

# The Fishing Admirals in Eighteenth-Century Newfoundland

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# The Fishing Admirals in Eighteenth-Century Newfoundland

JERRY BANNISTER

THE IMAGE OF EARLY NEWFOUNDLAND remains captured in a famous caricature written by D.W. Prowse. In a statement that has become part of the island's folklore, Prowse asserted:

I will try and describe the fishing admiral, as he appeared to our ancestors, clothed, not in the dignity of office, not in the flowing judicial robes, not in the simple and sober black of the police magistrate, but in the ordinary blue flushing jacket and trousers, economically besmeared with pitch, tar and fish slime, his head adorned with an old sealskin cap, robbed from an Indian, or bartered for a glass of rum and a stick of tobacco. The sacred temple of law and equity was a fish store, the judicial seat an inverted butter firkin. Justice was freely dispensed to the suitor who paid the most for it. In the absence of a higher bribe, his worship's decision was often favourably affected by the judicious presentation of a few New England apples.<sup>1</sup>

Yet Prowse had never witnessed such a scene, nor had he ever met a fishing admiral. He was repeating an account written two generations earlier by Patrick Morris, a political reformer who also had never observed an admiral's court.<sup>2</sup> Morris himself was relying on an earlier history written by Lewis Amadeus Anspach.<sup>3</sup> Both Morris and Anspach, in turn, had been heavily influenced by John Reeves' seminal *History of the Government of the Island of Newfoundland*, which drew on official reports of alleged corruption.<sup>4</sup> Handed down from one generation to the next, this apocryphal portrait was based on little more than local legend and political hearsay, but it has become a central feature in Newfoundland historiography.<sup>5</sup> Paragons of venality, the fishing admirals symbolized the essence of the island's society: a wild frontier beyond the pale of law and justice. As a generation of schoolchildren

learned from their textbooks, it was the admirals, along with their merchant allies, who were responsible for the cruel oppression of the settlers.<sup>6</sup> The fishing admirals were, in other words, the villains in the story of early Newfoundland.

In spite of their celebrated role in the island's history, we know remarkably little about the fishing admirals. Keith Matthews' watershed critique of traditional historiography challenged many of the stubborn myths inherited from Judge Prowse and his successors, particularly the notion that the island's "retarded colonisation" (to borrow A.H. McLintock's phrase) was due to an active campaign against permanent settlement waged by the West Country merchants; yet Matthews' work revealed little about the fishing admirals or their famously corrupt courts.<sup>7</sup> Like other scholars, Matthews faced the problem of a lack of archival evidence: no separate series of court records exists for study, leaving historians with only fragmentary references scattered throughout the extant primary sources. Subsequent research has covered a wide range of topics — from historical geography to merchant-settler relations — but sheds no new light on the fishing admirals.<sup>8</sup> Recent studies of law and government focus almost exclusively on the powers vested in the fishing admirals by King William's Act of 1699 and the concomitant jurisdictional issues.<sup>9</sup> As a result, we know a great deal about what the admirals were supposed to do in theory but virtually nothing about what they actually did in practice. Despite this paucity of knowledge, they remain a vibrant part of the island's popular history and a staple of the thriving cultural tourism industry.<sup>10</sup>

This article offers the first in-depth study of the fishing admirals. It explores the history of the admirals from 1699, when their duties were codified in King William's Act, through the operation of the legal system prior to 1729, when the British government appointed the island's first naval governor. It then examines the crisis which erupted when the admirals contested the authority of both the governor and the justices of the peace. It argues that the struggle for authority in the 1730s significantly affected not only the island's legal development, but also the legacy of the fishing admirals, who advanced forceful arguments concerning the relative merits of statutory law and the royal prerogative. Backed by powerful interests in the West Country, the admirals succeeded in undermining the magistrates' authority in the short term, but their protests contributed to the eventual rise of the Royal Navy as the dominant political and legal agency in Newfoundland. As the victors in the battle for control over the island's administration, the naval governors quelled the power and political standing of the fishing admirals, who never resurfaced as an independent force. In probing beneath the veneer of official reports, which must be treated with caution, this article also provides a systematic analysis of the fishing admirals' courts. Evidence from the extant proceedings contrasts sharply with the admirals' reputation as cruel despots ruling outposts with the cat-o'-nine-tails. An examination of the relevant archival sources has turned up no examples of any fishing admirals' court presiding over a criminal case or ordering punishments for criminal offences. Evidence indicates that they largely restricted their activities to

property law, particularly disputes over ship's rooms and other issues directly relating to the operation of the cod fishery. The admirals held few sessions, however, and evidence suggests that they were never very active in performing their juridical duties. Far from being the scourge of Newfoundland history, they appear to have been much the same as their mercantile peers. During their visits each summer, they simply had neither the time nor disposition to discharge their full statutory responsibilities. When they did become involved in legal cases, they generally kept within the confines of King William's Act, which significantly limited the scope of their judicial authority.

### KING WILLIAM'S ACT AND IMPERIAL POLICY

The history of written law in eighteenth-century Newfoundland begins with the 1699 Act to Encourage Trade to Newfoundland. Known popularly as King William's Act, it codified the customary regulations established in the Western Charters first granted to English merchants in 1634.<sup>11</sup> It confirmed the tradition that the master of the first English ship to arrive in a Newfoundland harbour after March 25 was by right the admiral of that outport for the upcoming fishing season. The second and third masters then became the vice- and rear- admirals respectively. Admirals had the choice of the best fishing rooms — i.e. tracts of the waterfront used for wharves, flakes, and stages — and were empowered to settle disputes over the possession of the remaining premises. Like the earlier charters, the Act contained regulations for the conduct of the fishery, such as prohibitions against damaging stages, stealing fish nets, or selling alcohol on Sunday.<sup>12</sup> It also reaffirmed the existing method for dealing with serious criminal offences: suspected felons had to be brought to England for trial. King William's Act stipulated that all robberies, murders, felonies, and capital crimes committed in Newfoundland each year after March 25, were to be tried, determined and judged in any county of England, under Assize commissions of Oyer and Terminer and Gaol Delivery. These offenses were to be tried according to the same laws and in the same manner as those committed in England. The fishing admirals, in order to preserve the peace and good government in their harbour, were enjoined to ensure that all of the Act's regulations were enforced and to keep a written journal for each fishing season. To augment this rather limited legal regime, King William's Act offered one significant reform: the naval commanders of the warships sent to patrol Newfoundland each summer could act as appeal judges to the fishing admirals' decisions.<sup>13</sup> The implications of this provision extended much further than the Board of Trade had originally envisaged, as the Royal Navy eventually became the dominant judicial and political force in eighteenth-century Newfoundland.<sup>14</sup>

King William's Act reflected imperial policy toward Newfoundland. The British government saw the island not as a colony but rather a seasonal fishing station to

be used solely for the benefit of the West of England fishery.<sup>15</sup> Patrick O'Flaherty has made much of the fact that the terms "plantation" and "colony" were never used in King William's Act to refer to Newfoundland, which was usually called a "country", i.e. an expanse of land or a region.<sup>16</sup> Nonetheless, the government's view was not as severely restrictive as O'Flaherty indicates, for the island was at times referred to as a *colony* in the eighteenth century. In 1730, for example, the Duke of Newcastle asked the Board of Trade to consider "what further directions are proper to be given for the effectual execution of His Majesty's most gracious intentions, for the preservation of peace and good order among His subjects in that Colony".<sup>17</sup> Although never a very productive source for sailors, Newfoundland was seen as a nursery for seamen — one in five men brought over each summer had to be a green man, that is, a novice — and the Admiralty played an important role in the administration of the island.<sup>18</sup> Prior to 1811 the right to settle and to hold property was, in theory, subordinate to the needs of the fishery, although in practice property rights were often recognized and enforced. Settlement continued to expand throughout the eighteenth century, often supported by the West Country merchants and traders, though its legal status remained uncertain and governors made sporadic and largely ineffectual efforts to restrict property use to the fishery.<sup>19</sup> As a number of scholars have argued, the traditional myth that King William's Act actually prohibited settlement has no basis in fact.<sup>20</sup>

While some year-round habitation was inevitable and indeed necessary for the operation of the migratory fishery, the full trappings of colonial government were not. Conventional wisdom held that the island's limited development did not merit the institutions normally allocated to settled colonies. In his treatise on the British empire, John Oldmixon pronounced that, in Newfoundland, "there is no need of much Law, for the inhabitants have not much land and no money".<sup>21</sup> British officials took a pragmatic view toward Newfoundland, remaining skeptical about granting the island its own legislature right up to the eve of representative government in 1832.<sup>22</sup> But this does not mean that Newfoundland was uniquely anomalous. The administration of most colonies in the first British Empire was largely *ad hoc*, leaving local communities with a relatively limited amount of official supervision and regulation. London was invariably wary of initiating policies which would place added burdens on the treasury.<sup>23</sup> Between 1689 and 1763 Parliament passed relatively few acts relating directly to the management of individual colonies. In the wake of the consolidation of the navigation acts in 1696, the English government focused on defending specific domestic industries against foreign and colonial rivals. By protecting the West-Country interest in the cod fishery, King William's Act formed part of a broader policy of using statutory law to promote English commerce.<sup>24</sup>

## THE LIMITS OF STATUTORY LAW

From the perspective of the actual governance of Newfoundland, King William's Act created a number of serious problems. Its provisions did not correspond to the island's actual economic development — the increasingly complex cod fishery encompassed migratory and resident operations, West-Country merchants and year-round settlers — and, as Patrick O'Flaherty argues, it cast a long shadow over the island's legal development.<sup>25</sup> It prescribed no specific penalties or punishments for those who broke its regulations or committed crimes other than felonies. It limited local authority to fishing admirals and naval commanders, neither of whom had formal commissions of the peace. They had no specific instructions to issue warrants, take depositions, or bind persons in recognizance.<sup>26</sup> The admirals were reputedly too busy with their own fishing operations and seen as too biased in their judgments to maintain law and order. After the fishing fleet and naval squadron had left in the autumn, no legal authority existed whatsoever. The system of transporting suspected felons back to England proved extremely difficult to carry out: in most cases the logistics and costs of apprehending and incarcerating offenders and shipping them when the fleet returned to England, outstripped the resources of both the visiting naval commanders and the fishing admirals.<sup>27</sup>

A confidential report commissioned by the British government clearly outlined the problems with relying on the admirals to maintain law and order. In 1701 George Larkin, an English barrister sent to assess colonial policy in North America, spent a month in Newfoundland during the height of the fishing season. Larkin traveled from Carbonear, in Conception Bay, to Fermeuse, on the Southern Shore, and spent considerable time in St. John's, where Arthur Holdsworth, master of the Dartmouth ship *Nicholas*, was admiral of the harbour. He reported that Holdsworth openly broke the regulations in King William's Act designed to ensure that new fishermen were brought over each year, thereby undermining the policy that the island should produce an annual pool of potential recruits for the Royal Navy.<sup>28</sup> All along the coast, in fact, the fishing admirals neglected to hold regular courts or keep proper journals.

Larkin asserted that the admirals deliberately abandoned their duties so that the judicial work fell to the commanders of visiting warships. Revealing that a nascent naval surrogate system had already taken root, he reported: "It hath been customary for the commander in chief upon complaints to send his Lieutenant to the several harbours and coves to decide all differences and disputes that happen betwixt commanders of merchant ships and the inhabitants and planters and betwixt them and their servants".<sup>29</sup> The custom of holding such informal court sessions dated back at least to 1680, when Captain Robert Robinson of HMS *Assistance* presided over the prosecution and punishment of four men for destroying French fishing installations. Attended by three merchants who served as assessors, the court ordered the men to be ducked (i.e. dunked into the ocean and hauled up again) from the yardarm

of the *Assistance*.<sup>30</sup> Although Larkin approved of the current officers' efforts to administer law, he claimed that previous courts had been unlawful proceedings at best. In addition to accepting bribes, officers reputedly never kept regular minute-books or registers of their decisions. Larkin compiled an abstract of the known rules and decisions and left it, along with a commission for trying pirates, to be used by future officers.<sup>31</sup>

The report stressed the need to appoint civil magistrates to administer law after the fleet had departed. According to Larkin, masters and servants became locked in battles each winter that frequently erupted into violence; he proposed that one of the prominent inhabitants in each harbour should be appointed as a magistrate. He further advised that a person with formal legal training should be sent to serve annually under the naval commodore or to settle permanently on the island as a judge advocate. This magistrate could then summarily hear and determine all the disputes which arose each year by traveling on a circuit to the major harbours. Upon receiving Larkin's report, the Board of Trade tried to persuade the government to draft a new statute for the island's fishery. The committee of trade informed the House of Lords that nearly every clause in King William's Act was being violated because of the lack of penal sanctions and the means of enforcement.<sup>32</sup> No action was taken, however, and the outbreak of the War of the Spanish Succession, in 1701, preoccupied the British government.<sup>33</sup>

Following Larkin's report, some officers began to keep court records. Naval officers in this sense were the lieutenants, commanders and captains of the Royal Navy squadron — occasionally this group included midshipmen who had not yet passed for lieutenant — and they are not to be confused with the civilian "naval officers" appointed as recorders of ship movements in colonial ports, who were overseen by the Board of Customs Commissioners and had no affiliation with the Royal Navy.<sup>34</sup> In 1704 Captain Jonathan Bridge, commander of HMS *Loo* and commodore at St. John's, convened a court along with the local fishing admirals, in which they settled the disputed title to a plantation in Ferryland.<sup>35</sup> Propertied interests generally supported the move toward stronger local government. In 1705 a group of prominent fish merchants petitioned the British government to establish some type of magistracy in Newfoundland. Whitehall asked the Board of Trade for advice on the issue of appointing constables and magistrates.<sup>36</sup> With several outposts captured as a result of French raids the previous year, the House of Commons also ordered the Board of Trade to present an account of the Newfoundland fishery. Issued in 1706, the report reiterated Larkin's findings and recommended that Parliament introduce legislation to decree penalties for offenses committed during the fishing season. Naval commanders and the fishing admirals were both to be empowered to levy fines according to the nature of the offence, up to five pounds or, in cases of non-payment, to imprison transgressors for ten days.<sup>37</sup>

Proposals for statutory reform received little support in Parliament, leaving the Board of Trade to make do with existing legislation. It sought a legal opinion from

the Solicitor General on how to administer King William's Act. Asked whether penalties could be imposed for violating a statute which did not specify any punishments, the Solicitor General replied that offenders could still be legally punished. Such persons could be fined at the discretion of the court, upon being found guilty on an indictment or information, for acting *contra formam statuti*.<sup>38</sup> In criminal pleading, *contra formam statuti* was the standard term used in indictments brought for an offence created by statute and did not denote any penalties for breaking King William's Act other than those already in the Act itself, i.e. none. With this rather thin assurance, in 1708 the British government issued a proclamation by Order in Council, ordering the strict enforcement of King William's Act. It explicitly censured the fishing admirals for neglecting their duty and directed those living in Newfoundland to bring to punishment all those who broke the regulations in King William's Act.<sup>39</sup>

The principal byproduct of the inadequacy of King William's Act was a substantial expansion in the judicial function of the Royal Navy. Prior to the royal proclamation in 1708, which authorized punishment for offenses against King William's Act, the Board of Trade had made a presentation to the Privy Council on the state of Newfoundland. Condemning the garrison commanders as inept and corrupt, it pointed out that no naval officer had been accused of impropriety and argued that the commodore should be given a commission to act as commander-in-chief with an indisputable power to command on land. In addition to checking the excesses of the army, this would provide a source of speedy redress for the inhabitants and fishermen.<sup>40</sup> Citing the Solicitor General's opinion on the enforcement of King William's Act, the Board of Trade advocated extending the powers of the naval commodore, requesting that "he be fully empowered thereby to redress all such abuses and offences as shall be committed at Newfoundland, contrary to the said Act in such Manner as the same have formerly been or lawfully may be redressed or punished according to the known Usage or Customs there".<sup>41</sup> In cases where customary laws were uncertain or inapplicable, the commodore was to submit the suspect's name and an account of the incident to the British government so that offenders could be proceeded against in England.<sup>42</sup> Such proposals reflected not only the increasingly active role played by officers in administering law in St. John's, but also the fact that government ministers saw the Royal Navy as the primary means for maintaining order in Newfoundland.

In 1711 Captain Josias Crowe, naval commodore and commander-in-chief, convened the island's first known legislative council. From August to late October he presided over a series of public meetings attended by masters of fishing ships, merchants and prominent townspeople, which approved, in his words, "several laws and orders made at St. John's for the better discipline and good order of the people and correcting irregularities".<sup>43</sup> Known popularly as "Captain Crowe's Law", the sixteen provisions contained both general regulations and specific warrants. In addition to rulings on property disputes and orders for maintaining coastal

defenses, the articles stipulated that servants who hired themselves out to more than one master were to be fined two pounds or whipped three times in public.<sup>44</sup> Captain Crowe also forbade the selling of liquor on Sunday, upon a fine or forfeiture of two pounds for the first offense, eight pounds for the second, with a fine of one shilling for each person found in a disorderly house. Other measures went unrecorded: in his returns to the heads of inquiry, Crowe simply stated that he had suppressed debauchery "by threats, punishments, and other necessary means".<sup>45</sup> Though Crowe had not acted according to any known instructions, his initiatives established an early precedent for the customary legal system in which the naval commodore — and, after 1729, the island's governor — consulted with merchants and townspeople and took steps to meet the perceived needs for law and order.<sup>46</sup>

When Sir Nicholas Trevanion, captain of HMS *York*, arrived in 1712, he operated this customary system as if it had dated from time immemorial. Like his predecessor, Trevanion convened an *ad hoc* legislature in St. John's — attended by the fishing admirals, merchants and other prominent inhabitants — which debated and adopted six by-laws. He reported that he held a general court twice a week, assisted by the fishing admirals. To account for its operation, Trevanion stated simply, "whenever differences happened, we endeavoured to settle it".<sup>47</sup> During his stay he received complaints about neither the conduct of the fishing admirals nor the implementation of King William's Act. To enforce Sunday observances, he posted orders, appointed a watch and punished offenders. "I leave this Island in a very good condition", he concluded, "and the people very well satisfied". Such a sanguine voice was rarely heard from Newfoundland. Over the next decade the Board of Trade received a steady barrage of petitions on the need for civil government, regular courts and winter magistrates. As the extracts quoted by John Reeves illustrate, these reports all repeated the same basic point: the admirals were unfit for any type of public office.<sup>48</sup>

## IN SEARCH OF THE FISHING ADMIRALS

The litany of complaints about the admirals' conduct tells us a great deal about how they were perceived by some British officials but virtually nothing about who they were or what they actually did during the summer fishery. Perhaps the most accurate answer to this question is that these men were no different from the island's fishing masters, from whose ranks they were drawn. Masters in this sense denoted captains of fishing ships who made the annual voyage from England to Newfoundland: some were wealthy landowners, but most were lesser merchants with few pretensions to gentility. While the vast majority of these men remain anonymous in official records, there were exceptional families, such as the Holdsworths of Dartmouth, which produced a succession of prominent admirals.<sup>49</sup>

Through the case of Arthur Holdsworth we can trace the career of a fishing admiral in the early eighteenth century. At the age of 32 he assumed a prominent role in the family business, sailing to Newfoundland with his brother in their ship the *Nicholas*; by 1701 he had become admiral of St. John's harbour, a position he held off and on for the next ten years. He soon asserted himself in local society, creating a minor controversy when he dueled with an army officer over a perceived slight. The officer was later accused of cowardice but the Holdsworths did not suffer from the potential scandal. As the nearest thing to gentry on the island, the family had little to fear from anyone other than the commodore. Highly unpopular among their competitors, the clan expanded their operations into carrying passengers to Newfoundland, thus creating temporary labour gluts.<sup>50</sup> Holdsworth also became heavily involved in the petty politics which marked early St. John's. He petitioned against competitors, curried favour with the garrison commander in return for contracts and interpreted laws and customs as he saw fit. Whether for lack of interest or free time during the hectic fishing season, Holdsworth held no known courts or meetings during his tenure as admiral. The only extant evidence of his involvement in local government occurred in 1701, when he attested to a list of "planter's rooms" compiled on the orders of the commodore of the Newfoundland squadron.<sup>51</sup> After 1711 Holdsworth stopped sailing to Newfoundland regularly and managed his firm from Dartmouth, where he built a large manor house. In short, he pursued his mercantile interests to the fullest: the legal responsibilities of his office appear to have been of little consequence.<sup>52</sup>

Though Holdsworth was likely an atypical admiral in many respects, his career reflected a broader pattern. The fishing admirals lived in Newfoundland only during the summer months, when they were fixated on ensuring that their fishing operations succeeded. They were particularly pressed for time during the late summer and early autumn — from August to October they had to make all the necessary arrangements for settling contracts and prices and shipping the codfish to market — but this was precisely when their legal services were needed the most. Even when they had the opportunity, admirals were required, in essence, to police their competitors, a situation fraught with potential problems. Perhaps most importantly, there was no superintending authority other than the commodore, whose power extended only to acting as an appellate judge; in theory complainants had to approach the admirals before bringing petitions before a naval officer. Pre-occupied by their own affairs, the admirals had neither the time nor inclination to fulfill the duties prescribed by King William's Act. It is not surprising, therefore, that they conducted little judicial business.<sup>53</sup> As we shall see, by the mid-eighteenth century, they were no longer an independent force in the island's politics and, with few exceptions, they obeyed the naval government which dominated Newfoundland from the 1750s to the 1820s.

## ADMIRALS VERSUS MAGISTRATES: THE BATTLE FOR AUTHORITY IN THE 1730S

The admirals' acknowledgment of the legitimacy of civil authority came only after a protracted battle which shaped the entire course of the island's legal development. The period following the establishment of a naval governor and civil magistracy in 1729 is crucial to tracing the history of the admirals. From 1729 to the mid-1730s two opposing groups of legal officials — the justices of the peace (by commissions granted from the governor) and the fishing admirals (by King William's Act) — competed for control over the means to administer law. This was not, as many historians have assumed, simply a case of obstruction by corrupt fishing admirals against enlightened reforms. Equally important, this conflict does not fit the conventional model of state-sanctioned formal law versus popularly-oriented customary law. In Newfoundland the former was far from uniform and what law the labouring people might resist was itself contested by opposing factions within the ranks of the propertied classes. The quarrel for legal supremacy entailed a struggle *within* the law; the question to be decided after 1729 was what type of institutions would govern Newfoundland. The disputes during the 1730s illustrate how long-standing prerogatives could be reasserted in different forms when threatened by administrative activism. For thirty years the fishing admirals seem to have done little to fulfill their duties as laid down in King William's Act, but they swiftly reclaimed their powers when forced to share authority with civil magistrates.

The British government did not consider the reforms instituted in 1729 to signify a major shift in its policy toward Newfoundland.<sup>54</sup> The initial recommendation to appoint a governor and civil magistrates — made in December 1728 by the Board of Trade to the Duke of Newcastle, Secretary of State for the Southern Department — echoed a report issued a decade earlier.<sup>55</sup> It claimed that the general contempt for the authority vested by law in the fishing admirals had damaged trade and diminished the reserve of potential sailors for the Royal Navy.<sup>56</sup> Additionally, the intransigence of the garrison commander at Placentia needed to be eliminated by establishing the naval commodore as the island's undisputed political and military authority. To justify this move the Board claimed that several commodores on the Newfoundland station had already served informally as governors. The report raised the issue of magistrates as an administrative afterthought. It recommended that if the commodore was empowered to appoint justices of the peace to settle disputes between the inhabitants during the winter season, the miseries of the planters and servants would be somewhat abated.<sup>57</sup> The Board of Trade had yet to formulate a clear strategy on the question of local government. While suggesting that a trained lawyer be sent to assist the regulation of property disputes, it repeated the impractical proposal, originally advanced in 1718, to deport the island's settlers to Nova Scotia.<sup>58</sup> In April 1729 a committee of the Privy Council approved the plan to appoint a governor and justices of the peace. The committee stressed the need to bol-

ster the commodore's power to settle property disputes and to establish a magistracy so that those who remained on the island would not live in a state of anarchy. To check the perceived social decay of the fishing communities, the Society for the Propagation of the Gospel was asked to send missionaries to Newfoundland.<sup>59</sup>

The Board of Trade ordered the usual heads of inquiry to be prepared and met with Lord Vere Beauclerk, who was to command the squadron.<sup>60</sup> Lord Vere had served as commodore the previous year and had already argued the case for legal reform. His 1728 report had reiterated the essential points of his earlier dispatches to the Admiralty: the fishing admirals were largely corrupt, habitually incompetent and held courts only when the naval commanders were present; yet the practice of periodically appointing winter magistrates had no basis in law and their authority was not recognized in the outports. He then summarized the crux of the problem: unless the naval commanders were present to assist the fishing admirals in executing their legal duties, "their meetings would be nothing but confusion, and their orders of no use, which is the reason we are obliged to usurp a power, which I apprehend does not properly belong to us, of publishing orders in our own names to prevent as much as we can the threats of rioting and disorders, which, to the great detriment of the fishery, are generally practiced in our absence".<sup>61</sup> The British government was unwilling to appoint Lord Vere governor of Newfoundland because it would then lose his Parliamentary support. The Board of Trade drafted a commission for Captain Henry Osborne to act as governor, with Lord Vere to serve as commodore of the naval squadron.<sup>62</sup>

Government ministers expressed serious reservations over the new administrative system. Officials at the Board of Trade warned that efforts to enforce the fishery's regulations would be ineffective until the British government established a court in Newfoundland with a clear jurisdiction in civil law. The proposed changes also did not affect felonies committed in Newfoundland, which still could be tried only in England, a system that already had proven unworkable. The Board of Trade suggested that a lawyer be sent to the island as soon as possible, along with a commission of Oyer and Terminer, in order to establish some type of local assize jurisdiction.<sup>63</sup> Instead, the naval governor's commission set clear limits on his legal powers. It was normally issued only once, at the beginning of the governor's concurrent appointment as commodore and any amendment required a new commission to be issued under the great seal. It empowered the governor to constitute and appoint justices of the peace, who were to hold quarter sessions according to English law. But the governor and his magistrates were forbidden to contravene King William's Act in any way and were ordered not to interfere with the fishing admirals' jurisdiction.<sup>64</sup> The commission placed Placentia under the jurisdiction of the Newfoundland governor and authorized him to build gaols and court houses throughout the island. Yet this mattered little when balanced against the fact that the governor was legally obliged to defer to the fishing admirals' powers to hear all

causes relating to the fishery as defined in King William's Act. Since nearly every case inevitably involved the fishery one way or another, the governor could not necessarily claim to have the superior legal authority.

Despite London's hesitancy, the appointment of Governor Osborne marked a break with the island's legal past. For the first time, the island's governor was a servant of the Crown appointed by writ of the Privy Council. Whereas the early governors had been leaders of commercial ventures, the naval governors were professionals, paid a set salary and given an official mandate to enforce the authority of the Crown. It is important to note that the governorship was first and foremost a post in the Royal Navy. From 1729 to 1825 every governor was simultaneously the commander-in-chief of the Newfoundland station. Prior to the appointment of Admiral John Montagu in 1776, the naval governors held the rank of commodore.<sup>65</sup> This was a temporary rank given to an experienced post-captain when he assumed command of a naval squadron or station. Valued by aspiring officers as a means of securing future promotion, it brought the coveted honour of hoisting a broad pendant and with it a wide range of responsibilities. Commodores of the Newfoundland station followed orders from both the British Admiralty and the Board of Trade; in addition to their own flagship, they had to manage a squadron which typically consisted of several warships. Their authority was based on the commission given to each governor at the beginning of their term. It empowered the appointee to act as governor and commander-in-chief over all of the civil and military personnel within his jurisdiction, authorized him to appoint local magistrates and gave him the honorific title of Excellency.<sup>66</sup>

When Governor Osborne arrived in HMS *Squirrel* in the summer of 1729, he summoned the principal inhabitants to St. John's harbour and publicly read his commission. In the weeks before the squadron returned to England, Osborne had to institute the basic elements of the new legal system, most notably the justices of the peace. The Newfoundland commission of the peace, he later confessed, had been quickly drawn up as best he could manage before receiving orders from the Admiralty to set sail.<sup>67</sup> It combined the form of the English commission of the peace with additional directions for observing the laws and customs of Newfoundland. On the one hand, it included the standard directives given to English justices of the peace: magistrates were to ensure that those who broke the peace either found sufficient security or were imprisoned; they were empowered, for example, to convict those who committed fraud through false weights and measures or sold food contrary to English ordinances. They were also required to hold general quarter sessions according to common law. These provisions were essentially the same as those contained in commissions of the peace issued throughout Georgian England.<sup>68</sup>

On the other hand, the island's commission curbed the magistrate's jurisdiction to conform to King William's Act. It stipulated that the justices could not prosecute or judge robbery, murder, or any other capital crime; in such cases they had to arrange for the suspect and witnesses to be sent to England. Magistrates were never

to contravene King William's Act in the course of their duty, nor to do anything repugnant to its provisions and were prohibited from obstructing the fishing admirals in the execution of their office.<sup>69</sup> On top of these restrictions, justices of the peace were required to assist both the naval commanders and the fishing admirals. The commission assigned the island's civil magistracy both the wide-ranging responsibilities accorded English justices and the limited authority concomitant with King William's Act. This arrangement engendered a tripartite judiciary — Royal Navy, fishing admirals and justices of the peace — without any clear delineation of legal powers. While the fishing admirals enjoyed a statutory prerogative, they were not empowered to issue judicial writs, a right granted only to justices of the peace. Before the new system could function effectively, its distribution of powers and responsibilities would have to be clarified.

More immediate, however, was the problem of appointing a sufficient number of civil magistrates. Governor Osborne had no trouble finding suitable men in St. John's: two of the justices — William Keen and Allen Southmayd — had already served as local magistrates.<sup>70</sup> But the lack of acceptable candidates in the smaller outports forced Osborne to create a system of judicial districts encompassing a series of settlements along a specified stretch of the coastline.<sup>71</sup> Osborne divided the island into the six basic jurisdictions that prevailed to the end of the eighteenth century, each with at least three justices and constables, save Conception Bay.<sup>72</sup> Although Lord Vere expressed hopes that the new magistracy would prove popular and effective, Osborne was far less optimistic. In his first report as governor, Osborne cautioned that the best of the magistrates were but inferior men unfamiliar with any form of government. He repeated the opinion — commonly heard in official circles and repeated uncritically by some modern observers — that the island's people were as primitive as its institutions.<sup>73</sup> Settlers may have acquired the first layer of English law, but they had yet to prove to London that they could sustain civil government.

Governor Osborne also worked to establish prisons and stocks for the new penal regime. Upon his arrival in St. John's he found no functional gaol, nor any house that could serve as one, and he sent a warrant to the justices of the peace, directing them to organize the building of a prison and the means to pay for it. In August 1729 the magistrates proposed a scheme to raise £150 by taxing the season's fish catch. Osborne approved the plan and authorized the justices to raise a levy: one half a quintal (56 lbs.) of merchantable (standard quality) codfish per fishing vessel, another half a quintal per ship's room (i.e. waterfront premises) and an undetermined proportionable rate for those not involved in the fishery.<sup>74</sup> This tax applied only in St. John's and Ferryland districts, where prisons were to be built, and for only one year. The other districts would rely on stocks for petty offences; serious offenders would be sent to one of the two regional prisons. Osborne confirmed the prison tax through a public proclamation, sending additional warrants to the justices to ensure its collection.<sup>75</sup> By imposing taxation in a jurisdiction without any form of repre-

sentative government, Osborne knew he was on uncertain ground.<sup>76</sup> As he was no doubt aware, King William's Act clearly designated the Newfoundland fishery to be a free trade.<sup>77</sup>

## DEFINING THE BOUNDARIES OF ENGLISH LAW

With the convoy of fishing ships and naval escorts ready to weigh anchor in early November 1729, Governor Osborne could do no more until the following year. Not surprisingly, after his departure the nascent magistracy ran into problems. Two justices of the peace in Bonavista — who described themselves as “newly appointed justices, not learned in the Law” — sent Osborne a request to clarify their civil jurisdiction: the commissions and instructions had contained no references to causes involving property rights or the recovery of debts.<sup>78</sup> In April 1730, Lord Vere Beauclerk and Governor Osborne met twice with a committee at the Board of Trade to discuss the problems which had arisen the previous year. The Secretary of the Board of Trade asked Francis Fane, the Solicitor General, and Philip Yorke, the Attorney General, to provide opinions on several points of law.<sup>79</sup> Lord Vere and Osborne presented four *quaeres*: If the island's inhabitants disobeyed the order to raise the prison tax, in what manner could they be punished? If they ill-treated magistrates or destroyed the stocks, could they be forced to pay for repairs and be corporally punished? Could the justices, in the absence of the fishing admirals, decide disputes relating to property? Finally, could Governor Osborne authorize additional taxes to fund public works?<sup>80</sup>

The reports took different approaches but both criticized the initiative to impose taxation. While Fane expressed doubts over the validity of the magistrates' actions, Yorke ruled emphatically that they did not have sufficient authority to raise funds for building a prison.<sup>81</sup> The Attorney General's opinion clearly limited the scope of Osborne's legal regime. Yorke argued that the levy on fishing boats directly contravened not only King William's Act, which exempted the fishery from taxation, but also the English statute regulating gaols, by which such rates could be set only after a grand jury presentment.<sup>82</sup> He pointed out that the island's commissions of the peace required the magistrates to act according to the laws of England. “So far as the people have submitted to this tax”, he conceded, “there may be no occasion to call it into question, but I cannot advise the taking of rigorous methods to compel compliance with it”.<sup>83</sup> With regard to the second *quaere*, the Attorney General stated that actual assaults or resistance to authority were indictable offences punishable by a fine or imprisonment. For contemptuous words spoken to the justices or to their authority, offenders were not liable to be punished corporally but were to be bound in recognizance for their good behaviour.<sup>84</sup> To the third question, Yorke gave an unequivocal answer: the justices of the peace could not decide differences relating to property; their powers were restricted to the criminal matters

specified in their commission. On the broader issue of the power to raise taxes, he pointed out that no such authority existed in Osborne's instructions for imposing general taxation without the consent of some assembly of the people.<sup>85</sup> Though relatively straightforward in theory, the division between criminal and civil jurisdictions was largely ignored in practice. Yet the provision for allowing the use of informal meetings to approve local levies was later exploited as a justification for establishing regular taxation throughout the island's districts.

The Board of Trade decided not to alter its policy toward Newfoundland. It tried to wring some legal justification for the prison tax from the Solicitor General and, obligingly, Fane reassured the government that Osborne had acted with caution and prudence. Having taken no arbitrary steps in the execution of his commission, he concluded, the Newfoundland governor would not be liable to a prosecution in England. Although Fane still held that the tax was not entirely agreeable to King William's Act, he believed that Osborne was justified in raising the levy because it represented the only means through which the governor could meet the design and intent of his commission.<sup>86</sup> Assuaged by this, the British government made no changes to its instructions to the Newfoundland governor. The Secretary of the Board of Trade reassured Osborne: "you stand perfectly justified according to his [the Solicitor General's] opinion, as so you do in ours, in all the steps you have taken there for preserving the peace and tranquility of the inhabitants, during your absence, more particularly with respect to the building of a gaol".<sup>87</sup> To avoid any appearances of violating the free trade in the fishery, he suggested that the tax be levied in money exchangeable for fish. If Osborne encountered resistance to the prison rates, a grand jury was to be impaneled to make a presentment at quarter sessions. In June 1730, with the naval squadron already put to sea, the Board of Trade finally responded to a government query — made the previous year by the Duke of Newcastle — into reputed difficulties in administering law in Newfoundland. Stonewalling for another year, the Board asserted that Osborne had faithfully discharged the trust reposed in him and no further information would be available until he returned the following autumn.<sup>88</sup>

## LOCAL POWER STRUGGLES

When Governor Osborne returned to Newfoundland in 1730, he soon discovered the extent of resistance encountered by magistrates trying to establish their jurisdictions in the outports. Waiting for him was a dispatch from the Placentia magistrates, recounting how the fishing admirals had successfully challenged their authority. The justices of the peace — Peter Signac, Thomas Salmon and Thomas Buchanan — reported that the three admirals of the harbour had convened a court in May 1730 to hear two complaints brought by a fish merchant. According to the justices, the admirals had ordered one of the defendants to be imprisoned overnight in the garri-

son merely because of a trading disagreement.<sup>89</sup> The next day the magistrates met Captain William Brooks, the senior fishing admiral, at Salmon's house and told him that the proceedings of the admirals' court constituted an infringement on their authority. Brooks then purportedly claimed that, "the administration of all justice did belong to them, and that we was only winter justices, and that his thought was that our power was only about the affairs of the church and in such small business".<sup>90</sup> The justices offered to hold a meeting to produce their commissions of the peace, but Brooks retorted that he had "no business with our commissions, that he had the Act of Parliament for his".<sup>91</sup> One of the men allegedly went so far as to pronounce that the admirals had greater legal powers than Governor Osborne.

This altercation provides a rare insight into the highly personalized process through which authority at the local level was negotiated and contested. As tensions rose in the room, Thomas Salmon laid the key to the stocks on the table and declared: "he that had the most right to it may take it". Without hesitating, William Brooks snatched it up, affirming that the admirals had the power "to whip and to put in the stocks when they thought fit and to imprison and detain at their pleasure".<sup>92</sup> It is not surprising that the key to the stocks figured so prominently in this confrontation: whoever possessed (both figuratively and literally) the means to punish controlled the symbolic and material centre of judicial power.<sup>93</sup> According to the magistrates, the admirals not only claimed the right to appoint constables; they also disparaged Governor Osborne's authority as based merely on a commission issued by the Privy Council. Forced onto the defensive, the justices decided to wait until Governor Osborne arrived in Placentia to confirm their powers and — equally important, though they did not admit to it — to bolster their damaged social standing.<sup>94</sup> When Osborne visited Placentia, he attempted to expand the justices' authority by empowering them to act in any of the island's districts. He hoped this would enlarge the pool of available magistrates and thereby augment their position in outpost communities.<sup>95</sup>

The incident in Placentia illustrates how various sources of law became intertwined in the contested imposition of civil authority. The fishing admirals displayed a basic legal knowledge and were well aware of the difference between statutory law and royal prerogative. They used this to argue that their authority (by King William's Act) was inherently superior to that of the governor and the justices (by Order in Council). The admirals cited recent practices and popularly-held beliefs, in particular the idea that the magistrates were merely winter justices confined to hearing breaches of the peace after the naval squadron had returned to England. The mistaken notion that the justices were restricted to sitting during the winter months has been widely treated as an accepted fact, but it had no legal foundation whatsoever.<sup>96</sup> Neither the governor's commission nor the commissions of the peace circumscribed the justices' summer jurisdiction beyond the provisos to obey King William's Act and to assist the fishing admirals. The conflict between the admirals and magistrates demonstrated the consequences of the relative ability of

competing legal authorities to enforce their judgements. Without the means to chasten the fishing admirals, the justices backed down, effectively conceding the government of Placentia until Governor Osborne arrived.

This crisis was not restricted to outposts like Placentia, nor did it dissipate with Osborne's arrival. He received further complaints that the fishing admirals had licensed public houses and had repeated the claim that their authority was superior to that of the justices.<sup>97</sup> The St. John's magistrates reported that the admirals had expanded their jurisdiction beyond disputes concerning the fishery: they now determined criminal cases, sent warrants to constables and ordered magistrates to assist in carrying out sentences. Governor Osborne responded by sending a pessimistic dispatch to London. He had hoped to be able to inform the British government of the progress brought by legal reforms,

but instead thereof, the Fishing Admirals and some of the rest of the masters of the ships and traders in this Island, has ridiculed the Justices of Peaces authority very much in my absence, and have used their utmost endeavours to lessen them in the eye of the lower sort of people, and in some parts have in a manner wrested their power from them. The admirals have brought the power given them by the Fishing Act in competition with the justices, and have not scrupled even to touch upon mine.<sup>98</sup>

Osborne pointed out that before the appointment of civil magistrates, the admirals had rarely exercised their statutory authority. Since 1729, however, they had used "all the little spiteful things they can against these men because they bear this commission".<sup>99</sup> Some justices of the peace had become completely intimidated, refusing to judge certain cases for fear of retaliation from fish merchants. To counteract this trend, Osborne issued a proclamation confirming the justices' powers.<sup>100</sup>

## RESPONSES TO THE ADMIRALS' PROTESTS

In his official dispatch to London in September 1730, Lord Vere Beauclerk personally apologized for the failures in establishing the new legal regime. Writing from HMS *Oxford* moored in St. John's harbour, he admitted that he originally had intended the justices' powers to be limited to the winter months but he could not lawfully limit their authority once they had been given commissions of the peace. "I have only endeavoured", he conceded, "to keep them and the admirals quiet, without absolutely determining their several jurisdictions".<sup>101</sup> What was now needed were clear instructions from the British government on the respective responsibilities and powers of the justices of the peace and the fishing admirals. The Duke of Newcastle pressed the Board of Trade to devise a plan to rectify the island's administrative problems.<sup>102</sup> Newcastle asked for another opinion on whether the commis-

sions of the peace contravened the powers given to the fishing admirals by King William's Act.

In December 1730 the Attorney General submitted a report which concluded that the justices' powers in no way impinged upon the fishing admirals' authority. He ruled that the admirals' powers extended only to regulating disputes within the fishery. Whereas this constituted a type of civil jurisdiction in particular property cases, the justices' authority extended only to breaches of the peace and other criminal matters.<sup>103</sup> It appeared, therefore, that a feasible division of legal powers could be made on the basis of criminal versus civil administration, with the former allocated to the justices of the peace and the latter to the fishing admirals. Numerous points of law remained unsettled, however, and Governor Osborne again sought legal opinions when he returned to England. In the winter of 1731 Osborne brought three new *quaeres*: Did the fishing admirals have the power to issue warrants to constables, or were they subordinate to the justices of the peace? Were the justices entitled to act according to the statute laws of England? And was the governor himself empowered to act as a magistrate and to sit at quarter sessions?<sup>104</sup> Francis Fane, the Solicitor General, was asked to deal with the questions in the spring of 1731. In an important ruling, Fane replied that the admirals had no power to send warrants to constables, nor to commit persons to prison or the stocks: they were subordinate to the justices in everything but what related directly to their authority to settle disputes in the fishery. This was due to the fact that King William's Act did not assign the fishing admirals any specific powers to levy penalties or to inflict punishments (see Appendix A).<sup>105</sup>

Once Governor Clinton arrived in HMS *Salisbury* in the summer of 1731, the struggle for authority in Newfoundland became further embittered. Clinton censured the fishing admirals at Muskitta for usurping the justices' powers — a malfeasance he imputed to sheer ignorance — and kept the admirals' warrant to show the British government how insolent they had become.<sup>106</sup> Captain Osborne also sent a dispatch to the British government repeating the increasingly common invective against the fishing admirals. Osborne argued that as a result of recent disorders, offenders were escaping with impunity.<sup>107</sup> He added that Irish convicts were now being shipped to Newfoundland illegally as fishing servants; the convicts were blamed for the recent murder of a woman and four children at Muskitta. By linking the fishing admirals' conduct with fears of serious crime and social disorder, Osborne raised the stakes in the battle for legal supremacy. Throughout his first year as governor, Clinton reproved the fishing admirals and anyone else, including the commander of the army garrison at Placentia, who appeared to resist his authority.<sup>108</sup>

The governor also resurrected the custom, last practised in the 1710s, of convening a general court alongside the St. John's fishing admirals. In September 1731, for instance, Clinton and two admirals issued a ruling on the ownership of a fishing premises in Petty Harbour.<sup>109</sup> The governor was well aware of the question-

able legality of such proceedings, for two days later he urged the fishing admirals to hold their own courts:

If you remember, upon my arrival here, and publishing my commission; I then declared that I should not sit at any court ashore; but that in compliance with the Act of Parliament, [King William's Act] I should be always ready to hear any appeal that might be made to me on board the *Salisbury*, from any person that judged himself aggrieved by your sentence. But as I am daily pestered with complaints of masters being ill treated by their servants, and servants wronged by their masters ... it makes me very free to say that I think you have been very negligent in the discharge of that duty incumbent on you; that is, the speedy hearing [of] such complaints, and doing justice to the injured party. It is therefore my opinion that you ought ... hold a Court to hear and decide so many controversies as are ready to come before you.<sup>110</sup>

Local developments, particularly appeals from the St. John's magistrates, had pressured Clinton to assume greater legal powers. The justices had warned him that strong measures were especially needed to combat abuses in the fishery and the wave of crimes committed by transported convicts reputedly landed along the coast.<sup>111</sup>

In September 1731, the admirals at Placentia attempted to co-opt the army garrison. Claiming that the justices of the peace had neglected their duty, they petitioned the local commander to order his soldiers to patrol the community during the winter.<sup>112</sup> Angered by such insolence, Governor Clinton submitted a scathing report to the British government. He portrayed Newfoundland as a wild country where only the Royal Navy stood in the way of a troika of venal fishing admirals, rebellious Roman Catholics and rapacious merchants. "The ignorant people are possessed therewith", he claimed, "their orders are obeyed, and mine tore, and those I send them be very much abused".<sup>113</sup> Two fishing admirals had been charged with contempt of court, though the outcome of their trial, if one was ever held, is unknown. The dispatch received serious attention at Whitehall, in particular Clinton's emphatic assertion that it was "almost impossible to govern such a sort of people under the present Establishment".<sup>114</sup> In November 1731 the Duke of Newcastle again requested the Attorney General to recommend measures to overcome the difficulties faced in Newfoundland. Newcastle considered the root of the problem to be the ongoing dispute over whether the justices' commission of the peace contravened King William's Act and he asked for another opinion on how best to clarify the web of overlapping legal jurisdictions.<sup>115</sup> Despite the best efforts of the early naval governors, the admirals could not easily be dismissed as ignorant troublemakers because they offered a cogent legal argument. By appealing to the supremacy of statutory law, the fishing admirals forced the British government to rethink its support for the island's civil magistracy.<sup>116</sup>

## POLITICAL MACHINATIONS IN ENGLAND

In the winter of 1732 the powerful West Country interests backing the fishing admirals counterattacked. In February the MP for Dartmouth met personally with a committee at the Board of Trade to present a memorial requesting that the justices of the peace be prohibited from hearing disputes in the Newfoundland fishery.<sup>117</sup> Signed by twenty prominent merchants and traders, including the fishing admiral of St. John's harbour, the petition condemned the civil magistrates as illiterate boors who lived idly on credit during the winter. It argued that because these justices did not return to England each year, they could not be held properly accountable for their actions. The merchants spared little in this political offensive. They complained of Governor Osborne's unfair and illegal taxes, which allegedly damaged trade and reduced servants to beggary. They requested that the justices of the peace be denied any legal powers during the seasonal government of the fishing admirals, i.e. from May to October each year.<sup>118</sup>

Similar petitions were sent by the merchants of Poole and Bristol. While the former characterized the island's justices as "New England men of little worth and less reputation", the latter affirmed that they had succeeded in wresting the lawful statutory powers out of the admirals' hands.<sup>119</sup> By portraying the justices as crass and ungentelemanly provincials, the merchants placed a social as well as a political distance between themselves and the magistracy. Merchants and officials in Poole took additional steps to discredit the Newfoundland justices: the mayor, Timothy Spurrier, took two affidavits from fishing masters describing supposed instances of misconduct by local magistrates. In the first, Peter Shank, master of the *Nancy* (a Poole sloop operating out of Ferryland in the summer of 1730), stated that when he had moored in St. John's harbour to take on passengers bound for Ireland, William Keen came aboard and summarily imprisoned him. Keen then searched every chest on board, arrested four men and, as a result of the fracas, Shank lost more than half of his fares.<sup>120</sup> The second affidavit contained two statements from Dorset masters sailing out of Trinity. John Moors of the brig *Agnes and Mary* claimed that in the spring of 1731 the local justices had unlawfully arrested one of his servants. Moors's statement clearly illustrates the sharp personal antagonism that characterized the battles between masters and the magistrates: "this deponent says, that he went to the said justices and told them, that one of the men was his servant, and that as he was vice-admiral and duly qualified, he would have a hearing and know by which authority they presumed without his licence to put them in the stocks".<sup>121</sup> According to Moors, the magistrates threatened that "if he did not hold his tongue, they would put him in the stocks likewise, and by force and in opposition to this deponent did put the said men in the stocks". Joseph Vallis, master of the brig *Friends Adventure*, related that when the admirals had posted the price of fish and a list of debt settlements on the church door, the justices tore it down and tied it to the com-

mon whipping post. As had happened in Placentia, the tools of punishment were at the heart of struggles for authority.

This campaign forced the British government to reconsider its support for the Newfoundland magistracy. Although William Keen had sent a strong written answer — Shank's affidavit had formed the basis of another petition filed at Poole — the barrage of criticism prompted the Board of Trade to abandon its efforts to clarify and implement the jurisdictions and relative powers of the justices and fishing admirals.<sup>122</sup> As quickly as it had arisen, the question of the reception of English law faded into political oblivion.<sup>123</sup> What now concerned officials was how to prevent further protests and maintain a basic framework for the *de facto* administration of justice. By the outbreak of the War of Jenkins' Ear in 1739, the pretense that the Newfoundland magistracy would function entirely according to formal English law seems to have been abandoned, as the British government became preoccupied with other matters.<sup>124</sup> Ultimately, the struggle for legal authority was won by neither the justices nor the fishing admirals, but by the Royal Navy and its officers.

## THE FISHING ADMIRALS UNDER NAVAL RULE

Although the fishing admirals had sharply contested the authority of the governor and magistrates in the early 1730s, by 1750 they were no longer an independent force. In the second half of the eighteenth century the fishing admirals came firmly under the control of the island's naval government. In 1749 Governor Rodney launched an ambitious series of reforms: within two years the island had a local court of Oyer and Terminer (an annual Assize court that tried felonies at St. John's), a highly organized system of customary surrogate courts (convened in the outports by naval officers) and a central court in St. John's (presided over by the governor).

By the mid-1760s Newfoundland was divided into nine districts, administered by civil magistrates, and five maritime zones, governed by naval surrogates. It had many of the standard English institutions used to administer justice — e.g. constables, coroners, a sheriff and a grand jury — and magistrates took recognizances, held petty sessions and organized quarter sessions on a regular basis. By 1780 the system of naval government had evolved into an entrenched customary regime based on two levels of authority: the seasonal administration of the Royal Navy, which had up to ten warships patrolling the coast from mid-summer to early autumn and the year-round sessions held by civil magistrates.<sup>125</sup>

Although the admirals were no longer an independent political force, they still figured prominently in contemporary accounts of Newfoundland. William Douglass' survey of the North American colonies, published in London in 1755, offered a purportedly up-to-date assessment of the island's government:

Differences amongst the fishermen of the several harbours, are at first instance determined by the admirals so called, being the first ship masters who arrive for the season in the respective harbours; from this judgment, appeal lies to the commodore of the king's stationed ships, who determines in equity. Felonies in Newfoundland are not triable there, but in any county of Great Britain.<sup>126</sup>

While Douglass was well aware of the annual appointment of naval governors, he portrayed the fishing admirals as powerful local figures:

At present the commodore of the king's ships stationed for the protection of the fishery of Newfoundland, is governor of Newfoundland, during his continuance there, by the title of governor and commodore in chief of Newfoundland, and of the forts and garrisons there; there are also lieutenant governors of the forts and garrisons there....As we hinted, the master of the vessel who first arrives in the several harbours, is called, admiral of that harbour, and acts as a magistrate and is called lord of the harbour.<sup>127</sup>

When Joseph Banks visited Newfoundland a decade later, he too described the office of fishing admiral as a type of magistrate. Banks noted that "in every harbour the first arriving ship is admiral of the harbour her captain administering justice tho' with frequent appeals to the Lieutenant Governor".<sup>128</sup> He viewed the admirals as part of the larger system of naval government administered by Captain Hugh Palliser, who was governor from 1764 to 1768.

Official imperial policy continued to view the position of admiral as an important institution. Article 40 of the "Heads of Inquiry" required him to investigate "whether the Admirals are careful, in order to preserve the peace and good government, both in their respective Harbours and on Shore, to see that the Rules and Orders contained in the aforesaid [King William's] Act be duly put in execution".<sup>129</sup> Governor Palliser's response, submitted to the Board of Trade in 1764, was remarkably similar to the scathing reports of the 1730s:

The Admirals do not comply with any part of this Article, concerning themselves with nothing but what is for their own or employer's interest, as is beforementioned; and notwithstanding the repeated orders of every governor, they pay no regard thereto; they are under no obligation to do it; there is no law, nor authority to compel them to it, no penalty for neglecting it, no benefit accrues from their doing it, and few or no ship privileges left to preserve; and the Admirals, who are for the most part illiterate men, incapable of keeping the account required by the Act; are always under the influence and direction of particular people, who are commonly encroachers or monopolisers.<sup>130</sup>

Palliser added that the admirals were "totally negligent of everything required of them by the Act; either through incapacity or bias to their own or employer's partic-

ular interest; neither is any regard ever paid to them, they themselves paying none to the Governor's orders to them". For Palliser, the admirals' incompetence represented an obstacle to the proper enforcement of King William's Act, which he was trying to reestablish as the dominant source of local law.<sup>131</sup>

Palliser's comments on the admirals' ineptitude are reflected in the pamphlets written in this period. Judging from the two pamphlets on Newfoundland published in the 1760s, the fishing admirals were not seen by everyone as essential to the island's government: both Griffith Williams' *Account of the Island of Newfoundland* and the anonymous *True Interest of Great-Britain* completely ignored the admirals and focused instead on the Royal Navy.<sup>132</sup> Dr. Gardner's unpublished essay on Newfoundland in 1784 repeated the familiar description of how the fishing admirals system worked but he noted that "this custom can be of no farther use now".<sup>133</sup> The only vestige of the system left functioning, according to Gardner, was the admirals' habit of extorting £30 to £40 for the use of ship's rooms. On the role of the admirals in allocating ship's rooms, he contended,

Whatever advantages this practice might have been to the fisheries in their infancy, most certainly it is a great discouragement to them at present, as it makes property precarious. This inconvenience may be easily remedied by the Governor's appointing three men in every harbour to regulate this matter, and see that no man is injured in his property; nor engross more fishing room than he can occupy.<sup>134</sup>

In an authoritative treatise prepared in 1786, Archibald Buchanan asserted that in theory the fishing admirals still had jurisdiction over disputes regarding landed property. Buchanan claimed that the admirals' authority had lapsed because they had long neglected to exercise their legal powers, leaving the governor and his junior officers to fill the void.<sup>135</sup>

In the 1780s, one last effort was made to make the position of fishing admiral an effective judicial office. This policy initiative stemmed from a suit brought in Exeter against Governor Richard Edwards for a decision he delivered in 1780 during a sitting of the governor's court. The details of the dispute were murky even to those involved in the case: it appears that a planter in financial trouble had brought an action against Governor Edwards to recover an allegedly unlawful fine levied by the governor's court. The suit was settled out of court but its effects were far-reaching, as Edwards' successors were unwilling to sit as judges for fear of being sued in England.<sup>136</sup> With the loss of the governor's court, other local courts had to fill the juridical gap and assume a greater caseload. According to Aaron Graham, the governor's civil secretary, the authority to hear disputes relating to ship's rooms was now given to the admirals:

All questions respecting the right and property of fishing rooms etc. have, since the beginning of Admiral Campbell's government in 1782, been tried by the fishing ad-

mirals according the Act of 10th and 11th William 3rd and their decisions have generally been acquiesced in. Before that time (for many years back) it was customary (tho' contrary to the Act of Parliament) for the Governor and the captain of the ships of war under the denomination of surrogates, to take cognizance of those causes in the first instance.<sup>137</sup>

As we shall see, the impact of this shift in policy can be observed in the surviving court records, which reveal a marked revival in the admirals' judicial activities in the 1780s.

Not surprisingly, this initiative was short-lived. The admirals' courts heard relatively few cases and they usually acted only after receiving orders from the governor or one of his junior officers. Captain Henry Nichols, commander of HMS *Echo*, which was stationed in St. John's harbour in the spring of 1784, reported: "I found the people here rather disposed to dispute the authority of the fishing admirals".<sup>138</sup> In 1786 a delegation of West Country merchants suggested that the admirals' courts would be more effective if they were allowed to appoint deputies to hold sessions when they were at sea, but the British government rejected this proposal.<sup>139</sup> In the wake of problems with the surrogate courts in the late 1780s, it became obvious that an overhaul of the island's legal system was needed. In 1789, Governor Mark Milbanke submitted a lengthy report in which he addressed the problem of what to do with the fishing admirals and King William's Act:

And here it is necessary for me to observe, that a very great alteration having taken place in the mode of carrying on the fishery since the passing of this Act, an alteration in the Act itself is become requisite. From the powers given hereby to the fishing admirals, it is presumed, that the fishery was then carried on with boats and that those admirals were always upon the spot, and easily applied to in cases of dispute about fishing room; but now it is otherwise. The fishery is in a great measure carried on with bankers, whose masters are the fishing admirals, and instead of being always upon the spot to settle differences and disputes, they are not to be met with above thrice in the season, and then for little more than twenty-four hours at a time, which is so necessarily taken up with their own, that they cannot possibly attend to the business of the public; therefore, unless the captains of the ships of war (which is not legally to be done as the Law now stands) will take upon themselves to decide in the first instance, the disputes must in general remain unsettled, to the great injury of the fishery, and encouragement of unlawful and arbitrary proceedings.<sup>140</sup>

Milbanke suggested that Parliament amend King William's Act to enlarge the naval officers' jurisdiction but the British government opted instead to pass new legislation.

The Judicature Act of 1791 created a new statutory framework for the island's legal system. It constituted a new court of civil jurisdiction and was limited to one year, during which John Reeves, the newly-appointed chief judge, would assess the

requirements for future reforms.<sup>141</sup> Naval officers began to withdraw from their customary position as sole surrogate judges — after 1791 civilians began to sit on the surrogate bench — but the governor and his junior officers still dominated local government. Reeves' first report recommended that the British government establish a legislative council in Newfoundland.<sup>142</sup> In his second report, however, he abandoned the concept of a council in favour of more pragmatic measures. After visiting the outports in 1792, he affirmed "I am convinced, from what I there saw, that there is less need of regulations than of persons to execute them; and that instead of making new laws, we should first find a new set of magistrates to execute the old ones".<sup>143</sup> In 1792 a second Judicature Act created a supreme court for both civil and criminal jurisdiction and entrenched legally the system of surrogate courts that had long operated customarily.<sup>144</sup> The Act made no mention of the fishing admirals and their jurisdiction was completely — and, one presumes, deliberately — omitted from the section delineating the organization of local courts.<sup>145</sup>

In the generation after 1792, local government continued to function basically as it had since the mid-eighteenth century. The Judicature Act was for one year only and had to be renewed annually until 1809, when the island's legal regime was made permanent.<sup>146</sup> Under this judicial system the fishing admirals reverted to the minor role they had played prior to the 1780s. When Aaron Thomas compiled his account of Newfoundland in 1794, he repeated the familiar description of the fishing admirals system, adopting essentially the same view as Gardner had espoused a decade earlier. Like Gardner, Thomas saw it as an obsolete institution which was no longer taken seriously as source of local justice. Thomas admitted that the admiral's position was in theory still important, especially if "he goes to sea a banking, he having command of all the vessels which are employ'd on the Grand Bank a fishing". "But this honor", he continued, "is perfectly nominal and the title Admiral is frequently derided and laughed at".<sup>147</sup> References to the fishing admirals continued to appear in nineteenth-century records. For example, as late as the administration of Admiral John Duckworth, governor from 1810 to 1812, naval officers embarking on coastal cruises were ordered to assist the local admirals in carrying out their duties.<sup>148</sup>

With the rise of an independent press and a political reform movement in the early 1820s, however, the Island's legal system came under increasing public criticism. Led by William Carson and Patrick Morris, reformers portrayed the hapless admirals as corrupt despots who represented everything that was wrong with Newfoundland's government.<sup>149</sup> In 1824 the reform movement won its first major victory: Parliament passed a comprehensive Judicature Act which, among other things, abolished the surrogate courts and provided for a charter of incorporation to make town by-laws.<sup>150</sup> Another statute passed the same year finally repealed King William's Act.<sup>151</sup> In 1825 a Royal Charter bestowed official colonial status, with a civil governor and an executive council.<sup>152</sup> As the system of naval government was

at last dismantled, the admirals faded into history, leaving behind few records of what they actually did during their long tenure under King William's Act.

### A SNAPSHOT OF THE ADMIRALS: *ANDREWS V. STONE*, 1787

One of the rare accounts of how the fishing admirals system functioned in practice appears in the court records for the district of Trinity in 1787. The minutes of *Andrews v. Stone*, which was heard on petition by a naval surrogate visiting Trinity harbour, offer a remarkably detailed description of how the admirals conducted themselves in the outports under their jurisdiction.<sup>153</sup> The case originated in a petition from Jonathan Andrews, an agent for the merchant house Kimber and Company, who claimed the rank of fishing admiral when the firm's brig *Flora* arrived in Perlican, in May 1787. Andrews' petition contained three allegations against Thomas Stone, a prominent merchant in Trinity. Stone had illegally seized a boat which Andrews had purchased from William Young, a planter in Perlican. Second, Stone had prevented Andrews from taking possession of a vacant fishing room on the public beach in Perlican, thereby contravening King William's Act. Lastly, Stone had used armed force in his efforts to keep Andrews from landing on the fishing room. The first complaint was dismissed, as Young testified under oath that he had previously entered into a binding agreement to build the boat for Stone, to whom he was heavily indebted. The court ruled that Stone had lawfully secured an attachment of the boat, which was then seized and publically valued against the outstanding debt.

The inquiry into the other two allegations provides a fascinating glimpse of how the fishing admiral system actually operated in the eighteenth century. When the court examined William Matthews, the master of the *Flora*, his testimony upheld Andrews' contention that he had taken possession of the ship's room in conformity with the provisions of King William's Act:

Q: On what day did you arrive at Perlican from Bristol?

A: On the 18th of May.

Q: Did you understand that any vessel, or person in behalf of any vessel, had been in that part before you?

A: No.

Q: Did you fix your claim to any part of the beach on the ships room when you arrived?

A: Yes.

Q: Was the part so claimed in the possession of any person at that time?

A: Not to my knowledge.

Q: Was there not a bow set up as a signal, or token of the room you claimed being already possessed?

A: There was a bow set up.

The court then examined Thomas Beckett, who was the agent for Stone in Perlican:

- Q: What time did Mr. Stone, or any persons for him, take possession of the room in dispute?
- A: I don't exactly know the day — It was between the 23rd and 26th of April.
- Q: Was it for the purpose of carrying on the fishery?
- A: Yes.
- Q: Did Mr. Jno. Andrews attempt to possess himself of the said room?
- A: One of his people took down the bow that had been set up by the master and a youngster of the *Joseph and Frances* Brigantine, who had come round from Trinity for that purpose, where she had arrived from Poole, and set up his own mark, which I thought myself justified in taking down.

The court ruled that the *Joseph and Frances* had acted properly by “observing the usual ceremony upon such occasions” and setting up a bow when they arrived in Perlican. Pakenham rejected Andrews’ claim to be the senior fishing admiral on the grounds that his brig was not the first English fishing ship to anchor in the harbour that year.

On the question of whether force had been used to prevent Andrews from taking possession of the ship’s room, the court heard testimony which further bolstered the respondent’s case. It examined Jonathan Norris, one of Stone’s servants working under the direction of Thomas Beckett at Perlican:

- Q: What directions had you from Mr. Beckett relative to the room?
- A: I was ordered, with others, to cut loose any vessel that Mr. Andrews should bring there with intent to land goods or impede my master’s business.
- Q: Do you know of any number of armed men that were kept on the room for the purpose of opposing Mr. Andrews?
- A: There were no armed men whatever for that, or any other purpose.
- Q: Were any threats made use of to intimidate or awe the said Mr. Andrews?
- A: Not to my knowledge.

After examining another of Stone’s servants, Captain Pakenham ruled that the charges contained in the petition were “groundless, vexatious, and ill-founded — tending to subvert that order and destroy that unanimity, so essential to the well-being of the fishery, and to introduce practices injurious to the property of the merchants”. In delivering this judgment, Pakenham made explicit reference to statutory law, pointing out that Stone had taken possession of the disputed room in accordance with “the full meaning of the Act of Parliament the 10th and 11th of King William the Third”.

In addition to affording the only known reference to the practice of using bows as markers for ship’s rooms, the case of *Andrews v. Stone* indicates that the fishing admiral system was functioning in at least one harbour according to King William’s Act. Not only did the court recognize and enforce the statute, but local plant-

ers and merchants appear to have accepted it as well. The impression from the court minutes is that the fishing admirals were not the all-powerful lords of the harbour, as envisaged by Douglass and other writers, nor were they the wild gangsters as depicted in traditional historiography; rather, they worked within a known framework of custom and statutory law, confining their activities largely to the regulation of ships' rooms. Equally important, *Andrews v. Stone* followed section fifteen of King William's Act, which authorized commanders of visiting warships to hear appeals against any decision made by the fishing admirals.<sup>154</sup> There is no evidence that a justice of the peace was involved in any way, nor is there any indication Captain Pakenham's authority was disputed or ignored. Yet although this case study provides an interesting snapshot of the admirals, we are left with the question of whether it represents a larger trend or an isolated incident. To assess the degree to which the events in 1787 were typical or unusual, we need to examine the broader patterns in the data from the archival records.

## ANALYZING THE ARCHIVAL EVIDENCE

The data reveal a number of salient patterns. The repeated complaints about the admirals' poor record-keeping are reflected in the archival evidence: no series of records of the fishing admirals' court has survived for study and it is unlikely that any separate minute book or journal was ever compiled. A survey of all of the relevant primary sources has turned up the records of only seven sittings of a formal fishing admirals' court (see Appendix B). The admirals sat alongside justices of the peace in the district court of sessions in four known instances and there are two examples of admirals acting as assistants to a surrogate court; yet this type of judicial activity was confined to Trinity during the 1750s and appears to have been an isolated practice. Evidence indicates that by the second half of the eighteenth century the admirals no longer seriously contested the legitimacy of the island's naval government. The sole extant example of an admiral challenging the civil magistracy occurred in 1758 in Trinity harbour, where a fishing admiral refused to assist a constable in serving an arrest warrant, but this was a relatively minor incident.<sup>155</sup> The admirals' level of participation in judicial administration appears to have been a fraction of the workload of the local magistracy. While the justices of the peace and the naval surrogates in each district heard dozens of criminal and civil cases every year, the admirals' total involvement in the legal system from the beginning of local court records in 1749 to the passage of the Judicature Act in 1792 averaged only about once a year for the entire island.

Table 1. The Fishing Admirals' Jurisdiction, 1749-92

|                         | Law of Real Property<br>(King William's Act) | Fishery Regulations<br>(King William's Act) | Law of Master<br>and Servant | Criminal<br>Law | Civil<br>Law | Total |
|-------------------------|----------------------------------------------|---------------------------------------------|------------------------------|-----------------|--------------|-------|
| Admirals' Proceedings   | 7                                            |                                             |                              |                 |              | 7     |
| District Proceedings    |                                              |                                             | 3                            | 1               |              | 4     |
| Surrogate's Proceedings | 1                                            |                                             | 1                            |                 |              | 2     |
| Orders                  | 7                                            | 6                                           | 4                            | 2               | 1            | 20    |
| Decrees                 | 8                                            |                                             |                              |                 |              | 8     |
| Appeals                 | 3                                            |                                             |                              |                 |              | 3     |
| Testimony               |                                              | 1                                           | 2                            |                 |              | 3     |
| Report                  | 1                                            |                                             | 1                            |                 |              | 2     |
| Total                   | 27                                           | 7                                           | 11                           | 3               | 1            |       |

Source: See Appendix B

The picture which emerges from the archival data is of the fishing admiral as an acquiescent and minor part of the island's legal system. Almost half of all the references to the admirals are orders sent to them by a governor, naval officer or justice of the peace; they themselves did not send any extant orders to any magistrate. In two instances during the 1750s admirals' courts appear to have acted independently but in every other case their proceedings were sanctioned by either a visiting naval surrogate or a justice of the peace. They brought no recorded cases to trial in the civil or criminal courts, nor did they order or carry out any corporal punishments. The traditional stereotype of the despotic admirals ruling with the cat-o'-nine-tails is simply not supported by the archival record: all of the known public whippings in Newfoundland were meted out on the orders of the naval governor, one of his junior officers or a justice of the peace.<sup>156</sup> The admirals' involvement in the criminal justice system was limited to three misdemeanor breaches of the peace. In the first case, the admiral of Trinity harbour sat alongside two justices of the peace in a court of session held in 1755 which ordered the house owned by a man convicted by a jury of being a public nuisance to be hauled down and destroyed; this is the only known instance of a fishing admiral participating in the sentencing of an offender.<sup>157</sup> In the other two cases, the governor ordered a fishing admiral to admonish a man and a woman accused of being disorderly persons.<sup>158</sup>

The data indicate that the admirals' jurisdiction was generally confined to the authority conveyed by King William's Act. All of the extant sessions of the admiral's court dealt exclusively with the law of real property as it related to the regulation of waterfront properties (usually referred to as ship's rooms or fishing rooms) and the adjacent houses, stores, stages, flakes, wharves and other buildings used in

the cod fishery. King William's Act clearly gave the admirals legal cognizance in such cases — Governor Milbanke viewed this as the only effective power actually conferred by the Act — and this statutory authority seems to have been respected in both St. John's and the outports.<sup>159</sup> The admirals' other two areas of activity concerned the conduct of the fishery (e.g. ensuring the proper use of bait and nets, as well as the methods for drying and curing codfish) and disputes between masters and fishing servants (e.g. cases of breach of contract and petitions for outstanding wages). Under King William's Act, the admirals were required, "in order to preserve peace and good government amongst the seamen and fishermen", to enforce the rules and orders contained in the Act.<sup>160</sup> These rules and orders cited a range of specific issues — the use of seines, cutting of firewood, theft of fishing gear, observance of the Sabbath, etc. — and the admirals had a well established role in helping the naval government to regulate the fishery. As late as 1792, Governor Richard King issued a proclamation which required the fishing admirals, "strictly to enjoin the masters of the fishing ships, the byeboat keepers and inhabitants, to take the greatest care in curing their fish with good salt, and with a proper and sufficient quantity, and in preparing, husbanding, and ordering the same".<sup>161</sup> Reflecting their status as servants of the crown, the admirals were obliged to report to Governor King the names of those who failed to comply with the proclamation. In one known instance the admirals heard a civil case beyond their statutory authority — in 1770 the admiral of Burin was ordered to settle a dispute over a bill of exchange payable to a Boston merchant — and this exceptional order was probably issued because there was no resident magistrate in Burin.<sup>162</sup>

The admirals had limited involvement with the law of master and servant. There is only one extant case of an admiral ever becoming involved in the administration of the range of penal sanctions — i.e. fines, whippings and banishment — used to enforce the local law of master and servant. In 1755 William Whitwood, the admiral of Trinity harbour, sat alongside the two justices of the peace in a court which authorized Benjamin Lester, a prominent merchant, to withhold fifty shillings from the wages due to Henry Smith, one of his servants, on the grounds that Smith had failed to perform the work for which he had been contracted.<sup>163</sup> The admirals acted as judges in three other master-servant cases, all of which were wage disputes. In 1749, Governor Rodney ordered the admirals to hear a complaint that a servant had assaulted his master but this seems to have been an isolated incident: the other orders relating to master-servant cases all dealt with wage disputes.<sup>164</sup> When the local law of master and servant was codified in Palliser's Act of 1775, jurisdiction over master-servant cases was given to the justices of the peace and the vice-admiralty court; no mention was made of the admirals.<sup>165</sup> Fishing admirals testified in the trials of two servants: in 1784, about the cost of a servant's passage from Ireland and about a servants' unruly conduct the following year and, in 1788, they submitted to the Ferryland surrogate court a report on a servant's qualifications as a fisherman.<sup>166</sup> Like the island's fish merchants, who were often reluctant to

attend a court session unless they had a case pending, the admirals appear to have been very rarely involved in the dozens of master-servant cases which local courts faced every autumn.

## THE FISHING ADMIRALS' COURT

The seven surviving sessions of the fishing admirals' court break down into two distinct periods: three during the early 1750s and four during the mid 1780s. The proceedings of the 1750s all involved property disputes in outports along the Southern Shore. The admirals appear to have acted independently, most likely after being petitioned *viva voce* by one of the parties, and did not proceed via judicial writ. None of the court actions were initiated by a governor, justice of the peace or naval officer. The first case, heard in 1752, concerned a plantation in Fermeuse leased to a tenant by the attorney for a landlord who had recently died. The property passed to the landlord's daughters, who refused to honour the lease, despite the fact that the tenant had fulfilled the conditions of the covenant and improved the property considerably. Following the standard rules of equity, the bench of three local fishing admirals upheld the covenant, ordering that the tenant continue to hold and enjoy the property in conformity with the terms of the lease.<sup>167</sup> The second case, which occurred at Ferryland in 1752, also involved a dispute over the property of a deceased planter. The property was claimed by the deceased's sister and another man who asserted that it had been willed to him; since the plantation had been leased, the court had to decide who should receive the rent. Acting as a probate court, a bench of three fishing admirals heard the testimony of fourteen men who seem to have served as a type of jury. Upon making a "strict inquiry of the inhabitants and principal persons", the court determined that because the landlord had left neither a will nor any outstanding debts or obligations, his sister should inherit the property and collect the annual rent.<sup>168</sup> The final case was a straightforward ruling on the boundaries and ownership of a piece of waterfront property in Fermeuse. In 1754, two fishing admirals issued a certificate (countersigned by two witnesses), which stated the dimensions of the property and affirmed that the land had not been previously occupied. Though this decree was later confirmed by a visiting naval surrogate and entered into the St. John's records, it was similar to the previous proceedings in that the fishing admirals clearly exercised the primary jurisdiction.<sup>169</sup>

By contrast, two of the admirals' courts held in the 1780s acted on the orders of the naval governor at St. John's. The first case began in 1784, when the commander of the sloop-of-war *Echo* directed the fishing admirals to convene a court to look into possible encroachments on ships' rooms in St. John's harbour. They were asked to investigate two properties — a storehouse and wharf erected for the use of the garrison and a house built by Alexander McClure — and to determine whether they were built on tracts of the waterfront which had been used as ships' rooms re-

served for the public use of fishing ships.<sup>170</sup> A bench of two fishing admirals held a court which questioned five witnesses about the circumstances of the property and the history of its use in the fishery. Following standard English jurisprudence, the court examined the local inhabitants with the longest memories of how the property had been used (see Appendix C).<sup>171</sup> After considering this testimony, the admirals ruled that two buildings had indeed been erected on ships' rooms, which were supposed to be common property. This judgement implicitly charged the two proprietors with violating King William's Act, but the admirals restricted their judgement to the basic facts, offering no comment on the attendant questions of law.<sup>172</sup> It was the naval governor and his officers who undertook the difficult task of interpreting the law and issuing the necessary orders. Later in the year, the governor instructed the fishing admirals to hold a second court to investigate whether a building obstructed another tract of public property.<sup>173</sup> This time the admirals ruled that the building in question was a public nuisance and should be removed but they issued no orders and merely passed on their report to the governor.<sup>174</sup> Part of a larger struggle to reopen access to a local waterway, this case involved a number of different complainants and petitioners, none of whom solicited the legal services of the fishing admirals. The admirals had become involved simply because the governor had required them to do so.

The third fishing admirals' court convened in the 1780s seems to have been the closest the admirals came to fulfilling their duties as prescribed by King William's Act. In 1786, the admirals of St. John's harbour assembled a court in response to a petition from the firm of Thomas and Stokes against John Noble, a competing merchant who had built a fishing stage and storehouses adjacent to the company's waterfront premises. The petition claimed that the new structure encroached on the land between the two properties which had been used as a public ships' room: this was not only detrimental to the public in general but also forced Thomas and Stokes to build a new wharf to maintain access to the harbour. Upon receiving the petition, William Orchard, the senior admiral in St. John's harbour, decided to consult with the "gentlemen merchants, boatkeepers and others, resident in this place". Orchard put to them two questions: Was the waterfront property in question actually a public ship's room? If so, what portion of it was Noble required to leave vacant for common use?<sup>175</sup>

The testimony of thirteen men was entered into the court minutes. While one witness reported that he had no knowledge relative to the two questions of fact, the twelve others all testified that, for as long as they could recollect, the cove lying between the property of the petitioner and respondent had been used as a common area for landing, washing and drying codfish — but that no one knew the exact boundaries of this common area. After hearing this testimony, the court was read an affidavit given by Thomas Buffett, whose statement had been taken by a magistrate two days earlier. Buffett stated that over thirty years ago a stage and flakes had been erected on the property now occupied by Noble, thereby casting doubt on what por-

tion of the property, if any, actually encroached on common land. The court's decision reflected both the witnesses' testimony and Buffett's affidavit. Finding that the exact boundaries of the public ship's room could not be determined, the admirals ruled against the petition and ordered that no alterations be made to Noble's property. However, in recognition of the need to preserve common access to the waterfront, they also ordered that the cove to the east of Noble's premises be kept open at least 24 feet wide to serve as a public ship's room. This balanced judgment was accepted by both parties — no appeals were filed — and the fishing admirals sent Governor Elliot a final report on the case.<sup>176</sup>

The last known sitting of a fishing admirals' court, held in Ferryland in 1787, was a throwback to the earlier proceedings of the 1750s. Like the admirals' court in Fermeuse in 1754, this case involved a straightforward ruling on the boundaries and occupancy of a fishing room. As the entry in the district minute book makes clear, the admirals were careful to limit their purview to the facts:

These certify whom it may concern that we the Fishing Admirals of the harbour of Ferryland have made strict enquiry of the antient [ancient] inhabitants of Ferryland concerning a vacant an[d] unoccupied spot of ground which Francis Free jun. have built a fish flake, house and stage and sunk a wharf and continues to build such as flakes and other conveniences as is needful for the use of the fishery in the said harbour of Ferryland — situate on the NW part of the said Harbour at the foot of the look-out hill known by the name of Gays Hill — its length along shore NE b N - S W b S - four hundred thirty five feet bounded by the common foot path on the NW which the said antient inhabitants have made known to us that the said vacant and unoccupied spot until this year have not been occupied these thirty years or more the last occupier we were informed was James Murphy boatkeeper deceased grandfather of the said Francis Free jun. the said Francis Free jun have kept a shallop this fishing season and cured fish on the said premises and intend to carry on the fishery for the full extent next year.<sup>177</sup>

This ruling was signed by the admiral, Gregory Hawson, vice admiral, Thomas Anquetil, and rear admiral, Richard Teede; it was also counter-signed by the local justice of the peace, Robert Carter. As in the earlier courts held by other admirals, Hawson did not make a summary judgment and took pains to consult the eldest townspeople about the boundaries and use of the property. His court, like the others we have examined, bore no resemblance to the drunken travesty of justice described by Judge Prowse.

## CONCLUSION

From the passage of King William's Act in 1699 to its repeal in 1824, the position of fishing admiral went through three main phases of development. During the first phase, from 1699 to the establishment of a governorship and magistracy in 1729, we know relatively little about the admirals other than the repeated complaints of their indolence which appear in colonial correspondence. George Larkin's report of 1701 established the paradigm that successive officials followed for generations: the admirals were corrupt, incompetent and negligent. Judging from the extant archival sources, the admirals seem to have been relatively inactive throughout this period; there is no evidence that they held any formal courts or kept any journals. King William's Act appears to have been problematic from its inception, prompting efforts to augment the admirals' jurisdiction with some type of local magistracy. When the British government neglected to enact reforms, the Royal Navy attempted to fill the need for local government, as naval officers began to assume many of the legal responsibilities accorded to the fishing admirals.

The second phase, which ran from 1729 to the mid-1730s, was marked by a struggle for authority in Newfoundland. When Governor Osborne started to appoint local justices of the peace and organize the island into judicial districts in 1729, he touched off a bitter conflict with the admirals over the question of who had the power to govern the outports during the summer fishery. While the admirals bullied magistrates and tried to undermine their authority in local communities, in England the West Country merchants attacked the legitimacy of the Island's legal system. Arguing that their statutory authority under King William's Act was superior to the governor's commission issued by writ of the Privy Council, the admirals forced the British government onto the defensive. Attempts to clarify the overlapping jurisdictions by separating cognisance in criminal law (given to the magistrates by their commissions of the peace) from the power to hear civil cases relating to the fishery (held by the admirals under King William's Act) were not initially successful; the admirals rejected the magistrates' right to hold courts during the fishing season. As had happened a generation earlier, the Royal Navy moved to fill the void created by the lack of effective government. Naval governors expanded their authority and successfully quelled the admirals' campaign to supplant the civil magistracy but this did not produce any new legislation and King William's Act remained in force. As the legal controversies subsided in the mid-1730s, the issue of reforming the Island's judicial system sank into political obscurity. By the 1740s, London was content to maintain the status quo, clearing the way for the ascendancy of naval government.

The final phase in the history of the fishing admirals began with Governor Rodney's reforms in 1749 and continued to the repeal of King William's Act in 1824. This was the period when the Royal Navy dominated Newfoundland: the fishing admirals were no longer an independent force and they never again

mounted a serious challenge to the legal system. With the beginning of local court records in 1749, the admirals' judicial activities were for the first time recorded in minute books which provide far more detail than the official correspondence collected in London. Evidence from the archival data indicates that the admirals held few courts and generally limited their jurisdiction to the parameters of King William's Act. An attempt to increase their caseload in the 1780s failed to meet local needs, in part because the admirals were reputedly reluctant to hold courts but also because their purview was confined primarily to cases dealing with ship's rooms. When the British government finally overhauled the island's judiciary in 1791-92, the Judicature Acts completely disregarded the admirals. As the admirals' status continued to diminish in the nineteenth century, they became a favoured target of political reformers who portrayed them as petty tyrants. By the time King William's Act was finally repealed in 1824, the admiral had already begun to fade into local folklore.

The legacy of the fishing admirals raises a number of important questions. The reason they left so few records may have been laziness or incompetence but there is remarkably little hard evidence that the admirals were in fact the corrupt despots described by Judge Prowse. What we do know about the admirals suggests that they were generally serious and diligent when they became involved in local cases. The fact that most of the admirals signed their own names to the documents which have survived for study also undermines the presumption that they were overwhelmingly illiterate. In the court minutes at Fermeuse in 1752, for example, the admirals noted that they had conducted their deliberations while "having the Act of Parliament now before us".<sup>178</sup> To be sure, the admirals were likely too busy during most of the summer fishery to hold regular courts but the bulk of outstanding cases settled by magistrates throughout this period were heard in the early autumn, after merchant accounts were settled and cod shipments were made. A more plausible explanation for the admirals' relative inactivity is that their restricted statutory authority meant that they were unable to hear the vast majority of cases which arose each year. As we have seen, King William's Act empowered the admirals only to regulate the conduct of the cod fishery and the allocation of ship's rooms; it did not authorize them to hear other civil or criminal cases. The admirals also could not legally convene courts to settle most disputes between masters and servants, which comprised almost half of the entire caseload in the outport districts.<sup>179</sup> In short, because the admirals generally adhered to King William's Act, their judicial scope was heavily circumscribed. The role of the naval governor and his junior officers was also limited in statutory law but they won the struggle for power because of their superior material resources, political force and willingness to take local initiatives. While the Royal Navy became entrenched as the dominant source of customary authority, the admirals saw their power steadily erode after the 1730s.

The admirals' fortunes reflected the changing place of King William's Act in the Island's legal regime. Parliament had designed the Act as a means to meet the

needs of the English migratory fishery and to enforce the imperial policy that Newfoundland should be a seasonal fishing station. As settlement expanded and the fishery grew in complexity, the demand for local justice extended well beyond what Parliament had envisaged in 1699. This is not to suggest that King William's Act was never enforced; as Patrick O'Flaherty asserts, it was repeatedly invoked throughout the eighteenth century.<sup>180</sup> But the existence of the Act did not prevent other sources of law from emerging to meet the growing needs of the local population. From the perspective of statutory law and official imperial policy, Newfoundland appears to have been legally static: no new legislation was passed until "Palliser's Act" of 1775. From the viewpoint of customary law and local authority, however, the picture is quite different: by 1750 the island had an effective legal system which included a naval governor, who held a court in St. John's; civil magistrates, who held regular courts of session; a Court of Oyer and Terminer, which heard felonies every autumn; and a network of surrogate judges, who convened courts in the outport districts each year. As the island's naval government filled the vacuum left by King William's Act, the fishing admirals became increasingly irrelevant. They had neither the legal authority nor the material power to impose their will on local communities. Like King William's Act itself, until 1824 the admirals' jurisdiction remained continually in force but was never consistently enforced.<sup>181</sup>

King William's Act influenced but did not determine the Island's legal development. The decline of the fishing admirals was due in large measure to the strength of local custom and common law and the concomitant weakness of King William's Act. With the limited powers accorded to the fishing admirals, the Act did not provide meaningful guidance for the resolution of the wide array of local disputes which lay beyond its purview. Attempts to fully comply with it never worked, because it was inadequate, but this does not mean that settlers and merchants were denied law. Statute law was never the dominant means through which state power was organized in eighteenth-century Newfoundland. The absence of the panoply of English law did not necessarily produce an enfeebled state; customary arrangements could function as effectively as the array of formal institutions established in many British colonies. Newfoundland was far from unique in this respect: all British territories had informal networks that played key political roles and the military often became involved in the administration of law.<sup>182</sup> Britain's policy toward the island was not wholly neglectful, nor was it inherently repressive or particularly enlightened. Rather, it followed the path of least resistance until forced in 1791-92 to legislate the minimum changes required for a functional judiciary. The Judicature Act of 1792 tailored law to the available legal resources and it codified local customs which had prevailed for generations. Given the admirals' minor role in the actual administration of justice prior to 1792, it is hardly surprising that they were left out of the new legislation.

Finally, the fate of the fishing admirals bears on the larger problem of historical certainty. How do we know that the admirals did not take bribes or order summary

whippings? The answer, of course, is that we cannot say with absolute certainty that they never acted like the admirals described by Judge Prowse.<sup>183</sup> But historians labour under the burden of positive proof: we cannot claim that the admirals sold justice from an inverted butter firkin unless we actually have evidence that they did so.<sup>184</sup> Some of them may well have worn blue flushing jackets and trousers, besmeared with pitch, tar and fish slime — one of them might even have fallen over drunk during a court session — but we cannot simply take Prowse's word for it. We are left to build our arguments as best we can, using the extant archival sources, and this means that our conclusions must be limited to what most likely happened in the majority of cases. In other words, my account of the admirals is based on probability, not certainty. Certainty is the domain of myth and legend, which will no doubt continue to depict the admirals as the villains in the saga of early Newfoundland.<sup>185</sup> Yet, judging from the historical evidence, the admirals were not so much the villains as the losers. In the struggle for power in the eighteenth century, they lost out to the naval officers, upon whose reports John Reeves and his successors relied. In the nineteenth century, the naval governors would in turn fall by the wayside as the reformers created their own version of the island's history — but that is another story.

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## APPENDIX A. REPORT ON THE LEGAL POWERS OF THE FISHING ADMIRALS, 1731

Copy of a memorandum from Francis Fane to the Board of Trade, 24 March 1731, PRO, CO 194/9, 140. A printed extract of this report appears in CSPC, vol. 38, 76. Fane's cogent report illustrates that contemporaries were well aware of the limited jurisdiction conferred by King William's Act, which was seen as a flawed statute:

I have considered the said Act and commissions and as to the first querie whether their powers given to the fishing admirals by the said act do in any respect interfere with those given to the civil magistrates by their commissions — I am humbly of opinion they do not because their powers are entirely distinct. The Fishing Admirals have no powers but what arise from the Act of the 10th and 11th of K. William III, and those confined to the fishing — and the Justices can no more interfere with them in regard to such powers than the fishing Admirals can interfere with the justices in the powers given them by their commission

2nd — Whether the fishing admirals have any power to send warrants to the constables to commit to prison or to the stocks or whether the said fishing admirals are subordinate to the civil magistrate?

I apprehend that the fishing admirals have no power to send warrants to the constables or commit to prison or the stocks: They are indeed by the Act of King William directed to see that law put in execution but there is no power given them by that law to levy penalties or inflict punishments and therefore I am inclined to think any proceeding of that sort could not be justified: The want of it is certainly a defect in the statute of King William for it is impossible to put that law effectually in execution unless the persons in authority had such powers. I think the fishing admirals are subordinate to the justices in everything but what relates to their fishing authority.

3rd — Whether the justices of the peace in Newfoundland may act by virtue of the statute laws of this Kingdom?

I apprehend that all the statute laws made here previous to his Majesty's subjects settling in Newfoundland are in force there: it being a settlement in an infidel country: But as to the laws passed here subsequent to the settlement I take it they will not extend to this country unless it is particularly mentioned.

4th — Whether the Governor of Newfoundland may act as Justice of the Peace and sit at their Quarter Sessions or other meetings as such?

I do not think the Governor himself can act as a Justice of the Peace for I observe the power from his Majesty is only to appoint fit persons for the administration of Justice.

## APPENDIX B. RECORDS OF THE FISHING ADMIRALS

There is no archival cataloguing for the proceedings of the fishing admirals' courts. References to the fishing admirals are dispersed throughout the Colonial Secretary's Letterbook [GN 2/1/A], housed at the Provincial Archives of Newfoundland and Labrador [PANL]. These materials are not part of any minute book or autonomous series of records; rather, they have survived for study simply because they were copied into the Letterbook. Evidence indicates that the fishing admirals rarely kept any written records and it is highly doubtful that any separate minute book or journal was ever created. Sampling was not employed: the following records comprise all of the known surviving minutes of the fishing admirals' court copied into the Colonial Secretary's Letterbook from the beginning of this series of records in 1749 to the end of the eighteenth century.

References to the admirals also appear in the bound minute books for a number of the district courts. These records are housed at PANL and in the Rare Book Cabinet of the Newfoundland Collection housed at the Provincial Resource Library [PRL]. Research has revealed evidence relating to the admirals in Trinity [PANL, GN 5/4/B/1]; Ferryland [PANL, GN/5/4/C/1 and PRL 340.9/N45 VT]; Placentia [PANL, GN 5/4/C/1]; and Trepassy [PRL 340.9/N45 VT]. The entries listed below constitute all of the known references to the admirals in the outport districts under the pre-1792 legal system: these data are by no means complete and probably omit some references which I may have inadvertently missed during my research, however, they undoubtedly cover the vast majority of recorded cases in which the admirals participated. The material listed below consists of a range of judicial actions which have been broken down into eight categories:

*Admirals' Proceedings:* Proceedings of a fishing admirals' court.

*District Proceedings:* Proceedings of a session of a district court at which a fishing admiral heard a case alongside a justice of the peace.

*Surrogate's Proceedings:* Proceedings of a session of a surrogate court at which a fishing admiral assisted a naval officer presiding over a case.

*Order:* Orders and warrants sent to the fishing admirals by the governor or one of his surrogates.

*Appeal:* Appeal made against a judgement made by a fishing admiral.

*Decree:* Decree made by a governor, usually in response to an appeal, which bore directly on a fishing admiral's judgment.

*Testimony:* Testimony of a fishing admiral before a district court.

*Report:* Report of a fishing admiral upon request from a naval or civil magistrate.

REFERENCES IN THE COLONIAL SECRETARY'S LETTERBOOK

| <i>Archival Source</i> | <i>Volume</i> | <i>Page</i> | <i>Year</i> | <i>Type of Judicial Action</i> |
|------------------------|---------------|-------------|-------------|--------------------------------|
| PANL, GN 2/1/A         | 1             | 76          | 1749        | Order                          |
|                        | 1             | 157         | 1750        | Decree and Order               |
|                        | 1             | 90-93       | 1749        | Decree (copy of 1701 doc.)     |
|                        | 1             | 93          | 1750        | Appeal and Order               |
|                        | 1             | 94          | 1750        | Appeal and Decree              |
|                        | 1             | 349-50      | 1752        | Admirals' Proceedings          |
|                        | 2             | 116         | 1754        | Admirals' Proceedings          |
|                        | 2             | 116         | 1754        | Decree                         |
|                        | 2             | 121         | 1754        | Admirals' Proceedings          |
|                        | 3             | 234         | 1764        | Order                          |
|                        | 3             | 289         | 1765        | Order                          |
|                        | 3             | 289         | 1765        | Order                          |
|                        | 5             | 4           | 1771        | Order                          |
|                        | 5             | 18          | 1771        | Order                          |
|                        | 6             | 96          | 1775        | Order                          |
|                        | 6             | 97-98       | 1775        | Appeal                         |
|                        | 6             | 98          | 1775        | Decree                         |
|                        | 6             | 123         | 1776        | Order                          |
|                        | 10            | 13          | 1784        | Order                          |
|                        | 10            | 14-18       | 1784        | Admirals' Proceedings          |
|                        | 10            | 36          | 1782        | Order                          |
|                        | 10            | 65-66       | 1784        | Decree                         |
|                        | 10            | 67-69       | 1784        | Order                          |
|                        | 10            | 69-74       | 1784        | Admirals' Proceedings          |
|                        | 10            | 122-28      | 1784        | Decree                         |
|                        | 10            | 150         | 1785        | Order                          |
|                        | 10            | 219-23      | 1785        | Decree                         |
|                        | 11            | 106-11      | 1786        | Admirals' Proceedings          |
|                        | 12            | 139         | 1792        | Order                          |

## REFERENCES IN THE DISTRICT MINUTE BOOKS

| <i>Archival Source</i>  | <i>District</i> | <i>Date</i> | <i>Type of Judicial Action</i> |
|-------------------------|-----------------|-------------|--------------------------------|
| PANL, GN 5/4/B/1, box 1 | Trinity         | 3 Oct 1755  | District Proceedings           |
|                         | Trinity         | 2 Oct 1755  | District Proceedings           |
|                         | Trinity         | 2 Oct 1755  | District Proceedings           |
|                         | Trinity         | 2 Oct 1755  | District Proceedings           |
|                         | Trinity         | 16 Aug 1756 | Order                          |
|                         | Trinity         | 3 Oct 1757  | Order                          |
|                         | Trinity         | 29 Sep 1758 | Order                          |
|                         | Trinity         | 14 Sep 1759 | Surrogate's Proceedings        |
|                         | Trinity         | 14 Sep 1759 | Surrogate's Proceedings        |
| PANL, GN 5/4/C/1        | Placentia       | 8 Sep 1769  | Testimony                      |
|                         | Placentia       | 26 Sep 1770 | Order                          |
|                         | Placentia       | 3 Jan 1784  | Report                         |
| PANL, GN 5/4/C/1        | Ferryland       | 10 Sep 1787 | Admirals' Proceedings          |
|                         | Ferryland       | 21 Oct 1788 | Report                         |
| PRL 340.9/N45 VT        | Ferryland       | 25 Aug 1784 | Testimony                      |
|                         | Ferryland       | 2 Aug 1785  | Testimony                      |
| PRL 340.9/N45 VT        | Trepassey       | 7 July 1789 | Order                          |

APPENDIX C. TRANSCRIPT OF A FISHING ADMIRALS' COURT, 1784

This transcript of a fishing admiral's court is a complete copy of the minutes as they appear in the Colonial Secretary Letterbook, housed at the Provincial Archives of Newfoundland and Labrador. Spelling and punctuation have not been modernized. The archival reference is: PANL, GN 2/1/A, vol. 10, 14-18.

At a Fishing Admirals Court held at the Court Hall in Saint Johns Newfoundland on Wednesday the 21st day of April. Present Mr. Richard Cullin, Fishing Admiral, Mr. William Whiteway, Rear Fishing Admiral. Mr. Samuel Justham being interrogated upon oath answers to the following questions — Quere (1)

Do you know whether the cove or ground wherein the Kings Wharf and store were erected was ships fishing room or not and whether it was ever made use of by fishing ships.

Quere (2)

Do you know whether the ground on which Mr. McClure built a house now in the possession of Mr. Warrant, was ships fishing ground or not.

Mr. Samuel Justham answers as follows to Quere (2)

I have been here about seven and thirty years, and it always appeared to me to be ships room, and about five or six and thirty years ago it was proved to be ships fishing room by a tryal in this Court and either Mr. Turmin or Mr. Pike who was then agent for Mr. Noble made use of it as fishing room.

Answer to Quere (1)

It is my opinion it was ships room and cove and I always considered it as such. [signed Samuel Justham]

Mr. Andrew Barnes being interrogated upon oath, answers as follows to the before mentioned queres. Answer to Quere (1)

I have been here about forty years and always looked upon it to be ships Fishing Room, and have seen two vessels washing out their fish in the cove at one time, and have seen water horses in part at the ground wherein the other was erected.

Answer to Quere (2)

I was a servant on that room and our barrow path was where the house now stands, and I always considered it as Ships Fishing Room [signed Andrew Barnes]

Mr. John Marshall being interrogated upon oath answers as follows to the beforementioned queres — Answer to Quere (1)

I was born here and am sixty three years old, and always considered it to be ships fishing room, and have frequently seen it made use of as such.

Answer to Quere (2)

I know nothing of Mr. McClures house, whether it was ever made use of as ships fishing room or not. [marked by John Marshall]

William Penny being interrogated upon oath answers as follows to the beforementioned queres. Answer to Quere (1)

I have been here twenty two years and always considered it to be ships fishing room and have seen two bankers washing and making fish on it at one time particularly on part of the ground whereon the store and wharf stands.

Answer to Quere (2)

I have not. [signed William Penny]

Mr. Barnard Nurse being interrogated upon oath answers as follows to the before mentioned queres. Answer to Quere (1)

I have been sixty years here and have known it to be called the Admirals Cove and have seen it made use of as ships fishing room, and have seen two [vessels] in the cove at one time and people making fish in them.

Answer to Quere (2)

I know not but have heard it was ships fishing room [marked by Bernard Nurse].

[break in the proceedings]

At a Fishing Admirals Court held at the Court Hall at Saint Johns this 21st April 1784. Present Mr. Richard Cullin, Admiral, Mr. William Whiteway, Rear Admiral, Mr. James Rich, Vice Admiral being absent, not able to attend as it appears from Doctor Diggins Certificate. Having maturely and deliberately weighed and considered the evidences which as appeared before us this day, relative to encroachments made on fishing ships rooms, We are unanimously of opinion that the ground and bar whereon Colonel Pringle built a store and runs out a wharf in the fall of 1782 were erected on fishing ships room and the cove thereunto belonging. We are unanimously of opinion that the house built by and late in the occupation of Mr. Alexander McClure is also erected on fishing ships rooms. [Signed by Richard Cullin and Wlm Whiteway.]

## Notes

<sup>1</sup>D. W. Prowse, *A History of Newfoundland from the English, Colonial and Foreign Records* (London, 1895), 226. On Prowse's influence, see George Story, "D.W. Prowse and Nineteenth-century Colonial Historiography", in Shannon Ryan, ed., *Newfoundland History 1986: Proceedings of the First Newfoundland Historical Society Conference* (St. John's, 1986), 34-45; Jerry Bannister, "Whigs and Nationalists: The Legacy of Judge Prowse's *History of Newfoundland*", *Acadiensis* 32 (1) (2002), 84-109.

<sup>2</sup>The passage, which Prowse copied practically verbatim, appears in Patrick Morris, *Arguments to Prove the Necessity of Granting to Newfoundland a Constitutional Government* (London, 1828), 17. In an earlier pamphlet, Morris, who quoted approvingly from both Anspach and Reeves, had condemned both the fishing admirals and the naval governors as the evil twins of Newfoundland history: "The Administration of the Admirals-Governors was of little benefit to the country. A Comparison with the Fishing Admirals may make a shade or two in their favour; but the historian of Newfoundland must rank them together: the principles upon which they acted were precisely the same — a pure, unqualified, and unmitigated despotism". See Patrick Morris, *Remarks on the State of Society, Religion, Morals and Education at Newfoundland* (London, 1827), 10. On the island's reform movement and Morris's place within it, see Jerry Bannister, "The Campaign for Representative Government in Newfoundland", *Journal of the Canadian Historical Association* new series 5 (1994), 19-40.

<sup>3</sup>Although Anspach had served as a justice of the peace and a surrogate judge from 1802 to 1812, his description of judicial administration drew heavily upon local folklore. Published in 1819, his account is the likely origin of the portrait of the fishing admirals, though Anspach included the justices of the peace in his indictment: "It was said of the Fishing Admirals, and of the Justices of the Peace in the out-harbours, that their decisions were uniformly characterized by the grossest partiality and injustice...and as to the resident Justices, a quarter-cask of Lisbon or Madeira, a present of some choice spirits, nay, a barrel of apples, a few bottles of West-Indian pickles...were the usual grounds of the decisions of those administrators of Justice". See Lewis Amadeus Anspach, *A History of the Island of Newfoundland* (London, 1819), 177.

<sup>4</sup>John Reeves, *History of the Government of the Island of Newfoundland* (1793, rep. New York, 1967), 149-154. Unlike Patrick Morris, Reeves was careful to separate the fishing admirals from the naval officers who served as surrogate judges in Newfoundland: whereas the former were portrayed as habitually corrupt and incompetent, the latter were depicted as fair and honourable. The influence of Reeves' history is discussed in Patrick O'Flaherty, *The Rock Observed: Studies in the Literature of Newfoundland* (Toronto, 1979), ch. 4. For a recent attempt to rehabilitate Reeves' reputation as a historian, see Mark Warren Bailey, "John Reeves, Esq. Newfoundland's First Chief Justice: English Law and Politics in the Eighteenth Century", *Newfoundland Studies* 14 (1) (1998), 28-49.

<sup>5</sup>Prowse's caricature has most recently appeared in Kevin Major's monograph. See Kevin Major *As Near to Heaven by Sea: A History of Newfoundland and Labrador* (London, 2001), 150-151.

<sup>6</sup>Leslie Harris, *Newfoundland and Labrador: A Brief History* (Toronto, 1968), esp. 47. Paraphrasing Judge Prowse, Harris claimed that the "Fishing Admirals could usually be bribed with money, food, or a glass of rum. They had the power to punish men as harshly as

they pleased". Like thousands of other Newfoundlanders, I was assigned this textbook in elementary school, and I can still vividly recall my history teacher ranting against the tyrannical fishing admirals.

<sup>7</sup>Keith Matthews, "Historical Fence Building: A Critique of the Historiography of Newfoundland" (1978), reprinted in this volume; "A History of the West of England-Newfoundland Fishery". (D. Phil. thesis, Oxford University, 1968); *Lectures on the History of Newfoundland, 1500-1830* (St. John's, 1988), esp. 90-99. The retarded colonization school of thought reached its zenith with A.H. McLintock, *The Establishment of Constitutional Government in Newfoundland, 1783-1832: A Study of Retarded Colonisation* (London, 1941). For comprehensive reviews of the historiography, see Olaf Uwe Janzen, "Newfoundland and the International Fishery", in M. Brook Taylor, ed., *Canadian History: A Reader's Guide, Volume One: Beginnings to Confederation* (Toronto, 1994), 280-324; Peter E. Pope, "Comparisons: Atlantic Canada", in Daniel Vickers, ed., *A Companion to Colonial America* (Malden MA and Oxford, 2003), 489-507.

<sup>8</sup>C. Grant Head, *Eighteenth Century Newfoundland: A Geographer's Perspective* (Toronto, 1976), esp. 38 and 146; W. Gordon Handcock, *Soe longe as there comes noe women: Origins of English Settlement in Newfoundland* (St. John's, 1989); Sean Cadigan, *Hope and Deception in Conception Bay: Merchant-Settler Relations in Newfoundland, 1785-1855* (Toronto, 1995), esp. 28 and 31.

<sup>9</sup>Christopher English, "Newfoundland's Early Laws and Legal Institutions: From Fishing Admirals to the Supreme Court of Judicature in 1791-92", *Manitoba Law Journal* 32 (1996), 57-78; Patrick O'Flaherty, *Old Newfoundland: A History to 1843* (St. John's, 1999), esp. chs. 4-6.

<sup>10</sup>See, for example, Mark Dwyer, "Justice's Fishing Admirals", *The Newfoundland Herald* 56 (3) (20 January 2001), 46-47. Like other popular writers, Dwyer mixes folklore and history together with the basic assertion of the admiral's importance: "Fishing Admirals are as much of Newfoundland's rich history as the fish they pursued and the legacy they left". For a critical analysis of this type of history and its link to cultural tourism, see James Overton, *Making a World of Difference: Essays on Tourism, Culture and Development in Newfoundland* (St. John's, 1996), esp. 146-147.

<sup>11</sup>On the Western Charters and the seventeenth-century fishery, see Keith Matthews, *Collection and Commentary on the Constitutional Laws of Seventeenth Century Newfoundland* (St. John's, 1975), 169-179; Gillian Cell, *English Enterprise at Newfoundland, 1577-1660* (Toronto, 1969); Peter E. Pope, *Fish into Wine: The Newfoundland Plantation in the Seventeenth Century* (Chapel Hill, in press), esp. chs. 7 and 9.

<sup>12</sup>10 and 11 Wm. III, c. 25, ss. 1-4, 12 and 16 (1698-99).

<sup>13</sup>10 and 11 Wm. III, c. 25, ss. 13-15 (1698-99).

<sup>14</sup>See Jerry Bannister, "The Naval State in Newfoundland, 1749-1791", *Journal of the Canadian Historical Association* new series 11 (2000), 17-50.

<sup>15</sup>G.S. Graham, "Newfoundland in British Strategy from Cabot to Napoleon", in R.A. MacKay, ed., *Newfoundland: Economic, Diplomatic, and Strategic Studies* (1946, rep. New York, 1979); John G. Reid, "1686-1720: Imperial Intrusions", in P.A. Buckner and J.G. Reid, eds., *The Atlantic Region to Confederation: A History* (Fredericton and Toronto, 1994), 85-93.

<sup>16</sup>Patrick O'Flaherty, "King William's Act (1699): Some thoughts 300 years later", *Newfoundland Quarterly* 93, 2 (Winter 2000), 26-27.

<sup>17</sup>Newcastle to Board of Trade, 24 November 1730, Public Record Office, Kew [PRO], Colonial Office Paper, Series 194 [CO 194], vol. 9, 1.

<sup>18</sup>On the Royal Navy and Newfoundland generally and the relatively few sailors it recruited from the fishery in particular, see Gerald S. Graham, "Fisheries and Sea Power", in G.A. Rawlyk, ed., *Historical Essays on the Atlantic Provinces* (Toronto, 1967), 7-16; David Starkey, "The West Country-Newfoundland Fishery and the Manning of the Royal Navy", in Robert Higham, ed., *Security and Defence in South-West England before 1800* (Exeter, 1987), 93-101.

<sup>19</sup>Although A.H. McLintock overstated the case, the potential of British policy to restrict property and settlement rights in Newfoundland has been noted by Keith Matthews and, most recently, Sean Cadigan. See McLintock, *Establishment of Constitutional Government*, ch. 3; Matthews, *Lectures on the History of Newfoundland*, ch. 7; Cadigan, *Merchant-Settler Relations*, ch. 1.

<sup>20</sup>Head, *Eighteenth Century Newfoundland*, 146; Handcock, *Origins of English Settlement*, 38; Pope, *Fish into Wine*, chs. 7 and 9.

<sup>21</sup>John Oldmixon, *The British Empire in America* (London, 1708), vol. 1, 18-19.

<sup>22</sup>On this point, see Bannister, "Campaign for Representative Government", 30-40.

<sup>23</sup>Ian K. Steele, "The Anointed, the Appointed, and the Elected: Governance of the British Empire, 1689-1784" and John Shy, "The American Colonies in War and Revolution, 1748-1783", both in P.J. Marshall, ed., *The Oxford History of the British Empire*, vol. 2, *The Eighteenth Century* (Oxford, 1998), 105-126 and 300-323; C.A. Bayly, *Imperial Meridian: The British Empire and the World, 1780-1830* (London, 1989), esp. 194-195, 209, 236. On the debate over the relative strength of colonial government in the eighteenth century, see Stephen Foster, "British North America in the Seventeenth and Eighteenth Centuries", in Robin Winks, ed., *The Oxford History of the British Empire*, vol. 5, *Historiography* (Oxford, 1999), 73-92.

<sup>24</sup>Frederick Madden and David Fieldhouse, "Imperial Policy and Legislation, 1689-c. 1760", in F. Madden and D. Fieldhouse, eds., *The Classical Period of the First British Empire, 1689-1783: The Foundations of a Colonial System of Government* (Westport CT, 1985), 2-5.

<sup>25</sup>Patrick O'Flaherty, "King William's Act", 21-28.

<sup>26</sup>For a legal interpretation of the admirals' powers, see Appendix A.

<sup>27</sup>See Jerry Bannister, "The Custom of the Country: Justice and the Colonial State in Eighteenth-Century Newfoundland." (PhD thesis, University of Toronto, 1999), ch. 2.

<sup>28</sup>George Larkin, "Report on the state of the Island", 20 August 1701, PRO, CO 194/2, 132. The report was received at the Board of Trade in London on 15 October 1701. Unless otherwise noted, all dates are cited in the new style, with the year beginning on 1 January, rather than the old style (pre-1752), when the new year began on 25 March.

<sup>29</sup>Larkin, "Report" (1701).

<sup>30</sup>See Prowse, *History of Newfoundland*, 174. On the use of ducking as a punishment, see John Byrn, *Crime and Punishment in the Royal Navy: Discipline on the Leeward Islands Station, 1784-1812* (Aldershot, U.K., 1989), 80. The 1680 case is discussed in detail in Pope, *Fish into Wine*, ch. 10.

<sup>31</sup>Larkin, "Report" (1701).

<sup>32</sup>Matthews, "West of England - Newfoundland Fishery", 261.

<sup>33</sup>See James D. Alsop, "The Age of Projectors: British Imperial Strategy in the North Atlantic in the War of the Spanish Succession", *Acadiensis* 21 (1) (1991), 30-53.

<sup>34</sup>Steele, "Metropolitan Administration of the Colonies", 11.

<sup>35</sup>Minutes of a general court held in St. John's, 5 October 1704, PRO, CO 194/4, 195.

<sup>36</sup>Secretary Hedges to the Council of Trade, 4 July 1705, PRO, CO 194/3, 243.

<sup>37</sup>"A State of the Trade to Newfoundland: Answer of the Commissioners of Trade and Plantations to an Order of the Hon. House of Commons", undated (circa 1705/06), British Library [BL], Egerton Mss., 921. This manuscript report is reputed to have belonged to Robert Walpole.

<sup>38</sup>James Montague to Board of Trade, May 1708, PRO, CO 194/4, 226.

<sup>39</sup>Order in Council, 26 June 1708, PRO, Privy Council Registers [PC] 2/82, 122.

<sup>40</sup>*Acts of the Privy Council of England, Colonial Series*, [APCC] (London: His Majesty's Stationary Office, 1910- ), vol. 2, 556.

<sup>41</sup>APPC, vol. 2, 558.

<sup>42</sup>APPC, vol. 2, 559.

<sup>43</sup>Captain Josias Crowe, "A Record of several laws and orders made at St. John's for the better discipline and good order of the people...between 23 August and 23 October 1711", PRO, CO 194/5, 26-27. Titled "Captain Crowe's Law", a slightly different printed version appears in Prowse, *History of Newfoundland*, 271-272.

<sup>44</sup>Crowe, "A Record of several laws and orders made at St. John's", 26-27.

<sup>45</sup>Captain Josias Crowe, answer to question 22 in the heads of inquiry, 1711, PRO, CO 194/5, 24. The "heads of inquiry" were included in the articles that comprised the instructions given each summer to the commodore and, after 1729, the governor.

<sup>46</sup>D.B. Quinn, "Crowe, Josias", *Dictionary of Canadian Biography* [DCB] (Toronto: University of Toronto Press, 1966- ), vol. 2. Quinn argues that such efforts were isolated and failed to influence subsequent developments, but Crowe's initiatives were part of a broader pattern of nascent naval government that grew after 1729.

<sup>47</sup>Commodore Sir Nicholas Trevanion to the Board of Trade, 29 October 1712, *Calendar of State Papers, Colonial Series: America and West Indies* [CSPC] (London: His Majesty's Stationary Office, 1926- ), vol. 27, 75-77.

<sup>48</sup>Reeves, *History of the Government of the Island of Newfoundland*, Part II.

<sup>49</sup>On the Holdsworths, see Handcock, *Origins of English Settlement*, 63, 154, 251.

<sup>50</sup>D.B. Quinn, "Holdsworth, Arthur ", DCB, vol. 2. The documents relating to Holdsworth's quarrel with Lieutenant William Lilburne are in PRO, CO 194/2, 86-89, 95.

<sup>51</sup>Captain John Graydon, list of "planter's rooms" in St. John's, 25 August 1701, Provincial Archival of Newfoundland and Labrador [PANL], Colonial Secretary's Letterbook [GN 2/1/A], vol. 1, 90-93.

<sup>52</sup>Prowse, *History of Newfoundland*, 227-228.

<sup>53</sup>On the pace of the seasonal fishery in Newfoundland, see Matthews, *Lectures on the History of Newfoundland*, ch. 9.

<sup>54</sup>For a case-study of the local application of imperial authority in this period, see Olaf Janzen, "Of consequence to the Service: The Rationale Behind Cartographic Surveys in Early Eighteenth-Century Newfoundland", *The Northern Mariner/Le Marin du nord* 11 (1) (2001), 1-10.

<sup>55</sup>From 1724 to 1748 the Duke of Newcastle served as the Secretary of State for the Southern Department, which dealt with the colonies from 1702 until the creation of a sepa-

rate secretaryship for the American Department in 1768. On imperial administration, see Hugh Egerton, *A Short History of British Colonial Policy* (London, 1928), 549-553; W.A. Speck, *Stability and Strife: England, 1714-1760* (Cambridge, Mass., 1977), 231-234 and 252-254; and James Henretta, "Salutary Neglect": *Colonial Administration under the Duke of Newcastle* (Princeton, 1972).

<sup>56</sup>Board of Trade to Newcastle, 20 December 1728, CSPC, vol. 36, 279-284.

<sup>57</sup>Board of Trade to Newcastle, 20 December 1728, 283.

<sup>58</sup>Board of Trade to Newcastle, 20 December 1728, 284.

<sup>59</sup>Report of the Committee of Privy Council, 19 April 1729, CSPC, vol. 36, 351. See also APCC, vol. 3, 216-217.

<sup>60</sup>Board of Trade to the Committee of the Privy Council, 14 May 1729, CSPC, vol. 36, 375.

<sup>61</sup>Lord Vere to Burchett, 19 August 1728, CSPC, vol. 36, 223.

<sup>62</sup>If Lord Vere had accepted an office of emolument under the Crown, he would have had to vacate his Parliamentary seat. He could have stood for re-election, but there was not enough time to make the necessary arrangements, since the convoy was preparing to make sail. The practice of appointing a separate commodore and governor ended when Captain George Clinton assumed both posts in 1731. It revived temporarily in 1750, when Captain Rodney resigned as governor yet continued as commodore, but in this case Rodney remained the unquestioned *de facto* leader of the island's government.

<sup>63</sup>Board of Trade to the Committee of the Privy Council, 14 May 1729, CSPC, vol. 36, 376.

<sup>64</sup>Osborne's name was inserted into the final commission on 22 May 1729.

<sup>65</sup>On the Royal Navy in Newfoundland during this period, see Olaf Janzen, "The Royal Navy and the Defence of Newfoundland During the American Revolution", *Acadiensis* 14 (1) (1984), 28-48.

<sup>66</sup>Commission of Captain Henry Osborne, 31 May 1729, CSPC, vol. 36, 377.

<sup>67</sup>Osborne to Newcastle, 14 October 1729, CSPC, vol. 36, 504.

<sup>68</sup>Newfoundland commission of the peace, undated (circa 1729), PRO, CO 194/8, 228-232. Commissions of the peace were issued every three years with the appointment of a new governor. For a comparison with the commission of the peace used in Georgian England, see E.N. Williams ed., *The Eighteenth Century Constitution, 1688-1815: Documents and Commentary* (Cambridge, 1965), 283-285.

<sup>69</sup>Newfoundland commission of the peace (circa 1729).

<sup>70</sup>Keen was well known for his efforts to apprehend offenders and to promote legal reforms; Southmayd had acted as a magistrate in the 1723-24 court at St. John's. See Keith Matthews, "Keen, William" DCB, vol. 3.

<sup>71</sup>Lord Vere to Board of Trade, 18 August 1729, CSPC, vol. 36, 471-72.

<sup>72</sup>List of judicial districts in Newfoundland, 1729, PRO, CO 194/8, 226. The six original districts were: Bonavista (3 JPs and 3 constables); Trinity (3 and 9); Carbonear-Harbour Grace (none in 1729); St. John's (3 and 7); Ferryland (5 and 5) and Placentia (3 and 4).

<sup>73</sup>Osborne to Newcastle, 14 October 1729, CSPC, vol. 36, 504-05.

<sup>74</sup>Osborne to Newcastle, 14 October 1729.

<sup>75</sup>Governor's proclamation, 5 October 1729, CSPC, vol. 36, 516.

<sup>76</sup>Osborne to Newcastle, 14 October 1729, CSPC, vol. 36, 504-05.

<sup>77</sup>10 and 11 Wm. III, c. 25, s. 1 (1698-99).

<sup>78</sup>Henry Jones and John Henning to Osborne, 8 December 1729, CSPC, vol. 37, 79.

<sup>79</sup>Minutes of the Board of Trade, 9 and 17 April 1730, PRO, CO 391/39, 83-84, 93. Though listed as part of the Colonial Office Papers, the CO 391 series comprises only the minutes of committee meetings at the Board of Trade and does not contain any colonial correspondence.

<sup>80</sup>Lord Vere and Osborne to Board of Trade, 17 April 1730, CSPC, vol. 37, 86.

<sup>81</sup>Solicitor-General Fane to the Board of Trade, 26 April 1730, CSPC, vol. 37, 90; Attorney-General Yorke to the Board of Trade, 27 April 1730, PRO, CO 194/21, 1-3.

<sup>82</sup>10 and 11 Wm. III, c. 25, s. 1 (1698-99); 11 and 12 Wm. III, c. 19 (1700). On the English system for building gaols, see Beattie, *Crime and the Courts in England, 1660-1800* (Princeton, 1986), 292-293.

<sup>83</sup>Quoted from the printed version of the Attorney-General's report, 27 April 1730, printed in George Chalmers, ed., *Opinions of Eminent Lawyers on various points of English Jurisprudence, chiefly concerning the colonies, fisheries and commerce of Great Britain* (Burlington, 1858), 536-38. An extract of this report also appears in CSPC, vol. 37, 91-92.

<sup>84</sup>He pointed out that the fines could then be applied to the cost of repairing damaged stocks or whipping-posts.

<sup>85</sup>The Attorney-General's report concluded that neither Captain Osborne nor the justices of the peace had the power to raise taxes for public works except in cases cited specifically in statute.

<sup>86</sup>Attorney-General Fane to the Board of Trade, 13 May 1730, CSPC, vol. 37, 108.

<sup>87</sup>Board of Trade to Osborne, 13 May 1730, CSPC, vol. 37, 108-09.

<sup>88</sup>Board of Trade to Newcastle, 12 June 1730, CSPC, vol. 37, 145.

<sup>89</sup>Report of Peter Signac, Thomas Salmon and Thomas Buchanan, 16 May 1730, PRO, CO 194/9, 21-22.

<sup>90</sup>*Ibid.* In an accompanying undated petition to Governor Osborne, the three magistrates reiterated that the "Admirals have plainly told us we were only *Winter Justices* [underlined in the original] and seemed to doubt of your authority of appointing of justices, and that their authority was by Act of Parliament, that your Honours [sic] was only from the Privy Council". See PRO, CO 194/9, 14.

<sup>91</sup>Report of Peter Signac, Thomas Salmon and Thomas Buchanan, 16 May 1730, PRO, CO 194/9, 21-22.

<sup>92</sup>Report of Signac, Salmon and Buchanan, 16 May 1730. This passage was underlined in the original, presumably by Governor Osborne.

<sup>93</sup>The link between control over punishment and the process of upholding social authority is addressed nicely in David Garland's critique of Durkheim's model of hegemony. See Garland, *Punishment and Modern Society: A Study in Social Theory* (Oxford, 1990), 54-61.

<sup>94</sup>Report of Signac, Salmon and Buchanan, 16 May 1730.

<sup>95</sup>Osborne to Board of Trade, 8 September 1730, CSPC, vol. 37, 263.

<sup>96</sup>Patrick O'Flaherty also makes this point in *Old Newfoundland*, 70 and 223. Keith Matthews erroneously assumed that the justices' authority was restricted to the winter months: see *Lectures on the History of Newfoundland*, 101-02.

<sup>97</sup>Osborne to Newcastle, 25 Sept. 1730, CSPC, vol. 37, 289-91.

<sup>98</sup>Osborne to Newcastle, 25 Sept. 1730.

<sup>99</sup>Osborne to Newcastle, 25 Sept. 1730.

- <sup>100</sup>Proclamation of Governor Osborne, 12 August 1730, PRO, CO 194/9, 22.
- <sup>101</sup>Lord Vere to Board of Trade, 26 September 1730, CSPC, vol. 37, 291-292.
- <sup>102</sup>Newcastle to Board of Trade, 24 November 1730, PRO, CO 194/9, 1.
- <sup>103</sup>Report of the Attorney General, 29 December 1730, PRO, CO 194/9, 3-6. A printed version appears at Chalmers, ed., *Opinions of Eminent Lawyers*, 538-541.
- <sup>104</sup>Queries submitted to the Privy Council, 12 January 1731, PRO, CO 194/9, 70.
- <sup>105</sup>Francis Fane to the Board of Trade, 24 March 1731, PRO, CO 194/9, 140. A printed extract of this report appears at CSPC, vol. 38, 76.
- <sup>106</sup>Order of Governor Clinton, 12 July 1731, CSPC, vol. 38, 208. The reference is likely to Mosquito in St Mary's rather than Conception Bay.
- <sup>107</sup>Osborne to Board of Trade, 28 July 1731, PRO, CO 194/9, 131-33. Osborne had sent essentially the same letter to the Duke of Newcastle on 25 July 1731.
- <sup>108</sup>For examples of Clinton's efforts to censure local opposition, see CSPC, vol. 38, 207-208 and 277-278.
- <sup>109</sup>Order of a general court held at St. John's, 21 September 1731, CSPC, vol. 38, 281.
- <sup>110</sup>Clinton to Fishing Admirals of St. John's, 23 September 1731, PRO, CO 194/9, 109. The quotation is from the printed version at CSPC, vol. 38, 282.
- <sup>111</sup>Weston and Southmayd to Clinton, 20 August 1731, PRO, CO 194/9, 103-105.
- <sup>112</sup>To exacerbate matters, the local garrison commander asserted that Clinton and Osborne had visited Placentia for only a few hours the entire summer. See *Fishing Admirals of Placentia* to Lieutenant-Governor S. Gledhill, 10 September 1731; Gledhill to Newcastle, 30 September 1730 CSPC, vol. 38, 274-275.
- <sup>113</sup>Clinton to Board of Trade, 1 October 1731, CSPC, vol. 38, 275.
- <sup>114</sup>Memorandum from the Attorney General, November 1731, PRO, Secretary of State Papers [SP], 36/25/90, 75. This passage was underlined in the original. The memorandum appears to be a summary of Clinton's letter to the Board of Trade on 1 October 1731. An original copy appears at PRO, CO 194/9, 90-91. I thank Greg Smith for providing copies of several of the State Papers relating to Newfoundland.
- <sup>115</sup>Newcastle to Board of Trade, 23 November 1731, CSPC, vol. 38, 355.
- <sup>116</sup>Ralph Lounsbury speculated that "the principle reason for the arrogant attitude of the West Country fishing admirals and shipmasters was their appreciation of the growing power of parliament and the contemporary decline in the constitutional prestige of the Privy Council. Because of their residence in England the West Country fishermen were in a better position to understand the political changes which were taking place in Great Britain at this time than were the Newfoundlanders." See Ralph Lounsbury, *The British Fishery at Newfoundland, 1634-1763* (1934, rep. New York, 1962), 285. Lounsbury rather characteristically overstated his point, but the suggestion that the appeal to parliamentary supremacy was rooted in contemporary politics does have merit. For a synopsis of Whig politics under Walpole, see Paul Langford, *A Polite and Commercial People: England, 1727-1783* (Oxford, 1989), 9-59; Wilfred Prest, *Albion Ascendant: English History, 1660-1815* (Oxford, 1998), 120-131.
- <sup>117</sup>Minutes of the Board of Trade, 8 February 1732, PRO, CO 391/41, 49.
- <sup>118</sup>Petition of the merchants of Dartmouth, undated (February 1732), CO 194/23, 152-153. The petition was read at the Board of Trade on 8 February 1732.
- <sup>119</sup>Petition of the merchants of Poole, 1 February 1732, PANL, CO 194/23, 154-155; petition of the merchants of Bristol, undated (1732), PANL, CO 194/23. The Poole petition

was signed by 47 men, while the one from Bristol was signed by 65 merchants. The minutes of the Board of Trade refer to the Poole document as a petition from the mayor, aldermen and merchants. See Minutes of the Board of Trade, 22 February 1732, PRO, CO 391/41, 71.

<sup>120</sup> Affidavit of Peter Shank, undated (1732), PANL, CO 194/23, 155-156.

<sup>121</sup> Affidavit of John Moors and Joseph Vallis, 11 February 1732, CO 194/23, 158-159.

<sup>122</sup> Keen's answer is contained in an untitled typescript collection of miscellaneous documents (1731-1743), housed at the Provincial Resource Library, Newfoundland Collection, VAULT 338.3 P94, 1-2. A complete copy of this typescript material is also preserved in the records of the Newfoundland Historical Society.

<sup>123</sup> A committee at the Board of Trade gathered together the various letters and documents and summoned Governor Clinton to a meeting on 21 March 1732. Clinton then submitted a report, which was read in early April, but no further action was taken and the materials were merely passed on to the Duke of Newcastle. The situation in Newfoundland appears to have received no further substantive discussion in 1732 and the minutes of the Board of Trade for next five years (volumes 42-46 inclusive) were restricted only to routine bureaucratic matters, e.g. the appointment of the island's naval governor. See Minutes of the Board of Trade, 21 March and 4/6 April 1732, PRO CO 391/41, 91, 103, 105.

<sup>124</sup> For an overview of Britain's imperial strategy, see Paul Kennedy, *The Rise and Fall of British Naval Mastery* (London, 1976), ch. 3.

<sup>125</sup> The material in this and the following paragraph is drawn from Jerry Bannister, *The Custom of the Country: Law and Naval Government in Newfoundland, 1699-1832* (Toronto, in press), ch. 7.

<sup>126</sup> William Douglass, *A Summary, Historical and Political, of the First Planting, Progressive Improvements and Present State of British Settlements in North America* (London, 1755), vol. 1, 290. Douglass had first published this book in Boston in 1749 — the London edition was printed after his death in 1752 — and he was obviously unaware of the establishment of the island's Court of Oyer and Terminer in 1750.

<sup>127</sup> Douglass, *Summary*, 290.

<sup>128</sup> A.M. Lysaght, ed., *Joseph Banks in Newfoundland and Labrador, 1766: His Diary, Manuscripts and Collections* (Berkeley and Los Angeles, 1971), 150.

<sup>129</sup> "General Reports of the State of the American Colonies", 1764, BL, King's Mss. 205, 345.

<sup>130</sup> "General Reports" (1764).

<sup>131</sup> On Palliser's attempt to enforce King William's Act, which he called "the Fishing Act", see the Governor's proclamation, 15 September 1766, PANL, GN 2/1/A, vol. 4, 19. On Palliser's administration more generally, see Matthews, *Lectures on the History of Newfoundland*, ch. 20; William Whitely, "Governor Hugh Palliser and the Newfoundland and Labrador Fishery, 1764-1768", *Canadian Historical Review* 50 (2) (1969), 141-163; John Crowley, "Empire versus Truck: The Official Interpretation of Debt and Labour in the Eighteenth-Century Newfoundland Fishery", *Canadian Historical Review* 70 (3) (1989), 311-336; and Olaf Janzen, "Showing the Flag: Hugh Palliser in Western Newfoundland in 1764", *The Northern Mariner/Le Marin du Nord* 3 (3) (1993), 3-14.

<sup>132</sup> Griffith Williams, *An Account of the Island of Newfoundland, with the Nature of its Trade, and the Method of Carrying on the Fishery* (London, 1765); Anon., *The True Interest of Great-Britain, in Regard to the Trade and Government of Canada, Newfoundland, and the Coast of Labrador* (London, 1767).

<sup>133</sup>Sylvester Gardner, "Some facts collected, and observations made on the fisheries, and government of Newfoundland" (unpublished essay, 1784), BL, Add. Mss. 15493, 9. Gardner was a prominent Boston physician with royalist sympathies who came to Newfoundland after the American Revolution.

<sup>134</sup>Gardner, "Newfoundland" (1784).

<sup>135</sup>Archibald Buchanan, "Concerning Landed Property in Newfoundland" (unpublished treatise, 1786), BL, Add. Mss. 38347, 373-88. In addition to serving as a justice of the peace, Buchanan worked as the island's senior comptroller of customs.

<sup>136</sup>*Third Report from the House of Commons Committee to Enquire into the State of the Trade to Newfoundland* (June 1793), f. 2 [testimony of Aaron Graham], in Sheila Lambert, ed., *House of Commons Sessional Papers*, vol. 90: *Newfoundland, 1792-93* (Wilmington, DE, 1975), doc. 4438.

<sup>137</sup>"Report submitted to the Board of Trade by Admiral Milbanke and Mr. Graham", undated (circa December 1789), PANL, CO 194/21, 254-256.

<sup>138</sup>Henry Nichols to Governor Campbell, 22 April 1784, PANL, GN 2/1/A, vol. 10, 19. Nichols further noted: "I cannot find [that] the fishing admirals are authorized [by King William's Act] to order any person or persons from their lawful occupations to attend their court".

<sup>139</sup>*Report of the Lords of the Committee of Privy Council for Trade, on the Subject of the Newfoundland Fishery* (17 March 1786), f. 11, in Lambert, ed., *House of Commons Sessional Papers*, vol. 90, doc. 4385.

<sup>140</sup>*Admiral Milbanke's Report upon the Judicature of Newfoundland* (31 December 1789), f. 18, in Lambert, ed., *House of Commons Sessional Papers*, vol. 90, doc. 4385.

<sup>141</sup>31 Geo. III, c. 29 (1791).

<sup>142</sup>Report on the Judicature of Newfoundland, 10 October 1791, PANL, CO 194/38, 317-318.

<sup>143</sup>Report on the Judicature of Newfoundland, 5 December 1792, PRO, BT 1/8, 83.

<sup>144</sup>32 Geo. III, c. 46 (1792).

<sup>145</sup>Section 12 of the 1792 Judicature Act reads: "And be it further enacted, That it shall not be lawful for any court in the island of Newfoundland, or islands aforesaid (except the supreme court and the surrogate courts appointed by virtue of this act) to hold plea of any suit or complaint of a civil nature, any law, custom, or usage, to the contrary notwithstanding." The section made two exceptions — the court of vice admiralty, which could hear maritime cases, and the court of sessions (i.e. two sitting justices of peace), which could hear wage disputes — but made no mention of the fishing admirals or their jurisdiction over ship's rooms.

<sup>146</sup>49 Geo. III, c. 27, s. 2 (1809).

<sup>147</sup>*The Newfoundland Journal of Aaron Thomas. Able Seaman in HMS Boston*, Jean Murray, ed. (London, 1968), 168-169. Thomas noted: "The Admiral, as I before stated, was a kind of Church Warden or Head Constable, and the Vice and Rear Admiral might be consider'd in the light of Constables. When this trio of Admirals were assembled, and the complainants before them, the judges and plaintiff, defendants and evidence, being equal in rank, a free communication was likely to take place between them. If all were disposed to an amicable adjustment their friendship and good neighbourhood was soon restored again. The Rear Admiral has the appellation of Lady". Thomas goes on to cite the oft-repeated observation that the admirals never kept proper journals, as required by King William's Act, in large part because they were overwhelming illiterate.

<sup>148</sup>Instructions to Naval Officers, undated (circa 1810), PANL, MG 204, Duckworth Papers, box 1, 00260-78.

<sup>149</sup>Bannister, "Campaign for Representative Government", 30-40.

<sup>150</sup>5 Geo. IV, c. 67 (1824).

<sup>151</sup>5 Geo. IV, c. 51, s. 1 (1824). I thank Patrick O'Flaherty for kindly providing this reference.

<sup>152</sup>For the promulgation of the 1825 Royal Charter, see the *Mercantile Journal* (St. John's), 2 March 1826.

<sup>153</sup>Minutes of the Surrogate Court, Trinity, 24 August 1787, PANL, GN 5/4/B/1. Unless otherwise noted, all of the material in this section (including all of the quotations) is from this source.

<sup>154</sup>10 and 11 Wm. III, c. 25, s. 15 (1698-99).

<sup>155</sup>Minutes of the District Court, Trinity, 29 September 1758, PANL, GN 5/4/B/1. Entered into the minutes was a deposition, dated 26 June 1758, from Robert Hutchens, the constable for Trinity. Hutchens stated that the justice of the peace had ordered him to take Captain Lundridge, the local fishing admiral, with him to serve a capias. Hutchens deposed that Lundridge asked to see the warrant, whereupon he "put it in his pocket and told me that he was now constable and would not let me have it again after the third time asking." When the local magistrates learned of the incident, they took no known action and it seems to have been quickly forgotten.

<sup>156</sup>The use of secondary punishments under naval government is discussed at length in Bannister, *Custom of the Country*, ch. 7.

<sup>157</sup>Minutes of the Trinity District Court, 2 October 1755, PANL, GN 5/4/B/1.

<sup>158</sup>Orders of Governor Byron, undated (1771), PANL, GN 2/1/A, vol. 5, 4, 18.

<sup>159</sup>10 and 11 Wm. III, c. 25, ss. 4 and 15 (1698-99). Milbanke's summation of the island's legal system in 1789 makes only one reference to King William's Act: "The Act of 10th and 11th of William III...provides amply for the settlement of disputes respecting the right and property of fishing rooms." See *Admiral Milbanke's Report upon the Judicature of Newfoundland* (31 December 1789), f. 22, in Lambert, ed., *House of Commons Sessional Papers*, vol. 90, doc. 4385.

<sup>160</sup>10 and 11 Wm. III, c. 25, s. 14 (1698-99).

<sup>161</sup>Governor's order, 4 September 1792, PANL, GN 2/1/A, vol. 12, 139.

<sup>162</sup>Minutes of the Placentia Surrogate Court, 26 September 1770, PANL, GN 5/4/C/1.

<sup>163</sup>Minutes of the Trinity District Court, 2 October 1755, PANL, GN 5/4/B/1.

<sup>164</sup>Order of Governor Rodney, undated (1749), PANL, GN 2/1/A, vol. 1, 76.

<sup>165</sup>15 Geo. III, c. 31 (1775).

<sup>166</sup>Minutes of the Ferryland District Court, 25 August 1784 and 2 August 1785, PRL, 340.9/N45 VT; Minutes of the Ferryland District Court, 21 October 1788, PANL, GN 5/4/C/1.

<sup>167</sup>Minutes of the Fishing Admirals' Court, Fermeuse, 25 July 1752, PANL, GN 2/1/A, vol. 1, 349-350. On the administration of leasehold property and the use of equity under English law, see W.R. Cornish and G. de N. Clark, *Law and Society in England, 1750-1950* (London, 1989), 121-145.

<sup>168</sup>Minutes of the Fishing Admirals' Court, Ferryland, 2 October 1752, PANL, GN 2/1/A, vol. 2, 121.

<sup>169</sup>Minutes of the Fishing Admirals' Court, Fermeuse, 2 September 1754, PANL, GN 2/1/A, vol. 2, 116.

<sup>170</sup>Orders to the Fishing Admirals, St. John's, 19 April 1784, PANL, GN 2/1/A, vol. 10, 13.

<sup>171</sup>On the use of such customs under English common law, A.W.B. Simpson, *Legal Theory and Legal History: Essays on the Common Law* (London, 1987), esp. 362-368; R.J. Walker and M.G. Walker, *The English Legal System* (3rd ed. London, 1972), ch. 3; Carleton Kemp Allen, *Law in the Making* (7th ed. Oxford, 1964), ch. 2.

<sup>172</sup>Minutes of the Fishing Admirals' Court, St. John's, 21 April 1784, PANL, GN 2/1/A, vol. 10, 14-18.

<sup>173</sup>Orders to the Fishing Admirals, St. John's, 18 September 1784, PANL, GN 2/1/A, vol. 10, 68-69.

<sup>174</sup>Minutes of the Fishing Admirals' Court, St. John's, 20 September 1784, PANL, GN 2/1/A, vol. 10, 69-73.

<sup>175</sup>Minutes of the Fishing Admirals' Court, St. John's, 14 October 1786, PANL, GN 2/1/A, vol. 11, 106-111.

<sup>176</sup>Fishing Admirals' Court, St. John's, 14 October 1786.

<sup>177</sup>Minutes of the Fishing Admirals' Court, Ferryland, 10 September 1787, PANL, GN 5/4/C/1.

<sup>178</sup>Minutes of the Fishing Admirals Court, Fermeuse, 25 July 1752, PANL, GN 2/1/A, vol. 1, 349-350.

<sup>179</sup>For example, the 149 cases heard by the magistracy in Trinity from 1760 to 1790 break down into four main categories: disputes between masters and servants (44%); civil suits between and among merchants and planters (20%); criminal trials (12%); and other types of actions, such as disputes over wills, or those which could not be completely identified (24%). See PANL, GN 5/4/B/1, boxes 1 and 2.

<sup>180</sup>Patrick O'Flaherty, "King William's Act", 21-28.

<sup>181</sup>On the difference between the law *in force* and the law as *enforced* in colonial regimes, see Jim Phillips, "'Securing Obedience to Necessary Laws': The Criminal Law in Eighteenth-Century Nova Scotia", *Nova Scotia Historical Review* 12 (2) (1992), 87-124.

<sup>182</sup>See, *inter alia*, H.V. Bowen, *Elites, Enterprise and the Making of the British Overseas Empire, 1688-1775* (New York, 1996); Frederick Bernays Wiener, *Civilians under Military Justice: The British Practice since 1689, especially in North America* (Chicago, 1967).

<sup>183</sup>On the question of historical certainty, see Simon Schama, *Dead Certainties (Unwarranted Speculations)* (New York, 1991), 320.

<sup>184</sup>On the burden of historical proof, see David Hackett Fischer, *Historians' Fallacies: Towards a Logic of Historical Thought* (New York, 1970), 62.

<sup>185</sup>On the distinction between history and heritage, see David Lowenthal, *The Heritage Crusade and the Spoils of History* (Cambridge, 1998), xv.