

Lawless Lawyers: Indigeneity, Civility, and Violence

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On 8 June 1826, young members of the Family Compact—allegedly disguised as “Indians”—raided William Lyon Mackenzie’s York office, smashing his printing press and throwing his types into Lake Ontario, to protest defamatory editorials. This essay investigates how the cultural memory of “Indian” disguise emerged by asking what this memory reveals about the performative and political dynamics of this protest. At first glance, the performance conventions and disciplinary function of the Types Riot allow it to be compared to folk protest traditions such as “playing Indian” and charivari. However, the Types Riot differed from these popular performances because the participants were members of the provincial elite, not protestors outside of the structures of power. The rioters’ choice of *how* to perform their “civilized” authority—through an act of lawless law legitimated through citations of “Indigenous” authority—demonstrates inherent contradictions in how power was enacted in Upper Canada. Furthermore, by engaging in a performance that resembled charivari, the rioters called their own civility—attained through education, wealth, and political connections—into question by behaving like peasants. The Types Riot demonstrates that the Family Compact’s claim to authority based on its members’ civility—their superior values, education, and social privilege—was backed by the threat of uncivil violence. The riot revealed a contradiction that the Upper Canadian elite would, no doubt, have preferred remained private: that in the settler-colony, gentlemanly power relied upon the potential for “savage” retribution, cited through the rioters’ “Indian” disguises.

Le 8 juin 1826, un groupe de jeunes membres du Pacte de famille—déguisés selon les dires en « Indiens »—ont pillé les bureaux de William Lyon Mackenzie à York, détruit sa presse et jeté ses caisses de caractères typographiques dans le lac Ontario pour signaler leur opposition à des éditoriaux diffamatoires qu’il a publiés. Dans cet article, Davis-Fisch examine l’émergence d’une mémoire culturelle du déguisement « Indien » en questionnant la dynamique des aspects performatif et politique de cet événement. À première vue, les conventions performatives et la fonction disciplinaire de l’émeute permettent d’établir des parallèles avec des formes folkloriques de protestation comme celle de « jouer à l’Indien » et le charivari. Or, l’émeute dont il est question ici se démarque de ces styles de prestations publiques en ce que les participants appartenaient à l’élite provinciale et faisaient partie des structures de pouvoir. La façon qu’ils ont choisi d’exprimer leur autorité « civilisée »—par un acte illégal qu’ils cherchaient à légitimer en citant l’autorité « indigène »—illustre des contradictions inhérentes à la représentation du pouvoir dans le Haut-Canada. Qui plus est, en prenant part à un spectacle qui rappelait le charivari, les émeutiers remettaient en cause leur civilité—qu’ils devaient à leur scolarisation, à la richesse et à leurs liens politiques—en se comportant comme des paysans. L’événement montre à quel point la prétendue autorité du Pacte de famille, qui s’appuyait sur la civilité de ses membres—theurs valeurs supérieures, leur scolarisation et leurs privilèges sociaux—s’appuyait sur la menace d’une violence incivile. En effet, l’émeute laisse voir une contradiction que l’élite du Haut-Canada aurait sans doute voulu taire, à savoir que, dans la nouvelle colonie, le pouvoir de la noblesse reposait sur sa capacité de recourir au châtement « sauvage » évoqué par le déguisement « indien » des émeutiers.



My experience investigating the 1826 event known as the “Types Riot” begins—suitably, considering its connection to law and order in Upper Canada—with a detective story. Preparing a lecture on Rick Salutin and Theatre Passe Muraille’s historical documentary *1837: The Farmers’ Revolt*, I stumbled across a tantalizing comment about the event in the *Dictionary of Canadian Biography*’s entry on William Lyon Mackenzie. Frederick Armstrong and Ronald Stagg describe it as follows: “On 8 June 1826 a group of 15 young, well-connected Tories, perhaps organized by Samuel Peters Jarvis, thinly disguised themselves as Indians, raided his [Mackenzie’s] York office in broad daylight, smashed the press, and threw type into the bay.” Several things about the description struck me: I was intrigued by Armstrong and Stagg’s reference to “Indian” disguises, surprised by the incongruence between the rioters’ behavior and their social positions, and fascinated by the retrospective knowledge that one of the riot’s alleged organizers would go on to become the Chief Superintendent of Indian Affairs for Upper Canada. The image of Samuel Peters Jarvis, who was eventually forced to resign from his position in the Department of Indian Affairs because of accusations of fraud and larceny, dressing up as an “Indian” in order to break into Mackenzie’s house and destroy his printing press was impossible to ignore: it seemed a significant clue with the potential to reveal how concepts of Indigeneity and Indigenous peoples were deployed, manipulated, and represented by members of the legal system and provincial administration in the decades following the confirmation of the Toronto Purchase in 1805¹ and the War of 1812. By pursuing this clue, I hoped to address two questions: Why did the types rioters disguise themselves as “Indians”? What political and social significations did these disguises carry?

In order to get to the bottom of these disguises, I needed to establish what happened and why. In April 1826, Mackenzie, the reform-minded editor of the *Colonial Advocate*, became embroiled in a heated press debate with J.B. Macaulay, an attorney and member of the provincial executive council, concerning the dismissal and reinstatement of John Fenton, a parish clerk in Dr. John Strachan’s church. Mackenzie claimed that Fenton’s reinstatement constituted an “attempt to hush up some conflict” in the church (Flint 40). Macaulay responded to the allegations with a pamphlet that “questioned Mackenzie’s past business dealings, mocked his ancestry, and jeered at his mother” (41).² In retaliation, Mackenzie set up an elaborate satire, announcing on the 4th of May that he was retiring as editor of the *Advocate* and that its regular contributors would meet to choose his successor. Accounts of these two “colloquies” were published on the 18th and 25th of May. The articles, which Mackenzie claimed were intended to “strip vice and pride of their masques, and to shew them forth to the world in all the distinction of their naked deformity” (*Colonial Advocate* 25 May 1826), functioned as “a diatribe against the social pretensions of the capital’s administrative elite” (Romney 117). These documents function not only as print artifacts of political discontent but also as an archival record of Mackenzie’s rhetorical performance enacted on the pages of his paper. Mackenzie recognized the potential performativity of his editorial intervention: this is clear in his formal choice of dialogue rather than strict prose. The language he uses to describe his intentions—he desires to “strip” his enemies and to show them to the world in all their “naked deformity”—also evokes a future performative moment using the vocabulary of shame and sexualized violence, implying the presence of an imagined

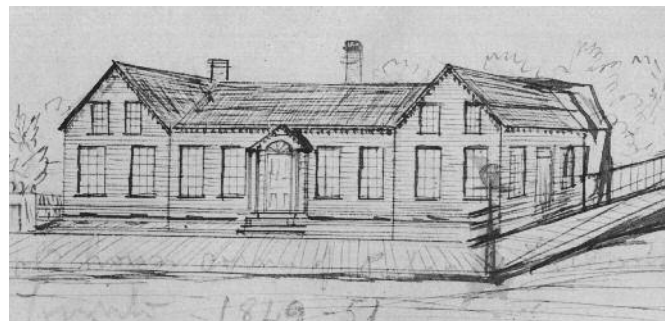
spectator gazing upon bodies revealed as corrupt. This rhetorical violence will prove significant in considering the rioters' actions and the legal repercussions that followed the riot.

While Mackenzie's articles from the 18th and 25th of May clearly upset the young Tories, the final straw that provoked the riot appears to have been an article that appeared in the June 8th edition of the *Advocate*. Mackenzie cast yet another blow against the Family Compact³ by reviving discussion of an 1817 scandal that arose from a duel between Samuel Peters Jarvis and John Ridout, an example that underlines the ambiguous conventions governing the behavior of young, upper-class men in the colony.⁴ Around six o'clock that evening, these same young, upper-class men—law students and clerks, members of the Juvenile Advocates' Society, sons and nephews of the leading members of the Compact—took action against Mackenzie. Armed with “clubs or sticks in their hands” (Mackenzie 12), they paraded through the streets of York. After stopping “for a moment on the bank in front of the Advocate Office,” perhaps to decide on a tactic, they “appeared to go in towards the office in Indian file one after another at a quick step” (8). Mackenzie was not in the office but two of his employees—James Lumsden and James Baxter—fled when the rioters entered. Mackenzie's elderly mother and fourteen-year-old son James were upstairs, as the office was located on the ground floor of Mackenzie's home. James Mackenzie witnessed the rioters destroying the printing press when he ventured downstairs; he saw Jarvis:

[T]aking a chase to the front of the office, full of types—he threw them down out of the chase upon the stones, the quoins flew out and the type fell out, then two or three more scattered them over the yard, and Jarvis took the rules, bent them up and threw them away—Afterwards Capt. Peter M'Dougall came out from the printing office and said, ‘I think we have done enough.’—Three of them carried three cases and threw them into the bay. (qtd. in Mackenzie 13-14)

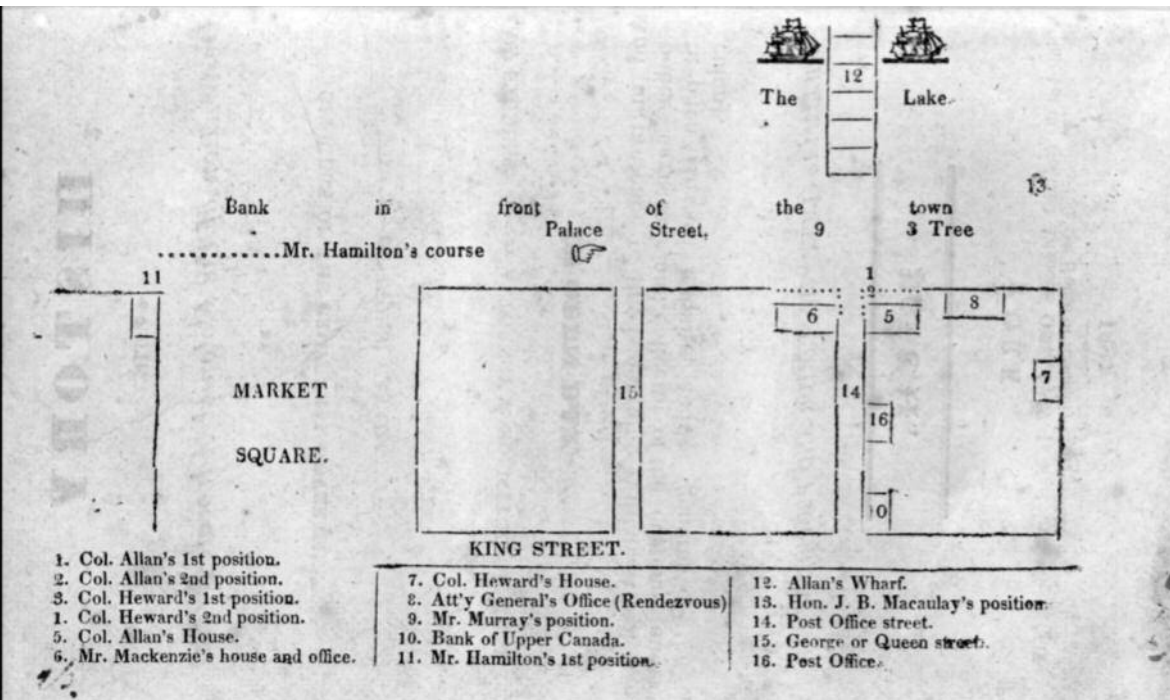
While this was happening, Mackenzie's mother went outside, “greatly agitated” by the disruption (Lumsden, qtd. in Mackenzie 12). The young men, upset by Mackenzie's insults, took their revenge on surrogates, terrorizing his son and mother, intimidating his employees, and destroying the objects that had allowed Mackenzie to publicize his criticisms.

The noisy destruction of the printing press drew attention from passersby, but despite the ruckus and Baxter and Lumsden's calls for help, no one even attempted to stop the rioters. This was likely because two very public figures—justice of the peace William Allan and auditor general Stephen Heward, the father of two rioters—stood in front of Allan's house, across the road from the office, and watched the riot unfold, making no effort “to quell the riot” (Murray, qtd. in Mackenzie 9). In the weeks that followed, official neglect of the rioters' conduct continued: Judge John Beverley Robinson, the attorney general and uncle of two rioters,



Mackenzie's house, from an 1849 pen and ink drawing by Henry Cawthra.
Courtesy of Toronto Public Library.

refused to lay criminal charges. The rioters eventually faced civil charges in October 1826 and were ordered to pay Mackenzie 625 pounds in damages, a relatively harsh punishment. The sting of the punishment was diminished, however, when the fine was paid through a collection taken up among the family and friends of the young men. The money Mackenzie won, ironically enough, allowed him to replace his printing press and continue publishing the *Advocate*, which was in dire financial straits when the June riot occurred.



Map showing location of Mackenzie's house, printed on page two of *The History of the Destruction of the Colonial Advocate Press, by Officers of the Provincial Government of Upper Canada...* Courtesy of Library Archives Canada.

Although Paul Romney notes that the Types Riot “may be one of those select facts which ‘every schoolboy knows’—every Canadian schoolboy, anyway” (113), my examination of surviving documentation revealed that the “facts” related to the rioters’ “Indian” disguises are difficult to reconstruct.

While there are allusions to Indigeneity in the record—references to the rioters moving in “Indian file,” Thomas Hamilton’s comment that “in breaking open a dwelling house the rioters did what Indians would not have done” (qtd. in Mackenzie 8), a reference to “desperadoes” wearing “a little lampblack on their faces” in an editorial in the *Canadian Freeman* (qtd. in Mackenzie 20)—there is no explicit mention of disguise. None of the primary sources I located at the Ontario Public Archives, the Law Society of Upper Canada, the City of Toronto archives, or through the Canadian Institute for Historical Microreproductions collections mention that the rioters were costumed at all. Transcripts of the civil trial do not appear to have survived and newspapers reporting on the trial do not

mention disguises.⁵ While I cannot claim that my search has been exhaustive, it surprised me to find *no* mention of “Indian” dress at all. The cultural memory of disguise appeared to enter the official archive in the *Dictionary of Canadian Biography* entry. Considering the lack of evidence concerning the rioters’ costumes and, indeed, my own uncertainty concerning whether the rioters were actually disguised, I was forced to propose a more tentative line of investigation. The question I will address here, allowing a consideration of how the rioters positioned themselves as “Indigenous” without requiring that we establish that the rioters were indeed dressed as “Indians,” is this: What does the memory of “Indian” disguise reveal about the performative and political dynamics of this seemingly strange act of protest? Examining the riot through this lens reveals that enactments of Indigeneity are intertwined with competing ideas of masculinity and tension concerning the relationship between violence and justice in the settler-colony.

Settlement in Upper Canada

Before the outbreak of the American Revolution, “practically no white settlement had taken place” in the territory that would become Upper Canada (Gentilcore and Wood 32). The first significant settlement occurred as a result of the Revolutionary War: thousands of Loyalists left the American colonies both during and immediately following the conflict, settling in Nova Scotia and Quebec (which would be divided into Upper and Lower Canada by the Constitutional Act of 1791).⁶ While some of the early settlers eventually returned to the United States, many remained, enticed by generous offers of free farmland.⁷ When John Graves Simcoe became the first lieutenant-governor of Upper Canada, he clarified the terms of land grants, determined the size and composition of townships, and established generous land grants for members of the executive and legislative councils. Simcoe hoped that these grants, which provided 3,000–5,000 acres for important individuals and 1200 acres for their children, would help establish a Canadian aristocracy (Craig 33–4). Between Simcoe’s departure in 1796 and the onset of the War of 1812, Upper Canada experienced steady immigration from the United States but because of the ongoing war in Europe, very little from other parts of the world. By the beginning of the War of 1812, the original Loyalists and British immigrants were outnumbered “by about four to one” by later arrivals (47).

The settlement of Upper Canada was only possible because the colonial government was able to purchase land from the Mississauga Nations, part of the Ojibwe group of First Nations, whose traditional territory covered much of what is now southern Ontario. These transactions were governed, at least theoretically, by the Royal Proclamation of 1763, which “banned purchase by private persons” to ensure that “Native groups could dispose of their lands only by selling them to the Crown” (Ray 129).⁸ Following the end of the Revolutionary War, the Mississauga surrendered significant tracts of their lands to the British, most notably the Niagara Peninsula in 1784 and the area that is now Greater Toronto, in 1787. The treaties of this period “often merely created the illusion that colonial officials were abiding by the rules of the Royal Proclamation,” in part because the southern Ojibwe who signed treaties frequently “did not fully understand what they meant or feared offending government officials” (155). During this period, the relationship between Loyalist settlers and Indigenous populations tended to be fairly peaceful: until 1812, the British counted the Ojibwe and Six

Nations as important military allies, so “courting Native support” remained a “corner-stone” of British policy (151). This peace was threatened at times, for example when white soldiers murdered Wabikinine, a Mississauga chief, in 1796, rumours of an uprising circulated and a rebellion seemed imminent for several weeks (Smith 36-7). Fear did not, however, generate respect: Donald Smith comments that “Mrs. Simcoe’s opinion that they were an ‘idle, drunken, dirty tribe’ seems to have been the common one” (41). Fear of Indigenous uprising diminished as time went on: by the end of the War of 1812, the Mississauga were “greatly outnumbered by immigrants” and, with the threat of American invasion eliminated, they were “of little value as a potential military force” (Ray 155). By 1815, most Mississauga had either migrated away from settled areas or grown “highly dependent on trade goods and alcohol” (155) and virtually all of their traditional homelands had been surrendered to Upper Canada.

With the end of the War of 1812 and the Napoleonic Wars, Upper Canada experienced another wave of immigration, this time from Europe. To encourage settlement in the colony, the government offered families free passage to Upper Canada on the ships sent to retrieve troops from North America (Craig 88) and incentives like free land and rations. While settlement was spread out across the colony, cities experienced significant population growth: for example the population of York, the provincial capital, almost tripled from 600 in 1810 to 1677 in 1825 (Gentilcore and Wood 43). Rapid population growth led to friction between the more established settlers—the old Loyalists and early British settlers—and newcomers who arrived after the war. This was in part because settlement plans were supervised by the military and “viewed with much suspicion by the government and leaders of Upper Canada” (Craig 88), in part because the loyalty of newcomers had not been proven through military service in defense of the colony, and in part because of the fear that newcomers would disrupt the balance of power that had developed in the colony.

The term “Family Compact” entered usage in 1828, when Marshall Spring Bidwell used it in a letter to William Warren Baldwin, and was popularized by the 1839 Durham report.⁹ In the years immediately following the War of 1812, long before the term “Family Compact” appeared in print, the elite group began to consolidate its power. The Compact was comprised of members of the second generation of Loyalist families and of men, or their sons, who came to Upper Canada directly from Britain in the late eighteenth-century. Characterized by “sound education, high intelligence and proper ambition, brought up in a tradition of unswerving devotion to the King and the Mother Country,” the members of the Compact had lived in the province during the war and quickly gained positions of power when the war ended (Craig 108). Their political perspective was shaped by two fundamental beliefs: first, the idea that Upper Canada was not merely a British colony but a key part of the British nation (109) and second, “an open contempt for the rising tide of democracy” drawn from the conviction that “government did not [. . .] derive its authority from the consent of the governed” (109, 110). By the time of the Types Riot, members of the Family Compact controlled the executive and legislative councils, the judicial system, the high offices of the episcopal church, and the bank (Patterson 497-8) and were, according to David Gagan, linked by an economic interest in land speculation (69). Reform-minded newcomers like Mackenzie, who arrived in Upper Canada in 1820 and became editor of the *Colonial Advocate* in 1824, not only challenged the ideologies that governed the Compact but also threatened its comprehensive control of the colony.

Playing Indian

This admittedly brief historical overview underlines the strangeness of the types rioters' actions. Why would these young men with close links to the Family Compact, presumably both personally and professionally invested in preserving British ideals of civility, choose to commit such an obvious act of lawlessness against Mackenzie? Furthermore, considering the ambiguous relationship between Indigenous peoples and settlers in the colony, how and why did their actions evoke the ideas of Indigeneity that remain preserved in the archive?

If the rioters did don some form of "Indian" disguise before entering Mackenzie's office, they were partaking in a longstanding tradition of what Phil Deloria terms "playing Indian." In eighteenth- and nineteenth-century North America, settler-colonists often referenced ideas and images of Indigeneity in acts of protest. While Aboriginality was a shifting signifier, taking on specific meanings in response to the particular circumstances that caused discontent, referencing Aboriginal identities allowed protesters to position themselves as upholding the "native" customs of the "new" world in opposition to authorities enforcing laws and social practices from the "old" world. Phil Deloria argues that since, "Native people had been on the land for centuries, [. . .] they embodied a full complement of [. . .] necessary traditions" which colonists could claim superseded royal law; by "playing Indian," protesters "evoked and invented local understandings about the freedom, naturalness, and individualism of native customs" (25-6). "Playing Indian," according to Deloria, "suggested that a powerful landscape had somehow transformed immigrants, giving them the same status as Indians and obligating them to defend the same customary liberty" (26). Although settler-colonists who "played Indian" implied that their performances demonstrated a specifically "American" sensibility based on the appropriation of Indigenous customs, these performances actually often referenced folk traditions, such as charivari, with long histories in western Europe.¹⁰

Charivaris were popular across early modern Europe and, like many forms of popular performance, occurred in a range of contexts and included diverse performance conventions. Martin Ingram notes that although charivaris varied widely in scale and formality, "[b]asic to all of them was mocking laughter, sometimes mild and good-hearted, but often taking the form of hostile derision" (82). These performances were also widely practiced in North America, with examples documented in the American colonies, in the United States, and in both Upper and Lower Canada. Terming the charivari a "ritualized mechanism of community control," Bryan Palmer notes charivaris could "be directed against virtually any social offender," but were, in North America, most commonly directed against "adulterous relationships, cuckolded husbands, wife and husband beaters, unwed mothers, and partners in unnatural marriage" (9).¹¹ A charivari was usually "initiated under the cover of darkness, a party gathering at the house of the offender to beat pans and drums, shoot muskets, and blow the ubiquitous horn, which butchers often rented out for the occasion" (9).¹² The precise conventions of the charivari varied and while disguise was not always part of the event, many perpetrators dressed up to execute their performances.

While charivari traditionally provided a way for a community to discipline domestic transgressions, they also allowed community members to respond to political offenses. In England, charivaris could "involve an element of social or political insubordination [. . . and] a political flavour was sometimes present even in charivaris ostensibly concerned with

domestic situations” (Ingram 90). Strictly political charivaris were far less common than domestic charivaris, but these events, which temporarily reversed the “natural” social order, “were a reminder that rulers were, after all, only as other men” (97). Politically-motivated charivaris also occurred in the American colonies. For example, in New Hampshire in 1734, settlers were so disturbed by Assistant Governor David Dunbar’s attempt to enforce a law reserving tall pine trees for ships’ masts, prohibiting their use in home construction, that they entered the tavern where he was eating, wearing blankets “wrapped Indian-style and sport[ing] caps and feathers on their heads. They had blackened and painted faces, and they grimaced and brandished clubs at the frightened group” (Deloria 11). The “Mast Tree Riot” is notable because the rioters explicitly employed “Indian” disguise as they executed rough justice against Dunbar, recognizing an important link between performance conventions and the disciplinary function of charivari to restore the “natural” order of things.

There are parallels to the Mast Tree Riot in both Upper and Lower Canada as well. For example an 1802 charivari protesting the marriage of Augustin Boiton de Fougères, a French royalist, to Eugenia Willcocks involved young men “dressed as Indians” who “kept up the ‘shivaree’” for a total of four nights (B. Palmer 19). John Bigsby’s 1850 work, *The Shoe and the Canoe: or Pictures of Travel in the Canadas*, notes that a similar charivari occurred in Montreal, involving “[f]ifteen or sixteen people [. . .] in the garb of Indians, some wearing cows’ horns on their heads” (qtd. in B. Palmer 20). These examples show that participants in North American charivaris recognized that “Indian” disguise served both performative and disciplinary functions, demonstrating how “two social contexts [. . .] the penal and the festive” merged in charivaris (Ingram 92).

In both Europe and North America, charivaris tended to be performed by the lower and working classes, although members of the ruling classes were not always excluded from the events. In England, “more substantial members of the community often encouraged the demonstrators and sometimes took active part” and supported forms of rough justice “privately” (Ingram 104, 105). In Upper Canada, members of the upper class participated in charivari until the mid-nineteenth century, although their participation was generally limited to “customary wedding-night celebrations” (B. Palmer 50).¹³ While charivaris initially appear to undermine authority and to validate “rough” forms of justice, the participation of the upper classes demonstrates that “rough” and legitimate justice were not necessarily at odds. Martin Ingram underlines this relationship by pointing out that early modern charivaris had “extremely close affinities with the shame punishments meted out *officially* by certain courts of law” (92) and that the participants in charivaris that stemmed from political discontent may “have believed that they were acting in quasi-legal fashion to draw attention to the malfeasance of their governors” (93). Charivaris in North America, similarly, were often ultimately conservative rituals, demonstrating performers’ “active attachment to ideological principles justifying a social order in which they, for the most part, occupied subordinate positions” and allowing performers to simultaneously insist “on their own right to regulate certain aspects of the life of the community” (Greer 33).

I am not claiming that the Types Riot *was* precisely a charivari but that the event made use of some of charivari’s structural elements for a similar socio-political purpose: it was a disciplinary act, intended to intimidate its victim(s) into complying with normative social and political values, executed through an invasion of Mackenzie’s public and private space.

While it is unclear whether the types rioters were aware that charivaris often involved “Indian” disguise, it is difficult to imagine that they were unfamiliar with one of the best-known examples of “playing Indian” in the eighteenth century: the Boston Tea Party. The Boston revolutionaries’ protest bears significant similarities to the Types Riot. For example, Phil Deloria notes that although the participants in the Tea Party are remembered as “faux Mohawks slinking home down Boston alleyways,” conjuring images of men in full costume, only “some participants donned feathers” and “for most a smear of soot and a blanket proved an easier choice. Others eschewed disguise altogether, making no effort to hide their identities” (6); the types rioters, if they were actually costumed, were also thinly disguised and were easily identified by witnesses (Mackenzie 12).

Although the Boston rioters did not attempt to hide their identities through their disguises, they “took pains to offer up Indian identities, grunting and speaking stage Indian words [. . .]. If they did not care much about actual disguise, they cared immensely about the *idea* of disguise and its powerful imputation of Indian identity” (Deloria 6). The idea of Indigeneity was essential as the “Tea Party revolutionaries crossed the boundaries of civilized law in order to attack specific laws that displeased them and to speak to the British from a quintessentially American position” because it allowed them to be “both Indian and not-Indian, [. . .] representative of social order and disorder” and to thus “open [. . .] the door to the creation of the new” in the colony (31-2). “Playing Indian,” in the context of the Boston Tea Party, provided a way for unhappy colonists to speak back to the British empire by positioning themselves as citizens of a emerging nation legitimated by their ability to balance “new” American “Indigeneity” and traditional civility.

While the types rioters likely recognized the performative and political purchase to be gained by “playing Indian,” whatever claim to Indigenous authority their performance attempted to make actually complicates Deloria’s interpretation of “playing Indian” as a specific act of protest. The Boston Tea Party, an event enacted by American revolutionaries unhappy with British rule, is a strange example for the children of Loyalists and British immigrants to emulate. But the strangeness goes beyond this. When members of social elites engaged in “playing Indian”—as in the case of the Boston Tea Party rioters (Deloria 28)—their actions were imagined as a protest against flawed models of governmentality: despite their high social and economic status, the Tea Party rioters disguised themselves as “Indian” to signal their exclusion from and dissatisfaction with the political establishment. In contrast, the types rioters were members of the provincial establishment with easy access to disciplinary apparatuses like the courts and the press: unlike the Tea Party rioters, they did not need to express their disapproval of Mackenzie’s actions through performative protest.

The Types Riot is not, then, an example of political protest directed from the margins toward the centre but an example of “lawless law,” a term Lawrence Friedman uses to describe unlawful events that “take place ‘inside’ the legal system itself [. . . when] lawlessness masquerades as law [. . .] or replaces law” (172) and which Carol Wilton applies to the Types Riot. Lawless law collapses boundaries between legality and illegality, law-enforcer and law-breaker, civil and uncivil acts. This collapse of binary oppositions precisely parallels one that occurs in the types rioters’ evocation of Indigeneity: their actions collapsed the binary opposition between extralegal authority legitimated by custom, which legitimated many performances of “playing Indian,” and legal authority legitimated by governmental power. While Deloria’s

reading of the Tea Party posits that the performance gained its power by allowing protesters to balance and juxtapose competing legitimacies, the types rioters' act of "playing Indian" merged Indigeneity and civility, suggesting that such a merger formed one foundation of the Family Compact's authority in Upper Canada.

White Civility

In nineteenth-century Upper Canada, as today, Indigeneity was an overdetermined sign, its ambivalence epitomized in the popular ideal of the "Noble Savage." By the 1820s, most of the Mississauga's traditional lands around York had been surrendered and the Indigenous population had either relocated to new areas or grown dependent on trade with the British. Members of the Family Compact were, therefore, likely to believe that actual Indigenous peoples were not the pressing political or social concern they were in the late eighteenth and early nineteenth centuries. This made it easier for concepts of Indigeneity to be severed from the material and physical reality of Aboriginal peoples, connoting land tenure and colonial occupation rather than racial or ethnic identity.¹⁴ Situating the types rioters' alleged "Indian" disguises in the context of this broader connotation of Indigeneity allows one to consider how their actions against Mackenzie attempted to collapse the opposition between competing authorities and legitimate the power of the Family Compact.

Daniel Coleman argues that the concept of civility developed in English Canada was a "specific form of civility modeled upon the gentlemanly code of Britishness" that was "contradictory and ambivalent, never consistent within itself" (10). Civility was, in the European Enlightenment tradition, intimately tied to the development of the concept of the "Noble Savage": civilized subjects could "rationalize, first, the production of Aboriginal status and, then, its exclusion from the civil sphere" by "represent[ing] Indigenous peoples as delayed in the process of civilization" (14). In a settler-invader colony like Canada, however, the relationship between the settler and the Aboriginal other was more complicated. The settler, in pre-confederation Canada, "occupies a temporal space between the projected and assumed civility of the metropolitan power and the disavowed and resistant civility of the Indigenous population in the hinterland" (15). The process of colonization and settlement produces a temporal lag, where the settler "must hurry to catch up, to leap from primitive, colonial incivility to advanced, modern civility" (16). Coleman makes the argument, essential to understanding the role Indigeneity played in the Types Riot, that "the settler must construct, by a double process of speedy indigenization and accelerated self-civilization, his priority and superiority to latecomers; that is, by representing himself as already Indigenous, the settler claims priority over newer immigrants and, by representing himself as already civilized, he claims superiority to Aboriginals and other non-Whites" (16).

The types rioters imagined themselves as "already indigenous" in contrast to Mackenzie. The trace signs of Indigeneity in the rioters' performance—moving in "Indian file", carrying weapons that signaled savagery and violence, the possibility they were disguised—all suggest this, but Samuel Peters Jarvis's 1828 pamphlet, *Statement of Facts relating to the trespass on the printing press in possession of Mr. William Lyon Mackenzie*, explicitly figures Mackenzie as newcomer in contrast to the Indigenous rioters. Jarvis writes that, "[a] few years ago Mr. Mackenzie came to this Country, a perfect Stranger" and that Mackenzie was, "like other strangers, at liberty to gain among us, without hindrance, an honest livelihood" (8). The estab-

lished citizens of Upper Canada had lived “as people do in other societies, happily and harmoniously [. . .] for a long series of years, before they [reformers like Mackenzie] came among us” (8). With these comments, Jarvis positions himself and his peers as the established, Indigenous inhabitants of the territory and Mackenzie and other later immigrants as “strangers.” He implies, furthermore, that Mackenzie’s ambitions of reform posed a threat to the happy and harmonious order of Upper Canadian society.

Jarvis’s remarks anticipate nativist discourses that emerged in the mid-nineteenth century. John Higham points out that nativism was “a defensive type of nationalism” but that its “defense varied as the nativist lashed out sometimes against a religious peril, sometimes against a revolutionary peril, sometimes against a racial peril” (150). In Canada, nativism was linked “to a strong colonial emphasis on preservation of the cultural aspects of the Anglo-Saxon tradition” and radicals like Mackenzie “violated the basic assumptions of counter-revolution and order which could be traced to the Loyalist origins of English Canadian society” (H. Palmer 120-21). Jarvis figured Mackenzie as not only a “stranger” (anticipating the title of Higham’s landmark study of nativism, *Strangers in the Land*) who refused to assimilate and live “happily and harmoniously” but also a dangerous threat to the Family Compact because of his radical inclinations.

It seems certain that the young members of the Family Compact who broke into Mackenzie’s office, because of their social connections and professional aspirations, imagined themselves not only as already Indigenous but also as already civilized. In Upper Canada, political authority and social power were located within the legal profession. Blaine Baker argues “Since neither land ownership nor commerce could provide a sufficient basis for power or gentility, a provincial bureaucracy supplied and supported by the legal profession was widely affirmed on material as well as ideological and spiritual grounds as the most suitable keystone for the province’s social pyramid” (190). Paul Romney concurs with this assessment and points out the role that nepotism and other social connections played in the leadership structure of Upper Canada: “To provide for their progeny [. . .] the provincial elite appropriated the legal profession. It was an obvious choice, for its function of administering the body of rules that governed civil relations within the polity made it an ideal nursery for future administrators and legislators” (119). Furthermore, power in Upper Canada was held by relatively few individuals who, more often than not, held multiple offices. A brief biographical examination of two figures involved in the Types Riot reveals the connections between the legal profession and the provincial bureaucracy and provides grounds for the types rioters’ belief in their own civil authority. William Allan, the Justice of the Peace who witnessed and failed to intervene in the riot, was:

[A] legislative councillor, an acting justice of the peace in, and treasurer of the Home District, postmaster of the city of York, collector of customs at the port of York, inspector of shop, still, and tavern licenses for the Counties of York and Simcoe, a colonel of militia, a commissioner for war losses, a commissioner for forfeited estates, a commissioner to investigate frauds in the revenue, a commissioner for the erection of the parliament buildings, vice president and director of the Welland Canal company, a commissioner appointed to investigate frauds in the post office [. . .] a great land owner and house proprietor, a police magistrate for the town of York, a Church of England man. (Mackenzie 6)

The rioters held the same connections, reduced only by virtue of age and experience. Samuel Peters Jarvis, for example, was “late private secretary to his honour the Administrator of Upper Canada, son-in-law to his honour the late chief justice of the king’s bench, clerk of the crown in chancery, a director of the bank of Upper Canada, a barrister at law, a lieutenant colonel of militia” (Mackenzie 6-7). Jarvis was connected, either through marriage or offices he held, to the provincial administration, the King’s Bench, the bank, and the military. These connections were not seen, at the time, as a conflict of interest—indeed, “[n]either the governmental, the legal, the ecclesiastical, nor the lay mind seems to have dissociated [. . .] the professional qualification of advocate from the status of landed proprietor, man of business, governor, or colonial official” (Baker 190-91). They were simply the privilege held by “civilized” members of Upper Canadian society.

The types rioters were civilized both through their social and professional positions and by the contrast they imagined between themselves as Indigenous inhabitants and Mackenzie as a “stranger” disrupting established order in the colony. They were, then, doubly civilized. White civility, according to Coleman, functioned both as a mode of internal self-definition and as a mode of external management that gave “civil subjects a mandate for managing the circumstances of those perceived as uncivil” (13). The young lawyers and law students perceived Mackenzie, a stranger to the colony and a potential threat to order, as “uncivil” and therefore subject to their discipline. This allowed them to justify their illegal entry of his office and their destruction of the instrument of his incivility: his printing press. As we will see, however, their choice of *how* to perform their “civilized” authority—through an act of lawless law—demonstrated fundamental problems with these forms of rough justice.

Lawless Law

The rioters’ execution of rough justice against Mackenzie highlighted that the Family Compact’s authority could only be sustained by an ambiguous relationship between civility and violence. In one sense, the rioters’ actions appear justified: they believed Mackenzie had committed libel by writing articles that were “the vehicle of the grossest and coarsest slanders, and of the most malicious lies against the living and the dead” (Jarvis 12). Mackenzie’s great offense lay in the effect of his alleged slander on “persons unknown in public life, and unconnected with politics—against married women—against aged widows, and even against our friends who had been long dead, and who, while they lived, were universally beloved and respected” (Jarvis 12). Jarvis believed that Mackenzie attacked him in the June 8th editorial because he was, like “every man of character, the friend of those Gentlemen whom he thought it in his interest to abuse most” and because he “had a Mother and a Wife, whose feelings he might wound” (14). Mackenzie’s crime, in Jarvis’s eyes, was that he weighed in on private matters (Jarvis’s 1817 duel) and shamed private individuals in a highly public forum—his newspaper.

Understanding Mackenzie’s crimes as Jarvis explains them suggests that the rioters’ vandalism constituted a form of “eye-for-an-eye” justice: by terrifying Mackenzie’s mother and teenage son in their home, they injured his family in a way that mirrored Mackenzie’s insults against the rioters’ families; by destroying the printing press, they destroyed the instrument that allowed him to perpetrate his crimes and symbolized the public sphere in

which he committed his crimes. Furthermore, the rioters' specific gestures of violence against Mackenzie's press—notably throwing his type into Lake Ontario—resemble British grain riots, when “men and women near to starvation nevertheless attacked mills and granaries, not to steal the food, but to punish the proprietors. Repeatedly corn or flour was strewn along the roads and hedges; dumped into the river; mill machinery was damaged and mill dams let off” (Thompson 114). This parallel suggests, like the possible “Indian” disguises, that the rioters attempted to locate themselves within traditions of legitimate political protest and “rough” popular justice.

This attempt failed, however, not only because of the rioters' social status but also because the rioters misread—or perhaps over-read—the violence embedded in Mackenzie's transgression and acted in a manner that belied their “civil” ambitions. Mackenzie committed his offense on a discursive level: insulting the rioters' families and friends and shaming the rioters themselves was an act of rhetorical, not physical, violence. Sidney Sondergard remarks, however, that rhetorical violence—“language and images selected by an author to enact the fiction of violence” (15)—can have surprising effects on readers: “if the fiction is amplified sufficiently [. . .] the reader either loses the correlative connection of personal experience/imagination and participates in it without a sense of personal investment [. . .] or becomes so empathically linked to the narrative [. . .] that pain or discomfort actually becomes the ‘intentional state’ that imagination ordinarily cannot cue as experience” (17). It is possible that Mackenzie's editorials caused one group of readers—the rioters—to react in a manner akin to that Sondergard describes: Mackenzie's attacks caused actual pain, preventing the rioters from dismissing his insults as “simply the gutter press at work” (Craig 113). It is also possible to interpret the rioters' reading practices cynically: Mackenzie's rhetorical violence may have been a tidy excuse for retribution that he had long deserved. In either case, Mackenzie's articles, which enacted a fantasy of violence exemplified in his professed desire to “strip vice and pride [. . .] and to shew them forth to the world in all [. . .] their naked deformity” (*Colonial Advocate* 25 May 1826), performed figurative violence, violence “communicated by ‘the sheer force of the imagery’ of one's discourse” (Sondergard 18). The rioters' actions, on the other hand, enacted literal violence, demonstrating that Mackenzie's “conceptual violence [...intersected] with the sphere of experience” (18). Mackenzie's violence was, in a sense, gentlemanly—he used words rather than blows to harm his targets. In contrast, the rioters acted in an ungentlemanly manner, using physical violence to retaliate against Mackenzie's property and home. In this context, their evocation of Indigeneity, whether it occurred through disguises or through the decision to brandish clubs, signals not the customary authority of the “Noble Savage” (as described by Deloria) but barbarism enacted through mob law. Witnesses recognized their actions as such, commenting that the rioters “did what Indians would not have done” (Thomas Hamilton, qtd. in Mackenzie 8); referring to the men as a gang (Murray, qtd. in Mackenzie 8) and a mob (Ridout, qtd. in Mackenzie 9); and noting that the rioters threatened to knock down any witnesses who spoke against them (Lumsden, qtd. in Mackenzie 12).¹⁵

Furthermore, by engaging in a performance that resembled charivari, the rioters called their own civility—attained through education, wealth, and political connections—into question by behaving like peasants. Although the upper classes occasionally participated in wedding night charivaris, by 1828 the *Canadian Freeman* remarked that the

practice would “disgrace even the walks of savage life” (qtd. in B. Palmer 26) and by the 1850s, the charivari was “exclusively an affair of the lower orders [. . .] associated with the barbarism and savagery of the masses” (B. Palmer 52). In short, the rioters, by “acting like common hooligans [. . .] gave the lie to their own claims to superior civility” (Romney 127). Furthermore, riots motivated by perceptions of social injustice were the purview of the lower classes and the marginalized, not the powerful.¹⁶ The rioters undermined their own argument—that Mackenzie had offended their civility—through their “common” actions.

The rioters went too far in their attempt to discipline Mackenzie. Although Judge Robinson failed to lay criminal charges against the rioters, their outrageous actions troubled some members of the Family Compact, most notably William Warren Baldwin. Baldwin told Robinson that while he admitted that “Mackenzie’s conduct was very bad” and that he “should have suffered for his slander,” he should not have been punished “by outrage; especially at the hands of those who ought to know, what they affect to hold, the characters of Gentlemen” (qtd. in Romney 130). The men’s education and social connections meant that they should have known better; they were not, as Mackenzie’s lawyer Marshall Bidwell pointed out during the civil trial, “ignorant men, of strong passions unrestrained by education” but moved “in the first circles of society [. . .] with all [. . .] advantages” (qtd. in Mackenzie 16). Although Judge Robinson refused to charge the men, he could not ignore Mackenzie’s civil suit against the rioters and ordered them to pay Mackenzie 625 pounds in damages. Even when it came to the fine, however, the Family Compact demonstrated its solidarity with the rioters: the damages were paid through a collection taken up among the rioters’ family and friends.

Through public performance, the Types Riot demonstrated that the Family Compact’s claim to authority based on its members’ civility—their superior values, education, and social privilege—was backed by the threat of uncivil violence. The riot revealed a contradiction that the Upper Canadian elite would, no doubt, have preferred to keep private: that in the settler-colony, gentlemanly power relied upon the potential for savage retribution. The riot also demonstrated the tenuousness of the Family Compact’s claim to power. Mackenzie’s editorials that provoked the riot asked, among other things: “Is it a secret in these parts that many, very many, such Virginian nobles, as the Robinsons assume themselves, were descended from mothers who came here to try their luck and were purchased by sires with tobacco[?]” and pointed out that Robinson’s mother “kept the cake and beer store in King Street” (qtd. in Flint 42) drew ire from the Family Compact for suggesting that the upper crust of York society was only a generation removed from its peasant roots. The types rioters’ response to Mackenzie’s libel proved that Mackenzie’s comments were on the money: the invisible boundary between the Family Compact and the lower classes was historically contingent and could be easily exposed and transgressed through misfires in social performance. Indigeneity, the signs of which the rioters assumed in order to justify their disciplinary action against Mackenzie, actually signaled that the savagery the Family Compact presented itself in opposition to ultimately lay beneath the grounds of their political power.

Notes

- 1 The British purchased the land that is now the Greater Toronto area from the Mississauga Nations in 1787 and the terms of this purchase were confirmed in 1805.
- 2 This pamphlet has not, apparently, survived (Dodds).
- 3 The term “Family Compact” did not appear in reference to the leading members of Upper Canadian society until 1828; despite this minor anachronism, I use it in this essay as a shorthand term for the group.
- 4 On 12 July 1817, Ridout and Jarvis met for a duel. Ridout, probably nervous, fired early, missing Jarvis. Jarvis, following the codes of dueling, fired at Ridout’s chest. Ridout died and although Jarvis was found not guilty in the resulting trial, the event was a black mark on his public record.
- 5 Until 1823, there was no reporter assigned to arrange for the publication of court decisions, for the general public or for members of the legal profession. After 1823, a reporter was appointed by the governor but the “system failed to produce regular reports” (Armstrong 118-19). This is one reason why no record of the civil trial has survived.
- 6 J. David Wood estimates that between 6,800 and 10,000 Loyalists settled in Upper Canada in the decade following the war (xviii-xix).
- 7 Under Sir Frederick Haldimand, the Governor of the province of Quebec from 1778-86, these grants allocated 100 acres of land to the head of a family, with an additional 50 acres for each family member, and provided 200 acres for non-commissioned officers (Craig 5-6).
- 8 Ray notes that the Royal Proclamation “was a document born of expediency rather than from a deeply held sense of moral obligation towards Native people” (129).
- 9 The term’s meaning and applicability is contested by historians. For a detailed discussion of the term’s origins and debates concerning its definition, see Patterson.
- 10 While Indigenous characters were represented on the eighteenth-century stage with some frequency, both in British plays such as *Inkle and Yarico* and *Omai, or a Trip Around the World* and in North American plays such as *Pontiac, of the Siege of Detroit*, it does not seem that these performances directly influenced the conventions of “playing Indian” in North America. Nineteenth-century stage representations of aborigineity, like James Nelson Barker’s *Pocahontas* (in *The Indian Princess*, 1808) and John Augustus Stone’s *Metamora* (in *Metamora*, 1829), seem to develop from a Romantic aesthetic rather than from the folk traditions Deloria describes at work in “playing Indian.”
- 11 This was also the case in early modern Europe. In France, “charivaris against second marriages were central in country misrule” while “in the cities charivaris against domineering wives were the most frequent” (Davis 116). In England, “all the available evidence indicates that the great majority of ridings [...] took place because a wife had physically assaulted her husband or otherwise dominated him” (Ingram 86).
- 12 In England, charivaris often involved “riding skimmington,” in which an abused husband (or a surrogate, such as a neighbor or effigy figure) was forced to ride facing backwards through a mocking crowd (Ingram 82-6). The practice of riding skimmington appears to have been less common in North America.
- 13 Natalie Zemon Davis points out that the Abbeyes of Misrule, which enacted carnivalesque performances of reversal in early modern France, originated in the earlier tradition of youth-abbeyes, organizations of young, unmarried men in peasant communities; these groups had a

“surprising range of jurisdiction and festive responsibility” (104), including jurisdiction over the behavior of married people (105). The youth-abbeyes meted out punishments, including charivaris, for social transgressions such as a second marriage between partners of very different ages (105). Davis notes, “youth-abbeyes and youth-kingdoms with the same constellation of characteristics... are found throughout rural Europe in Switzerland, Germany, Italy, Hungary, Rumania, and perhaps England and Scotland” (109). In urban centres, the Basoche, organizations of law clerks, enacted similar social performances: they “planted May bushes, pleaded mock cases, and put on public comedies and farces at Mardi Gras in which read persons, in their jurisdiction and out of it, were represented and their faults derided” (111). These examples from early modern France allow for an interesting comparison to the types rioters, who were members and former members of the Juvenile Advocates’ Society, which seems to parallel the Basoche.

- 14 The separation of Indigeneity from aboriginal bodies persists throughout twentieth-century Canadian theatre historiography, which at times discursively collapses Canadian theatre with Indigenous or native theatre, erasing the history of Canada as a settler-colony. A quick glance through Don Rubin’s collection *Canadian Theatre History* reveals a number of examples: see Merrill Dennison’s 1929 comment “there is this to say about a native theatre” (93); Robertson Davies’s 1951 remark that touring productions provide examples “for our native actors” (158) and his hope for “the establishment of a native tradition” (160); Tyrone Guthrie’s rhetorical question as to whether “Shakespeare should not seem as indigenous to Western Ontario as he does to Northumberland?” (212); Herbert Whittaker’s 1957 comment that “The theatre instinct, however, showed up elsewhere, and in a humbler, more indigenous form” (221); Don Rubin’s assessment (initially written in 1974) that until the 1960s, Canada’s “major claim to indigenous theatre” had been provided by amateur companies (322); and Rick Salutin’s assertion, in 1981, that “in Toronto in the post-war period there was an indigenous theatre movement, with people like Mavor Moore at the centre” (381).
- 15 The rioters may well have hoped that their actions would have the same effect on spectators sympathetic with Mackenzie as food riots in Britain had on farmers: E.P. Thompson notes that although food riots appeared to defeat their own objectives, by destroying mills and farm equipment, they produced a threat of violence which pressured farmers to keep prices low (120).
- 16 This is the case both historically and in the present. Thompson notes that food riots in eighteenth century England were “a highly-complex form of direct popular action” (78). Alan McPherson notes that anti-American protests in Panama in 1964 were, similarly, imagined as acts of “masculine redemption” for decades of “feminine powerlessness” experienced by Panamanians under American rule (219). And at the time of this writing (summer 2012), students in Quebec, protesting university tuition increases, certainly appear to imagine themselves as marginalized by the Charest government and current economic conditions. The types rioters actions seem more comparable to examples of riots that develop from festivities gone awry: for example the Calves-Head incident of 30 January 1734/5 (see Kelly) or contemporary Stanley Cup riots in Montreal and Vancouver.

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