

# OBLATE MISSIONARIES AND THE "INDIAN LAND QUESTION"

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**I**t has been suggested that missionaries of various denominations approached Native land claims in nineteenth-century British Columbia in very different ways. Methodists and Anglicans on the North Coast are often credited with contributing "strong and effective support" for Native land rights, while "few, if any, Catholic missionaries seem to have publicly supported claims to Indian title, although some did become active advocates on the reserve acreage question."<sup>1</sup>

In this article I consider the role of the Missionary Oblates of Mary Immaculate in the public debates surrounding what was called the "Indian Land Question." I argue that, in the 1870s, Oblate involvement in the debate shifted from a defensive position intended to protect Catholic influence on "Catholic" reserves to a position based on clearly articulated conceptions of Native rights to ownership of land.

I first provide a rough sketch of missionary activity in BC, with a focus on the Oblates, and trace out colonial, provincial, and federal land policies. I then document Oblate activities in the 1860s and 1870s, and offer some account of the Native dissatisfaction that contributed to a shift in the Oblate position regarding the land question during these years. I argue that Oblate and government perceptions of Native rights to land were bound up with culturally specific conceptions of property and its possession that reflected very different philosophical, moral, and legal geographies.

<sup>1</sup> The first quote is from Arthur J. Ray, *I have lived here since the world began: An illustrated history of Canada's Native people* (Toronto: Lester Publishing Ltd. and Key Porter Books, 1996), 321; and the second from Paul Tennant, *Aboriginal peoples and politics: The Indian land question in British Columbia, 1849-1989* (Vancouver: UBC Press, 1990), 41.

## A SKETCH OF MISSIONARY ACTIVITY IN BC

The Oblates of Mary Immaculate were, and remain, a Catholic religious congregation founded by Bishop Eugène de Mazenod in 1816. In reaction to such currents in France as secularization, the subordination of Church to state, and liberalism, the congregation was intended to remedy the numerical and qualitative decline of the French clergy and the religious ignorance of the populace following the Revolution of 1789.

The Oblates recognized the importance of foreign missions when they sent missionaries to the Oregon Territory in 1838. In 1857 they established a station at Esquimalt, moved to the mainland (Okanagan) in 1859, and soon thereafter opened missions at New Westminster and in the lower Fraser valley at Saint Mary's. In 1864 mainland BC was erected as an Apostolic See, under the direction of Bishop Louis D'Herbomez (OMI).

In 1853 the Oblates received official instructions regarding foreign missions. Briefly, they were to work in pairs, only adult Natives who were sufficiently instructed and had proved themselves during a probationary period were to be admitted to baptism, catechisms and canticles were to be translated into Native languages, visual imagery was to be used to aid teaching, every effort was to be made to settle Native peoples, and the missionaries were to concern themselves with the temporal conditions of their neophytes.<sup>2</sup> But these instructions gave few details about precisely *how* the Oblates were to accomplish these goals; therefore Oblate methodology in BC developed gradually, borrowed from many sources, and was often the product of trial and error.

Anglican and Methodist missionaries were also working among Native people in BC in the 1860s. The denominational geographies of the nineteenth century are clearly discernible: Anglicans worked along the lower coast, in much of the Fraser canyon, and on Vancouver Island; Methodists on the Queen Charlottes, the central coast, Chilliwack, and Vancouver Island. Missionaries of both these denominations were to be found in the Skeena and Nass valleys. On Vancouver Island, secular Roman Catholics were at work, while the mainland was the province of the Oblates, who dominated the interior and the lower Fraser valley, and were active on the lower coast. Needless to say, theological differences in tandem with territorial over-

<sup>2</sup> *Constitutiones et Regulae Miss. OMI*, (Massiliae, 1853), *Appendix: exteris missionibus*, 167-82.

laps led to frequent verbal sparring between missionaries, often to the detriment of evangelization.<sup>3</sup>

The missionaries' methodologies differed, as did their theologies. John B. Good at Lytton and William Duncan at Metlakatla exemplify the Anglican tendency to establish missions intended to attract Native settlement and to allow missionaries to remain relatively sedentary.<sup>4</sup> The Oblates also established missions, but used a combination of mission-centered work and itineracy (traveling from place to place) to evangelize Native groups.

During the 1860s many missionaries, regardless of their denomination or mode of evangelization, realized that white settlement was affecting Native land uses, settlements, and fishing and water rights. I turn now to a brief consideration of the government policies regarding Natives and land that laid the foundations for the "Indian land question."

## GOVERNMENT LAND POLICIES

[The Provincial Government's Indian land policies show] how faithfully they represent the deep race-prejudice of the general white population ... [and] history must state that the existence of an Indian land question is mainly due to him [Trutch]." [G. M. Sproat to Father Grandidier, 28 April 1880].<sup>5</sup>

The "Indian land question," as it was called in the 1870s, turned around the allotment of reserve lands to Native groups in British Columbia. It was an issue that provoked a wide range of opinions, and involved first the colonial government, and then the provincial and dominion governments, missionaries, settlers, and, of course, Native people themselves.

The official British position regarding Native lands in Canada was set forth in the Royal Proclamation of 1763, which recognized "Indian

<sup>3</sup> Superintendent of Indian Affairs I. W. Powell acerbically noted to Methodist missionary Thomas Crosby that disputes between the Methodists and Anglicans on the North Coast had not only caused conflict among Native people from different villages, but also that "the example is a bad one for the Indians who stand aloof, and at the time of my visit the natives of the Upper villages had determined to have nothing to do with either party, assuring me that their old customs were a great deal better and attended much less contention." 7 August 1882, National Archives of Canada, Department of Indian Affairs, Record Group 10, Black Series [RG10], vol. 3818, file 57,837.

<sup>4</sup> See Brett Christophers, *Positioning the missionary: John Booth Good and the colonial confluence of cultures* (Vancouver: UBC Press, 1998).

<sup>5</sup> Archives Deschatelets [AD], HEB 6751. c47c.

title and ... the need to secure its cession in return for adequate compensation,"<sup>6</sup> and in a general way this policy was followed in Ontario and on the prairies. This is not to suggest, however, that the Colonial Office adhered stringently to this policy in all the North American possessions, for the driving force behind colonial land policy appears to have been economy: Vancouver Island, and later mainland British Columbia, were expected to be self-sufficient.

This was the stricture within which Governor James Douglas was expected to act. Having initially made fourteen treaties with Native people on parts of Vancouver Island (which by extinguishing Native title implicitly recognized it), Douglas was unable to continue the process when the Colonial Office refused him a loan, reiterating its expectation of colonial economic self-sufficiency. On the mainland, no treaties were made, and Douglas instead allotted reserves of land "embracing the village sites, cultivated fields, and favorite places of resort of the several Tribes," often instructing surveyors to lay out whatever lands Native people requested.<sup>7</sup>

Between Douglas's retirement in 1864 and 1871, colonial land policy was largely dictated by Joseph Trutch, Chief Commissioner of Land and Works. Trutch contended that Native people "really have no right to the lands they claim" and supported this statement by noting that "[the Indians] make no use whatever" of the majority of those lands, and that such "unproductive" lands were "to the prejudice of the general interests of the Colony."<sup>8</sup> During this period, Trutch systematically reduced the size of reserves laid out during Douglas' term of office, particularly those which were "greatly desired for immediate settlement" and those which he believed the Natives hardly used.<sup>9</sup>

The Terms of Union of 1871, which shifted the responsibility for Indian affairs to the dominion government, included a requirement (Section 13) that Indian policy in BC should continue along the lines "hitherto pursued by the British Columbia government."<sup>10</sup> In 1872, the dominion appointed I.W. Powell as Superintendent of Indian Affairs for the province, and it was Powell who alerted the dominion

<sup>6</sup> Robert E. Cail, *Land, man and the law: The disposal of Crown lands in British Columbia, 1871-1913* (Vancouver: UBC Press, 1974), 171.

<sup>7</sup> Douglas to the first Legislative Council of BC, 21 January 1864, in Cail, 175.

<sup>8</sup> Trutch to Acting Colonial Secretary, 28 August 1867, in *Papers connected with the Indian land question, 1850-1875* [1LQ] (Victoria: R. Wolfenden, 1875), 42.

<sup>9</sup> Cail, 180.

<sup>10</sup> Robin Fisher, *Contact and conflict: Indian-European relations in British Columbia, 1774-1890*, 2nd ed. (Vancouver: UBC Press, 1992) 176.

to BC's policy of reserving only ten acres to each adult male, seventy acres less than the dominion recommendation. A series of squabbles between the province and the dominion followed regarding acreage, the timing of surveys, gazetting, and the appointment of officials, and it is fair to say that Trutch and his administration impeded Powell's ability to work effectively.

By the 1870s, then, many Native people in BC were feeling the effects of substantial reductions in the size of reserves, white encroachments upon reserves, dwindling water rights, restrictions on grazing and pasturing animals, and the slow pace of the reserve allotment process generally.

#### LAND AND THE ORDER OF RIGHTS

Dites avec Jésus-Christ: *Regnum meum non est de hoc mundo*, ne vous mêlez jamais des affaires politiques, parce que les opinions sont comme les modes qui changent avec les saisons. [Father Pascal Ricard to the fathers and brothers of Oregon, n.d.]<sup>11</sup>

[Say with Jesus Christ: *My reign is not of this world*, never mix in political affairs, because opinions are like fashion which changes with the season.]

The Superintendent General is no doubt well aware that all clergymen will urge their views from their own religious standpoints." [James Lenihan to E.A. Meredith, 12 April 1875]<sup>12</sup>

In 1862 a Squamish man, "Snatt Stroutan," attempted to pre-empt a suburban lot adjacent to New Westminster, and his right to do so was affirmed by Governor Douglas.<sup>13</sup> Land and Works Commissioner Richard Moody was uneasy, however, and noted that the "Indians are pre-empting in extended order along the River and elsewhere ... and such extent is likely to increase very considerably and very rapidly."<sup>14</sup> Moody reiterated his concern in 1863, writing that "RC priests have moved the Indians to pre-empt as fully as any other persons." He believed that missionaries were helping Natives to exploit gaps in the pre-emption law.<sup>15</sup>

<sup>11</sup> AD, HPK 522I. R48C, 3.

<sup>12</sup> RG10, vol. 3614, file 4225.

<sup>13</sup> ILQ, 2.

<sup>14</sup> Idem.

<sup>15</sup> Ibid., 3.

In 1869 Father Durieu was involved in a dispute regarding which "chief" (Protestant or Catholic) in the Sko-yalla village on the lower Fraser River should receive the official survey map of the reserve.<sup>16</sup> In August of the same year he penned a petition for the Burrard's Inlet Squamish requesting a survey of the land on which they had settled, built houses and a church, and cultivated potato fields.<sup>17</sup> He also acted as mediator for another lower Fraser River band at Shelik Creek, who requested a survey of their reserve.<sup>18</sup>

In 1870 Oblate activity increased. The colonial government received petitions written by or transmitted through the Oblates from bands at Yale, Harrison River, Chapman's Bar, Lillooet, Cariboo, and Miller's Landing. Most of them dealt with white incursions onto Native settlements and requested land surveys.<sup>19</sup> The same year Durieu and the Methodist minister Thomas Crosby were engaged in a dispute over the allotment of land to a group of Protestant Natives in the Fraser canyon.<sup>20</sup>

The Oblates, then, were engaging with Native land issues in British Columbia despite Ricard's advice never to become involved in political affairs. It seems likely that Durieu did not regard Oblate forays into these issues as broadly political. His interventions *at this time* do not seem to have been motivated by a clearly formulated policy regarding Native rights. Rather, he saw land issues as practical matters that threatened the church's local authority over Native people, or that represented government persecution of his congregation and a Protestant drive for dominance.<sup>21</sup> Ensuring that a particular reserve was legally surveyed, that the "proper" individual was given the official survey map, or that Native settlements with chapels were officially recognized all served to protect the most concrete local manifestations of Oblate power and space. Thus Oblate involvement in land matters during the 1860s was practical and was focused on specific local issues.

<sup>16</sup> Sko-yalla village to Captain Ball, July 1869, Vancouver Roman Catholic Archdiocesan Archives [VRCAD], GR 1/01 S/02, box 2, folder 1; Ball to Colonial Secretary, 15 December 1869, ILQ, 74.

<sup>17</sup> Brew to Bushby, 29 July 1869, ILQ, 75; Bushby to Trutch, 30 July 1869, ILQ, 74; Trutch to Bushby, 5 August 1869, ILQ, 75.

<sup>18</sup> Shelik Creek to Bushby, 20 August 1869, ILQ, 78-9.

<sup>19</sup> Colonial Secretary to Durieu, 29 April 1870; Chapman's Bar Band to O'Reilly, 16 September 1870; Lillooet and Cariboo, nd., all in VRCAD, GR 1/01, S/01 box 2, folder 1; Durieu to Musgrave, 20 May 1870, British Columbia Archives, Colonial Correspondence [CC], B-1326, file 503.

<sup>20</sup> Durieu to Bushby, 8 May 1870, VRCAD, GR1/01, 5/01 box 2, Folder 1; Durieu to D'Herbomez, 28 February 1870, AD, HPK 5282. H53Z, 152.

<sup>21</sup> Durieu to D'Herbomez, 10 August 1869, AD, HPK 5282. H53Z 150.

In 1871 Moody's earlier concerns that missionaries were helping Native people to exploit the land laws proved to be justified: Durieu, acting with powers of attorney, procured land grants for two Natives.<sup>22</sup> More importantly, the tenor of Oblate activity in the "Indian Land Question" began to change. Bishop D'Herbomez wrote to Louis-Hector Langevin, federal Minister of Public Works, recommending not only that reserve acreage should be proportional to band population, but also that "a treaty should be made with the Indians for the extinction, at the earliest possible period, of their titles to their lands."<sup>23</sup>

This letter marks a significant change in the Oblates' engagement with Native land issues: a shift from the defense of the Catholic church and Oblate missionary space to an aggressively articulated Oblate conception of Native rights to land. Three related concerns motivated this transition. First, the Oblates became increasingly aware that the land question had profoundly affected their ability to maintain order and discipline on "Catholic" reserves. Second, there was concern that Native dissatisfaction would manifest itself violently, a move that D'Herbomez believed could only result in a devastating loss of Native lives and of their legitimate claim to lands. And last, the Oblates and the province had distinctly different conceptions of property rights, a point I address in some detail in the next section. Thus in 1873,<sup>24</sup> petitions from Hope, New Westminster, Yale, and Lillooet all pointed out that no compensation had been received by these bands despite the curtailment of their reserves.<sup>25</sup>

The next year saw a flurry of Oblate activity over Native land claims, as Bishop D'Herbomez's internal correspondence with his priests demonstrates. D'Herbomez urged his missionaries in the Kootenays, the Okanagan, and at Williams Lake to press the land claims issue.<sup>26</sup> This internal correspondence suggests a geography of Native dissatisfaction with land claims: Native people at Fort Alexandria and Quesnel refused to sign petitions although pressed to do so by Father

<sup>22</sup> The Natives were Joseph Twatalem and Alexis Swuetselalough. Durieu to Trutch, both dated 12 January 1871, CC, B-1326, file 503.

<sup>23</sup> 29 September 1871, reprinted in Robert Cooke, OMI. *Sketches of the life of Monseigneur de Mazenod*... 2 vols. (London: 1879), 1: 340.

<sup>24</sup> I have found nothing from 1872 that can be attributed to the Oblates with total confidence.

<sup>25</sup> Peter Ayessik to Powell; New Westminster, Yale and, Lillooet to Powell; both 13 April 1873, VRCAD, GR 1/01/02 S/01 box 2, folder 2.

<sup>26</sup> D'Herbomez to Baudre, 15 April 1874 and 3 November 1874; D'Herbomez to Fouquet, 29 October 1874, in AD, GLPP 1435. McGuckin to D'Herbomez, 25 July, 16 August, 29 August, and 20 September 1874, AD, box P4935-6272, folder 5288-5431.

Marchal. Father McGuckin noted that they “wish first to see the Indian Commissioner and know what he will do for them. They want to *talk to him* themselves before making any complaints or demands.”<sup>27</sup> Whether this refusal to sign the petitions reflects some wariness on the part of Natives regarding the Oblates, or whether it simply reflects less white pressure on Native lands in this area is unclear. Whatever the case, Durieu had petitions signed by bands in the Williams Lake district in hand by the end of the year.<sup>28</sup>

Oblate activity in 1874 was more substantive and public in Kamloops, a core of Oblate influence on the mainland and in the heart of a region of intense Native dissatisfaction with the reserve allocation process. Moreover, one of the most politically aware and active of the Oblate missionaries, Father Charles Grandidier, was stationed at Kamloops.

#### DISORDER

Il y a des grands désordres; et les sauvages presque partout veulent conduire le prêtre au lieu d'en être conduits. [Grandidier to D'Herbomez, 26 September 1873]<sup>29</sup>

[There are great disorders; and the *sauvages* almost everywhere want to lead the priest rather than to be led by him.]

In his [Father Marchal's] church teachings he has horrified some old Indians who believed the Government intends to act justly toward the Indians and will secure and protect them in their rights. The Priest telling them that the Queen and Government was as so much dirt; and that the presents made to them was no good, and was as so much dust thrown into their eyes to blind them. [John E. Lord to Powell, 20 February 1875]<sup>30</sup>

One of the tasks assigned to Superintendent Powell was to respond to complaints and rumors of serious dissatisfaction among Shuswap and Okanagan Natives. Powell visited portions of the interior in the summer of 1874, where he met the Oblate Father Grandidier, who

<sup>27</sup> McGuckin to D'Herbomez, 29 August 1874, *ibid.*

<sup>28</sup> Durieu to D'Herbomez, 6 January 1875, AD, box P2288-3505, folder 2310-2413. Durieu did not want to send them, however, because of several technical flaws (no dates, etc), but also because Powell would know “que c'est nous qui avons tous fait dans la petition.” [that it is we who have done everything in the petition.]

<sup>29</sup> AD, box P2288-3505, folder 3118-3505.

<sup>30</sup> RG10, vol. 3617, file 4606.



had been concerned about Native activity in the Kamloops area since his arrival in 1873. Grandidier's correspondence to Mgr. D'Herbomez describing the mood and activities of Native people in the Kamloops area is extensive, and in 1873 he wrote of two large potlatches at Lytton and Bonaparte. These potlatches alarmed Grandidier because they were attended by the principal local chiefs; large amounts of property were distributed; and drunkenness, gambling, dancing, and other "public disorders" prevailed. He also worried that these "réunions," attended by both Protestant and Catholic Natives, "abaiss[er] la barrière qui les sépare [et] de plus nous sommes obligés de défendre plusieurs choses que les ministres permettent, et on fait des comparaisons."<sup>31</sup> But potlatching and Native "va-et-vien" continued throughout the winter.

In late June 1874, Powell met a delegation of Shuswap people near Kamloops to talk about reserve lands. This is how Grandidier described the tenor of these meetings:

Dans la première réunion des Sauvages j'avais grand'peur qu'il n'y est des difficultés; j'ai parlé aux chefs, leur ai recommandé la modération, leur ai expliqué la position du Docteur, et les ai engagés d'être polis et calmes dans leur rapport avec lui tout en étant fermes dans leurs demandes. C'est ce qui est arrivé. Le Superintendant leur a proposé de leur donner un fête [avec des présents] ... beaucoup voulaient tout refuser, de peur de compromettre leurs droits. J'en ai averti Dr. Powell, qui leur a expliqué que ce qu'il voulait faire pour eux ... ne les engageait à rien, qui ne les mettait pas dans son pouvoir ... A Nicolas, et au Lac Okanagan cela s'est passé différemment. Ils n'ont rien voulu prendre, ni fête, ni instruments ... que le Superintendant voulait donner aux chefs. A la tal d'épinette, il n'y avait que peu de sauvages. Les Pentektons, Osoyoos, et Similkameen ne s'y sont pas rendus. Le Docteur Powell n'en a pas été très content....<sup>32</sup>

[At the first meeting of the *sauvages* I was very afraid there would be difficulties; I spoke to the chiefs, recommended moderation to them, explained the Doctor's position to them, and urged them to be polite and calm in their relations with him, while being firm about their

<sup>31</sup> [will lower the barrier that separates them (and) more we are obliged to forbid some things that the ministers permit, and (the Natives) make comparisons.] Grandidier to D'Herbomez, 23 December 1873, AD, box P2288-3505, folder 3118-3505. He was also annoyed that they took place so close to Christmas.

<sup>32</sup> 1 July 1874, AD, Ibid.

requests. That is what happened. The Superintendent proposed to give them a feast [with gifts] ... many wanted to refuse, for fear of compromising their rights. I warned Dr. Powell, who explained what he wanted to do for them ... [the feast] would commit them to nothing, and would not put them in his power ... At Nicola, and at Lake Okanagan all this happened differently. They did not want to take anything, neither the feast nor the farming implements ... that Dr. Powell wanted to give to the chiefs. At Tal d'épinette, there were only a few *sauvages*. The Pentictons, Osoyoos and Similkameen did not go. Dr. Powell was not very happy.]

Pandosy, at the Okanagan mission, commented less positively on Native reaction to Powell, who had stopped at Head Lake because he could not continue in his "bogy" [buggy]:

La visite a irrité les sauvages. "Comment, disent-ils, ce grand chef nous fera-t-il rendre justice pour les terres qu'on nous a enlevée, s'il ne vient pas sur les lieux? Nos réserves sont déjà bien petits, toujours les blancs nous les rongent et personne ne nous rend justice. Nous pensons que les Anglais ne sont pas comme les Américains, mais nous savons maintenant qu'ils sont pires. Les Américains prennent les terres, mais ils payent, les Anglais ne payent pas et les laissent prendre, en promettant un chef qui viendra lorsqu'il n'y aura plus de terre ou lorsque nous serons tous morts."<sup>33</sup>

[The visit irritated the *sauvages*. "How, they said, can this great chief do us justice for the lands that have been taken from us, if he does not come to the spot? Our reserves are already very small, the whites already eat away at them and no one gives us justice. We thought the English were not like the Americans, but now we know that they are worse. The Americans take the land, but they pay, the English do not pay and let them be taken, promising a chief who will come only when there is no more land or when we are all dead."]

In late August, Powell suggested that Grandidier write a letter to the principal British Columbia newspapers to raise public opinion and to press the provincial government on the land question. On August 28th a long editorial by Grandidier (approved by Bishop D'Herbomez) appeared in the *Victoria Standard*. It contained what was to become the quasi-official Oblate stance on the land question in British Columbia, and placed the congregation in public opposition

<sup>33</sup> Pandosy to D'Herbomez, 25 June 1874, AD, box 6273-7077, folder 6360-6563.

to provincial policy. In addition to addressing the practical needs of Native farmers and ranchers, Grandidier argued that Native people had possessed the land before whites came, and that the use they made of it was immaterial:

It is not correct to say that no injustice has been done to the Indians in taking away their land because they did not cultivate it. For they were the owners of the land, and the title to a property is not rendered valueless because the land is left to decay.

He argued that the land had been “wrenched from them in virtue of might, not right,” and also claimed that the purpose of “the Government [is] ... to civilize and make useful men of them ... to reclaim them from their wandering life and attach them by bonds of interest to the soil.”<sup>34</sup>

This provocation elicited a curt response from the provincial secretary, who declared that “all that it is ‘reasonable and just’ to demand of the Provincial Government is that the 13th Section of the Terms of Union should be faithfully observed.” James Lenihan, Superintendent of Indian Affairs at New Westminster, responded to the provincial secretary, arguing that the province had not made the “most liberal and enlightened interpretation” of that section. In November the dominion government, prompted by then Under Secretary of State Langevin (who corresponded with D’Herbomez), issued a memorandum critical of the provincial position regarding Indian land claims.<sup>35</sup>

Grandidier’s article was followed by a petition in the name of the Chiefs of Kamloops, Shuswap, Okanagan, and Similkameen bands to Powell that claimed “the reserves have been laid out generally without our agreement and against our own will. The Magistrates have treated us as if we were slaves and as if we had no right to our own land.”<sup>36</sup> Durieu noted in the margin that this was a “model petition” to be tailored to the actual circumstances of specific bands, and in 1875 he urged his missionaries to take care in petitions that they not allow government “voir que c’est nous qui avons tous fait.”<sup>37</sup>

<sup>34</sup> Grandidier’s letter is reproduced in ILQ, 145-8.

<sup>35</sup> John Ash to Lenihan, 12 October 1874, ILQ, 148; Lenihan to Ash, 15 October 1874, ILQ, 148; Langevin to Trutch, 14 November 1874, ILQ, 150-5.

<sup>36</sup> 20 November 1874, VRCAD, GR 1/01 S/01 box 2, folder 3.

<sup>37</sup> [to see that it is we who have done everything.] Durieu to D’Herbomez, 6 January 1875, AD, box P2288-3505, folder 2310-2413.

This petition is noteworthy because it demonstrates that Grandidier's article had a profound effect on the language used in Oblate/Native petitions to the provincial government. These petitions had moved from specific cases of encroachment and demands for surveys to a far more legalistic and abstract set of arguments about rights.

#### LAND AND CONCEPTIONS OF RIGHTS

I want to make a number of points about the seemingly uncharacteristic rights-based language the Oblates employed. Grandidier's newspaper article provides some insight into the set of claims he was attempting to counter, and it seems clear that the latter were rooted in an essentially Lockean conception of the linkage between property rights and labour. I want to suggest that Locke's conceptions of labour and property were the products of a particular post-Reformation strain of thought that worked against the grain of an older Catholic tradition regarding natural law and property rights.

Much of this post-Reformation thought was premised on the general proposition that the law of nature *was* the law of reason, a position that would alter both the location of natural law in the order of the universe, and the uses to which it was put. [Saint] Thomas Aquinas, who formulated what was to be the definitive view of natural law until the Reformation, posited that theology and natural law formed the two parts of what he called the *lex aeterna*, the eternal law that was "the divine providence governing the cosmos, man, and matter."<sup>38</sup> Natural law derived from God's will and could be apprehended by what Aquinas called practical reason, which he defined in opposition to speculative reason. The latter mode of rationality was concerned with the observable (the natural sciences, for example), while it was through practical reason that people were able to discern the good. Thus, for Aquinas the natural law was an immutable and eternal expression of God's will, knowable through the application of objective principles of right reason. For Aquinas, right reason was a means of *apprehending* natural law - he did not equate the two - and philosophical enquiry was a means of discovering God's will.<sup>39</sup>

<sup>38</sup> *New Catholic Encyclopedia*, 18 vols. (New York: McGraw-Hill, 1967), 10: 253.

<sup>39</sup> The entire body of Aquinas's work was approved by the church, and his theological precepts formed the backbone of Church doctrine for centuries. The Oblate seminaries taught canon law as well as Aquinas's theology, cf. Yves Beaudoin, *Grand Séminaire de Marseilles - et scolasticat Oblat - sous la direction des Oblats de Marie Immaculée, 1827-1862* (Rome, 1966).

Post-Reformation philosophers, working from a series of premises first formulated by legal theorists Hugo Grotius and Samuel Pufendorf, located natural law in an individual's capacity to reason, a positioning that tended to sever its connection with (Catholic) theology and revelation. The equivalence thus established between reason (as an individual activity) and natural law, in conjunction with the political nature of the enquiries it was called upon to elucidate, stripped natural law of its immutable, objective, and divine elements. Natural law, in the post-Reformation period, became subjective, increasingly secular, and historically contingent.

This later tradition of natural law provided the philosophical framework in which Locke worked. At the core of his argument about property is the claim that property rights lay with those who "mixed their labour" with the land to improve and cultivate it, rather than with those who "merely collected" the fruits of the "spontaneous hand of nature."<sup>40</sup> The performance of labour did not just fulfill God's injunction that "in the sweat of thy face shalt thou eat bread" (Gen. 3.19), it also had social utility in that it ameliorated what Stephen Buckle has called the "persistent social problem of necessity" by producing "social bounty."<sup>41</sup> Thus Locke's claims that there would always be "enough and as good" left for others and that a day labourer in England was better fed and housed than a king in America rested on his utilitarian belief that the private accumulation of land and the proper activities of labour were socially useful. For Locke, labour was a rational and moral activity - it was a law of nature.

But as Buckle has argued, Locke's argument was also "context sensitive" because

In the stage of primitive simplicity, the spoilage condition implied by the workmanship model of the created order prevents the accumulation of excessively large estates. In the developed stage of a money economy, the productive capacity of labour guarantees that the initial bounty of God's provision for human beings is always maintained, so that no matter how scarce usable land becomes, there is always 'enough, and as good' of the means of subsistence for all - in fact there is more for even the worst off.<sup>42</sup>

<sup>40</sup> See Peter Hulme, "The spontaneous hand of nature: savagery, colonialism and the Enlightenment," in *The Enlightenment and its shadows*, Peter Hulme and Ludmilla Jordanova, eds. (New York: Routledge, 1990), 30.

<sup>41</sup> Stephen Buckle, *Natural law and the theory of property, Grotius to Hume* (Oxford: Clarendon Press, 1991), 156-7.

<sup>42</sup> *Ibid.*, 148, 161.

For Locke, then, labour was the motor of progress and the emblem of civilization, to the detriment of other “primitive” modes of accumulation, land use, and property rights.<sup>43</sup>

Following Patricia Seed, Locke’s argument can be seen as the “rational” expression of a “culturally unique English impression ... that the actions involved in agriculture [planting hedges, building fences, ploughing and manuring, and constructing buildings] were connected to legal title.”<sup>44</sup> Seed’s argument suggests that from an English point of view Native land use was either unrecognizable – the land was “left to decay” – or insufficient to establish legal right even if it was recognizable. In English common law and English custom, property tended to be seen as arising from agricultural labour and the material signs of that labour, and, increasingly, as *private* – solely and individually held. Seed’s argument certainly resonates through much governmental correspondence regarding the Indian land question in BC, in which “cultivation” and “houses” were seen as concrete markers of Native possession and other land was regarded as “waste,”<sup>45</sup> and in which the (proper) utilization of land was directly linked to the right to possess it.<sup>46</sup>

Grandidier, however, worked within a natural rights framework that made no connection between labour, right, and use. In canon law, property was seen as a fundamental natural right, a necessary

<sup>43</sup> These kinds of philosophical arguments regarding Native land rights clearly have implications. The social/cultural hierarchy established by Locke’s premise that “in the beginning all the world was America” places Native people at the bottom of the historical heap, as incapable of progress. The centrality of his concept of labour in natural law (the law of reason) serves not only to suggest – as Hulme does – that Native people refused to exercise their reason in relying solely on the spontaneous hand of nature, it also casts doubt on the very applicability of the justice and fairness of natural law to them, as beings who are unable to discern the light of reason and therefore fall outside its purview. These implications, however, seem more remote than the immediate rationalization Locke provides for depriving Native people of their land rights: the notion that, in the end, they will reap the social bounty provided by a “correct” use of land.

<sup>44</sup> Patricia Seed, *Ceremonies of possession in Europe’s conquest of the new world, 1492–1640* (Cambridge: Cambridge University Press, 1995), 35. Seed claims that the importance of agricultural actions to English conceptions of property rights had been operative since the early Middle Ages.

<sup>45</sup> HBC Secretary Archibald Barclay to Douglas, December 1849, in Tennant, 18. “Clearing and tilling” were also cited, Colonial Secretary William Young to Trutch, 6 November 1867, ILQ, 45.

<sup>46</sup> As Powell explained to Father Horris, “I am of the opinion that it would require to be shown in the case of an Indian that he was sufficiently far advanced to utilize more than 20 acres of land and be otherwise capable of taking upon himself the responsibilities of civilisation before that consent could be obtained for him - In other words to show that he can do so is to prove that he has done so in respect to the 20 acres of land.” 16 July 1874, VRCAD, GR 1/01/02, S/01, box 2, folder 2.

extension of the rights to life, liberty, and limb. Thus canon law placed more emphasis on the importance of possession and/or occupation in establishing a right to property, declaring that “la possession prolongée suffit à faire naître un droit de propriété sans qu’il soit besoin d’autre preuve directe.”<sup>47</sup> More important, perhaps, than this formal declaration of canon law was Grandidier’s theological training, which taught him the basic precepts of natural law formulated by Aquinas. The right to property was not historically contingent, nor could it be dictated by political necessity, or prevented by positive law. It was *lex naturalis*, part of God’s eternal order. Positive law that deviated from the principles of natural law was not only illegitimate, it was also a willful flouting of God’s will.<sup>48</sup> For many white settlers in British Columbia, property rights arose from a set of decidedly *legal* (and unconsciously cultural) claims, while for Grandidier those rights were rooted in a set of *moral* (and equally unconscious cultural) claims.

Another persistent theme to the Oblates’ arguments about Native property rights is the emphasis on Native acquiescence and agreement to the presence of the British. Again, as Seed has argued, French colonial possession was established not through agricultural actions or symbols, but in the formality of ceremony, and Native consent and participation were critical to the enactment of French ceremonies of possession.<sup>49</sup> There are countless examples of French explorers and colonial officials manufacturing Native consent, and the Oblates themselves had abided by the unwritten formality of asking Natives for permission to settle from their earliest years in Oregon. The per-

<sup>47</sup> [prolonged possession suffices to bring a property right into being without there being need of any other direct proof.] *Dictionnaire de droit canonique*, R. Naz, ed., 7 vols. (Paris: Librairie Letonzey et Ané, 1965), 7: 366.

<sup>48</sup> Several of the principles underlying the Oblates’ position were reinforced in 1864 by Pope Pius IX with the publication of the Syllabus of Errors. Among the specific theses laid out by the Syllabus were: “it is not lawful for the individual to accept and profess that religion which, guided by the light of reason, he considers true; The State does not possess, as origin and source of all rights, an unlimited right; moral laws require divine sanction, and it is at least necessary that human laws should be made consistent with natural law, or should receive their binding force from God; the science of philosophy and ethics, and the civil laws, shall not and ought not to deviate from divine revelation and the authority of the Church”; and a general thesis was also announced, that “The Roman Pontiff cannot, and ought not to, reconcile himself and come to terms with progress, liberalism, and modern civilization.” From J.B. Bury, *History of the Papacy in the nineteenth century, 1864-1878* (London: MacMillan, 1930), 16, 27, 34, 40. Obviously, the Syllabus in general is a sweeping rejection of Enlightenment thought in favor of a far more medieval set of presumptions including the pre-eminence of the Church over the state, the former as final arbiter over every aspect of human life.

<sup>49</sup> Seed, 1-68, particularly 56-68.

sistence of the importance of Native consent to this French approach to possession-taking is reflected in Durieu's claim that the provincial government had not gained Native consent to take possession of the land, and hence his use of the word "slave." Natural liberty (which embraced property rights) could only be constrained legitimately by consent. A condition of voluntary servitude could be established only by "a freely chosen renunciation of natural liberty in return for the rules [and privileges] of civil conduct supplied by the sovereign power."<sup>50</sup> For Durieu, the lack of consent constituted involuntary servitude, i.e. slavery, a position also reflected in Grandidier's statement that British possession was based on might (force), not right (consent).

Neither Durieu nor Grandidier argued from a utilitarian point of view that tied *individual* labour to *private* property, or that translated private property into the bounty of society as a whole. Grandidier constantly alluded to a man's right "to earn the livelihood of his family," or to rights as possessed either by "the Indian" – a collective term – or as requirements for the maintenance of Native families – another collective term. He never mentioned individual rights or private property. For Locke, civil society was based on a social contract that arose from the need to protect individual rights of life, liberty, and property. For Durieu and Grandidier, the basic unit of society was the *family*, not the individual. For the Oblates, civil society had its origins in the family, and, as Anthony Pagden has argued, a more general Catholic conception saw that family-based social order as "a pre-determined condition [that] existed in the mind of God even before it was enacted on earth."<sup>51</sup> In other words, the social order based on the family was divinely ordained – it was part of an immutable natural law that was completely unaffected by local circumstances and could not be abrogated by mere positive law.

The position of the provincial government regarding Native rights to land was a legal position that embodied a set of inherently British cultural assumptions about possession-taking and the link between "reasoned" economic activity, individual rights to property, and the social order. The Oblates' rejection of that legal position was rooted in a set of moral precepts that supposed a fundamentally different view of economy, property, and social order.

<sup>50</sup> Michael Sonenscher, *Work and wages: natural law, politics and the eighteenth-century French trades* (Cambridge: Cambridge University Press, 1989), 50.

<sup>51</sup> *The fall of natural man: the American Indian and the origins of comparative ethnology* (Cambridge: Cambridge University Press, 1982), 105.



## CONCLUSIONS

Oblate involvement in the “Indian Land Question” in British Columbia reflected two considerations. The first of these was linked to the congregation’s commitment to the temporal as well as the spiritual welfare of their neophytes. This commitment had a peculiarly Oblate cast: their belief that the land question was a cause of disorder on Native reserves and hence rendered the Catholic discipline of Native people more difficult, and their desire to settle Native peoples in agrarian communities suggestive of the medieval European peasantry.

Second, and perhaps more important, the Oblates came out of a very different tradition of legal, moral, and philosophical precepts regarding property rights. Their position in no way reflected what Alan Ryan has called an “instrumental” tradition that linked work and property, and that was “clearly associated with British political thinkers.”<sup>52</sup> Indeed, as Robert Tombs has argued, “France was the only country in Europe that never accepted the Scottish Enlightenment, the “birth certificate of modernity,” with its principles of economic liberty, utilitarianism and liberalism.”<sup>53</sup> This statement would have been particularly applicable to the Oblates who, absolutely devoted to the Pope, would have agreed wholeheartedly with the precepts of the Syllabus of Errors [see footnote 48].

Both of these factors speak to what Nicholas Thomas has called “colonial projects,” enterprises that are discursive as well as practical and material.<sup>54</sup> Clearly, the Oblates were engaged in a project that was materially and ideologically different from the projects of the provincial government, while the latter differed from those of the dominion. While the scope of this article does not allow for a detailed analysis, there were also denominational differences in the ways that missionaries approached, articulated, and conceptualized Native title to land in British Columbia. The multiplicity of these colonial discourses – of these colonial projects – highlights the fractured and polyvocal nature of colonialism itself: colonialism was not a monolithic and unified process, but was contentious. Projects were driven by a multitude of institutional imperatives, reflected distinctive cultures of cognition, and both shaped and were shaped by indigenous populations.

<sup>52</sup> *Property and political theory* (Oxford: Blackwell, 1984), 7.

<sup>53</sup> *France, 1814–1914* (New York: Longman, 1996), 66.

<sup>54</sup> Nicholas Thomas, *Colonialism’s culture: Anthropology, travel and government* (Princeton NJ: Princeton University Press, 1994), 58.

The Oblate position on Native rights to land was clearly articulated in a number of written documents, both private and public. It seems clear that the Oblates – Catholic missionaries – were involved in more than reserve acreage questions and, despite claims to the contrary, they were also actively and publicly engaged in Native *rights* to land. But, like most other missionary activity over Native land claims in the province, the Oblates were never able to make a dent in provincial policies: their position regarding property rights scarcely caused a ripple in the provincial government's management of Native land claims, and Native dissatisfaction with provincial land policies continued to increase throughout the 1870s.