

# MI'KMAQ LAND CLAIMS AND THE ESCHEAT MOVEMENT IN PRINCE EDWARD ISLAND

Rusty Bittermann \*

Recent decisions on Mi'kmaq and Maliseet rights to resources in the Maritimes have underlined the potential for conflict between different groups of peoples who rely upon the harvests of land and sea for a livelihood.<sup>1</sup> Given the economic and cultural issues at stake, the strident rhetoric and, in some cases violence, should not have been a surprise, but they were not inevitable. There have been times in the past when rural leaders have thought in terms of the shared problems of those deriving a living from natural resources and of comprehensive solutions that might address the needs of them all.

In the spring of 1838, William Cooper made his way from his lodgings in East London to the Colonial Office. He had arrived in London from Prince Edward Island several days earlier, carrying a thick bundle of papers concerning property rights and the distribution of land on Prince Edward Island, which he presented to the officials responsible for Britain's colonies.<sup>2</sup> He also carried with him the hopes of much of the rural population of Prince Edward Island, as he had come to London charged with persuading the Imperial government to reconsider policies that permitted a relatively small number of landlords, some resident on Prince Edward Island, some in Britain, and a few elsewhere, to control four-fifths of the land in the colony. Indeed, an 1830 survey of landlord holdings showed that the six largest landlord estates included more than a third of the land on the Island.<sup>3</sup>

Although Cooper was a member of the House of Assembly, he did not represent the majority of the House at this time. Instead, he had come to London as the representative of a grassroots rural protest movement now known as the Escheat movement. The name reflects a central claim of the movement: that the grants of land that the British had issued were vulnerable to escheat, i.e., to resumption by the Crown. The British had acquired Prince Edward Island from the French by the Treaty of Paris (1763) at the conclusion of the Seven Years' War, and quickly moved

---

\* Professor, Department of History, St. Thomas University.

<sup>1</sup> Ken Coates, *The Marshall Decision and Native Rights* (Montreal and Kingston: McGill-Queen's University Press, 2000) c. 5-6

<sup>2</sup> Cooper to Glenelg, 30 June 1838, Colonial Office (CO) 226/56/147.

<sup>3</sup> Report of Lieutenant-Governor Ready, CO 226/47/166-8.

to transfer most of the Island land into private ownership, with grants of large parcels of around 20,000 acres, subject to settlement conditions. Grant holders failed to meet these conditions and this weakness in their titles provided the Escheat movement with a basis for arguing that the state could (and should) reconsider the distribution of land on the Island and act to secure property in the hands of those who lived on the land and directly derived their livelihood from it. The movement Cooper represented had been growing in power across the 1830s; it gained a majority in the House of Assembly in the fall of 1838, following Cooper's return from London.<sup>4</sup>

Most of those supporting Cooper's mission were immigrants from the British Isles, or descendants of people who had migrated from the British Isles, some in the decades after the Seven Years' War, most in the early 19<sup>th</sup> century. Many were, in one fashion or another, refugees from transformations of the countryside of Scotland, Ireland and England. These transformations, involving clearances, increased rents and reductions in rural employment opportunities, had forced a significant portion of the rural population to seek opportunity elsewhere. The desire of these immigrants and their descendants to secure property rights in the land they worked on Prince Edward Island was in part a defensive response to the threats that the concentration of property ownership might pose yet again. Not all of those whose interests Cooper represented, however, shared this background. The Escheat movement also articulated the interests of the Acadian inhabitants of Prince Edward Island. As well, the documents that Cooper brought to London included a petition from Oliver Thomas LeBone, "a Chieftain of the Mic Mac Tribe of the Indian Inhabitants of P.E. Island."<sup>5</sup> A transcription of this document is printed at page 176.

Oliver Thomas LeBone's petition provides evidence on a number of matters of interest to those who study the aboriginal history of Prince Edward Island. One of these is the size of the Mi'kmaq population in the colony. According to LeBone, 500 Mi'kmaq lived on Prince Edward Island in the 1830s and they were but "a skeleton" of "our once numerous tribe." L.F.S. Upton drew from the LeBone petition both to estimate population numbers and to chronicle the story of the establishment of a reserve for the colony's Mi'kmaq.<sup>6</sup> The petition also documents Mi'kmaq struggles to gain recognition of their land rights, and in the context of current land claims, provides insight into the nature and history of the Mi'kmaq claim of property rights on the Island. According to LeBone, "in former times" his people's ancestors "were the owners of this Island and fully enjoyed their acquired Resources thereof." LeBone added that his "tribe ha[d] been deprived of their hunting Grounds without

---

<sup>4</sup> Rusty Bittermann, *Rural Protest on Prince Edward Island: From British Colonization to the Escheat Movement* (Toronto, University of Toronto Press, 2006) c. 9.

<sup>5</sup> Petition of Oliver Thomas LeBone, Chieftain of the MicMac tribe of the Indian Inhabitants of Prince Edward Island, May 1838, CO 226/56/228-9.

<sup>6</sup> L.F.S. Upton, "Indians and Islanders: The Micmacs in Colonial Prince Edward Island," (Autumn 1976) 6 *Acadiensis* 1, at 23-25.

receiving any remuneration for the loss they sustained.” As well, the LeBone petition provides evidence concerning the challenges Island Mi’kmaq faced in the 1830s. LeBone indicated that the Mi’kmaq needed a grant of land so that they might live “in this our native Island ... without fear of removal or molestation.”

There are, in short, many things that can be learned from the petition itself. Arguably, however, the greatest significance of the petition is not to be found in examining the details of its content but in considering how it came to be constructed and delivered to the Colonial Office. It is easy to conceptualize the history of aboriginal struggles for property rights in the Maritimes as a story of competitive claims dividing European immigrants and their descendants on the one hand from aboriginal inhabitants on the other. Indeed, some of the language of the LeBone petition, such as that concerning the fear of “removal or molestation” might fit into such a history. And certainly there is much evidence to justify such an interpretation, albeit that the scholarly literature does nuance it with accounts of the exertions of some prominent non-natives who sought to defend First Nation’s interests (at least as they understood them).<sup>7</sup> The LeBone petition, taken in context, is of particular interest as it offers insight into a moment in Prince Edward Island history when non-aboriginal rural leaders on the Island appear to have conceptualized the claims of First Nations residents neither as competitive with the interests of the non-aboriginal rural population nor as a matter for charity. Rather, the inclusion of the LeBone petition within the broader documentation Cooper carried to London to press for land reform on Prince Edward Island suggests that Cooper and other Escheat leaders thought about property struggles in the colony as being between those who monopolized vast portions of the land base and those who actually lived on the land and needed it for their livelihood. To think about property relations on Prince Edward Island in this way was to view the colony’s Mi’kmaq and Acadian population and the more recent immigrant population and their descendants as potential allies facing a common problem.

The signatures at the bottom of the LeBone petition provide additional evidence that LeBone and leaders of the Escheat movement were thinking in terms of shared problems and of the benefits of cooperation in the 1830s. At least two of the three men listed as witnesses to LeBone’s signature, Cornelius Little and John Arbuckle, were leading activists in the Escheat movement. Given that Oliver Thomas LeBone signed the petition with an X, it is probably reasonable to assume that the Escheat leaders who signed their names to the document were more than simply witnesses to its construction.

Although the leaders of the Escheat movement appear to have brought an inclusive analysis to their perception of the land problems that most of the Island’s

---

<sup>7</sup> In the case of Prince Edward Island, see for instance, Alan Andrew MacEachern, “Theophilus Stewart and the Plight of the Micmac,” (Fall/Winter 1990) 28 *Island Magazine* 3; Nancy McMahon, “Benevolence From Afar: The Aborigines Protection Society and the Lennox Island Indian Reserve,” (1988) 15 *Archivist* 6 at 10-11, 15.

rural population faced, and to have thought in terms of the common problems of rural residents, the arguments that Cooper and other rural leaders used to advance their claims varied depending on the circumstances and history of the property claims of different populations. The petition of Oliver Thomas LeBone framed Mi'kmaq claims in terms of aboriginal property rights, previous appeals, and need. The petition highlights the Mi'kmaq assertion of continuing property rights, even as they accommodated the needs of other rural residents. The claims that Escheat leaders advanced on behalf of settlers from the British Isles were framed in large part on the basis of a labour theory of value: landlords had weak property claims as their deeds were void because they had not fulfilled the conditions on which the land was granted; settlers had stronger claims on the basis of the value their labour was creating with farm-making.<sup>8</sup> The claims of Acadian settlers were framed somewhat differently again.

This insistence in the 1830s that there was a common rural problem concerning property rights that nonetheless had different facets depending on the histories of distinct populations living on the Island conceptualized the problem in a way that persisted, modestly, in subsequent attempts to redress land grievances. The report of the 1860 Prince Edward Island Land Commission, for instance, which was established to resolve continuing widespread unrest over property rights in the colony, addressed the problems of the rural population in general, but also included separate sections dealing with the particularities of the land grievances of the Island's Acadian and Mi'kmaq inhabitants.<sup>9</sup>

The LeBone petition, understood in context, is a reminder that the rural residents of Prince Edward Island, and the Maritimes more generally, exercise choice in how they conceptualize property claims and how they think about the problems of resource allocation. In the 1830s, rural leaders in Prince Edward Island opted to think in terms of the common problems of those who lived on the land and needed access to resources in order to survive. In response to an Imperial decision that facilitated the concentration of land ownership, rural leaders on Prince Edward Island built a political movement that sought to use the power of the state to protect rural residents from the consequences of this decision. The compulsory termination of landlordism on Prince Edward Island in the 1870s and subsequent policies which limit the concentration of land ownership on the Island are the product of this way of thinking about property rights and shared interests.<sup>10</sup>

---

<sup>8</sup> Rusty Bittermann and Margaret McCallum, "When Private Rights Become Public Wrongs: Property and the State in Prince Edward Island in the 1830s," in John McLaren, A.R. Buck and Nancy E. Wright, eds., *Despotic Dominion: Property Rights in British Settler Societies* (Vancouver: UBC Press, 2005) c. 7.

<sup>9</sup> Report of the Commissioners appointed by the Queen to enquire into the differences prevailing in Prince Edward Island, relative to the rights of Land owners and Tenants with a view to the settlement of same on fair and equitable principles, CO 226/95/1-119.

<sup>10</sup> Rusty Bittermann and Margaret McCallum, "Upholding the Land Legislation of a 'Communitistic and Socialist Assembly': The Benefits of Confederation for Prince Edward Island," (March 2006) 87 *Canadian Historical Review* 1.

**Petition of Oliver Thomas LeBone, delivered to the  
Colonial Office in London by William Cooper, spring 1838**

*To the Queen's most Excellent Majesty*

*May it please Your Majesty*

*Prince E. Island*

*Delivered to Lord Glenelg by*

*W<sup>m</sup> Cooper*

*The Petition of the undersigned, a Chieftain of the Mic Mac Tribe of the Indian Inhabitants of  
P.E. Island in British N. America –*

*Most respectfully shewith;*

*That in former times our fathers were the owners of this Island and fully enjoyed their  
acquired Resources thereof until they were visited by people of the French nation who taught  
them Religion and the Duties of civilised life after which by a treaty entered into by that nation  
with Your Majesty's Government, our people became British subjects – since which our tribe has  
been deprived of their hunting Grounds without receiving any remuneration for the loss they  
sustained – by which privation and want has reduced our once numerous Tribe in this Island to a  
skeleton of Five Hundred Individuals who collectively are not inferior to any other  
Denomination of Your Majesty's subjects in a strict adherence to moral honesty or an invincible  
attachment to Your Majesty's person and government –*

*That our people duly value the benefits resulting from a steady application to farming  
pursuits and a settled mode of life, thereby has made a frequent application to the House of  
Assembly of this Island to obtain a Grant of Land on which our People could permanently reside  
without fear of molestation a favour though earnestly sought is yet denied us – thereby our  
people are still compelled to wander in the Forests as an unprotected neglected Race of the human  
species unworthy to enjoy the Patronage or favour of those vested with authority.*

*Therefore your Petitioner humbly beseeches Your Majesty to be graciously pleased to  
instruct your Majesty's Representative in this Colony to procure for our People a permanent  
Location on a Tract of Land in this our native Island on which we may reside and cultivate  
without fear of removal or molestation – for which as in Duty bound your Majesty's Petitioner  
and People shall ever pray –*

*Prince Edward Island – May 1838*

*Oliver Thomas LeBone*

*his X mark*

*Signed in our presence*

*C. Little*

*J. Arbuckle*

*Edward(?) Dunn*