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Collective Violence in Ferryland District, Newfoundland, 1788

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In September 1788 a court found 114 men guilty of riotous assembly in the district of Ferryland the previous winter. This event is remarkable for the number involved (45% of the adult male population of the district); for the number of charges (21% of all civil and criminal actions heard in the district's courts over the next 25 years); for the absence of damage to property; and for the severity of the sentences, which included loss of wages, flogging, transportation and banishment. These proceedings occurred in a community where the majority (Irish planters, fishermen and apprentices) were socially distinct from the small Protestant elite of merchants who dominated government office. It is proposed that this elite exploited the presence of a Gaelic-speaking renegade priest who was bent on undermining the authority of the papal vicar-apostolic in St. John's, in order to sow division among the rapidly-increasing Irish majority. Taking advantage of a policy of imperial centralization and rationalization decreed in Whitehall and at Westminster, the plan succeeded as the rioters were judged guilty in the name of order and state security. In the short run private interest informed public policy, reminiscent of the use of the law by the supporters of Walpole and the Hanoverian succession at home. The trials in Ferryland in 1788 signalled the end to what E.P. Thompson has called a "moral economy," a flexible and locally-mediated definition and application of the law. But in the longer run, as at home in England, the victors of 1788 themselves had to defer to new definitions of law and administrative accountability decreed from London.

En septembre 1788, la cour a prononcé 114 hommes coupables d'une assemblée séditieuse, tenue l'hiver précédent dans le district de Ferryland. Cet événement est remarquable à cause du nombre impliqué (45% de la population adulte male du district); pour le nombre d'inculpations (21% de tout les procès civils et criminels entendus dans les cours du district au cours des prochains vingt-cinq ans); pour l'absence de dégâts matériels; et pour la sévérité des sentences, qui ont inclu le fouet, le transport, le bannissement et la perte de salaire. Ces procès ont eu lieu dans une communauté où la majorité (planteurs irlandais, pêcheurs et apprentis) était socialement distinct de la petite élite de marchands protestants qui composaient le gouvernement. On propose que cette élite a exploité la présence d'un prêtre rénégat de langue gaélique qui se préoccupait d'ébranler l'autorité du vicaire-apostolique du Pape à St-John's, afin de semer une division parmi la croissante majorité irlandaise. En profitant d'une politique de centralisation et de rationalisation impériale ordonnée à Whitehall et à Westminster, le plan a réussi car les manifestants ont été jugés coupables au nom de l'ordre et de la sécurité de l'état. A court terme l'intérêt privé a informé la politique publique, qui rappelle l'utilisation de la loi par les partisans de Walpole et la succession

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hanovérienne. Les procès à Ferryland en 1788 ont signalé la fin à ce que E.P. Thompson a nommé "moral economy" (économie morale), une approche flexible à la loi et son application, variant selon les exigences locales. Mais à long terme, à Terre-Neuve comme en Angleterre, les vainqueurs de 1788 ont dû eux aussi se déférer à de nouvelles définitions de la loi et à la responsabilité administrative ordonnée par Londres.

The small historic Newfoundland outport of Ferryland—today 75 kilometers by road south of St. John’s—in the eighteenth century was accessible only by footpath or by sea. A three-man court, sitting there for 14 days from 17 September 1788, found 114 men guilty of riotous assembly on an undefined day or days in the preceding winter. Sitting on the bench were the governor’s surrogate, Royal Navy Captain Edward Pellew (later Lord Exmouth), and two resident fish merchants, surrogate and justice of the peace, Robert Carter, and J.P. Henry Sweetland. Peter Romney was sworn in as a J.P. by the court on 22 September. The court imposed fines totaling £640 6s 1d. Thirty-one fines were under £5; 67 between £5 and 8; 12 between £8 and £14; five ranged upward to £20. In addition, five men were to be flogged and 11 transported “home” (to the English West Country or southern Ireland). Thirteen, 12 of whom were sentenced as ringleaders *in absentia*, would forfeit their total wages for the season. Those who were sharemen would surrender their entire share of their boat’s seasonal catch once wages owed to their coadventurers had been paid. By an imperial statute of 1775, fishermen had first claim on the proceeds of the voyage. The 12 “ringleaders and open abettors of the riots” were banished from the district and subject to “39 cat o’ nine tails lashes on their bare back were they to return.” The property of those fined was subject to distraint. Anyone guilty of harbouring fugitives would be fined £20, raised on 1 October to £50.¹

Such is the brief and impersonal nature of the court record. Close examination yields a few more, still elusive, details. The guilty were inhabitants; their unlawful assembly was “to the great and manifest danger [of] the inhabitants of this place and their property.” Threats had been “made to many of the principal inhabitants” which might be put into effect in the upcoming winter. “Riots” are referred to in the plural. These words are not from an indictment. They were recorded contemporane-

1. Provincial Archives of Newfoundland and Labrador [P.A.N.L.], GN 5/4/C1, Ferryland District surrogate Court Book, 1786-1812, 17-30 September 1788 and subsequent proclamation, 1 October 1788. Of the four only Pellew, 1st Viscount Exmouth, has a biography: S. Lee, ed., *Dictionary of National Biography*, vol. XLIV (London: Smith, Elder & Co., 1895) at 266-70.

ously by the court clerk, probably on the very day of the trials. Equally important is the fact that the clerk (as external evidence indicates) was the prosecutor and in effect, crown counsel.² In the absence of any recorded complaints by private citizens, I assume that we are dealing with one “riotous” assembly, possibly over several days, in the one centre of Ferryland, which did no damage to property or to individuals who did not participate in the unrest.

From subsequent entries we learn that four of the fugitives surrendered themselves that autumn on condition they be transported home without being whipped. One, James Sheehan, had his sentence (loss of wages of £18 11s, flogging and transportation) reduced to a simple fine of £4 11s. One planter, Nicholas Murphy, fined £20, had his property and effects, including house and garden, sold at auction on 6 October. The purchaser was his tenant, Thomas Norris, who had been paying a rent of £6 10s per annum on a seven-year lease. Norris raised the purchase price by contracting separate promissory notes payable to six residents: Mrs. Tree, proprietor of Ferryland’s sole, and respected inn; John Migault, fish merchant; Justice Carter; Carter’s son William, the island’s sole judge of Vice-Admiralty; Justice Sweetland; and Sweetland’s wife (daughter to Robert Carter). If the judges’ fees, payable to them in lieu of salary,

2. P.A.N.L., Colonial Office, Correspondence, Newfoundland, 194, vol. 38, 203, Governor Mark Milbanke to London, 6 July 1790: “William Easton, clerk of the said court [Oyer and Terminer], who prosecutes for our Sovereign Lord the King . . .” In the absence of both indictment and court transcript we cannot know how closely the evidence reflected the elements of the common law crime of riot. We are clearly beyond the charge of “affray” (up to three people congregating, without the *mens rea* to commit an offence). A crowd meeting with a common intent but not putting it into effect and then dispersing might comprise an unlawful assembly which, if the crowd moved towards the execution of such intent, would comprise a riot. The facts of the instant case seem to justify the charge of riot: three or more persons with common intent using force “against the peace or to the manifest terror of the people, whether the act intended were lawful or unlawful”: R. Burn, *The Justice of the Peace and Parish Officer*, 22nd ed., 5 vols. (London: T Cadell, 1814) vol. 5 at 15. The first magistrates appointed in 1729 were each provided with the two volumes of the recently published J. Shaw, *Practical Justice of the Peace* (London: T. Ward, 1728) which was reissued in five editions to 1751. Presumably commentaries such as Burn’s (first edition 1754 and 30 to 1869) replaced Shaw as guides for local magistrates. Upon taking up their commands, Newfoundland governors received a package of legal materials which included the fisheries statutes. There is no evidence that magistrates or surrogates were ignorant of the law though, of course, not all English law was received into Newfoundland. A statutory jurisdiction by English justices of the peace over riot dated at least as far back as Edward III in the fourteenth century. In Newfoundland their common law jurisdiction finessed both the requirements of statute—such as reading the riot act—and the question of what English domestic statutes had been or might be received into Newfoundland.

“amounted to many a luscious morsel”³ (£25 comprised court expenses), the Carter clan may have profited nicely from the affair.⁴

These were stiff fines. While wages in the fishery were graduated and hard evidence is elusive, £5 (19 cases) might comprise 25 to 50% of a fisherman’s or a shore worker’s seasonal wage. One of the four fines of £20 was imposed on William Coman, the district’s leading and perhaps sole Roman Catholic merchant. He appears first among the 114 convicted. A loyal Catholic, he was irascible and had been fined £50 for contempt by the same court the previous year. On appeal Captain Pellew had recently mitigated the fine to £20.⁵ We shall return to the role of religion in the unrest.

What can we tease out of this intriguing but modest record? First: this event is remarkable for its uniqueness and for the number of participants. Of 533 civil and criminal actions pursued at three levels of court in Ferryland (sessions, surrogate and, after 1791, supreme court on circuit out of St. John’s) between 1786 and 1812, this one extended hearing accounts for 21%. Without it, criminal trials comprise 20% of the total.⁶ Sixty per cent of all actions were for debt: by merchants against planters (independent family-based fishing enterprises); by merchants against other merchants; and by fishermen against employers or merchants for wages.

Sentences of whipping also distinguish this case: eight as set against three over the next quarter century. Five were meted out to alleged ringleaders and two to men sentenced to transportation, later reduced to

3. C.J. Byrne, ed., *Gentleman-Bishops and Faction Fighters* (St. John’s: Jespersen, 1984) at 74. Letter from [Prefect Apostolic] James O’Donel to [Bishop of Ossory] John Troy (16 November 1788). O’Donel reported directly to the Holy See but corresponded extensively with Troy.

4. Constable Cox received £2 2s 0d, probably for the service of summonses, and £10 was expended on stationery, presumably the at least 114 indictments. The clerk was paid £5 5s. After deductions for expenses, uncollectable fines, and land for a new jail and court house (£12), £532 13s 5d remained.

5. Ferryland District Surrogate Court Book, *supra* note 2. *Cox v. Coman*, 30 October 1787, 17 September 1788. O’Donel claimed that there were only six Roman Catholic merchants on the whole island, which, for purposes of settlement ran from Placentia Bay in the south along the coast to Cape Bonavista north and west of St. John’s. Coman, born in county Waterford, Munster province, would pay dearly for his—probably unavoidable—choice of faction in the unrest. As a result he lost fisherman clients. By 1795 he was Newfoundland manager of the Scottish commercial house of Andrew and Thompson of Greenock. *Supra* note 3 at 56. Letter from O’Donel to Antonelli (December, 1785). See also R.J. Lahey, *James Louis O’Donel in Newfoundland, 1784-1807* (St. John’s: Newfoundland Historical Society, 1984).

6. Excluding quasi-criminal charges such as sabbatarian offences (7), illegal sales of liquor (4) and harbouring deserters (5), criminal charges, excluding the riot, comprised 17% of the total. The global figure for criminal cases over the period was 41%.

banishment from the district. The sole flogging imposed on an accused who was neither ringleader nor sentenced to transportation may be queried since his 90 lashes is exceptionally high and was entered in the minute book in pencil. We have seen that in at least five cases flogging was rescinded when the accused returned to the jurisdiction of the court. By 1789 Governor Milbanke had prohibited the use of court funds, notably the fines imposed in Ferryland in 1789, to be used to defray the costs of transporting criminals home to England or Ireland. The severity of the sentences imposed in Ferryland probably signalled the potential of eighteenth century English law to inspire awe and terror.⁷

As measured by cases brought to court over a quarter century from 1786, Ferryland district was not a violent outpost of empire. Few cases alleged offences against property: only 12 cases, most involving damage to boats, premises and fences. There were 15 charges of theft, often of timber cut by another party in the woods. Assault, extending to threats, abuse, scuffles and two charges of defamation, comprised 12% of the total. Consensual fisticuffs lay beyond the courts' purview. In 1786 Governor Campbell credited the "moral character and abilities" of the justices of the peace for the fact that there were "fewer crimes and gross misdemeanors committed on the whole island than in any the smallest county in England." Captain Gower praised the J.P.s when he reported to Campbell's successor, Governor Elliot, the following August that on his arrival there was no one in prison. The court of Oyer and Terminer, sitting annually in St. John's, had no business in the two successive seasons of 1787 and 1788. In the latter year the prisons were empty all winter. These years of social peace stand in contrast to the unrest of 1788 in Ferryland district which Elliot characterized as "diabolical proceedings" due to intra-Catholic rivalries.⁸

7. Douglas Hay, "Property, Authority and the Criminal Law" in D. Hay et al., eds., *Albion's Fatal Tree* (London: Allen Lane, 1975) at 17-63.

8. Great Britain, Public Record Office [P.R.O.], Board of Trade [BT], 6, Miscellaneous 90, p.319, Letter from Campbell to London (January 1786). Great Britain, P.R.O., Admiralty 1, Admiralty and Secretariat 472, letter from Elliot to London (12 August 1786). Colonial Office 194, 37, p. 50, letter from Elliot to London (23 November 1787). *Ibid.*, 38, 13 (2 August 1788; 24 October 1788). This is not to say that there was no, or even very little crime. Governors' reports probably most closely reflected the situation in St. John's, especially on the incidence of serious crimes which were tried annually in September before the court of Oyer and Terminer and General Gaol Delivery. Petty crime was dealt with by magistrates, many in isolated outports, although the governor did require returns from them. An incident in Bonavista Bay in 1786 may be said to anticipate at least the official view of 1788 at Ferryland, with dangerous implications for the magistrate, E. Langdon: "I had occasion to punish a man for a petty theft . . . by putting him in the stocks. The consequence, 40 or 50 of the lower class of people who are so formidable here got together and released him, sending me word by the

Winter seems an unlikely time for 114 rioters, drawn from at least four of the district's settlements, to congregate in Ferryland.⁹ We do not know what brought them together. In that long and often bleak period from Christmas to Easter, one day offered release from the rigours of the weather and of Lent: 17 March, St. Patrick's Day. According to James O'Donel, Roman Catholic Vicar Apostolic in St. John's, it was traditional for men to gather in the spring for hurling matches on open pasturelands on "the Downs" behind Ferryland.¹⁰ Relief from the tedium of a long winter, rough physical contact, high spirits, and cheap rum (2s 9d a gallon, with 16,600 gallons imported into Ferryland), offer a hypothetical scenario.¹¹ What is certain is that we are dealing with remarkable numbers. The census of 1789 recorded the district's winter population as 389. Of 256 adult males, 45% (114) were found guilty.¹² Virtually all had Irish surnames.

In the court records over a quarter of a century from 1786 this outbreak was unique. Yet O'Donel wrote the governor late in 1788:

[T]here have been riots [in Ferryland] and in every quarter of the Island [for] 40 years past and often brought to an higher pitch than they have been this winter, for there is a deep rooted malice in the hearts of the lower class of Irishmen to each other.

constable it was fortunate for me that I had not fallen in their way. A [naval] surrogate here occasionally would effectively prevent such disorders . . . and enable me to perform the duty of my office with safety." Admiralty 1, 472, 296, letter from Langdon to Elliot (6 September 1786), enclosure in letter from Milbanke to London (14 April 1789). In 1788 two sloops, *Placentia* and *Trepassy*, were commissioned to be built in Trinity for use in policing the coasts, perhaps in the bays and coasts of the districts after which they were named. *Ibid.* 5 (8 October 1789) 342.

9. P.A.N.L., Colonial Secretary's Office, Outgoing Correspondence, GN 2/1/A, vol. 10, p.391. Letter from Pellew to Elliot (9 October 1788). Ferryland district ran from Toad's [now Tors] Cove in the north, south to Cape Race. Ferryland outpost was the largest community, the others being, from north to south, Brigus, Cape Broyle, Capelin Bay [Calvert], Aquaforte, Fermeuse and Renewes.

10. *Supra* note 3 at 71. Letter from O'Donel to Elliot (1788). By the early nineteenth century in Leinster hurling had become a spectator sport: S.J. Connolly, "Popular Culture" in S.J. Connolly, ed., *Conflict, Identity and Economic Development in Ireland and Scotland, 1600-1939* (Preston: Carneigie, 1995).

11. P.R.O., BT, 6, Miscellaneous, vol. 92 (1806-1807), Governor Gower's [annual] report, 1806, "Imports into Newfoundland, 1784-85", for imports of rum. Allowing for some modest consumption by women (24 mistresses and 33 women servants) and 172 male masters and fishermen who pursued the summer migratory fishery (a seven day a week occupation), an adult male's annual consumption, likely much higher in the long winter than in the relatively short summer, might have averaged between 50 and 70 gallons.

12. P.R.O., Admiralty 1, 472, Governor's [annual] return, 1789. The settled population of the island was about 11,000: BT 6, 89, 211, 17 March 1786. Although women in Ireland were said to intervene in faction fights once their men and sons were engaged, no women were sentenced in the Ferryland affray: P.D. O'Donnell, *The Irish Faction Fighters of the Nineteenth Century* (Dublin: Anvil Books, 1975) at 58.

This year “a desperate gang headed by one Fogarty from Callan, paraded, challenging Munster men to fight them”.¹³ Later O’Donel signalled to his superiors that “they came to [the] point of madness that they proceeded to floggings, bloodshed and breaking of bones.” He attributed the troubles to the importation of Irish provincial feuds between Leinster men and Munster men, to drinking and idleness, and to the penal laws which barred Roman Catholics from schooling. Indeed O’Donel took credit for the fact that there had not been more such incidents in his four years on the island. During that time “I left no means untried to level those distinctions of Provinces, & to prevent my flock from attending hurlings in the spring of the year which were generally productive of those riots.”¹⁴

O’Donel may have overstated his contribution to civil peace, but it was consistent with his policy of accommodation and peaceful negotiation towards gradual reforms to the penal laws restricting Catholicism.¹⁵ However, from 1788 to 1791 he had to contend with a renegade Irish priest, Patrick Power. Power, like O’Donel, was a Franciscan and a Kilkenny man. Denied a parish by O’Donel, he surfaced in Ferryland where he preached in open defiance of O’Donel and his appointee, Thomas Ewer. Ewer, also a Franciscan, was vulnerable because he was Dublin-born and unable to speak the Irish language. Power preached that Ewer’s Munster-born parishioners were denied confession by an English-speaking Leinster priest backed by a Leinster bishop. Power was popular, rejected O’Donel’s authority and caused him grief for two years before being excommunicated by Irish bishops and returning home.¹⁶

13. Callan is in county Kilkenny, just inside the Leinster side of the provincial border with Munster. Two Fogartys were convicted. Martin Fogarty, described as a ringleader, was sentenced *in absentia* to loss of all his wages (£20), flogging and transportation. He evaded the court’s jurisdiction. William Fogarty, also condemned as a ringleader, was fined £12 12s and surrendered to the court on 25 October.

14. *Supra* note 3 at 71, 74, 94. Letter from O’Donel to Elliot (November 1788) Letter from O’Donel to Troy (16 November 1788; 18 December 1789).

15. Acts in relief of Roman Catholic disabilities were passed in 1778 and 1782. They removed clauses of the Oath of Allegiance which had denied some tenets of Catholic belief and also permitted the erection of Catholic schools and chapels, practice at the Bar and the lease of land for longer periods. In his policy O’Donel echoed that of influential members of the Irish hierarchy, particularly of Troy who became Archbishop of Dublin in 1786. T. Bartlett, *The Fall and Rise of the Irish Nation* (Dublin: Gill and MacMillan, 1992) at 83-119. Another relief act took effect in 1792. Later commentators have stressed the importance of a Declaration on Liberty of Conscience issued by Governor Campbell in 1783: H. Rollmann, “Religious Enfranchisement and Roman Catholics in Eighteenth-Century Newfoundland” in T. Murphy & C.J. Byrne, eds., *Religion and Identity* (St. John’s: Jespersen Press, 1987) at 34.

16. Details on this saga are in Byrne, *supra* note 3, Lahey *supra* note 5, and R.J. Lahey, “Thomas Anthony Ewer”, *Dictionary of Canadian Biography*, vol. VI (Toronto: University of Toronto Press, 1987) at 243-244.

If unrest was not uncommon, what new factors might account for its extent, for the severity of the sentences and for the proclamations which annually pursued those sentenced *in absentia*? Most of the convicted acceded to the court's decisions. Some ringleaders negotiated lesser sentences; some disappeared into the hinterland; two who were fined absconded. Most had little choice but to pay up. Whether as waged employees, sharemen, or self-employed planters, all fishermen were in debt to merchants for current supply (fishing gear and bait). The court had only to go to the merchants who would deduct a fine from the proceeds of the catch which were to be paid out in that same month of September. Short of abandoning family, job and property, the guilty were helpless to resist. Faced with a social, religious, economic and judicial system which favoured Protestants whose origins lay in the English West Country, how might settlers or immigrants of Irish Catholic origin make their voices heard? To the extent that they had exchanged one system of authority for another, their subordination and lack of influence in official circles may have gone unremarked, a situation that may have been grudgingly accepted as both familiar and unlikely to change.

Ferryland district was a magnet for Irish immigrants from within a 40-mile radius of the south-eastern town of Waterford.¹⁷ They brought with them ancient provincial rivalries whose origins were obscure and whose aims or goals were neither sectarian nor political. Indeed, their only goal may have been violence (a trait which marked eighteenth century Irish society in general): from heavy drinking, duelling (characterized by one commentator as "murderous combats fought with a minimum of restrictions") and kidnapping of prospective brides among the gentry, to working-class violence at fairs, patterns (parish patronal feast days) and peasant uprisings. Faction fighting was one among a number of "institutionalized displays of aggression." It had its weapons: fists, boots, and metre-long cudgels of oak, ash or holly, reminiscent of the sticks which substituted for swords in the training of Irish volunteers for continental armies. Clearly, hurling sticks on the Ferryland Downs might be employed in other forms of "sport." And the whole was performed with its rules and ritual: "Captains" (Fogarty of Callan?) faced

17. Arthur Young was in Wexford (Leinster) on 12 July 1776 and noted that "[m]any lads go to Newfoundland in May and come home in October, and bring from £15 to £24. Pay £3 passage out and £1 10s home." From Waterford (Munster) on 26 October he wrote that although they might be paid £18 to £20 and receive room and board, they seldom returned with more than £11. Laconically he noted that "some of them stay and settle." C. Maxwell, ed., *A Tour in Ireland* by A. Young (Cambridge: Cambridge University Press, 1925) at 26, 135.

off in the no-man's land between the rival factions and taunted each other. Then each performed "the wheel" by dancing up to the opposing side and provoking it with words and gestures. This form of entertainment and bravado remained a feature of young working men's recreation in St. John's through the Napoleonic Wars.¹⁸

Faction fighting was a traditional, even valued aspect of the culture of the Irish immigrants and (on O'Donel's testimony) was familiar to employers and judicial personnel who—in Ferryland—were the same men. But faction fights are not necessarily riots. They might bloody the heads of the participants without threatening the established order of privilege, much less that of government. In Ireland they had often been ignored—even encouraged—by magistrates as a diversion from attacks on the propertied classes and a means of perpetuating divisions among the peasantry.¹⁹ Perhaps this was the case in Newfoundland. If it was, then one is left to ask why traditional pastimes, previously ignored or contained, were suddenly singled out for formal judicial sanctions under the authority of the state.

Munster and south Leinster, the source of Ferryland's Irish immigrants, had other institutionalized forms of popular aggression. O'Donel's home county of Kilkenny was particularly distinguished throughout the eighteenth century for outbreaks of Whiteboyism, but he does not mention it in his extensive correspondence. Whiteboyism was generated by disputes over landholding and leases; pasturing and conacre; tithes and priestly dues. It took the form of maiming farm animals, intimidation, charivari and arson.²⁰ By contrast, Ferryland's disputes centred on the fishery: wages, debts, fishing rooms and premises. Disputes over real property were extremely rare for under imperial statute all land was reserved for the fishery, though title to fishing rooms was, in fact, granted

18. O'Donnell, *supra* note 12 at 9,13-19, 49. S. Connolly, "Violence and Order in Eighteenth Century Ireland", in P. O'Flanagan et al., eds., *Rural Ireland, 1600-1900* (Cork: Cork University Press) 42 at 56. C. English, "The Official Mind and Popular Protest in a Revolutionary Era: The Case of Newfoundland, 1789-1819" in F.M. Greenwood & B. Wright, eds., *Canadian State Trials*, Vol. I (Toronto: University of Toronto Press, 1996) 296 at 311-13.

19. G.C. Lewis, *On Local Disturbances in Ireland* (Dublin: B. Fellowes, 1836) at 279-297. C.O. Danachair, "Faction Fighting in County Limerick" (1966-67) 10 *North Munster Antiquarian J.* 321.

20. Lewis, *supra* note 19 at 251-257. Michael Beames, *Peasants and Power* (Sussex: Harvester Press, 1983). T.D. Williams, ed., *Secret Societies in Ireland* (Dublin: Gill and Macmillan, 1973). W.E.H. Lecky, *A History of Ireland in the Eighteenth Century*, Vol. II (London: Longmans, 1972) at 1-50. Conacre (from corn-acre): a plot of cultivated land sub-let annually from a tenant farmer, usually for growing potatoes.

by the governor.²¹ In 1788 threats may have been uttered, but no damage to persons or property was recorded.

O'Donel's emphasis on faction fighting as the source of the riots finds support, after the trials, in an October petition by "the Magistrates, Principal Merchants, Traders and Inhabitants" to the governor. They spoke of "the violence and threats of both parties," the parties not being identified. Noting "that we were under great apprehension for the safety of our persons and property," they asked for naval protection in the upcoming winter and permission to use the fines to construct a jail and courthouse.²² Perhaps the threats were issued against those who sought to intervene in the faction fighting or in the subsequent drinking and partying. However, Ferryland (the outport) had only one constable. The privileged elite of merchants was unlikely to interfere in organized mayhem up on the Downs as long as their property and security were respected. Faction fighting was for the rabble, especially those 63 young single men ("dieters") who over-wintered, exhausting their previous season's wages in drink and boredom. Overcrowding in ill-equipped houses was acute: there were only 37 private houses and two taverns in the district to accommodate the population of 386.²³ Many presumably shared outbuildings, the lucky ones with what livestock survived the harsh winters. Were specific threats issued, or do the terms *assembly* and *faction fighting* indicate a generalized threat of unrest? We do not know. However, absent an imminent threat to persons or to property, surely it would have been prudent for property owners who signed the petition (and for the more modest propertied "planters") to leave well enough alone. This may have been the case in previous confrontations, which O'Donel had referred to, and which the petitioners called "the riotous and unlawful assemblies of the people which in the course of last winter were more conspicuous than ever."²⁴

21. (1699) 10 & 11 William III, c.25; (1775) 15 Geo III, c.31. Given the provisions of the act of 1699, one can read in one granting possession to settlers who could claim long user predating 1685.

22. *Supra* note 9.

23. *Ibid.*

24. *Ibid.* At no point in the private or official correspondence generated by the Ferryland unrest of 1788 do the protagonists refer to a generalized danger of revolution. There was a steady commercial traffic between Newfoundland and the Thirteen Colonies and United States of America and Newfoundland was exempted by the imperial authorities from the embargo provisions imposed by statute on imperial trade with America down to 1783. It would be unrealistic to expect that Newfoundlanders might have been aware of the agricultural unrest and grain and food riots common in France in the years before 1789, but many were recent or annual immigrants from the south of Ireland and may have brought with them generalized criticisms of the English presence there or an emerging, if private, commitment to Irish nationalism. On the context for and manifestations of an era of democratic revolution in the

Can we tease any evidence out of the scanty record that faction fighting, and the propertied classes' reactions to it in 1788 may have assumed a new importance? Patrick Power offers a new, perhaps key, element. Settling in with a relation, Mr. Nash, in the fall of 1787, he worked to undermine O'Donel and Ewer among the unilingual Irish-speaking majority in a population already 74% Roman Catholic. (By 1795 it was 95% and the sole Church of England priest was about to be withdrawn.) Power's "inflammatory speeches" stressed O'Donel's failure to appoint a priest from Leinster, his residence far away in St. John's, and Ewer's inability to speak Irish. The rhetoric added volatile new ingredients to traditional provincial quarrels. The basis for an appeal to class had already been laid by O'Donel's policy of working closely and cooperatively with the governor and established interests. By education and disposition he preferred their company. Power, on the other hand, was an engaging bilingual advocate who appealed to working-class Catholics on grounds which might also transcend class. Coman was loyal to Ewer, but some among the planters may have wavered.

Power's challenge to O'Donel and his local appeal provided an opportunity for those who signed the petition to Governor Elliot to reinforce their social and economic preeminence. According to O'Donel, the Anglican establishment, especially William Carter, Judge of Vice-Admiralty, patronized Power and promoted his interests with the anti-Catholic Captain Pellew. Carter's friends extended credit to Power to enable him to build a house, though it was soon evident that he would not be able to repay them. This clash of loyalties within the Roman Catholic community may have been the Protestant elite's opportunity. Vastly outnumbered by an increasing wave of Catholic immigrants, and concerned to maintain their near-monopoly over fishery supplies and the purchase of the catch, over the judiciary and official positions such as customs officers, did they embrace Patrick Power in order to discredit O'Donel and the official hierarchy? With what aim? To divide the Catholic majority? To put the lower orders in their place? To restore disabilities only recently removed? Even to expel O'Donel and his three priests from the island?²⁵

If there was such a conspiracy, it had some success in the short run. Governor Elliot permitted the erection of a jail and courthouse out of the

North Atlantic and Western European world, R.R. Palmer, *the Age of the Democratic Revolution*, 2 vols. (Princeton: Princeton University Press, 1969) and Jacques Godechot, *La Grande Nation* (Paris: Aubien, 1956).

25. More than once O'Donel contrasted the trouble he experienced with Power in Ferryland with the larger, peaceable and more secure Roman Catholic parishes of Placentia and Harbour Grace.

proceeds of the fines, and took the exceptional step of stationing Pellew's frigate in Ferryland harbour for the winter. Mark Milbanke—Elliott's successor in 1789—was predisposed against Catholicism and initially, perhaps influenced by Pellew, against O'Donel.²⁶ Have we here an alliance, even identification, of public policy and private interest reminiscent of the use of the law attributed by E.P. Thompson to Walpole and the new hard men of the Hanoverian succession? Their imposition of legal norms defined in Westminster and applied nationally and, in principle, uniformly, signalled the end of the "moral economy" which had previously provided for a flexible and locally-mediated definition and application of law.²⁷ In responding to Power's siren call, were the rioters of 1788 protesting in general terms the imposition of externally-defined law which ignored their views? Alternatively, or perhaps at the same time were they calling for greater freedom to practice their religion and for the removal of Catholic disabilities? We do not know, for no voice from among the guilty speaks to us. It seems more likely that the exhaustion of their previous season's wages at the end of a hard winter would preoccupy them. Dependence on their employers for winter diet may have brought home their continuing subservience to the Protestant merchant elite. Of course this was nothing new, and for the winter they were assured food and lodging; albeit as a debt against the upcoming fishing season's wages. If faction fighting played a key role in the unrest of 1788, language, religion, economic dependence and class antagonism may have offered sub-texts to uncertainties and grievances at which we can only guess.

What we do know is that hurling, imported Irish provincial rivalries and, after the bloodied noses, partying were traditional in late winter. The whole seems an indistinct mixture of Irish nationalism, boredom and anticipation of the spring solstice. In this the unattached young male Irish Catholic immigrant may have seen only habit and tradition. By contrast, the propertied and the Protestant elite—faced with the demographic evidence of their numerical inferiority—may have discerned change which posed a threat to their position, power and security. In defence they invoked the law, and in the process, a sporting event or faction fight was constructed as an unlawful assembly, further translated into a riotous one

26. Anon., "James O'Donel", *Dictionary of Canadian Biography*, vol. V (Toronto: University of Toronto Press, 1983) at 631-633. Milbanke's three years as commander in Newfoundland receives a one-line notice in S. Lee., ed., *Dictionary of National Biography*, vol. XXXVII (London: Smith, Elder & Co., 1895) at 369-370.

27. E.P. Thompson, *Whigs and Hunters* (London: Pantheon Books, 1975). (1722) 9 Geo I, c.22 [The Black Act] and its amendments through the eighteenth century extended the number of capital crimes, especially offences against property, to 350. It was largely repealed in 1823 (7&8 Geo IV, c. 27).

which threatened the fabric of the state itself. Perhaps, like the English peasants suddenly targeted as criminals by the Black Act, the Irish fishermen and planters brought to court in September 1788 were the surprised recipients of new and externally-defined standards of acceptable social behaviour. Long-standing festive late winter activities—hurling and inebriated sociability which declined into faction fighting—could now be defined as “riot” and “endangering the King’s peace.” The bruises and cracked heads incurred in these traditional pastimes could now attract sanctions imposed by the state: fines, loss of wages, forced sale of property, flogging, transportation and banishment. At the same time as they signalled the presence of the state, these punishments seemed to reflect the determination of a small elite to maintain order and their own social and economic prominence.

Can magistrates and merchants in Ferryland stand in for Walpole’s hard men? According to O’Donel they had seen unrest before. And like the young men hurling or cracking a few skulls up on the Downs, they had traditional responses to hand: ignore it or contain it; or buy time until such shenanigans were forgotten in the bustle of a new fishing season. But in the winter of 1787-1788 there was the chance of using Power to muddy Catholic waters. Robert Carter, his family and his friends promoted themselves as the natural, even sole interlocutors with the state, personified by the seasonally-resident governor and his secretary in St. John’s, and the governor’s naval surrogates patrolling the coasts. This preeminent minority’s influence and hopes for position and preferment depended upon the governor’s goodwill. And Ferryland’s elite was positioned within the legal system to take advantage of London’s centralizing mercantile and imperial policies. Within three years Newfoundland would have a supreme court and, within a generation, a resident population large enough to require a year-round governor (1818) and a governor’s council (1823). Were the governor’s surrogates, Carter and Pellew, and the Ferryland magistrates, Sweetland and Romney, both principals and agents in 1788? As principals they had social position and economic power to maintain. As agents they signalled the arrival of more standardized and universal definitions of English law, especially where the issue of state security might intrude.²⁸ Catholic disabilities were a religious, a

28. The process whereby the law in England in a revolutionary age was tightened in the interests of state security and, at the same time, exported to the colonies, is a theme of the *Canadian State Trials* volume, *supra* note 18. The same process was under way in Ireland: T. Bartlett, “An End to the Moral Economy: The Irish Militia Disturbances of 1793” (1983) 99 *Past and Present* 41.

political and an imperial problem for Westminster. Continued reform, leading to emancipation in 1829, would profoundly affect Newfoundland where sectarian rivalries predominated in politics, the economy and social relations through the middle of the nineteenth century.

In Ferryland in 1788 the private interests of the merchant and Protestant elite may have piggybacked on the imperial process of imposing legal norms which no longer distinguished violent entertainment and a release from the winter's long tedium from riot and a threat to state security. In this process however, Thompson has shown that the law is not necessarily subordinated to private interest. And so it proved here. The Carters and their friends may have turned the law to their own account, but there are indications that it was a pyrrhic victory. Someone may have complained, perhaps through Aaron Graham, secretary to a succession of governors, who favoured a more moderate and accommodating policy towards the official representatives of Roman Catholicism on the island.²⁹ Governor Elliot did not question the sentences handed down in 1788. However, he left Pellew free to vary them in execution, and, as we have seen, he did so in the direction of greater leniency. Elliot and his successor went further, to the point of challenging the magistrates' stewardship and expenditure of the fines. Recent governors had already found fault with surrogate, magistrate, and district collector of the customs, Robert Carter. Admiral Campbell in 1785 had called him to account for excessive expenses, and rejected his request for a salary as J.P. Elliot in 1788 denied him a salaried clerk and remonstrated that the more than £500 of fines and forfeitures of 1788 must not be retained in Ferryland for uses to be defined by the magistrates. His successor Milbanke was outspoken. He criticized Sweetland for cost overruns on the jail and courthouse and for extravagantly furnishing the latter. Carter had to reimburse the court for unauthorized expenditures. Arguably the most influential man in the district, he resigned his commission as J.P., though he continued as surrogate. Milbanke then rebuked him for appearing as counsel in the Ferryland courts. The Carter connection was further discredited by Milbanke's accusations that the fines of 1788 had been used, without gubernatorial authority, to defray the costs of transporting the guilty. This was not the first time that Carter was accused of spending public monies or expenses which properly lay with private parties. In 1777 Governor John Montagu had rebuked him for charging the court the costs of apprehending run-away servants instead of billing their complaining employers. In 1789 Governor Milbanke concluded that the courts had sustained ex-

29. The governor's incoming correspondence has not survived.

penses which properly fell to the merchants who brought actions before them. As if this was not enough, Sweetland's bookkeeping was criticized as sloppy, with the unstated implication that it may have been fraudulent.³⁰ Thereafter his name disappears from the roster of magistrates adjudicating disputes in the district.

Increased vigilance by the governor and by Aaron Graham who as governor's secretary provided continuity among successive governors, indicated that judicial authority in Ferryland was not untrammelled. Its officers were accountable. Two of the four judges who presided over the 114 cases in 1788, Carter and Sweetland, were reprimanded and, in effect, removed from office. In an era of imperial consolidation and judicial reform, signalled in Newfoundland by a first act of judicature in 1791, both the definition of criminality, as in the charge of riotous assembly-cum-sedition brought against the young men on the Downs above Ferryland, and the conduct of judges would be more closely monitored. New standards of social behaviour, and the legal processes by which they were judged, might be imposed and supplant locally sanctioned custom. In the course of serving an imperial interest—the need for stricter provisions for state security in an age of change, reform, revolution and war—the law might at the same time reinforce the power and position of the local Ferryland elite. But in extending its sway, the law would be held to its claims of equal treatment and could thus prevail over private interest.

30. *Supra* note 3. Colonial Office Correspondence, *supra* note 2. All gubernatorial letters addressed to Robert Carter by: John Campbell, 3 October 1785; John Elliot, 9 October 1786, 12 October 1788; Mark Milbanke, 23 October 1789, 18, 28 October 1790; Richard King, 25 October 1792. Before he died in office in 1800 Carter continued to lobby succeeding governors: for a life pension, a salary as surrogate, and a salaried clerk. Governor William Waldegrave wrote his surrogate, Captain Crofton, on 28 August 1797 that "it is strongly rumoured here that Mr. Carter Sen[io]r has of late been guilty of many offensive acts in his capacity of Surrogate for the district of Ferryland."