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The Sedition Trial of Timothy Houghton: Repression in a Marginal New England Planter Township during the Revolutionary Years

THE FORTHCOMING PUBLICATION BY The Osgoode Society for Canadian Legal History of the first in a projected multi-volume series, *Canadian State Trials*, will help to focus attention on the hitherto much neglected subject of 18th-century crimes against the state, especially during the period of the American Revolution.¹ A legal history perspective on New England Planter attitudes towards the American Revolution will also help to counter-balance a recent tendency by historians of Loyalism to reconceptualize the New England Planters as undifferentiated loyal Americans. Chief among these “revisions in need of revising” is J.M. Bumsted’s ‘loyalty’ or ‘Canadian Loyalist’ thesis,² against which John Bartlet Brebner’s hitherto normative ‘neutrality paradigm’ must now be set. Indeed, the evidence of the wartime sedition proceedings suggests that disloyalty was far more endemic and widespread than Bumsted and other revisionists who view the New England Planters as proto-Loyalists, are prepared to admit.³ The colonial government of the time recognized this fact and responded accordingly. The only way in which the loyalty thesis can be sustained is by ignoring the evidence of the sedition proceedings, which suggest that the New England Planters were neither neutral nor loyal. If Brebner’s neutrality thesis erred by attempting unsuccessfully to ‘acadianize’ the New England Planter experience during the American Revolution, then Bumsted’s loyalty thesis errs by reconstructing the Loyalist myth in order to accommodate New England Planters of ambiguous loyalty and forced allegiance. Both paradigms stand in need of revising in favour of a ‘quasi-loyalty’ thesis,

- 1 This article was occasioned by reading Ernest Clarke and Jim Phillips, “Rebellion and Repression in Nova Scotia in the Era of the American Revolution”, in F. Murray Greenwood and Barry Wright, eds., *Canadian State Trials: Volume 1: The Early Period, 1670-1837* (forthcoming, 1996). I am grateful to the authors for allowing me to consult their article in manuscript, and to Dr. Phillips for an insightful critique of the first draft of the present article.
- 2 The thesis, which was first propounded by Bumsted in his “Loyalists and Nationalists: An Essay on the Problem of Definitions”, *Canadian Review of Studies in Nationalism*, 6 (Fall 1979), pp. 218-32, is most fully articulated in the third of his Mount Allison University Winthrop Pickard Bell Lectures, “Revisions in Need of Revising: The Future of Loyalist Studies”, in J.M. Bumsted, *Understanding the Loyalists* (Sackville NB, 1986), pp. 18, 39-51. See also Bumsted’s article in David J. Bercuson, ed., *Colonies: Canada to 1867* (Toronto, 1992), Chapter 4.
- 3 Bumsted’s most recent statement on this subject is to be found in “1763-1783: Resettlement and Rebellion”, in Phillip A. Buckner and John G. Reid, eds., *The Atlantic Region to Confederation: A History* (Toronto and Fredericton, 1994), pp. 168-72. (“Too much has probably been made of the immediate conflict of loyalty in the Atlantic region”.)

Barry Cahill, “The Sedition Trial of Timothy Houghton: Repression in a Marginal New England Planter Township during the Revolutionary Years”, *Acadiensis*, XXIV, 1 (Autumn 1994), pp. 35-58.

which, if nothing else, takes into account the evidence of legal proceedings for crimes against the state ancillary to treason. This is not to say that New England Planter attitudes were any more monolithic than American Loyalist attitudes. Just as there were whigs and Tories among the Loyalist refugees, so too were there patriots and non-patriots among the immigrant New England Planters, and it was these tensions among Nova Scotia's New Englanders which ultimately prevented sedition from culminating in rebellion.

Of the four Massachusetts townships on the South Shore of Nova Scotia — the margins of 'a marginal colony during the Revolutionary years' — it is Chester (the smallest and most easterly of the four) which has been the least studied.⁴ Though it was given two provocative pages by Brebner, in a chapter of *The Neutral Yankees of Nova Scotia* entitled "Profits and Pains of Neutrality", the public prosecution, in 1777, of the chief magistrate of Chester township, Captain Timothy Houghton JP, for slandering the king is not only the most important, but also the least known instance of sanctioned disloyalty in the New England Planter townships along Nova Scotia's South Shore.⁵ Houghton, who, as the chief agent and expeditor of

- 4 Liverpool and Yarmouth Townships (the two larger) have received more scholarly attention than Chester or Barrington (the two smaller); see Graeme Wynn, "A Province Too Much Dependent on New England", *Canadian Geographer*, 31, 2 (Summer 1987), pp. 98-113, which covers the period 1755 to 1775. There is no study of Chester comparable to McNabb on Horton or Mancke on Liverpool: Debra A. McNabb, "Land and Families in Horton Township, Nova Scotia, 1760-1830", M.A. thesis, University of British Columbia, 1986; Elizabeth Mancke, "Two Patterns of New England Transformation: Machias, Maine and Liverpool, Nova Scotia, 1760-1820", Ph.D. thesis, Johns Hopkins University, 1989. Two other useful unpublished studies are Phyllis R. Blakeley, "The Coming of the New Englanders to the South Shore of Nova Scotia", unpublished paper presented to the Nova Scotia Historical Society, 6 March 1959 and Ian McKay, "The History of the South Shore: An Overview, 1620-1920: A Report to the Nova Scotia Department of Development" (December 1984); McKay goes so far as to characterize the New England Planter South Shore as "a centre of Rebellion" (p. 5). See also Gordon Stewart and George Rawlyk, *A People Highly Favoured of God: The Nova Scotia Yankees and the American Revolution* (Toronto, 1972); George A. Rawlyk, *Nova Scotia's Massachusetts: A Study of Massachusetts-Nova Scotia Relations 1630 to 1784* (Montreal & London, 1973); and Gordon T. Stewart, *Documents Relating to the Great Awakening in Nova Scotia 1760-1791* (Toronto, 1982). A useful recent synopsis of the historiography of 'Nova Scotia and the American Revolution' is given in M. Brook Taylor, ed., *Canadian History: A Reader's Guide: 1: Beginnings to Confederation* (Toronto, 1994), pp. 108-9, 256, 402-4.
- 5 John Bartlet Brebner, *The Neutral Yankees of Nova Scotia: A Marginal Colony during the Revolutionary Years* ([1937] New York, 1970), pp. 341-2. See generally George Rawlyk, "J.B. Brebner and Some Recent Trends in Eighteenth-Century Maritime Historiography", in Margaret Conrad, ed., *They Planted Well: New England Planters in Maritime Canada* (Fredericton NB, 1988), pp. 97-119.

Brebner credits Professor D.C. Harvey, then Archivist of Nova Scotia, with having 'uncovered' the Houghton case. Brebner's brief account was essentially duplicated by Wilfred Brenton Kerr, *The Maritime Provinces of British North America and the American Revolution* (Sackville NB, [1942]), p. 83, who downplayed the significance of the affair: see also W.B. Kerr, "Nova Scotia in the Critical Years, 1775-6", *Dalhousie Review*, 12, 1 (April 1932), pp. 97-107. S.D. Clark, *Movements of Political Protest in Canada, 1640-1840* ([1959] Toronto, 1978), pp. 62-64, who devoted three pages to the topic of disaffection on the South Shore, did not so much as mention either Houghton or Chester Township. Despite the brevity of his treatment, moreover, had it not been for Brebner, Houghton might have been lost to history altogether. The 'constitutional republican' tradition within the Houghton family was lost by the third generation, a granddaughter of Timothy Houghton marrying a son of the Loyalist refugee Charles Church. For the impact of the Loyalist-Planter *mésalliance* on the 60-year-long political hegemony of the Anglo-German élite centred in the shire town of Lunenburg, see Brian Cuthbertson, *Johnny Bluenose at the Polls: Epic Nova Scotian Election Battles 1758-1848* (Halifax, 1994), p. 169.

the 'Shoreham' township grant of 1759, deserves to be regarded as the founder of Chester, was a former Massachusetts provincial officer of wide military experience.⁶ The proprietors' choice of Houghton as moderator at the inaugural town meeting in August 1761 was implicitly approved by government seven months later, when Houghton was commissioned justice of the peace.⁷ Becoming the first magistrate in the township guaranteed that Houghton would be *primus inter pares* on the proprietors' committee, a quinquevirate appointed by the governing Council of Twelve in Halifax, in May 1762, for the purpose of regulating the admission of settlers into the township.⁸ The very existence of such committees demonstrates the extent to which the Council was able to maintain indirect control over the administration of local government.⁹ Even the moderator was essentially decorative unless and until empowered by being included in the commission of the peace, by which means the Halifax rulers legitimized, through positive vetting and central appointment of 'justices of the quorum' (sessional magistrates) as well as civil magistrates, the régime of democratically selected local headmen, such as Captain Houghton.

Though these petty oligarchies made Halifax rule more or less effective throughout the New England Planter townships, the pre-war ferment undermined the precarious balance of forces which had existed since the beginning of the Planter influx towards the end of the Seven Years' War in America. Nor was Timothy Houghton the first prominent New England Planter to be prosecuted for slandering the king. Seditious utterances were first heard far from the South Shore, on Minas Basin, and long before the American Revolution. As early as 1761 the magistrates of Horton Township indicted one Daniel Hovey, a proprietor from Massachusetts, for seditious utterance for 'maliciously and publicly defying' the orders of the administrator, Chief Justice Belcher¹⁰ — ex officio president of the Council — and the king himself. While, in theory, the Court of General Sessions of the Peace had jurisdiction to try misdemeanours such as sedition and riot, the exercise of the jurisdiction was officially discountenanced and *R. v. Hovey* proved abortive. Despite the grand jury's having returned *Ignoramus* ('not found') on the bill, the

In relative terms the Planters were viewed as 'disloyal' by the Loyalists because of the seditious practices in which they had indulged during the war. Assimilation to the Loyalists meant that even the memory of a radical political culture among the New England Planters, vigorous during the Revolutionary years, would be extinguished. The sedition trial of his Houghton ancestor is conspicuous by its absence from Charles Edward Church, comp., *History and Genealogy of the Houghton Family* (Halifax, 1896). Despite the impossibility of constructing Timothy Houghton as a Loyalist in any sense of the word, this history of his family by a descendant concludes with a paean to the mythical 'U.E.L.', whose principal legacy to the Canada of the 1890s was jingoistic imperialism.

- 6 Nancy S. Voyer, comp., *Massachusetts Officers in the French and Indian Wars 1748-1763* (Boston, 1975).
- 7 'Commission Book', 20 March 1762, RG 1, vol. 164, p. 167, Public Archives of Nova Scotia [PANS]. Houghton remained sole JP until 1764, when he was joined in the commission by Dr. Jonathan Prescott. Houghton, who acted as surveyor and proprietors' clerk, was also a captain of militia and officer commanding the militia within the township.
- 8 Minutes of Council, 4 May 1762, RG 1, vol. 204, p. 48, PANS. The other members were the 'Dissenting Teacher', the Reverend John Seccombe, and three proprietors.
- 9 See generally D.C. Harvey, "The Struggle for the New England Form of Township Government in Nova Scotia", *Canadian Historical Association Annual Report* (1933), pp. 15ff.
- 10 Chief Justice Jonathan Belcher took over the government of the province on the death of Governor Charles Lawrence in October 1760 and became lieutenant-governor in November 1761.

magistrates imprisoned the accused without trial, prompting the Council at Halifax to rule that their proceedings were 'irregular and out of order'.¹¹ The government was not prepared to tolerate political or religious use of the criminal law by the justices of the quorum for the purpose of resolving disputes or overasserting the limited criminal jurisdiction derivable from the commission of the peace. The privilege of prosecuting crimes against the state was one which the governing Council of Twelve at Halifax arrogated exclusively to itself.

By the outbreak of "North America's first civil war" in 1775, the *Hovey* case was long forgotten. No attempt has ever been made by scholars to link it to the sedition proceedings resulting from the insurrection at Lunenburg in December 1753,¹² or to the sedition proceedings, during the 'revolutionary years', against New England Planters in Nova Scotia, who were neither so loyal nor so neutral as they have been depicted by historians prepared to ignore incidents of disloyalty or to explain away Planter republican angst as neutrality. Despite the fact that New England Planter patriots, as political pariahs in their adopted homeland, were widely dispersed throughout Nova Scotia, the historiography remains dominated by the treason trials of the patriot besiegers of Fort Cumberland¹³ — as if the scope of crimes against the state in the colonial period was so narrow as to encompass only armed rebellion. This article aims to redress the imbalance by focusing on New England Planter patriotism as disloyalty articulated not as rebellion but as sedition. It is an attempt to learn more "about those men in Nova Scotia who supported the revolutionary cause",¹⁴ without having recourse to insurrection.

This article also provides a context for interpreting the sedition proceedings as an after-effect of the raising of the patriot siege of Fort Cumberland. The Nova Scotia government dealt with insurrection in Cumberland County and sedition elsewhere in the colony through a variety of measures, administrative and juridical,

11 Judith Norton, comp., *New England Planters in the Maritime Provinces of Canada, 1759-1800: Bibliography of Primary Sources* (Toronto, 1993), pp. 198, 210; A.W.H. Eaton, *The History of Kings County Nova Scotia* ([1910] Belleville, 1972), p. 441.

12 See the author's "The 'Hoffman Rebellion' (1753) and 'Hoffman's Trial' (1754): Constructive High Treason and Seditious Conspiracy in Nova Scotia under the Lawrentian Stratocracy", in Greenwood and Wright, eds., *Canadian State Trials: Volume I*.

13 Previous work on this subject will henceforth be measured against Ernest Clarke, *The Siege of Fort Cumberland, 1776* (forthcoming, 1995). See also D.C. Harvey, "Nova Scotia and The American Revolution", United Services Institute of Nova Scotia *Annual Journal* (1932), pp. 12-30; W.S. MacNutt, "British Rule in Nova Scotia 1713-1784", M.A. thesis, University of London, 1932, pp. 395-432; Joseph A. Ernst, "English Canada and the American Revolution", in Centre national de la recherche scientifique, *La Révolution américaine et l'Europe* (Paris, 1979), pp. 515-25; G.A. Rawlyk, "The American Revolution and Canada", in Jack P. Greene and J.R. Pole, eds., *The Blackwell Encyclopedia of The American Revolution* (Cambridge MA & Oxford, 1991), pp. 497-503. American attitudes towards Canada are nicely caught by Jack P. Greene and J.R. Pole in a volume of conference essays which they edited and which is perhaps the finest work on the subject published in the 1980s: *Colonial British America: Essays in the New History of the Early Modern Era* (Baltimore and London, 1984).

14 G.A. Rawlyk, ed., *Revolution Rejected, 1775-1776* (Scarborough, ON, 1968), provides a summary of the debate about the reasons why Nova Scotia did not join the American Revolution, but, as Graeme Wynn has pointed out, "With a few exceptions the perceptive regional and biographical studies called for there have yet to appear". See Graeme Wynn, "A Region of Scattered Settlements and Bounded Possibilities: Northeastern America 1775-1800", *The Canadian Geographer*, 31, 4 (Winter 1987), p. 335 n. 4.

which involved political use of the criminal law. Legal repression as the official response to apprehensions of disloyalty culminated in holding sedition trials, or threatening treason trials. Other aspects included dismissal from government service, harassment and intimidation, and detention with or without trial. Any account of official reaction to disloyalty culminating in sedition rather than rebellion would be incomplete if the trials for sedition were not placed in this much broader context of legal repression and the general criminalization of political dissent. That government's response to sedition on the South Shore and elsewhere in Nova Scotia during the period of the American Revolution was characterized more by repression than by leniency is suggested by the tendency to construct formal high treason out of sedition. Nevertheless, only one magistrate — Timothy Houghton — was actually tried for 'high misdemeanour' and, while he was found guilty, fined, imprisoned and decommissioned, official forgiveness for breaking allegiance was granted upon his retaking the oath.

It cannot be emphasized too greatly, as will become apparent through the course of this article, that the patriot leadership in the New England Planter townships, whether in the southeastern part of present-day New Brunswick or on the south (and southwestern) shore of Nova Scotia, was supplied by the resident magistrates, the incumbent Congregational clergy or both. Minister and moderator represented the twin pillars of local government in New England Planter townships. It would, however, have been highly inexpedient for Halifax to prosecute Chester's long-time Congregational minister, the Reverend John Seccombe, for uttering seditious words. In December 1776, and again in January 1777, Seccombe was hailed before the Council of Twelve, charged with having preached a "seditious sermon" and having prayed publicly for the military success of the patriots; "he was ordered to find security in £500 for his good behaviour, and to be debarred from preaching until he signed a recantation".¹⁵ Seccombe was neither prosecuted nor compelled to take the oath of allegiance, however, and what circumstantial evidence there is suggests that he neither stopped preaching nor recanted. The central government dared not indict a venerable 'Dissenting Teacher', nearly 70 years of age, who was probably the best-known and most highly respected clergyman in the province. Doing so would, at the very least, have been tantamount to a gratuitous insult to the memory of the recently deceased Chief Justice Belcher, who, though himself a member of the Church of England, had invited Seccombe (his Harvard classmate of 1728) to preach the funeral oration over his wife in 1771.¹⁶ A 'prosecution at Law', therefore, was neither tactically advisable nor strategically necessary in order to quell parsonical sedition.

What Seccombe's biographer, Susan Buggey,¹⁷ says of the Seccombe affair

15 See generally S. Buggey, "Seccombe, John", *Dictionary of Canadian Biography [DCB]*, vol. 4, pp. 705-6; Gwendolyn Davies, "Poet to Pulpit to Planter: The Peregrinations of the Reverend John Seccombe", in Margaret Conrad, ed., *Making Adjustments: Change and Continuity in Planter Nova Scotia 1759-1800* (Fredericton, 1991), pp. 189-97.

16 Beamish Murdoch, *A History of Nova-Scotia, or Acadie*, vol. 2 (Halifax, 1866), p. 584; see also Norton, *New England Planters*, p. 229. Murdoch, however, altogether ignores the Houghton sedition trial.

17 Buggey, "Seccombe, John".

applies equally to Squire Houghton, whose trial in the Supreme Court in February 1777 on charges of calumny against the king perhaps “tells more about governmental fears and Chester’s proximity to the capital than about revolutionary sympathies” on Houghton’s part. Though Buggey does not draw any comparison between the Seccombe and *Houghton* cases, if the government overreacted by not only requiring Seccombe “to give security for his future good behaviour but [also forbidding him] to preach until he had signed a formal recantation”, then how much more so by not only prosecuting Houghton, but also sentencing him to imprisonment and fine. Prosecutorial decisions — especially under martial law, during wartime — were not made in a legal-official-political vacuum, and the unequal treatment accorded Seccombe and Houghton shows just how discretionary such judgements might be in view of the relative importance and prestige of the persons concerned. The Houghton sedition trial is historically more significant not only than the Seccombe ‘heresy trial’, but also than the Cumberland treason trials occurring two months later, because Houghton’s prominence as a local government administrator made the offence much more serious, and potentially much more subversive of the government’s authority within the township, than it would otherwise have been. The government was virtually compelled to prosecute Houghton for a crime against the state in order to legitimize dismissing him. *Houghton* was also the first of only two prosecutions for sedition successfully carried out by the government of Nova Scotia during the entire course of the American Revolution.¹⁸

The situation in Chester in 1776-77 was doubtless complicated by the fact that Parson Seccombe and Squire Houghton were long-time associates in governing Chester township; both were members of the 1762 Committee. Though it was scarcely practicable to subject the minister, given his age, distinction, prestige and popularity, to a show trial in Halifax, it was necessary to make an example of some prominent person — who better than Seccombe’s co-religionist, the ‘ardent republican’ chief magistrate? Members of the governing Council could afford to be magnanimously lenient with a well-respected, Harvard-educated elderly clergyman carried away by his own pulpit rhetoric; seditious slander from out the mouth of the chief magistrate of the same township — reputedly a station on the ‘underground railroad’ for fugitive rebels in transit, and in any case utterly defenceless against the threat from American privateers, who raided in 1779 and again in 1782 — was intolerable. In order to re-establish its authority over its own agents, the government had no choice but to make an example of the most prominent member of Seccombe’s congregation. Chester, a Massachusetts township on the South Shore of Nova Scotia, appeared riven into two factions: ‘old’ New England, led by churchman Dr. Jonathan Prescott, a former military surgeon who had participated in the expedition against Louisbourg in 1745, and ‘new’ New England, led by the Congregational Houghton — the former looking to Halifax for support, the latter to the county town of Lunenburg. The advent of rebellion and civil war in America

18 The other — *R. v. Salter* (1777) — involving the *primus inter pares* of the old New England mercantile elite of Halifax, failed to result in a clear verdict and induced the government to keep Malachy Salter under prosecution until his death in 1781.

served only to exacerbate local tensions, and to redefine the feudists along political and confessional lines. Tensions within Chester may also have reflected tensions between the Anglo-German ascendancy which ruled the county and the marginalized New England Planter township, the contiguity of which “to Lunenburg had led to its incorporation into Lunenburg County”, rather than Halifax.¹⁹

The justice of the peace was the government agent *par excellence*; the government depended on its network of JPs both to enforce the law and to implement public policy — to reach those far-distant parts whither Halifax rule otherwise could not penetrate. For example, the tactic of issuing a general warrant empowering the justices of the peace to enforce the emergency measures proclamation of 23 June 1775,²⁰ so the government hoped, would both confirm the dependability of the magistrates and reinforce the subservience to government of its law agents. Then, on 6 July 1775, Secretary Richard Bulkeley, a senior member of Council and *de facto* leader of the government, wrote a circular letter to magistrates throughout the province enjoining them to watch the behaviour of local people, and to arrest and convey to Halifax, under guard, anyone suspected of opposing royal authority.²¹ Houghton would have received a copy of this special executive order, though neither he nor Bulkeley could have suspected that the only person to be prosecuted as a result of it would be one of the magistrates to whom it was addressed.

On 23 August 1775 the king issued his omnibus proclamation “For Suppressing Rebellion and Seditious” in America, which contained an open invitation to tory-loyalists in the townships to cast suspicion upon and denounce their whig-patriot

- 19 Cuthbertson, *Johnny Bluenose*, pp. 165-6. Squire Houghton’s closest business associate — before as well as after the sedition trial — was Philip Augustus Knaut, MHA for Lunenburg Township, who was formerly of both Halifax and Lunenburg but latterly of Chester. Knaut, a fellow JP, was also Houghton’s principal creditor. Concerning the career of P.A. Knaut (“one of the first success stories in the Lunenburg region”), see J. Murray Beck, “Knaut, Philip Augustus”, *DCB*, vol. 4, p. 414. Knaut and Houghton began their association as partners in the Chester sawmill, Knaut having been Lunenburg’s premier sawmiller.
- 20 “[R]equiring all persons coming into this Province from any parts of America to give Testimony of their Fidelity and Allegiance to His Majesty’s Sacred person and Government”, Commission Book, RG 1, vol. 168, pp. 419-22, PANS. For the experience of one of the innocent victims of the series of preventive war measures acts taken by government in the latter half of 1775 — the eminent Congregational pastor, the Reverend Dr. Simeon Howard of Boston — see Emily P. Weaver, “Nova Scotia and New England during the Revolution”, *American Historical Review*, 10 (1904), p. 64; Clifford K. Shipton, ed., *Sibley’s Harvard Graduates*, vol. 14 (1968), pp. 282-3. Council minutes for June 1775 record that Rev. Howard, who in the early 1760s had supplied the Congregational pulpit at Cumberland, to which he afterwards declined a call, was arrested in Annapolis Royal, transported to Halifax in the custody of the provost-marshal, and threatened with “a prosecution at Law” if he did not conform. Howard was hailed before the Council and the state oaths administered to him. See Minutes of Council, 20 June 1775, RG 1, vol. 189, pp. 310-2, PANS. The case of the ‘dissenting Teacher’ Howard, a recent immigrant from Massachusetts, bears contrasting with that of his long-settled older contemporary, Seccombe, who was treated with far greater leniency.
- 21 Norton, *New England Planters*, p. 42, citing Secretary’s letter-book, RG 1, vol. 136, p. 200, PANS; text of circular in Mather Byles DesBrisay, *History of the County of Lunenburg* ([1895] Bridgewater, NS, 1967), p. 60.

neighbours.²² Between the passage of *The Quebec Act* in June 1774 and the outbreak of armed rebellion in Massachusetts in April 1775, the transition from protestant dissenter to whig-patriot — from religious to political dissent — was occurring among disaffected New England Planters on the South Shore of Nova Scotia. Yet it was really the desperate situation in Argyle Township, pitting loyal Acadians against disloyal New England Planters, which stirred the government to purposeful action. Three days after the decision was taken to dismiss Elder John Frost, JP, on 26 August, Governor Francis Legge issued a proclamation requiring all persons above age 16 to appear at the next General Sessions of the Peace in order to subscribe the state oaths — allegiance, supremacy and abjuration — in open court.²³ Houghton conformed outwardly; most people did. Then, in September or October 1775, during and after the prescribed public administration of the oaths, Houghton was alleged to have asserted that the oaths were non-binding because the king — towards whom his colonial subjects were being obliged to reaffirm their allegiance — had himself broken his coronation oath by ‘establishing’ Roman Catholicism under *The Quebec Act*. It is possible, of course, that the handwriting on the wall was recognized as early as August 1774, eight months before the outbreak of armed rebellion in New England, when Houghton was passed over for appointment as a justice of the Inferior Court of Common Pleas of Lunenburg County in favour of his junior colleague, Prescott.²⁴

The omnibus public administration of the state oaths at Lunenburg took place during the autumn sitting of the Court of General Sessions of the Peace in October 1775. This emergency measure, which deserves more than any other to be regarded as the Nova Scotia government’s ‘remedy for the American Revolution’, was in response to the governor’s loyalty oath proclamation of the preceding August. Houghton, as a magistrate, could hardly have refused publicly to subscribe the oath of allegiance, but justified his doing so on the grounds that swearing allegiance to a king who had broken his coronation oath to uphold the protestant supremacy did not bind any of his protestant subjects. Houghton’s reasoning did not commend itself to the Anglo-American Tory rump in Chester, but the anglo-German ascendancy in the shire town seemed reluctant to take action against any magistrate who conformed outwardly — even though not with a clear conscience.²⁵

- 22 ‘Royal Proclamations, Proclamations by the Lords Justices and by the Governors of Nova Scotia, 1748-1823’, RG 1, vol. 346, doc. 81, PANS.
- 23 Minutes of Council, 26 Aug. 1775, RG 1, vol. 189, pp. 345ff., PANS; Clark, *Political Protest*, pp. 62-3. Frost (1716-1779), ordained elder of the dissenting congregation at Jebogue (Chebogue), held a magistrate’s commission which comprehended three of the four southwestern townships then comprising Queens County. See also Stuart and Gwen Guiou Trask, comp., *The Records of the Church of Jebogue in Yarmouth, Nova Scotia 1766-1851* (Yarmouth, 1992), *passim*.
- 24 Commission Book, RG 1, vol. 168, pp. 376-78, PANS. Prescott was originally from Massachusetts, but, unlike Houghton, he was a member of the Established Church, a point which would have counted in his favour in the eyes of Chief Justice Belcher, also from Massachusetts and himself a churchman. Prescott was a quintessential government man whom the Halifax oligarchy tried unsuccessfully in 1775 to parachute into Liverpool Township as MHA, after the previous member, the notorious patriot, Justice Seth Harding, had left the province to join the American Rebellion: Cuthbertson, *Johnny Bluenose*, p. 176.
- 25 Harold A. Innis, ed., *The Diary of Simeon Perkins 1766-1780* (Toronto, 1948), p. 108, under date 2 Jan. 1776; Minutes of Council, RG 1, vol. 189, pp. 345ff., PANS. The Quarter Sessions occurred

Disloyalty within their own ranks would have caused their stock to plummet in Halifax, and invited leading questions as to whether the anti-subversion executive order of July 1775 was being followed in the case of those very magistrates who were personally responsible for enforcing it.

The problem of 'who watches the watchers' begs the question of why the disaffected magistrate Houghton was not 'presented' by the Lunenburg grand jury or indicted by the Lunenburg County Court of Sessions. The latter would not have met until March 1777, however, whereas the Halifax grand jury convened quarterly, and the circular from the secretary of the province was deemed sufficient authorization to arrest Houghton and convey him, under guard, to Halifax for indictment, arraignment and trial. This despite the fact that it was technically illegal to try an accused outside the county where the offence allegedly occurred. Though provincial legislation provided for an exemption in case of felony, the summary change of venue shows the degree to which the proclamation of martial law in December 1775 gave teeth to the executive order of July 1775 (which effectively suspended due process) and conferred wide powers of legal repression on the civil authorities. There was no question of military aid to the civil power, as the British army presence was negligible, while the efforts of Governor Francis Legge — a lieutenant-colonel in the regular army — to raise a fencible regiment were defeated by his personal unpopularity.

Though it cannot be known with any degree of certainty by whom the initiative against Squire Houghton was taken locally, collaboration, or at the very least acquiescence, on the part of John Creighton, colonel of militia, chief magistrate of Lunenburg County and recently-appointed (May 1775) member of the Council, must be presumed. Creighton was the only official within the county possessing direct authority over a magistrate of Houghton's seniority, and who could have acted with or without explicit orders from government to dispatch the deputy provost-marshal to Chester to arrest Houghton.²⁶ The government was alarmed by the defection of senior magistrates such as Frost and Houghton, on whose loyalty and judgement the 'peace, order and good government' of the outports depended — despite, if not because of, their being leaders of the New England Planter-cum-Congregational community.

'Arraigning' Parson Secombe and prosecuting Squire Houghton for sedition, were undoubtedly two of a variety of *ad hoc* emergency war measures determined upon by the Council in December 1776 in order to reassert royal authority in the outports lest another insurrection break out. Indeed, the government was as expeditious in its prosecution of Houghton for high sedition as it was to be dilatory in its prosecution of the patriot besiegers of Fort Cumberland for high treason. It was a case of the sideshow occupying centre stage while the feature presentation was still in rehearsal. Yet trials for sedition carried far fewer political and legal risks than trials for high treason, which the government was exceedingly reluctant to undertake — mainly because the death sentence was mandatory and irrevocable except by royal pardon. No delay retarded the prosecution of Squire Houghton, who

four times a year only in Halifax County; elsewhere they were biannual.

26 It is possible, though unlikely, that the crown proceeding was removed by writ of *certiorari* from the Lunenburg County Court of General Sessions of the Peace to the Supreme Court at Halifax, there being none at Lunenburg.

was, in quick succession, indicted, arraigned and tried in February 1777 (Hilary Term), while the Cumberland rebels languished under indictments, none of which were tried until April (Easter Term). Indeed, what distinguished Houghton most conspicuously from all but two of the 40-odd Cumberland treason indictees was that he was tried at all.

Despite the government's decision to prosecute Houghton, proceedings against him were not actually instituted until more than a year after the alleged offences had taken place. Though the offences themselves appear not to have been committed until after the outbreak of hostilities in Massachusetts in April 1775, moreover, the content of Houghton's slander suggests that his 'constant opposition' to government was animated by whig-patriot, 'constitutional republican' attitudes towards *The Quebec Act*. Nevertheless, it was events elsewhere in Nova Scotia which galvanized the Council into taking action against this constitutional republican with the queasy conscience. Incriminating depositions were procured from Houghton's Anglo-American neighbours and the pre-trial process was speedily executed — doubtless on account of the patriot investment of Fort Cumberland. Between seditious sermonizers and the patriotic bombast of disloyal magistrates such as Houghton, the government was in no mood to be conciliatory towards domestic subversives, be they dissenting clergy or free-thinking magistrates.

In the shire town of Lunenburg County, however, the point of view was different. Anglo-German officialdom were generally reluctant to lend credence to the aspersions cast against Houghton by his political or personal enemies within his own township. The petty politics of Chester's little New England were not their problem; insular Lunenburg, unless and until prompted by the Council at Halifax, did not feel threatened by Houghton's activities. His relations with prominent members of the 'foreign Protestant' community who had migrated to Chester were excellent. Yet if Houghton's loyal Anglo-American neighbours — four only of whom (the deponents) are named²⁷ — could not prevail against him in Lunenburg, they would fare better in Halifax. There the deponents received what they could not obtain in Lunenburg: an attentive hearing at the seat of power. The strategy of legal repression was a double-edged sword. Intended to be wielded by the magistrates against subversives, it was instead being used against the magistrates themselves by local malcontents. Houghton's enemies, making up in determination what they lacked in numbers, struck back at his hegemony by going over the heads of the county authorities and laying their grievances directly at the foot of government. Houghton's seditious slander in public places helped to lend credence

27 For the identity of the deponents, see the analytical inventory of archival court records relating to *Houghton*: (1) 'Depositions and Other Papers Connected with Crown Prosecutions between 1749 and 1780': doc. 60 — Deposition of William Harrison of Chester containing charges against Timothy Houghton, a magistrate of Chester (19 Dec. 1776); doc. 61 — Deposition of William Negus of Chester ... (10 Jan. 1777); doc. 62 — Deposition of John Umlach ... (10 Jan. 1777); doc. 63 — Deposition of Charles Adams ... (7 Dec. 1776); doc. 64 — Grand jury bill of indictment against Timothy Houghton of Chester (28 Jan. 1777); doc. 65 — petty jury verdict in *R. v. Houghton* (10 Feb. 1777), RG 1, vol. 342, PANS; and (2) N.S. Supreme Court / Pleas of the Crown / Easter Term 1765 to / Michaelmas 1783, pp. 274-75 — Hilary Term 1777, RG 39, "P", vol. 1, PANS. (Norton, *New England Planters*, p. 225, mistakenly identifies *Houghton* as a trial for treason rather than sedition.)

to the complaints of the non-Planter rump within the township, as the incriminating depositions, which were to form an essential part of the government's case against him, make clear.

The depositions against Houghton, four in number, all originating with Chester residents, were sworn in Halifax between 7 December 1776 and 10 January 1777 before Attorney-General Nesbitt and Secretary Bulkeley. That the attorney-general and the secretary were busily facilitating the prosecution on the government's behalf is evident from their having drafted the statements which the deponents signed.²⁸ Despite the government's having inaugurated the prosecution of Houghton in a manner entirely consistent with declared policy, jurisdictional lines had been crossed and due process suspended. Though a special commission of *oyer* and *terminer* might have been issued for the purpose of trying the accused at the newly-built county court house in Lunenburg, where the Supreme Court did not regularly sit until 1794, the proclamation of martial law enabled the government to proceed with a sedition trial as if it were a treason trial.

Assuming that his words were accurately reported by those who claimed to have heard them, Houghton's grasp of recent British political history was evidently weak, for he attributed King George's 'papism' to the fact that his early prime ministerial favourite, the unpopular Earl of Bute, was a Jacobite. Though the Earl's patronym was 'Stuart', he spent the years of the Rebellion in England and was no more a Jacobite than Houghton was a Jesuit. The Earl had also been out of power and out of politics for over a decade, and could not have been held responsible for the introduction of civil government into the old province, much less for *The Quebec Act*. In the case of John Umlach, the local recruiting agent for Governor Legge's provincial regiment, the Loyal Nova Scotia Volunteers, it is possible to read his deposition as revenge for an insult, for Houghton had allegedly abused him by "saying that such an office was 'no better than that of hangman'".²⁹ It is not clear whether the other three deponents had axes to grind as a result of Houghton's administration of the township's affairs or his views on the non-binding character of the oath of allegiance. Nevertheless, one of the deponents, William Negus, who had threatened to report Houghton to the government for his unwillingness to move against the nonjuring refugee from Liverpool, John Pendergrass, soon forfeited the chance to carry out that threat; he drowned at Lunenburg within six months of Houghton's release from jail. The evidence suggests that there was acrimony between the whig-patriot magistrate and the tory-loyalist rump within the community, and that the government exploited the situation in order to obtain a legal pretext for ridding themselves of a politically suspect and constitutionally unsound magistrate.

The indictment against Houghton, as drafted by Attorney-General Nesbitt,

28 The depositions of William Harrison and Charles Adams were drafted by Secretary Bulkeley; those of William Negus (the longest, most detailed and most incriminating of the four) and John Umlach were drafted by Attorney-General Nesbitt.

29 Brebner, *Neutral Yankees*, p. 342. Umlach, a British Army veteran, appears to have been the only proprietor among the deponents; see Joyce Hemlow, "John Umlach (ca. 1726-1821): a 'Native of Scotland', Soldier and Settler", *Nova Scotia Historical Review*, 10, 1 (June 1990), pp. 35, 42-3.

represented a distillation and downscaling of the allegations made by the four deponents. If, for example, the allegation (by deponent Charles Adams) that Houghton had “assisted some escaped prisoners from Halifax to get away before he issued a warrant for their apprehension” was true,³⁰ then there was no reason why he should not have been indicted for high treason;³¹ the crown had four witnesses, after all, and they needed only three to support the treason charge. Those more serious allegations, however, which would have given colour to an indictment for high treason, or at the very least misprison of treason, were left unused. The attorney-general had no intention of placing before the grand jury an excessive indictment which would be rejected, or which, if accepted, might lead to a conviction for a capital offence. As the government’s aim appears to have been the exemplary punishment of a deviant magistrate — not his judicial murder — especial care needed to be taken during the pre-trial process.

In order to determine the specific nature of the offence with which Houghton was charged, one need look no farther than the fourth book of Blackstone’s *Commentaries*, to the first American edition of which (published a mere five years earlier) Attorney-General Nesbitt had been a subscriber.³² It is clear that the “high misdemeanour” for which Houghton was successfully indicted and tried was contempt of the sovereign: lese-majesty, in its non-technical sense of treason-misdemeanour. Evidence of the thin line dividing treason from high misdemeanour in the colonies is to be found in the 1756 Nova Scotia criminal case, *R. v. Young*. The imperial law officers expressed the opinion that the English penal statute which denominated counterfeiting as high treason did not extend to the colonies, where, *mutatis mutandis*, the crime could “only be considered as an high misdemeanour” at common law. Though the law officers did not constitute a judicial committee for hearing criminal appeals from the American plantations, the implications of this *ex cathedra* pronouncement are suggestive: what was statutory high treason in England might only be considered an high misdemeanour at common law in the colonies.³³

The government, mindful of the potential risk to its prestige and authority involved in charging with a capital crime a senior magistrate in whom they had hitherto reposed unexceptionable confidence, determined to be careful what they asked for from the Halifax grand jury lest they got it. The question was not only

30 Brebner, *Neutral Yankees*, p. 342.

31 Malachy Salter was to be charged with sedition for a second time the following year, though the case never came to trial.

32 See William Blackstone, *Commentaries on the Laws of England* (Philadelphia, 1771-72), vol. 4, pp. 119ff. According to Blackstone’s taxonomy, high misdemeanours were positive ‘misprisings’ (contempts) affecting the sovereign. They included reflections on the king’s prerogative, his person and government or title. As such the offence had more in common with the later-18th-century doctrine of constructive treason and the still later, Victorian statutory crime of treason-felony, than with sedition.

33 The law officers’ report on the decision in *R. v. Young*, which Beamish Murdoch was to cite as a British authority as to ‘How far the Laws of England are in force in this Colony’, caused it to become the leading case on the reception of English criminal law in Nova Scotia. See Jim Phillips, “‘Securing Obedience to Necessary Laws’: The Criminal Law in Eighteenth-Century Nova Scotia”, *Nova Scotia Historical Review*, 12, 2 (December 1992), pp. 98ff.

whether the government would jeopardize its credibility by failing to prosecute Squire Houghton, or provoke a backlash in the outports, which had not yet succumbed to rebellion, by successfully prosecuting him; it was also whether Houghton's activities had compromised his position and undermined the government's authority within the township where he held sway. The government gambled on Houghton's being abandoned and ostracized by the Planter majority within the township if they made an example of him: they could at once silence, neutralize and isolate Brebner's "errant Justice of the Peace".³⁴

In accordance with the government's policy of prosecutorial restraint where state-political crimes were concerned, the attorney-general forebore charging Houghton with high treason, thus obviating the necessity for the Halifax grand jury to reduce the charge to high misdemeanour — as had happened during the province's first, abortive treason trial (*Hoffman*) in 1754, in which Nesbitt had also been involved as king's attorney.³⁵ Nesbitt's choice of charge reflected the government's unwillingness to carry legal repression to the extreme of charging with treason anyone *not* suspected of active participation in armed rebellion, and led to an understanding between the crown and the grand jury which ensured that a true bill would be found against the accused. The foreman of the 15-man grand jury³⁶ which returned true bill on the indictment against Houghton was merchant John George Pyke, who, within three months, would be appointed a justice of the peace and immediately dispatched to the Cobequid townships, together with a fellow JP, to "tender the oath of allegiance to all the settlers there".³⁷

R. v. Houghton came to trial in the Supreme Court at Halifax in Hilary Term 1777, Acting Chief Justice Charles Morris (a lay judge, originally from Massachusetts) presiding. In keeping with hoary tradition that the most serious criminal business was disposed of at the beginning of term, the indictment was filed on 28 January, the statutory first day. True bill was returned upon it, and Houghton was arraigned and pleaded 'not guilty' three days later; the trial was set down for 10 February. The case was tried in Halifax, not only because the Supreme Court circuit did not extend to the South Shore counties of Lunenburg and Queens, but also because the executive order of July 1775 concerning suspected political criminals reasserted the primacy of the Halifax Supreme Court as a centripetal force in the administration of criminal justice. The bench, moreover, under-professionalized at the best of times,³⁸ was also undermanned. The elderly senior

34 Post-trial developments suggest that the government's strategy of 'divide and conquer' had the desired effect on the internal affairs of Chester Township. The Council in 1777 received and acted upon a memorial from several "proprietors" of the township complaining that Houghton had "in many Instances acted greatly to their Detriment". See Minutes of Council, 16 Sept. 1777, RG 1, vol. 189, pp. 430-1, PANS.

35 The grand jury returned *Ignoramus* on the high treason indictment, forcing the crown to reindict the accused (a former JP) on the reduced charge of 'high crimes, misdemeanours and breach of the peace' (i.e., seditious conspiracy).

36 As the prescribed number was 23, the rate of absenteeism was relatively high; the quorum was 12, all of whom had to agree on the return.

37 Murdoch, *Nova-Scotia*, vol. 2, p. 585.

38 Not until 1781 would either of the puisne judgeships be filled by an experienced lawyer — Attorney-General James Brenton.

puisne, Charles Morris, was acting chief justice by virtue of seniority, while his associate Isaac Deschamps (also a non-lawyer) apparently did not sit for Hilary Term 1777.³⁹ Justice Morris was on his own with nothing but the ubiquitous Blackstone and the remembered example of the late Chief Justice Belcher to guide him.⁴⁰ Though the chief justice could preside alone ‘in town’, two judges were required under the statute to constitute the circuit court, which meant that the circuit was virtually in abeyance from the spring of 1776,⁴¹ when Chief Justice Belcher died, to the spring of 1778, when Belcher’s successor, the Irish barrister Bryan Finucane, arrived. The debility of the bench, moreover, meant that, in the two-year hiatus between chief justices, the attorney-general and the secretary jointly assumed the legal leadership of the province.⁴²

Ironically enough, though the trial judge was not a lawyer, counsel were. Prosecuting for the crown was the attorney-general;⁴³ counsel for the accused was the dean of the bar, Daniel Wood Sr., who was also to defend Parker Clarke, one of the only two Cumberland treason indictees who were actually tried.⁴⁴ As no defence witnesses were called, one can only assume that all four of the original deponents testified for the crown. If so, then Houghton, who had pleaded not guilty, was convicted on the testimony of those of his Chester non-Planter neighbours whose incriminating depositions convinced the Halifax grand jury to return true bill on the indictment. On the other hand, depositions were not usually taken at the preliminary inquiry stage of a criminal proceeding unless they were to be given in evidence at the trial; testimony before the grand jury was *viva voce*. It may be that Attorney-General Nesbitt had taken a sensible precaution against the possibility that one or more of the crown witnesses would be unable or unwilling to attend the

39 Deschamps’ bench-book proceeds directly from Michaelmas (autumn) 1776 to Easter (April) 1777. See Royal Nova Scotia Historical Society fonds, MG 20, vol. 221, file 91.5, PANS. Judge Deschamps was member and clerk of the House of Assembly, of which Attorney-General Nesbitt was Speaker — a striking indicator of the degree of coalescence not only of the executive, but also of the legislative branch of government with the judicial.

40 Morris’s adjudication was delightfully parodied by Thomas H. Raddall in *His Majesty’s Yankees* (New York, 1943), which may be described as the novelization of Brebner’s *Neutral Yankees*, published in New York six years earlier; see Chapters 36ff.

41 In May 1776 the judges of the Supreme Court represented to Council that the threat posed by American privateers in the Bay of Fundy rendered it unsafe to hold the circuit in Cumberland, Annapolis or Kings County. See Weaver, “Nova Scotia and New England”, p. 69.

42 Secretary Bulkeley, who was second only to Charles Morris in seniority at the Council board, as well as being judge of the provincial Court of Vice-Admiralty, cooperated closely with Attorney-General Nesbitt, who was remarkably vigorous for a man of nearly 70. Bulkeley and Nesbitt had all the legal, moral and political weight which Acting Chief Justice Morris lacked, despite his being *ex officio* president, *pro tempore*, of the Council — because Morris had been a partisan of the recalled Governor Francis Legge, whereas Bulkeley and Nesbitt had attempted (not altogether successfully) to remain neutral. See M. Arbuthnot to G. Germain, [?] Nov. 1776, CO 217/52/fol. 239, Public Record Office (mfm at PANS); Clarke and Phillips, “Rebellion and Repression”, p. 30 [ms.].

43 This is an inference from the fact that Attorney-General Nesbitt as crown counsel carried the indictment down to the grand jury, and that he argued the crown’s objection to the defence’s post-trial motion in arrest of judgment. Crown attorney at trial, however, may just possibly have been James Brenton, a New England Planter lawyer originally from Rhode Island, who resumed the post of solicitor-general in November 1776.

44 Clarke and Phillips, “Rebellion and Repression”, p. 21 [ms.].

trial, which involved a coastal voyage from Chester to Halifax in privateer-infested waters and during the dead of winter. It was also insurance against intimidation, which might have followed as a natural consequence of Houghton's arrest, once the identities of those local people who had turned king's evidence became known. In any case, the names and exact number of the crown witnesses are alike unknown. What is certain is that counsel's defence to the charge, with or without cross-examination of the crown witnesses, was insufficient to dissuade the jury from rendering a verdict of guilty as charged. Two days later, before sentence was pronounced, defence counsel moved for arrest of judgment, a primitive form of criminal appeal at common law, in which legal exceptions might be made on strictly procedural grounds.⁴⁵ As the complete case file is not extant, it is impossible to know the grounds of the motion, only that it was opposed by the attorney-general on behalf of the crown, and then overruled by the court.

The customary sanction on conviction for high misdemeanour being imprisonment at the discretion of the court and payment of a fine, Houghton was sentenced to six months in jail and fined £50. Not content to remain a political prisoner in Halifax while his wife and large family and busy sawmill languished at Chester, however, Houghton, within two months, petitioned Lieutenant-Governor Marriot Arbuthnot for a remission of sentence. "Tim: Houghton", wrote Justice Deschamps in his bench-book on 4 April 1777,

having petitioned the L^t Gov^r. that the rem^r. of the
Imprisonment order'd, sho^d. be remitted the L^t Gov^r.
referr'd the same to the Court, order'd that said Tim:
Houghton do find security himself in £50. & 2 sureties
in £25 Each. that he shall behave as a good & faithfull
subject to His Maj^y. K. Geo. : & all his Liege people
[words crossed out] & [be] of the good behavior for 1
year / said T. H. took the Oaths of fidelity [Nathan] Levi
& Sam^l. Albro sureties - 46

There was certainly irony in his *volte-face*, because Houghton was alleged to have argued that the oath of allegiance was no longer binding on the king's Protestant subjects. "Houghton", concluded Brebner, "sloughed off the constitutional doubts

45 In view of the slip of the pen made by Attorney-General Nesbitt when drafting the indictment — he placed Chester in Queens rather than Lunenburg County — it is just possible that the substance of Wood's objection was 'error of law on the face of the record', which, had the objection been sustained, would have induced a mistrial and necessitated a reindictment.

46 Deschamps bench-book. Unlike some prison petitions of the time, Houghton's appears not to be extant. Houghton's sureties, Nathan Levy (anglicized from 'Nathaniel Levi') and Samuel Albro, were, respectively, a trader-innkeeper in Chester, and a New England Planter from Rhode Island who afterwards became an innkeeper in Halifax. It is clear from the Chester township surveyors' 'Field Book' that there was ill feeling between Houghton's friend, Levy (the progenitor of a well-known legal and political family), and Houghton's nemesis, the Halifax New Englander, Prescott, who owed Levy money. See Municipality of the District of Chester, Registry of Deeds, RG 47 (LU) [mfms at PANS]; letters from Malachy Salter to Jonathan Prescott, 1766-73, Miscellaneous Manuscripts Collection, MG 100, vol. 217, file 26, PANS.

which only he among the Nova Scotians is recorded to have expressed, took the oaths, and gave security for a year's 'peaceable behaviour towards his Majesty'.⁴⁷ The oath which Houghton retook was the very oath which he had himself publicly subscribed, then ridiculed and broken, and which he had been administering at Chester, in his capacity as magistrate, as late as September 1776.⁴⁸

The immediate, almost automatic result of Houghton's conviction was that his name was struck from the Commission of the Peace.⁴⁹ His sentence remitted, Houghton returned to Chester where he attended quietly to his sawmill for the last three years of his life. Though Houghton remained moderator of the town meeting until his death, without a JP's commission the post was symbolic; the proprietors were apparently disinclined to add insult to injury by deposing their former chief of men from the moderatorship. Houghton's militia captaincy was also removed, and command of the Chester township militia bestowed on Dr. Prescott.⁵⁰ One wonders how Houghton comported himself during the American privateers' raid on Chester in October 1779; the magisterial inquiry into the affair was conducted solely by Prescott, who had completely emerged from beneath Houghton's giant shadow.⁵¹

Timothy Houghton, who had served the king's grandfather with distinction during the French and Indian War, did not live to see the outcome of the American Revolution; he died of smallpox in Halifax in May 1780, in his 53rd year.⁵² What was true of Lunenburg after the successful prosecution of Hoffman for seditious conspiracy in 1754 held true also for Chester following the successful prosecution of Houghton in 1777. It may be observed that after Houghton was removed from office, the settlement never again for the duration of the war showed any tendency towards such seditious activity as its chief magistrate had shown in the autumn of 1775. Houghton's bones lie in the Old Burying-Ground of Halifax, while his house, relocated and altered, still stands on North Street in Chester, "the quaintest, and

47 Brebner, *Neutral Yankees*, p. 342.

48 'Also a copy of several extracts taken from a book that was formerly in the possession of the late James Smith of Chester, N.S., who married Elizabeth, daughter of Timothy Houghton on the 18th. day of Aug. 1789', p. 83, Dal MS 2. 135, Dalhousie University Archives; Norton, *New England Planters*, p. 230. Item is a photocopy, ca. 1971, of the third of three parts of a late-19th-century transcription of a now apparently lost 18th-century township book.

49 Though there is no official record of the cancellation of his commission, Houghton's name was scored out in the copy of the *Nova-Scotia Calendar, or An Almanack, For ... 1777* which Judge Isaac Deschamps, who was certainly in a position to know, used as a diary; nor did Houghton's name reappear in subsequent lists. See Isaac and George Deschamps family fonds, MG 1, vol. 258a, PANS. During the course of the 18th century the office of justice of the peace, on which the entire machinery of English local government depended, became permanent. A justice of the peace was virtually irremovable except on conviction for a criminal offence: "The power of removal was silently disused. After the first quarter of the eighteenth century, it became extremely rare for any Justice to be removed from the Commission, or to have his name omitted on the issue of a new Commission": Sydney and Beatrice Webb, *The Parish and the County* ([1906] London, 1963), pp. 380-1. The reason why Houghton did not receive a letter of dismissal, as did John Frost of Argyle, was that his commission was deemed automatically to have been cancelled upon his conviction; Frost, on the other hand, was 'wrongfully dismissed'.

50 R. Bulkeley to J. Prescott, 21 May 1779, Secretary's letter-book, RG 1, vol. 136, p. 272, PANS.

51 RG 1, vol. 342, docs. 68-71 ('Examinations'), PANS.

52 Though the death took place in Halifax, it is recorded both in the burial register of St. Paul's (Church of England) and in the Chester township book, MG 4, vol. 13, PANS.

somehow the most affecting, relic” of a good man *manqué*.⁵³

Assuming that the remission of two-thirds of a six-month custodial sentence qualified as leniency — there was no question of official forgiveness or an act of oblivion — then *Houghton* was the exception which proves the rule. If government policy for dealing with sedition had been consistently applied, then what was leniency in one month (the Seccombe ‘arraignment’) would not have looked like repression in the next (the *Houghton* prosecution). The distance which lay between the two proceedings — the one inquisitional, the other prosecutorial — was the forthright criminalization of political dissent. *Houghton* exemplifies the paradox that the less serious the political crime, the greater the scope for repression, given the political will and legal means to impose it. The seriousness of the crime and the harshness of the government’s response were inversely proportional.

An argument could possibly be made that the government’s failure to expedite the treason trials of the Cumberland rebels was attributable to official preoccupation with the sedition trials.⁵⁴ If leniency there was, it was leniency in the interest of suppressing sedition, and the obverse of that coin was legal repression, whether the state crime was ancillary to high treason or treason *per se*. It seems clear that the government’s policy of legal repression was driven by ‘the expediency and necessity’ of rapid, effective response to real or apparent security threats. Nevertheless, the inquisition of Seccombe and the trials of *Houghton* and *Salter* did not proceed until after news was received of the raising of the patriot siege of Fort Cumberland.

If examples were needed in December 1776 and January 1777 of the government’s reinforced legal-repressive line on sedition, then *Parson Seccombe* and *Squire Houghton* were understandable choices, not least of all because they were both well known in Halifax. The minister, with his reputation as a libertine and his tendency to indulge in political rhetoric, was doubtless informed on by someone in the Congregational meeting-house at Chester.⁵⁵ *Squire Houghton*, a conscientious objector racked by moral scruples against kingly oath-breakers, and denounced by his enemies within the township as a constant opponent of royal authority, was even more the candidate of choice for a public prosecution. Yet neither of these domestic subversives had been singled out until as late as December 1776, when the reverberations of the suppression of rebellion at Fort Cumberland were beginning to be felt in Halifax and westwards along the Atlantic coast.

Though *Houghton* had unquestionably been the focus of hostility on the part of tory-loyalists within Chester Township, the local authorities in Lunenburg were understandably slow to act against a magistrate of *Houghton*’s seniority — had he

53 Paraphrasing and quoting Winthrop Pickard Bell, *The “Foreign Protestants” and the Settlement of Nova Scotia: The History of a Piece of Arrested British Colonial Policy in the Eighteenth Century* ([1961] Fredericton and Sackville, NB, 1990), pp. 352, 468.

54 A mere two days separated *Houghton*’s trial from that of *Malachy Salter* for uttering seditious words. Though *Salter* was also convicted, the verdict was ambiguous and led irrevocably to another sedition prosecution, which commenced before the year was out.

55 The government was not prepared to tolerate political dissent in any Protestant Dissenting pulpit. *Rev. Seccombe*, however, was treated differently not only from *Houghton* but also from *Elder Frost*, because, unlike them, he was not a magistrate.

not, after all, publicly subscribed the loyalty oath in response to the proclamation? — while the government in Halifax preferred not to have to take embarrassing, direct legal action against any intended executant of its policy for suppressing sedition. They might have summarily dismissed Houghton from all government employment, as was done in the case of Elder Frost,⁵⁶ had not the status quo post-siege demanded strict enforcement, through the courts, of the public policy of legal repression, which had been developed as a direct result of the outbreak of rebellion in New England, but which had failed to prevent insurrection in Nova Scotia.⁵⁷ The fact that the circular of July 1775 was addressed to magistrates, as agents of the central government, did not mean that magistrates were excluded from its purview. Post-insurrection trauma forced the government to confront the potentially disastrous consequences of inaction or too-long-delayed action regarding seditious magistrates. Having no option other than to implement approved and declared policy, the government required Parson Seccombe to appear before a secular inquisition, while Squire Houghton was forced to undergo a state trial.

The government was by no means risking ‘the legitimacy of the law’ by engaging in something more substantial than a token prosecution of Houghton; indeed, they might have incurred a greater risk by failing to prosecute him during the emergency. The government’s post-siege mentality induced them to believe that they could not suppress rebellion without also suppressing sedition — in the reasonable hope of forestalling another insurrection. Yet neither were they risking the life of the accused: the government had no intention of charging Houghton with high treason, which they might well have done. Nor would they give credence to allegations of oppression by arbitrarily dismissing Houghton; the removal of Justice Frost in 1775 had been made to look like yet another example of Governor Legge’s late and unlamented tyranny. In order for the government successfully to make an example of Houghton, they had to see to it that he was charged with, tried for and convicted of a political crime. They would undoubtedly have risked the legitimacy of the law by failing to extend its benefits to a respected and influential magistrate, who presided over the smallest New England Planter township and the one lying in closest proximity to Halifax. As the chief local dispenser of justice, the senior magistrate himself was neither above the law nor below it. Despite a tendency to view any ‘conscientious objector’ as a security risk, the government

56 R. Bulkeley to J. Frost, 26 Sept. 1776 [*sic* : 1775], Secretary’s letter-book, RG 1, vol. 136, p. 228, PANS. Only one judge appears to have been dismissed from government service on the basis of suspicion alone, and that was the tea merchant, Bostonian William Smith (ob. 1779), a justice of the Inferior Court of Common Pleas of Halifax County, and long-time MHA for Queens County. Deposed in 1775 as a result of Governor Legge’s ‘tyranny’, Smith, who had been marshal of the provincial Court of Vice-Admiralty and was a justice of the quorum, was restored to office in 1777, after Legge’s recall. Another judge-MHA, who absconded before he could be dismissed or charged, was the Connecticut Yankee, Seth Harding, MHA for Liverpool Township and a justice of the Inferior Court of Common Pleas of Queens County. The career of Harding has not been studied because he left Nova Scotia for New England in October 1775 and did not return. See generally Carl Wittke, “Canadian Refugees in the American Revolution”, *Canadian Historical Review*, 3, 4 (Dec. 1922), p. 329.

57 On the idea of the legitimacy of the law as the ideological basis for ‘contesting the legality’ of sedition, see Barry Wright, “Sedition in Upper Canada: Contested Legality”, *Labour/Le Travail*, 29 (Spring 1992), pp. 10, 48ff.

was not about to make the same mistake twice in as many years. Houghton, unlike Frost, would not be deprived of his office before having been convicted of a political crime.

The exemplary purpose of the proceeding against Houghton might well have been jeopardized by punitive or vengeful sentencing, by a spirit of official vengeance, or by government's failure to remit the balance of custody when the convict himself sought parole and accepted the prescribed terms and conditions. It was not enough to silence the seditious preacher by forbidding him to preach; it was expedient and necessary to silence the seditious magistrate by making an example of him. In the tense post-insurrection climate, the government's credibility might have been irreparably damaged had they decided not to prosecute Houghton at all or, worse still, to engage in a mere token prosecution as a hopeful, face-saving gesture. The raising of the siege of Fort Cumberland stiffened the Council's resolve and confirmed their belief that the resources of law could be exploited by prosecuting seditionists as well as traitors. That the government's claim to legitimacy might have been attenuated by hanging convicted traitors is perhaps the most significant difference between the sedition trial and the subsequent treason trials as legal effects of, and official responses to the threat posed by crimes against the state of varying degrees of seriousness. If post-insurrection circumstances dictated resoluteness, then the government's response to Secombe was to caution rather than to prosecute, while its response in *Houghton* ultimately was to temper justice with mercy.

In the aftermath of insurrection, viewed in relative terms, sedition trials represented the heavy hand of legal repression. As the government's perspective had shifted, so too did its perception of the danger posed by seditious utterances of a high-profile patriot in a marginal New England Planter township, such as Chester. The siege of Fort Cumberland forced a re-evaluation of the situation on the South Shore, where previously the government had been satisfied with exercising oversight through public administration of the state oaths by local magistrates whose loyalty was taken as read. The siege shifted the ground beneath the government's feet; they recognized that they were confronted not by mere sedition, but by constructive treason which might potentially issue in armed rebellion if not suppressed. There was nothing for it but to silence the militant patriot leadership, both clerical and lay.⁵⁸ The development of the case against Houghton makes crystal clear that 'law' (Attorney-General Nesbitt) was 'government' (Secretary/Judge Bulkeley) — and *vice versa*.⁵⁹ Official repression, which was legal in character, was actualized as a political prosecution engineered at the highest level through collusion between the Council (which included the acting chief justice) and the public prosecution service (the law officers, who were also the government's legal advisers).

58 John Frost, of course, had become all three: a JP, a 'Dissenting Teacher' and a patriot.

59 It bears remembering that Secretary Bulkeley was already judge of the provincial Court of Vice-Admiralty, and within five years would become master of the rolls in the Court of Chancery. Attorney-General Nesbitt, for his part, was chief magistrate of Halifax County. Law and government thus were, and were thought by professional lawyers most appropriately to be, as neatly fused as government and the judiciary.

Houghton justified the collaboration and prosecutorial initiative of the government's new 'pre-emptive strike force' — Attorney-General Nesbitt and the Secretary (and *de facto* leader of the Council), Judge Bulkeley. On the principle that an ounce of prevention is worth a pound of cure, the authorities followed up their suppression of rebellion in the hinterland by the suppression of sedition in the outports as well as in the capital. If post-insurrection civil litigation in Cumberland County assuaged 'loyalist' vengeance,⁶⁰ then post-insurrection sedition proceedings in Halifax County restored the government's confidence in its own ability not only to suppress, but also — and no less importantly — to prevent rebellion. *Houghton*'s conviction accomplished the dual purpose of removing him from the magistrateship — entirely without the appearance of the arbitrary exercise of the prerogative, such as had occurred in the dismissal of Elder Frost — and degrading his stature in the community. *Houghton* himself cooperated with the authorities by becoming neither a fugitive from justice nor an escaped convict; a jailbird at 54, he was too old and hitherto 'respectable' to become a jailbreaker. Fifteen years of being the village headman had left their mark on *Houghton*. Instead of contriving to escape, he deferentially applied for and received a ticket of leave. Conviction, dismissal, sentence and parole of the moderator together combined with public humiliation to administer a permanent quietus to whig-patriotism in Chester. *Houghton* thereafter kept whatever seditious intentions he may have had to himself, while the government was content to let sleeping dogs lie. There was no question of restoring *Houghton* to the commission of the peace; six JPs were more than enough to attend to the legal and administrative needs of Lunenburg County, while the termination of *Houghton* and his supersession by an 'old' New Englander — Jonathan Prescott — seems to have ameliorated the civil strife in Chester Township.

Thus it is necessary to view the sedition proceedings — an obvious method of dealing with *agents provocateurs* — as part of the government's strategy of emergency response to any 'officially apprehended security threat'. The *Houghton* sedition trial does not impute any reluctance on the part of government to resort to legal repression though rebellion was *not* involved. Yet instances of non-legal repression and petty tyranny, such as the summary dismissals of Judge Smith and Justice Frost, had ended with the recall of Governor Legge in January 1776. The government manifested no inclination to proceed against Squire *Houghton* until the patriot siege of Fort Cumberland forced them to consider the possible consequences of unchecked subversion in Chester — the nearest western port to Halifax, a mere 60 km away — which was subsequently twice raided, and which could well have served as an anchorage or base of operations for privateers or even an invasion fleet. Strategic naval considerations loomed larger when the dockyard commissioner, Commodore Marriot Arbuthnot RN, was appointed lieutenant-governor and then became acting governor in May 1776.

Houghton was dissent portrayed as sedition along the lines of the distinction in

60 See Ernest Clarke and Jim Phillips, "'The Course of Law Cannot Be Stopped': The Aftermath of the Cumberland Rebellion in the Civil Courts of Nova Scotia, 1778-1808", unpublished paper presented at the Atlantic Law and History Workshop II, Dalhousie Law School, 4 March 1995.

customary Scottish law between real and verbal sedition, or leasing-making (calumny against the king), “which attacked only the sovereign individually, not the Government”.⁶¹ The policy of repression-leniency towards the constitutional republicans in the New England Planter townships on the South Shore, though dictated by expediency, was one which treated real sedition — breach of allegiance — as neither more nor less than constructive treason. The government’s relative heavy-handedness in response to Houghton’s lese-majesty reflected its sober, informed judgement of the political expediency of sedition trials.

Armed insurrection at the Chignecto Isthmus having been suppressed, sedition in the New England Planter township lying in closest proximity, and on the sea road to Halifax, could not remain unsuppressed without recent history possibly repeating itself. If an ‘illustrious corpse’ was needed in the immediate aftermath of the raising of the siege of Fort Cumberland, to lend credibility to the government’s claim to reassert its authority in those areas where sedition had not yet culminated in rebellion, then Houghton was a prime suspect. Perhaps, too, the embarrassing Seccombe affair of September 1776 had made government understand that lightning can indeed strike twice in the same place; Seccombe could be ‘arraigned’ — Houghton, because his position of public trust aggravated the offence, had to be prosecuted. Having seen in the hinterland what uncontrolled sedition in coastal communities might lead to, the government had a very strong inducement to discourage treason by severely punishing sedition. The means to confirm the province’s loyalty was to make an example of disloyal magistrates, to affirm the legitimacy of the law and the blindness of justice by demonstrating that no one, especially not a petty satrap such as Houghton, was above the law, however invulnerable to prosecution he may have supposed himself to be. Such persons could no longer be entrusted with any government office, but they could potentially be converted into peaceable, quiet and well-affected subjects. In any case, to fail to repress political dissent — in other words, to suppress sedition — was to invite treason in the shape of armed rebellion. The peremptory prosecution of seditionists was essential more to the prevention, than to the suppression of rebellion.

Seccombe’s ‘trial’ in the Star Chamber at Halifax (as the Council was caricatured by pre-Loyalist old settlers in the later 1780s), followed by Houghton’s trial in the Supreme Court at Halifax, suggests that the government thought the best post-insurrection policy to be one of special repression rather than general leniency. It must be borne in mind that the proceedings against Seccombe and Houghton were *occasioned* by the patriot siege of Fort Cumberland, in that they each formed part of the government’s direct action in response to the emergency. The Houghton affair had dragged on for well over a year before the government decided, in December 1776, to go to law to checkmate him; Seccombe’s seditious sermon had been preached in September 1776, but it was three months before the Council summoned him to appear. Nothing happened in either case, or indeed would have happened at all, had news not reached Halifax of the patriot investment of Fort Cumberland. Then the government saw that the lax and

61 *Encyclopaedia Britannica*, 9th ed. (1886), vol. 21, p. 620, s.v. “Sedition”.

inconsistent ante-insurrection strategy of general leniency — compounded by the ill-advised, over-reactive and arbitrary measures of the departed Governor Legge, as well as by endemic military weakness throughout 1774 and 1775 — had failed. Instead it had been interpreted as proof of debility or political paralysis and had issued in armed rebellion. The government allowed unchecked sedition to precipitate them down the slippery slope of treason. Yet what distinguished the post-insurrection sedition proceedings most sharply from all but two of the treason proceedings — those which led to trials — was that they were not only instituted, but also carried through to a successful conclusion. If the news from the outsettlements was indeed so encouraging that the government decided against holding any Fort Cumberland-related treason trials in Hilary Term 1777, why then did the government proceed with *Houghton*? They did so because there was no other legitimate means of suppressing sedition than through legal repression.

Going ahead with a high-profile sedition trial, while unnecessarily deferring the treason trials, was a calculated exercise in *realpolitik*. Among the immediate legal effects of insurrection in Cumberland County was a trial for ‘high sedition’ committed in Lunenburg County. The Houghton trial — which, in terms of the range of criminal punishments available on conviction for any category of misdemeanour, was not oppressive — must be construed as a timely reassertion of that very royal authority which the accused had allegedly been undermining with hitherto complete impunity. Intermediate between the patriotism of disaffected New England Planters along the South Shore and the ultraism of the ‘Boston Tories’ who arrived in Halifax in the spring of 1776, therefore, lay the ethos of the old pre-planter New Englanders, such as Prescott: neither loyalty nor neutrality, but the automatism of the allegiance-owing subject.

The new loyalty paradigm advocated by Bumsted for revising the revisionist historiography of Brebner’s ‘marginal colony during the revolutionary years’ — loyal New Englanders rather than neutral Yankees — suggests that the right questions have not been asked concerning New England Planter attitudes towards the American Revolution.⁶² The generality of New England Planters were not “neutral Yankees”: a race of hobbits unique to Yarmouth Township, the only community where the psychopathology of religious revivalism can possibly help to explain Planter solipsism and indifference to the Revolution. Brebner’s pan-Americanist neutrality thesis served less to explain than to obfuscate why the Revolution ‘failed’ among New England Planter immigrants in Nova Scotia.⁶³ The neutrality paradigm — of which Bumsted disapproves not so much because it concentrates on Planter ‘disloyalty’, as because it forecloses on any study of the loyalism of the ‘pre-Loyalists’ — never was an adequate basis for the effective

62 See, for example, the recent revisionist study by political scientist Donald Desserud, “Nova Scotia and the American Revolution: A Study in Neutrality and Moderation in the Eighteenth Century”, in Conrad, *Making Adjustments*, pp. 89-112; despite Bumsted’s assault on the ‘neutrality paradigm’, Desserud still operates within the Brebnerian *Weltanschauung*.

63 It is instructive to observe that what Clark (*Political Protest*, pp. 75ff.), a Western Canadian historian at the University of Toronto, characterized as ‘The Struggle for the Fourteenth Colony’ referred to the American invasion of Quebec in 1775, not to the largely non-military struggle for the hearts and minds of Nova Scotia’s New Englanders in 1776.

reinterpretation of the history of Nova Scotia during the American Revolution. The answer was wrong because the question was wrong. "I am not convinced", states Bumsted, "that the American Revolution was so much rejected in British North America as British allegiance was confirmed".⁶⁴ Neither the people nor the government of the time shared the continentalism of anti-nationalist historians such as Brebner, for whom the history of Canada is, at best, the history of Canadian-American relations, or rather the inexplicable failure of Manifest Destiny.

Historians of the period need to restore their sense of perspective by recollecting the antiquarian wisdom of the Chronicler: "The various events of the American Revolution — the attempt on Fort Cumberland — the design against Halifax, only set aside by the fear of the epidemic small pox, and many other obvious causes, created a reign of terror in this province ...".⁶⁵ The government at Halifax drew on this emergency measures rationale to impose the heavy hand of legal repression. The solution to the false and misconceived 'problem' of neutrality is deceptively simple: loyalty — or rather conformity — was enforced through the dialectical alternation of repression and leniency (or "terror-mercy", as Jim Phillips has vividly characterized it) — but legal repression nonetheless. The proclamation of martial law on 5 December 1775, which imitated the measure taken in Quebec six months earlier, came in response to the "continual influx of strangers from the old colonies".⁶⁶ For obvious reasons the proclamation did not lead to the suspension of *habeas corpus*,⁶⁷ the establishment of a military council or the proliferation of military tribunals dispensing summary justice. The government instead chose the more realistic path of legal repression, through selective and discretionary use of the ordinary criminal law. A consistent pattern of behaviour may therefore be discerned connecting the official-legal repression of sedition (*Houghton*) to Emily Weaver's "judicial timidity", which distinguished the government's follow-up to the suppression of rebellion in Cumberland County.

It will stand to their eternal credit that the powers that were in Nova Scotia, unlike those in Quebec before and after the American invasion of 1775, were not willing to subvert due process in order to suppress sedition.⁶⁸ Yet adherence to legality did not deter the government from vigorously prosecuting ancillary crimes

64 Bumsted, *Understanding the Loyalists*, p. 49.

65 Murdoch, *Nova-Scotia*, vol. 2, p. 584.

66 Thomas Beamish Akins, "History of Halifax City", Nova Scotia Historical Society *Collections*, viii (1892-4), p. 75. A copy of the proclamation was enclosed in Governor Legge's dispatch to the secretary of state, 5 Dec. 1775, CO 217/52/fols. 31r-32r, PRO (mfm at PANS). It is understandable that Legge deferred proclaiming martial law until after the arrival of Brigadier-General Eyre Massey with reinforcements for the garrison. Otherwise the governor did not have at his disposal a sufficient number of regular troops to enforce even the most primitive 'war measures act'.

67 That did not take effect until the imperial *Habeas Corpus Suspension Act* of 1777.

68 In Quebec, where martial law had been declared in June 1775, Governor Guy Carleton was also the army commander, a state of affairs which had not existed in Nova Scotia since 1760. The only attempt at a rudimentary comparison seems to be 'G.P.' [George Parkin?], "State of Feeling in Quebec and Nova Scotia during the American Revolution", *Dalhousie Gazette*, 22, 9 (3 April 1890), pp. 137-42. (I am grateful to my colleague, Allan Dunlop, for drawing to my attention this unusual article, which was a polemical response to Quebec Liberal Premier Honoré Mercier's famous anti-imperialist speech in Baltimore.)

against the state. *Houghton* demonstrates that the heavy hand of legal repression was not stayed, precisely because it was required to suppress sedition. That Squire Houghton was a 'loud-mouthed' patriot only made his seditious utterances sound treasonable. The Halifax rulers desired to make crystal clear to local government that aberrant justices in townships on the periphery were neither exempt from, nor beyond the reach of the policy set forth in the governor's decree of July 1775. The imperial *Habeas Corpus Suspension Act*, passed in the same month the Houghton sedition trial took place, did not address sedition; in Nova Scotia, at any rate, there was no need for it to do so.