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# The Imperial Background

When the proprietary colony of Vancouver Island was created in 1849 and the Crown colony of British Columbia in 1858, the zenith of the British empire still lay ahead and a long history of British imperialism and colonialism lay behind. The modern history of the latter is usually considered to have begun in Scotland and Ireland, but well before the end of the seventeenth century the relevance of overseas colonies to the prosperity of the mother country was widely accepted in England.<sup>1</sup> Over the years thereafter, economic motives, calculations of geopolitical advantage and of imperial grandeur, concern for the plight of the British poor, the opportunity to spread Protestant Christianity, and a sense of responsibility to civilize savage peoples had all justified, in various permutations and combinations, the British government's involvement in the colonial enterprise. British settler colonies had been established in many parts of the world, and the oldest of them had fought and won a war for their independence.<sup>2</sup> By the mid-nineteenth century, when Britain established two remote and, from her perspective, relatively inconsequential colonies along the northwestern flank of North America,<sup>3</sup> there was this long experience to draw on – as well as the particular cast of British thought in the mid-nineteenth century. One element of the latter was the drift towards free trade, which had culminated in 1846 and had forced a reconsideration of the relationship between colony and mother country. Another was the legacy of a liberal humanitarian tradition emphasizing the civilizing mission and the rights of Native peoples, which had dominated the Colonial Office in the 1830s, and which had led to such relatively generous arrangements with them as the Treaty of Waitangi, negotiated with the Maori in New Zealand in 1840. On the other hand, and working against the humanitarian legacy, was a growing conviction, fed by the growth of scientific racism before Darwin and by the evidence of uprisings against British authority (culminating in the Indian Mutiny of 1857-58), that Native peoples could not be assimilated and therefore had to be

forcibly repressed in the interests of colonial security. Timing was important. The founding of the colonies of Vancouver Island and British Columbia, and the Native policies associated therewith, partook of both a long colonial history and of a particular mid-nineteenth-century historical moment.

At the hub of the colonial system in 1850, as for fifty years before, was the Colonial Office in London. Considering the size and geographical reach of the British empire, the Colonial Office was a modest operation. It comprised two houses close to the prime minister's residence on Downing Street, which contained desks for most of the some thirty people who worked in them, and a "library" which kept a few maps and books but was principally a depository for official papers. For years the waiting room for visiting dignitaries and others with appointments was a tiny twelve-by-thirteen-foot space, which could expand into standing room in a hallway. The secretary of state for the colonies, who presided over this domain, held a cabinet position. Under him was a permanent undersecretary, at least one other undersecretary, and some twenty clerks. The most senior of the latter were, in effect, policy advisors (some were considerable scholars), and the most junior were simply copyists. Every communication from the Colonial Office was reproduced in triplicate, and much incoming material was copied or *précised*, mostly still by hand. There was a librarian, also for a time a geographer (responsible for maps), and there were a couple of porters, a couple of house managers, and messengers as required. That, in effect, was the Colonial Office, the nerve centre of much of a global empire (India was handled by a different office). Dispatches came in and, depending on their importance, were minuted, *précised*, and variously circulated. Replies were drafted, commented on, finalized, and copied. An astonishing volume of correspondence – the reports, requests, and instruction on which the managing of an empire depended – passed through this small office. In a given week each of the undersecretaries and senior clerks characteristically dealt with events in quite different parts of the world. The whole system turned on the memories and judgments of a small group of exceedingly able men.<sup>4</sup>

They were, of course, men of their day who shared its implicit assumptions about the superiority of European civilization. They also operated within more explicit guidelines and theories, one of which, as the accommodation of the Colonial Office itself suggests, was frugality. The Crown would provide defence against external aggression, but internally colonies were to become fiscally independent as quickly as possible. Earl Grey, secretary of state for the colonies in 1849 when the Crown granted the proprietary colony of Vancouver Island to the Hudson's Bay Company, had been a leading advocate of free trade, including the termination of preferential tariffs on colonial goods, policies adopted in 1846. A few years later he reflected on the position of colonies in these early free trade years.<sup>5</sup> What, asked Grey, was their

role when they were no longer thought of as suppliers of raw materials to the mother country? National prestige and colonial responsibilities were the essence of his answer. He was impressed by the image value of colonies for a great power. He also thought that Britain had acquired responsibilities to British settlers who had chosen to relocate themselves within the empire and deserved the benefits of British protection, and also to Natives who would not be able to fend off these same settlers and deserved to be protected from them. The honour of the Crown was at stake. He did not add, but might have, that the coffers of the Lords of the Treasury opened reluctantly for honour. In an era of free trade, there was little political will to subsidize colonies, and colonial governors around the world had to deal with such parsimony.

The Colonial Office also drew on a more formal body of theory, grounded in the political economy of Adam Smith and David Ricardo, about the relationships of land, labour, and capital in colonial settings, and about their bearing on colonial land policy. Such theory sought to manage social relations and hence to shape colonial societies in places where the prior balance among the factors of production had been abruptly destabilized. By controlling land price and the rate of immigration, it was held, government could establish the value of labour and, thereby, determine the nature of the colonial social hierarchy. Edward Gibbon Wakefield, the most influential exponent of such views, argued that the system could be calibrated so that the colonial capitalist would have relatively cheap labour *and* the labourer would become, in time, a property-owning freeholder. The mother country would rid herself of surplus population, and all classes, constrained in Britain by want of space, would improve their lot in colonies where land was neither so cheap that almost anyone could have it nor so expensive that the poor could never acquire it.<sup>6</sup> In this view, the colonies were, in effect, theatres for an early form of social engineering, which, if the balance of land, labour, and capital were got right, would retain the best and eliminate the worst forms of British society. Such ideas raised basic questions. Marx, who considered Wakefield the pre-eminent political economist of the 1830s (he had a low opinion of political economists), gave him a good deal of critical attention:<sup>7</sup> years later the American historian Frederick Jackson Turner offered a somewhat mystical American variant of Wakefieldian thought in his celebrated article about the relationships between American society and the availability of free land on the frontier.<sup>8</sup> Wakefield's theories, in short, were important. They tended to break down in practice, partly because colonial officials could rarely control access to land on distant frontiers, but he had put his finger on a set of important relationships between society and land. Many in the mid-century Colonial Office were convinced Wakefieldians.

More relevant to my purposes in this book were theories, also current in the mid-nineteenth century, about what colonizers should do with the prior

inhabitants of their colonies. Immigrants came to settle in colonies and colonial administrations had to make space for them. To do so they had to dispossess indigenous people of much of their land and, in so doing, to decide where to put and how to treat them. The problem occurred wherever Europeans established settler colonies, and by the mid-nineteenth century the Colonial Office had a good deal of experience to draw on. There had been much discussion and a good deal of writing on the matter. Some of the best of it was by Herman Merivale, who was the permanent undersecretary at the Colonial Office when the colonies of Vancouver Island and British Columbia were established, and previously had been the Drummond Professor of Political Economy at Oxford. There in 1839, 1840, and 1841 he had delivered a set of lectures on colonization and colonies.<sup>9</sup> Two of them were on what then was known as the “Native question,” and they are as good a place as any to introduce the thought in the Colonial Office on the matter and begin an analysis of it in British Columbia.

Merivale took European civilization, Native savagery, the superiority of colonial power, and the sovereign rights of colonizers to colonial land completely for granted. Natives could resist but could not prevent what their colonizers wished to do. The challenge, therefore, was to work out “the duty and right policy of colonists and colonial governments towards the Native inhabitants of the regions which they occupy.”<sup>10</sup> He was under no illusions about the European colonial record, full as he felt it was with “wretched details of ferocity and treachery,” and about the limited value of good intentions. Needed were practical measures that might lead to “small successes.” All evils could not be corrected: the imperial centre was too far from the “outcasts” and “degraded creatures” who marked the van of European colonial expansion. “Desolation,” wrote Merivale, “goes before us, and civilization lags slowly and lamely behind.” At the same time he thought that colonial officials themselves would no longer treat Native people “with injustice and oppression,” and that they did have some means to improve Native lives.

After a colony was established and Native violence was subdued, Merivale thought that the protection of Natives from settlers was a prime duty of colonial administrators. Innumerable “subjects of irritation” lay between the two, for their interests were opposed, and colonial administrations had the responsibility to protect the weaker party. There were two ways, he thought, to accomplish this. One was to appoint officials – Merivale called them protectors or commissaries of the Indians – to act on behalf of Native people. They would detect and prosecute offences against Natives, regulate contracts between them and whites, act as *ex-officio* defenders of Natives when complaints or charges were brought against them, and control summary corporal punishments of Natives by white employers or travellers. The other

was to remove authority over Natives from colonial legislatures, which, invariably, would be controlled by settlers whose colonial opportunity depended on the displacement of Natives. Rather, Merivale thought, authority over Natives should lie with the central executive, that is, with the Colonial Office and the governor. He considered distance an advantage in this case, allowing a dispassionate arbitration between competing interests.

Merivale considered such protection a short-term necessity rather than a permanent solution. The civilizing mission, the need for which he took for granted, was more important in the long run. Native people had to be transformed from a savage to a civilized state, and as he thought about this, their “physical circumstances” – by which he meant where they should live – came immediately to mind. An error of much earlier colonization, he thought, was that land had not been allocated for Native use. As European settlement proceeded, Natives were pushed off their former lands and hunting grounds, and eventually the “dispirited, degraded ... remnants of once powerful tribes” either threw themselves on the mercy of governments or loitered dangerously around the edge of European settlements. Only then had reserves been allocated and attempts made to Christianize and civilize the disoriented survivors. Modern colonization, he thought, would not repeat these errors. Reserves of land would be made at the beginning of colonization, and the Natives would be somewhat “insulated” from settler society. Yet Merivale doubted that even insulation on reserves – which he called the missionary solution – could be more than temporary. In time, reserve lands would be surrounded and coveted by settlers, and governments would capitulate to settler demands. The Natives would be relocated, and the cycle would repeat itself. Agricultural progress and other advances towards civilization would be lost with each move back into the wilderness, while the Natives, insecure and facing annihilation, would sink into “sullen apathy.” Merivale had American experience in mind: in its light he considered reserves to be essential in the short run, but feared that in the longer term they could entrap backward, demoralized peoples.

The only solution, he thought, was amalgamation, by which he seems to have meant a form of acculturation between colonists and natives, including miscegenation, that is not easily distinguished from assimilation.<sup>11</sup> In his view, Natives and colonists should live together as master and servant, as fellow labourers, as husband and wife, and, ultimately, as fellow citizens. He thought that all colonial Native policy should be directed to this end, and that there was real urgency, otherwise Native races would perish. To those who thought that Native people would inevitably fade away before the European coming, he replied that there was no supporting biological evidence. Native numbers had declined since contact largely because of disease or warfare, not from “some unknowable other cause.”<sup>12</sup> In some places Native

populations were increasing. To those who thought that savage races could never be civilized, Merivale replied that he did not know whether Natives were the intellectual equal of Europeans, but was sure that they could benefit from civilization. He attached great importance to missionaries, and reported some of their achievements favourably while doubting that isolated theocratic settlements were possible in the long run. Real amalgamation, embracing not only conversion but also “the education of knowledge and industry, and admission into the pale of civilized life,” had never been tried. Until it had “the language of despair [was] unreasonable and unjust.” Amalgamation implied the spatial integration of settlers and Natives, the opposite of a policy of insulation.

Like Wakefield, Merivale dealt with relationships between land and society in colonial settings, but shifted the emphasis from the cost to the location of land and, in so doing, emphasized crucial relationships between society and space. The spatial arrangements that colonial governments would make for Native people would matter enormously. Their lives would be very different if they were confined on reserves or interspersed within colonial society. Drastically different human geographies of Native life, with all their ramifications, were at stake. Merivale, who held that Natives should be isolated in the short run and integrated in the long run, had two geographical agendas, each of which was a potential land policy in a colonial setting. Each, before long, would be vigorously advocated in British Columbia. Moreover, his argument that control of such policies – and therefore of the human geographies they entailed – should rest with the Colonial Office rather than with colonial legislatures because the interests of settlers and Natives were opposed, bears, even today, on federal-provincial divisions of power and on arguments over referendums.

Merivale’s views about the atrocities of an earlier colonialism, the capacity and willingness of Native peoples to acquire the benefits of civilization, and the requirements of an enlightened colonialism to treat them honourably, were not isolated opinions. Less than a decade before his lectures, parliament had abolished slavery throughout the British possessions, and in 1840, while Merivale was still at Oxford, the Crown had guaranteed the Maori of New Zealand possession of all their land, protection from European land speculators, and equal rights and privileges with British subjects in the Treaty of Waitangi. Such developments, like Merivale’s lectures, grew out of a broad tradition of liberal humanitarianism that was rooted in the Enlightenment and in early nineteenth-century Protestant evangelical Christianity. By the 1830s it considerably influenced the Colonial Office and acquired a good deal of parliamentary power.<sup>13</sup> The liberal humanitarians assumed that all people were essentially similar, and that with proper laws, administration, and education, barbarians and savages could be civilized, a state they would

readily embrace when exposed to its advantages. They posited a universal humanity and before long (with proper instruction) a universal, civilized culture, a product of a common sociocultural evolution – allowing next to no room for continuing cultural difference, and hardly a hint of the idea that there were different forms of civilized human societies. Imbricated with the moral crusade to Christianize and civilize was the economic agenda of free trade. Monopolies of any kind were inefficient, free labour was more productive than slave labour, and a productive labour force would enlarge markets for British manufactures. The rights of property, an industrious labour force given to hard work and thrift, a free market, an ordered Christian society: this bourgeois vision set an agenda for the reform of the indolent British poor and for the liberation and civilization of savage peoples overseas. The Aborigines Protection Society, the aim of which was the more humane treatment of colonized peoples, emerged directly out of the struggle for the abolition of slavery, and counted among its leaders prominent members of the Church Missionary Society and of the Liberal (free trade) party. In short, the conflation of a moral vision and an economic agenda gave the liberal humanitarians a good deal of momentum, and generated the body of thought within which Merivale's Oxford lectures and, for a time, much of the thought in the Colonial Office about the "Native question" was situated.

In the hands of officials in the Colonial Office, such views could yield policies completely at variance with settler opinion in the colonies. In December 1835, the secretary of state for the colonies in London, Lord Glenelg, declared illegal a British military advance, inspired by settlers, into Xhosa (Bantu) territory during the Fourth Frontier War in South Africa. It had resulted in the creation of a new colonial territory, Queen Adelaide Province. Glenelg held, however, that justice lay with the Xhosa who had been provoked by innumerable settler aggressions and for whom no provisions for land had been made. Queen Adelaide Province was to be abandoned, a preposterous decision in the eyes of most white South Africans. "Is it just," wrote one, "that a few thousands of ruthless, worthless savages are to sit like a nightmare upon a land that would support millions of civilized men happily?"<sup>14</sup> The Great Trek of the Boers, launched at this time, was partly an attempt to get away from such policies.<sup>15</sup> There were similar disjunctions in the south Pacific. In 1836 the Colonial Office refused to let the promoters of the new colony of South Australia sail until they agreed to accept "Aboriginal Protectors" appointed by the Crown, and to acknowledge that Aborigines had rights to the land that had to be purchased – policies that had been unknown in Australia and that the promoters did their best to circumvent as soon as distance shielded them from the Colonial Office.<sup>16</sup> Yet the recognition that before colonization could proceed land should be acquired

from Natives by treaty or purchase was a central objective of the liberal humanitarians, and it had surfaced again in New Zealand, to the dismay of many settlers, in the Treaty of Waitangi.<sup>17</sup>

For all its fervour, the humanitarian discourse confronted the contradictions inherent in colonialism and was longer on good intentions than on practical solutions. The full flood of reformist indignation and the thinness of its practical solutions are both revealed in a report of a Select Committee on Aboriginals that included some of the most influential reformers (Fowell Buxton and William Gladstone among them) to the House of Commons in June 1837.<sup>18</sup> The committee was sure that British colonialism had been calamitous for the colonized: it had “incurred a vast load of crime.” Yet it was the responsibility of the civilized, especially given their preponderance of power, to promote the spread of civilization and to secure to Native people “the due observation of justice and the protection of their Rights,” the most important of which was their right to land. Europeans had arrived uninvited in Native territory, and “by taking possession of their hunting grounds ... we have despoiled them of their means of existence.” Yet the very colonies in which Natives were to have “an incontrovertible right to their own soil,” were also to provide an outlet for the “superabundant populations of Great Britain and Ireland.” The committee’s attempts to protect Native rights and also to provide for settlers – the moral dilemma at the core of settler colonialism – were sketchy and unconvincing: by vesting authority for Native people with the two houses of parliament and the Queen rather than with settlers, by allowing only the Crown to purchase or acquire land from Native people, and by discouraging local governments from making treaties because Native people would understand neither the process nor its consequence and advantage would be taken of them. The report did not make clear how the colonial government was to acquire land for the emigrating British and Irish poor, or what to do should Native people not want to part with it. On such matters the committee was silent, apparently assuming that beneficent administrators would negotiate scrupulous, transparent purchases, and that Natives, eager for the benefits of civilization, would want to dispose of their land.

In retrospect, Merivale gave his Oxford lectures when the influence of liberal humanitarians was beginning to wane. Through the 1840s and 1850s the movement’s contradictions, doubtful assumptions, and few practical solutions for the problem of protecting Native people within actively colonizing regimes became increasingly evident, and British colonial thought turned away from a universalistic vision of a common humanity that had considered savagery to be a convertible condition. Instead, colonialism slowly fell back on more immutable, racially defined categories, on the economic rather than the humanitarian side of the reform agenda, and on assumptions about force

rather than education as the basis of colonial order. In the background were new “scientific” ideas about race, including, in these years before Darwin, the polygenist argument that human groups had different biological origins (therefore, in the extreme view, different races were different species), phrenological findings about different skull sizes, and arguments that Africans were the “link” between beasts and humans.<sup>19</sup> As such ideas became current, a vision of common humanity became harder to sustain. The colonial encounter itself seemed to furnish evidence. The colonized were not rushing to embrace European civilization. Missionaries found it difficult to win converts, and many colonial frontiers were maintained by force of arms. Unrest and falling sugar production in the West Indies complicated the claim that free labour was an economic asset. The reform vision of a docile, industrious labour force at the lowest ranks of an expanding British civilization did not seem to describe what was happening to former slaves in the Caribbean, or to Natives in New Zealand, South Africa, or India. Moreover, settlers pressed for responsible government (in Canada Lord Durham’s report strongly recommended it), demands that ran counter to the reformers’ conviction that responsibility for Aborigines should stay in the Colonial Office. All of this unsettled the humanitarian agenda. Its momentum seeped away in the 1840s, and the Indian Mutiny in 1857-58 was close to a final straw.

In Australia and New Zealand, the two closest colonial antecedents of British Columbia, the retreat from the spirit of humanitarian reform was clearly evident by the 1840s. The Treaty of Waitangi had guaranteed “to the Chiefs and Tribes of New Zealand ... the full, exclusive, and undisturbed possession of their lands and estates, forests, fisheries, and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession.”<sup>20</sup> This left room to debate the meaning of possession, and the New Zealand Company and its London supporters held that the treaty guaranteed Maoris possession of no more than their cultivated fields, villages, and burial sites. All other land was waste and therefore Crown property. Moreover the Treaty of Waitangi, “made with naked savages by a consul invested with no plenipotentiary powers,” was not more than “a praiseworthy device for amusing and pacifying savages for the moment” (similar arguments would be made about the Douglas treaties on Vancouver Island). It was ridiculous that no more than 100,000 people, occupying perhaps 1 percent of the land, should hold up the British colonization of New Zealand. Another parliamentary select committee, this one convened in 1844 in response to New Zealand Company lobbying and very different in tone from its predecessor eight years before, agreed (though not unanimously). The Treaty of Waitangi was one of “a series of injudicious proceedings.” Moreover, the right of Natives to all wild land in New Zealand, “was not essential to the true construction of the Treaty of Waitangi,

and was an error which has been productive of very injurious consequences.”<sup>21</sup> By this time, many in the Colonial Office (including Merivale)<sup>22</sup> were of similar mind. Increasingly the treaty came to be seen as a mistake, albeit one that had to be honoured. In 1847 the Supreme Court of New Zealand said as much. In *R. (on the prosecution of C.H. McIntosh) v. Symonds*, Chapman, J. ruled that Maori dominion over land, guaranteed by the Treaty of Waitangi, had to be respected, and could only be extinguished with the “free consent of Maori themselves.”<sup>23</sup> By this time, however, it was apparent that the Colonial Office would stand behind the letter but not the spirit of the treaty. The governor, George Grey, pursued a vigorous policy of assimilation designed to destroy Maori laws and customs.<sup>24</sup> The provision that Maori could sell their land only to the government became a device whereby they were denied the market value of their land and the government purchased it (sometimes under duress) at less than a tenth of its own selling price to settlers. A treaty that Maori thought guaranteed their possession of land had become the means of their dispossession.<sup>25</sup>

In South Australia where, as elsewhere in Australia, there were no treaties, the situation was quite different. The Colonial Office had insisted on Crown-appointed Protectors of Aborigines and on the obligation to extinguish Aboriginal title to lands in their possession, but once in Australia – half-way around the world from the Colonial Office – the South Australia Company concluded that Aborigines, a wandering people, did not possess any land. Therefore, it had not purchased land, had not granted reserves, and left the Protector of Aborigines with nothing to do. With the appointment in 1838 of a second governor, the Colonial Office attempted to retrieve the situation. The governor, George Gawler, had served with the army in Canada, and had concluded on the basis of his Canadian experience that Aborigines would not benefit from cash payments for land. He sought, rather, to lay out small reserves, which he understood as a reflection of Aboriginal ownership and title, and which the Aborigines themselves would select in advance of white settlement. Apparently, he thought that the increased value of reserve land as white settlement progressed would be compensation enough for land lost.<sup>26</sup> There was little point, Lord Grey wrote a few years later, in granting large, isolated reserves in South Australia because settlers and their flocks were dispersed and because the Aborigines themselves were migratory. Better, therefore, to set aside small reserves, vested in trustees, where Aborigines would be taught agriculture and the “mechanical appointments” that, in time, would induce them to renounce “a wild and roving life.”<sup>27</sup> According to Henry Reynolds and Jamie Dalziel, the corollary of the small reserve, for officials in the Colonial Office, was the Aboriginal right to the subsistence use of pastoral leases.<sup>28</sup> “Leases,” wrote Grey, “are not intended to deprive the natives of their former right to hunt over these Districts, or to

wander over them in search of subsistence, in the manner to which they have been heretofore accustomed, from the spontaneous produce of the soil, except over land actually cultivated or fenced in for that purpose.” Such, in the mind of the Colonial Office in the 1840s, was the South Australian translation of the burden of Native title: small reserves and the recognition of use rights on Crown lands. On the ground it was another story. Grey admitted that it was impossible to police the outlying districts where Aboriginal people on pastoral leases were commonly shot.

At mid-century the Colonial Office did not have a consistent Native land policy. Individuals in the Colonial Office had their own ideas, and relevant theories about sovereign rights, reserve land allocations, and racial differences were in the air, but there was no theoretical template, even on the most basic issues, that could be dropped into different colonies. There was a growing conviction that liberal humanitarianism did not have a consistent or practical agenda, and perhaps a growing reliance on force to secure Native compliance, but no conviction about *the* correct resolution of the Native question. Probably there could not have been. The Colonial Office comprised a few men with limited information and still sluggish means of communication trying to manage goodly portions of the world. It was forced to rely heavily on the opinions of governors and other officials in the field. It had limited funds at its disposal. In most cases it probably had to follow the path of least resistance, which was what seemed to work in particular instances. At any given time, therefore, it could find itself supporting different, even contradictory, policies in different parts of the world. Early in the 1850s, Lord Palmerston, shortly to lead the Liberal Party, said of political life that “people must in this world take things as they find them, and deal with them as best they can,”<sup>29</sup> an assessment that pretty well describes the operation of the Colonial Office at the time.

Herman Merivale certainly thought so. He left the Colonial Office in 1859 and two years later published a revised version of his Drummond *Lectures on Colonization*.<sup>30</sup> Republication gave him the opportunity to reflect on his long stint of colonial administration. He still thought that the home executive should provide a consistent, regulated management of Natives, and regretted that such a system had never been seriously attempted. Policies had vacillated in response to Native unrest and settler agitation. Troops were sent and withdrawn, and in periods of calm settlers pressed for more powers. For all the theorizing about colonial land policy, the system as it emerged was essentially a set of ad hoc responses to particular pressures in particular colonies. Merivale’s administrative mind still envisaged the general shape of a solution that, as twenty years before, turned on the protection of Natives from settlers and, eventually, the amalgamation of the two. He thought that troops should be regularly stationed and that colonists, who received such

protection, should not have control of Native policy. Such policy should start from the premise that, in terms of civilization, Natives and whites were not equal. The inferiority of Native people should be acknowledged by law, and with it the government's responsibility for their protection. To treat Natives and whites as equals was to expose the former to exploitation by the latter. Protected, Native peoples could be nurtured in the ways of civilization, and the processes of amalgamation would be encouraged. Although this was essentially what he had proposed twenty years before, the measured confidence of his Oxford lectures was gone. He was no longer sure that missionaries were of much use as agents of civilization; doubted that, given the competing pressures on the Colonial Office, a consistent Native policy was possible; and had even come to suspect that there might be no solution to the Native question.

In retrospect, the years of liberal humanitarianism appear as an interlude of relative principle in a long history of British colonial land policy dominated by expediency. Although a measure of altruism was usually somewhere in the air, the underlying intention of almost any Native land policy in a settler colony was the dispossession, with as little expense and trouble as possible, of Native peoples of most of their lands. In the American seaboard colonies in the seventeenth century, for example, land was acquired either by taking what was assumed to be unused or by purchase – whichever suited better in the circumstances.<sup>31</sup> Formal purchases and treaties offered a colonizer some advantages. The process produced written documents that could be used to further English territorial claims against those of a European rival. It provided a measure of security for settlers in new colonies or on the margins of older ones and, often, a quick, cheap way of acquiring a lot of land. It distinguished English (and Dutch) from Spanish colonialism. Certainly some colonists and colonial officials sincerely believed that Aboriginal peoples had natural rights to landed property, but I think the Lockean scholar Barbara Arniel is right to suggest that English recognition of Aboriginal right to land in seventeenth-century America emerged less from legal or moral principle than when it served the interests of English colonizers to do so.<sup>32</sup> Even the Royal Proclamation of 1763, which has been called the Magna Carta of Indian rights in Canada,<sup>33</sup> was in good part a pragmatic response to the threat of Native war (Pontiac's "rebellion"), and to the perceived need to control the westward expansion of American settlers and land speculators while providing for the orderly, peaceful acquisition of Native lands.<sup>34</sup> If, as Brian Slattery, the most thorough analyst of the Royal Proclamation, holds, the proclamation recognized "that Indian peoples hold rights to unceded land in their possession throughout British dominions in North America,"<sup>35</sup> it cannot, I think, be shown that this was a consistent principle in the British colonies in North America before 1763, that it was uniformly

adopted in later British settler colonies, or that the Royal Proclamation itself (as the British understood it) was separate, somehow, from a politics of dispossession.<sup>36</sup>

There was a jumble of Native land policies around the empire in the middle of the nineteenth century when the proprietary colony of Vancouver Island was created. The claim that the possessory rights of Native people were a burden on Crown sovereignty remained in the air, but the Colonial Office no longer knew quite what to do with it. In New Zealand, where courts and the Colonial Office concluded that the Treaty of Waitangi was binding, the Crown purchased Maori land at a fraction of its value. In Canada, rights of Native possession recognized in the Royal Proclamation of 1763 were circumvented in much the same way although, as in New Zealand, officials acknowledged a Native right to land that had to be extinguished before colonization could proceed legally. No such right was recognized in the colonies of Newfoundland, Nova Scotia, or New Brunswick. In South Australia aboriginal title was not purchased, but reserves were apparently intended as a reflection of Aboriginal ownership and title, and Aboriginal people retained (in Colonial Office principle if not in colonial fact) use rights on pastoral leases.<sup>37</sup> The Colonial Office tended to accept the propositions that responsibility for Native peoples and for Native land policy should rest with the executive rather than with settlers, and that responsible colonial government was desirable – quite contradictory positions. Native reserves were set aside in several colonies, but there was no formula for doing so, only the sense that they should be established at the beginning of colonization and that they should be small because, in theory that was less convincing than it had been, they were temporary havens on the road to amalgamation.



In 1846, Britain and the United States agreed on a division of Oregon Territory, the huge free trade area they had created in 1818 between Russian and Mexican claims on the Pacific coast of North America. This agreement, the Oregon Treaty, was a formal, legal understanding between distant governments “respecting the sovereignty and government of the territory on the northwest coast of America.”<sup>38</sup> It assigned to Britain Vancouver Island and the mainland north of the 49th parallel and south of Russian America, and made no mention of the Aboriginal inhabitants of this large territory. In the eyes of the governments involved, the issue of sovereignty in the former Oregon Territory was settled – except for the water boundary between Puget Sound and the Strait of Georgia. With the matter of sovereignty resolved, the British Crown was free to make proprietary grants within its new territories, and did so in 1849, granting Vancouver Island to the Hudson’s Bay Company for a period of years and under specified conditions. The Royal

Grant by the terms of which the Hudson's Bay Company received Vancouver Island recognized the company as "the true and absolute lords and proprietors of the same territories, limits, and places, and all other premises (saving always the faith, allegiance, and sovereign dominion due to Us, Our heirs, and successors for the same)."<sup>39</sup> Natives received only one comment: the grant of Vancouver Island to the Hudson's Bay Company for the purposes of colonization would be conducive to their "protection and welfare."

This was deliberate. Earl Grey, then secretary of state for the colonies, had been chair of the select committee on New Zealand of 1844, and endorsed its conclusion that Maori land rights extended only to village and burial sites and to cultivated fields. The Colonial Office had rejected this opinion, but principally because it understood that the Treaty of Waitangi was legally binding. An internal memorandum in March 1849 reveals a rather timid Colonial Office, hesitant to do anything at the inception of another colony that "might turn out [an] impediment in the way of colonization."<sup>40</sup> It claimed to have little knowledge of the people of the northwest coast, and preferred to leave the matter of Native land policy to the Hudson's Bay Company – which in its eyes managed Native relations far better than had the Americans.<sup>41</sup> To judge by this memorandum, the Colonial Office simply did not know to what extent British sovereignty on Vancouver Island was burdened: "It must however be added that in parting with the land of the island [to the HBC] Her Majesty parts only with her own right therein, and that whatever measures she was bound to take in order to extinguish the Indian title are equally obligatory on the Company" – a statement that accorded fairly well with the uncertainty in the Colonial Office on the matter.