

**CROWN LAND AGENTS  
AND SURVEYORS IN UPPER CANADA**

AGENTS OF PROGRESS:  
THE ROLE OF CROWN LAND AGENTS AND SURVEYORS  
IN THE  
DISTRIBUTION OF CROWN LANDS IN UPPER CANADA, 1837-1870

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## ABSTRACT

The distribution of land was one of the largest tasks of the colonial government in Upper Canada. This dissertation reviews that monumental distribution of resources from the perspective of those government agents, Crown land agents and surveyors, who gave practical effect to an array of policies, including the distribution of land to individuals, within the period when land sales, rather than free grants, dominated the land policy beginning in 1837 until 1870, by which time arable land was in short supply. While the land policies of Upper Canada have been examined in detail, little research exists to shed light on the application of those policies with regards to actual settlers. Notably, the place of cultural and social values with regards to settlers and land allocation has been disregarded, especially in terms of the ideas of worth and worthiness. Most research in this field has focussed on politics, political development, state formation, and the role of the elite. Yet, the concern of government agents was not centred solely on maintaining strict government control, but also on acting as advocates for those settlers who were seen as making a contribution to the growth of a successful colony. In mediating between the government and the people, agents expressed their own ideas about the meaning of land ownership and who would make the best settlers, especially with regards to squatters. The presence of an active pre-patent market in land claims further expanded the role of agents into one of adjudicators. Evidence shows that surveyors and land agents seemed more concerned with applying what they saw as the spirit, rather than the letter of the official land policy. They sought to encourage settlement and improvement in order to create a stable and prosperous society which had as its foundation successful family farms.



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Michelle Vosburgh

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## **Chapter 1: Introduction to the Thesis and Review of the Literature**

The distribution of Crown lands in Upper Canada was the greatest task undertaken by the government of that colony until it became a part of the Dominion of Canada in 1867. Originally established as a place of refuge for Loyalists from the United States, land, accordingly, was first distributed in the colony as a reward for loyalty for those refugees. Land grants were the accepted means of disposition of Crown lands until 1827, when, in need of money, the government first decided to implement land sales. The evolution of the land policy of Upper Canada was most dramatically affected though, by the events of 1837-38, when protest gave way to armed rebellion in both Upper and Lower Canada. The principle aim of the rebels in Upper Canada was to unseat the conservative elite who ruled. The response to that uprising, both within the colony and in Great Britain, was characterized by a concerted effort to reform the governance of the colony, including the distribution of Crown lands. This thesis will examine that period of time after the 1837-38 Rebellions until the end of large-scale distribution of Crown lands around 1870, when the limits of arable agricultural land in Upper Canada had been reached.

One of the significant aspects of this period of land distribution was the presence of Crown land agents, men responsible for the sale of Crown lands within local jurisdictions, usually one or two counties, and their counterparts, Provincial land surveyors who carried out inspections of Crown lands. Working within a context where competition for land was growing as the population grew and the availability of arable land was shrinking, these men found themselves at the centre of a dynamic process. They had to work between the government's need for revenue from the Crown lands and the government's moral responsibility to see the land put into the hands of settlers and put into production as quickly as possible. They also found themselves in the middle of the struggle for land between settlers, squatters and speculators. Generally, these men worked within a moral economy to ensure that *bona fide* settlers (even when the settlers were squatters) had access to reasonably-priced lots and had the opportunity to become successful farmers in order to encourage the settlement of Upper Canada and its future prosperity.

Over the course of this period, the competition for land became increasingly fierce. Although the official land policy became more sympathetic with the Crown land agents and surveyors' attitudes over the same period, especially becoming more lenient towards squatters, these men still found themselves under considerable pressure. Squatting appeared even more frequently as settlement advanced and the supply of arable land shrank, and a new group of squatter-speculators emerged as important players in the competition for land. Both large and small-scale speculators, looking to take advantage of the profitable market for land, became more adept at using loopholes in the system to

their own advantage, hampering settlement. Crown land agents and Provincial land surveyors working as inspectors, then, were on the front lines of land distribution during the period when Crown land distribution and competition for that land was at its peak in Upper Canada. The challenges of their role, and their responses to the competition for land reveal much about not only land distribution, but also the development of the province during this critical period.

#### Upper Canada's Land Distribution: Its Context

In order to establish how this thesis makes an original contribution to the published and unpublished scholarship dealing with the allocation of land in the new society of Upper Canada<sup>1</sup>, this chapter will review the main studies and their relationship to parallel works written about land and settlement in several other places in the world, primarily the United States and Australia. In addition, this review will familiarize readers with the historical context of Upper Canada within which land distribution and settlement took place. The events that shaped the development of Upper Canada have been interpreted in different ways. This review will examine some of these with a view to understanding how these events affected the processes of land distribution. Most importantly, this chapter will demonstrate the gap in the literature that this thesis hopes to fill, in order to further understanding of the processes of development in the province.

It is not surprising that the history of Upper Canada has been studied in some detail because the past offers insights to explain the present situation of the province of Ontario politically, economically, culturally and socially, as well as the development of Canada, long dominated by Ontario. Of particular interest, to academic, popular, and amateur historians alike, has been the settlement of the province, especially its southern counties. The topics of land and settlers have been an integral part of the discussion of the first half of the nineteenth century, because, quite simply, the distribution and settlement of land were, if not the most prominent activities in this period, certainly among the most important. It is no surprise then, that the subjects of land division, allocation and settlement have been significant components in the historiography of the province, both as central topics in their own right and alongside discussions of political, economic, social and cultural development. It is impossible to separate the politics of the province from any discussion of land. Land and settlement have also been the focus of a great deal of research that has looked at physical features and settlement patterns and rates, and immigration patterns. This importance of land distribution to several fields of history and historical geography has also featured on frontiers around the world, and the research and debates that come from those discussions have insights to offer to a study of land distribution and frontier in Upper Canada.

#### Land and the Establishment of the State

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<sup>1</sup> Upper Canada will be used throughout this thesis to describe that area and political jurisdiction which is now southern Ontario. Politically, Upper Canada was created in 1791 when Quebec was divided into Upper and Lower Canada. Although Upper Canada officially became Canada West in 1841 with the creation of the Province of Canada, the name Upper Canada remained in popular use until it was renamed Ontario at Confederation in 1867.

The British were concerned right from the beginning of Upper Canadian settlement with the economic prospects of land and the legal formalities of its allocation. They were careful, according to their own understanding of property, to extinguish native land claims and rights. This was, of course, a continuation of a policy that had been most fully articulated with the Royal Proclamation of October 1763. In that document, it was written that native tribes and nations were to be left in peaceful possession of those lands which “*not having been ceded to, or purchased by us, are reserved to them or any of them as their hunting grounds.*”<sup>2</sup> Another of the Proclamation’s provisions, one which would cause much tension, prohibited settlement on lands where the government had not extinguished native title. The Proclamation also forbade any direct sales of native lands by indigenous people to private parties, instead, all such purchases were to be made by agents or representatives of the monarchy, and the agreements were to be worked out in public.<sup>3</sup>

Once native land titles were presumed extinguished, the British continued their attempt to maintain an ordered treatment of land and property. They were insistent, successfully for the most part, on survey before settlement.<sup>4</sup> The transfer of land from the Crown was accompanied with papers indicating the same. Land and land policies were a central part of political life in the province, as a political and economic issue and a social one as well, since the government controlled the distribution, both by grants and sales, of Crown lands. The government policy regarding land was, however, concerned with much more than legalities. Land was a means by which the government could assert control over the development of the colony and its society. Land was also of personal interest to many leaders who also participated in the land market as private landholders and speculators. The development of Upper Canada did not, however, take place in an isolated world, despite the perceived remoteness and wildness of the colony. It has become increasingly evident that new ideas and attitudes towards land were being transmitted to Upper Canada, as well as being developed within its boundaries and those of British North America. As will be discussed later the vast British empire provided values and ideas, but so too did the United States.

The physical proximity of Upper Canada to the newly-created United States together with its membership in the British imperial family underscored the political

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<sup>2</sup> The Royal Proclamation – October 7, 1763, Virtual Law Office – Royal Proclamation of 1763 <<http://www.bloorstreet.com/200block/rp1763.htm>>, accessed 20 July 2002.

<sup>3</sup> The British, for the most part, were very firm about the policies outlined in the 1763 Proclamation. There were however, some exceptions, John Clarke points to several in the Western District, especially around Detroit, along the north shore of Lake Erie and up the Thames River, *Land, Power, and Economics on the Frontier of Upper Canada*, (Montreal & Kingston, 2001), pp.97-98, 136-141. For a discussion of the negotiations between the natives and the British, see Robert Surtees, “Land Cessions, 1763-1830,” in E.S. Rogers and D.B. Smith, (eds) *Aboriginal Ontario: Historical Perspectives on the First Nations*. (Toronto, 1994), pp. 92-131 and “The Development of an Indian Reserve Policy in Canada,” *Ontario History*, 61 (1969), 87-98.

<sup>4</sup> R. Louis Gentilcore, “Lines on the Land: Crown Surveys and Settlement in Upper Canada,” *Ontario History*, 61 (1969) 57-73.

development of the colony. The political importance of land distribution was heightened, not only because land distribution was one of the most important tasks of the newly-formed colonial government, but also because of tensions between the British and the former Thirteen Colonies. One of the first considerations of British officials responsible for creating a land policy for the area, even before Quebec was divided into Upper and Lower Canada by the 1791 Constitution Act, was loyalty. Refugees from the American Revolution were granted land in various locations throughout British North America. Simcoe, first Lieutenant-Governor of Upper Canada, provided grants for loyalists and their children as a reward for their loyalty and to provide them with land to build new lives. Others who followed, the so-called “late loyalists” were also provided with land in order to further the development of the colony.<sup>5</sup> The only requirement was to take an oath of loyalty and prove themselves worthy of receiving a land grant before a local Land Board. Uncertainty about American intentions towards British North America continued until late in the nineteenth century, and as a result, loyalty became an important political issue. David Mills has examined the evolving meaning of loyalty throughout the early history of the province. Even though the meaning of loyalty did change somewhat, the concept remained, nonetheless, an important and popular one for most on both sides of the political spectrum.<sup>6</sup> The issue of loyalty, tied closely to the first land policies of Upper Canada, remained an important element in the politics of land policy throughout the period of settlement.

Loyalty, as Mills discusses, was not something claimed solely by the conservatives, it was also co-opted by those whose political leanings were more liberal. R. Cole Harris and John Warkentin suggest, following Frederick Jackson Turner’s lead, that the process of settlement strengthened liberal attitudes in the province. The task of creating a human landscape on the frontier tended to diminish the cultural importance of tradition and emphasized individualism and individual enterprise. In an examination of the evolution of parliamentary procedure in Upper Canada, Gary O’Brien also examines the somewhat contradictory nature of the political culture. While that culture was strongly rooted in conservative traditions, the liberal notions that seemed to be a product of the colonial and frontier conditions had a significant influence on the political culture of Upper Canada.<sup>7</sup> At the same time, Upper Canadians were much more accepting of a larger government role in their lives and remained attached to the empire and the British parliamentary system. Harris and Warkentin have suggested that it was the shortage of arable land in the province that curbed the liberal values of most people in Upper

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<sup>5</sup> Gerald M. Craig, *Upper Canada; The Formative Years 1784-1841*, (Toronto, 1963), pp.24-5.

<sup>6</sup> For a discussion of the importance of the idea of loyalty in Upper Canada and the ways in which both Tories and reformers used it for their own benefit, see David Mills, *The Idea of Loyalty in Upper Canada, 1784-1850* (Kingston and Montreal, 1988).

<sup>7</sup> Gary W. O’Brien, “Parliamentary Procedure in Upper Canada 1792-1820,” *Ontario History* LXXIV (1982), 291-2.

Canada.<sup>8</sup> While different in its emphasis, Jane Errington's argument that the main issue of conflict in Upper Canada was between those who wanted to re-create Britain, and those who saw Upper Canada as a distinctly North American entity, albeit with strong British roots, also points to the influences of the frontier on Upper Canada.<sup>9</sup> The tensions that academics have identified between conservatism and liberalism, between the parliamentary system and republicanism, and over degrees of loyalty, were evident in debates over land policy and the control and distribution of Crown lands in the province.

It has long been held that the foundations for Ontario's development were solidly rooted in British political traditions, especially the Tory values of the age of Revolutions (1775-1815). This was, perhaps, too obvious an assumption, because of the timing of the 1791 Constitution Act so soon after the revolt of the Thirteen Colonies. Jane Errington, however, has quite rightly pointed out that Upper Canada's development was also strongly rooted in North America, and that its people made avid use of the knowledge gained by the United States. Most of the earliest inhabitants of the colony, the Loyalists, had been born in North America, and many, although loyal to the Crown, were not from a British background. Errington suggests that, unlike the British-born leaders, such as Lieutenant-Governor John Graves Simcoe, who arrived intending to create a little England, "the first settlers anticipated and worked towards the creation of a new and unique British-American society, one that incorporated the best of British ideals and American practice."<sup>10</sup> Carol Wilton argues similarly that the public was becoming much more involved in the political process. Wilton has made use of the rich collection of Upper Canadian petitions from the colony's subjects to its representative of the Crown, the Lieutenant-Governor (and after 1841, the Governor-General) to demonstrate that the populace had the opportunity to influence the policies of the government, and that they readily used petitions as a means to do so. While petitioning the Crown, as Wilton argues, was evidence of the British influence on Upper Canada's political culture, it allowed a means to address grievances and problems and introduce American influences and ideas.<sup>11</sup> Jeffrey McNairn also rightly points out that Upper Canada was not isolated from larger trends or influences in Great Britain and the United States. He emphasizes the fact that Upper Canada's political development was not as unique as has been argued. The development of deliberative democracy and the importance of public opinion, and the call for individuals to learn, debate and discuss issues of public concern, in venues away from the control of the government, McNairn argues, meant that people would avidly

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<sup>8</sup> R. Cole Harris and John Warkentin, *Canada Before Confederation: A Study in Historical Geography* (Ottawa, 1991), pp.112-3.

<sup>9</sup> Jane Errington, *The Lion, the Eagle, and Upper Canada* (Montreal and Kingston, 1987) pp.33-5.

<sup>10</sup> Errington, *The Lion, the Eagle, and Upper Canada*, p.33.

<sup>11</sup> Carol Wilton, *Popular Politics and Political Culture in Upper Canada, 1800-1850*, (Montreal and Kingston, 2000), p.224.



seek out ideas and theories from elsewhere.<sup>12</sup> Both Great Britain and the United States, then, would act as examples and points of reference not only for those who were responsible for directing the progress of the colony, but also for the population as a whole. The sharing of ideas across international borders and the active participation of citizens in these debates also had a profound effect on the policies regarding land distribution. As will be shown in later chapters, questions over the use of land reflected the larger political and economic debates. Was land to be used as a reward for loyalty and to create a “little England”; was it to be used to further Great Britain’s economic fortunes, should the government sell the land in order to maximize revenue or should settlers be encouraged through the free grants; should squatters be given pre-emption rights as they had in the United States; what about the role of speculators in capital development? These questions were central to the official land policy of Upper Canada and the attitudes of its citizens.

Not surprisingly, study of the political development of the province has paid considerable attention to the role of land in Upper Canada. The scope of the archival records on the subject, thanks to the British tradition of painstaking attention to record keeping, has guaranteed an abundance of publications set not only in political history, but in a number of areas. One only has to look at the relevant entries in the *Dictionary of Canadian Biography* or the *Historical Atlas of Canada* to see that land has been a critical component in the development of Upper Canada. The study of land policy, moreover, is not a new area of scholarly activity. Lillian F. Gates’ meticulous study of Upper Canada’s land policy, published in 1968, highlights the intense and complex relationship between the administration of land and the changing political character of the growing province. Her examination of the land policies in light of the colony’s growing independence from Britain, the problems associated with both land grants and sales, and the need for revenue from land sales is a careful one, showing the pressures that were coming from the Colonial Office, the public and various interests in the Upper Canadian government. Gates compared the inability of the government of Upper Canada to control speculation with the American government’s struggle to do the same. The problem seemed to be a part of the frontier experience: grants, cash sales and the provision of government credit yielded the same speculation activities which thwarted the attempts of the government to put the land into the hands of the settlers who were always pushing for land. Gates’ description of this problem is an amusing but accurate one: “One is tempted to conclude that the opening up of a new country is not an orderly process. Without efficient law enforcement, it is something like opening the strings of a gigantic grab bag,” and the more ruthless “grab what they can and find their way through whatever maze of regulations may be created in an effort to restrict them. The less fortunate pick up the bits and pieces of the good things that are left and hang on to them – if they can.”<sup>13</sup> The lack

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<sup>12</sup> Jeffrey McNairn, *The Capacity to Judge; Public Opinion and Deliberative Democracy in Upper Canada, 1791-1854*, (Toronto, 2000), pp.6-11.

<sup>13</sup> Lillian F. Gates. *Land Policy of Upper Canada*, (Toronto, 1968), p.305. Gates’ husband, Paul W. Gates, a leading historian of American land policy was highly critical of the distribution of land in the United States’ public domain. See his *Landlords and Tenants on the Prairie Frontier*, (Ithaca, N.Y., 1973).

of organization and the strong element of self-interest in Gates' "grab bag" analogy, is, in some ways, a fair portrayal of what was happening, in other ways, however, it ignores activities which were, in some cases, beneficial for settlers.

The lack of order in distributing land on the frontier caused innumerable problems for the British government for which they were largely unprepared. However, as H. Pearson Gundy argued in his review of the actions of the second Heir and Devisee Commission, the elite did not always ignore the rights of the settlers. One of the greatest problems, largely unanticipated, was the sorting out of claims to lots that had been originally assigned to an individual who had either sold, exchanged or mortgaged the land referred to in the location ticket or who had died. Such transactions did not transfer clear titles. It was the task of the Heir and Devisee Commissions, of which there were two (1797 to 1805; 1805 to 1841), to sort out the true claimants to lots. As will be shown in this dissertation, the Crown Land agents and surveyors played a large role in the sorting out of such pre-patent rights, especially after 1841. This became a greater problem as time went on because many people neglected to apply for the patents for the land they held or claimed.<sup>14</sup> The location ticket was considered to confer enough of a legal right, especially when claimants wanted to avoid paying applicable patent fees. In some cases, certificates (scrip) which entitled the holder to a certain amount of land without specifying the exact locations of lots had never been acted upon and these too became a source of problems to the government since they were also sold and bartered. Claims to lots were often sold and resold, and in other cases, the original locatee had died before obtaining a patent. The commissions were appointed to ascertain who should receive the patent for a particular parcel, and Gundy found that although the commissioners were entrenched elite, they nevertheless were quite fair and straightforward in their rulings.<sup>15</sup> However, as Gates points out in her study of the first commission, the decisions of the commission did not always bring an end to the matter since some of those who received a favourable report on their claim from the commissions considered that enough to secure their claim, and neglected to apply for the patent, forcing the government to put deadlines on filing an application.<sup>16</sup> The emphasis placed on clear and legal title and property rights in the British tradition made such

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<sup>14</sup> John Clarke, for example, found that in a sample of 399 properties in the Western District of the province, there was an average of about six to eight years between actual settlement and the date of the patent "Aspects of Land Acquisition in Essex County, Ontario, 1790-1900," *Social History/ histoire sociale*, 11, (1978), 103-4. Despite many problems with using the patents as a source of determining settlement, Clarke insists on using patent dates as a means of determining settlement, both in the above cited article and in his *Land, Power, and Economics*, pp.194-8.

<sup>15</sup> H. Pearson Gundy, "The Family Compact at Work: The Second Heir and Devisee Commission of Upper Canada, 1805-1841," *Ontario History*, 66 (1974), 129-146.

<sup>16</sup> Lillian F. Gates, "The Heir and Devisee Commission of Upper Canada, 1797-1805," *Canadian Historical Review*, 38 (1957), 21-36.

measures as the Heir and Devisee Commissions necessary features of the land administration in early Upper Canada.

Despite the practical difficulties of administrating the land distribution process, Gates quite rightly pointed out that above all else, the direction of the distribution of land was key to determining the character of the fledgling province, which was to become a key part of the Dominion of Canada.<sup>17</sup> The tensions between the practical problems of land distribution, and the more fundamental questions of creating a British colony in North America really became apparent in the debates over the Clergy Reserves, and the controversies that contributed to the outbreak of rebellion in Upper Canada in 1837.

#### The Reformers and Land Distribution

The management of the Clergy Reserves has become implanted in the popular history of Canada as a notorious instance of privilege, and the reserves are often held up to illustrate of how members of the “Family Compact” attempted to manipulate the distribution of land for their own benefit. The reserves had been created by the 1791 Constitution Act as a way of endowing the Church of England and giving it the foundation to become the leading religious institution in the province. The reserves were a way to recreate Britain in North America and it was hoped they would help to begin to establish elements of civil society in the backwoods. Many inhabitants of Upper Canada, however, were unhappy with two features of these tracts. First, the physical distribution of the Clergy Reserves, scattered as they were, along with the Crown Reserves, throughout the townships caused a great deal of practical problems, for example, impeding road-building and isolating settlers. Second, the privileged position of a Christian denomination to which only a small fraction of the population adhered raised the ire of many. As Alan Wilson has shown in *The Clergy Reserves of Upper Canada; A Canadian Mortmain*, the longevity and the persistence of the public and political debates over the presence, the purpose, and the management of the Clergy Reserves in Ontario political history was unequalled in Upper Canada’s colonial period.<sup>18</sup> The problem of the Clergy Reserves demonstrated the importance accorded to land during the early period of provincial development.

Land is also acknowledged as one of the factors behind the violent conflicts known as the Rebellions of 1837-38, because the control of much of the land by a few was viewed as a concrete example, mentioned often by populist politicians, to show how an elite allegedly controlled the colony.<sup>19</sup> The issue of land distribution became an imperial concern with the unrest and violence of 1837-1838. Lord Durham was appointed as governor to come to British North America to investigate the conditions in the two Canadas. His report alleged that the abuses particularly evident in the distribution of land

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<sup>17</sup> Gates, *Land Policy*, p.307.

<sup>18</sup> Alan Wilson, *The Clergy Reserves of Upper Canada; A Canadian Mortmain* (Toronto, 1968) p.196.

<sup>19</sup> Colin Read, “The Duncombe Rising. Its Aftermath, Anti-Americanism, and Sectarianism,” *Social History/ histoire sociale*, 9 (1976), 47-69 and the introduction to Colin Read and Ronald J. Stagg (eds) *The Rebellion of 1837 in Upper Canada; A Collection of Documents* (Toronto, 1985).

by the government were symptomatic of the larger problems plaguing the colony. Durham's report, however, was neither the first nor the last that described the problems hampering settlement, offered suggestions for improving the land distribution system and chastised a land policy that tended to favour a privileged few.<sup>20</sup>

The government and the public had been well aware for some time of the ways in which large tracts of unimproved land hampered settlement through much of the province. Robert Gourlay's *Statistical Account of Upper Canada*, first printed in 1822, showed that this was an acknowledged problem in the province. Gourlay's *Statistical Account* was a rather anti-climatical end to his business in Upper Canada. He was an avid proponent of agrarian reform in his native Scotland, and upon his arrival in Upper Canada soon became involved in the widespread discontent over the imperial refusal to grant lands to prospective American settlers after the War of 1812-14. Although his original address, written to accompany the list of questions to township officials for the purpose of compiling his information on Upper Canada, declared his endeavour to be a scientific one, his later writings on the "alien question" fanned the flames of discontent in the colony. It was within this atmosphere that the public discussed and debated possible responses to Gourlay's questions. Only 57 responses to over 700 questionnaires were received. While these responses probably came from communities and individuals that supported Gourlay or sympathized with his stance, they do provide an interesting snapshot of the colony at the time. In particular, reflecting their reform sympathies, the responses to the notorious 31<sup>st</sup> question: "What, in your opinion, retards the improvement of your township in particular, or the province in general: and what would most contribute to the same?" led to answers that were remarkably similar. More often than not they mentioned the presence of the Crown and Clergy Reserves and the large tracts of wild land owned by absentees as major impediments to settlement in the townships and the province as a whole.<sup>21</sup> Absentee landowners often did not pay local taxes, which made the burden on those who did that much greater. Although Gourlay's own writings on the problems that impeded Upper Canada's development reflected his "most accustomed guise as anti-authoritarian," the responses he received from his address and questionnaire which were sent out to townships officials throughout the province were printed as Gourlay received them.<sup>22</sup>

While the statistical information Gourlay collected for his *Statistical Account* was, purportedly, intended to encourage immigration from Great Britain, Gourlay soon

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<sup>20</sup> The issue was often mentioned in travel accounts and other materials that were circulated outside of Upper Canada. For a brief overview of travel accounts see G.M. Craig, "British Travellers in Upper Canada, 1815-1837," *Ontario History*, 43 (1951), 180.

<sup>21</sup> Robert Gourlay, *Statistical Account of Upper Canada*. 2 volumes, originally published 1822 (reprinted Yorkshire, England, 1996). The first volume contains the township reports. At the end of that volume, Gourlay created an index to the opinions expressed in the reports (pp.623-5). The second volume contains, among other things, Gourlay's review of much of the material included in the volumes. His review and comments on the opinions expressed in the township reports begins on p.402 of the 2<sup>nd</sup> volume.

<sup>22</sup> S.F. Wise, "Robert Fleming Gourlay," *Dictionary of Canadian Biography*, vol. IX, p.332.

switched his stance and advocated American settlement, strongly criticizing the colonial administration for their position on American immigrants. He grew more radical, losing much of his support, and his activities culminated in a controversial trial for seditious activities on 20 August 1819. He was banished from Upper Canada and on 21 August 1819 he was in New York State. While awaiting trial Gourlay had continued to write from jail, and his ideas concerning the taxation of wild lands, and government-sponsored emigration of British poor were later taken up by Edward Gibbon Wakefield.<sup>23</sup> Although Gourlay's career in Upper Canada was not a successful one, his *Statistical Account* provided a detailed, although politically-motivated picture of the conditions and problems in the colony in the early nineteenth century.

Twenty years later, when Durham and his associates arrived in Canada, the conditions that had occasioned protest during Gourlay's career in Upper Canada had not changed: large amounts of wild land controlled by absentee proprietors continued to obstruct settlement and impede the construction of roads thus hampering the ability of settlers to access markets. Durham's report devoted a great deal of space to the disposal of Crown lands in Upper Canada and his recommendations for changes were largely a result of the influence of Edward Gibbon Wakefield. In it, the inequities and injustices in the land system, particularly the ability of favoured individuals to receive large grants of land were examined in detail. These large grants of lands had been the object of hostility from much of the public throughout the province, but the depth of resentment was particularly great in those townships where such grants seriously impeded local development.

Large blocks of wild land, together with the scattered Crown and Clergy reserves, meant that settlers were isolated, and had to take on the added burden of clearing road allowances on unsettled lots in order to facilitate travel and communications. Durham's comments on the land issues, largely based on a report by Charles Buller, deplored the disposal of so much land in large quantities to individuals, "greatly beyond the proprietor's means of cultivation and settlement."<sup>24</sup> Durham attributed the violence in Upper Canada largely to the injustices and inefficiencies of the land distribution system.<sup>25</sup> Although a serious issue in Upper Canada, the problem existed throughout British North America. In addition, Durham condemned the confusion surrounding a land policy which always seemed to be undergoing alterations. It was aptly pointed out that the only consistency within the land policies of the British North American colonies was that they

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<sup>23</sup> Wise, "Gourlay," p.335. See also Robert Milani, *Robert Gourlay, gadfly: the biography of Robert (Fleming) Gourlay, 1778-1863, forerunner of the rebellion in Upper Canada, 1837* (Thornhill, Ontario, 1971) and Gerald Bloch, "Robert Gourlay's Vision of Agrarian Reform," in Donald H. Akenson (ed) *Canadian Papers in Rural History*, Vol. III (Gananoque, Ont, 1982), pp. 110-128. Carol Wilton examines Gourlay as an early proponent of the petitioning movement as one way to effect political change in her *Popular Politics and Political Culture*, pp.27-32.

<sup>24</sup> *Lord Durham's Report of the Affairs of British North America*. Sir Charles Lucas (ed), Vol. II "Text of the Report", (reprinted New York, 1970), p.222, 224.

<sup>25</sup> *Lord Durham's Report*, Vol. II "Text", p.218.

managed to alienate more land than individual grantees could ever hope to improve or develop.<sup>26</sup> Durham asserted that the presence of large numbers of squatters in Upper Canada was directly related to the difficulty of settlers to obtain good agricultural land from the Crown through legal channels.<sup>27</sup>

Durham's report, most specifically his recommendations for responsible government, met with a great deal of hostility among the colony's conservatives. Carol Wilton-Siegel has pointed out, however, that those conservatives, although in agreement in condemning the idea of responsible government – differed considerably on the issue of administrative reforms. In particular, local officials throughout the province advocated a number of administrative reforms to address the problems that had been outlined in Durham's report, particularly those concerning land. Rural conservatives criticized the Toronto elite, with whom they were usually allied, just as Gourlay and Durham had, for hampering settlement and the development of the province.<sup>28</sup>

In the following chapters, it will be shown that administrative reforms in the distribution of land did attempt to resolve many of the problems that had been highlighted in Durham's report. J.E. Hodgetts has shown that the process of administrative reform was, in fact, a large part of the practical achievement of responsible government in Canada.<sup>29</sup> As will be seen in the next chapter, the instructions given to Crown land agents and surveyors reflected the civil service reform movement and the desire to make the Crown Lands department more accountable to the government and to the public.

#### Large-Scale Land-Holdings and the Elite

Many of the studies on the early land distribution patterns have focussed almost entirely on the huge amounts of land given to or acquired by elites and the ways in which they attempted to manipulate the development of society through land for their own benefit. John Clarke clearly bases much of his work on this aspect of land policy.

Clarke's voluminous work on the Western District has looked at the acquisition of land in the Western District, Essex County in particular,<sup>30</sup> and he has painstakingly traced the complex web of inter-relationships of people holding large amounts of land, particularly those considered to be members of the Family Compact.<sup>31</sup> Clarke's *Land*,

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<sup>26</sup> *Lord Durham's Report*, Vol. II "Text", p.202.

<sup>27</sup> *Lord Durham's Report*, Vol. II "Text", see his footnote #2, pp.210-1.

<sup>28</sup> Carol Wilton-Siegel, "Administrative Reform: A Conservative Alternative to Responsible Government." *Ontario History*, 78 (1986), 105-6.

<sup>29</sup> J.E. Hodgetts, *Pioneer Public Service: An Administrative History of the United Canadas, 1841-1867*, (Toronto, 1955), pp.270-273.

<sup>30</sup> John Clarke, "Aspects of Land Acquisition in Essex County, Ontario, 1790-1900," *Social History/Histoire Sociale*, 11 (1978) 98-119.

<sup>31</sup> John Clarke, "The Role of Political Position and Family and Economic Linkage in Land Speculation in the Western District of Upper Canada, 1788-1815," *Canadian Geographer*, 19 (1975), 18-34. *Land, Power, and Economics*, see, in particular, Appendices 7.1, 7.2 and 7.3, pp.481-512.

*Power, and Economics* is the culmination of many years of research on the relations between the elite and the ways in which they used land for their own benefit, and the effects of their activities on the land policy and the settlement patterns of the province. One of Clarke's key assertions is that the acquisition of land was of primary importance among the elite, the "Family Compact", in the quest for power and influence: "Access to land was of primary importance, because it was the basis of life and economic and social prestige."<sup>32</sup> While these people fought hard to maintain the British connections in Upper Canada and to uphold British parliamentary traditions, they also fought to create a niche for themselves as the aristocracy that would lead Upper Canada.

Several of Clarke's articles also focus on the details of the land-holdings of the elite in the Western District, from which he drew the material for *Land, Power, and Economics*. In an intensive study that involved identifying land speculators and then tracing their genealogy, Clarke argues that many of the speculators were part of a network of elite formed by family and marital ties and that this group was able to acquire substantial tracts of land "by virtue of the substantial offices held by some in the power structure of the day."<sup>33</sup> In an early article, Clarke demonstrates the ways in which a speculator could take advantage of the possibilities afforded by relationships of family and friends to further his speculation activities. John Askin, Senior and Junior, as Clarke has shown, were both particularly adept at using their connections to acquire land.<sup>34</sup> The activities of speculators like the Askins were such that they managed to acquire a great deal of land in Essex County, in the Western District, as Clarke found in a study of factors that affected land acquisition in that county.<sup>35</sup> The patterns of speculation that Clarke found were not unusual for the Western District.

Such activities in that area of the province had a long history, as Leo A. Johnson asserted in 1974. Local leaders, whom Johnson calls "merchant-speculators," from Sandwich and Detroit had defied British policy and obtained large tracts of lands from the Indians. Settlers had little choice but to take up lots in these lands, held only by "Indian title", since the government was so slow in making lands available under regular legal processes. The settlers, indebted to the land-holders, and unable to realise enough from their farms in the first few years to pay their debts, were then forced to relinquish the land back to the merchant-speculators. Such activities posed serious problems for the British government and the control of the merchant-speculators was such that "the

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<sup>32</sup> Clarke, *Power, Land, and Economics*, p.xxxiii.

<sup>33</sup> J. Clarke, "The role of political position and family and economic linkage in land speculation in the Western District of Upper Canada, 1788-1815," *Canadian Geographer*, 19 (1975), 31.

<sup>34</sup> John Clarke, "The Activity of an Early Canadian Land Speculator in Essex County, Ontario; Would the Real John Askin Please Stand Up?" in D.H. Akenson (ed.) *Canadian Papers in Rural History*, Vol. III. (Gananoque, Ontario, 1982), p. 106.

<sup>35</sup> John Clarke, "Aspects of Land Acquisition in Essex County, Ontario, 1790-1900," *Histoire sociale/ Social History*, 11 (1978), pp.115, 118-119.

combination of speculation and the economic difficulties of the area would retard the development of Essex County for a long time.”<sup>36</sup>

In his work on the Home District, Johnson looks at the complex and often contradictory nature of the ways in which interests in power, wealth, and land impacted the government’s policy. Johnson points out that although land was the major source of capital in the colony, “it carried with it two serious defects: its value was only potential and it was not readily convertible into other kinds of assets.”<sup>37</sup> The value of the land held by large land-owners would only increase as the lands around their holdings were settled and improved. The faster way to see the land settled and improved, however, was to encourage immigration through the distribution of land in farm-size lots to individuals. Thus, there was tension between a policy encouraging settlement and one which favoured large landowners. While the land policy had slowly been moving in a direction which encouraged settlement, the introduction of the ideas of Edward Gibbon Wakefield in the 1820s and 1830s added a new dimension to the pressures influencing the policy. Wakefield’s theory of “systematic colonization” encouraged the development of capital in the colonies through the creation of a landless, and therefore cheap labour force. The creation of such a class would necessitate a land policy that would make it more difficult for the poor to obtain land.<sup>38</sup> Johnson argues that exactly this elimination of cheap land occurred with the sale of about 2.5 million acres of public lands to the Canada Company in 1826. About half of the land was located in the Huron tract, while the rest was Crown reserves scattered throughout Upper Canada. The sale provided the government with revenue from lands that, had an earlier policy of relatively free grants been continued, would have allowed poorer settlers access to land. The government also introduced sales of lands for those Crown lands that it retained. In the Home District, the opening up of the valuable reserves that had been transferred to the Canada Company had the effect of removing the tracts of wild land that had hampered settlement and angered older settlers, thus solving a long-held grievance. On the other hand, such a policy would not be appreciated by those who were now required to find the money to purchase lands, when earlier arrivals had been given the land. Johnson, like many others who have studied the early years of Upper Canada, concluded that the land policy was not merely a tool to distribute land, it was recognised even then as a tool by which the development of the character of the society of the province could be directed.<sup>39</sup>

J. K. Johnson points in his work on the provincial leadership, *Becoming Prominent*, to the necessity for aspiring men to not only acquire land themselves but also

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<sup>36</sup> Leo A. Johnson, “The Settlement of Western District 1749-1850,” in F.H. Armstrong *et al.* (eds.) *Aspects of Nineteenth-Century Ontario* (Toronto, 1974), p.23.

<sup>37</sup> Leo A. Johnson, “Land Policy, Population Growth and Social Structure in the Home District, 1793-1851,” *Ontario History*, 63 (1971), 41.

<sup>38</sup> Donald Winch, *Classical Political Economy and Colonies*, (Cambridge, Mass., 1965), pp.77-8, 99-102.

<sup>39</sup> Johnson, “Land Policy, Population Growth and Social Structure,” 60.



to seek the support of other local landowners. Land was viewed as the means to not only wealth and independence, but also status in Upper Canada. Regional leadership in Upper Canada took advantage of the abundance of land, “for as a group they acquired in one way or another an impressive amount of property.”<sup>40</sup> These men were able to further take advantage of their positions since “larger than normal grants of land were handed out as a matter of routine to anyone who could claim status or prominence.”<sup>41</sup> The importance of land as a means of acquiring influence and status in order to become politically successful meant that land was an critical element in the political development of the province in more than one respect.

However, the interests of these landowners also demonstrate the contradictory ways in which attitudes towards land policy could evolve. On the one hand, for those holding large tracts of land which they hoped to sell to settlers for a profit, any sort of free grant or easy terms of sale from the government could undermine their speculation attempts. On the other hand, though, such policies also had the potential to benefit speculators in the long run. As land around their holdings was settled and improved, there would be added demand for their lots; the more settled and improved the surrounding land, the higher a price they would command. Johnson looks at how the desire to encourage greater settlement led a number of influential men to form the Canada Emigration Association (1840-41). Working closely with the Executive Council, the Association felt that the promise of free 50 acre lots would help to encourage immigration, thereby stimulating development and assisting them in selling their own land holdings.<sup>42</sup> There was, as in the creation of the Canada Emigration Association, a connection made between land grants and the idea of economic development even by those with heavy interests in speculation. This manipulation or influencing of land policy was nothing new in Upper Canadian politics, many sought ownership and control not only of large tracts of land, but also of the land policy itself in order to further their own economic and political position.

#### Land and the Patronage System

Land transactions, particularly those involving the lease and sale of Crown lands, are used by S.J.R. Noel to exemplify the direction of development of Ontario’s political culture. Clientelism is the term Noel uses to describe this political culture. A broader term than patronage, clientelism suggests a pattern of stable and long-lasting relationships which are integral to the community, whereas patronage is more closely related to small favours for votes in a given election. Clientelism might be fostered, for example, when a patron arranged for a land grant in exchange for a client’s loyalty, service, economic

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<sup>40</sup> J.K. Johnson, *Becoming Prominent; Regional Leadership in Upper Canada, 1791-1841*, (Montreal and Kingston, 1989), p.52.

<sup>41</sup> J.K. Johnson, *Becoming Prominent*, p.52.

<sup>42</sup> J.K. Johnson, “Land Policy and the Upper Canadian Elite Reconsidered: The Canada Emigration Association, 1840-1841,” in David Keane and Colin Read (eds) *Old Ontario: Essays in Honour of J.M.S. Careless*, (Toronto, 1990), pp.217-233.

transactions, or votes.<sup>43</sup> The relatively loose land policy structures, especially in the first four decades of the colony's existence when Land Boards, surveyors, and local magistrates were at various times responsible for issuing location tickets or settlement duty certificates, meant that it was possible for these local leaders and their associates to ensure that certain people were rewarded with land for their support of the local patrons. Support for a client's petition to the Crown for land might also be communicated to those with influence within the Executive Council. The problem with an approach such as Noel's is that while it may help to illuminate the development of political culture, it may also obscure or misrepresent the ways in which land was actually distributed. Without a doubt, land was used as a reward or as a means to distribute patronage. There are documented instances, as Noel points to throughout his argument. However, not all land was distributed for such reasons. The evolution of the land policy was dependent on the sometimes contradictory goals of achieving, on the one hand, land distribution and settlement, and, on the other hand, developing political clientage.

Noel identifies Colonel Thomas Talbot and his control of land and settlement on the north shore of Lake Erie as one of the most successful patrons and brokers in Upper Canada. Several studies of Talbot – the Baron of Lake Erie – have shown the power and influence that came with controlling land distribution. Talbot's perception of his own role in distributing land and planning development, combined with the government's failure to supervise his extensive operations, meant that many would-be settlers had to conform to his requirements or lose their possession of their land and his support in gaining a patent. Talbot took it upon himself to expand his mandate geographically, later causing the government a great deal of trouble and expense in sorting out the land issues in a large area on the north shore of Lake Erie. Talbot's efforts to encourage settlement by providing roads, mills and other services were not philanthropic, for every settler he placed on land, Talbot was entitled to receive land for himself. In this way, Talbot came to control a large amount of land in several townships along the Lake Erie shore in Ontario. Talbot had originally been granted 5000 acres in the Township of Dunwich on 7 May 1804. On this grant, he was to locate settlers on 50 acre parcels, and for every settler so established, Talbot would receive 200 acres for himself in Dunwich or the neighbouring township of Aldborough. He failed to comply with the original terms of his grant and kept the entire 5000 acre original tract for himself and gave his settlers other lands in Dunwich and Aldborough. Eventually, he was to place settlers in five other townships as well. Talbot was able to maintain his position in that area as a patron and broker until his relationships with his patrons in Great Britain began to disintegrate in the late 1820s and 1830s and he was no longer able to wield influence through those channels. Talbot had relied on his patrons in Great Britain because he was disliked by the colonial executive and leaders in Upper Canada. Talbot used his experience as Simcoe's aide-de-camp while Simcoe was in Upper Canada, and his connections with the Duke of Cumberland, brother of the heir to the throne. Cumberland sought the help of the British Secretary of State, Lord Hobart, in influencing Peter Hunter, then Lieutenant-Governor of

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<sup>43</sup> S.J.R. Noel, *Patrons, Clients, Brokers; Ontario Society and Politics 1791-1896*, (Toronto, 1990) pp.13-14.

Upper Canada to grant Talbot the land he requested on the north shore of Lake Erie. In the end, Colonel Talbot left no great landed estate, and his affairs came under the close scrutiny of the government.<sup>44</sup>

### Speculators and Land Developers

The original intentions of the large-scale grants to people like Talbot were, purportedly, to establish a landed elite in the province. While some of those elite may have hoped to become the proprietors of large estates, supported by the revenues of tenants, the reality was that most were anxious to find buyers for their lands and convert their holdings into cash. The intended landed elite became speculators striving to maximize their profits while spending as little as possible. Others also recognized the possibility of profits to be made in land in the growing colony, and the ranks of speculators grew considerably.

There has been considerable discussion over how to identify speculators and differentiate them from individuals who were seeking to expand their holdings for other reasons, for example, in order to provide for children. Clarke, in his work in identifying speculators, chose to use 400 acres as a defining criteria since that amount of land was probably more than one individual could clear in a lifetime.<sup>45</sup> While Clarke's criteria is useful because it allows quick identification of possible speculators, Randy Widdis argues that possession of an arbitrary amount of land does not prove that the land owner was a speculator or intended to speculate. Instead, identifying speculators involved identifying their motivations in purchasing the land.<sup>46</sup> The problem with Widdis' approach however, is that it becomes difficult to use when the necessary information is lacking in many cases and it is also too time-consuming when looking at large areas. There are additional problems in identifying speculators because they did not just buy and sell property; there was also considerable speculation in land scrip and pre-patent "rights" which are often invisible in the land records as Widdis acknowledges.<sup>47</sup> However difficult it may be to identify specific land speculators or speculative activities, speculation was, nevertheless, a significant activity in Upper Canada.

David Gagan has looked at how widespread speculation tied up a considerable proportion of land in Peel County in the early nineteenth century. The land of Peel County, close to the centre of power in the neighbouring counties along Lake Ontario,

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<sup>44</sup> Paul Baldwin, "The Political Power of Colonel Thomas Talbot," *Ontario History*, 61 (1969), 9-18; Fred Coyne Hamil, "Colonel Talbot and the Early History of London," *Ontario History*, 43 (1951), 159-175; Fred Coyne Hamil, *Lake Erie Baron: The Story of Thomas Talbot* (Toronto, 1955); Noel, *Patrons, Clients, Brokers*, pp.64-69; Wayne Paddon, *The Story of the Talbot Settlement 1803-1840*, 2<sup>nd</sup> Edition (St. Thomas, Ontario, 1976); Alan G. Brunger, "Thomas Talbot," *Dictionary of Canadian Biography*, VIII, 857-862.

<sup>45</sup> John Clarke, "The Role of Political Position and Family and Economic Linkage in Land Speculation in the Western District of Upper Canada, 1788-1815," *Canadian Geographer* 19 (1975), 20.

<sup>46</sup> Randy W. Widdis, "Motivation and Scale: A Method of Identifying Land Speculators in Upper Canada," *Canadian Geographer*, 23 (1979), 337-51.

<sup>47</sup> Widdis, "Motivation and Scale," 341; see also Gates, *Land Policy*, pp.57-8, 131-3.

was claimed quickly. Its potential for future speculation made it attractive to landholders and potential settlers alike. Gagan argues that the forty percent of land which was unavailable for distribution to settlers created a significant barrier to settlement in that county.<sup>48</sup> The interference of speculators in the distribution of Crown land to settlers will be shown in greater detail in the following chapters. Most of the work so far has only involved showing how much land was tied up for speculative purposes and how speculators hampered settlement. The chapter on the investigations of Crown land agents in particular will demonstrate some of the specific ways in which speculators obtained rights to these lands and the ways in which government regulations attempted to prevent these abuses.

#### Settlers and Establishing Family Farms

It must be remembered that the contemporary recognition that wealth and capital were to be found in land was not limited to the elite or the wealthy. Land was a means to a better and more secure future for everyone, not just the upper classes in the province. Clarke's examination of the activities and networks of relationships between the elites in the Western District of the colony highlights the control of a huge amount of land by a very few and the processes by which they sought to consolidate and further their power through land-holding. Clarke condemns the narrowness of the popular viewpoint that celebrates Upper Canada as a destination for the hard-working poor, an Eden for those who had the energy and will to wrest a living from the forest, "So strong is the myth, largely justified, that this was and is the 'best poor-man's country' that it has generated an amnesia about the past, a forgetfulness that Canada was also the scene where man's acquisitiveness was manifest and where some sought more than necessary to sustain life."<sup>49</sup> That aim to acquire land and wealth was not exclusive to the elite however, it was much more democratic, especially in a place so imbued with "democratic tendencies." This thesis will attempt to show that the desire for land pervaded all classes of society. The public was well-informed about land issues and the decisions made by settlers demonstrate an awareness of the economic and political context in which they were establishing themselves.

In a study of the strategies used by families to maintain and increase their capital and to provide their children with some of that wealth, David Gagan has shown in *Hopeful Travellers* that many farm families were keenly aware of the economic opportunities and problems associated with securing land. His analysis of the economic and social behaviour of Peel County families included a detailed examination of their land-holding patterns, especially their efforts to protect the wealth in the "family farm" in the mid-nineteenth century. He found that they resisted the subdivision of farms. Gagan considers the idea of the family farm in mid-nineteenth century Ontario as a cultural icon

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<sup>48</sup> David Gagan, "Property and 'Interest': Some Preliminary Evidence of Land Speculation by the 'Family Compact' in Upper Canada, 1820-1840," *Ontario History*, 70 (1978), 63-70.

<sup>49</sup> Clarke, *Land, Power, and Economics*, p.xxxiv.

as well as an efficient agricultural production unit to support a family.<sup>50</sup> Likewise, McNairn, in his work on deliberative democracy in Upper Canada, points to strong opinions regarding land, specifically the desire for a “family farm” as a means of maintaining independence, as contributing to protracted debate over the law of primogeniture in Upper Canada. He argues that serious public discussions over primogeniture beginning in the second decade of the nineteenth century until its abolition in 1851 developed the concept of public opinion in Upper Canada and illustrated the problems that could emerge between a constitution that had been written under the influence of old ideas and assumptions that no longer dominated the culture of the colony. Many conservatives saw primogeniture as an important concept demonstrating Upper Canada’s loyalty and adherence to British traditions. The law dictated that when the head of a household died intestate, without a will, the whole of his property passed to his eldest son. Popular opinion, however, more strongly favoured the equitable distribution of estates, and primogeniture had been abolished in most of the other British North American colonies and the United States in the late eighteenth and early nineteenth century. The principle of primogeniture affected all landowners in the province, and because of its relevance, many more people became engaged in the debates. McNairn argues that the achievement of deliberative democracy came with the abolition of primogeniture.<sup>51</sup>

There has already been a great deal of work done on land and land distribution at the local level by historians and geographers. Historical and cultural geographers in particular have contributed to our understanding of how settlement proceeded and how it affected the landscape in unmistakable ways even as it was also effecting political and cultural change.<sup>52</sup> However, many of these studies have paid more attention to settlement rates and patterns, particular immigrant groups, the physical features of the land or the ways in which speculation and absentee landowners affected the distribution of land. For example, the role of physical features and resources in land choice has been considered in several important local studies. The emphasis on the physical and built landscapes in these settlement studies is evidence of a remarkable tradition of historical geography in the Ontario universities. Logically, in most of the studies, accessibility to mills and markets was found to be the most important factor in choosing a place to settle, while

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<sup>50</sup> David Gagan, *Hopeful Travellers: Families, Land, and Social Change in Mid-Victorian Peel County, Canada West*, (Toronto, 1981), p.18. For a similar argument, see Herbert J. Mays, “ ‘A Place to Stand’: Families, Land and Permanence in Toronto Gore Township, 1820-1890,” *Canadian Historical Association Historical Papers*, (1980), 185-211.

<sup>51</sup> McNairn, *The Capacity to Judge*, pp. 409, 417-8.

<sup>52</sup> R. C. Harris, “Historical Geography in Canada,” *Canadian Geographer*, 11 (1967), 236-7.

vegetation, soil, drainage and other indicators of the suitability of the land for agriculture, were less important, although still influential.<sup>53</sup>

Other work has focussed on particular immigrant groups and the motivations and constraints on their initial places of settlement.<sup>54</sup> For example, Alan Brunger made an analysis of the factors which influenced the locational decisions of settlers who made up the 1825 group of emigrants organized by Peter Robinson. Because of the government involvement in the scheme, it was not surprising that Brunger found that the government played the largest role. The government directed the settlers to Peterborough County because of the perceived need for settlers there, individual lots were distributed by lottery. Other than being able to exchange their location tickets with other settlers in order to be near relations and friends, Robinson's settlers had little choice in the matter.<sup>55</sup>

In a detailed analysis of another assisted emigration scheme: the Petworth Project, Wendy Cameron and Mary McDougall Maude found that the assistance these people received to emigrate was a major factor in their initial location decisions. Some found work as skilled labourers in the urban centres, others went to work on public works and many others became farmers within a short period of time. Although there were some

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<sup>53</sup> See for examples of published works: A.C. Brunger, "Analysis of site factors in nineteenth century Ontario settlement," W. Peter Adams and Frederick M. Helleiner, (eds) *International Geography 1972*, 22<sup>nd</sup> International Geographical Congress, (Toronto, 1972), pp.400-402; John Clarke, "Aspects of Land Acquisition in Essex County, Ontario, 1790-1900," *Histoire Sociale*, 11 (1978), 98-119; R. Louis Gentilcore, "Change in settlement in Ontario (Canada), 1800-50: a correlation analysis of historical source materials." Adams and Helleiner, (eds) *International Geography 1972*, 22<sup>nd</sup> International Geographical Congress, (Toronto, 1972), pp.418-419; R.L. Gentilcore, "Settlement," in his *Ontario Studies in Canadian Geography*. (Toronto, 1972), p.24; H. Hesselink, "Settlement pattern and land use changes in Belmont Township, Ontario," in Adams and Helleiner, (eds) *International Geography 1972*, 22<sup>nd</sup> International Geographical Congress, (Toronto, 1972), pp. 430-432; Kenneth Kelly, "The Evaluation of Land for Wheat Cultivation in Early Nineteenth-Century Ontario," *Ontario History* LXII (1970), 57-64; and Peter A. Russell, "Upper Canada: A Poor Man's Country? Some Statistical Evidence," in Donald H. Akenson (ed) *Canadian Papers in Rural History*, Vol. III (Gananoque, Ontario, 1982), pp. 129-47. There have also been a number of unpublished theses that have examined various aspects of settlement in areas throughout the province. Examples include: E.M.W. Gibson, "A sequence occupation study of the Norfolk Land plain" (M.A. thesis, University of Western Ontario, 1963); C.J.B. Wood, "Human settlement in the Long Point region, 1790-1825" (M.A. thesis, McMaster University, 1966); L.J. Wood "Settlement of the Mt Elgin Ridges, Ontario" (M.A. thesis, University of Western Ontario).

<sup>54</sup> Alan G. Brunger, "Geographical propinquity among pre-famine Catholic Irish settlers in Upper Canada." *Journal of Historical Geography*, 8 (1982), 265-282; James M. Cameron, "Scottish emigration to Upper Canada 1815-55; a study of process," in Adams and Helleiner, (eds) *International Geography 1972*, 22<sup>nd</sup> International Geographical Congress, (Toronto, 1972), pp. 404-406; Christopher Moore, "The Disposition to Settle: The Royal Highland Emigrants and Loyalist Settlement in Upper Canada, 1784," *Ontario History*, LXXVI (1984), 306-325.

<sup>55</sup> Alan Brunger, "Early settlement in Contrasting Areas of Peterborough County, Ontario," in J. David Wood, (ed) *Perspectives on Landscape and Settlement in Nineteenth-Century Ontario*, (Toronto, 1975), pp.117-140 and "Geographical propinquity among pre-famine Catholic Irish settlers in Upper Canada." *Journal of Historical Geography*, 8 (1982), 265-282. For more information on Peter Robinson's settlers see Wendy Cameron, "Selecting Peter Robinson's Irish Emigrants," *Social History/ histoire sociale*, 9 (1976), 29-46.

plans to locate settlers on large blocks of Crown lands, the interest and involvement of the Upper Canadian government in such schemes waned as time went on, and chain migration began to play an increasingly larger role in locational decisions.<sup>56</sup>

Most of the studies on the individual settler families have focused on the acquisition of land through ownership as a means of establishing wealth and capital. Catharine Wilson, however, has provided convincing evidence that tenancy and leasing were not as uncommon as is believed. In the 1848 census, Wilson points out that 45% of landholders rented land.<sup>57</sup> She criticizes historians for ignoring tenancy and leaseholds and concentrating instead on land ownership: “Tenancy was not anachronistic in the New World. While freehold was the most common form of landholding and the goal of most immigrants, tenancy was more prevalent than historians realize, and precisely because it had economic relevance.”<sup>58</sup> More importantly, she contends that tenancy was not merely an attempt by landholders to recreate the land-holding patterns that had benefited the aristocracy in Britain. Instead, it was an economically viable way for settlers to create capital and establish themselves in the New World without having to pay large amounts of cash for land when they arrived. Wilson introduces a concept that may be unfamiliar to most historians of Upper Canada, that of the “tenant right.” This right gave the tenant an “interest” in the land, a right to sell their improvements or remaining lease: “Tenants were able to capture much of this unearned profit by selling their tenant right and using the money to rent better farms elsewhere, or buy. As such they became the “owners” of land, as most people understand it.”<sup>59</sup> This right had the potential to be very profitable for tenants in Upper Canada, since the improvements that could be made to a piece of “wild” land were extremely valuable.

The “tenant right” was also an important opportunity for landlords, since improvements would also increase the potential for rent or the selling price of the land should the landlord wish to sell. As it turned out in Wilson’s examination of the estates of Irish landlords in Upper Canada near Kingston, the landlords did not hold the land for very long and it was soon in the hands of the tenants. The activities and movements of the tenants demonstrate that the settlers who came from Ireland clearly understood the opportunities and capital to be gained from becoming tenants. They were not being held by the yoke of the landlord relationship and exploited by their landlords. Clearly, the

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<sup>56</sup> Wendy Cameron and Mary McDougall Maude, *Assisting Emigration to Upper Canada: The Petworth Project, 1832-1837*, (Montreal and Kingston, 2000) pp.134-5, 172.

<sup>57</sup> *Censuses of Canada 1665-1871: Statistics of Canada 4* (Ottawa: I.B. Taylor 1876), Table 5, cited in Catharine Anne Wilson, *A New Lease on Life; Landlords, Tenants, and Immigrants in Ireland and Canada* (Montreal & Kingston: 1994), p.206.

<sup>58</sup> Wilson, *A New Lease on Life*, p.205.

<sup>59</sup> Wilson, *A New Lease on Life*, pp.8-9.

issue of tenancy and leasehold needs to be examined in more detail across Upper Canada, particularly with regard to the benefits of such for both owner and tenant.<sup>60</sup>

### Squatters on the Land

In the literature on the settlement of Upper Canada, historians and geographers have identified two related factors that have been seen as constraining the settler's choice of location: speculation and absentee ownership. Many of them completely disregard an important element of the settlement process that settlers used to overcome those problems: squatting. Unlike the legalistic interpretation modern historians tend to put on the availability of land, many settlers did not see the formal legal process as a barrier to settlement. In the chapters that follow, squatting will be seen as a widespread and officially acknowledged problem in the backwoods of Upper Canada. Squatters represented a fulcrum on which the land policy tried to balance the need for land sales for revenue and the need for settlement and improvement to further the development of the province. The policy wavered between tacit acceptance of the benefits of squatters and pressure to force squatters to pay for their lands.

Squatting is not a topic that has been widely studied in the Upper Canadian context. Perhaps because it does not fit easily into the dominant perception of Canadian history that emphasizes a tradition of "peace, order and good government", it has received at most only cursory attention in the literature. When squatting is acknowledged, it is usually only in passing and not the focus of discussion. Typical of this sort of acknowledgement is an article by Glenn J. Lockwood on the Irish immigrant settlers in Montague township in eastern Ontario. In this case, the Irish readily squatted on the lands in the township, and some continued to do so for quite a while, undisturbed, because of the poor quality of land there. Lockwood acknowledges their unauthorized possession of land since it helps to demonstrate that the Irish settlers in that township were persistent in their attempts to make a living on poor soil.<sup>61</sup>

In contrast to the near silence of Canadian historians with regards to squatting, there are some illuminating studies of squatters in other frontier contexts. Insights from

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<sup>60</sup> William L. Marr, "Tenant vs. Owner Occupied Farms in York County, Ontario, 1871," in Donald H. Akenson, (ed) *Canadian Papers in Rural History*, vol.4, (Gananoque, Ontario, 1984), pp.50-71 is an examination of some of the differences between tenants and owners on farms based on demographic and farm production data from the 1871 census.

<sup>61</sup> Glenn J. Lockwood, "Irish Immigrants and the 'Critical Years' in Eastern Ontario: The Case of Montague Township 1821-1881," in Donald H. Akenson, (ed) *Canadian Papers in Rural History*, vol. 4 (Gananoque, Ont., 1984), pp.163-4, 168-9. Squatters have not had much attention in the history of any area of Canada, possibly because of the way much of Canadian history has had its conceptual origins in central Canada. Exceptions that focus exclusively on squatting are Glen Grismer, "Early Squatter Holdings in Saskatchewan, 1878-1886," *Regina Geographical Studies*, (1980), 22-30, J.I. Little, "Contested Land: Squatters and Agents in the Eastern Townships of Lower Canada," *Canadian Historical Review* 80 (1999), 381-412, and Eric Whan, "Improper Property: Squatters and the Idea of Property in the Eastern Townships of Lower Canada, 1838-1866," M.A. thesis, McGill University, 1996. The position of the Metis people as squatters has also been addressed in studies of the conflicts between the Metis and the Canadian government, see Thomas Flanagan, *Metis Lands in Manitoba* (Calgary, 1991) and the sections on land title in his *Riel and the Rebellion: 1885 Reconsidered* (Saskatoon, 1983).



these studies have informed much of the discussion on this subject in this thesis. In the American historical tradition, largely due to the influence of Frederick Jackson Turner, the role of the frontier and the frontier experience in shaping a democratic society has been emphasized. Turner's interpretation of the history of the American frontier proved to be very popular and has had curious lasting influence, despite the many valid criticisms that have seriously questioned its validity and applicability to the American frontier experience.<sup>62</sup> Turner's theory stresses that the homesteading experience - establishing a farm out of the wilderness - shaped the development of a people who valued individualism, hard work and equality, people who questioned traditional social structures and authority.<sup>63</sup> The history of squatting, of ignoring laws regarding property ownership, fits comfortably into this model of American historical development because of the emphasis in Turner's theory on independence and disdain for centralized authority and law. Accordingly, squatting has received considerable attention in the literature of the American frontier and American depictions of squatters are much more sympathetic than in the Canadian context.<sup>64</sup> Similarly, the depiction of Australia's early pastoral squatters by generations of their historians fits in with its popular national history. Squatters during the early period of colonialization have not been looked upon as criminals, or opportunists, but as innovators and entrepreneurs.<sup>65</sup> Indeed, squatting has been widely acknowledged elsewhere in many neo-European frontiers, including the British colonies

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<sup>62</sup> Patricia Nelson Limerick, "Turnerians All: The Dream of a Helpful History in an Intelligible World," *American Historical Review* 100 (1995), 697-9.

<sup>63</sup> Turner first presented his paper, "The Frontier in American History" in 1893. It was included as the introduction to a collection of essays on the American frontier: F. J. Turner, *The Frontier in American History*. (New York, 1935).

There are many articles that offer analyses and assessments of the impact of Turner's frontier thesis, examples include: Gerald Nash, "The frontier thesis: a historical perspective," *Journal of the West*, 29 (1995), 241-255; Martin Ridge, "Frederick Jackson Turner, Ray Allen Billington, and American Frontier History," *Western Historical Quarterly*, 19 (1988), 5-20; and Martin Ridge, "Turner the historian: a long shadow," *Journal of the Early Republic*, 13 (1993), 132-144.

<sup>64</sup> See for example: Stephen Aron, "Pioneers and profiteers: land speculation and the homestead ethic in frontier Kentucky," *Western Historical Quarterly*, 23 (1992), 179-198; Paul W. Gates, *Landlords and Tenants on the Prairie Frontier*, (Ithaca, N.Y., 1973), (see especially Chapter 1); Alan Taylor, "'To Man Their Rights' The Frontier Revolution," in R. Hoffman and P.J. Albert, (eds) *The Transforming Hand of Revolution; Reconsidering the American Revolution as a Social Movement*, (Charlottesville, Virginia, 1995), pp.231-257; Elliott West, "American Frontier," in C.A. Milner II, C. O'Connor, and M. Sandweiss, (eds) *The Oxford History of the American West*, (New York, 1994), pp.115-149.

<sup>65</sup> See Stephen H. Roberts, *The Squatting Age in Australia, 1835-1847*, (Melbourne, 1964); Peter Burroughs, *Britain and Australia 1831-1855; A Study in Imperial Relations and Crown Lands Administration*. (Oxford, 1967); Jan Critchett, *A Distant Field of Murder; Western District Frontiers 1834-1848*, (Melbourne, 1990); R. Wright, *The Bureaucrats' Domain; Space and the Public Interest in Victoria, 1836-1884*, (Melbourne, 1989).

of New Zealand and South Africa.<sup>66</sup> Upper Canadian history is pervaded, on the other hand, by a myth that settlement was very orderly and well-controlled. This perception, largely driven by Loyalist and nation-building concepts of Canadian history and the critiques of these concepts, has meant that certain aspects of the history of land distribution and settlement have been emphasized while others have been largely ignored.

Moreover, despite all the knowledge that has been gained from local studies in Upper Canada, there is still much to learn, particularly about how the “ordinary settler” (if there was ever such a thing!) obtained land, and their relationship with the government. Although a considerable portion of the land was tied up by large landholders, there was still a great deal that ended up in the hands of settlers who obtained enough land from which to gain a modest livelihood through its cultivation. The role of the government in this process needs to be examined at the local level, not just at the level of policy development. It is this subject that this thesis will concentrate on exploring. In particular, the role of local Crown land agents and surveyors will be examined to illuminate how the land policy was carried out in practical terms.

#### Land and the Civil Service

In her study of the land policy of Upper Canada, Gates traces the ways how that policy changed and acquired added layers during the years in which land distribution and settlement were the most important activities and political considerations of the colonial government. In particular, Gates looks at how the official policy regarding squatters oscillated between utter contempt and begrudging respect for the efforts of squatters in clearing and improving land. Typical of the Upper Canadian attitude was John Beverley Robinson, who, Gates points out, “was always careful to use quotes when referring to the squatter’s so-called “right” of pre-emption.”<sup>67</sup> Public opinion towards squatters was often dependent on the actions of the squatters themselves. Sometimes they were perceived as assisting in the development of the colony by clearing land and using it for agricultural production. Other times, those illegally clearing the timber from Crown lands or those who hampered the efforts of legitimate settlers by not moving off newly granted or sold land were seen as a blight on society.<sup>68</sup> Gates’ work on policy is primarily a reference for understanding the evolution of the “official” land policy. To assume that that policy remained unchanged in the hands of bureaucrats would be to misrepresent the channels of power within government. To understand and illuminate the processes of land distribution and settlement, it is essential to examine thoroughly the interpretation and application of the policy on the local level.

The question remains, what about the many people who purchased relatively small amounts of Crown land without benefit of an U.E. loyalist or military entitlement,

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<sup>66</sup> John C. Weaver, “Frontiers into Assets: The Social Construction of Property in New Zealand, 1840-65,” *Journal of Imperial and Commonwealth History*, 27 (1999), 17-54; Leonard Guelke, “The White Settlers, 1652-1780” in R. Elphick and H. Giliomee, (eds) *The Shaping of South Africa Society, 1652-1820*, (Cape Town, 1979) pp.41-74.

<sup>67</sup> Gates, *Land Policy*, p.290.

<sup>68</sup> Gates, *Land Policy*, p.294.

or patronage. What about people who had to buy land from speculators or land companies like the Canada Company?<sup>69</sup> What was their experience in dealing with the Department of Crown Lands? If they were in illegal possession, as squatters, was their treatment different from other applicants? What if they were in arrears on payments? There is a whole aspect of the land distribution process and settlement history that has been largely ignored and is an aspect which impinged on the lives of settlers throughout the colony. Also largely ignored are those officials responsible for acting as mediators between the people and the government. Little is known about the role of those surveyors who also worked as land valuation inspectors; little is known about those men who were appointed by the Crown Lands Department as agents for the sale and lease of lands. Patronage no doubt had a great deal to do with the appointment of many of these men to their positions and this consideration is important, because these appointees were the link between the government and the people of Upper Canada in one of the most crucial activities in the formation of the colonial society and economy. They were interpreters of policy. Historians and historical geographers, as noted above, have long identified the importance of land distribution practices, but without studying all the aspects of those practices. Obviously these officials had guidelines which constrained them, but they also had, in many cases, some room for stretching or bending the rules when they thought it was necessary to do so. They had both some discretionary authority and also exercised discretion without firm authority.

As local agents of an enormous distribution of resources, as people who exercised judgements on the character and abilities of settlers, their position in colonial society and politics is a matter of importance. What shaped their ideas about what would be good for the new society? As political appointees, it is not unreasonable to suppose that these men conformed in many ways to attitudes and opinions of their patrons. Other considerations could also have influenced them. They were not modern bureaucrats subscribing to a well-formulated code of behaviour. They were isolated from the headquarters of the Crown Lands department and at the same time, many had leading positions in their local communities. Many surveyors had a personal vested interest in the land policy as speculators themselves. A number had been paid for their services in land. Crown Land agents also had opportunities to use their privileged positions to assist family and friends to profit from land sales, as will be discussed later.<sup>70</sup> Nevertheless, it becomes apparent in the evidence that they did not always agree with the land policy as created, particularly its strictness concerning illegal occupants. Moreover, it was their job to take a policy that

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<sup>69</sup> For discussions of the Canada Company and other land companies, see James M. Cameron, "The Canada Company and Land Settlement as Resource Development in the Guelph Block," in J. David Wood, *Perspectives on Landscape and Settlement in Nineteenth Century Ontario*, (Toronto, 1975), pp. 141-158; Anatole Browde, "Settling the Canadian Colonies: A Comparison of Two Nineteenth-Century Land Companies," *Business History Review*, 76 (2002) 299-335; and Roger Dennis Hall, "The Canada Company, 1826-1843," Ph.D. dissertation, University of Cambridge, 1973.

<sup>70</sup> For an examination of the relationship between surveyors and speculators, see R. W. Widdis, "Speculation and the Surveyor: An Analysis of the Role played by the Surveyors in the Settlement of Upper Canada," *Histoire Sociale/ Social History*, 15 (1982), 443-458.

was undergoing significant changes and make it workable according to the conditions found in their respective areas of responsibility.

In an interesting study of several high-level civil servants in the land department in Victoria in Australia, Raymond Wright looks at how they reinterpreted directions which altered the official policy created by the colonial government. Notably, Wright looks at how these bureaucrats sought to alter the policy in ways they believed would better suit the public interest. Wright recognizes how a layer of officials were able to create and develop communities. They were able to have a unique impact because they were removed from parliamentary control and were not under public scrutiny.<sup>71</sup> What Wright does not consider is how reports, recommendations, and decisions by lower level bureaucrats and agents also may have affected the policy's implementation. If, indeed, government land agents and inspector and surveyors had some influence over the application of the land policy, then it becomes imperative to try to understand their attitudes and beliefs. Like their superiors, most would have had some ideas of how they thought the interests of the province, the settlers, and others involved would be best served by the land policy.

The role of bureaucrats and the nature of the framework within which they operated were also undergoing fundamental changes during this period. J.E. Hodgetts argued that the major reforms that transformed the bureaucracy during the period of the United Canadas (1841-1867) represented a significant part of the achievement of responsible government in Canada. As part of his argument, Hodgetts examined the practices of the Crown Lands department, as one of the largest departments through most of the period. Although, as he acknowledges, there were some problems with the Crown Lands department's supervision of its Crown land agents, the department evolved to deal more efficiently with the task of putting the land into the hands of settlers. Hodgetts' argument, although based largely on reports submitted to the Legislative Assembly, recognizes the important role of Crown land agents in the distribution of land.<sup>72</sup>

Bruce Curtis has also argued that the transformation of the administrative structures in the 1840s was a result of concerns during that period about making "rule real and effective." In his discussion of the influence of the middle class on the development of a state-run school system, Curtis demonstrates the importance of recognizing the key role of the development of an effective, efficient and responsive administration in the achievement of responsible government. Without administrative reform, responsible government would not have become a reality.<sup>73</sup>

Like Hodgetts, David Moorman credits the tremendous task of overseeing the distribution and transfer of Crown lands as a major factor in the development of the basic

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<sup>71</sup> R. Wright, *The Bureaucrats' Domain; Space and the Public Interest in Victoria, 1836-1884*, (Melbourne, 1989).

<sup>72</sup> Hodgetts, *Pioneer Public Service*, see Chapters VIII to X on the Crown Lands department.

<sup>73</sup> Bruce Curtis, "Class Culture and Administration: Educational Inspection in Canada West," in Allan Greer and Ian Radforth (eds) *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada* (Toronto, 1992) pp.103-6.

structures of Canada's modern bureaucracy. He traces the professionalization and organization of the bureaucracy throughout the process of land distribution and settlement in Upper Canada. An increasingly detailed and complex system of information collection and decision-making followed the twists and turns of an often confusing land policy as priorities and attitudes changed. Moorman gives the bureaucracy somewhat mixed reviews, although his conclusion suggests that the system of land distribution by an organized bureaucracy was a tremendous success overall. Moorman's depiction of a relatively smooth and well-ordered settlement of Upper Canada is too favourable. It is perhaps a reflection of the appearance of the organized documents and ledgers that he was studying.

Moorman neglects to address the ongoing problems of land distribution and settlement at the local level, particularly with regards to squatting, performance of settlement duties and arrears of payments though he intimates that there was trouble within the system.<sup>74</sup> This is especially true of the period after 1841, for he concludes that the land distribution process was largely over by then. Nor does he examine the role of lower-level officials in any detail (other than members of the Land Boards), those men with the most contact with settlers, squatters and would-be settlers: surveyor/ inspectors and Crown Land Agents. Moorman's primary emphasis is on the effect of the land policy on the bureaucracy, instead of the effect of the bureaucracy on the land policy's creation and implementation.

The major reforms that transformed the administration and civil service in the colony were, to a great extent, introduced by Charles Poulett Thomson, Lord Sydenham, who served as governor from August 1839 to September 1841. Sydenham's term as governor straddled a tense period in the colony and because of the political vacuum after the rebellions he was able to implement many reforms that reflected his utilitarian ideas. One of Sydenham's key reforms was to make the members of the Executive Council heads of departments, thus closing the gap between government and civil service.<sup>75</sup>

#### Land, Political Economy, and the Second British Empire

British domestic and imperial economic policies, together with the American example had a great impact on what happened to the land policy in Upper Canada. The era of settlement in Upper Canada was a major era of settlement throughout many Neo-Europes, the term coined by Alfred Crosby in *Ecological Imperialism*. Crosby emphasizes the importance of European biota in the colonization of other continents, but he also mentions the significance of administrative organization and dexterity.<sup>76</sup> The range of schemes and plans to effect settlement and development is quite astounding. Local circumstances and natural environments played a major role in determining the

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<sup>74</sup> David T. Moorman, "The 'First Business of Government': The land granting administration of Upper Canada" (Ph.D. Thesis, University of Ottawa, 1998), pp.242-3, 315-6.

<sup>75</sup> Ian Radforth, "Sydenham and Utilitarian Reform," in Allan Greer and Ian Radforth (eds) *Colonial Leviathan: State Formation in Mid-Nineteenth Century Canada*, (Toronto, 1992), pp.64-102.

<sup>76</sup> Alfred W. Crosby, *Ecological Imperialism: The Biological Expansion of Europe, 900-1900*, (Cambridge, 1986), pp.5, 7.

course of settlement. A growing body of literature on frontiers around the globe demonstrates not only similarities but key differences.<sup>77</sup>

As a British colony, Upper Canada's colonial structures were British in origin and design. The creation of the colony so soon after the American Revolution also meant that opinions regarding the loss of the Thirteen Colonies had much to do with the colony's constitution and political structures. Donald Winch looks at the discussions of some of the major British economists regarding empire and colonization from the period after the Revolution into the mid-nineteenth century. For men like Adam Smith, Jeremy Bentham, David Ricardo, James Mill, John R. McCulloch, John Stuart Mill, Robert Torrens and others the continuation of the old colonial policy after the American Revolution was a mistake, especially given a growing conviction, based on the concept of utility, that the colonies were becoming too expensive for Great Britain. The empire was an important element of their discussions because the problems associated with colonies were fundamental to classical economic inquiry: "free trade, capital accumulation, population pressure, economic growth and the role of the state."<sup>78</sup> Remarkably, on the issues of imperialism and colonization, "there was a substantial measure of agreement among the participants as to the issues at stake, though there were significant differences of emphasis and approach within the classical tradition."<sup>79</sup>

Winch argues that between 1776 and 1830 these economists were largely opposed to the continuance of empire, set up as it was in the old colonial system. However, after 1830 many became avid proponents of empire and a new imperial system. After the American Revolution, imperialists continued on with the old patterns of imperialist structure, especially paternalistic conservative politics, including land-granting systems which rewarded civil or military rank. Such attitudes were apparent in Upper Canada where a well-connected government and mercantile elite, Loyalists, and military veterans received especially generous grants in an effort to create British social structures.<sup>80</sup>

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<sup>77</sup> There is an ever-growing body of literature on frontiers and the organization of land distribution and settlement. The following are just a small sample of the variety of work being done on frontiers around the world: Stephen Aron, "Pioneers and Profiteers; land speculation and the homestead ethic in frontier Kentucky," *Western Historical Quarterly* 23 (1992), 199-209; D.W.A. Baker, "The Origins of Robertson's Land Acts," *Historical Studies. Australia and New Zealand*, 8 (1958), 166-182; Donna J. Guy and Thomas E. Sheridan, (eds) *Contested Ground; Comparative Frontiers on the Northern and Southern Edges of the Spanish Empire*, (Tuscon, 1998); Howard Lamar and Leonard Thompson, (eds) *The Frontier in History: North America and Southern Africa compared*, (New Haven, 1981); Sharon Morgan, *Land Settlement in Early Tasmania; Creating an Antipodean England*, (Cambridge, 1992); Gregory H. Nobles, "Breaking into the Backcountry: New Approaches to the Early American Frontier, 1750-1800," *William and Mary Quarterly* 46 (1989), 641-670; William Norton, "Religion, behaviour, landscape: frontier experiences in the American Great Basin and in southeastern Australia," *Journal of the West*, 36 (1997), 59-67; Margaret Walsh, "Women's place on the American frontier," *Journal of American Studies*, 29 (1995), 241-255.

<sup>78</sup> Donald Winch, *Classical Political Economy and Colonies*, (Cambridge, Mass., 1965), p.2.

<sup>79</sup> Winch, *Classical Political Economy and Colonies*, p.2.

<sup>80</sup> R. Louis Gentilcore and David Wood, "A Military Colony in a Wilderness," in J. David Wood (ed) *Perspectives on Landscape and Settlement in Nineteenth-Century Ontario*, (Toronto, 1975), pp.32-50.

Sharon Morgan discusses how the British attempted to do the same in Tasmania, especially during the 1820s and 1830s.<sup>81</sup> The economists attacked this old imperial model on the basis of the perceived economic and military value or utility of the colonies. The costs associated with colonies were simply not justified based on their utilitarian value. This analysis resonated with a British public that was becoming increasingly convinced that the colonies were an expensive holdover.

In the 1830s and 1840s the issue of empire and colonization took on a new aspect with the colonial reform movement. Its proponents, especially Wakefield, proposed a new “systematic colonization” that would help alleviate Britain’s domestic social and economic problems. At the same time, they also had to prove that the established colonies would be capable of political and economic independence, without the dependencies and problems characteristic of earlier colonial experiments.<sup>82</sup> One of the greatest problems was the same one inherent in the 1791 constitutions of Upper and Lower Canada; the political structure set up an unresolvable conflict between the executive and the elected assembly. Colonial revenue was the subject of most of this conflict. In a comparison he made between land sales of New South Wales in Australia and Upper Canada, John Clarke has demonstrated how these sales played an important role in the antagonisms between the executive and assembly. The 1826 scheme to sell lands in Upper Canada, mirroring a similar plan in New South Wales, provided the executive with revenue without approval from the assembly. It threatened to liberate the executive from the assembly’s control of taxation.<sup>83</sup> This discord between executive and elected assembly was the same problem which had contributed to the American Revolution in the Thirteen Colonies and the Rebellions of 1837-38 in the Canadas. Lord Durham, sent to examine the problems in the Canadas, advocated many of the reforms suggested by the colonial reform movement in his report, particularly the principle of colonial self-government.<sup>84</sup> No doubt, this was due in large part to the fact that Durham took Wakefield, the leader of the colonial reform movement, to British North America with him as an advisor.<sup>85</sup> In fact, Winch argues that the Durham Report helped to make the colonial reform movement’s liberal concept of empire a reality.<sup>86</sup>

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<sup>81</sup> Sharon Morgan, *Land Settlement in Early Tasmania; Creating an Antipodean England* (Cambridge, 1992), p.8.

<sup>82</sup> Winch, *Classical Political Economy and Colonies*, pp.1-4.

<sup>83</sup> John Clarke and John Buffone, “Manifestations of Imperial Policy: The New South Wales System and Land Prices in Upper Canada in 1825,” *Canadian Geographer* 40 (1996), 121-136.

<sup>84</sup> Winch, *Classical Political Economy and Colonies*, pp.115-121.

<sup>85</sup> At his own expense, Durham took Wakefield with him to British North America to act as an advisor, Winch, *Classical Political Economy and Colonies*, p.117, note 3.

<sup>86</sup> Winch, *Classical Political Economy and Colonies*, p.2. Bruce Curtis also acknowledges the parallels between reforms in Great Britain and Canada during the 1840s, Curtis, “Class Culture and Administration,” p.109.

However, even before Durham came to Canada, another British utilitarian had already begun to change the direction of development in Upper Canada. Lord Sydenham, as mentioned earlier, was an adherent to the values of utilitarianism as advocated by Jeremy Bentham: efficiency, simplicity, and organization.<sup>87</sup> As governor though, Sydenham was also responsive to the “political realities in the colonies and at the imperial centre.” This responsiveness, as Radforth argues, meant that in discussions of reforming the land distribution process, Sydenham recognized that while it was too late for implementation of Wakefield’s “systematic colonization” scheme, there was room for considerable improvement in the land distribution structures. Sydenham’s views more closely paralleled the elite’s desire to promote settlement so that they could realize good profits from their speculative land holdings. The reforms introduced by Sydenham were practical: making the Crown lands department more accountable to the government and the public, and making the process of acquiring Crown lands more transparent. These reforms concerning land were part of a three-fold development plan for Canada that recognized the interdependence of transportation improvements, immigration, and land policies.<sup>88</sup>

Land was a key issue in many of the discussions of colonization, and there was much debate on the role of land and land sales in encouraging colonial development especially in the colonial reform movement. Peter Burroughs, in a masterful study, uses the Crown lands administration in the Australian colonies to explore how London’s imperial policies were altered when they encountered the local conditions in the colonies. In particular, Burroughs looks at the ways in which Wakefield’s views on colonial land distribution affected the policy in Australia with the 1831 Ripon Regulations.<sup>89</sup> Quite rightly, Burroughs acknowledges the difficulties and constraints of applying imperial policies from London to the distinctive local conditions in the Australian colonies. Ultimately, he concludes, the economic and political pressures of a frontier settlement overcame the imperial policies. In Australia, these pressures favoured pastoral land use over restrictive land sales that encouraged compact farming communities.<sup>90</sup> Similarly, A.R. Buck discusses the impact of pastoral land use on property law and land-holding practices in Australia. He argues that reforms made to property law in the mid-nineteenth century were egalitarian in the sense that they equalized access to property, rather than providing for everyone to have an equal piece of property. These reforms were the result

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<sup>87</sup> Radforth, “Sydenham and Utilitarian Reform,” p.66.

<sup>88</sup> Radforth, “Sydenham and Utilitarian Reform,” pp. 79-81. As Michael J. Piva has demonstrated, the development of systematic accounting procedures, largely in response to financial crises, were also a key component of administrative reforms, “Government Finance and the Development of the Canadian State,” in Allan Greer and Ian Radforth (eds) *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada*, (Toronto, 1992), pp.255-83.

<sup>89</sup> Burroughs, *Britain and Australia*, p.12-34

<sup>90</sup> Burroughs, *Britain and Australia*, p.10-11.



of shifts in cultural ideas and attitudes towards land, largely brought about because pastoral land use favoured lease-hold, rather than free-hold, land-holding in Australia.<sup>91</sup>

In the Australian context, it was largely pastoral squatters who fuelled the pressures to allow land to be distributed in ways that suited their needs as agriculturists. In Upper Canada, pressures were brought to bear on those who stood in the way of settlers seeking farm size lots. Economic conditions had much to do with the success of these pressures. In particular, the production of wool in Australia and wheat in Upper Canada made changing the land policy more palatable to the Colonial Office. While the discussions of political and economic influences on land policy are useful to illuminate the underlying attitudes that were informing the land policies of the British colonies they are large-scale efforts. They do not explain the actual application of the policy to individuals. Economic theory and highly public political debates, whether originating in London or the colonies, were not the only influences on land policy.

#### Land Distribution and the Moral Economy

It was E.P. Thompson who suggested the idea of a “moral economy” where the economic principles of supply and demand pricing do not always apply. According to him there is often an element of compassion or fairness, or economic justice which interferes with capitalist markets. Thompson’s study of the price of bread in the British markets reflects his assumption that profit was not the only element driving the price of bread. People’s need to buy reasonably-priced bread, the staple of their diet, led to controls in the market. For example, the hoarding of grain was often condemned by popular protest since such actions drove up the price of bread. There was a popular idea that a fair price for bread was a right or custom to be defended, and there seemed to be some acquiescence on the part of the authorities in order to prevent protest or violence.<sup>92</sup> There is an element of fairness in such decisions to put restrictions on free market functions. This concept of moral economy can also be applied to the decisions that drove land distribution and settlement in many cases and on several levels. As Roger Wells has pointed out in his discussion of Thompson and the concept of moral economy, the concept of property plays a significant role in the moral economy. In Thompson’s *Customs in Common*, the protestations of peasants in the face of the consolidation of absolute property rights with the Enclosure Acts were evidence that the acts violated customary rights. Ironically, the notion of absolute property rights, when transferred to the colonies, became the means by which the lower classes became land-owners themselves, and created a new moral economy of a different sort, by pushing for an opportunity to become an independent land-owner.<sup>93</sup>

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<sup>91</sup> A.R. Buck, “Property Law and the Origins of Australian Egalitarianism,” *Australian Journal of Legal History*, 1 (1995), 147, 164.

<sup>92</sup> E.P. Thompson, “The Moral Economy of the English Crowd in the Eighteenth Century,” *Past and Present*, 50 (1971), 70-136.

<sup>93</sup> Roger Wells, “E.P. Thompson, *Customs in Common*, and Moral Economy,” *Journal of Peasant Studies*, 21 (1994), 273-5, 281.

Evidence of moral economies have been found in different frontier societies and not just pertaining to bread or land. They suggest that the new economies formed on the frontiers were also creating “customs” that were in opposition to the functioning of a free market.<sup>94</sup> Christopher Clark uses a concept he calls “structures of opportunity” to explain how access to property and land ownership was governed in the American northeast. He argues that there was an underlying structure of the rural economy, based not just on economic opportunities for the individual, but also on social, cultural, ideological and political understandings. Thus, unlike traditional arguments which see the farmers of this region as proto-capitalists, Clark contends that the motivations which drove this society were more complex.<sup>95</sup> “Official” decisions to allow squatters leniency with regards to obtaining the lots on which they had made improvements are one example of the “moral economy” at work. Lenient attitudes towards squatters were largely a result of an idea that improving the land gave the “improver” some rights to the land regardless of their legal relationship to the land. The notion of public lands in the United States gave rise to the perception that the land was there for any member of the public to put into production. Moreover, there was growing public pressure to make it possible for settlers to acquire their own small piece of land out of the vastness of the American public domain. At the same time it was politically expedient to allow the land to be sold in a free market because of the revenues generated by the sale of public lands.<sup>96</sup>

The links between the idea of a moral economy and the land in the American frontier have also been addressed by Charles Sellers who contends that the early conflicts over the land policy served to focus American politics on questions about the responsiveness of government to popular demands. He argues that the contradictions inherent in the ideas of opportunity and equality and the problems associated with the opening of the public domain to sales and settlement under market conditions were the nucleus of the struggle in America about what the nation was to stand for and symbolize.<sup>97</sup> Likewise, Alan Taylor demonstrates how the struggle for land forced the government to become more conscious of popular viewpoints regarding land and property rights on the frontier in Vermont and the Susquehanna Valley in northern

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<sup>94</sup> See, for example, Craig T. Friend, “Merchants and Markethouses: Reflections on Moral Economy in Early Kentucky,” *Journal of the Early Republic* 17 (1997), 553-574; Ben Maddison, “From ‘Moral Economy’ to ‘Political Economy’ in New South Wales, 1870-1900,” *Labour History (Australia)* 75 (1998) 81-107; David H. Unser, Jr. *Indians, Settlers and Slaves in a Frontier Exchange Economy: The Lower Mississippi Valley before 1783*, (Chapel Hill, N.C., 1992).

<sup>95</sup> Christopher Clark, “Economics and Culture: Opening up the rural history of the early American NorthEast,” *American Quarterly* 43 (1991), 286.

<sup>96</sup> See, for example, the discussions in Daniel Feller, *The Public Lands in Jacksonian Politics* (Madison, Wisconsin, 1984) and Roy M. Robbins, *Our Landed Heritage: The Public Domain, 1776-1936* (Princeton, 1942).

<sup>97</sup> Charles Sellers, *The Market Revolution; Jacksonian America, 1815-1846* (New York, 1991) pp.1-33.

Pennsylvania.<sup>98</sup> The sale of land according to market conditions did not allow for equal opportunity but rather gave those with ready capital an unfair advantage. Yet, the sheer size of the area available made it very possible for the government to still make money from the land while allowing those people without much capital the opportunity to buy land. The government was persuaded by popular pressure to extend its role as a developer into one that not only could generate revenue, but also could maintain a market where most people would have a reasonable chance of participating in the purchase of land and by allowing pre-emption rights to squatters. The idea of every man having a right to be able to acquire a parcel of land was a strong one in the United States; it became a custom, one that was part of the moral economy.<sup>99</sup>

This idea or custom was probably imported with the large numbers of settlers who came from the United States to Upper Canada.<sup>100</sup> Besides, Upper Canada could not ignore land allocation practices in the United States if it wanted to attract and retain settlers on its own public lands. For example, under the Land Act of 1841, squatters were not allowed pre-emption rights (as they had in the United States) but a clause did allow the governor to authorize private sales to them at a valuation upon application.<sup>101</sup> A provincial land surveyor or a Crown Land agent, who had some latitude in determining the value of the land and the improvements, carried out an inspection and valuation of the land in most of these cases. One might suppose that some of these inspectors altered their valuations in order to benefit the occupant, perhaps to ensure that the occupant could afford to purchase the lot and so continue their improvements. If that is so, then the inspectors, as agents of the government, were ensuring that this custom, a part of the moral economy, was also included in the application of the land policy. Of course, it can also be argued that in allowing such settlers the benefits of their improvements, the government and its agents were actually making a sound economic judgement since such improvements would benefit the economic development of the province.

In much the same way, surveyors who were sent out to conduct large scale inspections of government lands before those lands were offered for sale, often encountered squatters, or settlers who had failed to meet lease or sale obligations. In those cases, these inspectors also had the job of determining the extent of the improvements made, and their value. The inspectors often went into some detail in their

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<sup>98</sup> Alan Taylor, “‘To Man Their Rights’ The Frontier Revolution,” in R. Hoffman and P.J. Albert (eds) *The Transforming Hand of Revolution; Reconsidering the American Revolution as a Social Movement*, (Charlottesville, Virginia, 1995), pp.255.

<sup>99</sup> While the homestead ideal was a powerful part of the American dream, as Paul W. Gates has pointed out, tenancy was also an important component of the American frontier, one that had been overlooked by many historians. The ability of individuals to circumvent the land policy and acquire large amounts of public land for speculative purposes was the greatest factor in the presence of tenancy. Gates examines the relationships between these speculator-landlords and squatter-tenants in *Landlords and Tenants on the Prairie Frontier*, (Ithaca, N.Y., 1973), pp.5-6, 9, 12.

<sup>100</sup> Gates, *Land Policy*, pp.303-7.

<sup>101</sup> Gates, *Land Policy*, p.264.

remarks on these individuals and families, especially those whom they considered deserving of favourable treatment.

The role of the inspectors and agents was not only to consider the character of settlers, deciding whether or not they were deserving of special treatment, but also has much to do with the evolving attitudes towards land use, the intrinsic value of land, and its potential value.<sup>102</sup> In most of the British colonies throughout much of Britain's imperial history, the idea that land should be intensively used in order to maximize its potential was strong. Indeed, much of the rationale behind pushing native peoples out of their traditional territories was that they were not making efficient use of the resources at hand. Lands used for hunting, gathering, and low intensity agriculture, especially those activities which left no visible mark on land, were presumed to be empty. The British believed that it was their responsibility as "civilized" people to ensure that the land was put to use, as they considered good or efficient use. Eric Stokes has looked at how such ideas of utilitarianism were applied to Britain's imperial interest in India. The "doctrine of improvement" during the decades from 1820-1860, was an important element in the colonial reform movement.<sup>103</sup> Similar principles were applied to European settlers in Upper Canada as well: how efficiently they used the land, put it into production and contributed to the well-being and development of the province.

The flexibility of the land policy at the level at which it was applied to individuals indicates perhaps a pragmatic approach on the part of the agents and inspectors. It also appears to be another level, beyond that of the Executive Council or the Legislative Assembly, where conflicting tensions between the need for economic development and improvement on the one hand and pressure to maintain a privileged class on the other were worked out. The value of looking in detail at local land settlement and distribution has already been proven in studies such as those done by Clarke and Gagan on regions in Ontario. While the examination of the effects of low-level bureaucrats is not local in the same sense, it is, nevertheless, an examination of local dynamics between settlers, and inspectors or agents, between people and the resources inherent in land, both natural and material. The growing body of American ecological and environmental history has demonstrated that, in many ways, the best studies are local studies.<sup>104</sup> Another window is opened, into the lives of the early settlers and how many came to be possessors of land and legal owners of land. In the following chapters that window on the lives of early settlers and their struggles to become land owners will be opened wider as the role of Crown land agents and surveyors in that process are examined.

In some respects, examining the role of the inspectors and agents is part of an exploration of the ideas that encompass settlement and land distribution, ultimately the interaction of people with nature and the development of natural resources. One group,

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<sup>102</sup> John Clarke and John Buffone, "Manifestations of Imperial Policy: The New South Wales System and Land Prices in Upper Canada in 1825," *Canadian Geographer* 40 (1996), 121-136.

<sup>103</sup> Eric Stokes, *The English Utilitarians and India*, (Oxford, 1959). See chapters III and IV.

<sup>104</sup> William Cronon. *Changes in the Land*, (New York, 1983), p.14.

surveyors and land agents, attempted to change the direction of the settlement process and thus the development of the province. Awareness of the processes of land allocation to settlers at the local and individual level adds to the historical understanding of how power is mediated on that level. The records surviving from that process can reveal the ideas behind that mediation. A discussion of those records will reveal a collaboration between popular culture and political culture, sometimes working smoothly, sometimes clashing, but always in a state of change, with each informing the evolution of the other. This period in Canadian history is important because the foundations of modern Canada were being laid. Knowledge and understanding of the ways in which the settlers of Upper Canada encountered the government and its officials are important contributions to an awareness of the development of the political culture of that province.

The following chapter will introduce the Crown land agents and surveyors by briefly exploring who these men were, and their responsibilities as government employees. In Chapter 3, the discussion will consider how Crown land agents and surveyors took it upon themselves to become actively involved in the decision-making process of land distribution, often going above and beyond their prescribed duties. Chapter 4 will follow several of the cases in which agents or surveyors became actively involved throughout the decision-making process in order to demonstrate the role of the agents and surveyors in that process. In the last chapter, several investigations of Crown land agents who were accused of fraud and “irregularities” will be discussed. These investigations revealed the ways in which speculators manipulated the regulations of the Crown Lands department, and how some agents abused their positions in order to benefit themselves and others to the detriment of actual settlers. Through these chapters, the process of land distribution from 1830-1865, the period when most of the Crown land in Upper Canada was distributed, will be examined at its most basic level.

## **Chapter 2: Serving the Government and the Public: Crown Land Agents and Surveyors**

Crown land agents [CLAs] and Provincial land surveyors were part of the government's efforts to impose its authority and to bring settlement activities under its control. They were the last links in a chain of command that was ultimately centred in London, England, although by 1837 the imperial government had begun to surrender its authority regarding land matters to the local colonial government.<sup>1</sup> Crown land agents and surveyors were, first and foremost, government employees; however, their roles were not restricted to carrying out their prescribed duties and enforcing government policy. A secondary role, but nonetheless an important one, was to represent settlers in dealings with government concerning land issues and to communicate the conditions and problems that were affecting the distribution and settlement of land. The purpose of this chapter and the next is to outline these dual roles and examine how Crown land agents and surveyors understood and acted in these complex and occasionally contradictory duties. This chapter will examine the technical or prescribed duties of Crown land agents and surveyors, and offer brief descriptions of who these men were. In the following chapter there will be a discussion of how Crown land agents and surveyors perceived and understood their duties, often taking it upon themselves to act as agents for the settlers and so serve the public interest.

Crown land agents and surveyors are often the forgotten part of the land distribution system in Upper Canada. The imposition of land policies on settlement depended on these largely anonymous officials. There is very little written about these men who were, so to speak, on the front lines of Crown land distribution for much of the nineteenth century. Ignorance about low-level government employees in the discussions of the settlement processes and in wider debates over the development of the provinces, particularly the intersection of its political culture with its economy, has meant that a crucial element has been disregarded. Bruce Curtis has acknowledged such a gap in the literature on Upper Canada, and argues that the linkages between the rulers and the ruled

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<sup>1</sup> In 1837, the British parliament gave its assent to the Land Act of 1837, in essence, handing control of public lands over to the colony's government. This move was re-affirmed with the 1841 Act of Union, even though it went against the recommendations of Lord Durham. Gates notes that the only legislation regarding land that failed to receive assent in London after this point was the Common School Lands Bill of 1849. Gates, *Land Policies of Upper Canada*, (Toronto, 1968), p.256.

are crucial aspects of the practical implementation of governance. He has attempted to fill one part of that gap in his discussion of school inspection and the inspectors.<sup>2</sup>

Using the concept discussed by political geographer, Derwent S. Whittlesey, Crown land agents and surveyors could be defined as examples of the “impress of effective central authority upon the landscape.”<sup>3</sup> Yet the study of Crown land agents and surveyors as agents of political impress does not have to be limited to their influence on the physical landscape. Using Whittlesey’s concept and the discussion of Whittlesey’s work by Kasperson and Minghi,<sup>4</sup> D.N. Jeans, an Australian geographer, undertook an examination of the processes of the impress of central authority in New South Wales in the late eighteenth and early nineteenth century, during a period when land distribution and land settlement was a crucial aspect of the establishment of British sovereignty in that colony. Accordingly, his discussion focuses on those political activities which most greatly affected the landscape: surveying and settlement. Quite rightly, he argues that a discussion of this type must first examine the “agents of political impress,” the ways in which political activities manifest themselves on the environment. He might have been describing the Crown land agents and surveyors of Upper Canada: “Political goals and the planned manner of achieving them may be termed ‘policies’ and reside not in intangibles but in actual individuals, roles or institutions: the evolution of policy is best understood as a result of the perceptions, values and interaction of political agents.”<sup>5</sup> Jeans looks closely at the bureaucratic structure of the government, pointing out that the bureaucracy is not merely the structures through which policy is disseminated, but is also the means through which information and influence flow back to higher centres of power. Jeans argues that within the bureaucratic structure of south-eastern Australia, which was similar in many ways to the colonial structures of Upper Canada/ Canada West, there were certain levels where particular decisions could be made without direct and specific reference to higher levels. More importantly, he notes that “there was also scope for subordinate officials to modify the instructions received from a higher order before

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<sup>2</sup> Traditionally, Canadian historians have been concerned with the larger picture during this period, when the foundations of the Canadian state and political culture were laid. In particular, there has been a concentration on the development of responsible government. While there has been a great deal of attention paid to the British revolution in government, the growth of a modern bureaucracy and British administrative history, as Bruce Curtis notes, there has been little attention paid to the corresponding changes in Canada. “Representation and State Formation in the Canadas, 1790-1850”, *Studies in Political Economy*, 28 (1989), 59-87.

<sup>3</sup> Derwent S. Whittlesey, “The Impress of Effective Central Authority upon the Landscape,” *Annals*, Association of American Geographers, 25 (1935), reprinted in Roger E. Kasperson and Julian V. Minghi (eds) *The Structure of Political Geography* (Chicago, 1969), pp.450-7.

<sup>4</sup> Kasperson and Minghi, “Introduction; Part V: Environment”, pp.429-431.

<sup>5</sup> D.N. Jeans, “The Impress of Central Authority upon the Landscape: South-eastern Australia 1788-1850,” in J.M. Powell and M. Williams (eds) *Australian Space, Australian Time: Geographical Perspectives* (Melbourne, 1975), p.1.

passing them on, and where also decision-making could be initiated by lower orders, though not necessarily completed without higher sanction.”<sup>6</sup> This discussion, of course, is not so much concerned with the manifestations of political processes on the physical landscape, but rather seeks to explore the ways in which Crown land agents and surveyors, as ‘agents of political impress’ impacted the economic, social and cultural aspects of settlement through their own understandings of the land policy and the situations in which they conducted their work.

In order then to understand how and why Crown land agents and surveyors could have an impact on settlement and the political development of the colony of Upper Canada, it is first necessary to examine who these men were, and to understand their duties and obligations as civil servants.

#### Crown Land Agents

The first evidence that the government was employing agents to assist in the administration of public lands in areas far from Toronto appears in the Commissioner of Crown Lands’ letterbooks to Crown land agents. The first letters are dated 1836. This arrangement, however, appears to have been an *ad hoc* one, a temporary measure to deal with problems that had arisen in overseeing the lands. The Public Lands Disposal Act of 1837 in Upper Canada indirectly set the stage for the creation of a team of regular agents to work on behalf of the Department of Crown Lands. This act, demonstrating the influence of Edward Gibbon Wakefield, the British economist, changed the direction of the land policy in the colony. Wakefield’s proposals for “systematic colonization” sought to restrict land sales so as to concentrate agriculture and create a supply of labour. He believed that unrestricted sales of land and grants promoted depression and eliminated the labour pool that was necessary to maximize production per unit of land. This inefficiency could be prevented by making it difficult for emigrants to obtain land as soon as they entered British North America. Instead, they would be forced to work for a number of years in order to earn the capital necessary to purchase their land. While Wakefield’s plan of “systematic colonization” came too late to be successfully applied in Upper Canada, the principle of active government intervention in the land policy to direct progress remained an important concept in the development of land policy.<sup>7</sup>

Under the 1837 Land Act, free grants of land were no longer allowed, except to those who were entitled to them under existing regulations, mostly residual U.E. and military grants. Instead, land was to be sold: to be offered first at public auction, and lots then remaining unsold could be sold privately. It is important to note here that the act also provided for private sales at a valuation in certain cases. In other words, a window was being left open not only for squatters, but also for speculators and others who might use their connections with government. As well, the government was beginning to openly acknowledge squatting and the lively market in land “rights” and “interests” by inserting

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<sup>6</sup> Jeans, “Central Authority, South-eastern Australia,” p.2.

<sup>7</sup> Donald Winch, *Classical Political Economy and Colonies* (Cambridge, Mass., 1965), pp.93-4, 118-9.



a requirement in the 1837 act that the Commissioner of Crown Lands keep a register of assignments of claims to unpatented land, both lots that had been located and those unlocated.<sup>8</sup>

These provisions in the 1837 act, which was renewed in 1839, added to a growing number of factors that intensified the need for the Crown Lands department to have a regular team of representatives throughout the province. Crown land agents would facilitate the arrangement of public auctions in the vicinity of the lands offered for sale, which, it was hoped, would encourage settlement and development. As settlement and distribution moved increasingly further away from Toronto, it became more difficult for intending settlers or purchasers to travel between their lots and the city. Complaints about the inconveniences and expenses of dealing with a remote government department were understandably widespread. Likewise, it also became more expensive and time-consuming for the department to carry out its business, especially in cases where there were difficulties, confusion or conflicts in determining the details of transactions. In addition to these influences, the Colonial Land and Emigration Commission had also suggested the use of district agents to make settlement more convenient for immigrants.<sup>9</sup> Although the Commission, an element of imperial administration that had resulted from the influence of Wakefield and the British colonial reformers, had no jurisdiction in British North America, it did examine and report on colonial land legislation.<sup>10</sup> The result was that in 1839 Crown land agents became a regular part of the workforce of the Crown Lands department with the official appointment of a number of agents in July 1839.<sup>11</sup> The advantages of local agents continued to inform the business of the department over the next several decades. Among the records of the Crown Lands Department from the period are several petitions from settlers who requested the appointment of a local Crown land agent. Like the petitioners from Renfrew County, most cited the difficulties of having to travel long distances to complete business with the Crown Lands Department

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<sup>8</sup> Located land refers to that land for which an individual had received the good will of the government to either grant or sell that person the land in the future, usually on condition that certain settlement duties be performed, or that fees and purchase instalments be paid. The term “located” referred to the location tickets that were given. The rights conferred upon the locatee or his or her assignee were seen as much greater than that of a mere squatter. Unlocated land was, of course, land which remained legally, on the government’s books, as open without any claimants.

<sup>9</sup> Gates, *Land Policies*, p.263. The Crown land agents did assist in the settlement of new immigrants, see for example, Assistant Commissioner of Crown Lands to Crown land agents, circular, 10 April 1862, p.223, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-9, A.O.

<sup>10</sup> Gates, *Land Policies*, p.232; Donald Winch, *Classical Political Economy and Colonies*, pp.109, 119. The first members of this commission were T.F. Elliot, E.E. Villiers and Robert Torrens.

<sup>11</sup> Appendix B8 “List of Land Agents” Inventory 1, Volume 26, Crown Lands and Resources, RG 1, A.O. notes the provision in the 1839 Land Act to appoint resident agents, although there is much evidence that agents were already acting on behalf of the Crown Lands Department before this time.

as “inconvenient and the cause of an expence[sic] a loss of time to them which few of them can well afford.”<sup>12</sup>

For the purposes of this study, only those Crown land agents who were appointed before 1870 are discussed, although there were agents, especially in the more northerly areas, until the early part of the twentieth century. By 1870, many of the areas that had originally had agents had little, if any, Crown lands left available for sale and the agents became redundant. Indeed, by the late 1850s Crown land agents were no longer needed in some of the older settlements. The Commissioner of Crown Lands, Philip VanKoughnet, noted in his 1861 report that a total of 22 agencies in Lower and Upper Canada had been closed in the previous year.<sup>13</sup>

Before beginning the discussion on Crown land agents, it is appropriate to make some comments on the resources used to gather information about them. The Crown Lands department did not keep files on their agents, and very little personal information, apart from the extant financial records and some correspondence files, can be found within the department records. Some additional information exists in a very few instances. For example, the reports generated by investigations of Crown land agents accused of fraud and irregularities necessarily probe the public and private careers of those agents, depicting the overlap between duty and opportunity. The personal information that has been gleaned from the department records has been supplemented by material gathered from other sources, such as the *Blue Books*, the statistical accounts submitted by the colonial government each year to the Colonial Office in London and scattered newspaper articles. In addition, some material relating to specific agents is located within the private papers held by the Archives of Ontario, for example, a letter book of Kingston lumber merchant Allan F. MacPherson who also served as a Crown land agent. Secondary sources such as the *Dictionary of Canadian Biography* have also been consulted, together with traditional genealogical resources, but little was found on these men. The personal profile that does emerge is based on a very small amount of information on just a few of the agents and as such, must be regarded as tentative. Despite these shortcomings, however, some themes have emerged.

One of the first observations that can be made after perusing the records of the department concerning the Crown Land agents is that several men served as Crown land agents for a considerable length of time, working well into their senior years; these included Thomas Baines, J.B. Askin, Allan F. MacPherson, Andrew Geddes and John Clarke. The general ages of Baines, Geddes and Clarke are known because they were the

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<sup>12</sup> Memorial from the Municipal Council of Lanark and Renfrew For the Establishment of a land office in the Village of Renfrew, Petition No. 1867, Received 24 June 1850, Petition No. 1867, Petitions not related to land, RG 1-55, A.O. See also Petition of Hastings Road Settlers, 1866, Petition No. 16234, Petitions not related to land, RG 1-55, A.O. and “Separation of Grey from Wellington,” Elora *Backwoodsman*, 12 January 1854, p.2, A.O.

<sup>13</sup> “Report of the Commissioner of Crown Lands” Appendix, 1861 *Blue Book*, MG 11 C.O.47 vol. 180 (Microfilm B-1480), N.A.C.

subjects of investigations of fraud and irregularities in the business of their agencies. Geddes, who had been appointed in 1839 in Wellington County, was over seventy when he was investigated in 1859 and exonerated of any direct wrongdoing. He continued to serve until his death in 1865.<sup>14</sup> When the Crown Land department dismissed Askin, the Commissioner of Crown Lands noted that he had served as agent for 13 years and had served the government in one capacity or another for 55 years.<sup>15</sup> Allan MacPherson served as a Crown land agent well into his seventies.<sup>16</sup> Another Crown land agent, Alexander McNabb, served as an agent for thirty-one years, from 1851-1882. This man was probably the same Alexander McNabb who, as a clerk in the Crown Lands department, had earlier investigated complaints regarding another Crown land agent in 1843.

While the information provided from the *Blue Books* is not always complete, it is nonetheless possible to compile some general information regarding the length of appointments of Crown land agents in Canada West. Unfortunately, the *Blue Books* do not begin to give detailed information regarding Crown land agents until 1846, and even then the information provided from year to year was inconsistent. The Archives of Ontario (A.O.) has also provided a list of Crown land agents together with their years of appointment and the districts for which they served.<sup>17</sup> This information, however, has been found to be inconsistent in some respects with the data drawn from the *Blue Books* and from that found within the records of the Crown Lands department. With regards to length of appointments of Crown land agents, the differences between the *Blue Books* and the Archives of Ontario list are minor, suggesting that the overall picture that emerges from the two sources is reasonably accurate.

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<sup>14</sup> James Ross to Commissioner of Crown Lands, 23 January 1866, pp.72-3, Crown land agents' records for Wellington County, RG 1-495-0-29, A.O. James Geddes died 7 March 1865 at the age of 82 years. "Andrew Geddes (1782-1865)," Geddes family file, W.C.M.A.

<sup>15</sup> Commissioner of Crown Lands to J.B. Askin, 12 January 1847, pp.432-3, Commissioner of Crown Lands' correspondence to land agents, RG 1-6-3-4, A.O.

<sup>16</sup> Allan MacPherson to Col. A.J. Derottenburgh, 24 December 1855, letter book, Allan F. MacPherson fonds, F 575, A.O.

<sup>17</sup> Appendix B8 "List of Land Agents" Inventory 1, Vol. 26, Crown Lands and Resources, RG 1, A.O.

**Table 2:1 Length of Appointment of Crown Land Agents, 1839 – c.1866<sup>18</sup>**

Length of Term in Years	<i>A.O. Finding Aid list</i>		<i>Blue Book CLA lists</i>	
	Number of CLAs	Percentage of CLAs	Number of CLAs	Percentage Of CLAs
<i>1 year or less</i>	5	6.8%	3	4.8%
<i>2 to 5</i>	20	27.0%	15	23.8%
<i>6 to 10</i>	22	29.7%	21	33.3%
<i>11 to 15</i>	9	12.2%	8	12.7%
<i>16 to 20</i>	8	10.8%	6	9.5%
<i>21 to 25</i>	7	9.5%	8	12.7%
<i>26 or more</i>	3	4.1%	2	3.2%
<b>Total # of Agents</b>	74	100.0%	63	100.0%

Probably the most striking aspect of the information in Table 2:1 is the fact that about two thirds of the agents served at least six years. While definitive reasons for explaining these statistics can only come with a detailed examination of the individual agents, a task beyond the scope of this project, it is nevertheless possible to make some tentative statements. Although there is no reason to doubt that the initial appointments of most Crown land agents were politically-motivated, the length of time that so many served would seem to suggest that most tended to stay on through successive governments. S.J.R. Noel has suggested that the system of clientelism and patronage reached right down through the government to the lowest levels of local appointments.<sup>19</sup> However, if an appointment as a Crown land agent was a purely political reward for support, than the length of terms should have been considerably shorter, especially given the political turmoil of the later years of the Province of Canada. Moreover, if the clientelism system had been deeply ingrained in the Crown land agent appointments than it would be logical to see the agents being appointed, terminated and then re-appointed as the political fortunes of their patrons rose and fell. However, there is only evidence of one Crown land agent being re-appointed: H.S. Huber was appointed as a Crown land agent in April 1856, and continued until 1861. He was then re-appointed in 1863 and served until 1872.<sup>20</sup> J.E. Hodgetts found that the same pattern seemed to hold true for the whole of the civil service: “A close inspection of the lists of public employees reveals that wholesale house-cleaning, as was practiced in the United States at this time, was not

<sup>18</sup> *Blue Books of Statistics for the Province of Canada, 1846-1866*, MG 11 C.O.47, N.A.C. with exceptions of 1848, 1849, 1851, 1853, and 1859. Appendix B8 “List of Land Agents” Inventory 1, Vol. 26, Crown Lands and Resources, RG 1, A.O.

<sup>19</sup> S.J.R. Noel, *Patrons, Clients, Brokers; Ontario Society and Politics, 1791-1896*, (Toronto, 1990), p.312.

<sup>20</sup> *Blue Books of Statistics for the Province of Canada* MG 11 C.O.47, N.A.C.

popular in Canada.”<sup>21</sup> Patronage was used to fill vacancies when they occurred but there is no evidence that the election of a new government resulted in a significant change in the personnel of the civil service, with large numbers being fired and replaced by government supporters. It would appear that the continuing service of Crown land agents, like other civil servants, was not dependent on their political connections, at least for some agents. The discussion of investigations of Crown land agents in Chapter 5 will address the evidence that suggests that for some agents, political allegiance could affect their appointment. Interestingly, the tone of many of the letters in the correspondence files of the agents and the Commissioner of Crown Lands beginning at least as early as the mid-1840s, suggest that experience and skill in the job played a greater role than political affiliations.<sup>22</sup>

Lack of attention to the prescribed duties and responsibilities could result in termination of employment, as in the case of J.B. Askin. In 1847, the Commissioner of Crown Lands informed Askin that the Governor in Council had ordered his dismissal. Askin had already been cautioned several times by the Commissioner of Crown Lands that unless he carried out his instructions more carefully, his appointment would be terminated. Askin had been particularly negligent in submitting the required monthly returns to the department, as well as failing to answer correspondence in a timely fashion, despite receiving several warnings from his superior in the department. Although Askin had pleaded his case to the Commissioner, he received no sympathy. “It seems to me that instead of making your long experience useful in the discharge of your official duties, you rather used it as an excuse for want of accuracy. You are aware that under the present order of things the conduct of functionaries is narrowly watched, and must be more attentive in the discharge of their duties than they might have been formerly.”<sup>23</sup> Despite long service to the government, family connections to the old conservative element in the province, and the support he had received from Henry Draper, who had lobbied for Askin

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<sup>21</sup> J.E. Hodgetts, *Pioneer Public Service: An Administrative History of the United Canadas, 1841-1867*, (Toronto, 1955), p.46.

<sup>22</sup> See, for example: Commissioner of Crown Lands to Francis Allan, 7 February 1844, p.62, Thomas Baines, 29 March 1844, p.111, Anthony Leslie, 24 June 1844, p.161, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-3 A.O. and J.B. Askin, 25 February 1847, pp. 481-2, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-4, A.O.

<sup>23</sup> Commissioner of Crown Lands to J.B. Askin, 12 January 1847, pp.432-3, Commissioner of Crown Lands’ correspondence to agents, RG 1-6-3-4, A.O. Similarly, Denis Moynahan was also removed from his office as Crown land agent for Essex County because of neglect of his duties. Commissioner of Crown Lands to Denis Moynahan, 14 September 1861, p.174, Commissioner of Crown Lands’ correspondence to agents, RG 1-6-3-9, A.O.

to be allowed to retain his position, Askin lost his agency because he had not carried out his responsibilities with sufficient skill and attention.<sup>24</sup>

The lists provided in the annual *Blue Books* provide a systematic register of the agents and the agencies and the commissions paid. While it is difficult to compare the rates of commission because of the changing boundaries of areas covered by the agencies, it can be observed nevertheless that generally those agencies with lower annual total commissions had a higher turnover of agents. Some of the agencies that were paid consistently higher total commissions annually tended to have much longer-serving agents including Andrew Geddes, Samuel Hart, Thomas Baines, and J.B. Askin. The annual amount of commission paid to an agent was directly related to the rate of Crown land sales in the agency, and the amount of land available for sale. As noted earlier, when sales in an agency became too low to warrant an agent, the department would close the agency and the appointment of the agent was ended. This is what happened to many of the agents of the Crown Lands department.

With few exceptions, the office of Crown land agent was not intended to provide sufficient income with which an agent could support himself and his family, especially since the annual business of an agency could fluctuate considerably.<sup>25</sup> As noted in a letter from the Commissioner to Allan Macpherson which was marked “private”, agents usually came from a class of residents who already had “means of subsistence of their own,” and to whom the income from a Crown land agency might “add to their comfort.” However, as the Commissioner also pointed out, should an agent’s other business and personal interests interfere with his ability to give the necessary attention to his duties as Crown land agent, it was expected that he would resign his position.<sup>26</sup> The problems that came with having Crown land agents engaged in other interests were addressed directly in the 1856 Commissioner of Crown Lands’ annual report to the Legislative Assembly. The commissioner, Joseph Cauchon, noted that it was not surprising that Crown land agents in agencies where revenues were small were less attentive to their duties since they had to earn a living in other ways:

it could scarcely be expected that their time could be very effectually devoted to the duties of their office, involving as those duties do, the

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<sup>24</sup> Although the reasons for his dismissal are never stated, John Gilchrist, Crown land agent for Victoria and Peterborough Counties received the support of over 600 people in five petitions drawn up in Emily, Ennismore, Douro, Dummer and Eldon Townships respectively protesting his dismissal. The petitions note his integrity and the respect and esteem with which he was held. Petitions 314, 315, 316, 317 and 345, Petitions not relating to land, RG 1-55, A.O.

<sup>25</sup> In 1844, the Executive Council rejected a proposal from the Commissioner of Crown Lands to create a fund with which to augment the commissions of those Crown land agents in agencies where there were fewer sales and leases. Order-in-council, 8 January 1841, p.103, General land orders-in-council Copybook, RG 1-50-5-1, A.O.

<sup>26</sup> Commissioner of Crown Lands to A. Macpherson, 9 November 1847, p.56, Commissioner of Crown Lands’ correspondence to agents, RG 1-6-3-5, A.O.

collection of evidence in disputed cases, in preemption right, squatters' claims, &c.,&c., and reporting to the Department – in all which no money transactions take place, and consequently no per centage or pay accrues to the Agent. The result is that the duties are in general not satisfactorily performed, and the inevitable train of consequences ensues - ... murmurs complaints and public dissatisfaction.<sup>27</sup>

Cauchon proposed the implementation of a new system of travelling agents, paid by annual salary instead of on commission, who would cover much larger areas as one way to eliminate the problems associated with the smaller agencies but the idea was never realized.<sup>28</sup>

### Duties and Responsibilities

While the Crown Lands department records reveal little personal information about the agents, there is no deficiency in the material on the assigned duties and expectations for the Crown land agents. The department had printed instructions outlining the duties of the agents that were sent with the letters of appointment to the agents. In addition, in order to cope with changing policies and changing circumstances, and to close loopholes with the system, the department often sent circulars to its agents, outlining new procedures or clarifying old ones. These circulars are scattered throughout the correspondence files of the department, as well as in several miscellaneous document collections within the Crown Lands records. The circulars in particular provide an interesting window through which to see how the department sought to control and direct its agents and to introduce new aspects to its official policy. As well, some annual reports and other correspondence files also contribute to an understanding of the role and responsibilities of Crown land agents.

Crown land agents were appointed by the Commissioner of Crown Lands to administrate the sales and leases of Crown lands in a particular area. Their remuneration was by commission, a percentage of the monies collected in payments for purchases or leases of Crown lands. As pointed out in the printed instructions, and in several circulars and letters to individual agents, they were not reimbursed for postage or for office supplies and the like. The money received for commissions was expected to be enough to compensate agents for the other paperwork that their position generated, for example, handling the applications for patents and distributing the patents to the property owners.<sup>29</sup>

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<sup>27</sup> Joseph Cauchon, Commissioner of Crown Lands, addresses this issue in several places in his "Annual Report of the Commissioner of Crown Lands for 1856," *Journals of the Legislative Assembly*, 1857, Appendix 25. Unfortunately, the pages of this report are not numbered.

<sup>28</sup> Cauchon, "Annual Report of the Commissioner of Crown Lands for 1856," *Journals of the Legislative Assembly*, 1857, Appendix 25.

<sup>29</sup> "Remuneration", III, V p.5, "General Instructions to the District or Resident Agents of the Department of Crown Lands," November 1845, Crown land agents' records for Simcoe County, RG 1-499-0-9, A.O. Circular to agents from Commissioner of Crown Lands, 25 January 1844, p.6116, Crown Land administration files, Regulations and Orders, RG 1-9 vol.11, env. 6, A.O.

Agents were also required to post bonds and have two or three individuals also post bonds for them, acting as sureties. Such a requirement was deemed necessary to help to keep the Crown land agents honest, and to protect the interests of the government and the purchasers and lessees of Crown lands in the case of fraud or error on the part of the agent.

In November 1845, the department had the “General Instructions to the District or Resident Agents of the Department of Crown Lands” printed, and for the period under discussion it remained the most comprehensive and important reference for the department and agents. While details, such as remuneration rates or settlement conditions of sale did vary, the “General Instructions” remained the same. The complete list of duties outlined the responsibilities of the agents with regards to dealing with the public, procedures for carrying out sales and arranging leases, correspondence with the department, enforcing government regulations with regards to settlement conditions, the sub-division of lots, and book-keeping, including the required monthly returns and the payment of the agents’ commission by the department.

The most important part of the agents’ responsibilities was related to the sales of Crown lands and many of the instructions are directly related to these duties. Crown land agents were also responsible for the sales of Clergy Reserves, which were sold under different procedures than the Crown lands. In some cases, Crown land agents were also responsible for selling timber licences on Crown lands, although in areas where the logging industry was particularly active, such as along the Ottawa River, a separate Crown timber agent was appointed just to attend to this business. In addition to these duties, agents were also to commit some time and effort to the collection of arrears on payments for Crown lands.<sup>30</sup>

The agents were also to perform other duties that came about as a result of their position as representatives of the Crown Lands department. For example, they were to provide the department with information and paperwork required to deal with special cases and disputes. As will be seen in the next chapter, this could be a burdensome task. The agent might have to collect information from both the parties directly involved, and other observers, such as neighbours. Sometimes people were difficult to track down, especially if they had moved from the community. In order to find out information on assessments and whether taxes were paid, the agent had to consult local government officials. Affidavits and other documents had to be forwarded to the department.

In addition, where occupants applied to purchase a particular parcel of land, agents were required to carry out inspections of the land and any improvements or degradations thereon and provide a reasonable valuation for the sale of that land. This was one duty for which the agents did receive additional compensation. The instructions

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<sup>30</sup> See “Agents’ Duties”, I, p.1, as well as the more specific instructions under the other relevant subheadings in the “General Instructions to the District or Resident Agents of the Department of Crown Lands,” November 1845, Crown land agents’ records for Simcoe County, RG 1-499-0-9, A.O. See also Circular from Commissioner of Crown Lands, 7 March 1844, p.91, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-3, A.O.



regarding these duties reflect the careful balance the agents had to maintain. “They are to proceed to this valuation with much attention and caution, avoiding all favor or acception of persons, and avoiding equally too high a valuation which might deter or overcharge purchasers, or too low a one which would diminish the fair proceeds of the public property.”<sup>31</sup> In making inspections and valuations, the agents were responsible for finding an equilibrium between conflicting tensions and for providing written justification for their valuation to the department.<sup>32</sup> On the one hand, they were to try to encourage settlement and development of the land, and on the other, there was pressure from the government to maximize the revenue from the sales of Crown land, not to mention their own commission on the sale of land. The inspective role of Crown land agents, in some ways, conflicted with their role as sales agents.<sup>33</sup>

It was clearly outlined that the agents were to give no encouragement to squatters. Under “Sales of Crown Lands”, Instruction XI was clear: “No direct or even vague sufferance or permission is to be given which might authorize persons to settle themselves provisionally on Public Lands.”<sup>34</sup> The agent was instructed that those “Squatters and others in unauthorized possession of Public Lands must be informed that the only way for them to secure the property thereof is to purchase them at once.”<sup>35</sup> This duty was emphasized over and over in the correspondence as well, both in circulars and in individual letters: “... I take this opportunity of informing you that it is the wish of the Government to discountenance to the utmost the taking unauthorized[sic] possession of public lands and therefore you will take every opportunity of warning squatters that they will receive in future no consideration.”<sup>36</sup> Such reminders came regularly as the

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<sup>31</sup> “Agents’ Duties”, V, p.1, “General Instructions to the District or Resident Agents of the Department of Crown Lands,” November 1845, Crown land agents’ records for Simcoe County, RG 1-499-0-9, A.O.

<sup>32</sup> Commissioner of Crown Lands to William Jackson, 13 September 1861, p.172, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-9, A.O.

<sup>33</sup> Bruce Curtis examines the role of inspectors in the school system of Upper Canada, and in the administration of rule: “Representation and State Formation,” p.63. In some ways, this role parallels part of the duties of Crown land agents, and surveyor-inspectors, (as will be discussed later in this chapter,) but it also presents a dilemma to employees whose first duty was, purportedly, to *sell* land.

<sup>34</sup> “Sales of Crown Lands”, XI, p.2, “General Instructions to the District or Resident Agents of the Department of Crown Lands,” November 1845, Crown land agents’ records for Simcoe County, RG 1-499-0-9, A.O. It should be noted that the “General Instructions to the District or Resident Agents of the Department of Crown Lands” November, 1845 appears in several other places in the Crown Lands department records.

<sup>35</sup> “Sales of Crown Lands”, XIII, p.2, “General Instructions to the District or Resident Agents of the Department of Crown Lands,” November 1845, Crown land agents’ records for Simcoe County, RG 1-499-0-9, A.O.

<sup>36</sup> For example, Commissioner of Crown Lands to Samuel Hart, 5<sup>th</sup> September 1845, p.500-501, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-3, A.O.

department and the government worked to eliminate the tremendous problems that squatting had created for the department: “It is therefore very objectionable for agents of the Department to encourage parties to take possession of lands which is not open for sale, with a view of establishing a preemption claim which might lead to embarrassment.”<sup>37</sup> The department took a dim view of allegations that agents of the department encouraged squatting when the department and the government were striving to discourage it.

At the same time, the agents’ position was a difficult one. First, their instructions authorized them to allow “occupants in good faith” or “with improvements” a reasonable opportunity “within a short delay” to purchase the land which they occupied. These instructions are understandably vague, given the reluctance of the government to commit to allowing pre-emption *rights*, while recognizing the contributions of such squatters. The agents were further instructed that “no Lot with any considerable improvements on the same, should be sold to any other than the occupant, without first communicating with the Department on the subject.”<sup>38</sup> The vagueness of the instructions, however, allowed the agents leeway in interpreting terms such as “good faith”, “a short delay” or “considerable improvements.”

Second, the government’s oscillations in enforcing aspects of the land policy made it difficult for agents to find a balance when dealing with squatters and occupants. Public opinion vied with the determination of some governments and officials to force squatters to purchase the lots on which they were living and to enforce settlement duties and the collection of arrears. The circulars sent out by the department to the agents demonstrate the underlying conflict that was going on about the direction of the land policy and the relative importance of encouraging settlement in comparison to revenue from land sales. For example, in December 1842, a circular sent out to the agents informed them that they were to entertain pre-emption claims on Clergy Reserves only when occupants made payment within a period fixed by the agent.<sup>39</sup> In an effort to eliminate the squatting problem on Clergy Reserves several years later, another circular, dated 14 March 1846, informed agents that pre-emption privileges would expire on the 1 January 1847. Squatters not making application to purchase and paying all rents owing since the date of occupation by 1 January 1847 would not be considered to have any

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<sup>37</sup> For example, Commissioner of Crown Lands to Allan Macpherson, 23<sup>rd</sup> September 1845, p.526, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-3, A.O.

<sup>38</sup> “Sales of Crown Lands”, XIII, p.2, “General Instructions to the District or Resident Agents of the Department of Crown Lands,” November 1845, Crown land agents’ records for Simcoe County, RG 1-499-0-9, A.O.

<sup>39</sup> Circular from Commissioner of Crown Lands, December 1842, Crown Lands Department Orders and Regulations, RG 1-67-0-1, A.O.

special claim to those lots.<sup>40</sup> The deadline likely provoked protest from occupants unable to raise the money necessary to comply with the order, since another circular, dated 23 December 1846 informed agents that “a further delay is granted to parties so circumstanced.”<sup>41</sup> Similarly, when the government began an earnest attempt to close out the sales of remaining Crown lands in the settled townships in 1859, it again backed down from initial deadlines.<sup>42</sup> The government’s lack of clear direction for much of the period under discussion left the agents to try and find a workable balance between the benefits that squatters often brought to the community and the illegalities of their occupation.

While discouraging squatting, the agents were at the same time to do their utmost to discourage speculation and speculative activities while encouraging the settlement of *bona fide* settlers. The regulations encouraged the settlement of lots by individuals and families by laying out specific conditions of sale, including settlement duties. While these conditions varied over time and location with regard to details, it was nonetheless up to the agent to impress upon purchasers the necessity of fulfilling these conditions, and to endeavour to assure that these conditions were met before patents would issue.<sup>43</sup> Similarly, the agents were given the power to suspend or cancel sales if they suspected collusion or speculative intentions during the auctions of Crown lands.<sup>44</sup>

Of course, one of the most important aspects of the responsibilities of the local Crown land agent was his knowledge and experience of local matters and people. Within the copybook volumes of correspondence to Crown land agents from the Commissioner of Crown Lands many letters directly state the reliance of the Commissioner on the local Crown land agent to understand matters and suggest fair and workable solutions to problems and conflicts that arose. Typical of these letters is one addressed to Anthony Leslie, agent for the Bathurst district: “As regards the first [petition] I can only state that it is for you to obtain information on the subject in whatever manner you may think best,

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<sup>40</sup> Circular to agents from Commissioner of Crown Lands, 14 March 1846, p.6119, Crown Land Administration Files, Regulations and Orders, RG 1-9 Vol.11 Env.6, A.O,

<sup>41</sup> Circular from Commissioner of Crown Lands, 23 December 1846, p.412, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-4, A.O.

<sup>42</sup> Circulars, 22 July 1859, p.499, 19 January 1860, p.580, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-8, A.O. “Crown Lands,” *Chatham Weekly Planet*, 22 December 1859, 29 December 1859, N437, A.O. Gates, *Land Policies*, p.31.

<sup>43</sup> Circular, 20 November 1846, p.354-5, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-4, A.O., Circular, 17 February 1863, p.305, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-9, A.O.

<sup>44</sup> “Sales of Crown Lands”, VII, VIII , p.2, “General Instructions to the District or Resident Agents of the Department of Crown Lands,” November 1845, Crown land agents’ records for Simcoe County, RG 1-499-0-9, A.O.

of which you should be the best judge, being acquainted with the localities.”<sup>45</sup> The Commissioner acknowledged his reliance on the agents when he wrote to Thomas Baines, chastising him for not looking into a matter carefully enough, “as local Agent, you are better able to form an opinion than the head of a Department living at a distance, who cannot be supposed to know all particulars of a case. This local knowledge in District Agents is one of the chief grounds of the confidence reposed in them by their chief.”<sup>46</sup> The agents were responsible for not only relating the facts and papers relating to cases of dispute or confusion, but they were also to “give an opinion as to the merits of the case”<sup>47</sup> and “to offer a suggestion for the consideration of the Department.”<sup>48</sup>

The reliance of the department on the Crown land agents was mirrored by expectations that the agents would be careful to preserve their reputations by making their conduct as upright and conscientious as possible. For example, James Stevenson, a Crown land agent who was also employed as an agent for the Bank of Montreal, was informed that he could not carry on both agencies. Questions about the propriety of such an arrangement had arisen. The Commissioner wrote to Stevenson, informing him that if he wished to continue his employment with the Crown Lands department then he would have to cease his employment with the Bank. Stevenson, the Commissioner wrote to him, also faced an investigation in order to “justify yourself of invidious imputations and putting an end to suspicions created in the public mind.” Moreover, such an inquiry would make known the efforts of “the Government in employing meritorious officers whose attention [is] to the strict execution of their duty.”<sup>49</sup> The possibility of conflicting interests, such as employment by both a bank and the Crown Lands department, were unacceptable for a Crown land agent.

In much the same respect, political involvement was viewed as unacceptable, as G.B. Lyon was informed by the Commissioner, “...I may inform you however in the mean time that your coming forward at the last general election has been considered as a virtual resignation of your office. The same view of the case has been taken in regard to

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<sup>45</sup> Commissioner of Crown Lands to Anthony Leslie, 24 June 1844, p.161, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-3, A.O.

<sup>46</sup> Commissioner of Crown Lands to Thomas Baines, 19<sup>th</sup> December 1845, p.647, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-3, A.O.

<sup>47</sup> Commissioner of Crown Lands to E.P. Smith, 27 May 1847, p.578, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-4, A.O.

<sup>48</sup> Commissioner of Crown Lands to P. McMullen, 27 May 1847, p.577, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-4, A.O. See also Commissioner of Crown Lands to James Stevenson, 18 August 1847, p.667, and 4 September 1847, p.687, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-4, A.O.

<sup>49</sup> Commissioner of Crown Lands to James Stevenson, 4<sup>th</sup> December 1844 and 28<sup>th</sup> December 1844, p.265 and p.280, RG 1-6-3-3, A.O.

all other agents of the Department similarly situated.”<sup>50</sup> Similarly, J.P. Roblin was chastised by the Commissioner of Crown Lands for authoring a petition to the Governor in Council on behalf of a settler regarding the disputed price of some land: “therefore I take this opportunity of remarking that it is very undesirable that Agents of the Government should either directly or indirectly encourage parties to resist the views of Government.”<sup>51</sup> The agents were to be careful to preserve not only their reputation but that of the department and even the government, for whom they were acting as representatives. There was more latitude for Crown land agents at the local government level, probably because Crown land matters were not under local jurisdiction. E. Perry was informed, upon enquiry, that there was no objection to his serving as a member of the local County Council.<sup>52</sup>

Similarly the duties and instructions given to the Crown land agents were designed to create a system of sales that was as regular and transparent as possible. The problems that arose resulted in a system that was continuously undergoing further refinement to achieve those ends. When Crown land agents failed to follow directions and regulations, the result could be an embarrassing situation for the agent, the department and the government if complaints were loud enough. For example, Allan MacPherson had been criticized for not following the instructions given to him when his actions had resulted in several sales of lots being cancelled after purchasers had made payments, putting the department in an awkward position.<sup>53</sup> While Crown land agents did have some latitude within which to work, they also had to closely adhere to the instructions given them, not just to streamline the business, but to preserve the integrity of the department and the agency.

In order to maintain a reputable and trustworthy team of Crown land agents, agents were forbidden from personally purchasing Crown lands. The November 1845

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<sup>50</sup> Commissioner of Crown Lands to G.B. Lyon, 25<sup>th</sup> February 1845 p.333, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-3, A.O. Although George Jackson lost the nomination to run as MP for Grey county, he nevertheless ceased as the Crown land agent for Waterloo and Grey counties when he threw his hat in the ring for the Reformers in 1854, “Durham” Elora *Backwoodsman*, 4 May 1854, p.2, A.O. and “County of Grey,” *Guelph Herald*, 25 July 1854, p.2, A.O. Interestingly, his brother was appointed in 1854 as the CLA for Grey County in 1854, “Grey Agency,” Elora *Backwoodsman*, 7 September 1854, p.2, A.O.

<sup>51</sup> Commissioner of Crown Lands to J.P. Roblin, 17 December 1846, p.402, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-4, A.O. For similar remarks, see Commissioner of Crown Lands to A. Leslie, 12 March 1847, p.498, and Commissioner of Crown Lands to J.B. Askin, 6 May 1847, p.543, and Commissioner of Crown Lands to A. McPherson, 20 May 1847, p.563, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-4, A.O.

<sup>52</sup> Commissioner of Crown Lands to Ebenezer Perry, 17 January 1861, pp.796, Commissioner of Crown Lands’ correspondence to agents, RG 1-6-3-8, A.O.

<sup>53</sup> Commissioner of Crown Lands to Allan Macpherson, 5<sup>th</sup> November 1845, p.578-9, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-3, A.O.

“General Instructions” went even further in warning against personal speculation. Under the first section, “Agents’ Duties,” the fourth instruction began by telling Crown land agents “to give applicants such advice and information as they are enabled to afford (not of a confidential nature) respecting the sales and grants of public Lands.” However, it went on to sternly warn the Crown land agents that, “any direct or indirect understanding on their part for participating in the benefits claimed by individuals, any receipt of money for their own benefits no matter from whom, to secure to the parties the obtaining of any lot of Land, would subject them to the loss of their situation as would all speculation in land within their Agency not actually under Patent.<sup>54</sup> Not only would personal speculation in Crown lands result in dismissal, but to assist others to do so would also result in the same outcome. The regulations forbade the agents from purchasing Crown lands. However, the Governor in Council, upon the receipt of petitions, had allowed a few exceptions to this rule when it was deemed expedient that agents be allowed to purchase a single town lot in order to build a personal residence.<sup>55</sup> While some Crown land agents seem to have found loopholes through which they were able to participate in land speculation in their own districts, particularly through family members, such activity was formally forbidden.<sup>56</sup> If, however, a purchase by a family member was completed openly and within the regulations and laws, then the department would have no problem with that, as was told to Ebenezer Perry: “the Department can offer no objection to your son purchasing land within your Agency subject to the conditions attached to the sales in the locality. It can be allowed only upon the understanding that you have no control over, nor any personal interest either directly or indirectly in the land.”<sup>57</sup> Later, the Commissioner of Crown Lands asked Perry to justify the sale of land to his son by showing that the conditions of sale had been met, after complaints regarding the preferential treatment of Perry’s family members had been received by the Department.<sup>58</sup> It was important that Perry’s conduct as a Crown land agent be without reproach.

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<sup>54</sup> “Agents’ Duties”, I, IV, p.1, “General Instructions to the District or Resident Agents of the Department of Crown Lands,” November 1845, Crown land agents’ records for Simcoe County, RG 1-499-0-9, A.O.

<sup>55</sup> Commissioner of Crown Lands to John Alexander, 30 March 1844, p.113, and 10 December 1844, p.267, Commissioner of Crown Lands’ correspondence to agents, RG 1-6-3-3, A.O.

<sup>56</sup> Chapter 5 discusses the investigations of several Crown land agents accused of speculation and fraud in their agencies’ business.

<sup>57</sup> Commissioner of Crown Lands to Ebenezer Perry, 16 August 1860, p.713, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-8, A.O. The tone of this letter indicates the effect that the allegations and investigations of family speculative activities in other agencies had had on the department and its efforts to maintain its reputation and that of its agents as honest and trustworthy.

<sup>58</sup> Commissioner of Crown Lands to Ebenezer Perry, 27 February 1867, p.650, and 7 May 1867, p.667, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-9, A.O.

The Crown land agents had a unique and often challenging position as representatives of the Crown Lands department in their local communities. While they had to cope with a number of detailed instructions, which could often change, they also had considerable room for interpretation of some of those instructions as will be discussed in the next chapter.

#### Provincial Land Surveyors

Provincial land surveyors in the province were, for the most part, less involved in the processes of the distribution of Crown lands than Crown land agents. Their most important and largest task was surveying and mapping. They did however, become involved in the process of Crown land distribution in one aspect, largely because of their knowledge of the land and the environment and its importance in a largely agricultural society. At several different times surveyors were called upon to carry out large-scale inspections of lands. For example, in 1825-26, surveyors were among the people asked to carry out inspections and assess the value of Crown lands. In the late 1830s, as the land policy became more regulated and land sales came to dominate the distribution process, it became necessary to carry out inspections of large territories of Crown lands that remained unpatented. Such inspections, including Clergy and Crown reserves, were done periodically. This was performed in order to determine the presence of squatters, the amount of timber removed, if any, and to determine the value of the land in preparation for its sale. Surveyors carried out these large systematic inspections, as well as continuing to complete inspections on individual lots when called upon to do so by local Crown land agents or the Crown Lands department and their inspection reports were regarded with the same seriousness as the work of the Crown land agents.

The earliest surveyors in Upper Canada, although responsible for creating much of the human landscape seen today, were not regulated in any systematic way. It was not until 1849 that a provincial statute created a Board of Examiners which consisted of the Commissioner of Crown Lands and six others appointed by the Governor and was responsible for licensing Provincial Land Surveyors. This was a measure designed to prevent the problems that had arisen from earlier inaccurate surveys. Provincial land surveyors were licensed by a Board of Examiners after a three-year period of apprenticeship under an experienced surveyor. The candidates had to prove their technical and mathematical abilities, they had to possess quality instruments and provide character references. In 1860, the Association of Provincial Land Surveyors was incorporated, furthering the professionalization of the job.<sup>59</sup>

The three-year apprenticeship continued an older tradition of learning through apprenticeship. Before 1849 the qualifications and competence of surveyors varied considerably. The *Proceedings* of the annual meetings of the Association of Provincial Land Surveyors contain some information about education and experience in the obituaries and biographical sketches of those surveyors who practised in the early part of the colony's history. For example, Reuben Sherwood probably gained his knowledge of

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<sup>59</sup> Hodgetts, *Pioneer Public Service*, p.45.

surveying from his father, Thomas Sherwood. Thomas Sherwood, “[T]hough not a legalized Surveyor, ... had the instrument and understood its practical use] and was called upon by the government to run the side lines of Elizabethtown Township.<sup>60</sup> Similarly, Thomas William Walsh likely received much of his surveying education from his grandfather, Thomas Walsh, who was a surveyor.<sup>61</sup> Like Sherwood and Walsh, other early surveyors such as Samuel Ridout and Mahlon Burwell were also tied into the elite conservative network of Upper Canada.<sup>62</sup>

Surveying was one of the greatest expenses associated with the distribution of Crown lands in the colony. Until 1818, the funds for hiring surveyors and their crews came from the Military Chest.<sup>63</sup> The drain this put on funds resulted in the adoption by Order-in-Council in December 1818 of a contract system of survey, whereby payments for surveys was to be in land.<sup>64</sup> The result of this contract system, whereby most surveyors received about four percent of the total lands they surveyed, was that surveyors became speculators. As Randy Widdis has discussed, surveyors often had their choice of lots, and given their intimate knowledge of the physical landscape, were able to acquire the best lots.<sup>65</sup> The accumulation of land through this system of contract survey merely added to the social position of many of the surveyors as members of the conservative elite in the province.<sup>66</sup> The practice of paying for surveys with land came under severe criticism. While Lord Durham’s report cited the practice as the reason surveys were carried out haphazardly without enough care or accuracy, the practice also gave surveyors a vested interest in the demand for and the value of land.<sup>67</sup> This interest may

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<sup>60</sup> “Biographical Sketch of Reuben Sherwood, Deputy Surveyor, *Proceedings, Annual Meeting of the Association of Provincial Land Surveyors of Ontario*, 1886, p.60, T.P.L.

<sup>61</sup> Obituary “Thomas William Walsh,” *Proceedings, Annual Meeting of the Association of Provincial Land Surveyors of Ontario*, 1895, T.P.L.

<sup>62</sup> John Ridout, “Biographical Sketch of Samuel Ridout, Deputy Surveyor” *Proceedings, Annual Meeting of the Association of Provincial Land Surveyors of Ontario*, 1887, pp.128-9 T.P.L.; John Clarke, “Mahlon Burwell” *Dictionary of Canadian Biography*, Vol. VII, pp.125-8; “Biographical Sketch of D.W. Smith, Surveyor, Upper Canada, 1792-1804” *Proceedings, Annual Meeting of the Association of Provincial Land Surveyors of Ontario*, 1894, pp.144-5, T.P.L..

<sup>63</sup> Gates, *Land Policies*, p.157.

<sup>64</sup> G. Patterson, “Land Settlement in Upper Canada,” in A. Fraser (ed.) *Sixteenth Report of the Bureau of Archives for the Province of Ontario* (Toronto, 1921), p.125.

<sup>65</sup> Randy W. Widdis, “Speculation and the Surveyor: An Analysis of the Role Played by Surveyors in the Settlement of Upper Canada,” *Histoire sociale/ Social History*, 15 (1982), 446.

<sup>66</sup> Widdis, “Speculation and the Surveyor,” 453.

<sup>67</sup> *Lord Durham’s Report of the Affairs of British North America*. Sir Charles Lucas (ed.) (New York, 1970) Vol. III, pp.231-2.



have carried over into their other duties when employed by the Crown, such as the contracts for large-scale inspections, especially if their land-holdings were nearby.

The records relating to the large-scale inspections reveal a systematic collection of data and a relatively straightforward determination of land value.<sup>68</sup> In determining land values, the surveyors were given similar instructions to the Crown land agents. They were responsible for maintaining that balance between encouraging settlement and maximizing government revenue from their sales.<sup>69</sup> The Order passed by Her Majesty in Council on 21 October 1841 regarding the disposal of Clergy Reserves in the Province of Canada was explicit in its instructions for the inspectors: “returns shall exhibit whether or not the same[reserves] are vacant and if occupied or improved by whom and under what authority or claim if any such shall be asserted. The extent and nature as well as the value of such improvements, the value of the land apart from the improvements, the nature of the soil and all such other circumstances as shall or may affect the valuation.”<sup>70</sup> Such instructions are similar to those given to the Crown land agents who were responsible for carrying out inspections of individual lots or having such inspections made. In essence, they had to justify the valuation they gave to lots. The inspections were carried out in so regular a manner that printed forms for the collection of information came into regular use. With minor variations, the inspection forms called for such information, in addition to occupation and improvement or the removal of timber, as the amount and kinds of timber present, soil type, drainage conditions, the distance to the nearest good roads, mills, or village, and other information that would affect a lot’s value.<sup>71</sup> There was also a spot reserved on the forms for “Remarks.” The surveyors often made use of this area to explain the situations of squatters and to act as advocates for those whose improvements were seen to be valuable and adding to the development of the province.

The inspections carried out by the surveyors represented an important part of the distribution of land in Canada West. The surveyors determined minimum prices of government lands, thus also affecting the prices of privately-held lands. Moreover, their reports provided some of the most systematic and organized descriptions of the lands held by the Crown.

### Conclusion

Crown land agents and surveyors were key links in the chain of the implementation of the government’s land policies. Their duties placed them at the juncture of land distribution between the government and the individual. The

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<sup>68</sup> The majority of these reports are found in RG 1-95, A.O.

<sup>69</sup> Michelle Vosburgh, “Bending the Rules: Inspectors and Surveyors and Upper Canada’s Land Policies,” *Ontario History*, 94 (2002), 149-51.

<sup>70</sup> Orders, Correspondence, reports and memoranda received by the Surveyor General from other government offices, RG 1-2-5 Vol. 73, A.O.

<sup>71</sup> Vosburgh, “Bending the Rules,” 153.

responsibilities that came with this position were carefully mapped out. The next chapter, however, will discuss how the agents and the surveyors found ways of moving beyond the realm of their prescribed duties. Many saw their role as beyond that of Crown land agent for the government or inspector for the Crown, but as advocates for individual settlers. They were also working for the public interest, and the development of the province.

**Chapter 3:  
Serving the “Public Interest”: Crown Land Agents and Surveyors  
as Mediators in the Distribution of Public Lands**

A squatter, on a Government lot  
That is to say  
Before the survey  
Must not be treated like a snake, and shot

But when the land is advertised for sale  
Must pay the first instalment without fail  
And if he does not pay,  
We'll surely charge him, in lieu of rent  
Interest on the value of the lot, at 6 per cent.<sup>1</sup>

This unsigned piece of poetry found in a Crown Lands Department file is an amusing expression of the tensions between the government's encouragement of *bona fide* settlers and its urge to maximize revenue. Crown land policy was always under review, undergoing changes that sought to reflect the public interest. Crown Land agents and surveyors were servants of the Crown and therefore responsible for carrying out the policy of the government with regards to land distribution, but they were also caught in the middle of the debates over Crown land disposal. The Crown land agents and surveyors, at the lower levels of the bureaucratic organization of the Crown Lands Department and in locations remote from the headquarters of that department, had considerable responsibilities. As seen in the preceding chapter, the department carefully outlined the Crown land agents' duties to ensure that they discharged their responsibilities to reflect the public interest as expressed in government policy. However, within some of those duties and responsibilities, as we are about to see, they actually had considerable scope within which to interpret and apply government policy. Moreover, as seen in the last chapter, the Commissioner of Crown Lands accorded great weight to the recommendations of Crown land agents. This chapter will show how these recommendations and decisions often resulted in the application of practical judgement at odds with the written policy, although reflecting the Crown land agents and surveyors' conception of the public interest. Their support of settlers and squatters represented participation in a moral economy that strove to provide Crown lands to worthy people at a reasonable price.

The efforts at reform that briefly reached a height of revolutionary fervour during the Rebellions of 1837-38 had a profound effect on the governance of the colony and its

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<sup>1</sup> Undated. "Squatters, 1832-1859," Crown land administration files, RG 1-9 Box 19, A.O.

future. The uprising precipitated an investigative commission within the colony (which will be discussed later), and a larger imperial investigation which resulted in Lord Durham's Report and, ultimately, the legislative union of Upper and Lower Canada. This period also represented a time of significant changes in the responsiveness of government to public opinion, especially as it became increasingly difficult to form and maintain political coalitions. Partly as a result of these difficulties, politicians and other political actors more actively sought public support and attempted to influence public opinion. By so doing, as Jeffrey McNairn argues, they were not only recognizing the presence of public opinion, but giving it greater authority and importance in the political process.<sup>2</sup> In Canada West in particular, the Reformers, an umbrella term to describe those less conservative than the former "Family Compact" Conservatives, gained increasing public support which gave them more opportunities to form governments and initiate changes according to the public interest. However, as Lillian Gates has argued, the system of administration of the public lands remained largely untouched by the efforts of the Reformers when they finally gained greater political influence and power. These men had been particularly critical of the land distribution system under the conservative Family Compact, but they too seemed unable to bring the distribution of lands under stricter control by means of legislation. Instead, like the Tories who had dominated the government of Upper Canada, what the Province of Canada "had to rely on in the administration of its natural resources for the general welfare was not the minutiae of legislation but, as before, the vigilance of the legislature and the character of its public men and civil servants."<sup>3</sup> Despite attempts at greater control of the land distribution process through investigative commissions, laws, and regulations, the Province of Canada continued to depend on its employees, including Crown land agents and surveyors, to carry out this vast and important task.

In his work on the Australian colonial government in Victoria, Raymond Wright closely examines the relationships between the official land policy and the bureaucrats' perceptions of the public interest. Like the land policy regarding public lands in Upper Canada, Victoria's policy fluctuated, coming under regular scrutiny by the government and the public. The bureaucrats, so Wright argues, were left to negotiate among the various interests and come up with an agreeable and workable set of policies. Because of the difficulty of the task Wright argues that the implementation of Victoria's land policy fell largely to officials who, out from under the window of public scrutiny and somewhat removed from parliamentary debate, used their own understandings of the public interest to shape actual land policy. Wright's arguments point to an important distinction in the discussion of the implementation of land policies in colonial settings. Rather than looking at the spatial organization of society, one must regard a study of land policy as a social organization of space. In other words, in an "empty" land, such as the Australian colonies

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<sup>2</sup> Jeffrey McNairn, *The Capacity to Judge; Public Opinion and Deliberative Democracy in Upper Canada 1791-1854*, (Toronto, 2000), p.415.

<sup>3</sup> Lillian Gates, *The Land Policies of Upper Canada*, (Toronto, 1968), pp. 301-302.

or British North America, there was more activity relating to the organizing of space to facilitate the development of a “proper” society than there was social activity responding to spatial organization. For example, a need for order and efficiency compelled a neat grid survey system, with planned urban centres. In trying to organize space, Victoria’s bureaucrats expressed their own perceptions of the public interest. Wright developed a model for understanding how the public interest was determined and he emphasizes that that interest reflected a majoritarian ethic: what is best for the majority is what is right and proper and good.<sup>4</sup> Wright is ultimately critical of the lower-level local government agents and surveyors in Victoria, arguing that they hampered the work of the Melbourne department employees.<sup>5</sup> At the same time, he acknowledges that the Melbourne bureaucrats relied to a great extent on the reports and recommendations of local bureaucrats, such as district surveyors. The discovery of gold and semi-arid environmental conditions thrust Victoria’s land policy development in different directions from Upper Canada’s. Nevertheless, Wright’s work raises several issues that also apply to Upper Canada’s land policy development and implementation. He established the need to examine the implementation of policy, the perceptions of persons responsible and their understanding of the public interest.

This chapter will begin by examining various expressions of the public interest from Crown Lands Department clerks and other interested parties, including assessments of the Crown land agents and surveyors, and their role in the land disposal system. The rest of the chapter will concentrate on how Crown land agents and surveyors attempted to influence the practical application of the land policy in order to fulfill the public interest by assisting individual squatters and other settlers in the distribution of Crown lands. The examples selected are not organized chronologically or by region, but arranged conceptually. Several themes are apparent in the records of these men, many of them in response to particular situations or issues that arose in the course of their duties. The consistency of their responses to some of these issues across regions and through time will become apparent.

The public interest, as many of these men saw it, had much to do with the doctrine of improvement – that settlement and improvement of land was the best way to spur development of the colony as a whole. As an article in the *Elora Observer* noted, the government could only expect increased emigration from Canada until they made major reforms to the land policy, including allowances for the “settler who cannot pay for the land he has cleared and tilled.”<sup>6</sup> The emphasis on improvement, on making land productive, was largely based on the influences of John Locke on British legal and economic thought. Locke asserted that labour added value to land. By adding his labour

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<sup>4</sup> Raymond Wright, *The Bureaucrats’ Domain, Space and the Public Interest in Victoria, 1836-1884*, (Melbourne, 1989), pp.12-13.

<sup>5</sup> Wright, *The Bureaucrats’ Domain*, pp.121-124.

<sup>6</sup> “Emigration from Canada,” *Elora Observer*, 13 July 1859, p.2.

to land, an individual thereby acquired a right of ownership to that land. The official recognition of the right of pre-emption in the United States and the tacit practice of pre-emption in Canada can be directly attributed to the influence of Locke on conceptions of property. Natural ownership of land came to an individual, so Locke argued, when he “mixed his Labour with, and joyned to it something that is his own, and thereby makes it his Property.”<sup>7</sup> The doctrine of improvement was important not only in British colonial settler societies, like Canada, but throughout the British empire.<sup>8</sup> Improvement in Upper Canada with regards to individual lots meant removing timber and taking whatever steps were necessary in order to prepare the land for farming purposes.

In their adherence to the doctrine of improvement, the Crown land agents and surveyors were intervening to maintain a moral economy to ensure that deserving settlers could obtain a reasonably-sized parcel of land for farming purposes for a reasonable price, especially if the settlers showed themselves to be committed to settling and improving that piece of land. This held equally true for both settlers who sought their land through regular channels and those who squatted upon Crown lands. An important part of this discussion will, accordingly, focus on the significance of character. Crown land agents and surveyors usually based their recommendations on the perceived character of individuals and families, supporting their efforts to become legitimate landowners if the evidence showed them to be of good character.<sup>9</sup> The Crown land agents and surveyors often stepped in as mediators between the government and the settlers, acting as advocates for deserving settlers when the official land policy failed to support their efforts to improve land.

Reflecting the influence of Frederick Jackson Turner’s frontier thesis, Lillian Gates pointed out that the growing problem of squatters, and public pressure for cheaper land, together with arguments based on the doctrine of improvement that were gaining acceptance, exerted a great deal of influence in the province. She asserted that the demand for free land was, in part, influenced by the notion “that a free land system would help create a democratic and stable society.” Even more important were the beliefs “that population was more important than revenue, that wild land was worthless until labour

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<sup>7</sup> John Locke, *Two Treatises of Government*, (London, 1824), p.146 quoted in Ainslie T. Embree, “Landholding in India and British Institutions,” quoted in Robert Eric Frykenberg (ed) *Land Control and Social Structure in Indian History*, (Madison, Wisconsin, 1969), p.39.

<sup>8</sup> British administrators in India, trying to make sense of Indian land tenure practices and reconcile them with their own cultural context, conceded that Indian peasants enjoyed a measure of property ownership because of their labour in making that land productive. Embree, “Landholding in India and British Institutions,” p.40.

<sup>9</sup> It is important to note that the majority of settlers dealing with the government on land issues were men. The few women who did conduct business with the government on matters of land, were however, judged in much the same way as the men, and received favourable consideration if they demonstrated good character and showed that they were working to improve land by bringing it under cultivation.

and capital had been applied to it, and that to charge the settler for his land was to deprive him of the capital he badly needed or to place him under a crushing debt that would take years too lift and that might have the effect of depriving him of the fruits of his labour in the end.”<sup>10</sup> Some of the people expressing those ideas and openly pushing for changes in the implementation of the land policy were Crown land agents and surveyors. And as Gates found, those ideas finally came to dominate the land policy by the second half of the nineteenth century. The shift in thinking was exemplified by Olge R. Gowan and Dr. Morgan Hamilton in the report they submitted in 1857 as Commissioners appointed to look into the conduct of the Crown land agents in Huron and Bruce counties:

Indeed in our opinion, no Government having the interest of the Country at heart, ought to depart from a principle so distinctly recognized by the Legislature, and at once so wise, so salutary, and so patriotic. Nor need we add our Conviction that the present Government will reap a rich reward, in the gratitude of posterity for their strenuous endeavours, to discountenance land speculation and jobbing, and to secure the public domain, as the heritage of the industrious and labourous[sic] resident.<sup>11</sup>

In the meantime, however, Crown land agents and surveyors had been actively intervening in the practical application of the land policy, supporting pre-emption claims, and applications to purchase, advocating reductions in purchase prices, interest and rent charges, making appeals for the extension of deadlines for payments and assisting settlers in other ways. The Crown land agents and surveyors’ actions, in many ways, went against the official policy. In 1859, when Commissioner of Crown Lands, P.M. Vankoughnet, issued a notice that after 1 September 1859, the Crown Lands Department would no longer “entertain” the claims of squatters, there was considerable public outcry. One newspaper article accused the Commissioner of Crown Lands of “perfect[ing] the injustice of driving off every settlers who cannot pay for the land he has cleared and tilled” and of having “no compasssion” for “the squatter who has hewed for his family a home in the forest.”<sup>12</sup> Yet, as will become evident, the Crown land agents and surveyors acted as advocates for the settlers and squatters who were improving the land no matter what the official policy. Certainly the contention of the *Elora Observer* that squatters would receive “no mercy” from the Crown Lands Department and that their removal was “to be strictly enforced” did not take into account the presence of sympathetic Crown land agents and surveyors.<sup>13</sup>

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<sup>10</sup> Gates, *Land Policies*, p.302.

<sup>11</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands, Initial Report of the Huron and Bruce Commission, 1 February 1857, p.14, RG 1-14-3-1, A.O. As a report for a very public investigation, Gowan and Hamilton were also looking to emphasize the government’s adherence to such a policy and thus boost its popularity among the electorate.

<sup>12</sup> “Emigration from Canada,” *Elora Observer*, 13 July 1859, p.2.

<sup>13</sup> “Crown Lands Management,” *Elora Observer*, 20 July 1859, p.2.

It is important to note at the outset that not all Crown land agents and surveyors worked zealously to ensure rapid settlement of the Crown lands. Crown land agents, paid on commission, had an interest in seeing that lands realized the highest possible prices with payment made as quickly as possible. Some also directly speculated in government lands, or assisted family and friends to do so.<sup>14</sup> Surveyors often contracted to work for a percentage of the Crown lands they surveyed, sometimes receiving four percent.<sup>15</sup> Even so, there were some who, while speculating or suspected of collusion with speculators, also took it upon themselves to help individual settlers and their families acquire land. As a result, actions by Crown land agents may seem contradictory to the accusations of self-serving corruption made against them during investigations, which are discussed in Chapter 5. Without a detailed biographical sketch of these men, and comprehensive evidence and reconstruction of their precise speculative activities it is difficult to know how they saw their dual roles. While it may seem contradictory on the surface to be a speculator and at the same time assist settlers and squatters, speculators actually had a vested interest in seeing as much land settled and improved as possible. The demand for lots available in areas where most of the land was improved was high and the prices commanded for such lots greatly exceeded the prices paid for lots in the “backwoods.” It is possible and reasonable then that Crown land agents and surveyors who were participating in speculation would at the same time actively assist settlers and squatters. An active land market, in both public and private lands, benefitted both the Crown and private owners. In that respect, Crown land agents and surveyors who also speculated privately could combine the seemingly contradictory duties of serving the public and oneself. One could actively believe in the development of the province through settlement, and at the same time seek to earn capital through speculative activities.

#### In the Interest of the Public

Defining the public interest as it existed at any given point in time is problematic, because there may be as many variations as there are individuals. Nevertheless, several definitions of the public interest tended to dominate the political, economic and social development of Upper Canada. The government articulated expressions of public interest in its policies. Of course policies were malleable, influenced by the leadership of

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<sup>14</sup> A letter from J. Alexander, Crown land agent for Simcoe County to Thomas Baines, Crown land agent for the Home District suggests that perhaps Crown land agents helped each other and their friends to acquire suitable lots outside of their own agencies in order to circumvent regulations that forbade agents to acquire Crown lands in their own jurisdiction. Alexander to Baines, 5 November 1844, Crown lands agents' records for Simcoe County, RG 1-499-0-14, A.O. See also Andrew Geddes to Alexander McNab, 3 December 1853, Crown lands agents' records for Wellington County, RG 1-495-0-28 Box 4, A.O.

<sup>15</sup> Randy William Widdis, “Speculation and the Surveyor: An Analysis of the Role Played by Surveyors in the Settlement of Upper Canada,” *Histoire sociale/ Social History*, 15 (1982), 445-7.



individuals, political leanings, coalitions, and the general feelings of the electorate.<sup>16</sup> Largely inseparable from this were popular expressions of the public interest conveyed in newspapers, and other public forums, which both influenced and were influenced by the government and the public. Political and economic conditions, domestic, continental and imperial, also influenced expressions of the public interest. Wright's model for the public interest includes a list of what he called complementary parts, all of which had varying degrees of influence, including precedents and tradition.<sup>17</sup> The records of the Crown Lands Department and the government have many references to the public interest during the period under study, demonstrating variations in what was understood to be the public interest, and specifically, the role of Crown Lands Agents in fulfilling that interest.

Apart from the tensions between using the Crown lands as a revenue source for government or facilitating settlement through grants of Crown land or sales at very low prices, other issues came into play within the Crown Lands Department and the government, both in the legislative assembly and executive council. One of the most apparent that manifests itself in several reports made on the Crown Lands Department and the system of distributing Crown lands is the growing push for greater control and regulation. As Moorman and Hodgetts discuss, bureaucratic rules became increasingly more precise and exacting, as well as more widespread through government departments during this period. Many administrators worked to make the business of government as orderly and efficient as possible.<sup>18</sup> In addition, the public brought to bear growing pressure throughout this period for a more accountable government. Proponents of bureaucratization and accountability outside the Crown Lands Department, as well as within it, felt that this particular branch of government stood in great need of reformation and they continued to seek greater efficiency as time went on.<sup>19</sup>

In 1839 and 1840 a Royal Commission was appointed to investigate the public departments of Upper Canada. The commission, the "Royal Commission Set Up to Investigate Business, Conduct and Organization of Various Public Departments of Upper Canada" was part of an effort at reform that came after the 1837-38 uprisings. The leaders of the government in Upper Canada, shaken by the outbreaks of violence in the

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<sup>16</sup> McNairn, in his *Capacity to Judge* and Carol Wilton, in her *Popular Politics and Political Culture in Upper Canada, 1800-1850*, (Montreal and Kingston, 2000), discuss some of the ways in which public was expressed in the pre-Confederation period in the province. Wilton looks specifically at the ways in which petitions were used to influence government and leaders and to seek changes in government policies.

<sup>17</sup> Wright, *The Bureaucrats' Domain*, pp.12-13.

<sup>18</sup> David Moorman, "The First Business of Government: The Land Granting Administration of Upper Canada." Ph.D. Dissertation. University of Ottawa, 1998, pp.7-8, 317-318. J.E.Hodgetts, in his *Pioneer Public Service*, directly attributes many of the administrative changes to the Crown Lands Department's attempts to define and fulfill the public interest, (Toronto, 1955), p.128.

<sup>19</sup> Hodgetts, *Pioneer Public Service*, pp.34, 94-96.

colony and in Lower Canada, were anxious to appease the public. Support for reform had been growing for some time before the 1837-38 Rebellions, and the conservative “Family Compact,” which had controlled the Upper Canadian government decided to accede, at least in part, to calls for reform in the business of the government. In addition, the British government, through the Colonial Office, had become more actively interested in the conditions of B.N.A. and was making its concern known among the leaders of the colony.<sup>20</sup> The report of the Royal Commission’s investigations contained a great deal of evidence and several recommendations for the Crown Lands Department. The commission had more to say about the bookkeeping practices and accounts of the department than any other issue. Satisfied with the disposal of Crown lands, the commissioners condemned the large errors that poor accounting practices had caused. Accordingly, their recommendations for the Crown Lands Department focused on improving the system of bookkeeping.<sup>21</sup>

The members of the “Royal Commission appointed to enquire into the State and Organization of the Crown Land Department,” 1845-46, found that little had changed in the intervening years since the 1839-40 Royal Commission and Lord Durham’s Report. Complaints in 1845-46 largely focused on the problems experienced in accounting and the inefficiency of the department in dealing promptly with paperwork.<sup>22</sup> An interesting part of the evidence presented in the report came in the form of replies to queries put to a number of gentlemen, including Members of the Legislative Council. The first two questions asked whether the men had had any difficulties in their business with the department and could they identify the perceived causes of any difficulties. Of the 29 replies, 13 answered that they had no difficulties, and only two cited Crown land agents as causing their difficulties. The majority of the replies complained either about the system of land disposal itself, inefficient administration in the department or both.<sup>23</sup> The

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<sup>20</sup> Lord Durham’s appointment as governor of Lower and Upper Canada, with the mandate to carry out an investigation of the conditions in B.N.A. and make recommendations, signalled the seriousness of the British in dealing with the conditions that had led to the rebellions. Durham’s Report, and the attention it gave to the land distribution system, are discussed in Chapter 1.

<sup>21</sup> “Report of the Royal Commission Set Up to Investigate Business, Conduct and Organization of Various Public Departments of Upper Canada” Appendix, *Journals of the House of Assembly*, Upper Canada, 1839-40, Vol. II, p.61.

<sup>22</sup> With the legislative union of the Canadas in 1841, the land administration of the two former provinces was merged, and the Crown Lands Department was responsible for the disposal of lands throughout Canada East and Canada West. In some respects, the department was forced to operate as two separate departments for Canada East and West. This was due, in part, to the very different nature of land distribution practices, and the different responsibilities regarding leases, timber licenses, and such, for each jurisdiction. Land distribution was a much greater task in Canada West, than in the older settlements of Canada East. For a detailed discussion, see Hodgetts, *Pioneer Public Service*, Chapters 8-10.

<sup>23</sup> Reply of D. Campbell, question 2, Appendix B.2. “Report of the Commissioners appointed to Enquire into the State and Organization of the Crown Land Department,” *Journals of the Legislative Assembly*, Canada, 1846, Appendix E.E.

third query asked specifically whether or not the gentlemen had any complaints about the Crown land agents or knew of others who had “well-grounded complaints.” Again, of 23 answers, 4 had complaints, 18 had none, one respondent declined to answer. A more interesting pattern of responses came with the fourth question, which asked their opinions concerning the role of Crown land agents in facilitating settlement. The 27 responses were evenly divided, 13 affirmative, 13 negative. One gave no definitive answer. Instead, Mahlon Burwell, land surveyor and speculator, wrote that the agents’ practical utility was irrelevant. Their appointment had been a political manoeuvre in an attempt to gain political support and he opined that the withdrawal of agents would occasion public dissatisfaction, since “the people ... now fancy they are better accommodated” by the Crown land agents.<sup>24</sup>

Positive responses generally came from locations further from the centre of power, such as London, Chatham, Peterborough and Barrie.<sup>25</sup> James Gordon of Amherstburgh maintained that the Crown land agents could not fulfill their duties “one principal cause of which I apprehend to be that their powers are too limited.”<sup>26</sup> A similar pattern resulted in the responses to the last question, about whether or not settlers would have additional trouble and expense if they had to apply directly to the department. Of the replies, ten answered yes, sixteen answered no, with one giving no clear answer. H.H. Gowan, Barrie, and George Lount, Holland Landing, both pointed out that settlers might have to go to the trouble of hiring private agents to represent them in their dealings with the Crown Land Department, especially “those without education or unacquainted with business (and this class of applicants are the most numerous), ... and the loss of time, trouble, expense and risk attending it would ... be severely felt.”<sup>27</sup> George Lount added

<sup>24</sup> The role of the local Crown land agent in assisting settlers to acquire land is affirmed by petitions sent to the Crown Lands Department asking for the appointment of an agent. See for example, the 1850 petition from the Municipal Council of Lanark and Renfrew requesting the appointment of a Crown land agent in the Village of Renfrew “for the convenience of the inhabitants,” Petition No. 1867. The Hastings Road Settlers made a similar request in 1866, Petition No. 16234, Petitions not relating to land, RG 1-55, A.O.

<sup>25</sup> The problem of access to the Crown Lands Department and the Commissioner of Crown Lands was exacerbated by the movement of the capital from place to place. The government of the Province of Canada, including the legislature, the executive and various departments moved regularly between various urban centres. The first capital was in Kingston, but was soon moved to Montreal. After the Parliament building there was destroyed by fire, the capital was moved to Toronto in 1849. After more political debate, it was decided that the capital would alternate every four years between Toronto and Quebec City. It was finally decided to ask Queen Victoria to name the new capital and in 1865, Ottawa became the capital.

<sup>26</sup> Reply of James Gordon, question 4, Appendix B.2. “Report of the Commissioners appointed to Enquire into the State and Organization of the Crown Land Department,” *Journals of the Legislative Assembly, Canada, 1846*, Appendix E.E.

<sup>27</sup> Reply of H.H. Gowan, question 5, Appendix B.2. “Report of the Commissioners appointed to Enquire into the State and Organization of the Crown Land Department,” *Journals of the Legislative Assembly, Canada, 1846*, Appendix E.E.

that many “would become dupes of designing persons and speculators who upon hearing that such persons wished to purchase a particular lot of land, would apply for the purchase thereof with a view of selling it at a greater price to such persons.”<sup>28</sup> J. Alexander, Crown land agent for Simcoe County, later expressed much the same fears when defending his appointment against a threat of closure.<sup>29</sup> The men who replied to the survey represented a class that had many advantages and connections unavailable to poorer settlers, and no doubt their dealings with the Crown Lands Department and its agents reflected their position. It is to be expected that their business with the department and the Crown land agents was handled with greater care and dispatch than those less well-connected. Nevertheless, their responses, some of which elaborate on the difficulties experienced by poorer individuals, demonstrate that many were aware of the relationship between settlers and the department.

Unlike these gentlemen, many of those called to testify before the Commission criticized the system of Crown land agents, or District Agents as they were also known, particularly the problems caused by the poor system of accounting and the department’s seeming inability to adequately check the agents’ records. Some criticisms emphasized the fact that Crown land agents handled public money. One of the recommendations made by two of the commissioners, (the third, D.B. Papineau, Commissioner of Crown Lands at the time, is recorded as dissenting from those recommendations) was to follow the American system, and have all monies paid directly to the Receiver-General. The very first recommendation of the other two commissioners, William Morris, Receiver-General, and James Henderson, was to discontinue the District Agencies. The government of the day, however, disagreed with that recommendation and the service of Crown land agents continued, probably because to do away with local agents would have occasioned public outcry from a population which appreciated access to a local representative of the Crown Lands Department. Similarly, while the commissioners denounced the work of those sent to inspect Crown lands, arguing that they made valuations too low, no action was taken.<sup>30</sup> This recommendation is not surprising, given that much of the criticism of the department pertained to its expenses, and relatively low revenue. Higher valuations would have increased revenue but hampered sales and settlement and also provoked public protest.

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<sup>28</sup> Reply of George Lount, question 5, Appendix B.2. “Report of the Commissioners appointed to Enquire into the State and Organization of the Crown Land Department,” *Journals of the Legislative Assembly, Canada, 1846*, Appendix E.E.

<sup>29</sup> J. Alexander to Commissioner of Crown Lands, 23 December 1861, Crown land agents’ records for Simcoe County, RG 1-499-0-13, A.O.

<sup>30</sup> Introduction and Recommendations, “Report of the Commissioners appointed to Enquire into the State and Organization of the Crown Land Department,” *Journals of the Legislative Assembly, Canada, 1846*, Appendix E.E.

In 1854, the legislature appointed a select committee to conduct an inquiry into the management of Crown lands. The committee received evidence from a number of people both within and outside the department. William Spragge, first clerk in the Surveyor General's branch of the department, made several contributions to the committee's investigation, the first in the form of a letter to the committee. Spragge, at that point the longest-serving employee in the department and the highest paid (other than the Commissioner of Crown Lands) made several comments as to how he thought the public interest should be served in the distribution of the Crown Lands (many of which echoed his recommendations to the 1845-46 Royal Commission<sup>31</sup>). For example, Spragge suggested that instead of requiring annual payments, settlers should be granted a three year grace period during which no payments would be required and no interest would accrue, after making the down payment. Such measures would give them a chance to clear their land and begin to see some benefits from their labour. While it would reduce the immediate amount of revenue realized from sales of Crown land, Spragge felt the government had a responsibility to the settlers.

And many of those pictures of squalid misery which the backwoods present, result from the absence of paternal solicitude for the welfare of the humble class of settlers which the exercise of judgement, combined with practical knowledge, and the experience of responsible officers who felt a deep interest in that class of persons would have obviated; and would have changed the scene to one of happiness and contentment.<sup>32</sup>

Similarly, the testimony of Alexander T. Galt, Commissioner of the British American Land Company emphasized the importance of settlement and improvement over the need for government revenue "because it can be readily shown that the increase in its material wealth, and revenue arising from the successful settlement of a family, ... is vastly greater than the value of the land itself." Galt went on to demonstrate his adherence to the doctrine of improvement and the greater value of settlement and improvement when compared to the value of the land alone: "the one being productive, the other unproductive. The object, therefore, is to seek for such a system as will most speedily cause the occupation of the waste lands of the Province by industrious settlers, regarding revenue from the sale of lands as only incidental."<sup>33</sup> Others called upon by the committee

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<sup>31</sup> See Appendix A.4. "Report of the Commissioners appointed to Enquire into the State and Organization of the Crown Land Department," *Journals of the Legislative Assembly, Canada, 1846*, Appendix E.E.

<sup>32</sup> William Spragge to Select Committee, 28 March 1854, Select Committee on the Present System of Management of Public Lands – Report, *Journals of the Legislative Assembly, 1854-55*, Appendix M.M.

<sup>33</sup> Alexander T. Galt to Select Committee, 7 March 1855, Select Committee on the Present System of Management of Public Lands – Report, *Journals of the Legislative Assembly, 1854-55*, Appendix M.M. Anatole Browde points out in her comparison of the British American Land Company and the Canada Company that the success of the land company was dependent in part on its ability to work for and with the settlers to bring land into production, to work for the common good: "Settling the Canadian Colonies: A Comparison of Two Nineteenth-Century Land Companies," *Business History Review*, 76 (2002), 300.

concluded that revenue should be secondary to the settlement and improvement of the Crown lands, including David Gibson, Provincial Land Surveyor.<sup>34</sup> Interested in the United States system, the committee had asked Jonathan R. White of Michigan to explain the American system and its merits. At that time, when lands were opened for sale in the United States, the lots were sold at auction subject to a minimum or upset price. In contrast to the Canadian system, no credit was offered, payment was to be made in full, in cash, at the time of sale, and there were no limits as to the amount of land an individual could purchase. In reply to White's presentation, A.N. Morin testified that while the American system "would increase the direct and immediate revenue from the Lands" he did not believe that was in the best interests of the well-being of the province.<sup>35</sup>

A year later, Joseph Cauchon, Commissioner of Crown Lands, while still supportive of settlers, was less enthusiastic about the value of their improvements. In the commissioner's annual report to the legislature, he remarked that their efforts were a fair exchange "for the credit and easy terms of payment they obtained" on their purchase of public lands.<sup>36</sup> Cauchon was largely critical of the Crown land agents and the extra expense and work their presence created for the department's clerks. Instead, he advocated a system of travelling agents, paid by salary, but the idea was never implemented. The political turmoil of the period, which saw the appointment of a new Commissioner every two years on average, hampered Cauchon's scheme. Cauchon acknowledged this problem in his report, then fell victim to the same political instability. His appointment only lasted two years, from 1855 to 1857.

In their investigations of Crown land agents accused of fraud and irregularities in the business of their agencies, A. McNabb, William Spragge and Olge R. Gowan and Morgan Hamilton, defined their notions of the public interest. Gowan and Hamilton's report, quoted earlier in this chapter, influenced, no doubt, by political interests, repeatedly spoke of the government's duty to the public.<sup>37</sup> Spragge's work in the investigations also reflected his earlier testimony as a senior clerk in the department. These reports, which will be discussed in greater detail in a following chapter, showed the attitudes of the investigators towards those who unfairly stood in the way of actual settlers. For example, Alexander McNabb, at the time a clerk in the Crown Lands Department, was contemptuous of how a former agent in the Owen Sound settlement

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<sup>34</sup> David Gibson, P.L.S., Testimony, 13 March 1854, Select Committee on the Present System of Management of Public Lands – Report, *Journals of the Legislative Assembly*, 1854-55, Appendix M.M.

<sup>35</sup> A.N. Morin to Select Committee, 5 April 1855, Select Committee on the Present System of Management of Public Lands – Report, *Journals of the Legislative Assembly*, 1854-55, Appendix M.M.

<sup>36</sup> Joseph Cauchon, Annual Report of the Commissioner of Crown Lands for the year 1856, *Journals of the Legislative Assembly*, 1857, Appendix 25. This annual report is remarkable for its detailed assessment of the business of the department and recommendations for improvements.

<sup>37</sup> See Chapter 5 on the investigations of Crown Land Agents accused of fraud and speculation.

attempted to manipulate an unfortunate situation to his own benefit. McNabb also wrote at length of the efforts of the settlers in the area. Although they endured difficulties caused by poor roads, long distances from mills, and other hardships of trying to establish a farm in the backwoods, he praised the rapid progress of the settlement. McNabb suggested that “to remove the complaint of the want of a Grist Mill, and add to the comfort an industrious settlement,” the government make funds available to build a road to Fergus, which had a mill.<sup>38</sup> Spragge spoke of the prevention of speculation and the necessity of facilitating the settlement of actual settlers: “They are without exception persons in humble circumstances their[sic] striving to be but who have yet to become substantial Freeholders.”<sup>39</sup>

“Deserving of Favourable Consideration of Government”

Similarly, Crown land agents and surveyors responsible for completing valuations also expressed their perceptions of the public interest, and specifically the need for deserving actual settlers to receive the favourable consideration of government. As J. Alexander put it in letter advocating the retention of the credit system, “the profit or trouble given to the Department should not be taken into account when the settlement of the lands is the object sought in return and now when so many people with small means are looking for home[s] for themselves and their families.”<sup>40</sup> The settlement of the lands of Upper Canada, however, in order to be successful, had to be accompanied by other forms of development. These included not only improvements to the transportation and communication systems, and the exploitation of other natural resources but the overall growth of the colony and its economic, political and social status.

The Crown land agents often brought particular situations to the attention of the Crown Lands Department and the government when they believed action ought to be taken to further the development of the province. For example, Thomas Baines recommended the disposal of some lots near Port Credit along the Credit River. While Baines would benefit from the sales of these lands, he urged their sale to curb the smuggling that operated out of Port Credit.<sup>41</sup> In 1842, Baines suggested that the government take steps to facilitate the development of a potential limestone quarry in Rama Township. Instead of importing limestone building materials from the United States, Baines believed that the government should encourage development of the

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<sup>38</sup> A. McNabb to A.N. Morin, Commissioner of Crown Lands, 23 November 1843, Crown land administration files, RG 1-9, volume 17, envelope 2, A.O.

<sup>39</sup> William Spragge to Charles Alleyn, 28<sup>th</sup> December 1859, Report on Accusation of Fraud Against the Agent for County of Kent, John E. Brooke, RG 1-14-2-2, A.O.

<sup>40</sup> J. Alexander to Commissioner of Crown Lands, 12 February 1866, Crown land agents’ records for Simcoe County, RG 1-499-0-13, A.O.

<sup>41</sup> Thomas Baines to Commissioner of Crown Lands, 29 June 1843, Crown land agents’ records for the Home district, RG 1-569-0-5, A.O.

province's own limestone quarries.<sup>42</sup> Alexander McNabb advised the Crown Lands Department to allow Thomas Adair to extend his water lot by a few extra feet. Adair needed the additional land beside his warehouses to erect an elevator to be able to load and unload wheat from ships at a port near the mouth of the Saugeen River. Improvements to Adair's shipping facilities were "calculated to benefit the agricultural and shipping interest" of the surrounding community.<sup>43</sup> Ebenezer Perry, while on a tour of inspection of the Addington Road, noted that he was able to diffuse tensions that had arisen between some settlers and lumbermen.<sup>44</sup> The agent for the Midland district, W.J. Scott, in response to enquiries regarding the possibility of a large emigration of Prussians, urged the Commissioner to facilitate the settlement of these people. He cited several reasons for accommodating the request, arguing that the settlement would not only improve the land but that the settlement "would form a nucleus for other families from the same country to join from year to year." Those already settled would provide much needed employment for the newly-arrived immigrants, an important consideration because "at present it is very difficult to find employment in this section of the country for Yeoman who cannot speak English." Scott astutely pointed out that these immigrants, once they become familiar with the culture and language, "would soon scatter throughout the Province and be of great assistance to our farmers when labourers are scarce."<sup>45</sup> Scott wrote several more times regarding the subsequent settlement of these emigrants and the arrangements made for them. The sale of these lands provided him with more commission, but he emphasized in his correspondence the wider economic benefits of this sort of settlement.

Most of the time the Crown land agents made their opinions and attitudes apparent in their records concerning individual settlers and families. The following examples will, therefore, serve to show how Crown land agents acted as advocates for settlers, arguing on their behalf for the recognition of squatters' rights, extensions of deadlines for payments, reductions in the purchase price or the amount of interest or back rent owing, and other favourable considerations from the government. The inspection and valuation reports often put forward compelling cases in similar instances, supporting the efforts of actual settlers. As will also be shown, the Crown land agents and surveyors did not act on behalf of all settlers looking for assistance. There seemed to be clear

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<sup>42</sup> Baines to Commissioner of Crown Lands, 25 November 1842, Crown lands agents' records for Home District, RG 1-569-0-5, A.O. See also Commissioner of Crown Lands to Baines, 20 November 1843, Crown land administration files, RG 1-9, Box 1, A.O.

<sup>43</sup> Alexander McNabb to Commissioner of Crown Lands, 31 July 1865, Crown land agents' records for Bruce County, RG 1-491-0-1, A.O.

<sup>44</sup> Ebenezer Perry to Commissioner of Crown Lands, 30 September 1862, and Perry's account of his tour in March 1862, Numeric land files, RG 1-246-3 Box F-81, File No. 4086/62, A.O.

<sup>45</sup> W.J. Scott to Commissioner of Crown Lands, 23 September 1862, Crown land agents' records for the Midland district, RG 1-576-0-7, A.O.



distinctions between those they labelled “deserving” and those who were not. Among the apparent criteria for those distinctions, character, extent of improvements and length of residence were the most important. While a more extensive and detailed study would be necessary to substantiate this impression, the correspondence and other records I have reviewed indicate that race and ethnicity had very little to do with these classifications of settlers as “deserving” or not.<sup>46</sup> The examples selected for this discussion – a mere scratching of the surface – depict a discourse on character that was non-sectarian, possibly non-partisan, humane and, most significantly, remarkably pragmatic.<sup>47</sup>

Before beginning this discussion, it is appropriate to describe the sources from which the evidence for this chapter has been drawn. Much of the material concerning the Crown land agents comes from the Archives of Ontario Crown Lands records collections (RG 1), specifically assorted materials from Crown land agents for the different districts and counties. Many of the agents’ correspondence files have survived, and some daybooks and memorandum books are extant. The available documents, which record the activities of the individual agents regarding sales, inspections and other duties, vary from district to district, and for each agent. The records are quite complete for some; for others, all that are left are monthly returns to the department. The correspondence files are particularly useful, as agents often carefully detailed the situation of individual settlers. Using the Commissioner of Crown Lands’ outgoing correspondence to land agents’ copybooks, it has been possible in many cases to trace the correspondence concerning specific situations. Various administration files supplement this material. The Archives of Ontario’s collection of Inspection and Valuation Reports, from the various districts, counties, and townships, are a surprisingly rich resource. The records include information on the physical attributes of individual Crown lots and the valuation placed upon them prior to sale, and provide details of the situations of many squatters and other settlers. The National Archives of Canada also hold some of the inspection reports completed on Indian lands that were surveyed and opened for sale under the administration of the government. Many of the inspectors encountered squatters and settlers in the course of their work and their remarks about the occupants often outlined the circumstances in some detail and recommended courses of action.

One of the most time-consuming and onerous responsibilities for Crown land agents required them to examine squatters’ improvements and determining whether or not their claim was legitimate and sufficient to allow them to purchase the lot privately from the Crown. Officially, the Crown land agents’ most important duty was to sell

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<sup>46</sup> Such a study would require a systematic search of settlers throughout Upper Canada, perhaps using surnames to determine ethnicity, and correlating that information on ethnicity with data on how their applications, petitions, and other business with the Crown Lands Department was handled.

<sup>47</sup> Only one instance has been found where an individual’s political loyalties were mentioned in regards to a claim. Alexander Duncan, noted as “a good Conservative” [emphasis in original] was looking for a favourable decision from the Conservative Commissioner of Crown Lands respecting his claim to lots in Tumberry. 19 August 1861, Numeric land files, RG 1-246-3, Box F-35, File 2375/59, A.O.

Crown land. The presence of squatters, however, impeded the efficiency of that process both for the Crown land agents and for the Crown Lands Department office in several ways. If an occupant applied to purchase a particular lot, the Crown land agent had to make a recommendation regarding their claim. Transfers of squatters' claims from party to party complicated the Crown land agent's review, as did disputes arising when more than one person had improvements on the same lot. Crown land agents often had to work out an amicable agreement for these settlers based on their respective improvements and claims.<sup>48</sup> Then, if the claim was deemed to be legitimate and a private sale allowed, the Crown land agent had to ensure that the lot and improvements were inspected and the lot valued. This could be done in one of two ways. The Crown land agent himself could inspect the lot and value it, or the Crown land agent could have a licensed surveyor, a Provincial Land Surveyor, carry out an inspection and valuation.

In other cases, it often happened that the Crown land agent received the down payment on a lot from a would-be purchaser, only to find a squatter on the lot. This forced the cancellation of many sales. The prospect of a sale being stayed because of the claim of an occupant meant that Crown land agents could lose commissions, especially if a private sale was allowed at a lower valuation than the original purchase price. In that regard, Crown land agents had an economic incentive to reject the claims of squatters to pre-emption. The Crown land agent had some power to judge the legitimacy of the claim and so avert the extra work and possible reduction in commission. However, Crown land agents often acted on behalf of those making pre-emption claims.

The growing number of cases where sales had to be cancelled because of legitimate squatters precipitated an 1851 circular to all the Crown land agents instructing them to add a cautionary clause to receipts issued to purchasers. It warned purchasers that the sale could be cancelled if another party had a prior claim. "The sale is made upon the express understanding that no claim exists on the part of any other person on account of improvements or otherwise, and that should such a claim be established the sale will be cancelled."<sup>49</sup> This problem was unavoidable. Crown land agents or the department could not know if squatters occupied a given lot until the lot was inspected. Surveyors' field notes and inspection reports were only accurate at the time of their preparation. The difficulties associated with land sales generated a great deal of work for Crown land agents, but also gave them opportunities to influence the department and government on behalf of deserving settlers.

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<sup>48</sup> It often happened that the Crown land agents were left by the department to assist the settlers in working out agreements whereby one squatter would pay the other for his improvements and similar arrangements. See for example, A. McPherson to William Lee, 3 September 1859, Crown lands agents' records for Midland District, RG 1-576-0-6, A.O.; E. Perry to Robert Haddock, and E. Perry to Israel Grant, 14 August 1861, Crown lands agents' records for Midland District, RG 1-576-0-7, A.O.

<sup>49</sup> Commissioner of Crown Lands Circular to Crown Land Agents, 29 January 1851, p.124, Commissioner of Crown Lands' outgoing correspondence to land agents, RG 1-6-3-6, A.O.

As discussed in the previous chapter, the reliance of the Commissioner of Crown Lands and the Executive Council on Crown land agents' recommendations was openly acknowledged. In making their recommendations, many Crown land agents carefully explained their reasoning, knowing the consequences of their influence. In October 1843, John Alexander, Crown Land Agent for Simcoe County justified his advice regarding a dispute over a lot in Bradford Township, "I am of opinion that John Ross has the best claim to the Lot in dispute, on account of his possession, long settlement in first place, largeness of family and industrious habits."<sup>50</sup> By Order-in-Council of March 21, 1844, Ross was allowed to purchase the lots.<sup>51</sup>

Alexander based his recommendation partly on Ross' "industrious habits." Such character judgements are common throughout the records as an important element in determining the legitimacy of claims. George Jackson, in an inspection report regarding lots along Garafraxa Road, wrote in his note on Catherine Reynolds, widow of James Reynolds, "Mrs. Reynolds is an industrious woman and bears an excellent character."<sup>52</sup> Similarly, S.W. Hallen spoke encouragingly of Austin Jacobs, settled on a lot in East Gwillimbury township: "He is a poor man and the improvements, though small, have been effected by his own industry."<sup>53</sup> In an inspection report completed by Thomas Steers, Crown land agent for the Western District, the word industrious appeared regularly as a positive descriptive term. Steers was inspecting lands that had been assigned to indigent settlers to find out which lots had been abandoned and which remaining settlers deserved favourable consideration for the receipt of patents for their land.<sup>54</sup>

The characteristics of deserving settlers are apparent in instances where the recommendations support their efforts since the Crown land agents and inspectors were careful to make note of their good qualities. Along with industriousness, the length of time a settler had resided on a lot indicated their intentions to make improvements, the longer their residence and the greater the improvements, the more legitimate their intentions because of their investment of time and effort. George Kerr, agent for Lanark

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<sup>50</sup>J. Alexander to Commissioner of Crown Lands, 11 October 1843, Crown land agents' records for Simcoe County, RG 1-499-0-12, A.O.

<sup>51</sup> For other examples of the department relying on the judgement of the Crown land agent, see Crown Lands Department to Andrew Geddes, 9 August 1848 and 3 April 1850, Crown lands agents' records for Wellington County, RG 1-495-0-27, A.O.

<sup>52</sup> George Jackson, Appendix C, Report of Inspection of Lands on Garafraxa Road, 1848-1851, RG 1-12-2-10.2 A.O.

<sup>53</sup> Report of inspection of lots in York County by S.W. Hallen, P.L.S., Newmarket, submitted 14 March 1861, p. 112, Inspection and valuation returns on land for various districts, RG 1-95-19-3, A.O.

<sup>54</sup> Thomas Steers, Return of Inspection of Lands assigned to the Indigent Settlers in the Townships of Adelaide and Warwick, 1840, RG 1-95-14-9, A.O.

County, noted in his memorandum book that he had written to the Crown Land Department regarding the improvements that J.L. Sample had made on a lot in Beckwith township. Sample “had been living on the lot twelve years and had all his improvements on it and all he was worth in the world invested in it,” and hoped “that he might not be turned out of house and his land given to other parties who had plenty of land besides... whereas he had no other land in the world and praying he might be allowed to purchase the lot at a valuation.”<sup>55</sup> Kerr obviously attributed Sample’s twelve years residence on the lot as evidence of his legitimacy as a settler.

In his report on the indigent settlers, mentioned earlier, Steers made careful note of the character of settlers as part of his recommendations. Typical of a favourable recommendation was his evaluation of the Wiley family: “The Wileys have been [here] since the first settlement... They are a most industrious hard working family and deserve encouragement and have always been foremost in making roads and assisting newcomers to progress in the Township.”<sup>56</sup> Steers even exhibited a degree of understanding about some of the indigent settlers who had made relatively few improvements. In one instance, the individual assigned a lot was not living there, he had found work elsewhere as a smith in order to earn some money. Nevertheless, Steers defended his claim, “He has supported his father’s family upon their farm by his industry and is a praiseworthy young man.” Similarly, Steers also defended another settler who had made few improvements on his lot because he “has been since the disturbances [Rebellion of 1837-38] in the Militia ... and [has] had no opportunity of improving.”<sup>57</sup> Such people were viewed as assets to the community and the province, and agents typically supported their claims even when the official government policy was less encouraging.

Although the Crown land agents and inspectors never directly made the connection between marital status and family size and worthiness of settlers, it nevertheless appears to have been an important consideration as well. The inspection and valuation reports often included personal information such as the number of children, or the size of a family. It may be that Crown land agents and surveyors, echoing social values, viewed young, single men as more likely to be opportunists who squatted in order to plunder timber or other resources. Their single status freed them from many responsibilities and the social pressure to retain respectability and they were more mobile. Families, on the other hand, were harder to move around, and thus would be more likely to squat in order to permanently settle on a piece of land, clearing it and

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<sup>55</sup> Memorandum Book, 18<sup>th</sup> April 1859, p.12, Crown Lands Agents’ Records for Lanark County, RG 1-578-0-2, A.O.

<sup>56</sup> Thomas Steers, Return of Inspection of Lands assigned to the Indigent Settlers in the Townships of Adelaide and Warwick, 1840, RG 1-95-14-9, A.O.

<sup>57</sup> Thomas Steers, Return of Inspection of Lands assigned to the Indigent Settlers in the Townships of Adelaide and Warwick, 1840, RG 1-95-14-9, A.O.

establishing a farm. It would seem then that a combination of family size, extent of improvements, and length of occupation all figured into the assessment of settlers.

If taken at their word, the Crown land agents and inspectors minimized social and cultural attitudes towards ethnicity or race in making their recommendations concerning settlers.<sup>58</sup> The most important criteria for deciding whether or not a settler was a good one and deserving of favourable treatment applied for everyone. For example, Alexander Simcoe asked the Commissioner to reduce the amount owing on a lot settled by a black family in his agency: “Sam’l Thomas ... is not able to pay a fair value for the land and should it be exacted would leave him and family without a house or home... May I now beg to enquire if I may carry out the sale... to Thomas at one shilling per acre, that price being as much as he is able to pay.”<sup>59</sup> Similarly the inspector of Indian lands in Zone Township gave a favourable report of one native American settler: “Philip Jacob, the Chief, lives on this lot, has a good House and 17 acres good tillage”<sup>60</sup> Jacob was viewed as a deserving and legitimate settler because he had a house and considerable land in production.<sup>61</sup> The inspector Charles Rankin spoke well of the efforts of a black man, Williams, who was one of many squatters on the town site of Chatham. Rankin noted that Williams, a butcher, had been living there for several years “and appears to be industrious and is at present supplying the village and neighbourhood with fresh meat.” Williams and his family seemed to be faring well in the area and wished to stay, although, as Rankin noted, “the white inhabitants... describe him as a troublesome character (litigious &c.

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<sup>58</sup> The lack of negative comments on racial or ethnic characteristics in the records is somewhat surprising. A much different analysis of records is needed to clearly determine the patterns of race and ethnicity in the distribution of lands in the province. It may be that other outside influences, such as social pressure for segregation, and the establishment of particular areas for the settlement of particular groups, precluded the need for Crown land agents and inspectors to cite such information. Or, it may be that economic considerations prevailed, if settlers were seen to be worthy then they deserved assistance. Perhaps being “worthy” for these groups included the consideration that they were living in socially-acceptable areas.

<sup>59</sup> J. Alexander to Commissioner of Crown Lands, 11 January 1849, Crown land agents’ records for Simcoe County, RG 1-499-0-12, A.O.

<sup>60</sup> Canada West, Inspection Report, Orford and Zone Townships, Moravian Reserve, 1857, p.77-78, Indian Affairs, Series A, Indian Land Records, RG 10, Vol.1038, N.A.C.

<sup>61</sup> Jacob was also a good example of what the British and Canadian governments were trying to achieve in “civilizing” native Americans. For an introductory discussion of this see: John L. Tobias, “Protection, Civilization, Assimilation: An Outline History of Canada’s Indian Policy,” in J.L. Tobias (ed) *Sweet Promises: A Reader on Indian-White Relations in Canada*. (Toronto: 1991), pp.129-130.

&c.) and appear very anxious to exclude him from the village.” Despite the hostility of William’s neighbours, Rankin’s report of Williams was favourable, and he believed that Williams had the money to purchase his land on which he had several buildings.<sup>62</sup>

In contrast to the hard-working legitimate settlers, the Crown land agents and inspectors identified another class of individuals whose goals in obtaining land were short-term and profit-oriented, such as the individual whose activities inspector Henry Sullivan encountered several times. In 1840, among the lots Sullivan inspected in St. Vincent township was one containing a mill site for which Price Mallory, a land developer, had received a location ticket. The location ticket had been given by an Order-in-Council, in 1837, on condition that Mallory build two mills and have them operating within two years of the order. When Sullivan arrived in 1840, the saw mill was not in operation and the grist mill could barely produce enough flour for the few settlers in the township. Sullivan noted the poorly chosen location for the mill, “the stream being scanty even almost dry in some seasons, [and] the dam very leaky and the thing altogether like Mr. Mallory himself, of the very worst character.” Sullivan went on to say that the mill had begun production long after “the time when by the terms of the agreement a mill should have been in operation.” Sullivan’s recommendation was that Mallory deserved no favour from the government.<sup>63</sup>

There are often clear distinctions in the records concerning what constituted a deserving settler in contrast to those whose motives were perceived as self-serving. Sullivan made this distinction clear when he recounted the situation of the Wilcox family in St. Vincent. Mr. Wilcox, Senior had purchased land from Price Mallory, mentioned above, in a settlement plan that Mallory had arranged with the government in 1837. The government agreed to give Mallory title to a certain amount of land for every settler he placed. The government had set aside a certain amount of land for Mallory to carry out his settlement scheme. Mr. Wilcox, anxious to see his adult sons established with their own farms, made improvements on two broken lots adjoining his, even though he had not purchased them from Mallory. These lots fell outside the area set aside for Mallory, but Mallory had informed Wilcox that he could go ahead and make improvements. Mallory had assumed that the government would give him these additional lands and then he would sell them to Wilcox on the same terms as the other lots. Sullivan, although angered by Mallory’s presumptions, was convinced that the government should not punish Wilcox. “There is no doubt of their [Wilcox and sons] being good and permanent settlers and I think not only on this account but because in the early settlement of the township they must have been subject to many privations and great expenses before they could earn enough to supply their actual wants, that they deserve the favourable consideration

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<sup>62</sup> Charles Rankin, “Report – Squatters in Chatham,” 31 December 1834, p..226, Surveyor-General’s incoming correspondence, RG 1-2-1, Vol. 45, A.O.

<sup>63</sup> For later comments on Mallory’s failure to live up to the conditions of the order-in-council, see Letter from Surveyor General Thomas Parke, 12 April 1844, Miscellaneous records relating to land surveys, land surveyors, and land administration, RG 1-61-0-43, A.O.

of government."<sup>64</sup> Wilcox's claim to the lots was to be recognized because he was considered a deserving settler, in contrast to the inspector's poor opinion of Mallory.

Undeserving settlers were equated with speculators like Mallory and deemed conniving and greedy, taking advantage of the government. Such an instance emerged during an inspection of three lots in Wainfleet township in Niagara in 1839. It was discovered that nearly all of the oak and pine timber on those lots had been removed, which reduced the value of the land by about fifty percent. The occupants were the sons of the original squatter who had first occupied the land about thirty years before. That man had taken enough squared timber from the lots, it was alleged, to supply the British government with all that was needed to construct "during the late War [of 1812-14]... the Block houses at Chippewa."<sup>65</sup> The Crown land agent carrying out the inspections advised that the squatters were not to be given favourable consideration since the money made by selling the Crown its own timber and the use of the lots for three decades provided ample compensation for the improvements made on the lots.

Many squatters took possession of lots only for the cash that could be realized from the trees on Crown land by the sale of timber and potash. The agent in Midland District, Ebenezer Perry, made his opinion of such squatters known in a letter to Henry Warren. Warren had submitted a claim to Perry on a lot that the Crown land agent had sold to another person. Perry warned Warren that his improvements were insufficient to allow him pre-emption rights. Perry's opinion of Warren and squatters like him was clear. "There has been already too much squatting on lands in Oso giving no end of trouble and parties only take possession to make Potash (as you say was your object) and not with a bona fide intention of settling, improving and paying for the lots." The claim had only been submitted, Perry contended, because Warren had heard of the sale, otherwise, he would have continued with his activities, slashing and burning the timber to make potash.<sup>66</sup>

Along with those who sought to plunder lots of valuable timber and other resources, there was a class of speculative squatters. It was widely acknowledged that so-called "professional squatters" moved onto vacant lands, made a few token improvements

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<sup>64</sup> Henry Sullivan, Return of inspection of the township of St. Vincent, 1840, RG 1-95-16-2, A.O.

<sup>65</sup> Lots 58, 59, 60, Concession 7, Wainfleet, Return of inspection of Crown lands in Niagara, 1839, RG 1-95-12-1, A.O. The problem of squatters only being in occupation to strip the timber from lots was a common one. See for example, 25 January 1868 to Commissioner of Crown Lands, Crown lands agents' records for Midland district, RG 1-576-0-9, A.O.; Peter Carroll, Lot 9, Conc. 3 Township of Oxford West, Return of Inspection of Clergy Reserves in London District, 1828-1833, RG 1-95-14-1, A.O.; Thomas Steers, Lot 4, Conc. 5 Township of Oxford, Inspection Reports Western District Clergy Reserves, 1840-1841, RG 1-95-15-14, A.O.; Elias Moore to John S. Buchanan, Commissioner of Crown Lands, 10 September 1844, and General Remarks for Townships of Bayham, Malahide, Dunwich, Return of Clergy Reserves, London and Huron Districts, 1844-45. RG 1-95-14-11, A.O.

<sup>66</sup> E. Perry to Henry Warren, 5 November 1863, Crown lands agents' records for Midland district, RG 1-576-0-8, A.O.

in order to establish a right or interest in that land, and then sold that right to others who intended settling the land. The Crown land agents and inspectors had the difficult task of differentiating these squatters from “deserving” settlers.<sup>67</sup> Thomas Baines, Crown land agent for the Home District, advised the Commissioner of Crown Lands to sell several lots in Pickering at auction to make a punitive example of several squatters and to preclude such speculative squatting. “In many instances parties have lately gone on the most valuable reserves as a speculation tho’ frequently warned that doing so would give them no claim whatever.”<sup>68</sup> Speculative squatting had also occurred to a great extent in the township of Minto in the months before the lots of the township were to be sold at auction in 1854.<sup>69</sup> Andrew Geddes, Crown land agent for Wellington County and responsible for the Minto sale, spent over a week working out such claims after the auction was concluded.<sup>70</sup>

John Lyons, Crown land agent for the Niagara District, carried out an inspection of Crown lands in that district in the fall of 1839. He noted in his inspection of a lot in Crowland Township that the occupant, Stephen Hopkins, had only been on it for three months. Previously, Joseph Depue had lived on it for about nine months. The only improvements were a small log shanty and one acre of timber slashed. Lyons felt that the small improvements were not enough to allow a pre-emption claim. “Neither of these persons can have any claims whatever.”<sup>71</sup> There was not enough proof that Hopkins or Depue were acceptable as legitimate settlers, deserving of government goodwill.<sup>72</sup>

Thomas Steers, while inspecting Clergy Reserves in several townships in the Western district, made it clear that those whom he believed to have stolen timber from

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<sup>67</sup> “Sale of Lots in this Town,” *Owen Sound Comet*, 2 December 1853, p.2, A.O.; “Emigration to Canada,” *Elora Backwoodsman*, 1 June 1854, p.1, A.O.; “Crown Lands – the right of pre-emption,” *Toronto Leader*, 8 September 1854, p.2, A.O.

<sup>68</sup> Thomas Baines to Commissioner of Crown Lands, 17 June 1845, Crown lands agents’ records for Home District, RG 1-569-0-6, A.O. For similar situations, see Baines to Commissioner of Crown Lands, 4 April 1851, Crown lands agents’ records for Home District, RG 1-569-0-7, A.O. and the reply to Baines from the department, 14 April 1851, Commissioner of Crown Lands outgoing correspondence to land agents, RG 1-6-3-6, A.O.; Alexander McNabb to Commissioner of Crown Lands, 25 June 1863, Crown lands agents’ records for Bruce County, RG 1-491-0-1, A.O.; letter to Commissioner of Crown Lands, 10 August 1861, Crown lands agents’ records for Midland District, RG 1-576-0-7, A.O.

<sup>69</sup> “A Few Words of Advice,” *Elora Backwoodsman*, 2 March 1854, p.3, A.O.

<sup>70</sup> Andrew Geddes to Commissioner of Crown Lands, 16 September 1854 Crown land agents’ records for Wellington County, RG 1-495-0-28 (Box 4), A.O.

<sup>71</sup> John Lyons, Inspection Report, Crown Lands in District of Niagara, September-October 1839, RG 1-95-12-1, A.O.

<sup>72</sup> Peter Carroll said the same thing of two settlers in Blenheim township in a letter to the Commissioner of Crown Lands, 29 May 1843, Crown lands agents’ records for Brock District/ Oxford County, RG 1-494-0-4, A.O.



public lands should not be given any consideration for their claims. A man named Markham, who claimed lots on either side of the Belle River, in Maidstone and Rochester townships, appeared to Steers to have taken much of the valuable timber. Steers dismissed Markham's claim to pre-emption on those grounds. "I think he has none, the lot is badly plundered."<sup>73</sup> Like the squatters in Wainfleet mentioned earlier, Markham had profited by selling the timber, and therefore the government owed him no favours.

Andrew Geddes, under suspicion himself in the late 1850s regarding speculation, often acted on behalf of legitimate settlers who ran into difficulties with other speculators. In August 1865, Geddes wrote to the Commissioner on behalf of Samuel Halliday who wished to purchase a lot in Peel. Halliday made an application to purchase even though one instalment had already been paid on the land by Benjamin Sutherland in 1847, eighteen years earlier. Geddes supported Halliday's request, since the land was unoccupied and unimproved. The sale to Sutherland, so Geddes recommended, should be cancelled on the basis of the non-fulfillment of the conditions of sale that required actual settlement and improvement. Geddes made note of evidence that indicated Sutherland was likely a speculator whose holdings impeded settlement. Sutherland, he stated, "is a man of wealth and has lately purchased an additional farm. He also holds a Lot in Maryborough I am told on which no settlement has been made and only the first instalment paid."<sup>74</sup> The securing of land by paying the first instalment was a favourite tactic of speculators, who counted on the laxness of the government in enforcing the conditions of sale that required actual settlement and improvements, and in collecting the subsequent annual payments.

Geddes' successor in Wellington County, James Ross, made a similar recommendation for a squatter who was residing on land evidently purchased for speculative purposes at auction. In 1867, Ross reported to the commissioner that Samuel Whitman, who petitioned to buy the lot on account of improvements made thereon, ought to be allowed to buy it. "This Lot was purchased in September 1854 by David Morrison ... who has since left the country. As it is to be inferred that David Morrison has abandoned his claim from never attempting to carry out the conditions of sale, nor having paid any thing in addition to the first instalment, I can see no objection to allowing Whitman to purchase."<sup>75</sup>

Although generally poorly-enforced, most sales of public land during the period under discussion were sold subject to conditions of settlement and improvement. Speculators took advantage of the government's laxity in enforcing these conditions to

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<sup>73</sup> Thomas Steers, *Inspection of Clergy Reserves, Townships of Sandwich, Maidstone, Rochester, West Tilbury, 1842-43*, RG 1-95-15-6, A.O.

<sup>74</sup> 11 August 1865 to Commissioner, p.24, Crown land agents' records for Wellington County, RG 1-495-0-29 (Box 4), A.O.

<sup>75</sup> 1 August 1867 to Commissioner, p.229, Crown land agents' records for Wellington County, RG 1-495-0-29 (Box 4), A.O.

obtain land for speculative purposes. In 1861, the Crown Lands Department sent E.R. Jones to carry out an inspection of lots in several townships in Essex and Lambton Counties. The presence of the surveyor probably compelled at least one speculator to make a last-minute attempt to fulfill at least some of the conditions of sale. “Carroll lives in Sarnia. Part of the improvements on this portion of the Lot (s ½) was made by a man named Young, the remainder by Carroll who placed some men in possession 2 days before I inspected it. This is a valuable piece of land being only about a mile from the Wyoming Station on the G.W. R.R. and well-timbered.” Apparently, Carroll, worried that the lack of improvements on the lot would jeopardize his claim, made arrangements to put men in possession and begin to make improvements.<sup>76</sup> Gowan and Hamilton found similar instances of such activities in their investigation of the Crown land agents for Huron and Bruce Counties in 1856-57. Rumours spread that speculators had “sent men to make improvements upon their lands, hoping thereby to evade the stringent and implicit conditions which were promulgated at the sale.” Gowan and Hamilton heard that the absentee landholders hired men “to ‘slash down’ (as it is called) a few acres of the wood, and to pile up a few logs in the shape of a ‘shanty’ (though without an occupant) in the hope thereby to evade the conditions of sale.”<sup>77</sup> The public investigation and the apparent sympathy of Gowan and Hamilton towards *bona fide* settlers probably inspired the speculators to take action to make it appear at least that they were complying with the settlement conditions.<sup>78</sup>

As outlined in their official list of duties, Crown land agents were supposed to take steps to prevent collusion when it was suspected. Thomas Baines encountered two very determined men when he attempted to auction a lot in West Guillimbury. In his correspondence with the department on this issue, Baines noted that the “first bid was 9/- [9 shillings] per acre, the second 50/- [50 shillings] which offer was evidently made with the view of deterring any one else from bidding, and it had the effect of so doing.” Baines told the Commissioner that he refused to carry out the sale “suspecting some collusion between the two bidders, (who I perceived acted in concert).”<sup>79</sup> On 10 January 1843, Baines again attempted to auction the lot, with much the same result. “The first bid was 9/- [9 shillings], the second 10/- [10 shillings] and the third £ 3 – the latter evidently done for the purpose of defeating the sale in consequence of some dispute that has arisen respecting the lot between several persons residing in the vicinity of it.” Working

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<sup>76</sup> Inspection of townships of Brooke, Moore, Enniskillen, Warwick and Plympton, report submitted 23 February 1861, by E.R. Jones, Copybook of various inspection and valuation reports, pp. 103-104, RG 1-95-19-3, A.O.

<sup>77</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands, Initial Report of the Huron and Bruce Commission, 1 February 1857, p.18, RG 1-14-3-1, A.O.

<sup>78</sup> For a greater discussion of this investigation, see Chapter 5.

<sup>79</sup> Thomas Baines to Commissioner of Crown Lands, 20 December 1842, Crown lands agents’ records for the Home District, RG 1-569-0-5, A.O.

together, one person would first submit a very low bid, usually the upset (minimum) price, or very close to it, the second person would make a very high bid which would effectively stop the sale. When the second bidder failed to pay, the lot would then be sold to the next highest bidder, who would pay the very low price, a cunning way to manipulate the auction system. Baines suggested that the next time he be allowed to insist that the down payment be paid immediately, and if not received within a half hour, auction the lot again, but the person who failed to make the payment not be allowed to bid again. Such a requirement would thwart the intentions of those involved.<sup>80</sup>

#### Crown land agents and Inspectors as Agents of a Moral Economy in the Crown Lands Market

The attempts by Crown land agents to act as advocates for people whom they saw as deserving settlers and to protect them from speculators demonstrates the presence of elements of a moral economy at work. This moral economy, quite simply, sought to provide all deserving people of a reasonably-sized, reasonably-priced parcel of land, enough to support a farm family. Moral economies, which act against the basic principles of capitalist system, introduce an element of justice and equity that would otherwise be superseded by profit motives. E.P. Thompson emphasized the concept of a moral economy in his study of the price of wheat, flour and bread in Britain. He found that there were conscious controls of the prices and supplies of those commodities, and that when the public perceived unfair hoarding or price increases, they protested, sometimes violently. Bread was a necessity of life, and the presence of a moral economy ensured fair prices for everyone. Evidence of moral economies has been found on frontiers elsewhere in North America where active intervention in the economy helped to ensure equity and fairness.<sup>81</sup> Similarly, Crown land agents frequently acted to ensure that legitimate settlers had access to land at a reasonable price, often in contrast to pressures from speculators and the government to limit supply and increase prices.

It is important to note that Crown land agents were not acting only from a “moral” point of view. As discussed in the introduction to this chapter, the development of the

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<sup>80</sup> Thomas Baines to Commissioner of Crown Lands, 10 January 1843, 17 February 1843, 2 June 1843, Crown lands agents' records for the Home District, RG 1-569-0-5, A.O. There was a good deal of correspondence concerning this lot, which several parties claimed, one of whom was said to be the original purchaser who intended to finally apply for the patent. Baines consulted the Attorney General and received his approval for the way in which Baines handled the situation at the auction.

<sup>81</sup> See for example, Ruth Bogin, "Petitioning and the New Moral Economy of Post-Revolutionary America," *William and Mary Quarterly*, 45 (1988), 391-425; Allan G. Bogue, "The Iowa Claims Clubs: Symbol and Substance," *Mississippi Valley Historical Review*, 45 (1958), 231-253; Sean Cadigan, "The Moral Economy of the Commons: Ecology and Equity in the Newfoundland Cod Fishery, 1815-1855," *Labour/ Le Travail*, 43 (1999), 9-42; Craig T. Friend, "Merchants and Markethouses: Reflections on Moral Economy in Early Kentucky," *Journal of the Early Republic*, 17 (1997), 553-574; Peter C. Mancall, "The Moral Economy of the Eighteenth-Century Backcountry," *Reviews in American History*, 20 (1992), 453-458 and Alan Taylor, *Liberty Men and Great Proprietors: The Revolutionary Settlement on the Maine Frontier, 1760-1820*, (Chapel Hill, N.C., 1990).

colony was important to many people, development that included settlement and the expansion of agricultural production. If Crown land agents and surveyors held lands for speculation, they could directly realize the financial benefits of greater settlement. However, settlement and improvement would also, so it was held, indirectly benefit all the inhabitants of Upper Canada. As settlement activities were reaching their peak the popularity of railways was just beginning. Like settlement and agricultural production, railways were viewed as another, albeit much more powerful, tool to harness nature and create a more civilized and efficient society.<sup>82</sup> Crown land agents and surveyors were not just acting as advocates for deserving settlers to be kind or just, they were acting in accordance with currents that recognized and advocated the “doctrine of improvement.” When they supported the efforts of deserving settlers they were acting on behalf of a moral economy which recognized the importance of improvement and development and which rewarded those who worked hard to improve their land and increase agricultural production.

In a petition to the Governor-General in 1850, residents of Wellesley township protested that the land prices set by the government were too high. The matter was referred to the Commissioner of Crown Lands who asked Andrew Geddes to report on the situation. Geddes’ report supported the petitioners’ argument and the department later informed Geddes that “the reduction in the prices of lands both in that Township and in the Township of Mornington as suggested by you has been sanctioned.”<sup>83</sup> A reduction in land prices in Geddes’ agency meant a reduction in the amount of commission he would receive from their sale, yet that was his recommendation.<sup>84</sup>

Inspectors, whose duties included valuing land, also spoke up on behalf of deserving settlers. In a letter accompanying his inspection report, Donald E. MacDonell noted to the Commissioner that “I feel some anxiety in the following cases, which are included in the reports.” One of those cases was that of Mrs. Dean, in Charlotteburgh township, whose lot “has been claimed before the Heir and Devisee Commission by a person of the name of MacKay, I think it will be very difficult to show that his ancestor

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<sup>82</sup> The argument that railways were viewed as a form of civilizing nature and society is put forth by A.A. den Otter, in *The Philosophy of Railways: The Transcontinental Railway Idea in British North America*, (Toronto, 1997). He points to this notion of railways as a means to spur improvement and development by allowing people to further harness nature in his discussion of the construction of the Grand Trunk Railway during the mid-nineteenth century, p.98.

<sup>83</sup> 23 May 1850, Crown lands agents’ records for Wellington County, RG 1-495-0-26 Box 4, A.O.

<sup>84</sup> Similarly, William Jackson, Crown land agent for Grey County, supported the petition of settlers in Proton Township who bought poor land at inflated prices during the 1854 land boom, and who were now in a serious situation because of the amount due on their lands and the while poor conditions had created crop failures. Numeric land files, RG 1-246-3, Box F-35, File 2603/59, A.O. Likewise the settlers of Peel and Maryborough townships sought similar relief from prices, “Bushwhackers disfranchised – is it right?” and the petition from settlers in Peel and Maryborough townships printed in *Elora Backwoodsman*, 30 March 1854, pp.2-3, A.O., and “Peel and Maryboro’ Lands,” *Elora Observer*, 6 July 1859, p. 2, A.O.

was the person who actually Located this Land, when viewing this land I found a Mrs. Dean in the actual occupation who is a poor widow of good conduct, it would be well if she could obtain it, at a moderate valuation.”<sup>85</sup> MacDonell felt that the price of the lot should be set with reference to Mrs. Dean’s difficult situation, instead of the market value. Similar instances, where Crown land agents and inspectors advocated favourable treatment of widows and orphaned children, are found throughout the records.<sup>86</sup>

Valuations were a critical issue for all parties. The government was concerned about revenue. Higher valuations meant more money, but could also deter sales and encourage squatting. Crown land agents and surveyors were involved to a great extent in maintaining this delicate balance. Crown land agents would also benefit from higher prices for lands in their agency, but again, higher prices might deter purchasers which meant lower commissions, and squatters tended to create a lot more work for the Crown land agents. Surveyors, during the initial surveys, made extensive field notes on the lots they were surveying, which helped to determine the prices for the lots, based on quality of soil, drainage and other factors. Surveyors were directly responsible for making valuations in many cases as well.<sup>87</sup> Unlike the Crown land agents though, they were not paid based on the valuations they assigned to the lots. Finally, potential purchasers also had a vested interest in the valuation given to their lot. This was acknowledged by Elias Moore in a letter to the Commissioner of Crown Lands that outlined the difficulties surveyors encountered while trying to complete their inspections and valuations. “That all the parties [that] are personally interested, give us such information as they imagine most favourable to their own case” was the first item in his list.<sup>88</sup>

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<sup>85</sup> Donald A. MacDonell to D.B. Papineau, Commissioner of Crown Lands, Return of Inpection of the Clergy Reserves, Eastern District, 1844, 28 October 1844, RG 1-95-1-9, A.O.

<sup>86</sup> See for example: George Jackson, Appendix A, Report of Inspection of Lands on Garafraxa Road, 1848-1851, RG 1-12-2-10.2, A.O.; J. Alexander to Commissioner of Crown Lands, 26 March 1860, Crown lands agents’ records for Simcoe County, RG 1-499-0-13, A.O.; Thomas Baines to Commissioner of Crown Lands, 19 January 1850, Crown lands agents’ records for Home District, RG 1-569-0-7, A.O.; A. McNabb to Commissioner of Crown Lands, 29 October 1861, and 10 November 1865, Crown lands agents’ records for Bruce County, RG 1-491-0-1, A.O.; W.J. Scott to Commissioner of Crown Lands, 25 November 1865, RG 1-576-0-9; and 19 August 1875, Crown lands agents’ records for Midland District, RG 1-576-0-10, A.O.

Interestingly, Gordon Darroch and Lee Soltow found that among the few women heading households in 1871 in Ontario, the rate of property ownership was quite high. They found this somewhat surprising, but given the advocacy of Crown land agents and surveyors for widows to become owners of Crown land, it is easier to explain how and why some women became property owners. Gordon Darroch and Lee Soltow, “Inequality in landed wealth in nineteenth-century Ontario: structure and access,” *Canadian Review of Sociology and Anthropology*, 29 (1992), 177-8.

<sup>87</sup> See, for example, Land Rolls, Volume 1, p.40-41, RG 1-246-2 and corresponding letter to Neil Stewart, 6 December 1859, p.554, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-8, A.O.

<sup>88</sup> Elias Moore to Commissioner of Crown Lands, 10 September 1844, Report on Clergy Reserves in London District, 1844, RG 1-95-14-11, A.O.

Differences of opinions over valuations happened frequently among the government, the Crown Lands Department, and its Crown land agents and its inspectors, and settlers. It often happened that the Crown land agent and the inspector differed on the appropriate price for a lot. For example, J. Alexander, Crown land agent for Simcoe County was concerned that the values placed on a number of Crown lots was too low. In 1853, he recommended that the department double the prices of lands in the vicinity of a railway under construction because of the increased demand for land.<sup>89</sup> Yet in other instances Alexander supported the complaint of a settler who felt that the value placed by an inspector on the value of a lot was too high.<sup>90</sup> George Kerr defended the valuations of an inspector in 1859 who had valued the lots too low in the opinion of the department. Kerr spoke highly of the inspector, agreeing with his valuations because of the situation of the lots and the current market in the area.<sup>91</sup> The process of arriving at a valuation could be problematic, but there were few examples of complaints from prospective purchasers that were not handled satisfactorily for all parties concerned. The Crown land agents and inspectors played a significant role in making sure that valuations were reasonable to facilitate the purchase of land for actual settlers.<sup>92</sup>

In the last few years of the nineteenth century, the question of valuations and the inspectors was examined in another context. At that time, a legal dispute had arisen between Ontario and Quebec over the division of the Province of Canada's Common School Fund. The fund had received a large proportion of its money from the sale of public lands, mostly former Clergy Reserves. Quebec alleged that Ontario had reduced both the price of the lands and the interest charged, and thus failed to realize the best possible price for the lands. The position of Ontario, as argued by the province's counsel, Aemilius Irving, Q.C., was that the prices were fair, and the reductions had been made in the best interests of the country since the original prices and interest rates would have put settlers into financial difficulties and thus retarded development. In 1898-99, in the course of building his case, Irving and an assistant, J.R. Forsyth, conducted interviews with many settlers and former inspectors about the valuations. The interviewees, with very few exceptions, agreed that the inspectors had been fair in their valuations and that

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<sup>89</sup> J. Alexander to Commissioner of Crown Lands, 14 September 1853, Crown lands agents' records for Simcoe County, RG 1-499-012, A.O. See also J. Alexander to Commissioner of Crown Lands, 30 July 1846, Crown lands agents' records for Simcoe County, RG 1-499-0-12, A.O. Thomas Baines was often critical of inspectors' valuations, for examples see his letters to the Commissioner of Crown Lands, 25 March 1844, 25 June 1845, 10 & 11 November 1845, 25 June 1847, RG 1-569-0-5, A.O.

<sup>90</sup> J. Alexander to Commissioner of Crown Lands, 24 September 1853, Crown lands agents' records for Simcoe County, RG 1-499-0-12, A.O.

<sup>91</sup> George Kerr to Commissioner of Crown Lands, 5 November 1859, p.39, Crown lands agents' records for Lanark County, RG 1-578-0-2, A.O.

<sup>92</sup> "Sale of Town Lots." Owen Sound *Comet*, 23 August 1851, p.2, A.O..

the reductions were necessary. While Irving and Forsyth sought witnesses to support their case, their notes suggest that the valuations were conducted fairly, without favouritism. Favouritism, in this context, seems to have most referred to partisanship. The witnesses interviewed largely agreed on the non-partisan nature of the valuations, one spoke “decisively on an entire lack of favouritism or political bias.” Interviewee Henry Brown of Chesley had received no reduction in the price of his land, but, Forsyth noted, “he points [out] that if any favouritism had been shown he would have come in for a share of that favouritism, as he was frequently on the platform speaking in the interests of the Reform candidate at that time.”<sup>93</sup> Even though the interviews took place decades after the valuations, they nevertheless suggest that those valuing public lands adhered to the notion of facilitating settlement.

George Kerr, Crown land agent for Lanark County, was actively engaged on behalf of squatters who wanted to purchase land. Kerr’s appointment in 1859 came during a time when the government was trying particularly hard to discourage future squatters and to convince those already squatting to purchase the land where they resided. One tactic was to charge squatters rent for the time that they had been in illegal possession of the lot. Those who had become squatters because they lacked the capital to purchase land found themselves considerably indebted to the government because of those rent charges when they applied to purchase the land. George Kerr often made appeals for a reduction in rent charges so that squatters could afford to purchase the lots. For example, he wrote to the department on behalf of Mr. Ahern, a squatter, “if the lot is burdened with the rent with which it is chargeable ... he... would not be able to purchase, neither is the land worth it. He is willing to pay the valuation price and 10 years rent in addition which I think is as much as it is worth.”<sup>94</sup> Kerr advocated reductions of the amount of rent payable because of the inability of purchaser to afford the full amount, or because the additional money would put the total amount far beyond the real value of the land, as did several other Crown land agents.<sup>95</sup> In this way, Kerr was intervening to enforce the principles of a moral economy: the opportunity for people to be able to obtain land at fair and affordable prices.

In another way, J.B. Askin also acted on behalf of legitimate settlers who did not have much capital. In a letter accompanying a report of inspection, Askin very

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<sup>93</sup> Reports of J.R. Forsyth, Aemilius Irving fonds, Sales of Common School Lands, F 1027 (package 15) Item 1(a), A.O.

<sup>94</sup> Memorandum Book, 22 November 1859, p.42, Crown Lands Agents’ Records for Lanark County, RG 1-578-0-2, A.O.

<sup>95</sup> For example, letter to Commissioner of Crown Lands, 1 March 1865, Crown lands agents’ records for Midland district, RG 1-576-0-9, A.O.; letter to Assistant Commissioner of Crown Lands, 9 January 1874, Crown lands agents’ records for Midland district, RG 1-576-0-10, A.O.; J. Alexander to Commissioner of Crown Lands, 28 May 1864, Crown lands agents’ records for Simcoe County, RG 1-499-0-13, A.O.; Thomas Steers to Commissioner of Crown Lands, 17 July 1851, Crown lands agents’ records for Western District, RG 1-489-0-1, A.O.

systematically laid out a list of reasons why a particular group of settlers ought to be allowed ten years to pay for their land. His first reason was very simple, the settlers had only what they could make from the labour they applied to the land to pay for the lots, nor did they have adequate collateral to obtain loans at reasonable interest rates. Second, the local assessment for school and municipal taxes was so high that settlers found it difficult to raise enough cash to pay both the taxes and the current required instalments. Next, Askin spoke of the deterrent to settlement that the current high prices for land created. His fourth point was that “the improvements and the Buildings erected are a sufficient guarantee to the Government that the money due with the interest will be fully paid in time.” His last two points indicate his opinion regarding the necessity of the government to aid settlers.

5<sup>thly</sup> If they are not relieved from pressure to meet the demands due the Gov't (by giving time) they must sacrifice and abandon their best labour and time and go to the States where better terms are offered to the Settler, who is there considered as a valuable acquisition to the State and whose labour and energies is[sic] considered as deserving of encouragement.

6<sup>thly</sup> I consider every good Settler whose residence in the Country is permanent to be worth to the Province £ 100 and when he leaves this Province with his family to settle elsewhere the Country loses that sum if not more.<sup>96</sup>

Askin believed in the doctrine of improvement and the need for settlers to further the development of the colony and urged the government to give settlers more time to pay for their lands. The short term costs and difficulties accrued by the government by doing so, would, Askin argued, be offset by the settlers' efforts in improving the land and putting it into production. Other Crown land agents and surveyor-inspectors made similar arguments in favour of extending credit through an instalment plan for purchasing Crown lands, indicating a concern that settlers without much capital be given opportunities to purchase lands directly from the Crown instead of from speculators who would charge crippling interest rates.

Crown land agents often cited circumstances such as poor soil conditions, poor crops, a lack of transportation to markets and the sheer difficulty of clearing the land for agricultural purposes as reasons for extending the time allowed to pay for Crown land purchases.<sup>97</sup> The Commissioner of Crown Lands requested that Alexander McNabb comment on the destitution and suffering of many settlers in his agency after the Commissioner received a letter from D. S. Macpherson, a Member of the Legislative Council, on the subject. McNabb concurred with Macpherson that the high local taxes

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<sup>96</sup> J.B. Askin to Commissioner of Crown Lands, 25 February 1859, pp.336-7, Inspection Reports & Indian Affairs, Series A, Indian Land Records, RG 10, vol.733, N.A.C.

<sup>97</sup> See for example, J. Alexander to Commissioner of Crown Lands, 27 January 1866, Crown lands agents' records for Simcoe County, RG 1-499-0-13, A.O. and Thomas Baines to Commissioner of Crown Lands, 19 January 1843, Crown lands agents' records for the Home District, RG 1-569-0-5, A.O.



and the relative newness of the settlement plus several years of bad crops were placing a heavy burden on the settlers who also owed payments on their lands. McNabb suggested that the settlers should be granted an additional five years to make up their arrears to the department even though his commission on those payments would also be deferred.<sup>98</sup>

Individual settlers, if their situation was desperate, often received the support of the Crown land agents in asking for extensions for making payments. William Stewart of West Guillimbury Township, who signed himself “your undutiful servant,” wrote to J. Alexander, Crown land agent for Simcoe County, asking for additional time to make his payment. “If you will please to bear a little longer with me with the help of God I think I shall be able to pay you in the course of 2 weeks I do expect this week if spared to have my wheatt[sic] thrashed and butcher my hogs and next week go to the city with a load.”<sup>99</sup> Stewart’s request was not the first one that Alexander had received. Earlier, in 1844, Alexander evidently felt that a significant number of settlers in his agency would need such allowances. He wrote to the Commissioner of Crown Lands asking if the department would allow him to extend additional time for payment to those squatters who had legitimate claims without him having to refer each individual case to the department.<sup>100</sup> In December 1859, Crown land agent Alexander McNabb asked that an extension be granted for Mr. Day who was “one of the best settlers in the Township of Greenock and as he has complied as regards improvement with the Conditions of Sale, . . . I beg leave to recommend that he be allowed until the first of January 1861 with the understanding that all arrears be then paid up.”<sup>101</sup> If the Crown land agents trusted in the integrity of the settlers and believed them to be good settlers then the Crown land agents acted as advocates in this way for them, despite the fact that extensions would defer the payment of the agents’ commission.

### Conclusion

The Crown land agents and surveyors working as inspectors, as representatives of the Crown, had certain duties and responsibilities. However, in many cases they also saw themselves as representatives of the settlers to the government, and in this role, went out of their way to act as advocates for the settlers. One can see in many of their recommendations and reports an earnest attempt to serve the public interest, even when it

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<sup>98</sup> See Commissioner of Crown Lands to William Jackson and Alexander McNabb, 12 May 1865, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3, A.O. and Alexander McNabb to Commissioner of Crown Lands, 24 July 1865, Crown lands agents’ records for Bruce County, RG 1-491-0-1, A.O.

<sup>99</sup> William Stewart to J. Alexander, 3 January 1853, (letter is loose in between pages of ledger), Crown lands agents’ records for Simcoe County, RG 1-499-0-2, A.O.

<sup>100</sup> J. Alexander to Commissioner of Crown Lands, 5 November 1866, Crown lands agents’ records for Simcoe County, RG 1-499-0-12, A.O.

<sup>101</sup> Alexander McNabb to Commissioner of Crown Lands, 6 December 1859, Crown lands agents’ records for Bruce County, RG 1-491-0-1, A.O.

was contrary to the interests of the government and their own interests. It is apparent that these men believed that the presence of hard-working, permanent settlers would spur the development of the colony, thus benefitting all the inhabitants. The Crown land agents and surveyors reflected a growing attitude in the province that settlement and improvement of land were the best ways to establish a stable and civil society in the province. While the problem of squatters and increasing public pressure for cheap land were gradually pushing the government towards a policy of favouring individual settlers, Crown land agents and surveyors had much to do with ensuring that the spirit of such a policy was being carried out before it was officially expressed. No matter what the policy might have intended, Crown land agents made attempts to see that the spirit of that policy was implemented instead of allowing regulations to be followed to the letter without comment. In their roles as representatives of the settlers to the government they seemed determined to make sure that the land of Upper Canada was being used productively, and to do that it had to be in the hands of deserving settlers, whether their possession was legal or not. They had a self-appointed function, active mediation between the government, speculators, squatters and settlers.

#### **Chapter 4: Crown Land Agents and Surveyors on the Front Lines**

The process by which individuals acquired land from the Crown could be long and difficult. For settlers unfamiliar with the procedures, the Crown land agent could be an important advocate and guide. Even for buyers familiar with the processes and rules, the Crown land agent or Provincial Land Surveyor could be a valuable ally, strengthening a claim or an application to purchase land. The Crown land agents and Provincial Land Surveyors were most important as links between individuals and the Crown Lands Department. They provided a local presence for a government department which was significant for many people. Their local knowledge proved invaluable to both the department and the populace on many occasions. Although on the lowest rungs of the Crown Lands Department hierarchy, these men managed the processes that matched people to resources. Even though errors were sometimes made, they added stability to the process of acquiring land, and acted as advocates for an industrious and productive society.

The agents and surveyors played an informal, but important role as adjudicators. In the cases that follow, the disputes and confusions take place in a quasi-legal realm since many of the parties did not have legal title to property. What they did have were squatters' claims and rights from their improvements and private purchases of the claims of others. The government tended to recognize these rights in practice although they were never given any basis in the law. The people caught up in these disputes thus relied on the agents and surveyors to act as advocates or as courts since their legal standing was shaky and their supporting documentation, if it existed, was imperfect. The agents and surveyors could give a ruling or judgement in a case without the parties involved having to go to the expense of a legal action, (a boon to settlers) especially given the small sums concerned in many instances. The Commissioner of Crown Lands could then be appealed to if necessary. Although the Crown land agents, surveyors, and the Commissioner were all public employees, they acted privately in most cases to resolve conflicts; they did not involve the courts, or legislative bodies, such as municipal or provincial legislatures to create or interpret law.

Some title and claim disputes did end up in the court system. As Peter George and Philip Sworden observed in their examination of the rulings of John Beverly Robinson, chief justice of the Court of Queen's Bench from 1829 to 1862, his underlying concern was reliability of title, which "was crucial to the smooth functioning of the land market." George and Sworden cite three cases in which settlers had made conflicting transfers. In cases where an individual had transferred the claim or title to more than one individual, the court held that after the owner or claimant had transferred the land once, he was

“estopped” from making any other transfers.<sup>1</sup> The first case discussed by George and Sworden was one where an individual, Abbot, had transferred his claim to the land to Hennesy, but when Abbot received the patent he sold the land to Myers, instead of transferring the patent to Hennesy. The court found that Abbot, after making the transfer to Hennesy, was “estopped” from making the sale to Myers. This dispute, because it occurred after the issue of the patent, did not directly involve the Crown Lands Department, who were only responsible for land for which the Crown still held title (although Abbot should have informed them of the first transfer so that the patent could have been made out in Hennesy’s name). While the courts did adjudicate some disputes, like the one between Hennesy and Myers, the evidence from the records of the Crown Lands Department suggests that the great majority of conflicting pre-patent claims were worked out within the department itself.

As Peter Karsten points out, informal or “low” legal culture is vital part of any society, and more importantly, can often exist in contradiction to more formal or “high” legal culture. That is, the norms by which the informal legal decisions are made can differ substantially from that of the formal legal culture.<sup>2</sup> The most outstanding theme in the judgements and recommendations of the Crown land agents and surveyors is their almost universal adherence to the doctrine of improvement. Whenever possible their decisions favoured the people who were improving the land and thus furthering the development of the province. This principle did not always coincide with that of the chief justice of the Court of Queen’s Bench, which emphasized only one aspect of the economy, the reliability of title that would facilitate the operation of the land market. The Crown land agents and surveyors were active in their efforts to provide secure title for those they considered deserving and to weed out the less productive and suitable people. In that respect they were agents for not only the agrarian development of the province, but for wider economic and social development as well.

The Crown land agents and surveyors, however, also took advantage of opportunities to further their own capital development. Some were active speculators themselves, or had close ties to those who did. Yet even those Crown land agents and surveyors acted as advocates for the “deserving” settlers and worked to see those settlers receive title to their land. This apparent contradiction, however, was not as it appears. At a purely practical level, speculators would benefit materially by the improvement and development of lands near their speculative holdings by increased demand and higher prices. For that reason, the efforts of people who were labouring to build farms out of the backwoods were to be encouraged and rewarded. The behaviour of the Crown land agents and surveyors also mirrors in some ways the emerging political culture of the

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<sup>1</sup> Peter George and Philip Sworden, “The Courts and the Development of Trade in Upper Canada, 1830-1860,” *Business History Review*, 60 (1986), 272-273. For additional examples, see R.C.B. Risk, “The Last Golden Age: Property and the Allocation of Losses in Ontario in the Nineteenth Century,” *University of Toronto Law Journal*, 27 (1977), 202-203.

<sup>2</sup> Peter Karsten, *Between Law and Custom*, (Cambridge, 2002), p.15.

province. The public had become an increasingly important source of political power and public opinion had increasing weight in the governance of the province.<sup>3</sup> This was evident in the shift in the government's attitudes towards squatters. Reflecting public opinion, the government came to an understanding that improvements would give squatters a claim to land, although it was never entrenched by statute. The significance of public opinion was also evident in the presentation of affidavits and other communications of the opinions of neighbours in the cases that are discussed in this chapter and the weight given those opinions by the Crown land agents, surveyors and by the Crown Lands Department. The Crown land agents and surveyors themselves were also participating in this subtle political shift, carefully constructing their reports to illuminate the reasons for their decisions and recommendations.

The records of the Crown lands agents and the inspection reports are invaluable resources for discerning the attitudes and actions of the Crown lands agents and inspectors. However, they do not reflect the role of those men in the larger business of the Crown Lands Department. To remedy this, the department's land files were consulted for this chapter. The challenge was to make use of these extensive records methodically, yet also in ways that any examples selected would not be the product of preconceived ideas of what the Crown land agents and surveyors accomplished. Rather, it would be, as far as possible, a gleaning of the problems they confronted and tried to solve. In other words, it was necessary to find a structured, explicable method of selecting rich files, but without being inductive.

The following ten examples are drawn from two different sources in the Crown Lands Department records held by the Archives of Ontario: the township papers (RG 1-58) and the numeric land files (RG 1-246-3). They provide a wider picture of how the Crown land agents and surveyors fit into the regular operations of the department. The differences between these two sets of files are largely due to a change in the filing system of the Crown Lands Department in 1853. The township papers are records organized by township, concession and lot. They date from approximately 1783-1870. The dates of papers and files found in the township papers overlap the numeric land files to some extent. The department began using the numeric system of filing for their correspondence and documents in 1853 and continued until 1915. Beginning in 1853, every piece of correspondence was given a consecutive number, which was combined with the year it was received. One piece of correspondence (usually the first received by the department) about a particular matter was designated as the leader for the file and its registration number became the file number. The files are organized by number for each year. All subsequent related material was filed with that lead file under the leader number. The land rolls (RG 1-246-2), registers which organized the material by township, lot and concession, were maintained to serve as indexes. It is important to note that a land file from any particular year may contain correspondence and documents from years before

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<sup>3</sup> Jeffrey L. McNairn, *The Capacity to Judge: Public Opinion and Deliberative Democracy in Upper Canada, 1791-1854*, (Toronto, 2000), pp.11-12, 16-19.

and after. As noted in the finding aid for these records, the filing system was poorly maintained, and many of the papers were misfiled, which is readily apparent upon examination.

The selection process for finding examples to use in this chapter differed for the two sets of records. The township papers contain 72 metres of records, arranged alphabetically by township. Since they are available on microfilm it was found most efficient simply to examine every third file on the first microfilm reel in each row of the storage cabinet. Some of the oldest settled townships had no files associated with them, while other townships had files on a majority of the lots. Only those files that involved a Crown land agent or a Provincial Land Surveyor were candidates for selection. For a file to be selected, it also had to contain illustrative information and correspondence beyond the mere distribution of a patent or the forwarding of documents. Five files from the township papers are discussed below.

The numeric land files comprise 402 metres of records, filling 1349 boxes. Envelopes within the boxes usually contain a number of files. The sheer volume of these files and the different system of filing necessitated a more elaborate selection process. There was only one box for 1853, the first year of the new filing system. The files in that box were searched until appropriate ones were found. Beginning with the year 1856, the fourth box for every third year was examined: 1856, 1859, 1862, and 1865. Every second envelope in the box was examined until an appropriate file was located. Like the township papers the file had to involve a matter that concerned the Crown land agent beyond the distribution of the patent or the forwarding of documents, or a Provincial Land Surveyor beyond his surveying duties. In addition, it was decided that the matter to which the file referred should be resolved largely before 1865. It must be noted here that more than one example was located for each year. This was done to ensure that related material in correspondence files and other Crown lands records could be located for at least one example for each year.

Several problems complicated the process of actually finding appropriate files. To begin with, many files consisted of enquiries or matters that did not involve either a Crown land agent or a Provincial Land Surveyor. For example, many files related to problems with heirs after the death of purchasers or claimants, and others involved the claims of creditors and mortgagors. Secondly, many files consisted of just one piece of correspondence. Thirdly, many of the files related to matters that dragged on long past the presence of Crown land agents; in some instances, cases went unresolved for decades. Lastly, some files were unrelated to the sale or purchase of land. These complications meant that a large number of files were eliminated from the analysis.

Once appropriate files were selected, the correspondence files and other related records were searched for additional materials on the particular subject noted in the township papers file or numeric land file. The series of records that were examined for additional information include the Commissioner of Crown Lands' outgoing correspondence (RG 1-6) and the Petitions relating to land received by the Crown Lands Department (RG 1-54). The Ontario Land Records Index was also consulted, along with the property abstract indexes, and if necessary, the patent registers, and assessment rolls

(if available). I searched these records to find information on the particular lot or lots in question in order to determine to whom the lot was patented.

The large volume of records involved and the process used to work through the files to find reasonably representative practices gives a different perspective to the role of Crown land agents and surveyors acting as inspectors from that obtained from the Valuation and Inspection Reports and the Crown lands agents' records. Those records are, for obvious reasons, weighted more heavily towards matters concerning applications and claims to land from squatters and other settlers. The land files are drawn from the whole of the business of the Crown Lands Department and are more reflective of the totality of the responsibility of that department. However, the examples that follow demonstrate that the Crown land agents in particular served as an important link between the Crown Lands Department and individuals. Moreover, the local knowledge and experience of the Crown land agents and surveyors was an asset to the department and a significant element in the decisions made by the department concerning land distribution. In addition, the Crown land agents and surveyors acted as arbitrators in some instances, as they worked to find acceptable resolutions to problems that came to their attention.

John McCully, Southwold Township – Worthy Squatter

In January 1842, John McCully made an inquiry to the Crown Lands Department about the availability of two gore lots (Lot 5 in Concessions A & B) in Southwold Township in Elgin County. McCully had begun to make some improvements on the land in the spring of 1841 and wanted to purchase them. The department referred him to John B. Askin, agent for that district. Askin, so they informed McCully, would be responsible for the sale of the lots, after public notice was made that they were open for sale. The department gave McCully no indication of when that notice would be given.<sup>4</sup> Seven years later, in September 1849, the Department received another communication from McCully. He noted that since 1842 he had made application to Askin to purchase the lots but, as Askin told him, they were not yet open for sale. However, this time McCully's request to be allowed to purchase the lots was more urgent and insistent. As he noted in this second communication, he had made improvements on the lots, "which I thought myself justified in doing from the application I had made."<sup>5</sup> McCully did not inform the department at this point that he had actually made a start on his improvements before he made application to Askin. Still, McCully, like many, must have decided that his application to Askin strengthened his claim enough to continue to make improvements, so much so that in 1843 he had built a house and barn and moved his family to the lots. Whether or not Askin intimated that an application would help McCully is impossible to know. Agents routinely kept track of such applications and claims on their books in order

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<sup>4</sup> McCully's first letter is found in Lot 5, Concessions A & B, Southwold Township, pp.50-55, Township Papers, RG 1-58, A.O. The reply, dated 29 January 1842, is found in the Commissioner of Crown Lands' outgoing correspondence general letterbooks, p.185, RG 1-6-8-2, A.O.

<sup>5</sup> All documents concerning this matter, with the exception of those noted, are found in the Lot 5, Concessions A & B, Southwold Township, pp.50-55, Township Papers, RG 1-58, A.O.

to preclude problems when lots were finally opened for sale, so it is easy to understand why McCully felt himself justified in squatting on the lots. He was only hampered in his efforts to purchase the land by the failure of the government to offer them for sale.

As a squatter, McCully's position with regard to the lots was strengthened. Although the department's reply to his second letter has not been found, it is safe to presume that either the department or Askin informed him that he could petition for a private sale as an occupant. McCully did so. His petition and the supporting Provincial Land Surveyor's inspection report were forwarded to the department by Askin. Again, however, McCully must have believed his claim to the lot to be a strong one – strong enough to ward off other interested parties – since his petition to purchase was not made until 1854, thirteen years after he began making improvements and twelve years since his first inquiry about purchasing the lots. McCully made note in his petition of his length of occupation and the extent of his improvements, including thirty acres cleared, with a house and barn, and an extensive orchard. Charles Fraser's inspection report concurred with McCully's petition in the details about the improvements on the lots, making specific reference to McCully's "beautiful orchard" as an indication of the amount of labour, time, and money McCully had invested in the lots. Fraser remarked that the value of the improvements, which he estimated to be about £100, were now worth more than the land, which he valued at £ 2 per acre, or £ 73, 10 shillings for the two lots. A.N. Morin, Commissioner of Crown Lands, approved McCully's petition to purchase on 9 June 1854.<sup>6</sup>

#### "Her Sole Dependence": The Petition of Ann McLeod

In 1860, Ann McLeod, widow of Daniel McLeod, made a petition to the Governor General. Based on a claim of pre-emption, she was seeking permission to purchase 50 acres: the south-east quarter of Lot 20, Concession 15 in Dover East Township, in Kent County. John B. Williams, the former Crown land agent for Kent County filled in the appropriate information on the petition, a blank form. McLeod, apparently, was illiterate, as she was unable to sign her own name but simply made her mark. An affidavit attesting to McLeod's improvements and occupation accompanied the petition. In that affidavit, John Chalmers described the house and barn and the three and half acres cleared that signalled McLeod's occupation and industry. He also stated that McLeod and her children had been in occupation for about five years, and had paid the taxes for the same period.

Although he was no longer acting as the Crown land agent for the area, Williams' letter to the department regarding Ann McLeod's petition nevertheless reflects his knowledge of the regulations and laws. It is written in much the same way as any Crown land agent would have presented the letter, outlining McLeod's situation. He noted that much of the fifty acres was swampy, implying that the government would have trouble disposing of it by other means. He also sought sympathy for McLeod's situation, asking for favourable terms for the purchase, since it was "her sole dependence" and a "humble

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<sup>6</sup> John McCully, Petitions for land, RG 1-54-2, A.O.



homestead for her and her children.” While Williams was probably acting as Mrs. McLeod’s agent and would be paid for his trouble, his actions are similar to those of Crown land agents who encountered comparable situations.

Unfortunately, Ann McLeod’s petition, and its accompanying paper work, was in vain, and had Williams had access to the land books for the county, he would have realized this. The whole of Lot 20, Concession 15, containing 200 acres in total, had been patented on 9 December 1808 to Thomas Douglass, Earl of Selkirk. Selkirk had acquired a large amount of land through a settlement scheme he initiated in Upper Canada in the early part of the century. Although the settlement was largely a failure, Selkirk retained ownership of the land granted him by the Executive Council.<sup>7</sup> An absentee landowner, Selkirk had apparently never paid taxes on the lot, nor done anything else with it, and Ann McLeod had squatted on it thinking it was Crown land available for sale. Her claim and petition, despite her occupation and improvements, and the assistance and influence of Williams, was futile.

#### Confusion and Accusations: John Cliffe’s claim in Lansdowne Township

The difficulties in administering the distribution and sale of Crown lands is made apparent in this file which concerned the east half of Lot 4, Concession 2 in Lansdowne Township in Leeds County. The file reveals how Crown land agents might be accused of participating in or allowing a swindle.<sup>8</sup> The correspondence found in the file comes from James Bell Forsyth and J.T. Cartwright.<sup>9</sup> Forsyth and Cartwright were protesting the Crown sale of the 100 acres comprising the east half of Lot 4, Concession 2, Lansdowne. The file also contains three affidavits: one made by John Cliffe and Robert McCulloch together on 15 October 1861, and two made by John Cliffe alone, on the 6 November 1861 and the 10 November 1861.

The west half of this lot had been granted in 1800 to Susannah Jessup. However, there were misunderstandings regarding the title to the east half. In 1844, in good faith, John Cliffe purchased the east half, having been in occupation for several years prior. He bought the 100 acres from Francis Hill, who believed that he held title to the whole lot.

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<sup>7</sup> According to F.C. Hamil, “Lord Selkirk in Upper Canada,” *Ontario History*, 37 (1945), 46, Selkirk was later forced to sell his farm, Baldoon, and his other properties in Upper Canada. Most were sold to Thomas Clark, while the rest were sold to meet expenses and judgements against him. Why this particular lot still appeared to be held by Selkirk’s estate (he died in 1820) at this point is unknown. For more about Selkirk’s settlement plans in Upper Canada and in the North West, see John Morgan Gray, “Thomas Douglas, Baron Daer and Shortcleuch, 5<sup>th</sup> Earl of Selkirk,” *Dictionary of Canadian Biography*, Vol. V; J.M. Bumsted, “Alexander McDonnell,” *Dictionary of Canadian Biography*, Vol. VII; J.M. Bumsted, “William Burn,” *Dictionary of Canadian Biography*, Vol. V..

<sup>8</sup> All other documents concerning this matter, with the exception of those noted, are found in the file Broken Fronts and Lots 3 and 4, Concession 2, Lansdowne Township, Township Papers, RG 1-58, A.O.

<sup>9</sup> J.T. Cartwright may have been a son of John Solomon Cartwright, an influential Kingston lawyer. J. Douglas Stewart and Mary Stewart, “John Solomon Cartwright,” *Dictionary of Canadian Biography*, VII, 156-159.

The fact was, however, that the Crown had never issued a patent for the east half to anyone. Francis Hill merely assumed he had title. This evidently was confirmed by the property abstract for Leeds County which existed at the time. It apparently showed – erroneously – that the whole 200 acres had been granted.

In all three affidavits Cliffe asserted that he bought 100 acres, the east half of Lot 4. In the first affidavit, in which Cliffe stated the circumstances and McCulloch attested to their accuracy, Cliffe said that he sold Henry Retters<sup>10</sup> 50 acres, the north-east corner of the lot, in 1849. The other two affidavits, which Cliffe made alone, stated that Cliffe sold the 50 acres to Robert McCulloch, who in turn put his son-in-law, Retters, in possession of the lot. In the first affidavit neither Cliffe nor McCulloch had mentioned that Retters was McCulloch's son-in-law. Cliffe also asserted in the second and third affidavits that Retters had since applied to the Crown land agent at Prescott, W.J. Scott, to purchase the whole of the east half, 100 acres, pretending to be the occupant thereof and the assignee of John Cliffe. Cliffe made note in all three affidavits that the improvements on the lot were entirely his, and that he was still residing upon 50 acres, the south-east quarter.

Cartwright and Forsyth were angered and dismayed by the Crown's sale to Retters. Cartwright wrote that he was protesting the sale "in Mr. Cliffe's name as in that of the parties through whom he derived title, for whom I am interested" and also his [Cartwright's] "friend, James Bell Forsyth who is also a party concerned." According to the Abstract Index of Deeds for the lot, Hill had purchased the property from Forsyth.<sup>11</sup> Two days after Cliffe and McCulloch had made their first affidavit, Retters had made application to purchase the 100 acres. Scott, the Crown land agent for Leeds and Grenville, probably saw no problem and did the paperwork to forward to the department to have the sale carried out. Cliffe later applied to the Crown land agent to purchase the 50 acres still in his possession but was refused on the grounds that there was a prior application, Retters. After his application was refused, Cliffe sent an affidavit to the Crown land agent through Cartwright explaining his position and the circumstances of the east half of Lot 4.

Unfortunately, there is no indication in the file of how or when it was realized that the east half of the lot was indeed available for sale and had not been previously patented. The extant Abstract Index of Deeds for Lot 4 in Concession 2 in Lansdowne Township demonstrates that there were several registered transactions regarding the lot, including the east half, before ownership of that half was ever transferred from the Crown.<sup>12</sup> It must be noted here that registration of transactions did not confirm or guarantee titles. Registry

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<sup>10</sup> The name appears elsewhere in the file documents as Rattrey.

<sup>11</sup> Abstract Index of Deeds, Lot 4, Concession 2, Township of Lansdowne, Leeds County, pp.83-4, A.O.

<sup>12</sup> Abstract Index of Deeds, Lot 4, Concession 2, Township of Lansdowne, Leeds County, pp.83-4, A.O.

offices merely retained records of such documents individuals wished to register for security. James Forsyth and Francis Hill both had their purchase of the whole lot, in 1846 and 1847 respectively, duly recorded and registered in the county records. The mysterious other parties Cartwright mentions remain unnamed and their involvement unknown. It seems likely that Forsyth held an interest in the lot by virtue of a mortgage or other claim through Cliffe or Hill, although no mortgage is recorded in the abstract index. If Cliffe's claim and improvements were ignored and he lost possession then Forsyth might stand to lose as well. The only thing that is certain is that Forsyth and Cartwright were very concerned that Cliffe's claim would be ignored.

Forsyth requested in a memorandum that an investigation of the matter be carried out. He asserted that the price at which Retters' purchase was to be carried out was "a mere nominal price." He also reminded the department of its own policy that "no sale is ever made without expressly reserving all such claims, and both sub and head offices have had the fullest notice of the fact that Cliffe claims it." Forsyth had earlier in the memorandum asserted that Scott had known the circumstances of Retters and Cliffe's claims, and that affidavits explaining the particulars had been sent both to Scott and to the department. Cartwright stated much the same in his letter to the department, pleading Cliffe's case and speaking of the injustice of selling the land so cheaply to someone else who had made none of the improvements.

The role of the Crown Land Agent in all this, according to Cartwright and Forsyth, is one of collusion and assistance for Retters. We have only their word and that of John Cliffe that Retters was trying to swindle Cliffe out of his 50 acres of the east half of Lot 4. To give the agent the benefit of the doubt, the assignment from Cliffe may not have been clear in stating that it was only for half (50 acres) of the east half (100 acres) of Lot 4. The confusion resulting from the original error in the abstract for the lot certainly did not help the matter. Unfortunately, the dispute does not appear in Crown land agent Scott's records, and the agency was in fact closed at the end of 1862.<sup>13</sup> The existing abstract index for the lot from the county records indicates that the patent for the east half of Lot 4 was issued to Henry Retters. A flurry of transactions in 1864 and 1865 further indicate the difficulties in discharging all the various claims and satisfying both Cliffe and Retters, who each appear to have ended up with the 50 acres they wanted: Cliffe on the southern end of the east half and Retters on the north.<sup>14</sup>

#### Accusations of Favouritism: The Valuation of a McNab Township Lot

Large-scale inspections and valuations of Crown lands were some of the most time-consuming tasks of Provincial Land Surveyors and Crown land agents. In 1840, the Commissioner of Crown Lands gave Francis Allan, the Crown land agent for Lanark and

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<sup>13</sup> 8 November 1862, Scott and 15 other Crown land agents received notice of the impending closure of their agencies, Commissioner of Crown Lands' outgoing correspondence to land agents, RG 1-6-3-8, A.O.

<sup>14</sup> Abstract Index of Deeds, Lot 4, Concession 2, Township of Lansdowne, Leeds County, pp.83-4, A.O.

Renfrew Counties, the task of inspecting and valuing each lot in McNab township in Renfrew County, including the lot in the possession of John Wallace: Lot 16, Concession 1.<sup>15</sup> Wallace had received a location ticket for the lot in 1834.<sup>16</sup>

McNab Township had been named for Archibald McNab, seventeenth chief of the Clan of Macnab, who had arranged a settlement scheme for the township with the colonial government. McNab's subsequent behaviour, however, caused the people a great deal of distress. He laid heavy burdens of rent on the settlers and actively used the courts to pursue those who did not conform. Acting together, the settlers of the township had petitioned for relief from McNab's efforts to personally recreate the life of a Scottish laird in Upper Canada.<sup>17</sup> Allan's task of inspection and valuation was part of the government's plan to assist the McNab settlers in becoming owners, instead of just tenants. In addition to these duties, Allan also received instructions to read to each of the settlers the Executive Council's decision to sell them their lands, and to make particular inquiries about the amount of rent that they had paid to McNab.

During the course of carrying out these duties in the summer of 1840, Francis Allan inspected John Wallace's lot, number 16 in Concession 1, and valued it at 8 shillings, 9 pence per acre. On 20 November 1841, John Wallace petitioned the Commissioner of Crown Lands for a reduction in the valuation of his lot.<sup>18</sup> In his petition, Wallace gave several reasons for his belief that the valuation was too high. First, he stated that Allan did not spend sufficient time on the lot to make a fair valuation. Allan, so Wallace's petition asserted, only spent 15 or 20 minutes inspecting the lot and "merely took a walk in the clearence[sic] and did not even go more that one acre into the Bush." Second, Allan was accompanied by Donald McNaughton (McNaughton owned a lot adjoining Wallace's). Wallace alleged in the petition that McNaughton influenced Allan and he cited as evidence that Allan and McNaughton had gone to a local tavern after leaving Wallace's. Third, Wallace cited the valuations placed upon two neighbouring lots, one owned by McNaughton and one by Duncan McLauchlan, in comparison to his. Those lots, he said, were valued at only 6 shillings per acre, although they were "very superior to mine." He stated that the original valuation on his lot was 12 shillings 6 pence per acre, which Allan then reduced to 8 shillings and 9 pence. How this first apparent reduction in price was achieved, Wallace did not say. Allan "was valuing persons and not acres," the petition declared, alleging that McNaughton's lot had received a lower valuation because of his association with Allan. Wallace asked the Commissioner to have

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<sup>15</sup> Documents concerning this matter, with the exception of those noted, are found in the file Lot 16, Concession 1, McNab Township, Township Papers, RG 1-58, A.O.

<sup>16</sup> Location Ticket, John Wallace, RG 1 C-I-4 020 209, A.O. as noted in the Ontario Land Records Index, A.O.

<sup>17</sup> For more on Archibald McNab and his relationship with his settlers, see Alan Cameron and Julian Gwyn, "Archibald McNab," *Dictionary of Canadian Biography*, Vol. 8, pp.584-589.

<sup>18</sup> John Wallace, Petitions for land, RG 1-54-2, Box 6, A.O.

a “honest and respectable Land surveyor[emphasis in original]” carry out the inspection and valuations. Wallace expressed his willingness to pay a fair price, and concluded that he knew of no reason why he was “so unjustly treated.” As evidence of his good character he cited the fact that he had “regularly and honestly paid McNab of McNab his yearly rent.” Upon receiving the petition, the Commissioner of Crown Lands forwarded it to Francis Allan, the Crown land agent for Lanark and Renfrew, for his report.

Allan wrote his report on 31 January 1842.<sup>19</sup> In it, he made reference to all of Wallace’s accusations and insinuations, offering his side of the story. Allan could not account for why Wallace stated in his petition that Allan had first valued the lot at 12 shillings 6 pence and then lowered it to 8 shillings 9 pence. He stated that he only made one valuation of each lot, and that his report was submitted directly to the Commissioner of Crown Lands “and neither the Petitioner nor any settler in McNab knew anything of their valuation for many months after.”

In response to the accusation that he had not spent enough time inspecting the lot, Allan noted that he first followed the lot line all the way along the south side of Lot 16, from the front to the rear. After doing this, he proceeded across from the corner of the lot to Wallace’s clearing near the centre of the lot. He saw and talked to Wallace and then left the clearing heading back towards the front of the lot, with Wallace accompanying him: “we had not proceeded far into the bush when the Petitioner accosted me saying that it was of no use to go any farther as the lot was similar to what I had seen throughout.” McNaughton, whom Allan described as “very candid and disinterested,” agreed with Wallace and so Allan proceeded back to the other side of the rear of the lot. Allan thus contended that it was Wallace’s own actions that precluded a more thorough examination of the lot. Allan explained McNaughton’s presence by citing the fact that McNaughton’s knowledge of that part of the township was well known in the area and that he had paid McNaughton to accompany him as a guide.

As for the matter of the patronage of the local tavern, Allan freely admitted that he and McNaughton had gone to the tavern in search of its proprietor who also owned Lot 18 in Concession 1, and whose land Allan had next to inspect. It was nearing the end of a long, extremely hot day and Allan had been out since about six in the morning. While at the tavern, Wallace having followed them there, the report goes on, “considering the condition in which McNaughton and I were with the fatigue of the hot day and the attacks of the flies – I ordered a glass of Brandy and water for each of us and another for the Petitioner.” It is worth noting that Wallace never mentioned in his petition that Allan had also bought him a drink at the tavern. After refreshing themselves, all three of them left the tavern. Allan went back to the house where he had lodged the night before. He stated that he had delayed writing his report in order to get an affidavit from McNaughton verifying the events of that day, but he had not had an opportunity to travel the considerable distance from his office in Perth to McNaughton’s home.

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<sup>19</sup> John Wallace, *Petitions for land*, RG 1-54-2, Box 6, A.O.

The last part of Allan's report is a response to Wallace's contentions that his lot was valued unfairly in comparison to neighbouring lots. On the matter of Allan's supposed favouritism towards McNaughton, Allan referred the Commissioner to his Report of Inspection. There, it would be noted, Allan had valued McNaughton's lot at 10 shillings per acre, more than the value he assigned to Wallace's lot. Wallace was in error then, since his petition noted that both McNaughton and McLauchlin's lots were valued at 6 shillings. McLauchlan's lot, which was valued less than Wallace's, did have some good land, so Allan stated, but a considerable part of the lot was unfit for cultivation, which meant that he gave the lot overall a lower value. Allan did agree that in one way McNaughton and McLauchlin's farms were "far superior" than Wallace's. "They are industrious farmers – their improvements well cleared up and well fenced – the very reverse of which is the case as regards Petitioner." Allan ironically noted that if all three lots were in their natural state, Wallace would prefer his own lot, even at the higher valuation. Allan concluded his report by stating that he is surprised that more complaints like Wallace's have not been submitted. He believed that the purpose of the petition was "to annoy and harass." Although he never declared his opinion outright, he insinuated that Archibald McNab was behind the petition. John Wallace, so Allan reported, was "married to a niece of McNab's housekeeper, and on reading the annexed Petition and The McNab's Memorial, the style will at once convince who is the author of both."

Francis Allan's careful reply and explanation of his valuation and actions were more convincing to the Commissioner of Crown Lands than John Wallace's petition. The higher valuation would mean more money for the sale of the lot, and a higher commission for the Crown land agent (Allan, though, did not benefit from this as he ceased to serve as Crown land agent in 1844, five years before Wallace purchased the lot in 1849). That Wallace seemed to be a less "industrious farmer" than his neighbours, and the idea that his petition was contrived to gain favour from the government when he was not deserving of it probably significantly affected the outcome. Allan's contention that Archibald McNab was implicated in the matter may have also been a factor in the Commissioner of Crown Lands' decision, given the reputation of McNab among many in government. Wallace did nothing further to dispute the valuation. As others had done, he might have hired a Provincial Land Surveyor to do another valuation, or obtained affidavits from other neighbours regarding the quality of his land, and submitted the documents in support of his petition. According to the Crown Land Sales forms, in 1849, John Wallace paid the full amount of 87 pounds, 10 shillings, according to Allan's original valuation of 8 shillings 9 pence per acre, and received the patent for the 200 acre lot on 18 August 1849.

#### Encroachment: Peter Leitch's Claim in Alice Township

In 1855, Peter Leitch asked John Morris, a Provincial Land Surveyor, to inspect the lot on which he was making improvements, Lot 29, Concession 15, Alice Township, and to report to the Crown land agent for Renfrew County, William Harris.<sup>20</sup> Leitch's

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<sup>20</sup> All documents concerning this matter, with the exception of those noted, are found in Lot 29, Concession 15, Alice Township, Township Papers, RG 1-58, A.O.

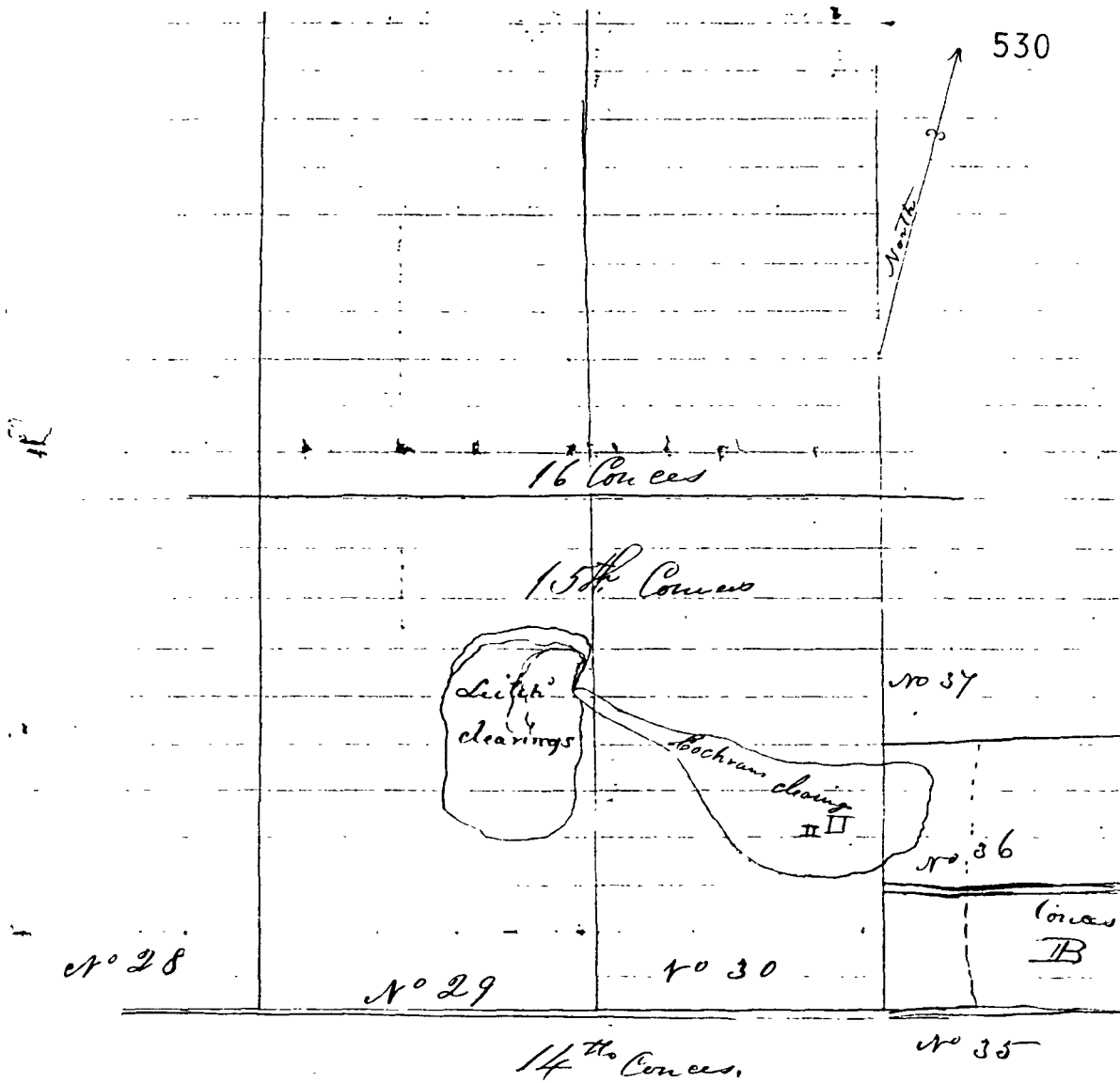
neighbour on Lot 30, Concession 15 and Lot 36, Concession B, William Cochrane, who had a large clearing on his lot, had extended part of that clearing onto Lot 29. Leitch, a squatter on the lot, wanted to purchase all of Lot 29, 100 acres, but Cochrane, because of his small improvement on Lot 29, wanted to divide the lot.

Along with his statement of the situation, Morris included a small sketch showing roughly the clearings of the two men in relation to the lot boundaries (see Figure 4:1). Morris noted that Cochrane had only cleared about an acre and a half on Lot 29. Moreover, the clearing was not of “any great value as it is not well improved.” Although Morris did not specifically say why, it probably only consisted of rough chopping and still required a great deal of work to be able to plant a crop on it. Because of that small amount of clearing though, Cochrane believed he had a claim on the lot, and refused to agree to anything other than dividing the lot with Leitch. Leitch had even offered to pay Cochrane for the improvements, but Cochrane was holding out for more. As Morris noted, because of the way the two men’s clearings were situated, it would be impossible to divide the lot fairly so that each would get the portion on which their improvements lay. Dividing it along a north-south line would give one man all the improvements and the other none, while dividing along east-west lines would split Leitch’s improvements in half and give him only part of his clearing. To give Cochrane the portion on which his clearing stood did not make sense since the clearing was so small, and it would create odd-shaped parcels of land. Moreover, Morris argued, Cochrane already had claims to 120 acres in Lot 20, Concession 15 and Lot 36, Concession B, while Leitch had only the 100 acres in Lot 29.

An affidavit accompanying the report further supported Peter Leitch’s position in regards to the lot. Hugh McLelland and James Leitch, Peter’s father, stated that Peter Leitch had begun to make improvements three years earlier, before the township was surveyed, and all those improvements were found to fall within the bounds of Lot 29. When Leitch began to make improvements there, there were no other improvements in the vicinity. By the time the affidavit was made, Leitch was said to have ten acres cleared and some of it planted as well.

Although it was nearly seven years later, Peter Leitch did receive the patent for the whole 100 acres of Lot 29, Concession 15 on 10 June 1862. Evidently, Morris’ recommendations had been accepted without discussion; there was no evidence that Cochrane had pursued his claim to part of the lot on the basis of his clearing. Cochrane may have hoped that he could intimidate Leitch to give up half the lot and part of his clearings, but realized the weakness of his position when Leitch had the Provincial Land Surveyor come to inspect the lot. The situation was one in which personal inspection of the lot and the clearings was necessary to see the situation. Had the Crown land agent or the Crown Lands Department relied solely on written evidence, they may have been easily misled, or have misunderstood the nature of the conflict. Morris’ inclusion of a sketch of the clearings and the lot boundaries made his recommendation clear, more so than just a written report.

Figure 4:1 Lots 29 and 30, Concession 15, Alice Township  
Sketch by John Morris, P.L.S., 1855  
Township Papers, p.530, RG 1-58, A.O.





To the Highest Bidder: Lot 9, Concession 3, Alnwick Township

In 1853, Elias P. Smith, Crown land agent for Northumberland and Durham Counties, found himself dealing with several parties all eager to purchase Lot 9, Concession 3, Alnwick Township in Northumberland County.<sup>21</sup> James Burrison, Josiah White, David White, and Charles White, all made applications to purchase the lot. The situation of the lot was an unusual one because it consisted of 139 acres in total, but in two pieces, separated by water: 26 acres of land were on the north part of the lot and 113 acres on the south part.

In 1845, the lot had been inspected and reported as unoccupied and unimproved. Sometime during 1849 or 1850, Josiah White applied to Smith to purchase the lot. Smith instructed White to have the lot surveyed and valued. This was done. On 25 November 1852, Smith forwarded the surveyor's plan and report to the department with a request for permission to sell the lot to David White, who had brought the plan to the Crown land agent. Smith believed that Josiah White had initiated the application process on behalf of his brother, David White. David White's claim was also based on his possession of the lot with the 26 acres on the north part cleared. Several weeks later, Smith received a reply back from the Commissioner of Crown Lands dated 14 December 1852, allowing Smith to sell the lot to David White. However, the Department would not accept White's offer of 8 shillings per acre, since the surveyor, Sanders, had valued it at 17 shillings 6 pence per acre. White would have to pay the surveyor's valuation.<sup>22</sup>

Late in December 1852, James Burrison wrote to the Commissioner of Crown Lands for permission to purchase Lot 9, Concession 3 in Alnwick. In his letter, Burrison noted that he had that day called on Smith to purchase the lot, but was told that White had received leave to purchase the lot. Burrison claimed that this was unfair, as fifteen years ago he had received a location ticket for the lot. He claimed he had received permission from a Mr. Birdsall whom he referred to as an agent of the Crown for the area. Burrison never produced a location ticket, which, if he had been "located" on the lot, he should have had in his possession. Furthermore, there is no evidence in the Crown Lands Department records of a Mr. Birdsall serving as a land agent. It is possible that Birdsall may have been a Provincial Land Surveyor and had jotted down Burrison's claim in his field notes. It seems likely that Burrison, like so many others, presumed that having his name recorded gave him a right to the lot. That this is what happened is made even more likely by that fact that Burrison noted that he had his name "put down upon your [Crown Lands Department] Books at Toronto four years ago for the lot." Burrison wrote in his letter that he had not then purchased the lot because he had been directed to have it surveyed. During 1851, Burrison finally had the lot surveyed, and he claimed that at that time he had gone to see the Crown land agent, but Smith was away. Obviously still

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<sup>21</sup> All documents concerning this matter, with the exception of those otherwise noted, are found in: Lot 9, Concession 3, Alnwick Township, File No. 13/53, Numeric land files, RG 1-246-3, Box F-1, A.O.

<sup>22</sup> Commissioner of Crown Lands to E.P. Smith, 14 December 1852, p.652, Commissioner of Crown Lands' outgoing correspondence to land agents, RG 1-6-3-6, A.O.

content that his claim to the lot was secure, it was another year before Burrison again ventured to Port Hope to see Smith about purchasing the lot. At that point he had about forty acres cleared and improved, so he wrote in his letter to the Commissioner, that it would be “a great loss should I loose[sic] the land after all my labour on it and expense incurred.” Upon receiving this letter, the Commissioner forwarded it to Smith for his report.

Smith was clearly skeptical about some of Burrison’s claims. He noted in his letter to the Commissioner that in 1845 the inspector had reported the lot as unimproved and unoccupied, and that if Burrison had first occupied the lot fifteen years previous, his improvements went unnoticed by the inspector. This, Smith believed, was unlikely to have happened. Furthermore, Smith had never had any information regarding a claim to the lot previous to that of Josiah White, despite Burrison’s claim that his had been recorded on the books of the department.

Yet another claimant came forward after Smith had received instructions to sell the lot to David White. The new claimant was Charles White, Josiah’s son. Josiah had died in 1849 or 1850, and Charles White intended to make his application to purchase the lot and another one nearby, Lot 10, Concession 4 as heir, based on his father’s application. Smith tentatively gave his support to David White’s claim. Josiah White, so Smith recalled, had told him that he intended the lot for his brother David, although Smith had nothing to that effect in writing. Burrison, he felt, had no claim, and had never received permission from him to go on to the lot. In the end, Smith suggested that to deal with the competing claims, “the better way, I suppose, will be to put the lot up at auction unless the claimants satisfy the department that they have made valuable improvements.”<sup>23</sup>

The last record on this matter suggests that the Commissioner of Crown Lands agreed with Smith’s report and advice. In a letter to Burrison dated 14 February 1853, the Commissioner began by stating that Burrison was to forward evidence in support of his claim to Smith. He then questioned Burrison’s statement that he had been located upon the lot fifteen years earlier, to which Smith had drawn attention, “this appears strange as the lot when inspected in 1844[sic] was reported to be unoccupied and unimproved.” He also requested that the plan of survey to which Burrison alluded be sent as well.<sup>24</sup>

It would appear that neither Burrison, David White nor Charles White were able to produce enough evidence in support of their respective claims. On 1 March 1856, an entirely new party – William Brown – bought Lot 9, Concession 3, Alnwick Township. He paid the value placed upon it by Sanders: 17 shillings 6 pence per acre. Smith’s advice to the department regarding the situation of this dispute was based upon reason. He pointed to the difficulties in substantiating Burrison’s claim of fifteen years’

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<sup>23</sup> Elias P. Smith to Commissioner of Crown Lands, 26 January 1853. Lot 9. Concession 3. Alnwick Township. File No. 13/53, Numeric land files, RG 1-246-3, Box F-1. A.O.

<sup>24</sup> Commissioner of Crown Lands to James Burrisive[sic], 14 February 1853. p.551. Commissioner of Crown Lands’ general letterbooks, RG 1-6-8-9. A.O.

possession, at the same time noting the lack of real evidence in favour of either David or Charles White's claim to purchase the lot. Although he favoured David White's claim, the best solution was, in the absence of evidence of improvements from any of the parties concerned, to put the lot up for auction. Had one of them been able to show that they had made substantial improvements, Smith would have supported that claim.

#### Establishing a Claim in Wallace Township

It took about two and half years to settle a dispute begun because there were two claimants to Lot 53, Concession 2 of Wallace Township in Perth County. At issue, essentially, was determining what constituted a legitimate claim – how much improvement should there be on a lot in order to establish a legitimate claim. The problem first came to light soon after a sale at the Crown land agent's office in Stratford on 17 September 1856.<sup>25</sup> At that sale, Robert Martin presented himself as claimant to the lot and the Crown land agent, John Sharman, allowed him to purchase it. Sharman, however, refused the application of William Smith, who also applied to purchase the lot based on his occupation and improvements, because Martin had already done so. Within days, several inhabitants of Wallace township drew up a petition in support of Smith's claim and requesting that the sale to Martin be cancelled in favour of Smith. The petition asserted Smith's right as the first occupier.

Based on the petition and two affidavits which accompanied it, John Sharman, the Crown land agent for Perth County, sent a letter to Robert Martin in November 1856 asking him to provide evidence to substantiate the claim by which he was allowed to purchase Lot 53. The affidavits all asserted that the improvements Martin had made consisted of rough underbrushing of one and half acres, the chopping being done very carelessly, with stumps left one and half feet high and the debris left where it fell. Samuel Whaley, in his affidavit, established that the chopping was done sometime between 8 and 22 September 1856, right around the time of the sale. Sharman obviously felt, as did the deponents and petitioners, that Martin had done the work solely for the purpose of establishing a claim to be allowed to purchase the land without having to bid for it at auction. Sharman defended his position on the sale of the lot to the department in a letter dated 9 January 1857. His superiors in the Crown Lands Department asked him to report on the matter and he enclosed with his report four more affidavits supporting Smith's claim. He recommended that the sale to Martin be cancelled and the lot sold to Smith. In response to the petition, and based on Sharman's report, the Commissioner of Crown Lands decided to have the sale to Martin cancelled and the lot sold to William Smith. That, however, was not the end of the dispute and Martin remained in possession of the lot.

In July 1857, Martin wrote to W.B. Robinson who had been the MP for Simcoe for many years. The letter was the second one Martin had sent to Robinson about Lot 53.

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<sup>25</sup> All documents concerning this matter, with the exception of those otherwise noted, are found in: Lots 53 and 54, Concession 2, Wallace Township, File No. 10106/56, Numeric land files, RG 1-246-3, Box F-11, A.O.

Martin requested that Robinson talk to the Commissioner of Crown Lands and get his opinion on the circumstances. Sharman had earlier warned Martin that he was not to improve on the lot, and Martin was now worried that the lot was liable to resumption because he had not fulfilled the conditions of sale. Robinson forwarded Martin's letter to the Commissioner, asking for information on the matter. While the reply from the Commissioner has not been located, Martin makes specific reference to it in another letter he wrote to the Commissioner of Crown Lands in February 1859 nearly two years later. This was in reply to a letter sent 27 January 1859 from the department warning Martin that he had not yet fulfilled the conditions of sale.<sup>26</sup> Evidently Martin had received an earlier letter in October 1857, from then Commissioner, E.P. Taché, stating that he was to comply with the conditions of sale and that the department "had no intention of disturbing the sale." Since that time, Martin stated, he had been on the lot and had a house and eight acres chopped, but only one and half acres ready for planting, and thus had fulfilled the conditions of sale. However, he also noted that "I am sensible that I have not paid my instalments as I expected to get the same privilege of all other settlers in the Township that have not paid theirs." He argued that he did not expect that he would be singled out.

Martin made an affidavit several weeks after writing this letter. In it he testified as to his improvements, although he did acknowledge that he only had one and half acres cleared when the conditions of sale required two acres annually. He also said that upon inquiring at the Crown Lands Department office in Toronto he had been told that his possession was secure and that he was to make his payments regularly, "make the matter of the clearing satisfactory to the local agent and that the local agent would not be so very particular with you." Two neighbours also made affidavits on Martin's behalf which were sent with Martin's affidavit.

Evidently Martin continued to have difficulty with Sharman, who refused to receive a payment from him. Sharman was informed by the department that since "the sale to Mr. Martin not having been disturbed and he being in occupation and improving the land there is no reason apparently for your refusing to receive the instalment due."<sup>27</sup> In addition to the complaint Martin made to the department about Sharman, Martin also continued to solicit the help of W.B. Robinson, although he was not currently serving in the Legislative Assembly, and also Thomas Daly, who was the MP for Perth. Both men sent letters to the department asking that the sale to Martin be allowed. Interestingly though, Robinson noted in his letter that Martin had just made the first payment on the

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<sup>26</sup> Commissioner of Crown Lands to Robert Martin, 27 January 1859, p.142. Commissioner of Crown Lands' outgoing correspondence. RG 1-6-8-10, A.O.

<sup>27</sup> Commissioner of Crown Lands to John Sharman, 21 March 1859. Commissioner of Crown Lands' outgoing correspondence to land agents. RG 1-6-3-8, A.O.

lot. Daly and Martin both received letters from the department stating the sale would not be cancelled at this point.<sup>28</sup>

While the claims of both Smith and Martin were tenuous at best at the time of the sale, the Crown land agent had clearly sided with Smith, on the basis of the many affidavits that stated he was the first occupant and that Martin's initial improvements were only a token effort to establish a claim. The decision made in 1857 about cancelling the sale to Martin and allowing Smith to purchase was never acted on. The reason for this inaction is never stated. It may be that Smith never followed through on his application to purchase. No matter what the reason though, the amount of time that had elapsed between the initial sale and the final resolution of the dispute was enough to allow Martin to take up residence on the lot and make considerable improvements thereon. That, along with the fact that Smith had purchased the lot next to it, Lot 54, Concession 2, probably swayed the final decision in Martin's favour. The Ontario Land Records Index notes that Lot 53 was sold to Robert Martin 17 September 1856, and Lot 54 was sold to William Smyth[sic] the same day.<sup>29</sup>

#### Simple and Straightforward in North Crosby Township

Lot 1, Concession 8 in North Crosby Township is bounded by Loon Lake and Mud Lake, and in 1859 a survey found that it contained only 138 acres of land. That year the Crown Lands Department received the petition of Francis Bedoir, who sought permission to purchase that lot, which he was occupying. Bedoir's petition was accompanied by Provincial Land Surveyor Joseph M.C. Cornwall's plan and report of the lot.<sup>30</sup> Bedoir declared himself to be "a poor man with a very large family who for a number of years has been supporting his family on some of the waste lands of the Crown." He had a house and outbuildings on the lot which, he petitioned, he "would endeavour to purchase if he could have it for what it is worth." He also had twenty acres cleared at this point. At the end of the petition, Bedoir asked if he could purchase the land at the price suggested by the surveyor. Unfortunately, Cornwall's report and plan is not located in the file so his suggested value is unknown. Based on the report of the Crown land agent though, it is likely that Cornwall valued it at five shillings per acre.

The department referred the matter back to the Dr. W.J. Scott, the Crown land agent responsible. On 21 September 1861, Scott reported to the department that he had visited the lots "and found the statements in the petition to be correct, it is only accessible by water during the summer months and the greater parts of the Lots[sic] is a succession

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<sup>28</sup> Commissioner of Crown Lands to Thomas Daly, 24 October 1859, p.536 and Commissioner of Crown Lands to Robert Martin, 24 October 1859, p.536. Commissioner of Crown Lands' outgoing correspondence, RG 1-6-8-10, A.O.

<sup>29</sup> Robert Martin apparently never received the patent to this lot, the Ontario Land Records Index, A.O. records an assignment for the lot to Michael Beyer, 1 March 1867.

<sup>30</sup> The file unfortunately does not contain Cornwall's report and plan. All other documents concerning this matter, with the exception of those otherwise noted, are found in: Lot 1, Concession 8, North Crosby Township, File No. 2304/59, Numeric land files, RG 1-246-3, Box F-35, A.O.

of granite rocks.” Scott also noted that Bedoir now had nearly thirty acres cleared. Bedoir was willing, so Scott stated, to “pay five shillings an acre... which sum is all it is worth.” The department’s final statement on the matter reiterated the information from Cornwall and Scott, and noted that the land was not part of that property which had been set apart for the Rideau Canal. The file contains a sales slip dated 12 October 1861 for the sale of Lot 1, Concession 8, North Crosby to Bedoir for \$104 plus \$68.55. A second sales slip indicates that 138 acres were to be sold at \$1.00 per acre, which would total \$138, but the total on the slip remained the same as on the first slip: \$104 plus \$68.55 interest.<sup>31</sup>

#### Assisting the Occupant, Robert Laidlaw of Bentinck Township

Like the previous example, this was a relatively straightforward matter for the department and the Crown land agent, William Jackson. The department accepted Jackson’s report and valuation without question. Robert Kerr had purchased Lot 11, Concession 11 in Bentinck Township on the 6 October 1854, but like many, had only paid the first instalment on the lot.<sup>32</sup> Evidently Kerr made no effort to occupy the lot or make any improvements on it. In February 1864, William Jackson, Crown land agent, corresponded with the Crown Lands Department on the matter, sending an affidavit from Thomas Laidlaw and William Pattison in support of Robert Laidlaw’s application to purchase the lot.<sup>33</sup> Laidlaw made application on the basis of his occupation and improvement of the lot – he having cleared eight acres, the only improvements made on the lot. In February 1863, the department notified Jackson that, based on his report and the affidavit, the sale to Robert Kerr had been cancelled and that Laidlaw was allowed to purchase the lot for \$3.00 per acre, the price which had been suggested by Jackson.

In an interesting postscript to this matter, there is a notation on the covering page of this file dated 13 November 1877, more than fourteen years after permission was granted to Laidlaw to purchase the lot. Thomas Johnson, the Assistant Commissioner of Crown Lands, noted that Laidlaw was “reported in occupation 10 years with 60 acres cleared” and based on that he was “entitled to a reduction in price to \$3 per acre and in the interest to 4%.” It would appear that Laidlaw was so confident with the mere allowance of the sale that he had not bothered to complete his purchase for a number of years. On 1 December 1877, a Toronto law firm, Jones Bros. and Mackenzie, sent a letter to the department enclosing a cheque for the full amount due on the lot “on behalf of Robert Laidlaw.” The Abstract Index of Deeds for Bentinck Township shows that the

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<sup>31</sup> It was generally figured that four dollars was the equivalent of a British pound. There are twenty shillings in a pound, hence the conversion of five shillings to one dollar.

<sup>32</sup> The year 1854 was a time of land boom in Canada West and many bought land paying only the first instalment with the expectation of speculation. Some of the problems that were caused by these activities are discussed in greater detail in Chapter 5.

<sup>33</sup> All documents concerning this matter, with the exception of those otherwise noted, are found in: Lot 11, Concession 11, Bentinck Township, File No. 3464/62, Numeric land files, RG 1-246-3, Box F-81, A.O.

patent for the lot in the name of Robert Laidlaw was issued 6 December 1877.<sup>34</sup> The patent was issued just weeks after Laidlaw arranged a mortgage with the Canada P.L. & S. Company. It is likely that the mortgage company required Laidlaw to get proper title in order to secure their own interests.

Making Sense of the Matter: South ½ of Lots 3 & 4, Concession 13, Wallace Township

Settlers often found themselves in difficult situations, and many were forced to seek financial assistance from others more fortunate than themselves. Such was the case of William Corrigan.<sup>35</sup> In March 1865, Corrigan wrote a letter, penned for him by C.M. Hemsworth, to the Crown land agent, John Sharman, in explanation of the confusion surrounding the claims for the south halves of Lots 3 and 4, Concession 13, Wallace township. Jesse Jones was evidently claiming the south half of both lots, while Corrigan claimed just the south half of lot 4.

Corrigan's letter, which was substantiated by the assignments and affidavits that were produced, told of his difficulties. He had, so the letter stated, lost his eyesight six or seven years before, in 1858-59. Before that, however, he had become indebted to Jesse Jones of Peel Township. Corrigan claimed in the letter that Jones had taken "a most dishonest advantage of me and to satisfy him I transferred the whole hundred acres (S ½ of 3 & 4) to him [transfer was dated 2 December 1857] on the understanding that, when I discharged the debt, only \$30, he would return to me the transfer." Corrigan found himself unable, because of unfortunate circumstances, including the loss of his eyesight, to pay this debt for three years. At the end of that time, he found that his debt to Jones had grown to \$240. "He charged me eighteen per cent on the debt and most exorbitantly for what writings were drawn between us [assignments and other documents] and doubled my account more than once." Powerless to do anything about it, Corrigan agreed to assign his claim for the south half of Lot 3 to Jones for \$300. Corrigan received the balance of \$60, after discharging his debt, and a transfer of the south half of Lot 4 back to him from Jones. This transfer was dated 13 February 1860.

In 1858, Jesse Jones had presented the first assignment, which transferred the south half of both lots to him from William Corrigan, to John Sharman, the Crown land agent. In January 1862, in response to a public notice for occupants of Crown lands to complete settlement duties, Sharman received an affidavit respecting Corrigan's occupation and improvement on the south half of Lot 4. This, of course, presented a difficulty for Sharman since Jones had submitted the assignment showing Corrigan's transfer of both lots to Jones. Sharman asked Corrigan to please explain the basis for his claim and present any documents respecting the matter, which Corrigan did, in the letter cited above. Along with that letter, Corrigan enclosed the assignment of the south half of

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<sup>34</sup> Abstract Index of Deeds, Lot 11, Concession 11, Township of Bentinck, Grey County, p.110, A.O.

<sup>35</sup> Corrigan's name also appears as Carigan in the file documents. All documents concerning this matter, with the exception of those otherwise noted, are found in: South ½ Lots 3 & 4, Concession 13, Wallace Township. File No. 2494/65, Numeric land files, RG 1-246-3, Box F-128, A.O.

Lot 4 back to him from Jones. Sharman explained the matter in his report, which was accompanied by the affidavits and assignments. He submitted them to the department, explaining that he had no reason to disbelieve Corrigan's statements and that Corrigan had fulfilled the settlement duties. The department apparently accepted Sharman's report as he made it and permission was granted to Corrigan to purchase the lot.

However, the last document in the file suggests that perhaps Corrigan's dealings with Jones were not over with the discharge of his debt and Jones' transfer of the south half of Lot 4 back to him. In 1872, a letter from Jones Bros. (the same Jones Bros., apparently, that were mentioned in the previous example) to the department requested information on the status of the south half of Lot 4, Concession 13, Wallace Township – the amount still due on the lot, and, in whose name the lot stood. Reference notes on the letter, apparently made by a clerk at the Crown Lands Department, suggest that \$174.50 remained due on the lot. That same year William Corrigan had a mortgage registered with the Canada P. B. & S. Society, as indicated in the Abstract Index of Deeds for Wallace Township.<sup>36</sup> When that mortgage was discharged, the name of the organization had changed to Canada P.L. & S. Company, the same firm with which Robert Laidlaw in Bentinck Township had dealt. Within weeks of the date of the mortgage, the Crown issued the patent for the south half of Lot 4 to William Corrigan, just as had been done in the case involving Robert Laidlaw. The south half of Lot 3, for which Corrigan had relinquished his claim, was patented to Jacob Wells in 1865.

#### Conclusion

The cases discussed here reveal certain patterns of the responsibilities of the Crown land agents and surveyors. Most importantly, they were crucial links between the Crown Lands Department and the settlers. They served as liaisons, and in some cases, their local knowledge of matters helped to clarify matters, while their actions in other cases, such as the controversy over the lot in Lansdowne township, could cause further difficulties. Their local knowledge could also put them into roles as advocates and adjudicators in areas where documentation and legal standings were imperfect, such as pre-patent land claims. They were an important component of an informal legal culture that favoured industriousness in improving land. For the settlers, the Crown land agents were also an aid in navigating the regulations that governed land distribution. They could inform settlers as to what was required to make applications to purchase, and probably coached them in making petitions that were clear and in the acceptable form, and in having neighbours produce affidavits that contained appropriate information. The agents and surveyors were in a key position to see that those people who were deserving received full title to their land. They defined the deserving as those who were actively improving the land and putting it into agricultural production efficiently. The Crown Lands Department, as revealed here, put great confidence in the reports of the agents and

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<sup>36</sup> Abstract Index of Deeds, Lots 3 and 4, Concession 13, Township of Wallace, Perth County, pp.547-548, A.O.



surveyors, accepting their explanations and valuations with little question. While final decisions always rested with the Commissioner of Crown Lands, the influence of the agents and surveyors in smoothing and making legitimate a process fraught with confusion, opportunity, friction and controversy cannot be discounted.

**Chapter 5:**  
**“Irregularities” and “Trafficking in Public Lands”:**  
**Investigations of Crown Land Agents**

Many Crown land agents tried to use their knowledge and experience to obtain favourable decisions for individual settlers and to advise the government on improvements to land allocation processes. Yet that same knowledge and experience could also give the agents an unfair advantage for their own pursuit of profits. As a Crown land agent, an individual had access to detailed information about the land market, current prices, the legal nuances of current land policy, the physical attributes of lots and he would know how to profit from such knowledge. Although the regulations concerning their duties were designed to prevent personal gain, a small number could not resist reaping the illegal rewards of their position. Charges made against several agents who were accused of using their position to unfair advantage were considered serious enough to warrant thorough investigations. While some were exonerated by the investigations, others were found guilty.

Crown land agents linked the government and people who wanted to purchase Crown land. They had a responsibility to see that the government’s land allocation policy was followed. When agents failed to meet the expectations, formal complaints to the local member of the legislature, or the Executive Council sometimes followed. In a few cases the complaints were instigated more by private malice than concern for the public good. Traditionally, as will be seen, favouritism and partiality had been an intrinsic part of the land distribution system in Upper Canada. That tradition may have deterred many from coming forward to protest the behaviour of a local Crown land agent. However, in the late 1830s, the opinions and attitudes of the public and of the government had begun to change and by the 1850s the development of a reformed civil service was well underway. Examples of these changes appear among the records of the Crown Lands Department in the form of reports of investigations of Crown land agents.<sup>1</sup> So far, reports of investigations of six different agents: A. Durnford, Thomas Baines, John Clark, A. McNabb, Andrew Geddes and John E. Brooke, have been found in the records of the

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<sup>1</sup> While the context of his discussion: education, is different. Bruce Curtis’ argument that inspection was recognized as a key component of government control by the mid-1840s is strengthened by the evidence presented in these investigations of Crown land agents: “Class Culture and Administration: Educational Inspection in Canada West.” in Allan Greer and Ian Radforth (eds) *Colonial Leviathan; State Formation in Mid-Nineteenth-Century Canada* (Toronto, 1992), pp.112.

Crown Lands Department and the Journals of the Legislative Assembly.<sup>2</sup> These six agents represent only a small fraction of the seventy or so agents who served from 1839 until about 1867. The agents investigated represent anomalies among a system that generally worked in support of settlers. Nevertheless, the reports and related papers provide rare and revealing glimpses into the lives of these agents and the ways in which the land distribution policies could be circumvented either with or without the collusion of the Crown land agents.

Some of the most intriguing and enlightening evidence with regards to the role of the land agents and the latitude which they had in carrying out their duties is presented in the reports of the investigations into the activities of Crown land agents. The Governor in Council commissioned several investigations on the basis of petitions of inhabitants and settlers. Petitions represented a channel through which anyone could bring grievances and problems to the attention of the Governor and Council. The charges brought against agents demonstrated the attitudes of many towards land distribution and the acceptable behaviour of the agent. Popular perceptions of fairness and justice were often used to highlight the unacceptable behaviour of the agents in question. Only within these few documents, among the abundant records of the Crown Lands Department, can we find such carefully outlined perceptions of the “proper” role of the agent and the ways in which they could fail to meet those expectations. The nuances of this role, beyond the official list of agents’ duties, are most clearly defined in these investigation records.

The investigations depict the increasing scrutiny of government employees by both the public and senior bureaucrats. The Crown Lands Department conducted four of the investigations, the exception being Governor-General Sir E. W. Head’s 1856 appointment of Ogle R. Gowan and Morgan Hamilton to investigate the disposal of Crown Lands in Huron and Bruce Counties, which came to be known popularly as the “Squatters’ Commission.”<sup>3</sup> The manner of investigation, the perceptions of the investigators, and their recommendations, and the responses of the Commissioner of

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<sup>2</sup> The reports that are mentioned here were found in various locations among the papers of the Crown Lands Department and the government. Several manuscript reports are grouped together under “Investigations of Crown land agents accused of fraud” in the Crown Lands Department records. One report was found quite by chance, however, while perusing the extensive correspondence files of the Commissioner of Crown Lands. It may be that there are other such reports, in the form of letters, that have yet to be discovered in the extensive collection of Crown Lands records held by the Archives of Ontario.

<sup>3</sup> It was probably not coincidental that the “Squatters’ Commission” was appointed the same year that Joseph Cauchon, Commissioner of Crown Lands [1855-57] sharply criticized the system of Crown land agencies in his department’s annual report. Cauchon proposed a new system of salaried, travelling agents to replace the present system in order to alleviate problems of “confusion, antagonism and ill-feeling, as well as undue speculation on a large scale.” Such problems, causing a backlog of undecided cases in the department, had resulted from carelessness, so Cauchon argued, both on the part of the agents, and a lack of supervision by the department. No doubt Cauchon’s report was influenced by a growing number of complaints which prompted political action, including those that resulted in the appointment of Gowan and Hamilton (which Cauchon cites in the report). “Annual Report of the Commissioner of Crown Lands for 1856,” Appendix 25, *Journals of the Legislative Assembly, 1857*.

Crown Lands illuminate the ways in which agents were expected to carry out their prescribed duties. More importantly, they demonstrate the reactions of these various officials to conduct considered inappropriate and in opposition to the spirit of the government's land policy in effect at the time.

#### A Shift in Government Conduct

It was, of course, a matter of fact, that those who were able had been allowed in the past to use their influence and connections in government to secure tracts of lands for themselves and their friends and family members. The Land Boards, which Governor Dorchester first appointed in 1788, remained as the local authorities, together with magistrates and even surveyors in some cases, responsible for the distribution of land until 1825.<sup>4</sup> Members had taken advantage of their connections to amass large numbers of lots across the surveyed regions of Upper Canada for themselves and their families.<sup>5</sup> Individuals with influence and connections had also gone straight to governors and executive councils and still others used connections in Britain.<sup>6</sup> In fact, in some ways it seems rather ironic that government agents were being investigated in the 1840s and 1850s for using their position to gain land and power when it had been a regular occurrence for land officials just a few decades earlier. Practices and attitudes had changed, however, in both the government and the public with regards to the distribution of land. Grants had been largely replaced by land sales, and the process of acquiring land had become more regulated and closely watched, as were the agents responsible for the distribution of Crown lands.

The regulations that governed the Crown land agents, when the first regular appointments were made in 1839, were designed, in part, to prevent the land agents from abusing their privileged position in the market for Crown lands. The general instructions for agents of the Crown Lands Department issued in 1845 were explicit in this respect. For example, the first part of item four of the agents' duties attempted to strike a balance

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<sup>4</sup> Records from the Land Boards of the Hesse (later Western) and Mecklenburg (later Midland) districts indicate that those boards had operated before 1788, on an *ad hoc* basis, probably because of their extreme isolation from the capital at Quebec. Mecklenburg District Land Board, Minutes and Records, 1783-1794. RG 1, L 4, vol. 7 (pp.1-363), N.A.C. and Minutes of the Land Board of the Hesse District – 1765-1790. RG 1, L 4, vol. 2 (pp.1-276), N.A.C.

<sup>5</sup> John Clarke, *Land, Power, and Economics on the Frontier of Upper Canada*, (Montreal and Kingston, 2001), p.454.

<sup>6</sup> J.K. Johnson, *Becoming Prominent; Regional Leadership in Upper Canada, 1791-1841*, (Montreal and Kingston, 1989), p.52. One individual stands out in his use of influence in Great Britain: Colonel Talbot had been very active in using his connections to secure land for himself. For discussions of the development of Talbot's lands see Fred Coyne Hamil, *Lake Erie Baron; The Story of Thomas Talbot*, (Toronto, 1955); Wayne Paddon, *The Story of the Talbot Settlement 1803-1840*, 2<sup>nd</sup> ed. (St. Thomas, Ontario, 1976). David Shanahan discusses in "Tory Bureaucrat as Victim: The Removal of Samuel Jarvis, 1842-47," *Ontario History*, XCV (2003), 38-64, the allegations made against Jarvis because he stood in the way of the plans of several prominent Reformers to acquire and sell for profit the lands of the Indian reserves.

between assisting settlers and maintaining impartiality: “They are also expected to give applicants generally such advice and information as they are enabled to afford (not of a confidential nature) respecting the sales and grants of public Lands.” It went on however, specifically to forbid agents from assisting people in ways in which the agent will receive some benefit. “[A]ny direct or indirect understanding on their part for participating in the benefits claimed by individuals, any receipt of money for their own benefits no matter from whom, to secure to the parties the obtaining of any lot of Land” would result in dismissal as would speculation in any land within the Agency not under Patent, or the sales of “interests” or “rights” in land, stated in section 4.<sup>7</sup> The need for discretion was apparent in the instructions regarding the valuation of lots by the agents. “[T]hey are to proceed to this valuation with much attention and caution, avoiding all favor or acception[sic] of persons.”<sup>8</sup> The instructions advised agents to guard against giving advice regarding the choice of lots; they were only to indicate which lots are vacant, in order to prevent misunderstandings or “disagreeable correspondence” with the department.<sup>9</sup>

Favouritism and the implication that agents were assisting family members or associates in speculative activities were the most prominent allegations brought against Crown land agents. Petitions and accusations considered serious enough to warrant an investigation often cited these “irregularities” at the top of their list of complaints.<sup>10</sup> It is important to note that all but one of these investigations took place in the late 1850s, towards the end of large-scale land distribution. Good land was becoming increasingly scarce in Canada West. Settlement was moving further north and onto marginal lands. By mid-century, serious discussions began about the possibility of opening the territories of the Hudson’s Bay Company in part to fulfill the demand for agricultural land. As land became increasingly scarce, the public’s desire for a fair and equitable system of land sales grew. Governments had to pay more attention to suspicions and rumours of unfair speculation and advantage and at least appear to act to prevent or rectify such abuses.

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<sup>7</sup> Department of Crown Lands, “Agents’ Duties. General Instructions to the District or Resident Agents of the Department of Crown Lands.” November 1845, Crown land agents’ records for Simcoe County 1835-1858, RG 1-499, A.O.

<sup>8</sup> “Agents’ Duties” November 1845, Crown land agents’ records for Simcoe County 1835-1858, RG 1-499, A.O.

<sup>9</sup> “Agents’ Duties” November 1845, Crown land agents’ records for Simcoe County 1835-1858, RG 1-499, A.O.

<sup>10</sup> Not all such complaints resulted in a full investigation. For example, Ebenezer Perry had been the subject of a complaint alleging that he had allowed his family members to obtain land without the fulfillment of settlement duties. The tone of the correspondence from the Commissioner of Crown Lands indicated a warning to Perry to take care of the problem promptly. Commissioner of Crown Lands to Ebenezer Perry, 16 August 1860, p.713, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3-8, A.O.

The investigations also reflected the changing nature of the bureaucracy and government in the colony. It seemed to be a period, as David Moorman has indicated, of a growing professionalization of the bureaucracy and greater control and regulation of the various employees of the Crown.<sup>11</sup> P.W.J. Bartrip has argued, in the British context, that historians have over-emphasized the significance of inspectors and inspections. He bases this conclusion on his study of factory and mines inspectors in Britain. Those inspection agencies, he argues, were not given enough money or power to enforce rules, and the influence of these agencies on government policy was negligible.<sup>12</sup> Certainly, the investigations of the Crown land agents discussed here seem to have had little, if any, effect on land policy. What is more important, which Bartrip does not acknowledge, was that inspectors, and investigators represented something else, an attempt to make government more accountable to the public. In the Canadas, the investigations represented another step in the achievement of responsible government in that they attempted to expose wrongdoing on the part of civil servants and to rectify actions which victimized settlers. As the colony matured, and its population became more educated and better informed, people were more willing and capable of speaking out about abuses and seeking redress, especially since the government was now more responsive to popular opinion.<sup>13</sup> Such a shift in the attitude of the government and bureaucracy towards public opinion in the Province of Canada mirrored a similar willingness to investigate various problems in Britain. In the 1850s, the British government appointed seventy-five Royal Commissions of Inquiry, the highest number during the Victorian period.<sup>14</sup> The investigations of the Crown land agents were an indication of the growing need to prevent abuses through poor administration and a lack of supervision of Crown land agents.<sup>15</sup> Moreover, people were using petitions to influence government policy and to address perceived problems, including complaints about the conduct of Crown land

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<sup>11</sup> David T. Moorman, "The 'First Business of Government': The land granting administration of Upper Canada." (Ph.D Dissertation. University of Ottawa. 1998).

<sup>12</sup> P.W.J. Bartrip, "British Government Inspection, 1832-1875: Some Observations." *Historical Journal*, 25 (1982), 605.

<sup>13</sup> Jeffrey McNairn, *The Capacity to Judge; Public Opinion and Deliberative Democracy in Upper Canada, 1791-1854*, (Toronto, 2000), pp.5-6.

<sup>14</sup> D.M. Schreuder, "Ireland and the expertise of imperial administration," in Roy MacLeod (ed) *Government and Expertise*, (Cambridge, 1988), p.154.

<sup>15</sup> J.E. Hodgetts, *Pioneer Public Service: An Administrative History of the United Canadas, 1841-1867* (Toronto, 1955), pp.159-60.

agents.<sup>16</sup> The petitions that instigated these investigations represented one of the ways in which individuals and groups could effect change in government policies.<sup>17</sup>

The following analysis of the investigations and activities of Crown land agents will illuminate their behaviour and their positions within the Crown Lands Department and their local communities.<sup>18</sup> The findings of the investigations into the conduct of John Clark, Huron County, Alexander McNabb, Bruce County, Andrew Geddes, Wellington County, and John E. Brooke, Kent County, which took place in the late 1850s, reveal important similarities and patterns.<sup>19</sup>

#### Loopholes in the System: The 1854 Crown Land Auctions

In 1856, the Executive Council appointed Olge R. Gowan and Morgan Hamilton commissioners to examine allegations of abuse and complaints about speculation in Huron and Bruce Counties. In 1859, William Spragge, chief clerk in the Crown Lands Department, carried out two separate investigations of the respective agents for Wellington and Kent Counties. The agents were accused of abusing their positions to benefit themselves and their family and friends, in direct opposition to their duties and responsibilities as Crown land agents. The public nature of the investigations, with complainants and accusers coming forward to give testimony, pointed to the accountability of the agents, to both the government and the local community.

The investigations were carried out in a common manner. The agents had prior notice of the impending inquiries, and opportunities to use their agency records and to question any witnesses in their defense during the inquiry. Gowan and Hamilton informed John Clark, upon notification of the impending investigation, that he might “take all such further and other, reasonable and fair proceedings in reference to the

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<sup>16</sup> Carol Wilton, *Popular Politics and Political Culture in Upper Canada, 1800-1850*, (Montreal and Kingston, 2000), pp. 1-2, 6-7.

<sup>17</sup> Wilton, *Popular Politics and Political Culture*, pp. 6-7.

<sup>18</sup> The first investigation, into the conduct of A. Durnford, agent in the Owen Sound Settlement in 1843, took place much earlier than the other investigations and was carried out more informally. It will not be discussed in detail because nothing untoward was found in the agency’s business except for a lapse in the morals of the agent. The greater part of the report was spent revealing the schemes of a land speculator to be reinstated as agent in Durnford’s place. A. McNabb, in a letter reporting the investigation of A. Durnford written to A.N. Morin, Commissioner of Crown Lands, 23 November 1843, Crown Lands Administration Files, RG 1-9, Volume 17, Envelope 2, pp.11096-11111, A.O.

<sup>19</sup> Thomas Baines was investigated for fraud in 1857-8. However, that investigation will not be discussed here because the nature of the fraud was fundamentally different from that of the others and only concerned his relationship with the Crown Lands Department, not with the public. Baines was found to have falsified his returns to the department and was held liable for the money owed to the government. L.V. Sicotte, Commissioner of Crown Lands to T.J.J. Loranger, Provincial Secretary, “Return shewing the amount of the defalcation or default of Thomas Baines, late Agent for Public Land sales in York County” 30 March 1858, *Journals of the Legislative Assembly of the Province of Canada*, Vol. 16, Appendix #22. See also Alan Wilson, *The Clergy Reserves of Upper Canada: A Canadian Mortmain*, (Toronto, 1968), pp.194-5 and Hodgetts, *Pioneer Public Service*, p.165.

matter, as he might be advised.”<sup>20</sup> In addition to looking into the circumstances cited in the petitions and complaints, the investigators received instructions to investigate any other cases brought forward during testimony that suggested fraud or irregularities. The pattern of inquiry that was used in the investigations closely follows the procedures used in commissioned inquiries in Great Britain during the same period. Like the Robinson Commission of Inquiry into Irish markets, the investigators of the Crown land agents took great care to create an atmosphere of justice and fair play.<sup>21</sup>

<i>Year</i>	<i>Acres</i>	<i>Year</i>	<i>Acres</i>
1848	6 583	1853	235 228
1849	14 265	1854	529 180
1850	36 536	1855	461 368
1851	81 949	1856	140 520
1852	50 837	1857	122 119

The accusations and complaints brought against the agents related mostly to the large sale of Crown lands that took place in a number of counties in the province of Canada West in the fall of 1854.<sup>23</sup> In that year, Crown land sales peaked (see Table 5:1) There was increasing pressure during this period for the government to survey and sell large amounts of land. A boom was underway in the colony, due in part to anticipation for growing demand for food and timber from the Canadas because of the Crimean War, the prospect of reciprocity with the United States, and the construction of railways. In addition, in 1852, the credit system was re-established for the sales of Crown lands in Canada West. This was intended to assist would-be settlers without a great deal of capital but who were willing to settle and improve Crown land in order to purchase it.<sup>24</sup>

<sup>20</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands. Initial Report of the Huron and Bruce Commission. 1 February 1857. p.3. RG 1-14-3-1. A.O. Clarke retained lawyer Malcolm C. Cameron to represent him at the investigation.

<sup>21</sup> Schreuder. “Ireland and the expertise of imperial administration,” p.154. Similarly, Schreuder emphasizes the sense of justice and fair play in the final report of the Robinson Commission. His description of the final report could describe those made by Gowan and Hamilton, and by Spragge on their investigations of the Crown land agents. Schreuder, “Ireland and the expertise of imperial administration,” p.154-161.

<sup>22</sup> Lillian F. Gates, *Land Policies of Upper Canada*, (Toronto, 1968) p.285, from statistics found in the *Journals of the Legislative Assembly of the Province of Canada*, 1856, Vol. XIV. Appendix #35 and 1857. Vol. XVI. Appendix 15.

<sup>23</sup> A brief examination of the Crown Lands Department land files for years after 1854 reveals both the extent of the land sales that year, and the numerous problems that accompanied the land boom, including speculation and inflated prices. RG 1-246-3, A.O.

<sup>24</sup> Gates, *Land Policies*, pp.285-286.



Although intended to aid settlers, the provision of credit was seized by speculators as an opportunity to increase their profits as the demand for land rose. They were able to manoeuvre around the regulations, sometimes with the help of the local Crown land agent, and take advantage of the government's credit. A great number of the specific charges levied against the agents focussed on the specific methods of obtaining land for speculative purposes during the 1854 sales.

Purchasers of Crown land, including the lots sold at the 1854 auctions, did not immediately receive full legal title to the land. Instead, the payment of the first instalment gave them what could be described as "purchaser's rights or claim." They had the right to settle and, importantly, the right to transfer, or assign, that claim to another person. Such transfers or assignments of rights were to be approved by the Crown Lands Department before they would be registered. The title, or patent, was only issued when the government had received all the payments and interest due in full. The settlement conditions placed on the sale – requirements to clear land and build on it – were also supposed to be fulfilled by the time the patent application was made, although in practice the government was more concerned about receiving payment.<sup>25</sup> The money that changed hands as a result of the assignment of a claim had no relationship to the original government purchase price.

One of the most common allegations made against the Crown land agents was that they knowingly allowed the use of third party names to avoid the 200-acre limit per individual. It was not uncommon at these auctions for private agents to act for people who wished to purchase land but who were not in attendance. On the surface, it was difficult to distinguish between legitimate agents for potential settlers, and those who purported to be agents in order to speculate in Crown lands. Speculators, ready with the required down payment, purchased lots using the names of third parties.<sup>26</sup> Their activities would be made even easier with the co-operation of the Crown land agent.

There was so much evidence against John Clark regarding this practice that he was forced to admit to it. He acknowledged that he had permitted the use of third-party names "merely to evade the ninth clause [prohibiting the purchase of more than two hundred acres by one person] in the conditions of sale."<sup>27</sup> Among those whom Clark allowed to evade this condition, or whose names were used to carry out this plan, were his children, his brother, a nephew, clerks both in his office and his brother's in Toronto, as well as "many of the Merchants, Traders, Lawyers, Clerks, Insurance Brokers, and

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<sup>25</sup> When an individual had made all the payments on a lot and applied for a patent or deed to issue, they were required to send an affidavit attesting to the completion of the settlement duties.

<sup>26</sup> The earliest evidence that the public was aware of this practice appears to be in a letter to the editor of the Elora *Backwoodsman*, that appeared in the 5 October 1854 issue of that paper, p.2. A.O. just weeks after the auction of Minto township.

<sup>27</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands. Initial Report of the Huron and Bruce Commission, 1 February 1857. pp.7-8, RG 1-14-3-1, A.O.

even Cabmen,” from Toronto. Clark extended the privilege further afield to residents of the United States and across the Atlantic to Great Britain.<sup>28</sup>

The down payment made on the lots purchased in the names of third parties gave the speculators enough security, or sufficient claim to the lot, that they could sell that claim to others at a profit, especially since the government was lax about enforcing settlement duties. Those purchasing from a speculator would pay him for that right, but had to meet the rest of the instalment payments before title would be transferred from the Crown. In order for a speculator to sell the claim to another speculator or a settler, the Crown Lands Department required the filing of an assignment or a document testifying to the transfer of these rights in the land. The speculator would then have the party in whose name the purchase was made sign the assignment. Since family, friends, and employees were often the “purchasers” it was relatively easy to execute the assignments. However, it was even simpler if the third party was a child or an individual who was unaware that their name had been used in such a way. The validity of some signatures was questionable, as Spragge found in his investigation of Andrew Geddes, where some of the assignments “were executed by Individuals not competent to convey any rights to the land.”<sup>29</sup> Occasionally, actual settlers would purchase a lot in the name of a minor child in order to secure land for the future. The investigators, when they found such cases, tended to be lenient. They were more concerned about two greater evils that resulted from the use of third-party names: the charging of fees for “registering” transfers, and allowing contradictory transfers to be “registered.”

Agents were not permitted to charge fees for unsanctioned practices. Transfers had to be approved by the Crown Lands Department and when approved, they were to be registered by the department, not its agents. Andrew Geddes took it upon himself to record transfers, giving the impression that the department sanctioned the assignments. He also charged a fee for doing so. To further compound the problem, it was found that he had recorded assignments that contradicted earlier transfers. For example, after recording a transfer of a lot from Francis Dalby on behalf of his minor son, Francis, to George Duncan, Geddes had later recorded another assignment for the same lot from Francis Dalby to Richard Morrell. Morrell, very conveniently, happened to be a partner of James Geddes, Andrew Geddes’ son. By recording assignments, Andrew Geddes was acting a registrar of titles when that was the duty of another public official; moreover, there was as yet no title to register. Until an assignment was officially recognized by the department, it was considered invalid. By recording these assignments Geddes was giving the impression that everything was being executed in a proper fashion. As Spragge

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<sup>28</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands, Initial Report of the Huron and Bruce Commission, 1 February 1857, pp.7-8, RG 1-14-3-1, A.O.

<sup>29</sup> William Spragge to Charles Alleyn, Provincial Secretary. Report on Accusations of Fraud against Crown Lands Agent in Wellington County, 1859 – Mr. Andrew Geddes, 26 April 1859. Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-1, A.O. Unfortunately, neither of Spragge’s manuscript reports on Geddes and Brooke have numbered pages.

put it, “It would not be easy to invent a delusion better adapted than this Local Agency registration for exacting Fees, under cover of a service performed, while damaging the individual’s interests which it professed to advance.”<sup>30</sup>

Similar abuses were found during the other investigations, as in Michael Galvin’s testimony that John Brooke had charged him for affidavits made by persons that he had brought to the Agent’s office to prove that he had made improvements on the lot he claimed.<sup>31</sup> Agents were expected to perform such duties without charge to settlers or purchasers. Their remuneration from the sales of lands was expected to be sufficient to cover these additional tasks. The department did not sanction such fees or exactions, since they could be an additional and unnecessary burden on those struggling to pay for their lands.

The charging of “fees” by government agents and office holders was not foreign to Upper Canadian society. It had been a common practice for many years.<sup>32</sup> It is not difficult, therefore, to understand why some agents believed that they were entitled to supplement their income as had been done in the past, despite the fact that it was now expressly forbidden. The testimony of one man at the investigation in Kent County revealed that Brooke knew that such fees were illegal. Richard Lancaster testified that Brooke had offered to obtain a number of gore lots (odd-shaped lots) that he desired “for a consideration of fifty dollars.” Even though he realized the fifty dollars was a premium that went into Brooke’s pocket and was not part of the government purchase price, Lancaster decided to pay anyway because he wanted the lots. Lancaster took a friend with him, to act as witness to the transaction, but since Brooke did not want a witness, the deal collapsed. Spragge was impressed by Lancaster, “an energetic looking Settler with all the appearances of a respectable steady Farmer and is of description of persons deserving of encouragement,” and was convinced of the reliability of his testimony.<sup>33</sup>

John Clark and Andrew Geddes came under suspicion when it appeared that they were extending privileges to their sons who were active land speculators. When people went to the Crown land agent’s office to buy Crown lands, only to discover the lots were unavailable, they could immediately be directed to Colin Clark or James Geddes. As Gowan and Hamilton put it, “the Settlers[squatters], whose lands had been sold, upon application to the Agent [John Clark], were constantly referred to his Son for further

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<sup>30</sup> Spragge. Report on Accusations of Fraud against Mr. Andrew Geddes. 26 April 1859. Report on Accusations of Fraud against Crown Lands Agents. RG 1-14-2-1, A.O.

<sup>31</sup> Affidavit of Michael Galvin. William Spragge to Charles Alleyn, Provincial Secretary. “Report on Accusation of Fraud against the Agent for the County of Kent. John E. Brooke, 28 December 1859. Report on Accusations of Fraud against Crown Lands Agents. RG 1-14-2-2, A.O.

<sup>32</sup> Clarke, *Land, Power, and Economics*, p.451.

<sup>33</sup> Spragge. Report on Accusation of Fraud against John E. Brooke. 28 December 1859. Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-2, A.O.

information touching their lands.”<sup>34</sup> Similarly, settlers testified to Spragge that on making inquiries to purchase lands at Andrew Geddes’ office that were unavailable for purchase from the Crown, they were directed to see his son in the adjacent office. In advertisements that appeared in both the Elora *Backwoodsman* and Elora *Observer*, starting in 1854, James Geddes called attention to his expertise regarding Wellington County, a result of his residence there, “business connections, and peculiar facilities for acquiring a knowledge of... lands.” No doubt his relationship with the Crown land agent and their adjoining offices provided those “peculiar facilities” which made James Geddes “a desirable medium” for “people wishing to make investments in public or other lands.”<sup>35</sup> It is not surprising that there was a great deal of suspicion because of the appearance of cosy working arrangements between these fathers and sons.

Another common charge in the complaints was that agents deliberately ignored the claims of squatters and sold lots with improvements to others. It is important to note here that squatters in Upper Canada never had a specific *right* of pre-emption under the law. Rather, the Land Acts of 1837 and 1841 specified that with the approval of government, occupants could apply to purchase their land, at a valuation, by private sale. In other words, squatters could only ask for consideration of their claim, there was no guarantee that they would be allowed to purchase the lot on which they had squatted. However, the government tended to be lenient with squatters, and the Crown Lands Department instructed its local agents on numerous occasions that they were not to sell lots that were occupied and improved upon, unless they first informed the squatters that they were entitled to apply to purchase the land at private sale by a certain date.<sup>36</sup> Nevertheless, many complaints that such claims had been ignored reached the government. Part of the task of the investigators was to ascertain the truth of these allegations.

In her work on the land policies of Upper Canada, Lillian Gates devoted a few pages to the Huron and Bruce and the Wellington County investigations. Her perspective differs from that adopted here since she examined the investigations from the point of view of the government and was concerned more with the reasons that prompted the investigations and the outcomes. As well, from the references she used, it appears that Gates did not look at the original manuscript reports and their accompanying evidence

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<sup>34</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands, Initial Report of the Huron and Bruce Commission, 1 February 1857, p.28, RG 1-14-3-1, A.O.

<sup>35</sup> Advertisements, “Land Agency, Elora,” Elora *Backwoodsman*, 1 June 1854, p.3, 8 June 1854, pp.2, 3, A.O., 15 June 1854, p.2, Elora *Observer*, June 8, 1859, p.1.

<sup>36</sup> General Instructions to District or Resident Agents, Sales of Crown Lands, VII, November 1845, Crown lands agents’ records for Simcoe County, RG 1-499-0-8, A.O.; Circular to Agents, 25 January 1844, pp.55-56, RG 1-6-3-3, and Circular to Agents, 29 January 1851, p. 124, RG 1-6-3-6, Commissioner of Crown Lands’ outgoing correspondence to land agents, RG 1-6-3, A.O.

using instead the copies printed in the sessional papers of the legislature.<sup>37</sup> Gates' analysis and conclusions reflect her approach to the question of land policy, emphasizing their complicated nature.<sup>38</sup>

#### Identifying a Moral Economy: The Huron and Bruce Commission

The Executive Council appointed Olge R. Gowan and Morgan Hamilton in response to petitions and complaints regarding the conduct of Crown land agents that had been received by local elected officials, the Commissioner of Crown Lands and the Governor-in-Council. Gowan's biographer, Hereward Senior, suggests that Gowan had earlier served as a Crown land agent in the Johnstown District, although there is no evidence in the Crown Lands Department records to support that contention. Nevertheless, he had earned a reputation as an advocate for settlers.<sup>39</sup>

Gowan and Hamilton were commissioned to "investigate the mode in which the lands in the newly surveyed Townships, in the united Counties of Huron and Bruce, had been disposed of."<sup>40</sup> Specifically, "the object the Government had in view... was to obtain information regarding complaints, continually being made by persons represented to be settlers in the newly surveyed Townships, of the manner in which the lands have been disposed of to their prejudice."<sup>41</sup> The persons subject to scrutiny were John Clark and Alexander McNab, the agents for Huron and Bruce Counties, respectively.<sup>42</sup> The greater part of Gowan and Hamilton's efforts was expended in the investigation of Clark.

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<sup>37</sup> Gates does not mention the investigation of John E. Brooke in Kent County, a surprising omission given that the nature of the allegations and the findings of that investigation were, in many ways, very similar to the others and the investigation was carried out so soon after the Wellington County investigation. However, if Spragge's report on Brooke was never transferred to the government from the Crown Lands Department, Gates was probably unaware of it because she does not seem to have looked closely at the internal records of that department.

<sup>38</sup> Gates, *Land Policies*, pp.291-294.

<sup>39</sup> Hereward Senior, "Ogle R. Gowan," *Dictionary of Canadian Biography*, Vol. X, pp. 309-314.

<sup>40</sup> Original letter of commission to Gowan and Hamilton, dated 4 April 1856, quoted by them in Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands, Initial Report of the Huron and Bruce Commission, 1 February 1857, p.1, RG 1-14-3-1, A.O.

<sup>41</sup> Further instructions to Gowan and Hamilton, dated 14 April 1856, quoted by them in Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands, Initial Report of the Huron and Bruce Commission, 1 February 1857, p.2, RG 1-14-3-1, A.O.

<sup>42</sup> While portions of Huron and Bruce Counties had been transferred to the Canada Company, several townships in each remained with the Crown. John Clark was responsible for the Crown lands in Ashfield, Grey, Howick, Morris, Turnberry and Wawanosh townships in Huron. His agency office was located in Goderich. Alexander McNab was responsible for the Crown lands in Arran, Brant, Bruce, Carrick, Culross, Greenock, Huron, Kincardine, Kinloss and Saugeen Townships in Bruce County.

The spelling of the surname of the Huron County agent is found as both Clark and Clarke.

Notices of the investigation were placed in newspapers in Toronto and Huron, and posted throughout those places.<sup>43</sup> The commissioners noted that they made extensive use of local assessment rolls as “the best criterion to which we could have referred, for comparison with our own notes; more particularly in all cases of Actual Occupation and Settlement.”<sup>44</sup> Paying property taxes had been acknowledged for a long period of time as conferring some rights or interest to a piece of land when the title was in some dispute.<sup>45</sup> Assessment rolls, in addition to showing that property taxes had been charged, also noted the value of cleared land, of houses and buildings, and other indicators of settlement. These facts helped establish whether someone was an actual settler and provided information on how long a particular piece of property had been occupied or improved.

Such information was important to the investigators because of the charges made against Clark. Most of the cases brought before the investigators through the complaints and petitions had to do with Clark ignoring the claims to pre-emption privileges of actual settlers, and selling the lands occupied by these settlers to non-resident speculators during the 1854 sales. Gates referred to the investigation as a “special squatter commission” whose job was “to untangle the conflicting claims.”<sup>46</sup> She disregarded the fact that the commission was appointed to investigate the land agents and the allegations of irregular activities; such an interpretation would not have fit in with her argument emphasizing the muddle the government had made of its land distribution activities. Gowan and Hamilton were to examine the individual cases primarily as a means to see whether the charges were substantiated by the evidence. While they did make numerous recommendations regarding the final outcomes of many of the disputed lots, that was only one part of their commission.

Interestingly, in opening her discussion of this investigation, Gates made reference to a newspaper article from the Elora *Backwoodsman* in which Clark was quoted as saying that the problem in Huron County had been the presence of “professional squatters.” (The inference was that the same problem could also be expected in Wellington County where Elora was located.) So-called professional squatters made a few token improvements and then sold them to others who could then

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The spelling of the Bruce County agent also varies within the printed and manuscript reports: McNab, MacNab, and McNabb, although McNab is the most commonly found spelling. It also appears that this Alexander McNab was the same man who had earlier carried out the investigation of Agent Durnford.

<sup>43</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands. Initial Report of the Huron and Bruce Commission, 1 February 1857, p.5, RG 1-14-3-1, A.O.

<sup>44</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands. Initial Report of the Huron and Bruce Commission, 1 February 1857, p.7, RG 1-14-3-1, A.O.

<sup>45</sup> Michelle Vosburgh “Bending the Rules: Inspectors and Surveyors and Upper Canada’s Land Policies,” *Ontario History*, 94 (2002), 156.

<sup>46</sup> Gates. *Land Policies*, p.292.

try to make a pre-emption claim.<sup>47</sup> Defending Clark, Gates stated that the department told agents that improvements of that sort were not to be treated as pre-emption privileges. Had this rule been enforced, the purchasers of the improvements would be the ultimate losers. The evidence in the actual report, however, indicated that Clark had ignored the legitimate claims of many settlers who had made extensive improvements themselves as well as the claims of those who had purchased improvements, selling the land instead to speculators through the use of third-party names.

The broad extent of these activities became apparent when the investigators saw advertisements from speculators listing lots that were available for sale. Gowan and Hamilton made much of these notices and reported that they could only copy some of the advertisements that were presented to them. Table 5:2 indicates the amount of land in each township of Huron County that was advertised for sale on the lists the commissioners were permitted to copy.

<i>Township</i>	<i>No. of Lots</i>	<i>No. of Acres</i>
Grey	63	6 300
Howick	411	41 100
Morris	22	2 200
Turnberry	76	7 600
Wawanosh	6	600

Non-resident speculators in the three townships most affected held a total of 55,000 acres: Grey, Howick and Turnberry. The commissioners noted that if they added to the above numbers an estimate of the lots on the lists they were not permitted to copy then in the townships of Grey, Howick and Turnberry “we have every reason to believe, that very nearly one-half of the whole lands were disposed of to non-resident speculators.”<sup>49</sup>

The effects of such large-scale speculation hampered and discouraged settlement and improvement not only on individual lots, but in the community as well. A large part of the commissioners’ report was devoted to discussing these problems and suggesting solutions. They had a lot to say about a government which had consistently imposed

<sup>47</sup> Elora *Backwoodsman*, 7 September 1851, clipping in “Squatters,” RG 1-9, Box 19, A.O. The editor of the Elora *Backwoodsman* drew attention to the similarities between Huron and Wellington counties again in 1854, arguing that the government, by not selling certain townships (like Minto), was forcing people to squat on the lands. 29 June 1854, p.2, A.O.

<sup>48</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands, Initial Report of the Huron and Bruce Commission, 1 February 1857, p.12, RG 1-14-3-1, A.O.

<sup>49</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands, Initial Report of the Huron and Bruce Commission, 1 February 1857, p.12-13, RG 1-14-3-1, A.O.

settlement duties on sales and even grants of land, but then failed to enforce those conditions. In addition to the limit of two hundred acres per person, the lands in question were sold upon condition of “immediate and continuous” settlement, with annual amounts of land to be cleared and the erection of a “dwelling House, at least 16x18 feet.” Importantly for this investigation, the regulations specified that there were to be no transfers of “rights” or “interests” without permission of Government.<sup>50</sup> Purchasers received a “Licence of Occupation” only. Upon fulfillment of the settlement conditions and the payment of all the instalments and interest, they could apply for the patent, but until then title remained with the Crown. Gowan and Hamilton noted that in no case had they seen a non-resident speculator comply with the conditions of sale. When it was thought necessary, purchasers made half-hearted attempts to solidify a claim by employing a couple of men to clear a few acres and build a shack. After Gowan and Hamilton had travelled through the area, a few speculators had done this, “hoping thereby to evade the stringent and implicit conditions.” This hasty action, in the opinion of the commissioners, was not enough to satisfy the conditions: “Actual settlement must be immediate and continuous and no mere skam[sic].”<sup>51</sup>

The failure of the government to ensure fulfillment of the settlement conditions hampered settlement, and demoralized the settlers in those areas who were denied roads, schools, churches and all the other niceties that came with a settled, prosperous community. Gowan and Hamilton wrote at length regarding the opportunities that they believed were being lost on account of the relaxed enforcement of regulations. The government was not only failing in its duty to actual settlers, but it was hampering its own efforts at encouraging progress throughout the province and impeding the further sales of Crown lands. Gowan and Hamilton scolded the government for failing to look beyond land sales to the larger picture. The government and the whole province would benefit far beyond the revenue from fees or purchase prices for the sale of Crown lands if settlement was encouraged.

No thoughtful mind can for a moment contend, that the money which may be obtained for the land will bear any comparison to the value or importance of actual settlement. The one is not merely temporary and trifling[sic], but often not even equivalent to the first expenditure, while the other is not only a source of annually increasing wealth, but carried with it so many elements of power and greatness, monetary, political, commercial, military and social, as to counterbalance all considerations, ... in the selling price of the public lands.<sup>52</sup>

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<sup>50</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands. Initial Report of the Huron and Bruce Commission, 1 February 1857, p.4. RG 1-14-3-1, A.O.

<sup>51</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands. Initial Report of the Huron and Bruce Commission, 1 February 1857, p.18-19, RG 1-14-3-1, A.O.

<sup>52</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands. Initial Report of the Huron and Bruce Commission, 1 February 1857, pp.13-14. RG 1-14-3-1, A.O.



Moreover, in an effort to appeal to those members of government who would fail to appreciate the long-term benefits over the short-term tangible benefits like revenues from land sales, the commissioners also noted that unimproved, “wild” land would also limit the potential selling price of remaining lots of Crown lands. Conversely, a lot in the midst of a number of improved lots, with good roads and access to mills and markets, would fetch a higher price.<sup>53</sup>

The anger of squatters whose pre-emption “rights” had been disregarded or those settlers who occupied land in the middle of large tracts of wild land was, so the commissioners argued, completely justified. It was not fair that large-scale speculators should hinder their efforts to improve the land. Moreover, it was through the efforts of these settlers that the speculators stood to gain substantially. Some settlers, who had squatted on the land before the 1854 sales, were completely ignored in the sales of the land which they had occupied and improved. This was in disregard of government policy which allowed eligible squatters to purchase the improved lot at private sale from the government at a price determined by an inspection and valuation of that lot, instead of at auction. Due to Clark’s high-handed conduct, they stood to lose their homes and improvements, despite the fact that many had paid taxes on the lots and had never ceased occupying them. Other settlers who held lands surrounded by unimproved lots held by speculators would not only have to clear the road allowances fronting their property, but if they wanted access they would also have to clear the road allowances running across the fronts of the empty lots held by land speculators. The speculators would realize more profit since the presence of improved lands with cleared roads around their lots would increase their market value. To rectify the injustice to squatter-settlers, especially where settlement preceded the sales in 1854, Gowan and Hamilton called for the government to cancel the sales. Technically, many sales could be cancelled on the grounds that absentee owners had failed to comply with the settlement conditions.

Several of the government regulations regarding the 1854 sales could have been used to effect a form of social justice. Gowan and Hamilton recognized this, and so emphasized the importance of enforcement, especially of the conditions of sale. The victims of the laxity of the government were justified in their anger. Their petitions and complaints to the government had been taken seriously enough to warrant the appointment of a commission to investigate the allegations. The regulations that were intended to prevent speculation and to protect the interests of settlers created a form of moral economy in the land sales. The lack of enforcement nullified that economy. It was not necessary to create new regulations, as the investigators noted, merely to enforce the old ones.

Gowan and Hamilton concluded the main body of their report by outlining the criteria and principles they had used to make their decisions regarding the resolution of

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<sup>53</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands, Initial Report of the Huron and Bruce Commission, 1 February 1857, pp.14-15, RG 1-14-3-1. A.O.

specific cases that they heard. They meant these principles to be applied to similar cases throughout the province, and to serve as guidelines for Crown land agents in the future. The most basic and fundamental recommendation and the most important one, was that where non-resident purchasers violated conditions of sale the purchases should be cancelled. “[W]e earnestly urge its adoption, as the only true principle upon which settlement should be made, the Country improved and general discontent allayed.”<sup>54</sup> The remaining recommendations reflected the opinions Gowan and Morgan had expressed earlier in their report and similarly stressed the benefits of allowing actual settlers greater access to land and restricting or removing the right of non-residents to hold land for speculative purposes.

The commissioners strongly supported settlers, including those who squatted on Crown land. Gowan and Hamilton seemed reluctant to use the word squatter, favouring instead the appellations actual settler or resident settler. However, that did not mean that they considered all squatters as deserving of favourable consideration, for they carefully outlined the criteria by which agents should judge squatters. Gowan and Hamilton’s investigation focused on sales in Clark’s agency made on or after the auction of public lands in September 1854. They determined that if it could be proven – through affidavits, assessment rolls and inspection reports or by other evidence – that a settler had entered and made improvements on a lot before that date, then the settler’s claim to the lot in question should be allowed. In other words, those who submitted claims to lots settled after September 1854 were not entitled to have the same consideration for pre-emption as those on lots settled before the auction. Those who settled before September 1854 were considered to be legitimate settlers who were only squatting because the lands had not yet been opened for sale. The commissioners were more suspicious of parties who squatted on lands that were available for sale. It was presumed that such people were intending in some way to take advantage of the government. Some may have hoped to claim pre-emption so they could defer paying for the land but at the same time qualify for the minimum price. Others may have squatted with the intention of later selling their improvements and “right” to others. Gowan and Hamilton sought to prevent such abuses of the pre-emption policy by suggesting that actual settlers be allowed a partial “right” to pre-emption, in that they be allowed to purchase the land on which they settled and made improvements, “but not at the original price but at the actual present value [including their improvements], to be determined by the resident Agent.”<sup>55</sup>

In a subsequent report to the government in 1858, Gowan and Hamilton reiterated their basic recommendations. Written in response to a number of criticisms about the first report, this one tried to clear up a number of alleged inaccuracies. Gowan and Hamilton attributed the misunderstandings to the fact that the evidence presented during the course

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<sup>54</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands, Initial Report of the Huron and Bruce Commission, 1 February 1857, p.71. RG 1-14-3-1, A.O.

<sup>55</sup> Olge R. Gowan and Morgan Hamilton to Commissioner of Crown Lands, Initial Report of the Huron and Bruce Commission, 1 February 1857, p.72. RG 1-14-3-1, A.O.

of the investigation was not published with the report. They stood behind their findings, and their support for actual settlers over non-resident speculators. “If justice is not meted out to the laborious pioneers of the forest, before whose axes the woods disappear, it will not be from any want of desire on the part of the Commissioners to secure to them the rights of labour or the obligations of duty.”<sup>56</sup> They reaffirmed that in the specific complaints regarding Huron County lands, the problems were largely the fault of the Crown land agent, John Clark, “Mr. Clark relied too much upon his son-in-law and others who had access to his office, and who, in part, managed, if they did not control the business of his agency.”<sup>57</sup> Again, they also pointed to the fact that strict enforcement of the regulations would have minimized problems.

In this final report, they also discussed the charges made against the Bruce County agent, McNab, and their findings with regards to those allegations. In general, although the charges made against McNab were similar to those levelled against Clark, upon examination of the complaints, the commissioners did not find the sort of systemic corruption that characterised Clark’s agency.<sup>58</sup> There were some irregularities in an isolated number of cases. Gowan and Hamilton believed that most resulted from simple mistakes or misunderstandings rather than attempts to circumvent the land policy. For example, there were outward appearances of fraudulent activities because McNab was not only a Crown land agent but also the local agent for the Bank of Upper Canada. Further, McNab seemed to have made a practice of pencilling in the names of persons who allegedly claimed certain lots, and was accused on the face of such notations, to have favoured certain parties in the sales of lots, to the detriment of those who applied to purchase such lots. Gowan and Hamilton, however, were convinced that the pencilled notations were merely intended as a reminder of claimants; McNab did not use them to extort money from other would-be purchasers. Unfortunately for McNab, these notations were viewed rather suspiciously by applicants, especially by those disappointed in their attempts to purchase lands. McNab sold more than 200 acres to the same individual in some cases, but “the Commissioners are more inclined to believe that such errors were the result of business pressure, and of other accidental circumstances” since it would have been so easy for him “to have evaded this portion of the Government instructions without detection, had he been inclined to do so.”<sup>59</sup>

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<sup>56</sup> Gowan and Hamilton, *Second and final report of Huron and Bruce Commission*, published as part of Appendix No. 22, *Journals of the Legislative Assembly of the Province of Canada*, Vol.16, 1858.

<sup>57</sup> Gowan and Hamilton, *Second and final report of Huron and Bruce Commission*, published as part of Appendix No. 22, *Journals of the Legislative Assembly of the Province of Canada*, Vol.16, 1858.

<sup>58</sup> McNab’s general conduct as a Crown land agent received positive reviews in several articles reprinted in the *Toronto Globe*, “The Indian Sale,” 11 September 1856, p.2, A.O. and “County of Bruce” 11 October 1856, p.2, A.O.

<sup>59</sup> Gowan and Hamilton, *Second and final report of Huron and Bruce Commission*, published as part of Appendix No. 22, *Journals of the Legislative Assembly of the Province of Canada*, Vol.16, 1858.

The evidence presented did not support the majority of the charges brought against McNab. The commissioners noted the contrast between the townships under McNab's charge and those in Huron County under the agency of Clark to underscore Clark's clear abuses of the land policy. The "extensive tract of country placed under his [McNab's] care has been well settled and managed, the prosperous settlements and extensive improvements, with which it every where abounds, affords ample proof" of McNab's devotion to the principles of the government's land policy.<sup>60</sup> Clark's actions, which favoured speculators over settlers, meant that many more unoccupied lots remained in Huron County, and there were far more complaints from residents because of the problems associated with non-resident owners.

The commissioners, attentive to the political expediency of supporting their own recommendations, did not closely analyze their own perceptions of the proportion of settled lands, and the overall contentment and success of the settlers in those two areas. Unfortunately, they did not provide comparative statistics concerning the number of vacant or squatted lots that they found during their investigation. The contrast between the first printed report and the final printed one was pronounced, not only in tone, but also in content. Gates argued that the report on McNab was too mild, "if not actually whitewashed." As proof of this she pointed out that the evidence against McNab was not printed.<sup>61</sup> Unfortunately, Gates again relied on the printed reports, instead of the original manuscript reports, which do contain the evidence from the investigation of McNab as well. It may be that the government, for the sake of economy, declined to print all the additional material.

There is also evidence that suggests that Gowan and Hamilton's report and findings were made with political ambitions in mind, rather than objectivity. One accusation came, however, from a person whom the investigators accused of speculation. Thomas McQueen, editor of the *Huron Signal*, published a pamphlet refuting the accusations, and accusing Gowan and Hamilton of attacking Clark, and others because of their political leanings and influence in the area. McQueen argued that the "Squatters' Commission," as the investigation was known, was appointed to appease potential votes in the upcoming election, and ensure the election of the Conservative party member, and few lasting changes in the land policy could be expected. While most of the attack is focused on Gowan, McQueen censured both gentlemen for their conduct during the investigation. Hamilton was left for quite a while to hear testimony on his own. He "wrote down everything that was presented, and who 'tis said had often to be reproved for his readiness to assist the Complainants to make out a strong case against the

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<sup>60</sup> Gowan and Hamilton. *Second and final report of Huron and Bruce Commission*, published as part of Appendix No. 22, *Journals of the Legislative Assembly of the Province of Canada*, Vol. 16, 1858.

<sup>61</sup> Gates, *Land Policies*, p.292.

accused.”<sup>62</sup> McQueen cited too Gowan and Hamilton’s presence at a political meeting, where Hamilton was heard to be praising the local member, William Cayley, for his support for the government attack on land speculation. McQueen argued that he was accused of being a land speculator, because, as a Clear Grit, he stood in the way of Cayley’s election and that Clark was being used as an easy target to achieve the government purposes in being seen as acting on problems with the land distribution system. McQueen’s pamphlet is a reminder that politics were an important factor in this investigation even though the allegations had validity.<sup>63</sup>

Hamilton’s conduct also came under scrutiny in Toronto’s *Daily Globe*, where it was alleged that he, and others, had speculated in lands in the Greenock town plot in Bruce County by virtue of his position as a Commissioner to investigate the Crown land agents for Huron and Bruce Counties. The paper suggested that Hamilton had threatened squatters into selling their claims by using the weight of his position as a commissioner, and that based on those claims, Hamilton and others bought the land very cheaply from the government. Mr. Webster, an M.P. for North Wellington, appeared as the purchaser, having bought the thousand acres for £500 when the land could have realized £30 000 – 40 000 at auction. The paper suggested that Webster would “not fail to prove his gratitude” by supporting the coalition government then in power.<sup>64</sup>

Despite their strong arguments in favour of encouraging settlement and discouraging as much as possible the speculation of Crown lands, Gowan and Hamilton’s report had little impact, other than the resolution of individual cases. Indeed, the agent appointed to replace Clark, a man named Charles Widder, had been extensively involved in speculation in Huron County, controlling 8000 acres at one time.<sup>65</sup> Yet, Widder did not come under the same scrutiny as Clark. McQueen questioned Gowan about Widder’s

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<sup>62</sup> Thomas McQueen, “The Land Frauds. Squatters’ Commission. Facts of the Case. to Olge R. Gowan Esq.,” p.9. RG 1-65-0-1. Department of Crown Lands [document compilation volume]. A.O. Hamilton’s conduct during the investigation was also brought into question concerning his role in “The Greenock Town Plot Swindle,” *The Daily Globe*. Toronto, 7 February 1859.

<sup>63</sup> Partisanship is also suspect in the case of a squatters’ claim made to Gowan and Hamilton by one Alexander Duncan, who, in a later letter to the Commissioner of Crown Lands, was noted as “a good Conservative” [emphasis in original]. Whether or not this had any bearing on Gowan and Hamilton’s support for Duncan’s claim is not directly stated, but the possibility certainly exists. See Numeric land files, RG 1-246-3 Box F-35, File 2375/59, letter dated 19 August 1861, A.O.

<sup>64</sup> “The Greenock Town Plot Swindle,” *The Daily Globe*, Toronto, 7 February 1859. The question also arises, was Hamilton seeking to remove the Crown land agents because they stood in the way of his speculation activities. Such a possibility had precedents in Upper Canadian politics. David Shanahan argues that Samuel Jarvis’ position and reputation in the Indian Department was attacked because his political enemies wanted to discredit and remove him from office – he stood in the way of their profit-making schemes for the Indian lands. Shanahan, “Tory Bureaucrat as Victim,” 61-62.

<sup>65</sup> Gates, *Land Policies*, p.292. Thomas McQueen suggests that Widder was not the owner of this land, but was acting as an agent for the owner. “The Land Frauds” pp. 9-10, RG 1-65-0-1, A.O..

appointment, “Tell us plainly, Sir, was it because he was not a ‘Clear Grit Patriot.’”<sup>66</sup> In order to resolve the disputed claims, the local agents, with the assistance of Gowan or Hamilton, were told to follow the law and the regulations.<sup>67</sup> While later investigations of agents found similar abuses of the land policy, those reports did not have the same tone of support for the actual settler, nor did they expound at length on the benefits of actual settlement as Gowan and Hamilton had in their Report of the Huron and Bruce Commission.

#### Treading a Fine Line: Andrew Geddes, Crown land agent

Soon after the final report of the Huron and Bruce Commission was presented to government, two more investigations of Crown land agents took place. Reflecting the findings of the earlier investigation by Gowan and Hamilton, these were painstaking examinations of the affairs and office procedures of Andrew Geddes, Wellington County and John E. Brooke, Kent County. The men were accused of fraud and irregularities in the business of their agencies. The department seems to have treated these investigations as internal departmental matters. The Commissioner of Crown Lands gave William Spragge the task of investigating the allegations. The Governor in Council did not formally commission him.<sup>68</sup> Although both reports were submitted to the Provincial Secretary, Charles Alleyn, in 1859, one in April and the other in December, neither was published by the government.

The first report to be completed concerned Andrew Geddes of Wellington County whose office was in Elora. The department had appointed Geddes as agent in 1845 and by the time of the investigation, he was an elderly man (Spragge believed him to be in his 78<sup>th</sup> year).<sup>69</sup> Geddes was part of the local elite. His daughter, Margaret, married David Gilkison, a businessman who had continued his father’s, Jasper Gilkison, development of 14,000 acres in the township of Nichol. Jasper Gilkison had also founded Elora. David Gilkison set out to equip the town with the amenities needed to make it an attractive place for potential buyers of town lots as well as increase the value of the surrounding farm

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<sup>66</sup> McQueen, “The Land Frauds” p.10. RG 1-65-0-1, A.O.

<sup>67</sup> Gates, *Land Policies*, p.293.

<sup>68</sup> Part of the reason for the less formal and less public investigations may have been the costs associated with Hamilton and Gowan’s commission. In the end, Morgan Hamilton was paid \$6,376.00 for his services and Olge R. Gowan, \$5,990.00. In addition, the department had to cover Hamilton and Gowan’s expenses, \$2,732.40 and \$206.08 respectively. In total the investigation cost \$15,299.48. Huron and Bruce Commission financial statements, pp.3-8, Commissioner of Crown Lands statement books, volume 12, RG 1-19-0-3, A.O. (That figure, of course, does not include all the extra costs to the department to work out all the land disputes. For the investigations carried out by Spragge, the department had only to cover his expenses.) An article in the Owen Sound *Comet* pointed out that Gowan was running as a candidate for MP in Leeds and Grenville counties at the same time that he was receiving \$10 per day as a commissioner, 16 April 1858, p.2, A.O.

<sup>69</sup> Spragge, Report on Accusations of Fraud – Mr. Andrew Geddes, 26 April 1859, Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-1, A.O.

land. Gilkison's biographers suggest that his father-in-law, Andrew Geddes, acted as his land agent when Gilkison was absent from Elora in 1837-38. When Gilkison left Elora permanently to live in Toronto because of his wife's poor health, Geddes probably continued to look after his son-in-law's interests. Upon moving to Toronto, Gilkison's activities suggest that he was well-connected.<sup>70</sup> Correspondence among Geddes' papers suggests links with the province's elite.<sup>71</sup>

Spragge's report on Andrew Geddes included a large number of affidavits; he spent 8-22 March 1859, except for "an adjournment over three business days, by mutual consent," carrying out the examination of witnesses.<sup>72</sup> The report is an enlightening glimpse into the daily office tasks and procedures of a busy Crown land agency. It shows how assigned duties were interpreted and carried out, as well as how land policy could be manipulated for profit. In addition to Spragge's report, Geddes' Crown land agent records from this period are also extant. They offer another perspective on what had been a very controversial sale in September 1854. The result is a rare detailed picture of an agency and of a Crown land sale.

A single petition signed by over 140 people alleged misconduct by Geddes.<sup>73</sup> Several signatories were considered prominent enough to be mentioned by name in the report: William Loring and Matthew Anderson, Justices of the Peace. The petition was taken seriously by the Governor and Executive Council for they instructed the Crown Lands Department to carry out an investigation. In essence, the charges resembled those discussed earlier. It was claimed that Geddes had failed in his duties to prevent speculation, had actually abetted speculation, and had allowed the use of names of third parties, "the names of Friends, little children and fictitious names."<sup>74</sup>

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<sup>70</sup> Gilbert A. Stetler, "David Gilkison," *Dictionary of Canadian Biography*, Vol. VIII, pp.327-328.

<sup>71</sup> See Geddes' Crown land agent records, particular his correspondence books: Crown lands agents' records for Wellington County, RG 1-495, A.O.; several letters regarding Geddes (20 July 1850, 14 November 1859) in the Charles Clarke fonds, F 26, A.O. and Geddes family file and papers held by the W.C.M.A.

<sup>72</sup> Spragge, Report on Accusations of Fraud – Mr. Andrew Geddes, 26 April 1859. Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-1, A.O.

<sup>73</sup> Unfortunately, the original petition has not come to light so far among the holdings of the Archives of Ontario or the National Archives of Canada. The information about the petition that is given here is taken from Spragge's report, in which he refers to the petition.

<sup>74</sup> Spragge, Report on Accusations of Fraud – Mr. Andrew Geddes, 26 April 1859. Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-1, A.O.

Like the other investigations, many complaints stemmed from a specific auction of public lands when Minto Township was opened for sale.<sup>75</sup> As Crown land agent for Wellington County, Geddes supervised this sale in September 1854. The correspondence in the agent's records shows that although he found the sale stressful, Geddes believed the auction went relatively smoothly and that disputes over claims had been worked out to everyone's satisfaction. The lands in Minto were in considerable demand according to newspaper accounts.<sup>76</sup> The *Toronto Leader* quoted a correspondent from Elora regarding the situation in Minto right before the auction: "there is such contention, wrangling, and even fighting amongst the *would-be* squatters, that respectable parties are almost afraid to go into the township [emphasis in original]."<sup>77</sup> Given the apparent demand, Geddes' account of the auction becomes more credible, "On Monday I had upwards of 600 people here, on Tuesday considerably more..." He also noted in his letter to the Commissioner of Crown Lands, J.C. Tarbutt that on Tuesday, the second day of the sale, "in the afternoon the fellows had a regular fight some 40 or 60 of them more or less, and next day when they came to pay their faces were patched in all directions; but on the whole they behaved very well. I have no doubt but some of them thought me very cross, as I told them plainly, that they should have *fair-play*, but if they made any noise and were refractory, I would at once *close the sale* [emphasis in original]"<sup>78</sup> Geddes went on to state that he had arranged to have some of his friends present, in addition to the Auctioneer and a Bailiff, so that those gentlemen could attest to the fair and equitable way the auction was carried out. During the course of the sale, Geddes noted that he had had two men employed in taking down the names of the purchasers and where applicable the name of individuals who claimed particular lots on account of their occupation and improvements. That original sales book would later disappear and only a copy, which was alleged to be different from the original, remained. The Monday following the sale, Geddes' began the painstaking and difficult task of settling competing claims. The work of settling these claims was difficult because sometimes as many as six people claimed the same lot. In fact, he had noted before the sale to a prospective purchaser that about three-quarters of the lots in Minto were already squatted upon and that those squatters

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<sup>75</sup> The fallout from the Minto auction plagued the Crown Lands Department for a number of years, evidence of which can be found in the numerous entries in the land file index for Minto dating to the September 1854 sale. Minto Township entries. Land rolls. Numeric Land files system, RG 1-246-2, Vol. 5, pp. 107-129. A.O.

<sup>76</sup> "A Few Words of Advice," *Elora Backwoodsman*, 2 March 1854, p.3, A.O.; "Minto," *Elora Backwoodsman*, 8 June 1854, p.2, A.O.; "Why don't they sell?" *Elora Backwoodsman*, 29 June 1854, p.2, A.O.; "Sale of Minto Lands," *Elora Backwoodsman*, 7 September 1854, p.2, A.O.

<sup>77</sup> "Crown Lands – the right of pre-emption," *Toronto Leader*, 8 September 1854, p.2, A.O.

<sup>78</sup> Andrew Geddes to J.C. Tarbutt, 16 September 1854, pp.216-218. Letter Book of outgoing correspondence. Crown lands agents' records for Wellington County, RG 1-495-0-28 (Box 4), A.O.



would have preferential claims.<sup>79</sup> Geddes wrote just before beginning the laborious process of hearing the claims that: “I am afraid [settling the disputed lots] will be a very troublesome business. However we shall give it a fair trial. Mr Gibson and Mr Allan has[sic] promised to be with me. The united wisdom of three of the Greatest Men in Elora cannot easily be withstood and we are to have the assistance of my son who is a Lawyer. There are nearly 300 disputed Lots.”<sup>80</sup> In settling many of the disputes, Geddes and his assistants decided to open the lot to bidding between the parties.<sup>81</sup> Despite his precautions and efforts, many felt that Geddes had not done his job properly and that he had allowed much of the land in Minto to go to people who did not intend to settle, but wanted to make a profit.

Much of the suspicion arose from the fact that would-be purchasers who approached Geddes after the auction to inquire if any vacant Crown lands remained were told by him that there were no lots left. Very conveniently though, they were informed that Geddes’ son, James had lots for sale. James Geddes, with the assistance of others, most notably George Dolman, had purportedly acted as an agent for a number of people at that auction. He bid and paid for land using other people’s names. Geddes himself wrote a letter to a purchaser – a certain Benjamin Hagarman – that Dolman had successfully bid on four lots for him. But Dolman did not have the means to pay the first instalment, so Geddes had paid it for Hagarman, “so as to secure you [Hagarman].” In addition to paying Dolman for his services, Geddes paid off “the two parties claiming these Lots.” Geddes went on to request that Hagarman send the money quickly, “I need not tell you how I am situated, *yourself* and my friend Mr Williams are the only persons I have done anything for... [emphasis in original]”<sup>82</sup> One deponent, John Stagman Bridgford, testified that on the first day of the auction, while the auctioneer stood in the doorway of Andrew Geddes’ office, carrying out the sale, Dolman conveniently offered bids from inside the office, instead of standing outside with the rest of those attending. While this in itself was not illegal, it was the type of cozy arrangement that raised suspicions.

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<sup>79</sup> Andrew Geddes to Wm Bartlet, 21 August 1854, pp.203-204, Letter Book of outgoing correspondence. Crown lands agents’ records for Wellington County, RG 1-495-0-28 (Box 4). A.O.

<sup>80</sup> Andrew Geddes to J.C. Tarbutt, 16 September 1854, pp.216-218, Letter Book of outgoing correspondence. Crown lands agents’ records for Wellington County, RG 1-495-0-28 (Box 4). A.O. Mr. Allan was probably Charles Allan. Allan was, among other things, a township councillor, county warden, member of legislative assembly, speculator and railway promoter. He had also been a partner, along with Andrew Geddes and Jasper Gilkison, in the private company which began the Elora and Saugeen Road. Kenneth C. Dewar. *Charles Clarke; Pen and Ink Warrior*. (Montreal and Kingston, 2002), pp.128-9.

<sup>81</sup> Andrew Geddes to Charles Chalmers, 25 September 1854, p.220-221, Letter Book of outgoing correspondence. Crown lands agents’ records for Wellington County, RG 1-495-0-28 (Box 4). A.O.

<sup>82</sup> Andrew Geddes to Benjamin Hagarman, 11 October 1854, p.229, Letter Book of outgoing correspondence. Crown lands agents’ records for Wellington County, RG 1-495-0-28 (Box 4). A.O.

Spragge began his report by reviewing the evidence presented by the petitioners. He had taken sworn affidavits from some and had letters from others. He concluded that fifteen petitioners were deliberately misled with regards to the contents and the purposes of the petition. Of those fifteen, two repudiated their signatures. The others all claimed that the petition had been represented to them as a protest against high land prices, the prevalence of speculating and the lack of enforcement of settlement duties. Sylvanus Beddin of Maryborough Township, could well have spoken for many. When he signed it he was “unaware that it contained any complaint against Mr. Andrew Geddes and had he known that such was the case, he would not have signed it.” The only person named as misrepresenting the true purpose of the petition – that it was calculated to topple Andrew Geddes – was John Jacob of Elora. When Spragge began his investigation in Elora he was called upon by George A. Drew, a barrister-at-law in that town, who informed him “that he would appear on behalf of the Petitioners, assisted by one of them; Mr. John Jacob of Elora, his brother-in-law.”<sup>83</sup>

The same George Drew had once been a business partner of James Geddes, the son of Andrew Geddes, but terminated their partnership abruptly in July 1856. James Geddes, who comes under considerable suspicion in the investigation, testified that Drew had removed all of Geddes’ books and papers from his safe without his knowledge or consent. Some of the missing papers and books were returned over a week later, but James Geddes testified that among the papers not returned were land transfers and receipts that directly related to the investigation. Drew said in his affidavit that he resorted to removing the papers because Geddes would not meet with him to settle their affairs reasonably. He had separated the partnership and private papers, and returned all Geddes’ private papers.

Of the petitioners who did appear before Spragge to make affidavits, only one (other than John Jacob) came forward to sustain the charges made in the petition: David Nickerson. Of this turn of events, Spragge remarked that it was important to note that of those petitioners who came forward, the majority “knew of no foundation for the charges which they have brought against the Local Agent.” It was thus left up to Drew and Jacob to bring forth the evidence that would support the petition’s allegations. Spragge insisted that they “prove not only the general but the specific charges which the Petition contains.” The general charges seemed to be substantiated by the evidence presented, but “none of the specific instances or individual charges of wrong doing have been made good in a manner connecting the Local Agent with certainty with them.” In fact, Spragge admitted that during the first part of his enquiry in Elora the evidence presented was so

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<sup>83</sup> Spragge. Report on Accusations of Fraud – Mr. Andrew Geddes. 26 April 1859. Report on Accusations of Fraud against Crown Lands Agents. RG 1-14-2-1. A.O.

weak that he felt there was little reason for him to continue the investigation. He was later to change his mind when several affidavits indicated that he should investigate further.<sup>84</sup>

The most common accusation was that Andrew Geddes allowed his son's abuses and speculation. While unable to prove his suspicions, Spragge attributed the problem of the missing sales book from the Minto auction to the access that Geddes' son had to the agency's records. The disappearance of the original sales book, which recorded the names of successful bidders and their payments, caused a number of problems. Geddes' copy was the subject of suspicion. As Spragge discovered, the discrepancies in the copy of the sales book usually seemed to favour speculators over the settlers who testified that they had purchased particular lots at the auction. Instead of the settler's name and payment, the name and payment of a speculator (or a third party) appeared against the lot, usurping the settler's claim to the lot.<sup>85</sup>

The conclusions of Spragge's report were, in contrast to the convoluted evidence, straightforward and his recommendations clear. He placed much of the blame for the "irregularities" upon the shoulders of James Geddes and his friends like George Dolman.<sup>86</sup> Spragge did not find Andrew Geddes guilty of collusion to deprive people of their rights to land or to facilitate speculation. He noted that the elder Geddes had failed, nonetheless, to take adequate precautions and actions to prevent speculation and abuses.<sup>87</sup>

It seems unlikely that Spragge looked closely at Geddes' correspondence records for the period of time immediately after the auction sale of Minto lands in 1854. If he had done so, he might have formed a harsher opinion of Andrew Geddes' actions. The letter to Benjamin Hagarman, noted earlier, is one example. In another letter to Hagarman, Geddes remarked that even at the prices being charged by the speculators it would still be possible to purchase lands in Minto and then resell them at a good profit: "It is far better

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<sup>84</sup> On 17 March 1859, Spragge took affidavits from Thomas McComb and Malcolm McMaster. Their testimony compelled Spragge to remain in Elora and expand his investigation. Spragge, Report on Accusations of Fraud – Mr. Andrew Geddes, 26 April 1859, Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-1, A.O.

<sup>85</sup> Spragge, Report on Accusations of Fraud – Mr. Andrew Geddes, 26 April 1859, Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-1, A.O.

<sup>86</sup> It would appear that James Geddes was accused of and tried for forgery in connection with his business in Elora later in 1859, Andrew Geddes to Charles Clarke, November 14, 1859, Charles Clarke Fonds, F 26, A.O. In July of that year, notices appeared in the *Elora Observer* and the *Globe* of the auction of James Geddes' house and contents, along with his horses and carriage, as well as the sale of a number of his land holdings, the proceeds to go to his creditors. *Elora Observer*, 13 July 1859, pp.2,3, 22 June 1859, p.3, and *Globe*, 5 December 1859, p.1. A notice in the *Globe* in 1865 suggests that James Geddes was then working as a merchant in Chicago, 1 November 1865.

<sup>87</sup> The anonymous "Minto Settler" who complained of the use of third party names to acquire land in Minto township likewise had a favourable opinion of Andrew Geddes, "who is a gentleman in my opinion." "Correspondence," *Elora Backwoodsman*, 5 October 1854, p.2, A.O.

speculating in land than being a poor C.L.A.”<sup>88</sup> Other letters also imply that Geddes was not content to remain a “poor C.L.A.”<sup>89</sup> Geddes may have technically carried out his duties as Crown land agent with regards to the 1854 auction of lands in Minto, but his actions were, nonetheless, questionable.

Geddes, for the most part, had not acted in a way which contravened the “letter of the law” when it came to his duties as agent, although Spragge felt that he had not lived up to the “spirit” of his duties. He had failed to facilitate and encourage settlement and improvement by not taking sufficient measures to prevent speculative activities “which were both demoralizing in their tendency and injurious to the honest Settler.”<sup>90</sup> It is important to remark here that Spragge had defined the agents’ role as one of encouraging and facilitating settlement. To keep that development process alive, he recommended Andrew Geddes personally compensate people who lost money or improvements: “For altho[sic] he may be acquitted of actual participation in the duplicity which has been practised,[sic] ... the falsification of papers could not have been consummated without his name being used and a satisfactory lesson should be inculcated which ... would contribute to a purer administration of the affairs of the Land Department.”<sup>91</sup> Such a gesture “would inspire with confidence the very numerous class who can look up only to the Government for redress when imposed upon by misrepresentations and plundered of means which, had they not been deprived of them, would [have] been ample for making a commencement in the back woods in a successful manner.”<sup>92</sup> The Commissioner of Crown Lands concurred with these recommendations, and Spragge’s judgement that Geddes was not guilty of disobeying the regulations and duties that governed the Crown land agents. He agreed that Geddes’ age and previous conduct did not warrant his dismissal.<sup>93</sup> The fact that so many had come forward to support him, and his “straightforward conduct and unexceptionable management, during the sales by auction

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<sup>88</sup> Andrew Geddes to Benjamin Hagarman, 21 October 1854, pp.235-236. Letter Book of outgoing correspondence. Crown lands agents’ records for Wellington County, RG 1-495-0-28 (Box 4). A.O.

<sup>89</sup> Andrew Geddes to John McBride, 15 November 1854, pp.248-249. Letter Book of outgoing correspondence. Crown lands agents’ records for Wellington County, RG 1-495-0-28 (Box 4). A.O.

<sup>90</sup> Spragge. Report on Accusations of Fraud – Mr. Andrew Geddes, 26 April 1859, Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-1. A.O.

<sup>91</sup> Spragge. Report on Accusations of Fraud – Mr. Andrew Geddes, 26 April 1859. Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-1, A.O.

<sup>92</sup> Spragge, Report on Accusations of Fraud – Mr. Andrew Geddes, 26 April 1859. Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-1, A.O.

<sup>93</sup> Commissioner of Crown Lands. appendix to Spragge. Report on Accusations of Fraud – Mr. Andrew Geddes, 26 April 1859, Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-1. A.O.

and the adjudications on disputed claims,” were significant in lessening the potential impact of the investigation on Geddes.

Centre of Another Network of Malice, Greed and Corruption: John E. Brooke

John E. Brooke of Kent County, Crown land agent, was the subject of an intense investigation into allegations of misconduct and abuses. As Spragge would come to learn, the methods of circumventing the government’s land policy in Kent County were almost identical to those unearthed in earlier investigations.<sup>94</sup> Unlike the other investigations, where no evidence directly linking the Crown land agent and the speculators had been found, Spragge discovered in detail how Brooke and his associates had carried out their schemes. He was also able to learn how the network was maintained, with Brooke providing the opportunities and others the capital for large-scale speculation. Other than several memorandum ledgers, Brooke’s correspondence files from his tenure as agent are no longer extant. However, the local newspaper, the *Chatham Weekly Planet*, offered some additional insights into the local reaction to the investigation.<sup>95</sup>

A complaint from Peter John Flood addressed to the Executive Council initiated the investigation of Brooke. Apparently, the Kent County Council had also sent several petitions to the Governor-General and Legislature regarding Brooke’s conduct.<sup>96</sup> An Order-in-Council, dated 22 July 1859, authorized the Crown Lands Department to carry out an investigation of the complaints which alleged that Brooke had “trafficked in Public Lands,” and was guilty of “malversation of Office.”<sup>97</sup> Like the investigations in Huron, Bruce and Wellington Counties, much of the problem seemed to stem from the Crown land sales that took place in the autumn of 1854.

Originally Spragge had intended to investigate only the specific examples cited in Flood’s complaint. His plans changed for two reasons. The first was that Peter Flood was unable to provide enough evidence to sustain his charges. The second was that County Warden James Smith, upon hearing that Spragge was taking testimony, asked Spragge to

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<sup>94</sup> In 1837, Lambton County was created out of the northern townships of Kent County. The agency continued to be referred to as the Kent County agency even though its jurisdiction encompassed both Kent and Lambton Counties.

<sup>95</sup> It is important to note that partisanship may have played a role in the newspaper’s coverage of the investigation. The *Planet* was a conservative-leaning paper. Unfortunately, it is the only Chatham paper that is extant for 1859-1860. At least one of Brooke’s associates, John Vosburgh, had been associated earlier with a Grit paper in Chatham, Sherriff J.R. Gemmill, “Historical Sketch of the Press of Chatham,” in *Kentiana*, (Kent County Historical Society, 1939), p.88. Fred Coyne Hamil, *The Valley of the Lower Thames, 1640-1850*, (Toronto, 1951) p.285. and Victor Lauriston, *Romantic Kent, The Story of a County, 1626-1952*, (Chatham, 1952), p.500.

<sup>96</sup> The *Chatham Weekly Planet*, 22 December 1859, p.2. A.O., printed a petition from the Kent County Council dated 15 December 1859, which stated that several petitions regarding the conduct of the local agent had already been submitted to the Executive.

<sup>97</sup> Spragge, Report on Accusation of Fraud, John E. Brooke, 28 December 1859, Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-2, A.O.

adjourn for several days. Smith wanted Spragge to hear other individuals who had complaints but he needed time to assemble these people. Spragge agreed to come back, especially after he had heard Flood's presentation.

Peter Flood was not an innocent victim. He was a central player in the schemes of land speculation in Kent County by virtue of his employment as a clerk in Brooke's agency office. Flood had also served as clerk for Brooke's predecessor, John B. Williams. Flood had made his complaint against Brooke because their business relationship had broken down. Williams, the previous agent, told Spragge that Brooke fired Flood for attempting to extort money from would-be purchasers. Flood's actions had "occasioned Public dissatisfaction and induced Deponent (Williams) to advise Mr. Brooke to dispense with Mr. Flood's services."<sup>98</sup> One can only surmise whether or not Flood would have continued in his job had "public dissatisfaction" not been so strong. Looking for retribution, Flood wanted to implicate Brooke without bringing attention to himself. Evasiveness was part of the reason that he was unable to substantiate his accusations. By his persistent questioning of witnesses, Spragge methodically rooted out the means by which Brooke and his acquaintances speculated in Crown lands in Kent County. Their methods of circumventing the land policy were familiar, echoing the findings of the other investigations.

Such activities had not started with Brooke. His predecessor, Williams, had not been as diligent as he might have been in preventing abuses.<sup>99</sup> He admitted as much under oath, telling Spragge that he had permitted Flood to lay claim to a number of lots. Moreover, Flood had not paid Williams the first instalment on those lots when the sales were registered. Instead, Williams covered the first instalment, and Flood later settled up with him after he sold his claims to the lots. Williams revealed that between the time he submitted his resignation in May 1853 and the handing over of the office to Brooke in December of that same year, he made "a few purchases within his Agency, in names of persons who lent their names for that purpose, but not in his own name."<sup>100</sup> Williams apparently did not see this as a lapse in his duties as agent, since he rationalised that he did not speculate in those lands until after he had resigned his duties. Williams later defended his behaviour while a Crown land agent in a letter to the editor of the *Chatham*

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<sup>98</sup> Affidavit of John B. Williams. 19 November 1859. Spragge. Report on Accusation of Fraud. John E. Brooke. 28 December 1859. Report on Accusations of Fraud against Crown Lands Agents. RG 1-14-2-2. A.O.

<sup>99</sup> There were several prominent John Williams in Kent County in the early to mid-nineteenth century. It is likely that John B. Williams was a member of one of the oldest families in Kent, see Hamil, *Valley of the Lower Thames*, p.356.

<sup>100</sup> Affidavits of John B. Williams, Spragge. Report on Accusation of Fraud. John E. Brooke. 28 December 1859. Report on Accusations of Fraud against Crown Lands Agents. RG 1-14-2-2, A.O.

*Weekly Planet*.<sup>101</sup> Working as a private land agent at the time of the investigation, Williams shared an office with Brooke's Crown land agency. Privy to much of the agency's affairs, Williams testified that some of Brooke's agency business "was conducted in the most irregular and scandalous manner [emphasis in original]." Although Flood was left to carry on much of the agency's affairs, Williams placed much of the blame on Brooke for not stopping or preventing these abuses.<sup>102</sup>

Flood and Brooke had had an arrangement to circumvent the government land policy and to share jointly in the proceeds of speculating in Crown lands. Flood purchased lands using the names of third parties, usually without their knowledge. When it came time to make up the monthly return to the Department, Brooke usually provided the money for the first instalments. Very conveniently, Brooke had one account with the Bank of Upper Canada for both his personal and his agency business. This revelation prompted Spragge to call upon the former agent for the bank, George Thomas. He learned from Thomas that arrangements had been made to allow Brooke to overdraw his account in order to cover the monthly returns. Spragge noted that Brooke always ensured that the department received the full amount owed each month as recorded in his monthly return.<sup>103</sup> Brooke's care precluded departmental scrutiny of his agency's business. Discrepancies in his returns and remittances would have been detected and investigated much more quickly than complaints from third parties.

There were inconsistencies between Flood and Brooke's testimony about whether or not they had had an "understanding" regarding the specific lots which Flood had alluded to in his complaint. However, as Spragge noted, this was irrelevant since Brooke, "in his admission, and the evidence of Williams and Flood renders it indubitable, that he transgressed the Law and his duty by indirectly purchasing lands under his charge for sale, colluding with Mr. Flood."<sup>104</sup> And indeed, Spragge later reported that having concluded his investigation with regards to the complaint of Flood, he felt that their

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<sup>101</sup> J.B. Williams. Letter to the Editor. *Chatham Weekly Planet*. 5 January 1860. p.1. A.O. This letter is one of several that involved Williams and Edwin Larwill, local MP. Williams had denounced County Warden Smith for making false allegations regarding Williams' actions while Crown land agent (29 December 1859, *Weekly Planet*). Larwill defended Smith, saying of the Warden, that "every man in the County feels he is right," and thus implied that Williams was guilty of misconduct (29 December 1859, *Weekly Planet*). Williams reacted to this by stating that Larwill had managed to purchase 4000 acres of Crown land, "over the heads of a large number of industrious settlers who occupy them." (5 January 1860, *Weekly Planet*).

<sup>102</sup> Affidavits of John B. Williams, Spragge. Report on Accusation of Fraud, John E. Brooke, 28 December 1859. Report on Accusations of Fraud against Crown Lands Agents. RG 1-14-2-2, A.O.

<sup>103</sup> Spragge. Report on Accusation of Fraud, John E. Brooke, 28 December 1859, Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-2, A.O.

<sup>104</sup> Affidavit of John B. Williams, 19 November 1859, in Spragge. Report on Accusation of Fraud, John E. Brooke, 28 December 1859. Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-2, A.O.

partnership could not possibly have been limited to the four or five instances that had been mentioned. Spragge believed that not just Flood and Brooke, but Williams also, had worked together regularly, but “concluded that it did not suit their purposes to implicate themselves further.” He regretted that they had not clashed earlier, and thus lessened the impact on the people of Kent County.<sup>105</sup>

The full extent of those abuses, including speculation, extortion and in at least one example, threats and intimidation to gain control of a piece of land, became apparent to Spragge when he began to hear from County Warden Smith’s group.<sup>106</sup> Brooke and Flood collected numerous illicit fees from settlers, pocketed the money and kept the transactions off the agency’s books. Individuals would insist on receipts, which were issued, but only legitimate charges were entered in the books, or in some cases, no entry was made at all. Deponent Michael Galvin found that the second instalment for his land was never credited to him, nor remitted to the department, although he was able to show Spragge the agent’s receipt for the full amount. Galvin had found out about the discrepancy in a letter from the Crown Lands Department.<sup>107</sup> In most of the cases though, the discrepancies were unknown until Spragge compared the receipts shown him with Brooke’s records and the department’s books.<sup>108</sup>

Spragge then turned to the broader issue of speculation in Kent County that was facilitated by Brooke who shared in the proceeds. A great part of the evidence came from the testimony of former bank agent, Thomas, who recounted in one example how 6000 acres in the Township of Brooke came under the control of Brooke and his associates. The lands had been purchased through the efforts of John Vosburgh.<sup>109</sup> Vosburgh, a contractor for the Great Western Railway during construction in 1854, was well placed to see the potential for profit from rising land values because of the railway.<sup>110</sup> Aided in his endeavours by Brooke, Vosburgh had used the names of various people to purchase land at auctions. The purchases were funded jointly by Thomas and Vosburgh with the understanding that the profits were to be divided equally. Brooke then told Thomas that

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<sup>105</sup> Spragge. Report on Accusation of Fraud. John E. Brooke. 28 December 1859. Report on Accusations of Fraud against Crown Lands Agents. RG 1-14-2-2. A.O.

<sup>106</sup> Affidavit of Benjamin Waldron. Spragge. Report on Accusation of Fraud. John E. Brooke. 28 December 1859. Report on Accusations of Fraud against Crown Lands Agents. RG 1-14-2-2. A.O.

<sup>107</sup> Affidavit of Michael Galvin. Spragge. Report on Accusation of Fraud. John E. Brooke. 28 December 1859. Report on Accusations of Fraud against Crown Lands Agents. RG 1-14-2-2. A.O.

<sup>108</sup> See affidavits of Benjamin Waldron. and George Whittington. in Spragge. Report on Accusation of Fraud. John E. Brooke. 28 December 1859. Report on Accusations of Fraud against Crown Lands Agents. RG 1-14-2-2. A.O.

<sup>109</sup> Lauriston. *Romantic Kent*, pp. 480-1. 500. Spragge spelled his name as Vosburgh in his manuscript report: in histories of Kent, it is spelled Vosburg. No relation to the author of this dissertation.

<sup>110</sup> Lauriston, *Romantic Kent*, p.500.



he was to have 2000 acres of the land, presumably as payment for his part in carrying out the illegal sales. Thomas consented. He assigned 2000 acres directly to Williams, presumably so that Brooke's name would not appear on the assignments registered with the department.<sup>111</sup>

To confirm Thomas' testimony, Spragge heard evidence from Alexander McPherson, a Chatham saloon-keeper. McPherson confirmed that in 1854 Vosburgh had approached him to use his name to purchase Crown land, and that he had later signed an assignment in favour of George Thomas. McPherson also informed Spragge that he had been present when Vosburgh had recruited Andrew Currie to do likewise. Spragge called Williams to give testimony again in light of Thomas' affidavit. Williams stated unequivocally that he sold claims to 2000 acres in Brooke Township on Brooke's behalf, and that he understood that the lands were Brooke's share of a purchase which had been carried out by Vosburgh. Williams received fifty pounds as payment for selling the lands. In addition to paying the rest of the instalments owed to the government, the settlers who purchased these lots also had to pay a "premium of four shillings and three pence per Acre" which went to Brooke.<sup>112</sup>

John Brooke was an enterprising man. Spragge found out that in addition to his job as agent for the Crown Lands Department, and his speculation activities, Brooke had also kept a store in Chatham before he became Crown land agent. In his retail business, Brooke had come into contact with Benjamin Switzer of Toronto, whose name often appeared on assignments of Crown lands in Brooke's agency. According to Williams, Switzer worked for the Toronto dry good wholesalers Ross, Mitchell & Co. Williams believed that Brooke used Crown lands to settle his business with that company by ensuring that Switzer's name ended up on a number of lots. In 1857, the business, after a decade of financial difficulties, failed. Interestingly, Ross, Mitchell & Co. was one of the Bank of Upper Canada's largest clients and its difficulties posed problems for that institution.<sup>113</sup> It may be that the Bank of Upper Canada, through its agent, George Thomas, put pressure on Brooke to satisfy his obligations with Ross, Mitchell & Co. When he returned to Toronto, Spragge questioned Switzer who denied that his

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<sup>111</sup> Affidavit of George Thomas. Spragge, Report on Accusation of Fraud. John E. Brooke. 28 December 1859. Report on Accusations of Fraud against Crown Lands Agents. RG 1-14-2-2, A.O.

<sup>112</sup> Affidavit of J.B. Williams. Spragge, Report on Accusation of Fraud. John E. Brooke. 28 December 1859. Report on Accusations of Fraud against Crown Lands Agents. RG 1-14-2-2, A.O. Further evidence of the association between these men appears in an advertisement for an "Extensive Land Sale" Chatham *Western Planet*, 27 September 1854, and 4 October 1854. p.3, A.O. The ad lists the abstract of title, among the names appearing are George Thomas and John E. Brooke. Further coverage of this sale can be found in the Chatham *Western Planet*, "Sale of Town Lots in Chatham North," 4 October 1854. p.3 and "The Late Sale of Town Lots." 18 October 1854. p.2. A.O.

<sup>113</sup> Peter Baskerville. *The Bank of Upper Canada*, (Ottawa. 1987), pp.c-ci.

transactions with Brooke were connected with Ross Mitchell & Co.<sup>114</sup> Switzer did testify, however, that he had been informed by one of that firm's partners, Fiskin, that Brooke had offered them lots in Chatham Township in order to settle some "claims against him."<sup>115</sup> Fiskin confirmed that Brooke executed assignments to the firm for the purpose of settling debts. Spragge noted that he had been told "that as a Business man on his own account as a Storekeeper, Mr. Brooke had been entirely unsuccessful" which helped to explain his need to seek capital.<sup>116</sup>

Spragge's conclusions were blunt. He made it clear that he held in contempt the ways in which Brooke conducted himself in his capacity as a public servant. "I cannot avoid expressing the conviction that no sooner was Mr. Brooke installed in the appointment of Crown Land Agent for the County of Kent than he connived at and took part deliberately in a system where every favorable opportunity was rendered available for practicing[sic] wrong." He was disturbed at what seemed to be a regular pattern of corruption in the agency, starting with Williams, and went on to suggest how the government might begin to resolve the many wrongs that had occurred because of Brooke's "utter disregard of his obligation."<sup>117</sup>

His recommendations included issuing public notices asking people who had dealings with Brooke, in his capacity as Crown land agent, to come forward with their receipts and other paperwork, in order to compare them to Brooke's and the department's records. In his report, he lamented the likelihood that a great many more cases escaped his attention because there had been little public awareness of the impending investigation.<sup>118</sup> He also advised that the public should be made aware of the general

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<sup>114</sup> Affidavit of Benjamin Switzer. Spragge. Report on Accusation of Fraud. John E. Brooke. 28 December 1859. Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-2, A.O.

<sup>115</sup> Affidavit of Benjamin Switzer. Spragge. Report on Accusation of Fraud. John E. Brooke. 28 December 1859, Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-2, A.O.

<sup>116</sup> Spragge. Report on Accusation of Fraud. John E. Brooke, 28 December 1859. Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-2, A.O.

<sup>117</sup> Spragge. Report on Accusation of Fraud. John E. Brooke, 28 December 1859, Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-2, A.O.

<sup>118</sup> The *Chatham Weekly Planet* had noted several months earlier that there was to be an investigation into "alleged irregularities" with regards to the local Crown land agent. Editorial remarks were made to the effect that such an investigation was long overdue, given "all the stories we hear in circulation regarding this Agency," 4 August 1859, p.2, A.O. This article appeared several months before Spragge arrived and no mention was made of his schedule. The next notice did not appear until 24 November 1859. It briefly informed readers that Spragge had been hearing evidence and had "adjourned the inquiry to Thursday of the present week, to give the County Council and others an opportunity of making their complaints." *Chatham Weekly Planet*, 24 November 1859, p.2, A.O. "Thursday of the present week" happened to be 24 November 1859, the same date the newspaper was distributed.

regulations, especially the one that required payments be made directly to the Bank of Upper Canada, and not placed in the hands of the local agent.

In sympathizing with the people who had been taken advantage of, Spragge wrote that “they are without exception persons in humble circumstances, their[sic] striving to be but who have yet to become substantial Freeholders.” Drawing a comparison with what had happened in Wellington County, in Andrew Geddes’ agency, Spragge warned his superiors that “what has been shown to exist in two Counties may, if not severely resolved by the Government, have a contaminating influence.” He noted the failure of speculators to fulfill the conditions of sale, and stated that all such sales where only the first instalment was ever paid and conditions of sale were not met should be cancelled immediately.<sup>119</sup>

Commissioner of Crown Lands, P.M. VanKoughnet, concurred with Spragge’s suggestions and recommended Brooke’s dismissal. As well, Brooke and those who had posted bonds for him were to be held responsible for paying back all the money that had held back from the department, and “all sums which Mr. Brooke has realized as profits in the buying and selling of lands.”<sup>120</sup> The government took legal action against Brooke and his sureties to recover the money in the civil cases of *The Queen vs. Brooke, Laird, Ireland and Robertson*. In January 1861, the lawyers for the Crown were awaiting information from the Crown Lands Department regarding the exact amount of Brooke’s debts to the government: “The Defendant and his sureties are very anxious to settle.”<sup>121</sup> Spragge also continued to be involved in the resolution of some of the problems that emerged from Brooke’s tenure as Crown land agent long after the investigation.<sup>122</sup>

Spragge’s investigation in Kent County coincided with a furious debate in the province over the order issued by the Commissioner of Crown Lands on 7 January 1859 which stipulated that all Crown lands for which there were unpaid back instalments as of 1 January 1860 were to be resumed by the government. Periodically, the government’s need for revenue had occasioned the issuance of such orders and warnings, although

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<sup>119</sup> Spragge, Report on Accusation of Fraud, John E. Brooke, 28 December 1859, Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-2, A.O.

<sup>120</sup> P.M. VanKoughnet, Commissioner of Crown Lands, 17 January 1859, at end of Spragge, Report on Accusation of Fraud, John E. Brooke, 28 December 1859, Report on Accusations of Fraud against Crown Lands Agents, RG 1-14-2-2, A.O.

<sup>121</sup> Paterson and Harrison to Attorney General, 14 January 1861, Letter #22, Department of Crown Lands orders and regulations, RG 1-67-0-2, A.O.

<sup>122</sup> According to a letter regarding the inspection of several lots in the agency, the inspector was also to send a copy of the reports to Mr. Spragge. The surveyor carrying out the inspections informed the occupants and claimants of these lots to come to the sale at Sarnia “bringing with them all papers concerning their Lands to be inspected by Mr. Spragge in order that their claims might be properly adjusted.” Arthur Jones, P.L.S. to Commissioner of Crown Lands, 8 March 1861, p.117-118, Inspection and valuation returns on land for various districts, RG 1-95-19-3, A.O.

enforcement was lax.<sup>123</sup> Nevertheless, it could have frustrated the plans of many speculators who had only paid the first instalment. The Chatham newspaper linked its discussion of the investigation with the order, arguing that it was unfair that honest settlers should be punished by this new regulation, especially when Crown land agents had misled them. Settlers had been told, so the article said, that as long as the entire purchase price, along with the corresponding interest was paid within ten years of the original purchase their claims were safe. To make good the promises, the paper proposed that the government should give settlers a few months to make up missed payments. The article's author argued that speculators who had only ever made one or two payments should have such lands resumed and the lots made available to actual settlers. In practice it would be difficult to distinguish between "good" settlers and "bad" speculators, but the moral argument echoed Spragge's recommendations.

A petition to the Governor and Legislative Assembly from the County Council of Kent accompanied the article. The council urged that in instances where only the first instalment had been paid and where the conditions of sale, particularly the settlement duties, had not been met, that the government resume the lands. The council argued that such action would "promote the more effectual settlement of these lands, and render [them] much more productive, both in direct revenue and capital."<sup>124</sup> The council had been concerned that settlers had made payments to Brooke which had never been remitted to the Crown Lands Department and therefore never credited to the settlers. That is one reason why they urged to the department use assessment rolls to determine which lands had been improved, so as to resume lands claimed by those who both failed to make payments and to fulfill the settlement duties. Along with the petition the newspaper also published a copy of a letter from the Commissioner of Crown Lands to the Warden of Simcoe County. This letter was a reply to petition from Simcoe County Council that expressed similar concerns about protecting settlers in regard to the 1 January 1860 deadline. In the letter, VanKoughnet wrote, "as I have repeatedly stated, in answer to petitions on the same subject," that the government and the department will do all they can "to show all reasonable indulgence to actual *bona fide* settlers, who pay by the 1<sup>st</sup> January next as much of the arrears due the Crown as their circumstances will

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<sup>123</sup> The problem was endemic to a system that allowed credit, and in areas where it was physically difficult to contact purchasers in arrears or compel them to pay up. In 1859, Vankoughnet, because of considerable public and political pressure, had to later qualify the notice by indicating that the department would examine all cases to check the validity of the excuses of why settlers could not pay the back instalments. For comment on this, see "Crown Lands Management," *Elora Observer*, 24 August 1859, p.2. Over a period of close to twenty years, the Commissioner of Crown Lands sent numerous circulars and letters regarding the collection of arrears and the resumption of lands in arrears to the agents. See for example: 7 March 1844, Circular, p.91, RG 1-6-3-3, 23 December 1846 Circular p.412, RG 1-6-3-4, 29 December 1846 to W.J.Scott, pp.420-1, RG 1-6-3-4, 13 August 1849, Circular, p.624, RG 1-6-3-5, 29 April 1850 Circular, p.801, RG 1-6-3-5, 19 January 1860, Circular, p.580, RG 1-6-3-8, Commissioner of Crown Lands' outgoing correspondence to land agents, A.O.

<sup>124</sup> *Chatham Weekly Planet*, 22 December 1859, p.2, A.O.

enable them to do.” However, he also stated that arrears would not be allowed to continue to grow, and that the government from this point forward would strictly enforce payment deadlines.<sup>125</sup> In the next issue of the paper, the editor remarked at length on the favourable relaxation of the 1 January 1860 deadline for actual settlers. It was only fair to those, who despite hard work and privation, were in arrears to the Crown.<sup>126</sup> Despite better enforcement of regulations, many disputes over lots in Huron, Bruce and Wellington counties remained unresolved years after the investigations. When the matter came before the Executive Council in 1861, they decided that settlers were to be preferred over speculators, if they lived on the lot with at least five acres under crop.<sup>127</sup>

### Outcomes

Gowan, Hamilton and Spragge urged strictness in upholding previous regulations as an effective way for the government to prevent the abuses that plagued the distribution of Crown Lands. Part of the problem was that it took more time to check on the completion of settlement duties than it did to consult the department ledgers about payments. Gowan and Hamilton used the local assessment rolls effectively to ascertain the degree of improvement on lots, but it was time consuming and costly. Speculators had the advantage of operating in a system that was relatively lax about the fulfillment of settlement conditions but more diligent about seeking payments.

Bringing civilisation to the backwoods could only happen when large tracts of wild land held by speculators were not hampering settlement. According to investigators legitimate settlers should be shown favourable consideration by the government for their efforts in improving and cultivating the land. It is evident from the reports of the investigations of four agents, from 1856 to 1859, that the local agent for the Crown Lands Department was a key figure in government designs for economic development. There was a broadly held belief that one class of land buyers really did the essential work of preparing the land for productive uses. That class consisted of actual settlers, toiling settlers. When the local land agent was less than fully mindful of his responsibilities to the government and the people then senior government officials reaffirmed the worth of the *bona fide* settler toiling in the backwoods.

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<sup>125</sup> P.M. VanKoughnet to G. McManus, Warden, Simcoe County, 7 November 1859, *Chatham Weekly Planet*, 22 December 1859, p. 2, A.O..

<sup>126</sup> *Chatham Weekly Planet*, 29 December 1859, p.2, A.O.

<sup>127</sup> Gates. *Land Policies*, p.293.

## Conclusions

Crown land agents and provincial land surveyors played a small but important role in the distribution of land in Upper Canada. Their influence on behalf of squatters and settlers who were considered deserving of favourable consideration was important for those people. But the Crown land agents and surveyors did more than just assist a few settlers. They stood at the intersection of official public policy and the needs and desires of local communities and individuals. They not only served as government agents, but as agents for the squatters and settlers, and for the larger public interest as well. Land distribution and land acquisition in the period from the late 1830s to the end of large-scale Crown land alienation cannot be discussed without looking at the role of these agents.

Crown land agents and provincial land surveyors, even when a few of them were serving their own speculative interests, recognized the importance of settlers to the development of the province as a whole. They were active proponents of John Locke's principle that efforts at improving the land and making it productive gave a settler an interest or a claim in that right. To that end, they worked to see that legitimate settlers and hardworking, deserving squatters received opportunities to purchase the land they occupied at a fair price. Even when the official land policy favoured the sale of Crown lands at the highest possible prices to maximize revenue, Crown land agents and surveyors worked to ensure a moral economy in the sales of Crown lands, namely, that every deserving settler had access to a reasonably-priced piece of land that would be sufficient to support a family. When the official policy failed to extend pre-emption *rights* (which had been conceded in the United States), the Crown land agents and surveyors did a great deal of work to ensure that pre-emption privileges were extended to all who deserved them in Upper Canada. Squatters in the United States had the right to purchase land on which they had made improvements entrenched in law, in other words, their improvements and occupation gave them a prior right to buy. In Upper Canada, however, the government had not gone so far as to entrench such a right in the law. Rather, provision was made, beginning with the 1837 Land Act, for the extension of pre-emption privileges to those considered deserving of such a concession. Squatters had to apply to be able to purchase their land, and their improvements inspected by a Crown land agent or provincial land surveyor. Squatting in Upper Canada then, did not lead automatically to the right to purchase, as it did in the United States. The Crown land agents and surveyors, however, as the primary gatekeepers of pre-emption privileges, saw to it that legitimate and deserving settlers received those privileges.

In deciding who deserved the government's favourable consideration, the Crown land agents and surveyors adhered to unwritten but remarkably consistent criteria for judging settlers and squatters. To receive a good report from the Crown land agents or surveyors, the settlers had to demonstrate a commitment to settling and improving the

land. They had to be of good character, their actions could not suggest that they merely occupied land to plunder timber, or sought only to establish a flimsy claim that they could sell. In the few instances where these men encountered natives or blacks, they seemed to apply the same criteria. Whether this impression of remarkable fairness can be substantiated must wait for a much more systematic and detailed study of the records of the agents and surveyors in terms of the ethnicity and race of the settlers. Similarly, while widowed women seemed to receive almost universal support from the Crown land agents and surveyors in support of their applications and petitions for land the conduct towards widows requires a more focused study.

In a society which valued the family farm as a cornerstone of its economic, political and social structures, land distribution played a key role in creating, maintaining and modifying that ideal. The value of individual settler families in the development of the province became increasingly appreciated as the official land policy shifted to support and encourage the efforts of these settlers in clearing the land and putting it into production. The shift in the land policy had much to do with the channels of communication that the Crown land agents and surveyors provided between the government and the local communities and the ways in which these men served as liasons between the settlers and the department. That these people included squatters is something that is fundamental to understanding the processes of land distribution and the larger developments that shaped Upper Canada.

Study of the records of the Crown Lands department reveals the tremendous activity in pre-patent interests and claims in land. This quasi-legal land claims market has largely been ignored in past studies of Upper Canada land distribution and acquisition. The distinct lack of attention to this fundamental part of the land market has meant that a significant aspect of the history of land distribution in Upper Canada has been left out of discussions of Upper Canada's development. The Crown land agents and surveyors played a role in this pre-patent land market. In particular, they acted as arbitrators when there was confusion or disputes involving these claims. When it came time for squatters to transfer those claims and interests into ownership, the Crown land agents and surveyors often acted as their advocates. The Crown land agents and surveyors' local knowledge was a key part of their role as advocates and adjudicators in this area of pre-patent land claims where documentation and legal standings were imperfect. They were an important component of an informal legal culture that favoured industriousness in improving land. When they considered settlers to be contributing to the development of the province through their labour in clearing the land and putting it into agricultural production, the Crown land agents and surveyors could and did bring considerable support to the applications and petitions of these settlers. A comparison of the judgments of the two earlier Heir and Devisee Commissions, which served from 1797 to 1805 and from 1805 to 1841, to work out pre-patent land rights for lands that had been located but not patented, and the decisions of Crown land agents and surveyors would be an interesting exercise. Were the Crown land agents and surveyors' decisions consistent with those of the commissions, or did they demonstrate different underlying assumptions

and beliefs? Such a study would further illuminate the ways in which Crown land agents and surveyors perceived their roles and the best way to serve the public interest.

In the same way that Crown land agents and surveyors supported the claims of squatters, they often sought reductions in prices, and additional time for payments for settlers struggling to clear the land and working to realize profits from their farming. In doing so, the Crown land agents and surveyors demonstrated their adherence to the doctrine of improvement and their belief that it was the efforts of such people that would contribute the most to the development of the province. The Crown Lands Department put great confidence in the reports of the agents and surveyors, accepting their explanations and valuations with little question. While final decisions always rested with the Commissioner of Crown Lands, the influence of the Crown land agents and surveyors in smoothing and making legitimate a process fraught with confusion, opportunity, friction and controversy cannot be dismissed.

In a period of considerable political turmoil, the Crown land agents and surveyors worked to ensure that the policy that individual settlers and squatters encountered remained remarkably consistent. They also represented an important part of a growing civil service where political patronage was slowly losing ground to skill and merit. The bureaucratization of the civil service tended to remove many public servants from the public eye, including the clerks who ran the Crown Lands department. The Crown land agents and surveyors, however, remained in close contact with the people they served, and their communities. Under increasing scrutiny from a public that was demanding accountability and transparency in the business of the government, the local Crown land agents and surveyors had to be careful to maintain a reputation for fairness and justice.

The Crown land agents and surveyors, however, also had personal vested interests in the Crown land policy and in the distribution of lands. Their positions gave them a unique vantage point to observe the local land market and to find opportunities to circumvent the land policy and regulations to speculate in land or to assist associates in speculative activities. Many provincial surveyors had become speculators by virtue of a long-standing policy of the Upper Canadian government to pay its surveyors with a percentage of the lands they surveyed. Some Crown land agents participated in speculative activities as well, either personally or by collaborating with family or friends. Only further study of the individual Crown land agents and provincial land surveyors can reveal whether or not more of them were involved in speculation and the extent to which they participated in the land market, especially the pre-patent market, while serving as Crown land agents or surveyors.

The efforts of a squatter or a legitimate settler to clear the land would benefit not only himself but the whole community, and the landowners in the locality. As well, the more land that was settled, the higher the price the government might receive for other public lands in the area. So while the Crown land agent could be forfeiting some commission, and the government some revenue by allowing a squatter or settler to purchase land by private sale instead of by auction, in the long run, both the Crown land agent and government (and speculators) would realize greater revenue because lands in more settled areas commanded higher prices. But beyond this immediate and direct



economic benefit, there were wider benefits to encouraging settlement and improvement. Such activities would strengthen the economic basis of the economy, encouraging greater development of transportation, communication and financial infrastructures. Such a foundation would add to the political strength and stability of the colony as well as contribute to its social and cultural progress. Many Crown land agents and surveyors recognized this, as did others of influence, and they worked hard to see that the policy they implemented in the local communities acted to encourage settlement in the face of an official policy that largely reflected political pressure to maximize revenue from the public lands. The agents and surveyors found themselves at the intersection of these tensions in the land distribution process of Upper Canada, just as they found themselves as the primary points of contact between the government and individual settlers. They used this position in ways to ensure that what they saw as the public interest was best served.

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- RG 1-14-3 Report of the Huron and Bruce Commission
- RG 1-19 Commissioner of Crown Lands statement books
- RG 1-50-5 General land orders-in-council copybooks
- RG 1-54 Petitions relating to land received by the Crown Lands Department
- RG 1-55 Petitions not relating to land
- RG 1-58 Township papers
- RG 1-61 Miscellaneous records relating to land surveys, land surveyors and land administration
- RG 1-65 Department of Crown Lands document compilation volumes
- RG 1-67 Crown lands department orders and regulations
- RG 1-95 Inspection and valuation returns on land
- RG 1-246 Numeric land files
- RG 1-489 Crown land agents' records for the Western District
- RG 1-491 Crown land agents' records for Bruce County
- RG 1-494 Crown land agents' records for Brock District/ Oxford County
- RG 1-495 Crown land agents' records for Wellington County
- RG 1-499 Crown land agents' records for Simcoe County
- RG 1-569 Crown land agents' records for the Home District
- RG 1-576 Crown land agents' records for the Midland District
- RG 1-578 Crown land agents' records for Lanark County

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MG 11 CO 47 *Blue Books of Statistics for the Province of Canada 1846-1866*  
RG 1 L 4 Minutes and Records of the District Land Boards  
RG 10 Indian Affairs, Series A, Indian Land Records

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