Property and ambiguity on Missisquoi Bay: 1760-1812

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ABSTRACT

Between 1760 and 1812, the fertile lands around Lake Champlain's Missisquoi Bay were bisected by an international boundary. During this intense period of settlement, these lands were also subject to competing claims by various individuals, states, empires, and Native nations, all of who used grants, leases, surveys, and titles to further their claims. However, this copious property creation did not result in a coherent landscape, governed by authoritative states. Instead, participants used competing titles and overlapping grants to negotiate a spectrum of territorial claims. In many cases, the political, geographic, and economic ambiguities of property were seen as opportunities, rather than liabilities, by the diverse parties who claimed and occupied Missisquoi land.

Entre 1760 et 1812, les terres fertiles situées autour du lac Champlain, plus précisément de la baie Missisquoi, ont été coupées en deux par une frontière internationale. Durant cette période intense de colonisation, l'endroit fut également l'objet de revendications par divers états, empires, personnes et nations autochtones qui utilisèrent différents titres, baux, plan d'arpentages et concession pour faire avancer leurs demandes. Cependant, la création de ces nombreuses propriétés n'a pas abouti au façonnage d'un paysage cohérent, politiquement stable et soumis à l'autorité claire d'un état. Au contraire, les participants ont utilisé les titres litigieux pour négocier un spectre des demandes territoriales. Dans de nombreux cas, les ambiguïtés politiques, géographiques et économiques du concept de propriété furent considérées comme des opportunités plutôt que des inconvénients par les différents partis qui ont demandé et qui ont occupé les terres du Missisquoi.

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INTRODUCTION

Missisquoi Bay is the large northeastern bay of Lake Champlain, draining more than 1,200 square miles of land from both branches of the Missisquoi River in northern Vermont and southern Quebec. As the river flows into the bay, it forms a broad, marshy delta surrounded by fertile fields.[1] These lands are first and foremost an Abenaki Indian place, inhabited and cultivated for close to 11,000 years.[2] Only more recently was the bay and its watershed bisected by 45th parallel, marking the international border between Canada and the United States.

This border was first delineated during an intense period of settler occupation in the region, roughly between 1760 and 1812, when the valuable lands on all sides of Missisquoi Bay were subject to claims by a staggeringly diverse array of individuals, groups, states, and empires. New York aristocrats, New Hampshire land speculators, and Quebec seigneurs, among others, all claimed the valuable lands around Missisquoi Bay. At the same time, the longstanding Abenaki settlement on the river a few miles east of the Bay expanded to contain members of wider Wabanaki and Iroquoian confederacies. Later, merchants and entrepreneurs from British Quebec, leaders of the newly created Republic of Vermont, and United Empire Loyalists all attempted occupation and ownership of these lands.

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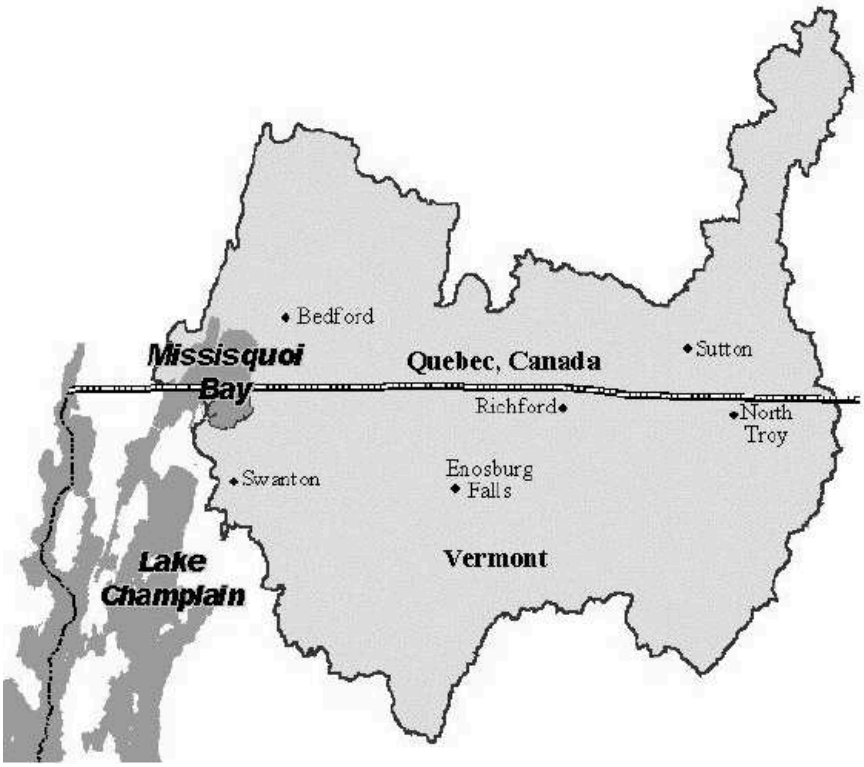
[1] "Watershed Information," Missisquoi River Basin Association, accessed July 4, 2013, http://www.troutrivernetwork.org/mrba/.

[2] William A. Haviland and Marjory W. Power, *The original Vermonters : native inhabitants, past and present* (Hanover [N.H.]: Published for University of Vermont by University Press of New England, 1981)., 15, 22, 152. "Missisquoi" is a corruption of the Western Abenaki word *Mazipskoik*, which means "At the Flint," which may be related to the proximal presence of a chert quarry. I will refer to the lands on all sides of Missisquoi Bay as "Missisquoi" in this thesis.



"Missisquoi River Watershed," Missisquoi River Basin Association, accessed July 4, 2013, http://www.troutrivernetwork.org/mrba/.

Competition for land at Missisquoi was particularly fraught because the bay happened to lie on the border of several empires, confederacies, and new states. However, conflict over territory should not be framed as merely a series of contests between governments. Land claims at Missisquoi were never a matter of states and empires asserting sovereignty (the association of land with a particular government) or jurisdiction (the enforcement of a particular set of laws over a territory). Instead, land was delineated, claimed, inhabited and cultivated by diverse individuals and groups – some associated with a formal government, and others with none in particular. For example, land speculators, aspiring landlords, colonial officials, farmers, merchants, and Indian family bands and confederacies, among others, all purchased, defended, and articulated the validity of conflicting titles.

These conflicts generated a great deal of material artifacts – deeds, titles, warrants of surveys, survey plats, maps, rent rolls, and grants – the many documents that, together with physical boundaries, are understood to mark the transformation of

un-delineated "land" into "property."[3] By this measure, an extraordinary amount of property was created at Missisquoi during this period. Yet much of this new "property" was contested, overlapping, unsettled, and vaguely or varyingly delineated. Property creation did not result in the creation of a coherent, orderly human landscape; instead, it often increased uncertainty. In many cases, the deep ambiguities of sovereignty and jurisdiction at Missisquoi during the period were seen as opportunities, rather than liabilities, by those who claimed and occupied it.

Typically, property making is seen as the orderly creation of powerful modern states. In James C. Scott's influential *Seeing Like a State*, he describes property creation as part of the "rationalizing and standardizing" projects of "early modern European statecraft," during which states obliterated "complex, illegible, and local social practices, such as land tenure customs or naming customs, and created a standard grid."[4] At Missisquoi, despite the copious production of property, no standard grid was achieved. "The fiscal or administrative goal toward which all modern states aspire," Scott asserts, " is to measure, codify, and simplify land tenure."[5] Yet even if the multiple, conflicting states that claimed Missisquoi hoped to create a modern tenure system, all of them lacked the ability to implement such a project. Yet this is not to say that property remained in a locally specific, pre-modern form. Settlers invoked state authority to their advantage, and several states did impose cadastral regimes on the region. Property creation at Missisquoi mingled local and imperial practices in more complex combinations than Scott's paradigm allows for.

Alan Taylor offers a more nuanced view, describing the transformation of land into property as a shared project of the settlers who occupy lands, and the state that legally protects their titles. In *The Divided Ground*, Taylor describes the creation of property during this period in the northeast as "intertwined processes of line-making," through which settlers and governments mutually "constructed the public

[3] Alan Taylor, *The divided ground : Indians, settlers and the northern borderland of the American Revolution* (New York: Alfred A. Knopf, 2006)., 9.
[4] James C. Scott, *Seeing like a state : how certain schemes to improve the human condition have failed* (New Haven: Yale University Press, 1998)., 1, 2.
[5] Ibid., 36.

power of states, nations, and empires in North America."[6] In Taylor's description of the process, after "a state or a colony claimed a sovereign monopoly within to sell land," it would survey its new territory and sell "sovereign title to the enclosed parcels." By doing so, a government garnered new settlers who "returned allegiance to the government that issued their land titles" in exchange for the government's legal protection of those titles. In turn, these "supporters consolidated a state's sovereignty to the limits of the asserted boundary."[7]

At Missisquoi, there were multiple states and empires issuing land titles. The relationships between settlers and states, this thesis contends, were far more complex, and often far more flexible, than scholars have portrayed them. Some states attempted to assert jurisdiction or sovereignty, but had little ability or interest in governing affairs on the ground. Many settlers seemed comfortable staking a claim based on a title from a no longer existing empire, or a grant from a new, unrecognized state. Speculators, in particular, often drew on the semblance of state authority when it served their purposes, but ignored it (or created new states) when it suited them.

The dynamic of property making explored in this thesis was not merely one in which states were distant or uninvolved, and settlers manipulative and opportunistic, though that was frequently the case. At a more profound level, the way that property was constituted around Missisquoi challenges notions of "states" and "settlers" as separate or coherent categories, whether cooperating or undermining each other. Property was created with far less intent on the part of states and empires, and far more initiative on the part of individuals. A variety of quasi-political entities, with wide-ranging levels of organization and authority, were often those who claimed land, carried out surveys, and constituted property in ways that defied easy categorization as either the large project of an empire, or the renegade claims of a single settler. New England townships, Quebec seigneuries, New York manorial estates, and speculative companies all played important roles in creating property, and it was often on their terms – a hybrid of public and private interests – that property was delineated, registered, defended, and settled.

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[6] Taylor, *The divided ground : Indians, settlers and the northern borderland of the American Revolution*., 9, 406.
[7] Ibid., 9, 406.

More importantly, the long-term presence and involvement of Native people (primarily Abenakis and Mohawks) in claiming land and defining territory in the region further removes property creation from the exclusive milieu of "settlers" or "states." A variety of Native entities – from individuals to family bands to nations to empires – engaged with a multiplicity of European entities in competition over land at Missisquoi. While there were profound differences between Native and settler strategies for claiming land, Native people at Missisquoi were not struggling against a coherent settler project of property making: there was no such monolith. Evaluating Native strategies for defining territory against European standard of "property" fails to capture the complexity of Native, *or* European land holdings. Instead of drawing conceptual lines between Native and settler conceptions of property, this thesis situates Abenaki and Mohawk land claims within a larger and more fluid variety of territorial strategies.

This project evaluates property creation on its own terms, rather than measuring it on the basis of a legal ideal of absolute property and perfect sovereignty. What were the intentions, and the actions, involved in creating property? At what point was property considered established? Who defined what property was, and how did they establish or defend these definitions? How precise did delineations of property need to be to be accepted by participants in property transactions? Were such definitions locally situated, or did they have geographic consistency over larger areas?

Chapter One problematizes the traditional narrative of the conflict over land around Missisquoi, typically framed as a lateral competition between New York aristocrats and New England freehold settlers during the 1760s and 1770s. A closer examination of provincial land granting practices along Lake Champlain dismantles the intentionality and authority of states in making property. Instead of powerful empires, an array of independent individuals and companies generated surveys, titles, leases, and deeds to land in the region.

In Chapter Two, this study of the property-making process expands to include Native Americans, namely the Abenaki band living at Missisquoi who leased their

land to a Québec merchant in 1765. This case study explores settler attitudes toward Native property ownership, as well as the particular motivations for Abenakis in leasing their lands. By contextualizing their hybrid lease within competing settler grants to the same place, this chapter emphasizes the common limitations of Native and settler property ownership during the period.

Chapter Three explores property creation on the northern side of 45th parallel in the 1780s, as British officials and landowners used and adapted former French seigneuries. In particular, it explores the efforts of United Empire Loyalists to settle on Missisquoi Bay, despite prohibitions of settlement on the boundary line. These loyalists purchased and used the 1765 Abenaki lease as an originating source of title in their property negotiations along the border.

Chapter Four focuses on the short-lived creation of the Republic of Vermont in the 1780s. In particular, it examines the efforts of the Allen Family to claim land and gain legitimacy for their new state through negotiating with the British empire. This chapter also charts the consistent efforts of Abenaki people to maintain their occupation and ownership of lands around Missisquoi, despite the aggressive attempts of the Allens to dispossess them.

While these chapters may appear as a motley collection of case studies, taken together, they demonstrate the staggering array of strategies for possessing land employed even in one small place. These examples may also seem disparate and messy because of their human particularity, and this is perhaps appropriate. Property creation, at Missisquoi and elsewhere, was not the large-scale creation of an impersonal state, but a series of negotiations over land and resources, between humans.

Nevertheless, these diverse examples do share several important commonalities. In most cases, the creation of property – titles, plats, deeds, and even physically marked boundaries – did not result in increased clarity over land disputes. In the eventual settlement of these disputes, it was almost never the actions of an authoritative state that resolved disagreements, but a mixture of force, legal rhetoric, occupation, and persistence on the part of the parties involved. Most importantly, the study of these varied interactions collapses divides between "settlers" and "states,"

and “Native” and “settler” land tenure, as useful categories of analysis. This thesis resists creating a new paradigm for property creation, contending, on the contrary, that this process was fluid and unstandardized. Instead, it calls for an expansion of our definitions of what property was, how it was made, and who contributed to its creation and maintenance.

CHAPTER ONE

On September 29, 1772, a surveyor for the British province of New York reported an attack on his surveying team. Deputy surveyor Benjamin Stevens was on the east side of Lake Champlain, running the lines for several grants "to the northward of Onion River," just above what is now Burlington, Vermont. After completing several surveys with his assistants, Stevens returned to the falls on the Winooski River and found his boat missing. Stevens set off with two other men in search of the missing boat, and along the east side of Lake Champlain, "came across three Indians in a canoe" who reported that "they had seen two men fishing the day before in said boat in Onion River."[8] After heading back up the river, they caught sight of their boat, weighed down with a gang of seven men.

In his deposition, Stevens identified the "chiefs of the said gang" as Remember Baker and "Ara" Allen. Originally from Connecticut, Remember Baker and Ira Allen were cousins, surveyors, and land speculators. Since the 1760s, the Allen family had engaged in land speculation in what is now Vermont. After purchasing titles to the region issued by New Hampshire, they physically disputed the rights of New York surveyors to measure and map the Champlain Valley.

Baker and Allen claimed that Stevens "had been surveying their land that they claimed under New Hampshire," although he protested, "he had received his order to the contrary." The hostile gang tied up one of Stevens' deputy surveyors "in a barbarous and cruel manner," and confiscated half of their provisions, as well as their surveying chain. When Baker and Allen finally untied the men and returned their boat, they issued a warning, that if Stevens "ever came there again they would take his life," as well as issuing many "threats against the Governor of New York and his Majesties Council and other gentlemen of said Province."[9]

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[8]Benjamin Stevens, "deposition concerning attack by Ira Allen and Remember Baker on New York Surveying team," 1772 September 29, Box 2, Folder 76, "Allen Family Papers," (Special Collections, University of Vermont Library.).

[9] James Benjamin Wilbur, *Ira Allen, founder of Vermont, 1751-1814* (Boston: Houghton Mifflin, 1928)., 17-19. In his 1799 autobiography, Ira Allen frames the same 1772 confrontation as a heroic attempt to stand up to greedy speculators. The Yorkers' party included "four of his men and ten Indians, all well armed with guns &c," rather than the smaller, unarmed group Stevens reported. Allen recalls, "Capt. Baker had a cutlass, I. Vanornam a gun and I a case of pistols. These were all the arms

This face-to-face interaction was part of a much larger and longer dispute over the land between the Hudson and Connecticut rivers. As J. Kevin Graffagnino describes the controversy, New Hampshire governor Benning Wentworth began issuing charters in 1749 for lands west of the Connecticut River. By the time the British Privy Council had established that river as New York's eastern boundary in 1764, Wentworth had already issued charters for three million acres of land, including charters for 128 townships.[10] New York had also issued several large and amorphous patents in the region, but after the 1764 decree, began granting land patents east of Lake Champlain in earnest, amounting to more than two million acres.[11] By the 1770s, fully one quarter of New York's patents between the Hudson and Connecticut rivers conflicted with Wentworth's New Hampshire grants.[12]

The 1764 proclamation did little to resolve the conflict because the Council was not sufficiently clear when it declared the Connecticut River "to be" the official boundary.[13] Holders of New Hampshire titles contended that the ruling meant that New York assumed jurisdiction over the area starting in 1764, in that they would rule the grants and issue additional titles, but that New Hampshire grants were made under valid circumstances and should be recognized by the new government. New Yorkers, on the other hand, suggested that the ruling meant that New York was in fact the

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we had; nevertheless, we determined to defend the ground." Allen portrays Stevens as threatening, describing his approach "with large pistols" and "brandishing his hatchet." Stevens "drew a scalping knife from his bosom," and only backed down when confronted with Allen's own pistol, at which he "stopped with a pale countenance." Ultimately, Allen decided to spare Stevens' life, and return a part of his possessions, only because of his awareness of the "truce between Govr. Tryon [of New York] and the people of the district of the New Hampshire Grants."

[10] J. Kevin Graffagnino, ""The Country My Soul Delighted in": The Onion River Land Company and the Vermont Frontier," *New England Quarterly* 65, no. 1 (1992)., 25. Vermont and Mary Greene Nye, *New York land patents, 1688-1786, covering land now included in the State of Vermont (not including military patents)* ([Montpelier]1947)., 5.

[11] Vermont and Nye, *New York land patents, 1688-1786, covering land now included in the State of Vermont (not including military patents)*., 19, 20, 6. By 1766, New York had issued more than one hundred patents, as a combination of township grants, confirmations of New Hampshire charters, and compensatory re-grants for lost charters.

[12] Graffagnino, ""The Country My Soul Delighted in": The Onion River Land Company and the Vermont Frontier.", 25.

[13] Vermont and Nye, *New York land patents, 1688-1786, covering land now included in the State of Vermont (not including military patents)*., 6.

ancient and rightful owner of the Green Mountains, and thus all New Hampshire titles could be considered invalid.[14]

This lateral conflict was more than a matter of confusion over a vague imperial decree. Graffagnino and Taylor both suggest that is was part of a larger ideological conflict over two types of property ownership: the landed aristocratic estates of New York and the populist freehold farms of New England. Alan Taylor's book on similar land conflicts on the Maine frontier, *Liberty Men and Great Proprietors*, includes the Allens as "part of a national pattern of backcountry resistance," in which "yeomen seeking free or cheap access to wilderness land confronted gentlemen who had exploited their political connections to secure large land grants."[15]

Graffagnino notes that Green Mountain title-holders might have been "willing to accept New York's jurisdiction, but a considerable number would not or could not pay New York's confirmation fees and quitrents." These fees were not only higher than New Hampshire's, but asked holders of Wentworth titles to pay a second time to have their grants approved by a different provincial government.[16] Angered by New York's demands for title fees, "radicals among the Yankees living west of the Green Mountains formed the Green Mountain Boys," led by Ira Allen, Remember Baker, and most famously, Ira's brother Ethan.[17]

On one level, this confrontation between Stevens and the Allens did represent a moment in which a nascent, independent polity began to resist the dominion of an aristocratic province. The Allens were instrumental in the creation of the state of Vermont, and Benjamin Stevens was running surveys for several well-connected,

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[14] Graffagnino, ""The Country My Soul Delighted in": The Onion River Land Company and the Vermont Frontier.", 27. In the early 1770s, in the "Ejectment Trials," a New York court decided: "Wentworth titles had no value as evidence" in court.

[15] Alan Taylor, *Liberty men and great proprietors : the revolutionary settlement on the Maine frontier, 1760-1820* (Chapel Hill: Published for the Institute of Early American History and Culture, Williamsburg, Virginia, by University of North Carolina Press, 1990)., 3-7. While Taylor acknowledges that Ethan Allen was a "canny opportunist," who "exploited agrarian rhetoric" to pursue profits, he roots them in a larger pattern, in which "western Vermont's Green Mountain Boys rebelled against their New York landlords."

[16] J. Kevin Graffagnino, "Revolution and empire on the northern frontier Ira Allen of Vermont, 1751-1814" (1993)., 22.

[17] Graffagnino, ""The Country My Soul Delighted in": The Onion River Land Company and the Vermont Frontier.", 27.

wealthy New York land speculators.[18] However, the conflict between Stevens and Allen cannot be distilled into a clash between two coherent visions of what private property was, either on the part of Stevens and Allen as individuals, or New York and New Hampshire as competing states. Instead, their 1772 confrontation instead reveals a much more complex interplay between property creation, colonial administration, and land speculation during this era.

As this chapter contends, conceptions of what "property" was were far more varied than either managed estates or improved freehold farms. Provincial governments issued land grants, but the grantees never occupied them. Settlers associated with no government in particular generated their own titles and used them to launch claims against British imperial jurisdiction. Property lines were surveyed, but those surveys were never registered with a state, or incorporated into cadastral maps. All the accoutrements associated with property creation were present: grants, warrants of survey, land registration, and border making. Yet rather than functioning together, at the behest of a powerful state, to create a complete cadastral map, these elements seemed to further uncertainty and conflict in the Champlain Valley.

Property-Making in Provincial New York

By the time he met Ira Allen in 1772, Benjamin Stevens had been employed as a surveyor in the Champlain Valley for at least two years. His deposition states that he was a Deputy Surveyor for the royal province of New York, laying out tracts to be granted to soldiers. In reality, he was laying out tracts for land speculators and landlords. For example, William Wickham, one of the primary beneficiaries of the survey hindered by the Allens, was a major land speculator, pursuing a variety of holdings in the Champlain Valley. Wickham first petitioned New York in 1765 to request a grant, and in March 1771, he requested another grant for 2,000 acres in the southern Champlain Valley.[19] In April of the same year, New York colonial records reported a return of survey for a tract of 21,940 acres on the east side of Lake

[18] Ibid., 60.
[19] Secretary's Office New York, *Calendar of N.Y. colonial manuscripts, indorsed land papers in the office of the secretary of state of New York 1643-1803* (Albany [N.Y.]: Weed, Parsons & Co., printers and publishers, 1864)., 365, 521, 526, 558.

Champlain. In March 1772 Wickham petitioned for another township in what is now Northeastern Vermont.[20] Maps that Stevens made the previous summer in central Vermont also suggest that he had been working for private interests for several years, surveying for notorious New York landlords and speculators such as Goldsbrow Banyar, John Tabor Kempe, Alexander Colden, and Crean Brush.[21]

As Graffagnino notes, most of the large grants that New York issued east of Lake Champlain, at the request of these powerful and wealthy men, were "thinly-veiled exercises in land speculation." Typically, "two or three major investors frequently bought out their fellow grantees as soon as the ink on the charter had dried."[22] Speculators hoped to subdivide and sell their holdings, while aspiring landlords hoped to settle their large grants with tenants, providing rental income for years to come.

Technically, Stevens was serving the British crown's interests in bounding and measuring its vast terrain, even as he contributed to the personal aggrandizement of New York speculators. The Crown had issued land-granting instructions in 1753, which defined the particular tasks that Stevens performed as a surveyor. The instructions required every would-be landowner to submit a petition in which he could "furnish sufficient proofs of his ability to cultivate and improve the grant," as a nominal protection against large speculative holdings. The governor of the province in question would then issue a warrant for survey. A surveyor would be sent to "make an exact survey of the land petitioned for," as well as attaching "a plot or description." These would be entered in the auditor's office, and then a land title would be issued.[23]

Yet Stevens, even as he participated in this process, was not surveying the Champlain Valley because of desires in London to have land laid out in a regular fashion. Philip Schwarz writes that the Crown never created "an adequate policy or

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[20] Ibid., 652, 670.
[21] Benjamin Stevens, "A Map of Newbrook in the County of Gloucester in the Province of New York, Surveyed in June & July 1771.," (1771).
[22] Graffagnino, "Revolution and empire on the northern frontier Ira Allen of Vermont, 1751-1814.", 23. New York, *Calendar of N.Y. colonial manuscripts, indorsed land papers in the office of the secretary of state of New York 1643-1803*., 542.
[23] Vermont and Nye, *New York land patents, 1688-1786, covering land now included in the State of Vermont (not including military patents)*., 8.

set of standards" for settling land disputes. In fact, "the crown's protection of its own interests could indeed make the crown itself factious rather than an impartial arbiter and ruler over subjects caught up in the tangle of interests." In this context, colonial authorities and landowners, acting in their own self-interest, treated the Crown as "the ultimate arbiter of intercolonial boundary disputes," but at the same time, "equally persistently acted as if the crown could be manipulated in the decision-making process."[24]

The 1753 general instructions, in particular, were not a well-planned directive for mastering a vast territory. Instead, they were part of an attempt by part of British authorities to rein in a system of colonial property making that was increasingly out of their control.[25] As Mary Greene Nye notes, New York land granting policies were the subject of "a voluminous correspondence" across the Atlantic; one that "continued almost constantly from the time of the adjudication of the New York boundary in 1764 until the outbreak of the Revolution."[26] By 1770, all the Crown could offer as a solution to the dispute was a temporary moratorium on granting or surveying land on the east side of the lake "until our further will."[27]

By surveying Champlain Valley lands in 1772 for New York, Stevens was disobeying imperial instructions, yet according to his deposition, he was following the directives of Britain's Royal province. At the provincial level, coherent intentions are equally hard to discern. New York's administration was deeply dysfunctional, and plagued by near constant factionalism. As Lustig describes the province's political system, New York's governor shared power with an assembly that consistently sought to oppose his authority. An elite group of landlords, including many of the speculators receiving Green Mountain titles, cycled in and out of favor with the

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[24] Philip J. Schwarz, *The jarring interests : New York's boundary makers, 1664-1776* (Albany: State University of New York Press, 1979)., 170, 174, 226.
[25] Lauren A. Benton, *A search for sovereignty : law and geography in European Empires, 1400--1900* (Cambridge; New York: Cambridge University Press, 2010)., 24-28. As Lauren Benton describes the administration of empires, "metropolitan efforts to construct internally consistent legal orders were desultory at best." Instead, imperial authorities "mainly reacted to shifting circumstances." Benton suggests that "approaches to the production of knowledge," such as those directing such knowledge production as surveying, "were not pre-formed but developed in part in response to practices and conflicts in empires," (28).
[26] Vermont and Nye, *New York land patents, 1688-1786, covering land now included in the State of Vermont (not including military patents)*., 9-10.
[27] Ibid., 8-9.

governor, at times collaborating with him, and at other times opposing his interests as members of the assembly.[28]

Yet in colonial New York, such factionalism did not necessarily hinder the process of granting lands and generating titles. Land granting presented opportunities for mutual, short-term profits for officials and speculators. Because of New York's grant confirmation fees, the governor served to benefit richly from issuing grants, even if his current political rivals purchased them in pursuit of profit. Governor Cadwallader Colden made more than $30,171 in personal profits in the 1760s and 1770s by granting nearly one million acres of land, in part by granting contested Green Mountain tracts to his major rivals.[29]

New York's considerable land-granting activities in the 1760s and 1770s were not in the service of shaping a clearly bounded sovereign space. Nevertheless, they did generate a considerable array of land titles. These titles were not only held by speculators and landlords, but also by settlers and farmers. Typically, land titles combine the precise details of the location of the property with the legal apparatus of the state that issued, registered, and promised to protect that title.[30] A land grant made in 1772 in the Champlain Valley was in the odd position of being forbidden by British imperial decree, yet surveyed and registered with New York following British imperial procedure. Without the backing of a coherent empire or state, were New York titles meaningless? What sort of protection of their property did title-holders have recourse to?

New York title-holders, after 1770, could hardly expect to have their land claims upheld in London. On the provincial level, New York's establishment of a legal system, and land granting protocol, was uneven. New York did register its land grants, meaning that hypothetically, a claimant could refer to that registry to demonstrate proof of their grant and its legal survey. New York formed counties, and thus technically a court system, in the Champlain Valley, but this was not to protect

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[28] Mary Lou Lustig, *Privilege and prerogative : New York's provincial elite, 1710-1776* (Madison [N.J.]; London; Cranbury, NJ: Fairleigh Dickinson University Press ; Associated University Presses, 1995)., x-xi, 9.
[29] Ibid., 160-1.
[30] Taylor, *Liberty men and great proprietors : the revolutionary settlement on the Maine frontier, 1760-1820*., 25. Taylor notes: "the value of a proprietary title depended on the ability of the courts to make and enforce legal decisions."

settler titles, but to send large landowners as representatives to the provincial assembly. These courts made decisions upholding the 1764 ruling, but such rulings only seemed to provoke opponents to New York's claims to dig in their heels.[31] As for Stevens' assault by Allen and Baker, a deposition was taken, and provincial authorities recommended issuing a warrant for their arrests. However, Allen and Baker were never caught. New York's jurisdiction only stretched as far as they could physically police their territory, which, increasingly, they seemed less and less able to do.

New York colonial officials seemed untroubled by either imperial prohibition, or the prospect of issuing titles in a jurisdiction they could not enforce. For Governor Colden, the incentive for granting titles was the prospect of obtaining confirmation fees, not creating a coherent cadastral map. More interesting is the evidence that speculators, landlords, and settlers also seemed unconcerned with the ambiguities of jurisdiction and sovereignty in their titles. Judging from Colden's profits (some $30,171) from granting titles during a period when New York's jurisdiction was being challenged from above and below, many of those eager to obtain land did not need the security of absolute sovereignty and clear jurisdiction to value a land title enough to pay a confirmation fee for it.

New Hampshire Land Titles and the Allen Family

The New Hampshire titles that the Allens used to challenge Yorkers had been created under strikingly similar circumstances, and with similar motivations, to the New York grants. When Governor Benning Wentworth began vigorously granting patents in 1749, it was in pursuit of personal profit and granting favors to associates, not in establishing a system of land tenure. As Jere Daniell notes in his study of Wentworth's administration, the governor was an agile politician, convincingly currying favor back in England, while building a clannish and powerful administration in New Hampshire. Wentworth's primary method of gaining influence was with gifts of land. Presuming that his provincial boundaries stretched west to the

[31] Graffagnino, ""The Country My Soul Delighted in": The Onion River Land Company and the Vermont Frontier.", 27.

Hudson River, and to Québec to the north, Wentworth freely granted townships for nominal or even absent fees.[32]

Like Colden, Wentworth granted townships as a means of self-aggrandizement. By reserving plots for himself in each township he gave to speculators or settlers, he gambled on the improvement of these developing tracts, assuring that he would retain a part of the profits of every title that rose in value.[33] As Fox argues, Wentworth reserved 500 to 800 acres of each township for himself, and often "took them at the corners so as to amass contiguous territory," accumulating "some ninety thousand acres." Fox suggests that the township structure of the grants, requiring proof of one hundred families settling, was a formality, and that Wentworth freely granted to speculators and landlords, resulting in tracts where almost none of the original grantees actually settled.[34]

The provenance of New Hampshire titles, New Hampshire's ability to establish jurisdiction over the Champlain Valley to protect those titles, and even the fate of New Hampshire as a province, were increasingly irrelevant to the Allens and other speculators in the Champlain Valley. Originally from Connecticut, the Allen brothers likely never set foot in the province, and when they drove Stevens out, they were not claiming the region for New Hampshire. The Allens were not settlers seeking the protection of a state, but speculators and businessmen, seeking opportunities for profit. In January of 1773, Remember Baker, Ira Allen, and his brothers Levi, Heman, and Ethan Allen incorporated the Onion River Land Company. Their "objectives were to buy New Hampshire titles to lands in the Champlain and Winooski River Valleys, encourage settlement in the area, and reap the profits from the resulting rise in real-estate prices."[35]

Ira Allen, the primary architect of the Onion River Land Company, was not only a speculator, but a surveyor as well. He chose lands not only on the basis on their titles, but the value of the lands' geographic location. As he noted in his

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[32] Jere R. Daniell, "Politics in New Hampshire under Governor Benning Wentworth, 1741-1767," *The William and Mary Quarterly: A Magazine of Early American History* 23, no. 1 (1966)., 82-83.
[33] Ibid., 89.
[34] Dixon Ryan Fox, *Yankees and Yorkers* (New York: University Press, 1940)., 159.
[35] Graffagnino, ""The Country My Soul Delighted in": The Onion River Land Company and the Vermont Frontier.", 32.

autobiography, he chose to "interest [himself] in that country" after he "contemplated the extent of the New Hampshire Grants, and probable advantages that might arise by being contiguous to Lake Champlain."[36] The other major appeal for pursuing New Hampshire titles, for the Allens, was the province's shaky jurisdiction, which kept prices low. As Graffagnino argues, after the 1764 ruling, potentially worthless New Hampshire grants were "readily available at pennies per acre." The Allens were making low risk investments, and gambling "on the chance that New York might eventually validate at least some of the Wentworth charters."[37] As Schwarz argues, for land-hungry "special interests," the prospect of clearly articulated boundaries could be detrimental.[38] In bounded provinces, governors would quickly run out of land to grant to build political allies.[39] For speculators, clear titles often meant high prices.

The Allens were hoping to make swift profits on buying, surveying, and selling land. Graffagnino notes that the Allens were quite successful in attracting settlers to buy their titles, and initially they made a promising return on the Wentworth titles they had purchased.[40] Despite their lack of any provincial affiliation, settlers were comfortable enough with the air of legitimacy that the Allens presented to purchase titles and relocate to the Champlain Valley, mostly coming from Connecticut and Massachusetts. In 1772 alone, the year they drove Stevens off, the Allen brothers participated more than fifty land transactions in the region.[41] Yet records also suggest that many of the settlers purchasing titles did not pay upfront.[42] In one letter from Levi to his brother Ira, Levi wrote about potential tracts in the

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[36] Wilbur, *Ira Allen, founder of Vermont, 1751-1814*., 14-17.
[37] Graffagnino, ""The Country My Soul Delighted in": The Onion River Land Company and the Vermont Frontier.", 29-30.
[38] Wayne K. Bodle, "The Fabricated Region: On the Insufficiency of "Colonies" for Understanding American Colonial History," *Early American Studies: An Interdisciplinary Journal* 1, no. 1 (2003)., 2. Bodle cautions that "the First British Empire was not constructed from the inside out on a colony-by-colony "jigsaw puzzle" basis." Instead, a group of powerful self-interested parties might simultaneously take "multiple commission from clusters of colonies," except, or even when their "assets depended in the most literal ways on defining sharp boundaries between colonies" (2).
[39] Sara Stidstone Gronim, "Geography and Persuasion: Maps in British Colonial New York " *The William and Mary quarterly.* 58, no. 2 (2001)., 378.
[40] Graffagnino, ""The Country My Soul Delighted in": The Onion River Land Company and the Vermont Frontier.", 34.
[41] Levi and Ira Allen, "Land transactions," in *Allen Family Papers* (Special Collections, University of Vermont Library.)., Box 2, Folders 11-19.
[42] Ibid., Box 2, Folders 1-34, 39-46.

Champlain Valley, advising "a purchase by way of speculation," but noting: "what they may be sold for immediately for ready pay will be the principle thing."[43]

Instead of expecting New Hampshire, or even British authorities to step in to enforce jurisdiction, the Allens defended and promoted their property personally.[44] They used violence, threats, propaganda, and an active physical presence in the Champlain Valley to "secure" their titles and make them appealing to settlers. In discerning the bounds of their new lands, Baker and Allen did their own surveying. As developers, Allen and Baker made efforts to attract settlers: they advertised in Connecticut newspapers, built rudimentary roads, and constructed a fort at the falls on the Winooski River in 1773.[45] These many semi-public efforts by the Allens to construct infrastructure in the Champlain Valley did lead toward the creation of the Republic of Vermont, whose constitution was ratified in 1777. However, their efforts to build a successful land company predated any political aspirations they later developed. In the early 1770s, "New Hampshire titles" sold to settlers were backed up not by the British Crown, or by the New Hampshire government, but by the self-interested muscle of a private corporation.

Province-less Property Creation and John Henry Lydius

Most historians have portrayed this conflict as a lateral one between New York and New Hampshire, or more properly New York and the Allen family. Importantly, the conflict over land was a much larger one, and it included French seigneurial claims, as well as a variety of Native claims to territory – both of which will be addressed in further chapters. Another example of the fluidity of land titles during this period are the efforts of John Henry Lydius, who claimed land in the Champlain Valley based on titles from sources other than New Hampshire *or* New York.

Born in Albany in 1704, Lydius settled in Montréal in the 1720s, working as a fur trader. In the 1740s, he established a trading post at Fort Edward on the Hudson River, and focused his efforts on acquiring Native land. By the 1750s, Lydius was

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[43] Levi Allen, "Letter to Ira Allen, concerning speculation in Vermont lands, 1789 May 24-25," in *Allen Family Papers* (Special Collections, University of Vermont Library., 1789)., Box 11, Folder 77.
[44] Schwarz, *The jarring interests : New York's boundary makers, 1664-1776*., 173.
[45] Graffagnino, ""The Country My Soul Delighted in": The Onion River Land Company and the Vermont Frontier.", 34.

surveying, leasing, and selling tracts from several large areas of land in New York and the Champlain Valley. His titles did not originate with grants from New York, New Hampshire, or any province in particular.

Unsurprisingly, New York provincial governors and landlords refused to acknowledge his titles to Champlain Valley lands (which conflicted with lands they claimed).[46] Nevertheless, his successful sales and leases of these lands in the 1750s and early 1760s suggest that his titles were nevertheless legitimate enough to be worth buying. Some Lydius title holders when so far as to defend his possessions at length. Budding politician Dr. Thomas Young wrote a lively pamphlet in 1764, defending Lydius as a way to justify his own, recently acquired Lydius tracts.

Apparently, Lydius had purchased his lands around Otter Creek and Wood Creek in 1732 from Mohawks. Young justified the validity of the Lydius titles on this basis, arguing that the British Crown never "asserted any absolute right to any lands claimed by the Natives of America."[47] Lydius, in purchasing directly from Indians, had obtained his title legally, and "none has a right to question it but the King."[48] After his titles were disputed by New York, Young explained, Lydius realized that "His Majesty's own particular sanction was the best to have stampt on his title," and thus, "he made application, by means of the Massachusetts-Agent (then going to the court of London) for the royal approbation."[49] Essentially, Lydius sought to bypass the problem of provincial jurisdiction altogether, by appealing directly to the British Crown via whatever province might be in closest contact with London.

Interestingly, Lydius seemed to behave something like a proto-province of one, in the way he divided up his lands. As Young noted, in 1760, Lydius "gave out several townships of land, the first to Connecticut people, and others to those of New-York and Rhode-Island, on the moderate rent of five shillings sterling per hundred

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[46] Thomas J. Humphrey, ""Extravagant Claims" and "Hard Labour:" Perceptions of Property in the Hudson Valley, 1751-1801," *Pennsylvania History* 65(1998)., 155.
[47] Thomas Young, "Some reflections on the disputes between New-York, New-Hampshire, and Col. John Henry Lydius of Albany," (New Haven 1764)., 9.
[48] Ibid., 20. Young characterized the Mohawks as a nation (or empire) "who then looked on themselves the Macedonians of all the neighbouring states to the northward and eastward, till the St. Francis Indians claim bounded theirs."
[49] Ibid., 11, 12.

acres, improvable land; first payable twenty years after the date of his leases."[50] Rather than acting as an individual selling or leasing a tract of land to another person, Lydius took on a bizarrely semi-public, administrative role, even though a single individual could hardly create a court system, build infrastructure, or bring any of the other trappings of statehood that would typically provide the authority for granting townships. Lydius most likely granted these "townships" to New Englanders because he hoped to lease, rather than sell his lands. Granting townships may have been a scheme for essentially becoming a manorial landlord, but without the burden of administrative work. Townships, when granted by colonial provinces, essentially required that the residents constitute the local government, and in particular, the time-consuming work of laying out their own parcels.

Apparently, grantees found these province-less titles reliable enough that they were, according to Young, "in earnest pursuit of settling and improving" their new townships. [51] Meanwhile, true to his disregard for provincial jurisdiction, Lydius went to London to pursue his cases in person, as Young realized when he arrived in Albany in 1765 to register his deeds, "only to find them invalid" (in New York) "and Lydius out of the country."[52] Lydius never returned to North America, instead continuing to sell specious titles in Europe until his death in 1791. While Lydius certainly possessed a wandering moral compass, what is of note here is that settlers did indeed lease and even purchase his titles. In an ideal situation, most settlers may have preferred clear titles from a strong and sovereign state. Yet in the 1760s and 1770s Champlain Valley, many were willing to gamble on far less.

The actions of the New York speculators, the Allens, and especially Lydius, may appear as outliers. However, these casual relationships with various governments may have been quite common in 18th century North America. In his article on early American "imagined communities," Ed White suggests that colonial American politics included "historical agents of several different orders," including Indian

[50] Ibid., 4.
[51] Ibid., 4.
[52] Stefan Bielinski, "John Henry Lydius " New York State Museum https://www.nysm.nysed.gov/albany/bios/l/jhlydius4615.html.

nations, religious groups, empires, class interests, and other imagined or practical collectives. Analyses that focus only on conflicts between competing empires, or provinces within empires, miss the many levels of political affiliation at play during the eighteenth century.[53]

Land speculators, White argues, identified themselves as part of an empire, which they "imagined as a complicated community of hierarchies and relations," but did not necessarily see themselves as members of any particular nation within that empire. Speculators, he suggests, "were neither cramped 'nationalists' nor simplistic defenders of Old World empire. Rather, they sought to envision the empire as a network of coordinated nations—Indian and white, tribes and colonies—in which they would serve as developers and managers rather than as mere members." White refuses to "reduce land speculation to some brute economic determinism," but instead argues that speculators did see their work as a sort of "imaginative political project." Yet they did not envision a consistent nation with clear boundaries as their goal, but a fluid array of nations and other collectivities. More importantly, they envisioned a political situation in which they played a nation-less, administrative role.[54]

In this framework, the actions of speculators, and their lack of concern for particular provincial jurisdictions, makes more sense. Only in this context could John Henry Lydius imagine himself as a subject of the British Empire, who nonetheless had the authority to negotiate with Indian nations and grant townships like a colonial province. Similarly, the Allen family's incorporation of a company that would create infrastructure and enforce its property boundaries in the Champlain Valley, before they even dreamed of creating a state, seems more plausible. If speculators and landlords like Lydius and Allen were relatively untroubled by the inconsistency of jurisdictions, it was because those ambiguities were the sources of their opportunities for profit. Fluid (or absent) allegiances to any particular nation were key to their ability to benefit from territorial unevenness. In the late 18th century, the conceptual ties between private property and state sovereignty could be quite tenuous, especially when they might hinder the pursuit of property.

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[53] Ed White, "Early American Nations as Imagined Communities," *American Quarterly* 56, no. 1 (2004)., 66.
[54] Ibid., 67, 74.

CHAPTER TWO

While a variety of state, pseudo-state, and state-less settler entities competed over land at Missisquoi, it was first and foremost a Native place. The lands around Missisquoi were inhabited primarily by Abenakis, but claimed by Mohawks and larger confederacies as well. At the same time that Stevens and the Allens chained lines, drew plats, and wrote out titles, Native people also participated in the rituals and negotiations of delineating and transferring land.

On May 28, 1765, a group of Abenakis leased several of their fields along both sides of the Missisquoi River to James Robertson, a "merchant of St. Jean" (now Saint-Jean-sur-Richelieu, Quebec).[55] The terms of the lease gave Robertson access to the land for ninety-one years, and specified a yearly rent of "fourteen Spanish dollars, two bushels of Indian corn, and one gallon of rum," as well as labor: that Robertson would "plow as much land for each of the above persons as shall be sufficient for them to plant their Indian corn every year." For his part, Robertson was free to build structures, to "make plantations," and to "cut timber of what sort or kind he shall think proper for his use."[56]

The lease was not just a neutral economic transaction between two interested parties for mutual benefit: Abenakis, like many other Indian people during this period in the northeast, operated within a context of encroaching white settlement and diminishing political power. It more likely represents a canny choice made within a set of increasingly limited options. At the same time, it is not evidence of Native people abandoning their strategies and appropriating – coerced or willingly – a European legal system. As legal scholar Saliha Belmessous argues, "indigenous and European peoples were engaged in a continuing political conversation," and therefore, European claims to possession should be seen not "as an original or

[55] Abby Maria Hemenway, Carrie E. H. Page, and George W. Wing, *The Vermont historical gazetteer: a magazine, embracing a history of each town, civil, ecclesiastical, biographical and military* (Burlington, Vt.: Miss A.M. Hemenway; [etc.], 1868)., Volume 4, 962. This thesis will use "Saint-Jean" as the consistent term for this place.
[56] Ibid., Volume 4, 963.

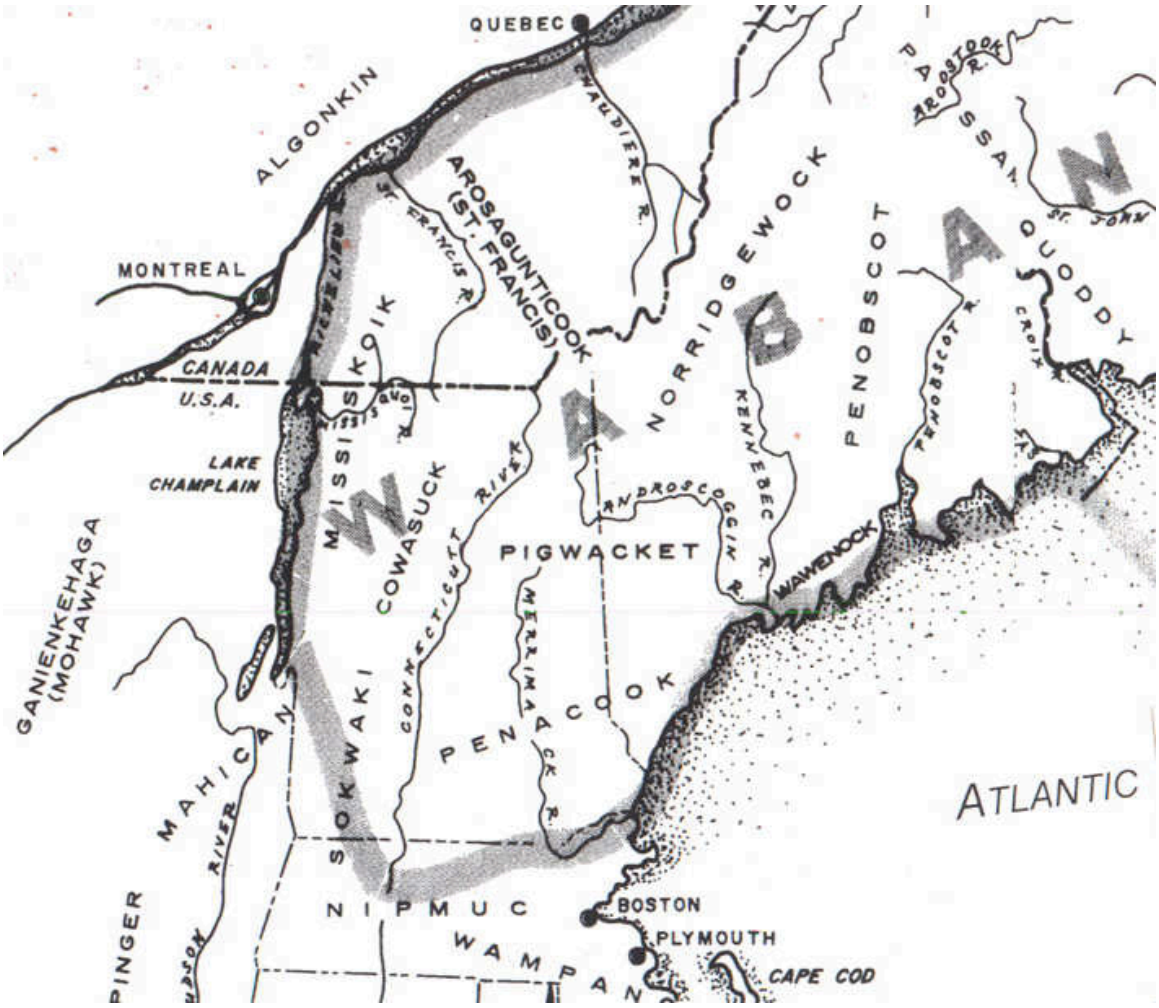
originating legal discourse but, at least in part, as a form of counterclaim."[57] Just as Natives adapted their strategies for possessing their land, appropriating European tools along the way, European strategies for claiming land also changed in response to Native influences.

Competing claims to property between Abenakis and settlers should not be framed as a clash between two coherent systems, or as a discrepancy in political organization. Native political and social entities did not fit neatly into the narrow settler categories of state, province, nation, or empire. However, neither did most settler political entities in the region. Expanding the definitions of property requires expanding fixed definitions of nationhood. In the Champlain Valley during the 1760s, the "political conversation" that Belmessous refers to was ongoing not only between Native and European people, but among a larger variety of players: Abenakis, Mohawks, English, French, Dutch, speculators, officials from multiple governments, and settlers affiliated with no government in particular – drawing on a variety of tactics to define, defend, and make productive the fertile lands along the Missisquoi River.

Missisquoi Abenakis and Native Nationhood

Missisquoi is located at the western edge of what ethno-historian Alice Nash refers to as the linguistic region of Wabanakia, an area including what is now northern New England, southern Quebec, New Brunswick, and Nova Scotia. Before and during the era of sustained European contact, inhabitants of Missisquoi mostly spoke western Abenaki, a further linguistic distinction separating them from eastern Abenakis in Maine.[58]

[57] Saliha Belmessous, *Native claims : indigenous law against empire, 1500-1920* (Oxford; New York: Oxford University Press, 2012)., 4, 6.
[58] Alice N. Nash, "The abiding frontier : family, gender and religion in Wabanaki history, 1600-1763" (1997)., 50, 51.



Map detail from "Wabanaki Country: The Wabanaki and their Native American Neighbors," Stacy Morin, William and Margret Brown Family History Library and Center, accessed August 2, 2013, http://www.brownhistory.org/images/Maps/Native%20American%20Maps/Wabanaki%20Country%20pre-18th%20Century%20Map.jpg

Abenakis employed territorial boundaries, but they did not prioritize hierarchy or organize themselves as a legible "state" with a central authority. As Calloway describes it, Abenaki society was structured in small, flexible family bands, hunting in delineated family hunting territories, and congregating and dispersing seasonally.[59] What is now Vermont was the "core of the western Abenaki homeland," with close to 10,000 western Abenaki people living in what is now New Hampshire and Vermont around 1600.[60]

[59] Colin G. Calloway, *The Western Abenakis of Vermont, 1600-1800 : war, migration, and the survival of an Indian people* (Norman: University of Oklahoma Press, 1990)., xvi, 10.
[60] Ibid., 11, xxiii.

Political identity was a matter of location, but it was also defined through diplomatic relationships. Throughout the 1600 and 1700s, Western Abenakis interacted, in allegiances and in antagonism, with English colonists and Native nations to the south, French colonists to the north, and the Six Nations to the west. The French first established a short-term mission on Lake Champlain in the 1680s, but focused more energy on the expansion of French-Abenaki relationships in Quebec mission villages, which took in refugees from King Philip's War in 1670's southern New England. In particular, the mission village of St. François (Odanak), along the St. François River in eastern Québec, as well as Bécancour (Wôlinak) in central Québec, emerged as important Abenaki settlements.[61]

By the 18th century, Missisquoi was increasingly composed of both Western Abenakis and Indian immigrants fleeing from southern New England's wars. Its geographic importance was consistent, but its population fluctuated. Abenakis and other Indians at Missisquoi moved freely and strategically between their southern settlements and the more protected French mission villages, responding to military issues (often wars with the English), epidemics, and seasonal hunting and planting schedules. In Grey Lock's War in the 1720s, and King George's War in the 1740s, Missisquoi was a crucial strategic base, launching war parties against the English. Missisquoi's population grew during this period, bolstered by the support of the French, who hoped to use it to keep English settlement from creeping north. While Calloway notes that most French authorities "had only a vague understanding of the pattern and purpose of movement between and around Abenaki villages," French sources estimated at least 20 Abenaki "cabins" at Missisquoi in 1738.[62]

By the 1760s, the Missisquoi community had both a local identity, and coherence as part of a larger confederacy. During the Seven Years' War, Missisquoi Abenakis often identified themselves as part of a Native confederacy known as the Seven Nations of Canada, including Algonquins, Nipissings, Lorette Hurons, Caughnawaga Mohawks, St. Francis and Bécancour Abenakis, and St. Regis Cayugas

[61] Ibid., 87.
[62] Ibid., 11, 116, 136, 145-53, 159.

and Onondagas, concentrated in the mission villages along the St. Lawrence. They also served, generally, as allies of the French.[63]

The Royal Proclamation and Native Land Tenure

At the close of war, the French lost "control" of North America in a treaty that did not account for Indians in its terms of settlement, even though the war was a profoundly multi-national conflict.[64] At the same time, in 1763, the British Crown issued a Royal Proclamation in an attempt to clarify and stabilize territorial conflicts with Native Americans. The Royal Proclamation turned the province of Quebec into a British "Government," and set its boundary "crossing the River St. Lawrence and the Lake Champlain in Forty five Degrees of North Latitude."[65] It also distinguished between Indian and British land, drawing a temporary line that reserved "all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West" as Indian territory. Scholars interpret this to mean the Appalachian Mountains, which run up the center of what is now Vermont, between Lake Champlain and the Connecticut River.[66] The Proclamation, interpreted literally, would place Missisquoi in a bizarre and arbitrary corner of this Indian Territory: barely underneath the Quebec border, and just westward of the top edge of the Appalachians.

It is unsurprising that the Proclamation Line makes little sense on the ground; it was not a precise accounting of territory, but a temporary solution dealing with broad swaths of an immense and unknowable new domain. At any rate, the line was not particularly meaningful for Missisquoi Abenakis, because their lands would supposedly be protected on either side. The Proclamation forbade British subjects to settle, grant, or survey "any Lands whatever" that had not "been ceded to, or

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[63] Ibid., 164.; Jean-Pierre Sawaya, *La Fèdèration des Sept Feux de la vallèe du Saint-Laurent : XVIIe au XIXe siecle* (Sillery, Quèbec: Septentrion, 1998).

[64] Colin G. Calloway, *The scratch of a pen : 1763 and the transformation of North America* (Oxford, England; New York: Oxford University Press, 2006). Calloway includes Pontiac's War as a major component of this conflict, as much a war between Native nations as it was between two European powers.

[65] King of England, "Royal Proclamation," (1763).; Francis M. Carroll, *A good and wise measure : the search for the Canadian-American boundary, 1783-1842* (Toronto: University of Toronto Press, 2001)., 8.

[66] Calloway, *The scratch of a pen : 1763 and the transformation of North America*., 94.

purchased by Us" by Natives, in either territory. The Proclamation also assured that all future land transactions between Indians and settlers be public, in the sense that "no private Person" could make Indian land purchases. Lands could only be purchased by the British Crown, "in Our Name, at some public Meeting."[67]

The Proclamation should have protected Abenaki land, as the 1760s marked the beginning of a sustained period of white encroachment. Ironically, only after this new protective decree did Missisquoi Abenakis experience significant threats to their territory and livelihood. Several scholars have cited the Proclamation as a paradigm shift in Native-European land transactions. Stuart Banner describes it as a "complete reorganization of Indian land purchasing," in which "land sales were transformed from *contracts* into *treaties*—from transactions between private parties into transactions between sovereigns."[68] Yet analysis of this lease, made just after the Proclamation, shows that notions of "private" or "public" were far more fluid than Banner's categories allow for. The Royal Proclamation may have influenced the creation of the lease, but it was only one of many concerns, rather than a new legal paradigm.

When they leased their fields to Robertson in 1765, the proprietors referred to themselves as the "Abenackque nation," and their lands as "belonging to Indians." While acting as a group, they also listed the named of the individuals participating in the transaction, who included the "widow of the late chief of the Abenackque nation at Missisque."[69] The land leased was defined by its location within a larger area of Indian land: running "one league and a half" from the mouth of the Missisquoi River at Lake Champlain, and bounded on its eastern side by "lands belonging to Indians joining to a tree marked on the south side of the river," specifically the individuals "old Whitehead" and "old Abernard." The lease also reserved the riverfront farms of the lessons within the larger tract: five farms on the north side, and seven on the south

[67] England, "Royal Proclamation."
[68] Stuart Banner, *How the Indians lost their land : law and power on the frontier* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2005)., 93, 84.
[69] Hemenway, Page, and Wing, *The Vermont historical gazetteer: a magazine, embracing a history of each town, civil, ecclesiastical, biographical and military*., Volume 4, 962-963.

side, each with "two arpents in front nearly, and sixty in depth."[70] The lease articulated both a group ownership of land, and delineations of individual farms; a common Abenaki pattern of social organization.

As for Robertson, the lessee, he was a private individual. Despite his stated residence in Saint-Jean, the lease did not attach him, or the land, to the jurisdiction of any particular provincial government; even though New York, New Hampshire, and Québec all ostensibly claimed Missisquoi land in 1765. Instead, the contract only gestured towards British sovereignty, noting that the participants "interchangeably set [their] hands and seals hereunto this 13th day of June, in the 5th year of the reign of our Sovereign Lord, George the Third, King of Great Britain, France and Ireland."[71]

Robertson did identify himself as a British subject; was his lease of Missisquoi lands thus a consequence of the Proclamation's prohibition on private purchases from Natives? Robertson was acquiring other tracts of land during the same period. On July 25, 1765, only two months after the Missisquoi lease was signed, Robertson purchased a tract of land on the "West shore" of Lake Champlain from Joseph Chancellier for "thirty Spanish dollars," payment "in full."[72]

Yet Banner notes that after 1763, "settlers and Indians alike seem to have often ignored the ban on private purchasing," and that the Proclamation only encouraged "the efforts of settlers and speculators to acquire land illegally, in the expectation that purchases unlawful in the present would become lawful in the future."[73] Robertson, unlike many settlers, may have decided that attempting an Indian land purchase was too risky a source of title to prove worthwhile, or that the potential returns would be too far in the future. However, buying Abenaki land was risky not just because of the Royal Proclamation, but because there were already so many conflicting titles to Missisquoi.

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[70] Ibid., Volume 4, 963.
[71] Ibid., Volume 4, 963. The gazetteer reports that this document was additionally recorded "in the England Register, letter A, folio 179, in the Register's office of enrollments for the Province of Quebec."
[72]"Receipt of James Robertson by Joseph Chancellier," in *Fonds de la Ville de Saint-Jean* (Library and Archives Canada).
[73] Banner, *How the Indians lost their land : law and power on the frontier*., 93, 99, 101.

By the 1760s, Missisquoi was a palimpsest of overlapping patents. Yet these grants, stored in different provincial offices, had never even been compared to one another. Nor were any of them articulated in terms that made clear delineations between Native and settler land. Some late 17th century New York colonial patents are so vague that it seems likely that they theoretically incorporated Missisquoi; the Hoosick Patent of 1688 supposedly included most of the land "above Albany" on both sides of Lake Champlain.[74] It is unlikely that the New York proprietors of this patent knew that bounds of their new territory included Indian land, if they knew the bounds of their patent at all.

French colonists made more specific and consistent attempts to claim Missisquoi land, in part due to their interest in establishing a mission there. The seigneury of Beauvais, granted in July 1734, technically surrounded the Missisquoi "castle" (as the Abenaki settlement was called), but Beauvais was never settled.[75] Like most of the Lake Champlain seigneuries, it was revoked by French officials in 1741 because of lack of settlement and cultivation.

Seigneurial grants meant the creation of an administrative record of a French presence, but they did not necessarily bring dramatic changes to the physical landscape, or to daily interactions in the Champlain Valley. After being revoked in the early 1740s, many of the Lake Champlain seigneuries were re-granted, hopefully to seigneurs who might take a more active interest in the region. The 1748 grant of Saint-Armand, which encompassed the territory of three prior seigneuries on the east side of Missisquoi Bay, did bring some changes. Nicolas-René Levasseur, head of shipbuilding for New France, approached his new seigneury largely as a source of shipbuilding timber. Levasseur had a sawmill constructed at the falls on the Missisquoi River, very close to the Abenaki "castle."[76]

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[74] Vermont and Nye, *New York land patents, 1688-1786, covering land now included in the State of Vermont (not including military patents)*., 19-20.
[75] Guy Omeron Coolidge, *The French occupation of the Champlain Valley from 1609 to 1759* (Mamaroneck, N.Y.: Harbor Hill Books, 1989)., 88; "Acte de concession par Charles de Boische, Marquis de Beauharnois, et Gilles Hocquart, gouverneur et intendant de la Nouvelle-France, au sieur Philippe-René LeGardeur (Le Gardeur), écuyer, sieur de Beauvais fils, d'un terrain 1734," in *Fonds Intendants, Registres d'intendance* (Bibliothèque et Archives nationales du Québec, 1734).
[76] Jacques Mathieu, "Levasseur, René-Nicolas," *Dictionary of Canadian Biography* 4(2003).

Levasseur's seigneurial presence did not necessarily mean that Missisquoi Abenakis would be dispossessed. In fact, his grant explicitly included the rights of "hunting, fishing, and trading with the Indians throughout the whole extent of the said concession" as seigneurial rights.[77] Rather than extinguishing Native title, this French grant implies that a Native presence was part of the rights that were granted. Levasseur's aspirations for Saint-Armand were focused on resource extraction, rather than a plan for tenant settlements that would necessitate Abenaki dispossession. He was actively lumbering at Missisquoi in the early 1750s, and "the Abenaki village soon developed into a busy French and Indian settlement of fifty huts, with a church that boasted a bell."[78] By 1757, however, Levasseur ceased his shipbuilding operation at Missisquoi, in part because of the difficulty of shipping large timber through the war zone of the upper Champlain Valley, and the British burned the sawmill during these hostilities.[79]

In 1763, Saint-Armand had been sold to Henry Guynand, and in May 1766, was sold again to William McKenzie, Benjamin Price, James Moore and George Fulton.[80] It was unclear what would happen to seigneuries like Saint-Armand after the Proclamation set the border between Quebec and New England at the 45th parallel. This line bisected Saint-Armand, and the land contained in Robertson's lease, but at the same time, the location of the parallel was unsurveyed and contested. To add to the complication, in August 1763, the province of New Hampshire granted charters for Swanton and Highgate, which each overlapped areas of Abenaki settlement, and even of Robertson's lease.

For Robertson, would holding an Indian title have been any more or less risky than possessing one of these grants? Buying Indian land, Banner points out, was

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[77] "Acte de concession par Roland-Michel Barrin, Marquis de la Galissonière, et François Bigot, commandant général et intendant de la Nouvelle-France, à Nicolas-René Levasseur, constructeur des vaisseaux du Roi en cette colonie, d'une étendue de six lieues de terre de front le long de la rivière Missisquoi, dans le lac Champlain…," in *Fonds Intendants, Registres d'intendance* (Bibliothèque et Archives nationales du Québec, 1748).; Calloway, *The Western Abenakis of Vermont, 1600-1800 : war, migration, and the survival of an Indian people*., 159.; Thomas C. Lampee, "The Missisquoi Loyalists," *Proceedings of the Vermont Historical Society.* (1938)., 101-102.

[78] Thomas C. Lampee, "The Missisquoi Loyalists," *Proceedings of the Vermont Historical Society* 6, no. 2 (1938)., 104.

[79] Ibid., 104.

[80] Coolidge, *The French occupation of the Champlain Valley from 1609 to 1759*., 100.

"illegal only in the sense that purchase contracts would be unenforceable in court and land titles derived from such contracts could be superseded by titles created later. Purchasing land was not a crime."[81] In 1760s Missisquoi, there was no coherent judicial authority that could arbitrate *any* of these titles. There was certainly no singular court in the 1760s Champlain Valley: would Robertson's title be enforced in Québec, New York, or New Hampshire? New York's wealthy proprietors and officials, who claimed the Champlain Valley as their own, mobilized their courts to uphold their own claims. The authority that issued broad and abstract ruling about Indian land purchasing – in this case the British Crown – was not the same authority that ruled on questions of local land title, and these authorities often had conflicting interests.

Nor was Robertson's lease necessarily a less complete form of land tenure than these versions of settler ownership. The Royal Proclamation prohibited private Indian land purchases, but most forms of concurrent settler title were not fully "private" transactions that rendered complete ownership to title-holders. The New Hampshire charter of the town of Swanton, granted in August 1763 by Benning Wentworth, was granted to a group of sixty-four proprietors, under certain conditions – that every grantee "shall plant and cultivate five acres of land within the term of five years on every fifty acres," or else risk "the forfeiture of his grant." Wentworth was also careful to reserve "all white and other pine trees within the said township lot for masting our royal navy." He also required a rent of "one ear of Indian corn" every year for the first ten years, as well as "one shilling reclamation money for every hundred acres," required "yearly and every year forever."[82] While a shilling was a negligible rent, it reminded township proprietors of their incomplete ownership. The prohibition on cutting pine trees, however, could prove much less symbolic: especially for settlers who hoped to take over the French sawmill at the falls.[83]

When Wentworth granted Swanton to sixty-four proprietors, he didn't simply transform public land into private land. He also mandated the creation of a governing

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[81] Banner, *How the Indians lost their land : law and power on the frontier*., 93, 99, 101.
[82] "Swanton Town Charter," in *Surveyor General's Records: SE-132* (Vermont State Archives 1763).
[83] Hemenway, Page, and Wing, *The Vermont historical gazetteer: a magazine, embracing a history of each town, civil, ecclesiastical, biographical and military*., 989-992.

body that would oversee that land on a local level. The nature of township grants in New England required the incorporation of a local government with the issuance of each patent. In particular, new township proprietors were collectively responsible for surveying, plotting, and listing the lands within their town.[84] While such land did become private, in that each plot was technically alienable by its proprietor, the township land also became increasingly engaged in a public context, in that the level of government supervision of the land itself became much more proximal and specific. The seigneury of Saint-Armand, when it was granted in 1748, was not a grant of land, but rather the ownership of a social system, conceded by the King, himself the seigneur of Canada, to Levasseur as a lesser seigneur. The grant reserved shipbuilding "oak timber" and "mines, ores, and minerals" for the King.[85]

These provisions were not extinguished when the British took over the area. In the 1760s, French seigneuries, especially those along Lake Champlain and the Richelieu River, were purchased by merchants, administrators, military officers, and entrepreneurs. As Françoise Noël argues, rather than rejecting French forms of feudal tenure, these new seigneurs acquired properties in part to acquire particular seigneurial rights.[86] Like township grants, seigneurial concessions also had a set of public responsibilities built into them. Seigneurs were responsible for establishing settlers on their new holdings, and they also played a significant administrative role. Like township proprietors, seigneurs were engaged in a great deal of record keeping concerning the management and delineation of land.[87]

Mutual inclusion under the very large umbrella of British sovereignty (which Robertson also claimed) offered very little help in arbitrating conflicting land claims at Missisquoi in the 1760s. Land might be British, but the practice of determining, confirming, and settling debates over boundaries and titles rarely took place at imperial levels of governance. Provincial governments ultimately settled their land squabbles by negotiation, not through appeals to British authorities. Moreover, the

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[84]"Swanton Town Charter."
[85] Lampee, "The Missisquoi Loyalists.", 102.
[86] Françoise Noël, *The Christie seigneuries estate management and settlement in the Upper Richelieu Valley, 1760-1854* (Montréal, Que.: McGill-Queen's University Press, 1992)., 13.
[87]Allan Greer, *The patriots and the people : the rebellion of 1837 in rural Lower Canada (Toronto; Buffalo: University of Toronto Press, 1993).,* 267.

land titles of individual proprietors were filed, organized, and as documents, physically resided in repositories – whether private seigneurial account books or public township town clerks' offices – at the local level.

For Robertson, leasing Native land – or potentially any land – may have been a more prudent option. Rather than entering into the fray of defending an incomplete title, Robertson entered into an agreement that allowed him access to valuable resources. For a businessman engaged in resource extraction, obtaining a 91-year lease in which he could "cut timber of what sort or kind he shall think proper," in a riverfront location where sawmill infrastructure had been built, might have been just as useful, and far less hassle, than obtaining a title that might prove worthless, limited, or disputed indefinitely.[88]

Abenaki Motives for Leasing Land

Ultimately, Robertson's personal motives are obscure. Moreover, the most compelling reason for this transaction was that Abenakis chose to lease their land, rather than sell it. The practice of Indians leasing land to settlers was not uncommon during the later 18th century. In *The Divided Ground*, Alan Taylor discusses Iroquois leasing practices in upstate New York. Similar Iroquoian leases, such as the 1787 "long lease" made between New York proprietor John Livingston and Seneca, Cayuga, and Onondaga chiefs at Kanadasega, were a codification of earlier diplomatic practices. Land leasing, Taylor suggests, grew out of Iroquoian practices of creating "a long-term, symbiotic relationship with particular settlers." A land deed, initially, was understood as a "gift" which "created a perpetual debt for the settlers." Mohawks, in particular, often requested yearly rent payments in the form of agricultural produce, similar to the Missisquoi Abenakis' arrangement with Robertson for plowing and corn.[89]

At the same time, formally negotiated land leases were also a response to encroaching settlement pressure. As English settlers, in particular, seemed less willing

[88]Hemenway, Page, and Wing, *The Vermont historical gazetteer: a magazine, embracing a history of each town, civil, ecclesiastical, biographical and military*., Volume 4, 962-3.; Calloway, *The Western Abenakis of Vermont, 1600-1800 : war, migration, and the survival of an Indian people*., 188.
[89] Taylor, *The divided ground : Indians, settlers and the northern borderland of the American Revolution*., 37-38.

to enter into reciprocal land exchanges codified through gift-giving, Mohawks began deliberately negotiating leases, which made "explicit the Mohawk expectation that settlers would continue to feed Indians," this time in settler legal terminology. The 1787 long lease was negotiated in part, Taylor contends, because of the chiefs' "suspicion that New York State meant simply to take their lands with little or no compensation."[90] Leases codified ongoing diplomatic relationships, but they also increasingly represented articulations of Indian ownership in the face of outright dispossession.

Both Abenakis and Mohawks protested incursions by English settlers onto Champlain Valley lands. In September 1766, both participated in an "Indian Conference" with Sir William Johnson, the British Superintendant of Indian Affairs, held on nearby Isle La Motte in Lake Champlain. In Johnson's transcript of the meeting, the Mohawk group spoke first, asserting that they were "the original Owners," of the Champlain Valley, a territory long "occupied in the hunting Seasons by the Antient Mohawks whose Descendants we are," and claiming it as the "undisputed Right of the 6 Nations & their Allies."[91] In 1766, this alliance included Missisquoi Abenakis as part of the Seven Nations confederacy.

The Mohawks not only claimed territory, but emphasized that settler development should only be undertaken with their approval. After French construction of Fort Saint Frederic began in the 1730s, "the five Nations hearing of it, immediately remonstrated against it to the French Govr." They only "consented" to the French finishing their fort, "upon Condition that no other Settlement should be made upon it hereafter," a requirement that the French "promised, & engaged to observe."[92]

Speaking next, Missisquoi Abenakis articulated "a Remonstrance something similar but if possible more urging than the foregoing." Identifying themselves as the "Misisqui Indns. of the Abinaquis or St Johns Tribe," they asserted that they had

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[90] Ibid., 36-39, 171.; Karim M. Tiro, *The people of the standing stone : the Oneida nation from the Revolution through the Era of Removal* (Amherst: University of Massachusetts Press, 2011)., 76-79.
[91] William Johnson, Archives University of the State of New York. Division of, and History, *The papers of Sir William Johnson* (Albany: The University of the State of New York, 1921)., Volume 12, 172-3.
[92] Ibid., Volume 12, 172-3.

"inhabited that part of Lake Champlain time unknown to any of Us," and moreover, "without being molested or any ones claiming any Right to it to our Knowledge." Like the Mohawks, they emphasized that all prior settlement had been with their consent. When the "French Govr & Intendt" visited Missisquoi to scout locations for a sawmill, they "convened our People to ask their Approbation, when accordingly they consented & marked out a Spot large enough for that purpose," but with "the Condition to have what Boards they wanted for their own use, gratis."[93]

Since the close of the war, the Abenakis complained, "some English people came there to rebuild the Mill, and now claim 3 Leagues in breath & we don't know how many deep wch would take in our Village & plantations by far." In this light, the lease with Robertson, which reserved certain farms within the area leased, seems to have been an attempt to reserve their own "Village & plantations" from English occupation. At the same time, the inclusion of reciprocal provisions in the lease – that Abenakis receive a share of Indian corn and their fields plowed – echoed the prior arrangement that they had sought with the French. They were attempting to establish, under duress, an agreement that served their purposes and preserved their livelihood.

Abenakis did not mention their lease with Robertson in their complaint to Johnson, further implying that it was made under coercion. In contrast to the French, who gained Abenaki consent through diplomatic agreements, Robertson was merely one of "some English people" who claimed their land with no justification. The Abenakis closed their statement to Johnson by laying down a belt of wampum, and requesting "that to whatever Governmt it may belong, the Affr may be inquired into that we may obtain Justice."[94] The use of wampum also suggests that the Abenakis intended to frame the discussion over land in a particular way: as a diplomatic negotiation, not a private complaint to a common authority.

Indeed, Missisquoi Abenakis were well aware of the nuances of British authority. Their request that the "Affr" be sorted out, "whatever Governmt it may belong" to, reflects their awareness that property claims operated at various levels of European jurisdiction. While the British Crown issued proclamations, it was the

[93] Ibid., Volume 12, 172-3.
[94] Ibid., Volume 12, 173.

provinces that administered land patents. Similarly, their presence at the same conference with Mohawks reflected their participation in a layered network of Native land claims. By articulating "a Remonstrance something similar but if possible more urging" than the complaints of the Mohawks, they acknowledged both their confederacy, as well as their own particular claims to Missisquoi.[95]

Stuart Banner proposes that the Royal Proclamation precipitated a diminishing belief in Indian land ownership among Anglo-Americans. Pre-1763, the lack of formal prohibition on Indian land sales meant that Europeans possessed a "recognition that the Indian sellers owned the land they were selling." After 1763, he suggests, "Indian landownership was easier to perceive as a kind of second-class property right."[96] Allan Greer, by contrast, argues that the Royal Proclamation was "a culmination of sorts in the history of colonial-era dispossession," rather than a break from an earlier tradition of private purchasing. 17th century New Englanders, he suggests, "saw Indian tenure and settler tenure as separate realms and when land passed from Native to colonial ownership, that transfer was properly an act of state."[97]

At Missisquoi, Abenakis did not experience the change that Banner describes: they had not engaged in private land transactions before the Proclamation. More importantly, it seems unlikely that private land transactions were something they *desired* to engage in. Their statement to Johnson in 1766, with its use of wampum and directive that "whatevr Governmt" was responsible should curtail English encroachment, stressed their preference for collective transactions like those they had made with the French. Even if English settlers had seen Indian land tenure as clearly private or public, at Missisquoi, Abenakis were not acting on the basis of settler perceptions, or of British directives like the Royal Proclamation. Instead, they consistently endeavored to frame land transactions in the terms they desired, even, or perhaps especially, in a context of sustained settlement pressure.

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[95] Ibid., Volume 12, 173.
[96] Banner, *How the Indians lost their land : law and power on the frontier*., 103, 109.
[97] Allan Greer, "Dispossession in a commercial idiom: Indian deeds to land cession treaties.", 25-35.

Missisquoi Abenakis were one group of participants among many negotiators over property in the 18th century Champlain Valley. As such, their experience cannot be distilled into a forced exclusion from, or coerced inclusion into, a coherent system of settler property-making. Such a system did not exist. In particular, distinctions between "public" land owned by a state, and "private" land held in perfect tenure by individuals, did not exist. Most white settlers during this region and period engaged a mixture of "private" and "public" strategies for possessing land: contractual leases, estate administration, township incorporation, and a variety of government grants. Indian land was not the only realm where forms of tenure, and levels of ownership, were not clear-cut.

Despite the similarities described in this chapter, there are important differences between Missisquoi Abenaki political organization, and local governance by townships or seigneuries. Both Saint-Armand's seigneurs and Swanton's township proprietors saw themselves as part of larger system of European law, while Abenakis, importantly maintained their role as negotiators, never fully inside those systems. The stakes were also higher for Abenakis than they were for merchants like James Robertson. The threats to their physical livelihood and self-determination were far more grievous than James Robertson's pursuit of profit. Perhaps because these reasons, the 1765 lease was only one element of a diverse array of their strategies for resisting dispossession, assuring physical and environmental sustenance, and asserting political independence. Because it is a written document that survives, it is more visible than other moments of exchange or resistance. Yet land title, for indigenous *and* European people, was only one aspect of the occupation, ownership, or possession of land.

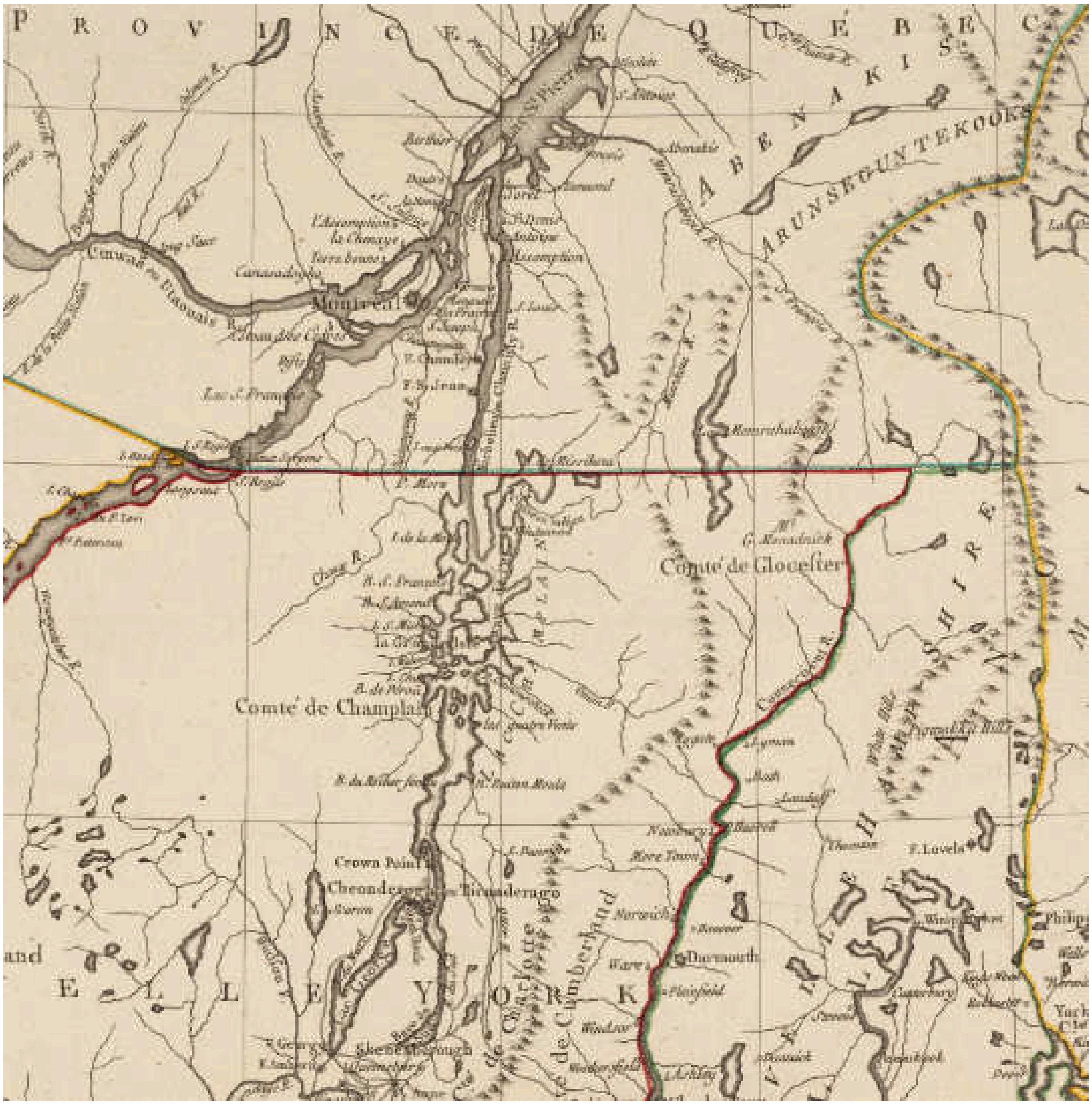
CHAPTER THREE

These processes of property creation were profoundly disrupted by the transformation of the Champlain Valley into a theater of war. At the close of the Revolutionary War, a new era of settlement commenced on both sides of the border. The 1783 Treaty of Paris that ended the war between Britain and the new United States transformed the 45th parallel, formerly the provincial border between New York and Quebec, into an international boundary. While the parallel was often invoked in political negotiations, its imposition was not simple or sudden. Nor did it immediately settle ambiguous jurisdictions or increase the level of clarity surrounding land titles. The border's creation did resolve some older disputes, but it also created new territorial problems, as well as new opportunities for those who found they could use multiple states to their advantage.

While the line ostensibly divided the new United States from the British Empire, it was marked by ambiguities on both sides. To the south, it separated Canada from the newly created Republic of Vermont, (whose development will be discussed in Chapter Four). On the northern side of the parallel, Quebec was still very much characterized by French seigneurial land tenure, as well as French civil law.

These complexities did not deter the many hopeful settlers who attempted to obtain land titles close to, or literally on the border in the 1780s. British businessmen in southern Quebec adapted and exploited the seigneurial system, hoping to profit from leasing and selling seigneurial lands along the border. This decade also saw a huge influx of United Empire Loyalist refugees from the war. A considerable number of these loyalists attempted to settle at Missisquoi, directly on the border, despite British prohibitions to do so. In their pursuit of land titles, these loyalists purchased Robertson's 1765 Abenaki lease as an alternate source of title to the land grants denied to them by the British. As at Missisquoi in the 1760s, the British seemed unable to enforce any decisions with authority. Still profiting from ambiguity as they had twenty years before, settlers mingled public grants, Native purchases, and French and British systems of land tenure as it suited them.

Creating the 45th Parallel



Detail from *Carte du théatre de la guerre entre les Anglais et les Américans,* with Missisquoi Bay at center, bisected by 45th parallel. Louis Brion de la Tour, Published by Esnauts et Rapilly (Chez), 1777. Norman B. Leventhal Map Center, Boston Public Library, http://maps.bpl.org/id/10101.

The location of the 45th parallel, even before it became an international boundary in 1783, underwent a protracted period of negotiations. As Don Thomson details, from the 1713 Treaty of Utrecht to the conquest of Canada in 1763, Britain "considered Acadia and Nova Scotia to extend to the St. Lawrence," arguing for a Quebec border far higher than the 45th parallel. Only after 1763, when it established

the 45th parallel as the southern border of Quebec, did Britain begin to insist on the importance of this line.[98]

In 1766, the governors of New York and Quebec agreed to begin the process of locating the parallel on the ground. Surveyors for both provinces independently located the 45th parallel on the west side of Lake Champlain, and came up with two different points. New York's point was significantly south of the British location, suggesting that this was the result of imprecise measurement, not an attempt to claim territory. By 1768, the provinces had agreed to use the northerly line.[99]

In the summer of 1771, Quebec deputy surveyor-general John Collins and New York surveyor Joseph Smith began marking the line east from Lake Champlain. They made it twenty-two miles toward the Connecticut River before winter set in.[100] The next summer, Thomas Vallentine replaced Smith as New York surveyor, and by September 1772, the line had been completed to the Connecticut River. Along the way, the surveyors were under instructions to "'blaze the Trees on the East and west Sides as you pass along, Cuting down only such Trees as stand directly in the sight of the Compass, and at the Distance of every 3 miles lying together in large heaps of stones and cutting a few Knotches on the Trees nighest each pile of Stones.'"[101] According to their surveyors' report, Abenakis disputed such physical manifestations of the provincial border. Saying that "their hunting grounds were being encroached upon," Abenakis "pull'd down a Post that had been erected on the east bank of Lake Mamraatagak" (Memphremagog).[102]

In 1783, when the 45th parallel became an international border rather than a provincial one, the physically delineated "Vallentine-Collins line" was accepted as the "correct" boundary. Compared to the rest of the new border, this section between Lake Champlain and the Connecticut River was clearly marked and free from disputes. To the east and west of this section, however, a spectrum of problems thwarted attempts to establish the border clearly. While the 1783 Treaty of Paris

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[98] Don W. Thomson, *Men and Meridians: The History of Surveying and Mapping Canada*, vol. I (Ottawa, Canada: Queen's Printer, 1966)., 252.
[99] England, "Royal Proclamation."
[100] John T. Faris, *The romance of the boundaries* (New York; London: Harper & Brothers, 1926)., 48.
[101] Thomson, *Men and Meridians: The History of Surveying and Mapping Canada*, I., 252.
[102] Faris, *The romance of the boundaries*., 49-50.

"specifically attempted to prevent misunderstandings and disagreements when dividing the continent," it defeated its own purpose by defining a border in which "reference points were wrong; specific river sources were debatable; islands in rivers could be validly claimed by either side."[103] The treaty's ambiguous and contradictory provisions reflected the lack of British and American knowledge of the territory they divided.

The physical certainty of even this small section of the parallel was short-lived. In the 1810s and 1820s the parallel was re-surveyed, re-negotiated, and finally re-codified it in 1842 some 1,200 feet south than the 1770s line.[104] Yet even when the physical line was clearly agreed on, as it was during the last few decades of the 18th century, there was still a great deal of contention over the new line. In particular, British officials struggled with a human problem, as settlers, speculators, and entrepreneurs flocked into the border region.[105]

Loyalist Settlement at Missisquoi

At the close of its losing war with the new United States, British officials in Québec faced a huge influx of loyalist refugees, petitioning for the land grants they were offered as compensation for their lost property below the border. On August 30th, 1783, two such loyalists, John Meyers and Thomas Sherwood, petitioned Quebec governor Frederick Haldimand "for a grant of lands on the Line of this Province Lat 45 to the East ward of the Missisqui Bay."[106] By October 26, when they wrote again to Robert Matthews, Haldimand's military secretary, to inquire about the status of their petition, they had engaged "upward of two hundred near all of them Loyal Rangers" who hoped to settle there. Most of the Loyal Rangers were originally drawn from the Mohawk and Champlain Valleys, and many had first been engaged in Carleton's fall 1776 campaign and Burgoyne's spring 1777 spring campaign in New

[103] Carroll, *A good and wise measure : the search for the Canadian-American boundary, 1783-1842*., 5.
[104] Ibid., 12, 70-74, 304.
[105] Ibid., 5.
[106] "Meyers and Sherwood to Matthews, 26 October 1783, Reel 110,," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: World Microfilm Publications, 1977).

York and the Champlain Valley.[107] Throughout the war, as Lampee points out, the Missisquoi region "had been continually traversed by the Provincial scouting and foraging parties."[108] Thus, their choice of Missisquoi as a settlement was not random; Sherwood and Meyers likely knew that Missisquoi lands were fertile and flat, as well as close enough to maintain ties to family and business opportunities in the United States.

In January 1784, Meyers wrote to Matthews again, stating the "extreme anxiety" of the petitioners to "know His Excellency the Commander in Chief's pleasure respecting a Grant of the Lands we Petitioned for."[109] Part of their concerns, as Meyers emphasized, was their "great fears that they would be compelled to go to some distant country."[110] Matthews responded on January 15, 1784, notifying them that their petition was denied, due to "the Inconveniences that would unfaillibly arise to settlers in that Quarter, from their proximity to the Americans." Haldimand, Matthews reported, "declined settling the fringe lands in that District, particularly as very valuable tracts of land have been discovered in other Parts of the Province," which offered "a certainty of being in peace and tranquility." Haldimand, Matthews assured them, "has been at much Pains in exploring those lands, and has received the most satisfactory accounts of them."[111] Haldimand had in fact sent surveyors out in the summer and fall of 1783, and located a site for settlement at Cataraqui (Kingston), comfortably farther from hostile interactions, or illicit business opportunities.[112]

Loyalist resistance to settling in Cataraqui, Haldimand and Matthews suspected, was due to continued relationships, and desires for proximity, to the no longer British states to the south. Matthews wrote again to Meyers in February, expressing his concern that their intentions at Missisquoi were to "traffic with the colonies, rather than to the spirit of cultivation."[113] Christian Wehr, another of the

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[107] Lampee, "The Missisquoi Loyalists.", 85-87, 110.
[108] Ibid., 111.
[109] "Meyers to Matthews, January 15, 1784, Reel 82," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: World Microfilm Publications, 1977).
[110] "Meyers to Matthews, 26 October 1783, Reel 110,," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: World Microfilm Publications, 1977).
[111] "Meyers to Matthews, January 15, 1784, Reel 82."
[112] Lampee, "The Missisquoi Loyalists.", 97.
[113] "Matthews to Meyers, 16 February 1784, Reel 23," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: World Microfilm Publications, 1977).

Loyal Rangers who hoped to settle at Missisquoi, wrote back quickly, insisting "it is in no wise our intention, nor never was, to settle East of Missisque bay, with a view to traffic with the Colonies."[114] The petitioners, of whom there were now "more than three hundred," "were brought up to cultivate the ground," and "have no other way" of living. Furthermore, Wehr argued, "as for the quarrelling with our neighbors we have not the least apprehension of being in any more danger from the United States by being settled in the place we petition your Excellency for, as in the upper countrys."[115]

If the Missisquoi loyalists were surprisingly direct in their desire for obtaining land grants "on the Line of this Province," they were not anomalous.[116] In April, Matthews responded to another group of New Yorkers, who had requested "a tract of land located between Missisquoi Bay and Connecticut River." Haldimand refused, Matthews reported to them, especially since "several applications for the same land have been already made," and denied.[117]

Many displaced settlers hoped for lands close to their families, and in familiar climates. Even more, entrepreneurs and large landowners who sided with the British saw loyalist immigration, and loyalist grants as opportunities to accumulate large tracts of lands through sponsoring settlements. In March 1784, Vermont landowner and British spy Roger Stevens wrote to Matthews, reporting "in the course of settling [his] business in the colonies," he "found great numbers of people who were desirous of retaining their allegiance to His Majesty," but noted that "the southern part of the Province, on the head of Connecticut River, or between there and Missisque Bay, was the part they seemed most inclined for."[118] Stevens presented loyalism not as a political act, but as an opportunity for quick and easy settlement. "If they can have a

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[114] Lampee, "The Missisquoi Loyalists.", 117.
[115] "Wehr to Matthews, 2 March 1784, Reel 82,," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: World Microfilm Publications, 1977).
[116] "Meyers to Matthews, 26 October 1783, Reel 110,."
[117] "Matthews to Moseley, 30 April 1786, Reel 23," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: World Microfilm Publications, 1977).
[118] "Stevens to Matthews, 15 March 1784, Reel 82," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: World Microfilm Publications, 1977).; Curtis Fahey, "Stevens, Abel," *Dictionary of Canadian Biography* 6(2003).

grant of lands in that part," he reasoned, "thousands would leave the States and settle thereon without further assistance from government."[119]

Such opportunists often asserted their loyalty to the British crown, but did not necessarily hide their intentions to continue pursuing opportunities in the United States. Ira Allen's brother Levi, who switched allegiances several times during and after the war, petitioned for loyalist land grants while his brothers simultaneously established a an American state directly to the south. Rather than rejecting his American allegiances when requesting British land, Levi Allen emphasized that he had "expended considerable sums in money, and much time in engaging settlers, and acquainting these that preferred his Majestey's government, to that of the states, and actually procured 280 settlers."[120] The crux of his argument was that he was simultaneously settling lands in the United States. "The lands I have petitioned for are far from being the best in Canada," he argued, "but the situation being contiguous to lands I am now settling in Vermont, make the same the most convenient for me to attend to, and get settlers on." [121] As they had in the 1760s, post-war speculators and entrepreneurs envisioned themselves as multi-national managers.

Alternative Sources of Title

While many loyalists expended copious rhetoric in petitioning British authorities, they did not necessarily wait to obtain explicit approval before settling lands in Quebec. In fact, Haldimand's secretary Robert Matthews found out about the Missisquoi settlement after he sent an agent to "go upon the spot," and to "bring a very accurate report of it, whether any settlements have been made, by whom."[122] The agent reported back that Meyers, Wehr, and others had "began a settlement at Missisquoi bay," where they had already "erected some houses," and "already got a

[119] "Stevens to Matthews, 15 March 1784, Reel 82."
[120] Levi Allen, "Letter to (Alured) Clarke, requesting grant of Canada land, 6 March 1792, Box 13, Folder 61,," in *Allen Family Papers* (Special Collections, University of Vermont Library., 1792).
[121] Ibid.
[122] "Matthews to Sherwood, 8 March 1784, Reel 23,," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: World Microfilm Publications, 1977).

sufficient quantity of land cleared to raise 1000 bushels of corn."[123] As they told Matthews' agent, "nothing but superior force shall drive them off that land."[124]

At the same time they were petitioning Haldimand for a land grant, the Missisquoi loyalists were also pursuing other potential sources of title. As Matthews' agent reported, one loyalist had "purchased an Indian title or claim, from Old Mr. Roberson of St Johns for 60 guineas or thereabouts." After finding "by measuration that the Indian title fell mostly or all in Vermont," he promptly subdivided and sold the title "in parcels" to Meyers, Wehr, and other Missisquoi loyalists.[125] As Matthews learned, "the purchasers have, by a stretch of measuring lately performed by themselves, brought the Indian title as far into this province as the mouth of Pike River."[126] At the same time, they were also "in pursuit of the same land under a French grant to one Mr. Leversere," and were "on point of concluding a bargain for 1000 pounds."[127]

The emergence of Robertson's lease in these had very little to do with Missisquoi Abenakis. Instead of using the lease to regulate a contractual relationship with Abenakis over control of resources, the petitioners invoked the lease as a sort of originating title for land claims with the British government. This practice, as Greer notes, was common in early New England, when Indian deeds "took on a life of their own in the colonial world of relations among Europeans and Euro-Americans."[128] As Greer describes it, "individuals, companies, and townships all could be found among those seeking and paying for Indian deeds."[129] The goal of obtaining these deeds "was to provide a foundation for settler property rights independent of direct grant from the Crown."[130]

To serve their purposes, the lease apparently morphed rhetorically into a sale: as described to Robert Matthews by his informants, the loyalists had "bought lands of

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[123] "Sherwood to Matthews, 12 March 1784, Reel 82,," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: World Microfilm Publications, 1977).
[124] Ibid.
[125] Ibid.
[126] Ibid.
[127] Ibid.
[128] Greer, "Dispossession in a commercial idiom: Indian deeds to land cession treaties.", 27.
[129] Ibid., 29.
[130] Ibid., 28.

Mr. Robertson at St Johns who bought from the Indians."[131] This transition may have occurred when Robertson sold it, or when Pritchard divided the lease into lots and sold those individual portions. Perhaps because Wehr, Meyers, others used the Robertson lease primarily to demonstrate that they were not on Crown land, not in order to sell that land, they assumed that the particular incompleteness of this "title" would not be challenged.

Haldimand and Matthews continued to resist loyalist attempts to settle as Missisquoi, but this was not because they doubted the validity of Indian title. Even though technically, the purchase of the Abenaki land after the 1763 Proclamation was illegal, Matthews never mentioned this concern in his correspondence. British authorities did not necessarily regard such titles as invalid in general.[132] Instead, they seemed concerned with the problem of location. Matthews sent several agents "upon the spot," to determine "the situation to a certainty," instructing them to determine, in particular "whether they are upon the Crown lands or Private Property, or within the American Line."[133]

Yet as Matthews' agent warned, "there will be some difficulty in ascertaining whether they are on Crown land or private property."[134] Even multiple visits to the physical location did not result in a sense of clarity about boundaries.[135] The lease that Robertson made in 1765 was certainly hard to delineate. It was not written in

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[131] "Closson to Sherwood, 18 March 1784, Reel 82," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: World Microfilm Publications, 1977).

[132] "Haldimand to Campbell, 22 March 1784, Reel 23," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: World Microfilm Publications, 1977). On March 22, 1784, Haldimand wrote to Colonel Campbell about a St. Regis Mohawk claim to a "tract of land from the River des Prairies, six leagues in depth." While the St. Regis Mohawks "for so many years considered themselves the proprietors of that land," Haldimand asserted that the Crown's "right is undoubted," because "the grant they pretend to have had, was never found, as nothing of the kind is to be found in the Register." Despite their belief in the value of legal, registered title as proof of ownership, authorities did not necessarily act on the basis of these beliefs. Haldimand advised Campbell to "avoid all difficulties with the Indians." He suggested that Campbell would be more successful if he gave "them some reasonable compensation for it, either in money, or by an adjacent grant, than to insist upon the right of the Crown of keeping it." Still, Haldimand advised diplomacy within the imposition of jurisdiction, even if only rhetorical. He advised Campbell, in settling the St. Regis claim, "to convince them that in law they have no right to the land, no grant for them ever having existed, and that the compensation offered is entirely a matter of indulgence proceeding from my wish to favor them."

[133] "Matthews to Sherwood, 8 March 1784, Reel 23,."

[134] "Sherwood to Matthews, 12 March 1784, Reel 82,."

[135] "Matthews to Sherwood, 8 March 1784, Reel 23,."

consistently used or standardized units, and its geographic delineations were relational: its boundaries were defined by their abutment onto Indian farms.[136] Since the war, the same Abenakis no longer occupied those farms.

Nor could British officials define exactly how much Crown land, as opposed to private land, was around Missisquoi Bay. Robertson's lease coexisted with French seigneurial grants above (and below) the 45th parallel. French property rights were protected in the conquest of New France, and further enshrined in the 1774 Quebec Act. The seigneury of St. Armand, granted in 1748, had been measured in leagues along both sides of the Missisquoi River, but not only had units of measurement changed, but the frequently flooding river also thwarted precise attempts to identify earlier boundaries.[137] Surveys of this part of Quebec had been carried out in the early 1760s, but in the 1770s, the location of the 45th parallel had been changed.[138]

Ultimately, the only line that seemed possible to determine was the physically marked international boundary, and Matthews decided to base his decision around that. He sent orders to acquaint the settlers that if they were found to be "within this province," they must "immediately desist."[139] If they were in fact on the south side of the parallel, then they were to be cut off from "provisions or other indulgences that will be experienced by the disbanded troops, and His Majesty's loyal subjects."[140]

On April 8, 1784, Lieutenant William Buckley made his report back to Matthews: that "all the lots were situated a mile or two within the lines."[141] While this did not solve the problem of whether they were on Crown Land or private property in Quebec, ultimately Matthews decided to discontinue their provisions on the basis of

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[136] Hemenway, Page, and Wing, *The Vermont historical gazetteer: a magazine, embracing a history of each town, civil, ecclesiastical, biographical and military*., Volume 4, 963.
[137] "Acte de concession par Roland-Michel Barrin, Marquis de la Galissonière, et François Bigot, commandant général et intendant de la Nouvelle-France, à Nicolas-René Levasseur, constructeur des vaisseaux du Roi en cette colonie, d'une étendue de six lieues de terre de front le long de la rivière Missisquoi, dans le lac Champlain…."
[138] Thomson, *Men and Meridians: The History of Surveying and Mapping Canada*, I., 98.
[139] "Matthews to Campbell, 22 March 1784, Reel 23," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: World Microfilm Publications, 1977).
[140] "Matthews to Sherwood, 22 March 1784, Reel 23," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: Wold Microfilm Publications, 1977).
[141] Lampee, "The Missisquoi Loyalists.", 124; "Matthews to Campbell, 8 April 1784, Reel 23," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: Wold Microfilm Publications, 1977).

Haldimand's prohibition on loyalist settlement below the St. Lawrence River.[142] Satisfied that they had settled north of the 45th parallel, Matthews allowed that the Loyalist "families should remain where they are until the season shall admit of their being removed with convenience."[143] However, the ringleaders of the settlement were still required to report immediately to Quebec.

The Missisquoi petitioners continued to protest throughout the spring: Meyers wrote on April 17, pleading to be spared the "expense" of going to Quebec, and on April 20th, Henry Ruiter lamented that due to his debts from confiscated lands in New York, he could not afford to relocate.[144] Christian Wehr's complaint was more specific: he emphasized that they had been swindled by the seller of the Indian lease, who had told them that it included lands above the border. The unwitting buyers, Wehr emphasized, had purchased the lands on good faith.[145] Wehr asked for permission to remain, and to be allowed "to proceed in settling them Indian lands, as we have begun, for it is to be considered, that the season is at hand, for to make gardens." Wehr closed by asserting: "I think, and am persuaded, that we are not on the Kings lands, and his Excellency knows, or at least might know better (if he pleases, to take the trouble) as I do, how that Indian lands lays." To be permitted to remain, Wehr wrote, would "be the greatest happiness, we the concerned have met with, since the beginning of this late unhappy rebellion in North America."[146]

Ultimately, Haldimand and Matthews did not succeed in keeping the loyalists from settling at Missisquoi. This was not because Wehr, Meyers, Ruiter and the others could prove that they held a valid title, or because they could delineate their property clearly. Instead, British officials found themselves incapable of determining "the situation to a certainty," beyond the location of the 45th parallel.[147] Letting the loyalists stay seemed to become the easiest course of action, in a situation where legal

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[142] Lampee, "The Missisquoi Loyalists.", 133-134.
[143] "Matthews to Campbell, 8 April 1784, Reel 23."
[144] "Myers to Matthews, 17 April 1784; Ruiter to Matthews, 20 April 1784, Reel 82," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: World Microfilm Publications, 1977).
[145] "Wehr to Matthews, 27 April 1784, Reel 82," in *Sir Frederick Haldimand: unpublished papers and correspondence, 1758-1784* (London: World Microfilm Publications, 1977).
[146] Ibid.
[147] "Matthews to Sherwood, 8 March 1784, Reel 23,."

and geographical particularity was elusive beyond the roughest of boundaries. Matthews cut off their provisions, but the loyalists stubbornly remained on their "Indian lands," building houses, cultivating fields, and raising their families.

Settling Seigneuries

The Missisquoi loyalists may have thwarted British officials with their combination of "Indian title" and physical possession. However, like in most land disputes during this period, negotiations were never solely between a government and group of settlers, but between a variety of competing interests. British businessmen who had purchased French seigneuries also claimed the Missisquoi lands.

In December 1788, businessman Thomas Dunn purchased the seigneury of Saint-Armand. Originally granted in 1748 to Nicolas-Rene Levasseur, Saint-Armand had already changed hands several times, and had most recently been sold to a group of British entrepreneurs in 1766.[148] For Dunn, Saint-Armand was one part of a considerable amount of land-holdings. Since he arrived in Quebec in 1760, he had been an ambitious and active entrepreneur. He purchased his first seigneury, Mille-Vaches (near Tadoussac), in February 1764.

Dunn's accumulation of land was not in the interest of creating saleable tracts: even if he had desired such a strategy, seigneurial ownership did not award him the privilege of subdividing and selling land, but a collection of monopolies. Even though Dunn was British, and did later advocate to abolish seigneurial tenure, he also clearly used the existing system in Quebec to pursue profits.[149] He obtained fur and fishery trading leases (in Saguenay), beginning in 1763, as well as renting another seigneury, Saint-Étienne, from 1767 to 1783. In 1772, he and his business partners acquired a trading lease to the lucrative posts of Mingan and Anticosti for fifteen years, during which time they managed to purchase most of those seigneuries as well.[150]

Dunn was one of a number of British businessmen that purchased seigneuries after 1760, at times taking advantage of the seigneurial system to profit from rents

[148] Gouvernement du Québec, "Saint-Armand," in *Fonds seigneuries de la région de Montréal* (Bibliothèque et Archives nationales du Québec).
[149] Pierre Tousignant and Jean-Pierre Wallot, "Dunn, Thomas," *Dictionary of Canadian Biography* 5.
[150] Ibid.

and monopolies, but at other times, advocating for changes to the existing property system when it would serve them.[151] Across Missisquoi from Saint-Armand lay what was known, by the 1780s, as Caldwell Manor, due to its management by Henry Caldwell, another British army officer and politician. Granted as the seigneury of Foucault in 1733, it reverted to the King in 1741, and was reconceded in 1743.[152] In 1774, Caldwell took on a 99-year lease to several seigneuries owned by Governor James Murray.[153] He managed Foucault until 1801, when he finally purchased the seigneury from Murray.[154] Both Caldwell and Dunn made purchases and negotiated long-term leases, suggesting that complete ownership of seigneurial land was not their most pressing concern. It certainly was not a necessity for obtaining profits.

For Missisquoi loyalists, the presence of these well-connected businessmen did threaten their settlements. At the same time, they offered opportunities. Henry and John Ruiter, two brothers who had petitioned with Wehr, Meyers, and others for the Missisquoi lands, were respectively hired by Henry Caldwell and Thomas Dunn as land agents, managing the affairs of the seigneuries on the ground.[155] Through their influence with Dunn and Caldwell, the Ruiters sought to obtain more secure titles for the Missisquoi loyalists.

In October 1787, as Dunn's purchase of Saint-Armand was imminent, Henry Ruiter wrote to Wehr from Caldwell's Manor on the subject of the loyalist titles. Both seigneurs, Ruiter reported, were aware that "there is some land reserved for the Indians," around Missisquoi Bay.[156] Apparently, British seigneurs also believed in the validity of "Indian titles" as originating grants.

Ruiter reported that he would "endeavour and get from Mr. Dunn, the boundary lines by which his seigneury is bounded."[157] Once the loyalists "know his

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[151] Noël, *The Christie seigneuries estate management and settlement in the Upper Richelieu Valley, 1760-1854*.
[152] Gouvernement du Québec, "Foucault," in *Fonds seigneuries de la région de Montréal* (Bibliothèque et Archives nationales du Québec).
[153] Marcel Caya, "Caldwell, Henry," *Dictionary of Canadian Biography* 5.
[154]Québec, "Foucault."
[155] Rick J. Ashton, *The life of Henry Ruiter, 1742-1819* (N.p.1974)., 26.
[156] "Henry Ruiter to Christian Wehr et al., Caldwell Manor 2 Oct 1787, MG23-GIII3, Volume 1," in *Ruiter Family Fonds* (Library and Archives Canada).
[157] Ibid.

boundaries," Ruiter suggested, they could "form a judgement" about whether on not they had settled within Saint-Armand, or on "Indian land." He also added, hopefully, that "the grant makes no mention of his lands from eight acres before the falls and to the bay but I suppose that is what was reserved for the Indians."[158] This supposition was wishful thinking; Robertson's lease and the seigneury of Saint-Armand had always overlapped, and never fit together logically. Missisquoi Abenakis, and Robertson, had not taken unsettled French grants into account when they made their agreement in 1765. Moreover, the supposed "Indian title" had migrated several miles north, above the 45th parallel, thanks to the efforts of the loyalists. If the seigneurial grant left out a section of land, that did not reflect a provision for Indians, but only an approach to land tenure that focused on obtaining riverfront lands, instead of creating a comprehensive cadastral map.

Despite, or perhaps because of these uncertainties, Ruiter hoped that "what you have settled you may still continue, perhaps to support your title."[159] In obtaining a title, Ruiter suggested, Wehr could "go to Mr. Robertson and demand the lease, or to demand the money, the latter I am sure he cannot do & the other he will gladly comply with." Ruiter presumed that it would be unlikely that they could get their investment back from Robertson, or that the lease would prove valid enough to impress Dunn. More likely, he surmised, would be that the loyalists could "tell Mr. Dunn that we would purchase his lands if his price was moderate." Thomas Dunn, Ruiter assured them, was a reasonable seigneur: "if the lands you have settled do not make part of his grant, he will not claim them." If "they do make part of his grant, I think you may be assured to have the preference of them, and at the same rate."[160]

Thomas Dunn did intend to subdivide and sell the lands within his seigneury. Under seigneurial tenure, this was technically illegal. Seigneurs did not own the land, but merely the collection of privileges that went with it. Nevertheless, Dunn wrote to the Ruiter brothers in October 1788, directing them to "set a provincial surveyor to work to lay out into lots of two hundred and ten acres each, that part of my seignorie of St. Armand that falls to the north of the Province line, as surveyed by Mr. Holland

[158] Ibid.
[159] Ibid.
[160] Ibid.

in June & July last, except such part as is now possessed in consequence of a supposed Indian lease, which I have consented shall remain as it is at present."[161] Like British officials, Dunn was stymied by the presence of the lease, but did not initially reject it outright on the basis of its "Indian" provenance.

By the next summer, Dunn was asking Ruiter's advice "with regard to fixing a price" for the lands he hoped to sell. Dunn estimated that "the good land should sell for a Dollar and a half an acre, that is, that the purchaser should pay one dollar and a half for each superficial acre, in consideration of my giving up my right to lods & vents, and their grinding their corn at my Mill."[162] Dunn seemed willing, or even eager to give up his seigneurial banalité and other privileges, only charging "a quit rent of six pence per annum for every hundred acres" to potential sellers.

Even as he casually changed forms of tenure, Dunn anticipated replacing the seigneurial relationships of monopoly and patronage with those of debt and mortgage. He noted to Ruiter that sellers could mortgage their lands, and "pay annually the legal interest on the amount of their purchase."[163] The same summer, he wrote to a Samuel Rove with several proposals for land sales, one for "four shillings per superficial acres," another for "one dollar per superficial acre," and for either offer, allowed that Rove could pay "only one half of the purchase money at present, & give four or five years to pay the remainder, but in that case the land must be mortgaged for the sum that remains unpaid, and for the payment of the legal interested at the end of each year."[164]

Thomas Dunn also may have hoped to convert forms of tenure because he found the logistical aspects of seigneurial management to be taxing. By 1791, Dunn seemed eager to be done with the matter of sorting out his property at Saint-Armand, and the loyalists in particular. As he wrote to John Ruiter, "I wish much to have finished with the Old settlers." In particular, Dunn lamented that although he had "promised" that he "would not take advantage of their situation and improvements,"

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[161] "Dunn to Henry and John Ruiter, 9 October 1788, MG23-GIII3, Volume 1," in *Ruiter Family Fonds* (Library and Archives Canada).
[162] "Dunn to John Ruiter, Quebec 6 June, 1789, MG23-GIII3, Volume 1," in *Ruiter Family Fonds* (Library and Archives Canada).
[163] Ibid.
[164] "Dunn to Samuel Rove, Quebec, 6 June 1789, MG23-GIII3, Volume 1 ", in *Ruiter Family Fonds* (Library and Archives Canada).

the loyalist settlers "seemed to interpret this promise to entitle them to claim as much of my estate as they please." Dunn's patience with loyalist claims had run out. "To prevent any further misunderstanding," he directed Ruiter, "I shall desire M. Pennoyer to measure and bound the lands they possess and ascertain the quantity of acres which must be done before they can have a title, and then we will endeavour to agree upon the price."[165] Furthermore, "if any of the settlers that have come on my land," he wrote to Ruiter, "choose to have their titles they may have them on coming here but in that case it will be necessary that you bring with you or send me some of the blank printed deeds I left with you."[166] While Dunn could not displace the loyalists, he ultimately attempted to force them to re-purchase their titles from him.

John Ruiter did purchase some Saint-Armand land from Thomas Dunn.[167] His brother Henry Ruiter, chose instead to petition the government for land in the Eastern Townships, newly open to settlement after the Constitution Act of 1791.[168] In May 1792, Ruiter and his associates obtained a warrant of survey for the new townships of Potton and Sutton.[169] Yet this avenue for obtaining title turned out to be lengthy and costly, much like the earlier settlement. Ruiter was forced to pay out of pocket for surveying and subdivision fees due to bureaucratic delays with his new townships, and did not obtain a letters patent for Potton until July 27, 1803.[170]

Never one to miss out on a business opportunity, Thomas Dunn also petitioned for a township to the east. He was granted Dunham in 1796, along with 34 other proprietors, all of whom he quickly bought out.[171] Dunn did not seem to draw clear distinctions between different forms of property: he adapted seigneurial tenure to resemble freehold tenure simply by hiring a surveyor and filling out printed deeds, and he approached a township as a unit to be managed, much like a seigneury. Indeed, even as Dunn casually abolished his seigneurial privileges at Saint-Armand,

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[165] "Dunn to John Ruiter, Quebec 3 January, 1791, MG23-GIII3, Volume 1," in *Ruiter Family Fonds* (Library and Archives Canada).
[166] "Dunn to John Ruiter, Montreal 3 November 1792, MG23-GIII3, Volume 1 ", in *Ruiter Family Fonds* (Library and Archives Canada).
[167] "Land Papers, MG23-GIII3, Volume 1 ", in *Ruiter Family Fonds* (Library and Archives Canada).
[168] Ashton, *The life of Henry Ruiter, 1742-1819*., 29.
[169] Ibid., 30.
[170] Ibid., 32-34.
[171] Wallot, "Dunn, Thomas."

he simultaneously petitioned officials for a grant of land to "complete" his seigneury in 1792, to compensate for the loss of the part of Saint-Armand that was below the American border.[172] In his view, altering a major aspect of seigneurial tenure did not invalidate his right to the title.

The question of title did matter for British businessmen, as well as loyalist settlers. After they were denied their British grants, loyalists pursued other sources of title, even though they already occupied their land; physical settlement would not be adequately secure. For British seigneurs, obtaining proper titles, and accurate delineations of their holdings, was important. However, the pursuit of title did allow for a certain degree of fluidity. Dunn and Caldwell gave credence to the lines and origins of the French grants they possessed, even as they sought to adapt the nature of tenure to suit their desires to sell land and reduce their burden of seigneurial record-keeping. For loyalists, entrepreneurs, and even government officials, "Indian" title remained under the umbrella of valid property, despite the distant directive of the Royal Proclamation. It was not rejected outright, but instead subject to the same fluid interpretation of property as many sources of title.

In none of these negotiations did British authorities play an authoritative role. Haldimand failed to remove loyalists from Missisquoi, and seigneurs like Dunn manipulated French seigneuries and township grants to their advantage. Even though the British had established the international boundary around Québec, they had to send agents, repeatedly, to identify that border's location. The creation of the border did not result in the imposition of a land tenure regime. Instead, property creation, as well as the maintenance and adaptation of earlier forms of land tenure – French and Native – was undertaken by an array of participants, specifically by those with personal and financial interests in the outcomes.

[172] Ibid.

CHAPTER FOUR

Loyalist mobilization of the "Indian" lease, and their occupation of lands on Missisquoi Bay, just north of the 45th parallel, met with little visible resistance from Abenakis. This was not due to Abenaki acquiescence, but because of the location of their claims. In their maneuvering, loyalists had applied the lease to territory significantly north of where it had initially been made. While they were certainly settling in Abenaki territory, they did not occupy the key location of their village along the Missisquoi River, which now lay below the 45th parallel. Here, Abenakis made their continued occupation and ownership prominently known.

The post-Revolutionary War era brought a new era of settler pressure for Missisquoi Abenakis. Indeed, historians often invoke the delineation of strong international borders, and the corresponding creation of nation-states, as major milestones in the process of Indian dispossession.[173] As Calloway describes it, the Treaty of Paris "imposed an artificial boundary on western Abenaki social reality. After 1783, British in Canada and Americans in Vermont regarded the forty-fifth parallel as a crucial determinant in any dealings or responsibilities they might have with the Abenakis."[174]

Yet during and after the war, the 45th parallel divided Quebec not from the United States, but the new and unrecognized Republic of Vermont. During Vermont's independent period, it was strongly controlled by the Allen family, whose development of a new state was inseparable from their efforts to consolidate the land-holdings of their Onion River Land Company. In the 1780s, the Allens did use the border as rhetorical tool in their struggle to undermine Abenaki claims to Missisquoi lands and gain legitimacy for their state in the eyes of British officials. Yet this was a straightforward case of two governments coherently hardening a boundary, strengthening European property lines as they consolidated state power. The notion of

[173] Jeremy Adelman and Stephen Aron, "From Borderlands to Borders: Empires, Nation-States, and the Peoples in between in North American History," *AMERICAN HISTORICAL REVIEW* 104, no. 3 (1999).
[174] Calloway, *The Western Abenakis of Vermont, 1600-1800 : war, migration, and the survival of an Indian people*., 222.

the border, and of the "state" on the south side of it, was decidedly negotiable, and occasionally purely rhetorical.

For Abenakis, the border's shaky location and piecemeal imposition was not necessarily their greatest concern; persistent settler occupation of their lands was more pressing. Nor was it a boundary that they instantly felt bound to respect. As Calloway points out, "Abenakis lived on both sides of the border and crossed it at will."[175] Abenakis continued to pursue their own independent interests in the 1780s, just as they had in previous decades.

Swanton, the Vermont Republic, and the Allen Family

In 1777, the Republic of Vermont signed its first constitution. While Vermont initially raised a regiment to fight against the British during the war, it did not display consistent loyalty to the new United States during the war. Nor was its eventual emergence as a state inevitable. It did not negotiate its somewhat reluctant entrance into the United States until 1791.[176] Throughout the war, and the 1780s, the Vermont Republic pursued a complex and contradictory foreign policy: engaging in covert talks with Quebec Governor Haldimand about rejoining the British Empire, while simultaneously courting the United States for potential entry, all the while struggling over land claims with its western neighbor, New York.[177]

Vermont was also marked by profound factionalism in its short-lived period as a republic. Competing parties lobbied for territorial control over both sides of the Connecticut River to the east, and potential union with New York to the west. Moreover, Vermonters were deeply divided on the subjects of re-joining the British Empire, the United States, or continuing on as a sovereign state.[178]

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[175] Ibid., 222.
[176] Graffagnino, "Revolution and empire on the northern frontier Ira Allen of Vermont, 1751-1814.", 162.
[177] Peter S. Onuf, "State-Making in Revolutionary America: Independent Vermont as a Case Study," *The Journal of American History* 67, no. 4 (1981); Graffagnino, "Revolution and empire on the northern frontier Ira Allen of Vermont, 1751-1814." 165; Michael A. Bellesiles, "The Establishment of Legal Structures on the Frontier: The Case of Revolutionary Vermont," *The Journal of American History* 73, no. 4 (1987).
[178] Graffagnino, "Revolution and empire on the northern frontier Ira Allen of Vermont, 1751-1814.", 158-202.

For most of its independent era, Vermont was tightly controlled by a small group of leaders: Ethan, Ira, and Levi Allen and their close allies, the Chittendens. Ethan Allen was military leader of the Green Mountain Boys, Thomas Chittenden was Vermont's first governor, and Ira Allen the state's first treasurer and Surveyor-General. The Allen brothers consistently mingled their "private" entrepreneurial interests with the "public" interest of Vermont, using their positions to further their development schemes along with a variety of personal vendettas. They used their control of a new political entity, together with a flexible concept of legality and justice, to claim, develop, and populate large tracts of northern Vermont land.

The Allen family's accumulation and development of Champlain Valley lands preceded any political concept of Vermont as a Republic, and in fact preceded their presence in the state. Levi Allen bought the family's first share of land in what would become Vermont in 1764, and Ira Allen spent the next twenty years accumulating his land-holdings in northern Vermont.[179] Their consolidation of the town of Swanton, which overlapped the Abenaki lands at Missisquoi, is a classic example of the Allen brothers' particular talent for mingling political control (and family relationships) with land acquisition.

After New Hampshire governor Benning Wentworth signed Swanton's charter in 1765, none of its original proprietors ever settled in Swanton – most never even visited the town. Within the year, the original proprietors began selling their shares to other merchants and landowners in southern New Hampshire and Massachusetts. By the end of 1773, Levi Allen held nearly all the shares of the township.[180] In 1774, the Allens held Swanton's first proprietors' meeting, not in Vermont, but in Salisbury, Connecticut. After acknowledging that Swanton was "granted under the great seal of N.H.," but was now "in the Province of N.Y.," they resolved to organize and lay out the township. Heman Allen was meeting moderator, and his brother Ira Allen became "Proprietors' clerk," taking on the role of surveying and land sales that he would pursue in many other towns.[181]

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[179] Ibid., 16.
[180] Hemenway, Page, and Wing, *The Vermont historical gazetteer: a magazine, embracing a history of each town, civil, ecclesiastical, biographical and military*., Volume 4, 992.
[181] Ibid., Volume 4, 992.

Acquiring Swanton was part of the Allens' much larger project, officially organized into the Onion River Land Company in the mid-1770s.[182] Vermont's constitutional incorporation in 1777, and the installation of the Chittendens and Allens as its ruling officers, greatly furthered the goals of the company. In 1779, Ira Allen became Vermont's surveyor-general, and in the next few years seventy-eight new townships were granted under the auspices of the Republic of Vermont, even as New Hampshire and New York continued to dispute large sections of territory. Ira Allen used these new charters as a way to increase his own land portfolio, in large part by taking shares of land as payment for his surveying work in lieu of cash payments. He acquired full ownership of several towns, and became a proprietor in twenty-three others. By 1783, Graffagnino calculates, Ira Allen possessed more than 100,000 acres of land in northern Vermont.[183]

Allen also spearheaded a plan for Vermont to confiscate and then sell loyalist property. This enabled the state to gain revenue without directly taxing its often less-than-loyal citizens. It also allowed Ira Allen and his brothers to purchase "choice farms and lands in the confiscation sales."[184] This loyalist confiscation plan was more economic than political: Allen introduced the plan in 1778, but by the end of 1780 he was initiating talks with Haldimand about rejoining the British Empire.[185]

In 1779, Ethan and Ira initiated the loyalist confiscation of the Vermont lands of their own brother, Levi Allen.[186] While Levi had fought as a Green Mountain Boy in the early days of the war, by 1776 he was pursuing a lucrative career supplying the British Army with supplies in New York City. After six months in a Connecticut prison in 1778, Levi worked as a British supplier in East Florida.[187] In 1783, when East Florida became "Spanish" territory, Levi returned to Vermont and worked in concert with Ira Allen to negotiate with Haldimand. Only a year later, he settled in

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[182] Graffagnino, "Revolution and empire on the northern frontier Ira Allen of Vermont, 1751-1814.", 52.
[183] Ibid., 145-6.
[184] Ibid., 120-1.
[185] Box 5, Folders 36-90, "Allen Family Papers."
[186] Graffagnino, "Revolution and empire on the northern frontier Ira Allen of Vermont, 1751-1814.", 140.
[187] John J. Hand Samuel B. Orth Ralph H. Duffy, *The Vermont encyclopedia* (Hanover [N.H.]: University Press of New England, 2003)., 39.

Saint-Jean, operating a trading business that trafficked in goods from his brothers' enterprises in the Champlain Valley.[188]

Levi's loyalism proved a solid business opportunity for the Allens, as well as an opportunity to "launder" land titles. In October 1783, the Allens and Chittendens engineered another land consolidation, this time by levying a tax on Vermont towns, and then confiscating and selling all lands whose taxes were unpaid by January 1, 1784.[189] In a set of sheriff's sales in late November 1784, both Levi and Ira Allen purchased copious properties at very cheap prices.[190] Before Levi departed for Québec two weeks later, Ira also purchased Levi's confiscated properties, signing fifty-seven deeds for individual rights in the township of Swanton, with Levi acting as his witness.[191] These transfers enabled the Allens to obtain Vermont land titles, obscuring the grants' insecure origins in disputed New Hampshire or New York titles, while simultaneously consolidating Vermont's authority in granting land. At the same time, they were able to keep their land-holdings within the family enterprise, even as the family's interests increasingly straddled the border. Yet possession of "clean" Vermont titles to Swanton did not ensure uncontested ownership and settlement.

Taking "Possession" of Swanton

In 1784, when Ira Allen attempted to formalize his possession and settlement of Swanton, he was forced to contend with a variety of other claims to Missisquoi. Simon Metcalfe, a New York surveyor, had obtained a New York grant covering the same lands in 1771, through similar means of township consolidation.[192] However, Simon Metcalfe's ties to New York soon became increasingly tenuous. During the war he was accused both of loyalism and patriotism, and imprisoned by both British and American forces.

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[188] Ibid., 40.
[189] Graffagnino, "Revolution and empire on the northern frontier Ira Allen of Vermont, 1751-1814.", 222.
[190] Box 7, Folders 1-32, "Allen Family Papers."
[191] Hemenway, Page, and Wing, *The Vermont historical gazetteer: a magazine, embracing a history of each town, civil, ecclesiastical, biographical and military*., 993.
[192] New York, *Calendar of N.Y. colonial manuscripts, indorsed land papers in the office of the secretary of state of New York 1643-1803*., 571.; Vermont and Mary Greene Nye, *New York land patents, 1688-1786, covering land now included in the State of Vermont (not including military patents)* ([Montpelier]1947)., 8-9.

Even as Metcalfe likely knew that his lands lay below the 45th parallel, he appealed to British authorities, rather than New Yorkers, for protection of his lands. In 1778 he petitioned the British for compensation for the destruction of "his house and other property" on Lake Champlain, while he was brought to Montréal to be held in debtors prison, which he was freed from by political connections.[193] He wrote again in December 1780, this time complaining that he had been "carried off to Crown Point by the Americans."[194]

Metcalfe's request of the British was not that they uphold his title to these contested lands, but that they allow him to extract resources. He estimated that he could "settle with his creditors" if he were allowed to cut lumber at Missisquoi, and "that timber he has cut would more than pay them if allowed to be cut into board."[195] In June 1781, Metcalfe wrote again, this time complaining that British soldiers continued to cut timber on his land. In July, he requested permission to build a small sawmill, offering to furnish "all the logs he had at Plattsburg for the use of the service."[196] Haldimand's military secretary, Robert Matthews, wrote back, permitting him to cut hay and timber, but denying his request to construct a sawmill.[197] Metcalfe's focus on resources, rather than land title, makes a great deal of sense in this context. In the midst of a war, holding a "clear" title to Missisquoi lands would have hardly been possible or saleable. Extracting resources during a high demand for timber, however, could be immediately profitable.

Even if Metcalfe had held a more secure title to Missisquoi lands, his occupation and possession was no match for Ira Allen's aggressive strategies. At the close of the war, Ira Allen discovered Metcalfe's presence on "his" lands at Missisquoi, and swiftly dispatched him. As Graffagnino explains, on August 30, 1784, Ira Allen and "a party of armed men who included brother Levi and several British soldiers 'arrested' Metcalfe on charges of trespassing." The Allens threw together a makeshift "freeman's court," and Metcalfe was promptly convicted by a

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[193] Douglas Brymner, *Report on Canadian archives* (Ottawa?: s.n.], 1888)., p. 908, B. 184-2.; Lampee, "The Missisquoi Loyalists.", 108.
[194] Brymner, *Report on Canadian archives*., 908.
[195] Ibid., p. 908, B. 184-2.; Lampee, "The Missisquoi Loyalists.", 108.
[196] Brymner, *Report on Canadian archives*., p. 908, B. 184-2.; Lampee, "The Missisquoi Loyalists.", 108.
[197] Brymner, *Report on Canadian archives*., 909.

"jury of Vermont settlers and uniformed British army 'Refugees.'" Unable to pay the fines charged him by Ira Allen on behalf of Vermont, Metcalfe retreated "to a small island at the mouth of the Missisquoi."[198]

Graffagnino interprets this performance of "justice" as part of a "Yankee versus Yorker" conflict.[199] Yet Ira Allen and Simon Metcalfe's competition for lands at Missisquoi was not just a matter of conflicting ideologies about forms of land tenure. It was primarily a struggle for valuable lands. Ira Allen, like Metcalfe, was interested in the Missisquoi lands in particular. Though less focused on lumbering, Ira Allen certainly was aware that flat, fertile riverine lands like the "old Indian fields" on the Missisquoi River were hard to come by in northern Vermont.[200]

Neither Metcalfe nor Allen initially obtained Missisquoi lands by a show of force in isolation. Despite their shared awareness of the 45th parallel, both seemed concerned about the approval of British authorities in Quebec. While Ira Allen was successful in dispossessing Simon Metcalfe without the aid of the British, he continued to seek British approbation for his lands below the border. In particular, Ira Allen was troubled with Abenaki attempts to reclaim their Missisquoi lands after the Revolutionary War.

Abenaki Claims and British Authority

On September 24, 1784, two months before he purchased Swanton from Levi, and only two years after he had been writing to General Haldimand about rejoining the empire, Ira Allen wrote to Quebec, complaining of Indian incursions onto "his" land in the town of Swanton. Allen began his letter to Haldimand by cordially insisting on Vermont's political legitimacy, expressing his "desire to promote a good understanding between the subjects of Great Britain and the citizens of Vermont."[201] Framing the town's history as smooth and coherent, he explained that Swanton was a

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[198] Graffagnino, "Revolution and empire on the northern frontier Ira Allen of Vermont, 1751-1814.", 224-225.
[199] Ibid., 224-5.
[200] Ibid., 305. In 1794-5, cousin Ebenezer Allen wrote back from Genesee country in western New York state, reporting that there were "thousands and tens of thousands of acres we have been throw as good as your [Swanton] Indian fields."
[201] Ira Allen, "Letter to Frederick Haldimand, 20 September 1784, Box 6, Folder 75," in *Allen Family Papers* (Special Collections, University of Vermont Library, 1784).

New Hampshire grant that "endures some old Indian fields on the river Majisque." Glossing over his own violent participation in New York/New Hampshire grant disputes, he explained that "the Government of New York obtaining jurisdiction regranting the lands about the year 1771 to Mr. Metcalf." Yet by 1784, he wrote to Haldimand, "Mr. Metcalf abandoning his old claim about the last of August," Ira Allen "took possession of said fields and settled some families thereon in the month of June."[202]

Ira Allen was aware of the Robertson lease. In fact, as he reported to Haldimand, a "Capt. Hunter and M. Grajon of St. Johns" were claiming the lands based on "an Indian lease made in the year 1765."[203] Allen had no trouble dispatching Hunter and Grajon's claims, much as he had Simon Metcalfe's, through his performance of legality. Apparently, he and Capt. Hunter "agreed to have our claimes determined by law," after which he "commensed a suit in a freeholders court for the possession of said lands." The "court" ruled in Allen's favor, after which "Capt. Hunter appeared to be very high making use of many improper expressions such as that the lands must be fought for," and "that the Indians would assert this right."[204] If this "freeholders court" was anything like the one he convened to charge Simon Metcalfe, it is unsurprising that Hunter was only angered by such legal proceedings.[205]

Ira Allen was relatively unconcerned about Hunter and Grajon, but Abenaki claims to Missisquoi represented a more grievous threat. Allen wrote to Haldimand to complain "that some of the St. Fransaway Indians have lately been on the ground in a hostile manner threatening the inhabitants." Ira Allen implored the governor "to take such measures as may appear to be most eligible to protect any ravages by the Indians," but also noted that he had "no objection to the Indians having a fare fight in

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[202] Ibid.
[203] Ibid.; "Haldimand to Matthews, St. Johns, 29 September 1784, Reel 88," in *Sir Frederick Haldimand : unpublished papers and correspondence, 1758-1784* (London: World Microfilms Publications, 1977).
[204] Allen, "Letter to Frederick Haldimand, 20 September 1784, Box 6, Folder 75."
[205] Vermont did have a county probate court system as of 1778, but this is likely not what Allen is referring to. See Graffagnino, "Revolution and empire," 212-215. This court system was not typically referred to as 'freeholders courts.'

law for any right they may suppose they have to said lands."[206] Despite Allen's legal rhetoric, he was clearly attempting to delegitimize Native claims to Missisquoi. The "Indian title," Allen wrote to Haldimand, he "considered of no validity supposing the Indians to have forfeited any claims" after their loss in "the former war between Great Brittain and France."[207]

Framing Missisquoi Abenakis as absent from the Champlain Valley due to their more prominent presence in Canada was a common strategy. Indeed, it was invoked frequently, as Abenakis consistently protested the occupation of their lands at Missisquoi. Abenakis had complained to British authorities about Simon Metcalfe's presence almost immediately after he settled at Missisquoi in 1771. Daniel Claus, a commissioner of Indian affairs, reported to Sir William Johnson on July 3, 1773 that "the Abinaquis of Misisqui" had delivered a "Deputation," stating that "Mr. Matcafes taking Possession of their Lands at Misisqui" was a violation of the British "promise in 1760 of letting them keep their Lands unmolested."[208] Claus informed Johnson that he had reminded the Abenakis of the Isle La Motte conference, when "the Govnrs of N York & Canada had settled it with the Caghnaws when in Lake Champlain in 1766 abt setting the 45 Deg." In that meeting, Claus told the Abenakis, they had agreed: "Indians should have free hunting & fishing in Lake Champlain but that the Ground belongd to the King & his Subjects," and insisted that "the Caughnaws in behalf of the rest agreed."[209] Claus also added that he suspected that the Abenakis were "set on by some People in this province," hoping to dispute Metcalfe's possession with a competing claim "by purchase from the french."[210]

As Calloway interprets this encounter, Claus and Johnson's interpretation of the Caughnawaga claims superceding those of the Abenakis was part of a larger strategy to "employ the Seven Nations of Canada as a conduit for Indian affairs," in which "British agents looked to Caughnawaga and St. Francis to control member and

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[206] Allen, "Letter to Frederick Haldimand, 20 September 1784, Box 6, Folder 75."
[207] Ibid.; "Haldimand to Matthews, St. Johns, 29 September 1784, Reel 88."
[208] Calloway, *The Western Abenakis of Vermont, 1600-1800 : war, migration, and the survival of an Indian people*., 196.; Johnson, University of the State of New York. Division of, and History, *The papers of Sir William Johnson*., Volume 12, 1026-7. See also 172-3 for Isle La Motte Council.
[209] Johnson, University of the State of New York. Division of, and History, *The papers of Sir William Johnson*., Volume 12, 1026-7.
[210] Ibid., Volume 12, 1026-7.

associate tribes."[211] This technique was a deliberate strategy, but also a practical response to dealing with confederacies that did not function with the sort of coherence that might make it easy to deal with. The Seven Nations of Canada were an alliance, but they did not operate with the consistent authority that Indian agents may have wished for. At the Isle La Motte council, for example, Abenakis and Mohawks had made different claims to the Champlain Valley. Within their stated confederation at the meeting, differentiated Abenaki claims to habitation at Missisquoi were not necessarily in conflict with Mohawk hunting and fishing rights to the Champlain Valley.[212]

During the Revolutionary War, however, Abenakis were not seen as entirely irrelevant. In May 1775, Ethan Allen issued an appeal to the "Indians of Canada," inviting the "Canesadaugaus and the Saint Fransawas," among others, to "help [him] fight the King's Regular troops," offering "money, blankets, tomahawks, knives, paint, and anything there is in the army."[213] Ethan Allen also noted that if "you, our brother Indians, do not fight on either side, we will still be friends and brothers, and you may come and hunt in our woods, and come with your canoes in the lake, and let us have venison at our forts on the lake, and have rum, bread, and what you want, and be like brothers."[214] Despite, or perhaps because of, their "loss" to Britain in 1763, Ethan Allen considered the "Saint Fransawas" worth courting as allies at 1775. Yet at the same time, he undermined Abenaki and Mohawk claims to the Champlain Valley. By offering them permission to "hunt in our woods," he was asserting his possession of those woods.

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[211] Calloway, *The Western Abenakis of Vermont, 1600-1800 : war, migration, and the survival of an Indian people*., 196-197.
[212] Sawaya, *La Fèdèration des Sept Feux de la vallèe du Saint-Laurent : XVIIe au XIXe siecle*.; Michael Gunther, "'The deed of gift': Borderland encounters, landscape change, and the 'many deeds of war' in the Hudson-Champlain Corridor, 1690-1791" (2010)., 181. If British authorities were uncomfortable in dealing with such political organizations, it was because they were frustrating, but not because they were foreign. The British Empire in North America during this period lacked coherence in its own hierarchy. Judging from their diplomatic rhetoric, the Abenaki perspective was that Britain was struggling to keep its own "governments" and individual subjects from disobeying British-made treaties to keep off of Abenaki lands. Abenakis, repeatedly, went to British Indian agents in order to demand that Britain keep its subjects and governments in obeisance to their agreements.
[213] Ethan Allen, "Letter to Indians of Canada, 24 May, 1775, Box 4, Folder 27," in *Allen Family Papers* (Special Collections, University of Vermont Library, 1774).
[214] Ibid.

The Revolutionary War profoundly disrupted Abenaki relationships with the British, as well as their inhabitation of their lands at Missisquoi. The Champlain Valley was a major theater of the Revolutionary War, and Abenakis struggled throughout to balance self-interested neutrality with stated alliances. As Calloway notes, the Seven Nations of Canada "declared their intention not to fight the Yankees" at the beginning of the war in 1775, yet Caughnawaga Mohawks fought on the British side against the Green Mountain Boys in Quebec and Vermont, while some St. Francis Abenakis fought with American troops.[215] Missisquoi Abenakis, in particular, played multiple roles: various reports suggest that they were fighting for the British, while some Abenakis living on the Lake Champlain Islands were apparently on the American side.[216] During the war, Abenakis largely moved away from their prominent village on the Missisquoi River. Still, as Calloway emphasizes, there is copious evidence of their continued presence around Missisquoi during the war. While some Missisquois temporarily resettled at St. Francis, others merely "dispersed into secluded surrounding areas," but continued to hunt and live near the river.[217]

In 1784, Ira Allen continued the fiction that any Abenakis in Vermont were "Indians of Canada" who only used the Champlain Valley as hunting territory. He pointed out to Haldimand that "the Indians abandoned the lands and have made no clame by themselves or assigns till lately."[218] Interpreting temporary Abenaki withdrawal from a war zone (as well as regular movement into various hunting and fishing territories) as abandonment was a classic strategy to undermine Native claims to land. In Calloway's interpretation, this was part of larger settler perception of "Abenakis as bloodthirsty raiders who had swept down from Canada." Any post-war Native people "encountered around Lake Champlain were trespassers from St. Francis who had no business being in Vermont."[219] Ira Allen consistently referred to

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[215] Calloway, *The Western Abenakis of Vermont, 1600-1800 : war, migration, and the survival of an Indian people*., 207-8.
[216] Ibid., 220.
[217] Ibid., 221. Calloway notes another settlement, likely one of Missisquoi Abenakis, near the head of Lake Champlain in 1782, as well as records of Abenaki baptisms at Chambly, Quebec.
[218] Allen, "Letter to Frederick Haldimand, 20 September 1784, Box 6, Folder 75."; "Haldimand to Matthews, St. Johns, 29 September 1784, Reel 88."
[219] Calloway, *The Western Abenakis of Vermont, 1600-1800 : war, migration, and the survival of an Indian people*., 226.

Abenakis as "Saint Francawas" Indians, rhetorically rooting them in one bounded Quebec location.

Allen portrayed Abenaki actions as at the behest of Hunter and Grajon, (who he had already dispatched through improvisational legal methods). In several letters sent to Robert Matthews, Haldimand's military secretary at St. Johns, Ira Allen emphasized Hunter and Grajon's culpability, diminishing Abenaki abilities to assert their rights. Allen entreated Haldimand to "interpose by recalling those who disturb the peace of this responsible through the symbolical machinations of some individuals residing at St Johns," who threatened to "send the Indians and burn all the houses and kill all the cattle."[220]

Abenakis as Landlords

While it is possible that Missisquoi Abenakis were working in concert with Hunter and Grajon, it seems more likely that they were asserting their claims to Missisquoi independently.[221] Roger Matthews, Haldimand's military secretary, also collected several depositions in St. Johns about the incidents, none of which linked Hunter and Grajon to Abenaki actions. One was a report that "a number of Indians was on the Indian fields in the Town of Swanton commiting outrages and insults."[222]

Yet Abenaki behavior was not a series of random attacks, but clear attempts to regain their lands, or failing that, to claim rent from the new inhabitants. As the deponent described to Matthews, "the Indians had order'd the settlers off the land and gave them some time to consider of it, and then they (the Indians) encamped some distance from the settlement." Since the settlers did not leave, the Abenakis took "a sheep by force from the Inhabitants, and upon recollection the Indians declared that that sheep should be a sufficient token for them to permit the owner to stay on the

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[220] Allen, "Letter to Frederick Haldimand, 20 September 1784, Box 6, Folder 75."; "Deposition by Thomas Butterfield, 27 September 27 1784, Reel 88," in *Sir Frederick Haldimand : unpublished papers and correspondence, 1758-1784* (London: World Microfilms Publications, 1977).
[221] "Jacques Robertson," 9 August 1769, *Index aux Cadastres Francais, Province de Quebec*, RG68-331, Library and Archives Canada, 800. While Ira Allen was able to dispense with Hunter and Grajon's claim to Missisquoi through his own "legal" means, it is possible that Hunter and Grajon had in fact purchased Robertson's lease. In August 1769, "Jacques" Robertson was involved in a legal property settlement with the "veuve Grajon," which could have included a transfer.
[222] "Deposition by Thomas Butterfield, 27 September 27 1784, Reel 88."

lands until spring and farther they sayeth not." A second deponent testified that settlers "at Missisqui River" told him that "there was one Indian man with his wife and family, the day before at that place from St. Francois, and ordered them to move off with their families, if not they should burn their houses and kill their cattle. He likewise informed, the Indians were coming there to live, that, that was their land; that the said Indian loaded his canoe with corn out of the fields, and said he would have rent for that land, and take it where he could find it."[223]

Indeed, even Ira Allen noted that after threatening the settlers, the "said Indians then took some such corn as they thought proper and retired a small distance."[224] Abenakis may have been returning from St. Francis, or merely from nearby enclaves around Missisquoi. In either case, they continued to enforce similar tenancy agreements as those they had established twenty years earlier with Robertson. While Abenakis could not physical dispossess Missisquoi settlers immediately, they could try to claim possession of their lands by enforcing their authority as landlords.

While Ira Allen attempted to delegitimize Abenaki claims by emphasizing British jurisdiction over them, he also simultaneously drew on British authority to secure his property in Vermont, and the legitimacy of his fledgling state. Abenakis also maintained diplomatic ties to the British government in the 1780s. In 1788, Allen wrote to Quebec again, this time to Sir Guy Carleton, protesting another disturbance at Missisquoi by the "St. Francaway Tribe."

Ira Allen enclosed a deposition by John Wagoner and William Tichout, two Swanton settlers, attesting that in October 1787, "an Indian known by the name of Capt. Louis and about twenty more" came to Swanton, where they "hoisted a flag on a pole drew their knifes threatened several of the inhabitants in a Hostile manner obliged the inhabitants to provide a dinner for them, claimed a right to the lands, and took, in a hostile manner, Ten Bushels of Indian corn from John Wagoner and about fifteen bushels of potatoes from Wm Tichout."[225] The next April, the Indians returned

[223] Ibid.
[224] Allen, "Letter to Frederick Haldimand, 20 September 1784, Box 6, Folder 75."
[225] "Deposition of John Wagoner and William Tichout, 21 June 1788, Box 10, Folder 86," in *Allen Family Papers* (Special Collections, University of Vermont Library 1788).

again and "threatened to destroy the crop of John Wagoner unless he would pay them a forth of all he raised on said lands as Rent to them."[226]

Indian agent John Campbell reported to John Johnson, the Superintendant of Indian Affairs, he had met with "the accused Indians, who acknowledged to have been in the months of October and April last on Missisque Bay in search of their livelihood by Fishing and Fowling."[227] The Abenakis explained that "they always travel with their colors and display them at their encampment wherever they may happen to be as a mark of their attachment to their Great Father, the King of England."[228] They expressed their "mortification" at finding Wagoner and Tichout "in possession of part of the lands handed down to them by their Predecessors, who were the proprietors of the same long before the French came to Canada." Nevertheless, the Abenakis insisted: "they neither drew their knives nor committed any of the irregularities they are charged with."[229]

Colonel Campbell attempted to arrange a meeting between Wagoner, Tichout, and some of the Abenakis involved in the altercation. According to a "Declaration by Louis Outalamagouine, an Abenaqui Indian of Misiskoui," (likely the Capt. Louis referred to by Allen), several Abenakis set out for Missisquoi at "father Campbell's" request, to find Wagoner and Teachout "at the lands, which had <u>always</u> belonged to them, and which those people occupy."[230] Bizarrely, Wagoner and Tichout expressed confusion as to "why M. Campbell had sent for them." When the Abenakis explained that it was because they had made complaints "in writing" and "upon oath, alledging the Indians had planted their flag in the <u>Village</u>," Wagoner and Teachout replied that "we have never mentioned anything of the sort, and it cannot possibly be so, because we can neither read nor write, unless Colonel Allen has played us this <u>trick</u> and without our knowledge."[231] As Calloway notes in his reading of the incident, "the deposition in question had been sworn before Justice of the Peace Thomas

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[226] Hemenway, Page, and Wing, *The Vermont historical gazetteer: a magazine, embracing a history of each town, civil, ecclesiastical, biographical and military*., Volume 4, 998-1000.
[227] Ibid.Volume 4, 1000.
[228] Ibid.Volume 4, 1000.
[229] Ibid., 1000.
[230] David Buchdahl Abenaki Nation of Vermont, *A petition for federal recognition as an American Indian tribe* ([Swanton, Vt.]: The Nation, 1982)., 176-177.
[231] Ibid., 177.

Butterfield, friend and agent of the Allens," demonstrating "further doubt as to its authenticity."[232] Whether or not Ira Allen fabricated this complaint, Colonel Campbell ultimately let the matter drop after Wagoner and Tichout never appeared for their meeting.[233] For Abenakis, maintaining a relationship with the British, and a claim to lands below the 45th parallel, was not necessarily a contradiction. Clearly, they did not honor the belief in the parallel as a consistently applicable line.

Ira Allen fabricated some fairly complex schemes in order to enlist British help in removing Abenakis from Missisquoi lands, which met with a mixture of failure and success. In the 1780s and 1790s, he did persist in maintaining ownership of Swanton, and Abenakis "found themselves pushed into marginal areas."[234] Yet Allen did not obtain this "victory" over the Abenakis because of his evidence of a proper title, or because of authorities that swooped in to preside over land claims. While Allen mobilized his own "freeholder's court" several times, he didn't have much of a legal authority to appeal to; in Vermont, he *was* that authority. Allen was clearly seeking British approval and recognition for Vermont claims, and these were only partially granted. More consequential were his efforts to settle and occupy Missisquoi lands. Abenakis retreated from a warzone, and returned to find their lands settled. Ira Allen's actions to develop land by bringing settlers, along with his shaky efforts to establish legal structures, fabricate land titles, and gain diplomatic approval, severely diminished Abenaki abilities to reclaim their Missisquoi lands.

Allen's efforts to dispossess Abenakis from Missisquoi were never completed, and they do not represent the conclusion, or even the most important turning point, in Abenaki history. Even as they disregarded the border, Abenakis used the presence of two states as opportunities to petition both for recompense. In 1797, Abenakis petitioned British officials in Quebec for an extra land grant in the township of Durham, close to Saint Francis, as a response to an increased refugee population from

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[232] Calloway, *The Western Abenakis of Vermont, 1600-1800 : war, migration, and the survival of an Indian people*., 229.
[233] Hemenway, Page, and Wing, *The Vermont historical gazetteer: a magazine, embracing a history of each town, civil, ecclesiastical, biographical and military*., Volume 4, 1000.
[234] Calloway, *The Western Abenakis of Vermont, 1600-1800 : war, migration, and the survival of an Indian people*., 234.

Missisquoi and Memphremagog, south of the parallel. They were granted 8,000 acres in 1805.[235] At the same time, they also petitioned the state of Vermont for compensation for the loss of their lands at Missisquoi, often in tandem with Mohawks who still claimed the Champlain Valley lands as part of the Seven Nations of Canada. Various delegations of Mohawks and Abenakis petitioned the Vermont legislature in 1798, 1800, 1812, 1826, 1833, and 1874.[236] All of these petitions were denied.

Saliha Belmessous suggests that historians have often focused "on the outcome of colonial ventures, namely, dispossession," and in doing so, "simplified the dynamics of relations between native peoples and Europeans."[237] When historians assign a "moment" of dispossession, and especially when they associate that moment with a loss or denial of land title, they define Native sovereignty in limited terms. Often, these assessments disregard the terms by which Native people continue to define their own sovereignty: terms not contingent on the formal recognition of settler governments.

At Missisquoi, such a "moment" of dispossession is hard to locate. There was no precise instant when their "title" to Missisquoi became invalid, and Allen's became legal instead. With or without a clear title from either government, Abenakis also maintained their occupation and cultivation of marginal lands at Missisquoi through the 19th and 20th centuries. One of the more disruptive moments of dispossession, rather than their losses in the 1790s, was the transformation of the Missisquoi River delta into a wildlife refuge in the 1941. According to Abenaki historian Fred Wiseman, this "loss of their traditional hunting and fishing grounds to Anglo regulators" marked a profound change in their ability to maintain a traditional lifestyle, as well as physical sustenance.[238] Ironically, owning clear titles in 1941 may not have helped Abenakis keep their hunting territories. At Missisquoi, the process of dispossession is an ongoing and contested one.

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[235] Ibid., 233.
[236] Ibid., 235-237; Timothy Redfield, *Report on the claim of the Iroquois Indians upon the state of Vermont for their "hunting ground"* (Montpelier, VT: E.P. Walton, Jr., 1854).
[237] Belmessous, *Native claims : indigenous law against empire, 1500-1920*., 4-6.
[238] Frederick Matthew Wiseman, *The voice of the dawn : an autohistory of the Abenaki nation* (Hanover, NH: University Press of New England, 2001)., 128, 120.

CONCLUSION

Settlers at Missisquoi may have believed in land title, accurate measurement, and some forms of state authority; but those beliefs never translated into a coherent or consistent sense of what property was. Such a system would have been nearly impossible to generate in such a milieu of overlapping tenures, unclear boundaries, and competing interests. Moreover, for many settlers, such a system was also clearly undesirable. Not only did participants tolerate ambiguity in property ownership at Missisquoi, in many cases, they exploited it.

This study of Missisquoi Bay may be a particularly chaotic incident in the history of North American property making, but it should not be discarded as an anomalous moment in an otherwise orderly process. Instead, a close examination of this period suggests that property creation, in general, is far messier, and less intentional than has been portrayed by historians.[239] Analysis of supposed outliers in the creation and maintenance of private property emphasizes the constructed, tenuous, and imperfect nature of notions of "real property" throughout North America.[240] Conceptions of private property and state sovereignty alike are mutually agreed upon, and perpetually in flux. These changes do not inevitably tend towards the hardening of boundaries and the solidification of absolute property rights.[241]

These concerns are more than academic because negotiations over notions of property are intertwined with concrete struggles over land, in which there are very real winners and losers. The flawed and complex cadastral patterns primarily created during the long 18th century are the same one that we contend with today. The ambiguous titles described in this thesis, created under bizarre circumstances, are on file in land offices in both countries, and they form the basis of contemporary land disputes, because they are the only "map" we have. While Canada and the United States may currently be in agreement about the location of the 45th parallel, notions of

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[239] Taylor, *The divided ground : Indians, settlers and the northern borderland of the American Revolution*., 9-10.
[240] Lisa Ford, *Settler sovereignty : jurisdiction and indigenous people in America and Australia, 1788-1836* (Cambridge, Mass.: Harvard University Press, 2010).
[241] Francis S. Philbrick, "Changing Conceptions of Property in Law," *University of Pennsylvania Law Review and American Law Register* 86, no. 7 (1938).

property, as well as property lines, continue to be negotiated on local, regional, and national levels.

In particular, Native people continue to resist the beliefs that property can become permanent, dispossession achieved, or colonialism completed. They also consistently combat the perception that they have not, or cannot participate in negotiations surrounding property. At Missisquoi, Abenakis meaningfully engaged in a variety of territorial relationships, including property creation, from its very beginnings in the region. They did not do so only on settler terms. Even if they had tried to, there were no "settler terms" of property in the 18th century.

Therefore, this thesis cannot offer a new paradigm for how property creation operated in North America, the northeast, or even just at Missisquoi. A shared comfort with ambiguity, flexible notions of legality, and the mingling of "private" and "public" interests and entities are the only consistencies that emerge from this study of land tenure, and these are consistent primarily in their inconsistencies. Nor would the development of a new paradigm necessarily be useful to historians. Dismantling our notion of an orderly settler project of land tenure frees up conceptual space to understand the complexities of land use, legality, and state authority. It also serves as an important reminder that the settler occupation of Native North America, and private land ownership in general, remain messy, contested, negotiable, and impermanent.

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