Nova Scotia Historical Review

Volume 12, Number 2, 1992

Nova Scotia Historical Review

Volume 12, Number 2, 1992

Cover Illustrations:

John Singleton Copley (1738–1815)

Jonathan Belcher, 1756
Oil on canvas
47¾ x 40 ⅛ in.

Abigail Belcher, 1756
Oil on canvas
49 x 40⅛ in.

Gifts of the Canadian International Paper Co.
The Beaverbrook Art Gallery
Fredericton, N.B., Canada

To Our Readers

The *Nova Scotia Historical Review* publishes scholarly articles on every aspect and period of Nova Scotia history, and welcomes contributions from everyone interested in the subject. The *Review* has a special mandate to publish non-professional and/or first-time authors, whose work can benefit particularly from the rigorous but sympathetic literary editing provided by the *Review* to all its contributors.

The *Nova Scotia Historical Review* is indexed in the *Canadian Magazine Index* and the *Canadian Periodical Index*, and is available on-line in the "Canadian Business & Current Affairs Database." Back issues are available in microform from Micromedia Limited, 20 Victoria Street, Toronto, Ontario M5C 2N8.

The *Nova Scotia Historical Review* is made possible by a grant from the Nova Scotia Department of Tourism and Culture.

Nova Scotia Historical Quarterly/Review

Back Issues Available

Quarterly

Volume 2 — Number 4
Volume 3 — Numbers 3 and 4
Volume 4 — Numbers 1, 3 and 4
Volume 9 — Numbers 3 and 4
Volume 10 — Numbers 2, 3 and 4

Available at $4.00 each or $7.00 for two.

Review

Volume 3 — Number 2
Volume 4 — Number 1
Volume 6 — Numbers 1 and 2
Volume 7 — Numbers 1 and 2
Volume 8 — Number 1
Volume 9 — Number 1
Volume 10 — Numbers 1 and 2
Volume 11 — Numbers 1 and 2
Volume 12 — Number 1

Available at $10.00 per copy.

From:

Nova Scotia Historical Review
Public Archives of Nova Scotia
6016 University Avenue
Halifax, Nova Scotia
B3H 1W4

Contents

Tear-Out
Subscription Renewal Form

Name _____

Address _____

_____

Province/State _____

Postal Code/Zip _____

- ☐ I enclose $20.00, 1 year, 2 issues
- ☐ Enter my subscription
- ☐ Renew my subscription
- ☐ Change my address

Send to:

Nova Scotia Historical Review
Public Archives of Nova Scotia
6016 University Avenue
Halifax, Nova Scotia
B3H 1W4

Some American Influences on the Law and Lawcourts of Nova Scotia, 1749-1853

Alan B. Sprague

This essay is an attempt to show some American influences on the law and lawcourts of Nova Scotia from 1749 to 1853; it is hoped that it may provide a starting-point for research by someone more learned in the law and the science of historical investigation. It is but a small phase of the large question of the effect of American influences upon the history of the province, which has been receiving such minute and expert attention within the past few years.[1]

I propose that the realms of history and law are not so divorced as to preclude this subject from coming under the heading of historical research, although the language may be at times that of the courts and the legal profession, rather than that of the general historian.

Sir William Holdsworth, successor to the Vinerian Chair at Oxford once held by the great Blackstone, has said in reference to legal history,[2]

> It is of equal importance to the general historian because law touches all those human activities which a state or community have at different periods found it necessary to regulate. Constitutional, social, economic, and political historians are all sooner or later brought up against the law.

Even more forceful are the words of the famous American jurist, Oliver Wendell Holmes, Jr:[3]

> The life of the law has not been logic, it has been experience. The felt necessities of the time, the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries.

The Honourable Alan Brown Sprague, now of Oakville, is a retired chief judge of the former District Court of Ontario. He was a second-year LL.B. candidate at Dalhousie Law School in 1935-36, when he submitted this essay for the William Inglis Morse History Prize. It was selected as joint prize-winner, and has now been edited for publication as a ground-breaking contribution to the study of Nova Scotia's legal history. Annotation has been revised or enhanced where necessary, but otherwise left unaltered. The original typescript, with pencilled corrections by Professor D. C. Harvey, Provincial Archivist, who apparently adjudicated the competition, was deposited in the Public Archives of Nova Scotia, where it is held in the Library.

1 Reference is made to the work of D. C. Harvey, R. A. Mackay and H. L. Stewart.

2 W. Holdsworth, *Some Lessons from our Legal History* (New York, 1928), p. 4.

3 O. W. Holmes, *The Common Law* (London, 1911), p. 1.

These statements by such learned men in the spheres of history and law have given me confidence in the conviction that the legal side of historical questions must not be disregarded if a complete picture is to be presented; and the writings of the Provincial Archivist, D. C. Harvey, have done much to suggest the possibilities of study in this restricted sphere as to the question at hand.[4]

One cannot read of the activities of the pre-Loyalist Americans in this province, with their demands for an assembly, their public press, their attempt to transplant the New England form of township government; or of the Loyalists, with their superior education and democratic ideas, without feeling that all of these combined to form an American outlook, which must have provided influences which trickled into our law in spite of Chief Justice Jonathan Belcher's efforts "to purge the law of the Colonial alloy so as to refine the pure British Gold."

The history of our courts of judicature may be divided conveniently into four periods. First, from the founding of Halifax by Colonel Edward Cornwallis in 1749 to the arrival of Chief Justice Belcher in 1754; secondly, from Belcher's arrival to the passage of the *Act to Regulate the Practice and Proceedings in the Supreme Court* of 1853; thirdly, from the above mentioned Act to the *Judicature Act* of 1884; and fourthly, from the *Judicature Act* to the present day. The time and space at my disposal have permitted only a cursory treatment of the more outstanding American influences in the first two periods from 1749 to 1853, exclusive of the *Act to Regulate the Practice and Proceedings in the Supreme Court,* passed in April of that year.

Law is such a wide term in its application that it must be specifically restricted before it can have any exact meaning in relation to a given subject. It is therefore essential, at the outset, to define the boundaries within which the word will be confined. Law in the sphere of jurisprudence, in common law countries (as opposed to civil or Roman law countries), refers to the rules and practices of the common law, and the statutes passed by legislative bodies. The whole of the law as derived from these sources leads one into a labyrinth of disconnected subjects, which eventually find themselves drawn

4 "The Intellectual Awakening of Nova Scotia," in *Dalhousie Review*, 13 (1933-34), 1-22; "The Struggle for the New England Form of Township Government in Nova Scotia," in Canadian Historical Association *Report* (1933), 15-22; "Nova Scotia's Blackstone," in *Canadian Bar Review*, 11 (1933), 339-44.

within the broad classifications of economics, politics and the administration of justice.

This essay does not propose to encroach upon the territory of law in its relationship to economics, or more especially in its relationship to constitutional problems, which I have called politics. Rather, it will deal with the third classification, that is the law of the law reports and of the established courts. For this reason I have been forced to digress from the usual chronological order of an historical essay, and have adopted an arrangement more suitable to the legal complexion of the subject; yet I have striven to maintain, as far as possible, a chronological sequence in the more detailed treatment of the divisions within the general structure.

In order to have a proper setting for the analysis, I propose to deal first with the establishment of the courts, at what may appear to be unnecessary length. Having gained a picture of the institutions in which American influences were felt, it will next be necessary for us to consider the vehicles on which they were conveyed into our system, namely, the statute law and the common law, under the headings of substantive law and procedure. The influences themselves may be classified as direct and indirect: the direct taking the form of statutes copied or decisions followed from the other British American colonies; the indirect taking the form of the character and outlook of the members of the Assembly passing the statutes, the prejudices and early environment of the judges and lawyers dealing with the cases, and the customs and practices of the colonies.

In this first section it is proposed to outline the establishment of the courts of Nova Scotia and to indicate certain American influences in their structure. This survey will include a brief reference to the first common-law court in Canada, held at Annapolis Royal, and then an examination of the courts as set up by Governor Cornwallis at Halifax, with a discussion as to the reasons for choosing the courts of Virginia as the pattern for these early tribunals. The continuity of this summary will be broken by a brief outline of the life of Chief Justice Belcher, who brought with him a new era in the life of our courts. The picture of the courts will then be completed with special reference to the abolition of the Court of Chancery, and the suggestion will be made that this movement was given impetus by experiments in abolition in many of the American states. The section will conclude with a brief reference to some of the officers who conducted the business of the courts.

The earliest English court of judicature to be held in Nova Scotia was a military tribunal held at the Fort of Annapolis Royal, and consisted of four officers and two Acadians. It met twice a week to settle disputes and register indentures.[5] In April 1721 Governor Richard Philipps discovered that the Governor and Council of Virginia formed the General Court there, and he set about trying to carry the same practice into effect at Annapolis. At the governor's house, Wednesday, 19 April 1721, the first court of common law was established in Canada:

> His Excellency acquainted the board that he had called them together to consider the establishing of a Court of Judicature to be held for this province, that one article of his instructions is to make the laws of Virginia a rule or pattern for his government where they can be applicable to the present circumstances. That by the laws of Virginia the Governor and Council were the Supreme Court of Judicature called by the name of the General Court which was fully advised on.[6]

However, with the arrival of Governor Cornwallis in 1749, this rather obscure jurisdiction seems to have been swept away (if it ever legally existed), so we must look to Cornwallis's Commission for the earliest beginning of our courts:[7]

> And we do by these presents give and grant unto you the said Edward Cornwallis full power and authority with the advice and counsel of our said Council, to erect, constitute and establish such and so many Courts of Judicature and Public Justice within our said province and dominion as you may think fit and necessary....And we do hereby authorize and empower you to constitute and appoint judges and in cases requisite Commissioners of Oyer and Terminer, Justices of the Peace and other necessary officers and ministers in our said province.

5 W. A. Calnek, *History of the County of Annapolis* (Toronto, 1897) p. 69.

6 J. A. Chisholm, "Our First Common Law Court," in *Dalhousie Review*, 1 (1922-23), 17-24.

7 The original commission is transcribed in W. Houston, *Documents Illustrative of the Canadian Constitution* (Toronto, 1891), pp. 9-16.

Cornwallis lost no time in implementing these instructions, as evidenced by his letter to the Lords of Trade, 19 March 1750 [N. S.]: "The first thing I set about after the departure of the Charlton was to establish Courts of Judicature."[8]

On 6 December 1749, the Council turned its attention to the matter of rules and regulations for the courts of the colony. Councillors Benjamin Green, John Salusbury and Hugh Davidson were appointed a committee to look into the matter. They reported:[9]

> The Committee are of the opinion that the form of government in Virginia being the nearest to that of Nova Scotia, the regulations there established for the General Court and their County Courts will be most proper to be observed in the province.

Therefore a General Court[10] was established, consisting of the governor and his council:[11] Paul Mascarene, Edward How, Hugh Davidson, John Salusbury, John Gorham and Benjamin Green, the two latter being Americans. The governor also appointed four justices of the peace: John Brewse, Robert Ewer, John Collier and John Duport, three of whom became justices of the lower, or County Court. Of all these men, John Duport appears to have been the only trained legal mind able to guide the colony through the intricacies of English law.[12]

Cornwallis was anxious to keep the procedure of the General Court strictly in accordance with English practice, as evidenced by his letter to the Duke of Bedford,[13] in which he asked whether the procedure had been correct in the Peter Cartell murder trial. However, in view of the absence of legally trained

8 T. B. Akins, comp., *Selections from the Public Documents of the Province of Nova Scotia* (Halifax, 1869), p. 605.

9 Minutes of Council, 1749: RG 1, vol. 186, p. 33, Public Archives of Nova Scotia [PANS].

10 See *infra* for the origin of the term in Virginia.

11 *Supra*, note 9, at 1.

12 C. J. Townshend, *Historical Account of the Courts of Judicature in Nova Scotia* (Toronto, 1900) pp. 10, 33.

13 *Ibid.*, 11.

judges, it is obvious that most other matters of a less serious nature must have been dealt with in the arbitrary and untechnical manner of judges unlearned in the law.

In an analysis of this sort, it is necessary to enquire into the reasons for such a wholesale adoption of the Virginian court system. John Bartlett Brebner has suggested that when the archives of the colony were removed from Annapolis to Halifax by Paul Mascarene, Governor Philipps's action in adopting the structure of the courts of Virginia was accepted by the officials at Halifax as a binding precedent.[14] The Committee may have gone no farther than this: they may have blindly accepted the practice as a legally binding precedent. However, it seems to me that the words of their report, "The form of government in Virginia being the nearest to that of Nova Scotia," may hold a further clue as to the reasons for their findings. The arbitrary methods of government in Virginia at that time may have been very close to the hearts of the majority of the members of this committee; the silent disregard of, and eventual outward opposition to, the clause in the governor's commission providing for an Assembly, and the subsequent reluctance of the governors to allow more New Englanders on to the Council at a time when they were badly needed, all point in this direction.[15] These men were appointed to inquire into the establishment of courts of law, but their report is based primarily on a similarity between the forms of government in the two colonies. When the report is directed to a detailed consideration of the courts, no mention is made of any attempt to follow the English structure or practice. Unfortunately, the edition of the statutes of Virginia on which the committee based their report is not now to be found in Nova Scotia,[16] and it is difficult to know just how much information the committee members had at their disposal.

As has been mentioned before, none of these men were lawyers. Nevertheless, it can hardly be suggested that they were ignorant of the structure of courts in England; and it should be pointed out still further, that if they did know of the distinction, they could not plead as their defence for

14 J. B. Brebner, *New England's Outpost: Acadia before the Conquest of Canada* (New York, 1927), p. 239.

15 *Ibid.*, 238.

16 The writer has attempted to obtain these statutes from the State University of Virginia; it holds only one copy, however, and this is not allowed out of the Library.

ignoring English structures that English courts were never adopted in any of the colonies, due to their impracticability: "From its beginning in 1634 the Courts of Maryland were considerably more English in their structure than any other colony, based largely on the English judiciary."[17]

The above suggestions may in part explain the readiness of the Council committee to accept the laws of Virginia even as a source of appeal, as expressed in the words of the report: "That if any difficulty shall arise in explaining any of the above rules and regulations, that recourse be had for explanation to the Laws of Virginia."[18] Whether these suggestions are correct or not, the fact remains that the Council looked not to England but to Virginia for its first exemplar. This substantiates Beamish Murdoch's statement: "The laws from this period were chiefly such as were in force in the neighbouring colonies, and a general court and other institutions were copied from theirs."[19]

It is interesting to note that the form which our early legal structure took actually originated in that truant northern colony of Massachusetts Bay, where there was open and flagrant disregard of the common law of England.[20] This is evidenced by the following passage from the *History of the American Bar*, by Warren:[21]

> In 1643 a judicial system was established in Virginia much resembling that of Massachusetts, consisting of County Courts (begun in 1623-4) composed of wealthy planters with an appeal to the General Courts composed of the Governor and Council.[22]

17 C. Warren, *A History of the American Bar* (Boston 1913), p. 50.

18 *Supra*, note 9, at 38.

19 B. Murdoch, *Epitome of the Laws of Nova-Scotia*, vol. 1 (Halifax, 1832), p. 26.

20 "In Massachusetts during the 17th century we find a continued, conscious and determined departure from the common law": P. S. Reinsch, "English Common Law in the Early American Colonies," in [Association of American Law Schools], *Select Essays in Anglo-American Legal History*, vol. 1 (Boston, 1907), p. 385.

21 *Ibid.*, 24.

22 On 11 Jan. 1759 the Governor and Council sent the following proclamation to the New England colonies in answer to questions by prospective settlers, "The Courts of Justice are also constituted in a like manner with those of Massachusetts, Connecticut and other northern colonies": A. W. H. Eaton, *The History of Kings County, Nova Scotia* (Salem, MA, 1910), p. 60.

Therefore the three early courts established were the General Court, the County Courts and the Court of General Sessions.[23]

The County Courts probably consisted of the justices of the peace mentioned above, while the Court of General Sessions consisted of the County Court justices and the other justices of the peace who dealt with local regulations for the towns. The County Court lasted only until 1752, when its name was changed to the Inferior Court of Common Pleas. This court sat four times a year, the original justices being Charles Morris, James Monk, John Duport, Robert Ewer and Joseph Scott. The first two mentioned were Bostonians.

The General Court was a court of assize and gaol delivery, consisting of the governor and councillors; it was held twice a year for trying criminal actions and hearing civil appeals from the County Courts. Inconveniences soon arose from the peculiar constitution of the General Court, and it was replaced by the Supreme Court with a chief justice as the sole judge. This new chief justice was the famous Jonathan Belcher, of whom Sir Charles James Townshend has written: "With the arrival of Chief Justice Belcher commenced a new era in our judicial annals. Hitherto no one pretending to have the necessary qualifications of a judge had presided in the courts."[24]

If Beamish Murdoch may be spoken of as Nova Scotia's Blackstone,[25] Jonathan Belcher may well be spoken of as Nova Scotia's Coke, the father and champion of the English common law in this province. No study of our courts can escape an account of his life in the service of law. In fact, so great was the effect of his personality upon the law that during his lifetime any American influences delineated may well be said to have happened "in spite of Chief Justice Belcher."

Born in Massachusetts on 10 July 1710, he was the favourite son of Governor Jonathan Belcher Sr. of that province.[26] After receiving his MA

23 T. C. Haliburton, *An Historical and Statistical Account of Nova-Scotia*, vol. 1 (Halifax, 1829), p. 163; Townshend, *Courts*, 46.

24 Townshend, *Courts*, 47.

25 The coinage was D. C. Harvey's.

26 R. G. Lounsbury, "Jonathan Belcher, Junior, Chief Justice and Lieutenant Governor of Nova Scotia," in *Essays in Colonial History Presented to Charles McLean Andrews by his Students* (New Haven, CT, 1931), pp. [169]-97 (a very extensive biography of Belcher).

from Harvard, he was sent to England to study law. During this period of Belcher's career, his father's ambition for him appears to have done little except create the habit of extravagance which was eventually to affect his later political career. In general, Belcher's legal practice in England was not successful, and he desired to return to America. His father would not hear of this, however, and he was instead persuaded to try his fortune in Ireland.[27] He practised there from 1742 until he accepted the position of Chief Justice of Nova Scotia in 1754. Unfortunately--and most of Belcher's biographers agree--in his attempt to assume an English attitude he became "more English than the English," and lost all sense of the colonial problems which his early Massachusetts background should have given him. In spite of some adverse criticism regarding his ability as an administrator, as a jurist Belcher nevertheless did much to place Nova Scotia's laws and courts upon the solid foundation of respect which they enjoy today.

In order to complete the picture of our early court structure, mention must be made of the Court of Chancery. It was a court of equity presided over by the governor as Chancellor, until the first Master of the Rolls was appointed by Royal Commission in 1825. For the purposes of this essay, it is interesting to note that in 1851--three years after the close of the period which Dr. Harvey has described as "the Intellectual Awakening of Nova Scotia"[28]--there was a concentrated attack upon the cumbersome and expensive procedure of this court. The general historian who is acquainted with the bitterness that existed between Alexander Stewart, the fourth and last Master of the Rolls, and William Young, the champion of the abolition of the Court of Chancery, may suggest that this movement was the result of personal animosity between these two men. Even if that was the originating force behind the movement, however, it could hardly have been responsible for the passing of a bill in the House of Assembly,[29] unless the members' minds had already been turned in the direction of reform.

I prefer to suggest that this move towards abolition was simply more evidence of the awakening spirit of the day. The leaders of the province, who felt that the court was not functioning in the best interests of the people, did

27 See *infra* on Irish procedure in mortgage foreclosure.

28 *Supra*, note 4.

29 The bill ultimately passed in 1855 (18 Vic., c. 23).

not hesitate to look southward to examine the results of experiments in abolition which had taken place in the United States.[30] It is significant that the first bill proposing the abolition of the Court of Chancery, introduced in 1851, had sections in it copied directly from the corresponding Ohio statute.[31] This bill was not passed by the Legislative Council, however, and the next year a committee was appointed to look into the question. In his report, William Young, who was attorney-general at the time, referred to the success of abolition in the American states which had adopted it. In the Assembly he referred to the statutes of New Brunswick, New York and Ohio and stated that the government had chosen a middle course in drafting the bill for Nova Scotia,[32] which was eventually passed in 1855.

For the sake of completeness, mention must be made of the various other courts such as Vice-Admiralty, Marriage and Divorce, Probate, Error and Appeal and Escheats. These courts are beyond the scope of this essay, however, and they shall be referred to only when there is some evidence of American influence infiltrating their structure in the compartments of substantive law and procedure.

It remains only to mention some of the officers of the court system. To Chief Justice Belcher must go the credit of placing our judiciary on so firm and respected a foundation that it was not influenced by the American practice of making the position an elective office, at the mercy of the public ballot.[33] However, it is perhaps significant that judges in Australia today still cling to the English paraphernalia of wigs, etc., even though Australia has shown more socialist tendencies in its legislation than we have. On the other hand, Nova Scotia's courts--while not consciously following America--were

30 Further evidence of this looking to America may be found in the lengthy discussions on the Maine liquor law, which took place at this time in the House of Assembly; see *British North American* (Halifax), *passim*.

31 *A Letter addressed to the Honorable the Chief Justice* [Brenton Halliburton], *by the Honorable the Master of the Rolls*, [Alexander Stewart], *chiefly relating to the Present State of the Court of Chancery in Nova Scotia* (Halifax, [1852]), p. 13.

32 *British North American* (Halifax), 19 Mar. 1855.

33 Townshend, *Courts*, 45.

unconsciously motivated by the ideas and inherent traditions of New England simplicity, and discarded the wigs and scarlet robes about 1834.[34] The bar in this province has never implemented the distinction among attorneys, solicitors and barristers, thus following the northern colonies--although its early counterpart, Virginia, apparently did.[35]

My purpose now is to show that the courts of Nova Scotia, during the period under consideration, relied to a measurable degree upon laws and practices common to the other British American colonies. This reliance originated in the idea of a common law of the colonies, in contradistinction to the common law of England. Evidence of this colonial common law will be produced in the form of direct references to it by learned men of that time and, more particularly, by examples of it collected from early legal records. These examples consist of practices in dealing with the poor, the avoidance of an adjudication upon the legality of slavery until a late date, and references to various practices of the other colonies being followed as precedents in our law. There is further evidence of this acceptance of colonial law in the attempted impeachment of the justices of the Inferior Court of Common Pleas in 1753 for introducing the laws of Massachusetts, in spite of the fact that they were acquitted of the charge by the Council. In conclusion, the early American training and environment of many of the men who dealt with and administered the law will be referred to, as well as the law books of the time, which guided their legal learning in the direction of American doctrine.

The sources of Nova Scotian law, namely statutes and the common law--the former being divided into imperial and provincial (before Confederation)--have been outlined at an earlier point. The question of the application of British statutes to the law of the colony may be dismissed as irrelevant to a discussion of American influences on the law.[36] The provincial statutes shall be dealt with as they specifically apply to the various branches of the law. The common law, however, is the very soil which has protected the roots of

34 Murdoch, *Epitome*, I, 123.

35 There appears to have been a distinction, however, between that class of lawyers who practised only in the County Courts and those who appeared in the General Court (1732). This reference to the distinction between barristers and attorneys is one of the earliest in all American colonial legislation or court rules: Warren, *American Bar*, 43.

36 *Uniacke* v. *Dickson*: (1848) 2 *Nova Scotia Reports* [N.S.R.] 287.

many American influences from the storms of judicial and executive exclamations of Imperial fealty, and as such merits treatment as an introduction to American influences on substantive law and procedure.

The term common law is of such significance that it epitomizes all the characteristics of the English-speaking peoples. As Story has described it,

> It is emphatically the custom of the realm of England and has no authority beyond her own territories and the colonies which she has planted in various parts of the world. It is no small proof of its excellence, however, that where it has once taken root it has never been superseded...The Common Law is the *lex non scripta,* that is the unwritten law which cannot now be traced back to any positive text but is composed of customs and usages and maxims deriving their authority from immemorial practice and the recognition of courts of justice.[37]

Or as Murdoch in his *Epitome* more tersely describes it from a legal viewpoint, "When it is said that such and such was the rule at Common Law it means to point out the state of the law on some particular point before the passing of an Act of Parliament."[38]

The above quotations will serve to show the flexibility of this system of law as compared with the rigid codes of civil law jurisdictions. By its very nature, the common law allows itself to be moulded from year to year to suit the changing social and economic conditions of the countries in which it operates. In fact, it is this very elasticity which has made it possible for two so differently governed countries as Great Britain and the United States to claim it as their common heritage.

The common law may best be described as a great circle encompassing many smaller circles of varying jurisdictions, which overlap accordingly as their customs and practices are similar, but which all lay claim to being within the wide orbit of the common law. From this very brief explanation, it is obvious that the dissimilarity between the social and economic conditions of England and Nova Scotia soon brought about differences in the common law applicable to each. Thomas Chandler Haliburton, historian, novelist and judge of the Supreme Court, with that keen insight into local affairs which

37 Joseph Story, *The Common Law* [?].

38 Murdoch, *Epitome*, I, 22.

made his Sam Slick an internationally known character, was the first to draw attention to these differences.[39] In a statement which might well serve as a headnote to this treatment he says, "For there is a Colonial Common Law, common to a number of colonies, as there is a customary Common Law common to all the realm of England."[40]

The condition of the law up to his time should be examined, in order to see whether these remarks were warranted. The first evidence of this colonial common law which comes to our attention is most certainly a *lex non scripta* and a custom.[41] In the record-book of Cornwallis Township is to be found evidence of a practice being carried on with regard to the poor, which was totally unauthorized by any regulation emanating from the governor and Council, and, it would seem, also foreign to English practice. The care of the poor was farmed out by tender, and provided a livelihood for those gaining the contract. The profit in the transaction derived from feeding the poor at less than the price contracted for, and from the use of their labour. In the township records we find the following entry under November 1847: "John Griffin did undertake to provide and support the poor...for the sum of 125 pounds."[42] It was also a custom to bind out the children of the poor at what amounted to an auction sale at the town meeting. In April 1825, "There was put up a female child of [...] who is dead, aged about 16 months to be bound out according to the rules of indenture only not to be learnt to write."[43] These were by no means isolated cases. In fact, items of this sort occupy roughly ninety per cent of the minutes of these meetings.[44] Nor are these practices beyond the memory of man today.[45]

---

39 See also Reinsch, "Common Law in the Colonies," in *Select Essays: supra*, note 20.

40 Haliburton, *Account of Nova-Scotia*, 2 (1829), 344.

41 Chief Justice George Duncan Ludlow of New Brunswick, but formerly of New York, also referred to the common law of the colonies: T. W. Smith, "The Slave in Canada," in *Collections* of the Nova Scotia Historical Society, 10 (1896-98), 101.

42 Cornwallis Township Book, p. 23 (mfm. at PANS).

43 *Ibid.*, 20.

44 The writer respectfully notes that Sir Joseph Chisholm [Chief Justice, 1931-1950] has recalled to him that his brother on the bench, the late Harris, C. J. [1918-1931], once related to him that his first assignment as a young newspaper reporter was that of a case where a man who had bound out a young girl [*sic*: the victim was

The historical interest of this semi-slavery lies in the fact that it was introduced into the province as a custom brought by settlers from New England, where it was sanctioned by statute.[46] The covenant or contract of 'binding out,' as it was called, appears to have been accepted by the Court of General Sessions as legally binding upon the parties, and as such may be spoken of as a part of the common law of the colony.[47]

Slavery itself was a practice of early Nova Scotia which may definitely be traced to the influx of New England Planters. Although it is not suggested that our courts ever gave a decision upholding slavery, the Planters, with their Black slaves, exerted a tremendous pressure on the courts, thus discouraging them as long as possible from following English law as enunciated by Lord Mansfield in *Sommersett*, 1772.[48] Chief Justice Sampson Salter Blowers, in a letter to Ward Chipman regarding a decision on slavery said, "My immediate predecessor [Thomas A. L.] Strange dextrously avoided an adjudication upon

about thirty-five years of age] assaulted her and murdered her on a lonely side road. [This was the notorious criminal case *Regina* v. *Thibault*, for the murder of the pregnant Charlotte Hill in Sept. 1880; it was tried in the Supreme Court at Annapolis Royal in Dec. 1880. Robert Edward Harris, reporting the proceedings for the *Spectator* (Annapolis Royal), was then a twenty-year-old law student under articles to Jacob Miller Owen, one of the three crown lawyers who assisted Attorney-General John S. D. Thompson in conducting the prosecution. — Ed.]

45 Under date 5 Apr. 1825 reads the following: "Butler was there and Moran but they refuse to have their children bound out and it was told them that they wouldn't have any further supply, nor any other family chargeable on the town till their children was [*sic*] put out."

46 Most of the settlers in Cornwallis Township came from Connecticut and Rhode Island. Unfortunately, no statute-book of this period from either of these colonies was available in Halifax. One may nevertheless assume that since these colonies instituted that practice, it was as common there as in Massachusetts:

> Male children till they come to the age of twenty-one years and females till they come to the age of eighteen years or time of marriage which shall be as good and effectual in law to all intents and purposes as if any such child were of full age, and by indenture or covenant had bound him or herself, or that their parents were consenting thereto, provision therein to be made for the instructing of children to be bound out to wit males to read and write, females to read as they respectively be capable.

Source: *Statutes of Massachusetts* (1720), p. 214.

47 *Ibid.*

48 *Sommersett* v. *Stewart*: (1772) 20 *State Trials* [St. Tr.] 1; (1772) 98 *English Reports* [E.R.] 499 (King's Bench).

the principal point."[49] He then went on to say that he chose to pursue the same course as Chief Justice Strange, working to defeat slavery by making it difficult for the master to prove his claim, rather than coming straight out with a decision against it.

Chief Justice George Duncan Ludlow of New Brunswick, and formerly of New York, adopted a more open policy and upheld the rights of the colonists to their slaves as a usage and custom of the colony thereby having the force of law. The difference between these two attitudes may be traced to the fact that Chief Justice Blowers had practised at the Massachusetts bar where slavery had gained little hold, while Chief Justice Ludlow came from the New York bar, which took a much stronger stand on the slave question.

There is further evidence of the existence of a colonial common law to be found in references to the laws of other colonies, as contained in decisions rendered by the Council on questions placed before it. In one example, concerning an application for permission to build a distillery within the town limits of Halifax, the minutes record, "The Council having taken into consideration and consulted the laws of the other colonies...."[50] Also, in a representation to the Council to pass a law respecting the erection of fences, the minutes read, "To do their quota in fencing and enclosing the smaller lots as the practice of the neighbouring colonies is."[51]

On 3 January 1753, a memorandum was presented to the Council against the justices of the Inferior Court of Common Pleas.[52] The fact that the first article of this indictment should contain an accusation against the justices for introducing the laws of Massachusetts into Nova Scotia, is not without significance. It is true that the justices were acquitted of this charge, but the tone of their defence[53] against the accusation, the Council's pronouncement of their innocence,[54] and the subsequent action of the home government in

49 See article by Smith (*supra*, note 41) for a complete discussion of the subject.

50 Minutes of Council, 11 July 1751: RG 1, vol. 186, p. 121, PANS.

51 *Ibid.* (22 Dec. 1752), 254.

52 *Ibid.* (3 Jan. 1753), 267.

53 *Ibid.*, 284.

54 *Ibid.*, 317.

sending out Jonathan Belcher to reorganize the judicial system, all seem to indicate that although government policy demanded their acquittal, the Lords of Trade in England suspected that there was some truth to the accusations, and that these men had indeed allowed Massachusetts laws to influence the administration of justice by the lower court.

It is difficult to say just how many of the American practices alleged to have been introduced by these justices weathered Belcher's reforms. However, it is reasonable to suggest that most of the examples of American influence adduced below in the treatment of substantive law and procedure, took root in the decisions of these early New England magistrates.

As a matter of fact, the oath which these justices swore did not preclude them from taking judicial cognizance of many of the laws of Massachusetts, as they formed a part of the custom and usage which many of the settlers had brought with them from that province:[55]

> You shall swear that well and truly you will serve our Sovereign Lord The King and his people in the office of a Justice of the Inferior Court of Common Pleas for the County of Halifax, and that you do equal right to all manner of people great and small, high and low, rich and poor according to the laws and the Statutes of England and *the laws and usages of this Colony* [italics added] without favour affection or partiality.[56]

In the introduction, reference was made to Justice Holmes's statement regarding the prejudices which judges share with their fellow men as having a good deal to do with the rules which they lay down. In view of the oath which the early common pleas judges took, to administer justice according "to the laws and usages of the Colony," it would not be remiss to inquire into the early environment and lives of these men whose decisions formed the structure of early Nova Scotian law.

Space does not permit a detailed examination of this aspect of the subject, which is perhaps more specifically allied to the field of psychology, yet the suggestion is ventured, along with certain evidence to substantiate it, that the lives and education of many of our leading jurists and statesmen must have

55 *Ibid.*, 324.

56 *Supra*, note 51.

had an affect on the development of provincial law. It must be admitted, however, that Chief Justice Belcher was an exception to the general rule. The influence of the American bar upon the early judiciary is evidenced by the presence of such American lawyers on the bench as James Brenton, from Newport, Rhode Island. In later years Chief Justice Blowers and his successor, Brenton Halliburton--influenced in the one case by American legal education, in the other by American legal precedents-- contributed much to the importation of American laws into the law of Nova Scotia.

The name of Sampson Salters Blowers appears among a list of prominent lawyers of the state of Massachusetts in an American treatise entitled *A History of the American Bar*.[57] Educated at Harvard, he studied law under Governor Thomas Hutchinson of Massachusetts, and later was admitted to the bar of that province, where he gained considerable prominence. The Nova Scotia law reports bear silent witness to the American learning of the other chief justice, Brenton Halliburton. Throughout the reports, his study of American case law and legal treatises is evidenced by his adoption of American precedents, as will be shown below. His careful consideration of American cases appears, for example, in *Tarratt* v. *Sawyer*, where the learned chief justice said:

> I have not overlooked the American cases which have been cited; although we are not bound to defer to them as we must to the decisions of Westminster, we derive great satisfaction and advantage from the views taken by the able lawyers who sit upon many of the Benches of that country, of transactions so similar to those which frequently occur in this.[58]

Perhaps the legal profession is more guided by "what the books say" (to use a legal expression) than any other, in the formation of its ideas and practices. It is for this reason that I venture a few remarks on the Bible of the early Nova Scotian lawyer--Beamish Murdoch's *Epitome of the Laws of Nova-Scotia*. No law reports (i.e., published proceedings of the Supreme

57 Warren, *American Bar*, 36.

58 1 N.S.R. 46-52.

Court) were published in this province until 1834.[59] Therefore it is difficult to discover upon what grounds the judges based their decisions before this time. The result is that one has to use Murdoch's *Epitome* as a mirror to reflect the actual sources from which the early judges drew the law up to the time of the first law report. To the lawyer of today, the most striking feature of this *Epitome* lies in the comparative scarcity of references to Blackstone's *Commentaries*, which in Murdoch's time was the recognized authority on the common law of England, and the constant references to Chancellor Kent's *Commentaries*[60] on American law. The result is that the *Epitome* is full of American precedents, and its author is always careful to refer to American decisions on points that have not yet been decided by English or provincial courts. At the very outset, Murdoch commends to the young law student of this province an American treatise on the law, Hoffman's *Legal Study*, thus exposing the minds of future lawyers and judges to principles and procedures not always in strict accord with English practice.[61]

The first law reports referred to above reflect this deep respect for American decisions, which is so manifest in Murdoch's treatise. Such an attitude towards American law no doubt accounts for the fact that there has been built up a library of over 2,500 volumes of American reports (apart from American textbooks and treatises) in the library of the Nova Scotia Barristers' Society at Halifax, books which are constantly referred to by judges and lawyers when they are unable to find precedents in the Canadian or British reports.

Law has been conveniently divided into substantive and adjectival law. Substantive law is that part of the law which creates rights and obligations, while adjectival law provides a method of enforcing and protecting them. In other words, adjectival law is the law of procedure. I now propose to draw

59 The first law report covers the years 1834 through 1851 [J. Thomson, *Law reports ... 1834-1851* (Halifax: A. & W. MacKinlay, 1877)]; the practice of publishing law reports commenced at the beginning of the period of "intellectual awakening" described by D. C. Harvey.

60 J. Kent, *Commentaries on American Law*, W. M. Lacy, ed., 4 vols. (Philadelphia, 1889).

61 "I have seen several treatises not exactly applicable to the circumstances of a colonial student. Hoffman's Legal Study, an American work of reputation, is the best I have met with and it should be read carefully by every student": Murdoch, *Epitome*, I, 10. [The reference is to David Hoffman, *A Course of Legal Study* (Baltimore, 1817). — Ed.]

certain examples of American influence from the substantive law. The examples chosen have been taken from the early bankruptcy law, probate law with special reference to intestacy, and finally, property law.

The minutes of Council, 27 December 1749, bear evidence of a most extraordinary right given to the early colonists of this province. It was admittedly a shameful concession, but deemed legal nevertheless, as following the precedent of Virginia:[62]

> It was resolved that from this day to the second of February 1750-51, no debts contracted in England or in any of the Colonies prior to the establishment of this settlement or to the debtor's arrival here as a settler shall be pleadable in any Court of Judicature in the province except for goods imported or ordered to be imported into the province.

Although it is true that this law was later abolished, it remains cogent evidence of the willingness of the governors to uphold the legal precedents of another colony, even in the face of a law contrary to common sense, equity and the laws of England.

In the first edition of the statutes of Nova Scotia, we find hidden in a congeries of laws on property rights, a law which goes to the very heart of colonial doctrines of property and probate law:[63]

> and the said judge having appointed guardians in a manner as hereafter may or shall be by law prescribed for all minors shall then out of all the residue of such real and personal estate distribute two shares or a double portion to the eldest son then surviving (where there is no issue of the first born or of any other elder son) and the remainder of such residue equally to and amongst his other children, and such as shall legally represent them...

This statute completely altered English law regarding the administration of the estate of an intestate. By English common law, the eldest son was the sole heir and entitled to the whole estate, exclusive of all other children; whereas colonial law directed that the real and personal estate of an intestate be distributed in single shares to all the children except the eldest son, who

62 Minutes of Council, 27 Dec. 1749: RG 1, vol. 186, p. 45, PANS.

63 *Statutes of Nova Scotia* [1767 ed.], p. 12.

received a double share[64] according to the Mosaic Law.[65] By this new statute, therefore, primogeniture and the feudal system of inheritance were ignored, and the law of the colonies was adopted in their place.

It may be profitable to trace this revolutionary law back to its early origin, in order to appreciate more fully its influence on Nova Scotia statutes. Most New Englanders originally came to America to escape the rigour of various English laws. The result was that they were ever on guard to protect their hard-won liberty from any trace of the abuses from which they had escaped. The principles which guided their actions were twofold: first, that of preventing the engrossing of lands and their accumulation in the hands of the few; secondly, that of hastening settlement and improvement of the land. To maintain these principles, it was necessary to adopt laws either unknown to English law or not in accord with it. Such intestacy laws were thus more than mere statutes passed by a colonial legislature. They were deeply-rooted customs--part of the colonial common law for sixty years before their affirmance by the statute law of the colony.[66] The New England Planters who took up the lands of the dispossessed Acadians, and the Loyalist refugees who fled from their homes after the Revolution, came from colonies where these principles had taken the firmest root. The fact that they were to be deprived of the New England form of township government in Nova Scotia only served to strengthen their attachment to these ideas.

Chief Justice Belcher in a footnote to the statute tried to excuse ignoring the seven English rules of descent[67] by pointing to a decision of the Privy Council in the probate appeal case, *Philipps* v. *Savage* from Massachusetts. It should be remembered that the Privy Council was the court of last resort, or final appeal, for each colony,[68] but that its decisions were not legally binding precedents for the other colonies. The above case was argued not solely on the

64 *Statutes of Massachusetts* [1692], p. 2.

65 C. M. Andrews, "The Influence of Colonial Conditions, as Illustrated in the Connecticut Intestacy Law," in *Select Essays*, I, 437.

66 *Ibid.*; see also Governor Talcott's rationale for the intestacy law: *ibid.*, 438.

67 Murdoch, *Epitome*, II, 177.

68 *Statutes of Nova Scotia*, [1767 ed.], 12.

grounds that the statute was contrary to English law, but also that it derived from the common law of Massachusetts. It was an open conflict between the common law of England and the common law of Massachusetts. The decision in favour of Massachusetts was an admission that this statute, which was contrary to the law of England, was nevertheless good law in Massachusetts. However, at this stage, the Privy Council decision could not be deemed to have set a binding precedent extending to the jurisdiction of the courts of Nova Scotia. A few years before, Connecticut had been flatly refused an appeal on the same question in the *Winthrop* case, and after the Philipps case the Council threw out a further appeal from Connecticut in the case of *Clarke* v. *Towsley*.[69] After that, no one dared attempt to carry another appeal on this question. Thus there is concrete evidence that no one at the time considered a decision of the Privy Council relating to one colony to operate as a precedent binding another colony. Therefore, Chief Justice Belcher appears to have sanctioned a law entirely adulterated by colonial alloy.

This is the one instance in his career when Belcher retained the colonial outlook to which he had been raised in early life, perhaps due to the fact that the name of Belcher and the Intestacy Law of Massachusetts were so inextricably bound together that he felt obligated to maintain the family tradition. His father had been champion of the colonial intestacy law, and he himself was retained as junior counsel in the *Philipps* case,[70] thanks to the influence of his father, during his unsuccessful career as a barrister in England.

Nova Scotia's courts have openly and consistently admitted the adoption of Massachusetts probate law in this province.[71] As Mr. Justice Townshend pointed out in *Northrup* v. *Cunningham*,

> Our whole theory and practice in the administration of estates and the rights and liabilities of executors or administrators is therefore more in conformity with the procedure in Massachusetts and other states in the union which have adopted similar legislation.[72]

69 Andrews, "Colonial Conditions," in *Select Essays*, I, 462.

70 Lounsbury, "Jonathan Belcher," 174.

71 See *In re Estate of John Simpson*, 12 N.S.R. 357, for an excellent judgment treating the adoption of Massachusetts probate law in Nova Scotia.

72 24 N.S.R. 188.

Without going into the facts or theory of law behind the above case, suffice it to say that it laid down the principle that the distinction between legal and equitable estates was of no practical value in Nova Scotia as in England, thus following the Massachusetts law.[73] It is interesting to note, moreover, that the authorities recognized by the Nova Scotian courts on this subject were all American treatises.[74]

A further example of Nova Scotia's courts following the Massachusetts law of probate is to be found in the case *Ells* v. *Ells* in 1841.[75] This was an action of assumpsit by a testator's wife against the executors of her husband's will. One clause of the will read, "I give and bequeath to my wife Elizabeth a decent, suitable and comfortable maintenance." At common law an action could not be maintained against an executor unless it was for a certain legacy or reducible to a certainty. Chief Justice Halliburton pronounced the above clause to be a certain legacy, and quoted several American cases as his authority:[76]

> These cases shew that under a Statute similar to our own, actions generally for legacies are sustained in their courts of law and that legacies of this particular nature are considered as certain legacies without any accounting or assent of the Executor.

The law of property supplies a final example of American influence upon our substantive law: the case of the lessees of *Lawson et al.* v. *Whitman*,[77] which introduced the American doctrine of the constructive possession of land into this province. At common law it was recognized that under the Statute of Limitations a person who, without colour of title (i.e., a person who

73 Sections 41 and 42 of the Nova Scotia probate law were copied directly from the Massachusetts Act. All the authorities on these sections are Massachusetts cases: *Newall* v. *West*, 149 *Massachusetts Reports* [Mass.] 521; *Dale* v. *Hanover National Bank*, 155 Mass. 141; *Liske* v. *Liske*, 155 Mass. 153.

74 See, for example, J. G. Woerner, *A Treatise on the American Law of Administration*, 3rd ed. rev. (Boston, 1923).

75 1 N.S.R. 173-76.

76 *Faulvell* v. *Jacobs*, 4 Mass. 634; *Baker* v. *Dodge*, 2 *Pickering (Mass.)* [Pick.] 619; *Swany* v. *Little*, 7 Pick. 296.

77 1 N.S.R. 208.

did not claim under any title, valid or invalid, e.g. a squatter), held a piece of land for twenty years in open, conspicuous and continuous possession, would be deemed to be legally in possession of it, as against someone who showed title. This applied, however, only to property which the person had actually occupied for the twenty years. In this case, the defendants cited American authorities in order to extend this doctrine so as to allow a person with colour of title, claiming to hold the land under the statute, to be entitled not only to the land which he occupied, but also to all the land described in the title which he claimed to hold under (whether a good title or not), and whether actually occupied by him or not. This extension is known as Constructive Possession.

In dealing with the case, Chief Justice Halliburton said,

> The situation of lands in this Province resembles that of those in the United States so much more than of those old and long cultivated lands in the Mother Country, that we may frequently consider with advantage the view which their courts have taken of questions of this nature. And on turning to their reports and elementary writers, I find that although they sustain the position of one who enters and holds for 20 years under colour of title, they have guarded it with so many reasonable exceptions that there is little danger of injuring the rightful owner in cases of conflicting constructive possession.[78]

It may be said, therefore, that Nova Scotia's courts have been influenced from time to time by American substantive law. Evidence to uphold this statement has been presented first in the adoption of early colonial insolvency laws, contrary as they were to English law, equity and good conscience; secondly, in the complete overthrow of the seven English rules of descent and the adoption of the intestate succession rules of the northeastern colonies; thirdly, in the adoption of an American precedent as to whether certain words might be construed as a certain legacy; and fourthly, in the adoption of the American doctrine of constructive possession of land.

In the final section of the paper, the law of procedure will be examined in order to discover some American influences on this branch of law. After a brief mention of the early procedure as adopted from Virginia, a more minute examination will be made of the forms of writs in use in 1752, which were

78 *Lessees of Lawson et al.* v. *Whitman:* 1 N.S.R. 208-09.

alleged to have been copied from those of the northern colonies. By means of a comparative analysis of the writs, the differences among those in use in England, Massachusetts and Nova Scotia, and those authorized for use by the Council in 1752 may be seen. This is followed by reference to the momentary swing of our courts in the direction of American procedure in demanding exactness in writs and processes, and the subsequent check upon this. Further American borrowings are to be found in the registration of land, the barring of a wife's dower by conveyance, and the mode of conveying a wife's real property by deed signed by her husband.

The earliest rules of procedure applied in this province were copied directly from those of Virginia.[79] They related chiefly to such matters as duties of court officials, bail, amount of time consumed by legal process and various other routine matters--the closer inspection of which would be of little value to this essay. These rules were found to be inadequate, and in December 1750 the justices sent a memorial to the Council asking for further instruction.[80]

The minutes of Council on 2 March 1752 substantiate Murdoch's statement: "We have derived from our early intercourse with Massachusetts a more simple formula of law proceedings."[81] The minutes of Council of the same date refer to writs being used which were different from those used in England:

> Through some mistake or otherwise it has been [the case], notwithstanding the general practice, to make use of some forms of writs differing from the form in use within the Kingdom of England, more especially for a writ for attaching goods, chattels and estates upon a mesne process for debt in the form used in His Majesties [*sic*] Colonies in New England.[82]

In order to appreciate fully the significance of this passage, it is essential to have an understanding of the early common law on this point. Since medieval times, every lawsuit had to be instituted by a process known as a

79 Minutes of Council, 13 Dec. 1749: RG 1, vol. 186, p. 31, PANS.

80 *Ibid.*, 15 Nov. 1750: RG 1, vol. 186, p. 98, PANS.

81 Murdoch, *Epitome*, III, 124.

82 Minutes of Council, 1752: RG 1, vol. 186, p. 148, PANS.

writ. The action to lie had to fit the wording of the writ; otherwise, there could be no claim, no matter how great a wrong had been suffered. These writs eventually became highly technical, cumbersome and slow. Therefore jurists were naturally exercised by inventing ways of getting around them. This was accomplished by means of legal fictions known as Bills of *Middlesex, Latitat, Capias in Trespass*, etc.[83] By these fictions an action could be started by presuming the original writ to have been issued before the process was initiated, although the steps involved in the fictions were as complicated as before. These processes took the form of summons, arrest, attachment, distress and capias.

At the end of the seventeenth century in England there were three ways of proceeding in an action for a debt.

1. In the Court of Common Pleas by process.[84]
2. In the Courts of King's Bench by Bills of *Middlesex* and *Latitat*.[85]
3. Via a new procedure just introduced by proceeding on a capias on a presumed writ of trespass.[86]

Apart from the procedure in the King's Bench, the question arises as to whether the colonial advocates of strict English procedure deemed the first or the third to be the correct method. It is not unreasonable to suppose that the colonists, due to lack of professional training, and perhaps also their reliance upon old legal texts, may have thought the first still to be in use.[87]

The significance of this rather lengthy discussion of the old English law is as follows. If the governor and Council had actually followed English

83 W. Blackstone, *Commentaries on the Laws of England* (London, 1765-69), III, 83: W. Holdsworth, *History of English Law*, I, 289.

84 Blackstone, *Commentaries*, III, 278, 463.

85 *Supra*, note 83.

86 Holdsworth, *English Law*, I, 22.

87 Blackstone, (*Commentaries*, III, 282) states that in 1650 the capias was the usual way of starting a suit, but he must be referring to an earlier version of the process because capias on writ of trespass had not yet been introduced: Holdsworth, *English Law*, I, 221. Sir Matthew Hale, on the other hand (*The History of the Common Law*, 5th ed. [London, 1794], p. 101), refers to capias as the usual process in 1669, but this must have been capias in trespass.

procedure, they would have set out the forms of capias differently. But neither the English nor the Massachusetts form was adopted; rather, a form evolved combining the English processes of *Distingas* and *capias ad respondendum*, and very clearly resembling the Massachusetts form. Attention is also drawn to the fact that the summons in England was not a separate document, but was executed orally as directed in the original writ.

An examination of the records of the County Court, 1749-1752,[88] reveals that no actions were started by original writ or fictions such as Bills of *Latitat*, etc. Only one process of summons was found.[89] This was to commence an action for defamation.[90] The remainder were all mesne processes for attaching goods, chattels and estates--and all in the form objected to in the 1752 minutes of Council. Three of them were crossed out and converted into summons.[91] The governor and Council answered the objection against the usage of New England writ forms in the following manner:

> That no writ or writs whereon any process or processes in law have heretofore been or are now depending or which may hereafter until the further order of the Governor and Council thereon be commenced within this province shall be abated nor the proceedings thereon be set aside or any way be effected upon account of said writ or writ's non-compliance with the form issued in the Kingdom of England if no other legal cause or reason thereof shall appear.[92]

88 [Extant case files of the General Court, 1750-1754, are in RG 39 "C" (HX), box 1, PANS. — Ed.]

89 The writer suggests that this single printed form of summons bears evidence of having been printed in one of the northern colonies, probably Massachusetts. From an examination of the pre-1752 writ of summons, the original form and the corrected form of summons may be seen. There is an exact correspondence between the original form and the form in use in Massachusetts. The corrected form alters the text of the Massachusetts writ in order to comply with conditions in Nova Scotia; e.g., the word "sheriff" is replaced, and since there was no Court of Common Pleas in Nova Scotia at that time—unlike Massachusetts—the expression was changed to read, "in the County Court."

90 Several other actions for defamation were found to have been started by attachment—as objected to in the minutes of Council, [RG 1, vol. 186] and case files of the County Court, 1749-1752 [RG 37 (HX), box 1], PANS.

91 This fact perhaps indicates that the discreet method of bringing an action was, for social and business reasons, by summons. The defendants were an army officer and a tavern-keeper.

92 Minutes of Council, 2 Mar. 1752: RG 1, vol. 186, pp. 158-59, PANS.

There is further evidence of the leaning towards American practice at this time in an enactment of March 1752, which demanded exactness in writs and processes on pain of abatement of the writ, unless the plaintiff and the defendant agreed upon the amendment. As Brebner recognized, it was a well-known practice of the time in American courts for lawyers to exaggerate respect for exactness in the drafting of documents. Fortunately, such an attitude towards procedure was short-lived in this province, where the courts were spared ingenious bickering over technicalities by sharp lawyers--so common in the United States, and of which there are still traces in the American courts. This is one American influence which may be pointed to as happily existing only from 10 March to 5 December 1752, when Council passed the following resolution:

> And be it further enacted by the authority aforesaid that no summons, process or writ issuing out of any of the aforesaid Courts of Justice shall be abated for any kind of circumstantial or Clerical Errors or Mistakes nor thro' the defect and want of Form only provided all the essential and substantial matters thereof be plainly set forth therein necessary to proceed upon the merits of the cause or be contained in such judgment made therein and where the Person and Case may be rightly understood and intended by the Court, on motion made in such case may order the Amendment thereof.[93]

Most writers, when comparing colonial and English law, point to the universal practice in the colonies of registering land transactions as the one outstanding difference between colonial and English procedure. At common law the practice was, and still is, to place the onus upon the purchaser for inquiring into the validity of the title by examining all the conveyances relating to the land for forty years back. In the colonies, the practice had always been to register the names of the parties to a real estate transaction in a book kept at the county registry office for that purpose.

It is true that this was done in Scotland and the counties of Yorkshire and Middlesex, and a tract called the Bedford Level,[94] but the practice was not recognized by the common law, and there is not the slightest evidence to

93 *Ibid.*, 5 Dec. 1752: RG 1, vol. 186, p. 236, PANS.

94 Murdoch, *Epitome*, II, 222.

show that these obscure jurisdictions had any influence upon the first pronouncement of the necessity of registration in this province, in 1752. In that year the governor and Council, following the example of the older colonies on which our courts and laws were modelled, passed a resolution that land transactions should be registered.[95] This was followed by numerous acts dealing with the same matter.[96]

The next American influence on procedure which came to my attention was an Act of 1771[97] respecting the barring of a wife's dower. It should be explained, perhaps, that dower at common law is the right of a wife, on surviving her husband, to an estate for life in one-third part of the freehold estates of inheritance of which her husband was solely possessed at any time during the marriage, to which her issue by him might possibly have been heir-at-law.[98] For a man to be able to dispose of any of the above described real property, therefore, it would be necessary for his wife to 'bar' her dower, i.e., to give up her legal right to the one-third share. Needless to say, this action had to be surrounded with many protections to prevent husbands from inducing their wives to give up this claim.

English and American procedure with regard to this act of barring dower are clearly contrasted by Chancellor Kent:

> The usual way of barring dower in this country by the voluntary act of the wife is not by fine as in England, but by joining with her husband in a deed of conveyance of the land containing apt words of grant or release on her part, and acknowledging the same privately apart from her husband.[99]

The 'fine' referred to above was merely a mode of conveyance under the fiction of a lawsuit amicably settled, the title to the land being transferred and a good title received. It was probably called a 'fine,' because a sum of money

95 See *ibid.*, 223, for a list of statutes on registration.

96 Minutes of Council, 27 Jan. 1752: RG 1, vol. 186, p. 129, PANS.

97 *Statutes of Nova Scotia* [1767 ed.], p. 271 (1771) 11 Geo. 3, c. 6.

98 *Halsbury's Laws of England*, 1st ed. (1907-1917), vol. 24, p. 189.

99 Chancellor Kent suggested that this practice originated in the Massachusetts statute of 1644: *Commentaries*, IV, 58.

was paid to the Crown for the licence to the Court to enforce the compromise. The procedure in Nova Scotia, following the American method described above by Chancellor Kent, was to have the wife join her husband in a deed of conveyance containing apt words of grant or lease on her part. She also had to be examined privately, in order to make sure that there was no coercion on the part of her husband.[100]

The conveyance by fine was further rejected in this province in the procedure connected with the conveying by a married woman of her own real property. In England, a wife might deal with her property by fine as if she were a *feme sole*.[101] Nova Scotia, however, adopted the procedure of having a wife's property always conveyed in the form of a deed signed by her and her husband; the husband's signature presumably for her protection.[102] The statute of 1794 relating to this matter shows the above practice to have been an early custom of the settlers; the preamble states that it had "been usual for married women entitled to real estate in this province to convey the same jointly with their husbands."[103] Murdoch, moreover, quotes Chancellor Kent's statement--"This substitute of a deed for a conveyance by fine has prevailed probably throughout the United States as the more simple, cheap, and convenient mode of conveyance--"[104] as indicating that this early practice, which existed at common law before it found a place in the statutes, must have been carried here by the American colonists.

I cannot conclude my treatment of American influence on adjectival law without mentioning an action which may nevertheless not be classified as a strictly American influence on procedure. Foreclosure proceedings in the law of mortgage in Nova Scotia are peculiar to this province, Ireland, Jamaica and several American jurisdictions.[105] In England, the practice is to petition

100 *Supra*, note 97.

101 Murdoch, *Epitome*, II, 237.

102 *Ibid.*

103 *Statutes of Nova Scotia* [1805 ed.], p. 332: (1794) 34 Geo. 3, c. 3.

104 Murdoch, *Epitome*, II, 227.

105 T. H. Coffin, "Mortgage—Foreclosure—Nova Scotia," in *Canadian Bar Review*, 10 (1932), 487-90.

for a bill of foreclosure, which states that if the mortgage is not paid at such a time the mortgagor shall lose his right of redemption or, in effect, his legal interest in the property mortgaged will be foreclosed. On the other hand, the Irish procedure is for the court to decree a sale of the mortgaged premises, instead of a foreclosure, and if the sale should produce more than the debt, the surplus goes to the mortgagor. An examination of the earliest cases in our law reports reveals that the judges relied solely on Murdoch's statement--which is made without giving any authorities for it--saying that this practice probably came from Ireland.[106] Mr. Justice Townshend, moreover, in his history of the superior courts, referred to the case of *Anderson* v. *Taylor* (14 June 1756), in which the English procedure was followed.[107] I therefore spent considerable time attempting to unearth the original decision documenting this transition from the English to the Irish procedure, in the hope that the practice might have come to Nova Scotia from Ireland via America. My efforts were to some extent thwarted, however, by the fact that the list of the 1900 extant Court of Chancery case files stored in the basement of the Public Archives building is not of such a nature as to indicate precisely the form of action, and therefore it is only by perusal of the documents in each of these old files that the original case altering the procedure could be found. The earliest reference to a foreclosure case decided upon Irish procedure was located in an old manuscript book entitled "Chancery General Writ Book B," which gave the decretal order for sale of the mortgaged premises in *Gerrish* v. *Joseph Gray and Mary his wife*, 23 September 1774.[108] Therefore, the transition must have taken place between 1756 and 1774.

An examination of the careers of the governors and lieutenant-governors who acted as *ex officio* Chancellors during this period reveals that Jonathan Belcher is the only one who might be expected to have known anything of Irish equity procedure, since he practised at the Irish bar from 1742 until coming to Nova Scotia in 1754. In fact, there is further evidence pointing to Belcher in a manuscript book entitled "Rules of Chancery" (apparently in use at this time), which is full of Irish references, and could only have been

106 See cases cited, *ibid.*

107 Townshend, *Courts*, 71.

108 *Gerrish* v. *Gray* [1774]: RG 36 "A," box 6, file 33, PANS.

compiled by a jurist who had an intimate knowledge of Irish law.[109] When someone is fortunate enough to discover the precedent-setting case in this transition from English to Irish procedure, it will be interesting to note whether Chief Justice Belcher was the *ex officio* Chancellor who decided it. If he was, then it will be the champion of English law whom we may credit with the introduction of a practice so foreign to the common law, into the law of this province; and it will stand beside his acceptance of the Massachusetts intestate succession law as another inconsistency in his reforming policy.

I submit by way of general conclusion that certain American influences have been shown to exist: *first*, in the Virginian structure (mediated through Massachusetts) which Nova Scotia's early courts adopted, and the subsequent movement for the abolition of the Court of Chancery, as influenced by reforms of this nature in the United States; *secondly*, in the articulation of the idea of the existence of a common law of the colonies, along with examples of this in the form of American colonial laws and practices being used as precedents in Nova Scotian courts; *thirdly*, in examples taken from the substantive law of insolvency, probate (including intestacy) and property law; *fourthly*, in examples taken from the law of procedure, as in the form of writs used, method of barring dower; and *fifthly*, the method of conveying a married woman's real property.

Some day a complete legal history of Nova Scotia--in fact of the whole of Canada--will have to be written. Criticism may then be directed against this essay, in that it has been a "grasping at straws," without any attempt to relate them to the law as it exists today. In answer to this, I submit that making such a connection falls to the scholar who continues this subject from 1853 to the present day. Finally, even if the criticism be justified, this essay will serve the better to illustrate our victory over what might have been a complete Americanization of the judicial system at the most vulnerable point in the whole of Canada's history. It will serve to make us more deeply appreciative of our law and lawcourts as they stand today, stripped of all unnecessary pageantry on one hand, and divorced from the pernicious practices of an elected judiciary on the other.

109 RG 36, vol. 76[8], PANS.

Nova Scotia's Forgotten Boxing Heroes: Roy Mitchell and Terrence 'Tiger' Warrington

Brian Lennox

The years between the two World Wars were not marked by great progress for Blacks in North America. Those who had enthusiastically enlisted during World War I found that fighting for their country did not improve their status.[1] In the United States, there were race riots in major urban centres as Blacks found their plight increasingly frustrating. One of the major trends in America during this period was the migration of Blacks to urban centres in the northern states; Canada, however, remained closed to large-scale Black immigration during this period. Blacks in Nova Scotia lived in both urban and rural areas,[2] and remained the most disenfranchised minority group within Nova Scotian society. The provincial press rarely reported anything that happened in the Black community. Indeed, the only consistent media coverage accorded to them, other than through boxing, appeared in cartoons--where they were regularly depicted during the 1920s and 1930s as having 'Sambo' characteristics.

In the period between the wars, however, there were vast changes in the organization of boxing. Throughout the early part of the twentieth century, different ethnic groups had dominated the sport. Whereas the Irish had predominated before 1914, now it was Jewish and Italian boxers who controlled boxing. The number of Black boxers increased as well, although it was after World War II that they became superior by talent and sheer numbers. From a sociological perspective, the consensus has been that the lowest end of the socio-economic scale produces the majority of boxers, in a sport which seems to symbolize the struggle of the lower classes more than any other.[3] Blacks in Nova Scotia were certainly at the lowest end of this socio-economic scale.[4]

Brian Lennox holds B.A. and M.A. degrees from Dalhousie University; his Master's thesis, from which this article is taken, was in the field of Leisure Studies.

1 Jules Tygiel, *Jackie Robinson and His Legacy* (New York, 1984), p. 36.

2 Donald Clairmont and Dennis Magill, *Nova Scotian Blacks: An Historical and Structural Overview* (Halifax, 1970), p. 124.

3 Steven Riess, "Sport and the American Dream: A Review Essay," in *Journal of Social History*, 14, 2 (1980), 296; Steven Riess, ed., "The Occupational Culture of the Boxer," in *The American Sporting Experience: A Historical Anthology of Sport in America* (New York, 1984), pp. 334-347.

4 Colin A. Thompson, *Born With a Call: A Biography of Dr. William Pearly Oliver*, C.M. - Dartmouth, N.S. (Dartmouth, 1986), p. 15.

During the 1920s in Halifax, one Black boxer emerged as the most prominent fighter in the province. Born in Bridgewater, Nova Scotia, Roy Mitchell began his career in 1924 as a light heavyweight, fighting in Halifax. Within one year he became the most talked-about boxer in the city, and established himself as the country's premier contender for the Canadian light heavyweight championship. During Mitchell's first year as a professional, he won twenty-three of his twenty-five bouts.[5] Sports reporters and fight fans in the Halifax area quickly began comparing him to George Dixon and Sam Langford. This comparison seems to have been made more to describe his race than the talent he possessed, since no boxer in Nova Scotia had even approached the feats of Dixon and Langford.

Mitchell's improvement in the boxing ring was impressive. Shortly after he began his career, promoters had to import fighters from the United States, as Mitchell had easily defeated all his Maritime opponents. On 9 June 1925 he defeated Bing Conly, a Boston heavyweight who was, according to *The Halifax Herald*, the most talented boxer brought to Nova Scotia since Jeff Smith and Mike McTique. Boxing trainers were astonished over Mitchell's improvement, as he won the majority of his fights by knockout.[6] During his first years as a professional, he fought often because he was relatively inexperienced. In addition, he fought often to earn more money, since he was not paid the same amount as his white opponents, who in most instances were also less talented.

Mitchell defeated a series of contenders from Boston in 1925, including Jimmy Madden, 'Shadow' Burton and Dan Dowd. These were boxers of considerable talent. Madden had defeated the 1924 Olympic champion in his last bout as an amateur. Dowd had fought Gene Tunney twice, as well as Tommy Gibbons and Young Stribling, who were both world-class figures.[7] Sociologists S. Kirson Weinberg and Henry Arond have described boxers such as these as 'type A' fighters, which classifies them as being in the top ten per cent of their division.[8] Dowd had also served as a sparring partner for

5 *The Halifax Herald*, 24 Apr. 1926.

6 *Morning Chronicle* (Halifax), 10 June 1925; *The Halifax Herald*, 24 June 1925. McTique later became a world champion.

7 *The Halifax Herald*, 25 June 1925; 24 July 1925.

8 Riess, "The occupational culture of the boxer," p. 341.

Jack Dempsey, an experience which in boxing circles is widely respected. Mitchell beat Dowd and then signed for a rematch one week later, in an era when fighting weekly was a common occurrence. Mitchell won their second bout also, defeating Dowd in a twelve-round decision.[9]

Following his victory over Dowd, Mitchell signed to fight 'Battling' McCreary, a Black heavyweight from Boston. The *Chronicle* reported that this match would be for the 'Negro' heavyweight championship of the world.[10] The 'Negro' title was not widely recognized, as there was no official champion within that category. Therefore, although Mitchell won the fight by a knockout, he was not formally recognized.[11] A number of boxers were accorded the title at various times, among them George Godfrey, a large boxer even for the heavyweight division (240 pounds), who was talented enough to be ranked in the top ten. Under the guise of the 'Negro' world championship, promoters had a relatively easy time advertising the match. However, this method of promoting Black fighters indicated how the colour line had been drawn in boxing. In the heavyweight--and presumably the light heavyweight division as well--Blacks were not given an opportunity to fight for the world title.

A dramatic example of the colour line being drawn was the refusal of Jack Dempsey, the World Heavyweight Champion from 1919 through 1926, to fight Harry Wills. Wills was the number-one challenger in the world in 1924-25; he had defeated the best heavyweights of the day and deserved a fight with Dempsey. Boxing historian Randy Roberts has noted that Wills would have been an excellent challenger to Dempsey, but he was Black and Dempsey would not waver from the colour line.[12] Jeffrey Sammons, however, has offered the opinion that Dempsey avoided Wills more out fear of his talent than his colour.[13] Whatever the reason, the Dempsey-Wills match never took place, although there were some people involved in boxing

9 *The Halifax Herald*, 31 July 1925; Morning Chronicle, 5 Aug. 1925.

10 *The Halifax Herald*, 28 July 1925.

11 *Morning Chronicle*, 12 Aug. 1925.

12 Randy Roberts, *Jack Dempsey, The Manassa Mauler* (Baton Rouge, La., 1979), p. 141.

13 Jeffrey Sammons, *Beyond The Ring; The Role of Boxing in American Society* (Urbana, Ill., 1988), pp. 77-78.

who thought Dempsey should have answered the challenge. One of the principal reasons Nat Fleischer, the noted boxing historian, started *Ring* magazine was to eliminate the colour line; unfortunately for Wills and other Black fighters of the day, however, there was no overwhelming desire to change the status quo.

Such discrimination against Black boxers was common, and Roy Mitchell endured similar treatment to that accorded other successful Black fighters. Interracial matches in the heavier weight classes were avoided; if there were interracial bouts, Blacks rarely received fair treatment in the ring. Another example of discrimination was that white fighters frequently withdrew from matches, an incident which Mitchell encountered with Pat McCarthy. McCarthy was at one time ranked twelfth in the world and had beaten McCreary, McTique, Johnny Wilson and Jackie Clarke.[14] As a result of such last-minute cancellations, Mitchell often had to fight replacement boxers without much advance warning. In McCarthy's case he was replaced by Tommy Robson, a talented fighter in his own right. On 8 September 1925, Mitchell fought Robson and was defeated on a foul; the *Morning Chronicle* reported that it was an even fight up to the fifth round, when Mitchell landed a low blow and the referee disqualified him.[15] This disqualification and others were dubious--quite often managers and boxers would fake an injury if they believed winning a fight was improbable.

The two Halifax morning papers, the *Herald* and the *Chronicle*, gave ample coverage to boxing. However, their reporting reflected contemporary racial attitudes and Black stereotypes in many subtle ways. During the mid to late 1920s, when Mitchell's career was flourishing, the papers often used cartoon illustrations in their reports of boxing matches. These cartoons gave a negative and condescending impression of Blacks. During a two-week period late in 1927, for example, the *Herald* ran a series of cartoons on the classic fight between Joe Gans and 'Battling' Nelson. Gans was depicted as having big lips and large ears, as well as using poor diction; while the press never made any inference that Mitchell had similar racial characteristics, one might conclude that the readership quickly connected the two. Other cartoons depicted Blacks as servants in white homes. Although sportswriters made

14 *Morning Chronicle*, 2 Sept. 1925.

15 *Ibid.*, 8 Sept. 1925.

reference to a boxer's colour, they apparently did this to identify the fighters more than to denigrate them. Mitchell was variously referred to as the 'Senegambian,' the 'Tanned Tornado,' the 'Dusky Protégé' and the 'Bronze Appollo.' This practice of racially-based nomenclature did not end until the post-war era.

News of Mitchell's talents soon reached other parts of Canada and the Northeastern States. A Montreal paper reported that boxing fans there wanted to see Mitchell fight.[16] In November 1925, he defeated a Black light heavyweight from Montreal named Jack Ward.[17] In just one year Mitchell recorded nineteen victories in twenty fights, his only defeat going to Tommy Robson;[18] Halifax promoters badly wanted to sign him. His rematch with Robson was described as "vicious" by W. J. Foley, a Halifax sportswriter, who reported that the fight ended as a draw, with both fighters injured.[19] Mitchell then had a rematch with Ward, and their ten-round bout was stopped in the final round. Mitchell claimed he had been hit below the waist, but the referee did not see the foul; he lost, for only the second time in his career.[20]

In 1926, Mitchell began to box against more talented fighters. On 20 January, he lost a ten-round decision to Yale Okun, a boxer who was ranked eighth in the world.[21] There were now those in local boxing circles who questioned whether Mitchell had the ability to be champion. Considering Okun's world ranking, this was unfair criticism; moreover, Mitchell had by then boxed for only eighteen months as a professional. Mitchell and his manager, Frank Burns, therefore planned in 1926 to move to the United States. Two New York sportsmen offered Mitchell a contract, but he delayed a move to Boston because he was promised a chance at the Canadian light heavyweight title. If Mitchell beat 'Soldier' Jones of Toronto, he would

16 As reported in *The Halifax Herald*, 19 Oct. 1925.

17 *Ibid.*, 3 Nov. 1925.

18 *Ibid.*, 3 Dec. 1925.

19 *Morning Chronicle*, 8 Dec. 1925.

20 *Ibid.*, 23 Dec. 1925.

21 Bert Sugar, *The Ring Record Book 1982* (New York, 1982); *Morning Chronicle*, 21 Jan. 1926.

receive an opportunity to fight the Canadian champion, Jack Reddick. However, sportswriters continued to be skeptical. The *Herald* columnist, C. R. Cobb, believed some boxing fans were not widely enthusiastic about Mitchell.[22] This was rather harsh and unwarranted criticism, considering that two of his losses had been to world-class fighters.

On 23 April 1926, Mitchell finally met Jack Reddick. Reddick had been offered $1,500 to fight, which at that time was the largest sum ever offered for a boxer to appear in Halifax.[23] In the days following Mitchell's victory, the Commercial Athletic Club of Boston offered him a contract to fight out of their facility, which was the largest boxing club in Boston. Mitchell's career seemed to be on the rise. He soon had a rematch with Yale Okun, fighting to a ten-round draw in Boston, a match which Leo Dolan of the *Herald* considered to be Mitchell's best.[24] Serious negotiations then began to get Mike McTique, the former world champion, to fight in Halifax.[25] Negotiations continued throughout the summer of 1926, as Mitchell looked to fight other opponents. He was now billed as the Canadian light heavyweight champion, even though his bout with Reddick had not originally been called a title fight. This says much about the organization and governing of boxing during this era; merely by virtue of his success, Mitchell became recognized as Canadian champion.

Roy Mitchell was unquestionably the highest profile boxer in Nova Scotia during the 1920s; but there were some aspects of his career which the press chose not to report. A very noticeable absence in the coverage given Mitchell was the purses offered for his bouts. In all probability he received less than his opponents, especially if they were white. In one case only, Mitchell's purse was discussed in the press: bringing the former light heavyweight champion, Mike McTique, back to Halifax cost promoters $2,100; Mitchell received $750 for this fight, half of what he and his manager had

22 *Morning Chronicle*, 30 Mar. 1926; 8 Apr. 1926.

23 *Ibid.*, 21 Apr. 1926.

24 *Ibid.*, 29 Apr. 1926; 27 May 1926.

25 *The Halifax Herald*, 1 June 1926.

demanded.[26] This continuing lack of money seemed to be the primary reason he and manager Burns decided to accept offers in Montreal and Boston. Locally, Mitchell expressed dismay over the small purses, and briefly broke his management arrangement with Frank Burns. The *Herald* sports editor J. E. Ahern, however, considered Mitchell to be somewhat of a malcontent who should be grateful for the position he was in and for what his manager had done for him.[27]

Unfortunately for Mitchell, the most important bout in his career was a disappointing loss to McTique in a ten-round decision. Approximately 5,000 fans attended the fight, many of whom began to boo Mitchell in the ninth round.[28] He soon went to Boston, and Burns argued that Mitchell had not received fair treatment in Halifax.[29] While in Boston, Mitchell impressed boxing experts there with his skill; a local sportswriter compared him with former featherweight champion, Abe Attell.[30] In 1927, Halifax promoters unsuccessfully attempted to draw him back for a big fight with Paul Berlenbach, another former world champion and one of the best fighters of this era.[31]

The move to Boston initially appeared successful, with Mitchell being touted as a possible world champion; the Herald continued to receive reports from Boston on his progress. Before a fight with Tom Sayers, scheduled for October 1927, the Boston press commented that the Black population of the city would be represented by Roy Mitchell.[32] Promoters often used the 'Black vs. white' gambit for their boxing cards, and this type of overall promotion, not just of the fights but also of the boxers themselves, was

26 *Ibid.*, 23 Aug. 1926.

27 *Ibid.*, 28 Dec. 1926.

28 *Ibid.*, 30 Sept. 1926.

29 *Ibid.*, 28 Oct. 1926.

30 *Ibid.*, 14 Sept. 1927.

31 *Ibid.*, 20 July 1927.

32 As reported in *ibid.*, 5 Oct. 1927.

common. In the days preceding the match with Sayers, Mitchell and Burns received two incredible offers. Former World Heavyweight Champion Jack Dempsey offered Burns $50,000 in cash for Mitchell's contract. Dempsey wanted, in his words, to "manage a few high class fighters."[33] Three days after Dempsey's offer, it was reported that Tex Rickard, the czar of boxing at that time, had offered Mitchell a chance to fight at Madison Square Garden. Bob White, a reporter for one of the Boston papers, wrote that most boxing fans believed that Mitchell was going to win, and questioned why he had been until now a relatively unknown fighter.[34] The offers by Dempsey and Rickard both depended on Mitchell winning the fight with Sayers, then proceeding to meet 'Tiger' Flowers, a former World Middleweight Champion. However, Mitchell lost to Sayers rather decisively--and with this defeat he also lost the offers for his contract and promises of more important contenders.[35] In Mitchell's defence, he was fighting a man twenty pounds heavier than himself. Boxers of considerable talent often found it difficult to find opponents, and Mitchell, like Langford before him, had to fight heftier contenders, sometimes twenty to thirty pounds heavier.

According to *Herald* sports editor, J. E. Ahern, Mitchell had been moving up in the world of boxing before he lost to the supposedly low-rated Sayers.[36] The Boston papers, however, did not mention that Sayers was a poor boxer. Ahern now speculated that Mitchell was slipping as a prize fighter, and Frank Burns consequently decided to write the *Herald* to complain that Mitchell was not receiving proper treatment from promoters;[37] one of the reasons for this, Burns believed, was that Mitchell was Black. By the summer of 1928 both boxer and manager returned to Halifax, to fight against Maritime opponents.

Mitchell's career now seemed to be going steadily downhill. On New Year's Eve 1928, he met Jack McKenna in Glace Bay at the Savoy Theatre.

33 *Ibid.*, 12 Oct. 1927.

34 *Ibid.*, 15 and 17 Oct. 1927.

35 *The Halifax Herald*, 2 Jan. 1928.

36 *Ibid.*, 6 Apr. 1928.

37 *Ibid.*, 2 Jan. 1929.

The fight promotion had apparently been a dull affair, as neither boxer was anxious to meet. The referee, Tommy Casey, stopped the match in the tenth round, following a low blow to McKenna. An enraged crowd began to rush towards the stage, and the police ordered the fight stopped. J. E. Ahern wrote a harsh column in the *Herald*, urging both McKenna and Mitchell to quit boxing. Ahern further suggested that the fight had been 'fixed,' and that those responsible should be run out of the province--a condemnation which may have been racially motivated. Three weeks later Mitchell's manager, Burns, wrote a letter to the *Herald* in which he stated that Mitchell had little chance at winning support, because fans were prejudiced.[38]

Mitchell enjoyed only mediocre success following the problems at Glace Bay. He fought in Providence, Rhode Island in June 1929 against Lou Bogash, and was disqualified for hitting below the belt, even though he had Bogash in trouble just before the disqualification.[39] In 1930, Mitchell's contract was bought by a Halifax man,[40] thus ending the six-year relationship with Burns. Because of his reputation, there was still discussion of possible 'big' fights. In 1931, there were rumours that Mitchell might yet face Paul Berlenbach, the former World Champion who was making a comeback.[41] Mitchell was past his prime by now, but he continued to have difficulty finding opponents in the Maritimes. It is also probable that white boxers would not fight him simply because he remained a formidable talent and was Black.

Certainly one of Mitchell's chief problems in advancing his career was his colour. Although Burns commented on this, the newspapers of the day did not report the racial prejudice Mitchell had to endure. Some fans and sportswriters, moreover, questioned his courage as a fighter. Mitchell was a deeply religious man and this indeed may have affected his attitude towards the violence of boxing; however, to survive as a Black boxer in this era required tremendous courage, with or without physical supremacy.

38 *Ibid.*, 2 Jan., 3 Jan. and 25 Jan. 1929.

39 *Ibid.*, 13 June 1929.

40 *Ibid.*, 28 June 1930.

41 *Ibid.*, 14 Apr. 1931.

Racial attitudes towards Blacks did not improve appreciably in the 1930s, despite the success of Joe Louis, who became a symbol for American Blacks during this period. In 1937, Louis won the World Heavyweight title, thus becoming the first such Black champion since 1915. It was said that during his reign as heavyweight champion, every Black family in the United States had a picture of Louis in their home; he was inspiration during an era of despair.[42] Louis, though, had to endure racial prejudice as the first Black champion since the hated Jack Johnson. Again, Louis's nicknames explicitly referred to his colour: 'Brown Bomber,' 'Dusky Thumper,' 'Tanned Tornado,' 'Ebony Embalmer,' to name a few. To become champion, he also had to follow a number of strict racially motivated guidelines established by his managers; for example, he could not date or be seen with white women and he had to appear humble, especially after beating a white opponent.[43]

Boxing remained the only professional sport in which Blacks could compete, but it was still a sport in which promoters preferred white boxers, because white audiences would pay more to see white fighters. Only the very best Black boxers therefore had an opportunity to compete for a world title or at least to receive a decent purse. Louis's success suggested that there were possibilities for change, but that they would be slow. According to Tony Gilmore, "Racial attitudes in the 1930's and 1940's were much too strong for most whites to support actively any black in physical competition with white men."[44]

With the increasing success of Black athletes, moreover, whites attempted to use scientific explanations to rationalize racial athletic differences. David Wiggins has examined the issue of Black athletic superiority, with specific attention to studies conducted in the 1930s on Black athletes.[45] One extreme

42 For a full discussion, see Alexander Young Jr., "Joe Louis, Symbol, 1933-1947," Ph.D. dissertation, University of Maryland (1968); and Chris Mead, *Champion Joe Louis, Black Hero in White America* (New York, 1985), pp. 195-197.

43 William Wiggins, "Boxing's Sambo Twins: Racial Stereotypes in Jack Johnson and Joe Louis Newspaper Cartoons, 1908-1938," in *Journal of Sport History*, 15, 3, (1988), 242-254; and Young, "Joe Louis," *passim*.

44 Al-Tony Gilmore, *South Atlantic Quarterly* (1988), p. 123.

45 David Wiggins, "Great Speed But Little Stamina," in *Journal of Sport History*, 16, 3 (1989), 158-185, and especially pp. 163, 182.

explanation that was offered to explain Black preeminence in boxing was that it was one way for them to express their hatred towards whites. Conversely, such physiological evidence was not used to rationalize Irish domination of the sport in the late nineteenth and early twentieth centuries. Both Wiggins and Harry Edwards contend that the physiological superiority of Blacks is an argument that is inherently racist: rather than examine the incredible efforts Blacks have made in sport, their dominance is explained because of 'natural' physical gifts.[46]

Inadequate management in boxing has been a part of the sport since its beginnings, yet it seems especially to have hurt Black fighters. Boxing managers, as Weinberg and Arond argue, are most concerned with winning and making profits, rather than with their boxers' welfare. Managers are the key to a boxer's success, since if connected to the right promoters, a manager can provide his boxers with more and better opportunities to fight. Money is and has remained a critical feature of the sport. Weinberg and Arond contend that a white boxer is more appealing to promote than a Black boxer with commensurate skills, since white audiences continue willing to pay more to see a white fighter than the Black counterpart.[47]

A classic example of poor management was Terrence 'Tiger' Warrington, an immensely talented and unquestionable world-class fighter. Born in Liverpool, Nova Scotia in 1914, he began his boxing career in the early 1930s, and within a few years had established himself as the best light heavyweight in the Maritimes. Similar to Joe Louis, Warrington was a likeable and humble man; he was once ranked as the ninth leading contender in the world for the light heavyweight title. This achievement, according to Alex Nickerson, the noted sportswriter and editor of the *Herald*, came despite poor management.[48]

With better management, Warrington could conceivably have been a contender for the world title. As it was, he still faced some world-ranked boxers in Lee Oma and Bob Pastor. Ranked for three years in the top fifteen

46 David Wiggins, "The Future of College Athletics is at Stake," in *Journal of Sport History*, 15, 3 (1988), 304-333; Harry Edwards, *The Revolt of the Black Athlete* (New York, 1969); and Harry Edwards, *The Sociology of Sport* (New York, 1973).

47 Reiss, ed., *The American Sporting Experience*, pp. 342, 344.

48 Interview with Alex Nickerson, Halifax, 9 Apr. 1990.

of the world, Warrington was certainly a 'type A' boxer. Nickerson believes Warrington was not bitter that his career did not progress as it could have, and he also contends that Warrington did not suffer undue racial prejudice.[49] Nickerson is not alone in his beliefs, since the vast majority of sportswriters and commentators repeatedly support similar claims; however, Gilmore argues that during this era Black boxers endured tremendous racial prejudice.[50] The roots of their collective frustration and anger have been described succinctly and aptly by the noted writer, Joyce Carol Oates:

> If boxers as a class are angry one would have to be willfully naive not to know why. For the most part they constitute the disenfranchised of our affluent society, they are the sons of impoverished ghetto neighborhoods in which anger, if not fury is appropriate--rather more, perhaps than Christian meekness and self-abnegation.[51]

Warrington was not born in the ghetto, but he was a Black who came from the lower end of the socio-economic scale. Boxing was the only avenue, at least in sport, where Blacks could attempt to climb out of their poverty.[52]

During the 1930s in Nova Scotia most Blacks involved in the sports world played on segregated teams in segregated leagues. They participated in hockey, playing for what the newspapers called "coloured" teams. Alex Nickerson has noted that very few Blacks played baseball, but there were exceptions, 'Tiger' Warrington being one. He played for the Liverpool Larrupers in the late 1920s and early 1930s, demonstrating his athletic prowess in that sport as well.[53] Generally speaking, though, baseball was not a sport in which many Black Nova Scotians could play, largely because of current practice elsewhere. In the United States, for example, many colleges

49 *Ibid.*

50 Gilmore, *South Atlantic Quarterly*, p. 123.

51 Joyce Carol Oates, *On Boxing* (New York, 1987), p. 63.

52 Education was limited, as only a few Blacks graduated from Nova Scotian universities prior to 1950: Thomson, *William Pearly Oliver*, p. 104.

53 Interview with Alex Nickerson, Halifax, 9 Apr. 1990.

were refusing to play other colleges with Black team members. Segregation in sport was an accepted practice to such an extent that some observers called the Bob Pastor-Red Burnam bout in 1940, a fight for "the white heavyweight" title[54]--although this could also be interpreted as admitting to Joe Louis's superior ability.

Despite poor management, Warrington on a few occasions came close to the world title. On 25 March 1939, he was outpointed by 'Tiger' Jack Fox, a Black light heavyweight, in a bout held in New York City.[55] Had he beaten Fox, it is possible that Warrington would have then fought Mel Bettina for the World Light Heavyweight title. An indication of Warrington's turmoil was that just after the 'Tiger' Fox fight, he split with his manager.[56] Adding to the confusion was his having two managers, one--Bobby North--in Canada and another in the United States. Some observers believe that Warrington should have fought for the World Light Heavyweight title.[57] His stiffest competition in Canada came from Edmonton, where Eddie Weinstob was also ranked in the world's top ten. Two world-class fighters in the same country caused two problems. First, the fighters had to face each other in order to determine the Canadian champion; secondly, and more importantly, each took a risk in fighting the other. The ensuing fifteen-round bout was declared a draw, which according to Nickerson may have cost Warrington several lucrative fights in the United States,[58] since following the draw, he dropped from top-ten status to mere honourable mention.

Warrington remained what boxing enthusiasts term a 'name' fighter. In the autumn of 1939 it was reported in the *Boston Post* that Bob McGourtney, his American manager, had offered Billy Conn $15,000 to fight Warrington. However, Conn and two other leading light heavyweights, Bettina and Gus Lesnevich, did not want to fight Warrington.[59] The Boston sportswriters

54 *The Halifax Herald*, 19 Jan. 1940.

55 *Ibid.*, 27 Mar. 1939.

56 *Ibid.*, 12 Apr. 1939.

57 Interview with Tom McCluskey, Halifax, 26 Feb. 1990.

58 *The Halifax Herald*, 3 June 1939.

59 *Ibid.*, 6 Oct. 1939.

seemed convinced that he could give Conn a decent fight, but the match never took place; Warrington nevertheless continued to meet some world-class boxers. In the summer of 1940, he knocked out Lee Oma in Glace Bay, Nova Scotia.[60] Oma went on to be a world-ranked boxer who fought for the World Heavyweight title in the 1950s against Ezzard Charles. It also appears that Warrington may have been under some consideration for the World Light Heavyweight or possibly even the Heavyweight title in the fall of 1940. He held both titles in Canada, because he often fought opponents who outweighed him by as much as twenty pounds. In November 1940, famed New York boxing promoter Mike Jacobs was negotiating for a bout between Joe Louis and Al McCoy. Two years earlier, Warrington had beaten McCoy. Alex Nickerson suggested that "The Tiger is good--too good one suspects and has been given the run around ever since he belted Bob Pastor through the ropes in losing a questionable decision to be champion bicycle rider of a couple of seasons ago."[61] Nickerson further questioned why, given Warrington's ability, nobody had mentioned a possible Louis-Warrington fight.

Warrington became less active in subsequent years, due in part to the advent of World War II, which took away many young boxers. He found himself ranked twelfth in the world in January 1941; boxing infrequently, he was inactive for seven months before fighting Al Delaney in Glace Bay in May 1941. Warrington was defending the Canadian heavyweight title and also conceding fourteen pounds to his oponent. The referee for this bout was Nat Fleischer, which certainly suggests that Warrington was respected in the highest levels of professional boxing. Delaney was an excellent opponent, having beaten 'Two Ton' Tony Galento and Gus Lesnevich earlier in his career. The bout attracted over 5,000 fans to the Glace Bay Forum, one of the largest crowds ever to witness a boxing match in that community. Unfortunately, Warrington's inactivity and the weight difference made for his loss.[62] This was to be his last bout before joining the Canadian Army.

60 *Ibid.*, 19 Aug. 1940.

61 *Ibid.*, 15 Nov. 1940.

62 *Ibid.*, 29 Jan., 26 and 27 May 1941.

Amazingly, at thirty-six years of age, Warrington regained his Canadian light heavyweight title on 17 June 1950, when he defeated Ed Zastre in a twelve-round split decision. Warrington had been away from boxing for eight years and decided to return. However, his comeback was motivated principally because he was 'broke'[63]--his pattern is not unlike boxers as a group, and Black boxers specifically.

Black athletes found that the years between World War I and World War II produced few positive changes for them. Other than track and field, boxing remained the only sport in which they could compete against whites. Nova Scotian Black boxers Roy Mitchell and 'Tiger' Warrington, although immensely talented and offering tremendous potential, were victims of marginality: they suffered from racial prejudice during their professional careers, while neither had good training facilities, nor inspired management, nor important connections in the United States. Both boxers were not only under pressure to perform, but also carried the weight of their community with them. Sports, specifically boxing, remained the most visible avenue by which to earn money and publicity for Blacks during this era.

Unfortunately, Blacks received scant encouragement from within their home communities either; neither Mitchell nor Warrington consistently received the support from Halifax boxing fans that they deserved--or which would have stimulated their ring careers. Following their infrequent losses, fans and sportswriters alike seemed overly negative, especially considering that their opponents were talented fighters from the United States. Mitchell and Warrington were the best fighters--Black or white--in this region, and for much of their careers the best in Canada. One can only imagine how far their abilities would have progressed today, given the improved racial climate of the late nineteenth century.

63 *Ibid.*, 19 June 1950.

Halifax through Russian Eyes: Fleet-Lieutenant Iurii Lisianskii's Notes of 1794-96

Glynn R. deV. Barratt

The accession of Catherine II to the Russian throne in 1762 marked the beginning of a new naval age, after a night of deep neglect of such matters by the Crown. It very soon became apparent that she meant the Russian Navy to be strong, as it had been during the lifetime of its founder, Peter Alekseevich (the Great).[1] Coming to Russia from a land-locked German duchy, Catherine had little knowledge of the sea and ships. Not only was she willing to be seen to further Peter I's naval enterprise, however; she also grew genuinely interested in the problems of naval renovation, thus distinguishing herself from all her German predecessors in St. Petersburg.[2] Both her administrative innovations and her hiring of experienced but impecunious and disillusioned British naval officers were to have visible effects upon the growth of Russian policy and strength in Baltic waters. Incidentally, such decisions also made it possible--and practicable--for the Admiralty College to acquire first-hand knowledge of the harbours, climate, products and conditions of assorted British colonies and outposts.[3]

One such colony was Nova Scotia, known to several of the ambitious Scottish officers and under-officers who joined the Russian naval service in the early years of Catherine II's reign (1762-69),[4] and which a number of particularly competent young Russian officers examined for themselves. Axiomatically, Scots in Russian naval service and their Russian counterparts in Royal Navy ships and dockyards--known (quite properly) as Russian Volunteers--thought of Halifax when they reported to the Admiralty College in St. Petersburg on Nova Scotia and the British naval presence in Atlantic North America.[5]

Glynn Barratt, PhD, FRHistS, FRAS, is a professor in the Department of Russian at Carleton University, Ottawa, Ontario. This article is an abridgement of a longer study on the same subject.

1 V. O. Kliuchevskii, *History of Russia*, trans. C. J. Hogarth (New York, 1960), 5: 28ff.; F. F. Veselago, *Kratkaia istoriia russkogo flota* (Moscow, 1939), pp. 85-86; M. S. Anderson, "Great Britain and the Growth of the Russian Navy in the 18th Century," *Mariner's Mirror*, 42 (1956), 132-46.

2 See my *Russia in Pacific Waters, 1771-1825* (Vancouver, 1981), pp. 23-25, 50-51.

3 A. G. Cross, "Samuel Greig, Catherine the Great's Scottish Admiral," *Mariner's Mirror*, 60 (1974), 251-54.

4 See R. C. Anderson, "British and American Officers in the Russian Navy," *ibid.*, 23 (1947), 17-27; W. Laird Clowes, *A History of The Royal Navy* (London, 1899-1904), 3: 326-27.

5 A. G. Cross, *"By the Banks of the Thames": Russians in Eighteenth Century Britain* (Newtonville, Mass.), 1980, pp. 156-60.

From documents held in the Public Record Office, London, notably Admiralty Records I (In-Letters from Captains and Stations), from the *Calendar of Home Office Papers* for 1760-1765, from the *Russian Imperial Navy List* (*Obshchii Morskoi Spisok*: 1885-1907), and from the published Archive of Prince Aleksandr Vorontsov (*Arkhiv kniazia Vorontsova*, ed. P. Bartenev: 1870-95), it is plain that a number of Russian officers actually reached British North America in 1763-66. Some spent time in Halifax. Among those who called in to that port were Petr Ivanovich Khanykov (1743-1813), Efim Maksimovich Lupandin (who later reached the rank of admiral) and Sergei Ivanovich Pleshcheev (1751-1802), lifelong Anglophile, traveller and friend of Samuel Bentham.[6]

With few exceptions, Russian Volunteers who had done well in British warships went on to distinguished careers at home. Khanykov, for example, became Commander-in-Chief at Kronstadt (1801), while Pleshcheev, patronized by the Grand Duke Paul--whom he escorted on a European tour (1781)--became an Adjutant-General and courtier of real influence. Axiomatically, such men tended to use their rank and influence to reinforce the Russian navy's almost institutional (and certainly traditional) benevolence towards the Royal Navy--and to keep respect for it alive.

The Russo-Swedish War of 1787-90 served as another testing ground both for young British naval officers in Russian service and, especially, for Russians who had served as Volunteers with the British Fleet in recent years. Among the former were distinguished ex-subordinates of Captain James Cook, like Lieutenant James Trevenen and Captain Joseph Billings who, returning to Great Britain from the North Pacific Ocean, had been led by mounting economic pressures and career disappointments to develop and attempt to sell their own Pacific projects to the empress.[7] As a result of this ongoing practice of exchanged training and service, it came to be recognized

6 *Obshchii Morskoi Spisok*, II: 240-41 and 456-59; William Tooke, *Life of Catherine II* (5th ed.: Dublin, 1800), 3: 280; George Forster, *Journey From Bengal to England* (London, 1798), 2: 264; Andrew Swinton, *Travels into Norway, Denmark, and Russia* (London, 1792), p. 486; *Correspondence of Jeremy Bentham* (London, 1968-71), II-III, *passim; Arkhiv kniazia Vorontsova*, ed. P. Bartenev (Moscow, 1870-95), XXII (1881), 54 [hereafter *Arkhiv*].

7 G. R. Barratt, *The Russian Discovery of Hawaii: The Ethnographic and Historic Record* (Honolulu, 1987), pp. 3-6; G. R. Barratt, *Russia in Pacific Waters, 1815-1825*, pp. 76, 89-91. See also Charles Vinicombe Penrose, *A Memoir of James Trevenen, 1760-1790*, ed. R. C. Anderson and C. Lloyd (London, 1959), pp. 85ff.

by the empress's key naval advisors--such as Count Vorontsov, a powerful Anglophile grandee with naval interests and mercantile intelligence--that many who "won distinction in the war, [had] learned their trade and *metier* in England's fleet."[8] The key to future naval strength and to the maintenance of an efficient officer corps, Vorontsov felt moreover, lay not in the continuing recruitment of senior and widely-travelled British naval officers, but in extension and expansion of the Russian Volunteer programme overseas. The war had fully demonstrated that experience acquired in the Royal Navy, and in British ports and colonies, was a commodity of value to the state.

After the end of the Russo-Swedish War, Vorontsov nevertheless loyally followed the imperial directive to recruit more British officers for Russian naval service. It is apparent from his private correspondence of the late 1780s and from several despatches to St. Petersburg from London, however, that he considered it increasingly important that the regular secondment of especially deserving Russian officers (and shipwrights) to the British Fleet should be renewed:[9]

> It will be desirable to select twelve youthful but well-disciplined lieutenants from our Fleet and to send them...to serve for an uninterrupted period of four years aboard English ships at sea. It will then be expedient to despatch a similar number of officers for the same period, to replace the first group; and this might be repeated steadily, so that within the space of twenty years we should have sixty men qualified to take command of warships....[10]

For the time being, his efforts were frustrated by the British Admiralty Board, as well as by the empress's preoccupation with political and military matters that did not concern the fleet.

After further delays, however, Catherine formally agreed to resuming the previous despatch to England of "outstanding young officers." A group of fourteen set out in October 1793 for Revel and Helsingfors, and so by

8 *Arkhiv*, IX: 178.

9 F. F. Veselago, ed., *Materialy dlia istorii russkogo flota* (St. Petersburg, 1880-1904), XIV: 576-77 and XIII: 133, 162, 442-44; also *Correspondence of Jeremy Bentham*, II: 210; *Arkhiv*, III (1902), 284-85 and IX, 198; Barratt, *Russia in Pacific Waters*, pp. 108-09; Cross, "*By the Banks of the Thames*," pp. 165-66.

10 V. A. Bilbasov, ed., *Arkhiv grafov Mordvinovykh* (St. Petersburg, 1902), III: 338.

merchantman for Hull in Northeast England.[11] Among them were Lieutenants Ivan Fedorovich (German: Adam Johann von) Kruzenshtern (Krusenstern) (1770-1846) and Iurii Fedorovich Lisianskii (1773-1837) who, as commanders of the ships *Nadezhda* (ex-*Leander*) and *Neva* (ex-*Thames*), would in 1803-06 bring the Russian flag to Oceania and round the world,[12] in what was the first and scientifically most significant of all the Russian circumnavigations of the globe.

Lisianskii was by birth a 'Little Russian,' a Ukrainian, though he was never to regard himself as anything but Russian and, perhaps significantly, chose not to retire in the South. On the maternal side, he was related to the powerful, land-owning families of Kiev Province, but his father, an enlightened man of priestly antecedents, was by no means well-to-do. It was in part because the training that it offered was comparatively so cheap, that Lisianskii, aged barely ten, was enrolled at the cadet corps for future naval officers. Like many other boys, he suffered at the barrack-like, profoundly inhospitable yet architecturally beautiful, Morskoi Kadetskii Korpus, ever afterward connected in his mind with idle bullying and sleepless, freezing nights.[13] He evinced natural aptitude for sciences connected with his calling: trigonometry, geometry and algebra, hydrography, shipbuilding, navigation and marine astronomy. As in the classroom, so also at sea aboard a training ship (June-July 1786), he won the overall approval of superiors without contracting special friendships with contemporaries. For the moment, three years' difference in ages barred familiarity with Ivan Kruzenshtern, with whom, however, he was well acquainted.

War, and the passing of another year, made such age gaps immaterial. Allowed to pass out from the Corps "before his time" as midshipman, Lisianskii was in June 1788 appointed to the 38-gun frigate *Podrazhislav*; in

11 *Ibid.*, III: 339; Veselago, ed., *Materialy dlia istorii*, XIV: 439; S.Ia. Unkovskii, "Istinnye zapiski moei zhizni," TsGAVMF, fond 1152, op. i, delo 1; V. V. Nevskii, *Pervoe puteshestvie Rossiian vokrug sveta* (Leningrad, 1951), pp. 32-33; Iu.F. Lisianskii, "Zhurnal Leitenanta Iuriia Lisianskago s 1793 po 1800 god," TsVMM, No. 41821/1 (9170/1938), fols. 1-2.

12 I. F. Kruzenshtern, *Puteshestvie vokrug sveta v 1803, 4, 5 i 1806 godakh* (St. Petersburg, 1809-12), 3 v.; Iu.F. Lisianskii, *Puteshestvie vokrug sveta... na korable Neve* (St. Petersburg, 1812); G. H. Langsdorf, *Bemerkungen auf einer Reise um die Welt in den Jahren 1803 bis 1807* (Frankfurt am Main, 1812).

13 F. F. Veselago, *Admiral I. F. Kruzenshtern* (St. Petersburg, 1869), pp. 2-3; E. L. Shteinberg, *Zhizneopisanie russkogo moreplavatelia Iuriia Lisianskogo* (Moscow, 1948), Ch. I.

her, he played an honourable part in at least three major actions of the Russo-Swedish War: those fought at Gotland, off the Åland Islands, and at Revel in Estonia. Whether or not he met Trevenen cannot be said with certainty, but probability and circumstantial evidence support the supposition that he did. He was unquestionably looking out for contact with, and knowledge of, the "explorations section" of the naval service, which had fired his imagination, and he is known to have had dealings with a half-dozen officers, some very senior, with interests or personal connections with the East or the Pacific.[14]

For Lisianskii, as for many others in the Russian Navy, peace came less as a respite and reward for service rendered than as a positive impediment to pleasantly exciting action and continuing advancement through the ranks. After gunfire and victory, a posting to a transport vessel, the *Emmanuil*, then on the Kronstadt-Revel-Riga run, depressed him. Matters brightened six months later. First, he was promoted lieutenant, then included in the list of those to be dispatched to England for a practical, three-year course in higher seamanship--and, as events transpired, long-range cruising. Taking passage in an English merchantman from Finland, he arrived in Hull in January 1794. Thus far, his knowledge of English was a passive one, sufficient for reading but inadequate for conversation. Very soon, he understood that such inadequacy would be costly in a country filled with quick-witted, unsentimental traders. As he put it in a letter to his brother, Ananii Fedorovich:

> The people with whom we are dealing here are highly enlightened with regard to finance and have infinite respect for deep pockets. To sum it all up, every step we take here costs us at least a shilling; and even when we landed at Hull, we were relieved of one guinea each for a few shirts and for the uniform that every man had in his trunk. They took money because we were Russians, because we were going to London, and at least a half-guinea simply because we did not speak English![15]

Shortly after their arrival in the capital, the Russian officers were posted to their ships or shore establishments, as earlier agreed upon by Vorontsov and

14 Survey in Barratt, *Russia in Pacific Waters, 1715-1825*, pp. 107-08.

15 "Zhurnal," TsVMM, MS No. 41821/i, fol. 3.

the Admiralty. Kruzenshtern boarded the frigate *Thetis* (Captain Robert Murray), while Lisianskii was appointed to HMS *L'Oiseau*, ex-*Cleopatre*, a "former fifth rate prize."[16] As would-be players in the international game of war and empire, so recently resumed by Britain and a revolutionary France, the Russians had timed their arrival to perfection. Kruzenshtern, Lisianskii, Mikhail Ivanovich Baskakov, Mikhail Polikuti, and the other Russian Volunteers in the "group of '93" now found themselves delightfully caught up in preparations for a major fleet engagement, as Admiral Lord Howe prepared to intercept the Brest Fleet, commanded by Villaret-Joyeuse. By 4 May 1794, more than 150 British ships stood off the Lizard. Their objective was to intercept a Franco-American convoy bound for France from the United States, laden with West Indian goods badly needed in a country torn by internal revolution and external war.

It was by chance, and to their disappointment, that the Russians now discovered that the squadron to which *Thetis* and *L'Oiseau* were attached, under the flag of Rear-Admiral George Murray (1759-1819), was one of three small units that were not to fight with Howe and the main Channel fleet.[17] Murray's squadron, "after performing a specific service, was not ordered to rejoin the main body, but to cruise in a different spot."[18] Having sailed from England on 17 May 1794, in fact, Murray simply left the Battle of June the First astern, seeking engagements of his own.[19]

Murray was to press ahead of the main fleet towards America and to report enemy sightings. Thus, although the bulk of the Franco-American convoy arrived safely in France, there were later would-be crossings of the mid-Atlantic, and Murray had the good fortune to stop one. As Lisianskii put it, in the introduction to his English-language version of *A Voyage Round the World* (1814),

16 P. Crowhurst, *The French War on Trade: Privateering, 1793-1815* (Aldershot, 1989), p. 181; also A. T. Mahan, *Types of Naval Officer, Drawn from the History of the British Navy* (Freeport, N.Y., 1901), pp. 448-49; and N. Hampson, *La Marine de l'An II: mobilisation de la flotte de l'océan, 1793-1794* (Paris, 1959), p. 203.

17 Lisianskii, "Zhurnal," fol. 5; also Nevskii, *Pervoe puteshestvie*, p. 25.

18 W. James, *Naval History of Great Britain from the Declaration of War by France* (2nd ed.: London, 1859), I, 138-139.

19 Lisianskii, "Zhurnal," fol. 5ff.

> Near the coast of the United States, he was at the taking of a large fleet of American ships, which were bound for France under the convoy of the French frigate *La Concorde* and other armed vessels. By her superior sailing, the *L'Oiseau* captured, besides many merchant-vessels, an armed brig called *Chigamoga*, on board of which was Monsieur Belgard, a black general, well known in the French West India islands. After this capture, the *L'Oiseau* repaired to Halifax to refit, and then sailed on a winter cruise...[20]

Lisianskii sailed into Halifax six months after the arrival of the new and royal commander-in-chief, HRH Prince Edward, Duke of Kent. What the Russian officer saw, therefore, was essentially the pre-Edwardian, wooden town "defended by the tumbledown remains of forts hastily thrown up or repaired at the time of the American Revolution."[21] Energetic and determined though the prince was, he had yet, in November-December 1794, to level the dilapidated ruins of the old wooden blockhouses and earthen batteries, preparatory to slicing off the whole top of Citadel Hill to a depth of fifteen feet.[22] As for the old Eastern Battery, at what is now Imperoyal (south Dartmouth), and the old defensive works of George's Island, neither had yet been touched by royal zeal, British gold, or gangs of labourers. The crescent-shaped and star-shaped forts were yet to come.[23]

L'Oiseau's refitting in Halifax Dockyard brought a lull to the Russian Volunteer's life. Six months of active service had been punctuated by alarums and collisions with the French; to the very end, as his journal indicates, he had expected an encounter with a squadron of ships under Rear-Admiral Nielly: "Our frigate," he observes phlegmatically, "will not meet with the four French men-of-war that are heading here from Europe--so

20 Lisianskii, *A Voyage Round the World in the Years 1803, 4, 5 & 1806, Performed in the Ship "Neva"* (London, 1814), xxvii; "Monsieur Belgard" was presumably the soldier son of Louis Bellegarde who had marr. at Fort-Royal on Martinique in 1773 (see E. Hayot, *Les Gens de Couleur Libres du Fort-Royal, 1679-1823* [Paris, 1971], p. 88); he was, of course, Creole.

21 T. H. Raddall, *Halifax, Warden of the North* (Toronto, 1971), p. 115.

22 *Ibid.*, p. 116; and T. B. Akins, *History of Halifax City* (Halifax, 1895), p. 110.

23 H. Piers, *The Evolution of the Halifax Fortress, 1749-1928* (Halifax, 1948), p. 19; Raddall, *Warden of the North*, pp. 117-18.

Farewell to them!"[24] Lisianskii viewed his visit to Nova Scotia as a necessary and perhaps amusing intermission in the war at sea and, as a conscientious officer, resolved to make the visit useful to his government, as well as pleasant for himself.

The journal from which the following extracts are taken is one of three connected with Lisianskii and held by the Central Naval Museum (*Tsentral'nyi Voenno-Morskoi Muzei*) in the former Stock Exchange building of St. Petersburg. It is entitled, "Journal of Lieutenant Iurii Lisianskii from 1793 to 1800" (*Zhurnal Leitenanta Iuriia Lisianskago s 1793 po 1800 god*), contains 70 sheets, and is held under archival reference, MS No. 41821 (ex-No. 9170/1938). Preserved with it, but not similarly on public display, are the contemporaneous journal maintained by Lisianskii in 1797-1800 on HMS *Raisonable*, *Sceptre* and *Loyalist*, whilst in South Africa and India (*Vakhtennyi Zhurnal...*: No. 41820/2); his later "Journal of Fleet Captain and Chevalier Iurii Lisianskii for 1813-1814" (No. 9170/1; 183 pages); a log, kept on Lisianskii's expeditionary ship *Neva*, 1803-06, by himself and his Master, Danilo Kalinin (No. 9170/8); and "Rough Drafts of Letters by Lisianskii to Various Persons, from 1803 to 1832" (*Chernoviki pisem*, No. 9170/3; 69 sheets). The "Journal of Lieutenant Iurii Lisianskii from 1793 to 1800" is written in a plain, legible hand; corrections are few, deletions even fewer. While chronologically arranged, it frequently skips days and even weeks, which reminds the reader that Lisianskii wrote it periodically, when leisure could be found after dramatic--or at least remarkable--events. It was intended for official eyes, contained much factual material of likely interest to his superiors at Kronstadt and St. Petersburg--for instance, data on the Halifax approaches and defensive works--and was in fact submitted to the Russian Admiralty for inspection (June 1800).

Those sections of the journal which bear immediately upon Halifax fall between folios 11-12, 21-22 and 25. They are written partly in Russian, partly in English, Lisianskii's command of which was excellent within six months or so of his joining HMS *L'Oiseau*.[25] As the pagination might suggest, the

24 Lisianskii, "Zhurnal," fol. 11.

25 He gave further proof of linguistic skills in 1804 when, at Hawaii, he compiled a 202-item "Vocabulary of the Sandwich Islands," and again ten years later as translator of his own excellent *Voyage Round the World*... (London, 1814). See Barratt, *Russian Discovery of Hawaii*, pp. 209-13 and 184-85; TsVMM, No. 9170/3, "Zhurnal...Iuriia Lisianskago s 1813 po 1814 god," *passim*.

"Halifax passages" date from different visits to the port and town. The first, given below as **Extract A**, reflects *L'Oiseau*'s refitting call in the final weeks of 1794, as is plain from an allusion to joint cruising with HMS *Hussar*. The second, given below as **Extract B**--although it follows brief geographical and hydrographic data on Bermuda, which Lisianskii must be supposed to have acquired from Lieutenant Thomas Hurd and from Captain John Beresford ("who with great skill and perseverance had completed a survey of the islands" in October 1794)[26]--may just as easily derive from a second visit, in May 1795, as from the first. This passage, with its painstaking description of the Sambro Ledges and of other navigational hazards in and near Halifax harbour, is also given below. A third and very swift reference to Halifax appears to date from twelve months later (May 1796), since it is preceded by an account of happenings in Boston, which city Lisianskii visited in the course of a journey from Georgia or the Carolinas northward to New England.[27] Brief outlines of Lisianskii's movements and activities follow each of the three Halifax sections of his journal, in an effort to present that city within the broader context of his time and service with the British Navy, and to indicate his own growing experience of British naval and colonial administration.

Extract A from Iu.F. Lisianskii's Journal

The town of Galifaks [Halifax] is the capital of Nova Scotia. It is tolerably well fortified, with a citadel on a hill which commands the surrounding area. Its entrance is also defended by a battery on the seashore and by another on St. George Island. The latter is very conveniently constructed. The town has a fairly good dock and haven. As for its lay-out, that is less advantageous, for its streets follow a number of knolls and, though they may present a pleasant spectacle from the water, the effect is the opposite from the landward side. Apart from a few rich houses, the rest are quite small though kept in a state of cleanliness. Instead of a wall there are, in various parts of the town, small

26 J. Ralfe, *The Naval Biography of Great Britain* (London, 1828), IV: 98. As Nevskii points out, however (*Pervoe puteshestvie*, p. 25), Kruzenshtern also looked in at Bermuda, early in 1795.

27 TsVMM, MS 41821/1, fol. 24-25. Having spent a mere week in New York (3-8 Oct. 1795), Lisianskii travelled by road to Philadelphia, arriving on 17 Oct. with letters of recommendation which appear to have ensured him a pleasant reception and practical assistance. He passed most of the winter there, making it his base for an excursion further south, and left for New York, Boston and Halifax only in early Mar.

two-storeyed wooden structures, in which apertures have been cut for small arms, and which serve as some defence against attacks by the American savages.[28] They also have little portholes, for temporary cannons; but there is almost no need for all this, nowadays. On the eastern side of the haven, there is a little settlement called Dartmouth, which comprises a few irregularly built little houses and which formerly had a sizeable population, the greater part of which suffered at the hands of the savages, some years ago,[29] so that now only a few people remain. On the 12th, we put out to sea together with the frigate *Hussar*. We laid a course from St. George's Island SE and E to the beacon on the NW, whence one can steer as one wishes. On departing from this harbour, one should note that the white buoys, positioned along the west side of the shore, are first to be encountered at the end of the reef called the Northwest Arm....[30]

Lisianskii offers a cameo of Halifax as it was on the eve of tremendous public works and martial improvements. Its value lies, indeed, in its correctness as an indication of the sorry state of the place which, from the outset, Prince Edward intended to transform--at huge expense if necessary--into a Maritime Quebec. Within months of Lisianskii's first visit, "at the request of Prince Edward, the men of the Militia were employed on the fortifications."[31] Soon, the whole south side of Cogswell Street from Brunswick Street to the Common would be occupied by military properties of one sort or another. But in 1794, the Duke's plateau had yet to be created on the hill. No modern barracks, bastions, traversing platforms for artillery, no mansion for Madame de Saint Laurent, the Prince's mistress, no new furnaces (for heating shot) or round Martello towers (for destroying would-be raiders) had appeared. All was imminent. Lisianskii paid attention to the aging wooden strongpoints, noted down what he was told about the MicMac raid on Dartmouth in 1751--and waited to be gone.

28 Lisianskii was seeing the defences of George's Island, Fort Massey and the Eastern Battery, as well as Col. Spry's blockhouses (1775-76) along the beach near the old Dockyard; Akins, *Halifax City*, pp. 210-11.

29 Lisianskii evidently received an exaggerated account of the raid made by Indians on Dartmouth in 1751. Population growth there, however, had indeed been slowed by fear of other attacks; see Akins, *Halifax City*, pp. 27-28.

30 *Ibid.*, pp. 209-10.

31 *Ibid.*, p. 110.

He sailed for Antigua and Nevis in the early days of 1795; or, more precisely, he sailed for the Chesapeake to join the hunt for French naval and merchant shipping, only to be robbed again of action, this time by a leaking hull, and carried instead to the Caribbean Islands. On Antigua, he contracted yellow fever and was forced to rest, despite a serious intention to examine the mechanics of the sugar industry and rum production. He was shocked to see Blacks pulling heavy loads like horses, and wrote on the subject to his brother Ananii: "*Never* would I have believed that Englishmen could deal so cruelly with men, had I not witnessed it myself on Antigua."[32]

Lisianskii recuperated well from yellow fever and was glad, in May 1795, to leave the heat of the tropics for Halifax again, meaning to win his superiors' consent for an extended tour of inspection through the United States.[33] It is probable, but not entirely certain, that the following "Discription" of Halifax harbour's sea approaches rests on observations made that May.

Extract B, Discription [*sic*] for Halifax Harbour, Nova Scotia

This is a good Harbour for a fleet and very safe riding and is to be known by a lighthouse on Sambro Island. When bound there from sea or from the westward, you will observe that the Land to the westward of Cape Sambro shows white, but to the eastward it shews red[d]ish and black.

2 Leagues south of Cape Sambro lays [*sic*] Sambro Ledges which are steep, having 15 or 16 fath[om]s water within half a mile of them, and SW from Cape Sambro 2 miles is Sambro Island, which appears white and at a distance like two Islands. It has a lighthouse upon it in which is kept a pretty good light in general. When you approach this Island coming from the westward, bring it to the bearing NE by E and you will clear the Ledges, which are the Ball, W1/2N 3 miles from the lighthouse; the White Horse, W68 1/2S 2 miles from the west breakers; SW by S 2 miles the 21/2 [*sic*]

32 Cited by Nevskii, *Pervoe puteshestvie*, p. 33. Both Lisianskii and his fellow-countrymen Baskakov and Kruzenshtern saw a number of the British Caribbean and Atlantic colonies (Barbados, Antigua, Nevis, the Bahamas, Bermuda, Guiana) and they took a lively interest in their administration and economies. They were reminded that the Russians, too, had island-colonies--in the remote North Pacific--and they later sought extensions of their leave from active service in the Baltic Fleet, to study not the West but the East India trade. See Barratt, *Russian Discovery of Hawaii*, pp. 12-13 and Shteinberg, *Zhizneopisanie russkogo moreplavatelia*, pp. 78-79.

33 Lisianskii, "Zhurnal," fols. 8-9.

Rams Reef; S by E1/2E one mile, the Black Rock; ENE1/2E one and a half mile the easternmost breaker, E1/2S one mile, the Shoals....But the passage through the Ledges and within Sambro Lighthouse I would not recommend. When the Lighthouse bears N by W, you may steer NE by N for Chebucto Head, off which runs a shoal SE, a Cable's length. When going in to the Harbour, keep the larboard shore on board but not so much as to shut in the Town with San[d]wich Point, which is a high point and opposite Cornwallis's Island. There is a Rock 2/3 of a mile [off] between the point and Chebucto Head, called the L Rock, which is about 3/4 of a Mile from the Shore, and near 2 miles S1/2W from Sandwich Point, and there is another rock bearing S from San[d]wich Point, with only three fathoms on it.

In coming from the eastward, steer for Chebucto Head till you open George's Island (which is nearly opposite the Town of Halifax) with Cornwallis's Island, to avoid a shoal that lays off Ahrum Cape [Thrumcap]. The marks for it is George's Island just between the NW part of Cornwallis's Island and the lighthouse on Sambro Island, just touching Chebucto Head. The marks to avoid it and go clear of all is to keep Citadel Hill open with Sandwich Point, that mark will carry you clear of the shoals off Point Pleasant, which is dangerous. You steer for George's Island after passing Point Pleasant, to clear you [i.e., keep clear] of a shoal that lies off the NW end of Cornwallis Island. You may go on either side of George's Island, but if you go within [i.e., between] it and the shore, I would advise you to leave 2/3 of the channel on the shore side or larboard hand and keep nearest the island when you will have 9, 10, and 12 fathoms. You may anchor anywhere about George's Island....

Lisianskii spent the late summer of 1795 on active duty in *L'Oiseau*, which was beginning to be the worse for wear, after one or two minor engagements and many heavy squalls. "On September 11 in a NNW wind," as his journal relates, "we sailed northward and set our course for New York, but the frigate was in such bad condition that our captain decided to spend all winter in Halifax or to go to England for repairs. I had the idea, just then, of leaving the ship and taking the opportunity of looking over some parts of the United States before the spring."[34] Cochrane and Murray were agreeable; and

34 TsGALI, *fond* 1337, op. 1, *delo* 1835, fol. 48; see also N. E. Saul, *Distant Friends: The United States and Russia, 1763-1867* (Kansas, 1991), p. 30 and Cross, "*By the Banks of the Thames*," pp. 170-71.

so, on 1 October, Lisianskii took passage in an American vessel, the *Fanny*, straight to New York. He carried with him several letters of recommendation from *L'Oiseau*, enough funds to survive for several months, and an intelligent, persistent curiosity about a country which, in rather little time, had "achieved such celebrity in commerce and in shipping."[35] Five weeks later (5 November 1795), he wrote a letter from Philadelphia to his brother Ananii, then commanding the transport *Margarita* in the Baltic Sea. (A plague then rampant in New York had obliged him to cut short his stay there and accelerate his travels southward, via Germantown, to Pennsylvania.) *Inter alia*, he said of his decision to part company with *L'Oiseau* for awhile, "since our frigate, in view of her sorry condition, had either to pass the winter in Halifax (where I thought I had seen enough of everything), or go back to England, I decided to leave her and see as much of the United States as possible." He proposed, he added, to spend the winter in Philadelphia and "then travel along the coast to Boston, and thence to sail in the spring to Halifax." He did in fact spend several months in Philadelphia, briefly meeting George Washington--"than whom there is no greater man on earth"--and after travels further south than Pennsylvania, returned to Boston on 12 April 1796:

> I had scarcely reached the top of the hill from which the town and river can be seen when I realized that I was going to some sort of universal mourning. Ships' flags were at half-mast, shops were closed up, and silence had everywhere replaced the hustle-bustle of commercial places. It was on every person's lips that Russell was no longer on earth....This Russell had not served in any official capacity but...had endeavoured to use his enormous capital only for the general good, so that the sciences, the arts, commerce, and agriculture in the State of Massachusetts wept together at the hour of his death. I found myself so upset by these scenes that I resolved to leave Boston as soon as possible; and so I chartered a schooner and put to sea on 16 April.
>
> On 3 May, I arrived back in Halifax, but not before contrary winds had driven me to Portsmouth, the capital of the State of [New] Hampshire, and into the harbour known as Kep-a-Soo....[36]

35 TsGALI, f. 1337, op. 1, *delo* 135, fol. 49.

36 *Ibid.*, fol. 58 (letter to Ananii Fedorovich), 68 (Boston). On Lisianskii's meeting with Washington, see E. L.

Lisianskii returned to Halifax to find that neither Cochrane nor Robert Murray were there. More than two-and-a-half years had passed, moreover, since his departure from St. Petersburg for England, and he now felt some impatience to return. Kruzenshtern and their comrade Baskakov also wished to leave for Europe; and so all three Russian officers requested berths in the homeward-bound frigate *Cleopatra* (Captain Charles Vinicombe Penrose). All three had further travel plans in mind, Lisianskii and Kruzenshtern in Eastern waters. All were taken on by the Russophile Penrose who would be James Trevenen's elegant biographer and Kruzenshtern's good friend, and together they made for England.[37] They arrived there only after an encounter with French warships involved in the attempted French Army landing on the coast of Western Ireland; it was an encounter which, had it gone against them, could have ended in their capture and imprisonment.

Once in England, and wasting no time, Kruzenshtern and Lisianskii sought assistance from Count Semen R. Vorontsov, now full ambassador in London, in developing a plan that they had nurtured on the North Atlantic, Halifax-based, frigate service: to proceed to the East Indies and if possible to China, to examine how the British, with the backing of their navy, were effectively controlling certain sections of the China trade; and to consider what new measures might be taken to increase Russian economic influence in the Far East.[38] Captain Charles Boyles of the *Raisonable*, then at Spithead, was informed that three young Russians would take passage in his ship to Cape Colony. The trio duly sailed on 21 March 1797.[39]

With the aid of Admiral Sir Thomas Pringle, then commanding at the Cape, Kruzenshtern was soon *en route* for India. But Lisianskii was struck down by the fever that he had contracted--so he thought--in the cane-fields of

---

Shteinberg, *Zhizneopisanie russkogo moreplavatelia* (Moscow, 1948), pp. 84-87 (highly suspect), and Nevskii, *Pervoe puteshestvie*, p. 33. "Russell" may be identified as the Hon. Thomas Russell (1740-1796), Boston shipowner, public official and philanthropist, whose death on 8 Apr. was widely mourned. The harbour of "Kep-a-Soo" is not immediately identifiable from contemporary sources.

37 Lisianskii, *Voyage*, pp. xviii-xix; Ralfe, *Naval Biography*, 3: 212 and 4: 98-99; Nevskii, *Pervoe puteshestvie*, 34; Barratt, *Russia in Pacific Waters*, p. 109.

38 Kruzenshtern, *Voyage Round the World* (1813), I: xxiii-xxiv; Barratt, *Russia in Pacific Waters*, pp. 108-09; Cross, "*By the Banks of the Thames*," p. 171.

39 PRO Adm I/1516, cap. 404 (Boyles to Evan Nepean, 16 Mar. 1797); Lisianskii, *Voyage*, p. xix.

Antigua and was forced to remain several months in southern Africa. There, he travelled on the Veld, collected shells and bones, engaged in botany and more especially zoology, twin sciences that he had earlier pursued in North America and in the Caribbean, and acknowledged the significance of what--if either he or Captain Cook had known the term--they might have called ethnography.[40] With Pringle's and the Royal Navy's friendly aid, he voyaged on at last, in HMS *Sceptre*, to Calcutta and Bombay, of which he made a careful study.[41] It was now, at the age of twenty-four, that he heard of Matthew Flinders's survey work in *Norfolk*, then proceeding, and of plans to send another scientific and surveying expedition to New Holland (Australia). He seriously thought of joining Flinders, for a wanderlust now held him in its grip and, as his journal notes on Halifax's sea approaches show, he had the hydrographic and surveying skills to make some contribution to the work around that island-continent. He was acquainted with Vancouver's recent *Voyage of Discovery* (1798), with its maps and description of Van Diemen's Land, and he was excellently placed to travel south to the Pacific.[42] But he went no further south or east that season. He was ordered to return to active duty in the Baltic, and took passage in a homeward-bound East Indiaman, taking his plans to visit China and New Holland back to Europe for a final eighteen months of incubation.

Lisianskii reached England again on 15 December 1799 and, despite his instructions to proceed without undue delay to Russia, he found business to detain and occupy him there for five months.[43] He preferred to serve his emperor in England where, wartime bustle and the interest of naval yards apart, he had trusted friends to visit. The first months of a new century proved difficult and dangerous for Russian officers of Anglophile opinions

40 TsGALI, f. 1337, op. 1, delo 135, fol. 89; Nevskii, *Pervoe puteshestvie*, p. 34; Cross, "*By the Banks of the Thames*," p. 171; Shteinberg, *Zhizneopisanie*, pp. 99-100; S. Ryden, *The Banks Collection: An episode in 18th-century Anglo-Swedish Relations* (Stockholm, 1963), pp. 67-68.

41 TsVMM, MS 41821/1, fols. 52ff.; V. V. Pertsmakher, "Iu.F. Lisianskii v Indii, 1799," *Strany i narody Vostoka*, ed. Ol'derogge, No. 12 (Moscow, 1972), 251-52; *Fort William-India House Correspondence and Other Contemporary Papers: Public Series, Vol. XIII (1796-1800)* (Delhi, 1959).

42 TsVMM, MS. 41821/1, fol. 62; Lisianskii, *Voyage*, pp. xix-xx; Barratt, *The Russians and Australia*, pp. 39-40.

43 TsGAVMF, *fond* 406, op. 7, *delo* 62 (sailing of 20 May 1799).

and moral strength, for Paul I, whose murder in 1801 would bring the liberal and youthful Alexander I to the throne, was erratic and irrational in attitude towards them. Some, like Captain Pavel Vasil'evich Chichagov (1767-1849), who was married to an Englishwoman and had intimate connections with the Royal Navy,[44] were disgraced, imprisoned, pardoned and promoted in bewildering succession. Others, like Lisianskii, waited cautiously for the result of power struggles in the Russian capital and, on the naval front, for local consequences of the Northern Alliance formed--at Paul's behest--against Great Britain (1800-01). Consequences came, in 1801, in the form of Nelson's virtual elimination of the Danish Fleet at Copenhagen and arrival off the Russian Baltic coast. Vice-Admiral George Murray, in HMS *Edgar*, played a pivotal role in those Baltic operations. Nelson recognized his knowledge of the Baltic Sea itself and, thanks to personal associations, of the Russians too.[45]

If Nelson's judgment of the Russian navy was appreciably harsher than Murray's, it reflected his encounters with veterans of Admiral Lord Duncan's Anglo-Russian operations in the North Sea (1795-96), and with Admiral F. Ushakov in the Mediterranean.[46] Despite the presence on Duncan's flagship HMS *Venerable* of Baskakov, who had just arrived from Halifax and was demonstrably competent as a liaison officer with North American experience,[47] the Russians in the North Sea exercise were less impressive than Lisianskii and the "Group of '93" had been. Nor had Nelson seen the Russian Volunteers in effective, close engagements with the French, as Murray had. It is significant, moreover, that Baskakov and Lisianskii both left Halifax as fluent English speakers--and that both remained for years on the best of terms with Captain (later Admiral) Sir John Poer Beresford.[48] As Anthony G. Cross remarks, in analysing Chichagov's career,

44 Cross, *op.cit.*, pp. 167-68; Arkhiv, XIX: 34ff.

45 Barratt, *Russia in Pacific Waters*, p. 111; O. Warner, *Nelson's Battles* (London, 1965), pp. 111-13.

46 See N. Nicholas, ed., *The Despatches and Letters of Vice-Admiral Lord Nelson* (London, 1844), 5: 448-49 and 6: 42-43; C. Oman, *Nelson* (London, 1947), p. 108; E. H. Turner, "The Russian Squadron With Admiral Duncan's North Sea Fleet, 1795-1800," *Mariner's Mirror*, 49 (1963), 212ff.

47 Cross, "*By the Banks of the Thames*," p. 166.

48 See Kruzenshtern, *Voyage*, I: 32-33; also Ralfe, *Naval Biography*, 4: 97-105 (Beresford's service to 1803); and National Maritime Museum (Greenwich), MSS AGC/M/2, 38/Ms/9295-1-11 (Evan Nepean corresp. with Iakov I. Smirnov and others).

> The 1793 group contained a number of interesting individuals in whose lives England played perhaps an even more decisive role in purely naval terms than in Chichagov's; they certainly gained much greater experience on board ships of the British fleet in many parts of the world.[49]

The crisis of 1800-01 having passed, Kruzenshtern was able to interest a new tsar and his liberally-minded naval minister, Count Nikolai Semenovich Mordvinov (1754-1845), in his long-cherished North Pacific-Oriental project.[50] Mordvinov had himself served as a Russian Volunteer with the British (1774-77), and had sailed with a squadron to New York and Halifax before embarking on Continental travels.[51] Kruzenshtern informs us that he chose Lisianskii as his second-in-command in 1802 for the forthcoming Pacific expedition, on the basis of his sea experience and proven zeal for the service.[52] If their subsequent relationship was less harmonious and smooth than later writers would have us think, the fact remains that, all in all, Lisianskii proved a happy choice as second-in-command and--more significantly--as the captain of a ship, purchased in London and renamed the *Neva*, that sailed independently for more than seven hundred days, or about two-thirds of the entire Kruzenshtern-Lisianskii expedition around the world (1803-1806).[53] Of Lisianskii's 1802 visit to England to find two suitable ships (the future *Nadezhda* and *Neva*), suffice to comment that he made effective use of contacts made during 1794-97; that he purchased instruments of the same variety and by the same London makers as used aboard *L'Oiseau* and *Topaze* in his Nova Scotian years, notably sextants, telescopes, azimuth compasses and false horizons by the much respected Edward Troughton

49 Cross, "*By the Banks of the Thames*," p. 169.

50 Kruzenshtern, *Voyage*, i: xxx; Barratt, *Russia in Pacific Waters*, p. 111; N. I. Turgenev, *Rossiia i russkie* (Moscow, 1915), pp. 90-92.

51 V. A. Bilbasov, ed., *Arkhiv grafov Mordvinovykh*, I (1901), 190; V. S. Ikonnikov, *Graf N.S. Mordvinov* (St. Petersburg, 1873), Ch.4; *Obshchii Morskoi Spisok*, IV: 393-94.

52 Kruzenshtern, *Voyage*, I: 2.

53 See Nevskii, *Pervoe puteshestvie*, pp. 191-92.

(1753-1835), and chronometers by Pennington and Arnold;[54] and that, finally, his travelling companion and the Admiralty's shipwright specialist for the Pacific-China mission was Ivan Razumov, who had worked in British yards while in Halifax and other distant parts of the British Empire (1796-99).[55]

Lisianskii's cameos of Halifax in 1794 and of its seaward approaches are among a dozen such vignettes in his journal; others give glimpses of contemporaneous New York and Philadelphia, Cape Colony, Madras, Bombay, Antigua and Bermuda, among other places visited in a perceptive spirit of enquiry. As seen, Lisianskii left a little sketch of Halifax as it appeared on the very eve of HRH Prince Edward's large-scale strengthening of its defensive works, and of the spate of associated military and civil building projects which, as Thomas Raddall has noted, were to transform the whole of Cogswell and Brunswick Streets and change the look of Halifax in general, from George's Island to the Citadel.[56] To the extent that it illuminates the changing townscape in the time of Edward and the Wentworths, and enables us to fix the date of certain changes, it is obviously useful to the regional historian. Lisianskii's notes on the defences and development of Halifax and on the major navigational hazards off its harbour heads have equal value and significance, however, as a specimen of the late eighteenth-century intelligence report.

Like other Volunteers serving under Murray, Lisianskii had instructions from his government to gather data on the places that he visited, and to submit his service journals (*putevye zhurnaly*) to the Admiralty at the end of his secondment overseas.[57] What Lisianskii wrote in his journal, therefore, was written largely with a view to its potential usefulness or value to his superiors, or as material that he might subsequently work up in another more official and/or polished format. It was not a private diary, replete with

54 TsVMM, MS 9170/1938 ("Zhurnal flota Kapitana-Leitenanta Iuriia Lisianskago...s 1802 po 1803 god"), fols. 10ff.; Nevskii, *Pervoe puteshestvie*, pp. 53-54; S. Novakovskii, *Iaponiia i Rossiia* (Tokyo, 1918), pp. 77-78; Cross, "*By the Banks of the Thames*," p. 171; Barratt, *The Russians and Australia*, pp. 204-05 and 294.

55 *Materialy dlia istorii russkogo flota* (St. Petersburg, 1866), XIV: 576-77.

56 Raddall, *Warden of the North*, pp. 116-17.

57 TsGALI, f.1337, op. 1, *delo* 135: fol. 1 and 612; and op. 1, delo 1672.

passages that placed him in an unfavourable light, perhaps revealing private peccadillos, weaknesses or failures. In short, Lisianskii was aware that higher authorities would examine his comments in detail; he therefore veered towards factual precision and avoided all frivolity.

That said, however, one must recognize the liveliness and readability of the entire journal, and reflect on its value as an eye-witness report. What, after all, did the Russian Admiralty know of Halifax in 1793? Essentially, what could be read in travel literature, in the British press, and in such plans and charts as those published by Colonel J. F. W. DesBarres.[58] As a representative of Russia and as a socially acceptable and recommended agent of an ally of King George III, Lisianskii was allowed much liberty in British North America. His access to strategic information was controlled, of course, by his position as a foreign officer; but on the basis of his observations, he could draw astute conclusions of strategic relevance.[59] And lastly, as a Russian whom the naval authorities at Halifax regarded as a trustworthy associate, Lisianskii had a freedom of movement and entry that Americans and other foreign subjects were denied.[60] Russian Volunteers had a status and position that effectively removed them from inspection procedures in the British colonies and left them free to gather data for reports, many of which must be supposed to lie unread and under dust in the Central State Naval Archive (*Tsentral'nyi Gosudarstvennyi Voenno-Morskoi Arkhiv*), Khalturin Street, St. Petersburg.[61]

58 See Akins, *Halifax City*, p. 221 and V. Kolgushin, comp., *Opisanie starinnykh atlasov, kart i planov XVI, XVII, XVIII i poloviny XIX vekov*... (Leningrad, 1958) for details of eighteenth-century British maps and charts held in the Archive of the Naval Ministry's Cartographic Production (ATKP-VMF) in St. Petersburg. Further on the matter, see Barratt, *The Russians and Australia*, p. 214.

59 For example, on the inevitable importance of Newport, R.I. to the United States Navy of the future, see TsVMM, No. 41821/1, fol. 17.

60 Since 1782, one must bear in mind, Port Wardens had been granting (or denying) passes to all foreign ships that wished to go by George's Island to the harbour; nor could any foreign ship (or citizen) leave Halifax before a boat had landed and reported on that island, with a pass (Akins, p. 83). These regulations had resulted from the coming and going of Americans immediately following the War of Independence and, of course, not from official British nervousness about arriving Europeans. Halifax was not at risk even to France, in the sanguine view of London.

61 "Svedeniia," in *Zapiski Voenno-Topograficheskogo Depo*, pt. 1 (St. Petersburg, 1837); F. A. Shibanov, *Ocherki po istorii otechestvennoi kartografii* (Leningrad, 1971), pp. 106ff.; Barratt, *The Russians and Australia*, p. 214.

Halifax Cabdrivers, 1939-1945

Edward Sutton

The taxi-driver is a small businessman offering a service to the general public. As such, he is open to criticism from his customers, a potential risk which has been around for as long as there have been taxi-cabs. The first auto-taxi was brought to Halifax in 1911 by James Wood and Fred Parsons, and they initially had to coax people to become passengers in their vehicle.[1] It did not take long, however, for the idea to catch on--or for the barrage of complaints to begin:

-- 'If there is one thing you ought to get busy about, it is the noise that the cabmen make at the North St. Railroad Station.'
-- 'I never take a cab belonging to any cabman who acts like a wild man when asking for a fare.'
-- 'It is not pleasant for any lady to have to pass down a line of yelling, gesticulating and insistent cabmen.'[2]

In any service dealing with the public, of course, it is a given that "You can't please all of the people all of the time"--but the truth of this maxim became only too clear in Halifax during the frenzied years of World War II. The criticism began innocently enough:

> An amazing feature of Haligonian taxicab drivers is their amiability and familiarity. They will begin a conversation without any inducement and will relate the story of their life, how they came by their present occupation, what they think of the war, the price of food--an all-important item of conversation in the city of sky-high meals--anything else the visitor may be interested in--or not, as is most often the case.[3]

As the war progressed, however, the repercussions felt in the port city, combined with the normal laws of supply and demand, operated to create a desperate situation where it was not unusual to wait two hours for cab service. In order to offset these difficulties,

> The city set up a central call office and attempted to bring all the cabs under its direction; but this was defeated by cabbies in various ways, including the destruction of telephone call-boxes. [This situation] made the central office another bad wartime joke, so that everyone arriving in the city received a bad impression from the start, and it was the last straw to those that left.[4]

1 *Morning Herald* (Halifax), 9 Apr. 1911.

2 *Ibid.*, 11 July 1911.

3 William Coates Borrett, "Historic Halifax," in *Tales Told Under the Old Town Clock* (Toronto, 1948).

4 Thomas H. Raddall, *Halifax Warden of the North* (Toronto, 1971).

Before we can judge the insolence and rapacity--or the amiability--of the Halifax taxi-driver, however, we must look at the nature of his business, the wartime conditions in Halifax, and the attitude of the people who were his customers.

At the start of World War II in 1939, there were twenty taxi-cab services listed in *Might's City Directory*. A Cabs Committee, consisting of Mayor W.E. Donovan as chairman, with Alderman J.F. McDonald and Alderman Breen, supervised the overall operation of such vehicles within the city.[5] They were guided by Ordinance #13, "Respecting the Regulation of Vehicles Transporting Passengers for Hire," which became operative under a resolution passed by Halifax City Council on 14 September 1939; and which was reinforced by Section 228 of the Motor Vehicle Act.[6]

Ordinance #13 stated, among other provisions, that persons applying for a taxi licence in the city had to be recommended in writing by the Chief of Police and one ratepayer, and had to be over twenty-one years of age--which suggests that those applying for a licence were average, honest citizens. The Cabs Committee issued 147 licences in 1939 for the eighty or ninety taxi-cabs that were available at that time,[7] thus indicating that there was considerable shared driving of operational, licensed vehicles.

Ordinance #13 also required that meters be installed in all taxis, a change from the previous ticket system whereby a person could buy five tickets for $1.00, receiving one free ride per book of tickets. There were various different meters on the market at this time: Ohmer, Tacipoc, French and Pittsburgh, to name a few. The taxi-driver of Halifax seemed to prefer the French or Pittsburgh, which could be installed for $50.00 and $60.00 respectively, and which proved to be very reliable.

The new meter rates were:

$ .25 -- drop for one passenger, up to one mile;
$ .10 -- each additional passenger;
$ .05 -- each 1/5 mile for distance over one mile;
$ .05 -- each 1 1/2 minutes' waiting time;
$3.00 per hour, 5-passenger car;
$5.00 per hour, 7-passenger car;

5 City of Halifax, Ordinance #13, Public Archives of Nova Scotia [hereafter PANS].

6 *Ibid.*

7 *Ibid.*

-- Hourly driving rates by arrangement with the driver and passenger, without meter;
-- Children under five years of age free, when accompanied by an adult.[8]

After acquiring a taxi licence for $25.00, having a meter installed for $50.00 or $60.00, having his car properly inspected and insured, and then spending a final $ .75 for two taxi plates, the Halifax cabbie was finally ready to meet the public: "Kings and queens in the world of entertainment, prime ministers, ambassadors, Halifax social leaders, murderers and preachers, drunks and temperance leaders, have all been patrons."[9]

Halifax has always been a 'boomtown' in time of war, and never more so than during the heady days of World War II. Conditions in the city have perhaps best been summed up by Thomas H. Raddall in his book, *Halifax Warden of the North*:

> The greatest of all wars affected the life of Halifax much as earlier wars had done. There was the same excitement, the departure of young townsmen on service, the arrival of thousands of strangers in uniform, the inpouring of workers, wives and children, speculators, criminals, prostitutes, the rigid martial authority, the flood of money, the congestion, the scarcities, the imminent danger of death 'en masse,' the sermons, the sorrow, the reckless gaiety, and the same general results.[10]

The city was crowded like never before: hotels, boarding houses, apartments and homes were jammed for six long years. The expansion of port facilities added thousands of workers and their families from other parts of Canada; 3500 airmen were stationed in the area and their families also came to be near them; and prior to 1941, large flocks of American tourists came to see the workings of a major seaport during wartime. These activities and demands, along with the many troop movements in and out of the city and vessels in and out of the harbour, made Halifax so overcrowded that the city advertised in newspapers all over Canada, suggesting that if you had no business there it would be better to stay away--because there was simply no room for you.

8 *Ibid.*

9 *The Halifax Mail*, 13 Jan. 1945.

10 Raddall, *Warden of the North*.

This did not stop the flow of women and children longing to be with their husbands and fathers. Some had to live in filthy rooms in the slums, or in small shacks in the woods on the edge of town. Many wartime visitors and servicemen never even got out of the city centre, so congested and short of transportation services was Halifax during these years. The city's population doubled in the first two years of the war and this, coupled with the normal requisitioning of basic commodities needed for the war effort, caused a shortage of almost everything: food, gasoline, rubber tires, alcoholic beverages, and so on. Even fish, which has always been a staple food source for the Maritimes, was in short supply because of the number of fishermen who abandoned their boats for service in the armed forces or merchant marine.

Haligonians spent most of their leisure time--what little they had--waiting in line-ups to get into restaurants, hotels, theatres, hockey rinks, or trying to move around via the few public trams that were available. There was little criticism levelled at this kind of delay and waiting, which was patiently accepted by most of the population; but, if one were waiting for a cab, the story was quite different. There was a scarcity of vehicles and drivers, of course, since like the fishermen, many peacetime cabbies had answered the call of their country.

It was a busy time for the vehicles and drivers who remained, as they worked all-out to fill the demands of the public for transportation. For the most part, their customers had little reason to question their undeniable zeal in handling business:

> One cab-driver by the name of Sears had three calls on a list that he was going to make, but in rushing to get these calls done he must have been going too fast, as he came to the wharf and could not stop the car and it went over the wharf, into the water. Sears escaped, but the two sailors in the back did not, and drowned.[11]

All in all, the cabbies endeavoured to serve the public well, providing basic transportation. They were, however, frequently talked about for their pursuit of two somewhat more lucrative forms of hire, namely prostitution and bootlegging:

11 Interview with Bernie Wade, Halifax, 4 Apr. 1985.

-- If you didn't bootleg, you didn't make any money. You would buy a bottle for $4 and sell it for $25. I didn't think I was working unless I got stopped and searched at least twice a week. Not like the sailors of today, who go back to the ship with a pizza or fish and chips and a Coke--the sailors during the war wanted a bottle. I used to carry a roll of masking tape and tape the bottle to their legs; with bell-bottom trousers, no one could tell the difference.
-- A cabbie was not a cabbie who could not get a man a woman. There were plenty of $2 houses around. I believe the last one was on Hollis St., run by a lady up until 1956-57; after that they disappeared.
-- The most famous place to 'shack up' was Johnson's Cabins on the Bay Road. I drove many a couple there at night and was told to pick them up in the morning.
-- The best places to take a serviceman or a visitor were the American Grill and the Acadian Hotel and Grill. The wildest place was the Dalo Cafe, with fights most of the time. The place for the most fun was Norman's Cafe on Morris St.
-- I consider myself a professional taxi-man and it was my business to know where and what to find for my customers.[12]

In wartime Halifax there were many cab-drivers, and they all had their stories to tell about prostitutes and booze, and the famous people they had driven as passengers. But there was also an unwritten code of ethics among cabbies: "They saw a lot, they heard a lot, but they knew nothing." In the spirit of that code, here are some of their stories...but none of their names:

-- I was hired by the day by this famous 'Western Star.' He asked me to take him to a coloured whorehouse, which I did. He would have a few drinks and then go into a room with one. He did this for five days in a row.
-- A person of the Canadian Press, who went on to become famous in television, would come to Halifax about once a month to cover a certain story of the war. He always called and asked for me. I would take him to a different whorehouse every night, sometimes he would come out so drunk that he couldn't walk. But the next morning he was on the job, and then back to the pleasure at night. This would go on for five or six days and then he was gone.

12 Interview with Ansul Hartlen, Halifax, 6 Apr. 1985.

-- A Supreme Court judge of Nova Scotia would hire me about every two weeks; he wanted a bottle of rum and a prostitute. After these requests were taken care of, I would drive around for about two hours while the judge had his fun in the back seat of my car. I would then drop the girl off and take the judge to his required place.[13]

This may be the glamourous side of being a cabbie, but there is also another, darker side to the business. During the war years there were many incidents of assaults on cab-drivers, one of the better known being the case of Bernie Wade, who was beaten and had his car stolen by three servicemen. Bernie received only minor injuries, but his car was missing for three days; the servicemen were never caught.[14] On another occasion, cabbie James Collins, a retired police officer, was taken by three or four sailors out to Bedford, where he was beaten, robbed and left in a ditch. Although over sixty years old, he was not seriously injured--but again, the criminals were not apprehended.[15]

Another serious problem for cabbies was that people refused to pay their fares:

-- Dec. 9th, 1942.
Stanley Goerwell charged under violation Sub-Section 4 of Ordinance 13 A of the City of Halifax by refusing to pay taxi fare. Given in charge by Edward Hiltz.
-- June 4th, 1943.
Samuel Sutherland for that he did...unlawfully violate [Ordinance] 13 A [,] Sec. 4 of the City of Halifax by refusing to pay $2.50 shown on the meter. Given in charge by Leo St. Fillet.
-- June 10th, 1943.
Erik Johauser for that he did in the City of Halifax violate Ord. 13 A relating to taxi meter, refusing to pay taxi fare, the amount of $7.50 shown on the meter. Given in charge by Richard Burke.[16]

13 *Ibid.*

14 Interview with Bernie Wade, Halifax, 9 Apr. 1985.

15 Interview with Bamie Kenny, Halifax, 7 Apr. 1985.

16 City of Halifax Police Records, PANS.

There were many incidents of this nature, most of which went unreported to the police. One especially annoying variation on the theme was that cabbies would often drive sailors back to their ships--only to find that their customers had no money on them. Many drivers would then go to the captain of the vessel to recover their fare, but this sort of thing would tie up both cabbie and car for a valuable period of time.

As the war progressed, the number of taxis available for service in Halifax was declining. There were nineteen cab services listed in the *Might's City Directory* for 1943, but only thirteen in 1944. By late that year, the situation had become desperate: most customers simply could not get a taxi. Some people complained that the cabbies were too busy with their sidelines of booze and women to care about the ordinary paying customer trying to get around town. Others blamed gasoline rationing for the scarcity of taxi-cabs. Although fuel was indeed rationed, a cab was nevertheless allotted five to seven gallons per day; obtaining enough gas was never a problem anyway, because it could easily be acquired on the black market. Tires and car parts were the real culprits contributing to the declining number of vehicles available as the war dragged on: "We were given tire coupons for two tires a month, but the rubber was no good; it was too soft. Many a cab was laid up because it had no tires [with which] to operate."[17]

Under the direction of the federal government, and in answer to this continuing transportation problem, Halifax set up a Central Call Office, with call-boxes in different locations around the city, in an attempt to bring all the cabs under centralized direction. This was known as the Halifax Wartime Taxi Association Ltd. The Central Call Office had a system whereby two girls answered the phone, took orders for cab service, and then passed them on to a dispatcher, who sent them through the call-box. Preference was given to hospital calls, and to people trying to catch a train. Each cabbie was required to take a minimum of ten calls a day through this system.[18]

The weak link in this arrangement was between the dispatcher and the cabbies. The dispatcher could not contact the taxis fast enough to fill the demand, and out of this chaotic system came those famous words, "Where is that cab I ordered?" Another problem with the "pool system" was that the

17 Interview with Barney Kenny, Halifax, 8 Apr. 1985.

18 Hartlen interview, 8 Apr. 1985.

driver was required to check in from a call-box to receive his next fare--and in order to get to the call-box, he might drive right past the waiting customer's front door. There was also an average of thirty-five to forty 'phony' calls per night coming through the call-boxes, which resulted in cabbies rushing by people on the street wanting a cab, in the drivers' haste to get to the 'phony' customers.

For these and various other reasons, cabbies did not like the call-boxes, and were always finding excuses for not using them. When the system was working at its peak, out of 165 cabs operating in the city, only about sixty worked through the switchboard, while the others cruised.[19] As dislike of the system increased, cabbies were blamed on several occasions for the destruction of individual call-boxes. As a result, the cabbies were threatened by Gordon Mitchell, president of the Halifax Wartime Taxi Association, with cancellation of their gasoline and tire permits if they did not use the call-boxes.[20] No cabbie ever lost either of these permits, however, as six months after the threat was made, the war ended.

The Halifax taxi-driver during World War II was criticized by many for being an arrogant profiteer, caring not about the public but rather about his own pocket. To others, however, with slightly more compassion and patience, the cabbie lived under the same conditions as everyone else, and was just making the best of conditions at that time, given the occupation he was in.

It has been over forty years now since the end of World War II, and the long wait for a cab is, like the hostilities themselves, history. The cabbies who drove the streets of Halifax then are also history, and it remains for those of us with longer memories to bring back the stories of those heady days. The changes have been numerous since then, regulations have come and gone--but one can be sure that the taxi will always be a part of the life of Halifax.

19 Kenny interview.

20 Interview with Ansul Hartlen, Halifax, 10 Apr. 1985.

Random Recollections: Mather Abbott's Boyhood, 1874-1893

A. B. deMille

[Editor's Note—The author of this reminiscence, Alban Bertram deMille, was born in Halifax, 7 March 1874, the son of James and Elizabeth Ann (Prior) De Mille (the surname spelling varied among family members). James De Mille was professor of history and rhetoric at Dalhousie College, and the author of various novels and poems, the most notable being *A Strange Manuscript Found in a Copper Cylinder* (New York, 1889).

A. B. deMille was educated in Halifax and at King's College, Windsor, N.S., where he graduated B.A. in 1893. After teaching at King's for several years, he moved to the United States, where he taught history at Milton Academy in Massachusetts, 1903-07, and at the Belmont School in California, 1907-10. DeMille then returned to Milton to teach English, 1910-21, at which time he was appointed assistant (later full) professor at Simmons College, Boston, where he remained until his retirement in 1939. He died in Winthrop, Massachusetts, 26 December 1941, remembered especially for his love of English, his skill in teaching, and his enjoyment of the outdoor life. The reminiscence which follows has been kindly supplied by his son, Wilfred Pryor de Mille of Richmond, Virginia.

The subject of the reminiscence, Mather Almon Abbott, was born in Halifax, 1 March 1874, first child of the Reverend John A. Abbott, rector of St. Luke's Cathedral, and his wife, Ella (Almon) Abbott. Both Rev. and Mrs. Abbott had been married previously with issue, then widowed, thus creating a blended family with their own marriage in 1873.

Mather Abbott was educated in Halifax and at King's College, Windsor, where he graduated B.A. in 1893. He then went overseas to study at Oxford, graduating B.A. in 1896. From 1896 to 1916 he was a Latin master at the Groton School in Massachusetts, where he became "one of the most widely known preparatory school teachers in the country"; among his more notable pupils was the young Franklin Delano Roosevelt.

In 1916, Abbott was appointed professor of Latin at Yale, and from 1919 until his death he was headmaster of Lawrenceville, in New Jersey. Under his stewardship, the latter institution embarked upon a period of unparalleled physical growth and academic excellence. Abbott received an honorary M.A. from Yale, 1918, and a similar D.Litt. from Princeton, 1920. He died at Lawrenceville, 17 May 1934, remembered for his "executive ability, progressiveness, learning, and energy," as well as for his "fondness for athletics [and his] expert knowledge of rowing."

Abbott had married in Halifax, 1 September 1897, Elizabeth Twining, daughter of Edmund Crawley Twining; there were two daughters, Elizabeth Twining Abbott and Gwynne Almon Abbott.

Sources: For de Mille, "In Memoriam," in *The English Leaflet* (New England Association of Teachers of English, Feb. 1942), 19-20; and for Abbott, *The National Cyclopedia of American Biography*, XXIV (1935; repr. 1967), 21-22. James De Mille's life has been recounted in Patricia Monk, *The Guilded Beaver: An Introduction to the Life and Work of James de Mille* (Toronto: 1991).]

My first recollection of Mather Abbott brings up a sturdy little fellow in Scotch costume standing in a huge room that seems to be filled with sunlight and the play of reflected ocean waves about the walls. Sunshine and sea-water; and a crowd of youngsters with a wilderness of toys. I suppose it was some sort of a children's party; I recall a beach, a boat-house with boats, noise aplenty and ice-cream and cake galore. The setting of the scene was the North West Arm, a beautiful sheet of water forming part of the magnificent harbour of Halifax in Nova Scotia. The harbour proper was on the other side of the peninsula on which the city stood; the Arm was used chiefly for yachts. At one point could still be seen the massive iron ring from which a chain was stretched across to keep out wandering French cruisers in the Napoleonic Wars and stray American privateers in the War of 1812; "Chain Rock" was a favourite bathing place.

Halifax was a garrison town and naval station; near the Dockyard stood Admiralty House--the headquarters of the British North American Fleet. A regiment of Royal Garrison Artillery and two line regiments were always on the station; it was the delight of us boys to watch big gun practice from the forts at Point Pleasant. There and then we learned the essential truth of Kipling's stories of the British "Tommy"; Mulvaney, Learoyd and Ortheris were personal friends of ours before ever *Soldiers Three* saw the light, and the tales came to us with special significance. I remember sailing up the harbour with Mather and some others to dine in the wardroom of the flagship, HMS *Bellerophon*--or "Billy Ruffian," as the sailors called her--our polite enjoyment of the lunch, and our admiration of the sleek and shining guns.

Four or five forts lay seaward from the harbour, and in the middle of the town rose the great Citadel, with its star-shaped glacis, built by freed slaves from the Barbadoes.[1] Across this we would walk on occasion to the Garrison Chapel. It was a thrilling experience to hear 1,000 soldiers sing "The Son of God goes forth to War." From the Citadel was fired every day the "Twelve O'Clock Gun"; on Sundays, as Mather and I sat side by side in the choir of old St. Luke's Cathedral, we waited with keen interest for its familiar voice. 'Bang!'--a relieved grin from the choir-boys; then, 'click-click-click' all over the church as the men opened and shut their watches and the preacher (rather nervously) hurried on to the end of his sermon.

The Abbott family at that time was a large one. The Reverend John Abbott--genial, generous, typically English in voice, manner and colouring; he had stepped right out of one of Trollope's novels. Mrs. Abbott, dark and handsome; a woman of great force and dignity (she always reminded us of Queen Victoria); most kindly and understanding of little people and their ways; and the family. There were three 'sets' of children: William Young, son of Mrs. Abbott's first husband, Sir William Young[2]; Charles, Annie and Mary, children of Mr. Abbott by his first wife[3]; Mather, Nellie and Almon,

1 These were the Maroons, brought from Jamaica in 1796 and employed on construction of the Citadel defences for a short time thereafter: see Harry Piers, *The Evolution of the Halifax Fortress 1749-1928* (Halifax, 1947), pp. 23-24.

2 Mrs. Abbott's first husband was not Sir William Young (one-time Chief Justice of Nova Scotia; see elsewhere in this issue for his reminiscences of youth), but instead his nephew, John Brooking Young.

Ella Almon, daug. of the Hon. Mather Byles and Sophia (Pryor) Almon, was b. 24 May 1843; she m. first, 14 Jan. 1864, Halifax, John Brooking Young, b. 28 Jan. 1839, eldest son of George Renny and Jane Francis (Brooking) Young. There were two children: William (b. 9 Jan. 1866; d. 30 Dec. 1899; m. with issue) and John Brooking (b. 4 Feb. 1868; d. Oct. 1868). John Brooking Young was lost on the *City of Boston*, which left Halifax for Great Britain on 31 Jan. 1870 and was not heard of again. [The genealogical information given here and below has been compiled from various sources at the Public Archives of Nova Scotia; but predominantly from the St. Clair Stayner Collection (MG 1, Vols. 1619, 1622, 1624, 1649 and 1650) and from RG 32, Vital Statistics, Series B, M and D.]

3 The Rev. John A. Abbott was b. ca. 1837 in Great Britain, son of James Hunt and Mary Ann Abbott; he m. first, 20 Aug. 1862, Liverpool, N.S., Janet Gordon Head, daug. of Dr. Head. She was b. *ca.* 1838 and d. in childbirth, 8 Nov. 1869, Halifax. There were five children: Francis William (b. 23 Aug. 1863; d. 19 Sept. 1922; m.); Isabella F. (b. 1864; d. 8 May 1866, from scalding); Mary Gordon (b. 21 Aug. 1865; m. Frank West); Annie Head (b. 31 Aug. 1867; d. 21 June 1943; m. Most Rev. C. L. Worrell, D.D.); and Charles Gordon (b. 1869; d. 25 Feb. 1898; m.).

with whom we are immediately concerned.[4] Mrs. Abbott, who had a sense of humour, used to refer to the three groups as "his'n," "her'n" and "our'n." She was an ideal mother--there was never a dull moment in that jolly household.

The house on the Arm was originally built, if I remember aright, by Samuel Cunard, the founder of the great Line that bears his name, and a Halifax man by birth.[5] The early Cunarders always tied up at Cunard's Wharf; there Dickens landed in 1847 on his first trip to America. The Abbott family afterwards moved to a large house in what was called "The Bower"--a beautiful tract of land not far from the water.[6] It was here, in celebrating the Fifth of November--Guy Fawkes Day--that Mather and some of his young friends nearly met an early grave. He was determined to have an explosion worthy of the occasion--we had to make our own fireworks in those benighted days--and organized us to dig a hole in the front lawn. Here he deposited a bottle containing some two pounds of blasting powder. The earth was stamped flat and the fuse led a few feet away, while we stood expectantly around. Suddenly an older brother asked casually: "How much powder did you put in, Mather?" "Oh," was the nonchalant reply, "only a couple of pounds." The shrubbery for some weeks bore signs where the band of youngsters tore through to safety. Thanks to that timely question, the only damage was the destruction of a good many square feet of lawn and a hole that you could drive a horse into. Mather was left to explain matters. We understood next morning that the explanation was "complicated with casualty."

4 The Rev. John. A. Abbott and Mrs. Ella (Almon) Young were m. in Halifax, 29 May 1873. There were three children: Mather Almon, the subject of this article; Ella Almon ("Nellie," b. 20 Mar. 1875; m. John S. Skinner); and Henry Pryor Almon (b. 11 July 1881; m. Rachel C. Dundas), subsequently a clergyman who was appointed the Episcopal Bishop of Lexington, Kentucky, in 1929. The Rev. John Abbott d. in Halifax, 3 Oct. 1881, aged 44, leaving his wife again a widow, with an extended family of eight surviving children and stepchildren.

5 The *Halifax City Directory*, 1878-79 and 1879-80, lists the Rev. John Abbott at "Emscote," North West Arm. This was the estate of Gilbert W. Franklyn and his wife Sarah Jane, a daughter of Sir Samuel Cunard. The property had been assembled in the 1860s from at least two parcels of land originally held and occupied by John Howe, father of Joseph Howe—who was born in an earlier house built on the property. The "Emscote" residence erected in the 1860s—Sir Samuel promised to build Sarah Jane a house in the field where he used to keep cows—was probably leased to Rev. Abbott. See John W. Regan, *Sketches and Traditions of the Northwest Arm* (2nd. ed., Halifax, 1909), pp. 62-68, and MG 1, Vol. 248, Docs. 45-60, PANS.

6 Following Rev. Abbott's death, Mrs. Abbott was unlisted in the *Halifax City Directory* until 1888-89 (14 Hollis St.). Possibly the family leased "The Bower" property, which was advertised in the *Halifax Herald*, 18 Aug. 1902 as available for rent via J. Y. Payzant and Son, Solicitors (Charles Gordon Abbott, a son of Rev. John Abbott by his first wife, m. 1895, Catherine Jane Payzant, daug. of John Y. Payzant).

It must have been about this time that we started school together. The school was known as Mr. Sumichrast's Academy for Young Gentlemen, and the Head, F. C. Sumichrast, possessed qualities that won both the awe and the friendship of a rather turbulent crowd of boys.[7] He was a superb fencer, a competent yachtsman and a most arresting speaker when addressing the School. We said, and I believe truly, that his eyes actually flashed fire when he was angry. On occasion he used to take us out in his yacht, the *Oi Kaze* (none of us knew what the name meant). She was a forty-foot cutter of the old type, deep and narrow. My respect for his skill is greater than for his judgment, when I remember how he would load her up with thirty or forty boys and take us roaring about the harbour. Such things were stimulating to Mather and me; with both of us, sailing became a life-long obsession. We planned, not long thereafter, to build a cutter of our own. She was to be white, with a gold stripe (Mather was very insistent about this), bunks for three, a lead keel (we despised centreboards), flush deck, and so forth. The matter of cost seemed of little moment. I was supposed to have certain literary leanings; what would be easier, therefore, than for me to write a novel, sell it to *Harper's*, and build our cutter. It is a beautiful tribute to the enthusiasm and faith of youth that the novel was actually begun! The thing hung fire, however; and presently we decided that it would be better (for the moment, anyway) to construct a football field on a vacant wood-lot belonging to the Abbott family. We inspected it carefully--the mere cutting down of several hundred well-grown pines and spruces did not appear to be at all prohibitive. We spent many delightful afternoons under the same trees, planning our field. Somehow, it never materialized.

It is not easy to summon up memories of the old schooldays. As I think back, Mather seems to be the one solid, unforgettable fact. His good face looks out--those clear eyes, those clean-cut features with the shock of light hair above them. We passed through a period of theatrical adventure. Our early plays were given in a barn, and were entirely original. One, I remember, was constructed around a naval cap that Mather dug up somewhere (it was the only item of costume), and we were very proud of the closing scene. A midshipman (Mather) is lost in the "forests of South Africa" (small pine-trees

7 Mr. Sumichrast's Academy for Young Gentlemen was located at the corner of Harvey and Pleasant [Barrington] Streets, Halifax, and operated--probably together with his Girton House for girls--during the 1880s, according to the *Halifax City Directory*, 1881-1888. Sumichrast had previously been a professor of languages at King's College, but left in 1874; by 1891 he had been appointed to Harvard University.

stuck in the barn floor), and was followed about in the most alarming manner by a bevy of wild beasts. To him, utterly despairing, appears a rescue party. The leader addresses him:

Leader: 'Aha! Have you a strawberry mark on your left arm?'

Mid.: 'I have!' (shows it)

Leader: 'Then you are my long-lost brother!'

And, really, what more could one wish? It was so decisive. There were rejoicings, accompanied by red fire and other combustibles, during which the whole strength of the company was called on to save the barn.

Later, 'real' plays were in order. We gave a farce called *My Awful Dad.* We made the scenery ourselves. The Tragic and the Comic Muses stood one on each side of the proscenium. I painted the Tragic Muse--she was a fearsome creature--and I well remember Mather's undisguised admiration of the lady's mouth, which was a Cupid's bow of graceful proportions. In the company, by the way, was the little girl who afterwards became Mrs. Abbott.[8] During rehearsal the scenery caught fire (someone upset a kerosene lamp) and it was Mather who dashed into the breach in his characteristic way, tore down seven or eight feet of blazing scantling, and got his hands burned in a quite ghastly fashion. But the play was acted on time. Our orchestra on this and other occasions was "The South End Fife and Drum Corps" (always pronounced *corpse*) who performed with ear-splitting enthusiasm. We were drawn, now and then, into the amateur theatricals of our elders; Mather was a bridesmaid (somewhat buxom, but quite charming) in *Trial by Jury*, and all of us were Gentlemen of Japan or Little Maids in *The Mikado.* We seem to have been mixed up also (probably because of our choir training) in *The Bohemian Girl* and *H.M.S. Pinafore.* We had our rows, of course, as Mather was at times a somewhat overbearing person. But he was always first to come forward with a gruff word of apology. His hot temper was accompanied by a fundamental sense of justice.

The summer holidays were seasons of pure delight, though our pleasures were simple, judged by present standards. There were no automobiles, no motor boats, no radios nor movies. If we wanted to go fishing, we walked six or eight miles to the brook or lake, and walked back in the evening with our catch. If we were becalmed out sailing, we stayed put until the wind rose or

8 I.e., Elizabeth Twining.

someone came in a rowboat. If we wanted a place to camp in the woods, we built our own spruce camp--and our roofs kept the rain out, too. Our first camping-out expedition was memorable. We were young, we were zealous, we won the family approval, and we begged a canvas tent. This was erected in a hollow above the beach where our boat was hauled up. There were four of us--not to mention Jip, a collie dog of engaging manners and genial behaviour. It was all very well until the dark shut down and we lit the lamp and turned in. Sometime after midnight, we heard the grating of a keel on the beach. This disturbed us, for we knew there were some tough characters in the neighborhood. Then heavy footsteps came up the path, and our oldest called out: "Wha-wha-what do you want?" (I remember how relieved I was to hear that his voice was just as dry-throated and quavery as I knew mine would be.) Drunken merriment arose from outside, and Jip advanced to the fray. We cheered him on (Jip to the rescue!--it was a fine picture); but he contented himself with barking sarcastically from a safe distance. Then, oh horror!--a head came burrowing in through the tent-flap. This was too much. Mather, with a word that his mother wouldn't have liked, flew across the tent and kicked twice at the face with all his might. It was quite enough. A sad voice outside said, "What's that for, Dinah?" and our visitors withdrew. So did we, at exactly five o'clock that morning.

All of us, in those days, lived in and on the water. It was before the rush of the many-headed multitude to the seaside, and we could spend our days "naked as God had made us, and happy as He intended we should be." There was a deserted sugar refinery on the Arm,[9] with an old wrecked schooner lying on the beach nearby. Quite obviously, this called for hair-raising exploits in the game of "Follow-My-Leader." Mather's leadership was always impressive, and woe betide the weakling who faltered. Through, over and under a wilderness of cold machinery he would go, with a train of greasy but faithful followers, and end always with a plunge off the twelve-foot wharf and a wild and yelling dash across to the schooner. Whoever first touched her tarry sides won the game. Mather's swimming style was peculiarly his own--a sort of combination of the dog paddle and Australian Crawl, making up in power what it lacked in beauty. He usually won.

9 The Atlantic Sugar House Co. Ltd. developed a refinery complex on the west side of the North West Arm, 1880s, on the present site of the Royal Nova Scotia Yacht Squadron; the venture was apparently short-lived. See Regan, *Northwest Arm*, p. 86.

Long, long in the misty hereafter
Shall echo in ears far away
The lilt of that innocent laughter,
The flash of the spray.

We were an unsophisticated lot; none of us smoked; dirty talk and profanity were absolutely taboo. Yet we were not ignorant of the seamy side of life. Looking back now, things seem to have been entirely normal and healthy; our relations with girls--our sisters and cousins and other fellows' sisters and cousins--were perfectly frank; although it must be said that picnics and other festivities were always strictly provided with chaperons (after all, if you selected your chaperon judiciously, things were not so bad). I really think that this basic healthy-mindedness was due in no small measure to the influence within our group of Mather's character. He was, naturally, without affectation, clean in speech and life.

Our winters, those splendid Northern winters, were full of intense activity. I can see Mather now, in his white blanket suit with scarlet toque and stockings, flying downhill on his toboggan in a whirling cloud of snow, or tramping stolidly on his snowshoes (skis were unknown) through long, white forest avenues. On holidays we would pack up a lunch and skate six miles up the Dartmouth Lakes to our chosen island, where the affairs of the nation, and our noble selves, would be discussed around a blazing fire. It was the time of buffalo robes and bearskin coats; of 'pungs' and 'cutters,' with silver bells and racing horses. The Abbott's pung was the usual low, box-like type of sleigh, painted blue and quite uncapsizeable--a fact for which we often had reason to be thankful.

Mather owned and sailed several yachts at various periods. The Royal Nova Scotia Yacht Squadron had the privilege by Admiralty warrant of flying the Blue Ensign; it was a proud moment when he hoisted it on the *Eaglet*, his first yacht. She was a little centreboard sloop (not, alas, our gold-striped cutter), flush-deck, with a small cockpit. We painted and rigged her ourselves each season. There were four of a crew--Mather was skipper--and we touched every rock and shoal in the harbour in due time. This was useful practical experience, because we never forgot them afterwards. We would run in to see how close we could come to some hidden danger. Suddenly there would be a bump and the centreboard would jump up in its box. "Ah," Mather would say, coolly coming about, "that must be Ive's Knoll"--or

Reed's Rock, or the Hen and Chickens, as the case might be. She was a good little boat; but we took chances in her which were never contemplated by our loving parents. We raced her regularly every Saturday; and every Saturday, just as regularly, came in last--"the little *Eaglet* pegging away bravely, far astern," as the newspaper would say. We must have been pretty good sports, for we took part in every race with undiminished enthusiasm.

The *Hildred*, which came next, was a larger boat; in her, Mather and his friends planned a cruise down the coast. They had a fog-horn and some provisions; but they didn't bother about a chart or a compass. The scheme was a crazy one; that coast is one of the worst in the world for small boats. Luckily, one of the parents got wind of it, routed the young mariners out of their bunks the night before the start, and placed a ban on the whole business. The *Hildred* was succeeded by the *Hebe*, a fine old-type cutter with a 'housing' topmast and a tremendous long bowsprit coming in on one side of the stem. By this time we had blossomed out in fancy uniforms and had regular racing stations--two in the forward cockpit to tend the head-sails, Mather and another in the after cockpit to sail the boat and look after the main and spinnaker sheets. On the outside courses a very heavy sea got up when a 'smoky sou-wester' was blowing; it was real ocean sailing, and I am not sure that it did not require greater skill to handle one of these old-timers than is needed in the modern types, with all sorts of labour-saving gadgets and every device for safety. Anyhow, we learned to 'house' the topmast in a rolling sea--and then life hadn't much more to offer. His last yacht was the *Wym*, from the board of William Fife (he, I think, designed the first *Valkyrie* for Lord Dunraven, and it wasn't his fault that she was beaten in the Cup races).[10] The *Wym* was a lovely boat, quite the latest thing in comfort, seaworthiness and speed, and we began to win races at last. In her, Mather cruised along the coast, now under rational conditions.

The old Academy for Young Gentlemen was reorganized as Cambridge House School,[11] and there Mather ended his schooldays, going up finally to

10 Windham Thomas Wyndham-Quin, 4th Earl Dunraven and Mount-Earl (b. 1841) was an avid yachtsman, twice built a yacht for racing competitions with the United States, and was also the author of *Self-Instruction in the Theory and Practice of Navigation* (1900). See *Who's Who* (1904).

11 Cambridge House, run by Mrs. Dashwood as a Boarding and Day School for Young Ladies, was announced in the *Morning Chronicle* (Halifax), 27 July 1877. It was located at 37 Tobin Street, and the Rev. John Abbott was among those named as references. It continued for several years, and may have absorbed Girton House and/or Mr. Sumichrast's Academy after the departure of the latter for Boston.

matriculate into King's College, Windsor. The foundation was an old one, established by Royal Charter in 1789, modelled to some extent on Oxford and having a sort of relationship to Columbia University--which was originally King's College, New York. Many well-known provincials were educated there; though, for various reasons, the attendance was never large. The Arts course was three years, with what was known as 'Responsions' in the middle; up to that time the studies were prescribed and afterwards you had your choice of electives. Mather's record was excellent; he won two scholarships and graduated with honours.

In our Freshman year there was a grand rebellion (is it necessary to mention the leader?) when the men of the first year refused to be hazed. "Why," asked the leader, dramatically, "should we be butchered to make a Roman Holiday?" An amusing compromise was arrived at, whereby the Freshmen agreed to allow one more hazing as a sort of sop to Cerberus; it is not of record, however, that any further indignities were inflicted on the protestants. Mather played cricket and football; he was strong rather than skillful in athletics, although he made his mark in drop-kicking--an important feature of the Rugby game as then played. He was a forceful speaker in the debates, employing a sledge-hammer style which was decidedly effective. Effective, too, he was at the Club or Society dinners, in a different way. These functions invariably ended with the singing of "Auld Lang Syne" (hands joined and one foot on the table) and "God Save the Queen." In the give and take of life in a small college, he more than held his own. With the best men he was always popular; with the others he was what he was--they could take him or leave him. He kept clear of the usual college weaknesses--drinking and so forth; he was never, in those days, a total abstainer, but exercised a wise temperance that had its due influence because it was based so obviously on sound common sense. He never preached morality; he talked very little of his inner feelings; but there was always a personal strength and cleanness which taught by example, not precept.

A delightful fellow to talk with or walk with; one does not forget certain long tramps about the beautiful countryside of that region. He had a robust sense of humour, which occasionally took him unawares at inopportune moments. His laughter was contagious--there was so much of it. Most of us know the agony of suppressed and untimely laughter; this is immensely increased by the presence of a large and purple-faced classmate uttering muffled squawks. He kept up an interest in acting; we were together in *Box*

and Cox, that fine old crusted farce; in *Our Boys*, another old-timer, and in more of the same vintage. He was a capable performer, but at his best at the suppers that used to follow in those halcyon days, when in truth "good fellows got together, with a stein on the table and a heart without a care." He went to all the dances in that gay little town; but it was noticeable that, for reasons well known to his intimates, he kept himself heart-whole while others fell by the way.

His original intention was to enter the ministry; his father and his elder brother were both clergymen, and his younger brother, Almon, later became Bishop of Lexington.[12] During his last year at college, however, there were already signs that this was not to be his vocation; I imagine that he found his field definitely at Groton. But he would have been a great priest, had he not chosen to become a great educator. His taste for the classics--for Latin especially--developed at his old college; the years following broadened and deepened his knowledge. He was not, as far as I can remember, a wide reader in his youth. As boys, we had a cult for Jerome K. Jerome--*Three Men in a Boat, Idle Thoughts of an Idle Fellow* and *Stage Land*. He was very fond of *Pickwick Papers*; I used to get letters from him modelled on the correspondence of the immortal Micawber. *The Idylls of the King* attracted him early; his sturdy code of life found nothing 'Victorian' in a passage like the following (a favourite):

> To reverence his conscience as his King,
> To love one maiden only, cleave to her,
> And worship her by years of noble deeds
> Until he win her.

When Kipling came, like all of us he was strongly drawn to the stories and the *Barrack-Room Ballads*. I remember an enthusiastic reading of "La Nuit Blanche," the brilliant cleverness of which was much to his liking. As a matter of fact, I believe that Kipling appealed to him more than any other poet. The early Barrie, too, the Barrie of *Better Dead* and *My Lady Nicotine*, was thoroughly enjoyed. Hawthorne drew him mildly; Byron interested him; Shelley bored him, except for certain stanzas in the *Adonais*; for Shakespeare he had the conventional respect of the average young man. Browning ought to have appealed to him, but for some reason didn't--at least in those days.

12 As noted above, in 1929.

Among other writers, outside the regular routine of 'assigned' reading, one recalls Conan Doyle, Rider Haggard, Stevenson--and a strange interlude of Marie Corelli's *Mighty Atom*. This, however, was the affair of a moment. He studied hard--no one harder; but reading as recreation or relief was never his strong point; he much preferred the open air.

Vignettes of those passing years come to mind. A small boy in an attic room; he has just made a highly successful 'spitting devil' in a saucer on the floor, and pours on gunpowder from a sizeable cardboard box to see "if the thing won't fizz up a bit." It does. There is a gigantic FUFF!--the room fills with choking white smoke, and three badly scared youngsters crawl under it to the door. The smoke pours from the windows, the fire department is warned off with difficulty, and Mather conceals from the family a scorched right hand....Same boy, clad like Kipling's Gunga Din, in

> nothing much before,
> And rather less than 'arf of that behind,

running down a seaside field with an irate white cow in hot pursuit (he had bet that he could cross the field before she saw him). They reached the beach together, but the cow balked at the water and the boy swam off to his admiring friends...A bedraggled boy climbing a shaky mast in a heavy sea, with a lashing between his teeth...A young sailor, furious at the tiller as his racing yacht rounds the last buoy and the spinnaker has to come down in a hurry; the ensuing peace as the yacht settles down for the long reach home; the consequent bottles of Bass 'broken out' from below for the weary crew; the look on the skipper's face as the grateful liquid trickles down his parched throat...A mud-splashed football player pointing out to a referee that his decision was such as no sane man could possibly accep...A youth, sketchily clad in rubber boots, pajamas and overcoat, with cap and gown over all, rushing madly for Chapel at half-past seven of a bitter winter morning....Same youth, unapproachable except with extreme caution, head-bound with a wet towel, 'plugging' for his Degree examinations...A young man with his girl in a canoe--band playing softly among the pines ashore--moonlight on the sea. "Good enough, eh?" he calls to a passing friend. Good enough, indeed; work well done behind him, all life stretching out before him.

Memories, all these, of days long faded; of a time before the full and rich experiences of Groton and Yale, and the great years of Lawrenceville. Memories of youth--trivial, perhaps, but such as one would not willingly let die. Through them all shows the dear old chap himself--"steel true and blade straight"; better, in the words of his beloved Latin:

Integer vitae, scelerisque purus.

"Securing Obedience to Necessary Laws": The Criminal Law in Eighteenth-Century Nova Scotia

Jim Phillips

Introduction

On 25 November 1754, as the concluding act of a notorious and troublesome criminal trial which was the centre-piece of the first term of Nova Scotia's new Supreme Court, Chief Justice Jonathan Belcher proceeded to sentence three men charged with murder but found guilty only of manslaughter. Samuel Thornton, Benjamin Street and John Pastree had all been sailors on the *Nancy and Sally*, a Boston-based merchantman which Captain Kinsey of H.M.S. *Vulture* believed was trading with the French.[1] Kinsey had chased the *Nancy and Sally* round the Bay of Fundy throughout the whole of 27 July of that year, finally cornering it in a cove and sending a boat-load of men to apprehend and search it. The three defendants fired shots into the boat as it approached and two of the King's sailors were hit. One Isaac Jolly died almost immediately, and James McDermott expired a few days later at Annapolis Royal. Despite offering armed resistance the *Nancy and Sally* was captured that same day; the three defendants were arrested along with the master, John Hovey, who had allegedly given the order to fire, and many others, two of whom were also brought to trial. It appears that some arms and ammunition were found among the cargo, which would hardly have commended the captives to the authorities.

Prosecution did not go smoothly. There was some debate about whether they could be tried in the Halifax General Court, the events having taken place at sea and that court not having admiralty jurisdiction. This was resolved by deciding that the shots had been fired--and Jolly's murder had occurred--sufficiently close to land, while in McDermott's case his death on land gave jurisdiction. Neither Attorney-General William Nesbitt, nor

Jim Phillips is Assistant Professor, Faculty of Law and Department of History, University of Toronto. This analysis of the criminal law in eighteenth-century Nova Scotia is part of a larger project on the history of crime and criminal justice in the eighteenth and nineteenth centuries. Research funding for this project has been provided by the Social Sciences and Humanities Research Council of Canada and by the University of Toronto. The author thanks Rebecca Veinott and Cara Fraser for research assistance, and Barry Cahill and Philip Girard for their comments on a previous draft.

1 For the case see Belcher to Pownall, 16 Jan. 1755, "Record of the Trial and Conviction of Benjamin Street, etc...," and "The King v. Street and Others: Arguments and Evidence," at the Public Archives of Nova Scotia [hereafter PANS], Colonial Office [hereafter CO] Class 217, Vol. 15, pp. 187-188, 194-199v, and 310v-329; Belcher's Charge to the Grand Jury and Notes on Jurisdiction, PANS, Belcher fonds, MG 1, Vol. 1738, Nos. 107 and 110; *Halifax Gazette*, 28 Sept. and 30 Nov. 1754; Jail Returns and Depositions, PANS, RG 1, Vol. 342, Nos. 43-45 and 50; PANS, RG 39, Series J, Vol. 117. There is a brief description of this case in T.B. Vincent, "Jonathan Belcher, Charge to the Grand Jury, Michaelmas Term, 1754," *Acadiensis*, 7 (1977), pp. 103-04.

Lieutenant-Governor (and President of the General Court) Charles Lawrence, however, seems to have been very confident on the jurisdictional issue; their doubts were shared by Belcher, although he went ahead with the trial shortly after arriving in the colony to preside over the Supreme Court.[2] Then Hovey briefly escaped from the jail, although he was recaptured in time to stand trial. More importantly, before and during the trial, defence counsel, Otis Little (the former King's Attorney) and Joseph Kent,[3] made a series of arguments to the effect that their clients' actions were justified, either because the navy had no authority to search the *Nancy and Sally*, or because they did have such authority but had exercised it improperly. In either instance, they argued, the court was dealing with a case of self-defence, not murder but justifiable homicide. Belcher would have none of this; he not only gave the case to the jury after a plethora of testimony clearly established that Thornton, Pastree and Street had fired the fatal shots, but also told them to return a verdict of guilty of murder.[4]

The jury was not so easily swayed. The trial had taken ten hours, but it required only "a short time" to find Hovey and two other defendants not guilty and the other three guilty only of manslaughter. No reasons were given, of course, and thus one must surmise that the jury were unconvinced either of the legality of the navy's action, or of the reasonableness of the manner in which the ship was approached and stormed--even if it was a valid search. Or perhaps they were simply irascible at being so peremptorily directed to their verdict, or at having sat such a remarkably long time for an

2 Belcher's doubts are expressed in "The King v. Street and Others," CO 217, Vol. 15, p. 329, and in MG 1, Vol. 1738, No. 107. What I take to be Nesbitt's opinion is in ibid., No. 113. The latter is not Belcher's work, being written by "a man not deeply skilled in the law," a description which Belcher would never have applied to himself. It is written as advice to a superior, and I assume therefore that it was penned by Nesbitt and meant for Lawrence. Neither of these two had formal legal training, but Nesbitt, who had come to the colony with Cornwallis in 1749 as "Governor's Clerk," did pretend to some knowledge and officiated as Attorney-General from 1753 until 1779: see J.B. Cahill, "Richard Gibbons' Review of the Administration of Justice in Nova Scotia, 1774," *University of New Brunswick Law Journal*, 37 (1988), p. 35.

3 Little was King's Attorney from 1749 until April 1753, when he was dismissed for taking money from the wife of a man he was prosecuting. At that point he was generally forbidden to appear in the General Court, but he must have been reinstated afterwards. See J.M. Bumsted, "Little, Otis," *Dictionary of Canadian Biography*, Vol. 3 (1974), pp. 403-04, although Bumsted does not note this reinstatement.

4 Belcher to Pownall, 16 Jan. 1755, CO 217, Vol. 15, p. 187v. Governor Lawrence also had no doubt that the three men should be found guilty of murder, judging from his discussion of the possibility of pardoning any of them in Lawrence to Gunter, 6 Nov. 1754, PANS RG 1, Vol. 134, pp. 267-268.

eighteenth-century criminal trial.[5] Whatever the explanation, Belcher was highly displeased and let that sentiment show in his sentencing speech.[6] The prisoners were left in no doubt that the jury's verdict was not consonant with "the sense of the Court," and that the accused had received the "highest Lenity." Belcher attributed this to his own apparently regrettable "indulgence" in allowing Thornton and his co-defendants to have counsel, which was not a right and meant in this case that they had "escaped the just Sentence of Death."[7] In fact the sentence for manslaughter at common law was death, but first-time offenders had the right to plead benefit of clergy which saved them from the gallows.[8] Belcher had no choice but to allow the plea, which entailed branding on the thumb "in open court" with a letter M, "that you may be publicly marked out as Offenders and Criminals in Blood, and that on any future Verdict you may be known and excluded from this benefit, and receive Death as your immediate Portion."

Nor was this all that Belcher had to say. The Chief Justice's displeasure at the verdict was further manifested when he told the prisoners that "[t]he Blood spilled by your Hands has been in the Cause of Treachery to your Sovereign and Barbarity to this Province." Indeed, given what was in the cargo, "[i]t may yet deserve Consideration...whether you and your Captain are not exposed to an indictment for High Treason...for furnishing the King's Enemies with Arms." High treason was, like murder, a capital offence that did not allow a plea of clergy, but Belcher was quick to explain why he was encouraging the Crown prosecutor to pursue the execution, or at least the condemnation, of these men: "no Measures of Law or Government can be too

5 In the 1750s it was common for the Supreme Court to deal with at least half-a-dozen cases a day, including capital crimes. The trial pace remained relatively rapid throughout the eighteenth century, although it appears to have slowed over time, especially when life was at stake: see PANS RG 39, Series J, Vols. 1, 2 and 117, *passim*. For the even speedier English criminal procedure of the mid- to late-eighteenth century, see J.M. Beattie, *Crime and the Courts in England*, 1660-1800 (Princeton, 1986), pp. 376-78.

6 CO 217, Vol. 15, pp. 330-331.

7 In this period, indeed until well into the nineteenth century, defence lawyers were only present in felony trials if the judge allowed it, and then only for the purpose of arguing legal issues, not to address the jury. For the evolution of the role of lawyers in the eighteenth century criminal trial see Beattie, *Crime and the Courts*, 352-62 and the same author's "Scales of Justice: Defense Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries," *Law and History Review*, 9 (1991), pp. 221-267.

8 Benefit of clergy is discussed below, text containing notes 24-26.

severe and rigorous against such bold and destructive Offences...Crimes...attended with such Circumstances of indignity to the Crown, of treachery & Ruin to...this Province." In the meantime, however, Belcher could only impose the regular sentence of branding on those allowed clergy, plus an additional, discretionary and unusual, nine-month jail sentence. He explained to Whitehall why he had taken this step; the legal basis for such "further Correction" was "the Statute of Eliz.," and the political rationale was that the actions of the defendants "were so...full of Insult and Indignity to the Crown, and of dangerous Consequences to this Province, that it was thought highly incumbent on the Court to manifest its resentment."[9]

The story of these three men illustrates a number of important points about the principal topics of this article--the content and source of the law governing serious crimes and their punishment in Nova Scotia in the second half of the eighteenth century.[10] It demonstrates the centrality of the English inheritance to the content of the substantive law of crimes and punishments; the distinction between murder and manslaughter, the doctrine of benefit of clergy, and the justification of additional punishment by reference to an Elizabethan statute all show that in the years immediately following the founding of Halifax in 1749 it was to English law that the authorities turned for the specification and sanctioning of criminal behaviour. In addition, Belcher's comments reveal the importance within the criminal law of capital punishment. It was the prescribed sentence, and the sentence that on this occasion he clearly wished to prescribe, for murder and treason and for many other offences, even if it was by no means always carried out when ordered.[11] Once the local legislature took a hand, in its very earliest sessions in 1758-59, the presence of capital punishment on the statute books was substantially

9 Belcher to Pownall, 20 Jan. 1755, CO 217, Vol. 15, p. 187v. The English statute referred to is 18 Eliz 1, c. 7 (1576). The authorities showed additional "resentment" towards these men when they were released from prison in July 1755, putting them "on board a man of war" and shipping them out of the colony: Return of Prisoners, PANS RG 1, Vol. 342, No. 50.

10 By serious crimes I mean principally the standard offences against the person and property, such as murder, rape, burglary, robbery, larceny, etc. that were considered to be the central part of the criminal law; not regulatory offences.

11 J. Phillips, "The Administration of the Royal Pardon in Nova Scotia, 1749-1815," *University of Toronto Law Journal*, 42 (1992), pp. 1-49.

reduced, however; it was further downgraded in practice by the actions of prosecutors and juries. It nonetheless remained available for a range of offences, and was the central pillar of the law relating to punishments throughout the eighteenth century.

We know very little about the early history of criminal justice in the English-speaking colonies that later made up Canada,[12] in substantial contrast to the interest taken in the subject by legal and social historians of eighteenth- and early nineteenth-century Britain and America. This essay on the content of the criminal law represents an initial excavation of that history in the oldest Canadian jurisdiction outside of Quebec. I do not, however, wish merely to recount the evolution of one set of legal rules, for a full understanding of the history of the criminal law requires some examination of contemporary attitudes towards the content and meaning of that law. A theme that resounds in Belcher's sentencing speech is that the criminal law was not an abstract scheme unconnected to broader social ordering and values. For Belcher, effective criminal law enforcement and rigorous criminal punishments were policies to be pursued with vigour, for they represented key mechanisms for ensuring the integrity of the state, the safety of individuals and the security of property. Belcher did not merely believe that Thornton, Pastree and Street should be dealt with retributively; convicting them as charged and hanging them would have sent a crucial message of deterrence to the wider community. I argue here that when Nova Scotia inherited an English system of criminal law in the 1750s it also inherited, through the medium of its governing élite, English values about the social and political role of the law, and particularly English reliance on the threat of the death penalty.

The story of Thornton *et al.*, however, also suggests that some jurymen did not share Belcher's views, and it is therefore necessary also to consider

12 For a useful general, if somewhat impressionistic, overview, see L.A. Knafla and T. Chapman, "Criminal Justice in Canada: A Comparative Study of the Maritimes and Lower Canada, 1760-1812," *Osgoode Hall Law Journal*, 21 (1983), pp. 245-274. For one aspect of the system in Nova Scotia see Phillips, "Royal Pardon." There is some useful material but little analysis in R.E. Kroll, "Confines, Wards and Dungeons," *Collections* of the Nova Scotia Historical Society, 40 (1972), pp. 93-107. The only general history of criminal justice in Canada, O. Carrigan, *Crime and Punishment in Canada: A History* (Toronto, 1991), is woefully inadequate, based entirely on secondary sources which for the early period are essentially antiquarian and often inaccurate. For a general review of the literature on Quebec, Upper Canada and the Maritimes see J. Phillips, "Canada," in L.A. Knafla and C. Emsley, eds., *Crime History and Histories of Crime: Studies in the Historiography of Crime and Criminal Justice History* [forthcoming, 1993].

what values were reflected in the actions of others in the colony when they played their part in the criminal process as jurors, prosecutors and, after the establishment of the Legislature in 1758, as lawmakers. The majority of the inhabitants, while they naturally did not approve of crime or criminals, were perhaps less convinced than anglophiles like Belcher of the links between the criminal process and social and political stability, and certainly less enamoured of capital punishment than their English contemporaries. Thus, in this respect at least, received English ideology was resisted and tempered over time, and Nova Scotian criminal justice came to be different, in theory and in practice, in content and in meaning, from its English roots. It never in this period departed as much from those origins as did, for example, Massachusetts,[13] but it did undergo a transformation as it adapted to colonial society and local conditions.

The Reception of English Criminal Law, 1749-1758

This first section is about the introduction, or what is technically called the "reception," of English criminal law in the Nova Scotia of the 1750s. I begin there because, while English criminal law was partially in effect in the colony during the Annapolis period,[14] the advent of substantial English settlement from 1749 made the issue a much more important one and brought far-reaching changes in both the civil and the criminal law. I take a different approach from most studies of reception, however, which typically deal only with legal doctrine as expounded in cases decided long after the period being discussed.[15] A case decided in 1850, for example, about what laws were in force in 1750 is much more likely to reflect the views of the judges in the later period than the practice of individuals in the earlier, and the result is

13 K. Preyer, "Penal Measures in the American Colonies: An Overview," *American Journal of Legal History*, 26 (1982), pp. 326-53.

14 T.G. Barnes, "The Dayly Cry for Justice: The Juridical Failure of the Annapolis Royal Regime, 1713-1749," in P. Girard and J. Phillips, eds., *Essays in the History of Canadian Law Volume Three - Nova Scotia* (Toronto, 1990).

15 See especially the standard account in J. Cote, "The Reception of English Law," *Alberta Law Review*, 15 (1977), pp. 29-92. Less amenable to such criticism are J. H. Smith, *Appeals to the Privy Council from the American Plantations* (New York, 1950), ch. 8, which does not deal with Nova Scotia, T.G. Barnes, "As Near as May Be Agreeable to the Laws of this Kingdom: Legal Birthright and Legal Baggage at Chebucto, 1749," in Barnes et al., eds., *Law in a Colonial Society: The Nova Scotia Experience* (Toronto, 1984), which does, and the work of D.G. Bell on New Brunswick: "The Reception Question and the Constitutional Crisis of the 1790s in New Brunswick," *University of New Brunswick Law Journal*, 29 (1980), pp. 157-72.

reception studies that are "unhistorical, or at best anachronistic surveys."[16] In addition, there is a tendency in some accounts by legal scholars to look for doctrinal purity, to get the law "right," which is not a useful exercise for the historian seeking evidence--not of what "should" have been done but of what was done. Thus while I by no means ignore doctrine, this account of the reception of English criminal law is based on the work of the courts and other evidence of contemporary views about the nature of the criminal law. It is, one might say, about "the law enforced," rather than "the law in force," although I would argue that these are much the same for the historian. Moreover, it is about the criminal law enforced, and does not purport to say anything about any other body of law.[17]

In the 1750s the vast majority of English criminal laws were in force in Nova Scotia. The only direct authority for this legal migration was Governor Cornwallis's 1749 commission, which gave him power to "erect constitute and establish" courts "for the hearing & determining all causes as well Criminal as Civil according to Law and Equity."[18] The instruction was obeyed fully. Following the first capital trial in Halifax, that of Peter Cartell for murder in 1749, Cornwallis told Whitehall that in the absence of a legally-trained presiding judge he had nonetheless sought "to follow as near as possible the English laws and customs...the substance and design of the laws were certainly observed."[19] A few years later, Governor Hopson could confidently assert that criminal proceedings operated "entirely under the English Laws," and his successor also noted that English law was "the Rule for our Justices in all Matters relating to the Peace." Indeed Charles Lawrence was concerned that a lack of sources made it difficult to apply that law precisely: "We have the Statutes at Large no further down than

16 J.B. Cahill, "'How Far English Laws Are in Force Here': Nova Scotia's First Century of Reception Law Jurisprudence," p. 1 (ms.) [forthcoming in *University of New Brunswick Law Journal*, 42 (1993)]. I am grateful to Mr. Cahill for allowing me to read this paper, which is the best general account of reception in Nova Scotia and has been most helpful in the writing of this article.

17 For a general overview see *ibid.*

18 Cornwallis's Commission, 6 May 1749, in T.B. Akins, comp., *Selections from the Public Documents of Nova Scotia* (Halifax, 1869), pp. 500-01.

19 Cornwallis to Board of Trade, 11 Sept. 1749, in *ibid.*, p. 585.

to...1741," he complained, asking for his collection to be updated.[20] He and the other two Governors who presided over the colony in the early-to-mid 1750s also made a regular practice of sending extensive reports of General Court criminal proceedings to Whitehall, such reports at times including requests for directions and/or affirmation that the court was proceeding in an acceptable manner.[21] Perhaps the best evidence of adherence to the letter of the statute law comes from the pen of Belcher, who in later years was criticized for his "slavish adherence" to English law generally,[22] and who in 1756 was adamantly of the opinion that "[a]ll convictions for felonies have from the settlement of Nova Scotia, been grounded on the laws of England, both common and statute."[23]

Confirmation that English criminal law was adhered to in these early years comes from examining the practice of the courts. To appreciate the significance of how they operated, however, one must first understand the structure of the English laws governing serious crimes at mid-century, which had evolved in a haphazard manner over the centuries.[24] Most of the major offences constituted activities proscribed at common law, which held them to be felonies punishable by death. Legislation from the medieval period onwards both added offences and, much more importantly, prescribed a range of punishments, so the state of the law ca. 1750 can best be understood by categorizing crimes according to punishment. One category comprised a small number of offences which had never been punishable by death. The principal ones were petit larceny (the theft of goods worth less than one

20 Hopson to Board of Trade, 1 Oct. 1753, and Lawrence to Board of Trade, 15 Jan. 1754, CO 217, Vol. 14, p. 300v, and Vol. 15, pp. 13-13v.

21 See, *inter alia*, Hopson to Board of Trade, 6 Dec. 1752 and 26 May and 22 Oct. 1753, CO 217, Vol. 13, pp. 413-419 and Vol. 14, pp. 172-7 and 280-291; Lawrence to Board of Trade, 1 June 1754, *ibid.*, Vol. 15, pp. 68-70.

22 Cahill, "Richard Gibbons' Review," p. 37.

23 Summary of Legal Arguments in *R. v. Young*, 1756, CO 217, Vol. 16, p. 140. By the phrase "from the settlement of Nova Scotia" Belcher meant the beginning of the Halifax period. See also his comment in a charge to the Grand Jury in the Michaelmas Term, 1754, that the laws to be enforced consisted in part of "the several Felonies capital by Common Law or Statute": Vincent, "Jonathan Belcher," p. 107.

24 This account is largely derived from Beattie, *Crime and the Courts*, pp. 140-46 and *passim*, and from the same author's "London Crime and the Making of the Bloody Code": unpublished ms., 1991.

shilling) and various forms of assault; for these a range of corporal and other punishments--fines, whipping, the stocks and the pillory, but only rarely short terms of imprisonment--were prescribed by common law or statute. Secondly, there were two principal offences--grand larceny (theft of goods worth a shilling or more) and manslaughter--which were capital at common law, but for which a convicted person could claim benefit of clergy on the first offence and thus escape the gallows. A second offence would theoretically lead to execution, although in practice this was by no means always the case. Clergy, which originated in the medieval period and was not abolished in Nova Scotia until 1841,[25] was at one time available whatever the offence committed, except treason, but could only be claimed by the ordained. Personal eligibility for it was widened in a piecemeal fashion over the centuries, a process which culminated in its becoming available to everyone in 1706.

As clergy was made increasingly accessible, however, from the sixteenth century onwards the offences for which it could be claimed were increasingly restricted by statute. It was this process which created the third, and largest, category of serious crimes, one that I choose to call "non-clergyable felonies," but which might also usefully, if not entirely accurately because of the rules governing grand larceny and manslaughter, be termed "capital crimes." By the mid-eighteenth century, "whether an offense was within clergy or had been excluded from its privileges...[was] the most significant determinant of the way it was regarded by the public and the way it was treated by the courts."[26] By then the list of these non-clergyable felonies included such major common law offences as murder, rape, burglary (breaking into a house at night) and robbery (stealing from the person with violence or the threat of it). It also had come to include many other crimes, most of them created by removing benefit of clergy from a variety of forms of actual and attempted larceny, if the offence involved goods of a certain value, or goods stolen from a particular place or under a particular set of circumstances. Examples include horse theft, theft from churches, and picking pockets. I shall refer to these as "non-clergyable larcenies," and they constituted the largest single group of capital crimes. Legislation of the post-

25 "An Act for Improving the Administration of Justice in Criminal Cases," *Statutes of Nova Scotia*, 1841, c. 4.

26 Beattie, *Crime and the Courts*, p. 141.

Restoration period in particular also made other kinds of activities offences without benefit of clergy; one single statute, for example, the *Black Act* of 1723, created dozens of them, including maliciously shooting at someone, breaking down the heads of fish-ponds, and appearing armed and disguised with the face blackened in a public place.[27]

This complex body of criminal law, which has come down to us known as the "Bloody Code," provided the legal structure for the work of the higher criminal courts in Halifax in the 1750s. In that decade over 200 men and women were prosecuted, 79 of them for offences that did not carry benefit of clergy.[28] While the latter included non-clergyable felonies such as murder, burglary and infanticide,[29] there were also prosecutions for a variety of larcenies deprived of clergy by English statute. That is, attention was paid to the highly significant differences of time, place and type and value of property by which the different categories of offence were delineated in English law. Soldiers Thomas Newman, John Catherwood and Joseph Hyatt were convicted in April 1750 of stealing a cow; it was worth just thirty shillings, but cattle theft had been removed from clergy so they received death sentences, although they were later pardoned.[30] Not so lucky were Christopher Donnelly and Robert Harrison. Along with James Mackenzie they were convicted in Easter Term 1752 of stealing a boat worth £6. This was an offence removed from clergy, and Donnelly and Harrison were

27 9 Geo 1, c. 22 (1723). Others included attacking deer, stealing coneys and hares from warrens, and cutting down or damaging trees. For the Act see E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London, 1975).

28 The source for this figure is my "Halifax Serious Crime File - General and Supreme Courts," a computerised dataset compiled primarily from the General and Supreme Court records held at PANS and supplemented from other sources. This contains the vast majority of the cases prosecuted in the second half of the eighteenth century, although it is certainly incomplete for 1761-63 inclusive and may underestimate prosecutions in the early 1750s. Further discussion of the dataset and of the nature of prosecuted crime in this period is provided in Phillips, "War, Crime and Society: The Case of Eighteenth Century Halifax," and "Women, Crime and Criminal Justice: Halifax 1750-1803," both unpublished.

29 See respectively the cases of Peter Cartell (Report of the Trial of Peter Cartell, CO 217, Vol. 9, pp. 97-101, and RG 39, Series J, Vol. 117); Lauchlin McConey (RG 39, Series J, Vol. 117, and Series C [HX], Vol. 2, files 35a-35c); and Mary Webb, discussed below, text accompanied by notes 54-57.

30 PANS RG 39, Series J, Vol. 117. Cattle theft had been removed from clergy just eight years previously: Beattie, *Crime and the Courts*, p. 145.

executed while only Mackenzie was spared.[31] Procedural forms were also closely followed, and provide further confirmation that England was the source of law; indictments always employed standard English constructions, in which common law crimes were stated to be "against the Peace of our...Lord the King," while crimes created by statute or for which a statute had altered the common law punishment were also "against the statute in that case made and provided."[32]

Meticulous attention was also paid to the prescriptions of English law in non-capital offences. As we have seen, those convicted of the clergyable offences of grand larceny and manslaughter were branded on the hand to show that they had "had their clergy." Petty larcenists were publicly whipped, none more publicly than John Davis, Judith Davis and Catherine Mosley who stole fish from a store owned by Messrs. Bowen and Freeman. The court ordered their punishment to be administered outside the store they had pilfered.[33] The pillory was employed much more rarely, and prison sentences were also uncommon although they do appear in the court records. An advisory memorandum of 1753 on the punishments available for certain offences, probably drawn up by Nesbitt to assist Hopson in his sentencing duties, demonstrates both the adherence to English law and the care that went into its application. John Moore, who had defrauded a local merchant, was by the terms of a Henrician statute to "suffer such Correction & punishment by Imprisonment of his Body, setting upon the Pillory or otherwise by any corporal pain" as the sentencing judge chose; for John Brisbane, guilty of an assault with an attempt to commit sodomy, the punishment prescribed by English law was "generally pillory."[34]

These kinds of crimes did not represent all prosecutions in the courts, for the higher criminal courts and the Quarter Sessions dealt also with minor

31 This case is discussed in Phillips, "Royal Pardon," pp. 1-2. The record does not specify which offence they were convicted of, but the crucial circumstance was probably that they had stolen property worth more than forty shillings from a wharf.

32 PANS RG 39, Series J, Vol. 117, and Series C, Vols. 1 and 2, *passim*; Abstract of Proceedings in the Supreme Court, Michaelmas Term 1754, CO 217, Vol. 15, pp. 194-212.

33 PANS RG 39, Series J, Vol. 117.

34 PANS RG 39, Series C[HX], Vol. 1, No. 75(1)(b).

crimes, many of them public order offences and breaches of local regulations ordained by the Governor and Council in the areas of liquor licensing, gaming and Sunday observance. Very few of these local laws, however, dealt with serious crime, and indeed Governor Hopson for one viewed them "as Regulations for the good Order of the Town of Halifax," not as a "Body of Laws for a Province."[35] They certainly did not provide the legal infrastructure for the great variety of prosecutions and convictions previously discussed. My purpose in detailing those cases is not to provide an account of crimes and punishments in early Halifax, but rather to indicate the close adherence to English definitions of crime and English penal prescriptions; few aspects of the general criminal law in Nova Scotia in the 1750s would have appeared unfamiliar to an English assize judge of the period.

The evidence presented so far establishes that, at the very least, the vast majority of English criminal law was effectively in force in the colony. It does not, however, positively demonstrate that *all* of the English criminal law was in force, for many statutory offences simply did not appear in court in these years, leaving us without evidence of their application. The extent of reception can be gauged, however, from one 1756 case which turned on that issue. In April of that year John Young and Benjamin Badcock appeared before the Supreme Court charged with counterfeiting and "uttering" (circulating) Spanish dollars, which were legal tender in the American colonies.[36] There was no real dispute over the facts, and the accused were found guilty on both counts. It then came to light that the Grand Jury had "obliterated the Material Words in the Indictment which constitute[d]...[the offence] High Treason." Counterfeiting non-English coin that had been declared legal tender in the colony was only treason if a Marian statute

35 Hopson to Board of Trade, 1 Oct. 1753, CO 217, Vol. 14, p. 300v. The power to make these laws was given by Cornwallis's Commission, 6 May 1749, in Akins, comp., *Selections*, p. 500. They can be located in the Council minutes and among the proclamations in PANS RG 1, Vol. 163. See RG 39, Series J, Vol. 117, *passim*, and RG 1, Vol. 189, *passim* for the work of the General Court, Supreme Court and Council in these areas. For the Quarter Sessions see RG 60 [HX], Vol. 1, and RG 34-312, Series J, Vols. 1-4.

36 For the circumstances and procedural history of the case see Belcher to Pownall, 20 Jan. 1757, CO 217, Vol. 16, pp. 130-130v; Record of the Trial of John Young, CO 217, Vol. 16, pp. 134-137; Belcher's trial notes and his Judgment on a Motion in Arrest of Judgment, [April 1756], PANS MG 1, vol 1738, Nos. 105 and 112; RG 39, Series C, Vol. 2, Nos. 19, 28, 29 and 39; RG 39, Series J, Vol. 117. For an account of currencies used in Halifax in the 1750s see A. Shortt, *Documents Relating to Currency, Exchange and Finance in Nova Scotia,...1675 - 1758* (Ottawa, 1933), p. xlv.

making it so was in force in Nova Scotia.[37] Belcher was not on this occasion enamoured of the content of the English law--he thought it imposed too harsh a punishment and wished that a local legislature could be established which would then impose some lesser but still significant sanction–but he did believe that the English statute was in force and was displeased that the Grand Jury "took it upon them to judge" differently. He ordered a new indictment drawn up, but the Grand Jury refused to find it a "true bill" and Belcher could only remand the prisoners until the next sitting of the court, scheduled for October.[38]

When the court met again a more compliant Grand Jury found the indictments, but the petit jury decided to find Babcock guilty only of the lesser offence of uttering the pistereens, and he was sentenced to stand in the pillory. The evidence of counterfeiting was much stronger in Young's case, and his trial was dominated by arguments about whether the treason statute was in force in the colony.[39] The principal proposition offered by defence lawyers Kent and David Lloyd was that the statute had not been received because it had been passed "before any part of America was possess'd by the Crown of England." This suggestion was roundly rejected by Belcher who asserted that there was no question that "the Common Law is in force in all the Plantations, tho' acquired to the Crown many Centuries after the Common Law had its rise," and that statutes were no different: "As to the Operation of the Laws of England in the Plantations, No distinction has been made between the Common Law & the Statutes antecedent to their Settlement." Thus when a colony took English law it took it all. Moving from the general to the more particular he asserted: "All Convictions for Felonies have from the Settlement of Nova Scotia, been grounded on the Laws of England, both Common & Statute, & if the Statutes extend on the Principles

37 1 Mar, sess. 2, c. 6 [1553].

38 Belcher to Pownall, 20 Jan. 1757, CO 217, Vol. 16, p. 130. The first stage in the criminal trial process was the presentation of indictments and some witnesses to the Grand Jury, whose job was to decide whether there was a case to answer. If they found that there was, the members signed the back of the indictment and made a notation that it was a "true bill." If not, the bill was simply marked Ignoramus ["we take no notice of..."] and the accused discharged.

39 These are extensively reproduced in Summary of Legal Arguments in *R. v. Young*, 1756, compiled by Belcher, CO 217, Vol. 16, pp. 138-144, from which all quotations are taken.

mention'd the Court can make no distinction, so as to prevent the force of any Statute in the Colony, antecedent to its Settlement, where such Statute may possibly be carried into Execution."

Belcher recognized that reception law drew a distinction between "uninhabited Countries newly found out" and "conquered [or ceded] Countries," but thought the distinction immaterial in the case of Nova Scotia. From the time he first set foot in the colony he believed in a "birthright" theory of reception, by which "the Laws of England, both Statute and Common" were "the Right and Privilege of every English Subject" and were therefore "introduced into the Plantations by the English settlers and Continue in force there at least till they are varied by the respective Legislatures according to the Circumstances of each Colony."[40] This theory derived from two English cases, *Blankard* v. *Galdy*[41] and a 1722 Privy Council Memorandum,[42] and according to Belcher was equally applicable in settled and conquered colonies. That is, settlers brought their law with them whether they peopled uninhabited or inhabited territory, unless there was a declaration by the crown in the latter case that some other laws were to be in force. He acknowledged that if a colony had been conquered, indigenous laws stayed in force and that "the King may either introduce the Laws of England, or other Laws at his pleasure," but saw the birthright theory as filling the gap if the law of the conquered was "silent" on a particular matter.[43] In any event Belcher believed that it was a reasonable inference from *Blankard* v. *Galdy* that "an appointment of proper Courts and Officers who may execute the Laws of England, is a virtual declaration that they shall

40 For evidence of Belcher's views on arriving in Halifax see his memorandum on whether the Government was required to call an Assembly, penned in late 1754. In the introduction he states, "The principle of Law is Settled that in Countries accruing to the Crown by Conquest or by Cession, the King has a right to Govern the Inhabitants by such Laws as he may think expedient. If the Subjects of England become Settlers and Inhabitants of those Countries they carry with them the Laws of England and are to be Govern'd by them 'till they are changed by other Laws or ordinances from the Crown": CO 217, Vol. 15, p. 191.

41 2 Salk. 411, 91 E.R. 356 (1693, K.B.).

42 2 Peere Wms. 75, 24 E.R. 359.

43 Here he cited the statement in the Memorandum that the "laws and customs of the conquered country shall hold place" unless they are "contrary to our religion," or "enact anything that is *malum in se*" [a wrong in itself], or "are silent." In such instances "the laws of the conquering country shall prevail."

be in force," and such an appointment had been made in Nova Scotia. Thus, whatever the characterization of Nova Scotia's reception history, he could conclude that it had English law:

> Whether Nova Scotia be consider'd as a Conquered or ceded Country, or as newly planted, the Laws of England, will in the first Case prevail, because as to counterfeiting Money the Laws of Nova Scotia are silent, & in the latter Case, this Stat[ute]...will bind, because it is antecedent to the Plantation & Settlement of the Province.

Defence counsel did have an alternative argument, based on the words of the statute that the counterfeiting had to be of coins made legal tender "within this realm," and that Nova Scotia was "tho' a Dominion...not part of the Realm." Belcher's response was simple: the word "realm" had been used to exclude possessions of the crown existing at the time the statute was passed which had their own "Laws and Jurisdictions for making Laws." It would not by itself exclude colonies not then established, and, to briefly summarize a lengthy passage, the only issue for Belcher was whether the statute was the law of England at the time that the colony was "planted" by English subjects. If it was the law of England, then it was also the law of the colony.

There were other points discussed in the case, but these are the crucial ones for my purpose. The colony's Chief Justice obviously had an absolutist view of reception law; all English penal statutes were in force in Nova Scotia and could only be considered not in force if they could not "possibly be carried into execution," or if they had at some point been locally repealed. Belcher's opinion was shared by the two Inferior Court of Common Pleas judges whom he had invited to sit with him on the trial, Charles Morris and James Monk,[44] a revealing decision given that as members of the Inferior Court they had, in opposition to Belcher, enunciated a much more restrictive view of the reception of English statute law in the civil realm just two years before.[45] The decision in *R.* v. *Young* confirms what has been seen of the opinions of others in the colony in the 1750s and of the operation of the higher criminal courts.

It must have been a considerable shock to Belcher to discover, a little less than a year after he had presided over the conviction of Young for treason,

44 Opinion of Monk and Morris, Justices of Nova Scotia, CO 217, Vol. 16, pp. 132-133.

45 This was *Steele* v. *Steele*, and concerned the *Statute of Frauds*: see Cahill, "Nova Scotia's Reception Law Jurisprudence," pp. 4-6 (ms.).

that he was, according to learned opinion in London, wrong. Following the trial he had delayed sentencing Young to death and sent over all the materials in the case for advice; while he expressed confidence in his decision and stressed the need not to allow "a Crime so atrocious as that of counterfeiting ...[to] go unpunished," he also wished to be "cautious" in a case in which "the Life of One of His Majesty's Subjects is concern'd." He also asked that Young be pardoned because of "the novelty & doubtfulness of the Case" and because he had "suffer'd a long imprisonment."[46] The response of the law officers of the crown, Attorney-General Robert Henley and Solicitor-General Charles Yorke, must have been both disappointing and puzzling. In a very tersely formulated opinion they offered three reasons why Young should not have been convicted. They first stated simply that "the act is expressly restrained to the counterfeiting foreign Coin current within this Realm, of which Nova Scotia is no part." Secondly, they held that "the proposition adopted by the [Nova Scotian] Judges," that "the Inhabitants of the Colonies carry with them the Statute Laws of this Realm" was "not true as a general Proposition." What statute law was received would depend in each case "upon Circumstances, the Effect of their Charter, Usage and Acts of their Legislature," and "it would be both inconvenient and dangerous to take it in so large an Extent." Thirdly, and somewhat repetitively of the first two points, the law officers stated that "the Offence can be considered only as a High Misdemeanour, unless there are any Provisions in any Charter granted to that Province, which make it a greater Offence, to which We are intirely Strangers."[47]

The crucial part of this opinion was the frustratingly brief second proposition, that not all of English statute law was generally introduced into a colony with English settlement. One can consider this statement from several perspectives. The scholar interested in the history and theory of the doctrine of reception would situate it within the long history of reception disputes in the Thirteen Colonies. Many of these had been founded with particular

46 Belcher to Pownall, 20 Jan. 1757, CO 217, Vol. 5, p. 314 (mfm. at PANS). Belcher needed to make this pardon request because the Governor of Nova Scotia could not grant, but only recommend, pardons in cases of murder and treason: see Phillips, "Royal Pardon," pp. 11-13.

47 Henley and Yorke to Board of Trade, 18 May 1757, CO 217, Vol. 16, pp. 146-146v. This opinion is also reproduced in B. Murdoch, *Epitome of the Laws of Nova Scotia* (4 vols., Halifax, 1832-33), Vol. 1, pp. 37-38. It was transmitted to Nova Scotia in Pownall to Belcher, 3 June 1757, CO 218, Vol. 5, p. 161.

charters of government which were generally interpreted by British authorities as precluding the reception of the whole corpus of English statute law. Many of them had also made their own laws over a century or more, often replacing what English laws were received.[48] Thus the law officers were correct to say that what laws were received depended on charters and local legislatures, but missed the mark in this instance because there was no charter and no elected legislature! They provided a standard form opinion rather than one sensitive to the particularities of Nova Scotia's history. The legal adviser to the Board of Trade, Sir Matthew Lamb, might have given a more contextual response, but for some reason does not seem to have become involved in this case.

In fact, given Nova Scotia's circumstances, by the understandings of his own time Belcher's exegesis on reception is largely "right," and his understanding of statutory interpretation is certainly so. His judgment did not consider whether the statute in question, or English criminal law in general, was applicable to local circumstances, but he did note the principle in passing; it also does not feature in pre-1750 cases anything like as much as it does thereafter. In any event, Belcher had no doubt that English criminal laws, and particularly those in issue, were suitable. He does not state whether he believed Nova Scotia was conquered or settled; two years previously he had thought it acquired by cession, but at that time and in *R.* v. *Young* he seemed to conceive of it for reception purposes as a kind of "mixed" jurisdiction, ceded in 1713 and settled from 1749, and this view is confirmed by his correspondence with Massachusetts lawyers.[49] These quibbles aside, however, Belcher's views were generally sound in the context of his time.

A second perspective from which to consider the decision in *R.* v. *Young* is that of the Chief Justice himself, not as a legal authority but as the judge presiding over criminal trials in the Supreme Court. The law officers' opinion potentially plunged that court into chaos. It could enforce the common law

48 See E.G. Brown, "British Statutes in the Emergent Nations of North America, 1606-1949," *American Journal of Legal History*, 7 (1963), pp. 96-101, and Smith, *Appeals to the Privy Council*, esp. pp. 465-487.

49 Cahill, "Nova Scotia's Reception Law Jurisprudence," p. 6 (ms.). For Belcher's earlier views see his 1754 memorandum on whether the Governor was obligated to call an elected legislature, at CO 217, Vol. 15, p. 191. The leading nineteenth-century Nova Scotia case on the question—*Uniacke* v. *Dickson* (1848), 2 Nova Scotia Reports [N.S.R.] 287—declared Nova Scotia to have been settled; this case must now be read with Cahill, "Nova Scotia's Reception Law Jurisprudence," pp. 32 *et seq.*, which throws much new light on it.

and local regulations, but could only be certain of legality when employing a very limited range of statutory provisions specifically introduced by one Council proclamation.[50] While Young had not been and would not be hanged,[51] Belcher was being told that there might be other convictions he had presided over and other executions he had ordered which were in fact illegal. Whitehall had not told him that this was the case, nor had it told him how he could know which laws were in force and which were not. He was already on record as believing that the Council ordinances were of dubious legality because of successive governors' failure to summon an elected Assembly, and he now found the work of his court called into question as well.[52]

This uncertainty had obvious consequences. One of the statutes drafted by him and passed a year or so later by the first Assembly provided that "all convictions, attainders, judgments, and executions, for any felonies or misdemeanours, before the making of this Act, shall be good and valid in law, and the same are hereby ratified and confirmed." Two other statutory provisions dealt with the relationship between counterfeiting and treason; one included in the definition of treason "all treasons declared by the Acts of Parliament of England," while the other made counterfeiting foreign coin

50 In late 1749 the Council proclaimed that "persons...convicted of stealing or destroying Oxen, Cows, Sheep, Goats, Hogs or Fowls" were to be "punished according to the utmost rigor of the Laws of England": Akins, *Selections*, p. 595. Professor Barnes has argued that this proclamation, and others like it in areas of the civil law, show the Council "implementing the law of England" and that the proclamations "constituted a 'reception' of English law": Barnes, "As Near as May Be Agreeable," p. 21. While it may have represented *a* reception, it was not *the* reception, for it was the only one dealing with the criminal law, and, as we have seen, later governors and judges had no doubts about the general reception of English criminal law. I would offer a more prosaic explanation of this proclamation—it was issued very early in the life of the new settlement, and probably reflected initial uncertainty or ignorance either about the general principles of reception or about whether the laws at issue would be considered suitable for local circumstances.

51 The subsequent history of the case is a little obscure. The law officers' opinion must have arrived sometime in the summer of 1757, and from Young's point of view should not be considered an "appeal," for that was unavailable in criminal cases, but as something more akin to a "motion in arrest of judgment," like the motion on which his first conviction had been quashed because of the Grand Jury's change to the indictment. The authorities, however, kept him in jail for the better part of another year; perhaps Belcher was hoping for the passage of a local statute under which Young could be retried yet again. Eventually, in May 1758, he was pardoned on condition that he join the armed forces: Lawrence to Hinshelwood, 20 May 1758, and Pardon for John Young, 26 May 1758, PANS RG 1, Vol. 163 [3], pp. 122-124. Young conveniently died in June 1758.

52 See the correspondence reproduced in Akins, ed., *Selections*, pp. 709-15. Ironically Belcher had used the occasion of transmitting his report on *R. v. Young* to note that the problem of reception in that case could have been avoided by a local Assembly passing its own counterfeiting statute: Belcher to Pownall, 20 Jan. 1757, CO 217, Vol. 16, p. 130.

made current in the colony--Young's offence -- punishable by corporal punishment.[53] Before the Assembly met, however, there were other sittings of the court to be held; the case of Mary Webb, tried and convicted of infanticide in the Supreme Court in May 1758, aptly illustrates the problems the Chief Justice briefly laboured under. Infanticide, the killing of a new-born infant, was simply treated as a murder case if the defendant was other than an unmarried woman. That is, the usual rules of evidence and the presumption of innocence (to the extent that it then existed) applied. But a 1624 statute laid down that if the mother were unmarried, and had attempted to conceal the birth, she was presumed to have killed the dead child and was convicted unless she could show by the evidence of one other person that it had been born dead.[54] Webb was convicted under these procedural rules after the law officers' opinion on Young was received, but before a provision identical to the 1624 statute had been passed by the Legislature.[55] She was not hanged, and in an application for pardon Belcher noted that the conviction had occurred "antecedent to the Law of this Province declaring Concealment of the death of a Bastard Child to be evidence of Murder," and that in fact "death might have been accidental from the manner of the Delivery."[56] Belcher's confusion of action and conscience is apparent. On the one hand he had presided over the Webb trial and seen her convicted in conformity with the English statute, which specified that the kind of doubts he expressed were irrelevant unless the accused could provide witnesses to the fact. Obviously in allowing the conviction he had acted as if the 1624 statute were in force, which was consistent with the position he adopted in Young and suggests that he continued to believe that, at the very least, many English statutes were in

53 "An Act Relating to Treasons and Felonies," *Statutes of Nova Scotia*, 1758, c. 13, ss. 1 and 37, and "An Act for Punishing Criminal Offenders," *ibid.*, c. 20, s. 6. The latter specified that a person convicted of Young's offence would henceforth "be set in the Pillory, by the space of one whole hour, and one of the ears of such offender shall be nailed thereto, and such offender shall also be publicly whipped through the streets of the town."

54 For infanticide see Beattie, *Crime and the Courts*, pp. 113-24 and R.W. Malcolmson, "Infanticide in the Eighteenth Century," in J. Cockburn, ed., *Crime in England 1550-1800* (Princeton, 1977). For the Webb case see PANS RG 39, Series J, Vol. 117, and Series C [HX], Vol. 2, No. 54.

55 "An Act Relating to Treasons and Felonies," *Statutes of Nova Scotia*, 1758, c. 13, s. 5.

56 Belcher to Board of Trade, 12 Dec. 1760, CO 217, Vol. 18, p. 85.

force. On the other hand, given the ultimately unhelpful nature of the law officers' opinion, he was sufficiently unsure about where he stood that he had no intention of risking an illegal execution. He did not need to make this point in Webb's favour, for no pardon recommended by Halifax authorities in the eighteenth century was rejected in London.[57]

Finally, for the historian of the criminal law, *R.* v. *Young* offers a different lesson altogether. The historian is much less concerned than either Belcher or the legal scholar with the correctness of the doctrine enunciated. Who was right is in large measure irrelevant; what matters is the law enforced, for that was the law in force. Hence the importance of *R.* v. *Young* is that it allows us to see that the English-trained barrister presiding in the Supreme Court believed--at least prior to mid-1757--that he was bound to enforce not just a criminal code largely based on English principles, but substantially the whole of English criminal law. His predecessors in the General Court believed this also, as did, one is tempted to suggest, those on the other side of the criminal process, for if the law could put a rope around a man or a woman's neck it was most assuredly in force.

The Criminal Law and Society in Eighteenth-Century Nova Scotia

The men who introduced English criminal law into Nova Scotia in the 1750s also brought to the colony a set of perceptions about the wider social and political role that that law was expected to play. The English system, substantive and procedural, was one that had evolved in adaptation to the socio-political structure of mid-eighteenth century England; in a society with a very limited bureaucracy, no standing army and no effective policing, it provided a significant mechanism of social control. It did so in part simply because it was one of the very few effective instruments of state coercion and central government presence across the country. The itinerant assize courts provided opportunities for political and social education such as the charge to the grand jury and the speech to sentence. The processes of public trial and punishment offered salutary lessons about what would befall those who contravened social and legal mores; the gallows in particular, on which the system of punishments so largely depended, played a central role, for the terror they created had a crucial general deterrent value greater than its effect in individual cases. Finally, the law was widely perceived not only as a harsh, if necessary, instrument of coercion, but also as a system that was legitimate-

57 Phillips, "Royal Pardon."

-it could show mercy and was generally distinct from class interests, fair and open to all. The vast majority of English criminal justice historians would accept this characterization of the law, although there is much disagreement about the degree to which it actually operated in the interests of different classes.[58]

Although the evidence on which this assessment is based is admittedly and regrettably slim,[59] there are clear indications that Nova Scotia's governing élite, predominantly English or English-influenced, brought to this colonial frontier many of the ideas about the criminal law that others of their class and training in England held. This comes through most clearly in Belcher's work, from which three themes emerge. First, he saw it as his duty, as did his English counterparts, to use the bench as a kind of secular pulpit to preach on the virtues of obedience and submission to government whenever the occasion offered. In his first official act as Chief Justice, the charge to the Grand Jury at the opening of the Supreme Court in 1754, he sounded a strident call for conformity: "Harmony and Union alone," he told the town's burghers, "can establish the Administration upon its Solid Basis" in difficult times. No "considerate person" should be "so weak and infatuated, as to disturb and Interrupt our Peace and happiness, by introducing distinction and Parties against the Government of this Province."[60] This theme of obedience to government obviously also informed his sentencing comments following the Thornton et al. trial, and it seems clear that both Grand Jury addresses and sentencing speeches, and probably other moments within the criminal process, were avidly exploited for these broader political purposes; judging

58 For differently focused but overt tracing of the links between the criminal law and political authority see D. Hay, "Property, Authority and the Criminal Law," in Hay et al., *Albion's Fatal Tree* (London, 1975), Thompson, *Whigs and Hunters*, and P. Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London, 1991). For arguments which acknowledge these links and also stress a degree of consensus see Beattie, *Crime and the Courts* and, *inter alia*, P. King, "Decision Makers and Decision Making in the English Criminal Law, 1750-1800," *Historical Journal*, 27 (1984), pp. 25-58. For the proposition that the law had effectively no broader context see J. Langbein, "Albion's Fatal Flaws," *Past and Present*, 98 (1983), pp. 96-120.

59 Compare the evidence available here with the wealth of Grand Jury addresses and other documentation available for a later period in Upper Canada: D.J. McMahon, "Law and Public Authority: Sir John Beverley Robinson and the Purposes of the Criminal Law," *University of Toronto Faculty of Law Review*, 46 (1988), pp. 390-423.

60 Belcher, "Charge to the Grand Jury," p. 106.

by the drafts that have survived he obviously worked hard at these set pieces, revising when a different word or the reworking of a phrase could achieve a better effect.

The second theme in Belcher's speeches and writings is that there was a direct link between a vigorous and effective system of criminal prosecution and the wider political stability that he so valued. "The expectation of your Country, Gentlemen," he told his first Grand Jury in 1754, "is attentively fix'd upon your proceedings"; "their prosperity and happiness" were "deeply involved, in a vigorous Execution of the Laws," upon which depended "the being and quiet of this and every other Community."[61] In *R.* v. *Young* the law-politics link was very easy to make. Belcher adamantly did not want "a Crime so atrocious as...counterfeiting [to]...go unpunished"; the case was "of much importance to this Province," for if the law did not sufficiently sanction the practice "the current Silver Coin here might become as the Copper coin is at present one half Counterfeit." Such considerations were even interwoven with his legal opinion on reception; perhaps hoping that it would persuade Whitehall to agree with him, he took care to make it clear that Spanish coins were "the only Silver current Money in Nova Scotia," and that without effective laws against counterfeiting "this Province would become an Asylum to Counterfeiters of foreign coin Current, to the great injury of the Province & the other Plantations where such counterfeit Money may be dispers'd."[62]

A third theme is closely related to the second--that, harsh though it might appear, the death sentence was necessary to make the criminal law work and was justified as much by the pursuit of the greater good as by retribution in individual cases. We have seen this view expounded at the end of the Thornton et al. trial; the point was also made in his first Grand Jury address as he lamented that "Happiness and Interest" could not by themselves guarantee "an Observance of the Laws," but needed to be supplemented by "the other Sanction to Obedience,...Punishments and Penalties," even if this was "a melancholy Necessity."[63] Obviously Belcher did not always take the

61 *Ibid.*, 109.

62 Belcher to Pownall, 20 Jan. 1757, CO 217, Vol. 16, pp. 130-130v, and Summary of Legal Arguments in *R.* v. *Young*, 1756, CO 217, Vol. 16, pp. 143v-144. Shortage of specie and consequent counterfeiting were indeed serious problems in the Halifax of the 1750s: see Shortt, *Currency, Finance and Exchange*, pp. xxxiii-xlix.

63 Belcher, "Charge to the Grand Jury," p. 106.

view that death was an appropriate sentence, for he did not think that John Young should die--regardless of what the law said. He did approve its application in more serious cases, however, and he held fast to the view that the gallows was a generally necessary deterrent. The most explicit statement from him on this point comes in his sentencing of four convicts for burglary in 1768; he told the condemned and his wider audience both that burglary was a crime particularly obnoxious because it took place at night "when the subject is not upon his natural defence as in the day," and therefore the commission of such a crime "justly ought to be at the peril of the life of the offender," and also that the seemingly harsh penal laws were in no case unreasonable: "[t]he measure of all penalties is not the proportion between crimes and punishments," he insisted, rather "the grand end of government is the measure by securing obedience to necessary laws." Indeed, "whatever penalties are proper for this end are just and righteous."[64] It might be objected that Belcher himself was a New Englander, and therefore a man who fits uneasily into the role of "English" judge in which I have cast him. But Belcher was very much an English lawyer, having left his native Boston in 1731 and travelled to study law at the Middle Temple and to practise at the English and Irish bars until receiving his colonial judicial appointment. During his time in England he became something of an anglophile--for example he believed strongly in the need for an established church at home and in the colonies--and he also appears to have imbibed views about the social role of the criminal law that were commonplace in mid-eighteenth-century England.[65]

While much more is available from Belcher's than from any other pen, views very similar to his are reflected in the commentary offered and the policies pursued by many of the men in positions of power throughout the second half of the eighteenth century. For example, the very presence of the Supreme Court and its judges, in Halifax and in the outlying settlements, was seen as an encouragement to social order for it brought concrete evidence of the dignity and effectiveness of government authority. This was true at the

64 Sentencing Speech, 1768, PANS MG 1, Vol. 1738, No. 111.

65 S. Buggey, "Belcher, Jonathan" *Dictionary of Canadian Biography*, Vol. 4 (1979), pp. 50-54.

time of the establishment of the Supreme Court in 1754,[66] and remained so thereafter. When the court went from biannual to quarterly terms in Halifax in 1768, it was purportedly because the infrequency of sittings "weakened the force and terror of the law" and was responsible for "emboldening offenders."[67] Government also vigorously supported the extension of the court into the rural areas, through both commissions of oyer and terminer and a regular circuit system, on the grounds that it would have a salutary effect on the relations between central government and local communities.[68] Lieutenant-Governor Michael Francklin, during one of his four periods in charge of the colony, argued that a better road system would, among other benefits, allow "courts of justice" to be "regularly held in the counties" so that "the people [could be] kept in good order and in subordination to the law."[69] Sometime Solicitor-General James Monk asserted that "the dignity, the Authority, and Consequence" of the Supreme Court should "disseminate its Power and Influence among the Multitude, for the preservation of Quietude and Subordination, to...Government."[70] Perhaps ironically, the greatest obstacle to the effectiveness of the circuits once they had been introduced in 1774 was the reluctance of the judges, especially Belcher, to

66 See the description of the opening of the court in *Halifax Gazette*, 12 Oct. 1754. See also Governor Parr's 1787 complaint, during the three-year hiatus between the death of Bryan Finucane and the commissioning of Jeremy Pemberton, that the colony was under "a great inconvenience" because of the lack of "an able impartial Chief Justice," a man who could "keep up the dignity of the bench" and make it respected by "supporting that order so absolutely necessary": Parr to Nepean, 5 Dec. 1787, CO 217, Vol. 60, p. 75. The best-known description of the pomp and ceremony of the English courts, and of the meanings to be gleaned from it, is in Hay, "Property, Authority and the Criminal Law," pp. 26-31.

67 "An Act for Establishing the Times of Holding the Supreme Court," *Statutes of Nova Scotia*, 1768, c. 5. Complaints from grand jurors, who had to serve for an entire year, led to the dropping of one term in 1780, although it was restored in 1796.

68 Commissions of oyer and terminer were issued for a particular trial or trials, and were useful to the authorities when they wished to deal quickly with a case, in or out of Halifax, or for trials where the Supreme Court circuit did not run. Their frequent use in this period can be traced principally through the minutes of the Council, commission registers and orderly books in PANS RG 1.

69 Francklin to Board of Trade, 30 Sept. 1766, CO 217, Vol. 44, p. 73.

70 J.B. Cahill, "James Monk's (Observations on the Courts of Law in Nova Scotia), 1775," *University of New Brunswick Law Journal*, 36 (1987), p. 145. For further advocacy of circuit courts see Assembly to Wilmot, 24 Nov. 1763, and Wilmot to Board of Trade, 17 Dec. 1764, CO 217, Vol. 21, pp. 9 and 36; Francklin to Board of Trade, 12 June 1768, *ibid.*, Vol. 22, p. 231.

undertake the arduous journeys required.[71] Difficulties do not seem to have lessened official enthusiasm for the good effects that circuits could have, however, and the view of Lieutenant-Governor Sir John Wentworth, expressed at the end of this period, that "it is of great importance that the Supreme Court should sit in the remote districts, as it makes great impression on the minds of the people," appears to have been prevalent throughout the second half of the eighteenth century.[72]

The links between enforcement of the criminal law itself, including the use of capital punishment, and social order were also noted by a variety of officials. Chief Justice Thomas Strange, another English import, who took up his position in 1790, had no doubt that the "Criminal Code" he was bound to help enforce "has for its Object the maintenance of that Morality, civil and political, by which the Social World is bound together." In sentencing two men the following year for a multiple murder committed at First Peninsula (Lunenburg), he described the death penalty as "a terror to evil-doers, and a security to them that do well."[73] Elite attitudes towards the selective use of the gallows are also reflected in executive decision-making about pardons. Given that the rate at which capital convictions were commuted to pardons did not increase in this period,[74] it is reasonable to conclude that the deterrent value of executions continued to be appreciated. This appreciation is most clearly seen in the Council's discussion about whether to hang one William MacLean, convicted of the capital offence of street robbery in 1782. Although the Halifax County Grand Jury interceded on his behalf, the Council decided that "at the present time, when Robberies were become so

71 For the inauguration of Supreme Court circuits, see "An Act...for Establishing the Times of Holding the Supreme Court," *Statutes of Nova Scotia*, 1774, c. 6. For this judicial reluctance see, *inter alia*, Council minutes, 19 Sept. 1775, PANS RG 1, Vol. 189, p. 357; "State of the...Supreme Court of Nova Scotia, 1786" ["A Loyalist Attorney's Critique of the Supreme Court of Nova Scotia, 1786," *Nova Scotia Historical Review*, Vol. 11, No. 1 (June 1991), pp. 151-55], CO 217, Vol. 58, p. 281; Wentworth to Dundas, 6 Dec. 1793, *ibid.*, Vol. 65, p. 8.

72 Wentworth to King, 15 Sept. 1800, PANS RG 1, Vol. 53, pp. 134-35. See also Legge to Dartmouth, 16 Nov. 1774, CO 217, Vol. 15, p. 40, Monk to Dartmouth, 16 Nov. 1774, ibid., p. 69, and Legge to Assembly, 6 July 1775, PANS RG 1, Vol. 286, No. 109.

73 Charge to the Grand Jury, Halifax County, 4 April 1791, CO 217, Vol. 63, p. 300v; Stewart, James, comp., *The Trials of George Frederick Boutelier and John Boutelier, for the Murder of Frederick Eminaud....1791* (Halifax, 1791), p. 31.

frequent, it is unavoidably necessary that he should suffer for the sake of example." In fact MacLean did not hang, for that was ultimately the Governor's decision, but the quotation nicely illustrates the wider use contemplated for the death sentence.[75] Judging from the tone and content of newspaper reports on executions, the gallows certainly made an impression on the minds of the Halifax populace. John Cox and Nathaniel Crew were said to have "behaved with great decency" when executed on 10 August 1779; more importantly, it was reported that they "were sensible of the Justice of their Sentences," "died very Penitent," and "exhorted the Spectators...to refrain from strong Drink and bad Company."[76]

In addition to this evidence, one can also gauge the importance of the criminal process by examining criminal justice policies. The extension of the court system has already been noted, while the enforcement of the law was given sustained government support via the early and consistent nurturing of public support for prosecution. This actually went beyond what then existed in England, where prosecution was still very much a private preserve, although it received some limited support from the authorities.[77] Belcher, a man who had little compunction about taking a leading prosecutorial role from the bench when he felt justified, thought that "the office of Attorney General is of the highest importance to the court";[78] the men appointed to the post, moreover, were consistently active in the Supreme Court at Halifax and elsewhere throughout the country,[79] their work as crown prosecuting

74 Phillips, "Royal Pardon," p. 27.

75 Council minutes, 4 Nov. 1782, PANS RG 1, Vol. 189, p. 493; Pardon for William MacLean, *ibid.*, Vol. 170, p. 331.

76 *Nova-Scotia Gazette and Weekly Chronicle* (Halifax), 10 Aug. 1779. Such reports are commonplace in the extant issues of eighteenth-century newspapers: see, *inter alia*, *ibid.*, 9 Aug. 1785 and 7 Nov. 1786; *Halifax Gazette*, 27 June and 25 Nov. 1752; *Nova-Scotia Packet and General Advertiser*, 4 Jan. 1787; *Nova-Scotia Gazette*, 25 Oct. 1791.

77 Beattie, *Crime and the Courts*, ch. 2.

78 Belcher to Pownall, 16 Jan. 1755, CO 217, Vol. 15, pp. 187-88. For a similar comment see Dartmouth to Legge, 7 Jan. 1775, CO 217, Vol. 51, p. 17.

79 Their presence in the Halifax Supreme Court can be followed in the summaries of proceedings in PANS RG 39, Series J, Vols. 1, 2 and 117. Their presence elsewhere than Halifax is attested to by Secretary Richard

attorneys also being supplemented when necessary by ad hoc appointees to attend the courts outside of Halifax.[80] Some Attorneys-General, notably Nesbitt and Sampson Salter Blowers, also served occasionally on commissions of oyer and terminer.[81] The victim of crime still had much to say about whether a prosecution would go forward, but government did much to encourage that decision, including defraying witnesses' expenses out of the public purse.[82]

This necessarily brief survey of élite attitudes towards, and government policies in support of, the criminal law and criminal process should not be seen as suggesting either that all members of the élite held the same views, or that there was a substantial cleavage between the élite and others on the basic rectitude of criminal prohibitions. Doubtless men and women of all classes and from all communities decried murder, theft and many other crimes, and joined with alacrity in the prosecution of them. Rather, I am suggesting that a significant number of the colony's eighteenth-century administrators placed much emphasis on criminal law in the search for order and authority in turbulent times. This probably accounts for why, in the 1750s, the colony took on the full panoply of English criminal law and procedure; they were embraced with alacrity by an élite that was prepared to be much more equivocal on whether English or Massachusetts civil law should be used in the courts.[83] No such half-way measures appear to have been contemplated, let alone exercised, in the penal realm. The stress on enforcement likely accounts for the high prosecution rates in Halifax generally--especially in the

---

Bulkeley to Shelburne JPs, 24 Sept. 1784, RG 1, Vol. 136, p. 345, and bench-book of Isaac Deschamps...1775-1782, RG 39, Series C [HX], Vol. A, No. 1. For directions prior to prosecution see Blowers to Clerk of the Crown, 2 April 1791, RG 39, Series C [HX], Vol. 65, No. 45c. For accounts of public prosecutorial activity, many of them combined with accounts for services rendered, see Council minutes, 2 June 1755, 27 Sept. 1760, and 13 July 1799, RG 1, Vol. 187, p. 294, Vol. 188, p. 156, and Vol. 191, p. 8, and Attorney-General Brenton's account, 1781, RG 1, Vol. 221, No. 48.

80 See Shelburne Sessions records, PANS RG 60 [SH], Vol. 2.1, 20.3.

81 For Nesbitt see B. Murdoch, *A History of Nova-Scotia, or Acadie* (Halifax, 1865-67), Vol. 2, p. 315; Council minutes, 30 Jan. 1762, PANS RG 1, Vol. 188, pp. 293-94, and 6 Feb. 1769, *ibid.*, Vol. 189, p. 107. For Blowers see Innis et al., eds., *The Diary of Simeon Perkins* (Toronto, 1948-67), Vol. 2, p. 315.

82 See Account, 8 Nov. 1776, Chipman Papers, PANS MG 1, Vol. 183, No. 18; Council minutes, 16 Aug. 1780, RG 1, Vol. 189, p. 470; Account of William Snow, 1788, RG 39, Series C [HX], Vol. 54, No. 81k.

83 See Cahill, "Nova Scotia's Reception Law Jurisprudence," and the *cause célèbre* that became known as the "Justices Affair," detailed in Council minutes, PANS RG 1, Vol. 186, pp. 282 et seq., and *Halifax Gazette*, 21 April 1753.

1750s--and in Shelburne also, as that community looked to establish itself in the mid-1780s.[84]

While no judgment can be offered about the effectiveness of these policies, or indeed any assessment made as yet of the nature of crime and punishment in the colony in this period, one issue does bear analysis. For all that has been said about the introduction of the "Bloody Code" in the 1750s, and the enthusiasm for it, the fact remains that Nova Scotia quickly replaced its inherited structure of punishments with a rather different one, one much less reliant on the death sentence. That issue, which may or may not represent the "failure" of the vision of men like Belcher, is the subject of the final section of this paper.

The Criminal Law, 1758-1800: The Triumph of Localism and the Not So Bloody Code

The establishment of the Nova Scotia Legislature in 1758 represents a watershed in the history of the colony's criminal law, for that body's extensive statutory output included a variety of criminal law provisions which effectively substituted a local code for the English law that had prevailed until then. The major penal statute of 1758, the *Treasons and Felonies Act*, made capital without benefit of clergy a total of just fourteen offences: treason (which included a variety of counterfeiting offences), murder, maiming in certain ways, infanticide, rape (including statutory rape), burglary, robbery, housebreaking in certain circumstances, picking pockets, stealing an employer's goods worth forty shillings, buggery, making threats by anonymous letter, maliciously shooting at someone, and arson.[85] Grand larceny ("stealing in any other manner") and manslaughter were also denominated capital offences, but first-time offenders could claim benefit of clergy. The *Treasons and Felonies Act* also contained a few provisions

84 Halifax in the 1750s saw a very large number of men and women prosecuted—some 219 in the decade between 1749 and 1759, a figure which accounts for 30 per cent of the 723 prosecutions in the General and Supreme Courts down to 1800. Obviously this is a very high number indeed for the first decade of settlement. Even though prosecuted crime in Halifax in the 1750s, and indeed throughout the eighteenth century, was to a substantial degree the preserve of military personnel stationed in the town—just over half the defendants were soldiers and sailors -- the problem of order must have been starkly evident to the colony's governors. The source for these figures is my Halifax Serious Crime File - General and Supreme Courts: *supra*, note 28. For Shelburne see RG 60 [SH], *passim*, and M. Robertson, *King's Bounty: A History of Early Shelburne, Nova Scotia* (Halifax, 1983), ch. 8.

85 "An Act Relating to Treasons and Felonies," *Statutes of Nova Scotia*, 1758, c. 13.

dealing with non-capital crime. The punishment for petit larceny was set at a public whipping and either restitution or three months' imprisonment. Other provisions dealt with receiving stolen goods and with attempts to commit rape or buggery, while other 1758-59 statutes enumerated a variety of lesser offences, including forgery, enticing and assisting deserters, adultery, incest and polygamy, some coining offences and perjury. Punishments for these were generally corporal--whipping and the pillory--although fines and short terms of imprisonment were mandated in some instances.[86]

The 1758 statutes, especially the *Treasons and Felonies Act*, effectively established a distinct local code of criminal law. This is not to say that they represented the whole of the criminal law, for the common law was still in force and common law crimes such as assault, which are not mentioned in the Nova Scotia legislation, continued to be prosecuted in the courts and punished accordingly. Nor, in one sense, were the statutes obvious examples of "local" law-making, for the *Treasons and Felonies Act* in particular was comprised of a collection of major English statutory provisions cobbled together by Belcher and Charles Morris (chief justice of the Inferior Court of Common Pleas) and enacted as one, and there was but a single direct change to the substance of English law. All the offences made capital without benefit of clergy were also thus in English law, and there was a general congruence with the mother country on lesser punishments as well.[87] The significance of the 1758 legislation, however, appears in what it did not include. It contained far fewer non-clergyable felonies than were present in the law of England, and in particular it apparently greatly restricted the circumstances in which simple larceny would be converted into a capital offence by the removal of benefit of clergy. While there is no direct evidence about contemporary intentions--the statutes are silent, no record of debates has survived, and

86 "An Act to Prevent the Sale of Slop Cloathing, and for Punishing the Concealers or Harbourers of Seamen or Marines Deserting from the Royal Navy," "An Act Concerning Marriages, and Divorce, and for punishing Incest and Adultery, and declaring Polygamy to be Felony," and "An Act for Punishing Criminal Offenders," *Statutes of Nova Scotia*, 1758, cc. 12, 17 and 20.

87 The substantive change was an alteration in the division between petit and grand larceny, from one shilling in England to twenty shillings in Nova Scotia. The congruence with English legislation is easily established, for early editions of the Statutes ("Perpetual Acts") contain marginal notes inserted by Belcher giving references to the originals and, in some instances, to English cases and treatises. On Belcher's role see B. Murdoch, "On the Origins of Nova Scotia Law," in Barnes et al., eds., *Law in a Colonial Society*, p. 190, and his drafts in PANS MG 1, Vol. 1738, Nos. 106 and 109, which note some involvement by Charles Morris, who in 1764 became the junior puisne (or assistant) justice of the Supreme Court.

nothing in official or private correspondence sheds any light on the question--there are persuasive indications that this failure to enact other English laws was a deliberate repeal of those already in force. It is clear from *R.* v. *Young* that Belcher believed that the colony had the power to alter all pre-settlement English criminal law through its own legislature, provided there was no repugnancy to English law; it also appears to be a long-standing principle of reception law that passage of a comprehensive local code will repeal by exclusion English law, certainly English statute law, that is omitted from--but not necessarily inconsistent with--that code.[88] More importantly, a little more than a year before he drafted the local statutes Belcher knew that there was doubt about which laws were in force. In these circumstances, a man who intended that all laws should remain in force would surely have included such a general provision in the local legislation, particularly as he did not want the courts to "be left to the difficulty of Construing Statutes into Laws," and thereby to "in some measure become a Legislature."[89] Indeed, as we have seen, he did exactly thus for treason law by including a general clause incorporating all English statute law on the subject. Given this fact, it is surely reasonable to conclude that the failure to include generally all English non-clergyable felonies meant that they were being repealed in the colony by exclusion. Certainly the framers of a later amendment to the *Treasons and Felonies Act*, which added petit treason to the list of offences without clergy saw it this way, stating shortly that the amendment was necessary because the offence had been omitted from the 1758 legislation.[90] There is no reason to think that the laws governing petit treason had not been received in 1749 along with the rest of English criminal law, and if they had not been locally repealed by exclusion in 1758 the later statute would have been unnecessary.

Whether intended to do so or not, the 1758 legislation did render locally

88 Summary of Legal Arguments in *R.* v. *Young*, 1756, CO 217, Vol. 16, p. 138v; Cote, "Reception of English Law," pp. 81-82.

89 Belcher to Gridley, 1755, cited in Cahill, "Nova Scotia's Reception Law Jurisprudence," p. 13 (ms.).

90 "An Act in...Amendment of An Act relating to Treasons and Felonies," *Statutes of Nova Scotia*, 1768, c. 3, s. 3. Petit treason was a special designation given to the killing of a husband by a wife or a master by a servant, because these two relationships contained special duties of obedience. The substantial difference between murder and petit treason in England was that a wife convicted of the latter was executed by burning, not hanging, although this cruel death was modified in practice. The Nova Scotia statute makes no mention of the form of execution. See generally Beattie, *Crime and the Courts*, p. 79 and S. Gavigan, "Petit Treason in Eighteenth Century England: Women's Inequality Before the Law," *Canadian Journal of Women and the Law*, 3 (1989-90), pp. 335-74.

ineffective much of the law received in 1749. The record of the criminal courts demonstrates this, just as it shows the extent to which English law was in force in the 1750s. After 1758, for example, while the familiar indictment formula that the offence was "against the peace of our Lord the King" was retained in most cases, as it indicated the common law origin of the prohibition, where more than this was required the English formula "against the Statute," used in the 1750s, was frequently replaced by some reference to "the Act of this Province made and provided."[91] More importantly, the offences prosecuted after ca. 1760 in the Supreme Court demonstrate that English capital statutes were no longer being enforced. Using cases for which documentary evidence such as indictments and depositions taken by Justices of the Peace is available, it is possible to find numerous examples of persons charged with grand larceny on facts which amounted to a non-clergyable larceny under English law. Livestock offences provide one illustration: when Thomas Hurley and Henry Funright were accused of stealing a cow worth £5 in 1789, they were charged with grand larceny and convicted of that offence.[92] Shoplifting also disappeared from Nova Scotia law as a distinct form of larceny, happily for Spaniard Felix Cannew in 1760 and 1761 and Godfrey Hogg in 1789,[93] as did certain forms of housebreaking that were capital in England but not in Nova Scotia.[94]

Examples could be multiplied, but the point is that not one person was prosecuted for a non-clergyable offence created exclusively by an English statute between 1759 and 1800. The disappearance of so many English non-clergyable offences meant that while forty-two individuals had been charged with non-clergyable larcenies in Halifax between 1749 and 1758, only

91 This appears as early as 1759, in an indictment charging one Godfried Akron with burglary: PANS RG 39, Series C [HX], Vol. 3, No. 16. For other uses see generally RG 39, Series C [HX], Vols. 8 et seq., *passim*.

92 PANS RG 39, Series J, Vol. 2, p. 82, and Series C [HX], Vol. 56, Nos. 68a-68f. The charge is recorded as "felony," a not uncommon designation and one that invariably meant grand larceny. The accused were allowed to plead benefit of clergy. See also the cases of Thomas Hughes and Lovett Hardwell (1759), RG 39, Series J, Vol. 117 and Series C [HX], Vol. 3, Nos. 34a, 34b, 35a, 35b, 35d and 52c.

93 PANS RG 39, Series J, Vol. 2, p. 87, and Series C [HX], Vol. 3, Nos. 70b, 70c, 71a and 71d, and Vol. 56, Nos. 67b and 67c. Stealing goods worth more than five shillings from a shop was excluded from clergy by 10 & 11 Wm. 3, c. 23 (1699).

94 See the case of John Smith, 1773, in PANS RG 39, Series J, Vol. 1, pp. 218-19.

sixteen more were so charged between 1759 and 1800.[95] Some of this was certainly the result of the reluctance of prosecutors to invoke a capital charge, but it cannot all be attributed to that. The evidence from the work of the courts, I believe, conclusively demonstrates the exclusion, after ca. 1760, of formerly "received" English law.[96]

It should be stressed that this account of the change to local sources of law is, like the preceding discussion of reception in the 1750s, restricted to criminal law, for the status of English civil law, while full of uncertainty, does seem to have been different. This difference is exemplified by Beamish Murdoch, who partly justified the publication of his *Epitome of the Laws of Nova Scotia* on the fact that "much doubt exists as to the degree in which the English common or statute law are valid in this colony," yet had no doubt that local enactments regarding capital punishment were the whole of the law on that subject.[97] The difference may be explained by the principle of strict construction of penal statutes, or by the fact that local criminal statute law was a comprehensive code whereas local law in other areas was not. The most significant reason, however, was probably local objections to the widespread availability of capital punishment in English law, a matter I discuss in more detail below.

Given that so many English penal statutes removing benefit of clergy from

95 Halifax Serious Crime File: *supra*, note 28. These figures must be treated with a little caution, for in a number of cases recorded in PANS RG 39, Series J summaries the charge is given only as "felony." The evidence of depositions and indictments, as well as sentencing practices, however, have enabled me to establish that in the vast majority of these cases the charge was actually grand larceny. It may be that a very few additional non-clergyable larcenies were charged, but no more than that.

96 This does not mean that no English penal statutes were in force in the colony, for those in force *proprio vigore* (passed by Westminster explicitly for the colonies) were. We are nevertheless concerned here not with English legislation for the colonies but with the fate of English law received into the colony simply because it was English law, and the *proprio vigore* doctrine had very little effect on the criminal law; it added only piracy (which fell within the jurisdiction of the Court of Vice-Admiralty) to the list of crimes capital in Nova Scotia: see generally Cote, "Reception of English Law," pp. 31-32, for the distinction between received law and law in force *proprio vigore*.

97 Murdoch, *Epitome*, Vol. 1, p. 34, and Vol. 4, pp. 117 and 128-34. Murdoch's views on reception are discussed in P. V. Girard, "Themes and Variations in Early Canadian Legal Culture: Beamish Murdoch and his *Epitome of the Laws of Nova Scotia*," *Law and History Review* [forthcoming, 1993]. For the general problem of English statute law in force after 1758 see Cahill, "Nova Scotia's Reception Law Jurisprudence," pp. 14 *et seq.* (ms.).

particular offences were effectively repealed in 1758, we can obviously talk about a divergence in the nature of the criminal law between colony and imperium. There was a clear local preference for a "gentler" code, one nowhere near so reliant as English law on capital punishment. The change effected by the 1758 legislation, however, was only one part of a more general process of divergence from English law. By 1800 Nova Scotia's law had become even more radically different from England's because the colony did not receive any of the additional capital crimes enacted in England in the second half of the eighteenth century. Current reception doctrine stipulates that after the "reception date," which for Nova Scotia is generally agreed to be the date on which the legislature first met, English common law continues to be received but statute law does not, unless it is specifically made applicable to the colonies. Belcher agreed generally with this proposition, although it is impossible to tell whether he thought the crucial date was 1749 or 1758.[98] In any event, at least after the establishment of the legislature the vast body of additional non-clergyable offences created by the English parliament in the second half of the eighteenth century did not become the law of Nova Scotia.[99]

The radical post-1758 alteration in the criminal law suggests two conclusions: that the men who sat in the Assembly or voted for their representatives were far from enamoured of the widespread use of capital punishment, and that, in consequence, they possessed different attitudes towards the law, particularly towards capital punishment, from the members of the élite whose views have been canvassed. It is easy to see how all of this could have come about. A majority of the population of Halifax in the 1750s were New Englanders, and from the early 1760s New England settlers or their descendants spread white settlement throughout the colony.[100] They

98 Summary of Legal Arguments in *R. v. Young*, 1756, CO 217, Vol. 16, pp. 138v-139; Cote, "Reception of English Law," pp. 87-89. Reception dates and the rationales for them differ from colony to colony: see D.G. Bell, "A Note on the Reception of English Statutes in New Brunswick," *University of New Brunswick Law Journal*, 28 (1979), pp. 195-201.

99 For this legislative explosion see Hay, "Property, Authority and the Criminal Law," pp. 18-22, and L. Radzinowicz, *A History of English Criminal Law and Its Administration from 1750* (London, 1948-84), Vol. 1, Appendix 1. Note that Upper Canada did receive most of this legislative outpouring, for it inherited all of the English criminal law as of 1792: 40 Geo. 3, c. 1 (U.C.).

came from colonial societies which had themselves in large measure rejected the English approach, and which would in some cases soon become involved in campaigns for widespread abolition.[101] They changed the criminal law as they changed divorce law and inheritance law, and as they tried to change the structure of colonial governance.[102] This explanation of the substantial reduction in capital punishment is an entirely reasonable one, but unfortunately also one entirely without direct evidence to support it! There is no evidence, for example, of a local campaign for significant abolition in this period; not until after the Napoleonic Wars did that occur.[103] It is nonetheless possible to draw on the criminal statistics for some indirect evidence of attitudes towards capital punishment.

Firstly, juries had power within the criminal justice process, and seem particularly to have exercised it in the realm of capital punishment. They wished to condemn to death neither Young, nor Thornton et al., nor many others, and to have taken this protective attitude from the beginning. Between 1749 and 1759 only twenty of the seventy-nine individuals, a mere 25 per cent, charged with offences removed from benefit of clergy, were actually found guilty and thereby made liable to suffer the death penalty. The trend continued after 1760, just 33.6 per cent (63 of 187) being convicted and condemned,[104] although it should be noted that conviction rates were a little higher under the reformed (post-1758) code; perhaps grand and petit juries found the balance of punishments more legitimate from the 1760s. Frequent

100 See generally J.B. Brebner, *The Neutral Yankees of Nova Scotia: A Marginal Colony During the Revolutionary Years* (New York, 1937).

101 See Preyer, "Penal Measures," and D.B. Davis, "The Movement to Abolish Capital Punishment in America, 1787-1861," *American Historical Review*, 63 (1957), pp. 23-46.

102 K. Smith-Maynard, "Divorce in Nova Scotia, 1750-1890," in Girard and Phillips, eds., *Essays - Nova Scotia*; D.C. Harvey, "The Struggle for the New England Form of Township Government in Nova Scotia," Canadian Historical Association *Report*, (1933), pp. 15-22.

103 For this see J. Phillips, "The Reform of Nova Scotia Criminal Law, 1830-1841," paper presented to the Canadian Law in History Conference, Carleton University, Ottawa, 1987.

104 The source for these figures, and for those given in the following paragraph, is again my Halifax Serious Crime File: *supra*, note 28. I include among those not found guilty as charged all those who escaped either at the grand jury stage, at the trial stage because prosecutors or crown witnesses did not appear, or at the end of the trial through either a petit jury verdict of not guilty or one of guilty of a lesser, non-capital, offence.

refusals to convict on capital charges were, of course, common in the unreformed system both in England and wherever it was exported, but the trend seems a little more marked in Nova Scotia than, for example, in Beattie's study of eighteenth-century England.[105]

A second, and perhaps even clearer, indication of objections to the indiscriminate use of capital punishment is that, although there were fourteen capital offences "on the books" in 1758, there were effectively only five. From 1759 to 1800 89 per cent, or 170 of 191, of the capital charges tried in the Supreme Court were for murder, infanticide, rape, burglary and robbery. This fact alone would suggest an increasing reluctance to employ the capital sanction even for the reduced number of occasions on which it was available. That conclusion is supported by clear evidence that in some cases accused persons could have been charged with a non-clergyable larceny but were not. Martha Welch could have been charged with picking pockets in 1759, for that was how she acquired the watch of Walter Warren, a member of the crew of H.M.S. *Devonshire*, but she was presented to the Grand Jury on an indictment for grand larceny only. Similarly, there seems to have been plenty of evidence that Alice Wallace picked the pocket of John Fuller, enough to keep her in jail for over six months, but she was not tried.[106] It is impossible to quantify precisely the extent of this practice, but it does appear to have been relatively commonplace.

Thus, although wholesale reform of the criminal code would have to wait until 1841,[107] it does appear that decades before jurymen and prosecutors, public and private, voted on capital punishment by different means. These men, of course, were from the same social group as those who passed the laws in the Assembly. It is unfortunate that we cannot often hear the majority of Nova Scotia's eighteenth-century citizens speaking directly on the subject of capital punishment; they did so only in particular cases, when they petitioned the authorities for pardons.[108] They did speak indirectly, however, when they legislated a criminal code with far fewer capital offences than

105 Beattie, *Crime and the Courts*, ch. 8.

106 PANS RG 39, Series J, Vol. 117, and Series C [HX], Vol. 3, Nos. 42a, 42b, 50a, 50b and 65.

107 Phillips, "Reform of Nova Scotia Criminal Law."

108 Phillips, "Royal Pardon," esp. p. 13.

were contained in the law of England, and when as prosecutors and jurors they preferred non-capital larceny charges to capital ones. In doing so they espoused different values from those held by Belcher and his fellow oligarchs. It may be that attitudes towards the death sentence represented the greatest gap in understanding about the criminal law between officialdom and the majority of the population.

This is a straightforward and attractive picture, but it is marred in one respect. Between 1762 and the end of the century five additional non-clergyable felonies were placed on the statute-book. In a sense no new offence was created by the passage of the *Petit Treason Act* in 1768,[109] but the other four were genuine additions. One species of theft--looting at the scene of a fire in Halifax--was removed from clergy,[110] and three other disparate, non-clergyable felonies were created: maliciously breaking a dyke so as to cause flooding, returning to the colony though one were an expelled alien, and breaking quarantine regulations.[111] It might also be noted that the Assembly attempted to add two others, which were for different reasons disallowed in London,[112] and that additional non-clergyable felonies were still being created early in the nineteenth century.[113]

This legislative activity is clearly inconsistent with a complete rejection of

109 See *supra*, note 90.

110 *Statutes of Nova Scotia*, 1766, c. 1, s. 1; 1798, c. 1, s. 8; 1799, c. 3, s. 11.

111 "An Act for...punishing Thefts and Disorders at the time of Fire," "An Act Respecting Aliens coming into this Province, or residing therein," and "An Act...to prevent the spread of contagious Distempers," *Statutes of Nova Scotia*, 1766, c. 1, s. 1; 1798, c. 1, s. 8; 1799, c. 3, s. 11. All these are noted in Murdoch, *Epitome*, Vol. 4, pp. 129 and 132-35, as still in force in the early 1830s, although he believed that the quarantine provision was "perhaps repealed" by an 1832 statute.

112 "An Act for Taking Special Bails," *Statutes of Nova Scotia*, 1768, c. 7, s. 3 made felony without benefit of clergy the offence of impersonating another at a bail hearing. In 1771 this section was disallowed on the grounds that it was "of an unusual and sanguinary nature," and that there was "no reason" to go beyond English law in this matter: Lords of Trade to the King, 6 Feb. 1771, CO 218, Vol. 7, pp. 147-48. In 1776 counterfeiting provincial bonds was made a felony without benefit of clergy—the same as counterfeiting specie—and while London did not object to this, it had other concerns so the bill did not become law: see "An Act for Emitting Twenty Thousand Pounds...," PANS RG 5, Series U, Vol. 1, and Legal Opinion of Gascoyne *et al.*, 3 June 1776, RG 1, Vol. 32, No. 34.

113 The Halifax looting offence was later made non-clergyable if committed in Liverpool, Dartmouth and Pictou: "An Act in addition to...An Act for...punishing Thefts and Disorders at the time of Fire," *Statutes of Nova Scotia*, 1801, c. 1; 1820, c. 7; 1823, c. 34. In 1801 the offences of stealing goods worth forty shillings from a shipwreck and of damaging a ship so as to cause a wreck were made capital: "An Act for the Security of Navigation,...and for punishing persons who shall steal Shipwrecked Goods," *ibid.*, 1801, c. 4, ss. 1, 2 and 7.

capital punishment, but I do not claim that there was such a rejection. Rather, Nova Scotians wished to invoke the death sentence only on limited occasions, when it was considered necessary. In rejecting so much of English law, and in adding a few locally specific offences, they were forging their own definition of that necessity. Making capital offences of crimes such as looting after a fire and dyke-breaking likely reflected in turn particular concerns about the damage that accrued to North American wooden towns in this period, and the importance to the provincial economy of wetland agriculture on the Bay of Fundy marshes. Two other points should be made. First, adding petit treason to the statute-book hardly created a new offence, for it merely gave a different name to a particular species of murder. Secondly, it is quite possible that there was no intention of employing the ultimate sanction in these cases. Studies of the great and indiscriminate increase in non-clergyable offences in England in the eighteenth century have argued that this was often the case, that the death sentence was added as a result of the lack of alternatives in the pre-penitentiary era. It may have been that Nova Scotians wanted the deterrent value only of these provisions; it should be stressed that nobody appears ever to have been charged under any of these provisions in the eighteenth century, and certainly no one was ever sentenced to death as the result of a conviction.

Conclusion

The history of the evolution of Nova Scotia's criminal code in the eighteenth century is a complicated and, in some ways, a contradictory one. To make sense of it the historian must struggle with the complexities of reception theory, local practice and indigenous law-making. Three principal conclusions can nonetheless be elicited from this account. The first is that whatever the state of reception doctrine generally in the 1750s, and whatever the practice in Nova Scotia's civil courts or in the courts of the Thirteen Colonies, the rulers of the fourteenth chose in the pre-legislature period to enforce English law with all its trappings. They did so largely because they thought it was required, but their decision was also motivated by an inherited appreciation of the wider uses of that law. Secondly, English law as such did not remain long in force, the original code's reliance on the widespread availability of capital punishment being substantially reformed in theory and practice by this community of Anglo-Americans. The third conclusion, in part consequent on the first two, is that reform of the criminal law was likely

an area in which governing élite and middling classes did not agree. The Halifax élite introduced into the colony in the 1750s, and continued to foster in subsequent decades, attitudes to capital punishment that were rather different from those held by the majority of the population. Further research into the work of the criminal courts and other aspects of the criminal process will likely reveal nuances in this picture, not the least of which could be variations among communities. It does nonetheless appear that, whatever may have been the ideology of the ruling clique of Halifax officialdom, their vision ran up against the complex of values and practices that was eighteenth-century Nova Scotian society.

The Autobiography of Chief Justice Sir William Young, *aet.* 21

On 28 July 1820, when he attained his majority, William Young began to keep a journal: "I am this day 21 years of age," he wrote, " & have occupied part of it in preparing a sketch, to which I refer."[1] It is this youthfully candid autobiographical sketch which is transcribed and annotated below. The 12-page holograph, which forms part of an accrual to the Sir William Young fonds at the Public Archives of Nova Scotia, was recently donated to PANS by W. Borden Mackenzie of Kentville, a collateral descendant of the Chief Justice, who died without issue.

[1]

Nova Scotia Halifax July 28. 1820.

I am this day twenty one years of age and shall devote this afternoon to a concise & unadorned description of some particulars relating to myself, which it may not be improper to preserve. -- Had I adopted this practice every year I would now look back to the respective papers with much interest - and the present document in like manner may be a source of amusement perhaps of instruction at some distant period, while it leads me to review the precise extent of my attainments and thus operates as a stimulus to more systematic & extended efforts. --

I was born in Falkirk, Stirlingshire Scotland on the 28. of July 1799. A number of anecdotes at this moment crowd upon my recollection which occurred during my infancy but I hasten over these childish details to my seventh year when having completed the rudiments of my education in English, Penmanship & the first elements of Arithmetic I entered on the Latin language under Mr Gibson the Parish Clerk. He was a man of feeble capacity & of no address. He had never learnt the art of commanding the respect of his pupils & consequently they made little progress under his care. I remember that under my first master (Mr Young) I was full [2] of emulation & generally took the lead of my companions. Under Gibson I was no longer fired by the same energy and quietly resigned the first place to a tall plodding dull blockhead of the name of McVey (I think) from a neighbouring village. This is the only time I was ever satisfied with being second & I took pleasure

1 "Journal 1820," p. 1: MG 2, vol. 731, PANS. The definitive account is by J. M. Beck: "Young, Sir William," in *Dictionary of Canadian Biography* [*DCB*], vol. XI (1982), pp. 943-49; the article was written, however, without benefit of access to this authoritative early text and must therefore be partly revised in light of it. The best account of the adolescent mercantile career of the future Chief Justice remains D. C. Harvey, "Pre-Agricola John Young or a Compact Family in Search of Fortune," in *Collections* of the Nova Scotia Historical Society, vol. 32 (1959), pp. [125]-159.

in seeing the same McVey at College plunged in the obscurity to which the character of his intellect necessarily consigned him. -- When I was twelve years of age, my father[2] removed with his family to Glasgow & I began to keep the shop regularly to which I had always been occasionally confined. I preserved however what I had learnt of the Latin by taking private lessons three times a week from Mr John Johnstone. With this gentleman I began also the Greek & under his judicious management I made pretty rapid improvement. My father at this time was an importer of Yarns from Germany & Ireland & of flax from Holland - but as the trade had greatly declined in consequence of the restrictive measures of Bonaparte[3]

- we turned our thoughts to the establishment of a cotton manufactory - and as it was essential that one of us should understand the mechanical operations, I entered at the shop of Mr Kennedy a weaver in the suburbs & in nine months had acquired some dexterity in the art with a pretty correct knowledge of its principles. Circumstances however conspired to make us abandon all thoughts of the proposed manufactory & my [3] Father was induced by some favorable accounts from America to turn his thoughts in that direction. He had long been desirous of visiting Nova Scotia or the Canadas being anxious rather to see his family comfortably settled than for his own sake and he began to make the necessary preparations for emigrating to Halifax. As six months however must needs elapse before we could sail & as a younger brother[4] by this time could take charge of the business it was thought that I could not better employ that time than at College.[5] The Logic or first philosophy class was selected as most likely to give me habits of composition & general knowledge & accordingly I was received by Professor

2 See R. A. MacLean, "Young, John," in *DCB* VII (1988), 930-35.

3 These were collectively known as the "Continental System." The decrees of Berlin (Nov. 1806) and Milan (Dec. 1807) proclaimed a blockade of the British Isles and prohibited neutrals and French allies trading with the British.

4 See J. M. Beck, "Young, George Renny," in *DCB* VIII (1985), 955-59. G. R. Young was named for his maternal grandfather, George Renny, just as William was for his paternal grandfather.

5 Namely Glasgow University, whither his father had preceded him in 1790; [1813 A. D.] "Gulielmus Young Filius natu maximus Joannis Mercatoris in Urbe Glasguensi" ("William Young, eldest born son of John, merchant in the city of Glasgow"): W. I. Addison, comp., *The Matriculation Albums of the University of Glasgow from 1728 to 1858* (Glasgow, 1913), p. 268, entry no. 8762.

Jardine[6] in November 1813. At this time I was so far a Latin & Greek scholar that I could make out the meaning of the Aeneid & Iliad without much difficulty -- but I had never opened any other than the usual school books. All my reading had been hitherto of a desultory & unprofitable kind. I had read it is true a vast deal in every department of General Literature -- History Travels Poetry Biography & Novels without number. Hence I had obtained some ideas on almost every subject-- but nothing accurate far less profound. In the Class it was the system to have a lecture delivered to us every morning -- on which we underwent an examination at an after hour & were required to compose short essays three times a week on the subject-matter of the course. My first endeavours at this [4] task were most awkward as well as painful - but I was resolute to persevere & I could soon discover in myself a most rapid improvement. In Glasgow I was nearly a stranger & of the 200 boys whom the class comprehended I had scarcely an acquaintance. In that University it is the custom in the Language & Philosophy Classes for the young men to decide by their own votes the ten prizes which are allotted both to what is called the Senior & Junior side. One of these I was very ambitious to obtain but the period for collecting the suffrages was a few days posterior to the time at which we were to embark & a Student by absenting himself loses his claim. However I stated the case to the Professor & having given him in the last Essay required by the Rules he promised to mention that owing to the circumstances I was still allowed to compete & such of my fellow students as thought me worthy of it might include my name in their lists. The fleet lay a short time at the Cove of Cork waiting for convoy & I there received information that the Class had voted me the first prize almost unanimously -- a circumstance the more gratifying that I had never solicited a single vote.

We arrived in Halifax on the 30. of June 1814 -- and my father having assumed me as his partner & given me share in the business we opened store in Water Street under the firm of John Young & Co. Halifax was then in the height of its prosperity. The French & American wars had thrown in an immense abundance [5] of property in the prizes; & nothing was more easy

6 George Jardine (1742-1827), professor of logic at Glasgow University. "Jardine gave a more practical and less metaphysical turn to the teaching of his chair, established a system of daily examination, and bestowed infinite pains upon his classes, which rose from an average of fifty to one of nearly two hundred": "Jardine, George," in *Dictionary of National Biography*, vol. XXIX (1892), p. 250.

than to make money by speculating at prize sales. Most of the merchants had become wealthy -- wages had risen -- trade of course was brisk -- & we sold our goods with a handsome profit. Towards the end of the year Castine was taken by the British troops in the Penobscot; & being nearer the great American market it was expected that manufactures could be disposed of there to advantage. We had imported anew in the fall, & my father proceeded thither leaving me in charge of the business at home. In his first trip he did well. He returned, purchased largely in town, & having taken from our own stock whatever would suit set sail a second time. After his absence I continued to purchase & ship to his address -- but this speculation in the end was unfortunate. The news of the peace concluded in Decr [1814] stopped all sales at Castine, & my father found himself there with £6 or £7000 worth of goods - which no one was inclined to buy - besides the prospect of a large importation in the spring. However he bought a prize schooner & took, in exchange for British manufactures, whatever produce he could get. He shipped most of his goods to New York & came back to Halifax in the vessel. The produce sold well & we obtained a profit of £700 on the Schr. -- but we had still a large amount of property in New York - which it was necessary to look after. Accordingly I went thither in May 1815 & remained till Nov. I opened a Counting House & succeeded in selling all my goods to the extent of £5000, & took in exchange bills, cotton, ashes flour &c., & escaped without having made a single bad debt. I have never passed my time more agreeably than these 5 mos. in New York. The manners of the people were very much to my taste - the socy. is literary & intelligent - & the city itself is commodious & handsome. -- After this nothing remarkable occurred either in my own histy. nor in our business till the year 1818. Business by this time had wonderfully declined, & I went down to Che. Town P. Ed. Island, with a quantity of goods to try if I could effect Sales -- And it was in my absence (in July 1818) that my father began the letters of Agricola -- The great demand for fresh beef during the war & the immense quantities of prize flour thrown in had [**6**] discouraged the cultivation of white [*sic?*] crops in Nova Scotia - so much so that scarcely any of our agricultural settlements raised its own bread & we depended for subsistence altogether on the States. The ruinous effects of this system were every day becoming more visible - our dollars were sent to the States with such regular profusion that they had quite disappeared; & all men regarded the coming poverty & the approaching fate of Nova Scotia with melancholy forebodings. To my Father it was evident that nothing could save us - but a vigorous attention to agriculture. He

therefore assumed the signature of Agricola, & entered upon a regular series of letters in the A[cadia]n Recorder. The prejudices to be overcome were numerous & obstinate - the indifference & the incredible ignorance of the community he was addressing were sufficiently discouraging, & by the higher orders the attempt was regarded as hopeless & even ridiculous -- But the unconquerable perseverance of Agricola was not to be shaken. He combatted the absurd idea which had become universal that our climate was incapable of ripening the bread corns - he descanted on the richness & diversity of our soils - demonstrated the superiority of our natural advantages by contrasting them with those of GB & of other countries - & attributed our agued[?] supineness & poverty to the force of prejudice & the want of skill in our farmers. At that time the Drill system & machinery, & the Rotation of crops had not been even heard of in N. Scotia - no man thought of increasing or saving his manure - & the annual produce from our most fertile marshes did not exceed £3 to £4 worth of Hay. The next measure which Agrica. adopted was to address by letter (still in his anonymous name) all the leading characters who could support his views, & to urge the formation of Agricl. Societies. The public mind gradually yielded under the pressure of this repeated application - & when success once began to be visible, it was most rapid & effectual. To this the Lt. Gov. the Earl of Dalhousie contributed a good deal by his personal influence.[7] He was one of the most [7] regular & zealous of Agricola's correspondents; & altho' he did not as yet appear in public, supported him well in private society. The first agricultural association was formed at Colchester in Octr. [1818] -- the example was soon imitated in the other Counties - & by the middle of Decr., Eleven were in operation & had ranged themselves under the banners of the unknown writer, who was the moving spring of the whole vast machine. It was now thought a proper time to constitute the Central Board in Halifax; and accordingly a Public Meeting was convened at which the Earl took the chair. It was numerously attended; & more than £700 was subscribed towards the funds of the Institution.[8] When the Legislature met in March [1819] the Board was

7 See P. Burroughs, "Ramsay, George, 9th Earl of Dalhousie," in *DCB* VII (1988), 723.

8 B. Murdoch, *A History of Nova-Scotia, or Acadie*, vol. III (Halifax, 1867), p. 423; T. B. Akins, *History of Halifax City*, in *Collections* of the Nova Scotia Historical Society, vol. 8 (1895), p. 186; M. Cumming, "The Junius of Nova Scotia," in *Dalhousie Review*, III, 1 (April 1923), [53]-60.

incorporated by Charter[9] - the House voted £1500 to be expended by the Directors[10] - & my Father made his appearance & was appointed Secretary in April.[11]--

This singular event altered the views & station of the family; & as trade was in a wretched state, we determined to abandon it. My father found it was necessary, beside, to the full success of his plan that he should practically illustrate the new doctrines he had taught; & he bought Willowpark containing 35 (now 61) acres of Land within two miles of the town. On the front lot is a handsome house, where we have since resided, & in which I am now writing.[12] My own views were no less changed by circumstances - but till now I have been unavoidably occupied in winding up our business & selling our remaining stock. It was only the last month that I could shut up shop finally. -- I have now resolved to embrace the Law as a profession, & have this day concluded an agreement to that effect. By a Provincial Statute five years service to an Atty. of the Supreme Court are a necessary preparative to [8] admission at the Bar[13] - & I have selected Messrs. Chs. & Samuel Fairbanks[14] as the gentlemen with whom I shall study. Altho' my Indenture is made out for the usual time, I have bound myself only for one year, till we see how far our connection is mutually agreeable. For the year they are to allow me £30 salary & to receive no premium - & during the currency of the second year, in case I remain with them & that I should be competent & willing to practice in one of the country towns, they have engaged to allow me one half of the net profits arising out of the business there. --

9 *Stats. N. S.* (1819) 59 Geo. 3, c. 13: "An ACT for the encouragement of Agriculture, and Rural Economy, in this Province."

10 *Stats. N. S.* (1819) 59 Geo. 3, c. 8 [p. 363].

11 See J. S. Martell, *The Achievements of Agricola and the Agricultural Societies 1818-25*: *Bulletin* of the Public Archives of Nova Scotia, Vol. II, No. 2 (1940).

12 It stood on the southwest corner of Windsor and Almon Streets, and was afterwards the Halifax residence of Prime Minister Sir John S. D. Thompson: P. B. Waite, *The Man from Halifax: Sir John Thompson, Prime Minister* (Toronto, 1985), p. 32.

13 *Stats. N. S.* (1811) 51 Geo. 3, c. 3.

14 Charles Rufus Fairbanks (1790-1841) and his brother Samuel Prescott Fairbanks (1795-1882). The former was one of the incorporators of the Central Board of Agriculture.

I have also agreed with Messrs. Holland & Co to take the management of the Recorder till the 1. August 1821 - to correct the communications - select matter for extracts - & prepare the Editorial Remarks - for which services they are to pay me One Hundred Pounds. I enter upon this duty next week. -- Such is my past history & my present situation. I proceed shortly to sketch my own character & understanding - such as I believe them to be: and as this paper is intended for no use for [sic] my own, I shall be quite impartial, that I may enjoy the after benefit of comparison. --

Nature has designed me to be short in stature. I am 5 feet 7 inches: & it is not likely that I will ever be taller. I am well enough made - not handsome - rather thick - my features regular - their expression nowise remarkable. They would denote, however, a more mature age. My constitution is perfectly sound: I never had a week's sickness together in my life. -- So much for the body: now for the mind & morals.

From the unavoidable & long interruption [9] of regular study, which the nature of my pursuits has imposed, I have advanced slowly since I left College. In 1815 I was a better linguist than I now am. At present I can read Cicero's Orations with tolerable ease. The Aeneid I find it difficult to translate: & Tacitus or Horace I question if I could read at all, so as clearly to comprehend their meaning. -- In Greek, again, I could at one period render the Iliad or Lucian pretty fluently - now I have so entirely forgotten it, that even the letters have escaped my recollection. The French I have acquired here - & many of the best authors, Voltaire, Fenelon, Mannontel, Rousseau, St Pierre, are familiar to Me - that is I can read them with the assistance of a Dictionary - once or twice perhaps in a page. About a year ago, I turned my attention under M. Perro[15] to the grammatical construction of the language & became tolerable proficient. I could prepare the Exercises with much accuracy, but did not attempt any connected piece of composition. [Ano]ther 3 mos. would have fitted me for achieving this higher task. -- In the Sciences I have every thing to acquire. I have studied none of them, except a little Mathematics - & there only the Elements of Geometry. On General Subjects I am, what the world would call, well-informed. My reading has been extensive & various. There is scarcely an English author of any note in General Literature, with whom I am not acquainted - Dr. Johnson, Addison,

15 See *Novascotian* (Halifax), 21 June 1832, p. 199, col. 4.

Swift, Sterne, Fielding, Smollett, Goldsmith, Pope, Shakespeare - Travels - Biography - & all the modern poets & novelists. [10] There are a few works of eminence, which I have perused repeatedly & with attention - Robertson's, Rollin's & Hume's Histories, Hume's Essays - Blair's Lectures - almost the whole of the Edinburgh Review - & particularly Paley's Evidences of Christianity & Smith's Wealth of Nations. However I have read chiefly for amusement - what was less attractive to a young mind & would afford instruction merely I have too much neglected. -- My opinions on speculative subjects I have derived mostly from my father - altho' I have also been at some pains to investigate their truth or falsity. When attacked, unless by a very able or subtle opponent, I can defend them. My religious opinions are fixed, probably for life. I have entertained the same which I now hold for these three years past.[16] -- The general character of my mind is on the whole showy but superficial. My style of language is fluent - sometimes approaching to eloquence - & in conversation appears to advantage. My chief ambition has been aimed at the power & habit of composition; yet I am greatly dissatisfied with my progress. My style is not easy, nor graceful tho' sometimes vigorous. It's principal want is simplicity. Age may supply it.

Such, I believe, are all my attainments. Considering my age, the list is disgracefully short - considering my opportunities, I have less reason to reproach myself. Next year, & the succeeding years my deficiencies I trust [11] will be repaired: & I shall be able to describe myself more according to my wishes. That passionate desire of distinction, which burns within me, is an idle flame, if it does not inspirit me to increasing & judicious efforts.

As regards my morals, my character is free from vice. I was never tipsy in my life - would despise the meanness of a falsehood - & have preserved a sound constitution. My temper is less commendable. The faults which I detect in myself are attributable to it. For the most part, it is under sufficient restraint - but it some times breaks out into violence. It is far from pliable, nearly unbending. It is however affectionate - won easily & retained by Kindness. My family - my mother especially[17] - I love with an entire

16 Though a lifelong Presbyterian, Young was to marry a Roman Catholic, Anne Tobin, in Aug. 1830—the ceremony being performed by the Church of England archdeacon!

17 Mrs. John Young, the former Agnes Renny, died 29 July 1863, *aet.* 84. She lived long enough to see her son reach the pinnacle of his profession by becoming Chief Justice of Nova Scotia in 1860.

affection. They tell me I am proud. This is true so far, that I could not endure disgrace. If I could not walk the streets with an erect countenance, I would retreat into solitude. That I am not proud of myself - so as to be vain - is a matter of which I can judge from my own internal feeling. How the fact stands, this paper will attest. In my own opinion I am deficient in self-confidence. At any Public Meeting, where I have occasion to speak, my heart beats & I become confused, altho' I am [12] conscious that I understand thoroughly what I am going to express - & that I have words at command. Such is & always has been my feeling - both on such occasions & in mixed society. When I see Men - inferior to me in the power of expression & of thought, conduct themselves with easy composure, I conclude that they are either more vain or less solicitous of their reputation for sense, than nature has made Me. -- My address & manner in company are frank & open to my acquaintance - but to strangers are awkward - & said to be stiff. To the little elegancies of life - in carving, dressing &c - I am sensible that I have not attended enough - & it is this consciousness which makes me uneasy. I am aware, however, that a successful Barrister must be a polite as well as a learned man - a man of the world no less than a Student.[18] --

If this picture, which I have drawn of myself be not a faithful likeness, I have erred unintentionally.

Halifax July 28. 1820.

18 William Young was called to the bar of Nova Scotia in Oct. 1826. His surviving younger brothers, George Renny and Charles, also both became lawyers. William omitted to mention that another brother, John Young *fils*, had died in Jan. 1819, *aet.* 14.

James Tory: A Scottish Loyalist and His Descendants

Raymond E. Torrey

There are several variations of the surname Tory, including Torey, Torry, Torrey and Torrie. Many Torys are found in and around the Islay area. The name and its variants are scattered throughout Scotland, appearing in Kincardineshire, Fifeshire, Dumfrieshire, Nairnshire, Aberdeen and other regions. The Torys were followers of the Campbells of Cawdor.[1]

James Tory was a Scot and a High Church Episcopalian and is believed to have come from Aberdeen. His father, also James Tory, had been a follower of Prince Charles Edward Stuart (Bonnie Prince Charlie), the son of James III, and was in the defeated army at Culloden, 16 April 1746. Many of the followers were captured and shot, but James Tory Sr. escaped.[2]

James Tory Jr. left his homeland in 1770[3] and sailed the broad Atlantic to what perhaps he thought would be the promised land, the British Colonies in America. Possibly he arrived via Cape Fear, North Carolina, which was one of the landing sites for Carolina-bound immigrants, although some did land in New York and made their way south by land or by vessel.

Loyalists claims dated 5 April 1784 (apparently submitted while at Port Mouton) and 5 July 1784 (submitted after arrival at Guysborough) state that Tory had settled at Cross Creek, now Fayetteville, Cumberland County, North Carolina. He brought with him about £30, bought 100 acres of land, took up 400 more, and settled down to the task of clearing his land. He had about fifteen acres cleared and a good house built when the War of the American Revolution began.

Many colonists wanted to become independent of Britain, while others wished to remain loyal subjects. James Tory chose to be a Loyalist, so therefore joined the British at Cross Creek in 1776. He held no regimental commission, but was working with the Commissary General's Department, possibly with the Royal 71st Regiment or with the Royal North Carolina Regiment, which he had spoken of joining.[4]

1 Dr. George F. Black, *The Surnames Of Scotland, Their Origin, Meaning and History* (New York, 1943-46), p. 775.

2 John A. Morrison, "Down Guysborough Way", in *Guysborough County Advocate*, 16 Mar. 1945, p. 51.

3 North Carolina Loyalist Claims, MG 14, AO12, #342, Public Archives of Nova Scotia [hereafter PANS].

4 North Carolina Loyalist Claims, AO12, Vol. 100, pp. 342, 347 (mfm.), PANS; Registry of Deeds, Cumberland Co., North Carolina, Strother Map of 1808.

Tory remained with the military throughout the war. According to his subsequent claims, his wife was dead and he had three children living in North Carolina. He had not enough money to support them while working as a cooper, so was granted from the Crown an allowance of £15 per annum at the war's end. His parents were still living, whether in North Carolina or in Scotland is not known, neither is it known what happened to his three children, for they did not come with him to Nova Scotia.[5]

The war was long, harsh and bitter, covering the entire eastern seaboard from Nova Scotia to Florida; fierce battles were fought, the worst being in the Carolinas; brother fought brother, father fought son. In 1783 peace was declared and the Thirteen Colonies became the United States of America. The successful Patriots chased the Loyalists from the country, many of whom went back to England, some to the West Indies, and others to the remaining British colonies in North America. As for James Tory, Nova Scotia was to become his new home.

During the year 1783, demobilized regiments and civilian Loyalists congregated in New York City, some among them forming that group known as the Associated Departments of the Army and Navy which was making ready for evacuation to Port Mouton, on the rugged south shore of Nova Scotia. This group was among the last to leave New York.[6] Ships had been dispatched from Britain to carry to the northern colonies the men, their families and what few possessions they had left. Colonel Robert Molleson, former Wagon Master General, and his assistant, Thomas Cutler, were in charge of the Associated Departments during the journey from New York, and their names appear frequently in the historical records of the early community, which was renamed Guysborough upon their arrival, in honour of Sir Guy Carleton.[7]

Port Mouton was a great disappointment. It was bleak, rocky and barren, a far cry from what was needed and wanted in order to farm as the Loyalists had wished. As mentioned earlier, it was in Port Mouton that James Tory

5 AO12, Vol. 100, pp. 342, 347 (mfm.), PANS.

6 Harry Bruce, *Down Home* (Toronto, 1988), p. 15; A.C. Jost, *Guysborough Sketches and Essays* (Kentville, 1950), pp. 139, 237.

7 M. Marie Woodworth, *The Early History of Port Mouton* (Liverpool, 1983), p. 9.

apparently first applied for financial assistance to supplement his income while working as a cooper, making and repairing barrels and casks that were needed for the fishing industry, the main source of income for the new settlement.

In the spring of 1784 disaster struck, in the shape of a fire which almost completely destroyed the settlement. Only two houses, still standing today, were saved. A ship with provisions was dispatched from Halifax for the needy settlers, who were homeless and without food. Soon after, Colonel Molleson acquired several vessels, with which on 6 June 1784 he and the majority of the inhabitants set sail for Chedabucto Bay, taking with them the name of Guysborough.[8]

In mid-June 1784, they arrived at their destination. Clearings had been cut and log huts built along the shoreline of the bay by the Duke of Cumberland's Regiment, which had arrived less than a month earlier.[9] Surveyors were busy laying out lines dividing the land into blocks for allocation amongst the settlers. So once again came the task of building, for almost all had been lost between the war and the tragic fire at Port Mouton. The Associated Departments of the Army and Navy settlers were assigned lots farther up the Milford Haven (Guysborough) River, in the North East Division, situated in the North Intervale in a huge tract conveyed to Nathan Hubbill and various other grantees.[10] James Tory was granted lot 13 in Block K, June 1785, and also a backland lot, number 205.[11]

Records show that Tory also received a portion of land at the formal setting apart of the town plot of Guysborough in August 1790.[12] It was around this time that he changed the spelling of his surname from Tory to

8 *Ibid.*, p. 7. The lists of Loyalist settlers who arrived at Port Mouton from 1783-86 are incomplete.

9 Jost, *Guysborough Sketches*, p. 139.

10 *Ibid.*, p. 141.

11 Manchester Township Book, MG 4, Vol. 109, p. 109, PANS. The land granted originally to James Tory in 1785, is owned today (September 1989), by one Leonard Connelly (personal interview).

12 Harriet Cunningham Hart, *History of the County of Guysborough, Nova Scotia* (Belleville, Ont., 1975), p. 212.

Torey. He is credited with having founded the family in Guysborough.[13] In earlier years the surname and its variants were fairly common in Guysborough and surrounding areas, but today there are only a few families left who use the original Tory surname, or one of its variants, and who are descendants of James Tory the Scottish Loyalist.

Note: The spellings *Torey* and *Torrey* have been used throughout this genealogical sketch where it has been discovered through research that certain descendants of James Tory used or are using one of these variations; otherwise, Tory will be used in accordance with references. James Tory changed his surname to Torey *ca.* 1790.

1 James[1] Torey, d. 1835. According to his Loyalist petition, his first wife was d. by 1784; his next wife, Christine **Kirke**, d. 12 Jan. 1807, aged 60 years. He m. again, Christine **Chisholm**, 22 June 1808; no children by this wife. James Torey and both Nova Scotian wives are believed to be bur. in St. James's Cemetery, North Intervale, Guys. Co.
Issue of James and Christine (Kirke) Torey:
- i. Alexander B., b. 17 Mar. 1786; d. 30 July 1790.
- 2 ii. Jane, b. 2 Nov. 1787; m. Isaac **Lawson**, 11 Dec. 1805.
- 3 iii. Janet, b. 21 Dec. 1789; m. Thomas J. **Morris**, 19 Jan. 1808.
- 4 iv. James Jr., b. 5 Apr. 1791; d. 28 Aug. 1877; m. Elizabeth **MacKenzie**, 18 Dec. 1816.
- v. Christine, b. 1792; no further information.
- 5 vi. Henry, b. 18 Feb. 1794; d. 1881; m. Ann **Dieckoff**, 13 Feb. 1816.
- vii. John, b. 2 Sept. 1796; d. 1822.

References: Guysborough Co. Genealogies, Reel 1, Section 2, PANS; Jost, *Guysborough Sketches*, p. 347; Morrison, *Down Guysborough Way*, p. 51; property conveyances to James Torey are in Registry of Deeds, Guys. Co., Vol. B, pp. 52, 535, Vol. C, pp. 273, 349, 350, Vol. D, pp. 196, 426; Boylston United Church Cemetery.

2 Jane[2] Tory (James[1]), b. 2 Nov. 1787; m. Isaac **Lawson**, 11 Dec. 1805. He was b. 17 Nov. 1785, son of William and Martha Lawson. They lived

13 Dr. A. C. Jost Collection, Guysborough County Genealogies: Associated Departments of the Army and Navy; PANS MG 4, Vol. 38 (mfm.).

at Manchester, Guys. Co.

Issue of Isaac and Jane (Tory) **Lawson**:

i. Christine, b. 12 Oct. 1806; d. 2 Dec. 1870; m. Abner **Myers**. He was b. 1799; d. 8 Jul. 1874, son of Charles and Panthia (Hart) Myers.

Reference: Morrison, *Down Guysborough Way*, p. 63.

3 Janet[2] Tory (James[1]), b. 21 Dec. 1789; m. Thomas J. **Morris**, 19 Jan. 1808. He was the son of Richard Morris. They moved to the U.S. after their children were grown.

Issue of Thomas James and Janet (Tory) **Morris**:

i. Christine, b. 25 Jan. 1809.
ii. Margaret, b. 8 Mar. 1814.
iii. Jane Bridgett, b. 29 Sept. 1816.
iv. Thomas, b. 15 Jan. 1824.

Reference: Morrison, *Down Guysborough Way*, p. 63.

4 James[2] Torey Jr. (James[1]), b. 5 Apr. 1791; d. 28 Aug. 1877; m. Elizabeth **MacKenzie**, 18 Dec. 1816. She was b. Guysborough, 1797; d. 5 Feb. 1879; daug. of James and Hannah (Larrabee) MacKenzie. James Torey Jr. lived on the Torey farm at the Intervale. He was a loyal supporter of the Church of England, and in politics was a Conservative.

Issue of James Jr. and Elizabeth (MacKenzie) Torey (possibly incomplete and/or out of sequence):

6 i. James Alexander, b. 26 July 1818; m. Elizabeth **MacGregor**, 1850.
ii. Priscilla, b. 1819; d. 1836.
7 iii. William, b. 13 Dec. 1822; m. Margaret **Sellars**.
8 iv. John Henry, b. 19 June 1824; m. Elizabeth **Brymer**, 4 Jan. 1847.
9 v. Alexander George, b. 14 Feb. 1828; m. Sarah Diana **Whitman**.
10 vi. George Isaiah, b. 13 Apr. 1830; m. Eleanor **MacPherson**, 16 Jan. 1866.
11 vii. Jane, b. 29 Aug. 1831; m. William Thomas **Sceles**, 21 Aug. 1863.
12 viii. Elizabeth, b. 31 May 1835; m. William Fred **MacDonald**, 31 Oct. 1866.
13 ix. Christina, b. 4 July 1837; m. William **Grant**, 1 Jan. 1853.

References: Jost, *Guysborough Sketches*, p. 347; Morrison, *Down Guysborough Way*, p. 52; Township Records of Guysborough, PANS;

Registry of Deeds, Guys. Co., Vol. F, p. 253; RG 7, Vol. 2, #105, PANS.

5 Henry[2] Torey (James[1]), b. 18 Feb. 1794; d. 10 Jan. 1881; m. Ann **Dieckoff**, 13 Feb. 1816. She was b. Jan. 1798; d. 12 Apr. 1874, daug. of Herman and Elizabeth (Marshall) Dieckoff. Henry Torey left the Intervale in 1816 at the time of his marriage, and settled in the section now called Port Shoreham. He took up a large acreage which in late years he divided with his sons. He occupied the homestead property passed to his son Robert Kirk Tory. The place is now occupied by his great-great-grandson Clayton Hart, who traces descent through Henry's daughter Elizabeth (Torey) Brown. During the War of 1812, Henry Torey joined the militia and was stationed at Fort Point, as was his brother James. Henry and Ann Torey are bur. in Boylston United Church Cemetery.

Issue of Henry and Ann (Dieckoff) Torey:

14 i. Christine Eleanor, b. 28 Nov. 1816; m. first, Isaac **Andrews**, 31 Jan. 1837; secondly, date unk., Dennis **Atwater**.

15 ii. James Alexander, b. 18 Jan. 1818 (Jost, *Guysborough Sketches*, gives 9 Aug. 1823); m. 3 Aug. 1847, Hannah Ross **Morgan**.

16 iii. Jane Isabella, b. 21 June 1819; m. David **Andrews**.

17 iv. Elizabeth, b. 10 Mar. 1822; m. Isaiah **Brown**.

18 v. Marianne, b. 23 Nov. 1825; m. John **Lipsett**.

vi. Henry, b. 25 Aug. 1827; m. Ann **Morgan**.

vii. Janette Amelia, b. 3 June 1830.

19 viii. John William, b. 9 Apr. 1833; m. Sarah **Hull**, 26 Jan. 1859.

ix. Susan, b. Aug. 1834.

20 x. Robert Kirk, b. 3 June 1838; m. Anorah **Ferguson**, 29 Dec. 1861.

21 xi Joseph, b. 24 Oct. 1840; d. 18 July 1897; m. Letitia **Kirby**, 20 Sept. 1864.

References: Morrison, *Down Guysborough Way*, p. 58; United Church Cemetery, Boylston; Jost, *Guysborough Sketches*, p. 347.

6 James Alexander[3] Tory (James[2], James[1]), b. 26 July 1818; m. Elizabeth **MacGregor**, 1850, daug. of Donald and Eleanor (Hadley) MacGregor. She was b. 7 Apr. 1828; d. 1918, Guysborough. He had a love of the sea, and when the Reciprocity Treaty between the United States and Canada was terminated, he was the captain of a vessel for the protection of Canadian fisheries. He was a loyal Churchman, as also were his father

and grandfather.

Issue of James Alexander and Elizabeth (MacGregor) Tory:

22 i. Sophia Cutler, b. 1851; m. Henry Pope **Mulhall**, 1873.
23 ii. Julia Eliza, b. 1853; m. Samuel Bradford **Matthews**, 1871.
24 iii. Florence McGregor, b. 1856; m. James **Grant**.
25 iv. Eva Gertrude, b. 1858; m. Lawrence Henry **Hartshorne**.
26 v. Stanley, b. 1860; m. Madelaine **Clare**, 1889.
27 vi. Annie Laurie, b. 1862; m. Alfred Kimball **White**, 1907.
vii. Clarence Everett, b. 1865.
28 viii. Havelock, b. 1867; m. Minnie **DesBarres**, 1906.

Reference: Morrison, *Down Guysborough Way*, p. 52.

7 William[3] Tory (James[2], James[1]), b. 13 Dec. 1822; m. Margaret **Sellars**. He was born at Guysborough Intervale and lived on the old homestead. She was b. 17 Sept. 1827, daug. of Donald and Isabelle (MacKenzie) Sellars.

Issue of William and Margaret (Sellars) Tory:

i. Martha, b. 8 July 1856; d. 12 June 1860.
ii. Arthur Edgar.
iii. Margaret Elizabeth.
iv. Isabelle Ann, b. 28 Mar. 1860; d. 31 Mar. 1861.
v. James William.
29 vi. Charles Alexander.
30 vii. George Clement.
viii. Daniel.
ix. Adeline Jane.

Reference: Morrison, *Down Guysborough Way*, p. 54.

8 John Henry[3] Tory (James[2], James[1]), b. 19 June 1824; m. Elizabeth **Brymer**, 4 Jan. 1847. She was b. 1 Nov. 1821; d. 12 Jan. 1865, daug. of Alexander and Christine Brymer. They lived in Haverhill, Mass., where he was a contractor and carpenter.

Issue of John Henry and Elizabeth (Brymer) Tory:

i. Elmira Emeline.
31 ii. Emma Alma, b. 18 Oct. 1854; m. William G. **Simpson**.
iii. James Alexander.
iv. Henry Levi.
v. Christine Minnie, b. 11 Dec. 1861; m. Arthur E. **Tory**, son of William and Elizabeth Abigail Tory. Following her death, he

m. secondly, 4 Feb. 1868, Sophia **Brymer** and had issue: Tillie; Lillian Miriam, b. 7 Aug. 1872 at Georgetown, P.E.I.; and Jane, m. Mr. **Hansen**, Omaha, Neb., and d. there.

Reference: Morrison, *Down Guysborough Way*, p. 55.

9 Alexander George[3] Tory (James[2], James[1]), b. 14 Feb. 1828; m. Sarah Diana **Whitman**, who was b. 24 Feb. 1836 and d. 1927, daug. of Ira and Elsie (Ross) Whitman. Alexander Tory was b. at Guysborough Intervale and d. at Manchester, 15 Dec. 1907. He was a carriage manufacturer at Guysborough.

Issue of Alexander and Sarah (Whitman) Tory:

32 i. Edgar James.
ii. Carrie Alice.
33 iii. Howard H., b. 24 Dec. 1864; m. and a dentist in Philadelphia.
34 iv. Wilbur Whitman, b. 18 July 1869; studied medicine at the University of Pennsylvania.
v. Lewis E., b. 22 Dec. 1872.
vi. Frederick, b. 1875.
vii. Roy, b. 1880.

Reference: Morrison, *Down Guysborough Way*, p. 52.

10 George Isaiah[3] Tory (James[2], James[1]), b. 13 Apr. 1830; m. Eleanor **MacPherson**, 16 Jan. 1866. He lived at Milford Haven, about ten miles from the old homestead, was a millwright and lumber dealer. She was b. 19 Apr. 1839, daug. of Hibbert and Nancy MacPherson.

Issue of George Isaiah and Eleanor (MacPherson) Tory:

i. Charles, went to U.S.A.
ii. John, went to U.S.A.
iii. Louise, m. Levi **Hadley** of Guysborough and went to U.S.A.

Reference: Morrison, *Down Guysborough Way*, p. 57.

11 Jane[3] Tory (James[2], James[1]), b. 29 Aug. 1831; m. William Thomas **Sceles**, 21 Aug. 1863. He was b. 21 Feb. 1831, a shipbuilder, son of Thomas and Elizabeth Sceles.

Issue of Thomas and Jane (Tory) Sceles:

i. William James, b. 5 Oct. 1867.
ii. John Josiah, b. 28 Feb. 1873.
iii. Annie Carrie, b. 19 Feb. 1875.
iv. Ernst, b. 16 Aug. 1883.

Reference: Morrison, *Down Guysborough Way*, p. 57.

12 Elizabeth[3] Tory (James[2], James[1]), b. 31 May 1835; m. William Fred **MacDonald**, 31 Oct. 1866, at Manchester.

Issue of William Fred and Elizabeth (Tory) MacDonald:

i. James.
ii. Henry.
iii. William.
iv. Elizabeth.

Reference: Morrison, *Down Guysborough Way*, p. 57.

13 Christina[3] Tory (James[2], James[1]), b. 4 July 1837; m. William **Grant**, 1 Jan. 1853.

Issue of William and Christina (Tory) Grant:

i. Cynthia Jane, b. 12 July 1854; m. Henry H. **Simpson**, 1874.
ii. William Henry, b. 25 Dec. 1855.
iii. John Edward, b. 10 Aug. 1858; m. Manila **Horton**, 3 Oct. 1881.

Reference: Morrison, *Down Guysborough Way*, p. 58.

14 Christine Eleanor[3] Tory (Henry[2], James1), b. 28 Nov. 1816; m. first, Isaac Andrews, 31 Jan. 1837. He was b. 4 Feb. 1812, son of Isaac and Lydia **Andrews**. Christine Tory married secondly, Dennis **Atwater** and had a son William, who was a police officer at Salem, Mass. Mrs. Atwater lived with this son in her later years until her death in 1905.

Issue of David and Christine (Tory) Andrews:

i. James.
ii. Henry.
iii. Eunice.

Reference: Morrison, *Down Guysborough Way*, p. 58.

15 James Alexander[3] Tory (Henry[2], James[1]), b. 18 Jan. 1818; m. Hannah Ross **Morgan**, 6 Aug. 1847. He was a farmer and lived at Port Shoreham; d. Aug. 1861. She was b. Apr. 1823; d. 8 Apr. 1875; daug. of Charles and Ann Morgan.

Issue of James Alexander and Hannah Ross (Morgan) Tory:

i. Henry Alfred, b. July 1848; d. Aug. 1872.
35 ii. Sarah Jane, b. 23 May 1854; d. 10 Feb. 1902.
iii. Martha Emma, b. 31 Jan. 1852; unm.
iv. Charles, b. Feb. 1857; drowned at sea.
v. George Josiah, b. 5 Apr. 1858.
vi. Robert Kirk, b. 19 Apr. 1860; drowned at sea.
vii. James Alexander, b. 2 July 1866; left N.S.

Reference: Morrison, *Down Guysborough Way*, p. 59.

16 Jane Isabella[3] Tory (Henry[2], James[1]), b. 21 June 1819; m. David **Andrews**, son of Isaac and Lydia Andrews.
Issue of David and Jane (Tory) Andrews:
- i. James.
- ii. David.
- iii. Isaac.
- iv. Ann Jane.
- v. Joseph.
- vi. Obediah.
- vii. Janett.

Reference: Morrison, *Down Guysborough Way*, p. 59.

17 Elizabeth[3] Tory (Henry[2], James[1]), b. 10 Mar. 1822; m. Isaiah **Brown**, son of James and Elizabeth Brown. They lived at Port Shoreham.
Issue of Isaiah and Elizabeth (Tory) Brown:
- i. Henry.
- ii. Lavinia, m. Alfred **Hart**.
- iii. Alexander.
- iv. Burton.
- v. Janett.
- vi. Christopher.
- vii. Annie.

Reference: Morrison, *Down Guysborough Way*, p. 59.

18 Marianne[3] (Henry[2], James[1]), b. 23 Nov. 1825; m. John **Lipsett**, son of Edward and Mary Lipsett. They lived at Port Shoreham.
Issue of John and Marianne (Tory) Lipsett:
- i. Mary Jane.
- ii. Ann.
- iii. Margaret.
- iv. Grace.
- v. Edward.
- vi. Augusta, m. Edward **Callahan**.

Reference: Morrison, *Down Guysborough Way*, p. 59.

19 John William3 Torey (Henry2, James1), b. 9 Apr. 1833; d. 27 July 1896; m. Sarah **Hull**, 26 Jan. 1859. He was a farmer and manufacturer of farm implements. She was b. 8 June 1836; d. 25 Nov. 1874.

Issue of John William and Sarah (Hull) Torey:

i. Frances Ann, b. 1859; m. first, Levi **Hadley** and secondly, a Mr. **Leary**.
36 ii. Sarah Victoria, b. 22 Dec. 1861; m. Gus **Long** of Boston.
37 iii. William Henry, b. 1863; m. Carita **Blanchard**.
38 iv. Jonathan Jeremiah, b. 1865; m. Edna **Falconer**.
39 v. James Burton, b. Jan. 1868; m. Belle **Adams**.
40 vi. Edwin Mills, b. 18 May 1871; m. Roberta **Martin**.
41 vii. Harry Osborne, b. 1875; m. Mary **Makovsky**.
42 viii. Clifford Lewis, b. 25 May 1882; d. 1962; m. Hattie Grace **Fisher**.

References: Morrison, *Down Guysborough Way*, p. 62; Pauline Hillis's family records, Halifax, N.S.

20 Robert Kirk[3] Tory (Henry[2], James[1]), b. 3 June 1838; d. 1892; m. Anorah **Ferguson**, 29 Dec. 1861, daug. of James and Sarah (Hughes) Ferguson. She was b. 26 Dec. 1835. Robert Kirk Tory lived on the original homestead of his father, Henry Torey, until his death in 1892. He was highly respected in his community, devoting himself to the development of the educational and religious institutions in that section. Mrs. Torey d. in Guysborough at a very advanced age. Robert Kirk and Anorah Torey are buried in Boylston United Church Cemetery.

Issue of Robert Kirk and Anorah (Ferguson) Tory:

i. James Cranswick, b. 24 Oct. 1862; d. 26 June 1944, Halifax. Educated at McGill University; officer of Sun Life Assurance Co.; MLA, Guysborough Co., 1911-25 and minister without portfolio, 1921-25; Lieutenant-Governor of N.S., 1925-1931.
ii. Henry Marshall, b. 11 Jan. 1864; d. 6 Feb. 1947, Ottawa. Educated at McGill University and Wesleyan College, Montreal; first principal of McGill College, Vancouver, 1906; first pres. of University of Alberta, 1908-28; pres. of Nat. Research Council, Ottawa, 1928-35; pres., Carleton College, Ottawa, 1942-47.
43 iii. Martha Ella, b. 16 Nov. 1865; m. John **Henderson**, Mass.
44 iv. Sarah Jane, b. 6 Aug. 1867; m. William Henry **Bruce**.
45 v. John Alexander, b. 7 Nov. 1869; d. 1950; m. 28 Dec. 1898, Guysborough, Abigail G. **Buckley**.
vi. Elizabeth Ann, b. 4 Sept. 1872; d. 1910; m. Benjamin **Spanks**; one child, John Spanks.

References: Morrison, *Down Guysborough Way*, p. 60; Pauline Hillis's

family records; Boylston United Church Cemetery.

21 Joseph[3] Torey (Henry[2], James[1]), b. 24 Oct. 1840; d. 18 July 1897; m. Catherine Letitia **Kirby**, 20 Sept. 1864. He lived at Milford Haven Bridge, Guysborough. She was b. 18 Aug. 1839, daug. of James and Abigail Kirby. Joseph and Letitia Torey are buried in Boylston United Church Cemetery.

Issue of Joseph and Letitia (Kirby) Torey:

46 i. Henry Malcolm, b. 10 July 1865.
ii. Abigail Ann, b. 18 Dec. 1866.
47 iii. James Alexander, b. Sept. 1868.
iv. Isabella Jane, b. 8 Aug. 1872; d. 11 May 1899.
v. Joseph Leo, b. 2 May 1875.
vi. Edwin M., b. 1877; d. 1949.
48 vii. Osborne Alvin, b. 30 June 1871; d. 1899.

References: Morrison, *Down Guysborough Way*, p. 63; Boylston United Church Cemetery.

22 Sophia Cutler[4] Tory (James A.[3], James[2], James[1]), b. 27 Nov. 1851; m. Henry Pope **Mulhall**, 16 Dec. 1873, son of John and Selina (Pope) Mulhall.

Issue of Henry and Sophia (Tory) **Mulhall**:

i. Harold Tory Mulhall, m. Lucille **Karkner**.

Reference: Morrison, *Down Guysborough Way*, p. 53.

23 Julia Eliza[4] Tory (James A.[3], James[2], James[1]), b. 7 Sept. 1853; m. Samuel Bradford **Matthews**, 22 Dec. 1871.

Issue of Samuel Bradford and Julia Eliza (Tory) **Matthews**:

i. James Bradford Matthews.

Reference: Morrison, *Down Guysborough Way*, p. 53.

24 Florence McGregor[4] Tory (James A.[3], James[2], James[1]), b. 17 June 1856, Guysborough; m. James **Grant**, 14 Jan. 1880. He was b. 6 Apr. 1852 at Inverurie, Scotland, son of James and Christine (Warrenden) Grant and was connected with the Direct U.S. Cable Co., Torbay and Halifax, N.S.

Issue of James and Florence (Tory) **Grant**:

i. James Warrenden, b. Nov. 1880; m. Mary Florence **Corcoran**, Sept. 1907.
ii. Mabel Louise, b. Jan. 1882; m. Richard D. **Royston**, June 1916.
iii. Ethel May, b. Feb. 1884; m. Dr. Ralph **Owen**, Sept. 1910.
iv. Sophia Elizabeth, b. Sept. 1886; m. Capt. Harry A. **Lowe**,

Dec. 1915.

v. Blanche, b. May 1888; m. Rozelle Laurence **Stevens**, Jan. 1914.

vi. Christine Anne, b. Feb. 1891; d. 24 July 1895.

Reference: Morrison, *Down Guysborough Way*, p. 53.

25 Eva Gertrude[4] Tory (James A.[3], James[2], James[1]), b. 1 Oct. 1858; m. Lawrence Henry **Hartshorne**, 19 Feb. 1884, Guysborough. He was b. 1 Aug. 1859, Guysborough, son of William and Sarah (Jacobs) Hartshorne.

Issue of Lawrence and Eva Gertrude (Tory) **Hartshorne**:

i. Bertha McGregor, b. 11 July 1885; m. Heber George **Keay**, 21 Jan. 1912.

ii. Sophia Claire, b. 4 Nov. 1890; m. Stephen M. **Pyle**, 7 Nov. 1917.

Reference: Morrison, *Down Guysborough Way*, p. 54.

26 Stanley[4] Tory (James A.[3], James[2], James[1]), b. 18 Nov. 1860; d. 26 Dec. 1920; m. Madelaine **Clare**, 30 Oct. 1889. He was a postal clerk in San Francisco. She was the daughter of Robert and Cecelia (Porter) Clare.

Issue of Stanley and Madelaine (Clare) Tory:

i. Clare Morse.

ii. Florence Ethel.

iii. Madelaine Estelle.

Reference: Morrison, *Down Guysborough Way*, p. 54.

27 Annie Laurie[4] Tory (James A.[3], James[2], James[1]), b. 7 Dec. 1862; m. Alfred Kimball **White**, 27 Nov. 1907 at Guysborough. He was b. 4 Nov. 1841, Yarmouth, N.S. and d. 1910, son of Andrew and Eliza (Crowell) White. They lived at Canso, N.S.

Reference: Morrison, *Down Guysborough Way*, p. 54.

28 Havelock[4] Tory (James A.[3], James[2], James[1]), b. 1867; m. 1906, Minnie **DesBarres**, Guysborough, daug. of Judge William and Letitia (Hart) DesBarres.

Issue of Havelock and Minnie (DesBarres) Tory:

i. Elizabeth Letitia.

ii. Ethel Mary, b. 1 May 1910; m. Rev. Harry E. **Langwith**, with issue, Miss Torrey Langwith.

Reference: Morrison, *Down Guysborough Way*, p. 54.

29 Charles Alexander[4] (William[3], James[2], James[1]), b. 9 Apr. 1866. He was in the lumber business at Boylston, N.S. for several years, then moved to the Canadian West. He m. Amanda **Simpson**, daug. of Albert and Caroline (Bears) Simpson.

Issue of Charles Alexander and Amanda (Simpson) Tory:

i. Edna Letitia, m. Leonard **Cleaver**. They lived in Detroit, Mich.
ii. Eva May.
iii. Wilbur Charles.
iv. Pearl.
v. Olive.
vi. Harold.
vii. Roy Earl.

Reference: Morrison, *Down Guysborough Way*, p. 55.

30 George Clement[4] Tory (William[3], James[2], James[1]), b. Aug. 1860; m. 5 Dec. 1891, Clara **Hall**, daug. of James and Sarah (Simpson) Hall; d. 8 Apr. 1952. They lived for several years in Guysborough, then moved to Western Canada.

Reference: Morrison, *Down Guysborough Way*, p. 55.

31 Emma Alma[4] Tory (John Henry[3], James[2], James[1]), b. 18 Oct. 1854; m. William G. **Simpson**, son of Thomas and Elizabeth (Horton) Simpson. Mr. Simpson represented Manchester and Boylston on the Guysborough County Council for a number of years and was also postmaster at Boylston some thirty years, until his death.

Issue of William G. and Emma Alma (Tory) **Simpson**:

i. Iona Gertrude, b. 16 Aug. 1874; m. George **Peart**.
ii. Sarah Alice, b. 27 Aug. 1876; m. Jacob T. **Anderson** of Boylston.
iii. Harold Edwin, b. 17 Feb. 1878.
iv. Florence Augusta, b. 5 Mar. 1879; a registered nurse.
v. William Gladstone, b. 30 Nov. 1882.
vi. Gordon Tory, b. 21 Feb. 1891.
vii. Winnifred Clyde, b. 5 Oct. 1893; m. Britt **Mitchell** of Halifax.
viii. Everet Claire, b. 9 July 1896.
ix. Augustus.
x. Jennie E.
xi. Annie, a registered nurse.

Reference: Morrison, *Down Guysborough Way*, p. 55.

32 Dr. Edgar James[4] (Alexander[3], James[2], James[1]), b. 19 Oct. 1858; m. Annie G. **Shaw**, 18 Sept. 1888. He lived at Freeport, Illinois, a physician there. She was the daug. of Bennet Shaw, from Windsor, N.S.
Issue of Edgar James and Annie G. (Shaw) Tory:
i. Sidney, b. 1904.
ii. Lomina, b. 1906.

Reference: Morrison, *Down Guysborough Way*, p. 57.

33 Howard H.[4] Tory (Alexander[3], James[2], James[1]), b. 24 Dec. 1864; a dentist in Philadelphia; m., wife not known.

Reference: Morrison, *Down Guysborough Way*, p. 57.

34 Wilbur Whitman[4] Tory (Alexander[3], James[2], James[1]), b. 18 July 1869. Studied medicine at the University of Pennsylvania and d. from a disease contacted in the hospital.

Reference: Morrison, *Down Guysborough Way*, p. 57.

35 Sarah Jane[4] Tory (James Alexander[3], James[2], James[1]), b. 23 May 1854; d. 10 Feb. 1902; m. Jacob T. **Anderson**, a merchant at Boylston, N.S. He d. 5. Feb. 1941, aged 92 years.

Reference: Morrison, *Down Guysborough Way*, p. 60.

36 Sarah Victoria[4] Torey (John William[3], Henry[2], James[1]), b. 22 Dec. 1861; m. Gus **Long** and lived in Boston, Mass.
Issue of Gus and Sarah Victoria (Torey) **Long**:
i. Ruth Tony, b. 1901; m. Wm. **MacKerron**.

Reference: Pauline Hillis's family records.

37 William Henry[4] Torey (John William[3], Henry[2], James[1]), b. 1863; m. Carita **Blanchard**.
Issue of William Henry and Carita (Blanchard) Torey:
i. Carita, b. 1890; d. 1983; m. Charles **Durling**.

Reference: Pauline Hillis's family records.

38 Jonathan Jeremiah[4] Torey (John William[3], Henry[2], James[1]), b. 1865; m. Edna **Falconer**.
Issue of Jonathan Jeremiah and Edna (Falconer) Torey:
i. Doris Elwyn, b. 1913; m. Max **Young**.
ii. Edna C., d. in infancy.

Reference: Pauline Hillis's family records.

39 James Burton[4] Torey (John William[3], Henry[2], James[1]), b. Jan. 1868; m. Bella **Adams**.

Issue of James Burton and Bella (Adams) Torey:

i. Harold Burton, b. 1904; d. 1979; m. Eunice **MacKay** with issue, Ann.

Reference: Pauline Hillis's family records.

40 Edwin Mills[4] Torey (John William[3], Henry[2], James[1]), b. 18 May 1871; m. Roberta **Martin**. They are buried in Boylston United Church Cemetery.

Issue of Edwin Mills and Roberta (Martin) Torey:

i. Sarah E., b. 1900; m. Charles **Myers**.

ii. Georgina H., b. 1902; m. Harry **Brown**.

References: Pauline Hillis's family records; Boylston United Church Cemetery.

41 Harry Osborne[4] Torey (John William[3], Henry[2], James[1]), b. 1875; m. Mary **Makovsky**, who was b. 1890 and d. 1987.

Issue of Harry Osborne and Mary (Makovsky) Torey:

i. Karl, b. 1911; d. 1980; m. Ruth **Tracey**.

Reference: Pauline Hillis's family records.

42 Clifford Lewis[4] Torey (John William[3], Henry[2], James[1]), b. 25 May 1882; d. 1962; m. first, 1904, Hattie Grace **Fisher**, who was b. 1884, d. 1919. He m. secondly, 1930, Margaret Helena **Gray**, who was b. 1904, d. 1978.

Issue of Clifford Lewis and Hattie Grace (Fisher) Torey:

i. Pauline Evelyn, b. 1905; m. 1928, James Stanley **Hillis**, who was b. 1903, d. 1954. Issue: Eric Stanley, b. 1943; d. 1974.

ii. Helen Margaret, b. 1907; m. 1940, Reginald **Wood**, who was b. 1910, d. 1979. Issue: Dennis Torey, b. 1941.

iii. Joyce Elizabeth, b. 1917; m. 1940, Donald **Archibald**, who was b. 1917, d. 1976. Issue: Margaret Joy, b. 1940; Avril Lynne, b. 1943; David Torey, b. 1946; Carol Elizabeth, b. 1948.

Issue of Clifford Lewis and Margaret Helena (Gray) Torey:

i. Donald Clifford, b. 1932; m. 1955, Barbara **Willetts**.

Issue: Donald, b. 1957; Susan Margaret, b. 1958.

Reference: Pauline Hillis's family records.

43 Martha Ella[4] Tory (Robert Kirk[3], Henry[2], James[1]), b. 16 Nov. 1865; m. John **Henderson**, son of Alexander and Sarah Henderson; lived in Franklin, Mass.

Issue of John and Martha Ella (Tory) Henderson:

i. Ethel Beatrice, b. 31 Oct. 1889.
ii. Gladys Gertrude, b. 13 Mar. 1892.
iii. Harold Tory, b. 6 Dec. 1895.
iv. John Roy, b. 16 May 1903.
v. Howard Clark.

Reference: Morrison, *Down Guysborough Way*, p. 61.

44 Sarah Jane[4] Tory (Robert Kirk[3], Henry[2], James[1]), b. 6 Aug. 1867; m. William Henry **Bruce**, b. 20 Oct. 1863, son of Charles and Lydia (Mckeough) Bruce. They lived at Port Shoreham, N.S.

Issue of William and Sarah Jane (Tory) Bruce:

i. Bessie Willena, b. 4 Oct. 1891.
ii. Annie May, b. 17 July 1893.
iii. Carrie Louise, b. 12 July 1895.
iv. Zoe Ella Josephine, b. 22 July 1898.
v. William Henry Marshall, b. 31 Jan. 1900; d. aged 3 years.
vi. Charles Tory, b. 1 May 1906.

References: Pauline Hillis's family records; Morrison, *Down Guysborough Way*, p. 61.

45 John Alexander[4] Tory (Robert Kirk[3], Henry[2], James[1]), b. 7 Nov. 1869; d. 1950; m. 28 Dec. 1898, Guysborough, to Abigail G. **Buckley**. She was b. 11 July 1874, Guysborough, daug. of Dr. George and Eva Georgina (Campbell) Buckley; d. 1961. They lived in Toronto, where he was the founder of the Sun Life Co.

Issue of John Alexander and Abigail G. (Buckley) Tory:

i. John S.D., b. 19 July 1903.
ii. James Marshall, b. 23 Nov. 1904.

References: Pauline Hillis's family records; Morrison, *Down Guysborough Way*, pp. 61, 62.

46 Henry Malcolm[4] Torey (Joseph[3], Henry[2], James[1]), b. 10 July 1865; m. Lillian Georgina **Hadley**, b. 1868.

Issue of Henry Malcolm and Lillian Georgina (Hadley) Torey:

i. Ernest Malcolm.

Reference: Morrison, *Down Guysborough Way*, p. 63.

47 James Alexander[4] Torey (Joseph[3], Henry[2], James[1]), b. Sept. 1868; was at one time a member of the Mass. State Legislature.

Reference: Morrison, *Down Guysborough Way*, p. 63.

48 Osborne Alvin[4] Torey (Joseph[3], Henry[2], James[1]), b. 30 June 1871; d. 1899; m. Annie Eliza **Bruce**, daug. of James Richard and Margaret (Lipsett) Bruce. She was b. 20 Jan. 1870; d. 15 Feb. 1955. She married secondly, Johnny **Barton**, 1912. She and Johnny Barton are buried in Manchester United Church Cemetery. Osborne Alvin Torey is buried in Boylston United Church Cemetery.

Issue of Osborne Alvin and Annie Eliza (Bruce) Torey:

49 i. Osborne Allan, b. 13 Sept. 1899; d. 29 Dec. 1977.

References: Morrison, *Down Guysborough Way*, p. 63; Manchester United Church Cemetery; Boylston United Church Cemetery.

49 Osborne Allan[5] Torey (Osborne Alvin[4], Joseph[3], Henry[2], James[1]), b. Sept. 1899; d. 29 Dec. 1977; m. Lois Adelaide **Simpson**, 8 Apr. 1922, at the Methodist Church in Guysborough. She was b. 28 Feb. 1901; d. 5 Aug. 1972, daug. of Robert and Ruth (Ferguson) Simpson, Manchester. They are bur. in Boylston United Church Cemetery. He changed his surname from Torey to Torrey, *ca.* 1934.

Issue of Osborne Allan and Lois Adelaide (Simpson) Torrey:

50 i. Anna Ruth, b. 30 Aug. 1923.
ii. Ralph Barton, b. 1 Mar. 1925; d. 5 July 1927.
51 iii. Kenneth Osborne, b. 13 July 1926.
52 iv. Eugene Francis (Bun), b. 5 Apr. 1931.
53 v. Roy Keith, b. 16 Aug. 1932; d. 4 Apr. 1982.
54 vi. Neta Adelaide, b. 10 Aug. 1937.
vii. Robert Neil, b. 7 June 1939; unm.
55 viii. Joan Carole.

References: United Church, Guysborough; Boylston United Church Cemetery; personal interviews.

50 Anna Ruth[6] Torrey (Osborne Allan[5], Osborne Alvin[4], Joseph[3], Henry[2], James[1]), b. 30 Aug. 1923; m. Harry Garfield **Myers**, 2 Apr. 1946. He was b. 5 Aug. 1918; d. 2 July 1984, son of Charles and Edith (Myers) Myers, Manchester. He served overseas with the Pictou Highlanders, North Shore (N.B.) Reg't. during World War II, 30 July 1940 to May 1945 and is bur. in Boylston United Church Cemetery.

Issue of Harry Garfield and Anna Ruth (Torrey) **Myers**:

56 i. Raymond Ellis Torrey, b. 24 Apr. 1941.
57 ii. Ralph Wayne Myers, b. 18 Oct. 1946.

58 iii. Nancy Eileen Myers, b. 20 Apr. 1953.
59 iv. James Allan Myers, b. 26 Dec. 1955.

References: personal interviews; Royal Canadian Legion, BR 81, Guysborough, N.S.

51 Kenneth Osborne[6] Torrey (Osborne Allan[5], Osborne Alvin[4], Joseph[3], Henry[2], James[1]), b. 13 July 1926; m. first, Frances **Anderson**, Boston, Mass.; m. secondly, Dorothy **Burke**, Beverly, Mass. (b. 31 July 1938).

Issue of Kenneth Osborne and Frances (Anderson) Torrey:

i. Kenneth Osborne, b. 30 Jan. 1949.
ii. Keith Allan, b. 1956.

References: personal interviews.

52 Eugene Francis[6] (Bun) Torrey (Osborne Allan[5], Osborne Alvin[4], Joseph[3], Henry[2], James[1]), b. 5 Apr. 1931; m. first, 12 June 1954, Eileen Evelyn (**Grant**) Andrews; div. 23 Apr. 1976. She was b. 15 Jan. 1933, daug. of William and Mae (Dickey) Grant, Boylston, N.S. He m. secondly, 31 Dec. 1976, Alice Lorraine (**Chisholm**) Worth. She was b. 7 Sept. 1938, daug. of Jamey and Minnie Chisholm, Odgen, Guys. Co., N.S. He joined the Canadian Army, 16 Oct. 1952, discharged 20 Dec. 1958; served with the Medical Corps in Korea.

Issue of Eugene Francis and Eileen Evelyn (Grant) Torrey:

i. David Eugene, b. 3 Aug. 1963; m. Sharon Ann **DeCoste**, 10 Sept. 1988. She was b. 10 Jan. 1963.
ii. Ruby Lorraine, b. 29 Mar. 1965. Issue: Tompkins (Teddy) David William Torrey, b. 21 Apr. 1983.

Issue of Eugene Francis and Alice Lorraine (Chisholm Worth) Torrey:

i. Trevor Eugene, b. 14 Sept. 1975.

References: personal interviews.

53 Roy Keith[6] Torrey (Osborne Allan[5], Osborne Alvin[4], Joseph[3], Henry[2], James[1]), b. 16 Aug. 1932; d. 4 Apr. 1982; m. Lillian Margaret McCall, 2 Oct. 1957. She was b. 16 Apr. 1935, daug. of William and Eva (White) **McCall**, Mulgrave, N.S.

Issue of Roy Keith and Lillian Margaret (McCall) Torrey:

i. Osborne James, b. 25 Oct. 1958.
ii. Lois Elizabeth, b. 28 Mar. 1960.
iii. Linda Margaret, b. 18 Aug. 1962. Issue: Keith Wade Torrey, b. 4 Jan. 1982.
iv. Carol Ann, b. 13 Sept. 1963; m. Gregory George **England**, 28 Dec. 1984. He was b. 10 July 1959. Issue: Stacey Lee Ann,

b. 12 Sept. 1983; Ashley Marie Dawn, b. 19 Feb. 1987.

v. Deborah Lynn, b. 30 Nov. 1970.

References: personal interviews.

54 Neta Adelaide[6] Torrey (Osborne Allan[5], Osborne Alvin[4], Joseph[3], Henry[2], James[1]), b. 10 Aug. 1937; m. Clarence Keith (Joe) McPhee, 26 Oct. 1957. He was b. 15 Aug. 1936, son of Rubin Elroy and Myrtle (Cole) **McPhee**, Oldham, Hants Co., N.S.

Issue of Clarence Keith and Neta Adelaide (Torrey) McPhee:

i. Steven Keith, b. 30 Dec. 1964.

References: personal interviews.

55 Joan Carole[6] Torrey (Osborne Allan[5], Osborne Alvin[4], Joseph[3], Henry[2], James[1]), m. Carl Ronald **Haywood**, 14 Aug. 1958. He was b. 1 Jan. 1938, son of Hilton and Helen (Carr) Haywood, St. Francis Harbour, Guys. Co., N.S.

Issue of Carl Ronald and Joan Carole (Torrey) Haywood:

i. Ronald Wade, b. 15 Sept. 1958; m. Elizabeth Ann **Livingstone**, 28 Apr. 1979. Issue: Amanda Ann, b. 25 Sept. 1979.

ii. Heather Charlene, b. 17 Oct. 1959; m. Anthony George **Coles**, 29 Nov. 1985. He was b. 8 Nov. 1956. Issue: Todd Michael, b. 10 Mar. 1979; Chantel Renee, b. 5 May 1986.

iii. Mark Edward, b. 3 Oct. 1961.

iv. Denine Leanne, b. 15 May 1967.

v. Natasha Lynn, b. 15 July 1979.

References: personal interviews.

56 Raymond Ellis[7] Torrey (Anna Ruth[6], Osborne Allan[5], Osborne Alvin[4], Joseph[3], Henry[2], James[1]), b. 24 Apr. 1941; m. Anne Catherine **Kelly**, 28 Jun. 1969; div. June 1982. She was b. 9 Apr. 1946, daug. of William and Mary (Fogarty) Kelly, Guysborough. He served with the Royal Canadian Signal Corps (Army) from 12 Nov. 1959 to 12 Nov. 1965, and was in the Congo with the United Nations Peace Keeping Force in 1963.

Issue of Raymond Ellis and Anne Catherine (Kelly) Torrey:

i. Shawn Michael, b. 30 Sept. 1970.

References: the author.

57 Ralph Wayne[7] Myers (Anna Ruth[6], Osborne Allan[5], Osborne Alvin[4], Joseph[3], Henry[2], James[1]), b. 18 Oct. 1946; m. Deborah Ann **DeLorey**, 3 Sept. 1971. She was b. 3 Aug. 1949, daug. of Lawrence and Catherine

(Burke) DeLorey, Tracadie, N.S.

Issue of Ralph Wayne and Deborah Ann (DeLorey) Myers:

i. James Wayne, b. 16 Apr. 1974.
ii. Gary Wayne, b. 27 Sept. 1977.
iii. David Wayne, b. 18 Aug. 1985.

References: personal interviews.

58 Nancy Eileen[7] Myers (Anna Ruth[6], Osborne Allan[5], Osborne Alvin[4], Joseph[3], Henry[2], James[1]), b. 20 Apr. 1953; m. as his second wife, George Charles **Long**, 9 Nov. 1974. He was b. 18 Jan. 1946, son of John M. and Pearl Long, Roachvale, Guys. Co. He served with the RCN from 18 Jan. 1961 to 20 Jan. 1974. His first wife, Helen Gertrude Jones, d. 5 Apr. 1974.

Issue of George Charles **Long**:

i. Angela Darlene, b. 24 Jan. 1967; m. Earl Franklin **Greencorn**, 19 Aug. 1989. He was b. 30 Jan. 1967.
ii. Tanya Lynn, b. 8 Feb. 1968; m. Brian Anthony **DeCoste**, 1 May 1987. He was b. 30 Dec. 1965. Issue: Miranda Helen Eileen, b. 6 Jan. 1988; Paige Valene, b. 5 May 1989.
iii. George Albert, b. 3 Sept. 1969. He enlisted with the Canadian Armed Forces (Officers' Training), Aug. 1986.

References: personal interviews.

59 James Allan[7] Myers (Anna Ruth[6], Osborne Allan[5], Osborne Alvin[4], Joseph[3], Henry[2], James[1]), b. 26 Dec. 1955; m. Darlene Elizabeth **Connelly**, 30 Aug. 1980. She was b. 17 July 1959, daug. of John and Bessie (Hall) Connelly, Intervale, Guys. Co.

Issue of James Allan and Darlene Elizabeth (Connelly) Myers:

i. Melissa Darlene, b. 24 Mar. 1982.
ii. Jeffery Allan, b. 20 Nov. 1984.
iii. Kendra Elizabeth Ann, b. 8 July 1987.

References: personal interviews.

The foregoing is an early draft of a more detailed family genealogy, including corrections, additions and extensive research notes, now held at the Public Archives of Nova Scotia as MG 100, Vol. 90, doc. 29ff.

Comments, queries, corrections or additions should be addressed to:

Raymond E. Torrey
3350 Connaught Ave., Apt. 9
Halifax, Nova Scotia
B3L 3B6

Book Reviews

Allen B. Robertson

Alexander & Agnes Hogg and Their Descendants: A Hogg Family of Nova Scotia, by Eleanor Robertson Smith. ISBN 0-9691913-6-7. Stoneycroft, Yarmouth, N.S., 1992. xiv + 169 pp., illustrated, paper, $20.00. Available at cost + $2.00 postage: Loyalist Foods, Box 43, Shelburne, N.S. B0T 1W0.

Baron De Hirsch Congregation 1890 to 1990: 100th Anniversary Commemorative Book, edited by Francklyn Medjuck. Baron De Hirsch Congregation, Halifax, N.S., 1990. 137 pp., illustrated, cloth, $50.00.

The Contexts of Acadian History, 1686-1784, by Naomi E. S. Griffiths. ISBN 0-7735-0883-X (cloth), 0-7735-0886-4 (paper). McGill-Queen's University Press, Montreal, 1992. xxii + 137 pp., illustrated, paper, $17.95.

The Contribution of Methodism to Atlantic Canada, edited by Charles H. H. Scobie and John Webster Grant. ISBN 0-7735-0885-6. McGill-Queen's University Press, Montreal, 1992. ix + 281 pp., cloth, $39.95.

Jack Tar in History: Essays in the History of Maritime Life and Labour, edited by Colin Howell and Richard Twomey. ISBN 0-919107-32-X. Acadiensis Press, Fredericton, N.B., 1991. 275 pp., illustrated, paper, $21.95.

Keys to the Encounter: A Library of Congress Resource Guide for the Study of the Age of Discovery, by Louis De Vorsey, Jr. ISBN 0-8444-0692-9. Library of Congress, Washington, D.C., 1992. xvii + 212 pp., illustrated, paper.

Making Adjustments: Change and Continuity in Planter Nova Scotia, 1759-1800, edited by Margaret Conrad. ISBN 0-919107-33-8. Acadiensis Press, Fredericton, N.B., 1991. 280 pp., illustrated, paper, $22.95.

Music of the Eye: Architectural Drawings of Canada's First City 1822-1914, by Gary K. Hughes. ISBN 0-919326-35-8. New Brunswick Museum and Royal Architectural Institute of Canada, Saint John, N.B., 1991. xii + 136 pp., illustrated, paper.

Nineteenth-Century Cape Breton: A Historical Geography, by Stephen J. Hornsby. ISBN 0-7735-0889-9. McGill-Queen's University Press, Montreal, 1992. xxvi + 274 pp., illustrated, paper, $44.95.

A Sensitive Independence: Canadian Methodist Women Missionaries in Canada and the Orient, 1881-1925, by Rosemary R. Gagan. ISBN 0-7735-0896-1. McGill-Queen's University Press, Montreal, 1992. xv + 281 pp., illustrated, cloth, $39.95.

Shelburne County Scrapbook Vol. I: Pre-1920, by Scrapbook Committee of the Shelburne County Museum. ISBN 0-9695877-1-6. Shelburne County Museum, Shelburne, N.S., 1992. 68 pp., illustrated, paper, $12.50.

Social History and Photography: the Atlantic Region, 1870-1920, by Kenneth C. Dewar and others. ISBN 0-895215-03-X. Art Gallery of Mount Saint Vincent University, Halifax, N.S., 1990. 62 pp., illustrated, paper, $5.00.

Studies in Maritime Literary History, 1760-1930, by Gwendolyn Davies. ISBN 0-919107-34-6. Acadiensis Press, Fredericton, N.B., 1991. 206 pp., paper, $16.95.

The diverse ethnic heritage of Nova Scotia has made for a rich historical tapestry. Smaller immigrant groups as well as the better-known larger waves of settlers are both being re-examined and rediscovered. The result is a continuing proliferation of new books and articles which open up that historic past to present generations. Histories for the general public reflect this current trend, which should entice Nova Scotians to acquire and celebrate the documentary record of their collective identity.

Halifax naturally attracted many initial immigrant streams by its position as the administrative and economic heart of the province. The Jewish community can look back on a continuous presence here since the founding 1749 fleet. As a fully integrated community with organized congregations, nevertheless, Jewish Haligonians trace their descent only from the late 1870s. One congregation in 1990 celebrated its centenary with a commemorative book that offers a pictorial and written treasure. Franklyn Medjuck and his committee prepared *Baron De Hirsch Congregation 1890 to 1990* on behalf of Beth Israel Synagogue's members. An institutional history, family histories and photographs combine to provide a personalized view of one religious community's proud legacy.

Readers of *Baron De Hirsch* are told of the eighteenth-century activity of Jewish merchants and their families at Halifax, and their importance in the community at large. Names such as Levy, Nathans, Hart, Solomon, Judah and Abrahams can be found in business, court, land and masonic lodge records from 1749 to the eve of the War of 1812. Out-migration and marriage into non-Jewish families diminished the active Jewish presence until renewed European and American immigration restored full family numbers and the needed male quorum to constitute a *shul*, the start of any organized congregation. The 1895 incorporation of the Baron de Hirsch Hebrew Benevolent Society occurred within two years of the opening of a cemetery, and the dedication of Baron de Hirsch Synagogue (formerly the Free Baptist Church at Robie and Starr streets) as the first synagogue in the Maritimes.

The severe damage sustained by Baron de Hirsch Synagogue in the 1917 Explosion led to the construction in 1920 of a new structure on Robie Street. This served the community until the opening of the present Beth Israel Synagogue in 1957. There are references to splits and reunification in the city's Jewish community between 1914 and the 1950s which leave the reviewer wishing for a better chronology of events. That perhaps belongs, however, in a special monograph rather than a commemorative book. The growth of societies, activities benefiting Jewish troops who passed through the city during two World Wars, and the demographic changes of the 1960s and 1970s provide a sense of the congregation's growth and alteration.

At least half the book is composed of biographical and family sketches. Here is a marvellous record of Nova Scotians' European roots, executed in a manner that professional historians would refer to as collective biography. How many would know that there are families in Halifax with connections in Russia, Romania, Galicia and Poland? The roll of towns and cities reads like a Dostoevsky novel: Babroisk, Kovna, Ossova and Minsk. As is so often the case it is an amateur work of local history which first informs the community, not an academic account. Both professional and non-professional historians, nevertheless, can contribute to each other's work, and although much research remains to be done on all periods, and particularly on the Jewish presence pre-1870, the publication of *Baron de Hirsch* is an important signpost along the way.

A more recent publication which likewise commemorates the past is *Shelburne County Scrapbook Vol. I: Pre-1920*. It was issued by the Shelburne County Museum as a fund-raiser, and is a fascinating pictorial account of that county's heritage; it was not intended to serve as a critical study of a particular theme. In the careful selection of photographs, advertisements, calling cards and other memorabilia, the Museum's Board of Directors have made accessible several rare sources for research. Subject headings run alphabetically from "Architecture" to "The War Years," and attempt to show the whole range of community life. Homes, recreation, businesses and clothing styles are all depicted in the *Shelburne Scrapbook*. As a commentary on social history alone it is worth reading. Gone are the days, for instance, when local newspapers advertised train schedules for points east and west so that people could attend the grand August Port Clyde Picnic (1913). The compilers, moreover, have tried to be sensitive to the mixed ethnic heritage of the area. Under "Architecture," for example, is a picture and brief description of the town's African Methodist Episcopal Church. Further on is an account of the band of the No. 2 Construction Battalion on its 1916 visit to Shelburne, which was catered by the business operated by Afro-Nova Scotians Logan Jacklin and John Gibson.

The Shelburne County Museum is to be commended for 'releasing' its holdings from filing cabinets and display cases. *Shelburne Scrapbook*, indeed, becomes a portable museum on the bookshelf. The medium chosen actually follows a well-known precedent itself. Connoisseurs of used bookstores are familiar with turn-of-the-century souvenir booklets such as the Dominion Atlantic Railway's *Evangeline Land*, or the commemorative booklet printed within days of the 1917 Halifax Explosion. These were best-sellers in their day, among the general public and tourists alike. *Shelburne Scrapbook* should prove to be no less attractive or popular.

Local historians and genealogists have published a number of commendable books in the past few years. Eleanor Robertson Smith's latest volume, *Alexander & Agnes Hogg and Their Descendants* is a celebration of family history, as well as a model of the professional genealogist's exacting labours. This information increases the potential research value of *Alexander & Agnes Hogg* for professional historians interested in tapping biographical sources and exploring the subsequent history of an immigrant family.

Sergeant Alexander Hogg served with the 40th Regiment at the close of the American Revolution. He joined other disbanded Scottish soldiers, together with Loyalist civilian refugees, in accepting a land grant in Nova Scotia. Hogg represented one of the successive waves of Scottish immigration to the province which strengthened its Celtic composition. His 1796 marriage to Agnes Hamilton, daughter of another Scottish immigrant to colonial America, gave him incentive to settle down and invest in his adopted province's future prospects.

Eleanor Smith's careful documentation enhances the biographical profile of both Alexander and Agnes Hogg, as well as their descendants. The pioneer Hogg generations were modestly successful farmers who contributed to the agricultural base of Nova Scotia. Not all family members, however, stayed in the province: out-migration became a hallmark of Bluenose households. Thus Joseph Hogg, the eighth child of Alexander and Agnes, took to the sea as commander of the *Kursamanny*, which plied the oceans from China to India and Britain. Joseph Hogg personally invested in the lucrative nineteenth-century tea trade by setting himself up as a tea planter in Assam (India). Meanwhile, his brothers and sisters remained behind to live out their lives in Shelburne County.

Family letters, poetry and photographs provide additional documents for the Hogg family history. These induce a continually changing rhythm for the genealogy, and keep it from becoming solely an enumeration of names and statistics. Just as *Shelburne Scrapbook*'s photographs provide a fine source for visual historical research, so too the pictures in Eleanor Smith's genealogy--or any well-prepared family history--enrich our knowledge of Nova Scotia's heritage. It is the innovative use of such graphic materials and the contributions of professional genealogists which have generated new insights into the past and the present.

Local and ethnic history have both been enriched by the use of non-textual documents to evaluate our understanding of the past. An exhibit at the Art Gallery of Mount Saint Vincent University (1985), held in conjunction with the symposium, "Social History and Photography: the Atlantic Region, 1870-1920," provides some suggestive approaches through the collected papers of that gathering. The articles in *Social History and Photography* directly address the issues of historical interpretation, critical assessment and popular culture.

Sandra Gwyn, in "Photography and historical detective work in *The Private Capital*," reminds us that a knowledge of the actual process or chemistry of photography is not essential to the utilization of photographs as documentary sources. This is not to discount the usefulness of knowing how a nineteenth-century photographer had to have people pose, or under what conditions the photographic plate could reproduce a street scene. 'Staging,' however, introduces an artificial nature into the picture and partially distorts the past. Nonetheless, Gwyn observes that photographs enhance a depiction of the past and can be used to compare verbal accounts to period standards of beauty, fashion and social mores. The portrait of a reclining Lola Powell of Ottawa (1904) shows without words how Governor-General Lord Minto could have fallen for her charms. In another setting, Gwyn uses two photographs to depict change in Ottawa; one is a ca. 1866 photo of pigs roaming the dirt roads of Sparks and Kent Streets, while the other--forty years later--shows people of fashion strolling in front of Parliament Hill's architecturally impressive cut-stone fence.

The remaining articles by Lilly Koltun, Kenneth Dewar, Patrick O'Neill and Scott Robson extend the approach taken by Gwyn. Both Koltun and Dewar directly address the issue of using photographs for historical research. Koltun is interested in dissecting the vocabulary of photography, emphasizing that the message and medium often convey an explicitly intended impression of reality as composed by the photographer. The historian must recognize that reality in order to understand the photographer's meaning. Dewar uses cautionary tales to warn the historian to keep photographs in perspective. These visual images are potentially valuable sources of information, but all sources need to be interpreted, assessed and placed in context. The old saw, "The camera never lies," needs to be quietly set aside. Patrick O'Neill of Mount Saint Vincent University leads the reader on a hunt to locate the copyright material (books and plays in particular) deposited by Canada from 1895 through 1924 in the British Museum (or as it then was, the British Library). The loss of much of that material in fires (1916, 1953) on Parliament Hill means that the identification of such a holding overseas could be a boon for historians of all specialties.

The concluding article, by Scott Robson, the Nova Scotia Museum's Assistant Curator of History, demonstrates the spread and popularity of photography in Nova Scotia. Within three years of L. J. M. Daguerre's 1839 public announcement of his new process, William Valentine of Halifax was

advertising "Photographic Likenesses, By The Daguerreotype Process." Robson utilizes both advertisements and sample photographs to discuss portraiture (including the various apparatus to hold the subject in place while the picture was being taken). The conditions in which photos were taken were as varied as the reasons why the sitters chose this new medium in order to immortalize themselves. Robson's approach takes one back to the basic consideration for historians that photographs are a means of communication, in the present as well as over time.

In the area of ethnic studies it has been remarked that one group is constantly overlooked: the English--and, by extension, all Canadians of British descent. There exist many avenues for exploring that particular legacy left by Celtic and Anglo-Saxon descendants. Perhaps one of the less obvious means is through architecture, especially that of the nineteenth century, when the British Empire was at its height. One fine example which can be used for this purpose is the guide prepared to accompany a travelling architectural exhibit. Gary K. Hughes, in *Music of the Eye: Architectural Drawings of Canada's First City 1822-1914*, presents the reader with the utilitarian, the grandiose and the spiritual, as represented in the buildings of Saint John, New Brunswick. To be more accurate, the drawings show us the vision which Saint John residents had of their world. There is a shift from late Georgian neo-classicism (inspired in part by Roman and Greek buildings) to the neo-gothic and the purely exotic. Nineteenth-century Romanticism led architects to explore the medieval heritage of Britain as exemplified by its cathedrals, castles, and ancient manorial estates. That vision was adopted by English-speaking Canadians, whose schooling had immersed them in British literature, politics and science. The result was a magnificent amalgam of architectural stylistic experiments, all designed to be on a human scale or to reflect human achievements. This is in stark contrast to twentieth-century block concrete slabs, hollow barn-churches and soulless high-rise monoliths.

Hughes provides in his introduction a detailed survey of this shift from neo-classical to neo-gothic. His treatment is well documented, with reference to recent studies on architecture throughout the Maritimes. The exhibit on which the book is based, moreover, traces the growing professionalization of the architect in Canada. During the nineteenth century, the architect was progressively an individual who was conversant with building styles, aesthetics, construction techniques, engineering, the potential of new and older building materials (cast iron, brick, concrete and wood), and who also supervised the actual construction of the building itself.

The fine detail of several of the sketches is partly lost in the reduced scale used for this book. Some full-page illustrations would have counterbalanced such a limitation. Nonetheless, the use of plain line drawings, water colours and photographs is well supported by text. Hughes's attention to the biographical details of these architects, and his discussion of their individual building projects, is especially commendable. *Music of the Eye* becomes, therefore, as much a teaching medium as it does a straightforward historical account. Knowing something about the architects behind the stone and brick heritage structures of Saint John further enables one to gain a fuller appreciation of the Victorian outlook and sense of progressive achievement.

Another publication which relies heavily on graphic materials is the highly commendable *Keys to the Encounter: A Library of Congress Resource Guide for the Study of the Age of Discovery*. Cartography and the European exploration of the Americas since Columbus are the timely joint subjects of this book. The Library of Congress is, of course, an important repository of published material. Maps come within that broad category as printed or published cartographic materials.

The chapters of *Keys to the Encounter* show a sensitivity in their move away from Euro-centricity. After introducing the Age of Discovery itself, both the European and North American world-views are discussed. Columbus's own voyages are placed in the context of two different world-views, and of the implications his own travels had for the subsequent extension of European interest in the Americas, including Spain, Portugal, France and England. Nova Scotian readers will be attracted immediately by the wrap-around cover, which depicts Samuel de Champlain's 1607 map of New England, New Brunswick and Nova Scotia (Acadie). It reminds us that the Maritimes were explored not in isolation, but as part of the expanding world of sixteenth- and seventeenth-century Europe.

Cartography, both the science/art of creating maps and the history of map-making, is an excellent means of seeing how the Americas were built up, layer by layer, in the European imagination. Geography alone did not guarantee an accurate understanding of aboriginal peoples, the climate or the vastness of the two western continents. It did provide a degree of reality and permanence through which the ideas that across the Atlantic lay an unobstructed route to China, or that a mythical paradise had settled on earth, slowly eroded. Finally, it has left us with a series of paths of exploration from 1492 onwards.

Several sections have a direct bearing on early Canadian and Nova Scotian history. The 1607 map by Champlain actually represents a twofold achievement, since it incorporates not only the French explorer's observations which demonstrate his own cartographic skills, but also integrates information and actual sketches contributed by New England aboriginals about the Maine coastline. The New England-Acadie map, then, is a joint European-First Nations cartographic effort. The editor of *Keys to the Encounter*, Louis De Vorsey, Jr., also makes use of Père Chrestien Le Clercq's 1670s writings concerning the Micmac of New Brunswick, whose general beliefs were held by mainland Nova Scotia Micmac as well. It is especially gratifying to be able to view a reproduction of pages from a copy of Le Clercq's "Micmac Prayer Book," which employs symbols devised by that missionary. Some of those symbols or hieroglyphics, it should be noted, actually imitated traditional Micmac decorative symbols. Le Clercq himself wrote that the Micmac were quite capable of drawing maps of the country which they traversed. It is not known, however, whether any of these were used in maps after the fashion of Champlain's co-partners from New England.

To complete *Keys to the Encounter*, De Vorsey provides the reader with a tour of the resources and cartographic holdings of the Library of Congress, and offers suggestions as to their research potential. Canadian historians can benefit from consulting *Keys to the Encounter* for specifically Canadian content, and for the opportunity to reappraise the nation's past in the context of a greater North American historiography. The general reader who is intrigued by colonial exploration accounts, or inspired to read further about post-Columbian contact, has a highly informative, readable account in this history.

The next stage after colonial exploration is the planting of permanent settlements. These are to be distinguished from fishing stations or fur-trading posts, which were either seasonal or lacked family units. The resulting society, though a partial transplant of its European prototype, could not fully duplicate it. Geography, natural resources, aboriginal peoples and imperial government policies altered and moulded the colonial world. Naomi Griffiths, a recognized authority in Acadian studies, has provided an updated and renewed examination of that settlement group. Her recent book, *The Contexts of Acadian History 1686-1784*, is based on the 1988 Winthrop Pickard Bell Lectures in Maritime Studies given by her at Mount Allison

University. In this book, she traces the initial stages of settlement to the 1680s (when the Minas Basin villages were founded), the creation of Acadian consciousness of themselves as a distinct people, the upheaval of the 1755 Expulsion, and the re-creation of Acadian society in the Maritimes by returned exiles.

Acadian history is a classic example of how transplanted Europeans created a unique colony in the New World. Those French immigrants who came as families to the Annapolis Valley in the 1630s were not the last Old World residents to do so. They were the first, however, in the Maritime provinces to come to terms with the land, the aboriginal peoples and how they would perceive themselves. Griffiths is careful to explain that the descendants of the first settlers--that is, the later generations who may be called Acadian--created a portable intellectual identity bound up with language, religion and custom. That Acadian consciousness, or 'tribal memory' (the latter a term used by scholars studying Puritan New Englanders), could survive being uprooted from the lands of Grand Pré, the Tantramar marshes or Annapolis. Where the people were able to regroup to keep alive language, faith and rituals--either in the Maritimes after the 1760s or in Louisiana--something special, something of the old Acadie, was reborn.

The 'Golden Age of Acadia' (1686-1730s) occurred during a period of nominal to tenuous control by French and English officials from Port-Royal/Annapolis Royal. Griffiths explores the Acadians' exploitation of the region's agricultural, timber and fisheries resources. In opposition to the usual portrait of Acadians as isolated, simple farmers, Griffiths describes instead a resourceful set of entrepreneurs. The Acadians raised sufficient farm produce and livestock both to meet their own needs and to have a surplus for trade with New Englanders. Later they extended that profitable activity to trading with Louisbourg on Ile Royale. The more distant the Acadian settlements were from Annapolis, the more likely they were to pursue their own community affairs in a nearly autonomous fashion. As a result, for example, the collection of seigneurial rents and Church tithes was neither regular nor always successful. Furthermore, unless confronted by a politically active priest such as the Abbé Le Loutre (who could use Micmac military enforcement), the Acadians were not utterly subservient to the Church; piety and a Catholic outlook were not to be confused with clerical dominance.

Griffiths presents Acadian society as a flexible structure which, while having its own integral identity, was nevertheless continually interacting with the wider world about it: European colonial policies and administrators, New England commercial relations, recruitment by French officials and military authorities, and both interaction and intermarriage with the Micmac-Malecite populations. Trade and the influence of cultural differences, argues Griffiths, also loosened the rigidity of European-Christian morality among Acadians: peasant autonomy combined with Micmac egalitarianism to reinforce Acadian independence.

Acadian society did possess a co-operative spirit which reinforced group identity. Certain undertakings, such as marsh drainage and dyke construction, necessitated collective action. The fact that most villages began as single-surname hamlets (fathers and adult sons) contributed to extended village kinship networks. Where there were variations in regional dialect, social habits and cookery, intermarriage among the Acadians blended their diverse inheritances into one especially suited for the Maritime colonial environment.

Griffiths's re-telling of the era of deportation (1755-1764) is important on two points: first, the Expulsion was an act of war policy, not genocide, in which Acadian communities were to be dispersed throughout the American colonies in an effort to neutralize them permanently as a potential threat during the renewed Anglo-French conflict; secondly, the routine transplanting of exiles by family or village group meant that the old kinship networks were not wholly disrupted. The Acadian 'cells' throughout the diaspora could keep alive the cultural memory; when opportunity presented itself after 1765 for readmission to Nova Scotia, groups of Acadians throughout the American colonies contacted each other to organize a return to the homeland. Those who did return, however, could not regain their old lands, which had since been granted to New England Planters. The new Acadian settlements, on poor farming lands in what are now Digby, Yarmouth, Richmond and Inverness counties, formed the diffuse heartland of Nova Scotia's present-day Acadian society. Larger numbers bolstered the French-speaking population of New Brunswick, while others drifted back to Prince Edward Island. These new communities were founded by settlers already having an identity, as a people whose homeland had been pre-1755 Nova Scotia. Exile reinforced this common identity, which inculcated the determination among Acadians to survive as a distinct culture. Griffiths has forcefully conveyed that history in order to show its continued links with present-day Acadians.

A renewed impetus for the scholarly investigation of Nova Scotia during the latter half of the 1700s has been provided by the Planter Studies conferences sponsored by Acadia University. Several papers delivered during the second conference in 1990 have been made available in *Making Adjustments: Change and Continuity in Planter Nova Scotia, 1759-1800.* This volume, like its predecessor, *They Planted Well,* has been edited by Margaret Conrad. The papers have been grouped under the headings 'contexts,' 'diversities,' 'case studies,' 'explorations' and 'future directions.' Several of the papers delineate new areas of inquiry.

The contextual essays provide consideration of Nova Scotia as the fourteenth colony. Both John Reid's comparisons with colonial Louisiana and the Floridas, and Donald Desserud's "Nova Scotia and the American Revolution," directly link the province's history to the larger English-speaking colonial world. Reid proposes the need to compare and contrast the Planter experience in Nova Scotia with that of colonists in the Floridas or Acadians in Louisiana. These are the regions described by Bernard Bailyn as "the extremities," that is, frontier regions often caught between contending political powers. The reader is challenged by Desserud to apply Enlightenment political thought to Planter Nova Scotian 'neutrality.' He argues that non-involvement was not a retreat or hiding from conflict, but instead a 'proactive' stance or decision derived from Enlightenment political thought.

The remaining two essays in this section, E. Jennifer Monaghan's impressive "Literacy in Eighteenth-Century New England" and Julian Gwyn's "Economic Fluctuations in Wartime Nova Scotia, 1755-1815," are meant to encourage historians to investigate hitherto neglected subjects. Monahagan goes well beyond literacy as the ability to read and write (two very distinct and separate skills). It is important to know who could read and write: men only, women and men, or the social élite. The skill to do both having been acquired, the historian must ask about its use. Julian Gwyn is equally anxious to have historians face up to old assumptions. The bald statement that wars affect prices and economic welfare generally means little unless research can verify what actually occurred. Gwyn has undertaken that demanding task for the period 1773 to 1815 in order to assemble comparative statistics on commodities, wages, population fluctuations, shipping and British imperial expenditure in Nova Scotia. His approach provides positive instruction as to how to avoid drawing false conclusions, and how to judge the actual nature of events ascertained by rigorous research.

The other articles in *Making Adjustments* address the agenda set by the four leading papers: challenges to older historiography, an extension of our understanding of pre-1800 Planter Nova Scotia, and the value of inter-disciplinary research. The religious and spiritual-literary themes are developed in Allen Robertson's, "To Declare and Affirm: Quaker Contributions to Planter Nova Scotia," Deborah Trask's discussion of Germanic gravestones, and Gwendolyn Davies's well-delineated account of poet-preacher, the Reverend John Seccombe. The ethnic composition of colonial society continues to attract investigation, whether through Gary Hartlen's essay on Blacks held in slavery in Planter society, Bill Wicken's work on Micmac (Mi'kmaq) land holding along the southwestern shore, or Carol Campbell's examination of the Scots-Irish planters of Truro (a group usually marginalized in any New England Planter history).

Land use, mapping and kinship networks fall within the scope of papers presented by Barry Moody, Richard Field, John Bubar, Joan Dawson and Marc Lavoie. The less tangible aspects of life are addressed by Nancy Vogan in her excellent delineation of the colonial musical heritage, Thomas Vincent's peregrinations in the realm of "Affection" in eighteenth-century Maritime poetry, and the ethnic-religious influences on colonial Nova Scotian elections as analysed by Brian Cuthbertson. The Planter Studies conferences have provided a needed forum for scholars to share their respective attempts in interpreting our colonial history. The comments by several chairs of sessions as to future directions for research indicate, of course, that much more remains to be done in re-creating accurately the image of Planter Nova Scotia.

Religion can be both the identifier of a particular ethnic group, and the means of uniting individuals of quite diverse backgrounds. Wesleyan Methodism, for example, at first an English phenomenon, rapidly spread to Ireland and Scotland, then crossed the Atlantic to the British colonies in North America. The impact of evangelical Methodism on eastern Canadian society was the theme of the October 1989 conference at Mount Allison University, "The Contribution of Methodism to Atlantic Canada." Fourteen papers that traced that influence from John Wesley's lifetime down to its twentieth century legacy have been edited by Charles H. H. Scobie and John Webster Grant for a book of the same title. Biography, nineteenth-century philanthropy, education, Church union, literature and hymnody--these themes are suggestive of the wide variety of subjects addressed in the collection.

Scholars of the stature of Sir Owen Chadwick ("John Wesley and the Origins of Methodism"), John Webster Grant ("Methodist Origins in Atlantic Canada"), Gwendolyn Davies ("'In the Garden of Christ': Methodist Literary Women in Nineteenth-Century Maritime Canada") and George Rawlyk ("William Black, Henry Alline, and Nova Scotia's First Great Awakening") signify the weight of historical expertise which underlay the conference.

Without slighting any of the participants in *Contribution of Methodism*, two articles especially permit readers a glimpse of exciting developments in Maritime religious historiography. Fred K. Graham's "Methodist Hymn Tunes in Atlantic Canada" addresses both the past and the present. It is instructive to learn about the emphasis which John Wesley placed on hymns as vehicles for responding to God and as a means for stirring up in singers the urge to deepen that relationship. What continues to fascinate is the strength with which John Wesley and his brother Charles imbued their own hymns, which was sufficient to ensure their being regularly performed over two centuries later: several of the Wesley brothers' hymns are sung today by a number of denominations, both Catholic and Protestant. Graham does not fail to discuss "lining-out" hymns, singing schools that encouraged "true unison pitch and a steady agreed tempo," or the pedigree of individual melodies. Maritime composers such as Stephen Humbert (a Saint John Loyalist) augmented European melodies (e.g. "Old Hundred") and adapted instrumental or secular vocal works. Graham's closing appeal, borrowed from John Beckwith, invites the reader to look again at hymns that have held place for so many generations, as compared to the adolescent, folksy idiom of contemporary hymnals: "Since we have lately stopped tearing down our old buildings, could we also stop throwing away our old hymn tunes?"

James D. Cameron's "Prince Edward Island Methodist Prelude to Church Union, 1925" bears reading for its treatment of the contrast between the urge to create the United Church of Canada and present-day schisms within that same denomination. Island Methodists traced their roots to the 1774 arrival of Benjamin and Elizabeth Chappell from London. Benjamin was an acquaintance of John Wesley, and he had been firmly won over by the latter's evangelical preaching. Subsequent migration to the Island by Loyalists and British settlers combined with periodic revivals to secure the firm establishment of Methodism. Cameron turns his attention to the series of unions, mergers and reorganizations of the later 1800s which provided precedent for 1925.

Such mergers of Methodist sects paralleled cooperative efforts by Protestants in Canada at large in education, temperance and foreign missions. Shifts in doctrinal emphasis and piety (e.g., the decline of revivalistic enthusiasm in favour of social reform) also encouraged Methodist receptiveness to inter-denominational union. Nor was the growth in Canadian nationalism to be discounted. A 1912 poll of Prince Edward Island Methodists on the possibility of Methodist-Presbyterian-Congregationalist church union received a 93-per-cent endorsement. This high rate of approval carried forward to the 1925 creation of the United Church of Canada. Cameron, however, has carefully introduced the need for a reassessment of what would later occur, by reference to the unravelling of John Wesley's legacy. Were the Methodists of 1925 identical to the evangelical, Christocentric Wesleyans of Benjamin Chappell's day? Did the move to social activism, moreover, strengthen or weaken Methodist identity? In the 1990s scholars will have to re-examine what is left of the Methodist and Presbyterian legacy in the United Church of Canada. The volume *Contribution of Methodism* will be an essential source from which to begin.

Another symposium that has resulted in a gathering of current scholarship in its field, and is likewise in book form, is *Jack Tar in History: Essays in the History of Maritime Life and Labour*, edited by Colin Howell and Richard Twomey. Once again, a variety of subjects united under one theme has been effectively addressed. The book is of particular interest to Nova Scotians, because of the province's past importance as a seafaring, shipbuilding state. Not all of the published papers are based on Nova Scotian examples, yet each can be profitably read for comparison with ordinary seamen's lives in this province.

Five avenues of approach are taken by the book's contributors: seafaring during the American Revolution; mariners' protests and marine law; family and gender roles; sailors and war; and seamen during the onset of industrialization. The lead articles by Peter Linebaugh and Marcus Rediber, and Julius S. Scott, redress the stereotypical 'whites only' image of seafaring. Free Afro-Americans and even slaves were employed in occupations such as seamen, stevedores and ship's carpenters. Scott's provocative account of Newport Bowers (born a free Afro-American in Massachusetts but died incarcerated on Jamaica in 1794) is the vehicle used to relate how Blacks in eighteenth-century American ports kept in touch with trans-Atlantic events. The fate of the Sierre Leone settlers, for example, was watched with interest

by Blacks in Newport, Rhode Island. The torch of freedom in British America and the United States was kept alive partly by news carried from Haiti--where a Black republic was established 1791-93--and Sierre Leone by Black mariners and dockyard workers. Scott's study also undermines the stereotype that Blacks were isolated in their servitude. Literacy was far higher than expected, moveover, and West Indian newspapers were widely circulated.

This revisionist approach pervades much of *Jack Tar*. Dianne Dagaw, Margaret Creighton, Lisa Norling and Valerie Burton follow it in their observations on the traditional and non-traditional relationship of gender to seafaring. Norling, for example, traces the shift in the Nantucket region from marriage as a business partnership (husbands at sea for whaling, wives at home to conduct financial and educational affairs) to the sentimentalized mid-1800's image of anxious, home-bound women who are second to the sea in their husbands' affections. More than a few letters and diaries exist in Nova Scotia which would permit a comparative study.

Later in the 1800s, Nova Scotian seamen had to confront changes wrought by industrialization and a decline in the province's shipbuilding industry. Del Muise's "'Iron Men?': Yarmouth's Seagoing Workforce in Transition, 1871-1921" uses that port for a case study of those changes. Earlier nineteenth-century Yarmouth vessels were crewed primarily by local residents. By the 1880s, however, the balance had tipped in favour of cheaper foreign crews regulated by Yarmouth shipmasters and a handful of Nova Scotian shipmates. Muise attributes this in part to new opportunities on land for young and old alike in the manufacturing enterprises of the new Yarmouth capitalists. Several of the latter were shipowners who sought to maximize profits through less risky land-based investments. Throughout this article, Muise challenges the reader to cast aside the illusion of seafaring as a golden age in late Victorian Nova Scotia. All of *Jack Tar*'s contributors, it can be said, lift the sail-canvas to enable us to see, unobscured, the mariners' less-than-idyllic world.

Another 1992 monograph, instead of using several lines of investigation to elaborate one broad subject (as in *Jack Tar*) follows instead the micro-historical or regional historical geography approach, whereby one case study provides suggestive reinterpretation applicable to Canada as a whole. Stephen Hornsby does not claim that his test site in *Nineteenth-Century Cape Breton* is absolutely conclusive--comparative studies for other regions (e.g., southern

Ontario, the Ottawa Valley, British Columbia's lower mainland) would be the long-term goal--but he nonetheless offers a striking evocation of settlement, land use, economic structures and cultural formation, through which Cape Breton emerges neither as an island of poverty, nor as a land of unlimited potential.

One of the most outstanding features which Hornsby examines is the degree of external influence shaping the island's economy. For example, for over two centuries, the Channel Island mercantile firm of Philip Robin & Co. and its associates or successors controlled the fishery, especially through the employment of Acadian labourers. Management remained Channel Island-based and Protestant, a phenomenon which had its effect on settlement locations and expansion. The arrival of Scottish Highland immigrants during the 1800s initially offset this external control, as new farmers began to exploit the island's agricultural potential. When the best lands had been distributed, however, leaving only poorer soils to exploit, younger generations had to adopt mixed farming and lumbering to survive, while general living standards declined. The later development of coal-mining and steel-making interests (initially Nova Scotian-controlled but soon taken over by British investors) offered Cape Bretoners alternative employment at a time when shipbuilding and farming were in crisis, but put both Gaelic- and English-speaking Cape Bretoners in a position similar to many Acadians: they were engaged in a specialized economic activity controlled by non-Cape Breton interests.

In the first chapters of this book, Hornsby provides excellent detail on each of the foregoing aspects, paying particular attention to population (ethnic origin, settlement patterns). He then proceeds to an examination of land distribution (including crown grants and Micmac lands), the costs of farming and marketing, the crucial distinction between prime farming land and backland, and the corrosive effects of out-migration from the late nineteenth century onward. The approach is a fine blend of social history, economic history and statistical analysis. Changes in demand for staples and industrialization on Cape Breton, with the resulting sociological implications as explored by Hornsby, do indeed offer a suggestive model for comparative studies across Canada.

There has been a trend recently toward placing women into the 'ethnic-group' slot, in general terms of reference. This, however, does a serious disservice to their widely differing experiences, and ignores the universe of

variation within their individual lives. Rosemary Gagan's examination of Methodist women missionaries and Gwendolyn Davies's close study of the literary activity of Maritime men and women do much to reverse this trend, by delineating ethnicity, gender, economic background and vision in an accessible and finely detailed style which places both authors at the forefront of Canadian historical scholarship.

In the June 1992 issue of the *Review*, readers were presented with Ruth Compton Brower's *New Women For God: Canadian Presbyterian Women and India Missions, 1876-1914*. Now the Methodist endeavours of the late Victorian era are explored in *A Sensitive Independence: Canadian Methodist Women Missionaries in Canada and the Orient, 1881-1925* by Rosemary Gagan. The author, like Brower, is concerned to show what drew women to mission work at home and overseas, the challenges which they faced (both from a male-dominated church hierarchy and in the mission fields themselves), and the effects of that international outreach in terms of new schools and hospitals. Gagan is interested in contrasting home and foreign missions, notably as to the bias inherent in the choice of fields permitted. Foreign missions, for example, were 'high profile' challenges which dovetailed with British imperial expansion and a growing Protestant nationalism in Canada. Missions within Canada, on the other hand, were assigned too often to women less well-trained and not necessarily suited to evangelism. Urban missions and outreach to new settlers or native peoples suffered as a result.

Gagan's analysis of Methodist women missionaries shows another trend already observed with regard to Presbyterian missions: Maritimers tended to be overrepresented in proportion to the region's population. Twenty-one per cent of the Methodist missionaries had been raised in the Maritimes, while Nova Scotians in the Japan Mission made up fifteen per cent. This has been attributed to fewer opportunities for educated single women in Nova Scotia, by comparison with central Canada. As well, Methodism had had its Canadian origins in Nova Scotia, where there was an equally long tradition of women's auxiliary and charitable associations.

Nursing and the early attempts to acquire the right to become fully qualified medical doctors provided Canadian women with more to offer the overseas missions than the role of educator alone. Higher education in the health professions and in general partially resulted from increased access to college-level studies by women through a number of Methodist seminaries

and colleges across Canada. The missions were, in particular, the forge for moulding the value of professional women in medicine. Both Gagan and Brower rightly point out that the conventional contraints on women's roles in Canada made the foreign missions much more attractive: over 300 single women would make that important commitment.

By the end of the century a rift had developed between the Women's Missionary Society and the General Mission Board in Japan, China and Canada. The reassertion of male dominance in church affairs and renewed interest in Canadian immigrants militated against wholehearted support for foreign missions. It was too late, however, to weaken the sense of independence and commitment to social reform which had taken root among Methodist women missionaries and their many supporters throughout the Church in Canada. It may be argued that whereas initially foreign missions had provided Methodist women with the means to utilize their talent and education overseas, it was the support given by women at home which encouraged a reverse flow of purpose, self-esteem and kinship in the greater Methodist sisterhood.

Gwendolyn Davies is a prolific scholar in the field of Maritime literary historical criticism; her reassessments of the leading figures in our early literature are both refreshing and meticulous. The publication of *Studies in Maritime Literary History* brings together several articles ranging in time from the late-eighteenth to the early twentieth century. The subjects are diverse: Planter journals; Loyalist lamentations; the satirical prose of the Reverend Thomas McCulloch; the novels of T. C. Haliburton and James De Mille; social influences and geography; and emigration. To catch a glimpse of the book's originality and importance one can choose two articles, "Introduction: Steering to Our Sources" and "'Dearer than His Dog': Literary Women in Pre-Confederation Nova Scotia."

The introductory essay is both prologue and summary. Davies will not have Maritimers marginalized as regional authors. They are instead authors sensitive to their region, environment, social setting and the best English literary traditions. Their reputations, indeed, have been international, whether one refers to Haliburton, Sir Charles G. D. Roberts or Lucy Maud Montgomery. Nature, satire, passion, romanticism and proletarian realism all have found expression in Maritimers' prose and poetry. Davies does point out, however, that late nineteenth-century authors tended to look back nostalgically to their youth or to a lost, idealistic vision, in comparison with

the earlier progressiveness of Haliburton's "Sam Slick" and McCulloch's "Stepsure." Late Victorian economic and social changes obviously were influencing the literary field. More than a wistful longing for an Arcadian idyll is at work here, however: Davies sees such poetry as "Tantramar Revisited" as symbolic of Maritimers' deep sense of self, and of a rootedness which almost defies definition.

In "'Dearer than His Dog'," Davies has scoured archival holdings and newspapers to determine the contours of women's literary expression and education in the colonial era. She brings to our attention, for example, the fleeting fame of those writers who could publish only in newspapers; for, once read, most papers were thrown out or used as fuel. Even this fleeting notice, however, provided a forum in which to be heard and to encourage women to aspire to publication as a legitimate fulfilment of intellectual activity. The literary tradition evident in the Deborah Cottnam-Martha Cottnam Tonge-Griselda Tonge dynasty illustrates the commitment women had to education itself, not only to the pursuit of writing. The survival of both private and published material spanning the generations within this one family also revealed to Davies the spread of higher education, and the exposure of these women to mainstream English and classical literary tradition. Women were thus neither wholly isolated nor completely disadvantaged, prior to their admission to Maritime universities in the 1870s.

Davies continues with an examination of early provincial literary magazines, such as Mary Eliza Herbert's *The Mayflower*, and Mary Jane Katzman's *The Provincial, or Halifax Monthly Magazine*, both published during the 1850s. Such journals, although they were not financially viable and soon folded, provided nevertheless a unique forum for communication among educated women in the province--although, as Davies notes, even these modest attempts at giving voice to women's literary aspirations were not without opposition, provoking, as they inevitably did unfavourable comment. Access to a professional literary forum thus remained closed to literary women in the province; the economics of writing and publishing, as Davies states, proved to be half the battle for Maritime women.

Although the *Mayflower*, furtively published poems or serialized stories in denominational and secular newspapers, and limited-edition books produced in the Maritimes, all seem fleeting and ephemeral, there was far more substance in them than is immediately obvious. Davies, in both this article and others in *Maritime Literary History*, demonstrates the increasingly

sophisticated literary tastes among Maritimers. Men and women both were not content to be mere consumers of British and American publications. The expression of that discontent in indigenous creative writing generated a self-worth among Maritimers, who as a result by no means felt themselves to be anyone's social or intellectual inferior. To Davies herself, we owe a debt for revealing that positive literary heritage. Just as the Beth Israel congregation gave expression to their achievement in *Baron De Hirsch Congregation*, so too in *Maritime Literary History* we have cause to celebrate our diverse collective heritage.

ISSN 0227–4752