

THE BUSINESS OF SETTLEMENT: LAND COMPANIES AND COLONIZATION IN THE  
BRITISH EMPIRE, ca. 1800-1850

by

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## Abstract

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By

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When analyzed in a comparative fashion, rather than an understanding of British policy as a mass of “apparent inconsistencies which seem to defy coherent analysis,”<sup>1</sup> imperial policy clarifies and displays an evolution as it reflected changes based on knowledge gained from the colonies themselves and highlights domestic legal, social, and political changes. Imperial policy failed to “design an international regime that would make the world safe for the monarchial, propertied, gentlemanly orders” by the end of the 1830s.<sup>2</sup> A study of land companies demonstrates the significance of the gentlemanly capitalists and the importance of the relationship of these men with the Home Government in the creation and implementation of imperial policy, specifically the Anglicization policy. A study of the three land companies allows a view of foreign investment before the bubble burst with a study of the Canada Company, after it burst but while a sense of optimism existed towards land companies with a discussion of BALC, and long after the optimism toward land companies died with an analysis of the New Zealand Company. As a new domestic environment arose, which included strict interpretation of contract and law and greater regulation of overseas investments, the Government changed along with this new state of affairs. The land companies, however, sought to ignore the changing domestic atmosphere and to maintain privileges

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<sup>1</sup> John Galbraith, “Myths of the ‘Little England’ Era, *The American Historical Review*, Volume 67, Issue 1, 1961, 34-48. Quote on page 48.

<sup>2</sup> P.J. Cain & A. G. Hopkins, *British Imperialism, 1688-2000*, 2<sup>nd</sup> edition (London; New York, Longman, 2001), 98.

typically associated with gentlemanly status. The failure of the Anglicization policy post 1837 accelerated the “ungentlemanly” nature of the relationship between the Home government and gentlemanly capitalists. The inability of the British government and land companies to institute English traditions through assimilation at the periphery had implications on a global scale. As the Anglicization policy failed, ideas regarding the inferiority of imperial subjects emerged. The construction of races of non-British colonial occupants created not only racism within the colonies, but also created pre-conditions for ready acceptance of racial inferiority associated with Social Darwinism in the second half of the century.

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## Abbreviations

BALC	British American Land Company
NAC	National Archives of Canada
PRO	The National Archives (Kew, England)
PP-CA	House of Commons Debate on Canada
PP-NZ	House of Commons Debate on New Zealand
SC-AT	Select Committee on Aboriginal Tribes
SC-NZ	Select Committee on New Zealand

## Chapter One- Introduction

In the first half of the nineteenth century, the British Home Government, in association with land companies, sent more than one million immigrants to Canada and New Zealand from the British Isles. These new settlement colonies were unique because each had existing populations of non-indigenous, non-British settlers.<sup>3</sup> In these new settlements, Britain continued an imperial policy utilized in earlier colonies that had intended to “export the British model of development”<sup>4</sup> so that English legal, political and social systems might be recreated overseas. Yet, in these new settlement colonies, the government of Britain modified this earlier policy through the abandonment of state-sponsored emigration, such as that to the Cape Colony, and entered into contracts with “gentlemanly capitalists” of land companies to send hundreds of thousands of emigrants to each of the new colonies of settlement. This is a policy known as “Anglicization.” However, the presence of non-British colonial residents, domestic legal, social and political changes and preexisting colonial structures made it impossible to recreate an English model of development overseas.

Nineteenth century policy makers did not use the term Anglicization. In fact this term was not used until the twentieth century to describe the nineteenth century emigration policy intended to inundate colonies with British settlers.<sup>5</sup> Anglicization itself stimulated such indignation: it exploded into the Canadian Rebellions in 1837-1838. In the wake of these rebellions, the British government reexamined and altered its colonial policies to adjust for the needs of non-British, non-indigenous colonial inhabitants in order to promote social control and stability within the colonies. As a result,

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<sup>3</sup> The Maori were not indigenous to New Zealand. It is estimated they arrived there in the mid-14<sup>th</sup> century and is discussed below. Thus, the term “non-indigenous” refers to the Maori and French Canadians.

<sup>4</sup> P.J. Cain & A. G. Hopkins, *British Imperialism, 1688-2000*, 2<sup>nd</sup> edition (London; New York, Longman, 2001), 100.

<sup>5</sup> For ease of explanation, I will use the term Anglicization when describing this emigration policy.

the British Home Government<sup>6</sup> abandoned its earlier policy of promoting the dominance of the propertied elite and its alliances with gentlemanly capitalists. These new policies threatened the continued financial success of the gentlemanly capitalists of the land companies and placed the British government into some very “ungentlemanly” conflicts with its former partners.

P.J. Cain & A.G. Hopkins suggest that imperial policy prior to 1850 was dominated by a desire to spread the influence of the domestic landed economy overseas, and thereby secure the influence of the gentlemanly capitalists who were dominated by the landed class. Gentlemanly capitalists consisted of a union of landed elites and “new men” from the financial and service sectors. These men were bound together by shared educational and social experiences. Cain and Hopkins further suggest that the financial and service sectors overtook the landed within this group of investors after 1850. Thus, it seems fitting that a study of gentlemanly capitalists, pre-1850, should focus on land companies. This dissertation will look at three land companies operating in three different colonies in three different decades in the first half of the nineteenth century. A study of the men involved in these three land companies reveals the switchover to a domination by the financial and service sector occurred in the 1830s, not the 1850s, at least within the gentlemanly capitalists of the land companies.<sup>7</sup>

The first company is the Canada Company. This company formed in 1824 for the purpose of sending immigrants to the colony of Upper Canada. This company was united in the imperial mission with the Home government and became the paradigm of all future land companies. The

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<sup>6</sup> The term “Government” is defined in this dissertation as the Home government as a whole: Parliament, the Queen, and cabinet offices, i.e. the Colonial Office. All effort is made to be specific as to the branch whenever possible.

<sup>7</sup> Anthony Webster suggests that gentlemanly capitalism underwent a trial in Asia in the late 18<sup>th</sup>, early 19<sup>th</sup> centuries as competing companies sought to limit privileges of the EIC. They did this through anti-monopoly campaigns and demonstrations of the EIC as a symbol of “Old Corruption.” Through the struggle a unification of “London merchants, industrialists, and merchants in the Empire” occurred and a “trans-imperial network” formed as a range of British economic interests merged with Anglo-Asian commercial communities. Then this alliance created political interest groups, who then shared information and lobbied for influence upon imperial policy. This alliance was then able to influence imperial policy as it related to political and economic issues. Anthony Webster, *The Twilight of the East India Company: The Evolution of Anglo-Asian Commerce and Politics 1790-1860*. (Suffolk, UK: The Boydell Press, 2009)

second company is the British American Land Company (BALC) that began operations in Lower Canada in 1833. This company did not have the idyllic conditions of the Canada Company, yet began operations united with the Home government. Events within that colony and other colonies, however, soon caused the Home government to reassess imperial strategy, abandon the agreements made with the BALC, and withdraw support for future land companies. The third and final land company is the New Zealand Company, which sent out its first ship of settlers in May of 1839. This company never shared the Home Government's imperial mission and in fact acted in direct defiance of the Colonial Office. A comparison of these three companies reveals the role of gentlemanly capitalists in the formation and execution of imperial policy in the first half of the nineteenth century. It also provides insight into the influence of the domestic political and legal atmosphere upon imperial policy and upon the land companies tasked with fulfilling the settlement goals of the Home government. It further allows understanding of the relationship of the Home and colonial governments with both the British and non-British settlers residing in these colonies.<sup>8</sup>

This chapter draws attention to various themes found throughout the dissertation. A discussion of patronage and gentlemanly capitalism will highlight and examine the work of both Cain and Hopkins and David Cannadine. A discussion of the Stock Market will demonstrate a change in regulations regarding foreign investment after 1825. A study of the three land companies allows a view of foreign investment before the bubble burst with a study of the Canada Company, after it burst but while a sense of optimism existed towards land companies with a discussion of BALC, and long after the optimism toward land companies died with an analysis of the New Zealand Company. The optimism present at the beginning of BALC's operations was dashed by the refusal of non-British colonial residents to assimilate. Thus, a study of the land companies also offers a view of the

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<sup>8</sup> In Canada, the indigenous population had been moved away from the settlement sites prior to the arrival of these companies. In New Zealand, there was no indigenous population at the time the first British settlers arrived; the Maori are a settler society. See Appendix #1 for more information.

racial categorization of peoples which follows that refusal within the colonies the companies settled. The domestic political turn towards liberalism was indeed compatible with these categorizations of race; thus, race and liberalism will be discussed in the final section of this introductory chapter.

### Patronage & Gentlemanly Capitalists

In the seventeenth and eighteenth centuries, England had attempted to export the traditional supremacy of the landed class through the patronage system. This was a system in which men from the landed gentry placed their sons in governing positions throughout the Empire. These men safeguarded the Empire as they served at military posts or as Governors to the colonies. The task of these men was to promote a sense of respect, if not deference, to the upper classes of Britain. In the meantime, these men rose in rank and status to positions with greater titles over time. David Cannadine argues the patrons were successful in their jobs. He suggests the replication of rank was so thorough that it actually became the driving force of the Empire.<sup>9</sup> Cain and Hopkins however see the landed class in the Empire as less secure, as having their success more closely related to the fortunes of the City, and as deeply threatened by the forces of the American and Napoleonic Wars. Therefore, in the aftermath of those wars, to protect the social order they had established, Cain and Hopkins argue the landed elite formed a partnership with “new men” from the financial and service sectors, a group of “like-minded” elites who demonstrated that “the British view of the world *could* and *should* be reproduced elsewhere.”<sup>10</sup> With these gentlemanly capitalists at the helm, there was renewed hope within the British Home Government regarding the possibility of securing the traditional dominance of property within the Empire through the use of large-scale emigration, or the Anglicization policy. This time, however, rather than using a handful of colonial governors to

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<sup>9</sup> This is a portion of his thesis for David Cannadine, *Ornamentalism; How the British Saw Their Empire* (New York: Oxford University Press, 2001). He argues that rank rather than race was the driving force of the Empire.

<sup>10</sup> Cain & Hopkins, 2001, 97-98.

act as patrons, they used land companies to send large groups of British emigrants to the colonies. They believed flooding the area with British subjects would aid in the desired replication of British structures and assist with acculturating the non-British colonial residents: the French in Canada and the Maori in New Zealand.

Besides calling into question the timing of the shift in power from agriculture to finance and trade within gentlemanly capitalism, a focus on these land companies also draws attention to other domestic determinants of imperial policy that receive little or no mention by Cain and Hopkins—including a greater adherence to a strict interpretation of both law and contract and shifts in political beliefs, which placed greater emphasis upon free trade and a greater emphasis upon merit, rather than birth, in the extension of titles and the privileges associated with gentlemanly status. Cain and Hopkins do recognize the growing influence of free trade and reduction of protectionism in the first half of the century, but suggest it had little influence before 1850. They maintain the period before 1850 was one of a mixture of “economic liberty and gentlemanly paternalism” and that it was a time of apprenticeship for men of new wealth who would eventually take over post-1850. They suggest that economic factors prompted colonial expansion, which in turn preserved political stability within Britain. Instead of securing the traditional pre-eminence of property, they argue, a new generation of gentlemanly capitalists emerged after 1850 that sought to create an international trading system governed by the principles of free trade and subservient to high finance. As the domestic economy drove foreign investment, they suggest, so did these factors drive imperial policy.<sup>11</sup>

In this dissertation I argue that such economic factors did play a role in colonization, but that in the first half of the 19<sup>th</sup> century a greater adherence to a strict interpretation of both law and contract and shifts in political beliefs towards radicalism, placed a greater emphasis upon free trade without protectionism, but not without regulation. Further, a study of the Canada Company, BALC

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<sup>11</sup> Cain & Hopkins, 2001, 98-104.

and the New Zealand Company demonstrates this strict adherence to law and contract limited the use of gentlemanly maneuvering, as an elevated emphasis upon merit, rather than birth, caused a decline in the extension of titles and privileges associated with gentlemanly status. Thus, destabilization of the colonies of Lower Canada and New Zealand, along with financial difficulties for the land companies operating there, occurred not only because of events in the colony, but because of the changing political and economic climate in Britain. This new atmosphere disallowed the extension of privileges traditionally linked to gentlemanly status and prohibited straying from a narrow interpretation of the law and contracts.

### The Stock Market

Starting in 1822, new opportunities for foreign investment appeared on the London Stock Exchange that caused a rise in the power of the financial and service sectors within the gentlemanly capitalists. This change placed greater emphasis upon joint stock companies and allowed a greater number of non-landed investors to enter into activities in the Stock Market. This shift directly led to a higher number of participants drawn from the financial and service sectors into the business of land companies. Thus, while the purchase of land and the settlement of peoples on colonial lands remained important to the land companies, as those companies became dominated by the financial and service sector, an increasing emphasis of other financial goals emerged. An example of this is seen in the push for settlement of New Zealand which included the desire to profit from transportation itself rather than through the land sales.

On March 3, 1801, the London Stock Exchange came into formal existence. Having existed in an informal form since the late 17<sup>th</sup> century, the Stock Exchange emerged from the securities market based primarily in funding Government debt. These securities resulted from Government borrowing which then created a permanent debt that was transferrable. Joint stock companies, such

as the East India Company, traded the capital they raised for largely unmarketable government debt. The Government received a source of funding and always made timely payments of its debt. Thus, investment in this type of security was considered safe and preferable to all others. “Increasingly, the safety, convenience, and liquidity of National Debt attracted investors who, in the past, might have placed their funds into land.”<sup>12</sup> The trades were informal and primarily limited to a few wealthy men within Britain. Yet over the course of the 18<sup>th</sup> century as more investors and traders became involved in the securities exchange, a need for regulation arose. Thus the formal creation of the London Stock Exchange in 1801 included regulations for the transaction of business. A committee supervised and arbitrated transactions and threatened expulsion for anyone who did not follow established regulations. The professionalization of traders occurred as they now had to be full-time stockbrokers. They could not hold dual professions, for example in banking. The market itself limited transactions to only those of Public Funds.

During the Napoleonic Wars, the national debt rose to approximately twice the national income. That national debt expanded to almost three times the national income by 1821. Because the Stock Market had originated in the market for National Debt and related securities, investors began to invest in other types of securities which might offer greater profit in the 1820s. A switch to foreign securities began in 1822 as the Government divided the foreign and domestic debt. Government loans for foreign investment increased more than 200% during the first half of that decade. The landed class had always limited entrance into the securities market, via the imposition of membership fees, to maintain the dominance of their class. As new types of men entered into the Stock Market, i.e. bankers, money brokers, etc. due to a growing interest in foreign securities, the landed elite were faced with the choice of allowing foreign securities to be traded in the Stock Market proper or creating a new exchange. Both options appeared unseemly. However, by

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<sup>12</sup> See Ranald C. Michie, *The London Stock Exchange*, (Oxford: Oxford University Press, 2001), quote taken from page 25.

November of 1822, a separate building, next door to the Stock Exchange Proper was purchased to hold a separate market for foreign securities, the Foreign Funds market.<sup>13</sup>

Investors were not happy with the rate of return of foreign government securities and they looked to joint-stock companies to increase their bottom line. In 1824-1825, 624 joint stock companies were promoted, primarily speculative in nature, creating a “bubble” of investment. The activities of these companies ranged from domestic projects such as railways and canals, both domestic and international mining, and investments seeking to expand the British economy overseas. Since the managers of the Stock Exchange were hesitant to sell shares of companies that they believed were far more risky than public funds, they decided in 1825 to require shares of these joint stock companies to be traded in a separate Foreign Funds market. In 1825, a poor economy facilitated by a rather poor harvest, led to the sell-off of a large number of shares, followed by a dramatic decrease in the volume of shares traded. Many of the plans for the joint-stock companies were found to be either unfeasible or outright deceptive. Of the 624 joint stock companies promoted in 1824-1825 only 127 survived until the end of 1826. Additionally, foreign states that had garnered loans from the Foreign Funds market began to default on their loans. The overall price of shares decreased rapidly and investors lost large sums. Banks that had lent money to the companies and investors on a speculative basis went bankrupt. The Foreign Funds market “bubble” had burst and trades on that exchange virtually disappeared in 1825.<sup>14</sup>

The Canada Company, which is the focus of Chapter Two, illustrates these changes in action in the years leading up to that land company receiving its charter in 1825. Yet despite early setbacks,

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<sup>13</sup> Ranald C. Michie; Larry Neal, *The Rise of Financial Capitalism: International Capital Markets in the Age of Reason*, (Cambridge: Cambridge University Press, 1990). Larry Neal, “The Financial Crisis of 1825 and the Restructuring of the British Financial System,” *Federal Reserve Bank of St. Louis Review*, May-June 1998. <http://research.stlouisfed.org/publications/review/98/05/9805ln.pdf>

<sup>14</sup> Michie.; Larry Neal, “The Financial Crisis of 1825 and the Restructuring of the British Financial System;” Arthur Gayer, D., W. W. Rostow, and Anna Jacobson Schwartz. *The Growth and Fluctuation of the British Economy 1790-1850*, (Oxford: Clarendon Press, 1953); Diamond, Douglas W., and Philip H. Dybvig. “Bank Runs, Deposit Insurance, and Liquidity,” *Journal of Political Economy* (June 1983), pp. 401-19

the Canada Company figured out how to maneuver in this environment in which they could not always rely on gentlemanly contacts to circumvent contract and law. Thus, the Canada Company upheld the Anglicization policy and established a settler ideology through emigration promotion. This generated optimism towards the possible success of future land companies. This optimism can be seen as Chapter Three begins with a discussion of the union between the British American Land Company (BALC) and the Home government in the business of Anglicization. Yet, changes in domestic standards of law and investment, along with the French Canadian refusal to assimilate to British norms not only tainted that optimism, it led to a failure of the Anglicization policy and the reclassification of French Canadians as a distinct race.

## **Race**

The term “race” is littered throughout the documents of the early nineteenth century. It specifically refers groups deemed inferior by policy makers. In this first half of the nineteenth century this categorization was free of beliefs of inferiority due to skin color or ethnicity. Yet, this categorization of inferior peoples demonstrates an undercurrent which led to Social Darwinism in the late nineteenth century. As illustrated in both Chapters 4 and 5, when the Anglicization policy failed in Lower Canada, the settlers, the companies, and those in power in Britain constructed a racial identity for the French Canadians. Each of these groups shared a unified understanding of the French Canadians as a race, which is clearly on display in the Durham Report. John George Lambton, the first Earl of Durham, a landed aristocrat who was also a philosophical radical, was asked by Lord Glenelg of the Colonial Office to travel to Canada and report on the state of the Colony after the rebellions of 1837. In his report he suggested that Upper and Lower Canada should be merged into one political unit, whereby the Anglo population of Upper Canada would reduce the political influence of the French Canadians in Lower Canada. In Chapters 6 and 7 we will see that in

New Zealand, unlike Canada, competing concepts of a Maori race developed from the settlers, who interacted with the Maori, and the Home government, which sought to apply new humanitarian and liberal ideals regarding native protection to the Maori. The settlers believed the Maori prone to violence due to their aptitude for war, that the Maori had lesser intelligence due to their concepts of land ownership, and as the Maori repeatedly submitted land claims, the settlers came to view the Maori as a devious race of people. Yet, a very different concept of the Maori race developed back in Britain. Those who held power in Britain created a concept of the Maori race which placed Maori development as more advanced than Native Americans, but less advanced than European settlers, such as the French Canadians. Thus, they believed the Maori were the victims of settlers and therefore required protection established by the Home Government. The government assumed that the Maori were not yet ready for western property rights or self-government. Yet the government restrained and punished the New Zealand Company and the settlers in order to “protect” the Maori. At the same time the Home Government believed the Maori incapable of progress and even if this were not true the policies implemented in the name of protecting the Maori arrested any possibility the Maori might have had for progress. This led to a conflict between the settlers who thought the Maori were an aggressive people and a British government who believed the Maori were acting in defense of their property and persons. It also set up a system of discrimination against the Maori which lasted for more than a century.<sup>15</sup>

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<sup>15</sup> JH Kerry-Nicholls, “The Origins and physical characteristics of the Maori Race” *Journal of the Anthropological Institute of Great Britain and Ireland*, 1886.; Horace William Milner, *The Maori Race*, (New Zealand: New Zealand Alliance, 1946); Anne-Marie Mooney Cotter, *Race Matters: an international legal analysis of race discrimination*. (Hampshire, England; Burlington, VT: Ashgate Publishing, 2006) Other ideas regarding these two concepts of the Maori race are evident in the Select Committee Report on New Zealand and other primary documents discussed in the next section.

## Race, Liberalism & Empire

The Durham Report, which was issued in the aftermath of the French Canadian rebellions of 1837-1838, is one of the most anti-French Canadian documents in the history of that colony. Historiography has portrayed Lord Durham as racist and ignorant regarding the French in Canada. However, revisionist scholarship has suggested that a policy such as Anglicization, which included planned assimilation, opened the widest political and economic opportunities to those who acculturated. Thus, Durham's work was in line with a "progressive universalist" mainstream liberalism as he supported a policy which he believed opened the widest political and economic advantages to French.<sup>16</sup> An alternative argument suggests that Durham was a "one-sided sociologist" who used liberalism for imperialist purposes, thus his views were anything but open-minded.<sup>17</sup> The Anglicization policy was a policy of assimilation, which by nature required a belief in the superiority of the British peoples. Thus, the Union of the two Canadas was a method of promoting a policy of assimilation in keeping with a long history of liberal thought; thus, Janet Ajzenstat argues the Union was not racist, but was an attempt to better Canada so the French Canadians would naturally acculturate. Guy Lafforest's suggests that liberalism was utilized to forward an imperial agenda. Therefore, the Union of the two Canadas was indeed another means of pushing an assimilation policy, and thus a racist agenda. He clearly departs from the historiographical notion that the Union, along with self-representation of the colony, was a liberal triumph. Both of these works bring to the forefront, albeit unintentionally, liberalism as a racist ideology or at the very least a compatibility of liberalism with racism. Yet, despite or possibly in spite of the role of liberalism, the Anglicization policy failed due to the failure to assimilate those of non-British origin in the Colonies.

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<sup>16</sup> Janet Ajzenstat, *The Political Thought of Lord Durham* (Toronto: McGill University Press, 1988); *Lord Durham's Report: An Abridgement of Report on the Affairs of British North America by Lord Durham*. Eds. Guy LaForest, Janet Ajzenstat, G.M. Craig. (Toronto: McGill University Press, 2006 )

<sup>17</sup> Janet Ajzenstat, *The Political Thought of Lord Durham* (Toronto: McGill University Press, 1988).

Durham's radicalism seems at odds with this racism. Liberals had a theoretical belief in universal equality which included the right of self-representation. Yet, in practice, they placed conditions on liberty. John Stuart Mill argued that liberty was limited to those who were mature adults, had no application to backwards societies, and could not exist in an area encumbered by war or severe internal turmoil. He and other liberals believed the presence of Europeans in colonies created a higher level of development and it was for this reason that they believed Canada was ready for self governance while New Zealand was not. However, many liberals changed their opinions in the aftermath of the Rebellions to a position that the French-Canadians were in fact not advanced enough for self-representation.<sup>18</sup> This has led some scholars, such as Uday Mehta, to suggest this period of liberal history was "unmistakably marked by the systematic and sustained political exclusion of various groups and 'types' of peoples." To exclude such peoples, liberals referred to the "manifest political incompetence" of such peoples. Thus the ideal of universal equality became one of everyone is naturally free, but restricted that right of freedom to only those whom liberals deemed rational. To determine who was and was not rational required a complex set of "individual and social indexes as the prerequisite of political inclusion."<sup>19</sup>

### Settlement and Race

James Belich has recently put forth the idea that not only is British history in the nineteenth century global history; he has argued that the rise of Britain and her colonies created a global economic disparity between East and West by the twentieth century.<sup>20</sup> This, he claims, occurred due to the construction of a new settler ideology that led to mass migration from Britain to its colonies.

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<sup>18</sup>Uday Mehta, "Liberal Strategies of Exclusion," in *Tensions of Empire, Colonial Cultures in a Bourgeois World*. Ed. Frederick Cooper and Ann Laura Stoler, (Berkeley: University of California Press, 1997)

<sup>19</sup> Mehta, 63. "manifest incompetence" is from Mehta quoting C.B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke*, (Oxford: Oxford University Press, 1962), 75.

<sup>20</sup> James Belich, *Replenishing the Earth; The Settler Revolution and the Rise of the Angloworld, 1783-1939*, (Oxford: Oxford University Press, 2009), 14.

This movement of people was accompanied by a movement of goods, currency and of course ideas.<sup>21</sup> The Anglo world was bound together through economic investment and this investment was subject to the boom and bust economy of the City and Stock Market. Investors invested strongly, and perhaps make riskier investments, during times of boom. The opposite was also true as poor economic times, such as after the Bubble burst, caused greater caution in investment. This economic activity bound together the colonies with London and therefore caused cycles of interdependence and growth which then provided Britain with an advantage in the global economy by the end of the century.<sup>22</sup> Thus, in order to provide the global superiority of the West suggested by Belich, the settler economy needed to be an extension of Britain's hinterlands, to provide Britain with foodstuffs and other raw materials<sup>23</sup>

Another central argument of Belich's work asks the question, "Why does so much of the earth speak English?" His answer to this is a rather simple one that in the post-Napoleonic War era the world came to be dominated by two countries, Britain and the United States. He explains Britain successfully populated areas with English speaking peoples and these emigrants successfully supplanted current languages of the colonies with English. He suggests the building of the Anglo speaking colonies, such as Canada, Australia, New Zealand, and South Africa was not a situation in which the center exploited the periphery. In fact he claims the center and periphery used each other, and thus if any exploitation existed it occurred in both directions. The main factor not considered in this analysis is that of race. Certainly it is true that the world became primarily English speaking due to new settler communities of Anglo speakers. But what of those who spoke other languages who resided in the colonies prior to the arrival of these new settlers? The French Canadians in particular were incredibly reluctant to give up their language. Thus, in order for

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<sup>21</sup> Ibid, 97-99; 111-123.

<sup>22</sup> Ibid,200-209.

Belich's theory of the global success of Anglo speakers, the new settlers would have to suppress the language, and other customs, of the preexisting colonial residents. In South Africa, the Afrikaner population refused to acculturate to British ways and responded by exiting the colony en masse. In Canada, the government had some success in pushing the Native Americans away from planned settlement areas and into reserve lands. French Canadians were not offered reserves, but the government invited them to assimilate to Britain's customs and traditions. The desire of the French Canadians to maintain their customs and language caused a full scale rebellion. In New Zealand, when a land company began the business of settlement with Anglo speaking emigrants in direct defiance of the Home government, the government responded by trying to offer protection to the Maori people: protection from the Company and its settlers. This however effectively prohibited further development of the Maori people.

A.G. Hopkins recently wrote of the "civilizing mission," an assimilation strategy used in the late nineteenth century, that not only was it was difficult "to convert others to different ways of thinking," but also the policy makers in Britain consistently underestimated the difficulties of assimilation.<sup>24</sup> Richard Roberts suggests that this civilizing mission "blinded Europeans to the complexities of indigenous societies" and did not account for the ways in which those societies "pursued their own agenda" through opportunities created by colonization.<sup>25</sup> P.G. Cain, in his biographical depiction of Charles H. Pearson, describes a British fear that indigenous populations would use colonial institutions in an inferior way which would lead to independence from Britain.

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<sup>24</sup> A.G. Hopkins, "Lessons of the Civilizing Mission are Mostly Unlearned," *New York Times*, March 3, 2003, Sec. 4,5. Discussed in Richard Roberts, "Africa and Empire: The Unintended Consequences," in *Africa, Empire and Globalization: Essays in Honor of A.G. Hopkins*, eds. Toyin Falola, Emily Brownell, & A.G. Hopkins. (Durham, N.C.: Carolina Academic Press, 2011), 399.

<sup>25</sup> Richard Roberts, "Africa and Empire: The Unintended Consequences," in *Africa, Empire and Globalization: Essays in Honor of A.G. Hopkins*, eds. Toyin Falola, Emily Brownell, & A.G. Hopkins. (Durham, N.C.: Carolina Academic Press, 2011), 400.

Yet, their inferior intellect would disallow the recreation of governmental institutions.<sup>26</sup> In the first half of the nineteenth century, prior to the “civilizing mission,” there was the policy of Anglicization. This policy did not discriminate between indigenous and non-indigenous colonial residents; it simply saw the need to create a majority British population in the colonies. Yet the fears and racism associated with the late nineteenth century can be glimpsed within the Anglicization policy without the classifications of peoples based solely upon skin color. As a result of the difficulties with non-indigenous colonial residents, British policy makers created new categories of race in order to justify the suppression of their language and culture. In South Africa, the Afrikaners were categorized as at a lower stage of development, particularly because they refused to give up their slaves. British attempts to regain these settlers and the lands they settled on, and the steadfast refusal of the Afrikaners to assimilate to British cultural and legal standards led to the Boer War at the turn of the century. When the French Canadians steadfastly refused to assimilate, they were categorized as an inferior race by British policy makers and Anglicization as a government policy of emigration using land companies to establish Anglo settlements in the colonies failed. In New Zealand, the Maori were deemed at a lower level of development, and therefore the Government viewed them as in need of protection, thus stalling the development of both the settlement and Maori communities. Thus, when we consider the creation of categories of race a new story regarding the development of the Anglo speaking world develops: a story of the creation of the Anglo world at the price of repression and destruction of those whom policy makers deemed inferior.

While the success of Anglo speaking peoples of the world may have provided an economic advantage to the West, it is definitely a stretch to claim it did not happen without the exploitation of peoples in the periphery as entire groups of colonial occupants were deemed inferior and stripped of

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<sup>26</sup> Peter G. Cain, “Democracy, Globalization, and the Decline of Empire: A View from the 1890s,” in *Africa, Empire and Globalization: Essays in Honor of A.G. Hopkins*, eds. Toyin Falola, Emily Brownell, & A.G. Hopkins. (Durham, N.C.: Carolina Academic Press, 2011), 463-476.

the rights they had prior to the creation of settlement communities. An argument about the periphery exploiting the Center could be made if one suggests that the land companies and gentlemanly capitalists exploited the center, but let us not forget that most of these directors and investors actually resided in London; thus, any exploitation of the Center that occurred from them really cannot be claimed as truly coming from the periphery. Certainly those deemed racially inferior in the colonies would not have an opportunity to exploit the Center as their voices remained unheard for at least the first four decades of the nineteenth century.

In fact the only group one could argue exploited the Center from the periphery is the group Belich upholds as creating links in the global community, the Anglo settler communities. The settlers presented very one-sided views of colonial activities to the colonial and Home governments. This view reported upon the inferiority of other groups which then justified actions taken against those groups as a means of self-defense. This can be seen in the language of the settlers leading up to and after the Canadian rebellions. It also can be seen in legal proceedings against the Afrikaners in South Africa, the French in Canada, the aborigines in Australia, and the Maori in New Zealand. In most disputes between settlers and other colonial occupants, the law was twisted to benefit the settler communities. In some cases the settlers were able to literally get away with murder, which was certainly against the British Common law which applied both in Britain and the colony. Reports of terrible mistreatment of the aborigines of Australia by Anglo settlers caused the Home Government to pass laws to protect native peoples. The Maori were protected under these laws and upholding these laws put the Home Government at direct odds with the settlers. The settlers refused to abide by the laws passed by the Home Government and they continued to clash with the Maori. This led to war between the settlers and the Maori people. Thus, even in a situation where a settlement community attempted to exploit the Home Government, other colonial occupants

suffered as a direct result. Thus, it is not fair to claim the periphery was able to exploit the Center when we consider residents other than Anglo speaking settlers.

When analyzed in a comparative fashion, rather than an understanding of British policy as a mass of “apparent inconsistencies which seem to defy coherent analysis,”<sup>27</sup> imperial policy clarifies and displays an evolution as it reflected changes based on knowledge gained from the colonies themselves and highlights domestic legal, social, and political changes. Imperial policy failed to “design an international regime that would make the world safe for the monarchial, propertied, gentlemanly orders” by the end of the 1830s.<sup>28</sup> A study of land companies demonstrates the significance of the gentlemanly capitalists and the importance of the relationship of these men with the Home Government in the creation and implementation of imperial policy, specifically the Anglicization policy. As a new domestic environment arose, which included strict interpretation of contract and law and greater regulation of overseas investments, the Government changed along with this new state of affairs. The land companies, however, sought to ignore the changing domestic atmosphere and to maintain privileges typically associated with gentlemanly status. The failure of the Anglicization policy post 1837 accelerated the “ungentlemanly” nature of the relationship between the Home government and gentlemanly capitalists. The inability of the British government and land companies to institute English traditions through assimilation at the periphery had implications on a global scale. As the Anglicization policy failed, ideas regarding the inferiority of imperial subjects emerged. The construction of races of non-British colonial occupants created not only racism within the colonies, but also created pre-conditions for ready acceptance of racial inferiority associated with Social Darwinism in the second half of the century.

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<sup>27</sup> John Galbraith, “Myths of the ‘Little England’ Era, *The American Historical Review*, Volume 67, Issue 1, 1961, 34-48. Quote on page 48.

<sup>28</sup> Cain & Hopkins, 2001, 98.

## Chapter Two- **The Canada Company, 1824-1830**

Before the Seven Years War, the British had laid claim to the Hudson River Valley, its drainage basin known as Rupert's Land, and settlement areas in Newfoundland. The French controlled much of modern day Ontario, Quebec and the Maritimes, which included the territories of Nova Scotia, New Brunswick and Prince Edward Island. Britain gained the territory of Nova Scotia from the French through the Treaty of Utrecht in 1713. At the Treaty of Paris in 1763 at the end of the Seven Years War, France ceded all of its Canadian holdings to the British. On October 7, 1763, George III issued a Royal Proclamation which divided the North American territories gained from the French into four "distinct and separate governments" under the titles of "Quebec, East Florida, West Florida, and Grenada." The area of Quebec covered all British holdings in Canada. The Proclamation further established all persons residing in Quebec subject to and under the protection of British laws and set forth methods for instituting local government and judiciary branches. Lastly, the Proclamation granted lands to veterans, established indigenous reserves, and strictly forbade squatting upon or the direct purchase of any Indian lands.<sup>29</sup>

In 1774, in response to the growing unrest of the French population in the area which became Lower Canada, the British Parliament passed the Quebec Act, which provided the French with freedom of religion and language. It further allowed the French to maintain their civil code, but English common law applied for criminal matters. Seventeen years later, the English Parliament issued the Constitutional Act in 1791.<sup>30</sup> This act divided the province of Quebec into Upper and Lower Canada. French Canadians constituted a majority of the population of Lower Canada and they wished to be able to speak French and practice Catholicism, while Upper Canada (which

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<sup>29</sup> Text of George III's *Royal Proclamation of 1763* found at The Avalon Project of Yale Law School. <http://www.yale.edu/lawweb/avalon/proc1763.htm>

<sup>30</sup> Also known as the Canada Act.

roughly corresponded to the area that is now Ontario), remained largely unsettled until the 1820s.<sup>31</sup> Further, the Act established voting rights which provided for French suffrage, and created the Assembly of Lower Canada that granted French self-representation in the area. However, the creation of Upper Canada divided the peoples as well as the geographical territory. The French remained the majority population in Lower Canada and the Anglophone settlers became the majority population in Upper Canada. While the French in Lower Canada gained a representative Assembly, the true governing power resided with a new oligarchic Upper House residing in Upper Canada. The members of the Legislative Council of the Upper House were appointed by the Governor of the colony, and thus were primarily Anglophone in origin.<sup>32</sup> In the last decades of the eighteenth century and the first decades of the nineteenth, the number of British settlers in Canada grew. More than half of the loyalists who fled the American Colonies after Britain granted independence to the thirteen colonies settled in British Canada.<sup>33</sup> Further, after the War of 1812, many British soldiers were encouraged by colonial administrators to settle in Canada as a means to promote a greater number of English speaking settlers in the colony.<sup>34</sup>

## Anglicization

This increased effort to attract English-speaking settlers was in line with a colonial policy known as Anglicization, which emerged in the late eighteenth and early 19<sup>th</sup> centuries. In that time it was used mostly, but not solely, toward the desire to attract Anglo settlers to the Cape Colony and Canada. This policy is not to be confused with the term anglicization used by historians to refer to a

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<sup>31</sup> See map of Upper and Lower Canada in Appendix #1.

<sup>32</sup> Maya Jasanoff, *Liberty's Exiles*, (New York: Alfred A. Knopf, 2011), 202. & *Constitutional Act*, a.k.a. "An Act to repeal certain Parts of an Act, passed in the fourteenth Year of his Majesty's Reign, entitled, An Act for making more effectual Provision for the Government of the Province of Quebec, in North America; and to make further Provision for the Government of the said Province", Public Archives of Canada, *Documents Relating to the Constitutional History of Canada*, eds. Adam Short & Arthur Doughty, (Ottawa, 1907), 694-708.

<sup>33</sup> Maya Jasanoff, 9.

<sup>34</sup> Orn Bodvar Bodvarsson, & Hendrik Van den Berg, *The Economics of Immigration: Theory and Policy* (London; New York: Springer-Verlag, 2009), 382.

“civilizing process” in Ireland and India, which did not include emigration, but formalized the English language and English schools as a means to assimilate the population.<sup>35</sup> Nor is it to be confused with a modern expansion of the term Anglicization to include a definition of Britishness which included English, Scots, Irish, Welsh, etc. This expanded definition refers to anglicization as an informal assimilation process rather than an actual policy emanating from the Home Government designed to populate colonies with British subjects.<sup>36</sup> In this sense, anglicization was a “primary strategy of domination” designed to maintain British authority around the globe. The maintenance of colonies by brute military force did not promote the loyalty of colonial subjects; however the assimilation of peoples increased Britain’s power and reduced the threat of revolt amongst her colonial subjects. Thus, Britain introduced “administrative, legal, and bureaucratic apparatus” to her colonies, along with the introduction of British schools, churches, and other institutions designed to promote the assimilation of colonial subjects.<sup>37</sup> Each of the strategies for colonial control included assimilation of colonial people in some manner. Yet the *imperial policy* of Anglicization, which is the policy addressed throughout this dissertation, secured a more thorough assimilation of colonial peoples by exposing them to British language, customs and traditions via a large influx of Anglo settlers.

In the 1820s and 1830s in Canada, the Cape Colony and later in New Zealand, Anglicization was a formal policy of the Home Government which included the introduction of a large number of British emigrants to the colonies not only to facilitate assimilation, but to gain and/or maintain control of the colony politically and economically. This policy followed earlier efforts to convert French settlers to the Anglican faith as “Britain’s official policy after the Treaty of Paris in 1763 was

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<sup>35</sup> Irish Anglicization is discussed in Patricia Palmer, *Language and Conquest in Early Modern Ireland*. (Cambridge: Cambridge University Press, 2001). Anglicization in India can be found in Prem Poddar & David Johnson, *A Historical Companion to Postcolonial Thought in English*. (New York: Columbia University Press, 2005).

<sup>36</sup> See *Britishness abroad: transnational movements and imperial cultures*. Eds. Kate Darian-Smith, Patricia Grimshaw, Stuart Macintyre. (Melbourne: Melbourne University Press, 2007)

<sup>37</sup> Cheralyn Mealar, “Anglicisation” in Prem Poddar & David Johnson, *A Historical Companion to Postcolonial Thought in English*. (New York: Columbia University Press, 2005)

to anglicize the French Canadians, including their religion.”<sup>38</sup> The Constitutional Act reversed or made ineffective many of the freedoms offered to the French in the Quebec Act. The new act distinctly favored Anglo, protestant settlers as well as their method of land settlement. The Constitutional Act directed that one-seventh of all land in new towns had to be reserved for the Anglican Church. The Act further created hereditary legislative bodies modeled on the House of Lords and filled the positions of the Upper House of Upper Canada with Anglo members. Thus, at the division of the two Canadas, the Home government was responsive to the desires of the loyalists who had entered the colony and attempts to assimilate the French Canadians focused upon increasing the dominance of the Anglo minority and their institutions.<sup>39</sup>

### A Gentleman’s Policy

In 1824, a group of financiers and landowners formed the Canada Company in order to promote the Anglicization policy, which differed from their precursors in its narrower focus on settlement, and in the partnership that emerged between the state and a set of “gentlemanly capitalists” in carrying it out. As Cain and Hopkins concluded in their classic study of gentlemanly capitalism, the Canada Company shared a mutual goal with the Government to implement an imperial policy intended to “export the British model of development” so that English legal, political, and social systems might be recreated overseas through a policy known as “Anglicization.”<sup>40</sup>

The creation of the Canada Company, which settled two and a half million acres in Upper Canada, created an uneasy alliance between its directors and members of the British Government. That alliance was tested in 1824-1826 as the directors sought to utilize their gentlemanly connections to forward their agenda. Private deals within their alliance along with a public adherence to

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<sup>38</sup> A. Noll, *A History of Christianity in the United States and Canada* (Wm. B. Erdmann’s Publishing, 1992), 123.

<sup>39</sup> Jasanoff, 200-202.

<sup>40</sup> Quote from Cain & Hopkins, 2001, 100; James Sturgis, “Anglicisation at the Cape of Good Hope in the Early Nineteenth Century,” *The Journal of Imperial and Commonwealth History*, XI, 1 (1982), 5-32.

propriety taught the directors of the Company the art of compromise. Thus, in the first rocky years of the Company's operation, 1826-1830, the directors gained the knowledge of when they could and when they could not rely on those gentlemanly contacts in a crisis situation. While the Anglicization policy remained of utmost importance, it was not a license to operate without consideration for regulation of business methods and the law. Thus, the role of gentlemanly capitalists and their interaction with others within the gentlemanly class illustrates not only the significance of the Anglicization policy, but also of the political, economic and social constraints on the business conducted in the Empire in the first half of the nineteenth century. Following a brief survey of the historiography of the Canada Company, this chapter proceeds to demonstrate the Anglicization policy through an investigation of the relationship of the gentlemanly capitalists of this land company with the Government. The early turmoil between the two illustrates the power of the gentlemanly capitalists, the disunity amongst policy makers in regards to utilizing such a company, and the significance of the Anglicization policy. The unity they eventually achieve accounts for the successful settlement of Upper Canada and the triumph of the Canada Company—in pointed contrast to the other land companies discussed in later chapters of this dissertation.

The gentlemanly capitalists of the Canada Company were confident in their status within Britain and of the privilege associated with that standing. They had close ties to the financial and political centers of power in the City. As a consequence they were in position to directly influence domestic and imperial policy decisions, and became partners with the Government in the Anglicization policy. Yet the Government was not monolithic. Certain individuals within the governmental structure, such as Colonial Secretary William Bathurst, the Colonial Undersecretary Wilmot Horton, and the Chancellor of the Exchequer, Lord Goderich, did not accept the “gentlemanly” assumptions of privilege in the business world at the expense of law and regulation. Privately the relationships amongst gentlemen both in Government and in the Canada Company facilitated the Company's

success. Yet, this was not at the expense of the need for adherence to law and propriety. Thus, while the private relationships eased the directors' path at times, publicly members of the Government had to maintain and impose standards the directors needed to uphold. This created a line which these members of Government could not cross or even bend to assist their gentlemanly counterparts in the business world. The eventual success of the Canada Company was a result of the gained knowledge of the directors as to the appropriate times to use, or not use, those private gentlemanly relationships.

The Company began operations without the approval or legal sanction of the Home Government in 1824. This was the subject not only of great scrutiny, but the cause of legal action by the Home Government against the Canada Company in 1825. The Company further had a direct hand in setting the price of land in Upper Canada through close relationships with the Commissioners dispatched to Canada for that purpose. When charges of impropriety and corruption followed, the directors reacted with surprise, and continued to rely on their contacts and status within Britain for advice, favors, and dispensation. Later, however, when the Company faced a severe financial crisis in 1828-1829, the directors first attempted to utilize their contacts as they had in 1825, but realizing the futility of the attempt, backed off quickly and saved their company from within. Knowing exactly when to utilize and also when not to employ their gentlemanly contacts aided the Company in its survival. The success of their methods led to not only the end of the Company's woes by the 1830s, but also allowed the Colonial Office, Members of Parliament, and others in Britain to see the Canada Company as the paradigm for all future land companies.

### Historiography

P.J. Cain and A.G. Hopkins state that any analysis of colonization requires the inclusion of the influential role of "gentlemanly capitalists." These men consisted of a union of landed elites and

“new men” from the financial and service sectors. This group dominated imperial investment and had close ties to those in positions of power. Their proximity to those who controlled the machinery of the state allowed these men access to privileged information, which provided the ability to amass large fortunes and achieve high societal standing. In the case of Canada, Cain and Hopkins argue,

The creation of British North America in its modern form would have been unlikely if the [gentlemanly capitalists] had been unable to tap capital sources in London and if British governments had not occasionally been willing to use the leverage which London’s financial predominance gave them.<sup>41</sup>

The Canada Company represented this new union of the government and gentlemanly capitalists. The men who formed it most certainly fit Cain and Hopkins’ description of gentlemanly capitalists. Among the nineteen directors, nine were members of Parliament, two were bankers, and at least three were merchants with ties to the Canadian fur trade. Significantly, all but four of the directors of the Company were among the aristocracy or gentry of Britain. The first Governor of the Company, Charles Bosquanet, came from a non-titled landed family whose lands can be traced back to the sixteenth century. William Williams, the first deputy Governor, came from a family attached to a barony. This lends credence to Cain and Hopkins’ claim that the landed class remained the dominant group within the gentlemanly capitalists until after 1850.<sup>42</sup> Yet, as mentioned in the introduction, the key transition as the service sector and financial sector overtook the landed within the gentlemanly capitalists appears to have occurred earlier than 1850. Of the land companies examined in this work, the Canada Company is the only one with a majority of men from the landed class. This not only suggests an earlier takeover by the financial and service sector, but also presents the necessity to investigate the Canada Company in order to produce a full understanding of this key transformation.

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<sup>41</sup> P.J. Cain & A.G. Hopkins, *British Imperialism: Innovation and Expansion, 1688-1914* (London: Longman Press, 1993), 15, 26, & 258.

<sup>42</sup> See Chart of Canada Company Directors, Appendix #2.

The Canada Company was a joint-stock company united with the government in a policy of Anglicization which included the large-scale transportation of emigrants to Upper Canada. In the first half of the nineteenth century, whenever proposals entered the Colonial Office or the House of Commons for new land companies, which offered the transportation and settlement of emigrants in the British colonies, invariably the great “success” of the Canada Company would be mentioned. In a certain sense, it would be difficult to claim a Company that survived over a century, until 1953, was not a triumph. Yet those who spoke and wrote of the achievements of the Company attributed to the Company triumphs well beyond its scope and longevity. Both contemporaries and later histories chronicling the period gave the Company credit for successfully assimilating all the people of the area into “Canadians.”<sup>43</sup> “Canadian” by definition actually meant “British,” even if that was only through assimilation of cultural, legal and social norms. The Company built towns, roads, schools and settled emigrants in the area of Upper Canada. Yet, by the time of the Company’s activity in the area, the indigenous population had moved on and the French resided in the area of Lower Canada.<sup>44</sup> Thus, arguments for the success of the Company due to integration of the populace fail to recognize there were no large groups of peoples in Upper Canada who required assimilation.<sup>45</sup> The goal of imperial policy toward Upper Canada at that time was to create a large emigrant population in Upper Canada to provide a counter balance to the French population residing in Lower Canada.

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<sup>43</sup> Modern accounts of the successful Canada Company can be found in Talbots, *The Canada Land Company: The Early Years*, (Toronto: Oxford, 1974) & Anatole Browde, “Capitalists and Paupers, the Business of Canadian Land Companies and Settlers” (Washington University Ph.D. Dissertation, 1999).

<sup>44</sup> The total estimated number of Chippewa living in the Huron Tract was 450. PRO CO 42 398, Info in loose leaf section including John Galt’s letters bundled with Charter signed in 1826.

<sup>45</sup> This argument regarding the success of the Canada Company can be found in Talbots, *The Canada Land Company: The Early Years*, (Toronto: Oxford, 1974) & Anatole Browde’s thesis in, “Capitalists and Paupers, the Business of Canadian Land Companies and Settlers” argues that the Canada Company’s economic success rested in their ability to assimilate the populace, something the British American Land Company was unable to achieve. Dissertation for Washington University, December 1999.

A further tendency in the historiography is to attribute the failures and successes of the Company through a biographical discussion of one man, John Galt. Personalities have always played an important role in the telling of history. Yet histories told through the stories of “great men” discount the contributions made by others active in the empire, choosing instead to elucidate the personalities of a chosen few. Granted, John Galt’s story is an important one for the Canada Company as he was a founder, a commissioner and a Secretary of the Company. Yet, telling the story of the Company solely through one man’s biography discounts the importance of the economic, political and societal conditions both in the colony and in England which influenced the course of the Company and imperial policy towards the colony.<sup>46</sup>

The economic success of the Canada Company is another recurring trend in the historiography of the Company. While it is rather safe to claim the Company achieved economic success considering the Company lasted until 1953, the idyllic conditions in Upper Canada were unlikely to be replicated elsewhere in the Empire. Thus, it is impossible to assess any other land company by the same criteria as contemporaries and future historians were apt to do. Further, histories of the Canada Company typically begin in 1826 or later, rarely investigating the years prior to the receipt of the Charter. In those earlier years, the Company faced serious economic, legal and ethical issues which taint the image of the Company as the paradigm for all future land companies. Robert C. Lee’s history of the Company does briefly delve into some of these issues in the pre-Charter years, yet his sources are solely from Canada and do not include correspondence which occurred wholly within Britain, particularly private correspondence between the directors and members of the British government.<sup>47</sup> Thus, the full impact of the gentlemanly capitalists is missing from his work.

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<sup>46</sup> This view can be found in O.D. Skelton, *The Life and Times of Sir Alexander Tilloch Galt*, (Toronto: Oxford University Press), 1920 & A. A. Otter, *Civilizing the West: The Galts & the Development of Western Canada*. (University of Alberta Press), 1982.

<sup>47</sup> Robert C. Lee, *The Canada Company and the Huron Tract, 1826-1853*, 2004. Of course I am aware that I am guilty of the opposite as I end my study in 1850 rather than following through to the end of the company in 1953. However, my

Also missing from the historiography is the influence of the activity and increased regulation of the Stock Market upon the Canada Company. This not only hindered the company at its outset, but prohibited future companies from duplicating the success of the Canada Company. It was one of 624 joint stock companies that were promoted in 1824-25, primarily speculative in nature, creating a “bubble” of investment. The activities of these companies ranged from domestic projects such as railways and canals, both domestic and international mining, and investments seeking to expand the British economy overseas. In 1825, a poor economy facilitated by a rather poor harvest, created a large number of shares sold, followed by a dramatic decrease in the volume of shares traded. As one visitor to Canada noted in 1829:

In the year 1825, famous for speculations, schemes, and companies, in the City of London; when the bowels of the Mexican mountains received strong purgatives in order to free them of ingots of gold and silver; when the pearl oyster of the orient seas yawned with surprise at the appearance of diving-bells; and when golden sands, said to be brought from the shores of Africa, were spread in the courts and alleys of Lombard-street, to allure the unreflecting; —the wilderness of Canada was opened before the public.<sup>48</sup>

Yet, many of the plans for the joint-stock companies were found to be either unfeasible or outright deceptive. Of the 624 joint stock companies promoted from 1824-1825, only 127 survived until the end of 1826. After the bubble burst, the initial activities of the Canada Company underwent great scrutiny, in keeping with the greater concern and scrutiny of joint stock companies after the bubble burst.

### **Gentlemanly Capitalism at Work: Private deals, public battles, 1823-26**

The gentlemanly capitalists of the Canada Company needed to learn how to operate in this new financial climate. The initial actions of the company were closely scrutinized. The environment was one in which these gentlemen were unaccustomed. As a result of the early activities of the directors,

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comparison of companies limits the years as the Canada Company was the only one to survive past the first half of the century.

<sup>48</sup> John MacTaggart, *Three Years in Canada, 1826-1828*, vol. one (London: Henry Colbourn, New Burlington Street, 1829)

the years 1825-1826 brought with them a number of charges against the Canada Company and the Commissioners who went to Upper Canada. The first allegation was that the Company and the Commissioners conspired to set the value of land in Upper Canada at a particular price, regardless of the actual terrain. The second claim was that the Company began selling land in Upper Canada before the grant of that land was issued by the Crown and that it further began selling shares of stock before it was legal to do so. The third charge was that of manipulating the books regarding the cost of land. In other words, they sold land at one price in Canada, yet report it in London as sold at another price to manipulate both the Government and the Company's stockholders. Lastly, there was an allegation that the Company agents were selling land the Government was not prepared to sell to them, i.e. the Clergy Reserves. All of these indictments were placed before the courts and the court of public opinion in 1825-1826.

### An Uneasy Alliance

In 1823, John Galt, a Scotsman who had been appointed to assist Upper Canadians with claims for losses sustained in the War of 1812, began writing to the Undersecretary of the Colonial Office, Wilmot Horton, and Frederick Robinson, later to become Viscount Goderich, the Chancellor of the Exchequer. In these letters, Galt suggested sales of the Crown and Clergy reserves in Upper Canada could raise money to settle the Canadian debt from the War of 1812. He further proposed those sales could fund the administrative expenses of the colony, relieving a future burden of the Home Government. This could be accomplished as funds raised from sales were to be paid into the administrative accounts of Canada rather than to the Home Government.<sup>49</sup> Horton, a Canningite

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<sup>49</sup>While Galt was the one to write these letters, the attorney general of Upper Canada, John Beverley Robinson, was the first to make this argument and Robert Gourlay suggested the sale of Crown Reserves to pay for losses from the War. On the idea of using funds from sale of lands to finance the colony, see Robert E. Lee, *The Canada Company and the Huron Tract*. Info on Galt's suggestions taken from NAC. MG24 I 4. Galt Papers. "The Case of John Galt. Petitioning for the Remuneration from His Majesty's Government, for selling certain Crown Lands in Upper Canada." January, 1, 1831. Also Letters from Galt to Robinson and Galt to Horton, December 16, 1823. NAC. MG24 I 4.

Tory and supporter of pauper emigration, took an early supportive role as he helped Galt generate a proposal that Galt brought before a group of investors ready to take on the business of emigration in July of 1824. The meeting in which he presented his proposal was the first meeting of the directors of what became known later that year as the Canada Company.

In April 1825, the Lieutenant Governor of Canada, Peregrine Maitland, acting as a representative of the Canada Company, drafted an agreement with the Secretary of State for the colonies, William Lennox Bathurst for the sale of land to emigrants in Upper Canada. This agreement was intended as an arrangement for the proposed company. The plan was for a grant of the townships of Niagara and Gore to the Company. The Company was to purchase all of the Crown Reserves and half of the Clergy Reserves within those townships. Earl Bathurst presented this proposal to Parliament. Parliament passed an Act authorizing these actions, but it did attach specific provisions. Those provisions included the exemptions of lands promised to others prior to 1824, particularly lands promised to military officers.<sup>50</sup>

Immediately after the Parliamentary Act, the directors received a letter from Wilmot Horton, the Undersecretary of the Colonial Office, who had long been their ally. The letter presented instructions for a Commission, requested by both Parliament and the Colonial Office, to assess the value of land in Upper Canada to be completed before the Company could receive a grant of land from the Crown. With a total of five commissioners required, the Company could appoint two, the Crown two, and the first four Commissioners selected the last one. The salaries of these gentlemen were to be evenly shared between the Company and the Government. Thus, all parties appointed and approved a commission, and the five Commissioners set out for Canada. All of these men had

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<sup>50</sup> PRO CO 42 398, Upper Canada Company 1825, Volume 5. Canada Company, "Minutes of the Intended Arrangements" between Earl Bathurst, His Majesty's Secretary of State, and the proposed Canada Company ordered by the House of Commons to be Printed, 15 April 1825, 4-9; "A Memorandum containing the Heads of the provisions to be introduced into the Charter to be granted to the Canada Company," 1-32 (provisions on 8-9); *An Act to enable his Majesty to grant to a Company, to be incorporated by Charter, to be called "the Canada Company" certain lands in the province of Upper Canada and to invest the said company with certain powers and privileges for other purposes related thereto*. Land Grants excepted, as to military officers, 13-16.

some interest in the early planning stages for the Company; they were not unbiased men and no attempt was taken to hide that fact. The Canada Company chose John Galt and Simon McGilivray to serve as their representatives. After the return of the Commissioners from Canada, John Galt served as secretary for the Company and Simon McGilivray became a director for the Company. The other three Commissioners also went on to serve as agents for the Canada Company.<sup>51</sup>

On August 25, 1825, the Company produced a new Charter, in keeping with the Commissioners' Report and requests from both the Colonial Office and Parliament. The Company's charter set the price of land at £1 million sterling for the total parcel of 2.5 million acres. Ten percent of the £1 million was to be paid to the government before operations began. Thus, the Canada Company began to sell shares to raise these funds. The price per share was set at £100 sterling.<sup>52</sup> The Colonial Secretary, Earl Bathurst, looked at this price and began to wonder if something might be amiss with the Commissioners' valuation of the land. It was a very large tract of land being offered to the Company for a relatively small amount. He was concerned the Company might be more concerned with making profits than with the intended goal of Anglicization. Secretary Bathurst wrote to the Company questioning the interests of the Commissioners who had valued the Upper Canadian land. He asked if the interests of those gentlemen, the Commissioners, interfered with the integrity of the Commission. He found it odd that the final valuation of the land was the same as listed on an earlier proposed Charter of the Canada Company, which had been issued prior to the Commissioners' departure. He asked if perhaps the valuation of the land was agreed to before the Commission departed. Thus, he questioned the possible influence of the Company in the determination of the price set by the Commissioners.<sup>53</sup>

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<sup>51</sup> PRO CO 42 398, Peregrine Maitland, "Commission to be granted to the Commissioners appointed to value the lands in Upper Canada," 9; PRO CO 42 398, Horton to Masterson, "Instructions to the Commissioners appointed to value the Lands in Upper Canada," 9-11; CO 42 398, "Report of the Commissioners, supplemental report," 28-33.

<sup>52</sup> PRO CO 42 398, "Proposed Charter of the Canada Company," 32-81.

<sup>53</sup> PRO CO 42 398, information taken from multiple letters which increased in intensity which passed between Bathurst and Masterman in July and August of 1825, 88-99.

The directors of the Canada Company responded first by suggesting they had never been told that the Colonial Office could somehow object to the Award since they had received a Charter and were willing to pay the price set by the Commission. The only exception, they believed, was if the Commissioners were found to be corrupt. The directors also responded to the implication of corruption:

As the high character of the persons chosen of the question especially as they feel confident in the justice of your Lordship, that their direct interest in the question would not be forgotten, but on the contrary that the opportunity would be afforded to them first to consider any objection which might have prevented itself to your Lordships mind and then to submit the objection as might appear to them most proper.<sup>54</sup>

Bathurst countered by stating he had the legal right based on Clause 4 of the Act of Parliament pertaining to the Canada Company. That clause stated he, Bathurst, could refuse their charter if anything was amiss, illegal or inappropriate. The directors used the same Parliamentary documents and quoted Clause 10 which stated the “great Seal” would be used, their final charter “imminent,” after the bill passed in Parliament, after they organized themselves as directors, and after they paid £100,000 to the Government. Each of these conditions had indeed been met by the Company. Yet on September 17, 1825, Horton sent a letter to John Masterman, a director of the Company, stating that upon further review, Bathurst had decided the land had not been properly valued; thus, a charter of incorporation could not and should not be issued for the Canada Company.<sup>55</sup> The following month Horton wrote to Masterman and suggested the Commissioner’s report “ascertained nothing.” He wrote,

The course of enquiry which the Commissioners adopted and the method which they pursued in recording their proceedings, have left their entire uncertainty the precise question which it was the special object of their mission to resolve.<sup>56</sup>

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<sup>54</sup> PRO CO 42 398, Masterman to Bathurst, August 30, 1825, 100.

<sup>55</sup> PRO CO 42 398, Letter from Horton, to Masterman, September 17, 1825, 111.

<sup>56</sup> PRO CO 42 398, Horton to Masterman, October 17, 1825, 115-117.

Horton followed with a formal letter to the Commissioners repeating these accusations. Thus, at least publicly, the Canada Company had lost an early and great ally in Wilmot Horton, specifically regarding the actions of the Commissioners.

### The Commissioners

In the summer and fall of 1825, questions concerning the wrongdoing of the Commissioners passed back and forth among the gentlemanly circles of London. Colonel Cockburn, a supporter of the Company and one of the Commissioners sent to Upper Canada, received an unsigned letter with a return address of “Downing Street.”<sup>57</sup> The letter relayed to Cockburn a concern that the land in Canada was “severely undervalued.” Because of this, the Canada Company would receive disproportionately large profits, perhaps “two to three hundred percent.” Thus Lord Liverpool, the Prime Minister, and others in government were considering refusing the Charter “subject to the reevaluation of land” which would allow the Company liberal profits, but not of the “extravagant and unparalleled extent” projected at the current value. The author also suggests the Company might wish to know the proposed ideas of Liverpool and others so they might “price the stocks fairly.”<sup>58</sup> Despite this notification to the Company, much maneuvering existed behind the scenes. While Horton was standing with Bathurst publicly, in a private, confidential letter to John Galt, he wrote:

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<sup>57</sup> More than likely the letter originated from Goderich, who was the Chancellor of the Exchequer who resided at 10 Downing Street. The author was not Lord Liverpool, the Prime Minister, who also made his home there, because the author of the letter refers to Lord Liverpool by name. Although it is still possible it came from any other Cabinet member who also had offices at this address, but the financial concerns discussed in the letter lend credibility to an educated guess that Goderich was the author.

<sup>58</sup> PRO CO 42 398. Letter from someone at “Downing Street” to Colonel Cockburn, 215-216. Author unknown either cut off or not signed. There is a handwritten note which says “regarding W. Robinson.” Cockburn had been receiving communications from John Galt and forwarding them to various Cabinet members at Downing Street, usually with explanatory notes. This would suggest Cockburn either wrote W. Robinson’s name himself either attributing authorship or suggesting the context to the M.P. before passing it to Galt or someone made the note before delivering to Cockburn. Notably W. Robinson is *not* Frederick Robinson, a.k.a. Lord Goderich.

I think by this time in our acquaintances you might know something of me and with the exception of Ellice, Downie and W. Hodgson I know much more of you than I do of any of the Directors. In a word I will send in my private remarks on the unsigned document, and you will deal with them as you think fit, but as I have said before I will not in my public capacity either with the Directors or Secretary of State enter into a refutation of accusations, every information however in my power I will freely give to either.<sup>59</sup>

Horton added a post script to his letter warning him about insecurity of Downing Street communications.<sup>60</sup>

As the Commissioners prepared to face an arbitration regarding their conduct in Canada and many debated the legal issues involved in such a proceeding, there continued to be a great deal of private maneuvering. William Huskisson, the head of the Board of Trade, advised the directors of the Canada Company as to what might occur so they could “price their stock accordingly” before the arbitration rather than watch the Company fail. Horton privately aided the company while publicly standing with his supervisor. His longstanding relationships with the gentlemen of the Canada Company led him to privately assist them, guiding them toward concessions necessary for the success of the Company’s endeavor. Horton’s earlier support of the Company demonstrated faith in the Anglicization policy if utilized in a lawful and proper manner. Both episodes of private maneuvering are evidence of gentlemanly capitalism at work. The directors of the Canada Company had very close contacts to those in power in the Government. By the time the Commissioners walked into the arbitration in April of 1826, there were no surprises. They had organized their “admission” and negotiated a deal for the outcome of the arbitration behind the scenes. On November 10, 1825, three commissioners, John Galt, Colonel Cockburn, and John Davidson signed an “amended report.” This report acknowledged the many reasons why they might have mispriced the land in Upper Canada. In so doing, these Commissioners acknowledged they had gone to Canada with a price already in mind. Yet, they did not admit the Company, nor anyone else, advised

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<sup>59</sup> PRO CO 42 398. Horton to Galt.

<sup>60</sup> Perhaps this was a warning regarding Col. Cockburn’s activities?

them as to that price. In return for their compliance, a deal was brokered between the Colonial Office, Prime Minister Liverpool, and the Commissioners. According to the terms of this deal, none of the commissioners faced prosecution for their actions. The matter was quietly handled within gentlemanly circles, yet the legal formalities of the arbitration were still to take place the following April.<sup>61</sup>

In April of 1826, the Commissioner's faced legal arbitration. The question put before the legal body was whether or not the commissioners had

Made and reported a valuation of certain Lands in the said province, have, in making and reported such valuation, duly executed the said Commission.... according to the true intent and meaning of such Commission and Instructions.<sup>62</sup>

The Treasury Solicitor held the responsibility as serving as legal counsel for the Colonial Office, as well as preparing and briefing counsel in state prosecutions for sedition and treason.<sup>63</sup> He brought three witnesses from Upper Canada to London to testify during this arbitration. One of those witnesses, Mr. Grant, asked that "it should be determined by the Crown" that the Commissioners, in pursuit of facilitating the arrangement between the Colonial Office and the Canada Company, fixed the price of land before leaving Britain.<sup>64</sup> It is unknown whether or not the three witnesses knew their testimony was futile as a private deal had been brokered with the Commissioners six months earlier. The arbitration results claimed the Commissioners were found to have executed their duty properly under the rules of the "amended commission."

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<sup>61</sup> PRO CO 42 398. Amendment to the Commissioners Report, 378-392.

<sup>62</sup> PRO TS 11 775. No. 2467 Treasury Solicitor's Papers. April 6, 1826. "Forms of Submission to Arbitration proposed by Informant." Words underlined added by James Stephen, Undersecretary to Colonial Office.

<sup>63</sup> David Jeffrey Bentley, *English Criminal Justice in the 19<sup>th</sup> Century*. (London: Hambledon, 1998)

<sup>64</sup> PRO TS 11 775 No. 2467. Treasury Solicitor's Papers. April 6, 1826. "Forms of Submission to Arbitration." Here they use the term, "average ready money prices were struck." No first name is given to identify Mr. Grant; he is simply identified as "informant."

## Early Stock Sales

The valuation of land was only the first of the problems facing the Company. The second was the early sale of stock in Britain. This problem resulted from the vague status of the Company itself. The 1824 Act of Parliament had made the Company an Association and the proposal from the Colonial Office required the directors to raise and pay monies up front to the Crown. The Company did not, however, hold its Royal Charter that would give them the official grant of land to the emigrants; therefore they could not legally sell land to raise capital. Instead, the Company sold shares in the Company. In effect, the directors were selling shares in their Company that they “then swapped for largely unmarketable government debt.”<sup>65</sup> The Parliamentary Act had made the Company, “as much a legal body as any mercantile House in the City.” However, it stood “in a peculiar situation being legally existent and not yet chartered.” Without a charter, the legality of stock sales was in question.<sup>66</sup> For the gentlemanly capitalists, however, news regarding upcoming business ventures before public knowledge was not an uncommon occurrence. In a letter to Horton in July of 1825, John Galt declared this type of share exchange had a long history amongst those of high social and economic standing in England. That is was in fact a common occurrence. He wrote:

But practically His Lordship well knows that such dealings and speculations as have taken place in shares of the Canada Company are of hourly occurrence- and it is without question familiar to yourself that all the Loans by which the Public Debt of the Country was contracted were raised by the same sort of transactions as those which have happened in the Canada Stock.<sup>67</sup>

Bathurst and Horton, however, were not willing to concede Galt’s point regarding the normalcy and frequency of the transactions. Horton responded by telling Galt that if such sales were made at the Stock Exchange, not only was Bathurst unaware of such transactions, but those sales were contrary to law. Horton added that if such a proceeding was made “officially known to his Lordship” it must

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<sup>65</sup> R.C. Michie, *The London Stock Exchange*, (Oxford: Oxford University Press, 2000)

<sup>66</sup> PRO CO 42 398, private letter from Galt to Horton, July 27, 1825, 172-173.

<sup>67</sup> PRO CO 42 398. Private letter from Galt to Horton. July 27, 1825, 172-173.

“elicit from him an expression of his entire disapproval independent of the consideration of the illegality which has already been averted to.”<sup>68</sup> In his study of the London Stock Exchange, R.C. Michie writes, “Many companies were acting as large scale partnerships no different from joint-stock companies but lacking any legal recognition.”<sup>69</sup> Thus it appears that this type of trading was indeed common in the early nineteenth century. The arbitration regarding this matter never resulted in charges against the Company. However, the time lost in litigation cost the Company a growing loss of confidence among its shareholders, particularly as the wait for the Charter dragged on.

### Early Land Sales

In a different, yet related matter, the Government entered into arbitration with the Company regarding early land sales in Canada in March 1825. The Treasury Solicitor brought in witnesses to testify they had purchased land from the Canada Company. The witnesses were questioned as to what year they purchased the land, the geographical position of the land, and the purchase price of such land. The Treasury Solicitor made three arguments. First, that the Company did not have the right to sell land before the passage of the 1824 Parliamentary Act. Second, he claimed the Company had no right to sell land after the passage of the 1824 Parliamentary Act but before the receipt of a Royal Charter. He then argued the Company had not only sold the lands early, but recorded the numbers at lesser amounts than the actual purchase price.<sup>70</sup> According to the charges, this allowed the Company to record a lower price to report to the Government and its shareholders in London. The Commissioners then used this lower price to report the value of the land as lower than its true value. The Company could also defraud their shareholders and the government in the future as they reported profitability. To the shareholders they would make a greater profit as the

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<sup>68</sup> PRO CO 42 398. Horton to Galt, July 1825, 170-171.

<sup>69</sup> R.C. Michie, *The London Stock Exchange, A History*. (Oxford: Oxford University Press, 2001), 17-18.

<sup>70</sup> The Treasury Solicitor entered into evidence a journal signed by John Galt showing some of these “altered numbers.” PRO TS 11 775. No 2467. Letter from Robert Grant to W.G. Adam, April 13, 1826.

true value of the land was collected through later sales. Yet in the meantime, the lower profitability promise of the Company was intended to ease the Government's concerns regarding the possible excessive profit margin of the Company, plus it supported a lower purchase price for the overall tract of land. Despite these charges, however, the private deal made with the Commissioners also included provisions for the Company. That amended commission included a requirement for the price of land to be set according to new standards agreeable to the Colonial Office. Thus, the Company incurred no penalties regarding early land sales or price-fixing.

### The Clergy Reserves and a New Charter

The last accusation facing the Company was that of early sales of land in the area known as the Clergy Reserves. After the issue regarding the Commissioners' Report had been settled, the Company and the Colonial Office entered into a new agreement for a revised Charter. This new Charter, however, excluded the territory of the Clergy Reserves. Instead the Colonial Office offered the Company 1,384,413 acres of Crown Reserves at the originally agreed upon price of £203,010. The earlier Charter had also included 829,430 acres of Clergy Reserves. Instead of this tract of Clergy Reserves, the Company received an additional 1.1 million acres of the Huron Tract for £142,150.<sup>71</sup> Thus, the total cost to the Canada Company was £348,160. For this sum the Company received 2.448 million acres of Canadian soil. This price was approximately £652,000 less than the original agreed upon price of £1 million. The Company had already paid the Government £100,000 through those early stock sales; thus they had a remaining balance of £252,000 for 2.448 million acres. All concerned parties agreed to and signed a draft of the new Charter in May 1826. The Company had been selling land in the Clergy Reserves since 1824 and the Government was no longer offering this tract of land to them. The Charter did, however, offer the Company the right to

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<sup>71</sup> The Huron Tract was a sizeable portion of lands the Crown had purchased from the Chippewa First Nation Indians.

take possession of additional quantities of land for each of the fifteen years following 1825. Thus, in order to gain the grant of land, the directors shelved their concerns regarding the issue of lands previously sold in the Clergy Reserves with the hope that it would be later granted to the Company.<sup>72</sup>

### United in the Anglicization Mission

On August 4, 1826 Bathurst was ordered by Lord Goderich to take immediate measures for the completion of the Royal Charter. The reluctance shown by Bathurst and others throughout the previous two years demonstrates a deeper concern with land companies. While early sales of both land and stocks were common practice among the gentlemanly class of Britain, it did not mean that all approved of such tactics. Those who stood opposed to the Company adhered to a strict interpretation of the law, i.e. stocks should not be sold before the issuance of the Charter regardless of the normalcy of the practice in gentlemanly circles. Yet men who were interpreting the law as such were in a minority at the time and advocates of the settlement agenda, determined to use emigrants as a means of exporting an English model of development caused their concerns to be dismissed. Yet the concerns were not only due to a strict interpretation of the law. The Canada Company had manipulated the price of that land to be granted by the Crown causing further concern. Certainly land had been granted by the Crown before and the sums to purchase land had been agreed upon in gentlemanly circles before, but never before had it been so apparent that private men stood to make enormous profits using the business of government and the settlement agenda to maximize their gains. The fact that these gentlemen also had a hand in setting that agenda not only made Bathurst and others uncomfortable, it caused them grave concern that the Anglicization mission would not succeed if the directors of the Canada Company privileged the maximization of profit over the imperial mission and the needs of their settlers. When Bathurst was

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<sup>72</sup> PRO CO 42 398. *Royal Charter issued by George IV*. This document is inserted into the book with a loose leaf binder, it is not part of the large text, but is numbered as pages 69-83.

ordered to prepare a Charter for the Canada Company to go forward despite his protests, he added a clause to the Charter that he hoped would force the Company to adhere to the political project to settle Canada with English emigrants.

The Company shall be held responsible to place and establish settlers on one-half of the lots taken up under this agreement every year, and in the event of any deficiency in the number of lots to settlers placed on them, then for each and every lot so deficient the Company shall expend the sum of twenty five dollars in improving the communications in the Townships where such unoccupied lots shall be situated. The application of this money to be certified to the satisfaction of His Majesty's Surveyor General of Upper Canada for the time being.<sup>73</sup>

The Canada Company needed to “place and establish” the settlers on at least half the lots or face financial penalties. Therefore, the Company was held financially responsible for the imperial mission of Anglicization. As the Canada Company agreed to and then received its official land grant via Royal Charter on August 19, 1826, there was no doubt the Home Government and the gentlemanly capitalists of the Canada Company were united in the imperial mission of Anglicization, even if the Charter forced the Company to uphold this mission.

### **Operations and Crisis, 1826-1830**

By the 1830s, Parliament, the Colonial Office, and future land company directors and investors looked upon the Canada Company as the paradigm of a successful land company. Yet before 1830, the Company faced a severe crisis that brought the Company to the brink of bankruptcy. From 1824-1826, the period before the issuance of the Charter, the Company had operated both in England and Canada. As a result, the Company incurred significant management fees without official land sales on the books. By the time the Company received its charter in 1826, there was a significant loss of faith among its shareholders. Thus, the directors made a pledge to their

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<sup>73</sup> PRO CO 42 396, Canada Company, Bathurst, “Heads of Agreement proposed by Earl Bathurst to the Canada Company,” September 24 1824. This was originally placed in an earlier charter and now adopted into the new charter, which would become the official charter.

shareholders that the Company would not issue further calls for capital for two full years.<sup>74</sup> During those two years, however, the company faced a slow emigration rate, a quickly declining stock price, and significant management problems causing a loss of confidence by its shareholders. All of these factors led to a significant financial crisis in 1828-1829. This crisis, however, led the directors of the Canada Company to gain valuable insight into the extent to which they could rely upon their gentlemanly contacts within Government for assistance and thus, place them on a trajectory for future success.

### John Galt and the Mismanagement of the Canada Company

John Galt had been a prominent figure in the early planning for the Company. He was the one to propose the idea to the initial investors, he served as a Commissioner for the Company to value land, and he became the first Secretary for the Company. In 1827 he was appointed Canadian superintendant for the Company. His actions in Canada did not always please the directors, nor the Canadian or Home Government. In fact one could argue his mismanagement of both his own behavior and the Company's accounts directly led to the financial crisis of the Company in 1828-1829.

Galt began writing to Peregrine Maitland, the Lieutenant Governor of Canada, in 1827. Galt would not let go of the idea that the company deserved to hold the land in the Clergy Reserves that was left out of the final charter. He argued there were many settlers who held emigrant cards in the Clergy Reserves and suggested it was "necessary for the sake of the province" for the Government to reconsider granting those lands to the company. The emigrant cards issued in the Clergy Reserves had been issued by the Company prior to the new charter in 1826 with the assumption the

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<sup>74</sup> They had given the shareholders a choice to either get out of their investment or to hang in there. Those who remained received this promise. Robert C. Lee, *The Canada Company and the Huron Tract, 1826-1853*. (Toronto: Natural Heritage Books, 2006)

Company would receive those lands. The fact that it did not receive those lands placed the Company in a serious bind with those who had purchased land there.<sup>75</sup> Galt claimed the Charter allowed the company the right to submit to arbitration any land it found unfit for cultivation, thus he believed the Crown might consider an allotment of alternate grants of land in the Clergy Reserves. Most of the directors, and Maitland, believed the Company might use this clause in the future to its advantage to assist them in gaining portions of the Clergy Reserves, but in March of 1827 it was simply too soon for the Company to make any claims that portions of land were unsuitable. Galt was pushing an already decided issue and he began to seriously annoy Maitland. In the summer of that year, Maitland sent a formal complaint to the directors regarding John Galt. Maitland complained of the tone of Galt's letters and of general harassment by Galt. The directors responded by formally sanctioning Galt and directing him to issue an apology to Maitland.<sup>76</sup>

Galt was also guilty of carelessly managing the Company's funds. On July 30, 1827, he wrote to Horton stating a group of "pauper emigrants" had shown up in Upper Canada. Originally bound for Halifax these emigrants came from Columbia and were therefore unsuited for work because they were unused to the climate in Canada. He did not have a fund established for caring for such individuals, thus he took it upon himself to supply these emigrants with such things "as the difference in Climate makes indispensable." In order to pay for supplies and housing he provided the Columbians he withheld £1000 from the first of the Canada Company's annual payments due to the Government. He wrote,

For which I will account to the Company and it can afterwards be settled with Government either in London or in this Country unless the Lieutenant Governor sees fit to relieve me from the consequences of this unforeseen company.<sup>77</sup>

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<sup>75</sup> PRO CO 42 408, Letter from John Galt to P. Maitland, March 10, 1827, 43-45.

<sup>76</sup> PRO CO 42 408, Letter from P. Maitland to Directors & Letter from Directors to Galt, 108-114.

<sup>77</sup> PRO CO 42 408, Letter from John Galt to R.W. Horton, July 30, 1827, 70.

The 1826 Charter of the Canada Company clearly stated the sums due the Government each year were amounts which must actually be paid and did not include discounts for public works and improvements.<sup>78</sup> The Company could pay more in any given year if the directors so desired, but they could not pay less. Galt's deduction of £1000 put the Company in a precarious position with the Government, particularly because this was the first payment. The directors ordered Galt to immediately pay the government the £1000. Galt had no choice but to obey. Because he had already spent some of the £1000 to aid the emigrants, Galt had to replace the spent funds with his own money. Further, he no longer had funds with which to assist the emigrants. Yet, he continued to do this from his own personal funds.<sup>79</sup>

Even after this incident, Galt's financial problems with the Company were far from over. The directors knew Galt was not the best businessman and certainly not the best bookkeeper. He was born in Scotland to a naval captain. He was not university educated, instead he was apprenticed into a mercantile career; however, he left the apprenticeship in favor of novel writing. It was through his works of literature that Galt achieved prominence and came into contact with many within the gentlemanly circles of London.<sup>80</sup> In 1828 a question arose regarding a £5000 discrepancy in the Company's account at the Bank of Upper Canada in Montreal. The missing funds, whether truly missing or a bookkeeping error was not something they could overlook. The missing funds, combined with Maitland's public accusations regarding Galt's impropriety, caused the directors to feel they needed to take some sort of public action against Galt in order to protect their stock price and thus, the Company's bottom line. Galt did offer to resign, but the directors refused to accept his resignation. Instead they sent a co-chair to work with Galt and an auditor, Thomas Smith, to

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<sup>78</sup> Emphasis mine. PRO CO 42 398, Royal Charter issued by George IV, 69-83. The Company was to pay £20,000 in 1828, £18,000 in 1829, £15,000 each for the years 1830 and 1831, £16,000 in 1832, £17,000 in 1833, £18,000 in 1834 and then £20,000 a year for the next 7 years thereafter; PRO CO 42 407, Report of the Attorney Solicitor General on Draft of Charter for establishing the Canada Company, "Conditions which must be met before the charter can be approved," August 4, 1826, 47.

<sup>79</sup> PRO CO 42 408, Directors Correspondence, various letters and documents, 118-119.

<sup>80</sup> Roger Hall and Nick Whistler, "John Galt", *Dictionary of Canadian Biography*. University of Toronto, 2000.

look over the funds issue. They stripped Galt of his “signing power,” which meant he no longer had access to funds without a second signature. During 1828-1829 Galt deluged the directors with lengthy letters explaining his “errors.” In so doing he told the directors of further mistakes he had made. The tone of the letters from the directors to Galt changed over the course of that year. They, like Maitland before them, got frustrated and irritated with Galt’s constant barrage of letters and they accused him of ungentlemanly behavior.<sup>81</sup>

### The Financial Crisis of 1828-1829

In 1828-1829, as Thomas Smith audited the books, the financial troubles of the Canada Company became glaringly apparent. It was during these years the directors wrote off the expenses of the pre-Charter years, an amount totaling £20,000. The directors complained to the Colonial Office that the Government was in part responsible for its financial problems. They argued the delay in the issuance of the charter financially hurt the Company, as did the vague legal status it held after the Parliamentary Act yet before the Charter. The issuance of the Act of Parliament, without the grant by Charter required the Company to maintain administrative expenses without the ability to procure legal sales. Thus, the directors believed they were due some compensation from the Government, even if it was simply a loosening of their repayment structure.<sup>82</sup>

The Company also faced declining stock prices. In February 1828 a share of Company stock had dropped to £6 per share, from a paid in value of £12/10 per share. By 1829, the price of the stock had declined to £1/10 per share. By March 1829, the directors discovered the Company’s accumulated financial problems left it short of the capital required to pay the installments due the

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<sup>81</sup> The way he constantly deluged people with letters was referred to in more than one letter as unbecoming a man of his station. In other words, he was acting very “ungentlemanly.” Because of his background many forgave his lack of couth, or at least tolerated it. Yet, others clearly do not see him as an equal and rather than forgive him due to his background, they blame his background and look down on him. Maitland was a perfect example of one of these people who saw Galt as less than themselves.

<sup>82</sup> PRO CO 42 409, Upper Canada Company Directors 1828, letters from Stephen to Hay, January 25, 1828 and February 27, 1828; PRO 42 410 Upper Canada Company Directors 1829-1831.

government for the year. In June, they managed to arrange a credit payment backed by debentures in their Canadian accounts to cover a semiannual payment. This, however, left them needing to pay an entire year's payment in December. The directors tried various ways to reorganize their assets, but both the government and their shareholders remained skeptical about the possibility of any future success for the Company. The shareholders therefore, put forth and carried two resolutions. First, they insisted the directors enter into negotiations with His Majesty's Government to reconsider or relinquish the present agreement regarding payment. Second, the directors could not issue a further call without the consent of the general court of proprietors.<sup>83</sup> The Company approached the Colonial Office with some possible alternatives: they asked for forgiveness of the debt, extensions on the loan, and offered to forfeit the land granted to the Company less any improvements made. The Colonial Office did not wish to repossess the land from the Company because they believed the "distress, clamour and unpopularity which it would occasion are such as no government could encounter."<sup>84</sup> Yet, given the alternative of forgiving a debt or extending a loan for an unknown period to a young, already struggling, Company, Sir George Murray, Secretary of State for War and the colonies, advised the Company in May of 1828 that he would accept the offer of a surrender of the Charter and the land. The directors had not anticipated the Colonial Office would seek to revoke their Charter, but they now recognized this as a credible threat. Unlike the earlier crises with the Charter, the Commissioners, and the early sales of land and stock, the directors realized this issue was not something they could resolve through the use of their gentlemanly contacts. It was a debt that needed to be paid; thus, rather than push their gentlemanly contacts further and risk their Charter, the directors handled the problem internally. They placed a £1/10 call per share of stock for each of the next consecutive years. They assured their stockholders that unless sales fell beneath 30,000 acres per year, the Company would make money. Thus, the

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<sup>83</sup> NAC MG 24 I 46, Canada Company Papers, 1825-1887, Minutes of a General Court of Proprietors, April 29, 1829, 5.

<sup>84</sup> Quote from PRO CO 42 409, Upper Canada Directors, Letter from Stephen to Hay, January 25, 1828.

investors agreed at a General Court of Proprietors to invest further rather than lose their previous investments. This gave the Company the needed capital for the payment to the government.<sup>85</sup> The Company did manage to pay the Government the full installment in December 1829.

The directors then decided to use Galt as a scapegoat in order to assure their shareholders that changes were taking place. They removed John Galt from his position with the Company. Certainly this was a political move to pacify their stockholders, Maitland, and possibly the Colonial Office. Yet if Galt had been the cause of all of the Company's financial problems, the directors removed him in 1828 when they discovered the improprieties simply to avoid future financial issues. They did not do this. Instead they waited a full year and then did more than simply use him as a scapegoat to pacify their shareholders and the Colonial Office. They removed him from his position, and then they financially destroyed him. The recovery plan they instituted for the Company stripped Galt of every asset he had. Galt returned to London with nothing and even spent time in debtor's prison for nonpayment of his son's school tuition.<sup>86</sup> This appears a rather harsh punishment if the directors were simply looking to pacify their shareholders and the Colonial Office. Instead it appeared a personal punishment towards someone who annoyed Maitland, others in government, and the directors themselves with his financial failures and his constant carping to everyone involved.

After Galt's dismissal and the payment to the Government, the directors began to reorganize and streamline management personnel and operation costs in Canada. As a result, the directors and their stockholders began to see immediate results. The work Galt had started, i.e. the town of Guelph, now came to fruition. Houses, mills, taverns, schools and roads multiplied and drew larger number of emigrants as people wrote from Canada to their loved ones in Britain asking them to join them.

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<sup>85</sup> NAC, MG 24 I 46 Canada Company Papers, 1825-1887, General Court of Proprietors, 1829. Also discussed in Lee and Browde.

<sup>86</sup> O.D. Skelton. *The Life and Times of Sir Alexander Tiloch Galt*, (Toronto, Oxford University Press), 1920. Also mentioned in Lee, *The Canada Company and the Huron Tract*.

By March 1830-, sales exceeded 50,000 acres per year for the first time. In 1831, sales almost doubled to 98,000 acres. The Canada Company never faced a financial crisis again from that point forward. It did have a slow year in 1837 due to the Rebellion which took place mostly in Lower Canada, yet even during that tumultuous year the company maintained positive emigration numbers. In fact, in 1856 the Parliament passed an act stating the company should be dissolved as soon as the liabilities and debts had been paid in full and everything divided amongst its shareholders due to a job well done and thus, completed. But despite a change in purpose at the end of the nineteenth century, the Canada Company remained financially successful from 1830-1953.

#### The Canada Company as an Anglicization Model

The Canada Company, after 1830, flourished. It became the model land company for the imperial mission of Anglicization. It brought settlers to Upper Canada and began the process of exporting the English model of development overseas. The Canada Company never again struggled to pay the government its installment payments and the directors maintained a close relationship with the Colonial Office. For all of these reasons the Canada Company became the standard by which all future land companies were measured.

Certainly the success of the Canada Company, post-1830, should be acknowledged on its own merit. Yet replication by another land company, even given the exact same conditions of Upper Canada, was not preordained. First, the men of the Canada Company were able to fluidly maneuver behind the scenes. The directors helped set the imperial agenda and then were able to finagle the Commissioners and themselves out of legal problems because of their personal status and connections within Britain. The directors of the Canada Company were primarily landed and gentry. In the next decade, the 1830s, men from the service and financial sectors became the dominant

group within the gentlemanly capitalists of the land companies.<sup>87</sup> Yet, even if this were not the case, the Canada Company brought much public attention to the possible corruption of land companies; therefore, it made it more difficult for future companies to escape closer scrutiny. They had less ability to rely on gentlemanly contacts to generate deals and escape prosecution. Further, the Colonial Office became very wary of companies solely seeking profit in the Empire.

In the early years of the Canada Company, the type of accord between gentlemanly capitalists and the government suggested by Cain and Hopkins did seem to break down.<sup>88</sup> There was obvious animosity over the Commissioners, the sales price of the land, and early sales of stocks and land. It was not until the Government and the Company came to a clear agreement that Anglicization was the prime reason for Empire and the pursuit of profit was not to interfere with that prime objective that the two parties united. In this case, that unity came in the form of a clause in the Company's charter to verify the company actually worked at settling emigrants into their new homes. It was because of this that the directors of the Company knew not to push the issue of renegotiation of repayment terms in 1829. Capital was secondary to the imperial mission, adherence to the Company Charter was a contractual agreement with the Crown, and repayment was one of the Company's roles in that mission. The fact that the Company had not accumulated enough funds was not a concern of the Government. The Canada Company understood this and because the directors wanted to keep operating, rather than forfeit their land and charter, the directors took care of the problem by convincing their shareholders to pay new calls.

This is not to suggest that within the policy of Anglicization everyone had the same agenda. It is quite possible that while everyone involved was promoting this imperial policy, various motivations for doing so existed. For the Government the creation of an Upper Canada filled with Anglo-

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<sup>87</sup> This will add depth and slight revision to Cain & Hopkins' argument that the landed elite remained the dominant group within the gc's until 1850 and is a claim based upon my breakdown of later land companies in the following chapters.

<sup>88</sup> Cain & Hopkins, 2001, 47.

Canadians meant a balance to the French-Canadians in Lower Canada. This held much appeal as they believed the British emigrants helped to create a better and stable colony. For many landed men, both in government and the Company, the Anglicization policy was a means to extend British traditions, laws and hierarchy. This expanded landed privilege overseas. Of course a further motivation existed for those directors of the Company, there was a chance if they followed all the rules, or bent them to their favor, that the opportunity for enormous profit existed.<sup>89</sup>

Thus, in 1830 with the Canada Company successful in every way that mattered to both the Canadian and Home Governments, Anglicization remained the primary policy of the Empire. New land companies petitioned the Government for charters and favors similar to those received by the Canada Company hoping for similar financial gains. The Government held future companies to the same standards of transporting English institutional and hierarchal structures overseas regardless of colonial realities and the Canada Company became the paradigm for all future land companies.

### The Success of the Canada Company

The Canada Company had multiple goals in order to achieve what they and others considered success. First, they needed to attract and retain happy settlers to their colony and sell them land. If the Company did this, it could then provide funding for the Canadian government and also increase the worth of its own stock. Secondly, they needed to work in close cooperation with the Colonial Office, as a bad relationship with that Office could generate not only ill will between the two bodies, but also could prevent the attraction of immigrants to Upper Canada.

Throughout the 1830s the Canada Company maintained economic success. In the aftermath of Galt's dismissal, the finances of the company were supervised, maintained and scrutinized very carefully. The Company improved the relationship with the Colonial Office by paying the monies

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<sup>89</sup> Horton argued that he believed it could be 200-400 percent profit on the initial investment and that was when he believed they were paying £1 million for the land.

owed to the Home Government on time and in full every year. The Company also was successful in attracting settlers to Upper Canada: it sold an annual average of 62,300 acres per year and maintained profitability throughout the decade, including 1837, the year of the rebellion.<sup>90</sup> In fact by 1856, the Company had indeed spent quite a bit of money purchasing and improving the lands in Upper Canada, yet the success of their land sales had far exceeded these expenses. The Company had liquid assets of £298,737/10. The British Parliament passed an Act which forbade the Company from further calls on their shareholders and ordered them to dismantle after all assets had been dispersed to stockholders and creditors. The Company did this, yet then it simply restructured and continued until the twentieth century.<sup>91</sup>

In general it is claimed that the settlers in Upper Canada were happy. The settlers received up to fifty percent of the cost of improvements on the land they purchased from the Company.<sup>92</sup> This promoted good will between the colonists and the Canada Company. Colonial residents in Upper Canada were divided between British immigrants and American British Loyalists. Thus, because they were all British in origin, the Company and colonists found little difficulty transitioning into a new colony.<sup>93</sup>

The success of the Canada Company in attracting and retaining immigrants stood in stark contrast to that of the British American Land Company, the travails of which will be discussed in subsequent chapters. The British American Land Company (BALC), which operated in Lower Canada, began with similar goals of the Canada Company: to attract immigrants, to provide funds for the government of Canada, and to increase the worth of their stock. Yet BALC was unable to meet the majority of these goals. In the first three years of BALC's operations, its cash receipts

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<sup>90</sup> Browde, 108-118

<sup>91</sup> Lee, 200-215

<sup>92</sup> Robina Lizars & Kathleen MacFarlane Lizars, *In the Days of the Canada Company: The story of the settlement of the Huron Tract.* (W. Briggs, 1896)

<sup>93</sup> Elizabeth J. Errington, *The Lion, the Eagle, and Upper Canada: a developing colonial ideology.* (McGill-Queen's Press, 1994) Errington argues that the main debate was whether Upper Canada was to be British, American or a conglomeration of both.

totaled only £250. In other words, the company sold most its land by providing mortgages to the settlers.<sup>94</sup> They further hurt their relationship with the Colonial Office as they made only three payments from 1835-1837. BALC then defaulted on their payments to the British Government. Because of its early entrance into Canada and their continuing good relationship with the Colonial Office, the Canada Company had gained advantages that later companies would not receive. The Canada Company had made all of its required payments to the Colonial Office. This assisted the Canada Company as the Colonial Office supported their endeavor to emigration authorities. Emigration authorities acted as indirect agents of the Canada Company and actively encouraged immigration to Upper Canada. This began more than ten years before BALC even began operations; thus the Canada Company continued to be a preferred company to deal with for emigration authorities even after BALC began competing for those immigrants. The Canada Company gained advantage in attracting pauper emigration, achieving special negotiated rates with shipping companies, and the transfer of funds from Poor Law Authorities to the Canada Company. The Canada Company's good relationship with the Colonial office provided these advantages.

This favoritism toward the Canada Company, along with other reasons discussed in the next chapter, prevented the emigration rate to Lower Canada from ever reaching that of Upper Canada. From 1833-1835 a total of only 1290 settlers made it to Lower Canada, accounting for only two percent of the total immigration numbers to Canada.<sup>95</sup> The majority of settlers chose Upper Canada and the Canada Company. One way which the Canada Company worked closely with the government was through pauper emigration, the Petworth Emigration Committee alone sent 1800 pauper immigrants to Upper Canada from 1832-1837 which exceeded BALC's total migration numbers. Yet the Petworth committee was only one pauper emigration program the Canada

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<sup>94</sup> Anatole Browde, 152.

<sup>95</sup> Browde, 154.

Company and Colonial Office united to promote.<sup>96</sup> This significantly aided the Canada Company in attaining immigrants; while BALC preferred to prioritize land speculation over pauper immigration.

The Canada Company acted as a land sales company, a transportation agent and a bank. When William Allan and Thomas Mercer Jones took over from Galt, they closely scrutinized expenditures and fostered the Company's relationship with the Colonial Office. Prior to the Canada Company's arrival in Upper Canada, all attempts to establish banks had failed, yet three chartered banks were established by 1837.<sup>97</sup> The population grew by 106% from 1831-1842 and imports tripled from 1836-1839.<sup>98</sup> All of these things set them apart from the other two land companies in Canada, BALC and the New Brunswick and Nova Scotia Land Company. At the same time, the success of the Canada Company was heralded by those interested in the two later companies; both chartered in 1834 and provided fuel for further settlement in Canada.<sup>99</sup>

News of the success of the Canada Company was forwarded to possible immigrants through advertisement in British newspapers and via pamphlet circulation. Upper Canada was represented as a land "ripe for plunder" and as a paradise. The rattlesnakes with no venom, bears that were tamed and both of these ferocious animals were "fading away like the Indians."<sup>100</sup> The cost of the journey and settlement on a "small improved farm" in Upper Canada cost the equivalent of only the transportation to Australia. These advertisements also demonstrated a greater demand for labor existed in Canada than in Britain and that the capital one accumulated went farther in the colony.<sup>101</sup> Through these advertisements a specific attempt was made to change an existing reputation of Upper Canada as a place of banishment to an Upper Canada that was an extension Britain

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<sup>96</sup> Wendy Cameron and Mary Maude, *Assisting emigration to Upper Canada: The Petworth Project, 1832-1837*. (Toronto: McGill-Queen's Press, 2000), 9.

<sup>97</sup> Belich, 91.

<sup>98</sup> The population of Ontario grew from approximately 60,000 in 1811 to 1.4 million in 1861. Belich 83, 284-285.

<sup>99</sup> Lee, 208-213.

<sup>100</sup> Belich, 154 & 282

<sup>101</sup> William Cattermole, *Emigration, the advantages of emigration to Canada*, (London: Simkin & Marshall, 1831); Belich, 155.

overseas.<sup>102</sup> There also were “far fewer trappings of inequality” in Upper Canada. Class was accepted, but “deference and condescension were emphatically rejected” and manual labor was respected.<sup>103</sup> This presentation of greater equality amongst the classes is demonstrated by Adam Ferguson in 1833 when he wrote:

Emigrants of every class may commit themselves to the Canada Company,  
in perfect assurance of experiencing the most kind, honourable, and liberal treatment.<sup>104</sup>

At times, the advertisements contained the opinions of those who had already settled in Upper Canada and could present an experienced opinion to those considering resettlement there. In the case of Adam Fergusson and others, they traveled to Canada specifically for the purpose of writing a pamphlet to attract settlers. Throughout the 1820s and 1830s, Britain saw numerous settler books and other publications which originated from Upper Canada. Providing further support for the advertisements, these writings encouraged future settlers with idealized depictions of the colony.

It is true that everyone who comes here, feels at the outset, the difficulties of his new and trying circumstances; even the lowest peasant upon first entering his shanty admits the loneliness of his situation and experiences a sinking of the heart, and a longing after his potatoes and buttermilk at home, but as his comforts increase, he becomes reconciled to his lot; finding himself independent, he becomes happy and experimentally learns that this is really a Paradise to him.<sup>105</sup>

The idea of a Paradise with plentiful land, jobs, and timber, along with superior quality of soil and equality amongst men is found throughout the letters from Upper Canada. Melons, cucumbers and pumpkins required no attention and grew “freely and abundantly in the open air.” The winters in Upper Canada were harsh, but this led to abundance in the spring. Frost made the “beds more secure” domestic fowl lost their toes in winter and thus became harmless to gardens. Gardens had

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<sup>102</sup> Belich, 152.

<sup>103</sup> Belich, 157

<sup>104</sup> Adam Fergusson, *Practical Notes Made During a Tour of Canada*(Edinburgh: Blackwood, 1833)

<sup>105</sup> Thomas Wm. Magrath (Upper Canada) to Rev Thomas Radcliff (Dublin), Erindale, Toronto, January, 1832. Published in T.W. Magrath, *Authentic Letters from Upper Canada* (Dublin: William Cury, Jun and co, 1833.)

no walls because the soil had no rocks and Lake Ontario never froze. Manual labor was extolled as idleness was spurned.

Everyone around us (is) employed at manual works- magistrates, senators, counselors, and colonels, without feeling any degradation.<sup>106</sup>

Any negative stereotype that may have existed about the harsh winters, links with the penal system, or stratification of classes was turned into a positive by those who wrote of the reasons to emigrate to Upper Canada.<sup>107</sup>

Through the initiatives taken to attract settlers, the Canada Company raised the expectations of settlers and policy makers. The sustained advertising campaign and the good news emanating from the letters of the Canada Company's settlers heightened the anticipated success of future land companies, specifically BALC, which planned to operate in the geographically adjacent Lower Canada. Thus, the government was willing to enter into an alliance with BALC to settle Lower Canada. The hopes of all rose by the "success" of the Canada Company led to a willingness of the Government to enter into an alliance with the BALC. The realities of the colony, however, soon shattered all preconceived expectations.

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<sup>106</sup> Ibid

<sup>107</sup> Ibid.

### Chapter 3- **The British American Land Company, 1832-1835**

Anglicization remained the clear policy of the British Empire during the first half of the 1830s. The landed elite had formed a partnership with the “new men” of the financial and service sectors, a group of “like-minded” elites with shared school and social contacts who maintained the British view of the world “*could and should be reproduced elsewhere.*”<sup>108</sup> With the gentlemanly capitalists influencing this policy, there was a renewed hope within the British Home Government regarding the possibility of securing the traditional dominance of property throughout the Empire by means of Anglicization. Land companies, such as the Canada Company, shared similar goals and were united with the government to forward this policy, particularly because it served their own purposes to expand the dominance of the landed elite beyond Britain’s borders.<sup>109</sup> Yet, as we saw with the Canada Company, the land companies had the additional goal of profit-making necessary to keep their companies afloat. Thus, the proper balance of these goals needed to be maintained. In the case of the Canada Company, this balance was maintained by inserting a clause in its Charter to assure that the goal of profit-making did not get in the way of Anglicization. For both the British government and the land companies, in the 1830s, the goal of Anglicization took precedence over all others in order to assure the goals of the companies and the Empire. The Canada Company’s post-1830 success caused that Company to be held as the example for all new land companies to follow.

In Upper Canada the success of the Anglicization was clear as the Canada Company’s emigrants replicated British values, legal systems, and hierarchal structures of authority within the colony. As directors from future companies attempted to follow the footsteps of the Canada Company into the business of colonial land sales and settlement, the anticipation was that the success of the Canada Company could be replicated in other colonies. Yet, that was unlikely. As discussed in the previous

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<sup>108</sup> Cain & Hopkins, 2001, 97-98.

<sup>109</sup> As noted by both Cain & Hopkins and David Cannadine. Cannadine argues in his work, *Ornamentalism*. (Oxford; New York: Oxford University Press, 2001), that the British upper class attempted to expand their dominance overseas through a transport of British hierarchy overseas.

chapter, after the Foreign Funds market crashed in 1825, it was no longer an independently viable market. Eventually, in 1831, the two rooms, the Foreign Funds market and the Stock Exchange proper merged. Along with this merger came the regulation by Committee of foreign funds securities, which placed greater scrutiny upon foreign investment through the use of a more stringent regulatory process. Closer inspection of foreign investment, and a general sense of unease among some investors after the foreign securities “bubble” burst in 1825, led some politicians to distrust subsequently-formed land companies.

The application of Anglicization under more challenging circumstances received its first test starting on February 9, 1832, when Lord Stanley, Secretary of the Colonial Office, met with a group of prominent gentlemen to discuss the establishment of a company for the “purchasing, improving, settling, and disposing of land in His Majesty’s colonial provinces of North America.” The specific lands were located in Lower Canada, which corresponded with present-day Quebec and the northeastern-most portions of Ontario. By the end of the evening the gentlemen had reached an agreement favorable to all present, leading to what become known as the British American Land Company (BALC).<sup>110</sup> BALC and the Government were planning to attempt to utilize the Anglicization policy in colonies with large populations of non-British, non-indigenous populations. The belief was that the large scale introduction of emigrants would assist the assimilation of previous non-British colonial occupants. The Canada Company had had relatively empty land on which to place their emigrants, which facilitated its success. This was not to be the case for the British American Land Company and other land companies that followed. The extension of the Anglicization policy into areas of heavy non-British population challenged the policy when it was not only British emigrants to whom they were trying to inculcate these values. Yet, through 1835, the British American Land Company and the Home Government continued a joint venture in the

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<sup>110</sup> NAC, MG 24 I 54. British American Land Company, Vol. 1, 42-51.

drive to situate British emigrants in Lower Canada as a means of carrying out of their policy of Anglicization.

In order to forward the policy, BALC promised to provide funds to the Canadian government which would help build the infrastructure for new emigrants, as the Canada Company had previously done. In 1820s, when the Governor General of Canada sought to prepare Canada for British emigrants by requesting funds for the creation of schools, roads, and mills, the French-dominated Legislative Assembly rejected new taxation and refused to divert existing funds for such improvements. Thus, he was left without the funding for improvements and without the basic funds to run the Canadian government until the Canada Company gave him the funds he needed through the sale of Crown Lands in Upper Canada. The proposed plans for the British American Land Company would extend these funds into Lower Canada.

Besides providing funds for new infrastructure, BALC also promised to supply the settlers that Lord Aylmer, Governor General of Canada, hoped would ease rising social unrest in Lower Canada. This unrest, in the form of hostilities between French Canadians and Anglo colonial residents, had exploded on May 21, 1832, when British soldiers shot and killed three French Canadians, later assumed to be bystanders during a riot which took place during elections. The press later dubbed this event the “Montreal Massacre.” In response, Lord Aylmer issued a call for massive emigration of British citizens, including Irish emigrants, in order to counterbalance the French population residing in Lower Canada. Aylmer and others hoped that the introduction of British emigrants to Lower Canada would resolve the “French Canadian problem” in Lower Canada. Not only would BALC circumvent the Assembly’s refusal for funding for new emigrants, the Anglicization policy would introduce a “superior” British population. Thus the French Canadians would have no choice but to assimilate to English traditions, the Assembly would no longer control the colony financially, and as the British population increased, the Assembly itself would become more British in character.

The creation of the BALC created yet another uneasy alliance between its directors and members of the British Government, as had the Canada Company before it. This union, however, was more complicated than the one made with the Canada Company due to the presence of French Canadians in Lower Canada. Further, the precedents of impropriety set by the Canada Company in its first years and an increased scrutiny and distrust regarding foreign investment placed greater impediments upon BALCs success. Following a brief survey of the historiography of BALC this chapter proceeds to demonstrate challenges to the Anglicization policy. First, the policy was questioned domestically as the Colonial Office scrutinized and even delayed the Company's charter. The negotiations between BALC and the Government reflected the continuity of the Anglicization policy despite the challenges faced by the company and the policy itself. The directors of BALC had taken a more cautious approach when organizing their company due to their knowledge of the Canada Company's early problems and they did trust their ability to utilize their gentlemanly connections to forward their agenda. Specifically the directors believed their shared goal of Anglicization with the Government, and the necessity to flood Lower Canada with Anglo subjects, would allow them to loosen the strict scrutiny of foreign investment that was becoming standard in London. Yet, an early objection to the company by Lord Goderich and the Colonial Office reminded the directors that they could not operate without consideration for regulation of business methods and the law.

The chapter proceeds to discuss of the complications on the ground within the colony of Lower Canada and how they threatened the company's ability to operate. Despite all of these challenges, Anglicization will remain firmly in place throughout 1835. The relationship of the gentlemanly capitalists of this land company with the Government reveals skepticism towards land companies brought on by previous experience with the Canada Company and domestic financial events. As the Anglicization policy stands strong through these events, its continued significance is revealed.

However, the strain caused by both domestic and colonial events will eventually cause the need for imperial control to take precedence over settlement and the Anglicization policy will fail.

### Historiography

While no detailed study exists of BALC, such as Robert C. Lee's work on the Canada Company, there is a great body of literature regarding Lower Canada. Most French-Canadian historians argue that the British takeover of the area and the entrance of British emigrants cut short the social and economic development of the Francophone population.<sup>111</sup> Gerald Bernier, for instance, argues the British American Land Company actually limited the possibility of Lower Canada developing agriculturally beyond subsistence farming and blocked access to small landownership. Thus, French peasants were dispossessed of not only their land, but also of economic opportunities.<sup>112</sup> Further, numerous works describe the political and social situation in the Canadian colony as a reflection of that in Britain, in which the British aristocracy sought to maintain its position against the growing power of the middle class—with the result that the British excluded French Canadians from the political process.<sup>113</sup>

A large body of work has been published regarding the emigrant experience. Authored by the settlers themselves, these works describe a population engaged in subsistence agriculture and thus resistant to the forces of proletarianization.<sup>114</sup> These studies of emigrants and other colonial

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<sup>111</sup> Gerald Bernier & Robert Boileau, *Le Québec en Transition, 1760-1867: bibliographie thématique*. (Montreal: French Canadian Association for the Advancement of the Sciences, 1987); Pierre Tousignant & Jean Pierre Walmot, "Le Régime Britique," in *Guide d'histoire du Québec du régime français à nos jours: bibliographie commentée*. (Montreal: Méridien, 1991). There are also other historiographies on the French/British relationship and the colony which will be discussed in chapter 5.

<sup>112</sup> Gérald Bernier & Daniel Salée, *The shaping of Quebec politics and society: Colonialism, power and the transition to capitalism in the 19<sup>th</sup> Century*. (Taylor & Francis, 1992)

<sup>113</sup> Gérald Bernier, "Landownership and Access to Political Power in Lower Canada, 1791-1838," *Quebec Studies*, 1988, 87-97; Richard LaRue, "Allégiance et origine: contribution à l'analyse de la crise politique au Bas-Canada," *Revue d'histoire de L'Amérique française* (RHAF), Spring 1991, 529-548.

<sup>114</sup> For example see J.I. Little, *Crofters and Habitants: Settler Society, Economy and Culture in a Quebec Township, 1848-1881*. (Toronto: McGill Queen's University Press, 1991); Daniel Salée, Gerard Bernier, Colin Coates, "The Shaping of Quebec politics and Society: Colonialism, power and the transition to capitalism in the 19<sup>th</sup> Century" *Journal of Canadian Studies*, Spring 1997; Terrence Murphy and Gerald Stortz, eds. *Creed and Culture. The Place of English-Speaking Catholics in Canadian*

residents supplement an additional body of work dealing with rural communities. Rather than a struggle between French and English in Lower Canada, these works describe a peasant culture that resisted the bourgeois development of the upper classes, regardless of their ethnicity.<sup>115</sup>

However, while some of these works briefly discuss BALC, none addresses gentlemanly capitalists in any detail. Further, although some works deal with the relationship between the Anglo and French Canadians, they do not deal with the imperial policy designed to flood the colony with settlers and the application of the policy through land companies. There also has not been a work in more than a half-century that deals with the relationship between Lower Canada and the Colonial Office in this pre-rebellion period.<sup>116</sup> Thus an examination of the gentlemanly capitalists of BALC and their alliance with the Home Government in the policy of Anglicization, along with the colonial conditions which ultimately led to a failure of that policy, adds to the historiography by demonstrating the role of land companies and the British government in the shaping of the political, economic and social fabric of Lower Canada and of the influence of colonial events upon the shape of imperial policy.<sup>117</sup>

Cain & Hopkins' perspective on the role of gentlemanly capitalists in imperialism applies to the case of BALC. As with the founders of the Canada Company before them, the men who formed

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*Society 1750-1930*, (McGill-Queen's University Press, 1993); Sean Cadigan. "Paternalism and Politics: Sir Francis Bond Head, the Orange Order, and the Election of 1836". *Canadian Historical Review* 72 (3), 1991, 319–347.

<sup>115</sup> Jacques Mathieu. "Seigneurial System", in *The Canadian Encyclopedia*, Historical Foundation of Canada; Richard C. Harris. *The Seigneurial System in Early Canada. A geographical study*. (Madison: University of Wisconsin Press, 1966; R.L. Jones, "French Canadian Agriculture in the St. Lawrence Valley, 1815-1850," eds. W. T. Easterbrook, Melville Henry Watkins, *Approaches to Canadian Economic History*. (Toronto: McGill University Press, 2003); Stanley Bréhaut Ryerson, *French Canada: A study in Canadian Democracy*. (Toronto: Progress Books, 1980)

<sup>116</sup> For works of this type see Helen Cowan, *British Emigration to British North America: The First Hundred Years*. (Toronto: University of Toronto Press, 1961); Kenneth Bourne, *Britain and the Balance of Power in North America, 1815-1908*. (Berkeley: University of California Press, 1967); Paul Knaplund, "Mr. Oversecretary Stephen," *The Journal of Modern History*, Vol. 1, No. 1 (March 1929), 40-66; Helen Taft Manning, "Who Ran the British Empire," *Journal of British Studies*. Vol. 5. No. 1, (November, 1965), 88-121.; Wm. Parker Morrell, *British Colonial Policy in the Age of Peel and Russell*. (Oxford: The Clarendon Press, 1930); A.G.L. Shaw, "British Attitudes to the Colonies, ca 1820-1850," *The Journal of British Studies*, Vol. 9, No.1. (November 1969), 71-95.

<sup>117</sup> There is no one book which details the history of BALC such as Lee's history of the Canada Company. In fact there is little in the historiography which deals specifically with the Company. An exception would be Anatole Browde's unpublished dissertation which compares the economic aspects of the Canada Company and the British American Land Company.

the British American Land Company fit their definition of gentlemanly capitalists. Of its twenty-three directors, six served as Members of Parliament, six were involved in trade, and others were involved in military and financial institutions. Only ten of its directors were drawn from the landed class.<sup>118</sup> The substantial difference between the composition of the directors of the Canada Company and BALC was that more than half of the BALC directors were *not* drawn from the landed aristocracy or gentry as was the case with the Canada Company. Rather, they represented the powerful emergence, as early as 1832, of the financial and service sectors within the gentlemanly capitalists. Cain and Hopkins locate this emergence twenty years later, and they connect it to a shift in the primary Colonial Office policy toward the Empire. Instead of securing the traditional pre-eminence of property, they argue, a new generation of gentlemanly capitalists sought to create an international trading system ruled by the principles of free trade and compelled by the new economic forces dominant in London. As the domestic economy drove foreign investment, they suggest, so did these factors drive imperial policy.<sup>119</sup> Yet, in the first half of the 19<sup>th</sup> century a greater adherence to a strict interpretation of both law and contract and shifts in political beliefs, placed greater emphasis upon free trade and a greater emphasis upon merit, rather than birth, in the extension titles and the privileges associated with gentlemanly status. Cain and Hopkins suggest that this period was one of tutelage for the men of new wealth who operated as the majority partner in the post-1850 gentlemanly capitalist empire. Yet, a study of BALC demonstrates a strict adherence to law and contract limited the use of gentlemanly maneuvering. The directors of the Canada Company had experienced this new environment in 1829 when they found the Colonial Office and their gentlemanly contacts unable or unwilling to assist the company's financial crisis. For BALC, even while beginning with a mission united with that of the government, destabilization of both the colony and the company occurred not only because of events in the colony, but because of the

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<sup>118</sup> See Chart of BALC directors in Appendix #3.

<sup>119</sup> Cain & Hopkins, 2001, 98-104.

changing political and economic climate in Britain that disallowed straying from a narrow interpretation of the law and contracts.

A study of BALC suggests imperial investment in land companies led to political destabilization within Lower Canada and other colonies. Events in the colonies themselves had a significant influence upon imperial policy, as well as upon both the domestic and imperial economies. These factors caused a loosening of the partnership of the Government and the gentlemanly capitalists, eventually leading to a demise of the Anglicization policy. Although BALC had a minority of landed men in their organization, they began their mission united with the Government in the goal of Anglicization, which by definition sought to secure the traditional dominance of the landed elite. Investors in BALC supported a “landed” policy because settlement, based upon the example of the Canada Company, was a profitable investment. Yet the Anglicization policy itself underwent subtle changes in the three years 1832-1835, all while both the Government and BALC remained wed to each other and the Anglicization policy.

### **Gentlemanly Capitalism at Work**

The early years of the Canada Company remained in the minds of many and made the establishment of any new land company more difficult as did a growing adherence to a strict interpretation of laws and contracts. The directors of BALC were very careful to not repeat the errors that plagued the early years of the Canada Company; yet, they still anticipated the type of preferential treatment gentlemen had always received in Britain, particularly because the directors saw themselves as partners with the government in the imperial agenda of anglicizing Lower Canada. Yet the new domestic climate, along with the lack of landed men amongst the directors of BALC, disallowed the type of behind-the-scenes maneuvering we saw with the gentlemanly capitalists of the

Canada Company. Thus, BALC met with significant barriers to its success in London before Canadian operations could even begin.

### A Gentleman's Agreement

On February 9, 1832, at the London Tavern, a “very respectable Meeting of Gentlemen, convened by public advertisement” took place to discuss the revival of a plan “long since in contemplation” for a land company to operate in Lower Canada. In 1825, two such companies had been promoted, one headed by the Lieutenant Governor of Canada in partnership with residents of Montreal. The other company consisted of London investors. Neither company knew of the existence of the other. In June of that year the gentlemen from Montreal raised £182,000 towards a total Capital of £1,000,000 and sent W.R. Fulton of the Legislative Council to London, where he then discovered the existence of the London-based Company. The directors of the two companies met, with assistance from the Government to discuss a merger of the two companies. The prospect of a merger was “proceeding satisfactorily” but in early 1826, the companies were instead “induced to defer their labors to a more favourable opportunity,” that of the Canada Company.<sup>120</sup>

Six years later, with the success of the Canada Company assured, this group of gentlemen believed it was time to revisit the original plan for a land company for Lower Canada. In fact, they presented the success of the Canada Company as the first of their arguments for a land company in Lower Canada.

The success of the operations of the Canada Company in the Upper Province, has proved that the most sanguine anticipations of the promoters of that Institution have been far more than realized; and it is gratifying to know, that in the prosperity of that Company, the comfort of the Emigrant and the improvement of the Province, have fully kept pace with the advantage acquired by the Shareholder.<sup>121</sup>

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<sup>120</sup> PRO CO 42/248 Colonial Office Correspondence, BALC-Secretary of State, 1832-1833, Report of Address given by Nathaniel Gould at the meeting at the London Tavern on 9 February, 1832 address dated 6 February 1832, report received and adopted unanimously 9 February, 1832. 8-9.

<sup>121</sup> PRO CO 42/248. 8.

Further they suggested the two shipping ports and established markets of the Canada Company could serve as an advantage to future settlers of a company in Lower Canada as the area developed.

A second alleged reason for the success of the new company was an increasing rate of emigration to the area in the year 1831. They cited a number of 55,000 emigrants landing in Lower Canada in that year, which was “equal to one-fifteenth of the population of *both Provinces*.”<sup>122</sup> That rate was expected to continually increase, which created a need “for making Roads, Railways, and Canals,” and even more significantly for their purposes, the “importance to the speedy establishment of the Company.”<sup>123</sup> The number of total emigrants was exaggerated but the need for funds was not. In other colonies, most notably India, the colonial residents subsidized the administration and development of the colony. The French-Canadians, through the power of the purse of the Assembly, had refused to subsidize what they saw as “British” plans and “British” settlement. Thus, BALC was a secondary plan to fund Lower Canada after the Assembly had disrupted the government’s plans to prepare the colony for settlement.

While imperial and national objectives were not directly discussed at this meeting, the planners were aware that a greater colonial policy existed as they discussed their plans:

Your Committee is not disposed to anticipate any difficulties in arranging with his majesty’s government, when the benefits, whether Individual, Colonial, or National are considered; at this period too, when the practicability of such undertakings have been fully tested, and when, as it is understood by the Committee, the Government itself engaged in plans for promoting Emigration.<sup>124</sup>

Here we can plainly see that they did not anticipate any objections to their plans, particularly because of the prospective partnership with the Government. If any concerns existed about the French Canadian populace, they did not discuss them. They did not want to bring attention to the

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<sup>122</sup> This number is overestimated as the total number of emigrants arriving in Canada was approximately 58,067 in 1831. Yet, more than 26500 of those who arrived at Quebec moved and settled in Upper Canada. Wendy Cameron & Mary McDougal Maude, *Assisting Emigration to Upper Canada: the Petworth Project, 1832-1837*. (Quebec: McGill-Queen’s University Press, 2000), 111.

<sup>123</sup> PRO CO 42/248, 9.

<sup>124</sup>Ibid.

differences between Upper and Lower Canada at a meeting intended to gain shareholders. The plans for the company did stand in line with the overall imperial policy, the same policy followed by the Canada Company. In fact, Lord Stanley was present at this meeting, as were six Members of Parliament who went on to become directors of the British American Land Company. Another individual present at this meeting was John Galt. Here he became “honorary secretary” to the British American Land Company based on his knowledge of Canada and his involvement with the Canada Company, despite his ignominious dismissal from that company. He served as secretary to BALC until ill health forced him to resign tenth months later, in December of 1832. He died just seven years later in 1839.

By the end of the evening the group had drawn up a Prospectus for the British American Land Company which would allow the Company to purchase tracts of land from Government, Corporate Bodies, or Individuals in the Province of Lower Canada for a purchase price of £500,000 at £50 per share. The Company also asked to be empowered to open roads, build mills, to sell lands to the emigrants and to transfer both the emigrants and their moneys to their new home.<sup>125</sup> Lastly, the directors asked for the same deal received by the Canada Company with regards to governing authority and purchase price. They did acknowledge there might be some “peculiar situation, laws, population and circumstances” in Lower Canada that might necessitate alterations from the Canada Company’s plan.<sup>126</sup>

Both at this meeting and in the general planning stages for the colony of Lower Canada, BALC and its supporters, while aware of the French Canadians, their words and actions showed disregard for the concerns of that group. The beginning of the minutes of this meeting began by promising that “in recommending the immediate establishment of ‘The British American Land Company,’ they

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<sup>125</sup> PRO CO 42/248, 9.

<sup>126</sup> PRO CO 42/248

rather accede to the general wishes of the *Colonial Residents themselves* and the public at large.”<sup>127</sup> The ‘colonial residents’ in this case were the Anglo residents living in Canada; the French Canadians are not included within that group. Of course this was a meeting to gain stockholders and to convince other gentlemen of importance who could assist them in their quest for a charter and incorporation; it was not an unusual practice to downplay possible negatives to a business venture. Instead, they focused on the dual goals of the company they were attempting to form: Anglicization and profit.

### A Gentlemanly Disagreement

At the beginning of 1832, the directors of the proposed company exchanged a series of letters with the Colonial Office. Within this exchange John Galt, now functioning as secretary for the newly formed British American Land Company, received a letter from Colonial Under-Secretary Viscount Howick, which outlined terms he believed Colonial Secretary Viscount Goderich would find acceptable to the Colonial Office in order for BALC to receive a Charter. While Goderich was now Colonial Secretary, it is important to recall his earlier post as Chancellor of the Exchequer during the early, troubled, times of the Canada Company and the attitude towards foreign investment by those who were cautious in the post-bubble era. The current plan of the Colonial Office, laid out by Howick, resembled the final deal reached with the Canada Company. It even specifically referred to that company and sections of its contract. But the new deal with BALC had some added restrictions compared to the Canada Company. For example, Goderich allowed the company to “take at their discretion Crown Lands and Crown Reserves situate (sic) in Lower Canada or in Such Other British American provinces as the Company may deem it expedient to carry on their operations.” Yet, Goderich insisted BALC pay back any loan to the Government in two years rather than five, and required additional security for the loan other than the land.

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<sup>127</sup> PRO CO 42/248, 8.

Goderich also had grave concerns regarding the allocation of nearly one-half million acres of nearly contiguous land. Lastly, he did not feel BALC should be given any local authority provisions in their charter.<sup>128</sup> Goderich's experience with the Canada Company had taught him that companies engaged in the Anglicization policy with the government needed to be guided to adhering to the policy so that the alternate goal of profit making did not take precedence and thus, undermine the Anglicization policy itself. Goderich's doubts regarding the Anglicization policy focused upon the possibility of the success of such a policy when competing with the alternative goal of large investment returns. He adhered to new regulatory procedures regarding investment and held a general distrust in foreign investment companies, as did others during the post-bubble burst era.<sup>129</sup>

The directors argued that Goderich was unreasonably forcing them into the open market like a "common purchaser" to search for a loan, since no land company, or any company at the beginning of operations, could hope to repay a full loan within the course of two years. Further, to require additional collateral other than the land forced the company to sell shares of its stock before official receipt of their charter, which was the very thing for which the Canada Company had faced charges brought before arbitration. BALC had taken great pains (and many years) to avoid all improprieties. It had not begun operations without a charter and the directors were not going to sell shares before it such time as it did. Thus, they made "strong objections" to this suggested layout of the loan repayment. They even threatened to dismantle the Company should this repayment schedule be insisted upon; thus abandoning the Government in its plans for Anglicization. The directors did ask for a clarification as to whether or not they could use improvements such as "court houses, schools

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<sup>128</sup> PRO CO 42/248, Letter from Howick to Galt, "Outline of What BALC may Require," beginning at page 14. Goderich mentions in later letters that the contiguous land is mostly unsurveyed, thus he has a problem with a grant of land to which no value has been set. There is no mention of the French possibly residing on this land in any of his letters.

<sup>129</sup> He also had political concerns regarding expanding the power of the landed elite overseas, this will be discussed in Chapter 4.

and bridges” as consideration for repayment of the loan if forced to meet the two year demand.<sup>130</sup>

Viscount Howick attempted to serve as somewhat of a mediator between the company and Goderich. He suggested the Company move forward with incorporation, despite the director’s and Goderich’s reservations, just as the Canada Company had before them. But BALC’s directors realized it would put them in that same “gray area” the Canada Company had once occupied, that of being incorporated yet unchartered, and without financial, legal, and military protection, if they did so.<sup>131</sup>

BALC’s governor, the M.P. William Robinson, prepared to introduce a bill to Parliament to authorize the company in May of 1832.<sup>132</sup> The directors were concerned about the lateness of the Parliamentary season and hoped the bill would have time to make it through. At the same time, the Company was having some ongoing problems with the Colonial Office. The first issue to which the Colonial Office objected was the proposed management of Lower Canada. Within the manuscript draft of the Charter, the directors included provisions for the “settlement and improvement of unsettled and waste lands in His Majesty’s Colonies in North America and their dependencies and for other purposes relating hereto.”<sup>133</sup> One such purpose as listed in the draft was,

to apply for and obtain and take a commutation and release from the feudal and seigniorial rights and burthens due upon such land tenements and herditaments ... and burdens on lands held in titre de fife tenures into the tenure of free and common soccage and for other purposes relating to the said busings of the said Company in all aspects as beneficially as any other body politic or corporate or any subject of this realm is by law entitled to do.<sup>134</sup>

This specifically relates to the type of land ownership of the French residents. If the Company encountered French residents who claimed they had rights to the land prior to the English claim, the

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<sup>130</sup> PRO CO 42/248, Letters from BALC to Colonial Office 24 Feb 1832 & 30 March 1832, 16 April 1832, 14-16, 36.

<sup>131</sup>PRO CO 42/248, Letter from BALC to Viscount Howick- handwritten note on the back, p 106.

<sup>132</sup> Notably sharing the same last name as Frederick Robinson, a.k.a. Lord Goderich, although no relation is noted that I could find.

<sup>133</sup> PRO CO 42/248 Handwritten draft for Parliamentary Bill, 58-98

<sup>134</sup> PRO CO 42/248, Handwritten draft of the Bill, 81.

Company wanted the right to make those claims null and void in accordance with previously passed royal decrees.

In response to the ongoing problems, Viscount Howick sent a letter to the directors pointing out they would have a chance to fix any “temporary difficulties” rather than be outright refused a charter. However, on the back of the letter is a note written in pencil and signed by Goderich which stated,

Inform M. Galt that there is a strong object to the grant by Act of Parlt- of power which his M. is competent to confer by charter. Most of objects which it is proposed to of turn by the act which....is very unpopular.<sup>135</sup>

So the hesitancy on Goderich’s part is noted not in the formal documents but in his handwritten notes. Yet, his hesitancy refers to the unpopularity of giving Parliament the responsibility for giving this company power, a usurpation of the King’s authority or simply giving too much power to Parliament. Further, because Goderich had dealt with the Canada Company’s manipulation of land prices, he had a deeper concern with land companies and the concern of those companies for profits over satisfying the imperial mission. Thus, while there could have been an issue regarding BALC having governing power over the French Canadians, the actual concerns at the time had nothing to do with that issue.

In August of 1832, Nathaniel Gould, a representative of BALC, sent a letter to Viscount Howick in an attempt to convince him to support an agreement for a Charter for the Company. In this letter Gould asked for BALC to receive 1,000,000 acres of land in Canada in its first grant, the second grant having already been agreed upon, and for an extension of time as to payment. He also asked the Government to agree not to sell land in the area at a lower price to any other individuals or companies. Gould reminded Howick of the imperial policy they were all meant to uphold and of the specific conditions of Lower Canada. He argued that due to the

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<sup>135</sup> PRO 42/248, Howick to Galt.

political hostility of a part of the population of the Colony; that alterations might be made therein; useful to the Company, convenient to His Majesty's government and beneficial to the national interests.<sup>136</sup>

Those "alterations" referred to the intended purpose of BALC to flood Lower Canada with British emigrants to balance the French Canadian population. Thus, the policy itself recognized the presence and possible objections of the French Canadian population, even if it was not being given as a reason to hold up the charter. Most importantly, this letter, clearly articulates the Anglicization policy as a part of BALC's planning. He writes,

The Operations of the Company are intended to embrace a grand National object...When the objects of the Company are looked at in a National Point of view, and the utility of introducing a more British and more healthy population into the Lower Province of Canada are considered it is hoped that His Majesty's Government will not think that the Directors are asking too much.<sup>137</sup>

Yet, Goderich, with Howick's assistance, continually stalled the passage of the Charter. He told the directors he was not sure the crown was in possession of the land, he refused to set a price for the land, and he continuously set almost insurmountable goals for the directors. Finally in November of 1832, after meeting all of the Colonial Office's requirements and tiring of the delay tactics, the directors decided to bring Goderich before an "umpire" for arbitration. Goderich met with the directors in November in a supposed attempt to reach an agreement before the arbitration. At that meeting Goderich seemed agreeable, but left without coming to an agreement with the directors. After Goderich's departure, the directors realized that Goderich never had any intention of setting a price. BALC sent him a scathing letter on Dec 8, 1832 letting him know of their fury and advised him the matter would now be referred to the Secretary of State, Viscount Palmerston, and they did not anticipate hearing from Goderich again until after that meeting in January.<sup>138</sup> The

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<sup>136</sup> PRO CO 42/248 Gould to Howick, August 1832, 147-148

<sup>137</sup> PRO CO 42/248 BALC, Gould to Howick, August 1832, 147-148

<sup>138</sup> PRO CO 42/248 BALC to Goderich, Dec 8, 1832, 191-192

arbitration, however, did not occur until April 4, 1833. The Secretary of State found in favor of the Company and Goderich now had no choice but to let the deal go through.

### **The Conditions in Lower Canada**

BALC and the Home government were united in the mission of Anglicization as BALC began its operations in Lower Canada. The experience of some early difficult conditions in Lower Canada such as illness amongst the settlers, the growing hostility of the French population and falling land prices strained this relationship. The commitment to the Anglicization policy, however, maintained the bond between BALC and the Home Government throughout the first half of the 1830s.

### Operations Go

On July 7, 1833, the directors of BALC requested a meeting with the new Colonial Secretary, Lord Stanley, to verify all the proper details were in order of the transaction between the Government and the Company. Stanley had replaced Goderich in March of that year, when Goderich was promoted to the position of Lord Privy Seal; he held the position for only fifteen months, resigning in June of 1834 when he broke with the Whig party over the issue of Catholic reform in Ireland. Stanley had been present at the initial meeting of the directors of BALC at the London Tavern and had been a supporter of the Company. As communications passed between the Company and the Colonial Office over the next few months, he offered the Company a tract of land situated on the Crown reserves. Stanley subscribed to a foreign policy which focused upon diplomacy, but also through an accumulation of financial strength; thus the Canada Company's plan to provide funds to the Canadian government, alleviating the expense to the Home Government, was in line with Stanley's foreign policy. He further had close gentlemanly contacts with the directors of the Company; therefore it is likely he was persuaded by those relationships of the

possible success of the Company while providing financial relief for Britain. At this point, Goderich spoke up and suggested the Company should consider alternate “interior lands approved by the Canadian Governor.” The Company opted for Stanley’s suggestion.

The price for these lands agreed upon between Lord Stanley and the Company was set at £120,000, which would “be eventually paid the government,” and most of the costs of the lands were to go towards public works projects.<sup>139</sup> For the total price of £120,000, BALC received 251,335 acres of surveyed land for £44,008 and 596,325 acres of land not yet surveyed for £75,992, or a total of 847,661 acres. The directors calculated that if they assumed 90,000 acres unsuitable for occupancy, the purchase price was 3 shillings and 6 pence per acre.<sup>140</sup>

By the summer of 1833, BALC had received the official “nod” from the Colonial Office. Stanley was definitely on the side of the Company. He assisted the directors with their final plans and he even “proposed the charter for the British American Land Company and arranged that it be presented through an independent member to the British House of Commons” in October of 1833.<sup>141</sup> It would not be until June 1834 that they received the Royal Charter, which officially granted the company land in Lower Canada, authorized the Company the right to govern and make improvements in the area, as well as the right to purchase additional territory.<sup>142</sup> Yet, with the backing of the Colonial Office and the Treasury Department, the Company directors decided it was time to begin to sell shares of their Company at the beginning of September 1833. Because the plans for the Charter were underway, the directors knew the company’s Charter authorized the establishment of a joint-stock company with total capital of £300,000. They set the cost of the

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<sup>139</sup> By the time of the official agreement, it stated “one-half of the money so to be paid by the Company shall be expended on public works.” And was at the discretion of the Secretary of State.

<sup>140</sup> NAC, MG 24 I 54. Vol. 1, 42-51.

<sup>141</sup> Quote from, Maureen Slattery, “Irish Radicalism and the Roman Catholic Church in Quebec and Ireland, 1833-1834: O’Callaghan and O’Connell Compared,” *CCHA, Historical Studies*, 63 (1997), 29-58.

<sup>142</sup> Limiting the Company’s total accumulation to 3 million acres. NAC MG 24-I 54, Vol. 13-31 & 42-51

shares at £50 per share, with no one person allowed to hold more than £100,000 worth of stock. All 6000 shares sold out by September 19, 1833.<sup>143</sup>

### BALC & the French in Lower Canada-

BALC had begun “unofficial” operations in the colony in 1833— “unofficial” only because the company was not yet chartered and the negotiations were ongoing with the Parliament and the Colonial Office. Yet, the Company was acting as an official outpost of the government. A report from an operative of the Company in 1833 revealed low subscription levels for emigration to Lower Canada that were due to the threat of cholera and bad weather. Most of the emigrants who arrived had to go to the hospital and Quebec had no hospital, thus the Company had the additional expense of sending these emigrants to a proper hospital in Upper Canada while they constructed their own new hospitals. The Company argued it was going to have to dip into the “emigrant tax and subscription fund” to pay the bills for hospital construction and to care for the ill.<sup>144</sup> The Council of Lower Canada did institute a special emigration tax to assist in the building of hospitals in their colony, but BALC expected the funds of the emigrant tax collected in Britain upon a settler’s departure should be forwarded to them. The Home Government and in part Canadian government paid for ill and indigent persons “to proceed to their place of destination.” The government did this, first, with an imposed quarantine for those who were ill and next by providing assistance for “limited time” for those arriving without enough funds. Further, the Company expected to be supplied by the Colonial Office. They sent Stanley invoices for supplies for things such as stationary, quills, etc. Stanley did pay for the supplies the funds for those items out of the budget

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<sup>143</sup> PRO CO 42/248, BALC, Reid to Lefevre, September 19, 1833, 264-270. Reid states with a deposit on each share of £3.00, all shares have been “taken up.”

<sup>144</sup> PRO CO 42/248. Letter from Daly, 1833, 24-26. While the “emigrant tax” was an official policy of the Parliament until 1834, various other types of taxation of this sort did exist in the colonies such as this “emigrant tax” and for planned resettlement, a “subscription fund.”

for the Colony.<sup>145</sup> These things lifted any financial responsibility from the Company, demonstrating the partnership between the Company and the Government in the mission to colonize Lower Canada.

The French Canadian population recognized this partnership between BALC and the Home Government. In December of 1833, BALC had reached a formal agreement with both the Colonial Office and King William. All that was left was the royal seal on the Charter. The company was operating unofficially and was readying for full scale operations. In 1832, Lord Aylmer, the Governor-General of Canada, had issued a call for massive immigration from Britain. That call was followed by petitions from Anglo-Canadians to the King who claimed they suffered from harassment and discrimination throughout most of 1833 due to their position as the minority population<sup>146</sup> Even in the course of Goderich's continuous denial of BALC's charter to operate in Lower Canada, the arguments against the Company were ones having to do with the Company possibly gaining too much power or profit. The French Canadian population was never discussed as a reason to deny BALC its Charter. In fact, the only time the French Canadians were mentioned was in such a manner as to reaffirm the need for BALC as a means to transport British emigrants to balance the French Canadian population, to uphold the "grand National object". This changed in 1833, when a petition with the signatures of 3064 French Canadian residents reached the king. This petition claimed the people of the provinces were "composed of two classes, the one descendants of the French inhabitants" and the others who had emigrated from Great Britain and Ireland. This petition goes on to say,

That evil disposed persons actuated by motives of personal aggrandizement and of disaffection to your majesty's government have availed themselves of this hereditary

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<sup>145</sup> PRO CO 42/250, Colonial Office Correspondence, Secretary of State- Lower Canada, 1834, 38. In a letter dated April 11, 1834, he approved the 3+ page long requests including knives, paper, 2000 quills, rulers, rubbers, holders, cards, pumice stone, 10 dozen pencils, etc. The funds were taken from the budget of the Lt. Governor of the Colony.

<sup>146</sup> PRO CO 42/248, Petition to the King, 5.

difference of origin and language, to foment dissention between these two classes of your majesty's colony in prosperity, to prejudice all its inhabitants...

They further suggest the introduction of any plan which introduced capital or emigration from Great Britain would be detrimental not only to Lower Canada, but to the Empire as a whole.

That your majesty's petitioners with feelings of deep regret and alarm have observed that systematic efforts have for a long time been making in the House Assembly to bring the officers of your majesty's government and particularly those entrusted with the administration of justice within this Province, into contempt, to expose them to public hatred.... DO NOT LET BALC COME IN...you are suborning hatred against us.<sup>147</sup>

Meanwhile in Canada, the struggle continued between the British dominated Council and the French-Canadian dominated Assembly. In March of 1834, the Assembly, headed by Louis-Joseph Papineau, circumvented the Canadian officials and appealed directly to the Home Government in a radical document entitled the *92 Resolutions*. The *92 Resolutions* was a French Canadian declaration of British discrimination towards those with French origins. In this document the Assembly demanded a true democratic form of government, including the removal of the Legislative Council. It also claimed the sale of Crown Lands to generate funds for the Canadian government was unconstitutional as only the Assembly had the right to raise and distribute revenue. The Assembly viewed the plans for BALC as a threat and stated the proposed company caused great "alarm" amongst the populace. Thus, the *Resolutions* demanded the King revoke his agreement with the British American Land Company.<sup>148</sup> The Home Government disregarded the *Resolutions* and BALC received its official charter. An Act of Parliament followed later that year (1834) authorizing its venture.

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<sup>147</sup> Petition to the King, 5.

<sup>148</sup> Québec House of Assemblée. *Les 92 Résolutions*: suivis de "État de la province," et d'une pétition: "Aux honorable chevaliers...du Royaume-Uni de la Grande Bretagne et d'Irlande, assemblees en parlement," signée L.J. Papineau. (Québec, 1834).

## Growing Tensions in the Colony

In April of 1834, another petition from the Lower Canada reached the King, this time from the Anglo-Canadians. They threatened to leave the colony unless they were given their own representatives in the Assembly. They suggested if they did not get these representatives, “evil” would come upon them from the French Canadians.<sup>149</sup> Yet in a private letter to Stanley, Lord Aylmer wrote that “no event of a public nature has occurred in Lower Canada.” He claimed meetings continued to be held, some in favor of and some condemning the “Resolutions as they are now calling them.” Yet, he had not heard of any instances of those meetings “being attended with any attempt at a breach of peace, mostly rattlings in the newspapers.” He dismissed the possibility of any growing sense of unrest.<sup>150</sup>

In Britain, the *Resolutions* were discussed in the Colonial Office and Parliament. Newspapers printed stories and editorials about them. In Canada, both the French and English-speaking populations demonstrated interest in the *Resolutions*. After church on Sundays, people attended speeches of those presenting their opinions on the subject and reading groups gathered to listen to the latest editorials from the local pamphlets and newspapers.<sup>151</sup> On February 26, *Le Canadien* printed a letter regarding Resolution 50, which suggested Canada might be better off as an American state. Most Anglo-Canadian and British letters which discussed this Resolution suggested it was an empty threat, but many argued that to threaten the Home Government was treasonous. Étienne Parent, a French Canadian journalist, government official and editor of *Le Canadien*, wrote,

If the representatives sincerely wished for a sudden scission between this colony and England, the surest way of securing it would indeed be by letting the government commit itself more and more to the ruin it is heading towards; by letting it fill in the

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<sup>149</sup>PRO CO 42/250, 243-247.

<sup>150</sup> PRO CO 42/250, Private Letter, Lord Aylmer to Lord Stanley, 357

<sup>151</sup> Alan Greer, *The Patriots and the People the rebellion of 1837 in rural Lower Canada*; (Toronto: Toronto University Press, 1993).

cup of injustice...until the people, no longer able to bear the weight of the chains, would spontaneously shake them off and overwhelm their tyrants.<sup>152</sup>

Thus at least in the opinion of Parent, the French-Canadians saw themselves as aids to the Crown as they tried to head off future catastrophe. Of course, the way to prevent disaster was for Britain to give in to all of the French-Canadian demands; there was no room for compromise.

Parent went on to say:

It is not a threat to England to lay before her the facts, the circumstances and the probabilities that must necessarily have an inevitable influence on the destiny of this country, and whose oversight on the part of the Mother Country could yield bitter fruit.<sup>153</sup>

Thus, the French Canadians claimed the Home Government was clearly unaware of the true situation in Lower Canada and the *Resolutions* were simply the French-Canadian method of advising the Home Government. According to Parent, the introduction of BALC was threatening the freedoms they had been led to expect from the Constitution Act. It was those freedoms, and the threatened loss of those freedoms, which made the French Canadians feel themselves more closely aligned politically to the American system of government.

Let it be remembered that this was the same language so-called Loyalists used half a century ago with respect to the Anglo-American people, and history has already proved the justice of their cause. Let care be taken that in another half-century history does not proclaim the justice of Canada's cause.<sup>154</sup>

Stopping BALC and any further British emigration became deeply important to the French-Canadian nationalist movement. Yet it also prompted non-British English speakers, such as those Loyalists who had come from the American colonies, to side with the British. The lines were clearly drawn along linguistic and ethnic lines.

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<sup>152</sup> Étienne Parent, "Concerning the 92 Resolutions," *Le Canadien*, February 26, 1834. Reprinted in Thomas Thorner and Thor Fron Nielson, *A Few Acres of Snow: Documents in Pre-Confederation History*, ed.2, (Broadview Press, 2003)

<sup>153</sup>Ibid.

<sup>154</sup> Ibid.

Although Lord Aylmer did not recognize the significance of the *92 Resolutions* in his colony, he was among the first to question the Anglicization policy. He doubted whether the plan to flood Lower Canada with British emigrants through use of a land company “would ever work as long as the French have a place in the Assembly.” He wrote that the French were for the most part “ignorant,” but “republican” and loyal by nature. He asked Stanley in a private letter if perhaps the plan to subvert the French “made by Parliament” might not have been ill considered.<sup>155</sup> Since the French were loyal to their existing institutions; thus, he suggested, they might not be willing or able to adapt to British hierarchal structures. For him, and many others within the aristocracy of Britain, class, expansion of the Empire overseas, still included ensuring the continued preeminence of the landed class into British colonies. This remained the fundamental driving force of the Anglicization policy and Aylmer thought the French incapable of assimilation and accepting their place within that structure. Despite Aylmer’s questions regarding the viability of the Anglicization policy, and even the fact that the landed class was a junior partner among BALC’s directors, the Government and the Company remained firmly united in their intended goal to introduce British cultural, legal and societal structures to Lower Canada through the use of large-scale emigration of British subjects.

Because the French were the majority population, they felt they had the right to choose the direction of their colony while the British believed the French Canadians needed to fall in line as imperial subjects. Hence from the moment BALC began official operations in 1834, the French Canadians greeted them with hostility. The French had been given the right of self-determination by the English king in 1791 via the Constitutional Act. But the growing number of English emigrants in the colony had caused tensions between the two groups. Louis-Joseph Papineau, a member of the Canadian Assembly and leader of the anti-British *Patriote* movement, was vocal as early as 1825 about those of “foreign origin.” He claimed only those of “French origin” should be

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<sup>155</sup> PRO CO 42/250, Private Letter Lord Aylmer to Lord Stanley, 357. He questioned it, but did not suggest the policy should be cancelled.

entitled to rule<sup>156</sup> As tensions between the two groups rose, the French controlled Assembly felt justified in refusing to give funding to the British controlled Canadian government to fund projects the Assembly felt were sure to benefit only the minority British population. The French had claimed their rights had been disregarded “in favour of monopolists in the United Kingdom.”<sup>157</sup> The French Canadians grew ever more radical as they believed their fundamental rights were at stake; whereas the British believed this to be a case of colonial subjects refusing to succumb to imperial control:

The hostility is the British emigrants and to the strength which an increased loyal population would oppose French domination. The Canadians enjoy the rights and privileges of British subjects far more ample than any more they could have ever have enjoyed as a colony of France and yet they are not contented with equal privileges. They must establish French rule over British interests in a colony of Great Britain.<sup>158</sup>

The French Canadians, however, saw the British as trying to overthrow their civil laws which were centuries old, as well as more recent Laws which the English kings themselves had extended to the French, such as the Assembly. One of the *92 Resolutions* read: “The Constitutional Act...ought not to be altered, except at such time and in such manner as may be wished by the people of the province”<sup>159</sup> In other words, changing Colonial laws should be the right of the people, not enforced by the government.

The French Canadians were fully aware that an influx of BALC-sponsored emigrants could mean an end to their majority in the colony and an end to their self-determination. The people and the Assembly repeatedly petitioned both the king and Parliament to revoke the Charter of BALC, and then they took it a step farther. They began circulating petitions which suggested BALC had intentions to overthrow the Colonial government, that the Company intended to unite the province

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<sup>156</sup> PRO CO 42 259 Lower Canada, “Public Offices,” 1835, Volume4, Author listed as “From a Correspondant,” “The Canada Question,” 10 March 1835, 385.

<sup>157</sup> *92 Resolutions*

<sup>158</sup> PRO CO 42 259 Letter to the *Montreal Gazette*, no Author noted, Eastern Townships, 386.

<sup>159</sup> *92 Resolutions*, resolution 39.

with the United States, or that the Company planned to declare the independence of the colony if the French Canadians were aided by France in any way. These arguments of the French differed from those of the Resolutions. No longer were the French threatening to secede, but instead they attempted to paint BALC as a treasonous threat to Britain. Robert Gillespie, a Canadian investor in BALC, and others attempted to warn BALC and the Government about these petitions and other “reasonable” actions of the Assembly in letters throughout January and February 1835.<sup>160</sup>

By May of that same year, the radical rumblings had increased to a point that Lord Glenelg issued a report questioning further charters and grants to English companies who wished to operate in Canada for fear of French-Canadian retribution. He feared French Canadians would try to “purchase revenge” against BALC and British emigrants living in Canada.<sup>161</sup> Yet, that same month, Lord Glenelg, now Colonial Secretary, received a letter from Gillespie which did question whether the British should hold onto the Canadian provinces. He argued that the French Canadians had been given concession after concession until they now demand that the Government of the country shall be invested in one branch of the Legislature only (the House of the Assembly) in which the Angla Canadian is not represented. The Legislative Council is the only branch of their Government in which the British population have any confidence and should that branch be made elective, they will not submit to it, and from the steps taken by the Constitutional association of Quebec and Montreal your Lordship may be assured that that part of the population of Lower Canada has more to complain of than the French Canadian.<sup>162</sup> Thus, in his opinion, the French were the “squeaky wheel” that had continually gotten greased; all the while it was the British emigrants who truly had more to complain about. Therefore, the Government was responsible for following through with its

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<sup>160</sup>PRO CO 42 259. BALC to Nathaniel Gould, 25 January, 1835; PRO CO 42 259, Rob Gillespie to Nathaniel Gould, 26 February, 1835, 371-373.

<sup>161</sup> Despatch from Lord Glenelg to the Earl of Gosford, the Right Hon. Sir C. E. Grey and Sir G. Gipps, His Majesty's Commissioners of Inquiry in Lower Canada. , July 17, 1835, found in *Documents of the Canadian Constitution, 1759-1915* edited by William Paul McClure Kennedy. (Toronto; London; New York: Oxford University Press 1918)

<sup>162</sup> C0 42/259, Gillespie to Glenelg, 403

Anglicization policy for the sake of the British emigrants who truly needed them. Once again, any true threats by the French Canadians, or any their real concerns, were dismissed out of hand.

According to Anglo-Canadians the presence of the French Canadians in Lower Canada was not only an ongoing hassle; the French presence decreased the property value in the colony. An article in the *Times* reported a meeting in Chambley, a town in Lower Canada, in 1835 during which a comparison was made between the conditions and land values of Upper and Lower Canada.

Where faction predominates in one case and submission to the laws and tranquility and contentment reigns in the other, it may be mentioned that the property in Lower Canada, which 15 months ago produced 1500% per annum now only produces .500%, while in Upper Canada, where everything is proceeding in a most satisfactory manner, property has increased three or fourfold in value during the same time.<sup>163</sup>

The price of land should have been a concern to BALC, its shareholders, and emigrants purchasing land in Lower Canada. But the Company and the Government remained united in the mission of Anglicization with the anticipation that land would increase in price in Lower Canada, just as it had in Upper Canada, as the Anglicization mission succeeded.

From its planning stages, the gentlemanly capitalists of BALC had followed every rule and made sure not to make the mistakes of the Canada Company before them. They did this because they knew they would have a majority French Canadian population intent on deterring or destroying them and the support of the Government was of paramount importance to the success of their company.

Throughout the early years of BALC, Anglicization remained the clear policy for Lower Canada. No one spoke of the French Canadian population with any concern for their “rights” or in the humanitarian terms applied to slaves in the Empire. Throughout this period the Company did receive continued official backing of the Government, it did act as the official outpost of the Home Government in the Empire, and it did share a “grand national objective” with the government to

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<sup>163</sup>“Affairs of Lower Canada,” *The Times*, May 2, 1835. Issue 15780. Col F. The article in *The Times* contains pieces of articles from Canadian newspapers, but does not cite which papers are being quoted.

flood the area with British emigrants to create a balanced population within Lower Canada. The very fact that it was considered “treasonous” to make an untrue statement against the Company demonstrates the united bond between the Home Government, the King, the Company and the united mission of Empire.<sup>164</sup> Further, the government absorbed the costs for emigrants who arrived ill or who needed financial assistance and it provided supplies for the Company’s office in Lower Canada. If the Company had been acting independently of the Government, all of these things would normally be expected to come out of the costs of a company responsible for the settling of emigrants in a new country.<sup>165</sup>

This is not to say the Company did not face obstacles. It is obvious that the Company faced extreme hostility from its onset from the French Canadian population. Yet, the French Canadians used political means to seek redress in these first years. They stopped funds traveling through the Assembly, petitioned the King, and they routinely blocked legislation of the Council. Britons questioned the Anglicization policy as well. In Britain, Goderich questioned the possibility of success of such a policy when competing with the possible prosperity of investors. After BALC had commenced operations, Lord Aylmer wondered if it was possible to export the British model of development into an area heavily populated with non-British citizens. He further wondered if it was possible to assimilate French Canadians, whom he considered obdurate and obstinate, to the traditional values and systems of the British. Both the concerns of Goderich in Britain and Aylmer in Canada were dismissed or temporarily put aside for the larger and more immediate matter of the large-scale introduction of British emigrants into Lower Canada. Thus, regardless of the motivations of the actors who implemented imperial policy in these early years, the union of BALC and the

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<sup>164</sup> The French-Canadians were also considered treasonous with the *92 Resolutions* and threats to unite the colony with America. Thus, their demands for recognition went largely unheard.

<sup>165</sup> Supplies in particular- one would expect a company operating in a colony, but with directors in London, to be supplied by the Company headquarters in London. Thus, the Colonial Office supplying them with basics such as this is a significant demonstration of the closeness of their partnership. The interconnectedness of the operations.

Government remained firmly intact through 1835, as did the policy of Anglicization. However, colonial uprisings 1835-1837 caused imperial policy to shift towards promoting stability in the colonies. The goals of the government no longer remained in line with that of the companies; thus, the government forsook its alliance with the land companies and abandoned the Anglicization policy.

#### Chapter 4- **Prelude to Rebellion, 1835-1837**

The issue of land in Lower Canada remained at the forefront throughout BALC's efforts to place settlers there. As its operations began, tensions escalated to the point of violence and outright rebellion in 1837. By the end of 1838, it became clear that the Anglicization policy had failed. This policy, which had sought to place British citizens on foreign soil in order to balance the French population, was ultimately replaced by an imperial policy intent upon maintaining peace and preventing rebellion within the Empire. Lord Durham travelled to Lower Canada in 1837 knowing he had been appointed to the position of Governor of the Colony beginning in 1838. He was aware that funds collected from BALC were his means of managing and financing the Colony. Yet, Durham claimed this was not a consideration in his decision-making process. Instead, he claimed, agreeing to a change of terms in BALC's payments would be "inexpedient with a view to the public interests" and "unjust towards other purchasers of lands from the crown." If the original terms prevented BALC from making a profit, he concluded, they could sell land "at prices sufficient to yield a very high profit on their investment of capital." He was suggesting a necessary break between the alliance between land companies and government in order to secure colonial peace and prosperity.

Durham's thinking was the product of changing political beliefs in both Canada and Britain in the mid-1830s, which challenged the relationship between BALC and the Home Government. Ethnic divisions and "race" relations threatened the stability of the colony, divided those in both the Canadian and Home Government, and further challenged the relationship between BALC and the Home Government. In the 1820s, a political shift occurred which shifted power away from traditional Tories to Liberal Tories, many of whom later joined the ranks of the Whig party. In the 1830s a further shift occurred with the rise of a new set of Whigs who were less committed to landed values and more concerned with reforms. Both these former liberal Tories and "radical"

Whigs came together to create a new political group known as the philosophical radicals. The actions of the British American Land Company, political developments, and divisions within the gentlemanly capitalists slowly began to cause changes to the Anglicization policy and the alliance between land companies and the Home Government. By the time they abandoned Anglicization, the government had broken its ties with the gentlemanly capitalists of the land companies, in the process severing its contracts with these companies.

Domestic changes such as increased regulation of the Stock Market and political changes such as a growth in power of the philosophical radicals will be the first topics addressed in this chapter. Liberal and radical thinking promoted a merit based system of political and economic advancement. A merit based economy called for an end to privilege through the law of equity, which had always provided the landed class with a loose interpretation of contracts and the utilization of special courts. The reflection of these domestic changes in the colonies will be the next topic of this chapter. Domestic changes were reflected in the colonies as the desire for a meritocratic society and took the form of a new military command that challenged the traditional authority of the Governor. The final section of this chapter will focus upon the results of events in the colony, along with new domestic political, legal, and economic thought. This caused a reevaluation of the Anglicization policy and the end of the united mission of the gentlemanly capitalists and the Government. By the end of 1838, the Home Government had a clear trajectory toward a new imperial policy, and a new future for both Lower Canada and BALC.<sup>166</sup>

### **Domestic politics and colonial consequences**

In 1836, BALC petitioned the Colonial Office to survey the 596,325 acres of land the Company had received with their charter in 1836. Immediately Lord Glenelg responded by asking whether or

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<sup>166</sup> Details of the actual break can be found in Chapter 7.

not the government should pay for this survey. He suggested holding off until he could get further opinion on the subject, because he wanted to know if there was a precedent for such a thing.<sup>167</sup> There was a precedent, of course: the government had paid for the entire survey of the Canada Company's land and it had paid for all expenses of the Commissioners when they went to Upper Canada.<sup>168</sup> Yet, Glenelg felt a need to reduce the close economic ties with the Company, and a need to ask for greater oversight. New regulations of the Stock Market after the 1835 merger of the Foreign Funds market with the Stock Market proper required greater supervision of joint-stock companies. In April of 1837, he asked for semi-annual reports detailing BALC's payments to the Canadian government, the company's expenditures, its land sales, and "all other matters regarding the Company of which in your Lordships opinion it is important that H.M. Government should be informed."<sup>169</sup> This is an indication of the trend toward scrutiny of overseas foreign investments. When the government had to account for its role in the investment, such as their joint operation with BALC, new regulations regarding foreign investment were certainly going to be taken very seriously.

### BALC and the Philosophical Radicals

The new regulatory regime was not the only domestic factor behind the Government's newfound hesitation to work with BALC. In the first decade of Lord Liverpool's Tory administration, from 1812-1822, he appointed men to his cabinet who would uphold traditional ideals. These appointees were men who would not extend political or economic reform. In fact, they saw strikes and riots as conspiracies against the monarchy rather than symptoms of a nation facing the very real and serious problems of mass hunger and poverty. Further, they treated anyone who sought to make profit

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<sup>167</sup> PRO CO 42/278 Despatches to Gov Earl of Gosford 1836-1837, Glenelg to Gosford, 24 July 1836, 111-113.

<sup>168</sup> While the Commissioner's Report stated the Company would split the cost of the *salaries* of the Commissioners, the Government took on the cost of the survey itself as well as any additional expenses.

<sup>169</sup> PRO CO 42/278 Glenelg to Gosford, 18 April 1837, 220-221.

from the national discontent as if they were “Robespierres and Marats.”<sup>170</sup> The concern with the exorbitant profit that the Canada Company stood to gain from their endeavor and Lord Bathurst’s benign treatment of that Company were representative of this political disposition. Beginning in 1822, Prime Minister Liverpool began appointing liberal Tories, including Robert Peel, William Huskisson and George Canning, who supported Catholic Emancipation, free trade, abolition of slavery in the colonies, and reform of the Poor Laws. Men such as Lord Goderich and Lord Glenelg supported many of these tenets, and joined many of their fellow Tories who later switched loyalties and enter the Whig party.<sup>171</sup>

The Whig party itself underwent transformation as some of their members “radicalized” as well. One such group within the Whig party began calling themselves the “advanced wing” of the party, or the “philosophical radicals.” This group had coalesced during the struggle over the Reform Bill and solidified after its passage. They believed the Bill did not go far enough with its reforms. These Whigs called for the abolition of all hereditary titles and all privileges associated with such claims. They wanted Britain to be a merit-based nation. The philosophical radicals were at the height of both their power and unanimity in the 1830s, yet they bitterly divided over the issue of Canada.<sup>172</sup> In his dealings with BALC in 1836-1838, Glenelg faced political pressure as Colonial Secretary from numerous political factions within both parties. Within his own party, the philosophical radicals insisted he not offer special privileges to the gentlemanly capitalists of BALC simply due to the social and economic influence of some of their members. The members of his previous party, the

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<sup>170</sup> John Plowright, *Regency England: the age of Lord Liverpool*. (New York: Rutledge, 1996); William R. Brock, *Lord Liverpool and Liberal Toryism*, (Cambridge: Cambridge University Press, 1942); Quote from: Charles William Chadwick Oman, *England in the 19<sup>th</sup> century*, (London: Longmans), 1900, 60.

<sup>171</sup> Other Tories would attempt to form splinter parties. One such person was Canning, his party would become known as the Canningite party. While officially that party would cease to exist by 1830, some of his followers would continue on with the belief system held by the Canningite party. Goderich and Glenelg were among the members.

<sup>172</sup> William Thomas, *The Philosophical Radicals: Nine Studies in Theory and Practice, 1817-1841*, (Oxford: Clarendon Press, 1979), 2-3 & 12.

Tories, were concerned with the profit of the company and/or any advantages it sought to take of Britain.

Glennelg also viewed recent events in London as a potential threat to the stability of the colony. The British Government had formally rejected the *92 Resolutions* of the French Assembly on March 1, 1837, three years after the French Assembly had issued the Resolutions. The Home Government had delayed responding for those three years as they sent an investigative committee headed by Lord John Russell to Canada. This rejection of the *Resolutions* was only the first response of the British Government in accordance with what became known as the “Russell Resolutions,” or “Ten Resolutions” based on John Russell’s recommendations. The second, in May 1837, came in the form of a dispatch which gave the local Canadian government the right to appropriate funds raised by the Assembly without their approval. The dispatch also reconfirmed the rights and privileges of BALC, formally denying the Assembly’s request to revoke that Company’s charter. It further declared the Legislative Council would always remain a non-elected body. Anticipating French Canadian response, 2400 troops were moved from other parts of North America to Lower Canada.

Lord John Russell was a moderate Whig who did support some radical positions such as the Reform Act, but he was not a member of the “philosophical radicals.” It is important to note that Parliament was not unanimous in its decision to take these actions in response to Russell’s suggestions. Russell’s proposal met strong opposition from a small group of philosophical radicals, notably Daniel O’Connell, W.N. Molesworth, Thomas Perronet Thompson, Joseph Hume, H. G. Ward, John Roebuck, and Charles Buller. At the heart of philosophical radicalism was a belief that the colonies were an expensive burden and complete independence of the colonies should be the natural conclusion. The inhabitants of the colonies would then become partners in trade and become profitable for Britain.<sup>173</sup> Thus, the philosophical radicals began to lobby for full self-

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<sup>173</sup> Thomas, *The Philosophical Radicals*, 377.

government for the Canadian colony. Their voices, however, remained a small minority, but an influence which gained strength in the aftermath of the rebellion.<sup>174</sup> Most British politicians, whether Whig or Tory, were hesitant to take any action which increased interference in the colonies; thus passing on the cost of such an enterprise to the British taxpayer. The Colonial Office “hoped that if they made conciliatory gestures and sent out fact-finding commissions to Lower Canada, they would be gratefully met by sensible concessions from the French Canadians.”<sup>175</sup> Thus, Russell’s mission and his recommendations were aimed at maintaining the status quo in Canada. The philosophical radicals had a problem with this and pushed a fact-finding mission with their presumed “champion,” Lord Durham, at the head of such a mission.

On the surface, John George Lambton, the first Earl of Durham, seemed to represent the epitome of an example of the landed aristocracy of the 1830s. He lived in a gothic castle and had an astronomical income from his land-holdings.<sup>176</sup> Yet, Lambton is identified by historians as a member of the philosophical radicals, primarily owing to his role in the creation and passage of the Reform Act of 1832. He also had many political admirers amongst the middle class and he seemed to identify more closely with them than with his landed counterparts in Parliament. In November 1830, he began serving on a committee on parliamentary reform. This committee became known as “Committee of Four” with Lord John Russell, Sir James Graham, and Lord Duncannon. Yet, Durham was not asked to serve on a committee which determined the final nature of the Reform Bill. Lord John Russell was the ultimate author of the final bill. Durham felt slighted by this, and it began a rivalry of sorts between Russell and Durham. Durham began to claim he was the “chief architect of the Bill” and he gained many radical followers through this embellishment. However, he did diverge from philosophical radical tenets, particularly over the issue of the House of Lords.

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<sup>174</sup> S. Maccoby. *English Radicalism 1832-1852*. (Routledge, 2001), 355.

<sup>175</sup> Thomas, 374.

<sup>176</sup> From his collieries alone he collected £50,000 per year, he received additional income from his farms. Ellice to Lambton, 27 Sept, 1826. Quoted in Thomas, *The Philosophical Radicals*.

When radicals sought to reform the House of Lords in the mid-1830s, he described such an action as a “moral impossibility.” To change the House of Lords to an elected body would deprive him of his inherited position to serve in the Upper House. Many with whom he served in Parliament noted his personal ambition and believed him to support any position which would further his own career rather than adhering to one particular philosophy. Yet, those who served with him from both parties reluctantly admitted his methods were successful even if they were at times contradictory to any political philosophy.<sup>177</sup> Thus, his political philosophy was not exactly in line with the philosophical radicals even before his mission to Canada and he accepted the position in part due to his own desire for political recognition and personal advancement.

John Roebuck, another philosophical radical and one time agent for Lower Canada, opposed the appointment of Durham to the position of governor of Lower Canada. Roebuck had argued earlier that the Council in Lower Canada was not even drawn from the population of the colony and had advised Papineau that if he persisted, eventually Britain would need to assure the demands were met. While those who seemed supportive of rebellion in Parliament faced political consequences, Roebuck and Hume both lost their seats in 1837, Roebuck continued to be vocal about the Canadian situation and he accused Durham of abandoning the radical philosophy.<sup>178</sup>

Apart from these domestic factors, Glenelg also had increasing concerns about BALC in the context of rising instability in Lower Canada. In his own report which he wrote in 1835, he questioned further land grants and charters to English companies wishing to operate in Canada. By the time he requested the semi-annual monitoring of the Company, in 1836, new developments threatened to upset the equilibrium of the Colony further. From 1835-1837, a wave of land speculation took place in the colony. British and American speculators purchased lands adjacent to BALC's and sold it to the Company at inflated prices. The original purpose of BALC was to

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<sup>177</sup> Thomas, *The Philosophical Radicals*, 353.

<sup>178</sup> Thomas, 233, 239, 376-83, 390-391.

provide funds for the Canadian government through the distribution of funds from land sales to the Canadian government. This would offset the growing power of the *patriote*-dominated Assembly which was refusing to allocate funds for anything other than the requirements of French Canadians. This land speculation denied the Canadian Government funds from land sales as BALC purchased the land from independent speculators and not the government. This increased tension as the Government continued to require funds from the Assembly. In the three years since the French Canadians sent the *92 Resolutions* to the Home Government, there had been political breakdown in Canada. Every bill the Assembly passed, the Legislative Council vetoed. Similarly, every measure proposed by the Council met a similar fate when introduced to the Assembly. In 1836, the Council vetoed the Assembly's education bill. This immediately stopped funding for elementary education and caused outrage through the entire colony.

### Military Authority in Canada

Britain's domestic political, social, and economic changes were reflected in Lower Canada. The philosophical radical belief in meritocracy over birth revealed itself in the military and governmental authority structures in Lower Canada. A new military command, which represented attempts towards a meritocratic society, clashed with the traditional hierarchal power in the form of the Governor. The French Canadians looked towards the philosophical radical desire to expand the franchise in Britain and used it for inspiration to mold their colony and achieve greater political participation. Lastly, a clash of motivations for imperial investment revealed disunity of purpose within the gentlemanly capitalists as both groups, landed and service sector, sought to increase the power of their own class. These shifts weakened BALC and eventually revealed the demise of the Anglicization policy.

Upper Canada and Lower Canada had parallel government structures. Each was governed by a Lieutenant-Governor, a Legislative Council and an Assembly. Representatives who sat on the Legislative Council were appointed by the Governor. The Council positions usually went to those with the most business, social or religious standing and they always went to those of British origin. In Upper Canada, these positions were strengthened by marriage and relations so much that the Council became known as the Family Compact. This group was dominated by military and professional men who doled out large tracts of lands to their members; it primarily consisted of wealthy British Merchants, although a few French who held large tracts of land were also members. In Lower Canada, the Council became known as the Château Clique, taking its name from its meeting place in Château St-Louis in Quebec City; as mentioned previously, it maintained an oligarchic control over the economy and politics of the Colony. Both of these groups associated themselves with the Tory party and the policy of Anglicization. They held greater power than the Governors of the colony, primarily because the Governors did not last longer than two years and Council members were appointed for life.

When Sir Robert Peel became Prime Minister in 1835 he sent Lord Gosford, Charles Grey and George Gipps to Lower Canada to investigate, yet again, the Resolutions. Lord Gosford was also appointed to serve as the new governor for Lower Canada to replace Lord Aylmer as Governor whom Peel (with Melbourne following through) recalled. Governor Gosford had been sent to Canada with instructions to ascertain the causes of the impasse in Canadian government. He sought at first to gain the confidence of French Canadians. During his first speech in the Assembly in the autumn of 1835 he announced his intentions to address all French Canadian grievances. He declared there would be no restrictions upon French Canadians gaining office, that the French language would be protected. This aroused great dissatisfaction amongst the Anglo-Canadians

towards Gosford.<sup>179</sup> In June of 1836, a committee with Anglo delegates from all parts of Canada met to petition the King for the dismissal of Gosford based on his unpopularity, accusations of financial misfeasance, and claims that he was out of touch with the realities of the colony. Gosford also did not have an easy time with the French Canadians. He attempted to both pacify and entertain the French by throwing lavish balls and parties on their feast days. But even while accepting his hospitality, the French in the Assembly took a stance independent of the executive branch. Finally in September of 1836, a bill was brought forth before the Canadian House of Assembly which demanded the Legislative Council be an elected body. This was something already turned down in Russell's *10 Resolutions*, yet the French populace began asking for it again. Interestingly this proposal began with a pamphlet written by the philosophical radical, John Roebuck. The doctrine of the philosophical radicals was equality, democracy, and self-representation. Yet, an elected Council would reduce Gosford's power to appoint men to that body. Further, based on the population, the Council would have consisted primarily of French subjects rather than a body of select British men. The king denied both the request for the dismissal of Gosford and the idea of an elected Council.

Governors of British colonies had several duties. The Governor was responsible for making sure British authority was accepted in the colony, that the colony was profitable, and for the defense of the colony. He supervised legislation, acted as the head of the judiciary, and initiated taxation. Central to his role was that of commander of the armed forces.<sup>180</sup> Lord Glenelg challenged one of the main responsibilities of Gosford's position as governor: that is Gosford's role as military commander as Glenelg appointed Sir John Colborne military commander in chief of both Upper and Lower Canada. From 1828-1836, Sir John Colborne had very successfully served as

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<sup>179</sup> George M. Wrong, H. H. Langton, *The Chronicles of Canada, Volume VII: The Struggle for Political Freedom*. (Tucson: Fireship Press, 2009), 101-103.

<sup>180</sup> Andrew Mackillop, Steve Murdoch, *Military Governors and Imperial Frontiers, c. 1600-1800: a study of Scotland*. (Leiden: Brill, 2003), xxvii. Also, L.W. Labree, *Royal Government in America: A Study of the British Colonial system before 1783*. (London: Frederick Ungar Publishing, 1964), 92-107.

Lieutenant-Governor of Upper Canada.<sup>181</sup> Yet, as a member of the Family Compact and as governor, he diverted funds to projects which favored new immigrants and the Anglicization policy. Thus, due to growing tensions in Upper Canada, Lord Glenelg relieved him of his duties in 1836. Yet, before he could return home, Glenelg appointed him to the position of Commander-in-Chief of military forces for both provinces. Because Colborne was directly appointed by the Home Government for the purpose of military command of both colonies, his position placed him above the colonial governor of Lower Canada in the chain of command.<sup>182</sup> Governor Gosford, however, opposed this decision. He wrote numerous letters to Lord Glenelg from January-April of 1837 saying the state of the colony was “tranquil” and he required no additional assistance.<sup>183</sup> Rumbblings in Canada, however, suggested otherwise. In the spring and summer of 1837 groups of French Canadians met throughout the colony to protest British refusal to reform Lower Canada, BALC and the introduction of chartered banks to the colony. Tensions between Colborne and Gosford came to a head in June of 1837, when Colborne discovered that Gosford had been issuing military instructions and moving men into battle-ready positions. Colborne advised Gosford he did not have the authority as Governor to do this. Colborne further advised Gosford, that it might be necessary to ‘restrict the authority of the governor’ and let the military authority dictate policy in such a situation.<sup>184</sup>

By September the situation grew increasingly radicalized, and Gosford began writing “private and confidential” letters to Glenelg. After months of denying a problem existed in the “tranquil” colony, he now admitted that tensions between the Anglo and French Canadians had reached alarming

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<sup>181</sup> Colborne, along with the Canada Company, doubled the colony’s population during his tenure as Governor. He further had increased the quality of Upper Canada through significant improvements to the colony’s infrastructure.

<sup>182</sup> Sir John Colborne was a career military man who at this time had the rank of major general. He was living and stationed in Upper Canada for the Crown, he was the ranking military officer in the area, and he was also a part of the Canada Company project.

<sup>183</sup> PRO CO 42/271 Despatches Earl of Gosford, Lower Canada Vol. 1 Jan-April 1837.

<sup>184</sup> PRO CO 42/272 Despatches Earl of Gosford/ Lower Canada Vol. 2. May-July 1837. Sir John Colborne to Earl of Gosford, 28 June 1837, 230.

proportions. Yet, those tensions had dissipated and it was now only the “ultras,” the most radical among both groups who were of concern to him and to the safety of the colony. For this reason he needed an expansion of the powers of the executive branch, the power to suspend the Constitution and *habeus corpus*. On September 2 he claimed the “Papineau faction” had the ultimate goal of separation from England and a Republican form of government. He believed it was necessary to take great caution and vigilance to “guard against the great evils that might follow from attempts making to excite discontent among the people.” He also suggested it might be necessary to suspend the Constitution, because Papineau would never submit to a “defeat which would annihilate all his power and influence” and Papineau was determined to do anything to achieve his desires.<sup>185</sup> The following week he claimed that Papineau’s orders originated from a “Central Committee,” which was keeping the country in such a state of “excitement.” Gosford argued that “had the executive branch the power of suspending *habeus corpus*” he would be in a better position to deal with this Committee. Should he have to confront Papineau, he believed he may have to bend or break some laws, otherwise it would show him to be of “weak” character and that would be the equivalent of allowing Papineau to simply take over without a fight. Further, Gosford wrote, he believed those who attended Papineau’s meetings should be charged with treason.<sup>186</sup>

Gosford concluded his letter by insisting that most people in Lower Canada, French and well as British got along harmoniously:

The jealousy that existed between the two races I found upon my arrival here had reached such a height, that from the first I considered it one of the principal obstacles to a satisfactory adjustment of difficulties. I must however observe that this has greatly diminished, and I can reckon as friends to my administration a large proportion of the reasonable and liberal men of the province. The ultras on both sides are struggling for ascendancy, and my determined opposition to the views of both in this respect, perhaps may in some measure account for their hostility to me,

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<sup>185</sup> CO 42/273 Lower Canada Despatches Earl of Gosford/Lower Canada Vol. 3 August-October 1837, Letter Gosford to Glenelg, Marked private and confidential, September 2, 1837, 90-91.

<sup>186</sup> Ibid.

but I cannot relinquish my principles on this point.<sup>187</sup>

Evidence was mounting, however, that rebellion had spread from a few extremists well into the general population. More than 1000 people attended a protest regarding Russell's *10 Resolutions* in May 1837, and the same number began practicing military maneuvers in October. The "Grand Assembly" itself, made up of patriots who met beginning in the month of October, had more than 5000 participants. And a French boycott against the English had the full support of the French Canadian inhabitants.<sup>188</sup> More importantly, however, Gosford was attempting to utilize the growing unrest within the colony for his own political purposes, to expand the power of the executive branch. The question one must ask here is why was it so important for him to control the situation rather than leave it to Colborne and the military?

What is evident in Gosford's letters is a representation of the changing social and political structures within Britain, the Empire, and gentlemanly capitalism. Gosford was a Tory, a member of the landed elite who was born into his position. He believed he had the right to power and governance simply by the matter of his birth. Colborne was a military man who achieved his baronetcy through military commands in the Napoleonic and Crimean Wars, through the system of meritocracy. When Colborne told Gosford he did not have the authority to command men within his colony, a threatened Gosford reacted by requesting additional powers for the executive branch. Gosford's power as Governor in Lower Canada had been decreasing in the colony. The appointment of Colborne in February 1836 took from him his right to command the military in the colony.

The demands for greater representation by the French Canadians echoed demands made in Britain itself through the demands of the middle and lower classes for increased participation in the franchise. In Britain the Tories objected to extending the franchise further or to any reform of the

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<sup>187</sup> Ibid.

<sup>188</sup> Greer, *The Patriots and the People*, 154. Detailed history and historiography of the rebellion in the next chapter.

Parliament, whether that was in the Commons or the Lords, which would reduce the political, social and economic power of the landed class. In Canada, Gosford, as a Tory, objected to expanding the Council to be a representative House. He further objected to a reduction of privilege of the men who held positions in the Council, as well as to himself, just as Tories objected to changes to Parliament in Britain.

Lower Canada presented English observers with the paradoxical spectacle of a pushing, commercially-minded British minority which favoured the oligarchal government of the colony, and a French-speaking majority, whose social and cultural heritage was clerical and feudal, defending their dominance with the arguments of extreme democracy.<sup>189</sup>

BALC of course represented this “commercially-minded British minority” as it sought to control the colony economically. Yet, a further struggle existed within the gentlemanly capitalists of the land companies, pitting the merged landed class against new men of the emerging financial and service sectors. These groups each had multiple motivations for Empire beyond profit margins, which sometimes clashed. Landed elites primarily hoped to extend the power of their class overseas, while at the same time sought to increase their own economic bottom line. The financial and service sectors did not have a similar motivation to remake the Empire in the image of the landed class as they held a desire to increase their own political standing within Britain and the Empire. Thus, profit rose above all other motivations for investment within the Empire for members of these sectors.<sup>190</sup> As each individual was busy jockeying for their own individual needs, or the desires of their group, be those needs political, social or economic, it left them with the inability or the refusal to look at the growing problems within the Empire. This blindness represents the true problem with the Anglicization policy and the alliance of BALC and the government in the business of colonization. It also led to Gosford’s hesitation to recognize the scale of the emerging crisis and the

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<sup>189</sup> Thomas, 373.

<sup>190</sup> Of course Cain & Hopkins do discuss the rise in the number of landed elites who involved themselves in financial and service sector investment in the second half of the 19<sup>th</sup> century. This was also true, albeit to a lesser extent in the first half of the century.

growing violence with the French Canadian population. His failure to recognize the growing crisis led Governor Gosford to resign amidst great pressure to do so in November of 1837. He was replaced by Lord Durham who had a direct role in the severing of the relationship between BALC and the Home Government and therefore terminated Anglicization as the official imperial policy.

### Failure of a Gentlemanly Agreement

Despite growing tensions in the colony, the Home and Canadian governments needed to continue the relationship with BALC, because the Assembly's refusal to fund the government of Lower Canada left the Company's land sales as the sole source of government revenue. Since the commencement of BALC's operations in 1834, the Company engaged in the business of settlement. It built roads, bridges, and churches all with the "direct authority and sanction of the Governor General." BALC also introduced monetary transactions to the area where the barter system was the sole means of trade previously. The Company claimed to be "most lavish" in the outlay of funds in the preparation for British settlers. Yet, the Home government had been backing away from its relationship with the company. The appointment of Colborne to head military operations marked a shift from an indirect governing style through BALC and Governors-General, to one in which the Colonial Office took a more direct role in the maintenance of the colony. Glenelg's call to monitor the Company further emphasized this insulating strategy while at the same time reflects the domestic shift towards monitoring imperial investment. Yet, the prime and most obvious example of this changing relationship was Durham's letter to BALC, which foreshadowed his more famous report.

During the course of 1837, the relationship between the Colonial Office and BALC began to change. Immigrants to Lower Canada were few in number. Instead of Lower Canada, most emigrants from Britain chose Upper Canada as their place of settlement. British subjects were reluctant to move into an area with a majority French population. Once the rebellions began, the

minute influx of immigration into Lower Canada ceased completely. British emigrants chose not to settle in an area in which they would be the minority population and where violence against them was a real possibility. Throughout 1837, BALC petitioned Lord Glenelg asking for assistance in promoting emigration from Britain to Lower Canada. The Colonial Office never responded to any of these requests.<sup>191</sup> These continued efforts of BALC, despite growing tensions in the colony, suggest a stronger adherence to the Anglicization policy than was any longer the case in the Colonial Office or within Parliament. The broken alliance between BALC and the Colonial Office is apparent through the Colonial Office inaction regarding settler assistance and the appointment of Colborne, even if BALC was slow to recognize Colonial Office withdrawal from their contractual agreement and the Anglicization policy itself. As a result of the stalled relationship with the Colonial Office, the flawed Anglicization policy, and ethnic tensions within the colony by 1838, BALC's outlay of capital had far exceeded its income. In the late spring of 1838, BALC requested authorization to utilize that year's principal as its interest payment to continue improvement projects in the colony, rather than paying the Government.<sup>192</sup> In August, they received a reply from James Stephen, the undersecretary of the Colonial Office, in which Stephen intimated Lord Glenelg did not "anticipate any objection to the proposed appropriation of this money to the location of emigrants on the land." Yet the letter goes on to state Lord Glenelg did not "feel himself at liberty previously to the receipt of the Report of the Earl of Durham" which was anticipated by the Government, before providing the company with a final answer.<sup>193</sup> However, this response from Glenelg temporarily reassured BALC that its relationship with the Colonial Office remained intact.

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<sup>191</sup> NAC, MG 24 I 54, Vol. 2, 271-274. BALC to Lord Glenelg, Dec 3, 1838. In this letter and an extract from McDougall to BALC is a reminder that the company asked in 1837 for assistance in settling 250,000 Highlanders on the Company's lands.

<sup>192</sup> This is a payment for the original tract of land purchased in 1834 under the terms of the Charter. Although the funds went to the Canadian government, the terms of the Charter stated the funds were due to the Home Government, the Canadian government was merely the collector.

<sup>193</sup> NAC MG 24 I 54 Vol. 2, 248-249. Letter to Sir George Grey from BALC, October 26, 1838.

Yet, the Colonial Office had asked Durham to make an evaluation of BALC's request, separate from his better-known report on the state of the Colony itself. The latter, later to become known as the Durham Report, claimed the Anglicization policy had failed in Canada and will be discussed at greater length in the next chapter. His letter regarding BALC, however, which was issued prior to his famous report in 1838, was an assessment of BALC prepared for the government. This letter caused BALC to lose all assurance that its alliance with the Colonial Office would remain intact. Durham's fiery letter in regards to BALC would send shock waves through the Colonial Office and BALC and it forever changed the relationship between BALC and the Government. The letter directed the government towards a means of severing its contract with the company utilizing current political, social, and legal doctrine. It allowed the government the appearance of fairness; while at the same time, it provided the ability to break a gentlemanly agreement with the company.

Durham argued that agreeing to BALC's terms regarding the change of terms of their payments would be "inexpedient with a view to the public interests" and "unjust towards other purchasers of lands from the crown."<sup>194</sup> Durham provided two reasons for his conclusion. The first was the principle of fairness and the legitimacy of the British Government. For this reason, he believed it necessary to hold BALC to its original contract. He suggested an agreement by the Government for the distribution of waste lands to individuals or companies for a purchase price must be enforced. To do otherwise was unfair to others who did make their payments on time. Further he claimed allowing any discrepancy could undermine the Government itself. Second, Durham wanted to stop BALC from claiming any losses caused by the Rebellion. He claimed BALC "might have foreseen" potential losses as the hostilities in the colony existed prior to the arrival of the Company. Further he argued BALC increased resentments within the colony by "appointing for their first ministers five gentlemen who had taken a very conspicuous and decided part in the politics of the Province."

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<sup>194</sup> NAC MG24 I 54, Vol. 2. Extract from a Despatch from the Earl of Durham to Lord Glenelg, dated Quebec, July 31, 1838, 239. Extracted and placed in a letter from Sir George Grey to BALC, October 17, 1838. 244-246.

Lastly, he stated that all British subjects who had invested money in British North America, not just BALC shareholders, had suffered monetary losses due to the enmity of the French populace. To admit the claims of BALC opened the Government to an unlimited amount of claims which the Government was unwilling or unable to pay, leading to a “well founded charge of partiality and injustice.”<sup>195</sup> Revealingly, this conclusion shifted the blame solely onto BALC. The Company and the Government had been united in this mission to supplant the French population with British settlers, but according to Durham’s interpretation, it is only the Company who should have known better, the Company is to blame for the increased violence, and therefore it was the policies of the company that caused the rebellion, not imperial policy.

The Colonial Office took Durham’s recommendations and informed BALC that it was not in the best “public interest” to hold the company to standards different from any other company. Further, any resolution of the issue was to take place “in the Province, where alone and accurate knowledge of all circumstances can be obtained.” This, in effect, severed the relationship between the Government and the Company as it cut off the access of the City and Home Government to many of the gentlemanly capitalists of BALC. Glenelg’s monitoring of BALC in 1836 was a part of the new restrictions and oversight regarding foreign securities markets, but also due to his concerns for the stability of the colony. Yet, Durham’s report justified the voices of an earlier minority, such as Governor Alymer and Lord Goderich, who had questioned the possibility of success for the Anglicization policy when companies put the concern for profit over people and when ethnic tensions permeated the colony. Durham’s suggestions for BALC were in line with philosophical radical and liberal political theories of the time, even though his general report on Canada, which will be a subject of the next chapter, is laced with racist remarks and seems far from the spirit of liberalism. As Durham suggested in his report on BALC, the company, like the Canada Company,

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<sup>195</sup> NAC MG 24 I 54 Vol. 2, Extract from a Despatch from the Earl of Durham to Lord Glenelg, Letter from Sir George Grey to BALC, October 17 1838, 242-243.

merged private and public business in the business of colonial settlement through use of the Anglicization policy. The gentlemanly capitalists may have had various political motivations, but they merged together under the united umbrella of financial gain. BALC united with the Government in a “grand national objective” to populate Canada with a “healthier” race of British citizens. Yet the Company discovered that getting people to come to a territory filled with French Canadians was very difficult. This was occurring at the same time as the Home Government underwent a series of economic and political changes, bringing to the forefront the concept of free trade and the rights of native inhabitants of colonies. This led the Home Government to discount the idea of aiding a failing Company even though they had shared the objective earlier. The growing strength of the philosophical radicals made some believe an end to the Empire might prove beneficial for Britain. The rebellion in Canada and other events in the empire in 1837 showed the Home Government the futility of the Anglicization policy. All of these things increased the need of the Government to distance themselves from the gentlemanly capitalists of the land companies. Thus, the acknowledgement of the failure of the Anglicization policy was firmly in place within the Home Government, but ending the policy itself would be a little like stopping a moving train. Once set in motion, particularly with a large number of emigrants included, it was be difficult to reverse the existing trajectory of the policy.

## Chapter 5- **Race & Rebellion, 1837-1838**

Since the beginning of England's colonization efforts, such as in Ireland and North America, colonizers justified possession of land by appealing to a medieval land law of improvement. This law was a part of English common law that regulated the manorial system, such as manorial dues and improvements made by tenants. It also regulated land usage, such as gleaning, hunting in the forest, and the use of common land. When transferred to the colonies the law referred to the intent of a settler to take possession of a tract of land through "improvement" of the existing land.<sup>196</sup> Erecting houses, fences and hedges were signs of improving the land and thus indicated private property ownership. Planting also indicated introducing culture and husbandry within a colony and bestowed private property rights. The fact that most indigenous cultures did not construct houses, erect fences, permanently cultivate tracts of land, or build towns and villages led to the English expression "heathen land": land occupancy which was anything but natural. Because of this, the English held that indigenous cultures had little, if any rights to land and thus a justification for appropriating land existed.<sup>197</sup>

In Canada under the French, the seigneurial land system granted nobility, religious institutions, military officers and civil administrators control over tracts of land, which were then worked by the French peasants as tenants. Inspired by the feudal system of Europe, the system favored local government as seigneurs had their own courts, mills, and communes. The British in 1763 upheld the seigneurial system, but as they developed new towns and opened new land for alternative settlement in the nineteenth century, they came to view the seigneurial system as a vestige of feudalism and inherently inferior to a system of land ownership that they were attempting to

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<sup>196</sup> J. Kendrick Kenny. *A Law Dictionary and Glossary: Primarily for the use of students, but adapted for use by the profession at large* (Chicago: Callaghan, 1893.), 372. Patricia Seed, *Ceremonies of Possession in Europe's Conquest of the New World, 1492-1640* (Cambridge University Press, 1998), 1-40; James Ridgeway, *British Farmers Magazine*, 1880 (London: Rogerson and Tuxford, Jan 1880), 150. *The Spectator*, vol. 1, (London: Joseph Clayton, 1846), 196-202.

<sup>197</sup> Patricia Seed, 1-40.

establish in the colony. The need for improvement opened doors for land companies such as BALC.

The need for improvement of colonial land not only gave the British the “right” under the common law of improvement to settle land in uninhabited areas, it also gave them the authority to require those living in colonial lands to improve their methods of land usage and ownership. When colonial residents such as the French did not wish to adhere to a British standard of property ownership, the British felt justified in improving upon the land themselves, even if it meant displacing those already occupying that land. The failure of the French Canadians to comply with British methods of ownership and improvement led to a belief amongst the British that this group was inherently inferior to themselves, and hence in need of assimilation to British cultural, social, economic and political systems. This set up an environment within the colony that was rich with ethnic tension. BALC was the arm of the British government that sought to improve the colony and thus put the land to more profitable use, but BALC was also intended to serve as the tool to inculcate British ethnicity and improve the French Canadians from their “inferior” state of existence through the Anglicization policy. When the French Canadians felt their way of life threatened by BALC and the arriving British colonists, they fought to maintain their traditions and ethnicity.

The Rebellion of the French in 1837-1838 led the British government to reevaluate the Anglicization policy and its relationship with BALC and other land companies. This reevaluation had a wide influence, since it affected the appropriation of land in future colonies and government willingness to work with land companies: this was evident in the Home Government’s relationship with BALC. Changed concepts regarding the possibility of instilling British ethnicity upon colonial subjects also caused a modification of beliefs in Britain regarding alternate practices of land ownership. When assimilation and the Anglicization policy failed, the British began to construct racial identities for their colonial subjects. Whereas ethnicity could be changed through

acculturation, race was immutable. British colonial policy and attitudes adjusted to reflect an acceptance of the unchangeable nature of race of their colonial subjects and thus an imperial policy based upon the need to promote colonial stability replaced the assimilation strategy of the Anglicization policy. An account of the troubled relationship between the French and British in Canada demonstrates the genesis of this change. This chapter will address the rise of French Canadian radicalism as a result of BALC's presence in the colony. The increased radicalism increased to outright rebellion and garnered a military response by both the Canadian and British governments. The refusal of the French Canadians to assimilate to British ways created not only a need for a new colonial policy, but the creation of a distinct French Canadian race. The development of this race and the associated racism is another focus of this chapter. Without the presence of BALC things might have progressed very differently.

Durham came up with a plan in his report that suggested the alleged racial inferiority of the French needed to be offset by control of an Anglo populace. This differed from Anglicization and assimilation as his plan called for a merger of the two Canadas to obtain this goal. The Canada Company had created a majority Anglo population in Upper Canada and it was this "superior" population who were to lead Canada politically after a merger. Thus, this merger would significantly reduce the influence of the franchise of French Canadians in the new united colony.

While the same end goal was achieved, that of diminishing the influence of the French Canadians and supplanting it with Anglo dominance, this new plan to dilute the franchise of the French was a break from the called for required immigration of the Anglicization policy. The successful Anglicization of the Canada Company had created a population of Anglos that did not exist fifteen years earlier. Durham could utilize this population to mitigate the political influence of French Canadians. The racial inferiority of the French Canadian provided Durham with the justification he needed to lessen the importance of the French Canadian franchise. Thus, the successful

Anglicization of the Canada Company in Upper Canada allowed Durham to break from the charter agreement with the BALC that called for Anglicization to Lower Canada.

### French Canadian Radicalism and Martial Law

In September 1837 in Montreal, a group of approximately seven hundred to eight hundred young French Canadian men formed a republican organization, *Fils de la Liberté*. They divided themselves into two groups, one to support political agitation and one to support military action if necessary. In August, the military wing organized themselves in deliberate imitation of an American group, the Sons of Liberty, and as they began weekly drill practice they became a visible threat to the Canadian government. Lord Gosford attempted to prosecute the group, but a grand jury refused to indict people for simply attending meetings.<sup>198</sup> Throughout the previous summer, however, many French-Canadians, including Papineau had cautioned against haste. They believed their battle was going to be a long one. Papineau, who was very fond of comparing French-Canadians to Americans, told his supporters to think of themselves as the American colonists ten years prior to the Revolution and the first move of their “revolution” was to imitate the Americans and abstain from all taxed articles.<sup>199</sup>

In October, the *Fils de la Liberté* published a manifesto demanding a government responsible to all citizens chosen by the people through elections. They also called for an overhaul of land sales process, called for the recall of BALC’s charter, and demanded a fair process for the sale of any public land. Lastly, they asked for the abolition of the practice of holding multiple offices and for equality before the law regardless of “distinction of origin, language or religion.” That same month, a “Grand Meeting of Six Counties” took place. After a speech by Papineau, Wolfred Nelson, a

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<sup>198</sup> He never however attempted to prosecute the members of the Doric Club, founded in 1836 in Montreal, a group of Anglo-Canadian Tories, who would clash violently with the members of *Fils de la Liberté*.

<sup>199</sup> Papineau, published in the *Vindicator*, June 6, 1837

*patriote* leader, advised the group that it was “time to melt their spoons into bullets.” Gosford responded to the manifesto of the group with legal action. Perhaps this is because Gosford claimed he would not “relinquish his principles” or perhaps he took offense at the claim in the manifesto that had been directed at him:

A governor as ignorant as his predecessors, and following the example of each one of his predecessors, turned into an official partisan, leads the governmental machine for the advantage of the small number, and is little concerned with the interests of the majority, or is even determined to be an obstacle to it.<sup>200</sup>

This time Gosford managed to get two indictments through the grand jury but the Attorney General, Charles Ogden, refused to prosecute. Ogden argued the offenses were too minor for prosecution and the political atmosphere too volatile. He believed dismissing the charges was the right thing to do for public safety.<sup>201</sup>

From their inception in September 1837, the two branches of *Fils de la Liberté* were active publishing manifestos, drilling their “militia,” raising liberty poles, holding public meetings, and declaring the independence of Canada from Britain. On November 6, they held a well-publicized meeting in Montreal to plant a liberty tree. As the group assembled, they were met there by members of the Doric Club, an Anglo-Canadian Tory Loyalist group. The ensuing clash, which is sometimes referred to as the “first skirmish of the Canadian rebellion,” went on for a number of hours, and the Doric Club continued a pattern of vandalism for the rest of the day. Numerous arrests were made by Sir John Colborne, including sixty-one people who were thought to be “sympathizers” with the rioters. Many of the sixty-one were leading citizens in the French-Canadian communities of Montreal and Quebec. Sensing the possibility of further violence, Sir John Colborne moved his headquarters, as well as the majority of his troops, to Montreal that day. Yet,

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<sup>200</sup> Thomas Starrow Brown, *Adresse des Fils de la liberté de Montréal aux jeunes gens des colonies de l'Amérique du Nord*, October 4, 1837. Accessed at <http://biblio.republiquelibre.org>. Translated in 2007 by Mathieu Gauthier-Pilote.

<sup>201</sup> CO 42/273 Lower Canada Despatches of Gosford, August-October, 195-197.

Gosford did not see this as a bold enough move to stop the upcoming violence.<sup>202</sup> Thus, on November 16, the Governor issued arrest warrants for the leaders of the *patriote* movement: Papineau, Morin O’Callaghan, Thomas Storrow Brown, and Wolfred Nelson. The French-Canadian population was enraged by what they considered baseless arrests and on November 22, a protest group stopped a cart transporting others arrested for attending *patriote* meetings and shots were exchanged between Colborne’s men and the protesters/*patriote* unit.

At this point Colborne decided it was time to take deliberate action to seek out the leaders of the French-Canadian movement and take action against those opposed to British rule. On November 23, he sent three hundred British soldiers, headed by Commander Charles Gore, to Saint Denis to face a force of approximately eight hundred *patriote* paramilitary forces. The French Canadians, however, were prepared for this battle. The French Canadians had cruder weaponry, yet they fought with fury. Thirteen French Canadian and twelve British lay dead by the time Gore ordered the retreat of the British troops. Yet, this was the only victory the *patriote* forces achieved during the rebellion. Two days later, more than four hundred British soldiers, along with the Royal Scots regiment, descended upon a troop of two hundred and fifty outmatched patriots at Saint Charles. At the end of this battle, more than one hundred and fifty French Canadians were dead, compared to only seven British soldiers. By December, hundreds of *patriotes* sought refuge in the United States, including Papineau and O’Connell.<sup>203</sup>

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<sup>202</sup> Alfred Decelles, *The ‘Patriotes’ of 37: a chronicle of the Lower Canadian Rebellion* (Toronto: Brook & Co.), 1920; James Boyd, *Sir George Etienne Cartier, his life and times; a political history of Canada from 1814-1873*. (Ayer Publishing, 1971)

<sup>203</sup> Rebellion History compiled from various sources in addition to those specifically mentioned in footnotes. See Fernand Oulette & Patricia Claxton, *Lower Canada 1791-1841 social change and nationalism*, trans. by Patricia Claxton (McClelland and Stewart, 1980); Orrin Edward Tiffany, *The Relations of the United States to the Canadian Rebellion of 1837-1838*, (Yutang Press, 2008); D.G. Creighton, “The Economic Background of the Rebellions of Eighteen Thirty-Seven,” *The Canadian Journal of Economics and Political Science*, Vol. 3, No. 3, August 1937, 322-334; G.S. Graham, *Canada: A Short History*. (London: New York: Hutchingson’s University Library, 1950); Francis Parkman, *A Half Century of Conflict* (Boston: Little Brown, 1922); M. Brook Taylor, *Promoters, Patriots and Partisans: Historiography in 19<sup>th</sup> Century English Canada*. (Toronto; Buffalo: Toronto University Press, c1989); Stanley B. Ryerson, *Unequal Union: Confederation and the roots of conflict in Canada, 1815-1873*. (New York: International Publishers, 1968)

Gosford instituted martial law on December 5, 1837, two weeks after the end of the hostilities in the colony. A group operating under the name of Frères Chasseurs planned a second rebellion in advance and had begun sporadically crossing the border from the United States into Canada in an attempt to continue their “revolution.” Yet, they had limited arms supply; thus, the second rebellion itself amounted to local skirmishes. The British military was able to successfully crush this movement completely within a matter of weeks. The power of martial law in the early nineteenth century was used to protect the rights of English settlers when threatened by those of a different “race.” By extension, the executive powers of the governor expanded as he declared these peoples hostile, but to do so, he had to first categorize them not only as threatening, but as a distinct race.

The use of martial law as a means of controlling colonial populations was becoming common in the early nineteenth century. It had been used in Barbados in 1805 to quell a French threat and in Barbados in 1816, Guyana in 1823, and Jamaica 1831-32 due to slave rebellions. In the Cape Colony just the opposite was true: the news of slave emancipation caused Afrikaners to revolt in order to maintain slavery and the British declared martial law and expanded colonial possession into the area known as Natal. In Canada, in both 1837 and 1838, Governors Gosford and then Colborne declared martial law in Canada. Yet, the purported intention of martial law was to control colonial populations *during* a time of rebellion, not after it had ended.<sup>204</sup> Gosford did not declare martial law until two weeks after the violence had ended. A much more common practice, other than outright martial law, and one which also took place in Canada with 160 prisoners left sitting in prison after the first rebellion, was the suspension of *habeas corpus*.<sup>205</sup> After a rebellion, particularly in the case of Canada, if there was no jury that a government could count on or if a populace seemed to be out for revenge and it appeared no fair trial could be provided, the suspension of *habeas corpus* was meant as

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<sup>204</sup> Jean Marie Fecteau “This Ultimate Resource”: *Martial Law & State Repression in Lower Canada, 1837-1838*, 246

<sup>205</sup> *Ibid*, 212.

a means protect the imprisoned. Although the fact that all of those imprisoned were of French Canadian origin suggests the restriction of the rights of that particular group.

Gosford had resigned in February 1838. One month prior, in January 1838, Lord Melbourne appointed Lord Durham to be Governor General of the North American colonies. However, Durham did not immediately depart Britain for the Canadian colonies due to waiting for the Home Government to become more secure in its position in the aftermath of the rebellion and he did not arrive in Canada until May. In the meantime, the interim Governor, Colborne, maintained martial law as a means of preventing a return to rebellion within the colony. He wanted to be able to take immediate action should violence return. Yet, he also had no functioning colonial government and no way to try the prisoners sitting in his prison cells.<sup>206</sup>

In February of 1838, Parliament replaced the French dominated Assembly with a Special Council appointed by the Governor. This council attempted to restore the legitimacy of the colonial government for all colonial residents. It first legalized the actions of the colonial government since the end of the rebellion, including the suspension of *habeas corpus*. Next, it offered legal protection, including pardons in many cases, to those who aided in the uprising. By the end of April, Governor Colborne felt the government had regained enough legitimacy to end martial law. However the Assembly still had no power, thus no true political representation existed for those of French Canadian origin.

Beginning on November 28, 1838 Colborne, who was appointed to the position of governor general after Durham resigned that same month, established a court martial tribunal which sat until November 29<sup>th</sup> 1839. This body oversaw the arrests of 106 prisoners. It executed twelve, deported twelve to Australia, granted twenty-seven conditional releases, and acquitted seventy-two. Martial law remained in force in the district of Montreal until August 24, 1839.

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<sup>206</sup> Colborne could not count on trial by jury due to the continued widespread animosity of the public, and the Legislative branch had broken down before the Rebellion.

The more important point to be observed is, the more Common Law is supposed to be extended to a colony in right of English blood and descent, the more it must be considered in favour of and for the protection of those subjects English descent, whose birthright it is presumed particularly to be. So that this theory, which has only lately been proclaimed upon such high authority, only makes all the clearer the power of a governor to proclaim martial law for the protection of the subjects of English descent whenever really required for their protection; as in cases of a really dangerous rebellion of those of a different or perhaps hostile, *race*.<sup>207</sup>

Lord Durham arrived in May of 1838 and stayed in the colonies until November 1838. He first visited Upper Canada where he was greatly admired by most Canadians and the Americans living just across the border whom he entertained lavishly at the expense of the Home Government. While there, he deported imprisoned *patriotes* to Bermuda for trial rather than testing the Canadian system of justice. He received harsh criticism for this back in Britain, because one of his charged duties was to test the system of justice in the North American colonies, not export it to another colony where he had no jurisdiction.<sup>208</sup>

While in Lower Canada, Durham formulated a plan, later to become known as *The Report on Canada*, or *The Durham Report*. Upon his arrival Lower Canada, he quickly came to the conclusion that the agitation in the colony was caused by “racial” conflict. He further surmised the solution to this conflict was the dilution of French institutions. To those on the ground who witnessed his racist attitudes, they believed he would back a continuation of the Anglicization policy, continuing the use of emigration to integrate French-Canadians into the British cultural, religious, and social institutions. This was exactly what the French Canadians had been fighting against for years and it is what had led to the rebellion. Durham had been sent by the Home Government as a supposed impartial negotiator and his apparent partisanship did not go unrecognized by the French Canadians. His plan in fact, when it was released over a year later, called for subjugation of the French through

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<sup>207</sup> W.E. Finlason, *A Review of the Authorities as to the Repression of Riot and Rebellion* (London: Stevens & Sons, 1868) 120-121. Quoted on page 213 of Fecteau.

<sup>208</sup> Cassandra Pybus, “Patriotes Exiles in Van Diemen’s Land” in *Canadian State Trials: Rebellion and Invasion in Canada, 1837-1838*. Eds. Frank Murray Greenwood, Barry Wright. Osgoode Society for Canadian Legal History. (Toronto: University of Toronto Press, 2002)

an already existing English populace in Upper Canada. Two days after his departure, the second rebellion began.

### Nationalism, Race, and Anglo-French Relations

The Canadian Rebellion was the latest in a long line of Anglo-French conflicts. There was a long tradition of anti-French attitudes in Britain. Both Linda Colley and Gerald Newman have argued that British nationalism was profoundly shaped by both contempt of and fear of the French. The 1707 Act of Union which formally constructed Great Britain had partly been a result of the French support for the Stuart dynasty. In the eighteenth century France and Britain were in almost a continuous state of war. When France aided the American colonies at the end of the century, it deprived Britain of not only the most profitable portion of the Empire, but also the portion to which the British felt most aligned emotionally. Both the American Revolution and the French Revolution exposed Britain to questions regarding the legitimacy of the monarchy and the British elite. The Napoleonic Wars raised the fear of French Military invasion. In fact, Ireland was annexed in 1800 under the Act of Union to prevent Napoleon from using it as a staging area for just such an invasion. Thus, British nationalism made it possible for people of Britain, regardless of class, ethnicity, or even country of origin to share a sense of unity fostered by war with a foreign neighbor.<sup>209</sup>

However, Francophobia was not universal throughout Britain. During the Enlightenment there was a considerable exchange of intellectual ideas between the British and French. In the mid-eighteenth century, despite the ongoing clashes, gentlemen both in France and England openly expressed their regard for the intellectual ideas of the other nation. Newman claims the “mature Enlightenment” was a product of a junction of French and English intellect. The union of thinkers

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<sup>209</sup> Linda Colley, *Britons Forging the Nation*. (New Haven, Yale University Press, 1997),4, 148-152, 322

such as Descartes and Bacon, Boileau and Bayle, Locke and Newton, Pope and Voltaire were all counterparts in this intellectual unity. However, Francophilia in Britain and Anglophilia in France were limited to the upper class. English gentlemen emulated French dress and hair styles. French cosmetics, jewelry, and tapestries were in great demand in England, as were French sauces for cooking. In France, English furniture, interior decorating and gardening were greatly admired and even displayed at Versailles. A movement in the eighteenth century in Britain sought to spread French standards of courtesy, table manners, and personal cleanliness amongst the English upper classes. In general, France and England were united intellectually and culturally to “promote the pleasures of the upper class.”<sup>210</sup>

In the last decades of the eighteenth century, powerful anti-French propaganda swept Britain. The French “character” was portrayed as the complete opposite of the British character. The French were depicted as “impure, dishonest, dissembling, imitative and servile.” They were connivers who angled to “seduce John Bull and his virtuous daughter.”<sup>211</sup> After the defeat of Napoleon at Waterloo the peril posed by a hostile neighbor dissipated. Yet, the British maintained many of these anti-French attitudes. This fear and loathing of the French was apparent in the treatment of French-Canadians.

The differing belief amongst the classes caused a nationalist, later to be called “radical” movement, to emerge in the mid-eighteenth century. It began as a means to expel French cultural hegemony from Britain. Because the upper class were hardened Francophiles, the movement sought to “clean up” politics and expand it beyond the upper class with the removal of men with loyalties to France. The continuous state of warfare in the eighteenth century and the fear of France and its influence led to paranoia that the French were plotting to dismantle Britain’s empire. The

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<sup>210</sup> Gerald Newman, *The Rise of English Nationalism: A Cultural History*. (New York: St Martin’s Press, 1987),16-18; Stuart Semmel, *Napoleon and the British*, (New Haven, Yale University Press, 2007), 175-200

<sup>211</sup> Newman, 231-232.

lower classes and “radicals” viewed the upper class as consciously or unconsciously aiding the French in that mission. It led to a great unpopularity of landed families and pushed forward movements for Parliamentary Reform including a greater inclusion of individuals within the political system.<sup>212</sup> Wars with French had meant greater demands on the lower classes and an increase in the British population. Increased taxation had made British citizens more politically aware. The recurrent threat of French invasion demanded loyalty of those of all classes. The expansion of the British populace to include the Scots and the annexation of Ireland also further complicated the issue of nationalism. The issue of granting citizenship to Irish Catholics, while still restricting the minority Catholic population in Britain, specifically England, caused great ire amongst the populace. Anti-Catholic attitudes also shaped British nationalism. Catholics, they believed, were prone to superstition and popery and Protestantism had been a move away from that to the “true” religion. The British populace and radicals viewed the Quebec Act of 1774, which gave French-Canadians the rights to serve in public office and the military without disavowing Catholicism, as an expression of anti-nationalist, pro-French influences at work within the political establishment.<sup>213</sup> Within Britain it was still required that all British soldiers took an oath of Anti-Catholicism. After the Quebec Act in Canada, however, a Catholic Relief Bill relaxing restrictions on British Catholics passed in both houses of Parliament in 1778. This bill led to the Gordon Riots in which a violent lower class physically attacked those of wealth and Catholics within England.<sup>214</sup> Thus, attempts to grant greater autonomy for Catholics were not met with respect or even acceptance amongst the British population.<sup>215</sup>

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<sup>212</sup> Newman, 159-200

<sup>213</sup> Connor O'Brien, *The great melody: a thematic biography and commented anthology of Edmund Burke*, (Chicago: University of Chicago Press, 1994), 93; Anthony Page, *John Jebb and the Enlightenment origins of British radicalism*, (Westport, CT: Greenwood Publishing, 2003), 173; Robert Choquette, *Canada's Religions* (Ottawa: University of Ottawa Press, 2004), 154-156.

<sup>214</sup> Newman, 201-215, Colley, 322.

<sup>215</sup> Colley, 352-354. The loss of the American colonies forwarded this need for reform in Britain. Reformers in Britain saw the loss of the American colonies as due to their own failures. “They had been corrupt and presumptuous, and they

The differences in beliefs regarding the French in Britain lend insight into the interaction between the British and the French in Lower Canada. The gentlemanly capitalists and the men serving in the Home Government were amongst those in Britain who admired French culture. The shared school experiences of these men would have included French intellectual thought and the courtesy and manners of being a gentleman were drawn from French social and cultural habits. This created a unity amongst gentlemen of both countries at least in the manner of thought and habits. The cultural and intellectual affinity between the upper classes of Britain and France, despite political differences and ongoing war, led the gentlemanly capitalists of the merchant sector of Upper Canada to believe the French-Canadians capable of assimilating to British standards. The British bourgeoisie living in Lower Canada were indeed Francophiles and broke from other settlers, particularly the laboring class in this regard.<sup>216</sup> However, the majority of British emigrants in Canada were not drawn from the upper class as pauper emigration was popular in the colony. The feelings of these settlers toward the French were in line with the lower classes in Britain; thus, they both feared and reviled all things French. The Francophobia of the settlers decreased the chances of integration of the two groups and make the failure of the Anglicization policy more certain.<sup>217</sup> The Francophobia of the Anglo-Canadians was different than what existed in Britain when the fear of invasion drove it forward; yet, it was still Francophobia.<sup>218</sup> When those who supported Anglicization realized the futility of their hopes of uniting the two peoples after the Rebellion of 1837, those of the upper classes who might have emulated the French in Europe came to believe the

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had warred against fellow Protestants;” thus, Britain was punished. Calls for parliamentary and imperial reform, religious tolerance, reforms for jails and mental facilities were seen as a means to regain their superiority and God’s favor. Adhering to these reforms would prevent future humiliation. The increased evangelicalism of the age led directly to the abolition movement. If Britain denounced the use of slaves and the slave trade and American and France did not, surely the national virtue would be certain and the superiority over those who did not do the same assured.

<sup>216</sup> Serge Courville, Robert Jean-Claude and Séguin Normand, ‘The Spread of Rural Industry in Lower Canada, 1831-1851, *Journal of the Canadian Historical Association*, Vol. 2, (1), (1991), pp. 43-70.

<sup>217</sup> Frank Murray Greenwood, *Legacies of Fear: Law and Politics in Quebec in the Era of the French Revolution*. (Quebec: Osgoode Society, 1993).

<sup>218</sup> Terrence Murphy & Gerald John Storts, *Creed and Culture: the place of English-Speaking classes in Canadian Society*. (Toronto: McGill-Queen’s Press, 1993), 11-20.

French-Canadians were incapable of assimilation due to an inherent inferiority. This then merged with the Francophobia of the lower class leading to systemic discrimination against the French-Canadian populace and recognition of the failure of the Anglicization policy.<sup>219</sup>

If British settlers had a deep repugnance for the French, the French majority population carried with them beliefs in the superiority of their established system of democracy stemming from the concepts of the French Revolution. In the immediate aftermath of the Rebellion there was a need to control the colonial populace to prevent further violence. To do this, an analysis of the “racial” tensions in the colony and an evaluation of any possibility of assimilation of the French populace were made in order to determine the future of the Anglicization policy or any policy which included the assimilation of the French populace. This was the purpose of Durham’s trip to Canada as well as a debate in the Commons to determine the best method of securing stability in the colony. The issue of “race” took center stage in both the report issued by Durham and the Parliamentary debate.

In Durham’s words:

I expected to find a contest between a government and a people; I found two nations warring in the bosom of a single state: I found a struggle not of principles but of races.<sup>220</sup>

John Stuart Mill and others like him, including Durham, felt the need to keep certain people racially defined.<sup>221</sup> Those who were responsible enough to be included in liberty would raise democracy to its highest potential. The gentlemanly class came to the conclusion that French Canadians were of a lower class than those emulated in France and thus equal to the lower classes in Britain. Just as they saw the lower class in Britain as unable to participate fully in government

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<sup>219</sup> Greenwood argues the French Revolution caused repugnance amongst the Canadian elite, and the rebellion of 1837 would strengthen this revulsion. Also, M. Brook, *Promoters, Patriots and Partisans: Historiography in 19<sup>th</sup> Century English Canada*. (Toronto; Buffalo: Toronto University Press, 1989); D.G. Creighton, 7, 322-324.

<sup>220</sup> *Lord Durham’s Report on the Affairs of British North America*. ed. with an Introduction by Sir Charles Lucas. Durham Report, Three Volumes. (Oxford: Clarendon Press, 1912), Vol. 2, 50.

<sup>221</sup> Joseph Hamburger, *Intellectuals in Politics: John Stuart Mill and the Philosophical Radicals* (New Haven: Yale University Press, 1965)

without the guidance of the upper class, they assumed French Canadians needed the upper class to provide that same supervision and leadership. However previous to the Canadian Rebellion, liberals had argued the French Canadians were ready for liberty. The Rebellion embarrassed the liberals and caused them to reevaluate their previous categorization of the French Canadians. They assumed they had made a mistake in their early classification of the French Canadians into a group who were ready for democracy. Thus it was the radicals, rather than the gentlemanly class who were more likely to assume a racist posture and abandon a policy of assimilating the French to English norms both due to their embarrassment over their mistaken classification and the categorization of peoples itself.

In Durham's report on Canada, he characterized the French Canadians as another race. One theory which addresses his reasons for doing so is put forth by Fernand Oulette. Oulette suggests Durham was a supporter of the middle class and the racial overtones of Durham's Report on Canada had to do with a dislike of the French Canadians caused by his perception of the French as transporting the *ancien régime* to the Americas. Oulette further suggests Durham viewed the French Canadians who worked the land as equivalent to the peasantry of Europe and the seigniorial system as parallel to "absolutist and feudal" France. Durham also suggested the British merchants had the attributes of the beginnings of a middle class, but did not see a possibility of that middle class thriving unless the superior British way of life was adapted by the French Canadians.<sup>222</sup>

The rebellion, however, was an indication that the large-scale emigration of the Anglicization policy was not working fast enough to increase the British population in Canada. Thus, Durham's Report advocated a union of Upper and Lower Canada. Since Upper Canada had primarily a British population, the union of the two would provide the British with a majority population in Canada and this would solve the "racial" problem through assimilation of the then minority French

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<sup>222</sup> Fernand Oulette, entry for John George Lambton, 1<sup>st</sup> Earl of Durham, *Dictionary of Canadian Biography Online*.

population. Janet Ajzenstat argues that Durham's policy was not racist, but was in line with the policies of liberalism and was founded in a desire to use assimilation to provide French Canadians with the most opportunity within the colony.<sup>223</sup> What she fails to recognize, however, was that liberalism itself, with its categorization of peoples, was fundamentally racist, as was any policy designed to displace the social, economic and cultural traditions of one peoples with another. So while Durham might have been in line with radical tenets of the day in suggesting the Union of the two Canadas and their eventual self-rule, his racism was actually a natural offshoot of his liberalism.

The word "race" was used frequently in the first decades of the nineteenth century. The term is littered throughout early nineteenth century imperial literature to describe peoples, regardless of skin color, including those of the British "race." Recent authors such as A.I. Silver, Gilles Gougeon, Phillippe Aubert de Gaspé and Micheline Cambrone have argued this term is a replacement for "ethnicity" and is therefore morally ambiguous.<sup>224</sup> It is true that at times it is used in morally ambiguous terms, but most times the term is derogatory. The first problem with treating the word "race" as ambiguous as these authors have done is the lack of definition between the terms "ethnicity" and "race". These authors claim the words are interchangeable, which they are not. Ethnicity assumes shared national, cultural, language and religious heredity. It is created in a bottom up fashion as members of an ethnic group identify on the basis of real or presumed common ancestry and this creates a sense of belonging amongst its members. Yet, race is a sociopolitical construct, a tool to produce social inequity. The term race refers to a division of peoples into groups based on a real or presumed ethnic grouping. However, unlike ethnicity where people self-identify based on a shared ancestry, governments who have control of various ethnic groups create

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<sup>223</sup> Guy LaForest, Janet Ajzenstat, G.M. Craig, 2006; Janet Ajzenstat, 1988

<sup>224</sup> For arguments of this type see A.I. Silver. *The French-Canadian idea of Confederation, 1864-1900*, (University of Toronto Press, 1997); Gilles Gougeon, *A history of Quebec nationalism*, Translated by Louisa Blair, Robert Chodos, Jane Ubertino. (Miles Kelly Publishing, 1994); Phillippe Aubert de Gaspé Père Micheline Cambrone, "Reflections on the Figure of a Nation in Les Anciens Canadiens" in *Francophone post-colonial cultures: critical essays* ed. By Kamal Salhi (Lexington Books, 2002)

categories of race. Thus while ethnicity and race do overlap in definition, before making an argument that the term race simply means “ethnicity” in the case of Canada and other colonies in the early nineteenth century, one has to consider the sociopolitical context of such colonies when determining the meaning and usage of the word race.<sup>225</sup> In the case of Canada, ethnicity was tied to an imperial policy which specifically intended to subjugate the French Canadian populace and to replace allegedly inferior French traditions with purportedly superior British ones. The British hoped the French would abandon their ethnic traditions, and accept British traditions as their own; thus an assimilation of French to British ethnicity. As Phillip A. Buckner has argued, the definition of the British race,

fluctuated between a circumscribed ethnic definition that focused on ancestry in the United Kingdom and a broader but still subjective cultural definition that could be extended to include at least some who adopted “British” values and British culture.<sup>226</sup>

Thus, assimilation could allow the French Canadians to overcome their race and join the British way of life. The British wanted to assimilate the French. The French-Canadians were not amenable to losing their centuries-old traditions. In fact, the French believed the new settlers should embrace their customs, which they happened to believe were superior, not the other way around. Papineau made a point of saying he was not racist but went on to say,

I love, I esteem all good men as men, not preferentially because they are of this or that descent, but I detest those haughty dominators who come amongst us and dispute our right to enjoy our own laws, customs, and religion. If such be not content to intermix with us, let them remain in their own country.<sup>227</sup>

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<sup>225</sup> On the difference between ethnicity and race, See- Karabenick, Woolley, Friedel, Ammon, Blazveski, Bonney, De Groot, Gilbert, & Musu, “Cognitive processing of self-report items in educational research: Do they think what we mean?” *Educational Psychologist*, 42(3), 139-151, 2007; U.S. Census Bureau. (2000). *State and County Quickfacts: Race*. Retrieved June 10, 2009. [http://quickfacts.census.gov/qfd/meta/long\\_68184.htm](http://quickfacts.census.gov/qfd/meta/long_68184.htm); Phinney, J.S., & Ong, A.D.

“Conceptualization and measurement of ethnic identity: current status and future directions.” *Journal of Counseling Psychology*, 54(3), 271-281; McKay, R. B. & De la Puente, M. “Cognitive testing of racial and ethnic questions for the CPS supplement.” *Monthly Labor Review*, 119(9), 2006, 8-12.; Sellers, R.M., Smith, M., Shelton, J.N., Rowley, S., & Chavous, T.M. “The multidimensional model of racial identity: A reconceptualization of African American racial identity.” *Personality and Social Psychology Review*, 2(1), 1998, 18-39.

<sup>226</sup> Phillip A. Buckner, *The Transition to a Responsible Government, 1813-1850*. (Westport, CT: Greenwood Press, 1985), 2.

<sup>227</sup> Quoted on page 195 of David Breckenridge Read, *The Canadian Rebellion of 1837* (C.B. Robinson, 1896)

In other words, let them become French! The inability or refusal of each group to assimilate the cultural, language, and religious ethnic ties of the other group, led to a construction of immutable racial identities of the French and British. Race could not be overcome through a change in religion or cultural practices.<sup>228</sup>

Precisely because the British believed the French incapable of change, they identified the French as incapable of overcoming their race. In *The Patriots and the People*, Alan Greer discusses the British volunteer militia, members of which refused to talk to the French populace. He recounts a story of Oliver Gagnez Lacolle, a French-Canadian citizen who came to volunteer to repel an attack from Vermont and instead he was arrested and held in jail for 2 days. The reason given to him by the captain (through an interpreter) was “he would not take those who did not speak English.” The racism was so deep the British did not trust anyone who spoke French to serve within their ranks even a volunteer who wanted to protect the same land. Further, instead of simply sending him on his way, they threw them in jail because he could not be trusted based on his language. Another account mentioned by Greer, is that of a volunteer sergeant who pistol whipped a French citizen and then declared it “not only proper, but indispensable” when dealing with French citizens.<sup>229</sup> The soldiers treated the French like livestock in need of whipping to keep the populace in line, because they refused to conform to the British cultural standards and due to the Francophobia which permeated their thoughts.

Lord Durham wrote in his report that the French “clung to ancient prejudices, ancient customs, and ancient laws not from any strong sense of beneficial effects, but with the unreasoning tenacity

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<sup>228</sup> Other examples of race versus ethnicity can be seen in a racial definition of Jews by the Third Reich, unlike centuries before where conversion would change their ethnicity, Jewishness was seen as something unchangeable and therefore racial. Another example of the construction of race exists in modern day Rwanda where both the Hutu and Tutsi were ethnically the same, with the same shared language, religion, and history. Yet the Belgian colonizers labeled the two groups as different races and gave one group superiority over another; thus creating a sociopolitical definition of race which would lead to genocide.

<sup>229</sup> Alan Greer, *The Patriots and the People*, 187.

of an uneducated and unprogressive people.”<sup>230</sup> He further goes on to discuss the superiority of the English,

The superior political and practical intelligence of the English cannot be, for a moment disputed. The great mass of the Canadian population, who cannot read and write...were obviously inferior to the English settlers.<sup>231</sup>

He stated the French “could not help but feel the superiority of the English enterprise” and “looked upon their rivals with alarm, with jealousy and finally with hatred.”<sup>232</sup> As a result, French Canadians looked with “considerable jealousy and dislike on the increase and prosperity of what they regarded as a hostile race.”<sup>233</sup> In a departure from the historiography which portrays Durham as racist and ignorant about French Canada, Janet Ajzenstat has argued that Durham’s work in Canada was in line with a “progressive universalist” mainstream liberalism, since he sought to use a policy of assimilation to open the widest political and economic advantages to French. Yet, Guy LaForest argued that Durham was a “one-sided sociologist” who used liberalism for imperialist purposes and his views were anything but open-minded.<sup>234</sup> The Anglicization policy was a policy of assimilation, which adhered to a belief in the superiority of the British peoples. Ajzenstat argues Durham’s suggestion of the Union of the two Canadas was a method of promoting a policy of assimilation in keeping with a long history of liberal thought; thus, it was not racist, but instead was a desire to better the French Canadians or at least the economy of Canada so that the Canadians would naturally assimilate. When Laforest suggests liberalism was used to forward an imperial agenda he is departing from the historiographical idea that the Union of the two Canadas, along with self-representation of the colony, was a liberal triumph. Both of these works bring to the forefront, albeit unintentionally, liberalism as a racist ideology or at the very least a compatibility of liberalism with

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<sup>230</sup>Lord Durham’s *Report on the Affairs of British North America*, 30.

<sup>231</sup> Lord Durham’s *Report on the Affairs of British North America*, 46.

<sup>232</sup> Durham, 36.

<sup>233</sup> Durham, 48-49.

<sup>234</sup> Guy LaForest, Janet Ajzenstat, G.M. Craig. 2006; Janet Ajzenstat, 1988

racism. Yet, despite or possibly in spite of the role of liberalism, the Anglicization policy failed due to the failure to assimilate those of non-British origin in the Colonies. The type of assimilation Ajzenstat suggests is more in line with the later policy of “Anglicization” which implied a slow cultural infusion of British ideals.

Durham’s radicalism seems at odds with this racism and in fact Ajzenstat has argued that Durham’s comments and report were not racist, but instead they were in keeping with a long tradition of liberal thought regarding the bettering of peoples. In fact there is some merit to such a claim. Liberals, also referred to as radicals, had a theoretical belief in universal equality which included the right of self-representation. Yet, in practice, they placed conditions on liberty. John Stuart Mill argued that liberty was limited to those who were mature adults, had no application to backwards societies, and could not exist in an area encumbered by war or severe internal turmoil. He and other liberals believed the colonies of the North Americas stood at a higher level of development in comparison to India and Africa due to the presence of European colonists. It was for this reason liberals believed the Canadian colonies were ready for representative government. Yet, the Rebellion changed many opinions to claim the French-Canadians were not in a sufficiently advanced state to receive the true principle of government.<sup>235</sup> The rebellion further deepened the racist Francophobia in the colony and spread it among the liberals in Britain. This leads some historians, such as Uday Mehta to suggest this period of liberal history was “unmistakably marked by the systematic and sustained political exclusion of various groups and ‘types’ of peoples.” Liberals referred to the “manifest political incompetence” of such peoples in order to categorize them as not worthy of political inclusion. Thus universal equality became one of is born with the natural right of freedom; however liberals placed restrictions on that right to exclude those who the liberals deemed

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<sup>235</sup>Uday Mehta

irrational. The determination of who was and who was not rational required a complex set of “individual and social indexes as the prerequisite of political inclusion.”<sup>236</sup>

Obviously, the French did not consider themselves an inferior race, but did feel themselves a people who were facing fully institutionalized discrimination. Thus, as BALC, the settlers and the Government “invaded” Lower Canada, the French-Canadian mentality burst forth from the province and a racial conflict arose. A great sense of resentment grew toward the British as they felt their religion, language and institutions threatened. These were the things which created their identity as a people.<sup>237</sup> The French Canadians were the majority population and in the “era of revolutions” it placed them on the path to rebellion.

### The Merger of the Canadas

When Durham reported on the post-rebellion colony, he stated the French-Canadians had an “all-absorbing hatred of the English.” He feared should an American army invade Canada, that army might “rely on the entire French population” for assistance.<sup>238</sup> One of the themes of Canadian historiography is the fear of American insurgence. This historiography forwards the opinion that the French Canadians and Americans were somehow bound by their common effort against the British in both the American Revolutionary and Seven Years War. The link created tensions between the British Loyalists who fled the United States for Canada and the French Canadian population. It also fostered ideas of Canadian independence from Britain as French Canadians looked in awe at their southern neighbor. A further argument discusses Britain’s realization of the difficulty of defending the Colony against United States encroachment and the impossibility of permanent border defense. Durham’s report was written after the uprising in Canada. During the

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<sup>236</sup> Mehta, 63. “manifest incompetence” is from Mehta quoting C.B. Macpherson, 75.

<sup>237</sup> François Labonté, *Alias Anthony St. John: les Patriotes canadiens aux États-Unis, décembre 1837-mai 1838*, (Presses Université Laval, 2004)

<sup>238</sup> Durham, 36.

uprising itself, the United States had declared its neutrality. During Durham's visit he had wooed the delegates from the United States. All of these reasons provided motivation for achieving long-lasting stability within the colony and made fear of American insurgence unreasonable.<sup>239</sup>

Yet, Durham claimed the true reason for the racial disquiet of the colony was the "vain endeavor to preserve French-Canadian nationality in the midst of Anglo-American colonies." A second theme in Canadian historiography is the clash of British and French-Canadians as a matter of imperial rivalry between France and Britain. This is the fear that France would someday return to take the colony or would back a rebellion against Britain by the French-Canadian populace.<sup>240</sup> One can make an argument that this fear might have provided partial motivation, as would the fear of American insurgence. Yet, it certainly is not a wholly accurate representation of the relationship with the Home Government or even Colonial government with the French population. The relationship here is one of an Imperial Empire and her subjects, not one of competing empires. It held the French population to be increasingly radical and irrational. Further, Government officials and the gentlemanly capitalists absolutely believed in the superiority of the British people and institutions and they thought of the French Canadians as an inferior race. A "great race" such as the English was sure to dominate the North American continent; therefore, Lower Canada, "must be made British with a majority British population."<sup>241</sup> Thus, the Anglicization policy received support based upon the "inferiority" of the French race and the need to raise them to a higher racial status through assimilation of British culture, society, law, and politics. In Canada Durham advocated a system to rid the colony of French traditions, supplementing them with English ones. Yet, fears of losing the

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<sup>239</sup> See Duncan McArthur, "Canada Under the Quebec Act," in *British Dominion, Vol. III. Canada and Its Provinces*. Eds. Adam Shortt & Arthur Doughty. (Toronto: Edinburgh University Press, 1914); Kenneth Bourne, 1967; Reginald C. Stuart, *U. S. Expansionism and British North America, 1775-1871*. (Chapel Hill: University of North Carolina Press, c1988).

<sup>240</sup> Arguments of this type can be found in Frank Murray Greenwood, 1993; G.S. Graham, 1950) and Francis Parkman, 1922)

<sup>241</sup> Apparently, the United States existed solely of British settlers and perhaps Mexico wasn't even part of his definition of North America!

colony due to an inability to control the populace should have been of greater concern than losing the colony to another country.

Yet the philosophical radicals had divided on the issue of Canada. They had defended the right of the French Canadians to self-rule prior to the rebellion and men like Roebuck, Grote, Leder, Hume and Wakely continued to support this ideal. They had hoped Durham would suggest a federalist system such as the one in the American colonies. In fact, Durham's original plan was that of a federalist system which called for independence from Canada. However Edward Wakefield arrived in the England before Durham's return and suggested the proposed plan to a few people and realized the loss of the Canadian colonies would cause great hostility. Thus, Wakefield warned Durham of this and Durham changed his plan to that of a Canadian Union. M.P. Roebuck called him a "dishonest coward" who had gone over to the side of the British oligarchs.<sup>242</sup>

Yet there was another group within the philosophical radicals who believed that maintaining some degree of authority over the colonies was necessary to protect financial interests in the two colonies, including BALC. This group included business men such as H.G. Ward, William Hutt, Benjamin Hawes, Charles Buller and Edward Wakefield. Edward Wakefield had suggested a policy of emigration which would continue placing the responsibility of the cost upon the gentlemanly capitalists and the land companies and would assure the success of the colonies through a better class of emigrants. Durham fell in line with these radicals, particularly because he himself was currently involved in plans for the New Zealand Association a colonization scheme in line with Wakefield's plans and also because he felt it more politically expedient to his own career to not suggest a loss of a colony. William Thomas argues that this issue of Canada permanently divided the philosophical radicals and led to the end of their political prowess. Yet, it was not only the philosophical radicals who disagreed with Durham regarding the maintenance of an unstable colony,

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<sup>242</sup> This is discussed in William Thomas, *The Philosophic Radicals*. (Oxford: Clarendon Press, 1979), 403.

and they did not all agree that the dispute was racial rather than political. While Lord John Russell, who was considered a “reformer” but certainly not a philosophical radical, was arguing for self-representation of Lower Canada, he suggested the struggle was no longer about the dispute between the races, no longer about the rebellion, and no longer about the right of one group to hold the governing power in Lower Canada. For him, and for the group of philosophical radicals following the teachings of Bentham and Mill, the freedom of Lower Canada seemed the only solution.

Is it then prudent to insist on keeping them in political subjection for a short time longer, knowing that they must soon be independent, and that if coerced now they will be hostile to England for many years—and that if an amicable separation be effected now, while it will anticipate the period of their independence but by a few years, it will render them sure friends o England, and convert their country from a burdensome colony into a most profitable free market for our manufactures, and a better and a more inviting field than now for emigration? The question, then, is now no longer one between parties in the colony only---it is no longer a question of right between the popular and the official parties, nor between the majority and the minority---nor, as the Government would have it appear, between the French and English races.<sup>243</sup>

Durham’s suggestion of the merger of the two Canadas, with an eye towards the assimilation of the French Canadians by including those of Upper Canada in their government, was simply another means of overtaking the French Canadian populace. Yet his plan was eventually implemented by the Government. Once again we see the Canada Company as the sole land company that had any merit in the colony. For Durham, BALC no longer needed to exist and his suggested merger would ensure that. Quebec was to remain in political quarantine until such time as the French Canadians assimilated to British standards, Ontario and thus the Canada Company would remain in control of the entire Canadian populace and continue to grow the population of Canada with British settlers. Thus the elimination of BALC was a natural offshoot. The merger would further end the necessity for the agreement between the gentlemanly capitalists of BALC and the Home Government as far

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<sup>243</sup> Lord John Russell, speaking as the leader of the House of Commons during Parliamentary debate on the Affairs of Canada, Hansards, Vol. 39, House of Commons Debate, December 22, 1837, 1428-1507. (Hereafter PP-CA)

as the Anglicization policy was concerned because the Government no longer had the need to send further emigrants to the colony to balance the French-Canadian population with British subjects.

### The Lessons of 1837-1838

Britain's Anglicization policy suffered many setbacks in 1837, in South Africa and Australia as well as Canada. Britain had subsidized emigration to the Cape Colony beginning in 1820 in an attempt to assimilate the Dutch-speaking Afrikaners to British social, economic, and cultural authority. However, the Select Committee on Emigration determined in 1827 that state-funded emigration was not the solution, citing the expense. By that point, of the government's alliance with the Canada Company had taught it that the gentlemanly capitalists of the land companies provided a viable alternative means to achieve Anglicization. However the policy as a whole was threatened when just seventeen years after the first British emigrants settled in the Cape Colony, the Afrikaners decided they could no longer live under the imposition of British traditions and authority and chose to leave the colony en masse.<sup>244</sup> In this so-called Great Trek, which reached its peak in 1837, more than ten thousand Afrikaners left the colony with their family members, livestock and worldly possessions.<sup>245</sup> Also in 1837, the Colonial Office issued a proclamation stating that people found in possession of land without authority of government would be considered trespassers. This came in direct response to a situation in Australia in which indigenous occupants of the land had "sold" land without understanding what they were doing. The proclamation, along with a *House of Commons report on Aborigines* issued in 1837, demonstrated recognition of British lawmakers to aboriginal rights

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<sup>244</sup> It was determined by the Select Committee on Emigration 1826-1827 that state-funded emigration was not the solution. This is discussed in the introductory chapter. Also, it should be noted here that one of the British rules the Afrikaners objected strongly to, was the abolition of slavery. They refused to give up their slaves.

<sup>245</sup> For more on the Cape Colony or the Great Trek, See Timothy Keegan. *Colonial South Africa and the Origins of Racial Order*, (University Press of Virginia, 1996); Basil Alexander Le Cordeur. *The Politics of Eastern Cape Separatism, 1820-1854.*, (New York: Oxford), 1981; J.G. du P. Pretorius, *The British Humanitarians and the Cape Eastern Frontier, 1834-1836.* (Pretoria, 1988)

to land. This recognition, along with the failure to assimilate peoples, was the foundation for a new imperial policy that left Anglicization behind.

The Canadian Rebellions of 1837-1838, along with the Great Trek in the Cape Colony, caused the British Government to abandon its policy of Anglicization in order to prevent further uprisings in the colonies. The introduction of BALC had escalated the tensions between the Anglo and French Canadians, leading to an abandonment of assimilation to a policy of racial exclusion through the merger of the two Canadas. The government discarded its previous agreements with gentlemanly capitalists, including breaking contracts and abandoning charters when it felt it became necessary to maintain the stability of a colony. This posed a threat not only to the economic bottom line of the gentlemanly capitalists as a whole, but to those of the landed class who had anticipated this policy would extend overseas their diminishing dominance at home. The Government, however, shifted their colonial policies to now include some colonial realities. As they moved towards the end of the 1830s and into the 1840s, this new policy attempted to consider those colonial realities, including humanitarian concerns of non-British colonial inhabitants. Those negatively affected by the change, such as BALC, challenged new procedures and others even outright defied the Government, as in the case of the New Zealand Company. They petitioned their gentlemanly contacts, the court systems, and others within government for a return to their privileged status. After 1837, however, they never again shared an alliance as strong as the one they shared with the Government in the now failed Anglicization mission.

Durham reacted to the failure of BALC to Anglicize the French Canadians with a suggestion for a new policy towards Canada which would reduce the political influence of the French Canadians. His suggestion of a merger of the two Canadas with the Anglos of Upper Canada firmly in charge was yet another reflection of the success of the Canada Company. Without that company's achievement of settling a large number of Anglo Canadians in the 1820s and 1830s, there would be

no “superior” Anglo population with which to suppress the French Canadians. Durham recognized that Anglicization via settlement was necessary, but due to the French lack of desire to assimilate, it was not an adequate method of obtaining order within the colony. Thus, he suggested forced assimilation via other means. His plan called for utilization of the success of the Canada Company to take over where BALC had failed. A merger of the two Canadas would dilute the French Canadian franchise and leave the allegedly superior Anglo Canadians with majority control of the new colony.

The merger of the two Canadas would allow the British to keep French Canadians in a perpetual state of political inferiority. In Canada, when French Canadians refused to assimilate; a sociopolitical construct of race was created which claimed the French were incapable of overcoming their race and thus should have a diminished right to participation in the political process. This racial construction was in line with liberal policies which categorized peoples based upon their readiness for self rule. Thus while liberals and philosophical radicals were pushing the concept of natural rights and liberty for all, they limited the right to autonomy to only those deemed by them to be ready to take on the hefty burden of self government. This was largely determined by the readiness of groups to assimilate to British ideals. They saw the Dutch Afrikaners who refused to assimilate to a policy of slave emancipation as inferior and created a racial construct to support this classification. This eventually led to the Boer War. Members of Parliament deemed the aboriginal tribes of Australia as in need of protection thus passed laws which recognized the rights of aboriginal peoples to their land. Despite this law, the British struggled to understand land ownership that differed from their own. The Maori of New Zealand, for example, did not erect permanent dwellings, fences, hedges, or towns, thus, the British viewed most of the land in New Zealand as empty and in need of improvement. Yet the home government passed laws of a “humanitarian” nature which were designed to protect those subjects the British deemed as inferior

as the government sought to distance itself from the failed Anglicization policy, yet at the same time maintain control of the colony. Distancing themselves from the Anglicization policy also required a break in the relationship with the gentlemanly capitalists with whom they entered into the business of settlement. Thus, when a group of men proposed a land company to settle New Zealand, the government refused their bid. The New Zealand Company would be born in the struggle of gentlemanly capitalists to maintain their preferential relationship with the government and a racially charged “humanitarian” environment.

## Chapter 6- Settlement without Anglicization: New Zealand, 1839-1845

London's changing political, legal, and business practices and new concerns regarding the rights of indigenous and non-indigenous colonial residents caused stability to become of primary importance to colonial policy. It also, however, created a need for the Home Government to discard its former arrangements with the gentlemanly capitalists who ran the land companies in the Empire. This was not a simple process. The Home Government had legal obligations to the companies in the form of charters. It had significant professional and social obligations to many of the gentlemanly capitalists, as many of the directors of these companies served alongside policymakers and had shared business and social relationships. Discarding these agreements represented not only a potential breach of contract, but also a break from longstanding British legal and social traditions. Yet all this had been called into question by the failure of the Anglicization policy, which was best observed in Lower Canada where BALC and the Government had entered into the business of colonization together with a goal of supplanting the French Canadian population with British subjects. Lord Durham blamed BALC for the Canadian rebellions of 1837-1838, claiming (among other things) that BALC had fueled the racial tension in the colony with its choice of political appointees. He further claimed that the Government's close relationship with BALC was an exception to the general system,

Instead of being subjected to the competition of auction at the established upset price of the district in which their land is situated, they were allowed to appropriate an immense tract, consisting in part of Crown Reserves, of the most valuable land in the Province, and for a price considerably below the average price then required from all other purchasers of Crown land in that district.<sup>246</sup>

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<sup>246</sup>“Durham to Glenelg”, July 31, 1838, *House of Commons papers; Accounts and Papers, Colonies: British North America*, Vol. 32, (London: HMSO, 1839), 151.

Yet as we have seen with the Canada Company, it was in fact not an aberration. Durham made this claim because as the Government attempted to free itself from this relationship and end the Anglicization policy, it needed to break its contract with BALC and this required the government to demonstrate this relationship was an anomaly.

The shift in imperial policy from the Anglicization policy left a void that needed to be filled with a new working plan for the colonies. Yet it was necessary for any new imperial policy to address the concerns Anglicization had raised. The concern for the expense of the empire is illustrated by historian C.C. Eldridge as he claims by the late 1830's the expense of the empire was overwhelming and, as a result of this expense, the ideology of empire shifted toward defending and governing natives.<sup>247</sup> This claim is partially correct, since the government was indeed concerned with defending native rights and the expense of the empire, but these were not the only concerns that formed colonial policy. The primary motivation was promoting stability in the colonies; thus, the consideration of native rights was imperative, but in the aftermath of the Canadian Rebellion, it became apparent that the rights of non-indigenous colonial residents were also an important consideration in the formulation of a new imperial policy. However, the true focus was not defending these rights as Eldridge suggests, rather it was upon promoting stability in the colonies. Stability would allow Britain to reduce the cost of Empire while still maintaining an imperial presence. The rights of non-indigenous colonial residents were important, but this was because it was necessary to keep the peace, not because philosophical radical politics, evangelical religion, or even humanitarian concerns pushed the colonial agenda.

Despite the abandonment of the Anglicization policy, settlement, land companies and gentlemanly capitalists remained relevant for political and economic reasons. Land companies, while no longer acting officially in concert with the government, continued attempts at settlement, at times

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<sup>247</sup> C.C. Eldridge, *The Imperial Experience: From Carlyle to Forster*. (Houndmills, Basingstok, Hampshire: Macmillan Press, 1996)

in direct defiance of the government's orders. In 1837, an attempt was made to create a company to colonize New Zealand. This New Zealand Association was one of the first land companies to attempt to get a colonization project off the ground after the failure of the Anglicization policy. New Zealand was political significant for Britain because France had a rival claim to the islands and further expansion in the Pacific by the Russians and Americans made the British fear a challenge to their naval superiority in the area. New Zealand also held economic significance as the colony contained a great deal of timber, which attracted investors, particularly those in the shipping business. Thus in 1837 New Zealand was notable for its allure to government officials and investors. Yet Durham's solution to the failed Anglicization policy in Canada, which had succeeded due to the prior patterns of settlement in the colony, did not apply to New Zealand. In 1837 in Upper Canada had a large tract of land that had recently been settled by Anglos. This provided Durham with the option to fold the French Canadians in Lower Canada into a single political unit in a united Canada. This solution was not an option in New Zealand because there were very few Anglo settlers in New Zealand and the Maoris were not part of a pre-existing polity.

Faced with this situation, Durham appealed to the differences between the Maori and the French to attempt to justify the necessity of land companies in order to promote stability in New Zealand. In his view, the French Canadians had the capability to choose to advance to the level of the British, yet they stubbornly refused to do so. On the other hand, he claimed that the Maori did not have a western sense of land usage and therefore were incapable of advancement without the help of the British. Thus, no attempt would be made to Anglicize the Maori population. Yet, the French in Canada and the Maori in New Zealand had much in common. Both were non-indigenous to the colonies in which they resided. The Maori are estimated to have arrived in New Zealand in the mid-14<sup>th</sup> century. For this, and other reasons, the British viewed both French Canadians and the Maori as at a higher level of development than indigenous colonial residents, i.e. the Native Americans.

The British categorized the Maori as more advanced than the natives indigenous the Americas due to their knowledge of the art of war, the weapons they used and their perseverance in long campaigns.<sup>248</sup> The French in Canada, while looked down upon, were viewed by the British as offspring of their European homeland.

If we accept Oulette's thesis regarding Durham's beliefs on Canada, in which he suggests Durham disliked the concept of pauper emigration because he believed it prohibited the success of the imported British merchant class in Canada, it would follow that the colonization of New Zealand which sought to exclude peasants and pauper emigration would garner the support of Durham. Of course we also must consider that one of the men who traveled with Durham in Canada was Edward Gibbon Wakefield. Wakefield's ideas regarding systematic immigration, combined with his personal friendship with Durham, may have also turned Durham's eye toward supporting the colonization of New Zealand. Wakefield proposed a theory of systematic emigration in which waste lands would be sold to settlers, the funds from those sales would then be utilized for bringing the settlers to a colony. This differed from both the Canada Company and BALC as funds from land sales were earmarked for the running of the colonial government. Thus, the colonial government would be funded as the land company hand-selected settlers who were sure to boost the economy upon their arrival. Wakefield's plan called for the price of the land to be set at high enough prices to prevent pauper emigration. He further believed this would prevent individual settlers from buying overly large parcels of land. Smaller parcels of land held by each owner would increase the overall productivity of the colony as efficient use of the land would occur. The land company would be responsible for overseeing these settlements and for governance of the colony until such time as the settlers themselves could represent themselves. This plan did not consider Maori as ever being ready to take part in that government, but like the French Canadians, the Maori would benefit from

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<sup>248</sup> Earl Grey, *Colonial Philosophy of Lord John Russell's Administration*, (London: A.M. Kelly, 1853)

the imposition of British traditional structures. This plan, believed Durham, Wakefield and others, would lead to stability in the colony. Yet in the new political and economic atmosphere it would be difficult to get a majority within the Home government to agree.

Three attempts to create land companies to settle New Zealand occurred between 1825 and 1839. The first two companies formed in 1825 and 1837 were false starts. These failed companies, which will be the focus of the first two sections of this chapter, provided the gentlemanly capitalists with an ongoing desire to settle New Zealand as they sought to recoup losses from the earlier companies. This desire, along with knowledge gained from the two earlier companies allowed a third company to begin operations in 1839 called the New Zealand Company. When it became clear to this company, which will be the focus of the rest of the chapter, that Britain would annex New Zealand as a colony, the directors of the New Zealand Company took a risk and defied the government's plans for the settlement of New Zealand. In their haste to begin operations in New Zealand, however, the Company did not purchase the land it sold to the settlers before their arrival in the colony. The quest of this company to obtain a charter is addressed in this chapter. Also highlighted is the Home government's new imperial policy designed to maintain stability within the colonies. As a result of this new policy, the Home government entered into a contract intended to secure Maori rights, the *Treaty of Waitangi*. This contract was at complete odds with the charter eventually issued to the Company. When the Whig government fell in Britain, domestic political changes came to the forefront and along with them came objection to land companies. Thus, the validity of land purchases by the company from the Maori came into question and provided the Home government with an escape from an agreement with the Company. This struggle between the Company and Home Government is the subject of the end of this chapter and is again addressed in the following chapter.

## **False starts**

The first two attempts to form land companies for the settlement of New Zealand failed, for different reasons. In 1825, the company failed due to an unwillingness of the company to realize that state-subsidized emigration was a thing of the past and that Anglicization, utilizing a partnership between land companies and the government to populate colonies with British subjects, was the new imperial strategy. In 1837, the company failed due to an inability of the company's directors to realize that the policy of Anglicization was over and that new priorities, which included the need to prevent future rebellions in the colonies, were now in place.

### The 1825 New Zealand Colonization Company

In 1825, as the Canada Company was pursuing its partnership with the government's Anglicization policy, a group of elite politicians, merchants and financiers formed the New Zealand Colonization Company with the initial intent to establish control over New Zealand's domestic products, specifically timber and flax. Among this group of men were the philosophical radicals, Lord Durham, Francis Baring, and Edward Ellice. Durham's involvement with this group in 1825 tends to dismiss the theory forwarded by Oulette that Durham became involved with the New Zealand Companies for the purpose of spreading Britain's merchant class overseas. Wakefield had yet to author his emigration scheme in 1825, although he was a vocal proponent of this 1825 company. It appeared that Durham believed in the Anglicization policy recently introduced to imperial policy. The fact that he was against colonization of Canada might have had more to do with the fact that Canada was an established colony, whereas he believed that New Zealand's less advanced society would benefit from the introduction of British traditions.<sup>249</sup> On the other hand, some Tories, such as Robert Peel and Arthur Wellesley, the first Duke of Wellington, believed the

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<sup>249</sup> Anthony Trollope, *Australia and New Zealand, volume 2*. (London: Chapman & Hall, 1873)

answer to overpopulation and unemployment in Britain was state-aided emigration. But as we have seen the British government had abandoned the idea of state-aided emigration in favor of a union with gentlemanly capitalists of land companies to settle British colonies. Thus it appears that Durham was more up to date with the government's current policy than the Tories, even if his support of one colony over another seems inexplicable.

In addition to overall imperial policy changes, Earl Bathurst and William Horton of the Colonial Office made it clear to the Company that New Zealand was not a possession of the Crown; therefore, the Colonial Office would not support colonization. The Tories further could also not convince Parliament to expend the funds for emigration.<sup>250</sup> The Colonial Office supported commercial ventures in New Zealand, but would not provide military support under any circumstances.<sup>251</sup> Of course any commercial venture was limited by the new rules affecting Foreign Funds securities and joint stock companies. The Colonial Office further saw no reason to join together with these gentlemen in a policy of Anglicization as they had in Canada. Yet, this did not deter the Company, and with a promise of a Charter from the King, it sent out two ships filled with emigrants in 1826. However, when the ships arrived in New Zealand, Captain James Herd claimed the area set aside for the settlement was unsuitable for habitation. Herd surveyed various areas of the country from September 1826 until January 1827, and he made the decision to bring the colonists to Australia rather than spend the time with them in New Zealand. Once in Sydney, he forwarded deeds for the lands purchased in New Zealand to the Company, and sent a report back to London detailing his mission and his belief that the exports of New Zealand would not meet the financial expectations of the Company. He then paid off his crew, and he sold off the leftover equipment and supplies. The total cost to the company for this expedition exceeded £20,000.

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<sup>250</sup> Patricia Burns, *Fatal Success: a history of the New Zealand Company*. (Birkenhead, NZ: H. Reed, 1989), 27-28.

<sup>251</sup> Robert McNab, *Muribikau: A History of the South Island of New Zealand and the Islands Adjacent and Lying to the South, from 1642 to 1835*. (Wellington: Whitcombe & Tombs Limited, 1909), 357-366. : Patricia Burns, 27-28.

Colonel Robert Torrens, a director of the Company, a navy man and an economist, was not satisfied with Herd's report. Therefore, he devised a plan to settle one hundred families in New Zealand. His plan called for these families to relocate to New Zealand and work growing flax. His belief was one shipment of flax could recoup the £20,000 loss and pay for the relocation and settlement costs of the emigrant families. The other directors agreed; thus, the Company applied for exclusive trading rights with New Zealand. The Colonial Office denied them this request. The Company then requested permission to establish a fort with a small number of men. Again, they were denied. Without government support and with the report of Herd still fresh in their minds, the men of the Company decided to temporarily put aside their plans for colonization of New Zealand and dismantle the New Zealand Colonization Company of 1825 in late 1827. Little did they know that Herd's crew from the *Lambert* had returned to New Zealand and had begun a very profitable flax and timber trade with Australia. This was the same flax and timber Herd's report claimed could never be profitable.<sup>252</sup> Thus, because of this early interaction, New Zealand never strayed far from the minds of those gentlemanly capitalists who were drawn to it through the lure of anticipated high yield on investment and now they had a further desire to recoup their original £20,000 investment.

#### The New Zealand Association 1837-1838

One month before Lord Durham's January 1838 appointment to Canada, in December of 1837, he and other gentlemen such as William Hutt, Charles Buller and Sir William Molesworth<sup>253</sup> were making plans for a colonization company to settle New Zealand. These philosophical radicals and others who opposed the BALC's method of colonization in Canada, supported colonization in New Zealand as the New Zealand Association planned on utilizing a new emigration scheme, one which excluded pauper emigration and promote a "better quality" of settlers. These gentlemen sought to

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<sup>252</sup> Burns, 21-23, Captain Herd also kept at least 2 of the land deeds for himself that had been purchased with Company money.

<sup>253</sup> Notably both Molesworth and Buller were philosophical radicals.

implement Wakefield's theories of emigration in an attempt regain ground for the landed elite. In these plans for the company and the colony, existing power struggles emerged. Within the City, this company was attempting to circumvent new laws regarding oversight and monopolies. Questions also arose regarding fair acquisition of land, the question of race, and as always the expense to the Empire. This company never got off the ground, but through its struggle to exist it was apparent that the Anglicization policy was obsolete and these gentlemen did not have the same type of partnership with the government as either the Canada Company or BALC. As a new colonial policy emerged in Britain, these gentlemen continued to push for preferred status with the government. A Parliamentary Select Committee on Aboriginal Tribes in 1836-1837 articulated a need for recognition of native occupiers of the land. This became integrated into the new imperial policy, particularly as concerns regarding colonial stability became paramount after the tumultuous years of rebellion in the Empire in 1836-1838. It also hindered the gentlemen of this company as they sought to recoup their losses from the 1825 Company.

The Association's plan was to employ Edward Gibbon Wakefield's emigration strategy in which colonists paid for land in the colony before they left Britain. This money would then fund their transportation to their new home and Britain would absorb no cost for the transportation. Durham had disliked BALC's practice of pauper emigration; thus, he supported this plan and believed it would prove more successful than BALC's strategy. The Association planned to purchase land from the Maori, sell land to the British emigrants and use those funds to transport colonists to New Zealand. Wakefield argued that wastelands could be sold to young married couples who were laborers. This would relieve the overpopulation in Britain and provide a new colony with young, ready to work couples who would soon populate the colony with more of the same. However, Wakefield argued that the price of crown land had to be made high enough to discourage settlers from buying land they could not utilize. A higher cost of purchasing land while in Britain would prevent pauper

emigration. This method would also, he claimed, encourage emigration, attract capital investment, and give the colonists the right to have and elect representatives to their own legislative body. He suggested that this would transplant British society to the colonies. Wakefield was able to attempt to put forth this scheme with the South Australian Colonization Commission in 1833, chartered in 1834.<sup>254</sup> In February 1835, Colonel Torrens was made chairman of the Commission and Wakefield's scheme was abandoned in favor of Torrens plans which included low priced land which to be sold to investors rather than directly to laborers.<sup>255</sup> Wakefield discarded his role with that company and instead began to focus on the New Zealand Companies. Yet Wakefield's association with the New Zealand Companies in the historiography has been overstated. While he did author the emigration theory the 1837 and 1839 New Zealand Companies adopted and he spoke publicly in favor of plans to utilize his emigration scheme to colonize New Zealand; he never served as a director of any of the New Zealand Companies. His involvement focused primarily on the dispensation and implementation of his emigration scheme.<sup>256</sup>

In addition to settling New Zealand, the Association wanted to govern the colony. They did not want the interference of a colonial governor who did not share their vision for the colony. To defend this aim, which on the surface paralleled the East India Company's combination of economic and political power, Durham attempted to head off claims that the company would create a monopoly in New Zealand. He insisted that while

A knowledge of political economy in modern times has condemned the practice of placing in the same hands a private interest and a public duty..... if the corporate government had a private interest, there would be grounds for asserting that they had attained privileges and a monopoly.....<sup>257</sup>

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<sup>254</sup> Grame L. Pretty. "Edward Gibbon Wakefield," *Australian Dictionary of Biography*.

<sup>255</sup> Robert Torrens, *Colonization of South Australia*, (London: Longman, 1835), 12.

<sup>256</sup> P. Bloomfield, *Edward Gibbon Wakefield, Builder of the British Commonwealth*. (London: Longmans, 1961); J.S. Marais, *The Colonization of New Zealand*, (London: Oxford University Press, 1927)

<sup>257</sup> PRO CO 209 2, Secretary of State Correspondence 1838, Durham to Glenelg, December 30, 1837, 439.

But in this case he claimed an exception, because the New Zealand Association did not plan to have authority over both islands of New Zealand; therefore some other company had the option to operate in another area and thus promote “competition.” Thus, he claimed there could be no true monopoly; therefore, there could also be no conflict between private interest and public duty. This position of Durham’s flew in the face of the values of liberalism which promoted free market values. While his argument suggested the Association was not a monopoly, it is clear that he favored a monopoly on at least one of the islands. The unity of purpose a monopoly would create would head off controversy between companies and thus, assist in promoting stability in the colony.

The New Zealand Association moved towards obtaining rights to settle New Zealand despite mounting criticisms of its approach to colonization. The call for assigning political authority to the Association worried some people, particularly James Stephen, the Undersecretary of the Colonial Office, who associated it with “incurring expenses, multiplying offices, and granting Salaries.” He feared access to funding would create a “dynasty” which was completely exempt from [British governmental] control. He also believed that “no private company could succeed in colonizing,” as the companies had limited means and only the government had the resources to fund such an enormous undertaking.<sup>258</sup> Dandeson Coates, Secretary for the Church Missionary Society, raised the additional concern, based on the difficult time missionaries had in obtaining land from the Maori, that the Association’s plans were impractical, short of dispossessing the natives of their land.<sup>259</sup> Jabez Bunting from the Wesleyan Missionary Society added, in a letter to Glenelg, that a British colony would “most seriously affect the rights and interests of the natives of New

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<sup>258</sup> Stephen wrote these words to Lord Howick quoted in Burns, 46; Stephen’s support of state funded migration was no longer considered a viable option; P. Knaplund, “Mr. Oversecretary Stephen,” says that Stephen was “always on guard against monopolies”, 52 & 65.

<sup>259</sup> This letter was published the following year. Dandeson Coates, “The Principles, Objects, and Plan of the New Zealand Association Examined, in a Letter to the Right Honourable Lord Glenelg, Secretary of State for the Colonies,” (London: Hatchards, 1838)

Zealand.<sup>260</sup> This letter came in the immediate aftermath of the first Canadian Rebellion when liberals in Britain sought to restructure their categorization of non-indigenous colonial residents. In light of these different concerns, Glenelg wrote to Durham in December 1837 that the Maori were:

not savages living by the chase, but tribes who have apportioned country between them, having fixed abodes, with an acknowledged property in the soil and with some rude approaches to a regular system of government... Great Britain has no legal or moral right to establish a colony in New Zealand without the free consent of the natives, deliberately given, without compulsion and without fraud. To do so would be an unrighteous use of Britain's superior power.<sup>261</sup>

Further, due to the Maoris' superior knowledge of the art of war, Glenelg wanted to know how the Association could financially guarantee the defense of the British colonists. Citizens of England did not lose their rights once they leave English soil; thus, they were still entitled to protection. In order to claim England was not responsible for that expense, the only choice would be for England to absolve their allegiance to the emigrants leaving their soil.<sup>262</sup>

Thus, concerns regarding the creation of a monopoly, possible expense to the Empire, violation of Maori and colonist rights, and the seeming impossibility of just land acquisition had Glenelg, Stephen, and others looking warily at the proposed plans for the Association. The discussion of the plans for the New Zealand Association occurred at the same time as the outbreak of the Canadian Rebellion; thus, Anglicization was on its way out and search for a new plan for the colonies had begun. However, given the political connections of the gentlemen of the Association, and fearing political reprisals, Lord Glenelg offered the members of the Association a Charter if they agreed to specific conditions. The Association would be allowed control of the administrative, legislative, judicial, military and financial affairs of New Zealand. However, the British Government would have the power of oversight to prevent abuses by the Association. Further, the company must form

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<sup>260</sup>PRO CO 209 2, Bunting to Glenelg, December 1837, 393.

<sup>261</sup> PRO CO 209 2, Glenelg to Durham, December 27, 1837, Glenelg is referring to the Select Committee on the present State of the Islands of New Zealand, 434-39.

<sup>262</sup> PRO CO 209 2, Glenelg to Durham, 30 December, 1837, 440.

a joint-stock company and they must have “a certain subscribed capital,” paid up front before the institution of the charter. None of these things were unusual, as we saw with both the Canada Company and BALC, but the shareholders objected to being subject to the stock market, and further objected to the call for up-front capital. Wakefield’s plan did not call for advance capital. Charles Buller, a member of the Association, later stated that their “repugnance to such a speculation induced them to reject Lord Glenelg’s offer of a proprietary Charter.”<sup>263</sup> The Colonial Office withdrew their offer in February 1838. The members of the Association then decided to try their hand at a private bill in the House. In June of 1838 the bill was defeated by a resounding majority, due to the lack of concern the Association’s plan provided for investors, British settlers and the Maori. There was a clear shift in policy from working with gentlemanly capitalists of the land companies to an almost adversarial relationship at times, as the Colonial Office and others in government sought to promote stability within the Empire in the aftermath of the rebellions of 1837-1838.

Interestingly, Durham’s letter regarding BALC came just one month after the dismantling of the New Zealand Association. In that letter he claimed that BALC needed to pay their debts because all land companies needed to be treated with the same sense of “fairness.” Yet the Association objected to obtaining a Charter which was similar to that of BALCs. Durham had an aversion to BALC and its practice of pauper emigration. He blamed BALC’s practices for the existing problems in Canada and within the current system of imperial investment. Yet twice now, he could not do what the Canada Company and BALC did, get his own company off the ground.

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<sup>263</sup> Charles Buller, (member of NZA, and MP) speaking in House of Commons, June 17, 1845, Parliamentary Papers, House of Commons Debates, 1845, 702 (London: Hansard), Microfilm (hereafter quoted and abbreviated as PP-NZ)

## **Settling New Zealand, 1839-1844**

By 1839 it was clear, not only to the land companies, but to those within the Home Government, that something needed to be done to secure New Zealand for the Empire. But this time, rather than entering into an agreement with a land company, the government specifically decided to not introduce additional Anglo settlers to the colony. Instead they chose a policy which would naturally grow the Anglo population at a very slow rate. The men of the two failed New Zealand companies were not satisfied with this decision of the government. The plans of the Colonial Office for slow growth in the colony were in direct conflict with the New Zealand Company's plans to bring large numbers of Anglo settlers to New Zealand. Thus, the directors decided to act in direct violation of government orders to secure not only their position in New Zealand, but their plans for the direction of the colony. This impeded the settlement plans of the Home Government which sought to prevent abuses against the Maori. Thus, at the very outset of colonization of New Zealand, the company and the Home Government disputed the direction of the colony and the treatment of the Maori people.

### Claiming New Zealand

In February 1839, the Colonial Office annexed New Zealand as a colony. How did the Government get from a position of claiming New Zealand was not a possession of the crown to annexing it as a territory? By 1839, there were more than two thousand British settlers in New Zealand, including missionaries, whalers, traders, and escaped convicts. While those there in a missionary capacity objected to colonization by company, they also held great concerns regarding the other settlers' treatment of the Maori; thus, they had repeatedly petitioned the government asking for officials to help control the British population residing in New Zealand.

Some of the roughest of the settlers residing in New Zealand had come from the penal colony in Australia and from Herd's 1825 expedition. Reports of their abuse upon the Maori people and other settlers were so widespread that the Home Government passed a law in 1836 "for the Prevention and punishment of offences committed by his majesty's subjects," allowing the laws of Britain to apply in New Zealand and punishments meted out just as they would in Britain, even though it was not yet a colony. However, widespread refusal to uphold to law took place across New Zealand. Many of the abuses were detailed in the Select Committee Hearing on Aboriginal Tribes in British Settlements, 1836-1837. This report accused the "British religious public" of being "unaccountable", of turning a blind eye to the abuses against aboriginal tribes in the colonies. Some of these abuses made missionaries unable to do their work. In effect, no one, public or private, had been able to stop tremendous abuses and settlers were seldom held responsible for abuses, up to and including the murder of colonial natives. The Home government blamed the atrocities upon local governments.<sup>264</sup> The report was meant to open the eyes of the public to these abuses and attempt to "fix the rules of conduct" toward "uncivilized" tribes around the world. The rebellions which followed in 1837-1838 illustrated the said "abuses" and demonstrated a need for such rules of conduct to be introduced. Of course, this led to a new imperial policy which sought to promote peace in the colonies.<sup>265</sup>

New Zealand was also becoming strategically important to Britain. France and Britain had always had rival claims to New Zealand: the islands were simultaneously discovered in 1769 by the British explorer, Captain James Cook, and Jean François Marie de Surville a French captain. It is estimated that the two ships possibly passed within twenty miles of each other.<sup>266</sup> The French had expanded into the Pacific as they obtained the Marquesas and the "Friendly" Islands. The British

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<sup>264</sup> John Bodley, *Victims of Progress*, (Lanham, MD: 2008), 39-41.

<sup>265</sup> *Report of the Parliamentary Select Committee on Aboriginal Tribes in British Settlements, 1836-1837*, Reprinted with comments by the Aborigines Protection Society, (London: Hatchard & Sons, 1837), Hereafter referred to as SC-AT.

<sup>266</sup> John Dunmore, "Jean Francois Marie de Surville", *Dictionary of New Zealand Biography*.

also viewed the United States as threatening, as Protestant missionaries from New England established informal colonies in the “Sandwich” Islands in 1820.<sup>267</sup> This fear of expansion of rival powers is exemplified in an 1839 argument of Patrick Matthew when he claimed that Russia and the United States were gradually extending their territories to prepare for an eventual challenge to naval superiority.<sup>268</sup> Thus, as other countries moved closer to New Zealand, members of the British government became increasingly concerned with maintaining “their” possession of New Zealand.<sup>269</sup>

Besides its strategic location, New Zealand was also important for its domestic products. The whaling industry was of the utmost importance for oil and whalebone because it was quickly becoming one of the only areas of the world where a viable whaling industry remained. Flax production and minerals were also important. But possibly the most important natural product of New Zealand was timber. New Zealand had several different types of timber which were important to the ship building industry, which according to several testimonies, made securing New Zealand as a possession a matter of “national importance” to the government.<sup>270</sup> Thus, geographic and economic significance, concerns for the domestic stability of New Zealand, and imperial rivalry influenced the February 1839 decision of the Colonial Office to annex New Zealand as a colony.

It was for many of these same reasons that the gentlemanly capitalist investors maintained interest in the colony as well. All three New Zealand companies contained directors who represented some of the largest shipping operations in Britain. Ship builders, shipping insurers, naval officers, and ship owners were all represented. These men were not ignorant of the

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<sup>267</sup> The Catholic Church began baptizing people in the Marquesas in 1839 which was a sign that the French had taken over the islands, even though they did not officially claim them as their own until 1842. Friendly Islands now Tonga (during the early 1800s some of her 150 islands claimed by France, some by Great Britain); Sandwich Islands now Hawaiian Islands.

<sup>268</sup> Patrick Matthew. *Emigration Fields; North America, the Cape, Australia, and New Zealand, describing these countries and giving a comparative view of the advantages they present to British settlers.* (Edinburgh: A & C Black, 1839).

<sup>269</sup> These arguments can be found in a letter written by Captain Fitzroy, quoted by Charles Buller in the House of Commons, June 17, 1845. PP-NZ, 669.

<sup>270</sup> The term “national importance” is quoted from the testimony of G.E. Earp from *Report from the Select Committee of the House of Lords, appointed to inquire into the present state of New Zealand, 1836-1837, 269-270.* Hereafter referred to as SC-NZ.

requirement of ships in the process of emigration, nor were they unaware of the valuable timber in New Zealand. The forests of New Zealand claimed to have the “finest spars for masts and yards in the world.” The claim that New Zealand would “ultimately reign the Maritime Queen of the Southern Hemisphere,” certainly was not lost on those interested in capital gain. For these and other economic implications, these gentlemanly capitalists wanted to be a part of any settlement of New Zealand.<sup>271</sup>

### The New Zealand Company

The Colonial Office’s plan for New Zealand was to set up several foreign trading stations manned by merchant companies in New Zealand. The office hoped the Maori would cede only the land required for these stations to the British government. Colonization would grow from these stations at a slow pace. In this manner, the Colonial Office sought to maintain its possession, establish dominance over the domestic products, foster a constructive and peaceful relationship with the Maori, all while incurring little expense for the maintenance of the colony. This plan was drawn from a proposal recommended by Captain William Hobson after traveling to New Zealand. The difference however is that Hobson called for setting up small factories within those trading stations. The Colonial Office did credit Hobson as the author of the plan.<sup>272</sup>

The gentlemen involved in the earlier colonization companies viewed the plans for direct government involvement in New Zealand with alarm. The end of the Anglicization policy had signified the end of the union of government and the gentlemanly capitalists in the business of colonization. The plans of Captain William Hobson and the Colonial Office not only eliminated the need for land companies, it called for slow, gradual colonization of the future colony. This was not in the plans, nor in the interest, of those looking to make financial gains in New Zealand. Lord

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<sup>271</sup> Quotes taken from Patrick Matthew. *Emigration Fields*.

<sup>272</sup> Testimony of Dandeson Coates, 14May 1838, SC-NZ, 269-270. .

Normandy of the Colonial Office and Viscount Palmerston of the Foreign Office appointed Hobson governor of New Zealand and sent him on another mission to New Zealand.<sup>273</sup> The mission was scheduled to depart in August 1839. Among the instructions Lord Normandy provided him, the most important was to “point out to them (the Maori) the dangers to which they may be exposed by the residence amongst them of settlers amenable to no laws or tribunals of their own and the impossibility of Her Majesty extending to them any effectual protection unless the Queen be acknowledged as the Sovereign of their country.” His mission, therefore, was to secure a treaty with the Maori.<sup>274</sup>

Yet much happened before Hobson could depart. Upon hearing rumblings of a proposed annexation, the members of the now defunct New Zealand Association formed the New Zealand Company in January 1839. Two-thirds of the directors of this company were drawn from the service sector, while only five men were of the landed elite, and seven of the directors of the New Zealand Company served in Parliament.<sup>275</sup> The directors were confident that the Government would go along with their plans for the proposed Company because they would meet the terms of the government’s demands. In a letter from the new company to the Colonial Office in February 1839, the directors wrote they were now willing to comply with all demands to form their new company.<sup>276</sup> This meant they now agreed to form a joint-stock company and to up front capital. The Company described its intended purpose as “employing capital in the purchase and re-sale of lands in New Zealand, and the promotion of emigration to that country.”<sup>277</sup> Yet it was now too late, both

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<sup>273</sup> Hobson will go on to author the Treaty of Waitangi; he also will be the first Lieutenant Governor of New Zealand beginning in 1840.

<sup>274</sup> Lord Normandy’s instructions to Hobson, 14 August 1839, found in Thomas L. Buick, *Treaty of Waitangi*, (Wellington: S.W. McKay, 1976), 70-79. Discussion of Hobson’s plan also in Burns and Peter Adams, *Fatal Necessity: British Intervention in New Zealand, 1830-1847*, (Auckland: Auckland University Press, 1977).

<sup>275</sup> The 1825 Company was primarily landed; the 1837 company consisted of slightly more than 50% service and financial sectors. See the charts of the directors of the 1825 and 1837 in Appendixes 5 & 6.

<sup>276</sup> Letter quoted in Burns, 74

<sup>277</sup> PRO CO 209 03, New Zealand Correspondence 1838, Quote from “New Zealand Land Company Prospectus,” 1838, 333-346.

politically and economically. On the back of the letter James Stephen penciled a note to Lord Glenelg which states, "I presume at the present moment this letter must be laid aside for further future consideration," and Glenelg agreed.<sup>278</sup> Glenelg informed Durham that Parliament would refuse any bill allowing the New Zealand Company to operate like the Canada Company, with unlimited administrative/governmental powers. "They will oppose the introduction of such a Bill and throw any obstacle in the way of the principle and details of the place being fully brought before the block of Commons and the public."<sup>279</sup> Thus Glenelg would not, even with the acquiescence to the terms previously imposed on the Association, recognize the New Zealand Company as a legitimate company and he refused the directors' request for a charter.

George Lyall, a member of the now defunct New Zealand Association, learned of the government's proposed annexation plans when he received a letter from George Grey of the Colonial Office in February 1839.<sup>280</sup> After years of attempting to secure their role as those who determined the fate of New Zealand's future, possible exclusion from all planning of the future colony, as well as the financial rewards New Zealand had to offer, did not sit well with these gentlemen. They saw their influence in the Empire waning. They also had losses from the 1825 company to recoup from New Zealand and they were not about to let Captain Hobson or the end of the Anglicization policy be the end of their standing in the Empire. Nor were they willing to pass up any future gains either in the Empire or in the City. On February 20, the directors of the company sent a letter to Lord Normandy, the Home Secretary, requesting his immediate intervention. In it they claimed both Stephen and Glenelg were unreasonable in their refusal to offer the company a charter. They claimed the government had spelled out the terms under which they were willing to grant a charter in a letter to Durham back in 1834. The company, they argued,

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<sup>278</sup>PRO CO 209 4, New Zealand 1839 Vol. 1 Colonial Office John Bright to Glenelg, January 1838, 298. Glenelg's note of February 1838, *Ibid*, 295-297.

<sup>279</sup> PRO CO 209 04, Glenelg to Durham, 5 February, 1838. 298-301.

<sup>280</sup> Burns, 74.

was “a most respectable body of gentlemen, several of them members of Parliament.....and (is based upon) on a plan suggested to them officially by members of the Cabinet.” Finally, they concluded, they had already sold over one million acres to “waiting emigrants.”<sup>281</sup> In another letter to Lord Normandy, George Lyall claimed the Company was “approved and encouraged by the Colonial Office, the Board of Trade, and the Admiralty and they were promised by these authorities a Charter of Incorporation and the protection of a ship of war.” Based upon these promises, the company had spent great sums.<sup>282</sup>

The Colonial Office prepared a response while waiting for Lord Normandy’s return to London and his reply. Handwritten on Lyall’s letter is a note that states there was “no such formal agreement” on file in the Colonial Office. In their response to the Company they claimed the government could not be held to a deal thirteen years old, referring to the deal made with the company of 1825, “a scheme projected under essentially different circumstances and much less complete knowledge of the facts of the case and made in favor of persons of whom a large portion must now, by its various casualties of life, be no longer able to become parties to any arrangement of the same nature.” Thus the Colonial Office claimed Lord Normandy needed to take the best course of action for the Empire and the people of New Zealand. They further stated Lord Normandy would be happy to meet with the gentleman of the New Zealand Company to discuss this, but with the knowledge that he “regards himself as unfettered” by any decision or agreement made with Lord Liverpool’s government in 1826.<sup>283</sup> Lord Normandy also wrote to Lord Durham personally advise him that the government would not be issuing a charter to the company.

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<sup>281</sup> PRO CO 209 4, William Hutt to Lord Normandy, February 20, 1839. Handwritten note on the back of this letter is a handwritten note from James Stephen which says, “This should be added to the other Desps on this subject.” The hold should be laid before Lord Normandy as soon as possible accompanied by a précis for his Lordship information and all that has occurred.” Dated 22 February, 1839, 301-302.

<sup>282</sup> PRO CO 209 4, George Lyall to Marquis Normandy, February, 1839, 307-310.

<sup>283</sup> PRO CO 209 4, To W. Gairdner, Author unclear- looks to be Stephen’s handwriting, but also could be Glenelg, 311-312.

The Company, however, was not about to let the lack of a charter stop them. But now time was a serious issue. The government's plans did not call for emigration to New Zealand, so the Company wanted to get to New Zealand with emigrants and establish themselves there before Hobson could begin negotiations with the Maori. Hobson was tasked with obtaining the cession of the Northern Island to the crown from the chiefs, in exchange for a British promise to secure Maori possession of lands.

The gentlemen of the Company considered themselves justified in their actions as they believed they were entitled to settle New Zealand based on their earlier expenditures there. Further, there was a precedent set with the Canada Company of land companies operating before the issuance of charters; thus, the company felt legally justified in their hastened departure without a charter. The rushed departure ensured a recoup of their losses in the 1825 expedition and would secure a claim to a portion of the anticipated profits in New Zealand to which they felt entitled. They believed the reason for the lack of charter was due to some individuals in government who were purposefully blocking their participation, and who had no right to do so. The Company did beat the French to New Zealand, whereas Hobson did not. The presence of the Company and its colonists in New Zealand caused the French to relinquish their claim over the islands; therefore, the Company was able to claim that it had "saved" New Zealand for Britain. For all of these reasons, the directors believed they would ultimately receive a charter and that their actions would be retroactively validated.<sup>284</sup>

However, also due to their haste, the Company left Britain with emigrants before acquiring any land in New Zealand. Agents for the Company in New Zealand "purchased" land from the Maori while the emigrants were already under sail. Thus, at the time the Company sold the land to the

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<sup>284</sup> Captain Hobson did not beat the French to New Zealand but the New Zealand Company did. The French claimed that the settlements of the Company prohibited establishment of the proposed penal colony and they relinquished their claim to New Zealand. For this reason, it was argued by the Company that it "saved" New Zealand for Britain with the early departure of the Tory. Charles Bueller speaking to House of Commons, June 17, 1845. PP-NZ, 678-679.

emigrants while in Britain, it was selling land it planned to buy, rather than land it actually owned. Further, the term “purchased” remains in quotes because while the Company did enter into agreements with the Maori for certain lands, their method of payment and acquisition came into question at a later date. In exchange for land, the Company gave the Maori money and items such as blankets. At the same time, the Company declared these were partial payments, stating the real payment was in the land. In other words, the Company was taking only the “unused” lands, leaving every tenth acre to the Maori.<sup>285</sup>

In May 1840, the Maori signed an agreement with the British Government agreeing to be subjects of the Queen: the Treaty of Waitangi. Captain Hobson announced that New Zealand was now a Crown Colony.<sup>286</sup> With the news of the declaration, Colonial Secretary, Lord John Russell, made an agreement with the New Zealand Company. Russell asked the Company to renounce all land titles acquired from the Maori and in return, he promised them a grant from the Crown. The Crown would grant four acres of land for every £1 the Company could show it had disbursed for acquisition and improvement of the land in New Zealand. Examination of the Company’s expenditures was to be completed by James Pennington, a London accountant.<sup>287</sup> The Company agreed to these terms in November 1840. The company did receive its charter at this time, but awaited the results of Pennington’s award for the grant of land tied to the charter. In May of 1841, Pennington had finished his investigation and issued a statement which entitled the Company to a land grant of 531,929 acres immediately and a further 4-5000 acres at a later date. Russell instructed Governor Hobson to make the necessary arrangements for this grant. However, on May 18, 1841, the Whig government fell. Robert Peel became the new Prime Minister, and he appointed Lord

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<sup>285</sup> Thus whether the company paid fair value for the land will be questioned later. The terms “unused” and “waste lands” at this time were translated as lands without physical Maori residence. The idea that Maori might have ownership of these lands for other uses, did not reach majority opinion until the Tory government. Charles Buller speaking to House of Commons, June 17, 1845, PP-NZ, 678-679.

<sup>286</sup> The Treaty will be dealt with in much greater detail in the next chapter.

<sup>287</sup> Burns calls Pennington a disinterested and honest person. Yet, she further claims that Pennington was duped into adding expenses to his total for advertisement and the hasty departure of the Tory. Burns, 171-172

Stanley to the position of Colonial Secretary. James Stephen, of course, remained on, as his position was that of permanent Undersecretary and not subject to dismissal or appointment by new Parliaments.

The fall of the Whig Parliament was a blow to the New Zealand Company. The rise of the Tory government created a majority in Parliament of those who believed natives had rights to their land. The Tories also held different views as to “waste” or “unused” lands. They believed the Maori had rights to all the land of New Zealand, regardless of residential status.<sup>288</sup> In New Zealand, Governor Hobson refused to institute Lord Russell’s instructions because to do so meant dispossessing the Maori of their lands. The Company wrote to Lord Stanley at the Colonial Office seeking his assistance. Stanley’s response, however, stated that Pennington’s award would be delayed until after a Land Commission could investigate all of the Company’s pre-annexation titles.<sup>289</sup>

The Company was outraged because they believed this constituted a violation of their original agreement. The Company began a torrent of complaints to government officials, they asked for an independent legal tribunal to determine the validity of their contract; in each case the government refused the company’s request. By 1843, the Company was in serious financial trouble; thus, Joseph Sommes, deputy-governor of the New Zealand Company threatened the government that the Company had to stop colonization and transform itself into an organization which made profits solely through the sale of land if the government did not enforce the original agreement or accelerate the settlement of land claims. The Colonial Office refused to budge and the Company gave up all emigration activities shortly thereafter.<sup>290</sup>

By 1844, the Company was in such debt that its bills were being dishonored in London. The government finally agreed to give them a loan of £40,000, but withdrew the offer when they learned

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<sup>288</sup> The Tories were primarily landed men, thus the maintenance of land and land rights were of a particular importance to them.

<sup>289</sup>Burns; Charles Buller to House of Commons, June 17, 1844, PP-NZ, 707.

<sup>290</sup> Burns, 253

the Company had more than £9,000 in outstanding debt. The Company suspended all operations and brought its complaints before Parliament. They asked for a Select Committee Hearing regarding the Colonial Office's breach of contract. Finally, something went the Company's way and they were granted a hearing. The Parliament ordered a "Select Committee be appointed to inquire into the State of the Colony of New Zealand and into the Proceedings of the New Zealand Company" on April 30, 1844.

The Committee was balanced with both supporters and opponents of the Company and its final report issued four resolutions. The first resolution was that the New Zealand Company had "openly and deliberately" sent out the first emigrants without sanction and "in direct defiance" of the Crown. This led to "a violation of the law by the first settlers" as they entered into an arrangement with the Company for the maintenance of order. After the sailing of the *Tory*, the government was unable to stop the tide of emigration to New Zealand. Thus, the actions of the Company had forced the British government to expend funds to establish New Zealand as a dominion due to the need to ensure the safety of the emigrants and the natives. The second resolution stated that the Treaty of Waitangi was a governmental blunder. The terms of the Treaty were "ambiguous and inconvenient" and caused sincere doubt as to whether the Maori were actually under the authority of the Crown. The third resolution stated the terms regarding "unoccupied land" were too vague and led to confusion regarding rights to land. A fourth resolution declared that the New Zealand Company was entitled to the grant of lands under Pennington's award, without having to justify the validity of their claim before the land Commission.<sup>291</sup>

Yet, despite the Committee's suggestions, Lord Stanley refused to abide by its proposal as did the House of Commons. Assigning Pennington's Award to the New Zealand Company constituted a violation of the Treaty of Waitangi, as this would be a violation of Maori rights and cause possible

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<sup>291</sup> SC-NZ, i-xiv.

instability in the colony. Many also were not prepared to take action against a treaty signed by the Queen. The gentlemanly capitalists of the New Zealand Company began a lobby to Parliament in hopes of forcing the imposition of Pennington's award. On April 15, 1845, Charles Buller who had been a director in the New Zealand Association and a philosophical radical, but was not a director of the New Zealand Company, told the House he would be asking for a full-scale debate on New Zealand.<sup>292</sup> Joseph Sommes, deputy-governor of the New Zealand Company and the owner of the largest ship-building firm in Britain, was newly elected to the House. He called on his merchant and banking contacts to sign a petition asking the House to enforce the Select Committee's recommendations. The House did allow a three-day debate in June and a two-day debate in July. In both cases, however, Prime Minister Peel insisted his party vote as a unit against the Company, thus ensuring their defeat by a margin of 223 to 173!<sup>293</sup> This reflected the limited power of the gentlemanly capitalists when other concerns took priority. In the case of the New Zealand Company, colonial policy had changed to prevent colonial unrest. Pennington's Award would create Maori uprisings and discontent as the Maori would need to be dispossessed of their land. Further, the monopoly in New Zealand the Company had attempted to create was against the principles of the free market. Peel as a liberal Tory believed free market capitalism would prevent corruption and thereby uphold public virtue. This is something that bound him together with many radicals and some other reformist Whigs. Free trade merged with an overall agenda of preventing monopolies, enabling meritocracy and gradual, rather than forced economic growth. Those who adhered to these principles believed it would lead to Britain's monetary stability. Therefore, both the Colonial Office and the Parliament sought to prevent the New Zealand Company from establishing

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<sup>292</sup> One of the first actions of the New Zealand Company was to assign stock to the 1825 and 1837 shareholders, thus the directors and shareholders of the earlier two companies also had a financial stake in the success of the New Zealand Company.

<sup>293</sup> Burns, 266.

operations sanctioned by the government in New Zealand to uphold both the new imperial policy of creating stability within the colonies and a free market agenda.

## Conclusion

For Peel and other Liberal Tories, the most powerful state was the minimal state which was free from class interest, was “subservient neither to patronage, the City, industry, nor land. Within such a state the landed class would not find itself weaker, either politically, socially or economically.”<sup>294</sup> Liberal Tories found themselves closer ideologically to the Radical Whigs than to Traditional Tories. Reforms of the 1820s and 1830s had expanded and reformed the domestic power base in Britain to include more individuals into the political process. Reforms also began to erode the system of utilizing gentlemanly contacts for political, legal, and business transactions. Instead an adherence to the rule of law became dominant. This had been a growing influence as we saw with the charges of impropriety of the Canada Company. Yet, the Canada Company directors were able to utilize their gentlemanly contacts within Britain to maneuver themselves out of a difficult legal situation. This adherence to the rule of law as well as concern for colonial stability caused the Colonial Office to reject the New Zealand Companies charter. By 1839, the influence of the gentlemanly capitalists, which allowed them to force through a business proposal within the Home Government had greatly diminished.

Evangelical religion also played an important role in the politics of the 1830s and 1840s. Liberal Tories “sought stability and morality through the removal of artificial props in the economic world, allowing the operation of the providential order with God-given, rather than man-made penalties.”<sup>295</sup> Evangelical religion, and a need to shore up the national morality, had played a significant role in the

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<sup>294</sup> Anthony Howe, *Free Trade and Liberal England* (Oxford: Clarendon Press, 1997), 5.

<sup>295</sup> Howe, 36

emancipation of slaves throughout the Empire.<sup>296</sup> It also played a role in the creation of a new imperial policy in the aftermath of the Canadian Rebellions which focused on colonial security. The personal religious beliefs of individuals shaped concerns regarding thrift and fairness in economic, social, and political policies. Religious morality cut across party lines and it permeated the service the professions of the City.<sup>297</sup> As Peel's Liberal Tory government took over with a reformist agenda, they incorporated evangelical principles of thrift, fairness, and meritocracy. These principles merged with the economic principles of a free market agenda and the liberal Tories created an imperial policy founded upon the idea of limited government. In the Empire, this union of evangelical ideals and Tory liberalism meant limited intervention, promoting stability, and a consideration of native rights.

Yet at times it was difficult for those in government to determine the nature of the responsibility toward the natives and non-indigenous peoples while at the same time upholding deals which created limited government. Essentially these deals were with gentlemanly capitalists so that they, not the government would provide services in the Empire. Evangelical religion also did not prevent the gentlemanly capitalists from believing state intervention was necessary at times. Yet the foundational beliefs of the liberal Tories prevented the New Zealand Company from obtaining Pennington's Award and eventually pushed the New Zealand Company towards bankruptcy. Yet in the process, it further caused confusion as to the best means to implement a policy of colonial stability in the Empire. This led to a stalemate between the gentlemanly capitalists of the New Zealand Company and both the colonial and Home Governments. Overall, however, the policies of the Colonial Office and the policies of the Liberal Tory government united and caused a lack of maneuverability of the gentlemanly capitalists. They could possibly utilize gentlemanly contacts to

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<sup>296</sup> Colley

<sup>297</sup> Boyd Hilton, *Age of Atonement; The Influence of Evangelicalism on Social and Economic Thought 1795-1865*. (Oxford: Clarendon, 1992), 222-236, 375-377.

obtain a hearing or a debate in the Commons; but the directors were unable to obtain the votes in the Commons required to continue their overseas investments.

## Chapter 7- Ungentlemanly Capitalism: BALC and the New Zealand Company, 1838-45

*The difficulty of maintaining amicable relations with the tribes and nations on the borders of our colonies is with us, and not with them.*<sup>298</sup>

In the aftermath of the Canadian Rebellions, the British American Land Company encountered financial difficulties. The directors of the BALC turned to the Colonial Office, expecting a renegotiation or leniency regarding the terms of the payments that had been due the Home Government. Instead they faced a hostile Colonial Office that penalized them for refusal to pay its debt. The Home government did not have this simple justification of non-payment as pretext for backing out of the contract with the New Zealand Company, which had formed after the Anglicization policy had already ended. Instead, they instituted a Land Commission which stalled the process of settlement. Rather than force the New Zealand Company out, this lengthy process financially crippled the Company. In the process, paths once available to men of privilege to make deals and maneuver within the Empire closed, and the relationship between these men and the government, while still drawn from the gentlemanly class, became decidedly ungentlemanly in nature with the abandonment of the Anglicization policy.

The Government's ungentlemanly interaction with both companies in its attempted extrication from the charters it had granted was a direct result of the failure of the Anglicization policy. It also hinged on disputes regarding contracts for both the British American Land Company and the New Zealand Company. While BALC had entered into the Anglicization project with the Government, the Canadian rebellions and BALC's fiscal problems created a legal escape route for the Government with its contract with the Company. This will be covered in the first part of this chapter. Yet, while the relationship between the New Zealand Company and the Government was never one of unity, it did enter into a contract with that Company in the form of a charter. The

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<sup>298</sup> SC-AT, 137.

Anglicization policy was over before the beginning of that Company's operations in 1839. In fact the New Zealand Company began its operations in direct defiance of the Government. Therefore, as a new imperial policy was put into effect, the Government's attempted disengagement from the New Zealand Company was far more complicated and will comprise the majority of the chapter.

Unlike BALC, which had begun operations united in purpose with the Home Government, the New Zealand Company began in direct competition with the Home government. While in Upper Canada both the Home Government and BALC sought to assimilate the French Canadian population until such time as they recognized it as impossible. In New Zealand, the Home government sought to protect Maori land rights. This placed the company and government at odds as their goals for the colony clashed. In both cases the relationship between the Home Government and the companies became decidedly ungentlemanly in character.

As the Anglicization policy failed, the settlers, the companies, and those in power in Britain constructed an immutable racial identity for the French Canadians. The inability or unwillingness of the French to assimilate caused these groups to define the French in racial terms as an explanation for the failure of Anglicization in the post rebellion years. These groups further shared a unified understanding of the French Canadians as a race. In New Zealand, unlike Canada, a single concept of the Maori race did not exist. The settlers in New Zealand created a concept of race in which the Maori aptitude for war created a belief that the Maori "race" was prone to violence, that their concept of land ownership demonstrated a lesser intelligence, and repeated Maori claims for land led the settlers to view the Maori as a devious race of people. Those in power in Britain simultaneously created an alternate concept of the Maori race which saw the Maori as more advanced than Native Americans, but less advanced than European settlers, such as the French Canadians. By this logic, since the Maori possessed intelligence and "nobility of character while at peace and courage when at war," they were victims of the settlers and in need of protection. The government did assume that

the Maori were not yet ready for western property rights or self-government. So while the government penalized the New Zealand Company and the settlers in order to “protect” the Maori, they believed the Maori incapable of progress and effectively froze any possibility the Maori might have had for progress. This led to a conflict between the settlers who thought the Maori were an aggressive people and a British government who believed the Maori were acting in defense of their property and persons. It also set up a system of discrimination against the Maori which lasted for more than a century.<sup>299</sup>

### **BALC and the Colonial Office**

When Lord Goderich had fought the passage of BALC’s original Charter and asked for short and specific terms for repayment, including collateral other than the land, he was overruled as his was a minority opinion at the time. The actual Charter issued to the Company claimed that up to “one-half of the money so to be paid by the Company shall be expended on public works.” Further the charter stated the £120,000 for purchase of the land by the Company would “be eventually paid to the government”<sup>300</sup> While additional, more specific, repayment terms entered into the Charter, the Home Government did allow BALC a certain flexibility, as was evidenced in 1833 when the Home Government stepped in and paid for the various needs of the Company due to low subscriptions, bad weather and the threat of cholera. This was, of course, due to the united mission of Anglicizing Lower Canada.

After the 1837 rebellions and the end of the Anglicization policy, however, the sociability, gentlemanliness and united mission which characterized the beginning years of the Government’s

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<sup>299</sup> Quote from JH Kerry-Nicholls, “The Origins and physical characteristics of the Maori Race” *Journal of the Anthropological Institute of Great Britain and Ireland*, 1886.; Horace William Milner, *The Maori Race*, (New Zealand: New Zealand Alliance, 1946); Anne-Marie Mooney Cotter, *Race Matters: an international legal analysis of race discrimination*. (Hampshire, England; Burlington, VT: Ashgate Publishing, 2006) Other ideas regarding these two concepts of the Maori race are evident in the Select Committee Report on New Zealand and other primary documents discussed in the next section.

<sup>300</sup> PRO CO 42 248, Charter of the British American Land Company.

association with BALC disappeared. In October of 1838, Sir George Grey sent a letter to the directors of the British American Land Company. In it, he included a copy of the portion of Durham's letter which dealt specifically with the Company as well as a Colonial Office proposal to deal with BALC's increasing financial difficulties. This proposal, based on Durham's recommendations, called for the reappropriation of BALC's lands if they could not make their payments to the government. The proposal further suggested any resolution should take place "in the Province, where alone an accurate knowledge of all the circumstances of the case can be obtained."<sup>301</sup> The proposal did not correspond with the previous rapport between the government and the Company. In fact, Grey's letter made it clear the Colonial Office now agreed with Durham that it was in the best "public interest" to hold BALC to the same standards of other companies, regardless of the previous unity in plans to settle Lower Canada. The Colonial Office further absolved the government from its previous relationship with the Company with the instruction that all decision-making for the Company should take place in the colony. This represented a break from the government's earlier gentlemanly relationship with the Company as it cut out the directors in London, and thus the influence of their gentlemanly relationships there.

The directors of BALC responded with utter confusion. They asked Lord Glenelg if he had forgotten Stephen's earlier letter in which he claimed Glenelg did not anticipate a problem with the modification of the terms.<sup>302</sup> Grey responded that the Colonial Office believed Lord Durham's investigation and subsequent report "must be considered as comprehending the whole subject matter referred to him."<sup>303</sup> Thus, they chose to defer to Durham's suggestions.

BALC's next letter reveals a growing irritation with Durham. The directors wrote that while Durham presented the situation as if the Company wished to suspend all future payments to the

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<sup>301</sup>NAC MG 24 I 54, Vol. 2, George Grey to BALC, October 17, 1838, 237-238.

<sup>302</sup> NAC MG 24 I 54, Vol. 2, BALC to Glenelg, October 26, 1838, 248.

<sup>303</sup> NAC MG 24 I 54, Vol. 2, Grey to BALC, November 3, 1838, 251-252.

government, in reality they were only asking for one installment to be “appropriated to the purposes of preparing their lands for the reception of emigrants under the sanction of Her Majesty’s Government.” This, they believed, was in accordance with the “principles and practices of the Colonial Office.”<sup>304</sup> They further claimed to be insulted by Durham’s “allusion to the appointment of the first commissioners of the Company in Canada” which Durham suggested heightened the “racial” tension in Lower Canada with BALC’s political appointees. The directors took exception to this claim and stated BALC never had intentions of assuming a political character. However, BALC’s charter did grant the company governing power and the Company had implemented the political agenda of the Home Government as it attempted to Anglicize the French inhabitants. The Colonial Office, however, ordered the company to pay what was due to the government based upon the agreement in the charter or face a repossession of the land. Despite their anger with Durham, the directors did acknowledge the necessity for concessions to the government. Thus, they asked for a clarification of the terms of the “resumption” of lands. The directors wanted to know if the Colonial Office would reclaim all of the lands BALC possessed or simply those granted to them under the charter.<sup>305</sup>

Grey’s response reflects both a cautious tone and a defensive posturing against BALC. He wrote that Glenelg could not answer the question regarding the reclamation of land without communication with the other branches of government. He also stated that the Colonial Office disagreed with the claim of the Company that the use of monies due the government for the improvement of land was a “normal” practice. Grey stated:

the appropriation of funds derived from the sale of Colonial Lands to purposes of emigration is in accordance with the principles and practices of Her Majesty’s Government in regard to some other colonies, the appropriation of the purchase money for any particular lots or tract of

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<sup>304</sup> NAC MG 24 I 54, Vol. 2, BALC to Glenelg, November 8, 1838, 254-255.

<sup>305</sup> NAC MG 24 I 54, Vol. 2, BALC to Glenelg, November 8 1838, 256-257.

land to the improvement of that specific land is distinct from general object of promoting emigration and the settlement of the Crown Lands is not in accordance with the practice hitherto observed elsewhere.<sup>306</sup>

In other words, if BALC utilized funds to bring emigrants to the Colony, that would be in line with the “principles and practices” of the government; however the diversion of funds for the purpose of readying the land for emigrants was not. This exposes the changing affiliation between BALC and the Home government.

BALC repeatedly asked the Colonial Office to specify the terms of reclamation: would the government take a portion of the land granted under the Charter or the full tract? Would BALC be compensated for the improvements it had made on the lands? Would payments made to the government previous to 1838 be a consideration in the reclamation decision? The Colonial Office responded that if the Government was to reclaim the entire tract, it would not reimburse BALC for sums the Company had paid to the government, or for any sums “expended in the improvement or management of land.” The Colonial Office would, however, consider making an arrangement based on specific improvements made by BALC; however, BALC could “have no claim on Her Majesty’s Government for the value of any improvements on as much of the Land as they might retain.”<sup>307</sup> This last point refers to BALC’s insistence that if they returned lands surrounding a town, BALC’s expenditures to the town should be taken into consideration. BALC claimed the value of lands surrounding a town increased due to the creation of the town itself and thus, should be considered worth more, even if no improvements had been made upon the reclaimed land.

The government did eventually take back the “St. Francis Territory,” which was the entire tract of unsurveyed land granted in BALC’s original Charter due to BALC’s nonpayment of principal and interest payments. The Colonial Office gave this land to the Canadian government, who in turn

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<sup>306</sup> NAC MG 24 I 54, Vol. 2, Grey to BALC, November 16, 1838, 258-259.

<sup>307</sup> NAC MG 24 I 54, Vol. 2, Quotes taken from Grey to BALC, November 28, 1838, 264-265. Other letters between BALC and Colonial Office found in same source, 259-263.

gave away the tract of land to Canadian citizens at no cost. This served to continue the hostility in the colony towards BALC as the populace accused them of “monopoly and wrong doing for not following the Government example of giving away their property.”<sup>308</sup> The actions of the government seemed inexplicable to BALC “considering that the Company had been greatly influenced to undertake the work of colonization” by the Governor General of Canada and the Home Government at the start of its operations.<sup>309</sup> The Government and BALC had entered into the business of settling Lower Canada together; yet, just a scant four years later the government had withdrawn its support of the company and two years later rescinded lands granted to the Company via its charter. This represented a dramatic turnaround on the part of the Government. Further, the Home Government and then Canadian government gave away BALC’s original land to Canadian citizens free of charge; thus, it illuminated not only a changed attitude towards the company, but also a change in the political, legal, and business climate of London, similar to the once minority opinion of Goderich. It further reflects the new emphasis placed upon colonial stability as the land given to the colonial residents served to promote good will between the colonial residents and the Home Government, if not with BALC.

The directors of BALC were confused with this turn of events. Certainly the Rebellion had played a role in the Government’s changing direction away from its relationship with the Company, but the hostilities that led to the rebellion had existed prior to the formation of BALC. Rebellions also were not unique to Canada and by the time of the cessation of land, the Canadian rebellion was well over. Thus, to BALC, the actions of the Colonial Office to sever the Government’s previous relationship with BALC appeared impulsive after allowing only four years of operation.

Essentially, the transformation of Colonial Office attitude towards BALC was a reflection of a new imperial policy which upheld the ideals of limited intervention, stability and concern for native

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<sup>308</sup> NAC MG 24 I 54, Vol. 1, Henneker, 157.

<sup>309</sup> Ibid.

rights, or in the case of Lower Canada and New Zealand, the rights of non-indigenous colonial residents. This lessened the influence of the gentlemanly capitalists by refusing to apply to them the legal tradition of equity that under other circumstances continued to favor the landed classes and those who held power in the City.<sup>310</sup>

In effect, equity doctrine was a case of *noblesse oblige* employed for the interpretation of contract. While a strict interpretation of law could be offset by the law of equity for those of privilege, it did not apply for those without an honored ancestry. The law of equity implied a loose interpretation of contracts and allowed for frequent changes to contracts to those who held a social pedigree or special relationships, such as the one between BALC and the government. Thus, the social status of the directors of BALC led the directors to fully expect the Colonial Office to oblige a request for a change to the original Charter. The Company's shock regarding the Colonial Office refusal of its request reflects an indignation regarding a strict interpretation of contract rather than access to the privilege of the equity doctrine.

The Colonial Office actions were in accordance with law, even if not with informal business relations the directors were used to. After the Rebellion of 1837, the Colonial Office understood that a government policy of British emigration was not working. Durham offered them a viable solution through the concept of the Union of the two Canadas. He further suggested the Colonial Office could utilize a strict interpretation of contract to back out of its original agreement with the Company when he suggested an agreement by the Government for the distribution of lands must be enforced or it would undermine the government itself.<sup>311</sup> The Colonial Office, therefore, denied BALC's application for a change to its repayment terms and held BALC liable for pecuniary

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<sup>310</sup> Patrick S. Atiyah, *The Rise and Fall of Freedom of Contract*. (London: Oxford University Press, 1996), 146. Equity emerged specifically in the context of the aristocracy and was a privilege associated with that position in England. "Legal duties arose from status, from custom, from relationships and transactions: inevitably the conclusiveness, the bindingness of promises, and free choice was at first less strong, as well as less necessary."

<sup>311</sup> NAC MG 24 I 54 Vol. 2, 239, Extract of a Despatch from the Earl of Durham to Lord Glenelg, dated Quebec July 31, 1831. Extracted and placed in a letter from Sir George Grey to BALC, October 17, 1838.

damages for a breach of its contractual obligations. In every aspect of the contract dispute, the Colonial Office held to this strict interpretation of contract as its validation for ending its formerly gentlemanly agreement with BALC. Thus, this reveals a shift in Colonial Office priorities in which colonial stability took precedence over the maintenance of gentlemanly contracts.

## **The New Zealand Company**

### The Land Claims Commission

The Colonial office, along with a Whig Parliament, ordered the establishment of the Land Claims Commission in December 1840 upon the annexation of New Zealand as a colony. The purpose of the Land Claims Commission was to investigate all purchases from the Maori prior to annexation. However, all lands granted by the Crown were to be exempted from this investigation. The directors of the New Zealand Company believed their company should be included in this exemption because under the terms of Pennington's Award, the lands would be granted by the Crown. The directors of the Company viewed Lord Stanley's insistence upon verification of original land titles before the grant of Pennington's award as a breach of contract. Charles Buller, speaking for the Company in the House of Commons, argued that the original contract made with Lord Russell was a "plain agreement to make a grant of land on proving certain payments."<sup>312</sup>

Further, from 1840-1841, while waiting for the grant of land authorized by Pennington, the Company had continued its activities and expenditures with the knowledge and consent of the Colonial Office. The Colonial Office had instructed the Company to raise capital. Thus, the Company sold £200,000 of new subscriptions in the form of lands sold to emigrants awaiting passage to New Zealand from Britain. The Company further sold 250,000 acres in New Zealand in preparation for new settlement. The Home government approved the terms of this sale as the

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<sup>312</sup> Charles Buller to the House of Commons, June 17, 1845. PP-NZ, 717.

Company readied areas in New Zealand for new settlement. In the spring of 1841, again prior to Pennington's award, the Company sent out two thousand emigrants "under the direct supervision of the Colonial Land and Emigration Commissioners." Had the Colonial Office supposed in any way that the Company did not have a valid right to continue their activities, the directors argued, the Government had committed a "culpable and extraordinary fraud" by encouraging emigrants to invest their money, supervising their departure "without a word of warning as to the delusion under which they were acting." The participation of the Colonial Office in these activities, before the award of land from Pennington and while the Land Claims Commission continued its investigation, signified to the Company that the Home Government held the Company's land titles to be valid. The Colonial Office's continued involvement further signified to the Company as a "public guarantee of the completeness of the contract." The Company viewed Stanley's refusal to fulfill the obligation of the Colonial Office to the Company as "monstrous."<sup>313</sup>

At the time, it was argued by the M.P. G.W. Hope that there were three parties taken into consideration when deciding how to deal with the Company, "the Crown, the Company, and the natives."<sup>314</sup> The Company had made a demand for lands also claimed by the Maori. The Treaty of Waitangi guaranteed Maori land rights as it stated that if the Maori agreed to cede their sovereignty to Britain, Britain guaranteed them "the full and undisturbed possession of their estates, lands, forest, and fisheries," as well as any other independent or personal property.<sup>315</sup> Yet, when the Home Government had given the New Zealand Company, a land company, a charter to operate, it placed the Treaty of Waitangi at risk.

The government now had competing promises to both the Company and to the Maori people. This placed the Company's desire for a grant of land in direct conflict with the Home Government's

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<sup>313</sup> Charles Buller to the House of Commons, June 17, 1845, PP-NZ, 706-708, 715.

<sup>314</sup> G.W. Hope speaking to the House of Commons, June 17, 1845, PP-NZ, 733.

<sup>315</sup> *Treaty of Waitangi*. For full text see Appendix #8.

promises to the Maori. Thus, instead of outright dishonoring the contract with the Company, Lord Stanley asked the Company to prove not only their expenditures but also to verify the legality of their original land acquisitions from the Maori.<sup>316</sup>

The Company begrudgingly sent their land claims off to the Land Claims Commission and declared they had waived an “extreme right” for the sake of peace. This right, of course, was the right to a land grant simply for proof of expenditures. Yet, the directors professed they were “content to abide by the agreement in full reliance on the assurance of the government aid to achieve a peaceable and reasonable extinction of native claims.”<sup>317</sup> However, when the Land Claims Commission received all of the claims, it became apparent that something was amiss. The acreage of New Zealand totals fifty-six million, yet the claims amounted to a total of 56,654,000. The Company alone claimed twenty million acres.<sup>318</sup> As a result of this discovery, Willoughby Shortland, the acting governor of New Zealand since the death of Governor Hobson in September of 1842, issued a statement prohibiting land settlement until all claims could be investigated and settled. The proclamation revealed the growing concern for indigenous rights and colonial security in the Empire.

The owners of the soil should have no cause to doubt the good faith of her Majesty’s solemn assurance that their territorial rights will be recognized and respected: Now, therefore, I the officer administering government, do hereby publicly warn all persons claiming land of this colony, in all cases where the claim is denied or disputed by the original native owners, from exercising acts of ownership thereon or otherwise prejudicing the question of the title to the same, until the question of ownership shall have been heard and determined by one of Her Majesty’s commissioners appointed to investigate claims to land in New Zealand.<sup>319</sup>

At the time of a Commons debate on New Zealand in 1845, the Company’s land claims had not yet been decided by the Commission. Opponents of the Company argued the extended length of time

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<sup>316</sup> Recall Pennington’s award was supposed to be a grant of land based on the expenditures of the company only.

<sup>317</sup> Charles Buller to the House of Commons, June 17, 1845. PP-NZ, 713.

<sup>318</sup> Captain Rous to House of Commons, June 18, 1845. PP-NZ, 766.

<sup>319</sup> Francis Molesworth read this into the Minutes of Evidence, June 25, 1844. PP-NZ, 188.

was a result of the Company improperly obtaining lands.<sup>320</sup> However, a majority of the land claims had yet to be decided by 1845, not merely the Company's claims. During a Select Committee hearing on New Zealand in 1844, all but one person testifying claimed the Maori had contended they had sold the land to William Wakefield, brother of Edward Gibbon Wakefield. The Maori chiefs and others signed deeds of sale which read:

All such lands and streams within certain boundaries as shall be truly described in this deed or instrument unto William Wakefield, Esq. in trust for the governors, directors, and shareholders of the New Zealand Company of London, their heirs, administrators and assigns forever.<sup>321</sup>

Even witnesses hostile to the Company stated that the Maori understood the deed and that everything had been translated and explained accurately. Thus, if the Maori acknowledged the sale, and they understood the sale, why were the land claims of the Company held up in the Land Claims Commission for years? The answers to this question are numerous: The land claims commissioner lacked proper direction. The Commission itself became rife with corruption over the years. The changed political atmosphere in London and a shifting imperial policy led Lord Stanley to purposefully delay the land claims in an effort to promote colonial stability, and lastly, conflicting beliefs regarding the Treaty of Waitangi and the rights of non-indigenous colonial residents, both in London and New Zealand, led to debate on the subjects of land ownership and acquisition causing further delays.<sup>322</sup> Attempts to honor both contracts had stalled the development of New Zealand and placed the Maori, the settlers and the company on the road to violence. Hence the new imperial policy of promoting stability in the colonies failed in New Zealand.

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<sup>320</sup> There were repeated references to rumors that William Wakefield had not purchased the land, but instead simply duped the directors of the Company into believing he did so. Frederick Alonzo Carrington (a fired surveyor previously with the New Zealand Company) testifying before Select Committee. Minutes of evidence, June 6, 1844. SC-NZ, 66-67.

<sup>321</sup> James Coutts Crawford read into Minutes of Evidence, June 18, 1844, SC-NZ, 166.

<sup>322</sup> References for these statements follow as each issue is dealt with separately.

The Select Committee assigned by the House of Commons in 1844 came to two conclusions regarding the delays of the Land Commission. First, they believed that Commissioner William Spain, whom Lord John Russell had sent to investigate the claims, was not given adequate instructions as to the method of conducting an examination of land claims.<sup>323</sup> In the absence of a proper directive, Spain came up with a plan which indefinitely stalled the settlement of claims. His method was to not only determine the “bona fide nature” of the sale, but also of the Maori rights to sell the land in the first place. The Select Committee determined the use of this technique would make it impossible to come to a satisfactory conclusion regarding land claims. Second, communication problems and cultural differences between the Company’s purchasing agents and the Maori had complicated the authentication of purchases. The Select Committee stated:

The evidence as to the reality of the alleged sales was almost invariably contradictory and confused, as might reasonably have been anticipated, considering what imperfect means of communication there were between the parties, and how little one of them understood the nature of such transactions.<sup>324</sup>

This last statement of “how little” the Maori understood such transactions, alludes to the imposition of European concepts of property ownership upon a society which did not share the same values.

The Committee summed it up by stating:

Your Committee need hardly point out the manifest absurdity of attempting to apply the notions of English law, with respect to landed property, to such a state of society, and the utter fruitlessness of an endeavor to disentangle the complicated and conflicting claims set up by the different tribes to wild land, this inquiry having to be conducted by Europeans, ignorant of both the language of the natives, and of their barbarous and superstitious customs, on which the claim to the land frequently depended.<sup>325</sup>

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<sup>323</sup> The company had even written to Russell asking him to clarify to the Select Committee the meaning of his original agreement with the Company. PRO CO 208 43, New Zealand Company Original Correspondence 1844, NZ Co to Russell, June 26, 1844.

<sup>324</sup> SC-NZ, v.

Maori concepts of land ownership differed greatly from the European model. The Maori recognized occupancy as a means of ownership of the land, therefore tribes who occupied the land owned that land. However, the Maori also recognized the right of conquest. If a tribe had conquered another residing on lands at any time within remembered history, the conquering tribe also had a claim if not in residence. Further, because some Maori tribes were cannibalistic, similar to the right of conquest, they also had a belief in conquest by consumption. If the chief of one tribe consumed another, the surviving chief had a claim to all the lands of the consumed chief. For these reasons, it was not unusual for three to five tribes to have a rightful claim to one piece of land. They further did not recognize the European concept of “sale of land for perpetuity.” Because they recognized the right of residence as the right of ownership, if the Maori sold a piece of land and the purchaser did not take immediate occupancy of that land, the Maori believed they could resell that land. They did not understand the concept of forfeiting ownership upon sale.<sup>326</sup> This invited “land sharks” from Europe and Australia who specifically targeted the Company’s lands in hopes of making a profit.<sup>327</sup> This made legitimate purchase of the lands difficult, proof of legal title to the land years after the purchase more problematic, and made the Land Claims Commission’s job next to impossible.

The Land Claims Commission became corrupt over the years as commissioners began imposing fees not approved by the Home Government for its services. In order for a claim to be heard, the commissioners required a £5.00 fee, plus an additional £1.00 for every one hundred words of

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<sup>325</sup> SC-NZ, vii.

<sup>326</sup> Concepts of Maori land ownership compiled from Burns; Adams; Norman Smith. *Native custom and law affecting native land*. (Wellington, N.Z.: The Maori Purposes Fund Board. 1942); Ian McLean. *The Shadow of the Land; a study of British policy and racial conflict in New Zealand, 1832-1852*. (Wellington: Historical Publications Branch, Dept of Internal Affairs, 1968); Paul G. McHugh, *Maori Land Laws of New Zealand: two essays*. (Saskatoon: University of Saskatchewan, Native Law Centre, 1983); John Bruce Brown ed. *Rural Land Administration in New Zealand*. (Wellington, New Zealand Institute of Public Administration; London: Oxford University Press, 1966); I.L.G. Sutherland. *The Maori Situation* (Wellington, NZ: Harry H Tombs, LTD, 1935); Graham Oddie & Row W. Perrett, eds. *Justice, Ethics and New Zealand Society*. (Auckland; New York; Oxford University Press, 1992)

<sup>327</sup> James Coutts Crawford, a self proposed “land shark” testified this was done in hopes the Company would have to repurchase the land from them. SC-NZ, 158.

evidence.<sup>328</sup> They further began to request funds from the New Zealand Company supposedly for the settlement of the Company's land claims. The money, for the most part, went to Maori tribes to make the competing claims of the tribes disappear. The Company continually paid out additional sums to tribes for lands previously purchased by the Company.<sup>329</sup> Yet, the claims never did disappear and the Company directors felt they had been extorted by the Land Claims Commission. Governor Fitzroy told the directors of the Company that the Commission would not settle "any title to any lands" until the matter had been "satisfactorily arranged between Her Majesty's government and the New Zealand Company."<sup>330</sup> This of course was not likely to occur as the Colonial Office was attempting to assure the rights of the Maori under the Treaty of Waitangi. Thus, as the Colonial Office chose to wait for the Land Claims Commission to verify the titles and the Commission refused to verify those titles without Home Government intervention, the likelihood that the claims would be settled was improbable. Unlike Canada in which the goal was an assimilated French culture into one unified British culture; the Treaty of Waitangi created the basis for bi-culturalism in New Zealand. The two concepts of race, however, prevented protection of the Maori.

In February of 1844, a full year after the Company had reached severe financial crisis, the directors of the Company became aware of a "secret agreement" between Lord Stanley and Governor Fitzroy that the government would in no way assist the Company in the settlement of their claims. The implication of such an agreement was that even if the Company fulfilled all the requirements of their contract and submitted all land claims to the Land Claims Commission, they might still never receive their grant of land from the Home Government. The Land Claims Commission appeared, to the Company, to be a futile and hostile effort on the part of the government to permanently block the operations of the Company and to perpetually stall the

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<sup>328</sup> Testimony of Lieutenant Thomas McDonald, Minutes of Evidence, May 23, 1844. SC-NZ, 12.

<sup>329</sup> Charles Buller to House of Commons, June 17, 1845. PP-NZ, 715.

<sup>330</sup> Francis Molesworth, Minutes of Evidence, June 25, 1844. SC-NZ, 200.

government's obligation to the Company. They claimed Stanley purposefully brought "the dull delays of an anomalous litigation to arrest the industry" and they "could not help but conclude that the investigation was entered on in no fair or friendly spirit."<sup>331</sup>

The Treaty of Waitangi further fueled the debate regarding Maori land rights. The interpretation of the Treaty created intense political division. Article Two of the Treaty in particular generated the most debate:

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat them in that behalf.<sup>332</sup>

The traditional stance regarding colonial land was that the establishment of British authority in New Zealand ceded "waste" and "unoccupied" land to the British government. Thus, those who maintained this traditional position were of the opinion that the government was free to dispose of these lands in New Zealand as it pleased. When speaking during the House debate, Charles Buller commented, "The utter repudiation of all purchases from savages was always the principle of our law."<sup>333</sup> The Select Committee had also suggested the Crown was the sole proprietor of all the soil of New Zealand.<sup>334</sup> However, a growing number of men in the Home Government believed the Treaty of Waitangi guaranteed all of the land to the Maori. The line from the Treaty which gave the Maori "the full exclusive and undisturbed possession of their Lands and Estates" supported this position. Thus, the increase of men who wished to protect non-British rights, or at least promote colonial stability, led to the assertion that the implementation of the agreement between Lord

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<sup>331</sup> Charles Buller, speaking to House of Commons, June 17, 1845. PP-NZ, 705 & 710.

<sup>332</sup> *Treaty of Waitangi*. See Full Treaty in Appendix #8.

<sup>333</sup> Charles Buller to House of Commons, June 17, 1845, PP-NZ, 705.

<sup>334</sup> Robert Ingles to House of Commons, June 18, 1845, PP-NZ, 789.

Russell and the Company should not occur. Yet, the same Treaty gave the Queen the right of “preemption.” Therefore, the Company and its supporters argued the Queen had the right to take land from the Maori to give it to the Company, with the authority of the Treaty behind her. The Treaty was in fact too vague or at least left open an avenue for traditional means of acquiring land in the Empire while at the same time attempting to support Maori rights.<sup>335</sup>

Maori construal of the Treaty also differed due to their competing concept of land ownership. When the Treaty was translated and explained to the Maori, they were told the Queen would own the “shadow of the land” but the Maori would “retain its substance.” Many Maori believed this to mean the Queen had returned the lands previously sold and received payment for. The Maori told numerous English settlers they considered the Treaty foolish because it guaranteed rights the Maori already possessed but did not give any advantage to the English.<sup>336</sup> The Maori also told the settlers the institution of the Land Claims Commission was proof that the people of England doubted whether the land had been fairly purchased. Thus, the Treaty and the Commission led the Maori to believe they held a position superior to the emigrants and the Company in the eyes of the British government.<sup>337</sup>

Shortland’s proclamation in 1842, which prohibited the sale of land until such time as the land claims were settled, furthered this Maori conviction and had a severe impact upon both the Company and the settlers. The settlers and the Company were prevented from utilizing land. For the emigrants, this meant they were prohibited from settling on lands purchased before leaving Britain. They could not build houses or reside on these lands while the Commission considered the validity of the Company’s claims. Those who had begun settlement upon their lands faced claims of

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<sup>335</sup> The Select Committee of 1844 did in fact rule that the Treaty was “too vague.”

<sup>336</sup> Mr. John Wright Child, New Zealand Company emigrant, Minutes of Evidence, July 2, 1844. SC-NZ, 231.

<sup>337</sup> Charles Henry Kettle, surveyor, Minutes of Evidence, June 20, 1844, SC-NZ, 179 & George Butler Earp, merchant, Minutes of Evidence, June 18, 1844. SC-NZ, 151.

the Maori and of the new land sharks from Australia and Europe.<sup>338</sup> They also could not sell the land and return to Britain because “no one would expend the trouble or capital upon the land” while it remained disputed.<sup>339</sup> Therefore, unless they had wealth, the settlers were stuck in a new land with nowhere to reside. Some of the emigrants chose to settle on the lands they had purchased while waiting for the reports of the Commissioners. This, at times, put them in direct conflict with the Maori. As the settlement of claims dragged on, tensions between the settlers and Maori escalated, as did the tensions between the Company and its settlers. A number of settlers filed lawsuits against the Company, furthering the Company’s problems.

#### An “Inevitable” Tragedy?<sup>340</sup>

In addition to the tense social conditions, economic and political conditions in New Zealand were reaching a crisis point in the early 1840s. The directors of the New Zealand Company faced a severe financial crisis. As a result, in January 1843, in what Burns calls “draconian” actions, the Company began to dismiss and cut salaries of laborers in New Zealand; the following month they suspended all land sales. The government of New Zealand, which was now temporarily headed by acting governor Willoughby Shortland while they awaited the arrival of their new Governor, Captain Fitzroy, had been expecting funds from the New Zealand Company, and had thus expended its entire budget. The previous governor, Hobson, and acting governor Shortland placed the colonial government into debt through purchases on credit for land and settlement of land disputes. These payments were for corruption as they paid government funds to the Land Commissioners or others to facilitate the settlement of claims. By the time governor Fitzroy arrived in New Zealand in April of 1843, the economy of New Zealand was bankrupt, unemployment was rampant, Fitzroy had no

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<sup>338</sup> Burns, 225. Francis Molesworth, Minutes of Evidence, June 25, 1844. SC-NZ, 174-178.

<sup>339</sup> J.C. Crawford, Minutes of Evidence, June 18, 1844. SC-NZ, 162.

<sup>340</sup> Section title borrowed from a chapter title in Burns, although his was “The Inevitable Tragedy”.

funds with which to administer the government, and tensions between the Maori, the settlers and the Company had escalated to the point of violent confrontation.<sup>341</sup> The Company, the government of New Zealand, the settlers and the Maori were all becoming desperate for the settlement of the land claims.

While the delay had much to do with promoting colonial stability, each day the Land Claims Commission did not rule escalated tension in the colony. Violent encounters between individual settlers and the Maori occurred, even though the Government had ordered the emigrants to “give up their land to any native who claims it is theirs.”<sup>342</sup> Because of this order, and Shortland’s earlier directive, whenever the settlers brought charges of violence to the local courts, if the violence was due to land, the local judges refused to hear the case.<sup>343</sup> The violence included destruction of property, the burning of homes, and even cases of murder.<sup>344</sup> As the situation worsened, the settlers were not offered government protection and they were further forbidden from forming militias for their own defense. Yet, the settlers still formed a militia for their own defense and the government threatened them with prosecution if they did not disband.<sup>345</sup> Both Burns and Adams suggest the Company was at fault for this escalation of violence as they placed settlers on Maori land. The true victims in this case were the Maori who acted out of self defense in response to the “Company’s” settlers.

The culmination of this violence was the Wairau massacre of June 1843. There had been continuing tensions in the Wairau Valley, an area the Company claimed it had purchased from the Maori in 1839. In 1842, the Company petitioned the government for control of the area’s lime and coal deposits. The New Zealand government refused this request based on heavy Maori claims in

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<sup>341</sup> Adams; Burns, Marais; *The Dictionary of New Zealand Biography*, described in biography of Gov. Fitzroy, accessed online at [www.dnzb.govt.nz](http://www.dnzb.govt.nz).

<sup>342</sup> Charles Bueller to House of Commons, June 17, 1845. PP-NZ, 717.

<sup>343</sup> F. Molesworth, Select Committee, Minutes of Evidence, June 25 1844. SC-NZ, 194.

<sup>344</sup> Burns, 151-164.

<sup>345</sup> Molesworth, Minutes of Evidence, June 25, 1844. SC-NZ, 188.

the area. The Company, however, decided to operate mines in the area until such time as the Land Claims Commission ruled. As they established mines, the Maori continually destroyed them. Additional friction ensued in April of 1843 when the New Zealand Court acquitted an English settler, Richard Cook, for the murder of a Maori woman and child. The woman had been married to a Dutch merchant; therefore the Company agents did not anticipate the Maori caring about this woman and child. They were incorrect in this assumption as the acquittal infuriated the Maori. That same month the Company began surveying the Wairau Valley despite the unsettled claims. The surveyors encountered severe hostility from the Maori in the area, including physical confrontations which, at times, sent the surveyors fleeing the area. Yet, despite the continuing conflicts, the Company and a group of settlers set out to survey and settle the Valley in June of 1843. The Maori objected and threatened to bring Rauparaha and Rangiaiaata<sup>346</sup>, two chiefs known for action against settlers, to the area. The Company and the settlers, however, refused to be deterred in their task. Thus, the Maori called on these chiefs who, upon arrival, burned down the settlers' encampment upon their arrival.

The settlers turned to the local government and found a local magistrate willing to issue an arrest warrant for Rauparaha on the charge of "burning houses." During the attempt to serve the warrant shots were fired. Reports vary as to the origination of the first shot, but at the end of the skirmish, four Maori and twenty-two settlers lay dead, and another three Maori and five settlers were seriously wounded. Twenty-seven settlers escaped the area and went to the magistrate to issue depositions. They claimed the Maori fired the first shots and continued firing even after the surrender of the settlers. The magistrates issued arrest warrants for both Rauparaha and Rangiaiaata. This time, the charge was murder.

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<sup>346</sup> Also spelled as Rauparahaero & Rangihaeata at times.

Governor Fitzroy, only in New Zealand for two months, ordered the warrant servers to take no action until he could speak with the chiefs himself. During the meeting the chiefs told the governor that the settlers had fired upon them first and thus, the Maori were simply defending themselves. Fitzroy dropped the charges, fired the magistrate for issuing an “illegal warrant,” and issued a statement to the Maori which was translated as:

Listen O ye chiefs and elder men here assembled to my words: I have now heard the statement of the Wairau affair and I have made my decision; I, the representative of the Queen of England, I, the Governor of New Zealand, have made my decision; in the first place, the white men were wrong, they had no right to survey the land, which you said you had not sold, until Mr. Spain had finished his inquiry; they had no right to build the houses they did on that land; as they were then first in the wrong, I will not avenge their deaths.<sup>347</sup>

He explained that while the Maori were now British citizens, “it was not a necessary consequence that they should be in every respect entirely amenable to British law” due to their ignorance of such laws.<sup>348</sup> He then issued public orders to the settlers that should the Maori attack and burn their houses, they should not resist.<sup>349</sup>

Lord Stanley agreed with Governor Fitzroy. He wrote, “some indulgence must be made” to understand the actions of the Maori due to the provocation of the settlers. He further advised the settlers that an apology for their behavior toward the Maori was in order. The settlers, however, continued to plead with the Governor for some type of retribution, or at the very least a judicial inquiry into the massacre. They felt this was a necessary precursor to peace between themselves and the settlers. Fitzroy refused and issued a declaration to the settlers:

You have dwelt so much on the fatal catastrophe at Wairau, that I feel it imperative on me to remind you, as painful as it is to my feelings, that our countrymen were the aggressors: that the principal magistrate was acting illegally: thirteen of our countrymen fell during the heat of a conflict brought on by

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<sup>347</sup> Read into Minutes of Evidence by F. Molesworth, June 25, 1844. SC-NZ, 197.

<sup>348</sup> F. Molesworth, Minutes of Evidence, June 25, 1844. SC-NZ, 201.

<sup>349</sup> Charles Buller to House of Commons, June 17, 1845. PP-NZ, 717-718.

misconduct of those in authority, and that the other nine, though mercilessly slaughtered after they had surrendered, fell victims to those ferocious passions they had roused to the utmost and who were still wild with savage fury. The British government does and will hold sacred the blood of Her Majesty's subjects *if shed in a just cause*; but to suppose that injustice will be countenanced and misconduct defended by a British Sovereign, or by those whom the Sovereign trusts in high authority is a great and dangerous error.<sup>350</sup>

The inaction of the government displays a naïve expectation that the continuous protection of the Maori could promote colonial stability. The government's continuing refusal to settle land claims is further evidence of this. However, short of removing every settler and the Company from New Zealand, the hoped-for stability was a delusion. In fact, the failure of both the local and Home Government to settle the claims escalated the tensions and violence within the colony.

On the eve of a Parliamentary debate on New Zealand in 1845, the Treaty of Waitangi had become the "first requisite of all contracts." While commendable, it was inconsistent with the colonial situation. For four years the land claims lay undecided, tensions between the Maori and settlers exploded, the settlers felt abandoned by their government, and the Company had fallen into significant debt which fueled an economic depression in New Zealand. The inaction of the government was clearly the catalyst for a majority of these problems. Much time was appropriated in the House debates to issues of blame. The Company was blamed for its initial defiance of the government with the departure of the *Tory*. Had the Company not disregarded the wishes of the government in the first place, the settlers would not be there, hence there would be no unease in New Zealand in the 1840s.<sup>351</sup> This was placed beside the government's inaction as reasoning for the ongoing tensions in the colony. Some, however, put blame aside and began a search for solutions. M.P. Charles Barkly argued the necessity for settling the land claims and honoring the Treaty simultaneously. The way to do this was to interpret the Treaty in a manner which did not include

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<sup>350</sup> Read into Minutes of Evidence by F. Molesworth, June 25, 1844. SC-NZ, 202.

<sup>351</sup> The Select Committee report mentioned this and then it was forwarded in the Commons debates by those such as G.W. Hope.

Maori rights to “waste lands.” Further, he suggested it was time to come to some final solution in regards to the New Zealand Company. He mentioned either a government buyout of the Company in which the Company would then vacate New Zealand, or an entrustment of power to make them an instrument of the government in New Zealand.<sup>352</sup>

At the end of the House debates, a vote was taken on the need to call a Select Committee Hearing to determine the future of New Zealand. An affirmative vote was a declaration only of the necessity to consider changing government policies towards New Zealand and the New Zealand Company. A negative vote was one for maintaining the current policies towards the colony. Prime Minister Peel insisted the Tory party vote as a unit against the Company. He felt the British government as a whole was currently upholding the Treaty of Waitangi and any vote for changing policy towards New Zealand represented a public display of dissent from the Treaty. Thus, along party lines, the M.P.s rejected the request for a Select Committee, 223 to 173.<sup>353</sup>

Privately, however, Peel made concessions to both the Company and the settlers. Peel asked Lord Stanley to order Captain George Grey, the new governor of New Zealand since Fitzroy’s recall in August of 1845, to establish tax municipalities. After a period of municipal government, the colonists would gain the right to regulate land, and this would lead to a national representative government. The Maori were exempted from this taxation, but would also not have the right to be represented in a new national government. The British government felt the Maori “race” incapable of governing themselves because they were a people who required protection and guidance. They were not advanced enough to guide themselves. In comparison, the British government believed the French Canadians also incapable of self-governance. Yet they were advanced enough to serve in government. The French-Canadians need not be protected, but needed to be controlled by a majority British population. In Britain, Stanley additionally ordered Grey to make selected

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<sup>352</sup> Charles Barkley to House of Commons, June 18, 1845. PP-NZ, 786.

<sup>353</sup> Burns, 266.

conditional grants to the New Zealand Company under Pennington's Award, asked for a full report as to the reasoning for the delay of the Commission, and ordered Grey to spend £10,000 on the purchase of land. The funds would go to the Company if Grey could not obtain enough "waste" land to satisfy Pennington's Award. If the government met the Award, Grey was to sell any excess land to whomever desired it.<sup>354</sup>

The directors of the Company were not satisfied with Stanley's offer; they wanted the full amount of land granted to them under Pennington's Award and full, immediate, representative government for the settlers. The Company brought the matter to the House again in July 1845. Once again, Peel backed his Colonial Secretary and insisted upon a party-line vote against the Company.

Privately, and perhaps at the insistence of Peel, Stanley made further concessions to the Company. He set their land claims to 1,300,000 acres and went to Parliament to request a loan of £100,000 for the Company. He argued the funds and acreage were not simply to satisfy the demands of the Company's directors, but the financial ruin of the Company would hurt the settlers. Thus, while publicly the directive of the Tory government was to ensure non-British rights to promote colonial stability; privately, recognition of the realities of the colony created a need to compromise with the Company in order to ensure peaceful relations in the colony. At the end of 1845, Lord Stanley resigned from the Cabinet. Peel's government fell the following year. This private concession was reflected within the politics of the Tory party in the 1830s and 1840s. Indigenous rights were a concept rather than a law to be enforced by courts. This meant that the political arena was the place for debate regarding indigenous rights, hence, the Parliamentary

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<sup>354</sup> Fitzroy had been recalled by Stanley; MP Wards argued in Parliament that he had been made the "scapegoat" for all that was wrong with New Zealand. Buller, to House of Commons, July 21, 1845. PP-NZ, 266. Also discussed in Ian McLean Wards, *The Shadow of the land; a study of British Policy and racial conflict in New Zealand*. (Wellington: Historical Publications Branch, Department of Internal Affairs, 1968), 168-170; Burns, 266-267.

debates and Select Committees.<sup>355</sup> In these debates, Peel and other Tories stood firmly behind indigenous rights. Peelite Toryism, however, sought to make “timely, practical and necessary reforms without compromising essentials or opening the floodgates to wider and more far-reaching changes.”<sup>356</sup> Thus, while Peel publicly adhered to a policy of maintaining Maori rights, his private agreement with the Company, which partially succumbed to long-standing British traditions and the gentlemanly capitalists of the New Zealand Company, could be justified if it were to promote further colonial stability. Liberal Tories in the early 19<sup>th</sup> century empire performed a balancing act as they attempted to reduce volatility in the colonies by supporting the rights of non-British colonial occupants, yet still maintaining British supremacy over such peoples. In this manner, the government’s racism was consistent with liberalism insofar as the latter “excluded” certain groups who were not sufficiently advanced from immediately being able to benefit from it. The directors of the Company, however, continued to push for the traditional rights afforded to men of privilege. They insisted upon the entire tract of land promised to them with Pennington’s Award. They would therefore continue negotiations with the Government long after the departure of Prime Minister Peel and his Colonial Secretary, Lord Stanley.

### **Conclusion: Historical Culpability and Ungentlemanly Capitalism**

The conflicts of the New Zealand Company with the Government and the Maori remained unresolved at the close of the Peel era. The Treaty of Waitangi, while instituted with the best of intentions towards the Maori, was simply incompatible with any imperial policy which included colonization principles. The Tory government had hoped to promote colonial stability by protecting Maori land rights, but this was impossible while British settlers were claiming the same lands. The

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<sup>355</sup> Mark Hickford, “Vague Native Rights to Land’: British Imperial Policy on Native Title and Custom in New Zealand, 1837–53,” *The Journal of Imperial and Commonwealth History*, 1743-9329, Volume 38, Issue 2, 2010, Pages 175-206.

<sup>356</sup> Richard A. Gaunt, *Sir Robert Peel: the Life and Legacy*, (London, New York: IB Tauris, 2010) , 4

land issue submitted to the Land Claims Commission was extremely complicated; therefore even someone with the best intentions of protecting Maori rights would find it difficult to obtain a “clean” land purchase. In short, the ongoing policy of colonization negated the objective of the Treaty. George Clarke, the Protector of the Aborigines, a position in New Zealand instituted by Peel, wrote:

One false step now must plunge us sooner or later into ruin...If the Government is determined to put settlers in possession of their lands, which we cannot convince the natives *or ourselves honestly* that we have alienated, they must do it at the point of a bayonet.<sup>357</sup>

The tension between the settlers and the British government persisted as settler rights were hindered by the Treaty. The government had repeatedly appeased the Maori at the expense of the settlers as seen in the aftermath of the Wairau Massacre. Any public indication of siding with the settlers could be construed as abandonment of the Treaty. The Tory government had every intention of protecting both the Maori and the settlers, but because the two groups had claimed the same tracts of land, it was impossible to satisfy both groups. Thus, at least publicly, the settlers’ needs were continually cast aside for the Maori and the Treaty.

The agreement between the Company and Lord Russell also clashed with the Treaty of Waitangi. Specifically, in order for the government to fulfill their end of the contract, it would be necessary to dispossess the Maori of their lands, by force if necessary. The Home Government, rather than outright refusing to honor the contract and abandoning tradition, subjected every land purchase to the Land Claims Commission and then made it impossible for those claims to clear as the local government awaited word from the Home government before clearing claims and the Home government awaited the clearance of land claims before taking action. The Tory government was truly in an impossible position. They were ordered by the Treaty to protect Maori rights, while at

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<sup>357</sup> From the Dillon Letters, page 60, quoted in Burns, 272.

the same time systematic colonization of New Zealand was underway long before they came into power.

Revisionist histories, such as those by Adams, Burns, and Lambourn, correctly assign responsibility for the mistreatment of the Maori to the New Zealand Company. Opposing concepts of land ownership made it impossible for anyone, including the Company, to obtain a legitimate title to land from a party that did not hold the same understanding of land ownership. Yet, traditionally, waste land was ceded to the crown; thus the directors of the Company were following past colonial models. However, the directors ignored the rights of the Maori during the ongoing Land Claims Commission, used their domestic influence to forward their agenda in Parliament, and ignored government directives on a number of occasions. This reflects a lack of understanding or acceptance on the part of the directors of the growing belief that protecting Maori rights would lead to colonial stability and indeed, does impart the culpability of the Company towards continued instability in the colony. Alan Lambourn has argued that the British government truly believed that New Zealand was founded in a spirit of “unity and trust,” thus placing responsibility for any injustice upon the Company.

These same revisionists excuse the behavior of the British government, claiming the actions of the Company forced the Colonial Office, Parliament and local government to continuously take actions in order to protect the Maori. In these histories, the Company is the abuser, the Government the protector. Patricia Burns defends the actions of Stanley, Stephen and all of the local government officials throughout her book, repeatedly stating that these officials were attempting to protect the Maori from the New Zealand Company.<sup>358</sup> While there is some truth in this, neither the Home Government, whether controlled by Whigs or Tories, nor the New Zealand government were innocent of maltreatment and exploitation of the Maori, even if it was at times

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<sup>358</sup> Burns

unintentional. Lord John Russell made an agreement to give the Company the “unused” lands of the Maori, the Colonial Land and Emigration Commissioners oversaw emigration of groups of colonists, and the Colonial Office did not instruct the Land Claims Commission as to the means to validate titles. The extended length of processing land claims caused a collapse of economic and political conditions in New Zealand and violent escalation of the tensions there. Prime Minister Peel’s insistence in a party line vote of “no” regarding the possibility of examining government policies toward New Zealand further ignored the turmoil of the colony. At the same time, the private concessions to the New Zealand Company by Peel and Stanley, while intended to promote colonial stability, would have the effect of dispossessing the Maori of their land. Thus, to deny the culpability of the Government in the mistreatment of the Maori or the ongoing violence in the colony is flawed.

The lack of clear law regarding both indigenous and non-indigenous rights created a gray area in which the Government and the New Zealand Company operated in the 1830s and 1840s. The failure to create a clear law exacerbated the turmoil in the colony. The need for clarity was apparent with the ineffectiveness of the Land Claims Commission and thus the economic failure of both the Company and colony. It is further evident in the Select Committee and two Parliamentary debates as officials spent days attempting to assign blame, rather than figure out solutions or to legislate clear points of law to apply to the Maori. The Select Committee on Aborigines had earlier suggested the need for the institution of clear laws and policies:

We must have a principle on which to base a more equitable system, that will settle the controversy on this subject, in the authoritative manner in which the Almighty settled the controversy between Job and his friends. We must be able to come into court and to assert the claims of justice on principles paramount to all human authority... We must lay down, as the basis of any system of international law we may wish to see introduced to regulate our intercourse with our neighbours on the borders of our colonies,

that principle by which kings should rule, and princes decree justice.<sup>359</sup>

In 1845, the Colonial Office and some House members had argued the Company's defiance of the government with the departure of the *Tory* caused a chain reaction leading to the economic, political and social chaos in New Zealand. Yet the House members ignored the fact that the Colonial Office had previously decided to take action in New Zealand. While the Colonial Office's plans for New Zealand were certainly less invasive than the Company's, it is impossible to know if it would have caused a similar chain of events. If taken to the extreme, it could be argued that the Colonial Office's decision to settle New Zealand motivated the Company to take action and thereby started the chain of events which led to the unstable colony. However, in consideration of the obvious abuses on the part of the Company, and the directors' desire to colonize New Zealand dating back to 1825, minimizing the culpability of the Company in this manner would be erroneous. Nonetheless, the Colonial Office decision to secure New Zealand as a colony should not be underestimated. After all, any plans for colonization, even if at a gradual pace, can only lead to injustice for previous occupants of that land. The Company did increase the speed of colonization, thus accelerating the abuses against the Maori. Yet, the Colonial Office's ambition to secure New Zealand, the continued inconsistencies between their public policies and private actions, and the continued delay in settlement of Lord Russell's contract with the Company through use of the corrupt Land Claims Commission, substantially contributed to the grave state of affairs in New Zealand in the 1840s and beyond. The British government was not a victim of the Company: they were its equal partner in the exploitation of the Maori people.

The Home Government's changed relationship with BALC demonstrated a clear break with traditional practices of gentlemanly relationships in the late 1830s in the aftermath of the Canadian

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<sup>359</sup>SC-AT, 137.

Rebellion. The relationship with the New Zealand Company, with its refusal to offer an initial charter, reflected the same reluctance to allow gentlemanly companies to operate in the Empire. It would be simple to claim that Lord John Russell's agreement with the Company and the private agreements made later by Stanley and Russell suggest gentlemanly capitalism was alive and well in the Empire. Yet, the institution of a Land Claims Commission by the Whigs, and Peel's insistence on party-line votes against the Company demonstrate favoring, at least publicly, the rights of prior occupants of colonial lands in order to promote colonial stability. This is not to say that the desire to protect Maori rights was insincere; nor does it deny gentlemanly capitalists maintained a significant influence behind the scenes; it was simply recognition by Peel and others that protecting Maori rights was not enough to secure the stability of New Zealand. If the things necessary to encourage colonial stability happened to favor the gentlemanly capitalists, in public or in private, it was a result of a Home Government seeking to secure colonial environments, not to favor men of privilege or previous traditions. In fact, the reclamation of BALC's land and the continued blocking of Russell's agreement with the New Zealand Company through means of a Land Claims Commission that could never settle claims resulted in a relationship between the gentlemanly capitalists and the Government which was decidedly ungentlemanly in character, if not in membership.

In Canada, Lord Durham had argued that French Canadian land use was reminiscent of feudal and aristocratic France and therefore led to a belief that the French Canadians were stubborn and refused to develop economically as the British had. Thus, a racial categorization of the French Canadians developed which provided Durham with the fuel required to dilute the voting rights of the French Canadians. The Maori concept of land ownership was not compatible with western concepts of land ownership. Thus the Maori were not viewed by the Home Government as stubbornly refusing to adapt, they simply had different core beliefs regarding land usage. Therefore,

the Maori needed guidance in order to develop. Yet, the two competing concepts of the Maori race, combined with the governments' stalling the development of both the company and the Maori allowed the construction of a bi-cultural society in which racism against the Maori people would exist for at least 150 years.<sup>360</sup>

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<sup>360</sup> Paul Spickard, *Race and Nation: ethnic systems in the modern world*. (New York; London: Routledge, 2005)

## Appendix #1

### Where Were the Indigenous People?

By the first half of the nineteenth century, indigenous peoples were of little import in the colonies of Canada and New Zealand as the indigenous population had earlier moved on from the areas where the land companies would settle. In Canada, the indigenous peoples had come into contact with both the French and British as early as the seventeenth century. The indigenous population skillfully played the two European groups against each other as they vied for position in the fur trade. At the conclusion of the Seven Years War in 1763, as the French ceded their land to the British, competition in the fur trade between the two European powers ended. Thus it would discontinue the indigenous method of playing one group against the other. Further, the French and the British had different means of dealing with the indigenous population, particularly due to their separate goals for the colony. The French had come to Canada with the main goal of establishing a fur trade. However, the British sought to settle the land in addition to trade. This would cause a need to displace the indigenous population. The Proclamation of 1763 had established native land reserves and forbade private purchases of these lands. This meant only the Home Government would be allowed to negotiate for indigenous land purchases.

In Upper Canada, the Home Government negotiated with the indigenous population for land to be given to Loyalists after the American Revolution and again in the 1820s as the Canada Company sought to settle in the area. Although these “negotiations” took place, it was really more of a forewarning to the indigenous population in the area to move away from the planned area of settlement. Thus, by the 1820s when the Canada Company sought to begin operations in Upper Canada, the indigenous people had long since moved out of the area en masse.<sup>361</sup>

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<sup>361</sup> The total estimated number of Chippewa living in the Huron Tract was 450. PRO CO 42 398, in bundled papers inserted into volume; *Sweet promises: a reader on Indian-white relations in Canada*. Ed. James Rodger Miller (Toronto: University of Toronto Press. 1991)

Native reservations dated back to the seventeenth century in both Upper and Lower Canada. In Quebec, the French were very successful, through the use of Catholic missionaries at moving indigenous people to these reserves. In the 1820's the British began an acculturation policy of the indigenous population in Lower Canada, including the incorporation of these groups into new settlements. The established methods for land acquisition, the long standing reserves in Quebec, the acculturation policy and the general amalgamation of indigenous peoples into the European community had made native affairs "fade rapidly from view." Thus, there was no real native presence in Lower Canada to come into conflict with the British American Land Company (BALC) in the 1830s. Further any problems BALC might have encountered with indigenous people was far overshadowed by the problems they encountered with the French Canadian populace.<sup>362</sup>

In New Zealand the Maori people are typically referred to as indigenous or aboriginal tribes. In fact the United Nations recently declared that the "Māori hold a distinct and special status as the indigenous people" of New Zealand.<sup>363</sup> Despite this declaration, the Maori are not indigenous to New Zealand. If we define indigenous as a people whose ancestors have resided since ancient times in a particular place, then New Zealand does not have an indigenous population. If we refer to an indigenous population as one that occurred naturally in the region, then all people born in New Zealand would fit this definition.<sup>364</sup> Thus, given the standard definitions of indigenous, the Maori are not indigenous. Another use of the term indigenous not found in the dictionary, but generally understood, refers to those who arrived first in an area. The Maori arrived in New Zealand from

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<sup>362</sup> Sidney Haring, *White Man's Law: Native People in 19<sup>th</sup> Century Jurisprudence*. (Toronto; Buffalo; London: University of Toronto Press, 1998); Roger L. Nichols, *Indians in the United States and Canada: A comparative history*. (Lincoln; London: University of Nebraska Press, 1998). Quote taken from Nichols, 186. BALC records have only one mention of native peoples in a letter book. Theodore Moore, head of the Lennoxville operation, wrote to Samuel Brooks, head of the Montreal Office requesting blankets and moccasins for the use of surveyors in the area. NAC MG 24 I 54, Vol. 5. Letter book Moore to Brooks, May 8, 1834.

<sup>363</sup> Tracy Watkins, "New Zealand does U-turn on rights charter," *The Press*, April 20, 2010. Quote from the charter which is printed within the article.

<sup>364</sup> See David Round, "Who is Indigenous?" New Zealand Center for Political Research, June 6, 2010 accessed at <http://www.nzcpr.com/guest197.htm> see also, David Round, *Truth or Treaty* (New Zealand: Canterbury University Press, 1998)

other Polynesian islands between the years 1250-1300 A.D. Archaeological evidence uncovered in the past two decades has been filled with controversy, but lend credence to an argument that suggests the Maori were not the first peoples to occupy New Zealand. In 1998, archeologists carbon dated bones, tools, and sculptures to the third century A.D. and categorized these items as distinctively not Maori. They further uncovered human skeletons of a people over six feet tall with bone structure decidedly non-Maori.<sup>365</sup> Ten years later in 2008, a study of rat bones claimed rats had to have travelled to the New Zealand with its first peoples as rats were not indigenous to New Zealand. The carbon dating of those rat bones suggests rats arrived with the Maori in the thirteenth or fourteenth centuries; therefore this argument suggests the Maori had to be the first occupants of New Zealand.<sup>366</sup> The rat bone argument did not address other archaeological evidence, including the skeletal remains of humans much larger than the Maori or the discovery of ancient stone sculptures which predate the Maori arrival in New Zealand by a millennia.<sup>367</sup> Those who uphold the Maori as the first occupants of New Zealand dismiss the archaeological evidence out of hand, referring to it as perpetuating ongoing European myths regarding Maori culture.<sup>368</sup> At least at this stage of research, it appears that the evidence does support an argument in which the Maori were not the first occupiers of New Zealand, although the debate continues. Thus, the Maori do not meet any of the definitions of an indigenous people. They were not naturally born on New Zealand soil. Their ancestors did not reside immemorially in New Zealand as we can date the arrival of their ancestors to New Zealand in the 13<sup>th</sup> or 14<sup>th</sup> centuries. And even using a less common definition of

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<sup>365</sup> Kimberly Paterson, "Pushing History Back beyond Our 'Real Time'," *Auckland Sunday Star-Times*, April 19, 1998; Ian Smith & Atholl Anderson, "Radiocarbon Dates from Archaeological Rat Bones: The Pleasant River Case," *Archaeology in Oceania*, Vol. 33, No. 2 (Jul., 1998), pp. 88-91; Matisoo-Smith E and Robins JH, "Origins and dispersals of Pacific peoples: evidence from mtDNA phylogenies of the Pacific rat," *Proceedings of the National Academy of Sciences of the U.S.A.* 24. (June 2004) 9167-72.

<sup>366</sup> Argument for Maori as first occupiers, Janet M. Wilmshurst, Atholl J. Anderson, Thomas F. G. Higham, and Trevor H. Worthy, "Dating the late prehistoric dispersal of Polynesians to New Zealand using the commensal Pacific rat," *Proceedings of the National Academy of Sciences of the U. S. A.* 105(22) (June, 2008), 7676–7680.

<sup>367</sup> Anita Jane Smith, *An Archaeology of Western Polynesian Pre-history* (Canberra: Pandanus Press, 2002)

<sup>368</sup> For example see Matthew Wright, "New Light Shed on Origins of Maori," *The Press*, July 28, 2010.

“indigenous” we see that there is a growing body of evidence that suggests the Maori were not the first occupants of New Zealand. The Maori were in fact a settler population, a group of emigrants who arrived only four centuries before the European settlers. Thus despite the United Nations labeling them as such, the Maori were not indigenous to New Zealand. However, by the early nineteenth century, the Maori were the only tribal peoples living on the island. While they were certainly not indigenous, it was they who came into contact with settlers brought by the New Zealand Company. Thus, the Maori and the French were not the original inhabitants of these colonies, yet but both of these non-indigenous groups would interrupt British plans for these colonies.

## Appendix #2



<sup>369</sup> Image from World Atlas, accessed at [www.worldatlas.com/.../lgcolor/cauplwlg.htm](http://www.worldatlas.com/.../lgcolor/cauplwlg.htm)

## Appendix #3 Canada Company Directors

NAME	SECTOR	OCCUPATION	MP?
Charles Bosanquet	<b>Gentry</b>	<b>Governor</b>	
William Williams	<b>Landed</b>	<b>Baronet</b>	<b>MP</b>
Robert Biddulph	<b>Landed</b>	<b>Banker</b>	<b>MP</b>
Richard Blanchard			<b>MP</b>
Robert Downie			<b>MP</b>
Sir John Easthorpe	<b>Landed</b>	<b>Politician/newspaper owner</b>	<b>MP</b>
Edward Ellice <sup>370</sup>	<b>Service</b>	<b>Hudson Bay Co.</b>	<b>MP</b>
Charles D. Gordon	<b>Gentry</b>	<b>Relation of Biddulph</b>	
John Fullerton	<b>Gentry</b>		
William Hibbert Jr.	<b>Landed</b>		<b>MP</b>
John Hodgson <sup>371</sup>	<b>Service</b>	<b>Hudson Bay Co.</b>	<b>MP</b>
Hart Logan	<b>Landed</b>	<b>Export/ Import</b>	<b>MP</b>
Simon McGillivray <sup>372</sup>	<b>Service</b>	<b>Hudson Bay Co.</b>	
John Hullet <sup>373</sup>	<b>Financial</b>	<b>Banker</b>	
James McKillop			<b>MP</b>
John Masterman	<b>Landed</b>		
Martin Tucker-Smith	<b>Financial</b>	<b>Banker</b>	
Henry Usbourne	<b>Service</b>	<b>Owned Timber Operations</b>	
			374

**Total number of Directors= 18**

Landed/Gentry=9

Service=4 Financial= 2

3 Unknown- but served as MPs

Members of Parliament= 9

<sup>370</sup> Edward Ellice further served as a government minister.

<sup>371</sup> In 1774, John Hodgson was listed as a young "apprentice," he will later go on to serve in imperial postings.

<sup>372</sup> Simon McGillivray is also listed as the "Grand master of the Masonic Movement in Canada"

<sup>373</sup> John Hullet was a partner in Hullet and Brothers & Co. Bank

<sup>374</sup> Information for table compiled using *National Dictionary of Canadian Bibliography*; Sir Bernard Burke, *A Genealogical & Heraldic Dictionary of the Peerage, History of Parliament*; George Smith, *Dictionary of National Biography to 1900*; Joseph Hadyn, *The Book of Dignitaries*; Edmund Lodge, *The Peerage and Baronetage of the British Empire*

## Appendix #4

### British American Land Company Directors

NAME	SECTOR	OCCUPATION	MP?
Sir John Peter Boileau	Landed	Baron/Archaeologist	
John Browde			MP
Robert Carter	Service	Military/Merchant	
William Petrie Crawford	Landed	Baron	
Russell Elice	Service	East India Company	
Alexander Gillespie (the younger)	Service	Shipping/Partner with Moffat	
Nathaniel Gould	Service	London Merchant/Partner of McGill	
Sir William Inglis	Gentry	Military	
Peter McGill (aka P. McCutcheon)	Financial	Head of Bank of Montreal	
George Moffat	Service	Shipping	
William Pemberton	Landed	Attorney	
George Richard Robinson	Service	Governor of BALC/Partner in Hart, Eppes, Gaden, and Robinson	MP
Edward Southwell Ruthven <sup>375</sup>	Landed	Military/Irish Politician	MP
George Sinclair	Landed	Baron	MP
Patrick Maxwell Stewart	Landed	Baron	MP
George Wildes	Financial	Partner in Wildes, Pickersgill, & Co.	
Sir James Wilson	Gentry	Military	
Lewis Stride		No Info Found	
John Shuter		No Info Found	
John Kirkland <sup>376</sup>		“Tower Surgeon”	
Keith Douglas		No Info Found	
Edward Wheler Mills		No Info Found	
William Robert		No Info Found	377

Total Number of Directors= 23

Landed/Gentry=8

Financial=2/Service= 6

Unknown=6<sup>378</sup>

<sup>375</sup> Ruthven died on March 31, 1836 so he will not be on the company's final charter

<sup>376</sup> This may be the incorrect “John Kirkland.” The dates are right but the “Tower Surgeon” becoming a director seems unlikely.

<sup>377</sup> *National Dictionary of Canadian Bibliography*; Sir Bernard Burke, *A Genealogical & Heraldic Dictionary of the Peerage, History of Parliament*; George Smith, *Dictionary of National Biography to 1900*; Joseph Hadyn, *The Book of Dignitaries*; Edmund Lodge, *The Peerage and Baronetage of the British Empire*

<sup>378</sup> The unknowns would most likely fall into a “non-landed/gentry” column as those groups are well documented

## Appendix #5

### New Zealand Company of 1825

NAME	SECTOR	OCCUPATION	MP?
John George Lambton	Landed	Earl of Durham	MP
John Wm. Buckle	Service	Shipowner/convict contractor	
Russell Ellice	Landed	Younger brother of Edward Ellice/Merchant	
Edward Ellice	Landed	Politician & Merchant	MP
Stewart Majoribanks	Service	Merchant	MP
Ralph Fenwick	Service	Shipping Insurance	
George Lyall	Service	Merchant	MP
George Palmer	Gentry	Merchant	MP
Robert Torrens	Service	Military/Economist	MP
Sir Courtney Boyle	Gentry	Admiral Royal Navy	
Edward J. Littleton	Landed	Baron	MP
James Pattison	Service/ Financial	Gov. Bank of England/ East India Company	MP
William Mannings	Service	Legal Writer/Merchant Family	MP
Abraham W. Robarts	Landed	Banking Family	MP
James Fadden	Unknown		<sup>379</sup>

**Total Number of Directors= 15**

**Landed/Gentry= 7**

**Service=7**

**Unknown=1**

**Total number of MPs= 10**

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<sup>379</sup> Chart compiled using information from Sir Bernard Burke, *A Genealogical & Heraldic Dictionary of the Peerage, History of Parliament*; George Smith, *Dictionary of National Biography to 1900*; Joseph Hadyn, *The Book of Dignitaries*; Edmund Lodge, *The Peerage and Baronetage of the British Empire*; *Dictionary of New Zealand Biography*; *The History of Parliament: the House of Commons 1820-1832*, ed. D.R. Fisher, (Cambridge University Press, 2008)

## Appendix #6

### New Zealand Association 1837

NAME	SECTOR	OCCUPATION	MP?
John George Lambton	Landed	Earl of Durham	MP
John W. Buckle	Service	Ship owner	
Russell Ellice	Landed	Merchant	
Stewart Majoribanks	Service	Merchant	MP
Ralph Fenwick	Service	Shipping Insurance	
George Lyall	Service	Merchant	MP
Robert Torrens	Service	Military/Economist	MP
William Hutt	Landed	Politician	MP
Wm. Francis Henry	Landed	Baron	MP
Sir Francis T. Baring	Landed	Merchant/Banker	MP
Sir George Sinclair	Landed	Politician	MP
Sir William Molesworth	Landed	Baron/Author	MP
Wm. Bingham Baring	Landed	Baron/Banking	MP
Walter F. Campbell <sup>380</sup>	Landed	Landowner	MP
Charles Enderby <sup>381</sup>	Service	Whaling & Sealing Co	
Robert Ferguson	Landed	Royal Academy	MP
Benjamin Hawes	Landed	Politician	MP
Rev. Samuel Hinds	Service	Bishop	
Philip Henry Howard	Landed	Politician	MP
Thomas Mackenzie	Landed	Scottish Politician	MP
Sir William Symonds	Service	Rear Admiral	
Henry George Ward	Service	Politician/diplomat	MP
William W. Whitmore	Service	Politician/Merchant	MP
Charles Buller	Landed	Politician	MP
			382

Total number of Directors= 24

Landed=14

Service=10

Members of Parliament=18

<sup>380</sup> Campbell had to sell his families estate in the 1850s due to massive debt

<sup>381</sup> Enderby claimed bankruptcy in the 1850s

<sup>382</sup> Chart compiled using information from Sir Bernard Burke, *A Genealogical & Heraldic Dictionary of the Peerage, History of Parliament*; George Smith, *Dictionary of National Biography to 1900*; Joseph Hadyn, *The Book of Dignitaries*; Edmund Lodge, *The Peerage and Baronetage of the British Empire*; *Dictionary of New Zealand Biography*; *Also Adams*; *Burns*; *The History of Parliament: the House of Commons 1820-1832*, ed. D.R. Fisher, (Cambridge University Press, 2008)

## Appendix #7

### New Zealand Company 1839

NAME	SECTOR	OCCUPATION	MP?
John George Lambton	Landed	Earl of Durham	MP
John W. Buckle	Service	Ship owner	
Russell Ellice	Landed	Merchant	
Stewart Majoribanks	Service	Merchant	MP
Ralph Fenwick	Service	Shipping Insurance	
George Lyall	Service	Merchant	MP
Robert Torrens	Service	Military/Economist	MP
William Hutt	Landed	Politician	MP
Wm. Francis Henry	Landed	Baron	MP
George Palmer	Service	Merchant	MP
Sir George Sinclair	Landed	Politician	MP
Sir Henry Webb	Landed	Politician	MP
John Abel Smith	Financial	Banker	MP
William Thompson	Landed	Banker/Politician	MP
John Pirie	Landed	Oriental Steamship Co.	MP
Joseph Sommes	Service	Shipbuilding	MP
George F. Young	Service	Shipping magnate	MP
John Ward	Service	Journalist	MP
James B. Gordon	unknown		
Arthur Willis	Unknown		

383

**Total number of directors=20**

**Landed=8**

**Service=9/Financial=1**

**Total number of MPs=14**

<sup>383</sup> Chart compiled using information from Sir Bernard Burke, *A Genealogical & Heraldic Dictionary of the Peerage, History of Parliament*; George Smith, *Dictionary of National Biography to 1900*; Joseph Hadyn, *The Book of Dignitaries*; Edmund Lodge, *The Peerage and Baronetage of the British Empire*; *Dictionary of New Zealand Biography*; *Also Adams*; *Burns*; *The History of Parliament: the House of Commons 1820-1832*, ed. D.R. Fisher, (Cambridge University Press, 2008)

## **Appendix # 8**

### **Treaty of Waitangi**

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favor the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands – Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant-Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

#### **Article the first [Article 1]**

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.

#### **Article the second [Article 2]**

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at

such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

**Article the third [Article 3]**

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

(signed) William Hobson, Lieutenant-Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof in witness of which we have attached our signatures or marks at the places and the dates respectively specified. Done at Waitangi this Sixth day of February in the year of Our Lord one thousand eight hundred and forty.

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