

“their unalienable right and privilege”: New Brunswick’s Challenge to the Militarization of the British Empire, 1807-1814

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Entre 1807 et 1814, le Conseil législatif et l’Assemblée législative du Nouveau-Brunswick s’engagèrent dans une longue lutte avec les fonctionnaires impériaux au sujet de l’adoption de nouvelles mesures législatives concernant la milice et, en particulier, l’équilibre constitutionnellement approprié des pouvoirs entre les autorités civiles et militaires. Cette lutte, survenue pendant les guerres napoléoniennes (1803-1815), qui engendrèrent une militarisation sans précédent du monde britannique, démontre que le Nouveau-Brunswick avait un gouvernement colonial qui faisait sciemment preuve d’assurance en voulant contester des politiques impériales qu’il jugeait contraires aux besoins de la colonie, tout en soulignant l’importance des colonies de peuplement nord-américaines dans le maintien d’un gouvernement civil au sein de l’empire durant ces années de guerre.

Between 1807 and 1814 the New Brunswick Legislative Council and House of Assembly engaged in a protracted struggle with imperial officials over the renewal of militia legislation and, particularly, the constitutionally appropriate balance of power between civil and military authorities. Occurring during the Napoleonic Wars (1803-1815), which engendered an unprecedented militarization of the British world, this struggle demonstrates New Brunswick had a self-consciously assertive colonial government willing to challenge imperial policies that it thought were contrary to the needs of the colony while underscoring the importance of North American settler colonies in maintaining civil government in the empire during those years of war.

IN THE WINTER OF 1814, as British military commanders in North America and Europe planned for spring and summer campaigns, the New Brunswick House of Assembly and Legislative Council engaged in a protracted struggle over the terms of the proposed militia act. The last clause of the 1813 Militia Act, Section LI (51) stipulated that it would be “in force until the end of the next Session of the House of Assembly of this Province and no longer.” Without new legislation, New Brunswick would not have a legally constituted militia. Members from the two chambers convened at least five conferences to resolve their differences after earlier discussions failed to yield a compromise. The core issue concerned “not only the *time* but the *manner* in which the Militia are to be trained.” At the eleventh hour the

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assembly prevailed in limiting the number of training days to four annually rather than the six the council wanted, arguing that additional training days were “inexpedient and unnecessary.”¹

This legislative fight was the culmination of numerous struggles that stretched over eight years from 1807 to 1814 and concerned two critical areas of imperial governance: the defence of the British Empire and the constitutionally appropriate configuration of power in a settler colony. In 1807 Lord Castlereagh (Robert Stewart), Secretary of State for War and the Colonies, ordered colonial administrators to improve defensive preparations in light of growing tensions with the United States after the *Chesapeake-Leopard* naval engagement in June that year, instructing them to revise legislation to align colonial militias more closely with regular army practices and military policy in Britain and reduce civil control. In New Brunswick, tensions mounted over five consecutive legislative sessions – 1808, 1810, 1812, 1813, and 1814 – as imperial officials, sometimes but not always with the support of the council, pressured the New Brunswick assembly to adopt expanded militia duties. Assembly members pushed back, arguing in 1814 that as “the representatives of the people [they] are the constitutional judges of the extent of the burthens which their constituents can bear” – a responsibility that they considered “their unalienable right and privilege.”²

This legislative brinksmanship by the New Brunswick assembly invites analysis. When positioned within geopolitical tensions from 1807 to 1814, what emerges is a series of disputes that pitted imperial officials – some in London, others on secondment in New Brunswick – against officials in the colony (both appointed and elected). The struggles turned on the question of the constitutionally appropriate balance of power between civil and military authorities and occurred during the Napoleonic Wars (1803-1815) and War of 1812 (1812-1814), when the British world saw unprecedented militarization at home and overseas. Indeed, so

1 53 George III, Chapter 1, “An Act for regulating the Militia,” *Acts of the General Assembly of His Majesty’s Province of New-Brunswick passed in the year 1813* (Saint John, NB: Jacob Mott, 1813), 3-21 (quotation on 21); 5 March and 24 February 1814, *Journal of the House of Assembly of the Province of New-Brunswick, 1814* (Saint John: Henry Chubb & Co, 1814), 62, 53; 54 George III, Chapter 21, “An Act to continue and amend an Act, intituled ‘An Act for regulating the Militia’,” *Acts of the General Assembly of His Majesty’s Province of New-Brunswick Passed in the Year 1814* (Saint John, NB: George K. Lugin, 1814), 20-4 (emphasis in the original). Legislation can be accessed through the British North America Legislative Database at the University of New Brunswick: <http://bnald.lib.unb.ca>. We want to thank participants of a history seminar, attendees of the War of 1812 in Atlantic Canada Conference, Gary Campbell, Robert Dallison, Brent Wilson, and the anonymous *Acadiensis* reviewers for their comments.

2 5 March 1814, *Journal of the House of Assembly, 1814*, 61; for similar sentiments, see 3 March 1814, *Journal of the House of Assembly 1814*, 59. This struggle over the militia is missing from most accounts of the War of 1812 and from histories of New Brunswick, such as James Hannay, *History of the War of 1812 Between Great Britain and the United States of America* (Toronto: Morang & Co., Ltd., 1905); Robert L. Dallison, *A Neighbourly War: New Brunswick and the War of 1812* (Fredericton: Goose Lane and the New Brunswick Military History Project, 2012); Alan Taylor, *The Civil War of 1812: American Citizens, British Subject, Irish Rebels, and Indian Allies* (New York: Alfred A. Knopf, 2010); and W.S. MacNutt, *New Brunswick, A History: 1784-1867* (Toronto: MacMillan, 1963). The issue is mentioned briefly in James Hannay, *History of New Brunswick*, 2 vols. (St. John: John A. Bowes, 1909), 1:327.

intertwined were questions of defence and empire that in 1802 the British Cabinet assigned two portfolios – war and the colonies – to the new secretary of state. This essay offers a case study of responses to this militarization in a settler colony, and explores how New Brunswick officials and assembly representatives pointedly criticized and resisted it.³

The story of this eight-year struggle, which at times pitted erstwhile provincial allies against each other, points to an early New Brunswick political culture of consultative governance and civilian control that local officials defended vigorously, even in the face of war and persistent pressure from imperial officials. Indeed, within New Brunswick, the defence of imperial interests included challenging metropolitan authorities, a tradition that had deep roots in the Anglo-Atlantic world.⁴ Whereas most studies of movements for greater populist control in post-1783 British North America begin their analysis in 1815,⁵ this study shows that resistance to metropolitan authority that colonists found excessive began earlier. Indeed, it had probably been there since the colony's founding and had achieved considerable sophistication and subtlety by the early 19th century. It indicates continuity with aspects of political culture from pre-1783 British North America and reinforces findings by Loyalist scholars who have analyzed various strands of Loyalist political thought and action to understand continuities and ruptures within the political cultures of Anglo-America. In New Brunswick, the council and assembly alike were deeply committed to deliberative and participatory government lead by civilians. It was a position under threat during the Napoleonic Wars.⁶

- 3 On the militarization of Britain, see J.E. Cookson, *The British Armed Nation, 1793-1815* (Oxford: Clarendon Press, 1997). On colonial administration see Helen Taft Manning, *British Colonial Government after the American Revolution, 1782-1820* (Hamden, CT: Archon Books, 1966), 90. C.A. Bayly, in *Imperial Meridian: The British Empire and the World, 1780-1830* (London and New York: Longman, 1989), analyses the authoritarian turn in the empire and Indigenous, but not settler, resistance to it. Other studies do not adequately recognize this militarization; see, for instance, Julie Flavell and Stephen Conway, eds., *Britain and America Go to War: The Impact of War and Warfare in Anglo-America, 1754-1815* (Gainesville, FL: University Press of Florida, 2004) and Lawrence Stone, ed., *An Imperial State at War: Britain from 1689 to 1815* (London and New York: Routledge, 1994). Some scholars dismiss the idea of any significant settler resistance until after the Napoleonic Wars; see, for instance, Ged Martin, "Canada from 1815," in *The Nineteenth Century*, ed. Andrew Porter, vol. 3 of *The Oxford History of the British Empire*, ed. William Roger Lewis (Oxford: Oxford University Press, 1999), 522, who states: "The small, scattered population [of British North America] could neither defend nor govern itself. Almost all administration was in British hands, subject to inefficient controls from London, and London was the sole source of minimal co-ordinating policy."
- 4 The classic study of the rise of the power of assemblies is Jack P. Greene, *The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776* (Chapel Hill: University of North Carolina Press, 1963). For the 18th-century background on colonial militias, see Lawrence Delbert Cress, *Citizens in Arms: The Army and the Militia in American Society to the War of 1812* (Chapel Hill: University of North Carolina Press, 1982), xi-50.
- 5 See, for instance, Phillip A. Buckner, *The Transition to Responsible Government: British Policy in British North America, 1815-1850* (Westport, CT: Greenwood Press, 1985).
- 6 See Jerry Bannister and Liam Riordan, eds., *The Loyal Atlantic: Remaking the British Atlantic in the Revolutionary Era* (Toronto: University of Toronto Press, 2012); Maya Jasanoff, *Liberty's Exiles: American Loyalists in the Revolutionary World* (New York: Alfred A. Knopf, 2011); David G. Bell, *Early Loyalist Saint John: The Origin of New Brunswick Politics, 1783-1786*

The impetus to revise New Brunswick's militia laws arose from British concerns about a military threat from the United States. Geopolitical tensions over Atlantic trade and over the citizenship or subjecthood of men working on American ships were exacerbated when Britain implemented Atlantic naval blockades in early 1807 to disrupt French commerce, including the lucrative Caribbean trade. In June 1807, while blockading French naval vessels that had gone into Chesapeake Bay for repairs, the British naval vessel HMS *Leopard* fired its cannons at the USS *Chesapeake* in a dispute over British deserters working as sailors on US-flagged ships, killing three men and injuring others. In Washington, the incident intensified bellicose anti-British sentiments. President Thomas Jefferson introduced legislation for a general embargo against both Britain and France, which passed in December. In Britain, the naval encounter triggered unease within the cabinet about British North American defensive capabilities, or the lack thereof, as perceived from the metropole. With most British forces bogged down fighting Napoleon in Europe, the British cabinet was concerned about the colonies' ability to muster well-trained militias to complement army units should they need to defend against American attacks.⁷

The regular British forces stationed in North America were organized into two military districts: Lower Canada and Upper Canada were one district, and six Atlantic colonies (Nova Scotia, New Brunswick, Prince Edward Island, Cape Breton, Newfoundland, and Bermuda) were the other. The governor general in Quebec, the supreme military commander in British North America, personally administered defence in the Canadas. The commander-in-chief for the Atlantic district, based in Halifax, technically reported to the governor general in Quebec but had considerable discretion over decisions. In Upper Canada, New Brunswick, Prince Edward Island, Newfoundland, Cape Breton, and Bermuda, the lieutenant governors commanded regular troops stationed within those provinces, and on military matters reported to the district commander.⁸ Civil authorities established militias through provincial legislation that defined the terms under which they could

(Fredericton, NB: New Ireland Press, 1983); David Bell, *Loyalist Rebellion in New Brunswick: A Defining Conflict for Canada's Political Culture* (Halifax: Formac, 2013); Ann Gorman Condon, *The Loyalist Dream for New Brunswick: The Envy of the American States* (Fredericton: New Ireland Press, 1984); Janice Potter-MacKinnon, *The Liberty We Seek: Loyalist Ideology in Colonial New York and Massachusetts* (Cambridge, MA: Harvard University Press, 1983); Jane Errington, *The Lion, the Eagle, and Upper Canada: A Developing Colonial Ideology* (Montreal and Kingston: McGill-Queen's University Press, 1987); and Elizabeth Mancke, "Early Modern Imperial Governance and the Origins of Canadian Political Culture," *Canadian Journal of Political Science/Revue canadienne de science politique* 32, no. 1 (1999): 3-20.

7 Nathan Perl-Rosenthal, *Citizen Sailors: Becoming American in the Age of Revolution* (Cambridge, MA: Harvard University Press, 2015), 262-7; Taylor, *Civil War of 1812*, 101-6; Bradford Perkins, *Prologue to War: England and the United States, 1805-1812* (Berkeley and Los Angeles: University of California Press, 1963), 140-6, 190-7; Patrick C.T. White, *A Nation on Trial: America and The War of 1812* (New York: John Wiley & Sons, 1965), 37-42; Spencer T. Tucker and Frank T. Tucker, *Injured Honor: The Chesapeake-Leonard Affair, June 22, 1807* (Annapolis, MD: Naval Institute Press, 1996), 1-17, 67-9; Andrew Lambert, *The Challenge: America, Britain and the War of 1812* (London: Farber and Farber, 2012), 10-25.

8 Private Correspondence with John Grodzinski, 4 February 2016.

be mustered, trained, quartered, and paid. The lieutenant governor, or a delegate in his absence, was responsible for deploying the militia in the event of need.

In New Brunswick, in 1807, two officials shared authority on matters of defence. The provincial government had been functioning without a resident lieutenant governor since early 1803, when Thomas Carleton returned to England but continued to hold his commission. In Carleton's absence, his role as New Brunswick's commander-in-chief had to be assumed by someone on the ground. Command over regular forces devolved to the second-most senior army officer in the district, who in 1807 was Major-General Martin Hunter, based in Halifax. Command over the militia devolved to the president of the New Brunswick council, the top civil position in the province, and the colony's administrator in Carleton's absence; in 1807 Gabriel Ludlow held that position.⁹

After the *Chesapeake-Leopard* Affair and the heightened threat of war with the United States, Carleton was ordered back to New Brunswick. As Ludlow noted in a letter to him, "it is deemed by His Majesty particularly necessary that at this time the officers who have Commands in the North American Colonies should be at their Posts" and that Carleton was to "take immediate measures for returning to New Brunswick."¹⁰ Despite royal orders, Carleton refused to return after learning that James Craig, a man junior to him in military rank, had been commissioned governor general and commander-in-chief of all British forces in British North America. As Carleton explained to Lord Castlereagh, he had every intention "of returning to my command" but changed his mind after reading the *Gazette* and discovering that, after five decades of service and having reached the rank of general, "I am put under the Command of a Lieutenant General." Carleton reminded Castlereagh that "officers of a superior rank in the King's Army cannot with propriety serve under the command of inferiors." Not only was the situation, in Carleton's estimation, "very painful to such superior officers, but [it could] prove greatly injurious to the King's Service"; he asked Castlereagh to convey these concerns "to the King's consideration."¹¹ Carleton stayed in England, thereby setting the stage for a prolonged contestation over the constitutional structure of civil and military governance in New Brunswick.¹²

On 5 September 1807, Lord Castlereagh wrote Ludlow to explain how New Brunswick fit into Britain's military plans. Although all "hoped that the Differences between this Country and America may terminate in an Amicable Adjustment," he counselled Ludlow to consult "with the officer Commanding His Majesty's Forces to place the Province in a state of defence." From Whitehall's perspective, New Brunswick's "extensive Frontier to the United States" posed defensive problems,

9 D.M. Young, "Hunter, Sir Martin," in *Dictionary of Canadian Biography (DCB)*, vol. 7 (Toronto: University of Toronto Press, 1988), http://www.biographi.ca/en/bio/hunter_martin_7E.html; C.M. Wallace, "Ludlow, Gabriel George," in *DCB*, vol. 5 (Toronto: University of Toronto Press, 1983), http://www.biographi.ca/en/bio/ludlow_gabriel_george_5E.html.

10 Ludlow to Carleton, 5 August 1807, Colonial Office Dispatches, MC 416, Provincial Archives of New Brunswick (PANB).

11 Carleton to Castlereagh, 11 September 1807, New Brunswick Correspondence, 1806-1807, CO 188/13, pp. 321-2, The National Archives (TNA), United Kingdom.

12 W.G. Godfrey, "Carleton, Thomas," in *DCB*, vol. 5, http://www.biographi.ca/en/bio/carleton_thomas_5E.html.

and Castlereagh thought “the Militia & the Garrison of Regulars” might not be able to make an “effective Resistance in Case an Invasion should be attempted.” Should the United States invade, “it will be desirable, should resistance not likely to be successful, that you should secure a Retreat into Nova Scotia with as much of the Military Population as you can collect for the Security of Halifax. I have written conformably to the General Officer commanding at Halifax to cooperate measures with you accordingly.”¹³

Those contingency plans for a retreat to Halifax concerned William Knox, New Brunswick’s agent in Great Britain. He wrote Castlereagh on 15 September, emphasizing how “valuable and important” New Brunswick was to the empire. Inadequate military support, Knox argued, would jeopardize access to key strategic resources, such as fish and timber. As well, the communication route up the St. John River, a critical stretch of territory through New Brunswick that provided the all-season express link between Halifax and Quebec City, might be severed.¹⁴ Knox probably knew that Castlereagh had similarly instructed the military command in the Canadas that in the event of an American invasion and an inability to defend Upper Canada effectively, troops were to retreat to Quebec City. But Knox also knew that, during the winter, reinforcements could not be sent by sea into Lower Canada. The best overland route was through New Brunswick, as indeed occurred in 1813 when six companies of the New Brunswick 104th Regiment marched overland to Kingston, Upper Canada, so they would be there for the start of the spring campaign.¹⁵

The general public in New Brunswick reputedly learned of these plans when someone in the local political class leaked the information in the fall of 1807, and for years afterwards Castlereagh’s judgement rankled New Brunswickers. Lieutenant-Colonel Joseph Gubbins, a British officer seconded to North America as the inspecting field officer of the New Brunswick militia, noted wryly in his journal in 1811: “This order was imprudently promulgated and at the time made a very unfavourable impression on the minds of the inhabitants whose interests were therein so little consulted.”¹⁶

Ludlow sent Castlereagh a measured response, one that attempted to balance metropolitan and district command directives with on-the-ground realities. Upon receiving Castlereagh’s letter, Ludlow convened the council “for their advice . . . [on] carrying his Majesty’s orders into execution.” He had already ordered one-quarter of the militia to be ready for service “on the shortest notice,” and the council agreed that all militia units “should be urged to perfect themselves in the use of the

13 Castlereagh to Ludlow, 5 September 1807, MC 416, PANB. Castlereagh was aware that the New England states were disinclined to go to war; see John R. Grodzinski, *Defender of Canada: Sir George Prevost and the War of 1812* (Norman, OK: University of Oklahoma Press, 2013), 30.

14 Knox to Castlereagh, 15 September 1807, MC 416, PANB; W.E. Campbell, *The Road to Canada: The Grand Communications Route from Saint John to Quebec* (Fredericton: Goose Lane Editions, 2005), 47-64.

15 Taylor, *Civil War of 1812*, 113; John R. Grodzinski, *The 104th (New Brunswick) Regiment of Foot in the War of 1812* (Fredericton: Goose Lane Editions, 2014).

16 Joseph Gubbins, *New Brunswick Journals of 1811 and 1813*, ed. Howard Temperly (Fredericton: Kings Landing Corp., 1980), 38.

musket without delay.” Ludlow also laid before the council a letter from General Hunter in Halifax, requesting that 1,000 militiamen be “put on actual service” in Fredericton and Saint John. Unlike Nova Scotia, where “Strong reasons” compelled local officials to order some militiamen to Halifax, Ludlow and the council saw no similar cause for concern in New Brunswick, at least according to “the best and latest intelligence from the United States.” They estimated a cost of approximately £15,000 to embody 1,000 militiamen for six months, the length of service that Hunter apparently thought appropriate. As Ludlow made clear, “the inability of the Province to defray this [financial] demand would oblige me to draw for it on his Majesty’s Treasury.” Ludlow and the council were concerned that needlessly calling out the militia during the winter months “might damp the ardor of the Militia and render them less willing to turn out in the spring when their services may be absolutely necessary.”¹⁷

In late December, Hunter learned that the US government was enforcing the 1807 Non-Importation Act and had passed the Embargo Act against British and French trade. He again advised Ludlow to embody part of the militia. In January Ludlow complied, ordering “about one thousand men to be immediately embodied and stationed at such places as the commanding Officer of his Majesty’s Troops [that is, Hunter] may think best situated for the defence of the Province.” Ludlow informed Castlereagh that Hunter had ordered him to provide militiamen with “Quarter,” “Provisions,” and “other allowances,” and “to allow them the same pay as is received by the Troops of the line.” The wages of 1,000 militiamen, he reminded Castlereagh, could “only be provided by my drawing bills . . . on his Majesty’s Treasury,” which he was certain “no objection can be made by his Majesty’s Minister.” According to Ward Chipman, a prominent New Brunswick lawyer, member of the council, and future puisne judge of the Supreme Court, Ludlow “had been over-persuaded to call out the Militia.”¹⁸

The militia call out quickly engendered complications. On 25 January militiamen from York, Sunbury, and Queen’s counties were stationed in Fredericton, with a smaller force of approximately 50 men up the St. John River at Meductic. Men from Saint John and King’s counties were stationed in the city of Saint John, while Charlotte County militiamen served in St. Andrews. Then, on 12 February, Ludlow unexpectedly died. Edward Winslow, now the eldest member of the Executive Council, succeeded him as president. Winslow wrote to Castlereagh on 7 March detailing Ludlow’s intention to pay militiamen at the same rate as “Troops of the Line,” yet explained that nothing had been finalized before his untimely death. Winslow’s fellow councillors were “unanimous in opinion that, as the Governor’s power to call out and embody the Militia is derived from the Act of Assembly, their pay must be regulated by the same authority.”¹⁹

The New Brunswick assembly – not the council, not the Treasury, not the British army, and not the secretary of state for War and the Colonies – determined militia

17 Ludlow to Castlereagh, 30 October 1807, MC 416, PANB.

18 Ludlow to Castlereagh, 16 January 1808, MC 416, PANB; Chipman to Winslow, 30 March 1808, in *Winslow Papers, A.D. 1776-1826*, ed. William O. Raymond (Boston: Gregg Press, 1972), 611-12; Winslow to Castlereagh, 7 March 1808, CO 188/15, pp. 13-14, TNA.

19 Winslow to Castlereagh, 7 March 1808, CO 188/15, p. 18, TNA; Wallace, “Ludlow,” *DCB*.

wages in the province. Heeding the council's advice, Winslow authorized pay based on the 1805 provincial militia law. The councillors were "clearly of the opinion" that the militia pay is "by the Law, intended to be allowed without any deductions on account of provisions." The militiamen and general population, Winslow informed Castlereagh, considered it "a public pledge of Government on which they might safely rely." In Winslow's estimation, not deducting for provisions offset the fact that New Brunswick militiamen did not receive "large bounties of money and allowances of clothing" that enlistees in the regular Army received. Winslow reiterated Ludlow's early advisory to Castlereagh that New Brunswick lacked funds to cover the militia payroll and that wages "must be defrayed by Bills on His Majesty's Treasury."²⁰

Within weeks, the councillors' concerns about the militia call out extended beyond financial worries to the long-term effects on public morale. Winslow and Chipman shared their anxieties in a series of letters in March 1808. Chipman considered the topic so sensitive that he advised Winslow "You had not better let any one see this letter." Ludlow had promised to disband militiamen after approximately two months – not the six months Hunter had advised – to give them time to return home and prepare for the spring fishery and planting of crops. In telling militiamen that the call out was only for two months, Ludlow simultaneously deferred to imperial orders and tried to minimize the burdens of time and money that the call out would impose. Chipman doubted whether militiamen would remain "many days after the expiration of the time limited in the late President's order, for they consider the faith of Government pledged to them for their dismissal at that time, and even a small extension of it would be submitted to only from the expectation of receiving their pay within such short period." If the government disregarded Ludlow's original timeline, Chipman feared, militiamen might simply choose desertion over duty, notwithstanding threats of fines or jail sentences, and "the dishonor to the Province would be indelible."²¹

Meanwhile, Winslow received assurances from David Erskine, the British minister to the United States, that "there was no prospect of immediate hostilities on the part of the Americans." After consulting Hunter, Winslow crafted a staged dismissal of embodied militia units. Men quartered in Saint John were sent home at the end of March in keeping with Ludlow's original timeline, with a pledge to pay their wages as soon as possible. Lacking funds and vulnerable to "a rascally

20 Winslow to Castlereagh, 7 March 1808, CO 188/15, p. 18, TNA; Ann Gorman Condon, "Winslow, Edward," in *DCB*, vol. 5, http://www.biographi.ca/en/bio/winslow_edward_5E.html; "An Act for the better Regulating the Militia in this Province," *Acts of the General Assembly of His Majesty's Province of New-Brunswick; Passed in the Year 1805* (Saint John, NB: John Ryan, Printer, 1805), 332-44 (article XVIII details militia wage rates). MacNutt, *New Brunswick, A History*, 133-6, puts most of the responsibility for the 1808 militia debacle on bad planning by the people of New Brunswick, not on unwarranted pressure from a military commander unfamiliar with the colony. David Facey-Crowther, *The New Brunswick Militia, 1787-1867* (Fredericton: New Ireland Press and New Brunswick Historical Society, 1990), 20, states that Ludlow "was completely unprepared" for a call-out of the militia.

21 Chipman to Winslow, 2, 9, 10, and 30 March 1808, in Raymond, *Winslow Papers*, 603-8, 611-13; Chipman to Winslow, 27 March 1808, Winslow Papers, UNB, <https://lib.unb.ca/winslow/>.

combination here to extort 10 pr. cent premium upon the bills,” Winslow dispatched William Hazen, the militia paymaster, to Halifax to secure £6000 of British Treasury funds. By mid-April, civil officials could pay three months of militia wages in full. On 24 April 1808, the council resolved to permit “the whole body of the Militia to return to their homes and to hold themselves in readiness to appear again at a minute’s warning.”²²

Winslow’s plan encountered setbacks with consequences for imperial relations. Incidents of disobedience, mischief, and desertion escalated during the last weeks of the call out, as militiamen grew impatient waiting for their promised wages and orders to disband. The level of unrest persuaded Winslow, on the advice of the council and military officers, to authorize a general court martial to try the worst offenders, a number of whom were given jail sentences.²³ Winslow also issued pay without deducting the cost of provisions, a decision that drew Whitehall’s scrutiny. One imperial official commended Winslow for drawing upon “his Majesty’s Treasury for the Expences of the Militia,” but then challenged New Brunswick’s militia law and the council’s interpretation of it: “I cannot concur in your Construction of the Militia Law, whereby you conceive, that a Militia Man is not subject to Stoppages for his Ration or Provisions.”²⁴ He would not approve Treasury funds for those expenses. The fiscal controversy simmered for over a year as Treasury officials repeatedly wrote to the Ministry of War and the Colonies inquiring if the bills for militia pay, as originally submitted by Winslow, should be paid or not.²⁵

The prolonged funding dispute irritated New Brunswick councillors who, like many people in the colony, were distressed at the complications arising from the militia call out, which they had advised against. In the spring of 1808 Lord Castlereagh, in response to these transatlantic concerns, chose to replace top civil officials in New Brunswick and Nova Scotia with commissioned military officers. He appointed Martin Hunter as president of the New Brunswick council in place of Winslow, in addition to his district military responsibilities as second in command and as commander of the regular forces in the province. The council presidency, however, was traditionally held by someone with civil, not military, credentials, and by someone who was a permanent resident of the province. In late 1807, Castlereagh also decided that the Atlantic district commander should be the lieutenant governor of Nova Scotia and sent Major General Sir George Prevost to replace John

22 Winslow to Henry Wellesley, 8 March 1808, CO 188/15, p. 15, TNA; Winslow to Castlereagh, 16 April 1808, and Winslow to Craig, 4 April 1808, MC 416, PANB; “Order for Disbanding Militia,” 24 April 1808; Winslow to Lutwyche, 30 July 1808; “Notes on Militia Embodied in 1808,” in Raymond, *Winslow Papers*, 616-19, 626-8 (quotations from letter dated 30 July 1808).

23 “Notes on Militia Embodied in 1808,” in Raymond, *Winslow Papers*, 628.

24 Unknown Whitehall official to Winslow, 1 June 1808, MC 416, PANB. The unknown official was likely Edward Cooke, Under-Secretary of State for War and the Colonies. See also Hunter to Cooke, 14 June 1808, CO 188/14, p. 41, TNA.

25 Audit Office to Edward Cooke, 14 October 1809, CO 188/15, pp. 138-138d, TNA; “Copies” of the letter of 8 March 1808 from Winslow to Wellesley were “sent to the Audit Office” 24 October 1809 – CO 188/15, p. 14d, TNA.

Wentworth. Wentworth was only notified of the decision when the ship bringing Prevost anchored in Halifax Harbour on 7 April 1808; Prevost was sworn into office as lieutenant governor on 13 April.²⁶

In New Brunswick, Hunter was the first of several military officers to fill the colony's top civil position. These appointments, lasting until 1817 when Carleton died and a new lieutenant governor was appointed, were an attempt to recreate the military and civil responsibilities of the office of lieutenant governor. Castlereagh's rationale for appointing Hunter was clear, but the obligations of district military command engendered problems that kept it from functioning smoothly. Hunter was officially president of the council until 1812, but his military duties as second in command in the Atlantic district meant that in the absence of the lieutenant governor of Nova Scotia, Hunter had to return to Halifax to assume district command. Such a hiatus occurred once from December 1808 to April 1809 and again from September to November 1811.²⁷

In Hunter's absence another military officer was assigned in his place, first George Johnstone and then William Balfour. Johnstone's brief promotion exposed multiple complications and inequities inherent in Castlereagh's innovation of combining military command and the president of the New Brunswick council in one person. Johnstone, a lieutenant colonel, wrote to Governor General James Craig requesting the temporary rank of brigadier general when standing in for Hunter, both to strengthen his hand in Fredericton and as recognition of his 28 years of service in the British forces. As well he asked for compensation for the pay cut that he suffered with this promotion. In an ironic twist, upon being elevated to commander-in-chief and president of the council, Johnstone had had to give up his command of the New Brunswick Regiment and thereby the pay associated with it. Craig did not promote Johnstone, but he did champion his request for compensation. The Treasury, however, challenged the request on a technicality: New Brunswick was part of the Atlantic military district, so Johnstone was not a commander-in-chief but only a commander of a sub-district. Meanwhile other Treasury officials challenged Johnstone's correspondence concerning provincial bills that needed paying because no one notified Whitehall that Johnstone was council president.²⁸

The New Brunswick council and assembly found these military appointments controversial from the outset. Castlereagh appears not to have reported his

26 Grodzinski, *Defender of Canada*, 28-31; Judith Fingard, "Wentworth, Sir John," in *DCB*, vol. 5, http://www.biographi.ca/en/bio/wentworth_john_1737_1820_5E.html.

27 Young, "Hunter, Martin," *DCB*. Hunter claimed it happened five times; see Hunter to Bathurst, 16 November 1812, CO 188/18, pp. 162-162d, TNA.

28 Johnstone to Craig, 30 November 1809, CO 188/15, pp. 134-134d, TNA; Craig to J.W. Gordon, 25 February 1809, CO 188/15, pp. 132-132d, TNA; Treasury to Edward Cooke, 23 April 1809, CO 188/15, p. 120, TNA; Johnstone to Castlereagh, 26 April 1809, CO 188/15, pp. 23-24, TNA; Home Guard to George Harrison, Treasury, 30 May 1809, CO 188/15, p. 130, TNA; Harrison to William Thornton, War, 16 June 1807, CO 188/15, p. 136, TNA; Thornton to Johnstone, 5 January 1810, CO 188/16, pp. 52-52d, TNA; Treasury to Liverpool, 5 February 1810, CO 188/16, p. 45, TNA; Johnstone to Liverpool, 20 February 1810, CO 188/16, pp. 48-51d, TNA; Treasury to Liverpool, 16 February 1810, CO 188/16, p. 47, TNA; Note to Liverpool, 21 February 1810, CO 188/16, pp. 53-53d, TNA.

appointment of Hunter to the bureaucrats in Whitehall who handled day-to-day colonial affairs. On 1 November 1809 Lord Liverpool succeeded Castlereagh as secretary of state for War and the Colonies and wrote Edward Winslow, still on record in Whitehall as president of the council, to notify him of the change. Winslow dutifully forwarded the letter to Hunter. He also took the occasion to update Liverpool, congratulating him on his appointment and informing him that Martin Hunter, not he, was president of the council. Winslow then turned to an analysis of the constitutional and morale problems with appointing a military officer on secondment as the council president. He explained that Castlereagh's "special Mandamus" appointing Hunter stipulated that in his absence the next ranking officer would assume both military command and "civil government." When Johnstone, "a man of amiable manners and respectable character," replaced Hunter from December 1808 to April 1809, New Brunswick councillors were uneasy that with "the fluctuating and precarious operations of Military service, the important civil concerns of our province may be committed to officers of a very different disposition." They felt that in appointing outsiders, Castlereagh "hold[s] them [the councillors] up to public view in a light peculiarly invidious and degrading" by implying that none of them were sufficiently qualified and loyal to be president of the council despite "twenty-six years" of "fixed principles of loyalty and habitual obedience" since New Brunswick's founding. Castlereagh had deviated "from his Majesty's original instructions to His Governor General" concerning the leadership succession in New Brunswick, which was "considered here as part of the Law of the Land." While acknowledging that Castlereagh appointed Hunter "under the pressure of a supposed emerg[enc]y," Winslow respectfully requested that Liverpool implement a solution "more congenial to the principles of the constitution and more beneficial to His Majesty's Service."²⁹

Liverpool maintained the status quo. Before Hunter's second recall to Halifax from September to November 1811, the council presented him with an address expressing its distress that the civil government of the province had not been stabilized. When Hunter had been appointed over three years before, the council anticipated that given Carleton's refusal to return to New Brunswick the imperial government would extend "some adequate mark of His Majesty's favor to him" so he would resign and Hunter could be appointed lieutenant governor. The councillors emphasized the importance of resolving the issue to "secure the province from the mischiefs of an unsettled and precarious government." Hunter faithfully conveyed the council's concerns to Lord Liverpool. Edward Lutwycke, New Brunswick's agent in London, also wrote to Liverpool about the constitutional problems with the military succession, noting that the top administrator in the province had the constitutional authority to remove all appointed officials if he wanted. It concerned people that the military officer who became president of the council might be someone recently arrived in the colony and intent on embellishing his own power. Hunter and Lutwycke's remonstrations changed nothing.³⁰

29 Winslow to Liverpool, 5 February 1810, CO 188/16, pp. 3-3d, TNA.

30 Hunter to Liverpool, 10 August 1811, CO 188/17, pp. 15-15d, TNA; Lutwycke to Liverpool, 16 November 1811, CO 188/17, pp. 56-57d, TNA.

Frustrations spilled over into private communications. Winslow wrote to his son: “The presidents of the Council are relieved here now with as little ceremony as an officer’s guard.” He queried rhetorically about “the consequence of measures so grossly absurd,” and feared “that the united abilities of all His Majesty’s Ministers could not have contrived a measure better calculated to alienate the affections of the people and to check the progress of this flourishing Colony.” To exacerbate matters, local members of “His Majesty’s Council (of course) are not very frequently consulted” – leaving even individuals one might expect to have been supportive of decisions emanating from London displeased with the new political reality in New Brunswick.³¹

In the assembly, a parallel set of concerns complemented those of the council members. Members of the legislative assembly repeatedly expressed an imperative to find a fit between imperial defensive needs and the resources of New Brunswick’s residents. Over five sittings of the assembly (1808, 1810, 1812, 1813, and 1814), they deftly deployed an array of legislative powers – expiry clauses, petitions, and electoral scrutiny and reform – to limit the influence of the British military and imperial directives on the civil government of the colony. They explained tactical moves with appeals to constitutional principles and their obligation to find a balance between being the constitutional voice of the people of the province and loyalty to His Majesty’s government.

Not surprisingly, Hunter met resistance in the assembly when he initiated a revision of the militia law in 1808. Prior to his appointment, New Brunswick’s militia laws had evolved gradually over two decades. Keen for the North American provinces to assume more responsibility for their own defence, British officials instructed Lieutenant Governor Carleton to organize the militia and, in 1787, the assembly passed the first iteration of the militia law. Two elements in the early militia laws – 1787, 1792, 1794, 1802, and 1805 – are particularly noteworthy. First, the assembly carefully stipulated the period the legislation would remain in force. Militia laws passed during periods of peace (1787, 1792, 1802) expired after five years. Those passed during periods of conflict (1794, 1805) remained in effect “during the present war, and no longer.”³² By using expiry clauses, the assembly embedded requirements to review and revise militia legislation at intervals it

31 Winslow to Edward Winslow, Jr., 25 November 1811, in Raymond, *Winslow Papers*, 672-3.

32 The expiry clause is the last article of each piece of militia legislation and thus the last page of the inclusive page numbers; see 27 George III Chapter 1, “An Act for establishing a Militia, in the Province of New-Brunswick, and for regulating the same,” *Acts of the General Assembly of His Majesty’s Province of New-Brunswick, 1787* (Saint John: J. Ryan, 1787), 129-36; 32 George III Chapter 1, “An Act for continuing the establishment of a Militia and for Regulating the same,” *Acts of the General Assembly of His Majesty’s Province of New-Brunswick, 1792* (Fredericton: Christopher Sower, 1792), 240-3; 34 George III Chapter 1, “An Act for the better Regulating the Militia in this Province,” *Acts of the General Assembly of His Majesty’s Province of New-Brunswick; Passed in the Year 1794* (Brookville, NB: Christopher Sower, 1794), 294-303; 42 George III Chapter 1, “An Act for Regulating the Militia,” *Acts of the General Assembly of His Majesty’s Province of New-Brunswick; Passed in the Year 1802* (Saint John: John Ryan, 1802), 452-5; and 45 George III Chapter 1, “Militia Act, 1805,” 332-44; quotation from the 1794 expiry clause. Facey-Crowther, *The New Brunswick Militia, 1787-1867*, 19, contends that with the onset of US-UK tensions in 1807 “New Brunswick’s militia law had not changed since . . . 1794.”

determined. Enhanced military powers during wartime concerned the assembly, so those powers lasted only as long as they were absolutely necessary.

Second, assembly members vigorously negotiated the number of training days. The 1792 law mandated two days of muster per year, but only “once in every year and not oftener” (i.e., two days in succession rather than one day on two occasions). The assembly allowed more training times during wartime. In 1794, training increased to two days twice a year (or four days total), reverted to one training muster once a year in 1802, and then increased to three training musters in 1805.³³ By reducing training times the assembly sought to limit the impact of militia duty on the province’s residents and economy.

Except for a small amendment passed in 1807, Martin Hunter encountered the 1805 militia law when he became council president in the spring of 1808. He called a rare summer session of the assembly that convened on 5 July, and asked it to revise the militia law in accordance with the King’s directive for “measures to be taken for strengthening the defences of the British possessions in North America.”³⁴ On 6 July the assembly struck a six-member committee to amend the law, and on 7 July Hunter forwarded excerpts from a letter Lord Castlereagh had sent to Governor General Craig in January 1808 outlining Castlereagh’s vision of sweeping changes to imperial defence policy in all the British North American colonies.³⁵

The 1808 session marked a turning point in the writing of the province’s militia laws. Unlike the gradual modifications over many years of peace (1787, 1792, and 1802) and war (1794, 1805), major changes were debated. After a full draft of the legislation had been “engrossed,” or prepared in a final form, assembly members put forward a motion to reduce the proposed training from 15 to 10 days; the council and assembly compromised in the final bill at 12 days. Further evidence of assembly priorities was the length of time the act would remain in force. All previous militia laws had remained in force for five years or “during the present war,” but the 1808 law, enacted during wartime, would expire after only two years – a pointed reminder of the assembly’s civil authority.³⁶ Both Upper Canada and Nova Scotia, significantly, also updated their militia legislation in 1808 and enacted policies aligned more closely with metropolitan directives than was New Brunswick’s law, legislation enacted without expiry clauses.³⁷

33 32 George III Chapter 1, “Militia Act, 1792,” 241; 34 George III Chapter 1, “Militia Act, 1794,” 295; 42 George III Chapter 1, “Militia Act, 1802,” 452; 45 George III Chapter 1, “Militia Act, 1805,” 334.

34 The 1807 act provided a procedure to court martial militia officers. See 47 George III Chapter 12, “An Act, in addition to an Act, intituled an Act for the better regulating the Militia in this Province,” *Acts of the General Assembly of His Majesty’s Province of New-Brunswick, 1807* (Saint John, NB: John Ryan, 1807), 23.

35 *Journal of the Votes and Proceedings of the House of Assembly of the Province of New-Brunswick, 1808* (Saint John, NB: Jacob S. Mott, 1808), 6 and 7 July 1808; 48 George III Chapter 1, “An Act for the greater security of this Province by the better regulating the Militia thereof,” *Acts of the General Assembly of His Majesty’s Province of New-Brunswick, 1808* (Saint John, NB: John Ryan, 1808), 3-15.

36 18 July 1808, *Journal of the House of Assembly, 1808*, 124-5; 48 George III Chapter 1, “Militia Act, 1808,” 15.

37 48 George III, Chapter 1, “An Act to explain, amend, and reduce to one Act of Parliament, the several Laws now in being for the Raising and Training the Militia of this Province. Passed 16th

The renewal of the militia law during the 1810 session, which convened on 27 January, unfolded quite differently. Hunter praised the assembly on the 1808 changes and requested further improvements, again sending directives from Lord Castlereagh expressing hope that “the Militia of the two Provinces (of Nova-Scotia and New-Brunswick) when on service, [would be put] upon the same footing with the Troops of the Line.”³⁸ Although this request required further substantive revisions of the militia law, the legislative process continued smoothly. As in 1808, some members advocated limited changes and votes divided between resisters and supporters of imperial directives. The number of training days was the major exception, reduced from 12 days in the 1808 law to eight in the 1810 law, four days twice a year with the times in each county specified in the legislation.³⁹

Assembly accommodation of British military requests occurred within the context of election oversight and long-sought reform. In 1810 a number of election-related concerns converged: a perception of executive overreach in the 1809 election, the possibility of war with the US, and the jurisdictional ambiguities in the upper St. John River valley – the Madawaska region – where the boundary between New Brunswick, Lower Canada, and the United States was contested. Acadians and Canadians settled that region in the 1780s and 1790s and war would test their allegiance, including militia service; extending them voting rights would affirm New Brunswick’s commitment in them.

In the summer of 1809 Hunter had dissolved the assembly and called an election. Only 11 of the previous 26 members, or 42 per cent, returned to the assembly, but among the 11 were longstanding and prominent MLAs such as Amos Botsford (repeatedly elected speaker of the house), William Pagan, and Robert Pagan.⁴⁰ Four election returns were contested: two seats from Kings County, and two from Northumberland County. King’s County residents submitted a petition to the assembly “complaining of an undue Election” and, after collecting evidence and hearing counsel on both sides, the assembly voted in favour of the petitioners and removed John Coffin and George Pittfield, both supporters of the executive, from their seats. Voters replaced Coffin and Pittfield in 1812 with George Leonard and

March, 1808,” *Laws of His Majesty’s Province of Upper Canada in North America, passed in the year 1808* (York, Upper Canada: John Cameron, 1808), 3-16; 48 George III, Chapter 1 [1808], “An Act to provide for the greater Security of this Province, by a better regulation of the Militia, and to repeal the Militia Laws now in force,” *The Statutes at Large passed in the several General Assemblies held in His Majesty’s Province of Nova-Scotia* (Halifax: John Howe, Son & Co., 1816), 24-44.

38 *Journal of the Votes and Proceedings of the House of Assembly of the Province of New-Brunswick; From Saturday the 27th Day of January, to Wednesday the 14th Day of March, 1810* (Saint John, NB: Jacob S. Mott, Printer, 1810), 7-8, 16 (quotation on 16 – 8 February 1810).

39 Article XVIII, 48 George III Chapter 1, “Militia Act, 1808,” 9; 50 George III Chapter 9, “An Act for better regulating the Militia in this Province,” *Acts of the General Assembly of His Majesty’s Province of New-Brunswick passed in the year 1810* (Saint John, NB: Jacob Mott, 1810), 23-39 (the provision for training days is in Article VII, 25).

40 Kim Klein, “Paths to the Assembly in British North America: New Brunswick, 1786-1837,” *Acadiensis* XXXIX, no. 1 (Winter/Spring 2010): 133-57; James Snowdon, “Botsford, Amos,” in *DCB*, vol. 5, http://www.biographi.ca/en/bio/botsford_amos_5E.html; David S. Macmillan and Roger Nason, “Pagan, Robert,” in *DCB*, vol. 6, University of Toronto/Université Laval, 2003–, http://www.biographi.ca/en/bio/pagan_robert_6E.html.

Jasper Belding.⁴¹ The assembly also reviewed election writs from 1785, 1792, 1802, and 1809 for Northumberland County; although not in full conformity with the law, they were consistent among elections and so the assembly allowed the two representatives from Northumberland County to take their seats.⁴²

The challenges to the election results emboldened the assembly to change the election law to allow Catholics to vote. Since the 16th century, Catholics had been disenfranchised in most of the English world. When Carleton called the first election in New Brunswick in 1785, the writ described the franchise requirements as white, male, twenty-one years of age, and three months residency in the province; so both Protestant and Catholic freeholders voted, quite to the dismay of some officials. The assembly passed an election law that excluded Catholics and sent it to Britain for approval, but in 1790 it was royally disallowed. The 1791 assembly passed another election law, which did receive royal approval, but it required state oaths that disenfranchised Catholics, and had a particularly heavy impact in the Madawaska region and Northumberland and Westmorland counties where there were large populations of Acadians.⁴³

At various times in the 1790s, some assembly members tried to expand the franchise to Catholics but failed.⁴⁴ The 1810 assembly methodically took up the challenge. On 5 February it voted to request that Hunter provide copies of the parts of the commissions to “Governors of this Province, previous to the year 1791, as relates to the calling of General Assemblies,” a request they repeated on 15 February. On 19 February Hunter conveyed an extract of Carleton’s 1784 commission “as relates to the calling of General Assemblies,” the only one predating 1791. On 1 March Peter Fraser, a York County assemblyman and militia captain, requested permission to draft legislation so that Catholics could vote for assembly representatives. In 1810, York County included the Madawaska region. Fraser, a prominent merchant, had extensive commercial ties on the upper St. John River; by expanding the franchise to Catholics, he was being not just civic-minded but also a shrewd militia captain, politician, and businessman.⁴⁵ The act passed on 12 March, was sent to London for royal approval, and was enacted in 1812.⁴⁶

41 *Journal of the House of Assembly of the Province of New-Brunswick, 1812* (Saint John, NB: Jacob S. Mott, 1812), 10-11, 18-19. Martin Hunter, however, appointed John Coffin to the council; see Hunter to Liverpool, 16 April 1810, CO 188/116, pp. 15-17, TNA; Hannay, *History of New Brunswick*, 309-10.

42 *Journal of the House of Assembly, 1812*, 12, 13, 55.

43 John Garner, *The Franchise and Politics in British North America, 1755-1867* (Toronto: University of Toronto Press, 1969), 54, 136-8.

44 52 George III, Chapter 26 (1810), “An Act for regulating Elections,” 39; Garner, *Franchise and Politics in British North America*, 136-8. Catholics would not be allowed to hold elected office until 1830, when the terms of Britain’s Catholic Relief Act were applied to New Brunswick.

45 Béatrice Craig, *Backwoods Consumers & Homespun Capitalists: The Rise of a Market Culture in Eastern Canada* (Toronto: University of Toronto Press, 2009), 56; *Journal of the House of Assembly, 1810*, 14, 20-1, 22-3, 40, 60-1.

46 52 George III, Chapter 26 (1810), “An Act in addition to an Act, intituled ‘An Act for regulating Elections of Representatives in General Assembly, and for limiting the duration of Assemblies in this Province’,” Passed the 14th March, 1810, *Acts of the General Assembly of His Majesty’s Province of New-Brunswick Passed in the Year 1812* (Saint John, NB: Jacob Mott, 1812), 39.

When Hunter convened the assembly for the 1812 session on 5 February a top priority was renewing the 1810 militia bill, which was set to expire. He emphasized the danger of war with the United States and called “for the more perfect regulation of our Militia.” The assembly duly initiated a bill to continue and amend the 1810 militia law, and over the following three weeks it moved through committees meeting little resistance.⁴⁷ The assembly, however, was weakening the militia law, the opposite of Hunter’s request. In particular, sections seven, eight, and eleven, all addressing militia training, were repealed and replaced with provisions less favourable to the British position on defence. The chief point of contention, as usual, was the annual number of training days, reduced to a maximum of three from a proposed minimum of nine and maximum of eleven.⁴⁸

The council and assembly, however, were more concerned about the constitutional integrity of civil government in New Brunswick, and the 1812 legislative session evolved into an elaborate and politic critique of the constitutionality of Castlereagh’s innovation in appointing a military officer as council president. The possibility of war with the United States heightened their concern. If the US declared war, Hunter would likely be promoted and recalled and another officer sent to replace him. They expeditiously dealt with the militia bill and, as it neared completion in late February, the assembly took steps to address constitutional concerns. It asked Hunter to send that part of Carleton’s “instructions” pertaining to “the succession to the Administration of the Government . . . in case of the death, absence or other removal of such Governor.” Four days later, it repeated the request, and Hunter obliged. On 24 February the assembly resolved to prepare a joint address with the council “on the subject of the Executive Administration of the government in this Province.” The council agreed, and by 3 March a joint committee had completed an address to the prince regent.⁴⁹

To underscore their concern with the unconstitutional appointment and not with the person appointed, the assembly resolved on 5 March to request that the president arrange for “a suitable monument” in “memory of Major-General William Balfour,” who had filled in during Hunter’s second absence, and that it “be erected in Christ Church in Fredericton.” The next day it resolved the same for Gabriel Ludlow, the council president who died in February 1808. The message was clear: their complaint was with the unconstitutional appointment of the council president and not with the appointed individual. On the day the assembly approved the second monument, the joint assembly-council committee presented Hunter with its petition and requested that he transmit it to England “to be laid before His Royal Highness the Prince Regent.”⁵⁰

The address briefly related New Brunswick’s history since 1784, how the lieutenant governor’s commission stipulated that “in the case of the death, absence or removal of His Majesty’s Lieutenant Governor” the governor general, if in the province, could “nominate and appoint” a replacement from the council who would

47 5-21 February 1812, *Journal of the House of Assembly, 1812*, 3-27.

48 52 George III Chapter 8, “An Act to amend and continue for a limited time an Act, intituled ‘An Act for better regulating the Militia in this Province’,” *Acts of the General Assembly of New-Brunswick, 1812*, 3-10.

49 *Journal of the House of Assembly, 1812*, 20-1, 27, 29, 39-40, 46 (quotations on 21, 29).

50 *Journal of the House of Assembly, 1812*, 51, 53, 54 (quotations on 51, 54).

hold the position “until His Majesty’s royal Pleasure thereupon should be known.” This practice safeguarded “against any improvident succession to the administration.” For the council and assembly, the leadership succession Castlereagh activated when he appointed Martin Hunter violated the “Constitution originally granted to them in and by the Majesty’s Royal Commission and Instructions.”⁵¹

They reminded the prince regent of New Brunswick’s importance, not least being second only to “Lower Canada in the supply of Masts, Spars, and other Timber for the Royal Navy, and for the use of His Majesty’s Subjects in Great Britain and Ireland.” They praised the person of Martin Hunter who had displayed admirable “Zeal for the Honor of His Majesty’s Service and for the safety and prosperity of the Province.” But “in the absence of General Hunter,” they noted, “the Officer commanding His Majesty’s Forces in this Province for the time being is to succeed him, as President of the Council.” The assemblymen and councillors observed that “in the vicissitudes of military service, and the ordinary casualties by death, [there could] within very short periods be a succession of Persons invested with the administration of this Government, altogether unknown to His Majesty and his Ministers” and without possessing “any degree of confidence” from people in the province. Given these leadership risks and the violation to their constitution, “the Council and Assembly for themselves and their fellow Subjects the Inhabitants of this Province,” asked the prince regent to rectify the problem.⁵² Hunter forwarded the petition to London and endorsed its sentiments. Officials reported back to Hunter that although the prince regent was “anxious” to attend to the council and assembly’s concerns, he believed that “under the present Circumstances” it was necessary to vest “Civil & Military Authority” under “the Officer in Command of the Troops.”⁵³ The military leadership of the province continued.

The US declared war on 18 June 1812, news of which reached New Brunswick from Eastport, Maine, and the anticipated leadership changes happened. Officials in London ordered Hunter back to Britain, and Major General George Stracey Smyth replaced him.⁵⁴ Smyth reassured Lord Bathurst, who had succeeded Lord Liverpool as secretary of state for War and the Colonies, that the people of New Brunswick were “Loyal disposed,” and he “witnessed great Zeal through all ranks of People to defend themselves.” He noted the £10,000 the assembly had allocated for defense should war be declared, and that people were “voluntarily assisting in repairing the Works.”⁵⁵

51 “To His Royal Highness The Prince Regent, The joint and humble Address of His Majesty’s Council, and the House of Assembly of His Majesty’s Province of New Brunswick in General Assembly convened,” 1812, CO 188/18, pp. 12-15, TNA.

52 “To His Royal Highness The Prince Regent,” 1812, CO 188/18, pp. 12-15, TNA (emphasis in original).

53 Hunter to Liverpool, 9 March 1812, CO 188/18, pp. 10-10d, TNA; Letter to Major General Hunter, 10 August 1812, CO 188/18, pp. 60-61, TNA. The government in Britain was in flux during the Napoleonic War, and so it is not that officials in London had little sympathy for concerns from New Brunswick; see Christopher D. Hall, *British Strategy in the Napoleonic War, 1803-1815* (Manchester: Manchester University Press, 1992), 53-73.

54 Hunter to Liverpool, 27 June 1812, CO 188/18, pp. 2-33, TNA; Facey-Crowther, *New Brunswick Militia*, 30-1; Dallison, *A Neighbourly War*, esp. chap. 1.

55 Smyth to Bathurst, 4 July 1812, CO 188/18, pp. 34-35, TNA.

On 14 January 1813, Smyth opened the general assembly and requested “the revision of the Militia Law . . . to enable us most effectually to counteract any hostile attempts of the enemy.” A council committee prepared the first draft and sent it to the assembly on 21 January.⁵⁶ On 25 January, the assembly reasserted its control by voting 12 to 6 to assign fixed militia training times for each county appropriate to local economic cycles. Samuel Street, from Sunbury County, persistently attempted but failed to insert language that would require militia commanders to file copies of accounts every six months. Other critics, however, did prevail in reducing the period that the law would remain in force only “until the end of the next session.” The council’s draft had been for “the present war with the United States of America and no longer.”⁵⁷

New points of contention arose between the assembly and council. The council opposed provisions that suggested unconstitutional jurisdictional intrusions, noting “that some of the abovementioned provisions as well as many others which it may be expedient to adopt in order to render the Militia Laws more effectual for the public defence, the Council conceive can only originate constitutionally with the House.” In the end, it took a committee of conference, then a committee of conference about that committee of conference, followed by another committee to rewrite the bill to resolve all of the objections raised by the council plus others put forward by the assembly.⁵⁸ These intricate negotiations arose from the British insistence on certain wartime changes to the militia law running headlong into growing resistance in the assembly. The close scrutiny of the bill, the references by both chambers to issues of constitutionality, and the last clause suspending the bill at the end of the next legislative session portended the debate that would ensue in 1814, the zenith of New Brunswick’s militia debates.

By the start of the 1814 legislative session, the war with the United States was 18 months long and the British command was anxious to shore up defensive measures along the entire international border even though most military action was concentrated around the Great Lakes. The New England state governments generally opposed “Mr. Madison’s War,” but US privateers had been attacking New Brunswick and Nova Scotia vessels.⁵⁹ The 1813 militia law fell short of what the military command wanted, so the newest council president, Major-General Thomas Saumarez, urgently called for the renewal and revision of the law during his opening speech on 11 January. He requested more power; the assembly delivered less. A house committee presented a militia bill one week later, the only nondramatic part of the whole legislative process. On the first draft, there were six debate postponements, two major votes on provisions in the bill, and a request sent to the president about the state of militia arms.⁶⁰ Two issues were particularly contentious, and on 31 January Saumarez sent a letter informing the

56 *Journal of the House of Assembly of the Province of New-Brunswick, 1813* (Saint John, NB: Jacob S. Mott, 1813), 3-4 (quotation on 4).

57 *Journal of the House of Assembly, 1813*, 11-14, 26-7 (quotation on 27); Thomas B. Vincent, “Street, Samuel Denny,” in *DCB*, vol. 6, University of Toronto/Université Laval, 2003–, http://www.biographi.ca/en/bio/street_samuel_denny_6E.html.

58 12-20 February, *Journal of the House of Assembly, 1813*, 32-40 (quotation on 32).

59 James H. Ellis, *A Ruinous and Unhappy War: New England and the War of 1812* (New York: Algora Publishing, 2009).

60 11-31 January, *Journal of the House of Assembly, 1814*, 3-20.

“House of Assembly [of] his decided opinion” on them. The first was training days, and he contended “annually training the several battalions during six days *at least*, is indispensably necessary.” The assembly’s proposed reduction in training days he deemed unacceptable. Saumarez also wanted “a provision for levying and collecting fines of delinquents in the discharge of Militia duties, without the interference of the Civil Magistrate,” a reference to the British military’s dislike of civil involvement in military affairs.⁶¹ The assembly declined Saumarez’s advice, approved its version of the bill on 5 February, and sent it to the council.

These issues touched on multiple concerns by the assembly: 1) unwarranted burdens on the time and financial resources of their constituents, 2) constitutional infringements by the military, 3) how militiamen should be paid for duty, and 4) British military control versus New Brunswick civil control. Over the subsequent month the council and assembly convened at least four conferences, and each side proposed compromises. The council offered amendments to the 1813 law, which the assembly rejected as being “an infringement of the privileges of this House.” The assembly approved a supplemental militia law, which the council rejected. The council proposed a draft that included sections of the 1810 legislation, the one most favourable to the British position on defence, which the assembly overwhelmingly rejected (13 to 6) because it contained “inexpedient and unnecessary” proposals. The council also suggested renewing the 1813 law unchanged, which the assembly rejected because “many material benefits would be lost to the Country.”⁶²

The legislative struggle reached a fevered pitch from 2-5 March. The two chambers exchanged scathing messages about the unconstitutional actions of the other. Assembly members adamantly defended their actions as within their constitutional rights. They were “decidedly of opinion that the practice which has prevailed in this Province of limiting the time and manner in which the Militia are to be trained, is consonant not only to the usage of the Sister Colonies, but of the mother country, as will be found by a reference to the Acts of Parliament, and of the several Legislatures.” They exaggerated. No other colonial assembly legislatively protected civil control of the militia as effectively as did New Brunswick. Nova Scotia and Upper Canada militia laws provided for more days of training than did New Brunswick legislation. The Upper Canadian legislation statutorily established June 4th, George III’s birthday, as a general muster day. The New Brunswick records show no similar requirement being seriously discussed. Rather, concerns with local economic needs were paramount. Indeed President Smyth did not embody the New Brunswick militia in the summer of 1812, after the US declared war, because “depriving the Country of the labour at this Season would occasion the most alarming scarcity, if not the total want of food, during the remainder of the year.”⁶³ In 1812, 1813, and 1814 the Upper Canadian assembly added restrictive expiry clauses to militia amendments, a sign of assembly unease with the expansion of military powers in that colony.⁶⁴ Significantly,

61 *Journal of the House of Assembly, 1814*, 20 (emphasis in original).

62 1 February-1 March, *Journal of the House of Assembly, 1814*, 20-65 (quotations on 47, 53, 57).

Other statements on the infringement of the privileges of the house can be found on 42, 58, 59.

63 Smyth to Liverpool, 4 July 1812, CO 188/18, pp. 34-35, TNA.

64 William Gray, *Soldiers of the King: The Upper Canadian Militia, 1812-1815* (Erin, ON: Boston Mills Press, 1995), 25; for the 1808 militia acts for Upper Canada and Nova Scotia, see n.37.

the New Brunswick assembly had utilized expiry clauses for over two decades. After one more attempt to push through a bill amenable to its position, the council conceded on 7 March, the last day of the session. The council's representative simply told the assembly "The Council have agreed to the Militia Bill," and then withdrew.⁶⁵

From 1808 to 1814, the potential impact of excessive militia training on the province's economy and residents was the most persistent and overtly contentious issue for the assembly. On 16 February 1814, it explicitly stated that "general or Battalion musters for six days" would cause "serious inconveniences, as it will tend to withdraw the whole of the male inhabitants between sixteen and fifty years of age from their agricultural, and other pursuits, at a time when the Province is called upon to make every exertion for its support." The council's proposed amendments, the assembly opined, would "impose additional burthens upon the people," and it reiterated on 5 March that members "consider it their indispensable duty to reduce to all possible certainty the burthens which are to be imposed upon their constituents; . . . [and] the people should be informed and assured by the Law, in what manner they are to be called upon to perform their military duty." The assembly noted that the council agreed that it "would be too burthensome for the Country, and which might under particular circumstances operate greatly to the inconvenience of the people."⁶⁶

Control of militia fines, whether by civilian or military authorities, was another contentious issue. The protocols for the collection of fines for infractions of militia duty were fairly standard in all the militia laws up to and including the 1808 law. Per-incident or per-day fines ranged from five to 40 shillings, depending on the year of the militia law, the rank of the person fined, and the specific infraction. Before 1810, the commanding officer of a company, or a deputized sergeant or corporal, collected the fine from the offender and added it to a general fund used "to defray the contingent expenses of the Regiment to which such offender may respectively belong."⁶⁷ The 1810 legislation introduced two important modifications. First, if offenders refused to pay fines to "any Non-Commissioned Officer" then "the same shall be recovered before any one of His Majesty's Justices of the Peace, or the Clerk's Court of the City of Saint John" – all of whom were civil appointments. Second, all fines had to be "paid into the hands of the Quarter-Master of the Regiment or Battalion" – that is, the officer in charge of supplies and responsible for accounts.⁶⁸ These two changes created greater internal and external oversight, focusing attention on how fines were collected and spent. During the 1812 session, Hunter instructed the assembly "to take into consideration the state of the Arms, which have been issued to the Militia, which require repairs, of which the fines are far from sufficient to defray the expence." The assembly, in turn, requested and received six days later "accounts of the fines levied under the Militia Law, and sums received from the exempts, and of the expenditure thereof."⁶⁹ The assembly repeated this request in 1813 and appointed a committee to examine and report on the militia

65 *Journal of the House of Assembly, 1814*, 63.

66 16 February and 5 March, *Journal of the House of Assembly, 1814*, 41, 61.

67 "Militia Act, 1808," Article VI, 5.

68 "Militia Act, 1810," Articles XI and XLI, 27, 38.

69 13 and 24 February, *Journal of the House of Assembly, 1812*, 14, 24.

accounts. The committee's report concluded that commanding officers in York, Sunbury, Westmorland, and Northumberland counties had "neglected their duty in not rendering an account of their receipt and appropriation of fines."⁷⁰

The issue came to a head in 1814. President Saumarez asked for the system of discipline to function "without the interference of the Civil Magistrate." When that request went nowhere, the council proposed that fines be collected before a "board of officers," rather than just one officer, but the motion failed in the assembly. The assembly finally agreed to the council's proposal that fines be collected by militia captains without civil involvement, although still handed over to the quartermasters.⁷¹ The two chambers then agreed on standardized orders and warrants, and the depositing of all money from militia fines and penalties "into the Provincial Treasury . . . subject nevertheless to such appropriations as the Commander in Chief shall from time to time direct for the contingent uses of the respective Battalions."⁷²

At the heart of the fines dispute lay concerns over militia funding and jurisdictional infringement. Militia expenses had been a source of metropolitan-provincial tension since the passage of New Brunswick's first militia law in 1787. Defence was generally considered an imperial responsibility and expense, but officials in London wanted British North American provinces to assume responsibility for local defence through militias. The awkward accommodation reached by the two sides was that militias would be funded, in part, through the collection of fines. Yet they never generated sufficient funds. Emboldened by new policies for internal and external oversight in 1810, the assembly investigated the overall effectiveness of the fine collection process. The council and military officials, in turn, considered assembly enquiries a form of jurisdictional infringement; so, in 1814, Saumarez asked the assembly to remove civil involvement from the collection of fines. This political jockeying in 1814 resulted from the assembly's desire for a sound collection process clashing with the military's resolve to maintain jurisdictional boundaries. The compromise allowed fine collection to remain the responsibility of militia captains and quartermasters, but the gathered money was to be deposited into the provincial treasury. The compromise provided the commander-in-chief a role in deciding how to spend the money, while the assembly retained considerable power over the purse.

The 1814 legislative fight ended with the elected assembly prevailing over the appointed legislative council. The assembly affirmed its authority over crafting laws in New Brunswick, including the threat to deprive the province of a functioning militia during wartime. The council was probably dissatisfied with the outcome, but

70 27 and 29 January, 4 and 9 February, *Journal of the House of Assembly, 1813*, 12, 14, 23, 28 (quotation on 28). A process had been in place since 1810 for the prosecution of commanding officers who neglected or refused to collect fines or hand them over to the quartermaster, and the report emphasized that "it is the opinion of this House that a uniform adherence to the Laws for regulating the Militia is absolutely necessary to the preservation of that discipline which alone can add to its strength and utility" (28).

71 *Journal of the House of Assembly, 1814*, 20-57 (quotations on 20, 24, 57).

72 54 George III Chapter 21, "Militia Act, 1814," *Acts of the General Assembly, 1814*, sections VIII, IX, and XIII, 22-4.

in the end the militia bill proved less urgently needed than the council and president thought. By the summer of 1814, war weariness had set in on both sides. In August Britain and the United States began negotiations that concluded with the signing of the Treaty of Ghent on 24 December 1814, returning North America to a state of peace notwithstanding the continued British occupation of eastern Maine after its August 1814 invasion and the January 1815 Battle of New Orleans. Although the New Brunswick militia dispute and its resolution would not have a major impact on the course of the war, it nonetheless reveals striking details of the canny and sophisticated political culture of early 19th-century New Brunswick and the relationship of the colony to the imperial metropole.

In early March 1814 the assembly reminded the council that even though its members “have the most perfect confidence in the judgment of the present administrator of Government,” he was also the commander in chief and the person holding that position changed frequently. Therefore, the assembly observed, it was not wise to grant that office the power to “to call the Militia out.”⁷³ We do not know how that reminder influenced the council’s willingness to accede two days later to the assembly’s version of the militia bill, but it did reinforce that, for assembly members, the militia legislation and constitutional concerns about the governance structure of New Brunswick were closely linked.

The resistance of New Brunswick’s council and assembly to imperial militarization raises questions about the institutional structure of provincial governance. Both the executive and legislative branches of government confronted imperial officials about the changes in the administration of the province that they considered unconstitutional. The assembly adroitly crafted militia laws to protect civil oversight and to limit military administrators. Martin Hunter and George Smyth were both concerned about complications arising from the appointment of a military officer as president of the council. Before Smyth sailed for New Brunswick in 1812, he investigated the differences between New Brunswick and Nova Scotia’s governmental structures. In the latter, he noted, if the lieutenant governor – who was also the military commander – left the province, the civil government would be assumed by a civilian and not a military officer.⁷⁴ Hunter, after returning to England in 1812, wrote the Colonial Office to explain the financial hardship his five years as New Brunswick’s administrator had caused him. He was expected to execute all the responsibilities of the lieutenant governor, but at half the pay.⁷⁵

Assembly activism in early New Brunswick suggests strong continuities with 18th-century British American politics, when assemblies established the legislative practices that made them major governing institutions in colonies. In “Paths to the Assembly in British North America,” Kim Klein argues that since the first

73 5 March, *Journal of the House of Assembly, 1814*, 61.

74 Smyth to Gordon, 6 March 1812, CO 188/18, pp. 100-101d, TNA. This letter in the miscellaneous New Brunswick correspondence for 1812 is marked private. Smyth’s salutation was to “My Dear Gordon” in the Colonial Office. Smyth researched the logic of his posting to New Brunswick, and pointed out that the administration of government in New Brunswick was not the same as in Nova Scotia.

75 Hunter to Golbourne, 15 October 1812, CO 188/18, pp. 158-158d, TNA; Hunter to Bathurst, 16 November 1812, CO 188/18, pp. 162-162d, TNA.

legislative session in 1786 the New Brunswick assembly was more than a “ratifying body” for the executive. This study confirms her assessment and shows how the assembly became central to provincial decision-making much earlier than many scholars have realized. The political struggles of the late 18th century that David G. Bell has studied – the election of 1785 and the assembly fights of the early 1790s – were not isolated incidents of political dissent. This study of the assembly’s protection of civil control of the militia from 1807-1814 and the extension of the franchise to Catholics show that episodes of assembly activism were part of a tradition with its roots in British American assembly practices dating back to the 17th century.⁷⁶

The 1807-1814 political struggles are distinctive in that members of the executive council remonstrated to imperial officials about the unconstitutional re-organization of the executive implemented by Lord Castlereagh. The struggle was between provincial and metropolitan perspectives on imperial developments more than between executive and legislative control. When the New Brunswick council and assembly found themselves on opposite sides of an issue during those years it was not over the constitutionality of the governing structure, on which they concurred, but rather the best approach for simultaneously accommodating and resisting military demands by the metropolitan government, with the assembly taking a stronger position of resistance.

Founded by Loyalist refugees in 1783-1784, New Brunswick is often thought of as the most loyal of the British North American provinces.⁷⁷ Loyalty, however, was not about acquiescence to metropolitan demands. As the assembly’s actions indicate, loyalty entailed adherence to constitutional practices, the rule of law, and the primacy of elected assemblies in enacting legislation. The assembly, council, and even military officers repeatedly reminded officials in Britain that conditions in the colony required provincial accommodations, not mandates from metropolitan officials who were ignorant of local circumstances or ad hoc adjustments that violated the provincial constitution. Their actions between 1807 and 1814 demonstrate that many people, including a majority of the assembly and council, were concerned about what military appointments to civil positions portended for the constitution of New Brunswick, if not British North America and the empire more generally. These concerns manifested themselves in adroit use of legislative powers, in protective language – such as expiry clauses – embedded in militia legislation, and in the joint 1812 council-assembly petition to the prince regent

76 Klein, “Paths to the Assembly in British North America,” 133-57; Bell, *Loyalist Rebellion in New Brunswick*; Greene, *Quest for Power*.

77 Arthur R.M. Lower, in his *Colony to Nation: A History of Canada*, 5th ed. (Toronto: McClelland and Stewart, 1977), 120, emphasizes New Brunswick’s “strong Loyalist start” and the control that kept “the Assembly to safe limits,” as well as “the ugly spectre of American democracy from showing itself.” R.T. Naylor, in his *Canada in the European Age, 1453-1919* (Vancouver: New Star Books, 1987), 177, says little about New Brunswick’s political culture except that it was “destined to serve as a bastion of Loyalism and an imperial timber reserve.” The discussion in David J. Bercuson et al., *Colonies: Canada to 1867* (Toronto: McGraw-Hill Ryerson, Ltd., 1992), 154, 252-7, offers a more nuanced discussion of political culture in late 18th- and early 19th-century New Brunswick and Nova Scotia, but even it does not touch on the protracted struggle over the balance of military and civil governance.

protesting Castlereagh's innovation of making the council president a military officer on secondment and not a civilian drawn from residents of the province.

A re-examination of the period from 1807 to 1814 casts new light on early New Brunswick's place within the British Empire. At various points, both appointed members of the council and elected representatives of the assembly chose to defend the constitutional integrity of the province against metropolitan directives and to protect their constituents' livelihoods from unwarranted military burdens rather than support metropolitan visions of military preparedness at the expense of the colony's constitution and economy. To have capitulated to imperial demands would have deprived households across New Brunswick of labour that was critical to maintaining farms, many of which were struggling from year to year. In turn, they would have conceded constitutional protections and rights that would have had to be reclaimed at the end of the war. Metropolitan unwillingness to correct Castlereagh's changes to New Brunswick's leadership succession was a stark reminder that rights lost were hard to regain. It also demonstrates that New Brunswickers understood that, even in wartime, internal threats might be as dangerous as external ones.

In the years following the Napoleonic Wars and War of 1812, the threat of war between Britain and the United States abated and the intensity of the disputes faded into obscurity. Yet if one is to appreciate the complexities of British North American politics, the years from 1783 to 1815 deserve more attention. As the fights over the militia in New Brunswick show, we know too little about the reactions of people in the settler colonies to the drift toward authoritarian governments in the empire during the French Revolutionary and Napoleonic Wars. Few imperial jurisdictions had assemblies that allowed subjects to push back at metropolitan directives through constitutionally embedded institutions. Within Britain, reformers were concerned that authoritarian practices within the empire would have a deleterious impact at home. In New Brunswick, the assembly used legislative processes to balance the presence of British army personnel in the province with the imperative to maintain a civilian-led provincial government.⁷⁸

Loyalty in New Brunswick was complicated, nuanced, and included a sophisticated understanding of British constitutional principles and how different parts of the governance structure could be deployed to protect the provincial constitution against imperial overreach. Although the New Brunswick council and assembly never challenged the legitimacy of the existence of the imperial state, they did have a keen sense of the constitutional structure of power within the British Empire. The commitment to the authority of elected assemblies over appointed councils and metropolitan officials was present long before the 'age of reform' in the 1830s and 1840s. New Brunswick may well have been the most loyal of Britain's North American colonies, but loyalty did not include *carte blanche* enactment of dictates from London.

78 Miles Taylor, "Imperium et Libertas? Rethinking the Radical Critique of Imperialism during the Nineteenth Century," *Journal of Imperial and Commonwealth History* 9, no. 1 (January 1991): 1-23.