

# Nova Scotia Historical Review

Volume 8, Number 2, 1988



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Cover Illustration:  
*View of Halifax from Davis's Mill looking SSW towards Naval Yard.*  
*Coloured Aquatint by George Isham Parkyns, 1801.*

Courtesy Picture Collection, Public Archives of Nova Scotia.

## To Our Readers

The *Nova Scotia Historical Review* publishes articles on every aspect and period of Nova Scotian 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.

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# Nova Scotia Historical Review

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## Editorial

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Looking closely at the watercolour which graces our cover one sees on the Halifax side of the Narrows the Naval Hospital. For much of its thirty-seven-year existence--it was destroyed by fire in 1819--this building was the largest structure in Halifax. The first surgeon and agent to officiate there was the Rhode Island Loyalist and former naval surgeon, Dr. John Halliburton (1739-1808), about whom we had hoped to publish an article in this issue. Limitations of space regrettably have forced us to defer this article until June 1989.

We nevertheless take great pleasure in laying before our subscribers the promised (but also deferred) theme issue on legal and medical history. These are relatively new fields of research in which exciting developments are taking place. The scholarly study of Maritime legal history may be considered to have begun as recently as 1984, on the publication by Carswell of a *Dalhousie Law Journal* special centenary number entitled *Law in a Colonial Society: The Nova Scotia Experience*, to which several distinguished historians and political scientists contributed papers. A legal history course is being offered every other year at the Dalhousie Law School, and in October 1989 the Faculty of Law at the University of New Brunswick will host an "Atlantic Law and History Workshop." We welcome for the first time among our contributors Professor Philip Girard, who is co-editor of *Essays in the History of Canadian Law, III: The Nova Scotia Experience*, forthcoming from the Osgoode Society.

We also welcome for the first time among our contributors Dr. Allan Marble of the Technical University of Nova Scotia, who has graciously consented to share with us material destined for his definitive "History of Medicine in Nova Scotia," on which he has been working for a decade. Medical history has become a focus of scholarly interest thanks to the activities of the Dalhousie Society for the History of Medicine, which meets in Halifax monthly to hear and discuss papers. Original research in fields such as these is rejuvenating the historiography of Nova Scotia, and the *Review* is privileged to be able to supply a forum for its publication.

This issue of the *Review* has again been made possible by a generous grant from the Nova Scotia Department of Tourism and Culture. This issue is also the first which will be covered by the *Canadian Periodical Index*. The *Review* is already indexed in the *Canadian Magazine Index* and available on-line in the Canadian Business & Current Affairs Database.

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# ATLANTIC LAW AND HISTORY WORKSHOP

## Call for Papers

Proposals and expressions of interest are invited for papers to be presented at a workshop on the legal history of the Atlantic Provinces. The event will be held on Friday/Saturday, 20-21 October 1989 at the University of New Brunswick (Fredericton).

By 'legal history' we understand both the approach to the writing of history and related disciplines (e.g., sociology, criminology) which draws on legal sources, as well as the attempt to understand law through study of its historical development. By calling the event a 'workshop' we solicit especially the participation of younger contributors. Proposals on any topic relevant to the Maritimes or Newfoundland are welcome, including comparative perspectives with other jurisdictions.

Expressions of interest and queries can be directed to either of the undersigned, and should best reach us by 15 February 1989. One-page abstracts of proposals should reach David Bell not later than 31 March 1989. Limited funding may be available to facilitate the participation of presenters who are graduate or articling students.

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# Paths to the Law in the Maritimes, 1810-1825: The Bliss Brothers and their Circle

D.G. Bell

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In 1817, on the twentieth anniversary of his birth, Fredericton law student Henry Bliss recorded an anecdote of the day in his journal. Having dined and sacrificed a bottle of vintage Madeira to the occasion, young Bliss read to his father, Chief Justice Jonathan Bliss, from *Tacitus* and from a *Life of Nelson*. On the latter the aged judge observed, "I would not lose a leg to be a peer."

"But," probed Henry, "to be a peer with an estate, Sir?"<sup>1</sup>

Judge Bliss paused, then replied, "I do not know what I might be tempted to do for my children."<sup>1</sup>

The subtext of desperation in this remark reflects the experience of many fathers in the early nineteenth-century Maritime élite as they schemed to launch suitable careers for their sons. In the lilliputian world of New Brunswick, where a genteel future for the young depended not so much on inherited wealth as access to public resources, the problem for those who aspired to a gentlemanly place in the legal profession was particularly acute. The provincial economy, though buoyant in the wake of the Napoleonic wars, was still so fragile that no lawyer coming to the bar in the first two decades of the century could hope for the income of a gentleman by virtue of professional competence alone. In the pattern of the first Loyalist generation, a "genteel independency" was possible only for those who could supplement ordinary professional fees with income from public office. Attainment of office depended typically not on what the aspirant did for himself, but on the influence of his connections--chiefly his father. Yet the patronage game, though operating within rough conventions, was one where nothing could be counted as certain, even for the son of a chief justice. The result was a relationship of dependence as trying for fathers--whose influence was now put to a critical test--as for their sons: hence the undercurrent of despair in the 75-year-old Chief

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1 Henry Bliss "Birthday" journal, 24 Apr. 1817: Bliss Papers, MG 1, Vol. 1608, No. 3, Public Archives of Nova Scotia [PANS]. (In quotations from primary sources punctuation has sometimes been standardized; spelling remains as in the original.) For parallel episodes of depression in the life of other Maritime Loyalist fathers see B.C. Cuthbertson, *The First Bishop: A Biography of Charles Inglis* (Halifax, 1987), pp. 77, 199; C. Berkin, *Jonathan Sewall: Odyssey of an American Loyalist* (New York, 1974), ch. 12.

Justice Bliss's acknowledgement that he did not know what he might not be prepared to do to secure the future of his children.

This essay surveys the career formation of the two Bliss sons--William Blowers (1795-1874) and Henry (1797-1873)--who became lawyers. It does so for the purpose of illuminating professional entry strategies of élite colonial lawyers in the second and third decades of the nineteenth century. It looks not at legal careers themselves but at the way those careers were launched, in terms both of educational preparation and of the role of the 'connectional' patronage that prevailed until supplanted by the partisan patronage that was an incident of the coming of Responsible Government. Focus on the Bliss brothers is possible through an exceptional archive of family correspondence, but parallels and variants can be found in the experience of several of their friends. The most instructive comparison is the well-documented case of the junior Ward Chipman (1787-1851), whose father proved even more adept than Judge Bliss in assuring the future of his son. The predicament of the Bliss brothers is also usefully viewed in relation to the career entries of four other aspirant lawyers within their circle of connections: Edward James Jarvis (1788-1852), John Simcoe Saunders (1795-1878) and the Parker brothers, Robert (1796-1865) and Neville (1798-1869).

All seven young men were sons of Loyalists in the office-holding (or, in the case of Jarvis, mercantile) élite and eventually all would replicate that status sufficiently as to secure a place in the *Dictionary of Canadian Biography*.<sup>2</sup> Although all were born in New Brunswick and were called to the provincial bar between 1808 and 1819, each career had an extra-territorial dimension. Three had schooling in Federalist Massachusetts and six at King's College in Nova Scotia, and five kept terms at one of the Inns of Court. Two went into practice as English barristers, one spending nearly his whole career there. Two of the group took steps to practise in Lower Canada and two in Nova Scotia. Two are now identified not with their

<sup>2</sup> Five of the group were sons of fathers who are themselves in the *Dictionary of Canadian Biography*. The remaining two--the Parker brothers--were sons of the military storekeeper and comptroller of customs at Saint John. Of the seven sons, six were appointed judges (including Saunders, who never sat). The seventh--Henry Bliss--applied unsuccessfully for a seat on the English county court.

New Brunswick antecedents but as supreme court judges in Prince Edward Island (Jarvis) and Nova Scotia (Blowers Bliss). Altogether, their careers have an intercolonial--even imperial--fluidity not seen again until the early decades of Confederation.

The privileged path to the law followed by the Bliss brothers and their circle was not that of British American lawyers generally; and the very fact that four of the seven cases considered were prepared to move to Quebec or Nova Scotia, while there is no instance of a lawyer from another colony immigrating to New Brunswick before the 1830s, suggests that the career dilemma of élite aspirants in New Brunswick was uniquely severe. Hence the utility of such a study depends not on whether the case of the Bliss brothers is representative broadly, but whether focus on the interplay of influence, nepotism and imperial connection deepens understanding of the Loyalist governing class in the transfer of power from the first to the second generation.<sup>3</sup>

The colony and province of New Brunswick, fashioned from the western rib of Nova Scotia in 1784, was born of the collapse of the old British Empire in America and was the first fruits of the second British Empire. Among the 14,000 Loyalists who joined about 1500 pre-Loyalists in populating the colony in the 1780s were seven judges and at least eighteen other lawyers.<sup>4</sup> That so many legal professionals should flock to the wilderness on the Bay of Fundy suggests something of the *élan* with which the founding élite initially viewed their task. Quintessentially a 'Loyalist' colony, New Brunswick was viewed by its appointed rulers as an experiment in vindication. By cultivating those "principles of subordination & obedience to the laws" for which they had been martyrs in the Revolution, the governing élite would make of New Brunswick, as they repeatedly assured themselves, the flourishing "envy of the American

3 For a brief survey of the father/son succession issue in the context of Loyalist New Brunswick, see A.G. Condon, *The Envy of the American States: The Loyalist Dream for New Brunswick* (Fredericton, 1984), pp. 196-99. A more detailed examination of one such relationship is offered in D.R. Moore, "John Saunders, 1754-1834: Consummate Loyalist" (MA Thesis: UNB, 1980), pp. 96-108.

4 The statistic for lawyers is a minimal one, excluding cases where there is reason to believe a Loyalist was a lawyer (e.g., Daniel Bliss, Edward Winslow), but who did not act in that character in New Brunswick. It also excludes lawyers--and I believe there were such cases--who were not admitted before the New Brunswick Supreme Court but who did practise locally.

states.” The colony was, in Judge Jonathan Sewell’s words, the “newest New Jerusalem.” To Solicitor-General Ward Chipman the building of Loyalist Saint John was a mythic task, comparable to the founding of Carthage and Rome. The governing élite aimed to create of New Brunswick--in Edward Winslow’s famous boast--the “most Gentleman-like” government “on Earth.”<sup>5</sup>

Within five years this grand illusion was in great measure dispelled, and no group suffered more palpably in the descent from dream to reality than the lawyers. Some of the blows to the prosperity of the bar were political, notably the removal in 1787 of the Supreme Court from the commercial capital of Saint John, where the most active practitioners lived, to the new political capital of Fredericton, the slashing of the lawyers’ fee table, and the attempts to expand the absolute monetary jurisdiction of the inferior courts in 1795 and again in 1802. The chief cause of depression at the bar, however, was the inability of a province on the settlement frontier and with a small population to support an extensive bar in the style to which élite American lawyers were accustomed by the end of the eighteenth century. In the old colonies, despaired Edward Winslow in 1792, there were a “multitude of People” whose “habitual licentiousness . . . generated an infinite variety of Crimes and Controversies,” to the profit of the legal profession. It was not so in a new country such as New Brunswick.<sup>6</sup> As a result, the remarkable influx of legal professionals in the 1780s was followed by a major outmigration--to the Canadas, New York, even the Bahamas--in the 1790s.

For those who remained there was poverty. Fyler Dibblee, a lawyer settled among fellow Connecticut Refugees at Kingston, was so overcome

5 W. Chipman, Charge to the grand jury of Kings County, July 1813: Lawrence Collection, MG 23, D1, Vol. 29, National Archives of Canada [NAC]; J. Potter, *The Liberty We Seek: Loyalist Ideology in Colonial New York and Massachusetts* (Cambridge, MA, 1983), pp. 55-61; Condon, *Envry of the American States*, pp. 45-59; D.G. Bell, *Early Loyalist Saint John: The Origin of New Brunswick Politics, 1783-1786* (Fredericton, 1983), pp. 86, 96-97; J. Sewell Sr. to W. Chipman, ca. 1785, quoted in J.W. Lawrence, *Foot-Prints; Or, Incidents in [the] Early History of New Brunswick* (Saint John, 1883), p. 16. (All Ward Chipman references denote the father and all Jonathan Sewell references denote the son, unless specified otherwise.)

6 E. Winslow to J.G. Simcoe, 7 Apr. 1792: Winslow Papers, Vol. 8, No. 11, Harriet Irving Library, University of New Brunswick.

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by the prospect of arrest for debt that he “grew Melancoly” and, with his family at tea, “unobserved. . .drew a Razor from the Closet, threw himself on the bed, drew the Curtains, and cut his own throat.” John J. Cluett, a Queens County attorney, also lost his property to the sheriff. Supreme Court judge Joshua Upham escaped arrest for debt only because his status as a Council member made him immune from *mesne* process.<sup>7</sup> Even relative successes, such as the two Massachusetts lawyers who for twenty-five years served as the law officers of the Crown, found their genteel penury deeply discouraging. Neither office carried a formal salary. As early as 1787 Attorney-General Jonathan Bliss declared that he was “weary” of “work[ing] like a Horse. . .for Nothing.” By 1791 he was officially complaining to the British government of his inability to subsist as a gentleman in what he now regarded as a “wretched corner” of the Empire, and requesting more lucrative employment. Later he claimed that during the quarter-century of his attorney-generalship, “the whole emolument of that & of the practice of my profession were not sufficient for my decent support.”<sup>8</sup>

More deserving than the rather indolent Bliss was Solicitor-General Ward Chipman, who spent two long decades in black despair at the ruination of his prospects before relief finally came. Already in 1790 he could congratulate his protégé Jonathan Sewell Jr. on the latter’s good fortune in escaping Saint John for Quebec. “The Practice here,” he reported, “grows more discouraging every day.” Twelve years later he observed that

[S]o far from accumulating fortunes, not one of them [lawyers] has obtained more than a very moderate subsistence by his practice. Most of them have been and are poor, and most of the young Gentlemen educated to the Bar in the Province have been obliged to quit it for want of business.

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7 Quoted in W. Brown, *The Good Americans: The Loyalists in the American Revolution* (New York, 1969), p. 141; Sheriff’s inventory, ca. 1800: Hazen Papers, Shelf 64, C21a, NBM; W. Chipman to T. Barclay, 31 Jan. 1792: Chipman Papers, Shelf 38, F3, P1, No. 4, NBM.

8 J. Bliss to S.S. Blowers, 24 Mar. 1787: Bliss Papers, MG 1, Vol. 1603, PANS; J. Bliss to E. Nepean, 23 Nov. 1791: CO 188, Vol. 4, Public Record Office; J. Bliss to B. Arnold, 22 Jan. 1796: Odell (Arnold) Papers, Shelf 87, F2, NBM; J. Bliss to Bainbridges & Brown, 12 July 1819: Odell Papers, Shelf 29, F48, No. 12, NBM.

In 1808, having many times resisted the siren call to return to Massachusetts, Chipman contemplated the bitter prospect of removing to Montreal. In broaching his humiliating subject Chipman lamented that he was not “to this hour. . . able to obtain sufficient to support me.” “Business is at a low ebb. . . . [M]y whole income from my practice does not exceed £200 per annum, and this after 34 years standing at the bar is a cruel situation to remain in.” Chipman, like Jonathan Bliss, was rescued from this “cruel situation” only in 1809, when both were appointed to the Supreme Court.<sup>9</sup> Chipman’s salvation also went far towards securing a New Brunswick career for his son and eventual successor on the bench, Ward Chipman Jr.

The unsettling effect of active service during the Revolutionary War and the uncertainty of peace-time prospects led the senior Chipman to wait until age thirty-two, in 1786, to wed. His only child, born the next year, was a precocious son at once fondly directed towards the legal profession. But Chipman’s poverty in relation to his pretensions forced him for twenty years to look to a series of connections for aid in launching this son in the world. First to be of service was his “immensely wealthy” Massachusetts brother-in-law, who took custody of the ten-year-old junior Chipman for schooling and continued partially to support him through graduation from Harvard.<sup>10</sup> Like his father before him, “Chip” elaborately spurned the lure of a brilliant professional life under republican government to return to serve his clerkship in Saint John. Permanent settlement in New Brunswick, however, seemed out of the question. From his earliest days he had been destined to make his legal *début* under the patronage of Attorney-General Jonathan Sewell of Quebec.

The Sewell-Chipman alliance is a fascinating one, illuminating both the powerful role of professional connection and the extraordinary lengths to which friends would go to protect the genteel from loss of caste. It had

9 W. Chipman to J. Sewell, 2 May 1790: Sewell Papers, MG 23, GII 10, Vol. 3, NAC; W. Chipman to J. Odell, 10 Mar. 1802: Lawrence Collection, MG 23, D1, Vol. 6, NAC; W. Chipman to J. Odell, 18 July 1800: Vol. 4; W. Chipman to J. Sewell, 29 Oct. 1808; J. Sewell to W. Chipman, 25 Nov. 1808: Chipman Papers, Shelf 38, F5, P2, No. 21a, 26, NBM. Chipman had earlier solicited the chief justiceship of Upper Canada: W. Chipman to J. Sewell, 10 Apr. 1796: Sewell Papers, Vol. 4.

10 W. Chipman to J. Sewell, 16 Nov. 1805: Sewell Papers, MG 23, GII 10, Vol. 4, NAC.

begun in Massachusetts in 1768, when Chipman's lawyer father died prematurely and friends led by the colony's attorney-general, Jonathan Sewell Sr., rescued the survivors from poverty and enabled Chipman to go to Harvard. In Sewell's office Chipman read law. When the peculiarly severe misfortunes to which Massachusetts office-holders were exposed in the Revolution stranded Sewell in England and disabled him with melancholy, it was Chipman who was entrusted with the professional education of the Sewell boys.

The senior Sewell had been a second father to Chipman; Chipman, in turn, took Jonathan Jr. and Stephen Sewell into his Saint John home and law office in the 1780s. “[N]othing on my part,” he pledged, “shall ever be too great a sacrifice to promote their interest, happiness or welfare.”<sup>11</sup> Both Sewells then left to seek their legal fortunes in Lower Canada. When it was soon clear that Jonathan Jr. would be a powerful presence in official circles in Quebec while his mentor's professional prospects suffered shipwreck in New Brunswick, Chipman made his expectations clear: “[I] already anticipate you in your turn taking little Chip [then aged three] by the hand, as your father--who was more than a father to me--‘kept my feet from falling’ . . . without whose assistance I must have sunk under a pressure of difficulties.”<sup>12</sup> Such élite interdependence, especially within the camaraderie of Loyalism, was not unusual, nor was it uncommon to welcome a relative or friend's children into the home.<sup>13</sup> The Chipman-Sewell connection is remarkable only in lasting across three generations and having an explicit mutuality that accounts for the confidence with which the polished and circumspect Chipman was not ashamed to urge the matter with Sewell.

On Chip's return from Harvard in 1805 Sewell wrote to offer his “assistance, patronage & in effect adoption” of the young man, and it was confirmed that he would emigrate to Quebec. Unable so soon to part with

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11 W. Chipman to J. Sewell Sr., 9 Dec. 1781: Sewell Papers, MG 23, GII 10, Vol. 2, NAC; C. Berkin, *Jonathan Sewall*, pp. 95-96, ch. 12.

12 W. Chipman to J. Sewell, 2 May 1790: Sewell Papers, MG 23, GII 10, Vol. 3, NAC.

13 L. Stone, *The Family, Sex and Marriage in England, 1500-1800* (London, 1977), p. 107.

his son, however, Chipman determined to keep him in his office until he was called to the New Brunswick bar. Young Chipman was just eighteen. Of the course of study he embarked on in his father's office much can be reconstructed.

By the latter half of the eighteenth century, most North American jurisdictions would admit lawyers to practice in superior courts only if they had served a lengthy apprenticeship with a member of the bar and had reached their majority.<sup>14</sup> Usually this involved the student--a teenager, often without a college degree--paying the practitioner for the privilege of acting as his scribe and errand boy.<sup>15</sup> Fifty guineas, payable in advance, seems to have been a standard fee. The student copied forms, made classified digests of legal points from the books in his principal's often meagre library and attended court, all in the hope of learning an arcane discipline by a method that might amount to little more than osmosis. The case of New Brunswick-born Oliver Goldsmith affords an example of this system viewed at its worst. The child of a minor army official anxious to launch his sons on professional careers with a minimum of expensive

14 In this general area the most useful colonial discussions are G.W. Gawalt, *The Promise of Power: The Emergence of the Legal Profession in Massachusetts, 1760-1840* (Westport, CT, 1979), ch. 1; G.B. Baker, "Legal Education in Upper Canada, 1785-1812: The Law Society as Educator", D.H. Flaherty, ed., *Essays in the History of Canadian Law* (Toronto, 1983), Vol. II, pp. 49-142; C.R. McKirdy, "The Lawyer as Apprentice: Legal Education in Eighteenth Century Massachusetts," *Journal of Legal Education*, 28 (1976), 124-36; P.M. Hamlin, *Legal Education in Colonial New York* (New York, 1939). Nova Scotia seems first to have formalized admission requirements on 21 Oct. 1799, when a Supreme Court rule specified a four-year clerkship: RG 39, J, Vol. 144, PANS. It was raised to five years by statute in 1811: *Act for the Better Regulation of Attorneys, Solicitors and Proctors*, S.N.S. 1811, ch. III, s. 1; subsequently college graduates were given a one-year exemption: S.N.S. 1818, ch. XIX. The identical requirement was formalized in New Brunswick by Supreme Court rule in 1823: A.O. Earle, ed., *General Rules and Orders of the Supreme Court* (Toronto, 1881), pp. 25-27.

15 It must be emphasized that the nature of these understandings between principal and student is unclear. It may possibly be that late eighteenth/early nineteenth-century students entered law offices either as apprentices for seven years (in which case they performed mostly clerical functions but did not pay?), or as paying students for three years (in which case their service was more ostensibly educational?); but such categorizations are rather undermined by the fact that in New Brunswick no examples of the former arrangement can be found, while in Nova Scotia it became universal by statute in 1811. For a useful but inconclusive insight into arrangements between Jonathan Sewell and his students at Quebec see J. Sewell to S. Sewell, 27 Sept. 1798, printed in A.W.P. Buchanan, *The Bench and Bar of Lower Canada down to 1850* (Montreal, 1925), pp. 145-46.

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schooling, Goldsmith was put into a Halifax attorney's office about 1807, at the age of thirteen. "I was employed," he recalled, "in copying old Parchments, writing Pleas, filling up Writs, and, at my leisure Hours, I was directed to read and study three works, Blackstone's Commentaries, Coke upon Littleton and Tidd's Practice."<sup>16</sup>

It is doubtful whether any legal apprenticeship in Loyalist New Brunswick was so barren, at least for those who—unlike young Goldsmith—finished their course. In contrast to Nova Scotia and Upper Canada, the early New Brunswick bar was self-consciously heir to the advanced legal professionalism of pre-Revolutionary Massachusetts and New York. Evidence of educational practice in the 1785 to 1820 period suggests that it was indistinguishable from élite career preparation in the old colonies.<sup>17</sup> In this the dominant presence was Ward Chipman Sr. Of the sixteen New Brunswick students admitted as attorneys between the opening of the Supreme Court in 1785 and Chipman's translation to the bench, perhaps as many as thirteen served their clerkship in his Saint John office.<sup>18</sup> Something of the determination with which Loyalist lawyers set about reconstructing the best of what they had left behind is suggested by the elaborate "Forensick Society" established by four of Chipman's students in the autumn of 1786. In organization it was similar to New York City's Moot Society of the 1770s, which was based in turn on the moot at Grey's Inn.<sup>19</sup> By debating difficult points of law students would acquire the

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16 W.E. Myatt, *Autobiography of Oliver Goldsmith: A Chapter in Canada's Literary History* (Hantsport, 1985), p. 34. No doubt Goldsmith's youth was a rather extreme case, but George Pyke entered R.J. Uniacke's Halifax office when he was barely twelve: MG 100, Vol. 211, No. 41, PANS. In 1832 Beamish Murdoch put the average beginner's age at between sixteen and eighteen: *Epitome of the Laws of Nova-Scotia* (Halifax, 1832), Vol. 1, p. 7.

17 The legal education available in Loyalist-era New Brunswick did not, however, keep pace with the dramatic changes in the American jurisdictions in the immediate post-Revolutionary period.

18 I can attest to ten students. Joseph W. Lawrence, who prided himself on such matters, listed thirteen: *Judges of New Brunswick and Their Times* [1907] (Fredericton, 1985), p. 203.

19 Hamlin, *Legal Education in Colonial New York*, pp. 96-97, 102, 201-03. There were other self-improvement societies in the late colonial period: e.g., Boston's "Sodalitas" (1765) and Newark's "Institutio Legalis" (1770). Unlike the Saint John organization, however, all of the American precedents were for the education of young lawyers rather than law students. In this the Forensick Society resembled the English model of student moot: W. Holdsworth, *A History of English Law*, Vol. XII (London, 1938), pp. 86-87.

research skills and rhetorical polish necessary for professional advancement; they would also develop a sense of the camaraderie and etiquette that, by the end of the eighteenth century, increasingly gave the legal fraternity a special identity.<sup>20</sup> "The Judges and the Bar," boasted Jonathan Sewell to his Massachusetts grandfather,

have expressed their approbation of the institution and as a mark we are allowed to wear an attorney[']s badge pendant from the left breast by a velvet ribband. Regular Records of the proceedings, arguments &ca of the Society are kept by the members, who take the clerkship in rotation for three months.<sup>21</sup>

Probably the Forensick Society did not have a long life, for after the late 1780s there were not again four law students in Saint John for thirty years. Although the junior Chipman's Saint John apprenticeship probably did not, therefore, include moot debates with other students, he did have two considerable advantages. He was in chambers with an experienced lawyer who could give well-considered answers to the questions a boy would naturally have in embarking on so unyielding a science. Not every student was so fortunate.<sup>22</sup> As well, Chipman had the use of his father's law library, one of the great benefits sons of élite lawyers enjoyed in entering the profession. Much of the reading programme prescribed by his father in 1805 was of a liberal rather than a narrowly legal nature, designed as much to produce a polished gentleman as a learned lawyer. The course began with concentration on the history of England, a subject then to be continued on a subsidiary basis. One hour of each day was "constantly" to be spent on the classics, "some portion" of this on the great works of English literature and "some part of every week" on the classics of French.

20. S. Botein, "The Legal Profession in Colonial North America," in W. Prest, ed., *Lawyers in Early Modern Europe and America* (New York, 1981), 129-46, summarizes the literature on this point.

21. J. Sewell to E. Quincy, 11 Jan. 1787: Sewell Papers, MG 23, GII 10, Vol. 2, NAC. The society's initial members were presumably Jonathan and Stephen Sewell, Gabriel V. Ludlow and Thomas Wetmore; its rules were very detailed.

22. For example, Saint John law student Robert F. Hazen lamented that circumstances compelled him to article not with London-educated Edward J. Jarvis, but with the inexperienced Charles S. Putnam. Hazen's "attendance at the office from 10 to 4 o'clock and *reading books* without being able to find out the reasons of many passages in them, and not knowing where to go to have them explained" reduced him to despair: R.F. Hazen to E.J. Jarvis, 12 Nov. 1823: Jarvis Papers, MG 24, B 13, Vol. 2, NAC. See also Myatt, *Autobiography of Oliver Goldsmith*, p. 34.

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As is typical in such reading programmes, the law itself was to be approached through reading standard works on the “general law and the Law of Nations”—Burlamaqui, Ward, Grotius, Puffendorf, Vattel and Martens. Only after this reconnoitre of history, literature and legal philosophy would the law clerk turn to doctrinal works.<sup>23</sup>

Lest this course of reading be thought atypically influenced by Chipman’s intended migration to the European-based legal system of Quebec, or by paternal indulgence, there is evidence of a similar pattern in the three-year programme Chip set for his own star pupil, Robert Parker Jr., commencing in 1815.<sup>24</sup> Year one was given over to English and French history, international law and a preliminary perusal of Blackstone’s *Commentaries*. In the second year the four volumes of Blackstone were again gone through, with Hale’s *History of the Common Law* and an introduction to civil procedure. Only in the third year did Parker’s reading take on a very practical character, as he turned to austere works on civil procedure and land law including the Everest of pre-Victorian legal study, Lord Coke’s *Commentaries* on Littleton’s *Tenures*. Another of the three-year reading programmes to survive is that of Henry Bliss in his first and third years of study in Attorney-General Thomas Wetmore’s Fredericton law office, beginning in 1817. Wetmore himself was without intellectual pretension, but he had been a student of Ward Chipman Sr. in the heady days of the Forensick Society. In the pattern of the Chipman Jr. and Parker readings, Bliss began with Grotius on the law of war, Puffendorf on the law of nature, Azuni on the law of the sea and Vattel on international law, moving then to historical works on feudalism, Domat on the civil law and Blackstone. By the third year the orientation of the programme was altogether different—tomes on evidence, civil and criminal procedure, Coke’s *Institutes* and, inevitably, Coke upon Littleton.<sup>25</sup>

The young lawyer’s concerted reading did not cease with admission as an attorney. The financially barren early years of a typical solo practice

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23 W. Chipman to J. Sewell, 16 Nov. 1805 and 24 May 1808: Sewell Papers, MG 23, GII 10, Vol. 4, NAC.

24 Robert Parker legal digest, begun in 1815: Barristers’ Society Collection, MC 288, MS 6, I 1, Provincial Archives of New Brunswick [PANB].

25 Bliss Papers, MG 1, Vol. 1611, Nos. 61, 62, PANS.

were for Robert Parker the occasion when he read systematically the major law report series, as well as treatises on wills, executorship, sales, insurance and the like, works probably too specialized to be read with profit by a teenager during clerkship. Such post-admission study was common among young lawyers with pretensions towards mastery of their profession.<sup>26</sup>

Young Chipman followed his reading programme and clerked in his father's office from 1805 to 1808. As the end of the apprenticeship approached, Chipman Sr. still temporized about parting with his son. On the day Chip turned twenty-one and in the week he was admitted an attorney, Chipman wrote formally to grant him independence. While still presuming ultimate removal from the province, he now proposed entering into partnership together for a few years. The plan collapsed when Attorney-General Sewell found that he could arrange an official appointment if the young man could come at once. Resigned to the inevitable, Chipman began arranging the practicalities of his son's removal to Quebec. As he did so, however, an event occurred which altered fundamentally the course of young Chipman's life.<sup>27</sup>

In November 1808 two of the original judges of the Supreme Court, twenty-four years on the bench, finally died. In New Brunswick lucrative appointments were such a scarce resource that the demise of even a minor official could, as Blowers Bliss once observed, trigger "as many changes as the death of a prime minister."<sup>28</sup> When the resulting reshuffle of preferments brought Chipman his long overdue appointment to the bench, he was able to negotiate a transfer of two of his lesser offices--those of advocate-general and clerk of the crown on circuit--to his son.<sup>29</sup> Thereby

26 See the examples cited in "Richard John Uniacke's Advice to a Young Lawyer, 1797," elsewhere in this issue.

27 W. Chipman to J. Sewell, 16 Nov. 1805 and 24 May 1808: Sewell Papers, MG 23, GII 10, Vol. 4, NAC; W. Chipman Jr. to W. Chipman, 15 July 1808: Chipman Papers, Shelf 38, F5, P2, No. 4, NBM; W. Chipman to J. Sewell, 29 Oct. 1808: *ibid.*, No. 21a; J. Sewell to W. Chipman, 25 Nov. 1808: *ibid.*, No. 26.

28 W.B. Bliss to H. Bliss, 29 Dec. 1817: Bliss Papers, MG 1, Vol. 1598, No. 25, PANS.

29 W. Chipman to W. Hazen Jr., 3 June 1809; J. Odell to W. Chipman, 10 June 1809: Chipman Papers, Shelf 38, F5, P3, Nos. 11a, 15, NBM.

he was suddenly able both to hand the young man his law practice and to place him in offices which, though junior, conventionally led to more glittering public prizes. The spectre of separation from his only child was removed.

Financial salvation for the senior Chipman and the successful launching of his son in the path of preferment made plausible another sort of career manoeuvre which had once been only an “airy dream”: becoming the first New Brunswicker to attend one of the Inns of Court.<sup>30</sup> Formerly Chipman had canvassed both Massachusetts relatives and English friends as possible patrons for his son. Now the young man’s prospects were sufficiently secure that the money could safely be borrowed. Chipman’s explicit rationale for the London move reveals his sure grasp of the art of preferment. A few terms at “the Temple” would give his son “the best chance for an eligible situation in life hereafter.” This result would follow not, however, from enhancing the young man’s legal education, but from “laying the foundation of an interest which might be useful to him whether he should resort to Quebec, this Province or any other place.”<sup>31</sup> Chipman knew that one of the requisites for attainment of the highest colonial offices was an array of influential contacts in London. He himself had lobbied there for his solicitor-generalship and his judgeship. He would later use his extensive employment on the interminable New Brunswick/Maine boundary negotiations as a vehicle for introducing his son to key officials in British colonial administration.<sup>32</sup> He was well aware of the case

30 Chipman Jr. was in London during 1811-13 and 1819-20, though he was not called to the English bar until 1822. I suspect that George Frederick Street’s biographer errs in stating that he preceded Chipman to one of the Inns by three years: *Dictionary of Canadian Biography*, VIII (1985), 840-41. Street practised in England as an attorney, a status inconsistent with admission to an Inn.

31 W. Chipman to J. Sewell, 16 Nov. 1805 and 18 Aug. 1809: Sewell Papers, MG 23, GII 10, Vol. 4, NAC.

32 This aspect of Chipman’s strategy is nicely brought out in P. Buckner’s biographies of father and son in *Dictionary of Canadian Biography*, VI (1987), 135-45; VIII (1985), 149-54. There is a good discussion of the same theme, occasioned by Norman Uniacke’s departure for Lincoln’s Inn in 1798, in B.C. Cuthbertson, “Fatherly Advice in Post-Loyalist Nova Scotia: Richard John Uniacke to his son Norman,” *Acadiensis*, IX, 2 (1980), 78-91, and, in the context of higher preferments in the colonial church, in Cuthbertson, *Charles Inglis*, pp. 208-11; note also Cuthbertson, “Place, Politics and the Brandy Election of 1830,” *Collections of the Royal Nova Scotia Historical Society*, 41 (1982) 5-19, p. 8. The Upper Canadian exemplar of the same strategy was John Beverley Robinson: P. Brode, *Sir John Beverley Robinson: Bone and Sinew of the Compact* (Toronto, 1984), ch. 3.

of "young [Thomas] Cochran of Halifax," who had gone off to Lincoln's Inn some fifteen years earlier and come back a Supreme Court judge, first of Prince Edward Island and then of Upper Canada.<sup>33</sup> On the same principle he schemed to get Chip to the Inns of Court so that he might make those personal contacts—"la[y] the foundation of an interest"—which would be necessary when it came time to apply for the province's senior legal positions. In the case of the Chipmans the father's cunning was matched by the son's assiduous pupilship, so that the junior Chipman acquired "interest" sufficient to accomplish the unprecedented feat of succeeding his father on the bench when the latter died in 1824. For his mastery of the politics of patronage Chipman was accounted "one of the deepest, most artful & most skilful politicians in existence."<sup>34</sup> The consummately successful launching of his son on the road to legal and public preferment set a standard against which other members of the New Brunswick legal élite were tacitly measured.

When Solicitor-General Chipman ascended the judicial bench in 1809 he took precedence rather reluctantly behind Jonathan Bliss, the new chief justice. In many ways more fortunate than Chipman, Bliss had improved his New Brunswick opportunities less, and the influence he was able to exert on behalf of his children was correspondingly diminished. A Massachusetts lawyer twelve years Chipman's senior, Bliss passed the Revolutionary years on pension and sinecure in England. In 1784 he received appointment as attorney-general of New Brunswick, possibly with the help of his Harvard classmate and lifelong friend Sampson Salter Blowers, who had declined the office in favour of the same place in Nova Scotia. In contrast to the dutiful Chipman, Bliss was a lazy and rather sullen member of the governing élite, unwilling to move his office to Fredericton or take a sustained role in politics. Indeed, in the 1790s he was virtually in opposition to Lieutenant-Governor Carleton's regime. This in itself would not have destroyed his "influence" in London, where the highest patronage was dispensed; but the low opinion it earned Bliss in the eyes of most of New Brunswick's ruling circle curtailed his ability to install

33 W. Chipman to E. Winslow, 24 Nov. 1804, W.O. Raymond, ed., *Winslow Papers* (Saint John, 1901), pp. 524-26; note also *ibid.*, 5 Oct. 1805 and 14 Dec. 1805, pp. 538-40, 541-44.

34 E.J. Jarvis to R.F. Hazen, 7 Sept. 1823: Jarvis Papers, Shelf 85, Box 2, F12, No. 1, NBM.

his connections in the lesser offices which were usually a prerequisite of eligibility for the greater ones.

Bliss's career in the "wretched Remains" of the Empire that were New Brunswick was marked by only one source of unequivocal satisfaction--the domestic happiness that followed his marriage in 1790, at the age of forty-eight, to the daughter of a rich Massachusetts lawyer.<sup>35</sup> Their union was cut short after only nine years. At Mary Bliss's death the two youngest boys--Blowers and Henry--were shipped off to Massachusetts relatives. In 1809 and 1812 they entered King's College (Windsor).<sup>36</sup> Much of the Bliss children's early financial support came not from their father or even--as with the junior Chipman--rich Massachusetts relations, but from Sampson Salter Blowers, since 1797 the chief justice of Nova Scotia. Even before Bliss was widowed, Blowers wrote offering support for one boy's schooling at Fredericton and for the education of "one or two of your boys to Windsor or Halifax." In 1802 he was buying new suits for the boys who had remained with their father to be schooled at the Fredericton academy.<sup>37</sup> It was probably also about this time--when Blowers Bliss returned from Massachusetts and was installed in Windsor--that Chief Justice and Sarah Blowers 'adopted' their young namesake. Prior to the twentieth century such informal adoptions were not uncommon among relatives and friends, even where the child's natural parents were alive. The childless Blowerses, for example, also adopted one of Sarah Blowers's Massachusetts relations. Upper Canadian legal history affords a well-known parallel in John Stuart's virtual adoption of John Beverley Robinson at his father's early death.<sup>38</sup> Of the Bliss children the choice of young Blowers was the obvious one, and the fact that the Blowers estate was only two miles distant from the Windsor academy made quasi-parental supervision convenient as well as desirable. Although it was not

35 J. Bliss to M. Bliss, 1 July 1792: Bliss Papers, MG 1, Vol. 1604, PANS.

36 [J. Inglis], *Memoranda Respecting King's College, at Windsor, in Nova Scotia* (Halifax, 1836), p. 25.

37 S.S. Blowers to J. Bliss, 2 Feb. 1799 & 3 Feb. 1802: Bliss Papers, MG 1, Vol. 1603, PANS.

38 L. Davidoff and C. Hall, *Family Fortunes: Men and Women of the English Middle Class, 1780-1850* (Chicago, 1987), p. 223; Brode, *Sir John Beverley Robinson*, p. 7.

intended that the boy sever ties with his natural father, Blowers agreed to be the boy's financial mainstay until he reached his majority.<sup>39</sup>

In this manner Blowers Bliss, the natural son of one chief justice, became the adoptive son of another. His prospects were also brightened when his maternal grandfather willed a substantial legacy to the Bliss brothers, to be enjoyed when the youngest turned twenty-one. In 1813 Blowers received his degree from King's College and was faced with the choice of a profession. Predictably he read law. Unpredictably he did so with the undistinguished Windsor lawyer William P.G. Fraser, so that he could remain close to the Blowerses and simultaneously keep terms for an MA. In 1818 Bliss was called--almost reluctantly in view of his unsettled plans--to the Nova Scotia bar. His examination consisted of breakfasting with Judge James Stewart, who asked "where I intended to open shop and retail law, and divers other pertinent questions from my Lord Coke and such old friends."<sup>40</sup> Though he then hurried over to Fredericton to be admitted a barrister on a courtesy basis, Blowers certainly did not intend to "open shop" in New Brunswick. Apart from his infant years he must have been present in the province only on school vacations. The still unattractive financial prospects of the profession in New Brunswick, and the apparent intention of his brother Henry to practise in the province, would have been further inducements to turn instead to exploit his Blowers connection in Nova Scotia. He now considered the peninsula as his "home." His natural father seldom wrote him.<sup>41</sup> The tone of his correspondence suggests that the closer he came to the prospect of working for a living, the more conscious he became of ingratiating himself with the wealthy Blowerses.

Inevitably, Bliss elected to open shop in Halifax. Unlike the junior Chipman he did not inherit a law practice, so he employed the time-honoured English way of putting himself forward. He simply attended at court, not so much with the prospect of immediate business, but "that I

39 W.B. Bliss to J. Bliss, 18 June 1816: Bliss Papers, MG 1, Vol. 1602, No. 1, PANS.

40 *Act for the Better Regulation of Attorneys, Solicitors and Proctors*, S.N.S. 1811, ch. III, s. V; W.B. Bliss to H. Bliss, 13 Apr. 1818: Bliss Papers, MG 1, Vol. 1598, No. 28, PANS.

41 W.B. Bliss to J. Bliss, 4 Apr. 1818: Bliss Papers, MG 1, Vol. 1602, No. 4, PANS.

may get something of a character for steadiness, and give the world an opportunity of knowing my face.”<sup>42</sup> This was a dull début indeed for a young man intent on professional distinction, but whose only acquaintance with the law was as clerk to a country attorney. Blowers had for some time thought of deferring professional labours by spending time at one of the Inns of Court, a plan which Chief Justice Blowers now encouraged and in which his father acquiesced.<sup>43</sup> Accordingly, in the autumn of 1818 he fled Halifax for London.

When William Blowers Bliss departed for what would prove to be four years at “the Temple,” he took a career path already familiar to élite colonial lawyers of his generation.<sup>44</sup> Upwards of ten native Maritimers attended one of the Inns of Court before the mid-1820s, including five New Brunswickers within the period 1811-1823.<sup>45</sup> To those with the means of living in London, a call to the English bar was easily obtained. It required only admission to one of the four Inns for five years, dining in the Inn at set intervals over three of those years, and paying fees. Although colonials who embarked on this process were generally already qualified lawyers in their home jurisdiction, they received no relaxation of the three-year requirement.<sup>46</sup> By the early nineteenth century the Inns had long ceased to offer a programme of study to be followed or examined on. Any

42 W.B. Bliss to H. Bliss, 13 Apr. 1818: Bliss Papers, MG 1, Vol. 1598, No. 28, PANS.

43 W.B. Bliss to J. Bliss, 4 Apr. 1818: Bliss Papers, MG 1, Vol. 1602, No. 4, PANS; W.B. Bliss to H. Bliss, 20 Oct. 1817: Vol. 1598, No. 23; J. Bliss to Bainbridge & Brown, 5 and 15 Sept. 1818: Odell Papers, Shelf 29, F48, NBM.

44 Colonials spoke of going over to “the Temple.” By this they meant not the Middle or Inner Temple in particular, but the legal heart of London in the precincts of Chancery Lane.

45 The influx of New Brunswick law students to London was sufficiently conspicuous to generate a humorous poem about one of them, perhaps Henry Bliss: “Gartmera” [Mrs. M. McDonald], *Poems, on Various Subjects* (Greenock, 1824), p. 166. (I am grateful to Eric Swanick for this curious reference.)

46 An exception was John S. Saunders, son and intended successor of Judge John Saunders, who did not gain legal qualification in New Brunswick until he had already been called to the bar at Lincoln’s Inn. Saunders was also exceptional among the group considered here in that his father was extremely wealthy and all of his education was in England. Another was Thomas Cochran, who practised law briefly in England before his appointment to the colonial bench.

legal education acquired during 'attendance' was self-generated. The manner in which Blowers Bliss set about this was typical of those other colonial lawyers--Ward Chipman Jr. and Edward James Jarvis of Saint John; John Simcoe Saunders and Henry Bliss of Fredericton--for whom we have information.

Initially the young colonial, usually in his early twenties and arriving for the first time in the centre of his political and legal universe, took rooms with a family connection or another Maritime student, often an acquaintance from King's College days. Then typically followed several months of disoriented dissipation, during which the young man sampled the delights of the great world around him but accomplished little in the legal line. In 1813, after wasting his first five months, Edward Jarvis lamented that:

in such a place as London, it requires no small portion of time to get the head settled and the mind composed--to abstract the attention from external objects and fix it upon the object of professional pursuits alone. . .to shun the temptations spread around to ensnare the weak and timid or unwary.

The pedestrian Blowers Bliss succumbed to no worse than conventional time-wasting, but it would be different with his literary brother Henry, who reached London in 1823. Already the sire of one white and perhaps also a black child in New Brunswick, Henry became addicted to "whoring before breakfast and after dinner, . . . following for miles upon that everlasting pavement some coquettish piece, who first insults, then plunders, then poxes you."<sup>47</sup>

When the student again fixed his attention on "the object of professional pursuits," he followed one of two paths of study. If, like Blowers Bliss, he had had a mediocre clerkship in the colonies, he probably set about a course of independent reading and attendance at the courts at Westminster Hall to observe the bar in action and make notes of

47 For Jarvis see Lawrence, *Judges of New Brunswick*, pp. 276-77. For W.B. Bliss see W.B. Bliss to J. Bliss, 7 Jan. 1819; 8 Jan. 1820: Bliss Papers, MG 1, Vol. 1602, Nos. 10, 14, PANS. For H. Bliss see J.T. Murray to H. Bliss, 1 Jan. & 3 Dec. 1827: Vol. 1606, Nos. 9, 10. For expressions of concern by R.J. Uniacke that just such dissipation would overtake his son while keeping terms at the Temple see Cuthbertson, "Fatherly Advice."

argumentation and rulings.<sup>48</sup> Legal archives are littered with such notebooks. Sometimes, indeed, they became the basis for published law reports.<sup>49</sup> Bliss, as he had done briefly at Halifax, resolved "diligently and regularly" to observe the workings of the Court of King's Bench. After a full year of this rather diffuse educational experience he seemed still very much the novice:

I feel quite sure that I derive great advantage from attending the Court of K[ing's] B[ench], where I take notes as well as the want of convenient room, & the noise of the Court will allow me. But every thing is conducted in so rapid a manner. . .that I find it difficult to be sufficiently alert and attentive to succeed very well as a note taker. I think I catch the law, if I lose at times a few connecting links of the chain of discourse.<sup>50</sup>

One advantage Bliss and fellow Nova Scotian James Cochran did acquire in these early days in London was a close acquaintance with Sir James Alan Park, a newly-appointed judge of the Court of Common Pleas.<sup>51</sup> Perhaps it was on Park's recommendation that Bliss eventually took the step that colonial lawyers with more satisfactory clerkships would have done directly--enter the office of a special pleader.

Special pleaders were the most respected sub-class of the attorney branch of the English legal profession, informally ranking above Chancery

48 W.B. Bliss to J. Bliss, 7 Jan. 1819: Bliss Papers, MG 1, Vol. 1602, No. 10, PANS. Note also G.B. Baker, "The Juvenile Advocate Society, 1821-1826: Self-Proclaimed Schoolroom for Upper Canada's Governing Class," *Historical Papers* (Montreal, 1985), 74, p. 97; Murdoch, *Epitome*, Vol. 1, pp. 10-11.

49 For Ward Chipman Jr. (London notes, 1811-13, 1819-20) see Hazen Papers, Shelf 65, Box 13, F32, Nos. 19, 29, 31; A268; A318, NBM. For Edward Jarvis (London notes, 1815-16) see Jarvis Papers, Shelf 88, Box 26, F1, No. 8, NBM. For George J. Dibblee (New Brunswick circuit notes, 1831-34) see Dibblee Papers, Shelf 95, Box 30, F2, No. 4, NBM. George F.S. Berthon began what became the *New Brunswick Reports* by publishing "notes which I had taken only for my own use" as a young lawyer: Berthon, *Reports of Cases Adjudged in the Supreme Court of the Province of New Brunswick, Commencing in Hilary Term, 1835* (Fredericton, 1839), preface.

50 W.B. Bliss to J. Bliss, 7 Jan. and 8 Mar. 1819, 8 Jan. 1820: Bliss Papers, Vol. 1602, Nos. 10, 11, 14, PANS. Compare Holdsworth, *History of English Law*, XII, pp. 85-86.

51 W.B. Bliss to J. Bliss, 8 Mar. 1819: Bliss Papers, MG 1, Vol. 1602, No. 11, PANS. Park had earlier patronized Cochran's distinguished half-brother Thomas (appointed chief justice of Prince Edward Island) when at Lincoln's Inn: J.A. Park to J. Inglis, 3 Mar. 1805: George Family Papers, MG 1, Vol. 2160, No. 162, PANS.

solicitors, conveyancers and attorneys in unspecialized practice. When a general attorney was called on to frame a civil claim or defence which was out of the ordinary, he sent it to be done by a 'special' pleader.<sup>52</sup> By the end of the eighteenth century, service in the office of a special pleader was the nearest thing a prospective English barrister could find to coherent instruction in common-law pleadings.<sup>53</sup> For this privilege the applicant paid a hundred guineas. Two of the New Brunswick students--Jarvis (1813) and Saunders (1815)--attached themselves to the eminent treatise-writer Joseph Chitty Sr., who "did more than perhaps any man of his time to facilitate the study of the law."<sup>54</sup> With Chitty as inspiration Saunders improved the early, barren years of his practice at the English bar by composing the two-volume *Law of Pleading and Evidence in Civil Actions* (1828). Although by Blowers Bliss's day Chitty no longer took pupils, he did have the good fortune late in 1820 to enter the office of the busy pleader William Wightman.

From the first Bliss liked "reading & writing & talking law" with Wightman and, perhaps because Bliss was older than most of his pupils, Wightman developed a high regard for him. Less than a year later Wightman, a future Queen's Bench judge, offered to employ Bliss as his chief assistant at £300 annually, with a view to turning the whole practice over to the young man once the master went to the bar.<sup>55</sup> Bliss was tempted to accept, for he heard nothing but bad reports of the state of the Nova Scotia bar. Probably it was only the weighty Blowers connection which took him back across the Atlantic in 1822.

Chief Justice Blowers was already ancient when Bliss returned to Halifax with the reasonable hope of some sort of inheritance. Almost at once he improved the odds immeasurably by marrying the only other

52 W.B. Bliss to H. Bliss, 12 Nov. 1820: Bliss Papers, MG 1, Vol. 1598, No. 36, PANS.

53 Holdsworth, *History of English Law*, XII, pp. 86-87; D. Duman, *The Judicial Bench in England, 1727-1875: The Reshaping of a Professional Elite* (London, 1982), pp. 11-12, 36-37.

54 *Dictionary of National Biography*, IV (1887), 266.

55 W.B. Bliss to J. Bliss, 11 Dec. 1820: Bliss Papers, MG 1, Vol. 1602, No. 15, PANS; W.B. Bliss to H. Bliss, 12 Nov. 1820 and 10 July 1821: Vol. 1598, Nos. 36, 41; H. and L. Bliss to W.B. Bliss, 9 Sept. 1821: Vol. 1601.

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prospective object of the Blowerses' largesse, his adoptive sister Sarah Anderson. Yet, in the manner typical of young lawyers, Bliss could see only gloom. "I never knew the value of money so much as I now do," he soon lamented, "and I never had less prospects of getting any." "I have no clients--no business--and, having opened the best looking office in town with the best collection of books, I thought that these would attract some one before this." Once he had ridiculed the likes of James W. Johnston (his future law partner) and Charles R. Fairbanks as "unphilosophical" legal drudges. Now he envied their £800 a year, for he earned not an eighth of that amount. What a "goose" he had been to work so hard in London when he could have pursued "pleasure and amusement." Bliss need not have worried. After sixteen years at the bar, his adoptive father brought to bear all his formidable influence in Halifax to help ensure that the year after the nonagenarian Blowers vacated the judicial bench his thirty-nine-year-old protégé ascended it.<sup>56</sup>

The textbook success of Blowers Bliss in following his adoptive father to the judicial bench in 1834, like the success of the even younger Ward Chipman in following his namesake to the New Brunswick Supreme Court a decade earlier, was a triumph in terms of the 'connectional' patronage of the pre-Responsible Government period. The considerable merit of the junior Chipman and the less considerable merit of the junior Bliss were irrelevant to the outcome. The effective cause was careful planning and the skilful application of influence by a paternal patron. It is equally instructive to observe the failure of these factors in the case of Blowers's brother Henry. In the early nineteenth-century Maritimes no lawyer's career commenced more impressively through the patent manipulations of a father, and none collapsed more spectacularly when that sustaining influence was removed.

The youngest of the Bliss sons, Henry became Chief Justice Bliss's companion and amanuensis at Fredericton during the final years of his life. Despite formal, old-fashioned relations with his sons, Jonathan Bliss was fortunate in the company of Henry, whose temperament resembled his father's in its bookishness, poetic bent and rather reluctant approach to the law. As his father's companion, and lacking a Sampson Salters Blowers to

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56 S.S. Blowers to T.N. Jeffrey, 5 Feb. 1833: Odell Papers, Shelf 29, F48, No. 19, NBM.

take him in hand, Henry was the only Bliss child to face making a career in New Brunswick. Élite sons did not yet enter the Church. Occasionally they obtained commissions in the army, but prospects were barren in the aftermath of Waterloo. A young gentleman's only plausible career path, the more so if his home must be Fredericton, was the law.

Bliss left King's College for Fredericton in the autumn of 1816 and the following spring entered the chambers of Attorney-General Thomas Wetmore. In principle this was an eligible career move, for Wetmore had an extensive private practice. In fact, the boorish, grasping, rather ungentlemanly attorney-general was far from Bliss's ideal, but Fredericton's tiny bar afforded little choice. On the other hand Bliss had, through his father, access to the finest law library in the province.<sup>57</sup> Although his reading course was not complemented by the stimulus of a mooting society, Bliss did exercise his rhetorical muse in a series of mock jury addresses, some arising from real New Brunswick causes. Not surprisingly in view of his personal history, it was defence of seduction actions that excited him the most, though he also composed a speech on behalf of Queen Caroline in the royal divorce proceedings of 1820.<sup>58</sup>

Bliss was admitted an attorney of the Supreme Court in 1819, at the age of twenty-one. Despite dark forebodings at being marginalized in Fredericton, professional receipts over the next twelve months totalled £153 (more than brother Blowers managed the first year at Halifax) and, in the second year of practice, an encouraging £277.<sup>59</sup> At the end of this second year he was called to the New Brunswick bar. This professional advance was not due to superior talents entirely. The beginning of the 1820s was a time of unprecedented prosperity in New Brunswick, as the wave of post-Napoleonic British and Irish immigration brought capital to the province and both the timber-exporting and shipbuilding industries

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57 R. Parker Jr. to H. Bliss, 18 Apr. 1821: Bliss Papers, MG 1, Vol. 1606, No. 13, PANS.

58 Bliss Papers, MG 1, Vol. 1611, Nos. 54, 56, 57, 59, 60, PANS.

59 These yearly accounts run from the day of Bliss's admission and are in very useful detail: Bliss Papers, MG 1, Vol. 1611, Nos. 80, 81, PANS.

boomed.<sup>60</sup> In response to the increase in business, admissions to the bar in the 1820s nearly matched the total of all earlier years combined. Bliss had the unforeseeable good fortune to be present as one of Fredericton's handful of lawyers at the very beginning of that prosperity.

This sort of professional success was a mere bagatelle, however, compared with young Bliss's unexpected triumph at the patronage stakes. Chief Justice Bliss's early alienation from New Brunswick's governing élite cost him any internal influence he might have deployed on Henry's behalf, and by the late 1810s he had simply outlived his once-effective London connections. Despite vigorous lobbying and some merit, the aged Bliss could not secure even his own retirement pension, much less a rich place for his son.<sup>61</sup> This left only the possibility of the judge's personal patronage. New Brunswick's chief justice controlled only one place of consequence, the office of clerk of the pleas in the Supreme Court. The clerk's duties were principally to take minutes of Supreme Court proceedings in Fredericton and to receive for filing official copies of the various documents exchanged in law suits. The office carried no salary but the incumbent charged fees for his filing services, totalling much or little depending on the volume of litigation.

From 1795 onwards the clerkship of the Supreme Court was filled by William Franklin Odell, appointed by Chief Justice Ludlow and continued by Chief Justice Bliss. Odell had been a mere twenty-two and a non-lawyer at the time of his appointment. He had since been allowed--in recompense for Jonathan Odell's long services--to succeed his father as provincial secretary and as clerk of the council. This, with the clerkship of the Supreme Court, made him the central functionary of the province. In 1818, when duties on the boundary survey took him away from Fredericton, he appointed a deputy to serve the court in his place. This in itself was unobjectionable; his patent from Bliss provided specifically for

60 As to the upsurge in litigation early in the 1820s see H. Bliss's draught blue book return, 20 Aug. 1822: Bliss Papers, MG 1, Vol. 1603, PANS; N. Parker to H. Bliss, 26 Oct. 1823: Vol. 1606, No. 27.

61 "I had once a few friends among the *great*; alas! I have out-lived them": J. Bliss to Bainbridges & Brown, 12 July 1819, 2 June 1821 and 27 Feb. 1822: Odell Papers, Shelf 29, F48, NBM.

it.<sup>62</sup> But Odell's own tenure as clerk was only "during pleasure," and failure to exercise it in person was made the pretext on which the chief justice took a step which he would hardly otherwise have dared. In the spring of 1819 he dismissed Odell and appointed his son Henry--only two months an attorney--in his stead.

Chief Justice Bliss's resort to so grave a breach of propriety within New Brunswick's tiny ruling élite is a plain admission of his lack of influence. With any leverage at all, he would have induced Odell to make Henry his deputy. Instead he created an open, indecorous breach in official ranks, accountable only in terms of desperation to advance the career of the son who stood by him in old age. Henry was later to assert, rather pathetically, that his father had little money to bequeath him "but he left me, as he supposed, this office."<sup>63</sup> In Judge Bliss's thinking, this must have been exactly the truth of it.

It was his tenure as clerk of the Supreme Court, not his private earnings, which made the early years of Henry Bliss's practice so unexpectedly lucrative. Under Odell the position had yielded modest returns. In the litigation boom of the early 1820s it brought Bliss something like £600 sterling a year, more than the salary of a puisne judge of the Supreme Court.<sup>64</sup> In terms of its limited duties it was the most lucrative place in the province and, now that it was wrested from the great Odell, no longer beyond coveting.

Although Lieutenant-Governor George Stracey Smyth soon had a pretext for ousting Henry, he chose not to do battle with a Supreme Court presided over by the senior Bliss merely to benefit the already over-important Odell.<sup>65</sup> When, however, the long-enfeebled chief justice finally

62 Patent of 30 June 1809: Odell Papers, Shelf 29, F26, NBM.

63 H. Bliss to Bathurst [Jan. 1824]: Bliss Papers, MG 1, Vol. 1605, PANS.

64 Bliss's estimate of the profits of office varied according to whether he was trying to minimize them (in a blue book return) or maximize them (in seeking compensation for eventual loss of the position).

65 On the constitutional argument that the clerkship was properly within the gift of the Crown see W.F. Odell petition, 16 Apr. 1819; T. Wetmore to G.S. Smyth, 31 May 1819: Odell Papers, Shelf 29, F29, Nos. 1,2, NBM.

died, on 1 October 1822, he withheld his hand no longer. Even before Jonathan Bliss was in his grave, Smyth asserted the theory that the clerkship of the Supreme Court was in the gift of the Crown and appointed his own aide-de-camp--“a person neither educated for the bar nor acquainted with the duties of the said office”--in young Bliss’s place.<sup>66</sup> The sustaining hand of his patron removed, Henry’s highly successful New Brunswick career collapsed in a day.

The fall of Henry Bliss was but one aspect of a ferocious power struggle touched off by the death of Chief Justice Bliss between Smyth and the province’s long-entrenched ruling families.<sup>67</sup> In the present context one need note only the minor episode acted out in the Supreme Court chamber on 19 February 1823, when George Shore, Smyth’s appointee, presented his patent of appointment as clerk. On the question whether to recognize his commission the court divided evenly. In his favour were the new chief justice, John Saunders (Shore’s father-in-law) and provisional Supreme Court judge Edward Jarvis. Voting against the sufficiency of the Crown patent were Judges Chipman--now orchestrating opposition to Smyth--and John Murray Bliss, a very distant Massachusetts connection of the deceased chief justice. Under these circumstances, with both lieutenant-governor and chief justice favouring Shore, he was admitted to act.<sup>68</sup>

Within a fortnight of his father’s death and even before George Shore could present his commission to the Supreme Court, Henry Bliss took steps to recover his clerkship in the only forum where an appeal might be effective--the Colonial Office. So it was that he arrived in London shortly after his brother Blowers had departed for Halifax. It was not evident why the colonial secretary would interest himself in so local a concern; but Lieutenant-Governor Smyth was simultaneously and successfully under attack for the unjustified appointment of Edward Jarvis rather than Solicitor-General William Botsford, and the peculiar circumstances of Bliss’s dismissal added a certain human interest to his case. As the son of a long-serving chief justice who took the trouble to appear for a personal

66 H. Bliss to Bathurst, ca. 25 Jan. 1823: Bliss Papers, MG 1, Vol. 1605, PANS.

67 W.S. MacNutt, *New Brunswick: A History, 1784-1867* (Toronto, 1963), pp. 188-92.

68 Supreme Court minutes, 19 Feb. 1823: RS 32C, Vol. 4, PANB.

interview, he would at least be listened to. But the case Bliss had to make was not an easy one. Whether the appointment was vested in the Crown or the chief justice, both had united in giving it to Shore. Nor could it be argued that the dismissal was unlawful, for the appointment was to be held only “during pleasure,” and this was the very pretext his father had used four years earlier to supplant Odell.

On the other hand, most colonial appointments, including judgeships, were held on the “pleasure” tenure, and it was virtually a convention in the British American colonies that incumbents would not be displaced of their ‘property’ except for good reason. Even Edward Jarvis, ousted by the colonial secretary, Lord Bathurst, from his brief and provisional judgeship in order to accommodate William Botsford, was compensated by appointment first as Crown legal adviser in Malta and then as chief justice of Prince Edward Island. Moreover, as the cases of Ward Chipman Jr. and Blowers Bliss illustrate, there was a discernible acceptance that fathers who had themselves been insufficiently rewarded for valuable services could transfer this interest to their sons.<sup>69</sup> Such was the gist of Bliss’s case: that his father, who had been denied a pension after long colonial service on a modest stipend, had transferred his moral claims on the British government to his son. Finally, there were the facilitating circumstances that Smyth himself was soon dead and Bliss was more than willing to remain in London on leave of absence, thereby leaving George Shore in place as his deputy in Fredericton, in return for half the fees of office. Under these circumstances Lord Bathurst ordered Bliss restored to his clerkship.

Now that he was in London chasing prostitutes, writing Latin verse plays and reading for the English bar, Bliss had no desire ever to return to New Brunswick where, except for illegitimate children, he now had no close relatives. As well, Judges Chipman and J.M. Bliss, despite their earlier support for him against George Shore, now manoeuvred to prevent Bliss resuming his clerkship, for each had his own candidate for the lucrative place. In the end, when his two-year leave expired in 1825 Bliss

69 Good examples of this principle at work in the Nova Scotia context are provided in B.C. Cuthbertson, *The Old Attorney General: A Biography of Richard John Uniacke* (Halifax, 1980), pp. 74-76, and Cuthbertson, *The Loyalist Governor: [A] Biography of Sir John Wentworth* (Halifax, 1983), p. 142. This was the argument on the basis of which William Franklin Odell had been allowed to succeed his father as provincial secretary: MacNutt, *New Brunswick*, p. 136.

remained in England to pursue a career at the bar, serving for many years with modest distinction as New Brunswick's London agent.

It is a commonplace among historians that the second generation of New Brunswick office-holders fell short of the often remarkable standard set by their fathers. Edward Winslow's reluctant observation in 1797 that the province's governing circle was "gradually sinking into a sort of Lethargy" holds even more truth for the second Loyalist generation. For most the choice was "eat, drink & vegetate" or emigrate. Fifteen years later an English visitor to the province confirmed the tendency to downward mobility among offspring of the gentry: "the sons of the officers of rank and of other gentlemen who took refuge here after the American war, though many of them have received tolerable education and are gentlemanlike in their manners, yet they are obliged to undergo all the drudgery of farming and hold their situations above the vulgar by their superior skill and industry." In the dilemma of emigration, influence or obscurity there was, therefore, more than mere prosperity at stake. The correspondence passing among Blowers and Henry Bliss and their lawyer friends reveals an obsessive concern not with monetary gain itself but with cultivation of a genteel life-style. In a new society where the status of élite figures was precarious--where generals could be seen in the character of innkeepers or selling cabbages at the public market, and even servants must be saluted as "Mr."--an elaborate emphasis on breeding served to shore up the fragile distinction between the gentry and the "vulgar."<sup>70</sup>

Among young men fresh from King's College this sensibility was acute. Instruction at King's put particular emphasis on literature and development of a good literary style, and both Bliss brothers subsequently cultivated their genteel instincts by writing poetry.<sup>71</sup> Henry Bliss, a literary prize-winner at college, wrote verse plays throughout his life. Probably his brother Blowers's enjoyment of writing was lifelong as well, for verse translations from Catullus, Horace and Ovid were the project of his retirement. To their father's generation, embittered by revolutionary misfortune but confident in at least their genteel pedigrees, literary

70 E. Winslow to J. Sewell, 14 Jan. 1797: Sewell Papers, MG 23, GII 10, Vol. 3, NAC; H. Temperley, ed., *Gubbins' New Brunswick Journals* (Fredericton, 1980), pp. xx, 26, 27, 84.

71 Cuthbertson, *Charles Inglis*, p. 141.

creativity had represented--in Chief Justice Bliss's phrase--a "Consolation to Distress"; it was an affirmation that elevated instincts survived amid the rocks and stumps of exile.<sup>72</sup> To his sons, cultivation of the poetic muse met a need that was perhaps even more urgent: an assertion of their very status as gentlemen. It depressed Neville Parker that the "affections get so oppressed & loaded with [the] rubbish and dust" of law practice that he could no longer command the "elasticity and play" of sentiment that had once made him a poet. He deplored the law's "tendency to callousness" which, he feared, might force him downward to the level of a "mere drudge."<sup>73</sup>

Affirmation of genteel values was also manifested in what the Bliss circle singled out for criticism and rejection. Henry Bliss routinely screened new acquaintances according to whether they were "Gentlemanlike."

72 G. Davies, "Consolation to Distress: Loyalist Literary Activity in the Maritimes," *Acadiensis*, XVI, 2 (1987), 51-68. Compare T.B. Vincent, "Eighteenth-Century Poetry in Maritime Canada: Problems of Approach," K. MacKinnon, ed., *Atlantic Provinces Literature: Colloquium Papers* (Saint John, 1977), 13, pp. 15-19.

73 N. Parker to H. Bliss, 10 Dec. 1819 and 27 Nov. 1824: Bliss Papers, MG 1, Vol. 1606, Nos. 24, 29, PANS. (I am grateful to Elinor Mawson of the Charlotte County Archives for specimens of the poetry of Blowers Bliss and Neville Parker from that institution's Parker Papers.) On the analogous practice of duelling between lawyers as a mode of asserting gentlemanly status see the discussion of the Street-Wetmore duel (1821) in Public Legal Information Services, *Manners, Morals and Mayhem: A Look at the First 200 Years of Law and Society in New Brunswick* (Fredericton, 1985), pp. 21-24; and compare M.S. Cross, "The Age of Aristocracy: The Formation of an Aristocracy in the Ottawa Valley," Canadian Historical Association, *Historical Papers* (1967), 103-17, pp. 109-110; Buchanan, *Bench and Bar of Lower Canada*, pp. 134-37.

The concern of young lawyers as to gentlemanly status is also a focus of G.B. Baker, "'So Elegant a Web': Providential Order and the Rule of Secular Law in Early-Nineteenth Century Upper Canada," *University of Toronto Law Review*, 38 (1988), 184-205. Because Baker's discussion is weighted chronologically to the 1820s and 1830s, he can appropriately conflate issues of gentlemanly status and professional consciousness. Indeed, for his young lawyers, "claims to superior civility were to be derived from an imbibed professional culture and moral knowledge rather than from privileged birth or upbringing" (p. 195). The dynamic I find at work among the Bliss brothers and their circle was different. Their myth of concern, formed in the 1810s, was overwhelmingly one of gentlemanly status, but *not* of professional consciousness *per se*, which in the Maritimes is a development of the 1820s (see below, note 83). Their anxiety was over retention of the status into which they were born but which they felt in danger of losing, not--as in Baker's analysis--careful cultivation of professional values for the purpose of acquiring genteel status in the first place. Their self-consciousness was acute, but its manifestations were personal rather than--as in the Upper Canada of the 1820s--collective and public. I offer this aside only to underline the modest point that the attitudes of élite law students in the Maritimes of the 1810s and the Upper Canada of the 1820s may differ in important respects.

Blowers Bliss recalled his 1818 voyage from Saint John to Fredericton for admission to the bar in terms of the “mixt and discordant assembly” he encountered, ridiculing the “many who at the dinner table obtained the title of gentlemen and ladies, being their first appearance in those characters.” In 1826 Neville Parker expressed disgust at the “low ebb” to which the legal profession had fallen in New Brunswick on account of the influx of practitioners who lacked the refinement of a college degree:

There is little talent & little learning at our bar--and I might add little respectability.... [W]e have [Henry] Swymmer and [George] Cleary and Mr. [Horatio] Lugrin--Swymmer's brother in law--and multis aliis who are as fit for the law as they are for the Church.

Elsewhere he pontificated that “the abuse that is so generally bestowed upon Attorneys is well merited by them.” “It is difficult to tell whether their stupidity or meanness is the most predominant.” Parker, who “once thought that £500 per ann. was a thing the very least that a Gentleman... could think of” lamented that he was doomed “to scramble [at St. Andrews] with such fellows as [Harris] Hatch & Swymmer for a bare 1 or 200.”<sup>74</sup> In the 1820s this prospect of fraternization with lawyers who had not been at least to King’s College was a new development in New Brunswick, elaborately deplored by those who had shared the camaraderie of several years’ dissipation at Windsor.<sup>75</sup> Probably it was the appearance at the bar of lawyers who were not quite gentlemen which, as much as anything, led the Supreme Court to formalize professional admission standards at last in 1823.<sup>76</sup> Until then the bar was a small, homogeneous family connection. With the rapid increase in the number of lawyers under the economic stimulus of the 1820s, the gentlemanly character of the New Brunswick bar could no longer simply be assumed.

74 H. Bliss, “Journal of a week in September 1817”: Bliss Papers, MG 1, Vol. 1608, No. 2, PANS; W.B. Bliss to J. Bliss, 18 Sept. 1818: Vol. 1602, No. 7; N. Parker to H. Bliss, 30 Oct. 1819, 9 Apr. 1820 and 11 July 1826: Vol. 1606, Nos. 23, 26, 31.

75 Nearly half of the graduates of King’s College between 1802 and 1816 became lawyers: Cuthbertson, *Charles Inglis*, p. 166.

76 Earle, *Rules and Orders of the Supreme Court*, pp. 25-27.

Despite the eventual success of a few young gentlemen in forging élite careers and finishing their course in the pantheon of the *Dictionary of Canadian Biography*, the declension/emigration thesis remains valid for the gentry of the second Loyalist generation generally. In the classic formulation of John Davidson, an Englishman at the University of New Brunswick writing in 1904:

Th[e] sons, who never had the stimulus of a great cause, or experienced the ennobling influence of a great sacrifice, were not, and could not be, the men their fathers were. The sons, . . . brought up to regard office and influence as the objects of life, hardly ever rose above mediocrity. Their energies were diverted to the barren pursuit of political jobbery at home [i.e., Britain] and in the colony. . . . Influence and not fitness or possible efficiency came to be the decisive test.<sup>77</sup>

Aside from its anachronistic expectation of administrative "efficiency," Davidson's analysis captures much of the career dilemma of the Bliss brothers and their contemporaries. Their fathers had attended Harvard and Yale as a matter of course. Except in unusual circumstances their sons could aspire only to the college at Windsor. The upheavals of the Revolution had put the fathers on familiar terms with princes, peers and generals, providing an array of useful contacts in the great world across the Atlantic. Their sons had no such opportunity. At a relatively young age the fathers had been entrusted with the governance of what was intended as a model American colony; but they proved far too long-lived to provide a predictable flow of preferments for their young. To the second generation, the prospect of attaining the genteel standard of their Loyalist fathers must often have seemed remote. They were forced--seldom reluctantly, it is true--to embrace the prospect of emigration as one of the fixed facts of a successful professional career. The junior Chipman contemplated law practice not only in Quebec but also in Nova Scotia. Blowers Bliss had no thought of a career in his native province and was nearly lost to Nova Scotia as well. Henry Bliss, while still a teenager, aimed for a legal career in the West Indies. Later, the realization that he was stranded as his

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77 J. Davidson, "The Loyalist Tradition in Canada," *MacMillan's Magazine*, XC (1904), 390, p. 395. The theme is echoed in A.G. Bailey, "Overture to Nationhood," C.F. Klinck, ed., *Literary History of Canada: Canadian Literature in English* (Toronto, 1965), pp. 60-61; W.S. MacNutt, *New Brunswick*, p.164; J. Hannay, *History of New Brunswick* (Saint John, 1909), Vol. 1, pp. 198-99.

father's companion in Fredericton caused him profound depression. John Simcoe Saunders nearly broke his father's heart by his zeal to live elsewhere. It was better, he taunted, to fail in Lower Canada than to succeed in New Brunswick. Only after four years in Quebec, several years at the English bar, and dreams of a career in Nova Scotia or the West Indies would the younger Saunders condescend to settle in "the narrow sphere of prejudice and ignorance" that was his native province.<sup>78</sup>

All hopes of evading the cruel dilemma of obscurity on the one hand and emigration on the other focused necessarily on the politics of "office and influence" that Davidson and some other New Brunswick historians have found so deplorable.<sup>79</sup> Nepotism was a fixed feature of life in New Brunswick's official ranks. The aspect of scandal in Chief Justice Bliss's ouster of William Odell from his Supreme Court clerkship was its violation of Odell's reasonable expectation of continuing in office, not the bold promotion of the judge's own son. No one had benefited more from the art of nepotism than William Odell himself, and Ward Chipman Sr., John Saunders and Sampson Salter Blowers all contemplated that their Supreme Court seats would descend to their sons. One of Henry Bliss's own professional consultations involved an analogous attempt by the provincial comptroller of customs to replace his Miramichi deputy with his own son. Neville Parker intended to open law practice at Miramichi, and his father sought to supplement professional income with the fees from a deputy collectorship. When the incumbent deputy resisted dismissal and raised legal objections, a typical compromise was reached whereby Parker went off to settle in the more agreeable port of St. Andrews in return for a pledge of half the Miramichi fees.<sup>80</sup> In a world lacking both

78 H. Bliss to J. Bliss, 23 Sept. 1815: Bliss Papers, MG 1, Vol. 1601, PANS; H. Bliss journal, 17 Sept. 1817: Vol. 1608, No. 2; J.S. Saunders to J. Saunders, 1 Aug. 1814 and 4 Sept. 1815, quoted in Moore, "John Saunders," pp. 94, 96-98.

79 For example, Condon, *Envy of the American States*, pp. 180-81; Hannay, *New Brunswick*, Vol. 1, p. 161; G.E. Fenety, *Political Notes and Observations* (Fredericton, 1867), pp. ix, xvi-xviii. On the other hand, the connectional patronage of the pre-Responsible Government period was provocatively celebrated in I.A. Jack, "Canadian Aristocracy," *Maritime Monthly*, IV, 1 (1874), 65-77.

80 R. Parker Jr. to H. Bliss, 27 Jan. and 18 Apr. 1821: Bliss Papers, MG 1, Vol. 1606, Nos. 12, 13, PANS.

merit tests and pension plans, nepotism and the proprietorial concept of public office were the accepted means of launching careers and building dynastic security, whether in church or state, whether in Georgian England or Loyalist/Federalist America.<sup>81</sup> If a young lawyer were to gain public preferment in the early nineteenth-century Maritimes, they were a necessity.

Henry Bliss, who was admitted to the Inner Temple in 1819, and James Boyle Uniacke, who commenced at Lincoln's Inn in 1823, are the last known students to have joined one of the Inns of Court as part of preparation (in Bliss's case notional) for a legal career in the Maritime colonies.<sup>82</sup> The explanation for this change--dramatic in view of the number of Maritimers who had thought it worth their while to keep terms at the Inns in the difficult decade of the 1810s--is not that the quality of English legal education had declined, for further decline was hardly possible; nor is there evidence suggesting that this shift in the pattern of élite career formation was due to improvement in the quality of legal education available locally.<sup>83</sup> Aspiring colonial lawyers did not, in any

81 For example, J.M. Bourne, *Patronage and Society in Nineteenth-Century England* (London, 1986), pp. 64-69, 97-99; H.T. Manning, *British Colonial Government after the American Revolution, 1782-1820* (New Haven, 1933), pp. 90-97; C.E. Prince, *The Federalists and the Origins of the U.S. Civil Service* (New York, 1977), pp. 42-43, 114-17, 122-24, 165-67, 266-67; S.H. Aronson, *Status and Kinship in the Higher Civil Service: Standards of Selection in the Administrations of John Adams, Thomas Jefferson, and Andrew Jackson* (Cambridge, MA, 1964), ch. VII; E.E. Brennan, *Plural Office-Holding in Massachusetts, 1760-1780* (Chapel Hill, NC, 1945), pp. 32n, 34; D.G. Bell, "Charles Inglis and the Anglican Clergy of Loyalist New Brunswick," *Nova Scotia Historical Review*, 7, 1 (1987), 25, pp. 45-46; Cuthbertson, *Charles Inglis*, pp. 222-23; Temperley, *Gubbins' New Brunswick Journals*, p. xxv; D Facey-Crowther, ed., *The New Brunswick Militia Commissioned Officers' List* (Fredericton, 1984), pp. 4-5.

82 No doubt other Maritime-born men did attend the Inns subsequent to Henry Bliss and James Boyle Uniacke. Sir Thomas Dickson Archibald (1817-1876), for example, was a Truro native and new member of the Nova Scotia bar who was admitted to the Middle Temple in 1840, called to the English bar in 1852, and appointed a judge of the English Court of Queen's Bench in 1872: *Dictionary of National Biography* [Supplement], 1 (London, 1901), 59-60. But I have been unable to find any example of one who did so intending to make it part of a legal career in New Brunswick or Nova Scotia.

83 Apart from the founding of a self-help Law Students' Society in Fredericton late in the 1820s, there is no positive indication that the state of legal education was a subject of attempted improvement. This is not to deny that the decade of the 1820s saw the first flowering of what may

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event, go to London primarily to add to their store of legal knowledge; that was incidental. They went for two sorts of reasons. One was career speculation in the senses already mentioned: laying the basis for public legal preferment in the Maritimes by making key London contacts and gaining an unexceptionable legal accreditation, or preparing for emigration to some other part of the empire. Probably another sort of motive inducing Loyalist fathers to encourage their sons to spend a few years at an Inn was to offer the imperial authorities a gesture of socialization, deference and ideological submission. By making their sons initiates of the Inns of Court, élite fathers implicitly assured the British that the second Loyalist generation would be led by men whose political inclinations were at least as anglophilic as those of the first. Their sons would become the more eligible for preferment not merely because they had a legal accreditation comprehensible to the English but also because, after a period of socialization in London, their political principles could be presumed to be sound.

Maritimers ceased keeping terms at the Inns of Court when these sorts of consideration no longer seemed as critically important in laying the foundation for an élite legal career. The economic upturn of the 1820s lessened the attractiveness of emigration, so there was correspondingly less need to enhance portability through English legal qualification. More important, perhaps, was the changing dynamic of imperial relations. By the end of the 1820s the British, no longer obsessed with the question of the loyalty of the British American colonies, were settled in a policy of principled non-interference in the colonies' internal affairs.<sup>84</sup> As a consequence, eligibility for appointment to the judicial bench and to the law officers' positions was calculated increasingly in accordance with the

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be called a professional (as opposed to a merely gentlemanly) consciousness at the British American bar, evidenced by the founding of law societies in Nova Scotia and New Brunswick in 1825 and at Montreal in 1828; Upper Canada's Juvenile Advocate Society and a student organization in Montreal also date from this decade. As well, given the intimate leadership role of judges in the nineteenth-century legal profession, the fact that the New Brunswick bench between 1825 and 1850 included two London-trained judges may have prompted a more searching examination of those who presented themselves for admission as attorneys, and hence better student preparation.

84 P. Buckner, *The Transition to Responsible Government: British Policy in British North America* (Westport, CT, 1985), p. 37.

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colony's own notions of appointment and promotion.<sup>85</sup> In the 1830s and 1840s these internal conventions came to be moulded by considerations of partisan politics, even where the applicant himself was not a partisan, until by the 1850s judicial appointments were made almost exclusively with a view to their impact on the balance of power in the House of Assembly. By the middle of the nineteenth century the connectional patronage of the pre-Responsible Government era was supplanted entirely by the partisan patronage associated with party government. Whatever theoretical discretion the British government and its colonial representative might enjoy in making senior legal appointments, its exercise came to be determined by factors internal to the colony, not in accordance with a particular applicant's personal contacts in London, and certainly not because the applicant had the guarantee of respectability associated with keeping terms at one of the Inns of Court. The end of the Maritime lawyers' career trek to London in the 1820s was not a matter of changing practices in legal education but chiefly a reflection of the changing colonial constitution itself.

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85 I do not overlook the startling appointment of James Carter, a young Englishman with no New Brunswick contacts, as judge of that colony's Supreme Court in 1834: Lawrence, *Judges of New Brunswick*, pp. 342-45. The scandal which that appointment provoked, and the subsequent assurance by the British government that it would not happen again, are the most explicit evidence in support of the argument sketched here.

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# “He usefully exercised the medical profession”: The Career of Michael Head in Eighteenth-Century Nova Scotia

Allan E. Marble

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The *Weekly Chronicle* of Saturday, 1 June 1805, reported the death in Halifax of Michael Head, Esquire, leaving a widow and twelve children. As this biography will show, Head had been a resident of Nova Scotia for at least forty years, and possibly for over fifty years. He provided medical and surgical services to Nova Scotians during most of the latter half of the eighteenth century, and practised in Amherst, Lunenburg, Windsor, and Halifax, as well as serving as surgeon to a British regiment, the Nova Scotia militia, and possibly the Royal Navy. During the last twenty years of the eighteenth century he operated a store in Windsor, and later in Halifax, in which he sold drugs and medicines. Michael Head was undoubtedly one of the most significant figures in the medical profession in eighteenth-century Nova Scotia. Because of his profession, and his long association with Michael Francklin, lieutenant-governor of Nova Scotia from 1766 to 1776, Head was accepted by, and was a minor member of, the colonial establishment. He received many appointments and grants of land from the government, but, after Francklin was superseded in office, he was turned down for two particular appointments which must have caused him a great deal of disappointment. The loss of his first wife, the loss of four infant children, and his omnipresent debts, must also have caused him much anxiety. However, Head undoubtedly ranks with Dr. Alexander Abercrombie (c.1714-1773) and Dr. John Phillipps (c.1737-1801), as one of the leading surgeons in Halifax in the eighteenth century. He was also the progenitor of five physicians and surgeons, including four men and one woman, who practised in Halifax, Sydney, Saint John, Fredericton, and on the Miramichi, during the early nineteenth century.

The baptismal register of St. Mary’s Roman Catholic Cathedral in Limerick, Ireland, contains a christening, on 21 August 1736, of Michael, son of Michael and Mary Head. While the writer has not been able to find any substantial evidence to link this christening to the subject of this biography, it is interesting to note that among the books included in the inventory of Michael Head’s estate, probated in Halifax on 17 June 1805,

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Allan Marble is a resident of Halifax, and has been active in lecturing and writing about Nova Scotian genealogy and history for many years.

Ferrar's *History of Limerick* is listed.<sup>1</sup> Furthermore, the inscription on Dr. Head's gravestone in St. Paul's Cemetery in Halifax indicates that, when he died on 1 June 1805, he was "aged 66 years." If he was, in fact, that age at the time of his death, he would have been born prior to, or on, 1 June 1739, approximately two years and ten months after the date of the christening mentioned above. The writer's long association with genealogical research has led him to conclude that ages inscribed on gravestones are frequently in error due to: the lack of knowledge of the correct age by surviving relatives; mistakes made by the gravestone carver; or difficulty in reading the inscription due to the deterioration of the stone. It is possible, therefore, that the Dr. Michael Head described in this paper is the same person baptized in Limerick on 21 August 1736.

The first mention of a Dr. Head in Nova Scotia appeared on 8 October 1754, in an entry in the account book of William Best, mason.<sup>2</sup> It was entitled "Doctor Head, of the Success," and Best charged Head five shillings for "Setting Iron Barrs in [the] form of a Grate," and an additional five shillings for "Bricks, lime, and sand." The ten shilling bill was delivered to Dr. Head on 3 April 1755, suggesting that Dr. Head was in Halifax on the latter date. Considering the nature of the items which Dr. Head purchased from Best, it would appear that the surgeon was repairing a chimney in the house he was renting in the town.<sup>3</sup> The *Success* was a Royal Navy ship of war commanded by Captain John Rous, and was in Halifax Harbour on 4 April 1755<sup>4</sup>. It was one of the ships which embarked from Boston on 20 May 1755 with troops sent to assist in carrying out the attack on Fort Beauséjour, and had an unnamed "sergeon"

1 Public Archives of Nova Scotia [hereafter PANS] RG48 Halifax Estates, Reel 407, Estate of Michael Head, Druggist and Surgeon. Ferrar, J.: *The History of Limerick, Ecclesiastical, Civil, and Military, from the Earliest Records to the year 1787, to which is added the Charter of Limerick, and An Essay on Castle Connell Spa, on water in general and cold bathing.* (A. Watson & Co., Limerick, 1787), 429 pp.

2 PANS MG3 Vol. 141, Account Book of William Best, Halifax, 1752-1759, p. 50.

3 A thorough search through the Halifax Deeds (PANS RG47) for the 1750s shows that Dr. Head did not own property in the town or county of Halifax.

4 Adm 1/480, p. 568, State and Condition of H.M.Ships and Vessels under the command of [Captain] A. Keppel at Nova Scotia. On 4 Apr. 1755, the *Success* carried 135 men.

on board.<sup>5</sup> The only additional record of Dr. Head in Halifax during the 1750s was on 30 March 1755, and appeared in the 'Report of the State of the Orphan House,' in which it was recorded that Doctor Head took in an orphan on that date.<sup>6</sup> Since the first name of this Dr. Head was not stated in any of the above sources, the writer does not have sufficient evidence to conclude that he was Michael Head, the subject of this sketch.

It is known, however, that Michael Head was in Nova Scotia prior to March 1765. The 40th Regiment, which had been stationed in Halifax for most of the first fifteen years of the existence of that settlement, finally embarked for England in March 1765.<sup>7</sup> Sometime prior to that date, Michael Head had served at Halifax as an assistant surgeon to that regiment.<sup>8</sup> Unfortunately, neither Drew's *Roll of Commissioned Officers in the Medical Services of the British Army, 1660-1960*<sup>9</sup>, nor *The Army Lists* include the names of assistant surgeons of regiments, and therefore it is not known when he joined the 40th Regiment.

Even though Michael Head never petitioned for a grant of land in the province, he was granted at least four large tracts, the first of which was lots 27 and 28 in Amherst Township, totalling one thousand acres and awarded by Governor Montagu Wilmot on 13 July 1765.<sup>10</sup> It appears, however, that Dr. Head did not actually reside in Cumberland County until 1769, since the records of the Halifax County Inferior Court for 1767 show that he was summoned to appear at the March sitting of the Supreme Court by Richard Gibbons for non-payment of the rent of a house in Halifax covering the period 23 August 1765 to 23 November

5 "Journal of John Winslow of the Provincial Troops while engaged in the Siege of Beauséjour in the Summer and Autumn of 1755," in *Collections of the Nova Scotia Historical Society*, IV (1885), 133.

6 C.O.217 Vol. 18, pp. 218-225, Report of the State of the Orphan House, 1752-1761.

7 C.O.217 Vol. 43, No. 263, Secretary of State to Wilmot, 23 Mar. 1765.

8 PANS Micro: Biography: Earl of Dartmouth: Reel #1, pp. 479-481, Denson to Legge, 1 Jan. 1776.

9 Wellcome Institute, London, 1968.

10 PANS Micro: Places: Nova Scotia: Land Grants, Book 6, p. 355. Michael Head was granted lots 27 and 28 in Amherst Township.

1766.<sup>11</sup> In the court record, Michael Head was described as a surgeon, late of Halifax, but now of Lunenburg. This was the first of two known instances in which Michael Head was charged with not paying his debts.

Michael Head had been appointed Assistant Surgeon at Lunenburg on 26 September 1766, succeeding John Phillipps, who had been given permission to go to England for medical attendance.<sup>12</sup> Head is known to have been a resident of Lunenburg as early as 6 December 1766<sup>13</sup>, and continued to reside in Lunenburg for about sixteen months. Sometime prior to 8 April 1768 he moved to Halifax<sup>14</sup>, and shortly thereafter, on 11 June, he was appointed surgeon to the Island of Saint John [Prince Edward Island] at a pay of five shillings per diem.<sup>15</sup> Unfortunately, Head and others were victims of an unauthorized plan put into execution by Lieutenant-Governor Michael Francklin to establish a settlement on that island. Approximately three months after the appointed officials, including Michael Head, had been on the island, the Earl of Hillsborough wrote to the governor of Nova Scotia, Lord William Campbell, who was absent from said province, stating:

The steps taken by Mr. Franklin[sic] in respect to the Island of St. John as related in his letter No.4 and the papers which accompany it are highly disapproved by the King.

His Majesty is unwilling to suppose that His Lieut Gov<sup>rs</sup> conduct upon this occasion could proceed from anything but a total and entire misapprehension of the orders specified in my Letter of 26 February in which there is not one word that can authorize any Establishments whatever.

His Majesty commands that all the Establishments for the Island of St. John made by Mr. Francklin should be entirely discontinued.<sup>16</sup>

11 PANS RG37 Vol. 21A, March Term, Halifax County Inferior Court Records, 1767. Supreme Court Records for 1766 (PANS RG39, Series C, Box 6) indicate that Michael Head had signed a promissory note in Halifax on 3 July 1766.

12 PANS RG1 Vol. 167, p. 16, Francklin to Head, 26 Sept. 1766.

13 PANS RG47 Cumberland County Deeds, Reel 555, Vol. B, p. 232.

14 PANS RG37'C' Halifax Supreme Court Records, Vol. 8, William Meaney vs Michael Head.

15 PANS RG1 Vol. 167, p. 73, Francklin to Head, 11 June 1768.

16 C.O.218 Vol. 25, p. 33, Hillsborough to Campbell, 12 Sept. 1768.

According to Francklin's letter to Isaac Deschamps, Superintendent of the Island of St. John, and dated 3 July 1768, Michael Head had arrived there in late June 1768. Francklin wrote: "By this Vessel comes the Reverend Mr. [John] Eagleson whom I have appointed for the Mission of the Island for the Present, his residence of course must be at Charlotte Town. The surgeon also comes by this conveyance with medicines."<sup>17</sup> Head was probably resident on the island until at least 1 October 1768, since he was paid £33 for his services as surgeon for the period from 19 May until the former date.<sup>18</sup>

On 12 June 1769, Michael Head, and Susanna, his wife, of Cumberland, sold Thomas Bridge of Halifax, two lots (#27 and #28) in the Township of Amherst, which lots had been granted to Head in 1765.<sup>19</sup> A condition of the sale was that Michael and Susanna Head could buy back the land for £31 plus interest at six per cent, prior to 11 June 1770. Susanna signed her name on the deed "Susanna M. Head." The writer has not been able to ascertain the maiden name of Susanna, the first wife of Michael Head, but it would be expected that she was the mother of his eldest son, Dr. Samuel Head, M.D., MRCS.<sup>20</sup>

The foregoing would suggest that Michael Head did not reside in Cumberland County for very long during the period 23 August 1765 to 29 August 1770. It is surprising, therefore, that P.S. Hamilton in his unpublished *History of the County of Cumberland*, wrote the following:

Head was an Irishman . . . . He was made a Justice of the Peace. Yet he no doubt loved a fight for its own sake. If not much belied, he used to ride boldly into these riots, and in a stentorian voice, "command the peace in the King's name." Then in a lower, but equally emphatic tone, he would say, in Irish, "Give it to them, the Sassenach devils, give it to them!"<sup>21</sup>

17 PANS RG1 Vol. 136, p. 117, Francklin to Deschamps, 3 July 1768.

18 C.O.217 Vol. 46, p. 97, The Government of Nova Scotia for the Settlement of the Island of St. John, [payment] to Michael Head, 30 Nov. 1768.

19 PANS RG47 Halifax County Deeds, Vol. 9, p. 258.

20 The inscription on Samuel Head's gravestone in St. Paul's Cemetery, Halifax, indicates that he died on 14 Nov. 1837, aged 64, indicating that he was born ca. 1773.

21 P.S. Hamilton, "History of the County of Cumberland" (essay submitted for the Akins Prize, 1880), pp. 67, 69.

Unfortunately, Hamilton does not indicate his source for the above information, or for the quotations. A thorough search of the Commission Books, and Governors' and Lieutenant-Governors' papers, for the period 1749 to 1770, has failed to find any mention of the appointment of Michael Head as a Justice of the Peace for Amherst Township or Cumberland County.

Dr. Head was mentioned as occupying a house in Halifax on 7 July 1770,<sup>22</sup> and on 29 August of that year he appointed Thomas Bridge as his attorney, with power to sell his two lots of land amounting to one thousand acres in Amherst Township.<sup>23</sup> On 26 February 1774, Christopher Jessen of Lunenburg wrote that "Dr. Head is established up the country at a salary of £75 per year and his medicines."<sup>24</sup> Just exactly what position he held which paid him that amount is not known. Sometime during 1774 or 1775 he removed to Windsor, and on 1 January 1776, Henry Denny Denson, newly appointed lieutenant-colonel of the Loyal Nova Scotia Volunteers (Legge's Regiment), wrote to Governor Legge, recommending that Dr. Michael Head be appointed surgeon to the regiment. The Loyal Nova Scotia Volunteers was one of three provincial regiments raised in Nova Scotia in 1775 to provide protection from invasion by the army of Congress. Denson wrote that Head was "an extreme good surgeon [who] has offered his services as a surgeon to your Regiment . . . . My chief dependence is on Dr. Head." In the same letter, Denson mentioned that George Ellis "who served his time [apprenticed] with Doct<sup>r</sup> Head could be appointed surgeon's mate."<sup>25</sup> For some reason, neither Head or Ellis were named to the regiment, since Dr. John Phillipps and William Pringle had already been appointed respectively surgeon and surgeon's mate on 25 December 1775.<sup>26</sup> Dr. Head was, however, named first lieutenant in a

22 *Nova Scotia Gazette and Weekly Chronicle*, 7 July 1770.

23 PANS RG47 Halifax County Deeds, Book 12, p. 368.

24 MG1 Vol. 583, Miller Collection, Folder 2.

25 PANS Micro: Biography: Earl of Dartmouth: Vol. 1, pp. 479-481, Denson to Legge, 1 Jan. 1776.

26 *Ibid.*, Vol. 1, pp. 546-547, Return of Officers of H.M. Provincial Regiment of Loyal Nova Scotia Volunteers, 23 Feb. 1776. These appointments must have been unknown to Denson when he wrote on 1 Jan.

volunteer Regiment of Militia in the District of Windsor on 17 May 1776, and on 1 June 1780 was promoted to captain of militia.<sup>27</sup>

Dr. Michael Head was married for the second time on 12 May 1776 to Elizabeth Barbara, the daughter of Joseph and Frederica (Erad) Pernette of Lunenburg.<sup>28</sup> At the time of their marriage Head was approximately forty, and his bride nineteen. They resided in Windsor, and on 5 June 1777, Michael submitted a memorial to the House of Assembly, in which he wrote:

that in the years 1775 and 1776 the Small Pox spread itself from Halifax [sic] to the Townships of Windsor, Newport, Falmouth, and Horton. That is consequence thereof, the inhabitants Generally resolved on Enoculation[sic] to prevent its dreadful effects.<sup>29</sup>

Dr. Head listed the names of fifty-eight persons from the four townships where he had inoculated, and asked to be paid for his services.

On 20 June 1777, Head wrote to his father-in-law, Joseph Pernette, lamenting that fact that General William Howe had countermanded Major-General Eyre Massey's appointment of him as Chief Surgeon of the General Hospital in Halifax.<sup>30</sup> Head must have been notified by Massey that he would get the appointment prior to 19 December 1776, since Dr. John Jeffries had been Surgeon to the Hospital since that date, and remained in that capacity until the arrival of his replacement, Dr. John Marshall, from England on 12 August 1778.<sup>31</sup>

Dr. Head was appointed a Justice of the Peace for Halifax County on 10 November 1777,<sup>32</sup> but continued to reside and practise in Windsor for

27 PANS RG1 Vol. 168, p. 468, Commissions of the Usual Tenor . . . , 1 July 1776; p. 571, Commissions . . . , 23 June 1780.

28 PANS MG1 Vol. 731A, No. 87, p. 71, PANS Family Papers, O'Brien Family, Windsor, Nova Scotia, Record of Marriages, Births, Burials of Windsor, 1738-1818.

29 PANS RG1 Vol. 301, Document 94, Memorial of Michael Head, Surg<sup>n</sup>, Windsor, 5 June 1777.

30 PANS MG100, Vol. 205, No. 15d, Head to Pernette, 20 June 1777.

31 PANS RG1 Vol. 342, Document 77, Jeffries to Bulkeley, 16 Dec. 1776. C.O.217 Vol. 54, p. 87, McLean to Whitehall, 18 Aug. 1778.

32 PANS RG1 Vol. 189, p. 434, Minutes of Council, 10 Nov. 1777.

the next thirteen years. He operated a store in Windsor during this period and on 10 August 1779, advertised in the *Gazette* as follows:

Just Imported, in the St. Lawrence, Captain Wyatt, Master, from London, and to be SOLD, by Michael Head, at his store in Windsor, A Fresh Assortment of Drugs and Medicines whose sale and retail which he engages to sell as cheap as can be had, in this Province.

Also a General Supply of Groceries, Sadlery, and Stationary and many other Articles, which he will Sell cheap for Cash.<sup>33</sup>

Michael Head resided and practised in Windsor during the American Revolution, and it was not until the end of the war that his name once again appeared in the official papers of the province. Probably for his service in the militia during the American Revolution, Head was granted 1,000 acres at Chester on 29 March 1784.<sup>34</sup> It is rather surprising, however, that on 16 September 1784, a Michael Head was appointed one of the justices of the Inferior Court of Common Pleas for Sunbury County, New Brunswick.<sup>35</sup> If this was the same Dr. Michael Head, he must have indicated to the government that he did not want to relocate in Sunbury County, since on 6 December 1784 he was appointed one of the Justices of the same Court in Hants County.<sup>36</sup> A second major grant of land received by Michael Head during the 1780s was one thousand acres in the Township of Parrsborough, which was granted on 5 July 1787.<sup>37</sup> This was lot 66 in the township and was located in the Diligent River area.

33 PANS RG39 Series 'C', Box 22, Summons, Michael Head vs Donald Cameron, 27 July 1780. This advertisement also appeared in the *Gazette* on 21 November 1790. In late July 1780 a surgeon by the name of Donald Cameron, late of Halifax, was summoned to court for non-payment for sundry medicines which he had obtained from Head's store.

34 PANS RG1 Vol. 190, p. 14, Minutes of Council, 29 Mar. 1784. The Index to Land Grants does not include an entry for this grant of land in Chester, nor does it contain a record of the grant of land Dr. Head received at Louisbourg on 10 September 1772(PANS Micro: Biography: Earl of Dartmouth: Vol. 1, p. 229, A List of Persons in Possession of Lands in this Province by License of Occupation, 27 Feb. 1775).

35 PANS RG1, Vol. 190, p. 38, Minutes of Council, 22 Sept. 1784. New Brunswick was created a separate province in July 1784.

36 PANS RG1 Vol. 169, p. 108.

37 PANS Micro: Places: Nova Scotia: Land Grants, Book 18(old), p. 125.

During his first ten years in Windsor, Dr. Head had rented accommodation for his family, and by February 1784 was paying £50 per year for a house located near Fort Edward.<sup>38</sup> On 6 April 1784, he purchased a two-hundred-acre lot of land, including a six-acre plot adjoining Fort Edward hill, from Joshua Mauger for £650. On the same day, Dr. Head signed a mortgage deed with Mauger amounting to £1,000, and on 7 April, signed a second mortgage deed with Mauger in which the latter loaned Head £500 and took as collateral the previously mentioned land.<sup>39</sup> Apparently Head did not faithfully pay his mortgage to Mauger, since on 30 October 1789, the latter brought a complaint against him for non-payment of the same.<sup>40</sup>

Prior to his dealings with Mauger, Head had built up a debt which was probably associated with his drug and medicine store. On 6 March 1786, it was recorded that he owed three merchants in London a total of £900. Dr. Head paid this debt by conveying some of his Windsor land to his three creditors. Nineteen days later, on 25 March, he sold another parcel of land at Windsor to the senior magistrates and the sheriff of the County of Hants for a jail and a court house.<sup>41</sup> This latter sale was to cause much difficulty for Dr. Head, and probably led to his departure from the town in 1790. At the Court of General Sessions held in Windsor on 27 October 1789, it was reported "that the Justices for the said [County] gaol will instantly call upon Michael Head, Esquire, to indemnify the County in the premises and to secure to the county their just right and title to the said land for which they have already so generously paid." Furthermore, in October 1790, just prior to Dr. Head's departure from Windsor for Halifax, the records of the same Court show:

Whereas we are informed by the Chief Justice that we at present have no gaol notwithstanding the county has paid generously for the land and buildings thereon. Having thereby weighed all the circumstances, we do present that the sum of fifty-five

38 *Nova Scotia Gazette and Weekly Advertiser*, 3 Feb. 1784.

39 PANS RG47 Hants County Deeds, Book 4, pp. 196, 263, 266.

40 *Ibid.*, Book 5, p. 473, Sheriff's Deed.

41 *Ibid.*, Book 4, pp. 344, 351.

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pounds currency be laid on the county to be forthwith raised and put in the hands of the Trustees for the county gaol, and we do insist that the money is not[to be] paid before a proper and good title is given. And further we do earnestly insist that the said Trustees do call on and demand from Doctor Michael Head, Esquire, the sum of fifty pounds currency, and if he does not give security, the Trustees are hereby required to take the said Doctor Head into custody until paid.<sup>42</sup>

Five entries in the records of the Hants County Court of General Sessions covering the period April 1792 to October 1798 indicate that Dr. Head did not pay the £50, nor was he taken into custody. The reason why there was a problem over this land is unclear. The records of the Court of General Sessions for 27 October 1789, however, indicate that John Butler Dight, of Halifax had bought at public auction part of the land on which the county jail stood. This would suggest that the description of the boundaries of the land which Dr. Head sold to the magistrates and sheriff of Hants County in 1786 were misunderstood, and the county jail building was constructed partly on Dr. Head's former land and partly on the land purchased by Dight.

Even though Dr. Head seems to have had severe debt problems and these must have been well known, he also appears to have been one of the leading citizens of Windsor. For instance, when Bishop Charles Inglis travelled through western Nova Scotia in the summer of 1788, he recorded in his Journal on 19 July that "with Messers Hammill, Deschamps, Head, Emerson, and Tonge,[I] rode over the farms adjoining Windsor."<sup>43</sup> Also in 1788 and 1789, Dr. Head sent two of his sons, Michael and probably Samuel, to King's Academy [King's Collegiate School]. Both were admitted on 1 November 1788, with Samuel attending the Latin School, and Michael the English.<sup>44</sup>

Michael Head moved his family and practice to Halifax in late November 1790, presumably because of the difficulties he had experienced

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42 PANS RG34 Vol. 313, Part 1, Hants County Court of General Sessions, Windsor, N.S.

43 *Report of the Work of the Public Archives of Canada for the year 1913* (Ottawa, 1914). Appendix I: Completion of the Correspondence and Journals of the Right Reverend Charles and John Inglis, first and third Bishops of Nova Scotia, p. 227: entry for 19 July 1788.

44 *Nova Scotia Gazette and Weekly Chronicle*, 13 Oct. 1789.

in paying his debts in Windsor. Prior to moving his residence and store from Windsor to Halifax in November 1790, Michael Head sold one thousand acres in the Township of Douglas, as well as land at Windsor.<sup>45</sup> The *Gazette* of 21 December 1790 contains an advertisement that he had opened a drug store and apothecary shop on Hollis Street, and in the Poll Tax records for Halifax for 1792 and 1793, he is listed as a druggist and apothecary.<sup>46</sup> On 14 August 1792, Head was appointed a Justice of the Peace for Halifax<sup>47</sup>, and he is said to have continued as such until at least the year 1802. On 20 January 1802, Michael Head, J.P., wrote an agreement of apprenticeship which bound William Inglis, aged five years, to George Myrer, for a period of sixteen years; Inglis was "to learn the trade and mystery of farming."<sup>48</sup> On 17 July 1793, Head was appointed surgeon to the First Battalion of the Halifax Militia, and in the *Almanac of Theophrastus* he was listed as surgeon to that battalion for every year thereafter until 1800.<sup>49</sup>

By 27 October 1795, Dr. Head had moved his drug and medicine store to Granville Street near the corner of Buckingham, and on that date the following advertisement appeared in the *Nova Scotia Gazette and Weekly Chronicle*:

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45 PANS RG47 Hants County Deeds, Book 5, pp. 262, 271.

46 PANS RG1 Vol. 443.

47 *Nova Scotia Gazette and Weekly Chronicle*, 14 Aug. 1792.

48 PANS MG4 Vol. 98, Canon Harris Papers, Inglis File.

49 PANS RG1 Vol. 171, p. 50. *An Almanack calculated for the Meridian of Halifax in Nova Scotia, by Theophrastus* (Halifax: John and David Howe); issued annually for several years.

HEAD'S DRUG & MEDICINE STORE,  
in Granville Street,  
Is now replenished by an extensive and general assortment of  
DRUGS & MEDICINES,  
Chemical and Galenical,  
Received in the Ship HERO from London, and sold wholesale  
and Retail by  
MICHAEL HEAD

By whom the greatest attention will be paid to all orders and prescriptions from gentlemen of the professions, of the navy and army, town and country---Also all family prescriptions, and Medicine chests, made up on the shortest notice.

He has also received the following articles:

Salt Petre	Keyser's pills
Isinglass	James's pills
Sago and Salep	Wash-balls, violet, and windsor soap
British violet, pearl, and opiate dentrifice	Best scented French hard and soft pomatum
Essence of Coltsfoot	Vermillion & carmine
Essence of Peppermint	Red and black lead
Essence of Pennyroyal	Lancets
Essence of Bergamot	Syringes
Essence of Lavender	Crucibles
Essence of Lemon	Liquorice and pearl barley
Dalby's Carminiative	Verdigris, & arnetta
Balsam honey	Allum, copperas & logwood
Patent blue	Aniseed
Jesuit drops	Caraway seeds
Greenough's tincture	Lint
Best red pale bark	Tow
Steer's opodel doc	Best rectified spirit of wine or alcohol, rose & orange flower water
Lavender & hungry waters	Horse medicines of all kinds <sup>50</sup>
Cephalic snuff	
Analeptic pills	
Anderson's pills	
Hooper's pills	

50 Chemicals refer to remedies first proposed by Paracelsus, who felt that the abnormal separation of the three elements in man (namely: salt, sulphur, and mercury), was the cause of sickness. Paracelsus introduced mineral baths; made opium, mercury, lead, sulphur, iron, arsenic, and copper sulphate a part of the pharmacopoeia; and popularized tinctures and alcoholic elixirs. Galenicals were remedies that were thought to restore the harmonious relationship of the humors, namely: blood, phlegm, choler, and melancholy, the four liquids of the body according to Galen.

Two years later in the *Gazette* of 3 October 1797, Michael Head had enlarged his advertisement to read "Drugs, Medicines, Patent Medicines, Groceries, etc.," and this advertisement took one whole column in the newspaper. Some of the interesting additions to his earlier list of articles were:

Tooth powders and brushes  
Pectoral lozenges

Nipple glasses  
Surgeon's instruments

By 1802 Dr. Head's advertisement had altered considerably, and he began with a paragraph in which he offered thanks to the general public for their patronage of his store:

The subscriber returns his sincere thanks to his friends in town and country, and to the Public at large, for the encouragement he has received from them, since he commenced business in the Druggist line. . . .<sup>51</sup>

This advertisement also contained the following articles and information:

SETS OF CAPITAL INSTRUMENTS

From £15 to £25 a set. A few pocket Instruments, Lancets, Crooked Needles, Tooth Instruments, which will, with all other articles be sold reasonably.

FAMILY AND SHIPS MEDICINE CHESTS,

to be had on the shortest notice, at any price from £2 to £40. Letters and Orders from the Country punctually attended to.

ADVICE AND INSTRUCTIONS GIVEN GRATIS

to the Poor, daily, at his Drug-Store in Granville-Street, from 10 'till 3 o'clock, & all favors gratefully acknowledged.

During the three years prior to Head's death on 1 June 1805 his activities are not known, but it is likely that he continued to operate his drug and medicine business. His estate papers contain a very detailed inventory of his possessions, including his library. The latter numbered 144 titles, among which were thirty-seven medical and surgical texts. This is the largest collection of medical books which the writer has noted from the inventories of eighteenth-century medical practitioners in Nova Scotia. In addition to the standard texts on anatomy, surgery, and the *Practice of Physic* by William Cullen (1712-1709), William Cheselden (1688-1752),

51 *Nova Scotia Gazette and Weekly Chronicle*, 7 Jan. 1802.

Alexander Monro (1697-1767), and Hermann Boerhaave (1668-1738), Dr. Head had in his library, books on: mineral waters (Short), smallpox (Mead), female diseases (Manning), wounds of the head (Pott), muscles (James), electricity (Cavallo), dying, child bed fevers, poisons, fevers (Huxham), vapours and hysterick fits, cataracts (Mudge), domestic medicine (Buchan), and midwifery (Hamilton).

As stated at the beginning of this article, Michael Head had a family of twelve children at the time of his death. Four additional children had died in infancy, and the names of one of these infants remains unknown.<sup>52</sup> His eldest son, Samuel, was probably the only child born to Michael's first wife, Susanna, and was likely born in Halifax. The next eleven offspring, including the unnamed infant, were born in Windsor, and the remaining four were born in Halifax. The birthdates of nine of the children born in Windsor are recorded in the O'Brien Family Papers<sup>53</sup>, while the baptisms of thirteen of the offspring are recorded in St. Paul's Church records in Halifax.

Head's children married very well, which can be taken as a further indication of his position in Halifax society. Sophia and Elizabeth Eagleson, the wives of Dr. Head's two oldest sons, Samuel and Michael Jr., were daughters of the Reverend John Eagleson, who had been in Amherst, and later on the Island of St. John, with Michael Head in the 1760s. Dr. Head's oldest daughter Sophia married Dr. Robert Hume who, along with Dr. Samuel Head, became one of the most influential members of the medical profession in Halifax during the first half of the nineteenth century. Dr. Head's second daughter Elizabeth married Daniel Butler Dawes, who was Storekeeper of His Majesty's Naval Yard in Halifax. The husband of his third daughter, Martha, was the Reverend Archibald Gray, minister at St. Matthew's Presbyterian Church in Halifax from 1795 to 1826. The year after Rev. Gray died, Martha, who was left with two children under twelve years of age, and who probably had learned a great

<sup>52</sup> PANS MG4 St. Paul's Church Records, Reel 2, Windsor and Falmouth Burials. During 1790, Dr. Head had two children buried, one on 7 Feb., and another on 25 Mar. One of these children would probably have been Joseph, who was born on 2 Oct. 1788; however, the name of the second child remains unknown.

<sup>53</sup> PANS MG1 Vol. 731A, No. 87.

deal about medicine from her father and two brothers, listed herself as a physician<sup>54</sup>. She is the first woman in the history of Nova Scotia to be designated as such. Dr. Michael Head's fourth son, John, who was a surgeon, married Ann Wetmore, the daughter of the attorney-general of New Brunswick, Thomas Wetmore. Four of Dr. Head's daughters married officers who were stationed in Halifax during the Napoleonic Wars. Mary married Colonel Andrew Creagh, and Lydia married Lieutenant-Colonel Christopher Myers, who was Deputy-Quartermaster in Upper Canada. Charlotte's husband, Captain James St. Clair, was with the Royal Artillery, and the seventh daughter, Ann, was married to Captain Nagle Lock, of H.M.S. *Jaseur*, the son of a Rear Admiral. The issue of Michael Head included:<sup>55</sup>

- i Samuel, b. ca. 1773; d. 14 Nov. 1837; m. 2 Jan. 1817 to Sophia Eagleson.
- ii Sophia, b. 23 Feb. 1777; d. 27 Nov. 1830; m. 29 Jan. 1801 to Dr. Robert Hume.
- iii Michael, b. 2 June 1778; d. 27 June 1844; m. 3 June 1813 to Elizabeth Eagleson.
- iv Elizabeth, b. 4 Jan. 1780; m. 12 Mar. 1805 to Daniel Dawes.
- v Martha, b. 2 Apr. 1782; d. 3 June 1862; m. 14 Dec. 1802 to Rev. Archibald Gray.
- vi Joseph, b. 10 Nov. 1783; d. 30 Nov. 1783.
- vii John, b. 30 Nov. 1784; d. 11 Mar. 1823; m. 21 Nov. 1815 to Ann Wetmore.
- viii Mary, b. 24 Sept. 1786; d. 21 Apr. 1835; m. 20 Dec. 1804 to Col. Andrew Creagh.
- ix Lydia, bp. 1790; d. 20 Feb. 1847; m. 16 Apr. 1814 to Lt. Col. Chris. Myers.
- x Charlotte, b. 2 Oct. 1788; d. 5 Nov. 1826; m. 12 Sept. 1809 to Capt. James St. Clair.

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54 PANS RG1 Vol. 446, 1827 Census for Halifax.

55 The order of the daughters in the listing of Michael Head's children has been established from the announcements of their marriages which appeared in Halifax newspapers. For instance, the *Acadian Recorder* of 20 June 1835 states that Mary was the fourth daughter of Michael Head, Esquire, whereas the *Halifax Journal* of 16 May 1814 states that Lydia was the fifth daughter.

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- xi Joseph, b. 2 Oct. 1788; d. 1790.
- xii Ann, bp. 3 July 1794; m. 12 May 1816 to Capt. Nagle Lock.
- xiii Charles, bp. 4 Sept. 1795; d. 5 Apr. 1849; m. 13 Sept. 1831 to Jane Dawes.
- xiv George, bp. 5 Aug. 1797; d. 10 Aug. 1797.
- xv Maria, bp. 9 Nov. 1798.

The birthdates shown above indicate that when Michael Head died on 1 June 1805, he was survived by six children under twenty years of age, including four unmarried daughters. His widow, Elizabeth, was left with this large family to support, as well as a debt load of over £2,000. It would be expected that her stepson Samuel, who did not marry until 1817, and her son-in-law, Dr. Robert Hume, both of whom were executors of Michael Head's estate, assisted her in managing the Head household. Mrs. Elizabeth Head died in Halifax on 30 January 1824, aged sixty-six<sup>56</sup>.

The sons of Michael Head who lived to become adults, were all very successful. Dr. Samuel Head studied at St. George's Hospital Medical School in London, and qualified as a Member of the Royal College of Surgeons of London in 1803.<sup>57</sup> He also was awarded an honorary M.D. by Castleton Medical College in Rutland, Vermont in 1823.<sup>58</sup> He was one of the medical practitioners who petitioned the Nova Scotia House of Assembly in 1819, requesting that they pass an Act to regularize the practice of medicine, surgery and midwifery, in Nova Scotia.<sup>59</sup> Michael, the second son of Dr. Head, became a captain in the Royal Navy and distinguished himself in the War of 1812.<sup>60</sup> The fourth son, John, also

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56 *Nova Scotia Gazette and Weekly Chronicle*, 4 Feb. 1824.

57 St. George's Hospital Medical School Register of Students, St. George's Hospital, London. Records of the Members of the Royal College of Surgeons of London, College Library, Lincoln's Inn Fields, London.

58 F.C. Waite, *The First Medical College in Vermont: Castleton, 1818-1862* (Montpelier, 1949), p. 214.

59 *Journal of the House of Assembly, 1815-1820*, p. 31. A Petition of Samuel Head and others, Practitioners in Physic, etc., praying a law may be passed to regulate and improve the present state of medical practice in the province, 27 Feb. 1819.

60 *Morning Post*, 26 July 1844, p. 2, col. 5.

studied at St. George's Hospital Medical School, and became a Member of the Royal College of Surgeons of London in 1810. He later practised in Halifax, Fredericton and Saint John.<sup>61</sup> Charles Franklin Head, the sixth son, was a lieutenant-colonel in the British Army when he died in 1849, and was also the author of *Eastern and Egyptian Scenery, Antiquities, with Descriptive Notes, Maps, Plans of an Overland Route*, published in London in 1833.<sup>62</sup>

Two of Dr. Michael Head's grandchildren entered the medical profession. James Compton Hume, the son of Dr. Robert and Sophia (Head) Hume was examined by the Royal College of Surgeons of London, and became an MRCS in 1831. He was one of the original members of the Nova Scotia Medical Society and was president of the Society in 1864.<sup>63</sup> His cousin, Robert Gray, the son of Rev. Archibald and Martha (Head) Gray, studied medicine at St. George's Hospital Medical School in London, and qualified as an MRCS(Lond.) in 1834. He later practised in Sydney, and on the Miramichi.<sup>64</sup>

This biography has attempted to describe how an Irish-born surgeon was able to survive in eighteenth-century Nova Scotia during three major wars; a number of depressions; and a period when government exercised a great deal of patronage. The inscription on his gravestone--probably coined by his son Samuel--noting that "he usefully exercised the medical profession" is, indeed, a fitting epitaph to a career which covered most of the latter part of the eighteenth-century.

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61 *Acadian Recorder*, 22 Mar. 1823.

62 *Novascotian*, 18 Apr. 1849. H.J. Morgan, *Bibliotheca Canadensis, or, a Manual of Canadian Literature* (Ottawa, 1867), p. 180. Morgan described Charles Head's work as "a valuable book."

63 D.A. Campbell, "History of the Medical Society of Nova Scotia," in *The Maritime Medical News*, XV, 12 (Dec. 1903), Appendix A.

64 PANS RG5 Series P, Vol. 81, No. 20. *Christian Messenger*, 8 May 1840.

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# The Rise and Fall of Urban Justice in Halifax, 1815-1886

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Philip Girard

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Canadian legal history has tended to produce relatively little in the way of institutional studies of courts or their personnel, and such studies as do exist focus almost exclusively on the superior courts. The neglect of the so-called inferior courts is hard to justify, as for most citizens, both high and low, contact with the lower rungs of the court hierarchy would have been more frequent than experiences in the superior courts.<sup>1</sup> The former were thus arguably more important in shaping popular ideas about law, justice and the courts in general, and Canadian social historians have explored this aspect of the lower courts in some detail.<sup>2</sup> Institutional history as such, however, has played, not surprisingly, a rather minor role in these studies. My concern is to look at a particular subset of the inferior courts: the urban courts which were set up by royal charter or special legislation and possessed no parallel in non-urban areas. It was in the cities where the increase of commerce, public health crises, immigration and enhanced opportunities for crime and social disorder provided spurs for the adoption of new judicial structures to deal with these problems. A study of the evolution of judicial structures in Halifax will provide an opportunity for reflection on the "rise" of legal professionalism and changing ideologies of law and justice.

The legal system which had emerged in Nova Scotia in the eighteenth century relied almost exclusively on two institutions--the justice of the peace and the Supreme Court--for settling disputes and maintaining order.<sup>3</sup> The JP was unsalaried, generally not legally trained, and resident

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1 A rare institutional study of a provincial inferior court is that by Sandra E. Oxner, "The Evolution of the Lower Court of Nova Scotia," in P.B. Waite *et al.*, eds., *Law in a Colonial Society: The Nova Scotia Experience* (Toronto, 1984). A succinct overview of trends in the evolution of British North America's urban courts can be found in Greg Marquis, "The Contours of Canadian Urban Justice, 1830-1875," *Urban History Review*, XV(3), (February 1987).

2 Judith Fingard, "Jailbirds in Mid-Victorian Halifax," in Waite, *Colonial Society*; Greg Marquis, "'Machine of Oppression Under the Guise of the Law': The Saint John Police Establishment, 1860-1890," *Acadiensis* XVI(1), (1986), 58; Paul Craven, "Law and Ideology: The Toronto Police Court, 1850-1880," in D.H. Flaherty, ed., *Essays in the History of Canadian Law, Vol. II* (Toronto, 1982); Michael Katz, *et al.*, *The Social Organization of Early Industrial Capitalism* (Cambridge, 1982), pp. 202-41.

3 See generally, Oxner, "Lower Court," C.J. Townshend, *History of the Courts of Judicature in Nova Scotia* (Toronto, 1900).

throughout the province. His jurisdiction encompassed all but the most serious crimes and most civil matters under £3.<sup>4</sup> In theory his appointment was "at pleasure"--i.e., he could be removed at will by the government--but in practice the office was usually held for life without incident. The Supreme Court judges, on the other hand, were handsomely paid, generally legally trained (invariably after the death of Isaac Deschamps in 1801), and resident in Halifax, though they were obliged to go on circuit after 1774. Given the breadth of the JP's trial jurisdiction, the Supreme Court functioned mainly as a court of appeal, but the more important civil and criminal cases began there. For most of the colonial period the Supreme Court judges did not hold office "during good behaviour" as their English brethren did, but aside from an (unsuccessful) impeachment attempt in 1790, they were not disturbed in their tenures. Their independence from the executive was formally secured by statute in 1848.<sup>5</sup>

Grafted on to this simple diptych was a third body, the Inferior Court of Common Pleas, which was often the centre of controversy during its nearly century-long existence (1752-1841). Composed of five local JPs, it sat quarterly or biannually in various districts in the province to hear civil causes of up to £10, over which it thus exercised concurrent jurisdiction with the Supreme Court.<sup>6</sup> No doubt it fulfilled a useful role in the early days before the Supreme Court went on circuit, but thereafter its necessity was often called into question, and it was eventually abolished in 1841.

Thus the same basic structures existed initially in both town and country for the administration of civil and criminal justice. Even before the close of the eighteenth century, however, some *ad hoc* measures had been found necessary in Halifax which began to create a distinctive system of urban justice in the capital. The combination of voluntarist magistracy, reliance on private prosecution, and little or no effective policing demonstrated its inadequacy as Halifax entered the bustling period of the Napoleonic Wars. Already by 1792, perceptions--and probably the reality

4 S.N.S. 1774, c. 15. The powers of the JP varied according to whether he sat alone, in a pair, or with all the county JPs in the Court of General Sessions of the Peace for each county.

5 S.N.S. 1848, c. 21.

6 S.N.S. 1765, c. 11.

--of crime had increased to the point where more regular and frequent sittings of the magistrates were required. A statute of that year established twice-weekly sittings of three JPs in rotation, with power to continue for a second day if the docket were not cleared.<sup>7</sup> Various lapses and revivals of this institution over the next twenty-odd years demonstrated that it had not yet shown itself indispensable, but with the creation of a Halifax Police Office in 1815 the principle of constant availability of the lower criminal courts was finally recognized in a permanent form.<sup>8</sup>

The Act of 1815 authorized the lieutenant-governor to appoint a JP to attend daily (Sundays and holidays excepted) at a public office for the determination of "every criminal offence or prosecution for any penalty. . .now properly cognizable by a single Justice of the Peace." Although the Act did not require this Police Magistrate, as he came to be called, to have legal training, the first incumbent, John George Pyke, was the longest-serving JP in Halifax County, and had for some years been *custos rotulorum*. A true innovation in the Act was the provision of a salary for the Police Magistrate, set at 11s 8d *per diem*, with authority given to the Halifax Court of Sessions to levy extra rates if necessary to satisfy the claim. This marked the first time in Nova Scotian history since the 1750s that public funds were used to pay for the services of a lower court judge. The magistracy were, of course, traditionally remunerated through the fees they collected from litigants, a practice resented only marginally less than the "squandering" of taxpayers' money on judicial officers.

If the Napoleonic Wars brought increased wealth to Halifax, they also witnessed more insecurity among the owners of that wealth, sufficient to justify the raising of taxes not only for the Police Magistrate's salary, but also for the salaries of the three new constables who were to be hired and placed under his control. This combination of judicial and executive functions, so shocking to the modern eye, provides the key to

<sup>7</sup> S.N.S. 1792, c. 14. This technique was probably adapted from the English practice of adjournment, as noted by Jim Phillips, "A History of the Nova Scotia Criminal Justice System 1749-1841" (unpublished ms., 1987). See John Beattie, *Crime and the Courts in England 1660-1800* (Princeton, 1986), p. 310.

<sup>8</sup> S.N.S. 1815, c. 9.

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understanding at least the criminal side of the lower courts until well past the mid-nineteenth century. The primary business of government, whether provincial or municipal, was to maintain peace and order, and the institution of the Police Magistrate was perceived as an administrative tool in carrying out that task, no more and no less. Thus the intermingling of adjudicative and executive roles was not seen as problematic, any more than the mixture of judicial and executive or administrative functions within the Court of Sessions itself.

It was not only in criminal matters that the capital began to diverge from the rest of the province. Indeed, the three-man "Rotation Court" set up in 1792 appears on the face of the statute to be concerned with civil causes only, although some confusingly drafted sections clearly assume that the court possessed criminal jurisdiction as well. The replacement of this system with the Halifax Police Court, of exclusively criminal jurisdiction, in 1815 meant that there was a lacuna in the small claims area which was only imperfectly filled by the quarterly sessions of the Inferior Court of Common Pleas. This was remedied by the passage of "An Act for the Summary Trial of Actions" in 1817, which authorized the lieutenant-governor "to appoint five fit and proper persons, to be Commissioners for the Trial of Actions, not exceeding Ten Pounds, within certain Districts," the court to meet monthly and to try all actions in a summary way (i.e., without a jury).<sup>9</sup>

While areas outside Halifax were not forbidden from seeking the benefits of the Act, it was Halifax, unsurprisingly, where the court flourished, as witnessed by a special statutory provision for its continuance in 1824. This Court of Commissioners seems to have supplanted the Inferior Court of Common Pleas in the capital during the 1820s and 1830s. It could hear not only actions for debt up to £10, but cases of assault, trespass to land, wrongs to personal property and even slander, where no more than £5 was claimed. Its judges were not required to be lawyers or JPs, though some may have been, and it conformed to the JP model in relying on fees rather than salaries for its officers. The 1824 Act

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9 S.N.S. 1817, c. 11.

specified that the court had to sit on the first Monday of every month, for a maximum of two days.<sup>10</sup>

Thus by the late 1830s, when the municipal reform movement in Halifax began to gather momentum, it had to be decided whether these two experiments of some twenty years' standing--i.e., the Police Office and the Commissioners' Court--would be maintained, altered or abolished when the city attained corporate status.<sup>11</sup> In view of the totally different régime which emerged under incorporation, one might expect to find ample evidence of the debate, within and without the legislature, over this transition. The search, however, is frustrating in the extreme. Neither the debates as reported, nor editorial coverage of the incorporation bills of 1838, 1839 or 1841 refer specifically to the question of urban courts. We are thus left with only indirect evidence of the reasons motivating these changes.

The "Act to Incorporate the Town of Halifax" broke with local tradition by vesting the powers formerly exercised by the Police Magistrate and the Commissioners' Court in elected, rather than appointed, officials: to wit, the mayor and aldermen themselves.<sup>12</sup> The jurisdiction of the pre-1841 courts remained basically unaltered, but the new "Police Court" was now to be held daily by the mayor or the alderman next in rotation. The Mayor's Court, or "City Court" replaced the old Commissioners' Court and was to be held twice-monthly (rather than once), presided over by the mayor and one alderman, or two aldermen. This system would remain essentially intact until 1867, when a stipendiary magistrate with security of tenure was appointed to succeed to both the civil and the criminal side of this municipal jurisdiction. As Greg Marquis has pointed out in a recent article, this three-stage process--from JP to Mayor's Court to stipendiary magistrate--was very common in British North America, followed, *inter alia*, in Toronto, Montreal, Saint John, Charlottetown and Kingston, as well as Halifax.

10 S.N.S. 1824, c. 36.

11 On the municipal reform movement generally, see D.A. Sutherland, "The Revolt of the Shopkeepers (Municipal Reform in Halifax through the 1830s)," unpublished ms., MG 100, Vol. 235, No. 22, Public Archives of Nova Scotia [hereafter PANS].

12 S.N.S. 1841, c. 55.

What is one to make of this innovation? For Nova Scotia's eminent political historian, J.M. Beck, the shift to an elective urban judiciary was an aberrant American import in a colony otherwise renowned for its adherence to traditional British constitutional principles. At a loss to explain how this anomaly could have survived the imperial legislative review process, Beck was forced to speculate that Homer nodded in the Colonial Office.<sup>13</sup> At first glance, the 1841 set-up does seem a radical departure from traditional British paradigms. Yet, further research into both British and British North American models of urban justice demonstrates that the vesting of judicial functions in elected officials was by no means unknown in the eighteenth and nineteenth centuries. For a cis-Atlantic example of just such a practice, one need go no further than that unlikely source of radical democratic tendencies, the 1785 Royal Charter of the City of Saint John.<sup>14</sup> The charter authorized the "Mayor, Aldermen and Commonalty of the City. . . [to] have a Court, to be holden before one of the Aldermen, with the Common Clerk. . . , as Puisne Judge, on the Thursday of every alternate week," and to determine all cases up to 40 s; it also vested a police jurisdiction in the city officials. The mayor of Saint John was an appointive office under the charter, but the aldermen were elected, and thus elected officials did exercise both criminal and small claims jurisdiction from the very foundation of the city.

The origins of these courts owed little or nothing to the elective judiciary of Jacksonian America, but rather to much older English practices which were adapted to the nascent urban communities of British North America. In the City of London, for example, the mayor and some aldermen acted as JPs for the city, and "decided as early as 1737 to take turns sitting daily at the Guildhall from 11:00 a.m. to 2:00 p.m. to deal with judicial business."<sup>15</sup> In addition, certain borough councils had the right by charter or custom to hold criminal and civil trials. This right

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13 J.M. Beck, *The Government of Nova Scotia* (Toronto, 1957), p. 138, n. 23.

14 Reproduced as Appendix I to the *Local and Private Statutes of New Brunswick*, Vol. 3 (Fredericton, 1855).

15 J.H. Baker, "Criminal Courts and Procedure at Common Law 1550-1800," in J.S. Cockburn, ed., *Crime in England 1550-1800* (Princeton, 1977), 31.

continued to be recognized in the English Municipal Corporations Act of 1835, acknowledged to be the model for Halifax's 1841 incorporation bill.<sup>16</sup>

Clearing up the confusion about the genesis of the Mayor's Court only leads to more questions, however. In spite of the fact that there was English precedent for such an institution, its existence seems bizarre to a modern Canadian sensibility, and it requires a considerable suspension of disbelief to appreciate its meaning to contemporaries. A clue to that meaning can be found in an article written in the *Novascotian*, presumably by Joseph Howe, when the Halifax incorporation bill was being debated.<sup>17</sup> The article discusses recent disorders in Saint John which had resulted in a petition by the Grand Jury for a "stipendiary and fixed magistracy" rather than one dependent on the popular voice. Asserting the legitimacy of popular institutions of justice, Howe bases his argument not so much on the legitimacy of elected officials serving as judges, but on a certain conception of the judicial function. Urban courts are not seen as arenas for the determination of rights held by individuals, but rather institutions which existed to maintain order in the community. On this view, it was eminently logical that responsibility for existing urban courts should be given directly to those ultimately responsible for the well-being of the community. It must also be recalled that the doctrine of separation of powers had only recently emerged in the province, with the separation of the Executive and Legislative Councils in 1837. Notions of an independent and discrete judicial branch of government had not yet permeated the body politic to any great extent.

This "pre-Diceyan" conception of the judicial function has another aspect which will assist in understanding the role of the post-1841 urban courts. In effect the judicial function was Janus-like, not unitary, and which face was presented depended very much on the class, or social standing, of the litigants. There was a model of justice which saw the judge as a neutral arbiter between rights-bearing litigants, but this model

16 The English Act is 5 & 6 Will. IV. For its role in the drafting of the Halifax Acts see the legislative debate reported in the *Acadian Recorder*, 20 March 1841. The Attorney-General referred to Montreal as the precedent for the Halifax bill in debate: *Acadian Recorder*, 13 March 1841.

17 *Novascotian*, 11 February 1841.

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was reserved mainly for property disputes between the well-to-do in the superior courts. The other model of justice is the one I have been describing, which I will call the Tory or conservative model, where the judge is seen as the bulwark of authority, responsible for maintaining peace and order in the community and thus identified very clearly with the executive branch of government. The protection of individual rights fades in importance when placed alongside the public interest, and the judge is not seen as a neutral arbiter between state and citizen. This view of the judicial function prevailed in the inferior courts, whether civil or criminal, and in the criminal work of the superior courts, probably because of the traditional absence of lawyers in these arenas. John Beattie and John Langbein have described the eighteenth-century English criminal trial as primarily inquisitorial rather than adversarial in nature, with no recognizable presumption of innocence and no real "case" against the accused. According to them, it is only with the regular appearance of lawyers in the criminal courts that the modern hallmarks of the criminal trial began to emerge, and these became entrenched only in the middle third of the nineteenth century. Thus the two notions of justice which I have been describing coexisted for a fairly long period of time in England before the "modern" version finally prevailed.<sup>18</sup>

So too in Nova Scotia. In 1841 the Tory conception of justice still prevailed, shared by most (probably all) of the Reformers as well as the Tories. The mayor and aldermen of the new corporation were thus the logical repositories of urban judicial authority, and the general absence of lawyers in the cases before them meant that there was little at first to cause them to alter the inquisitorial/administrative style of proceeding which they inherited from their antecedents and which seemed natural to them. Records from the Mayor's Court (i.e., the civil side) are unfortunately quite sparse and newspaper reports incomplete, but the large numbers of cases disposed of at a single session of the court made it unlikely that many lawyers could have been present.<sup>19</sup> As well, the majority of these cases

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18 Beattie, *Crime and the Courts*, pp. 356-62; John Langbein, "The Criminal Trial before the Lawyers," *University of Chicago Law Review*, XLV (2), (1977-78), 263-316.

19 Figures for the earlier period are hard to reconstruct, but by 1867 there are references to between eighty and 150 cases being disposed of in a single day: *Acadian Recorder*, 11 September 1867; 8 November 1867.

would have been debt collection, and an impecunious debtor is unlikely to be in a position to hire counsel. In the Police Court, lawyers would have been a rarity, at least initially; it is not clear whether Joseph Howe's 1850 "Free Trade in Law" bill was known or used by the labouring or criminal classes.<sup>20</sup>

Not only does the older conception of justice prevalent in 1841 explain the style of proceedings in the urban courts, but it also assists in understanding why lay persons were entrusted with judicial authority. Judge Sandra Oxner, in her account of the evolution of the lower courts of Nova Scotia, is rather at a loss to explain the seeming regression from the Halifax Police Court of 1815, staffed by a "salaried legal professional," to the unsalaried non-professionals of the city council a quarter-century later.<sup>21</sup> In fact there was no "regression," because it is doubtful whether one can qualify the 1815 court as more "professional" than its predecessor or its descendant. Certainly there was no requirement in the legislation that the Police Magistrate be legally trained, and there is no evidence that Pyke *was* a "legal professional."<sup>22</sup> Pyke was chosen because of his long (nearly forty years') experience as a JP and his service as one of the "rotating" magistrates, not because of any legal talent. Indeed, when Pyke's régime in the Police Office was criticized by the nascent municipal reform movement in the 1820s, it was his alleged failure to maintain order in the community which was impugned, not any lack of legal knowledge.<sup>23</sup> To suggest that Haligonian public opinion, or even élite opinion, had crystallized around the desirability of legally-trained judges in

20 This Act, S.N.S. 1850, c. 13, allowed any litigant to appoint any person (whether legally trained or not) to plead for him in any court in Nova Scotia.

21 Oxner, "Evolution of the Lower Court," p. 60.

22 Andrew Robb, "Pyke, John George," in *Dictionary of Canadian Biography*, VI (1987), 621-622 gives no indication that Pyke was a lawyer, and his name does not appear on any extant barristers' roll. Contrast Shirley Elliott, *The Legislative Assembly of Nova Scotia, 1758-1983: a biographical directory* (Halifax, 1984), p. 181, which reproduces an error made in the first (1958) edition of the same work at p. 289. It is likely that the senior Pyke was confused with his son, George Pyke, a lawyer and eventually a judge of the Court of King's Bench at Montreal: Jacques Boucher, "Pyke, George," in *Dictionary of Canadian Biography*, VIII (1985), 726-727.

23 Sutherland, "Municipal Reform," p. 5.

the lower courts as early as 1815 is to backdate the phenomenon by forty to fifty years. It is only with the debate surrounding the creation of a stipendiary magistrate in the 1860s that one can see educated opinion in the capital beginning to coalesce around the notion that even lower court judges should be lawyers. And even this shift is not just a reflection of the increasing influence of the legal professional but also, as I shall argue, a consequence of the emergence of the modern conception of justice and the judicial function.

The immediate cause of the transition to a stipendiary magistrate in Halifax was a concern over corruption in a judicial apparatus controlled by elected officials. No doubt there had been occasional allegations of corruption throughout the 1840s and 1850s, but the case of Julia Donovan in 1865 proved particularly troubling to a city anxious to develop a reputation for respectability. When Donovan was mysteriously released from prison shortly after receiving a six-month sentence for keeping a brothel in 1865, it seemed ample proof to many that "persons of the Julia Donovan stamp...had been receiving the most distinguished consideration from some of our 'city magnates'."<sup>24</sup> Indeed they had, as two aldermen later admitted that they had agreed to release Donovan upon payment of a \$100 fine to the city by some of her influential friends.<sup>25</sup> The loss of face was irreparable: amendments in 1865 to the Halifax Charter had recently reorganized the urban courts and added the Recorder (or principal law officer) to the City Court, but within two years the entire jurisdiction of the City and Police Courts were transferred to the newly-created stipendiary magistrate.

Yet this concern over corruption was not necessarily focused on the facility for abuse of power as such by city officials. It tended to be concerned specifically with the alleged leniency of the urban courts--the potential for buying reduced sentences, as in Donovan's case, or the requirement for unanimous convictions after the restructuring of the City Court in 1865. In other words, it was efficiency-related concerns rather than ethical ones that caused the existing system to appear disreputable.

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24 *Acadian Recorder*, 29 January 1866.

25 *Unionist and Halifax Journal*, 11 December 1865.

With the growing prosperity of Halifax in the early 1860s, it is not surprising that the urban élite should have begun to scrutinize the city's criminal justice administration more closely, and to have found it wanting.

What one does not see in the discussion of new urban judicial structures in the 1864-1867 period is any consensus that the new judicial officer should be a lawyer. Occasionally the desirability of legal training is mentioned, but in a rather lukewarm fashion.<sup>26</sup> It may be objected that commentators simply assumed that the new judge would be a lawyer, and saw no reason to mention it. Yet the nature of the complaints levelled at the City Court does not suggest that a lack of legal expertise or due process is the problem: quite the contrary. The editor of the *Acadian Recorder* complained in 1866 about the tendency of the lower classes "to find attorneys to persecute respectable people with trumped-up claims" in the City Court, deplored the fact that "servant girl suits" had become fashionable there.<sup>27</sup> It is not exactly clear what type of suit is referred to here--claims for back pay or assault are most likely--but the introduction of lawyers is seen as part of the problem, not the solution. Portland, New Brunswick had not required its stipendiary magistrate to have legal training when the office was created in 1848, nor did Nova Scotia stipulate legal training for the stipendiary magistrates which towns outside Halifax were allowed to appoint under enabling legislation passed in 1864. Far from being the inevitable culmination of a growing movement to professionalize the administration of justice, the statutory requirement in 1867 that Halifax's first stipendiary magistrate be a barrister of five years' standing appears somewhat anomalous and worthy of investigation.

The answer to this question probably lies in the identity of the man who shepherded the 1867 Act through the legislature--and coincidentally became the first stipendiary magistrate appointed under it. Henry Pryor was a sexagenarian Tory and five-time mayor of Halifax who had made the transition to provincial politics in 1859.<sup>28</sup> After various financial

26 *Unionist and Halifax Journal*, 16 July 1866; 7 December 1866.

27 *Acadian Recorder*, 29 January 1866.

28 His first wife was, fittingly, the granddaughter of John George Pyke, Halifax's first Police Court Magistrate. On Pryor's career, see my entry in the *Dictionary of Canadian Biography*, XII (forthcoming).

misfortunes he found himself in need of a secure post for his golden years, and pursued it with increasing assiduity during his years in the Assembly. In 1864 Pryor's brother-in-law, J.W. Johnston, succeeded in creating the Judge in Equity post as a vehicle for his own retirement from politics, and Pryor sought to do the same with his first attempt at a stipendiary magistrate's bill for Halifax. His position as chairman of the committee for Halifax bills enabled him to get the bill quietly through the Assembly in 1864, but it failed in the Legislative Council; or, as one journalist pithily expressed it: "The police functionary got his brains knocked out before he was well aware."<sup>29</sup>

In both 1864 and 1867 Pryor was faced with a dilemma: his own need for security meant that only a judicial post tenable "during good behaviour" was of any use to him; otherwise a subsequent administration might well give him the boot, with or without a pension. An inferior court judgeship held other than at pleasure was a perfect novelty in the province, however. Thus his post had to appear to be of an importance commensurate with its requirement of security of tenure. The stipulation in the 1864 bill that the office be held by a barrister of ten years' standing was one way of doing this, and was almost certainly Pryor's own invention rather than any consequence of a public demand for a "professional" stipendiary.<sup>30</sup> The requirement was reduced to five years in the 1867 Act.

It would be wrong, however, to say that changing legal ideologies and public perceptions of legality played no role in the shift to a stipendiary magistrate. One can see a concern with the nascent doctrine of separation of powers emerging in the critique of the City Court and Police Court, for example. As those courts were responsible for punishing infractions of city by-laws, it seemed inappropriate to some observers that the Recorder and aldermen could act as framers of by-laws at one point, interpret them judicially at another, and finally enforce penalties against recalcitrant offenders. This combination of executive, legislative and judicial powers, adopted without question in 1841, had by the 1860s become viewed in some circles as undesirable. While these ideas were sufficiently important

29 *Novascotian*, 30 May 1864.

30 The 1864 bill was published in the *Acadian Recorder*, 16 April 1864; no copy survives in RG 5, Series U, PANS.

to serve as a possible rationale for divesting the City Council of its judicial functions, however, they were not so developed as to demand a total separation of judicial and executive functions. The 1867 Act allowed the stipendiary magistrate to appoint special and extra constables for the city (with the mayor's consent) and directed the City Marshal and police force "to obey any order of the . . . magistrate," thus maintaining the historic connection of the urban courts with the law enforcement authorities. There was still a vast gulf between this officer and the modern judge, who is valued primarily for his or her technical expertise in the neutral adjudication of rights-based claims between citizen and state or citizen and citizen.

It is not until the late 1870s and 1880s that newspaper commentary on the Police and City Courts begins to reveal the adoption of a liberal rights-based approach to adjudication on the part of the educated élite. One should seek the origins of this phenomenon not only in the general intellectual trends of the day, but also in the activities of the lawyers themselves. There were many more lawyers in the province (and thus presumably in Halifax) in 1880 than there had been in 1860, and their concern with professional standards and education was such that a group of them decided to create the Dalhousie Law School in 1883. More importantly for our purposes, one can begin to see the emergence of a criminal defence bar in Halifax in the last quarter of the nineteenth century. It was probably the growing presence of lawyers in Pryor's court which led journalists to find his procedures increasingly inadequate. When James March was given a twelve-month "chance" for being under the influence of liquor on the street in July 1879, the *Acadian Recorder* noted disapprovingly that "how much was not stated, and it is a very important question how far a man may be legally 'under the influence'."<sup>31</sup> Twenty years earlier few would have cared a fig for such legal niceties. Later in the month Pryor ordered the courtroom cleared when a cruelty to animals case attracted one hundred spectators, upon which one Michael Byrnes, Esq. protested that the stipendiary magistrate had "no right to keep people out." After an upbraiding by Pryor, Byrnes "said no more to him but

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31 *Acadian Recorder*, 8 July 1879.

expressed his opinion very emphatically to other parties.”<sup>32</sup> The following year saw a crescendo of complaints regarding accused persons being thrown in jail on mere suspicion for days at a time.<sup>33</sup>

While I am not suggesting that the older, Tory view of justice disappeared entirely in the 1880s, the attraction of the new liberal view was revealed most clearly by the appointment of Robert Motton as Henry Pryor’s successor upon the latter’s retirement in 1886. Motton, an active member of the nascent defence bar, had often appeared before Pryor, and in his first few months in this new post took a variety of actions clearly aimed at distancing himself from his predecessor. Within days of taking office he announced a new departure: the name of the accused, his family history and other information would be taken down only if a conviction ensued. Previously the information had been recorded “as that of a criminal,” even if the accused were acquitted.<sup>34</sup> On his first day in office he announced he would not countenance the practice of allowing those summoned to avoid an appearance by paying a small fine: every accused would have to appear at the appointed time.<sup>35</sup> And, in a case similar to that of James March seven years earlier, a man charged with standing on a street corner under the influence of liquor was discharged, “as no offence against the law was noted in the summons.”<sup>36</sup>

One should not exaggerate the difference between the “older” and “newer” conceptions of justice being discussed here. Clearly, adherents of the newer views were no less concerned about crime and its punishment than others. But their commitment to due process meant that they were not prepared to let the public interest in social peace override totally the rights of individuals.

I have argued that it is only with Motton’s appointment in 1886 that one can begin to see the emergence of a recognizably modern conception of

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32 *Acadian Recorder*, 21 July 1879.

33 *Halifax Citizen*, 11 and 14 June 1880.

34 *Acadian Recorder*, 19 May 1886.

35 *Morning Herald*, 8 January 1887.

36 *Acadian Recorder*, 15 May 1886.

the judicial function in the Halifax courts. Paradoxically, it was exactly this new liberal paradigm of adjudication which led to the decline of the Halifax courts as distinctive urban institutions. The liberal emphasis on equality tends to be hostile to local courts, which are seen as islands of nonconformism and particularity in the wider provincial sea.<sup>37</sup> How can the provincial state be seen to guarantee equal treatment to its citizens if urban areas possess a distinct judicial apparatus not found elsewhere? "Rationalization" of court structures for economic or administrative reasons also tends to lead to the demise of local courts. Thus the twentieth century has seen the gradual replacement of the community-paid, community-based, lay (outside Halifax) stipendiary magistrate with the Provincial Court judge, a barrister paid from the provincial purse and often presiding in a district other than the one where his or her career was made.<sup>38</sup> The liberal ideal of judicial neutrality tends to equate familiarity with potential bias, and thus to disqualify local legal talent from Provincial Court appointments in that locality.

While today's Provincial Court judges undoubtedly have more legitimacy in the eyes of lawyers than their predecessors, it remains an open question whether the lay public shares this view. The liberal/professional model of adjudication, with its emphasis on procedures rather than outcomes, has always been regarded with incomprehension and even hostility by some: witness recent fears that the Canadian Charter of Rights and Freedoms will become a "criminals' charter." The apparent legitimacy enjoyed by the Halifax urban courts of the nineteenth century should cause us to reflect on whether some reconciliation between the dictates of liberal legalism and the need to be sensitive to local concerns is possible, or desirable.

37 Harry Arthurs, *Without the Law: Administrative Justice and Legal Pluralism in Nineteenth-Century England* (Toronto, 1985).

38 It is hard to use the word "community" without implying a positive value judgement, but my intention here is to describe a reality, not to wax nostalgic about the waning of the age of the "community" magistrate. There were both advantages and disadvantages with the old system, as there are gains and losses with the new.

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# Epidemics and Mortality in Nova Scotia, 1749-1799

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Allan E. Marble

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In 1798, the English physician, Edward Jenner, published his discovery that immunity to smallpox could be achieved by the introduction of the virus of vaccinia, or cowpox, through an abrasion in the skin.<sup>1</sup> Inoculation of a person with the virus of vaccinia (i.e., vaccination) induces a mild attack of the disease but renders the person immune to subsequent attacks of similar virulent organisms for at least five years.<sup>2</sup> Whereas during the eighteenth century in Nova Scotia, inoculation for smallpox was viewed with a great deal of scepticism because of the chequered history of its success, the general public soon recognized that vaccination was very effective in preventing smallpox. This development was undoubtedly one of the most important discoveries in the history of mankind, and improved dramatically the quality of life and life expectancy of people.

Smallpox and typhus were the main epidemics which plagued Nova Scotians during the eighteenth century. Although it is frequently difficult to identify the specific 'fevers' which permeate the records of eighteenth-century Nova Scotia, it would be expected that most were either the smallpox virus or typhus, the microorganism of the latter being spread primarily by lice and enhanced by unsanitary living conditions.

This article provides an account of the degree to which these two diseases influenced the life of Nova Scotians during the second half of the eighteenth century. It will be shown that these diseases were significant factors in deterring both the French and the Americans from attacking, and probably capturing, Halifax during the period. The diseases were also partly responsible for limiting the life expectancy of adults to forty-nine years of age, and for causing a very high level of infant and child mortality. This is probably also the first attempt to quantify the death rate and life expectancy of Nova Scotians during the first fifty years of British settlement.

Edward Cornwallis was appointed "Captain General and Governor in Chief in and over the Province of Nova Scotia," on 6 May 1749 (Old Style), and on 15 May 1749, thirteen transports under his command sailed

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1 I.E. Levine, *Conqueror of Smallpox, Dr. Edward Jenner* (New York, 1960), pp. 141-142.

2 It is important to be aware of the distinction between inoculation and vaccination. Inoculation is the injection of a disease virus into the body in order to build up antibodies and immunity to the same disease. Vaccination is a form of inoculation in which the disease virus of one species (the bovine) is injected into the body of another species (the human).

from Spithead, England, for Chebucto Harbour.<sup>3</sup> Cornwallis arrived in Chebucto Harbour aboard the Sloop of War *Sphinx* on 21 June, and by 1 July, all thirteen of the transports, carrying a total of 2,547 passengers including 1,174 families, had safely arrived. As indicated by one of the settlers in a letter which appeared in the *Gentleman's Magazine and Historical Chronicle* for September 1749, page 408, and dated Chebucto Harbour, 28 July 1749,

arrived on 28 June. Not heard that any one person died on the passage or since our arrival. Our health and preservation has been in a very great measure owing to the prudent measures taken by those who had the direction of this good work, in having ventilators and air pipes in all the ships and furnishing rice and fresh provisions.

The same magazine for August 1749, page 378, indicated that, contrary to the above quote, one child died during the voyage. This is remarkable since the expected mortality on trans-Atlantic crossings (in which ventilators were not used) was seven to nine per cent.<sup>4</sup>

That the thirteen Cornwallis transports were fitted with ventilators was due to the fact that the celebrated physiologist, Dr. Stephen Hales had made a presentation to the Lords of Trade on 3 April 1749, and had impressed upon them the importance of clean air in maintaining the health of the passengers during the crossing.<sup>5</sup> In fact there was a determined effort

3 The Gregorian Calendar was not adopted by Great Britain until 2 Sept. 1752, and the day following was declared to be 14 Sept. 1752. To bring "Old Style" dates into line with modern reckoning for the eighteenth century, add eleven days. At the same time that the calendar was adjusted as described above, the date of the commencement of the new year was also changed. Whereas the year hitherto had begun on 25 Mar., the years following 1752 were declared to begin on 1 Jan. Because different countries in Europe did not all use the same calendar prior to 1752, it was common to designate the dates between 1 Jan. and 25 Mar. using two years. Thus 1 February 1749/50 meant that this date was 1 Feb. 1750 according to the Gregorian calendar, but 1 Feb. 1749 according to the Julian calendar. At the meeting of Council held on 31 Aug. 1752, it was resolved "that an advertisement be printed and dispersed thro' the Province for the better information and regulation of all persons in regard to the alteration of the chronological stile [sic], for regulating commencement of the year and for correcting the Calendar now in use" (PANS RG1 Vol. 186, p. 211).

4 W.P. Bell, *The "Foreign Protestants" and the Settlement of Nova Scotia* (Toronto, 1961) p. 251.

5 A.E. Clark-Kennedy, *Stephen Hales: an Eighteenth Century Biography* (London, 1929). Hales, who lived from 1677 to 1761, is known for having made the first quantitative measurement of blood pressure. His book, *A Description of Ventilators*, appeared in 1743. The ventilators were bellows which could be used to draw fresh air into a structure, such as a ship, and expel foul air.

by the Lords of Trade, led by Lord Halifax, to make proper arrangements for the health care of the Cornwallis settlers. As early as 30 March 1749, Mr. Bevan, an apothecary and chemist, made proposals to the Lords of Trade for supplying medicines for the settlers intended for Nova Scotia.<sup>6</sup> On that same date, Major Leonard Lockman, who had been recommended to their Lordships as a proper person to be employed as surgeon and physician to the intended settlement, acquainted them with his qualifications.<sup>7</sup> Their Lordships directed Major Lockman to bring forward such persons as might give them further satisfaction of being duly qualified [as surgeons and apothecaries], which he promised to do. Furthermore, the Secretary to the Lords of Trade was ordered to write Mr. Middleton, Surgeon-General of the Army abroad, to request his attendance at the Board for his opinion concerning proper measures to be taken for preserving the settlers' health in Nova Scotia. On 3 April, the Lords of Trade were acquainted by Mr. Middleton and the Apothecary-General, Mr. Garnier, that they had met with the Physician-General, Dr. Wilmot, and were of the opinion

that the best choice of medicines to be sent with the new settlers would be those used in the Hospitals in Flanders, which might be prepared according to the *Pharmacopoeia* printed for them there, that two chief surgeons and two apothecaries should be sent with them to reside at the head settlement [Halifax], and a mate at each of the other settlements, who might be appointed out of such as have entered their names to go to Nova Scotia, upon their qualifications being examined at Surgeons' Hall.

It is clear from the above that the Lords of Trade were taking every precaution possible to ensure that the Cornwallis settlers were cared for during the voyage, and also after their arrival in Nova Scotia. The smallest of the thirteen transports, the *Roehampton*, was designated the hospital ship and had on board, in addition to seventy-two passengers<sup>8</sup>, a surgeon

6 *Journal of the Commissioners for Trade and Plantations from January 1741 to December 1749* (London, 1931), p. 397.

7 Leonard Lockman stated that he had been bred a surgeon; was a surgeon to H.M. Guards at Hanover; had been surgeon at a hospital in Mecklenburgh; and also Inspector-General of Health at Barbados from 1723 to 1724. Nevertheless, "Major Lockman was desired to pass his examinations at Surgeons' Hall [in London], upon return whereof their Lordships would further consider his application."

8 The Mess Lists of the thirteen transports appear in RG1 Vol. 523, PANS.

(Major Lockman), an assistant surgeon, an apothecary, an apothecary's mate, and a chemist and druggist. The *Roehampton* remained in Halifax Harbour as the hospital for the settlers until 9 July 1750 when it sailed from Halifax,<sup>9</sup> and patients were transferred to the newly built civilian hospital located outside the palisades near the south gate.<sup>10</sup>

The autumn of 1749 and the winter of 1749-1750 took its human toll in the new settlement. St. Paul's Anglican Church burial records indicate that, between 21 September 1749 and 21 April 1750, a total of 237 persons died: 172 were civilians and sixty-five were soldiers or mariners. The mortality rate among the civilian population was, therefore, approximately nine per cent during the seven-month period, a rather high figure.<sup>11</sup> However, it is difficult to understand why T.B. Akins, in his "History of the Settlement of Halifax" (read before the Halifax Mechanic's Institute on 18 April 1839 and published in an extended version in 1895<sup>12</sup>), would make the following statement: "About this time a destructive epidemic made its appearance in the Town, and it is said nearly 1,000 persons fell victim during the autumn and following winter" [referring to the autumn and winter of 1749-1750]. A study of the Boston newspaper of the period reveals numerous references to Halifax, but no mention of an epidemic which could have ravaged half the population.<sup>13</sup> On 19 March 1750, Cornwallis wrote to the Lords of Trade that "a frame is put up for a hospital to receive the sick. There has never been above 25

9 C.O.221 Vol. 28, Record of Ships and Vessels that cleared the Port of Halifax.

10 The frame of this hospital was raised on or about 19 Mar.

1750 according to Cornwallis's letter of that date (C.O.217 Vol. 30, p. 45, Cornwallis to Lords of Trade, 19 Mar. 1750). This hospital was located on the north side of present-day Bishop Street.

11 This contrasts with the year 1766, the first year for which detailed statistics were kept, during which only 137 out of a total population of 13,374 in Nova Scotia died (approximately one per cent). The 1766 statistics, given in C.O.217, Vol. 22, p. 121, are signed by Michael Francklin, the lieutenant-governor, who described the statistical reports as a "true return." (The death rate in Nova Scotia in 1984 was 7.9 per thousand, or 0.79 per cent.)

12 T.B. Akins, "History of Halifax City," in *Collections of the Nova Scotia Historical Society*, VIII (1895), 19. Winthrop Bell, in his *The "Foreign Protestants,"* p. 339, questions Akins's statement: "it would seem strange if there should have raged a plague with quite such heavy mortality as Akins quotes (apparently from tradition only) without any contemporary documentary evidence of its surviving."

13 *The Boston Gazette and Weekly Journal*. Every issue from May 1749 to the end of 1750 was read thoroughly by the author.

in the hospital ship at one time." In the same letter he wrote, "the winter has passed without complaints of any kind." These statements would be unlikely if an epidemic of the proportions reported by Akins had occurred, indeed, or was still raging. The fact that Cornwallis reported<sup>14</sup> there were 1,876 settlers victualled on 7 December 1749, and 2,367 victualled<sup>15</sup> during the period 18 May to 4 June 1750, makes it unlikely that as many as one thousand persons could have died from an epidemic during the winter of 1749-1750.

The first epidemic which Halifax experienced took place during the autumn and winter of 1750-1751. The unidentified sickness was probably typhus, and was brought into Halifax by one or both of two ships. The *Ann* arrived from Rotterdam with 322 "Foreign Protestants" on 2 September 1750,<sup>16</sup> and according to Hugh Davidson, the Secretary of the colony, "Mr. Dick's ship [the *Ann*] was somewhat sickly."<sup>17</sup> The sickness spread, and a month later, on 5 October 1750, Cornwallis wrote to Leonard Lockman:

the sick should be removed to the house of Major Lockman where there are chimneys and the persons that are in health that are there to be removed to the place where the sick now are. You are hereby directed to make such a disposition to them if it appears to you to be necessary for their comfort and to hire such of the persons in health among them to attend the sick as may be necessary, promising them a reasonable allowance for their service.<sup>18</sup>

This order may have been precipitated by the death of Matthew Jones, one of the principal surgeons at the hospital, who was buried on 7 October 1750.

Another possible source of the sickness was one or more of the transports which brought Lascelles' Regiment (the 47th) from Ireland.<sup>19</sup>

14 C.O.217 Vol. 9, p. 132, Cornwallis to Lords of Trade, 7 Dec. 1749.

15 PANS MG1 Vol. 258. Victualling List for May-June 1750.

16 C.O.217 Vol. 10, p. 95, Cornwallis to Lords of Trade, 2 Sept. 1750.

17 *Journal of the Commissioners for Trade and Plantations*, Vol. 58, entry for 8 Nov. 1750.

18 PANS RG1 Vol. 163/1, p. 47. Cornwallis to Lockman, 5 Oct. 1750.

19 PANS Micro: Biography: Diary of John Salisbury at Halifax, 1749-1753, entry of 12 Aug. 1750.

The transports had arrived in Halifax on 12 August 1750, and the same Hugh Davidson stated on 8 November 1750 before the Lords of Trade that "there was much sickness on board one of the Irish Transports when she arrived." Whether the sickness was brought on the Irish transports or the *Ann*, or both, it prevailed throughout the autumn and winter of 1750-1751. John Salusbury recorded in his diary on 16 November, "It is hoped this weather will clear the air and make the settlement more healthy. We have had more sickness this fall than last." On 27 November 1750 Cornwallis wrote, referring to the *Ann*, that "The Germans were very sickly and many dead."<sup>20</sup> Finally, on 11 December 1750, *The Boston Gazette* carried an item which read,

The buildings on the opposite side of the Harbour [Dartmouth] increase daily. The people are very sickly especially the meaner sort [the poorer people] and the Germans, which is probably owing to change in climate, want of necessities, and bad attendance [medical attendance].

The *Ann* had not been fitted with ventilators, and when John Dick, the agent who was in charge of transporting the Germans to Nova Scotia, was questioned by the Lords of Trade about this oversight, he explained "there was no person in the country [i.e., Holland], that could have fixed it."<sup>21</sup>

Figure 1, which was constructed from the burials in St. Paul's Anglican Church records, shows that, during the eight months from August 1750 to March 1751, a total of 333 persons, an average of forty-two per month, died. In contrast, the average mortality for the twenty-seven months following March 1751 was only twelve per month. It would appear likely that some form of epidemic ravaged the population of Halifax during the late summer, autumn and winter of 1750-1751.<sup>22</sup>

The settlement of Halifax continued to increase in 1752 with the arrival of five more ships in August and September, carrying a total of 1,007

20 C.O.217 Vol. 11, p. 3, Cornwallis to Lords of Trade, 27 Nov. 1750.

21 C.O.217 Vol. 11, p. 39, Dick to Hill, 23 Feb. 1751.

22 This could be the destructive epidemic to which Akins refers as having taken place during the autumn of 1749-1750. Further evidence that the epidemic took place during 1750-1751, rather than during the previous year, is found in the *Boston Gazette* of 18 July 1751, where one reads, "We have advice from Caco [Casco Bay, the Bay on which Portland, Maine is situated], that the epidemical fever is prevailing among them that they had at Halifax last summer which proved too fatal to [the] multitude."

foreign Protestants. Governor Peregrine Thomas Hopson had been instructed in April 1752

to have all ships or vessels inspected immediately upon arrival before persons on board are landed to enquire into the Health and condition of those on board. If any distemper or infectious disease is found on board, the said persons are to be landed and placed in a Lazaretto or other building erected for that purpose a convenient distance from the settlement.<sup>23</sup>

It is possible that these quarantine measures, the first mentioned for the new settlement, were directly responsible for preventing fever from entering Halifax in 1752. The mortality on two of the five ships arriving in 1752, the *Pearl* and the *Sally*, was 15.5 per cent, the highest among any of the eleven ships bringing foreign Protestants to Halifax in 1750, 1751 and 1752. It should be noted, that whereas passengers on the *Ann* were detained aboard ship in Halifax harbour for only five days, passengers on the *Pearl*, *Gale* and *Sally*, which arrived in 1752, were detained for fifteen to twenty-one days. When the *Pearl* arrived in Halifax harbour on 10 August 1752, it was reported at the Council meeting that the ship had "been inspected by the surgeon and found to be generally in good health and no appearance of a contagious or infectious disorder."<sup>24</sup> Nevertheless it was placed in quarantine, as previously mentioned.

The second incident of a quarantine being ordered was on 1 January 1754, when the Council set up preventative measures to guard against epidemics being brought into Halifax by visiting ships.<sup>25</sup> Council instructed Charles Hay, Esq., Captain of the Port of Halifax,

You are to go aboard all ships, snows, brigantines, sloops, schooners coming into the Harbour before thay pass George's Island and you are to examine into the Health and condition of the passengers and crew, and know from what Port they last sailed, and if you shall see any causes to suspect the plague or an epidemical disease on board, or if the vessel came from a Port where any sick diseases are supposed to be, you will bring the vessel to an anchor below the Island and forthwith make report thereof to the Governor or Commander-in-Chief.

23 C.O.218 Vol. 4, p. 216, Lords of Trade, Instructions to Governor Hopson, 23 Apr. 1752.

24 PANS RG1 Vol. 186, pp. 208-209, Minutes of Council, 24 Aug. 1752.

25 PANS RG1 Vol. 163/3, p. 27, Lawrence to Hay, 1 Jan. 1754.

The second major epidemic which visited Nova Scotia, after the arrival of the Cornwallis settlers, occurred during the winter of 1755-1756. The first fleet of Royal Navy ships ever to arrive in Halifax dropped anchor during the summer of that year. This fleet, ordered to intercept all French reinforcements sent to America, especially those sent to Louisbourg, had been stricken with sickness.<sup>26</sup> So many sailors were incapacitated that the vice-admiral, Edward Boscawen, decided to put into Halifax. He arrived on 9 July. The sickness could have been the smallpox acquired from French sailors taken prisoner by Boscawen's ships. A smallpox epidemic had been reported as having broken out in Louisbourg in June 1755.<sup>27</sup> It is possible that this smallpox outbreak could have deterred the French at Louisbourg from attacking Halifax in the spring of 1755. Vice-Admiral Boscawen wrote to the Secretary of the Admiralty:

By certain accounts the French intended to have attacked Halifax last Spring from Louisbourg, they having a Garrison of 2,500, the English Garrison at Halifax, not exceeding 400. . . . A Plan of Halifax with a scheme of attacking it from Canada taken out of a wash ball was in a French Officer's Chest going to Louisbourg. This Plan, I apprehend to be the Invention of Monsr. Vaudreuil, Governor of the three Rivers, he was taken in the *Alcide* . . . .<sup>28</sup>

On 12 July, Boscawen wrote that, out of the 6,154 men under his command, 1,624 were sick with "inflammatory fever."<sup>29</sup> On 16 July he wrote, "our sick increase dayly. We are now erecting tents and repairing houses for their reception on shore."<sup>30</sup> By September, it was reported that

26 This fleet consisted of twenty-two ships of war, the names of which are listed in Adm 1/480, p. 640. Boscawen's decision to put into Halifax because of sickness is recorded in his letter to John Cleveland, Secretary of the Admiralty, dated 4 July 1755 (Adm 1/481, p. 41).

27 Archives Nationales, Colonies, C11B, Vol. 35, folios 29-22, Drucour and Prévost to the Minister, Louisbourg, 2 June 1755.

28 Adm 1/481, p. 67. Boscawen to Cleveland, 15 Nov. 1755, on board the *Torbay*.

29 Adm 1/481, p. 46. "State and Condition of H.M. Ships under Vice Admiral Boscawen at Halifax," 12 July 1755.

30 *Ibid.*, p. 47, Boscawen to Cleveland, 16 July 1755.

“the people [in Halifax] are very sickly,”<sup>31</sup> indicating that the sickness brought by the Fleet had spread to the local residents. Captain John Rous, in a letter to Colonel John Winslow from Halifax on 22 September 1755, stated that “The Fleet is in high spirits notwithstanding there has been great destruction among them by sickness.”<sup>32</sup> The severity of this destruction can be established from the records of the Hospital for Sick and Hurt Seamen, administered by Robert Grant, surgeon. His report, dated 18 November 1755, indicates that between 18 October and 18 November, seventy-six of the 177 men who had been captured by Boscawen and held in the hospital, had died.<sup>33</sup> Figure 2, which shows the number of civilian deaths in Halifax during the period January 1755 to August 1756, indicates that the epidemic did, in fact, spread to the civilians of Halifax. The average death rate among them, during the six months preceding the arrival of the fleet, was nine per month, whereas the rate increased by a factor of four, to thirty-six per month, during the months of September, October and November 1755. The sickness which prevailed during the autumn of 1755 continued into early 1756. On 18 April Captain Richard Spry wrote of his seamen, “numbers of our people are so weak and sickly that they cannot be taken on board [ships in the harbour].”<sup>34</sup> There was also a high level of mortality among civilians during the months of January to April 1756, as shown in Figure 2.

The third epidemic to reach Halifax also came with Army and Navy. Seven regiments, including 5,990 soldiers, together with a train of Artillery, Ordnance stores, and Engineers, arrived in Halifax on 9 July

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31 Journal of Abijah Willard, 1755, in *Collections* of the New Brunswick Historical Society, 13 (1930), 3-75, Journal entry dated 23 Sept. 1775.

32 “Journal of Colonel John Winslow of the Provincial Troops while Engaged in Removing the Acadian French Inhabitants from Grand Pré,” in *Collections* of the Nova Scotia Historical Society, III (1883), 147-148.

33 Adm 1/480, p. 655. “State of the Sick left from the different Ships of Admiral Boscawen’s Squadron as they now stand on the sick Books,” 18 Nov. 1755. Robert Grant’s books indicate that forty-nine seamen had died during the last twelve days of October, and twenty-seven during the first eighteen days of November.

34 Adm 1/480, p. 702. Spry to Cleveland, 18 Apr. 1756.

1757 to prepare for an attack on Louisbourg.<sup>35</sup> These troops were brought to Halifax from Cork, Ireland, by Admiral Holburne on forty-five transports accompanied by fifteen ships and 7,135 seamen. Previously, on 30 June 1757, Lord Loudon had arrived from New York with four regiments totalling about 5,000 soldiers.<sup>36</sup> By the middle of July, therefore, there were about 18,000 newly arrived soldiers and seamen in Halifax.

On 16 July 1757, Governor Charles Lawrence indicated to Council that

the Earl of Loudon had, this day, represented to him that a fever was beginning to spread amongst the Troops under his Lordships Command, occasioned by the great quantities of rum that are sold to the soldiers by unlicensed retailers, and that, as this if it continues must unavoidably prove of fatal consequences to His Majesty's Service. . . .<sup>37</sup>

This was obviously a very contagious fever, since in July 1757 it is recorded that up to 949 patients, attended by thirty-two nurses, were victualled in the Naval Hospital.<sup>38</sup> It is difficult to assess whether the fever among the soldiers and seamen was, in August 1757, a significant factor in causing Lord Loudon and Admiral Holburne to postpone the invasion of Louisbourg. Their obvious concern over the severity of sickness among their men is indicated in a letter which, on 4 August 1757, Admiral Holburne wrote to John Cleveland, Secretary of the Admiralty. It read in part, "We had between 900 and 1,000 men put ashore to the Hospital where I must leave 500 sick, besides 200 dead since we sailed."<sup>39</sup> Admiral Holburne had sailed from Spithead on 8 May, approximately three months previously. Almost all of the two hundred deaths are reported to have taken place after Holburne and his men arrived in Halifax on 9 July 1757.

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35 *The Journal of Captain John Knox* (Toronto), 1 (1914), 22.

36 *London Magazine or Gentleman's Monthly Intelligencer*, 26 (1757), 457.

37 PANS RG1 Vol. 187, p. 526, Minutes of Council, 16 July 1757.

38 PANS MG13 No. 7a. "Register of the Receipts of Provisions, with the Number of men and nurses included victualled in the Naval Hospital in the years 1757-1761."

39 Adm 1/481, p. 388. Holburne to Cleveland, 4 Aug. 1757, from Halifax Harbour.

It is possible that both Loudon and Holburne realized that the fever was so serious among the seamen and troops in Halifax that it would have been unwise to attempt an attack on Louisbourg. Neither Loudon nor Holburne mentions sickness as the main reason for calling off the siege; however, it must have been of epidemic proportions. In September 1757, the Governor acquainted the Council that it was to consider measures which could be taken to prevent the spreading of the smallpox.<sup>40</sup> Dr. Abercrombie was called in and reported "that many of the families in the Town were infected and that it would be very difficult to stop [the epidemic]." He continued: "The several surgeons should be desired not to inoculate any person. . . ." On 2 August, John Knox, a military officer in Halifax had written, "The Royal Regiment [1st Regiment] with 700 rank and file only have been very sickly." On the same date he wrote, "It appears that since this Army last embarked at their respective ports, if they were then actually complete, have suffered by sickness, etc., and perhaps a few deaths, to the amount of 612 men."<sup>41</sup>

As was the case in the autumn of 1755, the epidemic brought by the fleet in 1757 spread to the civilian population. The number of deaths occurring in Halifax during the autumn of 1757 increased rapidly over previous months, as shown in Figure 3. It is clear that the smallpox represented a very serious epidemic in Halifax during October, November and December of that year and in early 1758.<sup>42</sup>

In December 1759 the Council prepared a bill entitled "An Act to Prevent the spreading of Contagious Distempers," which they submitted for consideration by the House of Assembly.<sup>43</sup> Surprisingly, as reported by Jonathan Belcher, President of the Council, to the Lords of Trade on 24 December 1760, the House of Assembly rejected the bill.<sup>44</sup> During the

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40 PANS RG1 Vol. 188, p. 5. Council Minutes, 26 Sept. 1757.

41 *The Journal of Captain John Knox*, p. 41.

42 PANS MG 100 Vol. 218, No. 3. Family Bible of Johann Michael Schmitt of LaHave, p. 16. There appears an entry that "the smallpox raged in Halifax in 1757 so that whole families died out."

43 *Journal of the House of Assembly*, 10, 12 and 13 Mar. 1760.

44 C.O.217 Vol. 18, p. 108. Belcher to Lords of Trade, 24 Dec. 1760.

same month, a vessel arrived in Halifax from Louisbourg, and landed some persons who had smallpox. In reaction to this incident, the Council adopted a resolution that all vessels coming into Halifax harbour must be stopped at George's Island.<sup>45</sup> Council sent to the House a new bill concerning contagious diseases, which received first reading on 25 July 1761. This new bill was a revision of the former one, and was composed after examining similar bills which had been enacted in other colonies.<sup>46</sup>

The fourth major epidemic to visit Halifax--and Nova Scotia--began in the summer of 1775 and extended into 1776. This was a summer filled with apprehension and anxiety for Governor Francis Legge and Nova Scotians, due to both the omnipresent threat of attack by the army of General George Washington, and a second fearful source: the smallpox. It is not clear exactly when the smallpox first appeared in Halifax during 1775, or how it was brought into the town. However, the first burial from St. Paul's Church in which the cause of death was given as smallpox, was recorded on 23 July 1775. Quite likely most of those who died of smallpox, and were buried from St. Paul's, were recorded as such by the Reverend John Breynton, since he wrote,

The Labours of my function were likewise greatly augmented by the breaking out of the Small Pox amongst us last Summer. When that Distemper (so peculiarly fatal to Americans) began to spread, I applied every effort to promote Inoculation, preached a sermon upon the occasion and raised a subscription towards Inoculating the Poor. I flatter myself I have been Instrumental in saving many lives in this Province . . . ."<sup>47</sup>

Figure 4 shows the number of deaths which occurred in Nova Scotia during each month for the two-year period 1775 and 1776. It is clear that whereas the average number of deaths per month was nine, prior to August 1775, the average number during the period August 1775 to March 1776 was forty. Figure 4 also indicates that during the five-month period August

45 PANS RG1 Vol. 188, p. 170. Council Minutes of 11 Dec. 1760.

46 *Journal of the House of Assembly*, 25 July 1761. The bill received assent on 13 Aug. 1761. The complete wording of the Act appears in *Nova Scotia Laws, 1758-1804* (Halifax, 1805), pp. 68-69.

47 Rev. Breynton to S.P.G., Letter No. 202, 2 Jan. 1776. PANS Micro: Miscellaneous "S," Society for the Propagation of the Gospel in Foreign Parts, Reel 73, p. 597.

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to December 1775 there was a total of 237 deaths in Nova Scotia, 144 (sixty per cent) of that total recorded as having died from the smallpox.

On 4 July 1775 a notice appeared in the *Nova Scotia Gazette and Weekly Chronicle* which read,

As the smallpox has made its appearance in more than one House in Town it is much to be feared it may spread, particularly as the Distemper was not contracted by contagion which probably indicates a disposing influence to this malady either in the generality of constitutions or the Air.

From these considerations I beg leave to offer to the public a few Hints on the method of Innoculating, which may be of use to poor Families who can ill afford to pay a Practitioner to attend. Eight or nine days before Innoculation and during the whole illness, let the patient abstain from meats, spices, butter, wine, and all high seasoned Food, regard however be had to the strength and constitution of the patient.

Three days before Innoculation let the Patient take a Vomit of Tarr Emittick proportional to the age and strength of the patient.

On the day of Innoculation let the patient take ten grains of Calomel in a Pill at Bed Time, this Dose is calculated for a grown person of a healthy Habit, and must be proportionally lessened for a younger or weakly person.

The next morning the patient should take a purge of the kind most agreeable, powdered jelap may possibly be the best, repeat the Pill and Purge on the fourth and seventh Days after Innoculation. On the eighth Day after Innoculation let the Patient take a Vomit of Tarr Emitt. The patient shou'd avoid severe Exercise, violent passions, and warm Rooms.

Common Drink should be Barley Water Sweetened with Brown sugar, and one ounce of powdered Cream Tart in half a Gallon of the Decoction.

The opinion of the most experienced in this Disorder is that the safest and best method of conveying the Infection is by small Punctures of a Lancet dipp'd in variolus matter.

The concern about the spread of smallpox prompted the House of Assembly, on 10 July 1775, to order a bill to be prepared to prevent the spreading of contagious distempers. The bill underwent a number of revisions before it received assent by Governor Legge on 17 November 1775.<sup>48</sup> Whereas an earlier act dealt mainly with diseases brought to Nova Scotia by ship and therefore applied to ports such as Halifax, Lunenburg and Yarmouth, this act applied only to towns and villages in Nova Scotia

located outside the town of Halifax. It directed that those infected should be quarantined as follows:

Two or more of the Justices of the Peace, together with the Overseers of the Poor, of such Town, are hereby empowered, upon full and sufficient evidence and proof being made to such Justices and Overseers of the Poor, and after taking the Testimony of one or more physician, surgeon, or apothecary, living and Residing in or near such Township or place, to take care and make Effectual provision in the best manner they can, for the preservation of the Inhabitant, and if such sick or infected person, or persons, shall not remove himself or themselves, or be removed by his or their parents or Masters to such place as the Justices and Overseers of the Poor shall think fit and proper provided the same be within such Townships or place. It shall and may be lawfull for the said Justices and Overseers of the Poor to remove and place such sick or infected person or persons, to and in a separate House or Houses and by providing nurses attendance and other assistance, and necessaries for them, at the charge of the parties themselves, their parents or masters, if able, or otherwise at the charge of the Town or place whereto they belong.

The new act also dealt with inoculation:

Provided that any person or persons desirous of being Inoculated (for the Small pox) themselves or of having their families Inoculated, may Proceed therein, provided that the house or place wherein they dwell or reside, during the time of their being infected with Small pox shall be at least one hundred and sixty rods distance from any other house or dwelling . . . A flag [should be] hung out at their said House, to the End that all persons may take notice thereof and avoid, if they see cause, going near such houses or places.

Within Halifax, by 1 August 1775, Dr. George Greaves was advertising that he was operating an inoculation hospital in a house in the North Suburbs.<sup>49</sup> This was the first private hospital operated in Nova Scotia. His advertisement read:

The happy Effects of inoculating for the Small Pox is too well known to need any arguments to persuade a reasonable Person to prefer Inoculation, to taking this Disorder in the natural way. The Subscriber G. Greaves has made himself fully acquainted with every Improvement lately adopted by the most eminent Practitioners of this Age in said Disorder, therefore all such as choose to put themselves under the care of said Subscriber

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49 *Nova Scotia Gazette and Weekly Chronicle* (Halifax), 1 Aug. 1775.

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are desired to apply as soon as possible—The Charge to each Patient is Ten Shillings, being for inoculating, medicines, and Attendance, through the whole course of the Disease.

On 8 August, Dr. John Phillips and Dr. William Faries, surgeons at the Naval Hospital, inoculated two hundred persons against smallpox. The notice describing the event read,

It will undoubtedly be agreeable to the Public at this critical Juncture to hear from unquestionable Authority, that Messrs Phillips and Faries's first Class of Patients, consisting of between one and two hundred inoculated for the Small-Pox, are now by the blessing of God, all save over the Disease without having had one bad, or unpromising symptom. The Patients were of all ages from fifty years down to less than one.<sup>50</sup>

It is possible that either Phillips or Faries was the author of the article published in the *Nova Scotia Gazette and Weekly Chronicle* on 29 August 1775 entitled, "Advice and Instruction concerning inoculation addressed to the industrious poor of Halifax." The article was submitted under the pseudonym G. Tiplady of the "Halifax Yard."

The smallpox which broke out in Halifax in late June or early July 1775 spread rapidly to other parts of Nova Scotia including Lunenburg, as shown in Figure 4. The Reverend Peter de la Roche, rector of St. John's Anglican Church in Lunenburg, described the smallpox epidemic as follows:

The Settlement was visited in the fall of last year with a dreadful plague; I mean the Small pox, which had never been here since the settlement began . . . As soon as it was spread enough to be certain that inoculation could not be charged with the further propagation of it, I gave the example and inoculated my eldest child . . . But this method was not relished by the generality . . . I dare say, above a thousand more have had it in the natural way, and dreadfully too; tho' but few have died (not above eighty), owing to the poor and frugal diet of the settlers their lives long and to the robust

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50 *Ibid.*, 8 Aug. 1775.

labouring people, as also to the favourable season of the year, for it happened between the heats of the summer and the beginning of winter.<sup>51</sup>

The smallpox also spread to Windsor and environs, as indicated in a memorial from Michael Head, surgeon of that town:

That in the years 1775 and 1776 the Small Pox spread itself from Hallifax [sic] to the Townships of Windsor, Newport, Falmouth, and Horton. That in consequence thereof, the Inhabitants Generally resolved on Enoculation [sic] to prevent its dreadful effects.<sup>52</sup>

Michael Head listed the names of fifty-eight persons whom he had inoculated, and asked to be paid for his services.

The smallpox was partially responsible for the Continental Congress cancelling their planned invasion of Nova Scotia, particularly Halifax. Governor Legge wrote to the Earl of Dartmouth on 20 December 1775 with an account of this plan:

By persons from New England I am also informed that Congress had allotted out five thousand men for the attack on this Province, that the smallpox at Halifax and the Frigates in the bay of Fundy had hitherto prevented them, but it was their determined intent to have this Province in their possession, or to destroy it, that it should be of no use either to the Army or Navy. A State of the King's Forces within this Province by which you will perceive that the whole number amounts to nine hundred and eighty, but for reason of sickness, new recruits and others absent, there remains no more than four hundred and forty six men fit for duty.<sup>53</sup>

Smallpox broke out in Liverpool in January 1776, and an inoculation hospital was established there. A number of residents were inoculated, but it appears that some of these contracted the smallpox due to the

<sup>51</sup> Society for the Propagation of the Gospel in Foreign Parts. Letter No. 207, Rev. Peter de la Roche to S.P.G., 26 Aug. 1776.

<sup>52</sup> PANS RG1 Vol. 301, Document No. 94. Memorial of Michael Head, Surgeon, Windsor, 5 June 1777.

<sup>53</sup> PANS RG1 Vol. 44, Document No. 85, Legge to Dartmouth, 20 Dec. 1775.

inoculation. As a reaction to this lack of confidence in inoculation, Simeon Perkins recorded on 25 March 1776 that "the people meet concerning the smallpox and generally sign an agreement not to be inoculated."<sup>54</sup> During the last twenty-five years of the eighteenth century there were several other outbreaks of smallpox, but none of epidemic proportions.

In order to establish figures for life expectancy and death rate in the last fifty years of the eighteenth century, with any degree of validity and statistical significance, one must have data on the population, number of deaths and age at time of death. To the author's knowledge, such statistics have never been presented for Nova Scotia during the period 1749 to 1799. Population figures for Nova Scotia are available in various sources for selected years between 1749 and 1784.<sup>55</sup> However, there are no figures available for the population of the province between the years 1785 and 1799. Over the past ten years this author has compiled a card index of deaths and burials of Nova Scotians during the period 1749 to 1799. Only primary sources have been used, and all such sources that are known to be held at the Public Archives of Nova Scotia have been perused. A total of 9,928 persons (civilians) are recorded as having died in the province during the last fifty years of the eighteenth century. Fortunately, the death records of 3,129 of this total (31.5 per cent) include the age of the deceased. The great majority of the deaths, for which ages are given, occurred during the period 1780 to 1799, and for ten of those years over seventy per cent of the deceased had their age recorded at the time of death. Figure 5 compares life expectancy of adult Nova Scotians during the period 1780 to 1799 with that for the year 1981.<sup>56</sup> The figure indicates that whereas life expectancy during the last twenty years of the eighteenth century was approximately forty-nine years, twentieth-century Nova Scotians, particularly those living in 1981, could hope to live to the age of seventy-five.

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54 *The Diary of Simeon Perkins, 1766-1780*. ed, H.A. Innis (Toronto), 1 (1948), 116.

55 The primary sources from which the index of deaths was compiled include church records, cemetery inscriptions, township books, newspapers, probate records, diaries, family Bibles, and family papers.

56 Only persons who died aged seventeen years or older are included in the life expectancy calculation.

Figure 6 presents the death rate of Nova Scotians during the period 1749 to 1784, since population figures are readily available for many of those years. It is presumed, however, that the death rates presented for the eighteenth century are lower than actual, due to the fact that not all of the deaths which took place during that period are known and recorded. This could explain the extremely low death rates shown in the figure for the years 1764 to 1774, which are similar in magnitude to the death rate for Nova Scotians in the year 1984. It is clear that the rate was very high for the first ten years of the settlement of Nova Scotia, and also was higher than normal for the years during which the four epidemics are known to have occurred.

Infant and child mortality was very high during the latter part of the eighteenth century. Of the 4,348 persons who died in Nova Scotia during the period 1780 to 1799, 1,328 are known to have been infants or children under the age of sixteen years. Thus 30.5 per cent of the deaths in Nova Scotia during the period were of infants or children. This percentage is almost identical to the per cent mortality of orphans who were resident in the Orphan House in Halifax during the period 1752 to 1762. One notes from Figure 7 that the smallpox epidemic of 1757-1758 appears to have spread into the Orphan House, since almost half of the orphans who died during the eleven-year period, died in 1757 and 1758.

This paper has attempted to identify and document the main epidemics which plagued Nova Scotia during the second half of the eighteenth century. Four major epidemics have been identified from manuscript sources, and it has been shown that three of the four were brought to Nova Scotia by the soldiers and seamen who were sent there to defend the civilian population against the French and the Indians. Whereas the epidemic of 1750-1751 was quite likely typhus, the epidemics of 1755-1756, 1757-1758, and 1775-1776, were stated to be smallpox.

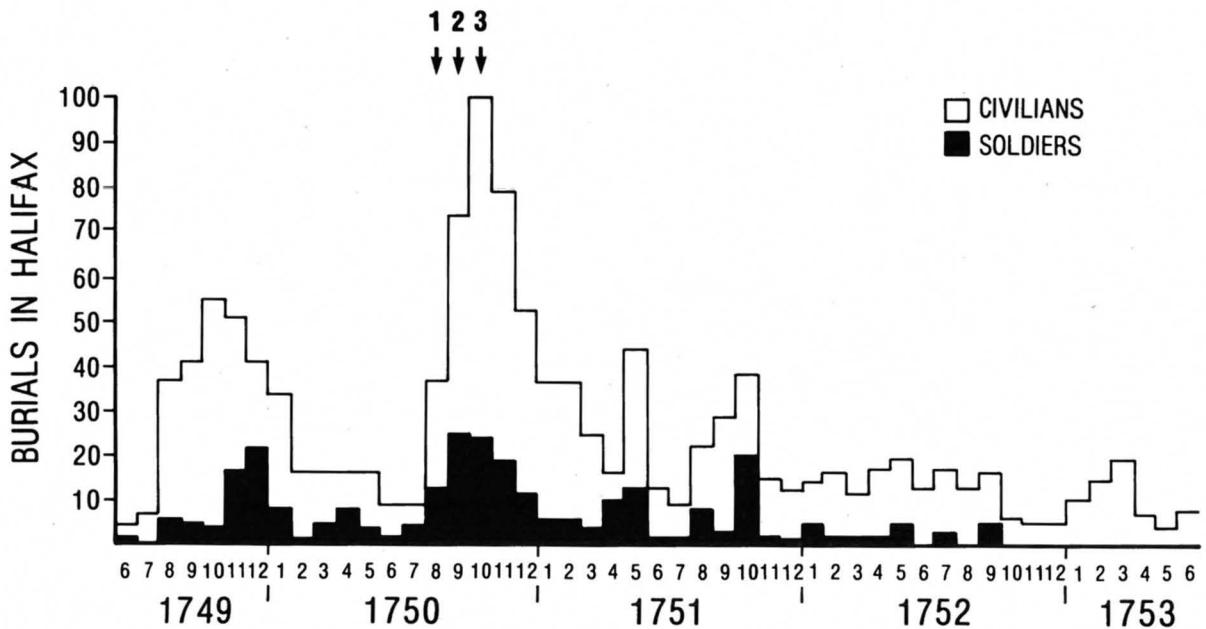
One conclusion which may be drawn from this paper is that the life expectancy of adult Nova Scotians has increased by fifty-three per cent over the past two hundred years. This remarkable increase can undoubtedly be attributed to such factors as the eradication of numerous contagious diseases; improved diet; modern medical diagnosis; and improvements in medical and surgical therapy.

Figure 1

## EVIDENCE OF AN EPIDEMIC IN HALIFAX 1750 - 1751

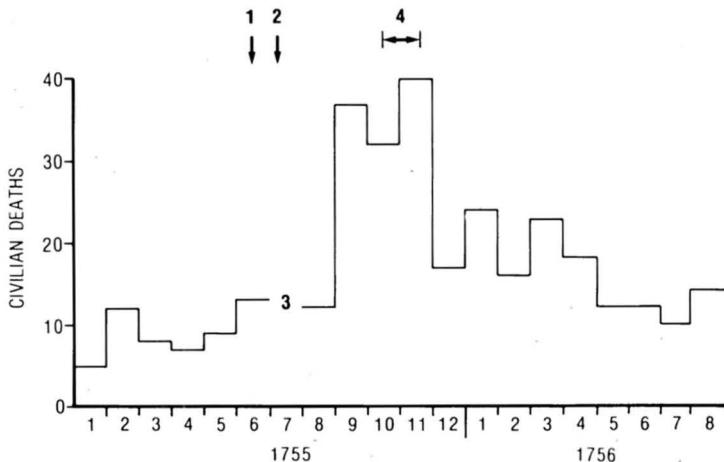
90

- 1 Arrival of an Irish Regiment, 12 August, 1750
- 2 Arrival of the "Ann" from Rotterdam, 2 September, 1750
- 3 Death of Matthew Jones, Principal Surgeon at the Hospital, 5 October, 1750



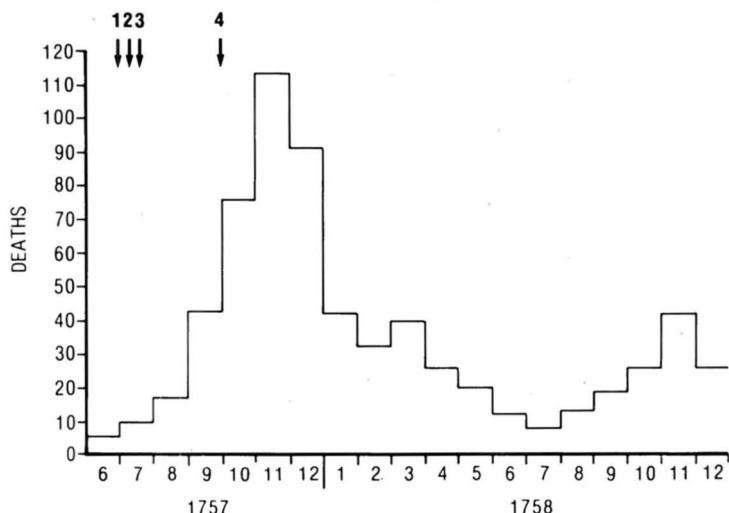
**Figure 2 CIVILIAN DEATHS IN HALIFAX DURING THE PERIOD JANUARY, 1755 TO AUGUST, 1756**

- 1 Smallpox epidemic reported at Louisbourg in June, 1755
- 2 Arrival of Boscawen's Fleet, 7 July, 1755 with Prisoners from Louisbourg.
- 3 No burials records for St. Paul's Church for July, 1755.
- 4 Period during which 121 Seamen and Prisoners died in Hospital.

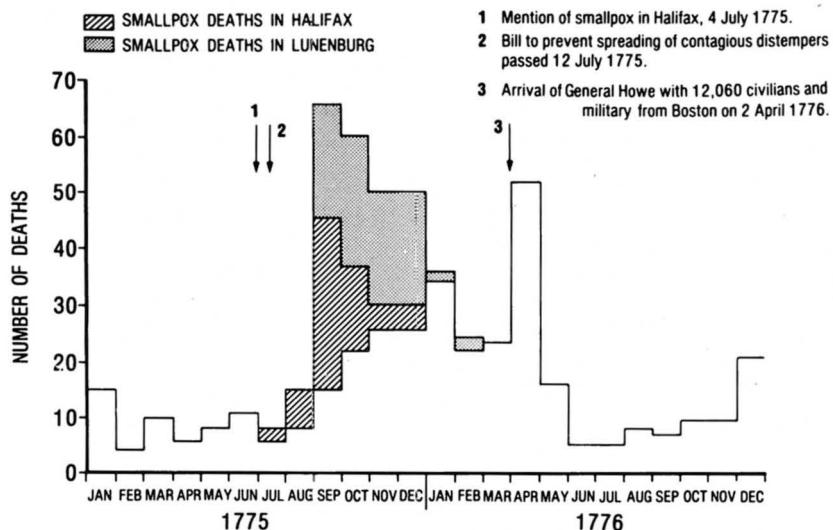


**Figure 3 DEATHS IN HALIFAX DURING THE PERIOD JUNE, 1757 — MAY, 1758**

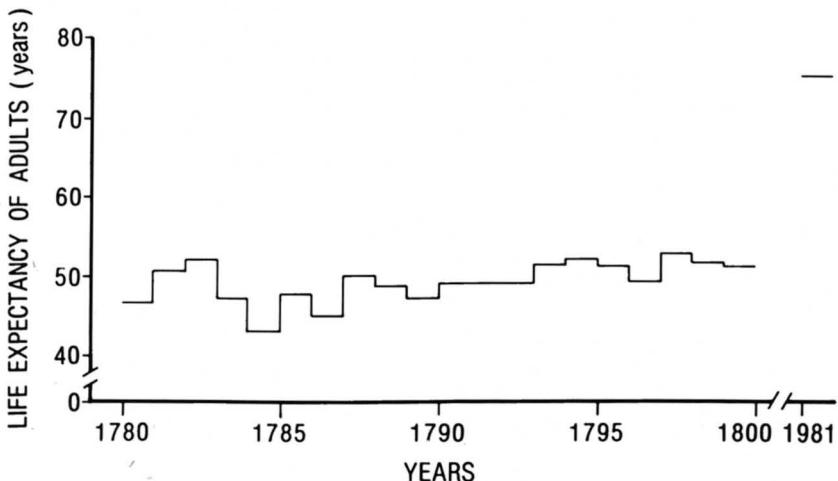
- 1 Arrival of Lord Loudon's and Sir Charles Hardy's Forces.
- 2 Arrival of Admiral Holburne's Fleet.
- 3 Lord Loudon indicates "fever" is spreading among the Troops.
- 4 Dr. Abercrombie indicates smallpox is rampant in the Town.



**Figure 4 TOTAL NUMBER OF DEATHS IN NOVA SCOTIA DURING THE PERIOD 1775-1776**

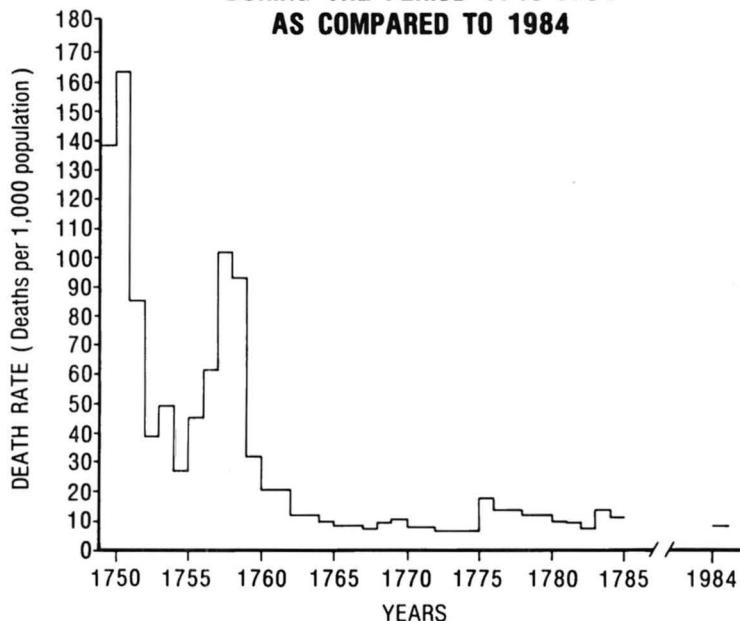


**Figure 5 LIFE EXPECTANCY OF CIVILIANS IN NOVA SCOTIA DURING THE PERIOD 1780-1799 AS COMPARED TO 1981**



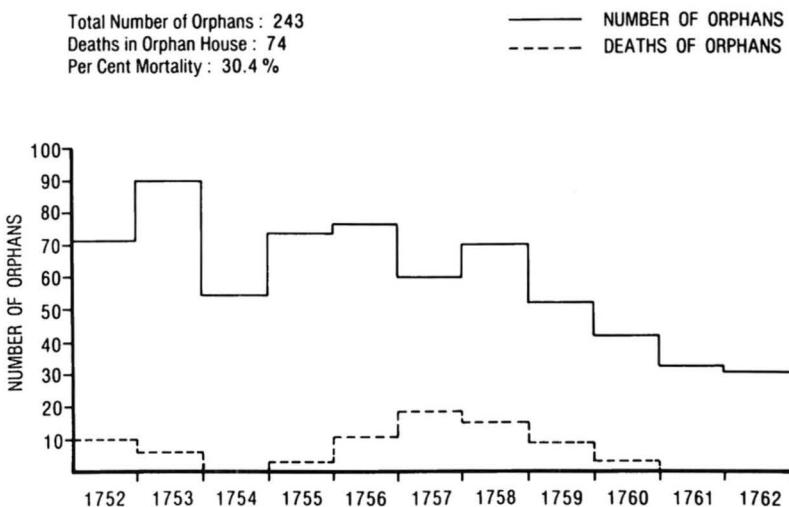
**Figure 6**

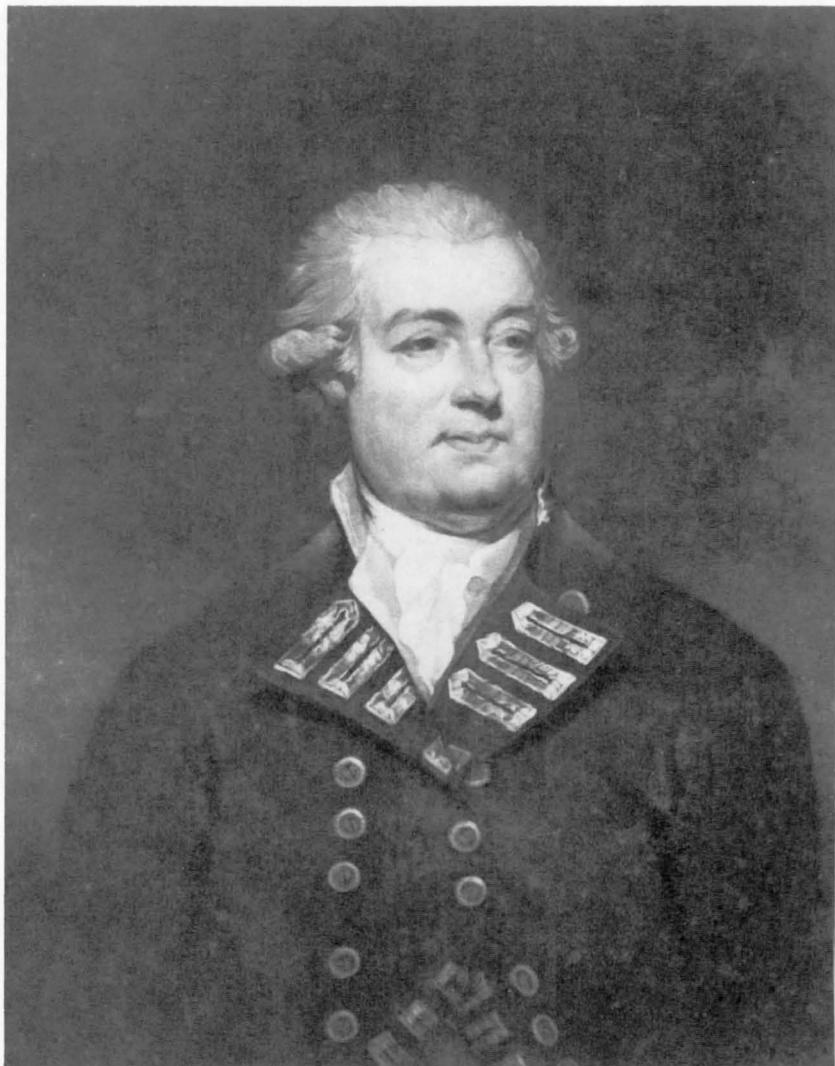
**DEATH RATE OF CIVILIANS IN NOVA SCOTIA  
DURING THE PERIOD 1749-1784  
AS COMPARED TO 1984**

**Figure 7**

**NUMBER OF CHILDREN IN THE ORPHAN HOUSE  
AT HALIFAX, 1752-1762, AND THE YEARLY  
MORTALITY**

( C.O. 217, Vol 18, p 218-225 )





*Commodore Marriot Arbuthnot by Charles H. Hodges after John Rising, 1792.*  
Photograph courtesy National Maritime Museum, Greenwich, England.

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# The Error of Marriot Arbuthnot<sup>1</sup>

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## Ernest A. Clarke

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"The devil was in him," was the way Marriot Arbuthnot, lieutenant-governor of Nova Scotia, explained the error he made in July 1776.<sup>2</sup> And a very substantial and embarrassing error it was. A large reinforcement en route from England to support the British army and navy in the American Revolution stopped at Halifax to ask directions, but Nova Scotia's lieutenant-governor claimed he had none--when, in fact, the precise instructions of where the reinforcement should go were in the pocket of his own trousers. He had stuffed them there two weeks earlier and had forgotten all about them. By fate alone the navy sailed to the right American port, there to rendezvous with British headquarters recently established at New York.

During the spring of 1776, British military headquarters in North America had been shifted temporarily to Halifax. After the forced evacuation of Boston in March, General Sir William Howe and Admiral Molyneux Shuldhham had fallen back on Nova Scotia with the remnants of their army and navy and hundreds of Loyalist refugees. Over the next three months the military caroused and convalesced in Halifax, while awaiting return to the scene of the revolution.<sup>3</sup> The reinforcement from England was daily expected, but by June, when none had arrived and with local supplies dangerously low, Howe and Shuldhham decided to act

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1. See Donald F. Chard, "Arbuthnot, Marriot," in *Dictionary of Canadian Biography*, IV (1979), 29-30.

2. "A detail of some particular services performed in America during the years 1776-79 by Sir George Collier," National Maritime Museum (NMM) BGR/28, published in "Biographical memoir of Sir George Collier, Knt., Vice-Admiral of the Blue," *Naval Chronicle*, XXXII (1814), 265-96 and 353-400.

3. Just how unruly the troops were at Halifax may be judged by the following warning issued 18 May 1776: "The Commander-in-Chief desires the Troops may be informed that he is determined to punish with the greatest Vigour any soldier who is detected in pulling down houses, Fences, or destroying anything else belonging to the Inhabitants." General Orders of Thomas Gage, MG 12, Series HQ, Vol. OA, Public Archives of Nova Scotia [hereafter PANS].

independently in establishing a bridgehead of operations in New England.<sup>4</sup> June 10 was the date set for departure of the fleet from Halifax.

On the day before sailing, a confidential letter of naval orders and instructions for the expected reinforcement was written by Admiral Shuldham and committed to the care of Marriot Arbuthnot, himself a veteran naval officer. "A large sheet of Paper, close written,"<sup>5</sup> this document disclosed New York as the fleet's destination, and had been hand-delivered to the lieutenant-governor by Evan Nepean, the Admiral's secretary. At a farewell working breakfast the next morning--the actual day of sailing--Shuldham checked with Arbuthnot to see if he had received the dispatch, "which Mr. Arbuthnot acknowledged that he had," and in keeping with its confidentiality had "put this letter unopened in his pocket." Happy in the belief that his advice on the place of rendezvous was secure with Nova Scotia's chief executive, the admiral conducted his fleet bearing the British army down the harbour to the open ocean.<sup>6</sup>

Where the British were going was a matter of speculation in Halifax, with the merits of Boston and New York debated by the populace. The actual destination, however, had not been announced and was officially unknown in Nova Scotia, except for the dispatch in Arbuthnot's pocket.<sup>7</sup>

4 Shuldham referred in April to "the present necessitous State of the Army" and admitted that he had been forced to reduce navy rations "to two thirds allowance." Shuldham to Stephens, 24 April 1776, R.W. Neeser, ed., *The Despatches of Molyneux Shuldham* (New York, 1908), 198-9. One observer concluded that General Howe "was in great want of provisions, and that is supposed to have been the true cause of his departure." See *Remembrancer*, Part II, 1776, 148.

5 "The War in America 1776. Original Manuscript Journal by Admiral Sir George Collier," NMM JOD/9, published in *Naval Documents of the American Revolution* [NDAR], 6 (Washington, 1972), Appendix C.

6 Collier in NMM BGR/28 and JOD/9.

7 The destination of the fleet was unknown: "General Howe with the Troops under Convoy of Admiral Shuldham. . .sailed on a Secret Expedition to what Port they are bound is yet undiscovered here," wrote Asa Spalding at Halifax to Samuel Peters, 18 June 1776. Papers of the Rev. Samuel Peters, National Archives of Canada [hereafter NAC], mfm. at PANS. Major-General Massey asserted that "General Howe left this Province the 10th Inst., where to, nobody knows." Massey to Germain, 27 June 1776, RG 1, Vol. 365, #13, PANS. The well-placed Nova Scotian, Charles Morris Junior recalled that "General Howe Sailed from this Port the 10th of June, but for what part of the Continent is unknown to us." Dartmouth Papers, 3928-9, mfm. at PANS. A junior officer at Halifax recorded in his journal that the fleet sailed 10 June, "Destination unknown." Marine officer William

As the days passed, Arbuthnot thought less and less about it, although the “large sheet of Paper” must have bulged his trousers’ pocket; by the time the reinforcement arrived off the harbour on 23 June, he had forgotten it altogether.

The British reinforcement for the campaign of 1776 was commanded by Admiral Richard Howe (brother of General Sir William Howe), who had been appointed to replace Admiral Shuldham on the North American station. Admiral Howe had expected to find his brother and Shuldham still at Halifax, “but understanding they were sailed, his Lordship sent to Commodore Arbuthnot to inquire where they were gone.” To everyone’s astonishment, Nova Scotia’s lieutenant-governor “did not know, nor could he even guess the place of their destination!!” This news “amaz’d Lord Howe inconceivably.” He asked whether Shuldham had not left orders where to join the fleet, at “which Mr. Arbuthnot assur’d his Lordship He did not.” “Lord Howe lifted up his Hands and Eyes at this account. . .and sailed from Halifax, uncertain what course to steer, or where to find the fleet he was appointed to command!!!”<sup>8</sup>

A second reinforcement from England arrived off Halifax Harbour two weeks later (7 July) under the command of Commodore William Hotham,

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Feilding did not learn in Halifax of the fleet’s destination until the news arrived via ship from New York 17 August, and he assumed that confidential instructions had been given to both reinforcements: Marion Balderston and David Syrett, eds., *The Lost War: Letters from British Officers during the American Revolution* (New York, 1975), letters #53, 60 and 67.

However, enlightened speculation was rampant: “The troops are all getting ready to embark,” wrote a Boston refugee at Halifax in May; “the place of destination is a secret, but Long Island or New York are generally talked of as the place of rendezvous.” Boston gentleman to a friend in London, 23 May 1776, in Margaret W. Willard, ed., *Letters on the American Revolution 1774-1776* (Washington, 1925), 319. Where the attack would be made was not announced, according to Captain John Bowater on board *Centurion* in Halifax harbour, “but most people think it will be at New York.” Balderston and Syrett, *The Lost War*, letter #55. Indeed, the junior officer agreed in his journal that “the general destination was however pretty generally understood without much Divination.” When pressed later in New York, Admiral Shuldham would claim that “the destination of the fleet and army was never kept a secret and was continually talked of before the troops sailed” (Collier, NMM BGR/28); although with an array of accusers facing him at the time, he probably overstated the matter. The journal of Ambrose Serle, Lord Howe’s secretary, sheds no light on the matter. It seems clear, however, that while the logical destination may have been readily guessed, the intentions of the fleet were not announced in Halifax for obvious reasons, and that the order consigned to Arbuthnot’s pocket was relied upon to instruct reinforcements.

8 Collier in NMM BGR/28 and JOD/9.

who likewise enquired of Arbuthnot about "the Place of Rendezvous," only to be greeted by the same blank look. The lieutenant-governor "was incapable of telling us where either the fleet or the army were, as he had no official information whatever relative to them!"<sup>9</sup> A perplexed Hotham "left the Coast as wise as he came,"<sup>10</sup> and after consulting with his captains decided to set a course for New York. They sailed "at a venture, and were fortunate enough to guess right, though it was an equal chance whether we had found friends or enemies in possession of that City."<sup>11</sup>

The lieutenant-governor of Nova Scotia was the topic of animated conversation at New York, when Admiral Howe and Commodore Hotham descended on Molyneux Shuldham and reproached him for "leaving no place of Rendezvous when He came away from Halifax."<sup>12</sup> Confessed Shuldham, "I was not a little surprised" on hearing that Arbuthnot had no knowledge of where the fleet had gone and he agreed that if it were so, and if he had left no orders behind at Halifax, it would have been a "very gross and un-officer-like omission" on his part.<sup>13</sup> But he protested vigorously that the order of rendezvous, "respecting such men of war as might arrive after his departure," had been left in Arbuthnot's charge. "The words 'New York' and 'Sandy Hook' were expressed in 5 or 6 diff't places in that Paper," asserted Shuldham!<sup>14</sup> To prove his point, he produced a copy of the very letter, and with a view to acquitting himself

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9 *Ibid.*

10 "Journal of Occurrences from January 1776 to August 1787. Military Events etc. at Halifax, Nova Scotia kept by Lieut. Ferguson," RG 1, Vol. 365, #27 1/2, PANS. The Arbuthnot blunder described in detail by Collier is corroborated by this junior officer's journal, as well as by Admiral Shuldham.

11 Collier in NMM BGR/28 and JOD/9.

12 *Ibid.*

13 Shuldham to Stephens, 24 July 1776, Neeser, ed., *Molyneux Shuldham*, 306.

14 Collier in NMM JOD/9.

of any future charges, had it authenticated by his secretary and posted to England.<sup>15</sup>

Meanwhile in Nova Scotia, Marriot Arbuthnot went about his business, blithely unaware of the furore he had caused at New York. He was busy indeed, not only as lieutenant-governor and chief executive of the province since the recall of Governor Francis Legge that spring,<sup>16</sup> but also as commodore of the navy on the Nova Scotia station, a job for which--as an old salt--he at least was qualified; and as commissioner of His Majesty's Dockyard, the only such British facility for repairing ships in all of North America.<sup>17</sup> It was as a dockyard commissioner that Arbuthnot had come to Nova Scotia in the first place, in November 1775. But during the following summer it was the job of lieutenant-governor that proved the most taxing--because of the shambles to which provincial affairs had deteriorated in the wake of Legge's discredited administration; the political fences that needed mending; and the loyalty of the predominantly ethnic New England population that had to be secured at a critical period. Harmonizing the factions of Nova Scotia's diverse community was his first priority.

After proroguing the Assembly in June, Arbuthnot made a point of dining out with members and officials at Willis's Tavern,<sup>18</sup> setting a jovial, conciliatory tone of government quite in contrast to that of the uptight, muck-raking Legge. A few weeks later he set out on an extensive tour of

15 Neeser, *Molyneux Shuldharn*, 306. A complete copy of the letter is on 307-9. Also in the letter were naval orders meant for Arbuthnot which were intended to tie up loose ends on the Nova Scotia station after Admiral Shuldharn's departure. Considering that the relevant orders languished in Arbuthnot's pocket, it may be wondered how well local naval affairs were managed that summer.

16 Governor Francis Legge of Nova Scotia was recalled in February 1776; Marriot Arbuthnot received his commission as lieutenant-governor on 20 April 1776, replacing Michael Francklin, and when Legge sailed from Halifax on 12 May 1776, Arbuthnot became chief executive of the province.

17 Damaged British ships along the North American coast as far south as Charleston, South Carolina had no alternative to "getting up jury masts to go to Halifax to repair." See "Extract of a letter from an officer on board H.M.S. *Bristol*," 7 July 1776, in Willard, *Letters on the American Revolution*, 332.

18 H.A. Innis, ed., *The Diary of Simeon Perkins 1776-1780*, (Toronto, 1948), entry for 29 June, 12. The Willis Tavern was the Great Pontac House.

the province, visiting regions never before seen by a governor, reviewing local militia companies wherever he went, and talking with the people.<sup>19</sup> Cultivating the Assembly and stumping the out-settlements--two activities peculiarly suited to Arbuthnot's open, gregarious personality--began slowly to undo the damage done by Legge and would gain him high marks for pursuing "conciliating measures";<sup>20</sup> but throughout that summer, in the tavern and on the road, the Shuldharn letter was presumably in his pocket all the while. It was "a considerable time afterwards that He accidentally pulled it out, and for the first time read those Orders."<sup>21</sup>

Several reasons for Marriot Arbuthnot's amazing lapse of memory may be put forward, none more eligible than the one he used himself: "the devil was in him." He was a senior citizen, and it might be argued that age had impaired his memory. Sir George Collier, who replaced Arbuthnot as naval commander at Halifax, thought as much, claiming that Arbuthnot had forgotten the letter because his "faculties were so impaired (which were never brilliant)."<sup>22</sup> But this assessment seems premature, since Arbuthnot was later entrusted with the most important post of his long career, that of commander of His Majesty's fleet in North America--in which post he superseded Collier. Arbuthnot, who was sixty-five in 1776, never tried to conceal his infirmities: "I lost almost totally the sight of one eye, and the other is but a feeble helpmate. . . I faint, remain senseless and speechless sometimes for hours and sometimes longer, and when I recover am ignorant of the past."<sup>23</sup> Yet soon after this admission, he was leading a squadron of eight ships of the line into battle against a similar French

19 Arbuthnot to Germain, 15 August 1776, in K.G Davies, ed., *Documents of the American Revolution*, XII, 183-4.

20 The House of Assembly, a fractious body under Legge, acknowledged "the conciliating measures you have pursued to unite us" in its address to the lieutenant-governor, 6 June 1777. RG 1, Vol. 218, PANS.

21 Collier in NMM BGR/28 and JOD/9. By 8 July, Arbuthnot was of the same opinion as others that the fleet had gone to New York, but appears not to have found the orders by then. Arbuthnot to Germain, 8 July 1776, CO 217, Vol. 10, 262.

22 Collier in NMM BGR/28.

23 Donald Macintyre, *Admiral Rodney* (London, 1962), 156.

force off Chesapeake Bay, a task that would have required Arbuthnot to issue--if not also remember--a great many naval orders.

By all accounts, Commodore Arbuthnot's naval skills were limited, and perhaps this was connected in some way with his absent-mindedness. A biographer claimed "he was ignorant of the discipline of his profession. . .[and] destitute of even a rudimentary knowledge of naval tactics."<sup>24</sup> If ability to sail was no prerequisite for commanding a fleet of the Royal Navy, however, it would be ludicrous to demand such rigour when entrusting a naval order, even an important one.

Contemporaries referred to Marriot Arbuthnot as a "coarse, blustering, foul-mouthed bully,"<sup>25</sup> and there is evidence that he was crude of speech.<sup>26</sup>

24 *Dictionary of National Biography*, II, 65. The biographer was Sir Charles Laughton. For an earlier biography, see "Memoirs of the Public Services of the Late Marriot Arbuthnot Esq. Admiral of the Blue Squadron," *Naval Chronicle*, XXIII (1815), 264-76. A brief character sketch is in *Rivington's Royal Gazette*, 26 June 1779.

25 DNB. "Can hardly tell what principles he is of, besides those of a blustering Tar." Thomas Brown commented on Marriot Arbuthnot at Halifax in 1778. Brown to Samuel Peters, 30 April 1778, Peters Papers, mfm. at PANS. Brown was a Boston merchant who came to Halifax with five members of his family and hundreds of other Loyalists in March 1776 when the British evacuated Boston. See list of refugees, CO 5, B-2967, 158-65, mfm. at PANS. Arbuthnot was referred to as "the famous blustering tar" by a Boston newspaper, *The Independent Chronicle*, 19 June 1777.

26 The following lampoon appeared in *The Morning Chronicle, and London Advertiser*, 18 May 1781:

" . . . part of the Admiral's eloquent and elegant recruiting harangue at New York a short time before his departure for Rhode Island, taken down literally from his own mouth, viz. 'I tell you what my boys, damme, if you'll go along with me, we will take, burn, sink, or destroy every French ship we meet, and b[ugge]r all the Frenchmen into the bargain, damme.' N.B. The above was pronounced in the hearing of at least fifty gentlemen."

A wag even rendered the subject in verse in the same newspaper, rhyming it neatly with Arbuthnot's alleged dilatoriness in attacking the French fleet:

"From Arb[u]th[n]ot, my friend, pray tell me the news,  
What's done by his ships, and their brave gallant crews.  
Has the old Englishman shewn old English spunk,  
And the ships of the French, burnt, taken or sunk?  
In truth, my good Sir, there has been nothing like it,  
'Tis easier to threaten a blow than to strike it.  
No ship has been taken, nor frigate nor lugger,  
Nor e'en a poor Frenchmen for jack tars to b[ugge]r,  
Though this was a promise so solemnly made,  
When he called on the sailors to give him their aid;  
Yet himself he has hid under Gardiner's Island,  
And swears the French ships must be now taken by land."

Such an attribute often was a colourful feature of the service. "Swears most horribly, and . . . is as false as hell,"<sup>27</sup> was Sir Henry Clinton's candid opinion of Nova Scotia's lieutenant-governor. In 1776, Arbuthnot had been a fixture of the Royal Navy for more than forty years, and Halifax was the quintessential navy town. It seems unlikely that Arbuthnot was absent-minded simply because of his rough character.

Perhaps Nova Scotia's lieutenant-governor was distracted by continuous efforts to ingratiate himself with superiors in London, a common enough characteristic of colonial administrators. A member of the House of Assembly labelled the entire Nova Scotia administration of this period "a Junta of Sycophants."<sup>28</sup> Officials filled their letters to England with fawning flattery designed to gain favourable notice for themselves. Marriot Arbuthnot, who was in the forefront of this style of colonial correspondence, must surely have achieved the apex of the genre with his letter of 13 September 1780 to Secretary of State Lord George Germain, when he wrote: "My Lord. . . the very idea in having thought my conduct worthy of your notice and approbation transports me almost to a frenzy!"<sup>29</sup>

Yet as a naval person the frenzied lieutenant-governor was even more beholden to the Earl of Sandwich, First Lord of the Admiralty: "I owe your Lordship too much not to devote my life to you," wrote Arbuthnot to Sandwich in 1776.<sup>30</sup> More succinctly and with a hint of disgust, Sir George Collier, also a naval person, declared Arbuthnot to be "a creature of Lord Sandwich."<sup>31</sup> Every Christmas it was Arbuthnot's habit to send to

27 William B. Willcox, *Portrait of a General: Sir Henry Clinton in the War of Independence* (New York, 1962), 311.

28 "Extracts of the proceedings, Sufferings, etc. of Sam'l Rogers of Nova Scotia," 10 April 1779, in *Papers of the Continental Congress*, Vol. 8, 268, #41. Samuel Rogers was MA for Sackville; member, of the patriot Committee-of-Safety for Cumberland; and officer in Jonathan Eddy's force that attacked Fort Cumberland in November 1776.

29 Arbuthnot to Germain, 13 September 1780, in Piers Mackesy, *The War for America 1775-1783* (1964), 11.

30 Arbuthnot to Sandwich, 30 March 1781, in G.R. Barnes and J.H. Owen, ed., *The Private Papers of John, Earl of Sandwich*, IV (1938), 170.

31 *Naval Chronicle*, XXXII (1814), 383.

the First Lord, via Royal Navy ships, exotic gifts from the wilds of Nova Scotia: a live wildcat in 1776, and in 1777 a live owl--"the finest bird I ever saw," enthused the lieutenant-governor to his patron.<sup>32</sup> But while ranking first in Halifax's "Junta of Sycophants," Arbuthnot apparently was not side-tracked from his responsibilities, nor can a link be discerned between his sycophancy and his absent-mindedness.

When not lobbying their superiors in London, colonial administrators were liable to be feuding with their peers in North America, with whom they competed for placement and reward. Arbuthnot played that game as well; indeed, he had been in the province barely a month before engaging in his first feud. "I am sorry to find," understated Admiral Shuldham in January 1776, "there has been a little mis-understanding between Admiral Graves and Commodore Arbuthnot on the Subject of Command." That Graves, while visiting Halifax, "found himself under the necessity" of ordering Arbuthnot to submit to his command, illustrated something of the latter's character.<sup>33</sup> In the summer of 1776, however, the Graves incident was behind him and his most celebrated feuds--those with Admiral Rodney and Sir Henry Clinton--were still several years in the future, so the lieutenant-governor should not have been distracted by such matters.

Marriot Arbuthnot was known to be preoccupied with lining his own purse, and Halifax was a centre of procurement for the British military in 1776. Fortunes were made in that lucrative activity.<sup>34</sup> There were so many licences for a chief executive to dispense, only one of which was the licence permitting Nova Scotia vessels to navigate in American waters for the purpose of supplying British troops at New York and other ports. Arbuthnot went farther by licencing those vessels to trade in rum and

32 Arbuthnot to Sandwich, 11 October 1777, in Barnes and Owen, ed., *The Private Papers of John, Earl of Sandwich*, I (1932), 306.

33 Shuldham to Sandwich, 13 January 1776, in *ibid.*, 105.

34 A report to Secretary of State Germain cited the money made in Nova Scotia early in the war: "By these immense Sums, derived since the commencement of the Rebellion from the Army for beef, rent of houses, and dry goods, the Province being enriched and for once established, it becomes now an object worthy of attention." Report of John MacDonald; main report dated 30 October 1776; see appendix dated 22 March 1777. CO 217, Vol. 52, 302, mfm. at PANS.

molasses, and issued so many licences and for such large quantities of those products--more than Nova Scotia and the British military could use--that General Howe was forced to reprimand him. The excess was being sold to the Patriots, "greatly facilitating their further opposition."<sup>35</sup> Occasional aid to the enemies of Great Britain may have been inadvertent, but Arbuthnot's gain from the operation of military hospitals was more difficult to explain. After becoming commander-in-chief of the navy in North America, he manipulated for his own benefit funds allotted to the sick and wounded. "The abuses of the hospital are beyond description," exclaimed an astonished officer on confronting the situation at New York in 1780.<sup>36</sup> Irregularities also were evident in the operation of the military hospital at Halifax while Arbuthnot was lieutenant-governor. That hospital operated on George's Island from April 1776 until May of the following year, when it was removed with its inmates to the mainland suddenly and in peculiar circumstances. A notorious row over its removal embroiled the army, navy and administration, and lasted until Arbuthnot left the province.<sup>37</sup>

In his capacity as commander of the navy at Halifax, Arbuthnot was able to claim the foremost financial share of the many captured American vessels condemned in the Vice-Admiralty Court. Only in the rare instance that a naval officer senior to his own rank appeared in port did Arbuthnot receive a lesser prize and then he would explode with rage.<sup>38</sup> It may have been to such benefits that Sir George Collier alluded when he described Arbuthnot's position of commodore as "of his three employments. . .the one that he most valued."<sup>39</sup> Despite a preoccupation with personal gain,

35 Letters of William Howe, 20 April and 8 June 1777, CO 5, B-2968, 245-7. Governors of West Indian colonies also were caught up in the 'rum and molasses' fiasco.

36 Macintyre, *Admiral Rodney*, 155.

37 For an introduction to the hospital incident, see Executive Council Minutes, 22 September 1778, RG 1, Vol. 212, PANS; *Halifax Gazette*, October 1778; and Collier's Journal, NDAR 6, Appendix C.

38 Macintyre, *Admiral Rodney*, 154.

39 Collier in NMM BGR/28. Arbuthnot may have contrived to maintain his claim to prize money even after Collier succeeded him in the naval command at Halifax. Many were the "prizes bringing in," according to Collier, "which happen'd continually, tho' I reap'd no Benefit from it."

it seems unlikely that Arbuthnot's error in the summer of 1776 was caused by that weakness, since any profiteering in Nova Scotia would have been small compared with the fortune he amassed after becoming commander-in-chief of the entire North American fleet. It was said he ruled that important station as if it were his own property, with a degree of corruption shocking even by eighteenth-century standards.<sup>40</sup>

The most compelling reason for Marriot Arbuthnot's absentmindedness was simply that he was over-worked. Since May, when he had moved out of the commissioner's residence--a stone building inside the high-walled dockyard compound--and into the wood-framed governor's house in the centre of town, he had laboured in three jobs: lieutenant-governor, dockyard commissioner, and naval commander: "each of the 3 being sufficient to employ the whole time and attention of anyone,"<sup>41</sup> conceded Sir George Collier, one of Arbuthnot's harshest critics. Collier was joined in this opinion by Admiral Shuldham, who believed that overwork had caused Arbuthnot's error: "In the Multiplicity of Business he is engaged in, in his Several Departments, I presume he must have forgot or mislaid [the letter]."<sup>42</sup>

Whatever the real reason for Arbuthnot's error, Lord Howe relieved him of one of his three jobs shortly thereafter. The naval command was given to Sir George Collier, leaving Arbuthnot with the dockyard commission and lieutenant-governorship. The army command had earlier been given to Major-General Eyre Massey, whom General Howe had left behind at Halifax.<sup>43</sup> Thus, during the critical events that followed, management and

40 Macintyre, *Admiral Rodney*, 154.

41 Collier to Germain, 21 November 1776, CO 217, Vol. 10, 332, mfm. at PANS. With the loss of Boston, there was a greater focus on Halifax and Arbuthnot was under increased pressure. Shuldham reminded London in May, just after Arbuthnot had been made lieutenant-governor, "of how much greater importance the King's Yard and Harbour of Halifax, as well as the whole Province of Nova Scotia, is now become, than formerly." Neeser, *Molyneux Shuldham*, 212.

42 Shuldham to Stephen, 24 July 1776, in Neeser, *Molyneux Shuldham*, 306. "He forgets all he says and does," agreed Sir Henry Clinton, when he worked later with Arbuthnot at New York, "and talks nonsense. . . by the hour." See Wilcox, *Sir Henry Clinton*, 311.

43 When General Howe departed for New York, "He was glad to find a pretence to leave Massey behind at Halifax," according to Sir George Collier. See Collier's Journal, NDAR 6, Appendix C.

defence of the province devolved on three gentlemen: Arbuthnot, Massey and Collier, although this move by British headquarters by no means eliminated blunders on the Nova Scotia station.<sup>44</sup>

Lord Howe never publicly divulged the reasons for his decision regarding Arbuthnot, but "it was generally supposed," according to Collier, that "his incapacity and want of memory were amongst the principal ones."<sup>45</sup> It can therefore be said, that if Marriot Arbuthnot was right about the reason for his error, the devil was at least indirectly responsible for the tripartite leadership that distinguished Nova Scotia during the first two years of the American Revolution.

Research into this triumvirate could shed light on the larger question of how Nova Scotians became the most consistent Loyalists of the Revolution, despite strong filial and political ties with New England. The leadership was neither a coterie of bland colonial appointees, nor a united management team. The triumvirs were colourful individuals in their own right, each with very definite abilities, whose personalities clashed fundamentally and whose administrative efforts during the critical early years of the Revolution were hampered by unusual internecine strife.<sup>46</sup> Resentment towards Commodore Collier for superseding him lingered with Lieutenant-Governor Arbuthnot all the time he remained in Halifax, and he was exasperated more than once by the erratic behavior of Major-General Massey. On the other hand, Collier, who at thirty-six was a young upstart compared with his two veteran associates, considered Arbuthnot to be a buffoon and learned to despise Massey. Except for the troops under his own command, Major-General Massey apparently was unable to get

44 Ferguson Journal, RG 1, Vol. 365, #27 1/2, PANS. After mentioning that Arbuthnot had mislaid the letter intended for the reinforcement, Lieutenant Ferguson made the following tantalizing entry: "7 July. . .N.B. Not the 1st or 2nd blunder committed before this Period--there were not a few committed afterward."

45 Collier in NMM BGR/28.

46 The most dramatic example was the duel that Massey and Collier were within seconds of fighting with pistols, behind Citadel Hill early in 1777, before Arbuthnot, the old conciliator, succeeded in talking them out of it. But while he was able to prevent the two chief officers of army and navy in Nova Scotia from killing or wounding each other, he could never persuade them to cooperate in military matters.

along with anyone in Halifax. It is surprising, in view of these contrasts, that during the same period severe political conflicts were resolved in the province, and that a series of combined military operations was undertaken by local forces with considerable success.<sup>47</sup> Still more remarkable is that Nova Scotia took an emphatically loyal course--sharply divergent from that of New England--while under the peculiar joint leadership of the daring but irascible George Collier; the soldierly but eccentric Eyre Massey; and the elderly, affable, rough-edged, self-seeking, and absent-minded Marriot Arbuthnot. In the summer of 1776, the old lieutenant-governor had been saved by pure chance from having to suffer the consequences of his "error": forgetfulness.

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47 Political conflicts left behind by Governor Legge included strained relations with both the Assembly and Council, and continued opposition in the countryside to the Militia Bill and its companion piece, the Tax Bill. In addition, Arbuthnot had to move decisively to suppress open rebellion in Cumberland and Sunbury Counties and Cobequid District. Military operations undertaken in Nova Scotia involved the local militia (both land and sea), the three provincial regiments (Royal Highland Emigrants, Royal Fencible Americans and Loyal Nova Scotia Volunteers); contingents of Royal Marines; and naval vessels belonging to the province as well as the Royal Navy. Fort Cumberland was successfully defended in November 1776; a Massachusetts invasion of the St. John River Valley was defeated in July 1777; and the Council ordered a pre-emptive strike at Machias and along the Maine coast in August 1777. In the meantime, the coastline had to be defended against American privateers, and Nova Scotia privateering was established. The participation of Nova Scotia in the Revolutionary War, which grew significantly under the joint tenure of Arbuthnot, Collier and Massey culminated in 1779, after their departure, with the erection of Fort George at Penobscot by Massey's successor, Francis MacLean.

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# Bucknam Pasha

Ann Doull

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The purpose of this article is to make available, in English, information from Turkish sources concerning Ransford D. Bucknam, the fisherman's son from Nova Scotia who became an admiral in the Imperial Ottoman Navy.

First, it would seem appropriate to give an outline of Bucknam's life before he went to Turkey. This is no easy matter. Bucknam's colourful career has inspired an assortment of accounts which differ considerably from each other, even in his date of birth.<sup>1</sup> These were written many years after Bucknam's death and appear to be based on the reminiscences of friends and former neighbours of the Bucknam family in Nova Scotia. There is, however, one contemporary source, namely H.J. Morgan's *Canadian Men and Women of the Time* (Toronto, 1912). This is a *Who's Who*-type of publication and the entry relating to Bucknam bears the stamp of authenticity. From it we learn that he was born in Hantsport, Nova Scotia in 1869, the son of Ezra Taylor and Isabella (Roscoe) Bucknam. While still an infant he moved with his parents to Maine, settling near Bucksport, where he went to school. In January 1904 he married Miss Rose Thayer of Philadelphia. Morgan provides Bucknam's address in Constantinople and tells us that he belonged to the following organizations: the Constantinople Club; the Lotus Club, New York; the Art Club; the Pen and Pencil Club, Philadelphia; and the International Club, Panama. He was also a member of the Boston Marine Society and a Republican.

In the various accounts of Bucknam's life, we read of storms, hidden treasure in the South Seas, piracy and mutiny. Morgan tells us that Bucknam went to sea at the age of fourteen, and that he commanded merchant steam and sailing ships on both the Atlantic and Pacific coasts and on the Great Lakes. He served as Superintendent in the American Steel Barge Co., New York; Superintendent, Pacific Mail Steamship Co., Panama; and Superintendent, Cramps Shipyard, Philadelphia.

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1 Dorothy Duncan, *Portrait of Nova Scotia* (New York, 1942), p. 45. William Coates Borret, *Down East* (Halifax, 1945), pp. 177-181. Evelyn M. Richardson, "Bucknam Pasha: The Story of a Nova Scotian Boy who became a Turkish Admiral," in *The Atlantic Advocate*, 48, 9 (May 1958), pp. 69-73. Ted Simpson to Dr. C. Bruce Ferguson, Aylesford, 28 Aug. 1970, in MG 100, Vol. 114, No. 41d, Public Archives of Nova Scotia. The surname Bucknam is often rendered as Buckman.

Cramps Shipyard was founded in 1830 and was still building vessels for the U.S. Navy in World War II, but is now out of business. While working for Cramps, Bucknam acted as trial commander for the American battleship, U.S.S. *Maine*, which was commissioned in December 1902.<sup>2</sup> At this time, the yard was also building a cruiser, the *Mecidiye*, for the Imperial Ottoman Navy. Bucknam was *Mecidiye*'s trial commander and was then given the assignment of delivering her to Turkey.<sup>3</sup> After crossing the Atlantic and traversing the Mediterranean, he handed her over to the Turkish authorities in Constantinople in July 1903.<sup>4</sup>

Morgan's entry gives the following information about Bucknam's association with the Turkish Navy: "Appointed naval adviser and A.D.C. to the Sultan of Turkey, April 19th 1904. Decorated with the Turkish Order of Osmanieh and Distinguished Service Medal."

Now let us turn to the information obtained from Turkish sources. In the summer of 1983, the author of this article wrote to Rear-Admiral Ilhan Aran, Commandant of the Turkish Naval Academy, asking if he could provide any information about Bucknam's service in the Turkish Navy. The Admiral replied very promptly with an English transcript of material found in the Archives of the Naval Museum:

Bucknam, who has worked on board Cruiser *Mecidiye* has been employed under the dignity of teacher and introduced as the honorary aide-de-camp to the Sultan, assigned a salary of 175 lira, and the rank of Commander has been conferred to his responsibility by the imperial rescript. (The part above has been textually translated from Turkish from the file of the imperial rescript number 148, document number 428, August 1, 1904, State Archives.) . . . Bucknam became Pasha (Admiral) in 1907 and was the recipient of the Ottoman Gold Token and the Silver Medal of Merit. He entered the Navy in 1894.<sup>5</sup> (*Naval Annual* 1908, page 28.)

Admiral Aran went on to say that Bucknam entered the service as a commander after bringing the cruiser *Mecidiye* from the United States and

2. *Dictionary of American Naval Fighting Ships*, IV (Washington, 1969).

3. H.J. Morgan, *Canadian Men and Women of the Time* (Toronto, 1912), p. 167.

4. *Janes Fighting Ships*, 1944/45.

5. Possibly a misprint for 1904.

that, as a rear-admiral, he served as Navy Inspector-General. For the first two-and-a-half years of his service with the Turkish Navy, Bucknam had Lieutenant Rauf Orbay as his liaison officer. The friendship between Bucknam and Orbay is of particular interest to Turks, as Orbay is a national hero. A most distinguished naval officer who was later to become Prime Minister of Turkey, Orbay, as commander of the cruiser *Hamidiye* carried out many daring attacks on Greek ports during World War I, always evading capture by the enemy Mediterranean Fleet.

In 1987, the author was put in touch with Yavuz Senemoglu, a retired senior captain of the Turkish Navy, now working as a researcher in the Turkish State Archives. It should be noted here that in 1928 Ataturk carried through his policy of language reform, replacing the old Turkish, which used Arabic letters, with a new alphabet based on Latin letters. Nowadays, only a limited number of Ottoman scholars, such as Captain Senemoglu--who has lectured on Ottoman Studies at Cambridge University--can read pre-1928 documents.

Captain Senemoglu has written, but never published, a paper on Bucknam Pasha. He has graciously given permission for excerpts from this paper to appear in this article.

In 1958, Rauf Orbay was invited by the Turkish Government to visit Ankara and the Chief of Naval Staff detailed Captain Senemoglu to be in attendance on him. The old gentleman recounted many interesting reminiscences of Bucknam, and later sent Captain Senemoglu several photographs. The following is the author's translation of portions of Captain Senemoglu's paper on Bucknam Pasha:

One of the most interesting of the increasingly close relations between Turkey and America was the arrival in Istanbul of the cruiser *Mecidiye* which was to join the Turkish fleet. The man who brought this ship to Turkey was Bucknam, a newly retired commander from the American fleet. Rauf Bey was detailed to act as his interpreter. When the *Mecidiye* joined the Fleet, Bucknam also assumed duties with the Turkish Navy.

In 1903 he served in the training department of the sea-going fleet, with the rank of commander. (Eventually, after successive appointments, he attained the rank of rear-admiral.) With the American Ambassador he was received in audience by the Sultan. Rauf Bey accompanied him to the Palace. After the audience which lasted more than half an hour, Bucknam came out and spoke to Rauf Bey as follows: 'The Sultan has offered me a job which I have been very happy to accept. He has conferred on me the

rank of commander. I, in turn, made him a request saying that I would like to have working with me an officer I knew in the Midilli Fleet, giving him your name. He promised to look into the matter and to give permission for us to work together.'

Bucknam Bey was a sociable, good-natured, sympathetic, cheerful man. Within a short time he had a wide circle of acquaintances and had made several close friends. He behaved in a tolerant way with all the officers with whom he was associated and never lost an opportunity of doing them a kindness or giving them help. . . .

One thing which Rauf Bey told me about Bucknam is quite without parallel. He said: 'In 1915 when Bucknam died, there occurred an event, the like of which was never seen in the six hundred years of Ottoman history, nor indeed, in the whole history of Islam. His funeral was attended by the entire Ottoman Government, Prime Minister and Ministers, and, of very special significance, by the Sheyulislam<sup>6</sup> himself.'

Today, Bucknam Pasha lies in the Karacaahmet Cemetery in Istanbul, side by side with the Turks with whom he served for twelve years without interruption.

Thanks to the good offices of Captain Senemoglu, this author has also obtained a copy of a paper published by Ozcan Mert, at present Assistant Professor of History in the University of Marmara, Istanbul.<sup>7</sup> This paper deals with a secret agreement signed on 18 December 1911 between Bucknam and Mahmut Sevket Pasha, Minister of War in the Ottoman Government. In September 1911, Italy declared war on Turkey and launched an attack on the Ottoman provinces in North Africa. During the war, which ended in October 1912 with the cession of Tripolitania to Italy, the European Powers maintained strict neutrality and refused to supply munitions to the beleaguered Turkish forces. Accordingly, the Ottoman Government made use of foreign and Turkish agents to run guns and ammunition through the blockade. Italy had already seized Rhodes and the other islands of the Dodecanese, which made it even more difficult for supplies to be shipped from Turkey.

The agreement signed by Bucknam in December 1911 concerned one such gun-running project. The ten-clause contract covered various aspects of the operation. Bucknam was to use a foreign-registered vessel and was to transport between fifty and sixty tons of arms and ammunition from a

6 The spiritual head of Islam in the Ottoman Empire, and ranked second only to the Grand Vizier.

7 Ozcan Mert, "Trablusgarb Harbinde bir Amerikalı ile Yapılan Gizli Mukavelename" ["Secret Agreement made with an American during the Tripoli War"], in *Faculty of Arts Magazine* (special number: Ankara, Hacettepe University, 1983).

point on the Ottoman coast to a place between Tripoli and the Tunisian border. He was to receive £10,300 for his services, with a bonus of £2,000 after delivery had been completed. The contract mentioned the possibility of further similar operations, but it is not known whether Bucknam did indeed make more than one such gun-running trip.

Lord Kinross, in his biography of Ataturk, makes reference to this venture.<sup>8</sup> Unfortunately, as Mert takes pains to point out, there are some serious inaccuracies in Kinross's version. For instance, he says that the cruiser which Bucknam delivered from America was the *Hamidiye*; this ship was in fact built in England. Mert regrets that so little is known about Bucknam. All the additional details he has been able to find, apart from the Kinross reference, are that Huseyin Rauf Orbay was appointed liaison officer to Bucknam and travelled with him in Europe and America<sup>9</sup>; and that the Sultan, Abdulhamit II, is said to have consulted Bucknam on even the most trivial matters, and to have ranked him among his most valuable naval advisers.<sup>10</sup>

One interesting point made by Mert is that in the 1911 contract, there was nothing to indicate that Bucknam was still serving in the Turkish Navy. He is referred to throughout as "Mr. Bucknam, an American National." This conflicts with Rauf's account as given to Captain Senemoglu, which emphasizes Bucknam's uninterrupted service with the Turkish Navy from 1903 till his death in 1915.

Be that as it may, there is no doubt that Ransford Bucknam, around whom Nova Scotians have begun to weave a web of legend, is still remembered in Turkey with affection and respect, as is shown by the closing words of Captain Senemoglu's paper:

He now sleeps in a corner of Karacaahmet Cemetery, in eternal rest, in the shade beneath dark green centuries-old cypresses. He sleeps in the peaceful knowledge that he is surrounded by his friends.

I bow in respect before his memory.

8 Patrick Balfour Kinross, *Ataturk: A Biography of Mustafa Kemal, Father of Modern Turkey* (New York, 1964), p. 62.

9 Inam Erberk, *Rauf Bey* (Istanbul, 1965), p. 692.

10 Fethi Okyar, *Uc Devirde bir Adam* (Istanbul, 1980), pp. 70-71.

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# Canning in the Seventies

Inigo<sup>1</sup>

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Canning is blessed with obscurity. To the casual visitor it is a little village in the north-west corner of Nova Scotia. The centre of a farming district, it seems only one of many such communities in the Cornwallis Valley. And, like all those villages, Canning is beautiful. . . . In all these externals Canning is not appreciably different from many of the lovely, quiet little towns through Cornwallis Valley. But to one who knows, there is a vast difference. At a time when large towns like Kentville were settlements of about two hundred people, when villages like Sheffield Mills had scarcely a track through them, Canning was a prosperous village of two thousand inhabitants. Canning is "A Village with a Past."

Her old name was Apple Tree Landing: Apple Tree Landing, ordinary in itself, yet a name to conjure with. . . . the name of a little place, a trading town, where the presence of river or lake is all-important, a village which would not, perhaps, have been settled had it not been for that body of water. At the head of a narrow and winding river emptying into Minas Basin there grew a great wild-apple tree. The river for the greater part of its length was hardly more than a brook, but, facing the plot of land where the apple tree stood, there was harbour room for as many as eleven one-hundred-and-fifty-ton freighters.

There was little else but the harbour and many trees when French immigrants came in the century following Razilly's expedition of 1632, to settle this part of the country, Acadie; they chose to clear the land not at the head of the river but farther down its course. Their village was called Habitant and the river Habitant River. It was these people, who came to be known as Acadians, who built the dykes to shut out the river from the meadow-land. They made a good living, working the fertile soil, for they were a thrifty people, and soon learned to conquer the drawbacks and to enjoy the benefits of their new land. Then in 1755 came the Expulsion, when they were removed from Nova Scotia and for five years the little settlements lay desolate. Cattle, in small numbers, roamed on them; the dykes, unmended, let in the salt water and the meadows were soon ruined.

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<sup>1</sup> "Inigo" was the *nom de plume* of Margaret E. Ells (1909-1986), who shared second prize in the James De Mille English Prize Essay Competition at Dalhousie University in 1929 for "Canning in the Seventies." (The author's autographed copy is in MG 100, Vol. 117, No. 25, Public Archives of Nova Scotia.) The editors express their gratitude to Donald W. Ells of Tidnish Cross Roads, surviving brother and co-executor of the late Mrs. Russell's estate, for granting permission to publish her essay.

When, in 1760, settlers came from New England, it must have been a deserted and cheerless prospect that met their view. Pioneers they were indeed, they who knew nothing of building dykes, of Nova Scotian farming and climate.

The hundred and fifty brave men and women who arrived in Cornwallis were, according to offers made by the English government, allotted their properties. Many of them went over the mountain and settled there. They were apparently inexperienced for it seemed to them the best farm-land, because, when they planted their seeds in the soil fertilized by ashes of the trees they had burned, their crops were abundant. But each succeeding year gave a scantier yield from that rocky and barren soil, and the mountain-dwellers looked down on the fruitful farms of the valley and realized their mistake. Not only had farmers of the valley better crops with artificial fertilization, but they were also protected from the worst of the storms, both of summer and winter. . . . It is not surprising that the mountain settlements were soon deserted for the Valley.

These settlers struggled along as best they could until in 1783 refugees from the newly independent United States of America came to share their misery. The Loyalists settled Apple Tree Landing. When the stump of the tree for which the village had been named was no longer visible, Apple Tree Landing received another name. Habitant Corner it was called and Habitant Corner it remained for some thirty years, until in the third decade of the nineteenth century a village meeting decided to change its name to that of two leading British statesmen, George Canning, late prime minister, and his nephew. Why they decided thus to honour these two men can only be conjectured. Since the prime minister had died in 1827, only a few years before the town was named for him, one naturally infers that there were some good Tories in the village who wanted the name of their hero always before them.

As Canning, Apple Tree Landing now entered a new phase of her existence. In the year 1800 there was built in this hamlet a wooden sailing vessel, the first of a long succession of such ships to be launched into Habitant River. Tradition has it that the builder of that ship was Dr. William Baxter. The venture was evidently not an entirely successful one for he never repeated it. The second vessel was built in 1839 by Bigelow, Northup, Lockwood and Pineo, and was given the attractive name of *Sam*

*Slick*. Shipbuilding became a regular and thriving industry, often under the management of the well-known builders of the *Sam Slick*.

The vessels were small, generally two-masted and of seventy to one-hundred-and-fifty-tons capacity. The first were built on the waterfront in the village opposite the site of the present axe factory. In 1839 Ebenezer Bigelow bought a farm extending from the waterfront one mile in length and about one-eighth of a mile wide, so that his son, Ebenezer, might have the waterfront whereon to build ships. The son had built a vessel in the previous year at Hall's Harbour and, in 1839, at the age of twenty-five he began a long and successful career as shipbuilder. . . . Mr. Bigelow built ships in Canning and Kingsport for over thirty years.

The people of the village and the surrounding districts had a peculiar interest in these vessels, for the transportation of their farm products depended entirely on the water route, and those products were both plentiful and of good quality. The article for which this particular district was best known and which brought in the most money was the potato. The farmers came for miles around, their ox-carts piled high with good Bluenose potatoes, to load on the vessels moored at the landing, sometimes eleven deep. . . . The village of Canning was "made" by the potato industry.

By the middle of the century, Canning had become an increasingly prosperous village, the largest of any in the country. Its streets were crowded with well-dressed men and women; business was always brisk. The chief collectorship of the customs for the county was established there. The *King's County Gazette* was published in Canning by H.A. Borden, and later by M. Theakston. In August 1866, the last issue was published. When Canning was enjoying the greatest prosperity, when fortune seemed to have come with both hands full, came the Great Fire. Canning has known many fires but none so devastating as that of the summer of 1866, when even the ships would have been burned on the dock had not one of them, by some providential stroke, been launched the very day before the fire broke out.

The topography of Canning is not complicated now, nor was it then. It is built along a single street running from east to west, and is a mile in length. The stores, the blacksmithy, and the mill are situated in the middle, spread over a third of a mile. And so it was before the fire, though

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at that time there were not the gaps between the stores that there are now. At one extremity of the stores were the three shops of the Harris brothers, one hardware, another groceries and a third dry goods; at the other extremity was a blacksmith shop belonging to Mr. James Blenkhorn. The Bigelow shipyard was near the blacksmithy and in line with the stores.

On the dock at the shipyard, on the day before the fire, were two vessels: a little schooner all ready to be launched, but as yet sparless and unnamed, and by her side, at a stage known as "timbered up," a barque, the vessel that was afterwards given the significant name of the *Providence*. Both of these craft were being built by Ebenezer Bigelow. The smaller was to be launched as soon as the highest tide came, and as this usually took place at night, they expected to "shove her off" that very night. But the tide came higher and higher at noon and Mr. Bigelow, seeing it flowing 'round the stern of the little vessel, determined not to wait until the night tide, but to launch her immediately. The weather was extremely warm and no doubt the workmen wondered at the unseemly haste of the launching, but orders are orders, and in a few minutes the little schooner floated out on the waters of Habitant River, apparently little better off than she had been when she stood on the dock.

Between twelve and one o'clock that night, the village was roused by prolonged and ominous ringing of the churchbells and shouts of "Fire!" In the middle of the three stores of the Harris brothers fire had broken out, and the strong west wind which sprang up carried it from shop to shop with breath-taking rapidity. It looked as though the whole town east of the Harris brothers' stores was doomed. At the sound of the bells fantastic figures and anxious faces appeared at the front windows of the houses, looked to ascertain the region and intensity of the fire, and disappeared. Soon they came out of their homes, and those who lived in the danger region began to carry out their most prized possessions. Sleeping children were borne a quarter of a mile to a home of safety. Articles ranging in size from a baby, securely tucked in a big clothes-basket, to a grand, square piano were carried to houses outside the danger zone. Every able-bodied person worked furiously.

It had been very warm and, now that the fire was raging, the heat became almost unbearable. Due to prolonged drouth, the wells had been low for weeks, there was little water, and what there was became increasingly difficult to procure. With no apparatus it was impossible to

fight the fire; the wooden buildings were like match-boxes and the whole lower village would have gone like tinder had it not been for one fact; at one-thirty the tide was high. The little schooner, loaded to its utmost capacity with furniture and goods from the houses, floated into mid-stream out of danger. The fire-fighters hastened to the river with buckets, dishpans, dippers, pails, the nearest vessel at hand, and carried away salt water to soak the untouched houses and grounds nearest to the danger. By concentrating their efforts on the eastern extremity, they succeeded in preventing the farther spread of the fire.

Meanwhile a dozen boys, seeing that the middle section of the village was doomed, set themselves to save the "timbered up" barque on the slips. The fire swept the yard, making the work more and more dangerous. In John P. Wells's lumberyard stood an immense pile of ship lumber, dried by two months of hot weather; it burned with a fierce strength and threw wave on wave of heat upon the ship. By dint of hard and long labour the boys succeeded. Gallon after gallon of water they poured on the flameswept sides of the ship, till, after five hours, the danger had passed. The schooner which had been launched during the day they christened the *Escape*, but the barque that went through the trial by fire they named the *Providence*.

At eleven o'clock of the morning after the fire started, that part of the village from Captain Ross's house to the shoe-maker's shop, was a mass of smouldering wood. Seven houses, a mill, a hotel, a tenement called "The Sebastapol," and all the stores but one in the village were in ashes. The damage was estimated at two hundred and fifty thousand dollars. Yet hardly had the embers cooled than new buildings began to fill the gaps. Everybody joined in the work of reconstruction, and by 1868, every store and house had been rebuilt. It speaks eloquently for the prosperity of the village that each merchant had built a better store. A new and resplendent Canning faced the world. Then, in the year that saw the completion of the new buildings came the second fire. As relentlessly as the first it came, roaring 'round the spick-and-span shops, licking the new paint greedily. When it was finally extinguished, the fire had wiped out the entire work of two years. Every one of the new shops was gone.

From the effects of the two fires, Canning has never recovered. Although the stores were rebuilt, one by one, until all the gaps were filled, although ships were afterwards built on the slips where the *Providence* had been

saved, the spirit was gone from the busy little village. In spite of its gaiety, signs of decline were already apparent in the seventies. The ships became fewer and fewer, business was less energetic. In the eighties, the building of a railway connected with Kentville caused much loss of trade by water, and the younger inhabitants of the village began to leave. The exodus continued through the rest of the century, and continues still. The heart was gone out of Canning. A ghost of her former self, the village, like many another "city with a Past," lives in the remembrance of bygone glories.

And the past had been both prosperous and pleasant, one that Canning might look back upon with justifiable pride. The busiest and most prosperous time was the period from 1850 to 1868, but it was in the seventies that the workers reaped the harvest of their toil. Having accumulated enough money to support themselves comfortably, they passed their responsibilities on to their sons and rested from their labours. In the seventies there were four chief classes of people in Canning: shipbuilders, seacaptains, merchants and farmers. Of these the shipbuilders were fewest and wealthiest. The seacaptains and their wives formed an interesting part of society, for in the good old days, the wife sailed with the captain and they both had the advantages of much travel. The merchants and their clerks were a goodly number of prosperous, peace-loving citizens; but all these classes together did not equal the number of the farmers. The farmers were well-to-do; they had large houses and larger barns, and they had the freedom and health that their vigorous out-of-door life gave them.

Until the seventies the children of Canning were educated at the direct expense of their parents. There was a "Seminary for Young Ladies" in the village, where the daughters of the more discriminating went to school. There was also a schoolhouse in which a teacher taught children whose fathers paid him for his services. The teacher "boarded 'round" in the homes of his pupils. A public school was established in the seventies, on the site of the present schoolhouse. When they finished school, the boys were often sent off to one of the colleges to fit themselves for some vocation or to enjoy college life before settling down on the farm. The Methodist children went to Mount Allison and the Baptist children to Acadia.

Those who did not go to college found ways of providing for their education. The best magazines and newspapers had their place in many of

the drawing-rooms of Canning. The latest books were bought as they came out. Not only were the "standard" authors well-known, but there was also a very real and intelligent appreciation of the works of writers of the time. There is now hardly one of the old homes of Canning that has not complete sets of Dickens and Thackeray. The children were brought up on them, and their devotion to them lasts.

The religious welfare of the community was guarded by three churches. Some of the wealthy inhabitants had pews in all three. The Methodist Church was at one end of the village, the Free Baptist Church at the other end, and the Baptist Church in the middle. Everybody went to church Sunday morning. It was a kind of rite. In the morning the family stayed in bed an hour later than on other days of the week. They had breakfast together at half-past eight. Then they scattered to wash the dishes, sweep the kitchen floor, and get ready their "go-to-meeting clothes."

When the smaller children were quite dressed, their heads sleek and their cheeks shining from the soap and water that had been vigorously applied, they were seated in chairs at a safe distance from each other and told to "be good." To make assurance doubly sure, their mother gave to each one a Sunday School text that had to be learned before he went to church. Meekly they sat, their short, little legs dangling uncomfortably far from the floor while the difficulties of the King James' Version puzzled their well-brushed heads. When the time came for them to leave so as to arrive at church by eleven o'clock, the children were given an appraising glance, and if everything pleased, marshalled on the way before the adults. Having arrived at church they filed solemnly into the family pew, the older children being judiciously distributed among the younger to prevent disturbances which otherwise might arise. The children were not required to keep awake during the service, though they generally did pretty well until the sermon commenced. Then one little head after another began to nod, and nod, and nod, till it dropped on the arm of the nearest big sister or brother, where it stayed till the sermon was done.

The ministers belonged to the "good" old-fashioned school that considered dancing an amusement for frivolous and light-headed persons, and playing cards an invention of the devil. Sermon after sermon they preached on the punishment that awaits the dancer and the whist player. "Lost Heir" and "Nations," however, could be played with ecclesiastical sanction. Conscientious, church-going parents forbade their children to

dance; but the children learned anyway at school during recess. Parents were horrified at the thought of touching a "spot" card; but the children went up in the haymow and taught themselves to play "Forty-Five" and "Casino."

There were families, however, who did not obey to the letter the instructions of their spiritual advisers. They were the people who had had experience in the world outside of little Canning, and had formed their own opinions of the amusements which the village pastors deemed evil. This class, composed of the more prosperous farmers, the seacaptains and some shipowners, formed an intellectual and fashionable society. In many amusements and functions all the inhabitants joined, but those young people whose consciences or parents would not allow them to dance could not enjoy the more elaborate parties.

The parties were many and delightful on winter nights. The invitations would be sent out a week before, and during the time between acceptance and "the" night, the preparations were extensive. The family that entertained was kept constantly busy. They dusted everything in and out of sight; they scrubbed the whole house till it shone; they decorated the drawing-room till it took on a festive air in keeping with the odours that emanated from the kitchen. All kinds of dainties were being prepared by the hospitable housewife and her daughters, while the men of the family polished the floors and the andirons, hung decorations and brought the biggest logs from the woodshed to fill the fireplaces.

In the breathing spaces between cooking the ordinary meals and preparing the party feast, Madam and her girls got their finery and that of the men in readiness. Eagle-eyed Madam examined the bustled, hoop-skirted gowns and the sombre evening suits, and found flaws where no one else would have done. The girls were given the garments, with full instructions for making them immaculate. Then, with the use of soap and water, followed by much starch and prolonged applications of the flat-iron, the work of rejuvenation began. Every frill must be white as snow and stiff as a ramrod, every infinitesimal crease must be ironed out, every suggestion of a wrinkle pressed to smoothness. . . .

The guests had also been through much preparation and when they arrived, around eight o'clock, they made a colourful and pleasing picture. Dancing began immediately, to the music of violin and piano, and lasted

till midnight. The waltz, the lancers, the polka and quadrille followed each other in graceful succession. The great logs burned cheerily in the fireplaces and cast a ruddy glow over the room and the quickly moving figures. . . . At midnight the guests went into the dining-room and supper was served. After four hours of exercise they might be expected to eat heartily, and the repast before them was sumptuous. From the sliced turkey that began the meal, through the innumerable courses, to the Washington and mince pies and rich coffee that ended it, everything was delicious. Nobody attempted to dance after such a feast. They sat around the table and talked until it was time to leave. Then the horses were put into the shafts, the guests bade farewell and sleigh-bells tinkled musically as the horses trotted homeward.

Although parties like this were not attended by all the people of Canning, there was one organization to which practically everyone belonged. It was dramatic, literary and abstinence societies in one--the local Division of the Sons of Temperance. Despite the prosperity of the three rumshops in Canning, everybody that was anybody belonged to the "Division," and everybody had to take part in the entertainments that were presented by it. Many of the men and women of the community had real dramatic ability, and thoroughly enjoyed acting in *Ten Nights in a Bar-Room* and *The Turn of the Tide*. On "Division" night Whitter's Hall, where the plays were presented, was always packed. The villain was terribly villainous, the hero was truly heroic, the lovers were deeply in love, the heroine swooned gracefully--and the audience wore itself out applauding. No one, however, enjoyed the plays more than the actors and actresses. . . . There was none of the feeble enunciation of half-memorised lines which characterises too many amateur performances. Each actor knew his lines, his cues and the height to which he must raise his voice. But there was more than mechanical exactness. The players were heart and soul in the play; they felt that they *were* the characters they represented. And the play, in spite of bad lighting and lack of scenery, was tremendously effective.

Drama was only one side of that versatile society. The regular meeting in the Sons of Temperance Hall was the social event of the week. They were especially hilarious when there were novices to be initiated. The dismayed shrieks of feminine observers and the hollow groans of masculine

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victims as they met each succeeding ordeal, mingled with the officials' solemn voices and the onlookers' roars of laughter to make a fearful noise. The society often held parties at private homes, where they played games in which everyone joined. "Shouting Proverbs," "Kingdoms," "Up Jenkins!" "Crokinole" and particularly charades were played with great enthusiasm. The chief thing which one lady who attended some of these parties remembers is how everyone sat bolt upright in chairs arranged in a row around the room, while they ate refreshments that they held in their hands, and tried to be polite, entertaining and neat, all at the same time. One one occasion, a gentleman was being more than usually brilliant when the movable seat of his chair moved and he slid down through the hole; covered with confusion and refreshments, he stuck solidly in the frames of the chair until someone came to rescue him.

There were other amusements besides the "Division" in which the young people took part. In the summer there was bathing on the grass-covered marsh, but few enjoyed it enough to learn to swim. There were family picnics, school picnics and church picnics, where everyone had a "wonderful" time--and suffered for days afterwards from sunburn, mosquito bites and indigestion. There were quilting parties, husking bees and house-warmings at different seasons; there were Hallowe'en, Christmas and St. Valentine's parties, birthday feasts, pie socials and concerts. The chief sports in winter were skating and coasting. Since skating depended on there being no wind when the pond froze, it was not to be enjoyed every day but, when the ice was good, all the younger members of the community went out on the pond. . . . It was particularly enjoyable at night when the children were in bed, the ice less crowded, and all the light that was necessary was shed by the moon.

Coasting lasted most of the winter. There are five good long hills in Canning, all excellent for sliding. After a storm, when the snow had been packed hard by the traffic and a slight glazing of ice had been added by the mid-day sun, the hill was perfect. If a bit of danger was added by the possibility of a collision--all the better. The coasters had long sleds, stout boards with runners at each end. The pilot lay prone on the steering end, his hands grasping the wooden tops of the runners; four or five girls and boys sat behind him, each holding to the one in front of him for dear life; the "starter" gave the sled a push, ran beside it while it gathered speed, and

then scrambled on as best he could; and they all went sailing down the hill, shouting like Indians, till they were spilled off at the end of the slide. Children were not generally allowed out at night, so the moonlight coasting parties were more decorous. If the hill was not too steep or slippery, and the coasters had any breath to spare, they sang as they shot down the gleaming white hills. On a bright, frosty night, what fun to work up a tremendous appetite by coasting for two hours or more, and then to go indoors and stuff oneself with sandwiches, crullers, cookies, hot chocolate and pulled molasses candy!

They enjoyed life in Canning, in the seventies. They were not idle people, but they had learned how to mix work and play to get the most from life. . . . Most of the men and women had been brought up on the principle of "work before play," and they knew that play is a hundred times sweeter when it is well-earned. And that energy is still a trait of Canning's inhabitants. That is why there are so few young men and women there now; they have gone where they *can* work.

"Ichabod! Ichabod! the glory is departed!" Canning has given over its bustling, prosperous life for one of tranquility. No longer is the river crowded half the year with trading vessels; the old wharves are broken down and useless. No ox-carts, groaning under their heavy loads, stretch from the wharf to the old church waiting to discharge their contents into the holds of the vessels in the river; a trading steamer, the *Glenholm*, comes every fortnight, now, and coal boats twice a year. No hammer-ring of the ship's carpenter fills the air with its cheerful staccato; the last ship was launched in 1919.

Only at such times as the Christmas season and Saturday night does Canning appear as it was in the busy days of the seventies. Then the streets, lighted by the electric glare from the shops, are crowded with teams and automobiles, the sidewalks filled with farm-hands who lean against any convenient wall or post and, by remarks on the passerby, rouse their companions to ribald laughter. Their guffaws mingle with the "giddap" of the teamster, the "honk" of the Ford, and the delighted squeaks of giggling girls, to waken the quiet streets to new life. . . . Then for a brief night or a few days the spirit of prosperity creeps back to Canning, only to fade again like a worn-out ghost when its hour is ended. . . .

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But Canning still performs a function, even as in the days of her youth. . . . Canning is an asylum in a jazz world, a retreat from the hurried existence of the twentieth century. . . . What better service can the greatest city or town render man, than to provide a resting-place, not when the grave yawns, but while youth and ambition spur him to action? In an age of aeroplanes, radios and electricity, when everything is done at top-speed and life has been accelerated proportionately, there is need for many such retreats. Untouched by the spoiler's hand, unfrequented by tourists, Canning affords opportunity for unlimited and perfect rest. Long may she so remain!

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# Aalders, of Aaldersville

Carol Duncan Evans

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The drive from Kentville to Chester, along Highway 12, is a pleasant route. It takes one through a primarily agricultural setting, and is exceptionally easy on the eye. Just after crossing the line from Kings County into Lunenburg County, the traveller enters the rural community of Aaldersville, or Aldersville, to use the lazy twentieth-century spelling inflicted on road signs and maps by our government. If one looks in the usually accurate reference work, *Place-Names and Places of Nova Scotia* (Halifax, 1967), one will read that Aaldersville is a corruption derived from the surname of an early settler called DeAdder/Deader. Surely not!

The strong tradition is that the first settler in the area was Peter Aalders: hence, the name of Aaldersville. Peter's 83-year-old great-granddaughter, Laura (Aalders) Veinotte, wrote in her memoirs (1966) that Peter "was the first settler. Years after, others came. They were the Hatchards, Burgoynes, DeAdders. . . ."<sup>1</sup> Local historian Caroline (Broome) Leopold agreed (1966): "The first settler was Peter Aalders, a veteran soldier. . . ."<sup>2</sup> An unreference obituary for Peter's son-in-law, Benjamin Burgoyne (died 1916), also claims that Aaldersville was named for Burgoyne's father-in-law, Peter Aalders, one of the soldier pioneers.<sup>3</sup> Can there be any question?

A number of Aaldersville's homes date back to the time of its forefathers. One church, St. James' Anglican, stands within the community's boundaries, and a cemetery lies just off the highway. The schoolhouse is gone now, as is the mill that produced barrels for shipping apples to England. Gone, too, are many of the family farms which once provided the local population with most of its food, clothing, wood products, and wild game. What remains is a largely pastoral scene, with rolling hills, old farm houses, and forest.

The forest is what dominated the landscape when Peter Aalders settled there around 1820. The highway from Kentville through this wilderness

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1 Laura (Aalders) Veinotte, "Memories of the Brave Pioneers" (unpublished manuscript, 1966).

2 Caroline (Broome) Leopold, *The History of New Ross in the County of Lunenburg Nova Scotia* (1966), p. 12.

3 Unreferenced newspaper clipping in the scrapbook of the late Edith (Young) Hayford, Mahone Bay.

was then only a blazed trail. It must have been a sharp change in living conditions for Peter Aalders, who had grown up in "civilized" European surroundings.

Peter was born in Gorinchem, Holland, on 20 June 1785, and was baptized six days later in the Dutch Reformed Church. His parents, Hendrik and Johanna (Dingslager) Aalders, were natives of Gorinchem, but Hendrik's father, Jan Aalders, had come there from the German state of Hanover. Hendrik was buried in Gorinchem on 25 June 1791, aged 41, and his widow was remarried four years later, to Dirk Swart, of Almkerk. Peter Aalders left Gorinchem before 1811.<sup>4</sup>

Most of us are familiar with the childhood song about the grand old Duke of York who marched his ten thousand men up the hill and back down again. Peter Aalders may have been one of the ten thousand: he was a British foot soldier in the 7th Battalion, 60th Regiment, of which the Duke of York was Colonel-in-Chief. Being Dutch by birth, how did Peter happen to join the British Army? The traditional explanation, preserved by Peter's descendants, was recounted in an unreferenced newspaper article printed in 1910, on the occasion of the fifty-ninth wedding anniversary of Mr. and Mrs. Benjamin Burgoyne, of Aaldersville. Mrs. Burgoyne was Peter's daughter, Mary Ann. The article states:

...[Peter Aalders] when a young man left his native town of Gorenchem [sic] in Holland to enlist in the army of Napoleon Buonaparte, at that time the Dictator of Europe. He was actively engaged with Buonaparte's army in the capture of Moscow in 1812.

He was afterwards taken prisoner by the British and subsequently on the 21st day of September 1813 enlisted in the English 60th Regt. of Foot. . . .<sup>5</sup>

There is no documentation to support the tradition of Peter's service with the forces of Napoleon Bonaparte. The newspaper clipping quoted above was found in the scrapbook of Peter's great-granddaughter, the late Mrs. Edith (Young) Hayford, of Mahone Bay. Mrs. Hayford was a careful family researcher, and recorded her own observation that no one knew for

4 Information received by the author from the Gemeentelijke Archiefdienst Gorinchem, The Netherlands.

5 Hayford scrapbook.

certain why Peter had enlisted with the British. It is a fact that Peter's early years were during the Napoleonic Wars, when Britain was more than willing to take into its forces recruits from Holland (an old ally), the German states, or any other Protestant nation. Perhaps the explanation lies there.

Peter enlisted with the 60th Regiment at Portsmouth, England, "for limited service," on 21 September 1813, aged 28 years. He must have seen earlier service, because he held the rank of colour sergeant throughout his stint with the 60th. In 1814, Peter's battalion was posted to Halifax, Nova Scotia, to be fitted for an invasion of Maine, during the War of 1812. This was evidently Peter's introduction to Nova Scotia. The expedition to Maine took place in September 1814 and was a complete success. The Aalders family tradition that Peter was in Europe in 1815 to fight in the Battle of Waterloo seems unlikely, since there is no evidence that any of his regiment was at that famous event.

On 6 January 1816, Peter Aalders married Elizabeth Hetler. He and his regiment were in Halifax that year, and his eldest child was born there in October. By 1818, Peter had returned to Portsmouth, England. On 12 October 1818, because he was suffering from dropsy, Peter Aalders was honourably discharged from the 60th Regiment. He was awarded a pension and was given a letter of reference by L.M. Thur--- [edge of paper worn by age], Captain of the Horse Guards. That letter provides a physical description of Peter Aalders: "He is 6 foot 4 inches in height, brown [hair], blue eyes[,] pale complexion."<sup>6</sup>

Two days after Peter's discharge at Portsmouth, his second child was born. This child was baptized in Holland, and by the time of the birth of Peter's third child, in 1821, the family was living once more in Nova Scotia. Thus, from birth and baptismal records for these children, an idea can be formed about the movements of the Aalders family during this period.

In 1822, Peter Aldis [sic] received two hundred acres within a large grant of Crown land made to Lieutenant William Ross and other military settlers at Sherbrooke, an area crossing the Lunenburg/Kings county line.

6 Aalders Family Papers. MG 100, Vol. 46, No. 67, Public Archives of Nova Scotia [hereafter PANS].

It is likely that he had been living on the property for a year or two preceding the actual grant.<sup>7</sup> Peter spent the remainder of his life farming in Nova Scotia. They must have been difficult years. There was land to be cleared, which meant felling trees, pulling stumps, digging rocks and turning the soil. He had an infant family, too young to be of much use as helpers. The work would have been hand-labour, his few neighbours would have been doing the same, and the road to civilization was a footpath.

Furthermore, Peter was suffering from dropsy, an affliction which brings a swelling of the abdomen and legs following extensive liver destruction. Within about ten years of having settled in Aaldersville, Peter was dead. One source gives the year as 1834; he was 49 years of age.<sup>8</sup> There is no known tombstone marking his grave, but he may have been interred somewhere on his land.

Peter's widow, Elizabeth, married again, her second husband being Robert Patterson, a Scots soldier who had taken up land in nearby New Ross, or Sherbrooke as it was then known. Mr. Patterson became homesick. He took his wife and youngest step-daughter, Mary Ann Aalders, back to Scotland where he died shortly after their arrival. The Patterson family financed the return to Nova Scotia of Elizabeth and Mary Ann, but not until the younger woman had been taught the fine art of Scottish folk-dancing. The memory of Mary Ann's excellence as a dancer survived in parts of Lunenburg County well into the present century.

On 30 November 1858, Elizabeth Patterson of Sherbrooke, widow of the late Robert Patterson, was buried according to the rites of Christ Church Anglican, Sherbrooke/New Ross.

The Aalders surname survives in Aaldersville and elsewhere, in the persons of Peter Aalders's descendants. This pioneer of Lunenburg County and his wife had issue, the names and birthdates of whom were preserved by the late Edith (Young) Hayford, identified beforehand. This precious page is now housed in the Public Archives of Nova Scotia. It reads:<sup>9</sup>

7 Lieut. William Ross and others, 1822. RG 20, Series A, Vol. 87, PANS.

8 Aalders File, Canon Harris Papers. MG 4, Vol. 94, PANS.

9 MG 100, Vol. 46, No. 69, PANS. Punctuation retained from original.

## Born

Peter Aalders June 20th 1785 in Gorcum, Holland  
Married to Elizabeth Hetler Jan 6th 1816

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Johanna Aalders, Oct. 18th 1816  
in Halifax Nova Scotia Baptised in Halifax

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Henry Aalders Oct 14th 1818  
in Chatham England Baptised in Presbyterian Kirk,  
Rotterdam, Holland

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John Christopher Dec 21st 1821  
Dutch Settlement - Lun Co N.S. Baptised in Halifax

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Ann Eliza Nov 21st 1824  
On the Horton Road Lun Co. N.S.  
Baptised in Sherbrooke Lun Co

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William George Alexander July 20th 1827  
Horton Road, Lun. Co. N.S. Baptised in Cornwallis  
Kings Co

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Elizabeth Sept 12th 1830  
Horton Road, Lun Co. N.S.

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Mary Ann April 1st 1833  
Horton Road Lun Co., N.S. Baptised in Sherbrooke

## Issue of Peter and Elizabeth (Hetler) Aalders:

1. Johanna Aalders, born at Halifax, 18 Oct. 1816. Johanna/Joanna was one of the characters of an old Aaldersville love tale, as told by Caroline (Broome) Leopold:

In the early days of the settlement of Aaldersville, Joanna, the daughter of Peter Aalders (the first settler there) was being wooed by a young man, from Lake Ramsay, whose first name has been forgotten, but whose surname was Keddy. The parents of Joanna, objected to her receiving the attentions of the

young man. Hoping that separation might cool the ardor of the young couple, Joanna's parents took her to Halifax for a stay there. A short time after her arrival there, when visiting a store she saw a "set of dishes" for the table, which caught her fancy and she spent all her money for the purchase of the dishes. Joanna hadn't been at Halifax long when she became homesick and decided to return home. She had spent all her money and had no alternative but to walk. Not daunted by the prospect she packed her belongings and carrying these and her set of dishes, she started on the long tramp from Halifax, via Windsor thence to Kentville and over the rough New Ross road to Aaldersville.

In the meantime, young Keddy, longing to again see Joanna had travelled via the road from Annapolis to Halifax, to find that the young lady had gone home. Here the narrator of the tale stopped, but it is to be hoped, that the parents of Joanna relented and that the young couple were married and lived happily ever after.<sup>10</sup>

Perhaps the parents did relent. On 10 Dec. 1837, Johanna Aalders, spinster, of Sherbrooke, was married by the Anglican rector at Chester to Philip Kiddy [sic], bachelor, of Sherbrooke. As for the couple living happily ever after, it is sad to report that Joanna, wife of Philip Kiddy of Sherbrooke, was buried according to the rites of the Anglican Mission, Sherbrooke, on 21 Jan. 1839, aged 22. There was no known issue from this marriage.

2. Henry Aalders, born at Chatham, England, 14 Oct. 1818. He was a farmer, and a staunch Anglican. Henry married Ann/Nancy Cory, and lived on land that had been his brother John's, beside the Peter Aalders homestead. Henry's granddaughter Laura (Aalders) Veinotte wrote of him:

My Grandfather Aalders did not have much learning but made use of what he had. By much reading and studying books, he became a Magistrate J.P. He had a good understanding of the law and order and I have here with me several of his old law books. . . .<sup>11</sup>

On 11 Feb. 1898, Henry Aalders, of Aaldersville, was buried from the Anglican Parish of Sherbrooke, aged 80 years. A handwritten obituary for "Squire Aalders" has survived among other family papers:

10 Leopold, *History of New Ross*, p. 58.

11 Veinotte, "Brave Pioneers."

Henry Alders [sic] Esq who died at Aldersville [sic] New Ross, last week, was one of the best known men in Lunenburg Co.; and also in part of Kings Co. For 50 years he was a customer of the late Hugh L. Dickey of Canard, and of the Red Store Kentville. Known every where as Squire Alders, he was a universal favourite, and every inch a man, and did much to build up the section where he lived, and was the adviser, and helper of the whole settlement. The name of Henry Alders stood for all that was good, loyal and true, and after a dreadful illness he has gone to his reward. His life history would fill volumes.<sup>12</sup>

In general, the Aalders of Lunenburg County are descended from Squire Henry, while the Aalders of Kings County are descended from his brother George.

Issue of Henry and Ann (Cory) Aalders:

- (1) Emmeline Aalders, b. 9 June 1842; marr. 30 Aug. 1864, in New Ross, to Thomas Frederick **Russell**, of Aldersville; d. 17 Nov. 1934, having had by the time of her death, eight children, fifty-two grandchildren, seventy-six great-grandchildren, and one great-great-grandchild.
- (2) John Nelson Aalders, b. 27 Aug. 1844; marr. 17 Jan. 1867, in New Ross, to Serena **Bezanson**; d. 19 Apr. 1927, aged 82; bur. in St. James' Cemetery, Aldersville. John and Serena (Bezanson) Aalders had issue, three sons and seven daughters, including Mrs. Laura (Aalders) Veinotte, whose memoirs have been quoted herein.
- (3) Richmond Henry Aalders, b. 14 Aug. 1846; marr. firstly, 28 Nov. 1871, in Chester, to Theresa Wilhelmina **Russell** (d. 16 Dec. 1884); marr. secondly, 27 July 1885, in New Ross, to Sarah Ann **Adams**; bur. 14 June 1926, aged 79, in St. James' Cemetery, Aldersville. Richmond Aalders had issue, five children by his first wife, and seven by his second wife.
- (4) George Solomon Aalders, b. 16 Oct. 1849; d. 8 Sept. 1863, from diphtheria.
- (5) Wilhelmina Elizabeth Aalders, b. 11 July 1852; marr. 1 Jan. 1874, in New Ross, to Edward **Hatchard**; d. in 1941, having had issue; bur. in St. James' Cemetery, Aldersville.

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- (6) Priscilla Agnes Aalders, b. 1854 (bapt. 24 Sept.); d. 8 July 1865, aged 11, from fever.
- (7) William Rodney Aalders, b. 7 Aug. 1860; bur. 11 Sept. 1863, a victim of diphtheria.
- (8) Newman Fitzgerald Aalders, b. 22 Nov. 1862; d. 14 Sept. 1863, from diphtheria.

3. John Christopher Aalders, born in Dutch Settlement, Lunenburg County, 21 Dec. 1821. On 28 Jan. 1844, John Aalders, of Sherbrooke, was buried, as recorded in the registers of St. Stephen's Anglican Church, Chester. The rector added this note: "This young man was accidentally shot by his own brother when in the woods hunting moose." Laura (Aalders) Veinotte left an account of the incident:

John had taken up land from the government, next lot to his father's, and built a house and lived there. He was not married. He and Grandfather [Henry Aalders] were in the woods one day hunting and Grandfather fell with his loaded gun and in falling the gun discharged accidentally and shot his brother.

In those days when one took up land from the Government, you had to live on and work the land to improve it until it was paid for and if anything happened, such as death or you could not meet the payments, the land would fall back to the government. His brother did not have his paid for so Grandfather said he would move there to live and finish paying on the land. . . .

The accident was an awful blow to Grandfather and he never took a gun in his hands again. He caught bears in steel traps and dead falls.<sup>13</sup>

- 4. Ann Eliza Aalders, born on the Horton [Kentville] Road, Lunenburg County, 21 Nov. 1824. Her baptismal record appears in the registers of St. Stephen's Anglican Church, Chester, but nothing more is known about her, except that she is said to have married a Mr. Smith.
- 5. William George Alexander Aalders, born on the Horton [Kentville] Road, Lunenburg County, 20 July 1827. He was known by his Christian second name, George. On 12 Jan. 1851, George Aalders, bachelor, and Mary Wambolt, spinster, both of the parish of St. Stephen's, Sherbrooke, were married in the Anglican Church at Sherbrooke [New Ross]. George raised his family in Aaldersville, but removed to Canaan, Kings County, before the turn of the century.

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13 Veinotte, "Brave Pioneers."

On 23 July 1903, he died in Canaan, aged 76, and was buried in Oak Grove Cemetery, Kentville.

Issue of George and Mary (Wambolt) Aalders:

- (1) Arabella Aalders, b. 13 Mar. 1852; marr. 13 Mar. 1872, in New Minas, to John A. **Bishop**; lived in Canaan, and had issue.
- (2) George Henry Aalders, b. 2 Apr. 1854; said to have removed to the United States, married there, had two daughters, fell ill, returned to his father's home in Aaldersville, and died.
- (3) William Aalders, b. 5 July 1856; married Catherine **Howie**; d. 22 Sept. 1886, aged 30; bur. in the Lower Churchyard, Christ Church Anglican, New Ross. He left issue, one daughter.
- (4) Peter Otho Aalders, b. 5 May 1858; marr. 10 Feb. 1885, in New Ross, to Charlotte Elizabeth **Robar**; removed to Canaan, Kings County; d. 11 July 1912, aged 54, killed by a freak bolt of lightning; bur. in Oak Grove Cemetery, Kentville. Peter had issue, eleven children.
- (5) Mary Rosanna Aalders, b. 25 Mar. 1861; marr. 24 Nov. 1883, in Kentville, to Aaron E. **Ward**, of North Alton, Kings County, and had issue.
- (6) Adelaide Adelia Aalders, b. 7 May 1863; marr. 3 Oct. 1883, in New Ross, to James Wilson **Hatchard**, of New Ross.
- (7) David Moore Aalders, b. 16 Feb. 1867; marr. 20 Oct. 1892, in Kentville, to Mary Katherine **Bench**; d. 1939, having had issue, ten children.

6. Elizabeth Aalders, born on the Horton [Kentville] Road, Lunenburg County, 12 Sept. 1830. However, the records of St. Stephen's Anglican Church, Chester, tell us that Mary Eliza, daughter of Peter and Elizabeth Alders [*sic*], of Sherbrooke, farmer, was born 21 Sept. 1830, and was baptized 27 May 1832. Further, the records of Christ Church Anglican, New Ross, contain a burial record for Elisabeth [*sic*] Aalders, of Sherbrooke, who was interred in 1834 (no month or day given), aged 2 years. The ceremony was conducted by Edward J. Ross, layman.

7. Mary Ann Aalders, born on the Horton [Kentville] Road, Lunenburg County, 1 Apr. 1833. On 22 June 1851, Mary Ann Aalders, of Trinity Parish, Sherbrooke, was married in Chester to Benjamin **Burgoyne**, also of Trinity Parish. The Burgoynes settled on a farm in

Aaldersville, beside the Aalders homestead. Among family heirlooms still in the possession of their descendants is Peter Aalders's meat trunk. This trunk was carried by the pioneer to Aaldersville, and buried to keep it safe from prowling animals. When it was retrieved, it carried the claw marks of an interested bear. Those marks can still be seen. Peter Aalders's clothing chest also survives. Mary Ann (Aalders) Burgoyne died in Aaldersville, 6 June 1920, aged 87, and was buried in Charing Cross Cemetery, New Ross.

Issue of Benjamin and Mary Ann (Aalders) Burgoyne:

- (1) Wellesley Burgoyne, b. 13 Nov. 1851; marr. 6 Nov. 1874, in New Ross, to Eliza Ann Bezanson; d. in Aaldersville, 20 Jan. 1908, aged 56, having had issue, four children.
- (2) Agnes Burgoyne, b. 5 Dec. 1853; marr. 18 Nov. 1875, in New Ross, to Ephraim Richard **Hiltz**, of Kingsport, Kings Co.; d. 16 Oct. 1936, aged 82, having had issue, eight children.
- (3) Mary Eliza Burgoyne, b. 29 June 1856; d. 5 July 1856, aged 6 days.
- (4) Adelaide Burgoyne, b. 8 Aug. 1857; marr. 3 May 1880, in Kentville, to George Thomas **Hillman**, of Halifax; d. 3 Aug. 1948, aged 90, having had issue, one daughter.
- (5) Walter Scott Burgoyne, b. 18 Dec. 1860; marr. 25 Jan. 1888, in Kentville, to Rosetta May **Hiltz**; d. in Windsor, Hants Co., 10 Mar. 1919, aged 58, having had issue, four children.
- (6) Esther Emmeline Burgoyne, b. 21 May 1863; marr. 12 Nov. 1885, in New Ross, to Charles Milledge **Young**, of Mahone Bay; d. 30 Aug. 1940, aged 77, having had issue, three children, including family historian Edith (Young) Hayford.
- (7) Mary Elizabeth Burgoyne, b. 6 Feb. 1866; marr. 31 Oct. 1896, in Mahone Bay, to Henry (Harry) **Kaulback**, of Conquerall Mills; d. 10 July 1948, aged 82, without issue.
- (8) Emily Edith Burgoyne, b. 28 Feb. 1870; d. 21 Apr. 1873, aged 3, from scarlet fever.
- (9) Edgar Norwood Burgoyne, b. 26 June 1873; marr. 25 Jan. 1918, in Aaldersville, to Florence May **Hiltz**; d. 4 Oct. 1954, aged 81; bur. in St. James' Cemetery, Aaldersville; had issue, six children.

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- (10) Emily Edith Burgoyne, b. 21 May 1876; marr. 25 Feb. 1895, in Kentville, to George Solomon **Hatchard**, of Aaldersville; d. 18 April 1966, aged 89, without issue.
- (11) Eva Blanche Burgoyne, b. 28 Apr. 1879; marr. 26 Dec. 1917, in Aaldersville, to David Uriah **Whalen**, of Canaan; d. 5 May 1952, aged 73, having had issue, one surviving son.

#### SELECT BIBLIOGRAPHY

In addition to the material cited in the footnotes, the following sources have also been consulted:

Public Archives of Nova Scotia:

- MG 4.      Registers of Christ Church Anglican, New Ross.  
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Registers of St. James' Anglican, Kentville.
- RG 32.      Marriage Registrations, Lunenburg/Kings Counties.  
Death Registrations, Lunenburg County.

Elsewhere:

Tombstone inscriptions, St. James' Anglican Cemetery, Aaldersville; Oak Grove Cemetery, Kentville.

Lewis E. Aalders, *The Peter Aalders (Alders) Clan of Nova Scotia* (1988).

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# Richard John Uniacke's Advice to a Young Lawyer, 1797

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D. G. Bell

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For forty-nine years Richard John Uniacke was one of Nova Scotia's law officers of the Crown, but his historiographical prominence rests on more than official longevity. After virtual exile from his family in Ireland to what is now New Brunswick, Uniacke made his political débüt in 1776 as one of the Cumberland rebels; in contrast, his 1806 preface to the consolidated statutes of Nova Scotia stands as one of the most arrestingly eloquent condemnations of political innovation ever penned in this country. Early attracted to Roman Catholicism, later a supporter of Halifax's dissenting meeting-house, he became in time an aggressively erastian defender of the pre-eminence of the Church of England. He began his North American career with an attempt to make Nova Scotia the fourteenth colony in rebellion; he is now remembered as one of the prophets of British North American federation. Uniacke may indeed have been, as his biographer claims, "the most influential Nova Scotian in the first quarter of the 19th century," but his enduring attractiveness to historians rests ultimately on a personality vast enough to transcend such contradictions, and on a talent for giving voluble and eloquent expression to the enthusiasms of his age.<sup>1</sup>

It is a measure of Uniacke's stature that his domestic correspondence can be as worthy of attention as his pronouncements on public affairs. In 1980 Brian Cuthbertson published Uniacke's remarkable letter to his son Norman, written in 1798 on the occasion of the young man's departure to study law in London. A set-piece of advice to a colonial son venturing for the first time into the larger world, it is a textbook illustration of the view that eighteenth-century fathers had ceased to act towards their children as authoritarian patriarchs and come to regard them as consensual "friends."<sup>2</sup>

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1 B.C. Cuthbertson, *The Old Attorney General: A Biography of Richard John Uniacke* (Halifax, 1980), p. v. Note also the remarkable tribute to Uniacke in J.G. Marshall, *A Brief History of Public Proceedings and Events, Legal, Parliamentary and Miscellaneous* (Halifax, 1879), p. 3.

2 "[Y]our father and mother are the truest and most affectionate friends you have on earth": B.C. Cuthbertson, ed., "Fatherly Advice in Post-Loyalist Nova Scotia: Richard John Uniacke to his son Norman," *Acadiensis*, IX, 2 (1980), 78-91, p. 83. The most notable exponents of this transformation in child-rearing are L. Stone, *The Family, Sex and Marriage in England, 1500-1800* (London, 1977) and, extrapolated into the North American political context, J. Fliegelman, *Prodigals and Pilgrims: The American Revolution against Patriarchal Authority, 1750-1800* (New York, 1982); its chronology and impact are disputed vigorously in J.C.D. Clark, *English Society, 1688-1832: Ideology, Social Structure and Political Practice during the Ancien Régime* (Cambridge, 1985), pp. 83-85.

This lengthy epistle was contrived with obvious care, so it is of significance to find the same spirit informing the letter Uniacke wrote in 1797 to his former law clerk, George Pyke, on the occasion of Pyke's entry into practice in Lower Canada.<sup>3</sup> In a consciously friendly rather than paternal spirit Pyke is exhorted to call on Uniacke whenever in need. Conversely, the parents of Voster Lombard, another of Uniacke's former pupils, who were inimical to their son's efforts to practise in Ireland, are on that account criticized as "unnatural" parents.

The 1797 letter of advice to a former law pupil is one of only two such compositions known to survive from eighteenth-century British North America.<sup>4</sup> In highlighting the case of Pyke, later a judge in Lower Canada, and of Lombard, who through Uniacke's efforts settled in Bermuda, it draws attention to the surprising mobility of Maritime lawyers in the late eighteenth and early nineteenth centuries. To cite only well-known examples from Nova Scotia, Thomas Cochran (1777-1804) went to the bench of Prince Edward Island and Upper Canada; Sir James Monk (1745-1826), Andrew William Cochran (1792-1849) and Norman Fitzgerald Uniacke (1777-1846) joined George Pyke on the bench of Lower Canada, while Samuel Wentworth Monk (1792-1865) was prothonotary of Montreal for fifty years; Sir James Cochran (1794-1883) became chief justice of Gibraltar; Augustus Wallet DesBarres (ca. 1793-1866), became a Supreme Court judge in Newfoundland; and Samuel George William Archibald (1777-1846) became the notoriously non-resident chief justice of Prince Edward Island. While contemporary New Brunswick cannot claim to have provided as many lawyers for the bench of other jurisdictions as Nova Scotia (four in the early nineteenth century --to Lower Canada, Nova Scotia and Prince Edward Island), the exodus of members of the bar was comparable to that from Nova Scotia.<sup>5</sup>

3 On Pyke see *Dictionary of Canadian Biography*, VIII (1985), pp. 726-27. A copy of his indenture to Uniacke as a law clerk (5 Feb. 1787) is in MG 100, Vol. 211, No. 41, Public Archives of Nova Scotia (PANS). He was admitted as an attorney and barrister on 15 Apr. 1794.

4 The other letter, equally significant but fairly well known, is from Ward Chipman to Jonathan Sewell, 2 May 1790, on the latter's commencement in practice at Quebec: Sewell Papers, MG 23, GI 10, Vol. 3, pp. 644-57, National Archives of Canada.

5 For example, D.G. Bell, "The Transformation of the New Brunswick Bar, 1785-1830: From

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Uniacke's letter is also notable for the sort of advice it offers. Pyke had entered Uniacke's office at age twelve and remained for seven years until his call to the Nova Scotia bar. He had then spent probably two further years preparing for his call to the bar of Lower Canada. Against such a background, some of the observations Uniacke thought it prudent to offer may strike the reader as surprisingly elementary. In fact, however, much of what Uniacke emphasizes--careful preparation rather than bluster, diplomatic behaviour towards judges, the necessity of a ready knowledge of the rules of evidence--are enduring truths of practice which can be embraced only through experience, not from books. Uniacke was naturally anxious that Pyke begin his professional career with an heightened sensitivity towards these wise and serviceable principles.

It may also seem curious that Uniacke should suggest that Pyke--already a member of two bars--now begin systematic reading of major English case reports, thereby implying that this had formed no part of his earlier legal training. Such a pattern of post-admission self-education was not uncommon, however. In the late eighteenth and early nineteenth centuries it was clearly assumed that an ambitious lawyer would use the financially barren early years of practice for systematic reading of the sort of technical legal material too specialized to have been read with profit by a teenager during clerkship. Thus, for example, it was after he was already admitted as an attorney that William Botsford of Sackville expressed the "hope that the foundation laid here [in Ward Chipman's chambers at Saint John] will enable me to read with great advantage the ensuing winter--at present I am reading Burrows Reports--and shall begin soon with the practice of the Courts of Westminster."<sup>6</sup> Similarly, as noted elsewhere in this issue, the detailed reading list kept by Saint John lawyer Robert Parker Jr. in the 1810s discloses that it was only following his call to the bar that his

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Family Connexion to Peer Control," *Papers Presented at the 1987 Canadian Law in History Conference* (Ottawa, 1987), Vol. I, 240-61, p. 245 names six New Brunswick lawyers who departed for other jurisdictions before 1800, and the list could now be extended.

6 W. Botsford to A. Botsford, 16 Sept. 1795: F30, No. 48, New Brunswick Museum.

systematic reading turned to specialized legal treatises and the case reports.<sup>7</sup> Uniacke's letter to Pyke is valuable confirmation of the prevalence of this practice.

Uniacke's letter entered the holdings of the Public Archives of Nova Scotia by purchase from a Montreal book-dealer in 1981. As it is published here in the context of its significance to legal history, textual apparatus has been kept to a minimum. The transcription is faithful to the orthography of the original, but capitalization--Uniacke capitalized most words--has necessarily been standardized, as has terminal punctuation.

**R.J. Uniacke, Halifax, to George Pyke, Quebec, 1 May 1797<sup>8</sup>**

My Dr George

With sincere pleasure I have frequently heard from yr father of yr welfare & that you had at last settled in business [called to the Lower Canadian bar 6 Dec. 1796] with some prospect of success. Few events can give me more satisfaction than to hear of the improvement of yr situation in w<sup>ch</sup> I feel a friendly and affectionate interest. Every thing now depends on yourself & I urge & recommend to you a serious, diligent & unremitting application untill you finde yourself fully master of your profession. Without that yr situation must be always precarious. A laudable ambition not to be out done by any competitor in your line shd animate yr pursuits & you shd suffer no object to divert yr attention from that studious application on w<sup>ch</sup> so much of yr future ease in life depends. By what I can hear it is not a very difficult task to excell amongst those who practice at yr Bar & nothing can be more certain than that the most shining capacities are every day in our profession obliged to acknowledge their inferiority to very moderate talents when accompanied by a fund of legal knowledge w<sup>ch</sup> only can be acquired by study & diligent application. The most eminent natural abilities are not suff<sup>t</sup> to support the credit of a practitioner in our profession unless aided by a correct knowledge of the law & it's principles.

7 See "Paths to the Law in the Maritimes, 1810-1825: The Bliss Brothers and their Circle," elsewhere in this issue.

8 MG 1, Vol. 926, No. 104, PANS.

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Nothing affords a pleader at the Bar a greater advantage than a familiar & correct understanding of the rules of evidence & the several cases w<sup>ch</sup> regulate the application of these rules. With such a knowledge there can be seldom a cause tried in w<sup>ch</sup> you will not have an opportunity to confound yr adversary unless he is equally wary with yourself. It is also essentially necessary that you sh<sup>d</sup> understand correctly & be able to pursue with facility the modes w<sup>ch</sup> the law points out to correct the opinion of a judge when improper evidence is admitted to the prejudice of yr client. This only can be done by the question being reserved for future [consideration?] by a Bill of Exceptions w<sup>ch</sup> will make the evidence & the judges opinion matters of record liable at all times afterwards to be reviewed by a higher tribunal. However, by no means differ in opinion with a judge unless the matter be of importance & that you are confident in the solidity of your own opinion. A ready knowledge & correct application of the rules of legal practice will give you much advantage & frequent opportunity's of correcting perhaps older practitioners with additional reputation to yourself. As no doubt very many questions must arise in your province on commercial subjects I advise you to read with the greatest attention Burrows, Douglas, Cowpers, Blackstones & Wilsons Reports together with the Term Reports to the present time from w<sup>ch</sup> you will readily comprehend the commercial law of England as it is now settled & recd I may say throughout Europe from England. Indeed I can only say in a few words that your whole success now depends on yourself & if you neglect the present time it will be impossible to recover it. You must therefore assign daily a very considerable portion of yr time to study from w<sup>ch</sup> you sh<sup>d</sup> suffer nothing to divert yr attention as from books alone you can expect to acquire the foundation of all knowledge. You have many friends who expect much gratification from your future prosperity. I am sure it is your wish as well as yr interest not to disappoint them. From such sources you will derive much more solid enjoyment than from the idle & fleeting pleasures of common life. Apply therefore yr mind to learn wisdom w<sup>ch</sup> comprehends all things necessary to be known in this life & from that source alone can you expect prosperity & true happiness. Dear bought experience of the consequences of youthfull neglect affords me abundant foundation for urging to you a steady, diligent pursuit in all yr undertakings & I hope truly that as age advances you will find no cause

to regret the most precious time of yr life (w<sup>ch</sup> is the present) as having been misspent. When you left me I desired you in case of need to look to me as a friend who wd do his utmost to assist you. Your not having called on me is I hope a proof that you did not want. If you have been in need of any thing w<sup>ch</sup> my friendship cd supply you with I shall take it very much amiss your not having had recourse to me as I do not accustom myself to make empty professions of friendship.

We are all much in the state you left us. Norman [Fitzgerald Uniacke] continues to supply yr place in the office & I hope will succeed. Yet his attention to study is not equal to my sanguine wishes. If you write to him I pray you recommend diligence & application to him as I think by this time you must be sensible that a habit of reading cannot be too early encouraged. Y<sup>r</sup> name is daily remembered amongst us with affection. I have been so very much engaged the past year in business of different kindes that I really have had but little time to write to any body. Very unfortunately last fall when I cd ill spare the time I wrote you a letter by a schooner bound with a cargo of Mess<sup>rs</sup> Cochran<sup>s</sup> to Quebec & not long since the first I heard of her was that she had not been able to get up the river & had ret<sup>d</sup> & sailed for the West Indies so what became of my letter God knows as she was gone from Halifax some months before I heard of her return.

Not long ago I rec<sup>d</sup> a letter from the Chief Justice of Bermuda [Daniel Leonard] conveying to me the unpleasant intelligence of poor Voster Lombards death.<sup>9</sup> He died the same day [2 Dec. 1796] that Governor [Col. William] Campbell died who had arrived at the island from [ . . . ] six days [ . . . ]. Both died of the yellow fever w<sup>ch</sup> by some means [had] been introduced [to] that place (heretofore so remarkable for the healthiness of its climate) where it carried off great numbers. Lombard not meeting that kinde reception from his parents that I wished was advised by me to settle at Bermuda where I found there was a very good opening for him. He came out from Ireland strongly recommended w<sup>ch</sup> with the interest I was able to make for him with Admiral [Sir George] Murray & the officers in the Navy he had settled himself in a very eligible situation. He was there

9 A native of co. Cork, Lombard entered Uniacke's office as an apprentice on 7 June 1783: indenture, RG 39 J 117, PANS. He was admitted as an attorney and barrister on 17 July 1787.

between three & four months & had entered into very full & profitable business at once with every prospect of doing well when he unfortunately fell a sacrifice to a disease w<sup>ch</sup> has made such dreadfull havock amongst the human species. I have written to his unnatural parents an acc<sup>t</sup> of the event w<sup>ch</sup> I hope will cover them with the shame & distress their vile conduct so justly merits. Poor Lombard. I think you will feel for his misfortunes. He had many good qualities with all his failings.

Y<sup>r</sup> friends here are all well. Mr Cochran is expected by the April packet. There is no particular news here. However Bob Hill who is the bearer will be able to inform you of every thing new in this quarter. I am soon about to go [on] circuit w<sup>ch</sup> presses on my time a good deal at present. Give my love to Tom Pike. Tell him I w<sup>d</sup> have wrote him but that I expect to see him here by return of the vessel.

I shall be always happy to hear from you when you have leisure. I need hardly mention to you that you have the sincere good wishes of all my family.

I am my dr sir yrs most affectionately

Richd J<sup>no</sup> Uniacke



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