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## INTRODUCTION

The Durham Report of 1839 represented a significant turning point in the history of Canada. That Report examined the causes of the 1837 and 1838 rebellions and identified a bewildering Canadian land policy which compared most unfavourably with the United States. The American policy was seen as efficient and uniform in its application throughout the country. It made acquisition of new land easy, yet it restricted appropriation to the real needs of the settler. According to Lord Durham, people could get an "instant and secure title."<sup>1</sup> Public property was distributed on equal terms among all classes and persons. There was no favouritism.

By contrast, Durham said that the British North American colonies had a profusion of systems. "The greatest diversity and most frequent alteration would almost seem to have been the objects in view."<sup>2</sup> Too much land had been granted to individuals and yet, at the same time, it was difficult for a person of no influence to obtain any public land. This was further complicated by inaccurate surveys, by needless delays which "harassed and exasperated" applicants, and by "gross favouritism". The major recommendation

1. Gerald Craig (ed.), Lord Durham's Report (Toronto: McClelland and Stewart, 1963), p. 113.

2. Ibid.

of Durham and therefore presumably the means to a solution of the land problems was the granting of Responsible Government.<sup>1</sup>

With the Union of the Canadas, politicians like Baldwin and Lafontaine worked towards the goal of Responsible Government.

But what had to be accomplished to realize this? J. M. S. Careless, for example, has explained that the fundamental problem was for the Assembly to gain control of the executive council:

If this central organ, the heart of government, could actually be made responsible to the assembly under the union, reformers would have small cause to worry further about the legislative council.<sup>2</sup>

As far as the Legislative Council was concerned, Careless argued,

In time previous, that appointed upper chamber assuredly had blocked assembly bills; but it could have little strength of its own without an interlocking oligarchy in the government.<sup>3</sup>

On April 25, 1849 Lord Elgin accepted the Rebellion Losses Bill. In doing so he had accepted the policy of the executive council or his ministers. The Governor-General was out of politics since he had abided by his ministers' decision, a decision also backed by the confidence of the Assembly. The principle of

1. Ibid.

2. J.M.S. Careless, The Union of the Canadas, 1841-1857 (Toronto: McClelland and Stewart, 1967), p.14.

3. Ibid.

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Responsible Government in its fullest sense had been realised.

The long battle had been won by the Reformers. The executive was now entirely responsible to the elected Assembly and could form its own policies almost unhindered.<sup>1</sup>

Now, public pressure was increasingly put on the Assembly in the early 1850's to solve two longstanding land problems; that of Seigniorial tenure in Canada East and that of the Clergy Reserves in both Canadas. As early as 1790 there had been an enquiry into the commutation of seigniorial tenure. Voluntary commutation had been the order of the day in the legislation of 1822, 1825, 1845, and 1849. By 1850, however, a Special Committee was set up to study, not voluntary, but compulsory commutation.<sup>2</sup>

In 1854 the Assembly passed an "Act for the Abolition of Feudal Rights and Duties in Lower Canada."<sup>3</sup> By the provisions of this Act seigneurs became landlords while the habitants became either tenant farmers who paid an annual rent or owners if they could pay a certain sum of money. All the seigniorial obligations

1. Careless, Union, p. 125.

2. William B. Munro, The Seigniorial System in Canada: A Study in French Colonial Policy (New York: Longmans, 1907), pp. 214-215, 242.

3. Careless, Union, p. 156.

and dues were to be abolished with the government indemnifying the seigneurs for this loss of revenue. Although a Committee would have to be set up to determine what was fair compensation, the government had apparently been able to solve this longstanding problem.<sup>1</sup>

Simultaneously in 1854 the Clergy Reserves question was dealt with by legislation. Since the creation of the Clergy Reserves by the Constitutional Act of 1791, one-seventh of all the lands granted were set aside for the maintenance of a "Protestant Clergy" in both Upper and Lower Canada. Disputes had arisen, however, concerning the meaning of "Protestant Clergy". Anglicans, the Church of Scotland, and other denominations had vied for the proceeds from these lands. In 1840 there had been a settlement which broke an Anglican monopoly, but which divided up the proceeds to no one's satisfaction. However, a growing feeling developed, particularly in Canada West, that the reserves should be secularized. This finally led to the 1854 settlement in which moneys not needed to support endowments already granted went into a Municipalities Fund for each province.<sup>2</sup>

1. Careless, Union, p. 156.

2. John Moir, "The Settlement of the Clergy Reserves, 1840-1855," Canadian Historical Review vol. 37, no. 1 (March 1956): pp. 49-50, 59-60.

With the passing of these two Acts in 1854, many writers concluded that the land holding problems had been solved. Responsible Government had been effective in resolving the long-standing grievances related to land. Apart from minor adjustments resulting from these Acts, little more has been said about the subject. The basic problems were apparently solved and historians have tended to turn their attention away from the land to other matters.<sup>1</sup>

After 1854 the interest in Canadian history has often shifted to a study of Confederation. In this regard, 1857 has been regarded as a turning point in Canadian history. That year there was a severe economic crisis. D. C. Masters has seen this marked change in relation to Canada's dealings with the United States.

Until 1857 reciprocity with the United States was distinctly in the ascendant.... The year 1857 marked the turning point: an economic depression involved a serious falling off of revenue in Canada just at the time when an ambitious programme of public works had necessitated large and unexpected advances from the provincial treasury.<sup>2</sup>

J. Hamelin and Y. Roby have also seen 1857 as a crucial year but they noted how some Canadians began to look forward to the union of British North America.

1. Munro and Careless are two examples of this.
2. Donald Masters, The Reciprocity Treaty of 1854 (Toronto: McClelland and Stewart, 1969), p. xv-xvi.

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La bourgeoisie découvre que le problème majeur posé par la fin du système colonial n'est pas résolu; le Québec a besoin d'un marché. Ce n'est pas sans raison que la Confédération canadienne, depuis longtemps un projet politique qualifié d'utopique, se révèle un 'futurible' intéressant en 1858. Ne serait-elle pas la solution au problème d'un marché national stable, générateur d'entreprises?

While Canada was having difficulties in not exporting enough goods to the United States, some Canadians were concerned with another problem, relating to foreign exchange. Canada was exporting too many people. In that same year, 1857, the Legislative Assembly of the Canadas was sufficiently concerned with emigration from Canada East that it appointed a Committee to investigate. The Committee was to ascertain the severity of the problem, its underlying causes, and to recommend how such emigration could be halted. The Committee prepared a questionnaire which it sent to localities for comment. The resulting 1857 Report is an important commentary of problems in Canada East at that time, a commentary both by the Committee and by a number of widely scattered respondents. Basically the Report addressed itself to three things; the need for manufactures, the need for better roads, and most important, the need to remedy serious problems relating to land holding and land use. The problems seemed as evident and as similar as they were in Lord Durham's day.

1. Jean Hamelin and Yves Roby, Histoire Economique du Québec, 1851-1896 (Montreal, Fides, 1971), p. 371.

This revelation of widespread difficulties about land in Canada East in 1857 indicates that the legislation three years earlier had not been as effective as most historians have suggested.

The purpose of this thesis is to study the problems relating to land use and land holding indicated by the 1857 Report. This paper will first of all examine both the questionnaire and the 1857 Report to identify the major difficulties, difficulties which the Report saw as causes for emigration. After the 1857 Report has been considered, the thesis will examine the way the recommendations were received.

Essentially then this is a study of government land policy. Such a study will lead to a brief but crucial consideration of governmental control of its own affairs. Such a study will necessarily deal with social and economic conditions although that is not its primary purpose.



CHAPTER I

THE 1857 REPORT

In this chapter the origins of the 1857 Report will be examined. The chapter will also indicate how and where the information for the Report was obtained. It will show a connection between this committee and an earlier one which is of importance to this study. Next, what the Committee's comments about the rate of emigration and the number of landless young men will be discussed before examining the Committee's assessment of the basic causes of emigration. That assessment will be briefly compared to the basic causes discussed by the respondents. Finally, these causes will be examined in more detail to understand the basic problems.

On the 12th of March, 1857 the Legislative Assembly,

Resolved, that a Committee of eleven members be appointed to inquire, 1st. Whether or not any emigration from Canada, to the United States of America or elsewhere has taken place, during the last two years? 2nd. If such emigration has taken place, to what extent? 3rd. To investigate the causes which have occasioned it? 4th. To ascertain the most efficient means to adopt to put a stop to such emigration; and to report thereon from time to time; with power to send for persons, papers, and records.

The Assembly then,

Ordered that Mr. Dufresne, Mr. Thomas Fertier, Mr. Conger, Mr. Chapais, Mr. Mackenzie, the Honourable Mr. Merritt, Mr.

1. Journals of the Legislative Assembly, March 12, 1857, p. 74.

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Laberge, Mr. Rankin, Mr. Huot, Mr. Bureau, and Mr. Polette, do compose the said Committee.

This Committee was not composed of the most important members of the Assembly; it contained only one honourable gentleman. Just the same it was a representative Committee from all parties. Four of the eleven members represented Canada West and there was a mixture of French and English members.<sup>2</sup>

Two days later the Committee prepared a twenty-four point questionnaire (See Appendix), which they sent out to get feedback for their Report. Copies of this questionnaire were sent through members of the House to the principal persons in each locality.<sup>3</sup>

The first of the questions made two alterations to its mandate: the period of time being investigated was changed from two to five years and the study was to deal, not with both Canadas, but only with Lower Canada.<sup>4</sup> Even a cursory examination of these questions makes it clear that the Committee was not looking for the causes of emigration. They had already decided that the main causes were a lack of good roads, problems in obtaining land, and a lack of manufacturing. The questionnaire also revealed that

1. Ibid.
2. P. G. Cornell, "The Alignment of Political Groups in the United Province of Canada, 1854-1864", Upper Canadian Politics in the 1850's, R. C. Brown, ed. (Toronto: University of Toronto, 1967) pp. 68-71, 82.
3. Journals, 1857 Report of the Special Committee on Emigration, Appendix no. 47, p. 2. The pages numbered from 1-142 for reference purposes in this paper, not originally numbered.
4. The 1857 Report consistently referred to Canada East as Lower Canada.

it had learned much detail about these causes. The questionnaire seemed to indicate that the Committee was looking for support for their contentions in order to bring pressure on the government.

No doubt much of this knowledge about the causes of emigration had been gained from an 1851 study by a "Special Committee appointed to inquire into the causes which prevent or retard the settlement of the Eastern Townships in the Districts of Three Rivers, St. Francis, and Quebec, and to report on the most effectual means of promoting the settlement of the said Townships".<sup>1</sup> That Committee published two reports which dealt with many of the same problems discussed in the 1857 one. The Second Report of 1851 dealt with a variety of testimony but among other things it referred to Lord Durham's Report and to the work of one of Durham's commissions to point out that the causes of land problems in 1851 were the same as those of Durham's time. The First Report, though, was simply a verbatim report of a pamphlet entitled "Le Canadien emigrant, ou pourquoi le Canadien-Français quitte-t-il le Bas Canada?" which had been written by twelve missionary priests from the Eastern Townships.<sup>2</sup>

1. Journals, 1851 Reports on Settlement of the Eastern Townships, Appendix 2 to vol. 10 (Appendix V), p. 1. The pages were not numbered so they have been numbered from pages 1 to 42 for reference purposes for this paper: First Report, pp. 1-12; Second Report, pp. 13-42.
2. 1851 Reports, complete list of the twelve missionaries and their locations, p. 11.

A certain continuation in the 1851 and 1857 investigations can also be seen by comparing the membership of these two Committees. Thomas Fortier was chairman of the 1851 enquiry and Antoine Polette was the committee member who presented the Report by the twelve missionaries. Dr. Thomas Boutillier, a physician from St. Hyacinthe, was a committee member in 1851 who gave a detailed proposed solution for the road problem. In 1857, as an ex-member of the Legislative Assembly, he made one of the more complete reports.<sup>1</sup>

On May 29, 1857, two and a half months after preparing the questionnaire, the Committee made its 142 page report to the Assembly.<sup>2</sup> The first eighteen pages gave the Committee's own evaluation while the rest of the space was devoted to answers and extracts from the replies of some eighty-seven groups or individuals. The last page of the Report noted that, "The Committee have received other answers, which they have refrained from publishing, the opinion being generally speaking, similar to those already printed."<sup>3</sup> Just how much information, if any, that did not suit the Committee's purposes was screened out by this procedure is not known. How many replies there were in all or where they all came from was also not given.<sup>4</sup>

1. 1851 Reports, pp. 1, 11, 14-17; 1857 Report, pp. 19-25.

2. Journal, May 29, 1857, p. 566.

3. 1857 Report, p. 142.

4. A summary was given of 101 people on pp. 2-3 of the 1857 Report. Some of the names given there, not included in the answers, were from Canada West.

It is obvious, though, from the places given for the replies that the respondents were widely spread throughout Canada East and were almost entirely in close touch with the rural scene (see table 1, p. 15). The replies extended from Chatham in Argenteuil County and from St. Polycarpe near the Canada West border east to Port Daniel in the Gaspé on the Atlantic. Urban areas, however, apparently showed little interest in the questionnaire. Only one reply came from Montreal and none from either Quebec or Three Rivers. Basically the replies came from small villages, which were mainly in the old seigneurial lands, but also from some which were in the townships near newer settlements.<sup>1</sup>

The largest number of replies came from the south shore of the St. Lawrence from about Quebec City eastward, through the Gaspé. There was also a significant response on the south shore from east of the Richelieu River to the Chaudière, part of which was in the seigneuries and part of which was in the Eastern Townships nearest the seigneuries. On the north shore there was a response from the Three Rivers area to Beauport just east of Quebec. The concentration here was heavier in the Three Rivers area. North of Montreal, Montcalm County was the main pocket for responses. Apart from these, there was only a small response from the Montreal region on the

1. 1857 Report, pp. 2-3 and report headings.

north shore and westward, or from the rest of Montreal Island.

There seems to have been no reply from the southern and eastern

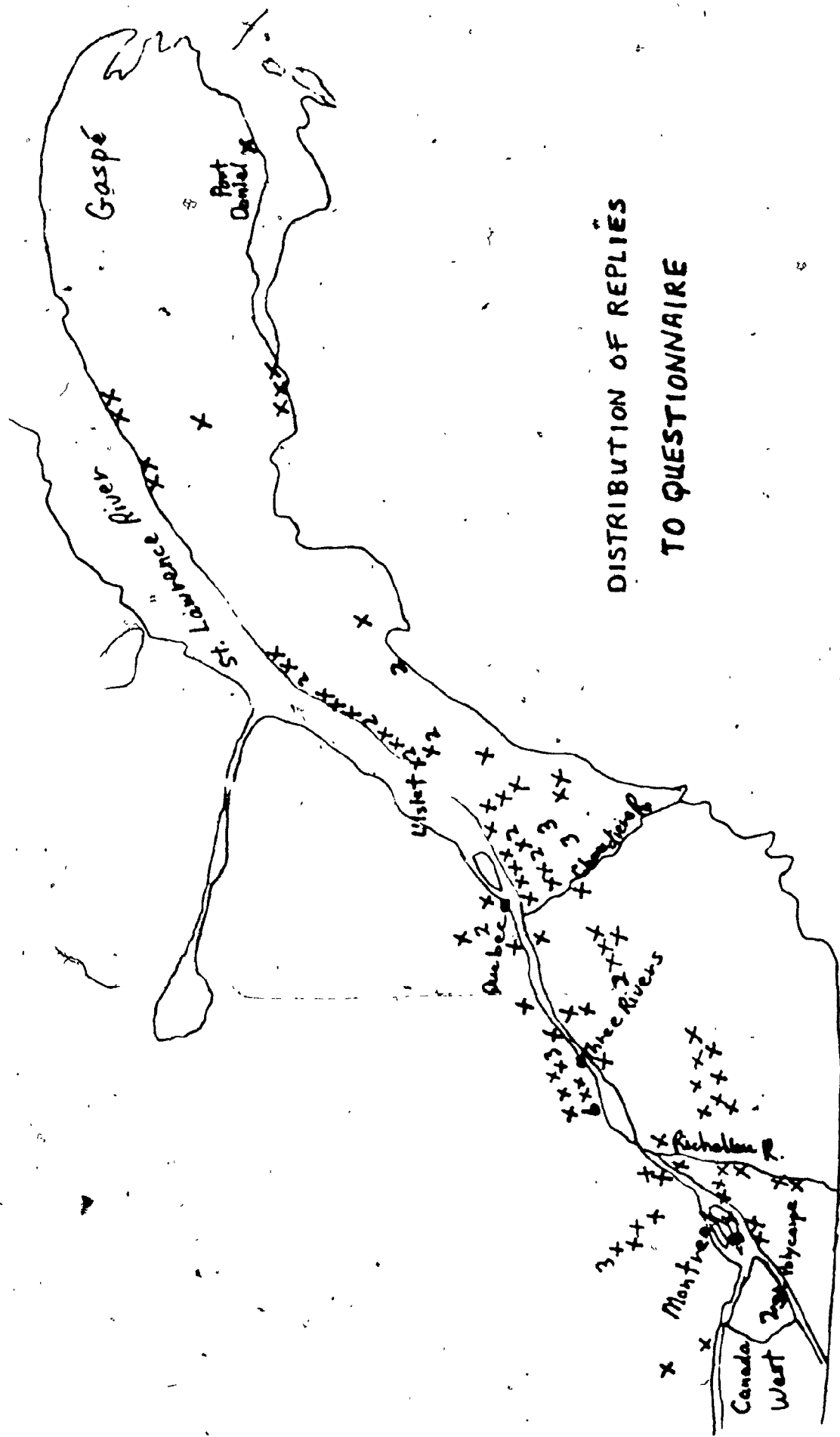
areas of the Eastern Townships such as the Sherbrooke area. A

number of areas sent more than one reply, some sending two or three.

Yamachiche, just west of Three Rivers, had the most with six dif-

ferent replies.<sup>1</sup>

1. Ibid.



DISTRIBUTION OF REPLIES  
TO QUESTIONNAIRE

Canada  
West

Table 1

## PLACES ANSWERING THE QUESTIONNAIRE IN CANADA EAST BY AREA

<u>PLACE</u>	<u>NO. OF REPLIES</u>
Area of Quebec - North Shore	6
Area of Three Rivers - North Shore	10-16
West & North of Montreal, and Montreal Island except Montreal	12-16
Montreal	1
West of Richelieu River - South Shore	6-9
East of Richelieu to approximately Chaudière R.	16-20
Area of Quebec - South Shore	20-24
Gaspé Area (l'Islet and eastward)	25-29

Note: Names with more than one possible location such as St. Luc are repeated. This explains the variation in the number of replies.

The Committee was of course, interested in learning how great the rate of emigration was. While the 1851 Reports quoted an earlier report to state that during the five years preceding 1849 more than 25,000 French-Canadians had left Canada,<sup>1</sup> the 1857

1. 1851 Reports, p. 5.



Report gave no definite figure. The Committee simply stated that they, "have been unable to procure the degree of information necessary to enable them to make a positive statement of the proportion which the numbers leaving the country bear to the population".<sup>1</sup> All they could do was to tabulate the answers given because replies such as "42 families", "a few", or "very considerable" were simply not translatable into meaningful statistics. The best they could do was to state that "emigration has perceptibly been more extensive in the Lower than in the Upper Province".<sup>2</sup>

While not being specific about the numbers who were emigrating, the Committee concluded that there was,

positive and indisputable proof that the great body of emigrants consists of the sons of farmers. These individuals compose, from their laborious habits, their vigor, their youth, and their hardihood, the most useful class of society, and are, indeed, the hope of the country.

It was for this reason that the Committee was very much interested in finding out the number of men without land who were eighteen years old or over. If the generalities such as "2 in 3 families", "one-half", "very few" or "by hundreds" are eliminated, the Report listed seventy other people or groups who claimed to know an

1. 1857 Reports, p. 2. The Committee must have discounted the figures given by Timoléon Ducharme of Montreal, p. 112.
2. Ibid., p. 2, chart pp. 3-4.
3. Ibid., p. 5.

average of 253 individuals fitting that description.<sup>1</sup> That was a rather impressive estimate from across rural Canada East and a significant indication that a serious problem existed in distributing the available land. The Committee therefore interpreted this information as proof enough to require, "prompt, energetic and efficient measures to keep them at home".<sup>2</sup>

Already noted, has been the fact that the questionnaire centred on three issues: a lack of good roads, problems in obtaining land, and a lack of manufacturing. It comes as no surprise, therefore, that when the Committee summarized the causes into four main ones, nine secondary or incidental ones, and several less tangible causes, that these three topics were most prevalent.

Of the main causes, the most frequently mentioned was the want of roads and bridges as a means of communication between the old settlements and the unconceded lands of the crown. The second main cause was the concession, in other days, of vast tracts of land to individuals or companies. "Such individuals or companies almost invariably neglect their lands until the Government have opened roads and built bridges in the neighbourhood, or until the lands are occupied by settlers who, for the most part, suppose them to form

1. Ibid., chart, pp. 3-4.

2. Ibid., p. 2.

part of a crown domain". Owners might then remove these people from the improved land or sell it to them at excessive prices. In the meantime, these owners were not fulfilling the conditions by which they obtained the land and nothing was done about it by the government. The third cause was, "the want of employment for a large portion of the population during our long winters, arising from the absence of manufactures." The fourth was a most interesting one, in that it was the added topic. It was a topic that aroused interest. Here was a major cause, and yet the Committee dispensed with it in two words without any embellishments. This cause was simply described as "inefficient organization". What it really meant was inefficient organization on the part of the government.<sup>1</sup>

Seven of the nine secondary causes dealt with various land problems. These causes concerned suits instituted by large proprietors against the settlers, particularly in the Eastern Townships. Then there was a law which exempted proprietors who held land under grant from the Crown from compulsory registration of their land. The Committee also listed problems affecting poor harvests for several years, the Hessian fly, rust in wheat, and potato rot. Moreover,

1. 1857 Report, pp. 6-7.

Agricultural Societies had been slow in forming, although it was mentioned that the Assembly had finally passed a law in the previous session to encourage such societies. There was also, "The redundancy of the population in the older settlements" and the neglect or maladministration of the local agents of the Crown lands in some districts, combined with certain imposed conditions of settlement. Lastly there was the problem of timber rights which gave a lessee the right to strip a settler's farm of timber.<sup>1</sup>

The two other secondary causes and the less tangible causes basically looked across the American border. There was the persuasive call of friends and relatives who encouraged others to emigrate, as well as the higher wages paid to craftsmen. The other points included such topics as a love of adventure and travel, a wish to escape from parental authority, and a hope of becoming wealthy without having to work very hard.<sup>2</sup>

As might have been expected, the respondents to the questionnaire did not always agree with each other, nor with the Committee's assessment. As far as the major causes were concerned, however, there was widespread agreement that roads and the large landowners were major problems. The Committee's concern for manufactures was.

1. Ibid., p. 7.

2. Ibid.

certainly such greater than most respondents' concern. Many of them certainly would not have rated it as a major problem. Others simply ignored the questions about manufactures, while a few even spoke out against manufactures. As for the fourth point, most were not reticent to blame the government, but some were more aware of another level of government, that of the municipalities.<sup>1</sup>

Some respondents would have rated some of the Committee's secondary land problems as major problems in their own area. They also indicated others, the most important of which was the seigneurial system, something the Committee chose to ignore. In other cases, such as the question of timber rights, a significant number of respondents disagreed with the Committee's position. Still other respondents, particularly the clergy, placed great emphasis on the moral damage to this agrarian people through emigration.

Having examined the basic causes both from the perspective of the Committee and the respondents, it can be seen that the material they have presented can be discussed rather conveniently under the topics of roads, manufactures and land. The topic of government involvement will obviously be intertwined throughout the total discussion since it involves each of those topics. Then too, the 1851

1. See below for specific examples.

Reports will be useful for amplification and for purposes of comparison. Since roads, the means to reach the land, was the most frequently mentioned topic in the replies to the questionnaire, as in the 1851 Reports, that will be a good place to begin this more detailed examination.

In 1851 a great controversy occurred concerning the horrendous conditions of the main roads of the Townships such as the Craig, Gosford, Blandford, Shipton, and Lambton Roads.<sup>1</sup> For instance a sworn statement was received from one person who saw animals stuck fast in the corduroy in the middle of the Blandford Road.<sup>2</sup> Another testified that, "Within five years, three horses have died on the Lambton Road, having sunk too deep in the mud-holes to be drawn out from them."<sup>3</sup> Settlers, therefore, obviously had great difficulty in getting any essential supplies to and from their lands. The Road and Municipal Laws were blamed for this since they left too much burden on scattered settlers to maintain these roads.<sup>4</sup>

Apart from the solution of the government spending more money on roads, Thomas Boutillier had prepared and circulated a detailed proposed new law for 1851 which would have had a Grand-Voyer

1. 1851 Reports, pp. 9, 10, 31, 33.
2. Ibid., p. 30.
3. Ibid., p. 32.
4. Ibid., p. 31

with an assistant put in charge of roads.<sup>1</sup> The general idea of this proposed law was to put a tax of about a penny per acre on all land and use this money to improve roads. In this way absentee owners would have to share this burden or lose their lands.

While this proposal had wide appeal, Alfred W. Rich, Esq. pointed out that, "because no permanent or sufficient interest is vested in or given to the several officers to be named under it, to see that its provisions be duly carried out to counteract the effects of 'fear, favor and affection' which must in the present state of society, govern officers resident in the locality where they may be called on to exercise their powers the duties are to be considered rather undertaken voluntarily than compulsorily".<sup>2</sup> In other words, in the end, this proposal was as toothless as the municipal laws then in existence which could be evaded. Others simply felt that toll roads were the answer to the problem. This idea was not brought up in the 1857 Report.<sup>3</sup>

The 1851 Reports also complained about large landholders who, by refusing to sell their lands at reasonable rates, left back

1. Ibid., pp. 14-17.

2. Ibid., p. 41.

3. Ibid., e.g. pp. 38, 41.

settlements isolated. Settlers could not make a road for themselves without being liable for trespassing, let alone being able to afford the time or money to build a road through such an undeveloped area. This general problem also existed with respect to Crown and Clergy Reserves.<sup>1</sup>

A similar picture of road conditions is gained from the 1857 Report. Improvements had by this time been made on the main roads. Since 1854, 755½ miles of new road had been opened and 224½ miles of old road repaired.<sup>2</sup> At the same time many back roads were reported in bad shape, although the examples given in 1857 were less dramatic than in 1851. Instead of horses lost in mud, the description was of "great boulders and firs in the middle of the road", while off in the seigneurie, the same writer said it was almost impossible to pass with a very small load without damage to the vehicle. This person's and other's solution was very straightforward, "Government should not hesitate to spend millions on the roads". Just how this money was to be raised was not discussed. The same person also suggested employing those who did not farm at grading and macadamizing roads.<sup>3</sup>

1. Ibid., p. 27.

2. Ibid., p. 20.

3. Ibid., p. 51, answer from Jos. Côté, M. D., St. Vallier.



The problem in 1857 seemed to be that more and more people needed to settle new lands so the demand for roads continued to increase. It is also apparent from the Report that all levels of government were being bombarded with petitions from all parts of Canada East (and West). As one person said, "many petitions to the three branches of the Legislature have represented the inconvenience resulting from the want of roads, and the Executive have granted trifling sums of money, too insignificant in amount to open so considerable length of road".<sup>1</sup> The Committee, for its part, recommended that the annual grant for the opening of roads and the construction of bridges should be increased to £60,000.

Apart from the general problems of the poor condition of roads and not enough government money being readily available, there remained two important problems. The first of these, which was explained by the Committee, revealed a very confused system of road building.

The plan which has been sometimes followed of commencing new roads, not at the old settlements, but at a distance of several miles within the woods, because there chance to be a few settlers there, and of carrying them on deeper still, so as to form a species of blind-road, has retarded the progress of colonization.<sup>2</sup>

1. Ibid., p. 96.
2. 1857 Report, p. 8.

The obvious solution was to build roads first from the settled areas to the blind-roads before extending them further away from the existing settlements. "Nothing encourages the settler more than the feeling that he is not cut off," the 1857 Report added.<sup>1</sup>

The other problem concerned unknown owners at the local level, but for this problem a solution that had worked particularly well in one locality was advanced by one respondent. Curé C. Marquis thought that the new Municipal and Road Act of Lower Canada of 1855 was the answer to the problem of owners who were unknown due to non-registration of titles and who therefore were not paying any taxes for supporting road building and maintenance. According to him, when this law was enforced in his area, it seemed to have an immediate effect. As he said, "The sales in February have had wonderful efficacy in bringing to light that pestilent tribe - the great proprietors".<sup>2</sup>

Roads are often thought of as one means to reach markets with manufactures. This paper's purpose, though, is to deal with land problems, so manufactures will be discussed basically in that light. It is also important to be aware that the Committee used

1. Ibid.

2. Ibid., p. 33.

this Report as a forum to emphasize its protectionist views concerning tariffs and manufacturing.<sup>1</sup> They did give two examples of the failure of Canada to protect its manufactures. A glass works at Vaudreuil and a woodenware factory at St. Athanase, had both closed down due to competition from the United States and had started up business in America.<sup>2</sup> The important point to note, though, is the fact that the Committee lacked practical positive suggestions for kinds of manufactures that might succeed at the local level.

"Manufactures of various sorts have always caused more misery than comfort", was the negative sort of answer received from some local respondents.<sup>3</sup> But, even if this kind of answer was ignored and only the most positive ones were considered, little evidence would be found of solutions that would ease any agricultural problems. Whether the idea was to create permanent jobs to alleviate the problem of so many men without land or to provide part time winter work for farmers, all the evidence given provided no noteworthy solution.

1. Prime examples of this were the answers by G. Benjamin, M.P.P., pp. 25-28, and by Jacob DeWitt, h.P.P., pp. 48-50 who answered a special set of questions dealing entirely with manufactures, mines or tariffs. See also the Committee's summary, pp. 9-13, which revealed by their own admission that their views on protectionism were not majority views.
2. 1857 Report, p. 10.
3. Ibid., p. 81.

When asking, what specific manufactures do these respondents recommend be started, there is a dearth of material. The only specific manufactures mentioned were sawmills or grist mills, and one carding and fulling-mill. One writer recognized the problem when he pointed out that saw mills employed only a few men. The picture of a vicious circle therefore emerged. Given the rural character of most of these areas, markets were not readily available for manufactures of any size and manufactures that might supply basic local needs would employ only two or three people. There was no solution at all to be found to ease the land problems which are now to be examined.<sup>1</sup>

One particular problem generated much heated verbage. It has already been seen how absentee proprietors of huge tracts of land were a problem for road building. The corollary of that, of course, was the fact that they were also a hindrance to land settlement. The 1851 Reports had much to say on this topic, particularly since the twelve missionaries saw it as the main cause of exigration. They complained that these proprietors refused to occupy their vast tracts, but, "by every species of exaction prevent others from settling on them." This privileged class had

1. Ibid., pp. 35, 80.

originally received these lands from the government with the intention of promoting, not retarding settlement. Nonetheless, the conditions of their letters patent were never complied with and yet, they continued to hold these lands.<sup>1</sup>

While the 1857 Report gave examples of public land selling for one shilling six pence per acre,<sup>2</sup> the going rates for selling these lands of the great proprietors in 1851 had been from twelve to seventeen shillings per acre. One example was cited of an owner who held 10,000 acres and who was demanding forty-six shillings and eight pence per acre for it, since it was located on a Provincial road. At that price those wood lots were valued at a total of £25,200.<sup>3</sup>

One respondent to the 1857 Report was specific enough to mention a government sale of a large tract in 1835 to gentlemen by the names of Humphries and Webb. They were described as absentee American capitalists. Another person mentioned large proprietors who had paid two shillings six pence to five shillings per acre for lands for which they were asking twenty-five shillings to fifty shillings an acre in 1857. There was even the special case near Isle Verte where there was about three square miles of land, called the Indian Township. This land had been granted some thirty years

1. 1851 Reports, p. 6.

2. 1857 Report, pp. 63, 65.

3. 1851 Reports, p. 7.

previously to a tribe of the Amellicite Indians, but only one sixteenth of it had been cultivated.<sup>1</sup> However, it was Curé Marquis who gave the classic example of Acton. As he put it,

The township was erected in 1806. It was surveyed and divided into lots of 200 acres. Of these every seventh was reserved for the Crown, another seventh for the clergy, and five others were distributed among the minions of power and their children, subject to the express conditions plainly inscribed in the patent that the grantees should, in a specified time, clear seven acres for every hundred so granted, and that in default of the due performance of that condition, the lots so granted should revert to the Crown domain in full and undiminished sight, and the patent should become void.

Half a century later,

Not a square inch of land has been cleared by these lucky mortals. Several of them have sold their lands at tolerably good prices; others have refused to sell, and ask exorbitant prices; several are unknown or exist in the state of spirits and are intangible; and in the meantime an immense tract of land remains in a state of nature, just adjacent to the old settled parishes which annually send in the excess of their population to the different parts of the United States.

Obviously the government was being partly blamed for the past actions of earlier governments, but it was also being blamed for not enforcing the terms of sale or possession as originally set out. On the other hand, while this particular problem seemed to have been widespread, nonetheless there were also replies such as, "I am not aware of the existence of any great tract of land in our country, in the possession of absentee or great proprietors."<sup>3</sup>

1. 1857 Report, pp. 135, 133.

2. Ibid., p. 31. This seems to be the same example used by Norman Macdonald, Canada, Immigration and Colonization: 1841-1907, (Toronto: Macmillan, 1966) p. 15. See also 1857 Report, p. 76.

3. 1857 Report, p. 61.

The topic of squatters, the other side of the same coin, received a lot of sympathetic attention in the various replies. The lack of registration of land and absentee owners being common, many people apparently settled on land which they thought was Crown Land. After improving the land, the squatters could be taken to court years later and sent off the land, losing years of invested labour or they could buy back the improved farm at an exorbitant price. One respondent cited the following classic example, the Wilson case as, "one case out of a thousand which will satisfactorily show the necessity of passing a law to protect settlers who belong to this class". A David Parre had settled on a lot of land in 1840 which belonged to a G. Wilson, Esq.. Parre, who believed it was Crown Land, built a house and cleared about 100 acres. In 1854, fourteen years after, one of the heirs of Mr. Wilson sued him for possession, succeeded in having him removed from the land and obtained possession without paying him anything. When Parre took possession of this lot, the nearby lots of the same quality were sold for 5s 6d an acre, but in 1854, the lot was worth over £1000. In some places squatters were extremely common. One person described an area where about one-fourth was occupied and improved by squatters so the problem was an urgent one.<sup>1</sup>

1. 1857 Report, pp. 103, 95.

Another chronic problem was the granting of timber rights over extensive areas to individuals or small groups. When a land holder obtained land in these areas, the timber rights still remained, so the land holder could later have his farm completely stripped of all wood even after he had settled the land. The Committee felt that as soon as a settler obtained a location ticket, all rights of the lessee of the timber limits should cease for that lot.

"Nothing vexes and disheartens a settler more than the depredations committed on his property by these bush hunters".<sup>1</sup> Thomas Boutillier, in his report, added that the settlers, "impute to the Government injustice towards themselves, and a want of foresight respecting the wants of the population now sought to be established".<sup>2</sup>

While the 1857 Committee had no kind words for these "bush hunters", and a majority of the respondents completely agreed with this condemnation,<sup>3</sup> nevertheless a strong minority saw timber merchants as a blessing, or at least a mixed blessing. The timber merchants were certainly a benefit to government income. For example one respondent estimated that the government derived over four shillings per acre from the wood sold. On the other hand another person

1. 1857 Report, p. 8. See also answers to the 20<sup>th</sup> question pp. 60, 63, 65.
2. Ibid., p. 25.
3. 1857 Report, pp. 37, 41.



made the charge that the timber merchants kept two sets of books, one for themselves and one with a record showing about one-half the actual wood cut. This second record was the one shown to the government agent.<sup>1</sup>

Lumbering could also help people. It provided employment and "subsistence" for people, particularly during the winter, and enabled some to have money to purchase seed grain for the spring. Lumbering therefore was seen by many as a cause in preventing emigration, since it provided employment for "great numbers of workmen".<sup>2</sup> In any case, when the lumbering was done on remote lands, not particularly suitable for settlement, there could have been little cause for the objection as implied in the twentieth question by the Committee that such lumbering practices were detrimental to settlement.<sup>3</sup>

If someone could not afford the sometimes exorbitant prices of the large landowner or did not want to take his chances with squatting, there remained three other possible kinds of land obtainable: colonization land, public land, and seigneurial land. What did the 1857 Report reveal about these possibilities?

1. Ibid., pp. 48, 107.

2. Ibid., pp. 63, 66, 97.

3. Ibid., p. 75.

The colonization societies came in for particular attention by respondents concerned with the settlement of the poorer people. One reply warned that these small societies, "can only be favorable to a class who can easily submit to sacrifices". A reply from St. Thomas in the Gaspé spoke of a society being formed there in 1856 where three or four hundred members had taken lots somewhere near St. Thomas. This same writer said that, "It is only by giving liberal encouragement to colonization societies that the government will succeed in the colonization of the places distant from old settlements." A third reply said,

In my opinion, the question of colonization is one of life or death to the French-Canadian nationality...if Government had done for the agricultural class what it has done for manufactures and commerce, we should not now have to deplore the crying evil of Canadian emigration.

To this person, the formation of numerous colonization societies was the solution. These would be formed with the help of loans from the government since the government was already helping railroads, telegraph companies and mining companies with loans.<sup>2</sup>

But, what was the prospect for obtaining public land to clear and settle? One respondent said that he had never felt that the actual price of public lands at one shilling six pence was an obstacle to settlement. Moreover, this person believed such a charge was

1. 1857 Report, pp. 54, 85.

2. Ibid., p. 99.

important so that the government would have income to improve roads.

This answer, however, did not come to grips with the widespread problem of poverty. For those poor people one shilling six pence an acre was well beyond their means to pay, let alone thinking of paying fifty shillings an acre. The practical problem then was what to do for people suffering from "crushing penury".<sup>1</sup> As Thomas Boutillier summarized,

To the young man who is utterly destitute of ready money, or the father of a family whose means are exhausted, such conditions are absolutely prohibitory. It is not difficult to imagine that to the father of four or five children, when he wishes to settle in the townships, the immediate erection of four or five houses of eighteen feet by twenty-six, the annual clearing of twenty or twenty-five acres of land, and the payment of the annual installments on his land are conditions far beyond his ability to fulfill, unless he chance to possess considerable property.<sup>2</sup>

If these people did apply for lands, Government agents sometimes refused to grant licences since they had no money. Others did settle on lands they could not really afford and soon found themselves deep in debt.<sup>3</sup>

There were a wide range of ideas about what to do concerning this major problem. One writer felt that grants of free land would

1. Ibid., pp. 63, 58.

2. Ibid., p. 21.

3. Ibid., pp. 36, 109, 139.

simply open the door of opportunity to "all the idle and worthless, and the dissolute".<sup>1</sup> The majority of replies, though, sympathized with the plight of these people. Most were in favour of grants at a very low price or of free grants with certain reasonable obligations to fulfill within a given length of time, in terms of road building or land clearing. Details varied in these opinions over the problems that the lands granted were not of equal quality and the person's ability to pay might vary. Some also specified that a limit of perhaps a hundred acres per person be clearly stipulated.<sup>2</sup>

The concensus seemed to favour easy terms believing that the privations, sweat and toil of the first few years was a significant payment to make. In any case favourable concession terms were essential, or else these people would have little option but to emigrate or to become a burden on the local community. The Committee, for its part, favoured a ticket for land being issued to such people absolutely free so that no pretext could be made of any sort to exact a fee from them. Title deeds then should be granted after the clearance of a road in front of the property, the clearance of six acres of land (two of meadow), and the erection of a house and barn.<sup>3</sup> No mention was made of the time period during which the

1. Ibid., p. 40.

2. Ibid. See answers to questions 15 and 17, pp. 24, 32. See also p. 69.

3. Ibid., p. 14.

settler was expected to fulfill these obligations.

There was no specific mention of the seigneurial system by the Committee. Only one secondary cause made an obtuse comment about the topic when it mentioned the redundancy or overcrowding in the older settlements. The Committee therefore relegated any problem in the seigneurial areas strictly to one of a demographic nature. Although the Committee was almost silent on the subject, a number of respondents were not. In fact almost forty of them made some mention, however brief, of the seigneuries. Several of these replies simply pointed out that there was no more land to be conceded in their particular area. St. Hyacinthe and Isle Verte were two such examples cited. Isle Verte had been all conceded for twenty-five years so in some cases this was not even a new problem.<sup>1</sup>

Not only were many seigneuries totally conceded, but some were facing a "superabundance of population".<sup>2</sup> This, of course, immediately raises the question of the long established practice of subdividing farms. The historian Norman Macdonald saw the problem this way: "congestion in the river parishes had been an integral part of Quebec's demographic history for decades - there was nothing new about it except its attempted solution."<sup>3</sup> Of the several people

1. 1857 Report, pp. 21, 36.

2. 1857 Report, p. 48.

3. Macdonald, p. 183.

who discussed this problem of subdivision, one especially saw the problem in different terms. To him, there was a new problem, that of having reached the saturation point of subdividing. "The custom of dividing farms does not now prevail, as they are already barely sufficient for the support of a family". In some cases the land was further subdivided but, "the lands thus divided not always sufficing to supply the wants of a family, compel the owners to sell them". Still another described "a father (and there are many of them) with but fifty-six arpents of land in extent who cannot settle four or five children; and he cannot even bring them up without great difficulty",<sup>1</sup>

If that were all the respondents had to say on the subject, it would be a simple matter to move on to the next point. But such was not the case. Indeed, since the Seigneurial Tenure's Act had just been passed in 1854 for the abolition of this system, some background material is essential to the understanding of what the respondents next said. At this point it is necessary to go back to 1850 and the beginning of the push towards its compulsory commutation.

By 1850 a Special Committee<sup>2</sup> was set up to study the matter.

By that Committee's first resolution it was clear why they were

1. 1857 Report, pp. 68 (See also pp. 75, 137), 82, 58.

2. The Committee included Mr. Polette and Mr. Boutillier.

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 meetings: "now that the subject has attracted the public attention in a high degree". By that same resolution it was evident that the Assembly could agree by a 53 to 1 margin on the concept of compulsory commutation, "taking care that all the interests concerned are protected and equitably adjusted".<sup>1</sup>

In spite of this general agreement in principle, a wide gulf separated two groups as to the meaning of equitable. One group felt strongly that seigneurs were bound to concede unconceded lands and that some seigneurs had "perverted" the whole system by illegally increasing rents and by adding "other incumbrances". On the other side were the Seigneurs who felt that "to do justice..., it is necessary to compare the present relative value of money and produce, with that value one hundred and fifty or eighty years ago".<sup>2</sup> They also felt no obligation to concede land. For instance Louis Joseph Papineau once reported that one habitant, "had the insolence to tell me that I was required to grant him land".<sup>3</sup> This difference in attitudes was shown in 1853 when the Assembly passed a bill to pay

1. Journals, June 26, 1850, pp. 96-97.
2. Journals, June 26, 1850, p. 87, Aug. 7, 1850, p. 24 and Appendix AKN, Aug. 29, 1851, p. 12 (A. Guy).
3. L. J. Papineau to L. J. Papineau, Oct. 22, 1850, cited in R. C. Harris: "Of Poverty and Helplessness in Petite-Nation", Canadian Historical Review, vol. 52, no. 1, (March, 1971) p. 29.

the seigneurs a small fixed annual sum per arpent in exchange for the abrogation of all seigneurial rights and dues. The Legislative Council forthwith rejected it.<sup>1</sup>

Seigneurial Tenure was finally abolished by legislation in 1854. However, it was passed only after suitable amendments favoring the seigneurs had been approved by the Legislative Council.<sup>2</sup> A monumental task then began with the appointment of commissioners to visit the seigneuries and to evaluate them. They had to determine the rights of the Crown or the dominant seigneur, as well as the amount of land held by each habitant, together with the annual dues and charges he had to pay. Guidelines then had to be established to try to make evaluations and rulings uniform.<sup>3</sup>

These complicated procedures were outlined in the Act beginning with the commissioners' swearing to faithfully perform their duties "without partiality, fear, favor, or affection" in Section 1, through to Section 13, where the final Schedule of a Seigneurie was completed. Only then, according to Section 14, could the Schedule be published in an official Gazette so that

every Censitaire in such Seigniorie shall by virtue thereof

1. Munro, p. 244.

2. Journals, Dec. 14-16, 1854, pp. 538, 570-577.

3. Munro, pp. 245-246.



hold his land in franc-aleu roturier, free and clear of all Cens, Lods et ventes, Droit de banalité, Droit de retrait and other Rente constituée which will be substituted for all Seignioral duties and charges; and every Seignior shall thereafter hold his domain and the unconceded lands in his Seignior, and all water powers and real estate now belonging to him, in franc-aleu roturier....

The 1857 Report appeared while these deliberations were proceeding. The large amount of settlement money was yet to be paid, a sum much larger in fact than the Assembly had anticipated.<sup>2</sup> It is therefore important to be aware that 1857 was a year when Seigniorial Tenure was settled in one sense, but was still unsettled in another as the respondents' further testimony revealed. Only two replies specifically mentioned the abolition of seigniorial tenure. One from St. François felt strongly that all the uncertainty was having a negative effect in his area. "All the emigrants have evinced a desire to settle on Crown lands and not on the lands of the seigneuries, inasmuch as the seigniorial tenure is as yet only deliberated upon and the result is still much to be feared." Another questionnaire, completed by five people from St. Anne de la Pocatière disagreed. To them, "land was sufficiently easy to be obtained

1. Statutes of Canada, 1854, Cap. 3, pp. 10-32.  
2. By 1859 \$1,200,000 had been paid. The final total cost was \$5,000,000 and some financial concessions to Upper Canada. See, Careless, Brown of the Globe, vol. 1, (Toronto: Macmillan, 1959) pp. 296-299; Marcel Trudel, The Seigniorial Régime (Ottawa: Canadian Historical Association, 1963) p. 17; Journals 1859, pp. 216-217.

before the abolition of the seigniorial tenure to induce people to remain if they desired to settle in their native country".<sup>1</sup>

The most frequently mentioned problems were really old ones. Over a third objected to the "high", "excessive", or "exorbitant" prices, to the "heavy dues and other charges", or to "other extraordinary conditions".<sup>2</sup> Unfortunately none of these complaints were very specific. No prices were given as examples, nor were values placed on any of the dues. There were no concrete examples such as in the Seigniorial Tenures Committee's Third Report of 1851 which showed examples of rates increasing from two sols tournois, to six, and then to twelve per arpent with an unspecified indemnity. In this same example the seigneur was also reported to have been selling both firewood and timber from the unconceded lands. Likewise, a second example from that Report had the rates increasing from six, to twelve, and finally to fifteen sols. The last of these rates was also accompanied by surcharges of from five to ten years' arrears.<sup>3</sup>

One person in the 1857 report mentioned some people who had worked at improving their seigniorial land, but who, were unable to meet their payments. These people were sued, lost their lands with

1. 1857 Report, pp. 95-96, 74.

2. Ibid., pp. 105, 50, 56, 126, 57.

3. Journals, Appendix N<sup>o</sup> 4, 1851, Evidence of Jean Baptiste Honignais, July 15, 1851.

the improvements, and also had to pay considerable costs.<sup>1</sup> Another respondent explained how some seigneurs were getting around the problem of price. Some lands,

...have been conceded in large tracts by the Seigneurs to friends, who offer them for sale at very high prices, to benefit the Seigneurs who have granted them to them, by a tacit understanding that they are to be sharers in the proceeds of the sale; these lands are uncultivated and unoccupied, and their neglected state injures and retards the clearing of occupied farms situated within the sale limits.<sup>2</sup>

In contrast to this, one priest related that along the entire North Shore between Trois Pistoles and Point Lévi the censitaires had become proprietors simply by paying for the deed of his property or the cost of the procès-verbal and of the measuring of their land. This was done even though these properties had been "burthened with the payment of lods et ventes and many other burthensome charges." According to this priest, these people had started with nothing but were able to become "rich proprietors living well and bringing up their families at the superior schools,..."<sup>3</sup>

There were a few who mentioned the seigneurs' refusing to concede land. One person declared that "there is in the hands of the Seigniors a great extent of land which they have neglected or refused to concede for at least ten years past. This has completely prevented the opening up of these lands....". Another seigneury

1. 1857 Report, p. 113.

2. Ibid., p. 76.

3. Ibid., p. 64.

which had been unconceded for years was known as "the American Seignior". It was apparently owned by some unknown American.

Still another, the Lauzon Seigneur, was mentioned by several people as wild and unconceded. Its owner, however, was well known: it was the Crown.<sup>1</sup> Still one other person pointed the finger at the government and the seigneurs of that locality: "I look with horror at the cutting of timber for commercial purposes, ...already, in Parishes which are but beginning to be settled, building timber is very scarce; and this because Seigneurs and the Government have permitted the cutting of the wood, of which a large exportation takes place in this locality".<sup>2</sup>

While some writers have stressed the habitants' reluctance to leave the seigneuries to take up lands in the Townships because they objected to the English system of landholding, there were no such objections in this Report. Rather, the price of the land or the difficulty of getting a clear title were the sort of objections heard. One respondent said that people were "indifferent whether they settle on Crown lands or on unconceded lands in the seigneuries. Everything depends on the proximity of the family and the quantity of the land".<sup>3</sup> In practical terms, more land was needed beyond what

1. The respondent referred to it as belonging to the Government.
2. Ibid., pp. 102 (see also p. 68), 91, 53, 93, 89.
3. 1857 Report, p. 71.

the seigneuries might have had left to offer, so the main focus was on the settlement of the Townships where this paper has already looked.

One other topic of interest in the Townships was the Clergy Reserves. Its consideration has been left until now because it was dealt with by the Assembly at the same time in 1854 as the Seigniorial Tenures Act. The Clergy Reserves Act ended further new grants of money to the clergy and made income from these lands available to municipalities. For Canada East, Section 1 of the Act established "The Lower Canada Municipalities Fund".<sup>1</sup> While this Act "removed the major source of irritation between churches and state" for the Province of Canada,<sup>2</sup> most of the concern about clergy reserves centred in Canada West. It is not surprising therefore that only a few references were made to these reserves in the 1857 Report and none by the Committee. One such reference simply mentioned that there was a certain amount of clergy land which caused a "considerable impediment to colonisation". A second reference was made by a priest who stated that the previous method of reserving one lot in seven for the Crown and one in seven for the Protestant clergy had created problems in settlement. "I assert positively that this method... has

1. Statutes of Canada, cap. 2, Dec. 18, 1854.  
2. Koiv, p. 62.

caused them [Crown and Clergy land] to continue ungranted, and to remain in a state of nature".<sup>1</sup>

There was nothing in the report of 1857 to compare with the details provided by the twelve missionaries in the 1851 First Report concerning the Clergy Reserves. At that time they reported oppressive conditions which included a basic charge of four shillings per acre for clergy lots. On top of that, however, were rent charges of twenty-five shillings per year for the first seven years, of fifty shillings per year for the next seven years, and of seventy-five shillings per year for the third term of seven years. It was asserted that a two hundred acre lot would have cost eighty-two pounds after twenty years occupation. Therefore, only four to six percent of the people were able to meet these terms. Later, another condition was added. Except for clearing land or for building, timber was not to be cut at all by the settler.<sup>2</sup>

Thus, in studying the 1857 Report, it can be seen that there were numerous problems in getting and keeping land. Further complicating the land problems discussed in this paper, were the climate, the soil, poor methods of farming, and poor harvests. Several mentioned the severe climate and shorter growing season, as well as the

1. 1857 Report, pp. 97, 64.

2. 1851 Reports, p. 8.

problems resulting from hills, swamp, and rock. Little could be done about those factors, but they certainly could discourage farmers.

The Committee's fifth point about secondary causes had mentioned the deficiency of the harvest for the previous several years.

As mentioned earlier, this was blamed on the Hessian fly, rust in wheat, and potato rot, but as well, the Committee added that the problem was connected to "the system of culture followed by our farmers".<sup>1</sup> Several replies elaborated on these farming methods.

There was reference to the soil being worn out as well as to there being lack of agricultural knowledge and education being prevalent. Experimental or model farms were obviously needed. One person felt that new crops such as flax, hemp, hops and sugar beets should have been introduced. He also believed that immigration of people with a better knowledge of farming would help to educate people and thus reform "their present vicious system of agriculture". Unfortunately there seemed to be little interest in such ideas of improvement.<sup>2</sup>

Two and a half months after sending out the questionnaire the Report had been presented. This chapter has shown that the Committee had identified four major and nine secondary causes of

1. 1857 Report, p. 7. See also pp. 86, 101.

2. Ibid., pp. 134, 94, 120, 70.

emigration. Most of these causes were related to land holding and land use. In addition, respondents, who were widely scattered over Canada East, described a number of other causes. These were generally similar to those given by the Committee, but they also added some. Both the Committee and the respondents agreed that a serious problem existed which needed immediate solutions. The next chapter will consider the recommendations related to legislation and the fate of that legislation.



## CHAPTER II

## THE CONSEQUENCES OF THE 1857 REPORT

Roads were needed to get to the land. Without the development of any significant manufactures to ease the pressure of so many people looking for land, even more roads were needed. While 755<sup>1</sup> miles of new road had been built and 224<sup>1</sup> miles of old ones repaired since 1854, a crucial question was whether or not this rate was keeping pace with new demands. Judging from all the petitions to the government, it would be easy to conclude that it was not. At any rate, the 1857 Committee certainly recognized a need for increased spending for roads.

By 1857 the Municipal and Road Act of 1855 was in effect.<sup>1</sup> This law set up a new municipal system in Canada East which had responsibility for road maintenance and construction. It even did away with the position of Grand Voyer although such road officials had existed since about 1657. In passing this lengthy legislation, the government had admitted the shortcomings of previous measures.<sup>2</sup>

1. Statutes of Canada, cap. 100, 1855, pp. 386-493.

2. Hamelin and Hoby, pp. 147-148.

Since the 1857 Report did not explain the new municipal system, some background is necessary. The law of 1855 clearly put the onus for local road building and maintenance on the municipalities which were created by this Act. The preamble of the Act declared that County, Parish, Township, Town and Village Municipalities were to be established. Some roads remained under the jurisdiction of the Commissioner of Public Works, but others were to be turned over to the appropriate municipal control. Apart from those roads, Montreal, the city of Quebec, and the Town of St. Hyacinthe were, according to Section 4, the only areas excluded from this Act.

Local initiative was the real key to the application of the law.

As far as the basic operation of the law was concerned, Hamelin and Roby have explained,

La loi de 1855 décrit avec précision la procédure à suivre dans la construction des routes locales. Les francs-tenanciers d'une ou de plusieurs paroisses qui désirent ouvrir ou améliorer une route procèdent à l'élection d'un surintendant qui a la responsabilité de les réunir, de consigner dans un procès-verbal le tracé de la route, la distribution des corvées et des cotisations entre les propriétaires. Il fait homologuer ce procès-verbal par le conseil municipal ou le conseil de comté qui ont plein pouvoir pour imposer des cotisations en argent si nécessaire.

The main interest of this discussion, however, concerns some

1. Hamelin and Roby, pp. 147-148.

details of the manner in which the money and statute labour were raised and how non-resident owners could be made to contribute their share.

Section 51, paragraph 5, gave the municipality some flexibility by allowing it to pass local by-laws and regulations for raising money for road purposes and for the use of statute labour. Section 71, paragraph 5, also provided for the commutation of statute labour at the rate of four shillings per day.

The respondent, Curé Marquis' interest was in how the law could be used against the great proprietors who left huge tracts of land undeveloped. They had been able to avoid paying taxes and contributing towards roads because the Registration Act did not compel a non-occupying proprietor to register his title.<sup>1</sup> There was simply no way to tax a non-resident or even find out who he was until this 1855 Municipal and Road Act provided a way to get around the Registration Act's protection. By the terms of the Municipal and Road Act the owner could be made both to reveal himself and to pay for roads or face the possible gradual selling of his land for these road taxes.

Section 74, paragraph 6 was the key that unlocked the door.

After provision was made for collecting the money due, paragraph 6 dealt with failure to pay:

If any person neglect to pay the amount of assessments imposed upon him, for the space of thirty days..., the Secretary-Treasurer shall levy the same with costs, by seizure and sale by warrant under the hand of the Mayor of the Municipality of the

1. 1857 Report, p. 13.

goods and chattels of the person who ought to pay the same, or of any goods of chattels in his possession, wherever the same may be found within the Municipality; and no claim of property, or privilege ... shall be available to prevent the sale thereof for the payment of the assessments and costs out of the proceeds thereof;...

Paragraphs 11 and 12 of this same section completed the details which explain Curé Marquis' talk of February sales. By November 15 a statement had to be prepared of all assessments still due for the preceding twelve months. Reasons for not having collected the moneys such as "non-resident" or "no personal property to seize" were to be included with each overdue assessment. By December such detailed lists were to be published in the Canada Gazette and in one local newspaper in that district, or in a paper from the next district if the immediate district had none. Lots or parcels of land would then be sold on the first Monday in February to raise the sums due.

Section 75 detailed sale procedures. It provided that only the portion of land needed to raise the taxes would be sold to the purchaser. The purchaser would then be issued a certificate for the land. He could immediately take possession, but the owner of the land or anyone on his behalf had a year to recover possession by paying the moneys due plus a twenty percent penalty. If the original owner did not buy it back within the year, the purchaser could execute a deed of sale which would give him free and clear title to the land.

Here was a way to raise money for roads in which all owners could be made to contribute. It also could force owners who had not registered their property to declare themselves by the simple act of paying their road tax, something the Registration Act had protected them from doing. Such a tax could also have the advantage of encouraging the owner to have his land settled since the land was now an expense to him.

Section 72, paragraph 1 also provided that the tenant could be made to pay the tax. However, paragraph 2 also made provision for the tenant to take action against the owner to recover these moneys paid, together with interest and costs. As long as payment was made, the Municipality had no more claim so it seems possible that a squatter could have paid such an amount so that the land he was on would not be sold from under him for unpaid road taxes.

Sufficient evidence was not given to show how effective this law was in bringing to light non-resident owners. However, in weighing Curé Larquis' comments against Mr. Rich's 1851 comments about "fear, favor and affection" in localities, it is not difficult to envisage an uneven application of the law. While office holders in some localities might apply the letter of the law, elsewhere a Secretary-Treasurer and Mayor or County Superintendent could avoid the strict enforcement of the Act.

Concerning a road policy for the province, Hamelin and Roby have painted a picture of governmental subsidies being spent on the politicians' electors at the expense of any system of priorities.

At the municipal level, they said "la confusion totale règne".<sup>1</sup>

Those who were in charge of building roads did not know how to do it properly. At the same time people doing Statute Labour talked away their time while doing little actual work. That picture would not disagree with the evidence in the 1857 report.

This discussion about the new municipal and Road Act raises an even larger problem. Absentee landowners in some localities were being forced to identify themselves and pay road taxes by means of a municipal law. This was a rather devious route. The obvious straightforward approach would have been for the Assembly to have passed one law forcing such registration of property and to have passed another to protect some basic rights of squatters. Why did they not follow that approach?

In fact the Committee offered this concept of property rights which led them to ask a question:

If the title deeds of a proprietor in virtue of the bare fact of their existence, confer legal rights of property to the holder, such rights can, if not sustained by actual possession, only constitute a bare interest in property. Now, while the holder of such deeds remains unknown, who is the ostensible proprietor? Undoubtedly it is the person in actual possession. This

1. Hamelin and Roby, p. 148.

individual frequently enters into a covenant with a third party, who having no means of ascertaining the real proprietor, is generally the victim of this defect in the law.

Why should the law be so indulgent, why extend its special protection to the secret proprietor?<sup>1</sup>

The answer lay in the simple fact that there was a very contentious battle going on between the Assembly and the Legislative Council. The Committee expressed anger at the Council's refusal to approve a Bill which the Assembly had passed in the session of 1857.

Your Committee cannot but express their regret that the Bill passed Your Honorable House in the present session, providing for the protection of both parties, in their respective rights of the latter as proprietors, of the former as de facto possessors and bona fide occupiers, has not received the sanction of another branch of the Legislature. It is no means their intention to make any remarks which may be construed as a censure of any, but they are bound to declare that a law which justifies one man in enriching himself at the expense of another is bad in principle, unjust and vexatious in operation, and behind the times in policy.<sup>2</sup>

The Committee went on to point out bitterly that in the Assembly the Bill had received unanimous support from Lower Canada and a large majority in Upper Canada. The Committee and friends of such a measure did not consider themselves defeated and would introduce a similar Bill in the next session. They also served notice that they would recommend an inquiry to see that conditions of agreements were kept, or the holders would lose their privileged rights. They would also have a Registration Act applied more effectively.<sup>3</sup>

1. 1857 Report, p. 13.

2. Ibid.

3. Ibid.

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After discovering the conflict between the Assembly and Council that was mentioned in the Report, the legislation concerning squatters was examined. A rather surprising pattern emerged. The 1857 legislation was the third such Bill to be passed by the Assembly to protect the interests of squatters. One was passed in 1855, 1856, and 1857. There were also to be Bills passed about squatters in the future, in the years 1858, 1859, 1860, 1863 (two Bills), and 1865. All nine Bills that were passed in this period end with the same words in the index listings, "Not returned from the Council".<sup>1</sup> Their frustrations at being thwarted had only begun. There would be no significant law passed before Confederation to protect squatters.

Examples of the Legislative Council protecting acquired land rights were not new. Reference has already been made to the Seigneurial Tenures settlement and the fact that in 1853 the Legislative Council rejected the Assembly's solution of a small fixed annual sum per arpent in exchange for the abrogation of all seigneurial rights and dues. Similarly in 1854 these measures underwent many and important amendments at the hands of the Legislative Council before the law passed both Houses. In fact the measure as finally approved, bore little resemblance to the one originally introduced.

1. General Index: Journals of the Legislative Assembly, p. 825.
2. Munro, pp. 244-245. J. C. Dent, The Last Forty Years (Toronto: McClelland and Stewart, 1972) pp. 238, 251.



This action also irked the Assembly enough to increase its pressure to have the Legislative Council made elective. Legislation to this effect was passed by the Assembly in 1855, only to be rejected by the Council. In 1856 the Assembly finally got its Elective Legislative Council Act passed. That Act provided for twenty-four councilors for each section to be elected for eight-year terms. Elections were not simultaneous, but biennial, with twelve members being elected in each of the years, 1856, 1858, 1860, 1862, 1864 and 1866. The previously appointed members still remained members, however. Even this legislation had no effect on squatters' bills. They were still being rejected by the Council after it had 48 elected members.<sup>1</sup>

High prices and excessive dues had been the sort of complaints that led to the abolition of seigneurial tenure. In 1857 the evidence of the Report suggests that the same problem still headed the list of complaints. While all conceded land would be subject only to a constituted rent a few years later, all unconceded land and the seigneur's domaine would have also then become his own, free of any seigneurial obligations. He could then set his own price for selling that land.

1. Dent, pp. 238, 261. Careless, Union, pp. 197, 200.

The Clergy Reserves situation, by contrast, was hardly mentioned by any of the respondents and not at all by the Committee. This evidence therefore agrees with a statement made by J. C. Dent that the Clergy Reserves question "never assumed very formidable proportions" in Lower Canada. It was essentially a problem in Upper Canada.<sup>1</sup>

The major problem by far with respect to Crown land areas was what to do about the ever increasing number of young men without land. Many of them were so poor that even a normally reasonable price like one shilling six pence per acre was beyond their means. To succeed, they needed some assistance through the first difficult years of clearing the land. The wide variety of solutions proposed by the respondents only confirmed the fact that there were no easy answers to this major problem. Many seemed to realize that the government did not have a bottomless purse. There was a practical limit to the financial concessions the government could make.

In its elaborations about squatters and their basic property rights, the Committee appeared to be something of a champion of the downtrodden against the pernicious designs of a privileged class represented by the Legislative Council. But what then was the standard of living they expected these people to achieve? The Committee's standard was by no means an egalitarian one; it was simply "comfortable subsistence".<sup>2</sup> For all their talk of favoured and disfavoured

1. Dent, pp. 217-218.

2. 1857 Report, p. 8.

people, nowhere were they advocating equality for the people of Canada East.

At the same time the government was coming under increasing pressure from the church to increase clerical involvement in this problem of the poor, through Colonization Societies. In the late 1840's, Lord Elgin had in fact encouraged the participation of the Roman Catholic clergy in colonization in order to neutralize the greater threat of Papineau's agitation.<sup>1</sup>

The challenge to the government's position came in an innocent enough looking plan for colonization proposed by Curé Parquis, which would have provided land for the 900 landless young men in the Acton area.<sup>2</sup> Aside from all the plans for roads and buildings, the crucial topics were leadership and money.

Since Crown Land Agents or Inspectors of Agencies lived too far away to provide the necessary on-the-spot leadership, the good priest logically concluded, "Well, why then should not the leader... be a priest?" But how was such a leader to survive? Would he not be left in the condition of the priests in the Petite-Nation seigneurie where the financial support was inadequate and where priests were

1. Jacques Monet, The Last Cannon Shot; A Study of French-Canadian Nationalism, 1837-1850 (Toronto: University of Toronto, 1907), pp. 293-294, 318.
2. 1857 Report. The discussion that follows refers to the plan of colonization, pp. 33-38.

rarely paid their tithes?<sup>1</sup> Curé Marquis had a perfect solution on paper. The government would pay the leader an annual salary of 150 pounds per year for five years in lieu of any tithes, burial fees or marriage fees. After five years the ecclesiastical dues would begin but the salary would be reduced 25 pounds per year until it ceased. The other problem was the fact that such an appointment was "a contravention of the rules of the church". Curé Marquis, however, thought that a "temporary suspension of the canons" could be arranged, since the bishops strongly supported colonization and would therefore be sympathetic to the "immense advantages likely to accrue to society, and to the cause of religion".

As far as costs were concerned, a 1000 pound twenty-five year loan would be obtained from the Municipal Loan Fund of Lower Canada. The government, "like a fostering parent" would pay back one-half of this with interest. The cost of surveying and of opening roads would, of course, devolve on the great landowners and the government as the holders of the land. A tax of two pence per acre would be levied upon wild land as well. So ended the curé's ingenious plan. Details such as the rates these settlers would pay for the land were not even discussed. In short, though, his plan would have meant that the priests would control colonization and the government would pay for it.

1. Harris, p. 40.

Rather than challenge the good priest head on, the Committee praised him by name for a comment he had made about roads. Then on the topic of colonization, they ignored his suggestion and offered an alternative that emphasized government control of colonization:

One means which Your Committee hold to be well calculated to encourage colonization and therefore to diminish the amount of exigration, is the grant to every man of 17 years of age or upwards of a certain quantity of land, not exceeding 100 acres, on his demanding the same from the Crown Land Agent, who might also be designated the Agent of Colonization.

In this context the Committee was prepared to recommend that such an Agent be empowered to grant a free location ticket upon demand so that there could be no pretext whatsoever to charge a fee to the poor settler.<sup>2</sup>

Finally it is noteworthy that while the Committee did its best to show the United States in its poorest light, they were forced to admit that Western American land could be acquired cheaply, on easy terms, and with an indisputable title.<sup>3</sup> That simple admission speaks volumes when contrasted with the material examined in this chapter. Just the same hope springs eternal, for one respondent concluded his reply with the hope that "Government will inaugurate a new era worthy of [Lower California's] "glorious destiny".<sup>4</sup> But the Committee's recommendations came to naught.

1. 1857 Report, p. 14.

2. Ibid.

3. 1857 Report, p. 3.

4. Ibid., p. 55.

## CONCLUSION

In the Introduction Responsible Government was discussed in relation to Careless' statement that once the executive, the heart of government, was made responsible to the Assembly, the Legislative Council was of little consequence. The Assembly achieved full responsible government by 1849 and then proceeded to enact legislation dealing with land in 1854.

The evidence provided in this study made it abundantly clear that responsible government had not solved the land problems to everyone's satisfaction. In 1857, a Committee appointed by authority of the Assembly that had supposedly achieved responsible government had admitted that the Assembly could not make what laws it deemed necessary; it admitted that it had not been able to pass a law for compulsory land registration, nor had it been able to pass one to protect squatters. Further investigation showed that this was but one of a series of nine laws concerning squatters that the Legislative Council had vetoed. It did this even though the Legislative Council, after 1856, became increasingly composed of elected members responsible to the electorate of Canada. Even with the so-called abolition

of seigneurial tenure in 1854, the Assembly had virtually capitulated from its original position of a year earlier to accept the basic demands of the Legislative Council.

Not only was the Assembly unable to legislate the laws it wanted, neither was it able to execute or see that some existing laws were carried out. After nearly eight full years of responsible government, here was the 1857 Committee and some respondents revealing that the owners of the large undeveloped tracts of land had taken those lands under specific conditions which the executive could not enforce. Threats by the Committee to recommend an inquiry to see that conditions of agreements were kept, or of having a Registration Act applied more effectively, were nothing less than admissions of defeat at the hands of the local "minions of power".

The many land problems revealed in this study had not been created overnight. When it is also understood that the Assembly did not have the power to solve them overnight, the entire picture really becomes more intelligible. Thirty years ago Donald Creighton took Canadian biographers to task for producing a dull sameness about their characters. Instead of producing biographies of Robert Baldwin or Francis Hincks, he maintained, the writers had created Robert

Responsible-Government and Francis Responsible-Government.<sup>1</sup> In the light of what the 1857 Report revealed about land problems, some writers seem also to have created the famous Seigneurial-Responsible Government-Tenures Act.

Once such an artificial creation has been scrapped, it becomes easier to understand that satisfactory land reform would not and could not be achieved in the circumstances of the 1850's. The government was incapable of simple solutions to hard problems. It had to try to do something for the plight of these numerous poverty-stricken farmers, yet it could not ignore the fact that it was not these same farmers who elected them to power. It was still the local "minions of power" to whom they answered at election time; they might threaten and bluster, but they could not forget to whom their ultimate responsibility lay.

Circumstances had forced the government's hand in the 1840's to have the clergy play a large rôle in colonization. Now the government was forced to make some concessions to them in recognizing Colonization societies, but it also had to resist complete capitulation to the clergy. It could not accept Curé Marquis' scheme of

1. Donald Creighton "Sir John Macdonald and Canadian Historians", Approaches to Canadian History C. Berger ed. (Toronto: University of Toronto, 1967) p. 53.

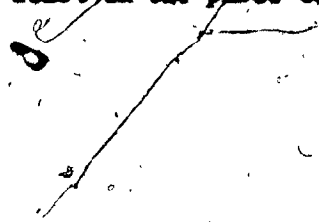


colonization by abdicating all leadership responsibilities while, at the same time, assuming total fiscal responsibility.

Fiscal policy also presented another problem. With the ever increasing number of landless farmers, the government was under even greater pressure to make financial concessions to help these people obtain land. This land had to be connected by roads. From where was the revenue to come to build them? Comfortable subsistence farming just did not generate government income to pay for those roads. Simple solutions were just not among the available options for action.

While some historians have seen 1857 as a turning point in Canadian history, there was no evidence of such a turning point as far as this study was concerned. The historians who talk of a turning point have been thinking mainly in colonial terms.

Apart from its commentary on Responsible Government, the Report provides an interesting commentary on the Seigneurial land and Clergy Reserve situation in Canada East. Little has been said by historians about what was happening regarding these problems after 1854. This commentary therefore is useful to show that seigneurial land was not being settled at least in one place because of



unsettled conditions resulting from the 1854 settlement. At the same time it was interesting to see the old problems of price and dues heading the list of problems. In the light of the terms of settlement, it was only to be expected. But, such an expectation was, at least, confirmed. Similarly, as expected, there was no evidence to show that the Clergy Reserves problem was a very serious one in Canada East.

In conclusion, the 1857 Report on Emigration provided an extremely valuable commentary on land problems and government policy in Canada East, a commentary which suggests a greater need to further examine the land policies of this important period in Canadian history. The evidence of the Report clearly refuted the idea that land problems were solved in 1854. Equally too, it refuted the proposition that government land policy in the 1850's would in any way inaugurate any new era. It also raises serious doubts about the efficacy of Responsible Government.

- Appendix

THE QUESTIONNAIRE SENT OUT BY THE 1857 COMMITTEE<sup>1</sup>

- 1st. Do you know whether any emigration from Lower Canada to foreign countries has taken place within the last five years?
- 2nd. Does such emigration take the direction of agricultural or manufacturing countries?
- 3rd. If you cannot furnish an answer respecting emigration in general, can you give any information relative to that emigration which has taken place from your neighbourhood, during the above period?
- 4th. What proportion do the number of persons emigrating from your locality bear to the whole population?
- 5th. Can you state the proportion of persons of each origin, French or Anglo-Saxon, and the class to which they belong?
- 6th. Of the persons who have so emigrated have any returned to your neighbourhood? In what condition, physical and moral? and with what pecuniary means?
- 7th. Can you state the principal causes of such emigration?
- 8th. Do you think that the causes are the same in all localities, and what are they in yours?
- 9th. Do the persons so emigrating evince any wish to settle on Crown Lands, or on unconceded lands in the Seigniories? and why do they not so settle?
- 10th. Have the suits instituted by the great land-owners against

<sup>1</sup>. 1857 Report, pp. 16-18.

those persons who had settled on their lands in the Townships been a cause why those persons and several of their friends and relatives, have emigrated to other countries?

- 11th. Is it your opinion that, if all the lands granted to individuals who have failed to fulfill the conditions of these patents, were re-annexed to the domain of the Crown, it would be a means of arresting emigration, by opening out such lands to settlers?
- 12th. What is the number of the men of eighteen years of age and upwards in your locality who have no land?
- 13th. How many of them would be disposed to take lands in the Public Domain if they were conceded gratuitously?
- 14th. In what part of Canada do they wish to settle? and state, if you can, in what district or township?
- 15th. If free grants of lands had been offered in the several Districts of Canada, would the emigration of Canadians to the United States have diminished or ceased?
- 16th. Is the want of communication by roads, in different parts of the country, where there are lands to be conceded, an obstacle to the settlement of them and therefore a cause of emigration?
- 17th. Do you recommend free grants of lands, or that lands to sold at very low or moderate rates? Give your reasons for that opinion.
- 18th. Do you consider that the fixing of one uniform price on high-lands, low-lands, swamps, and lands from which the

timber has been sold and carried away for trading purposes, is an obstacle to colonisation?

- 19th. Has not the impossibility of discovering the true proprietors of lands in the Townships, from default of the registration of titles, been one of the main causes which have impeded the settlement of the Townships?
- 20th. Has not the practice followed by the Government, of granting extensive timber limits on Crown lands to one house or individual, been also detrimental to the settlement of wild lands?
- 21st. Would the establishment of different branches of manufactures, in the part of the country where you reside, have the effect of arresting the emigration thence to foreign countries?
- 22nd. What effect are the present customs duties in Canada, and those in the United States, likely to produce on the manufacturer of this Province?
- 23rd. Is any considerable tract of land, in your county, owned by absentees or large land-owners, and how did such land fall into their hands?
- 24th. Are those lands improved, occupied, or wild lands?

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