

SEDITION AMONG THE LOYALISTS: THE CASE OF SAINT JOHN, 1784-1786

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It is commonplace to say that Canada was conceived in negation: in a rejection of the secular republicanism introduced to a wondering world by the revolution in America, then carried to its atheistic apogee a decade later in France. While, indeed, it would scarcely be possible to overestimate the influence of the revolution in France in crystallizing British America's anti-democratic ethos in the 1790s, it was the earlier, American conflict which gave rise to what late-Victorian historians would fashion into English Canada's founding myth. That myth was built around the northward flight, in 1783, of upwards of 30,000 American "Loyalists" into what remained of Britain's mainland colonies. Defeated and exiled in the 18th century, it was said, the Loyalists and their rejection of republicanism and democracy were vindicated in the 19th century as the United States proved vicious and unstable, while the virtuous British colonies to the north resolved the Blackstonean sovereignty paradox that had wrecked the first British Empire and became the brightest jewels of Empire-Commonwealth.¹ As with most mythologies, that which depicts Loyalists as the anti-republican, anti-democratic founders of English Canada has a measure of truth. Their advent more than doubled the non-French-speaking population of British America, triggered division of two old colonies, created three new ones with their attendant official hierarchies, and provided critical local content for a strain of anti-Americanism that would be invoked often in the 19th century.

When moving from mythology to fact it is always well to be cautious in generalizing about the Loyalists. Their outlook varied greatly according to background in the old colonies, wartime experience and place of resettlement. Upper Canada's primitive new townships were a world away from the polished and highly differentiated societies at Shelburne and Saint John. Conversely, the War of 1812 added to Upper Canada's "Loyalist" history whole chapters of infinite service to mythmakers in a way which had no parallel, and for which the ideological need was less pressing, in the Maritimes.² Yet despite these and other differences, a survey of the principal Loyalist communities at the very beginning of the exile experience discloses similarities which, together, were described aptly

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¹C. Berger, *The Writing of Canadian History: Aspects of English-Canadian Historical Writing: 1900-1970* (Toronto: University of Toronto Press, 1976) c. 2; M. Barkley, "The Loyalist Tradition in New Brunswick: The Growth and Evolution of an Historical Myth, 1825-1914" (1975) 4:2 *Acadiensis* 3.

²D. Mills, *The Idea of Loyalty in Upper Canada, 1784-1850* (Kingston: McGill-Queen's Press, 1988) c. 2.

by one startled observer as “amazing discontents”.³ In the mid-1780s such distempers beset Loyalists in Sorel, Kingston, Cornwall, Prince Edward Island, Shelburne, Annapolis-Digby, and at Saint John harbour.⁴ In every case they arose chiefly from a conjunction of two factors: delay in getting onto surveyed farms, coupled with the suspicion that Loyalist leaders were engrossing a disproportionate share of land at the expense of the rank-and-file, with a view to entrenching themselves as a local elite. In two notable cases – Shelburne and Saint John – this discontent and suspicion led to major riots, and Digby and Cornwall were only a hair-breadth from organized violence. Each of the major and some of the minor civilian Loyalist communities were, then, characterized at their inception by a contest to establish a local hierarchy. In the course of this intestine struggle, embattled elites did not hesitate to delegitimize their critics by labelling them as seditious. In this ineffably ironic, almost Kafkaesque epilogue to the Revolution, exiled Loyalists came to be branded by other Loyalists as disloyal.

The particular story of nine sedition prosecutions and related acts of official repression at early Saint John would repay attention even if those troubles lacked such arresting parallels in other Loyalist communities of resettlement. Here the contest for power lasted longest and assumed the most extreme rhetorical and legal dimensions. While not the largest of the Loyalist settlements, Saint John was the most important in that it became the political focus for a whole colony in a sense that Shelburne or Cornwall or Kingston did not. Research on Saint John's founding is enriched incomparably by the presence of rival newspapers and the survival of important collections of private correspondence. Moreover, the ultimate phase of Saint John's troubles was preceded by the 1785 provincial general election campaign which, conducted on a nearly universal manhood suffrage, served both to heighten the rhetoric of debate and to provide some idea of the relative strength of the competing factions. As part of its struggle to intimidate electoral opponents, New Brunswick's governing elite initiated a multi-faceted campaign of repression punctuated by trials for seditious libel.

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³Letter, W. Tyng to B. Watson, 25 May 1783: PRO, WO 60, vol. 33/I.

⁴This striking parallel in the founding of the various Loyalist communities seems to have received comment only in W. Brown & H. Senior, *Victorious in Defeat: The Loyalists in Canada* (Toronto: Methuen, 1984) c. 7, apart from my own work. For Sorel and Kingston, see L. Turner, *Voyage of a Different Kind: The Associated Loyalists of Kingston and Adolphustown* (Belleville: Mica Publishing, 1984) c. 6, 9; for Cornwall, see E.K. Senior, *From Royal Township to Industrial City: Cornwall, 1784-1984* (Belleville: Mica Publishing, 1983) c. 3; for Annapolis-Digby, see N. MacKinnon, *This Unfriendly Soil: The Loyalist Experience in Nova Scotia, 1783-1791* (Kingston: McGill-Queen's University Press, 1986) at 45-6; for Shelburne, see M. Robertson, *King's Bounty: A History of Early Shelburne...* (Halifax: Nova Scotia Museum, 1983) at 52-7, 126-8 and MacKinnon, *Unfriendly Soil* at 79-81; for Prince Edward Island, see J.M. Bumsted, *Land, Settlement and Politics on Eighteenth-Century Prince Edward Island* (Kingston: McGill-Queen's University Press, 1987) c. 7.

Over several months beginning in May 1783 the harbour at the mouth of the St John River was the debarkation point for over 10,000 Loyalist evacuees from British-occupied New York city. By origin, most were from the Middle colonies and Connecticut, though a significant minority was British. About half of the arrivals were civilian "Refugees"; the others were disbanding "Provincial" soldiers of the various Loyalist regiments, with their families, and some disbanded British regulars. They landed in an almost entirely unsettled (though not ungranted) area of Nova Scotia. Because little preparation had been made for their advent, most were forced to spend the winter of 1783-4 at Saint John rather than moving upriver to their promised farmland. It was from this winter of delay and despair that, in a sense, all later troubles sprang. Discontent was manifested not so much against Governor John Parr and his administration at Halifax as it was against the Loyalist leaders he chose to deal with at Saint John. For the most part these were either the leading men designated by British military at New York to have charge of the various civilian migration groups or ex-officers of the disbanded regiments. The Nova Scotia government simply commissioned several of this number as justices of the peace and let it be known that it would deal with the settlement through their agency. Against these "agents and directors" it was popularly alleged that in distributing town lots at the river's mouth they had awarded themselves and their friends a disproportionate number of the situations useful for commerce. True to their American political heritage, those who opposed the town's unelected leaders convened publicly to select representatives, establish "committees of correspondence" and issue "remonstrances". The town's first newspaper, the *St John Gazette*, begun in December 1783, made itself the organ of this disaffected group. Thereby, only a few months into exile, some Saint Johners showed the world that, while they might not be republicans, they were not political naifs.⁵

The principal source of information on the opposition faction is the *St John Gazette* between 1783 and 1786. Virtually every surviving issue contains anonymous letters, poetry and more versatile literary creations denouncing with striking vehemence the settlement's unelected leadership. Even in the agitated context the time, one such production, published on 4 March 1784, was sensational. Addressing his remarks to the many disbanded Provincials in the settlement, "A Soldier" concluded his letter with a veiled but unmistakable allusion to the possibility of collective violence:

I would not wish you to think I mean to cause discontent or excite discord among you. I mean to warn you of your impending inevitable ruin should government withdraw her bounty, leaving you inhabitants of the barren rocks or tenants to a fortunate few that either by bribery or fraud possess all the habitable lands

⁵I call the settlement Saint John by way of convenience; it was not given that name formally until incorporation as a "city" in 1785. This account of the settlement's founding is adapted from D.G. Bell, *Early Loyalist Saint John* (Fredericton: New Ireland Press, 1983) c. 2, 3.

expressly contrary to the King's order. No feeling men whose hearts are warm with loyalty could wish to rob you of your just rights, and those miserly wretches (void of principle and compassion) must feel the force of a justly enraged soldiery ... should they succeed in their mercenary attempts.

In a community which had experienced one minor outbreak of mob violence already and was declared with some frequency to be "in a state of Anarchy" in which the "common people" were becoming "insolent & rude" and betraying "stron[g] Symptoms of Discontent,"⁶ Saint John's weary magistrates were quick to seize on these references to "discontent", "discord" and "a justly enraged soldiery" as the pretext for administering an exemplary check to their critics. Within a day of the paper's publication the magistrates had used their power to trace the author of the piece and the chain of communication that had brought it to the newspaper. They selected for prosecution the two printers themselves and the man who had left the letter at their publishing shop, who not by coincidence was the brother-in-law of Elias Hardy, the foremost figure in the town's dissident faction. The actual author of the piece, though exposed, was not charged; it was the leaders of the opposition faction who were to be targeted, not their pawns. So it was that William Lewis and John Ryan (the printers) and William Huggefurd were arrested, brought before a grand jury and indicted by it on 10 March 1784 for publishing "among the subjects of our said lord the King a certain seditious and scandalous libel."⁷

The outcome of these prosecutions is unknown. Trial before the county sessions of the peace would have put in play the awkward possibility that a jury of twelve would acquit the proprietors of what was still the town's only press. It may be, then, that the absence of records on the fate of the prosecutions means simply that the accused were put on recognizance and trials never proceeded with. Thereby the managers of the town – the very men who in their capacity as JPs would have presided over any trial at sessions – could suppose that they had put their critics on the defensive without risking the possibility of a humiliating reversal from the jury.

⁶Letter, J. Cochran to J. Wentworth, 14 December 1783: PANS, Wentworth Papers; Letter, E. Winslow to B. Watson, 10 January 1784: PRO, CO 217, vol. 56; Letter, W. Aplin to W. Smith, 6 March 1784: PRO, CO 217, vol. 56.

⁷"Soldier's" letter appeared in an issue of the *St John Gazette* which no longer survives. Everything known of the seditious libel prosecutions comes from E. Jack's "The Liberty of the Press in Parrtown in 1784", printed in the [*Saint John*] *Daily Sun* for 5 November 1894 in the context of late 19th-century attacks on press freedom in New Brunswick: see D.G. Bell, "Judicial Crisis in Post-Confederation New Brunswick" in D. Gibson & W.W. Pue, eds., *Glances of Canadian Legal History* (Winnipeg: University of Manitoba, 1991) 189 at 197-9. Jack, who had access to the examinations of the principals and the grand jury presentments from the files of the clerk of the peace for Sunbury County, is silent on the fate of the prosecutions, from which I infer that he saw no evidence that they went forward. The materials seen by Jack and any judicial record connected with the affair are themselves not known to be extant.

Three months later, in the summer of 1784, for reasons which had little to do with unrest at the mouth of the St John River, the British government divided all Nova Scotia into three parts. Thereby the St John valley became the backbone of a new province called New Brunswick. Colonel Thomas Carleton, brother of the last British commander-in-chief at New York, arrived in Saint John on 21 November 1784 as governor. Carleton himself was an Englishman whose colonial experience was purely military, but the central officers of administration who followed him to New Brunswick were all Loyalists and practically unconnected with the detested agents and directors who had managed Saint John to this point. Carleton soon fixed the new colony's intended capital in the remote hamlet of Fredericton, but Saint John remained the seat of government and judiciary until late in 1786, by which time the tumults noted below must have made the decision to relocate the capital seem wise indeed.

Almost everyone assumed that once Loyalists themselves were in charge of an almost purely Loyalist colony, all of the earlier troubles would vanish. The newly-arrived governing elite approached its task with such self-flattering heroism that Solicitor General Ward Chipman likened the planting of Saint John to the founding of Carthage and Rome, Admiralty judge Jonathan Sewall called it the Loyalists' "New Jerusalem"; Surrogate General Edward Winslow vowed that it would be the most "Gentlemanlike" government "on earth", and, on half a dozen occasions, various writers declared that New Brunswick would soon be the flourishing "envy" of the American states.⁸ Moreover, thousands of Loyalists formerly stranded unhappily at Saint John were now scattered inland on their promised farm lots, and a second Saint John newspaper had been established, this one supportive of Carleton's regime. Under such favourable auspices the governor moved with confidence in the fall of 1785 to call New Brunswick's first general election. As formal land grants had for the most part not yet been issued, it was impossible to decree a voting qualification based on property holding. Accordingly, with a daring they would soon regret, governor and council awarded the franchise to all adult white males of three months' residence.

In the key Saint John constituency, which was to choose six of twenty-six members in the House of Assembly, the government ticket was headed by Attorney General Jonathan Bliss and Solicitor General Chipman. To the "utter astonishment of every body" in the governing circle, the election in the town where all of them still resided turned into an intense and sophisticated anti-government campaign. Banners, badges, placards and handbills were as much in evidence as if the election had been in pre-Revolutionary New York, although the parallel invoked by some Saint Johners themselves was that of John Wilkes and "shameful

⁸For extensive citations, see D.G. Bell, "Paths to the Law in the Maritimes, 1810-1825: The Bliss Brothers and their Circle" 8:2 (1988) *Nova Scotia Historical Review* 6 at 8-9.

and corrupt practices *à la mode de Westminster*.⁹ The early days of the election were punctuated by a major riot of opposition supporters at Mallard's coffee-house, the headquarters for the government candidates. The disturbance was suppressed only through intervention and arrests by British troops, a constitutional blunder reflecting the depth of Carleton's surprise and panic, and an act which itself became a popular grievance.¹⁰

Here, in the midst as it were of the protracted 1785 election campaign at Saint John, it is useful to examine the rhetoric employed by the two sides. Almost everything known of it comes from the two weekly newspapers, which overflowed with earnest, bitter, witty and learned productions from writers styling themselves "Horatio", "Claudius", "Britannius", "A Loyalist", "Mrs Mira", "Aesop", "A Native American Loyalist", "A Plain Dealer", "Urbanitatis", and the like. Although elaborate literary rituals may seem extraordinary in a community of now only four or five thousand, on the edge of the wilderness, in which true anonymity must have been impossible, they are a further sign of how much the politics of Saint John owed to the rhetorical techniques Americans had honed in the decade of debate preceding the outbreak of rebellion.

Even some of the issues dividing Saint Johners were connected directly to political tensions in the Old colonies, particularly New York. The two opposition leaders at Saint John, for example – Elias Hardy and Tertullus Dickinson – had led a major indignation protest by rank-and-file Loyalists in British-occupied New York city.¹¹ Similarly, the proprietors of the *St John Gazette* and the *Royal Gazette* had been rival printers there.¹² When Saint Johners were exhorted not to vote for Jonathan Bliss and Ward Chipman because they were lawyers and government placemen, they were reminded of an issue that had become a staple of 18th-century colonial politics, and varying precedents from pre-Revolutionary

⁹Letter, J. Sewell to J. Sewall [sic], 5 December 1785: NAC, Sewell Papers, MG 23, GII, 10.

¹⁰On use of the military for policing as a grievance, see Petition of the Electors of Saint John, 3 March 1786: PANB, RS 42, *R. v. Charles et al* (1786); and see J.P. Reid, *In Defiance of the Law: The Standing-Army Controversy, the Two Constitutions, and the Coming of the American Revolution* (Chapel Hill: University of North Carolina Press, 1981); B. Bailyn, *Ideological Origins of the American Revolution* (Boston: Harvard University Press, 1967) at 61-5, 112-7.

¹¹K.G. Davies, ed., *Documents of the American Revolution, 1770-1783, vol. 21* (Shannon: Irish University Press, 1981) at 98; M. Gilroy, *Loyalists and Land Settlement in Nova Scotia* (Halifax: Public Archives of Nova Scotia, 1937) at 147-53; W.O. Raymond, *The London Lawyer: A Biographical Sketch of Elias Hardy...* (Saint John: New Brunswick Historical Society, 1894) at 3-5 [CIHM #12376]; W.S. MacNutt, *New Brunswick: A History, 1784-1867* (Toronto: MacMillan, 1963) at 37.

¹²T.M. Barnes, "Loyalist Newspapers of the American Revolution, 1763-1783: A Bibliography" (1973) 83 *American Antiquarian Society Proceedings* 217 at 230, 237-8.

New York, Pennsylvania and Nova Scotia were duly canvassed.¹³ When opposition agitators urged voters not to support Bliss and Chipman because they were from Massachusetts, and exiles from that colony were already too powerful in New Brunswick, where the great majority of people came from New York, Connecticut and New Jersey, they invoked a long-standing colonial prejudice against natives of the Bay colony.¹⁴ By persisting in raising delayed and unequal distribution of land, opposition campaigners played to an issue which resonated deeply with many American colonists – former New Yorkers in particular – who were acutely aware of the vast, neo-feudal manors in the Hudson valley, with their thousands of tenants. When, therefore, opposition polemicists alleged that deliberate delays in the settlement process were part of a plan to reduce the rank and file to the status of “slaves” (ie, tenants), they invoked “a central concept in eighteenth-century political discourse” and played on one of pre-Revolutionary New York’s most sensitive public issues.¹⁵

In the rhetoric of government supporters, two interrelated themes emerge portending the regime’s subsequent legal offensive against its detractors. One is what may be called the “patriotic” issue. In their election handbill the government candidates style themselves as the “disinterested patriotic candidates”, implying thereby that their opposers were seeking to gain public office for private advantage. Other publications characterize Attorney General Bliss and his fellow candidates as “divested of any interested motive”, “without any selfish views, or considerations of private interest”, and the like.¹⁶ Conversely, opposition candidates are maligned repeatedly with the favourite 18th-century epithet of “factious” and its synonyms. They were “plotters”, a “party”, a “cabal”, “interested”, “artful”, “scheming”, “designing”, and “ambitious”; their success

¹³*Royal Gazette*, Saint John, 22, 29 November 1785, 6 December 1785. For New York, see P.U. Bonomi, *A Factious People: Politics and Society in Colonial New York* (New York: Columbia University Press, 1971) at 241-5; for Nova Scotia, see J.W. Lawrence, *Judges of New Brunswick and Their Times* (Saint John: Acadiaensis, 1907) at 177.

¹⁴Letter, J. Parr to Lord Sydney, 26 July 1784: PRO, CO 217, vol. 50; *St John Gazette*, 13 May 1784; *Royal Gazette*, Saint John, 8 November 1785, 6 December 1785; M.B. Norton, *The British Americans: The Loyalist Exiles in England, 1774-1789* (Boston: Little, Brown, 1972) at 67-8.

¹⁵Petition of the Electors of Saint John, 3 March 1786: PANB, RS 42, R. v. Charles et al (1786); “Americanus” seditious libel: PANB, RS 42, R. v. Lewis & Ryan (1786); *St John Gazette*, 29 January 1784, 13 May 1784; “Gentleman of Halifax”, *Vindication of Governor Parr and His Council, against the Complaints of Certain Persons...* (London: John Stockdale, 1784) at 24, 31 [CIHM #37513]; Bailyn, *supra* note 10 at 232; R. Berthoff & J.M. Murrin, “Feudalism, Communalism, and the Yeoman Freeholder: The American Revolution Considered as a Social Accident” in S.G. Kurtz & J.H. Hutson, eds., *Essays on the American Revolution* (Chapel Hill: University of North Carolina Press, 1973) at 256; R.C. Calhoun, *The Loyalists in Revolutionary America, 1760-1781* (New York: Harcourt Brace Jovanovich, 1973) c. 37.

¹⁶The only extant copy of the handbill is in W.O. Raymond scrapbook, vol. 5, at the Saint John Regional Library; *Royal Gazette*, Saint John, 1 November 1785.

came from deluding the ignorant and unthinking. Such rhetoric led almost irresistibly to the insinuation that those who opposed Carleton's regime were seditious and disloyal.¹⁷ One might have thought such epithets taboo in a community composed almost exclusively of Loyalists, but the course of the 1785 election campaign at Saint John so alarmed the governing circle that even this constraint was shattered. Thus one anonymous writer complained that the opposition's rhetoric made him "shudder" as reminiscent of the propaganda responsible for the "late American usurpation". Another warned that defeat for the attorney general's slate in the Saint John election would prove to the world "that the seeds of sedition and rebellion are already sown". A third charged that Elias Hardy and other opposition leaders were of a "Republican craft". Their principles, it was said, "correspond exactly with those of the rebels, by similar motives or some caprice, *flung* among the Loyalists; and they brought with them all that *restless turbulence* and *levelling* disposition, that characterized the enemies of loyalty."¹⁸

Such language was already in the air when Governor Carleton's supposition that the first New Brunswick election would be a quiet affair began manifestly to go wrong. Because voting at Saint John was conducted over a number of days it was soon evident that the opposition's slate was well ahead. Then occurred, as noted above, the Mallard House riot, its suppression by military intervention and the arrest of several second-rank opposition figures for their part in the disorder. Carleton's circle had misjudged the temper of the town entirely, and government forces both at the polls and in the streets were desperately on the defensive. What was to be done?

The first thought was to overwhelm the opposition by resorting to the constitutionally dubious expedient of voting the 160 officers and men of the 54th regiment, who had lately been so useful as police. The sheriff himself was prepared to allow this, and his deputy actually admitted the vote of one sergeant.¹⁹ When the six opposition candidates learned this they sent protests to both sheriff and governor-in-council which raised the delicate question of just what election — and other — laws governed a new colony in which the legislature had yet to sit. Nova Scotia had never succeeded in enacting an election statute, so there was no question of accepting passively the voting laws of that notoriously

¹⁷On the link in Loyalist thought between ideas of faction and disloyalty see J. Potter [MacKinnon], *The Liberty We Seek: Loyalist Ideology in Colonial New York and Massachusetts* (Cambridge MA: Harvard University Press, 1983) c. 2-4.

¹⁸*Royal Gazette*, Saint John, 1 November, 15 November 1785, 24 January 1786.

¹⁹Letter, T. Dickinson *et al.* to T. Carleton, 21 November 1785: PANB, RS 60, vol. 1.

republican colony.²⁰ The alternative was for the Council to fix by ordinance the principles on which the election would be conducted, and this it had done, but only in the briefest terms. None of the English statutes specifying who could vote or become a candidate or regulating the conduct of the sheriff was invoked. In the wake of the riot, when it became urgent to think of voting the garrison in order to save the election for the government, these lacunae in the voting ordinance suddenly became the focus for agitated consideration.

In effect, government forces determined to have it both ways. On one hand, the two law officers (themselves election candidates) advised the sheriff that the English electoral regime – with its careful curbs on participation by those holding office under the Crown – did not extend to the province: “You will remember Sir,” opposition candidates later reminded the sheriff, “that the Statute Law of England relative to Elections was repeatedly urged by us and as often rejected as not Extending hither and with it of course the *Bill of Rights*, which is an English Statute and the Basis of Parliamentary Freedom.”²¹ On the other hand, when the sheriff thought it in the government’s interest to grant a scrutiny of the votes cast, the lack of any legal warrant for such a proceeding proved no impediment to his professing to take as precedent “the Late Election at Westminster”, although in fact he followed it only to the extent convenient. In the end, however, the garrison was not voted. It is tempting to think that this was – as the English radical William Cobbett, one of the soldiers stationed at Saint John, later claimed – because the privates of the 54th regiment were actually in sympathy with the opposition.²² Quite apart from this possibility, one suspects that Carleton was deterred from allowing military votes because such a manoeuvre would have become a constitutional grievance of such magnitude that even far-off London could not have overlooked it. If the Saint John election were to be salvaged for Carleton’s regime it would be in some other way.

The means fixed on – a scrutiny of voter eligibility conducted by the bitterly partisan sheriff – rejected nearly 200 opposition votes on grounds of non-

²⁰J. Garner, *Franchise and Politics in British North America, 1755-1867* (Toronto: University of Toronto Press, 1969) at 14-19.

²¹Letter, T. Dickinson *et al.* to W.S. Oliver, 22 December 1785: PANB, RS 60, vol. 1. One detects here the earliest hint of what would become explicit the following year: that New Brunswick’s governing circle had selected as the colony’s reception point for English statute law the implausibly – though perhaps defensibly – early date of 1660, thereby omitting from the province’s constitution, at least symbolically, the Glorious Revolution: D.G. Bell, “A Note on the Reception of English Statutes in New Brunswick” 28 (1979) *University of New Brunswick Law Journal* 195. In the context of election legislation in particular, the issue is perhaps more complicated; but nothing save Tory fear and perversity can have deterred the governor-in-council from adopting by reference English “pure election” safeguards in its electoral ordinances of 1785.

²²*Political Register*, London, 13 December 1817.

residence, producing thereby a narrow win of the six seats for the government.²³ Opposition candidates protested the sheriff's conduct to the House of Assembly when it convened, early in 1786, but its pro-government majority vindicated him. By this time, however – in the wake of the Mallard House election riot and its attendant arrests, the intervention of troops, and the stolen election – the opposition's front-rank leaders had lost control over their disillusioned Saint John supporters, who now became so extravagant in their conduct as to give the government pretext for a stern and concerted campaign of suppression.

That campaign had a number of aspects, all exemplary, and all involving the notion of sedition. In one minor though vivid episode, a second-rank opposition figure who had protested the Assembly's vindication of the sheriff by remarking in a coffee-house that “the House of Assembly ought to be tore limb from limb” or that “he wondered the People did not tare them limb from limb” was denounced to the Assembly and ordered arrested for “publicly speaking and uttering certain opprobrious Words in Contempt and Breach of the priviledges of this House and tending to excite Sedition”. Brought to the bar of the House on 26 January 1786, the offending speaker was ordered committed until he should “ask pardon of this House, on his knees.”²⁴

Within a month of the “kneeling man” ritual the authorities were able to turn their attention to the opposition press when Lewis and Ryan unguardedly published a long and vehement anti-government letter from a writer styled “Americanus”. The bulk of the composition is a lurid rehearsal of the emotive theory that the Loyalist leadership had delayed distribution of farmland deliberately, so as to reduce the mass of exiles to such desperation that they would be willing to become tenants (“slaves”) to the great. As with the “Soldier” letter of two years earlier, it was the writer's desperate exhortation to action which sealed the printers' fate:

[W]e are distressed in looking forward. We scarcely dare view tomorrow. Our Provisions almost gone. Our lands not brought into cultivation. Our Loyalty suspected. ... [T]ear the mask from their Faces, and exhibit their naked Enormities to the whole World. [L]et us not disgrace Loyalty with Cowardice. My distressed Countrymen, let us oppose every the least Violation of our Priviledges. ... Submit not to petit Tyrants. ... In Fine, let the world know ... the Rights you are jealous of, manifesting yourselves to be the Descendants of Britons.²⁵

²³Particulars of voting and scrutiny are given in Bell, *Early Loyalist Saint John*, *supra* note 5 at 107-10.

²⁴Arrest warrant: NBM, Ganong Papers, Box 36, 1. This form of humiliation had colonial precedent: L.W. Levy, *Emergence of a Free Press* (New York: Oxford University Press, 1985) at 19.

²⁵“Americanus” seditious libel: PANB, RS 42, *R. v. Lewis & Ryan* (1786). The number of the *St John Gazette* for 22 February 1786, in which the “Americanus” letter appeared, is not extant. The only version of the piece to survive is that copied into the Supreme Court record, which is here excerpted without the attorney general's interpolated averments. Authorship of the piece was never uncovered.

Publication of these inflammatory urgings – reflecting the agitated disillusion caused by the Assembly's complicity in the theft of the Saint John election – led predictably to the arrest of Lewis and Ryan for “printing and publishing a scandalous and seditious libel”. Just two weeks later, and even before they came to trial, the printers announced the dissolution of their partnership, and the *St John Gazette* ceased publication. “The Printers have laid aside their paper”, the governor chortled, “and the Citizens disown these incendiaries”.²⁶ Thereby Carleton's regime succeeded in silencing the principal vehicle of opposition expression.

At the very time Attorney General Bliss was bringing his case against the opposition press, the Assembly was moving to intimidate and silence the entire New Brunswick population. The means chosen was one of the most overtly repressive statutes in the whole Canadian experience between the American rebellion and the War Measures Act: a law against political petitioning. Petitioning was a ritual of political expression which carried considerable freight in English constitutional history. The same had been true in the Old colonies, where petitioning gave a voice to those who were excluded otherwise from the political process.²⁷ When, therefore, the newly-convened General Assembly – alarmed that petitions against its vindication of the sheriff's conduct in the Saint John election were attracting hundreds of signatures – resurrected from the reign of Charles II a statute against petitioning, it sent a uniquely repressive signal to its detractors, while setting at defiance the Glorious Revolution's Bill of Rights. The professed purpose of New Brunswick's *Act against Tumults and Disorders*, upon pretence of preparing or presenting Public Petitions, or other Addresses, to the Governor, or General Assembly was to “prevent tumultuous and other disorderly soliciting ... of Hands, by private persons, to Petitions, Complaints, Remonstrances, and Declarations ... to the Governor ... for alteration of matters established by Law, [or] redress of pretended grievances in Church or State ... being made use of to serve the ends of factious and seditious persons, to the violation of the Public peace.” The effect of the legislation was to outlaw petitions “for alteration of matters established by Law in Church or State” with more than twenty signatures unless they had the prior consent of three justices of the peace or a grand jury. Violators would receive three months' imprisonment and a £100 fine.²⁸

Introduced into the Council, the Tumults bill was concurred in by the House of Assembly on 1 March 1786 and given Carleton's assent the day following. It

²⁶Letter, T. Carleton to Lord Sydney, 14 May 1786: PRO, CO 188, vol. 3.

²⁷J.P. Reid, *Constitutional History of the American Revolution: The Authority of Rights* (Madison: University of Wisconsin Press, 1986) at 21-3.

²⁸SNB 1786, c. 58; it disappeared only with New Brunswick's general statute revision in 1854. Its Restoration original was 13 Car. II c. 5, which was not repealed until 1986.

was a direct response to the petition campaign which had been underway for a month and which was attracting support in rural counties as well as Saint John. Only one of these petitions survives, but it alone contains upwards of 300 signatures, all from Saint John. Just days after the Tumults bill became law, four of the petition's leading sponsors called on the provincial secretary to present it. Jonathan Odell declined that honour but said that they might call the next day to offer it to the governor personally, at the same time warning them formally that the law against petitioning had come into effect. Accordingly, when the presenters waited on Carleton on 7 March to hand in the document, both sides were engaged in a self-conscious ritual of confrontation. The four – Claudius Charles, William Thompson, Joseph Montgomery, and John Carnes – were arrested quickly, examined before Saint John's mayor, and charged with publishing a seditious libel.²⁹

Among many remarkable political compositions surviving from the tumultuous early history of Saint John, the petition of March 1786 is uniquely compelling. None of the leading opposition figures signed it, and it conspicuously lacks their rhetorical polish. It is, however, this very quality of artlessness which makes it such an arrestingly eloquent expression of grievance, despair and desperation. Something of its special character is captured in its sonorous opening sentence:

We His Majestys dutiful and Affectionate Subjects, Electors of the City & County of St. John, after having suffered every Evil which could be inflicted upon loyal Subjects by the cruel Hand of Usurpation, for an Adherence to the Person of Our King and His Government, and a most oppressive Tyranny since our Arrival in this Place, patiently have borne those Hardships from a due Regard to the British Constitution, under the firm Persuasion of being relieved from our Bondage upon Your Excellency's arrival, cannot now sit silent under the complicated Grievances we suffer and the fearful Apprehensions of what this infant Settlement must undergo, if such dangerous measures are persisted in, which threaten no less than a speedy Dissolution of the same or a Revolution, to us no less dreadful: particularly the most daring, violent and alarming Invasion of our Liberties striking directly at the Vitals of our most excellent Constitution.³⁰

These sensational allegations – with references to “a most oppressive Tyranny”, “Bondage”, “complicated Grievances”, and suggesting the possibility of mass return to the United States or a “Revolution” – were alone enough to invite prosecution. But there was more. After a lengthy catalogue of election-related grievances and a request that Carleton call a new vote, the petitioners concluded

²⁹Since the Tumults law had been passed for the very purpose of suppressing this petition and since the presenters had been explicitly warned under the legislation, it is surprising that the four were charged not with its violation but with seditious libel. The only obvious reason to prefer seditious libel was the advantage it gave the Crown in limiting the role of the trial jury, as noted below.

³⁰Petition of the Electors of Saint John, 3 March 1786: PANB, RS 42, *R. v. Charles et al* (1786).

with a threat which no government could ignore. They asserted that laws made by an Assembly "so unconstitutionally composed" could have no binding force. It cannot be wondered, therefore, that the four presenters were arrested on a warrant alleging that they had published "a certain inflammatory, seditious and scandalous libel purporting to be a petition to the Governor ... tending to excite sedition and rebellion against our Government, which said libel also denieth the authority of the Laws ... and the legality of the Assembly now sitting".³¹ Through such averments Carleton's regime contrived to equate criticism of a colonial government with opposition to the King, and proceeded on that basis to prosecute Loyalists for disloyalty. Indeed, in the excited imagination of the regime's attorney general, circulation of this "most seditious" document was "little short of an overt act of High Treason".³²

Printers William Lewis and John Ryan and the four petition presenters all came to trial at Supreme Court sittings in May 1786, the occasion on which the Mallard House rioters also took their trial. None of those charged with sedition was indicted through means of the county grand jury. An administration in which both law officers were from Massachusetts had ample reason to fear the reluctance of an American grand jury to indict for seditious libel.³³ Instead Attorney General Bliss adopted the safer course usual in sedition prosecutions in England by proceeding *ex officio* to lodge informations with the Supreme Court. Once charges were procured in this manner, the actual trial presented relatively little political risk. At trial of a seditious libel the petit jury decided only the factual question of whether the prisoners had "published" the words in question and whether any innuendoes were as the Crown alleged. It was the judge — and in New Brunswick all judges were members of the privy and legislative Councils, and Chief Justice George Ludlow was styled the regime's "prime Minister"³⁴ — who decided whether the publication in question was seditious.³⁵ Prosecuted and tried under such an arrangement, and in the context of the prevailing campaign of suppression, it is not surprising that the two printers and the four presenters were convicted and fined.

These six convictions for seditious libel, together with the trials of the election rioters, were the denouement of the official campaign against political dissent in early Saint John. The election of six opposition Assemblymen had been

³¹ Arrest warrant, 8 March 1786: NAC, Lawrence Collection, MG 23, D1.

³² Letter, J. Bliss to S.S. Blowers, 17 March 1786: PANS, Bliss Papers, vol. 1603.

³³ Levy, *Emergence of a Free Press*, *supra* note 24 at c. 3.

³⁴ *Supra* note 32.

³⁵ Levy, *Emergence of a Free Press*, *supra* note 24 at 11-12; T.A. Green, *Verdict According to Conscience: Perspectives on the English Criminal Jury, 1200-1800* (Chicago: University of Chicago Press, 1985) c. 8.

forestalled, the opposition press had been silenced, public petitioning had been suppressed. Even prior to the trials Attorney General Bliss thought that the opposition had “discovered some Symptoms of Fear & Dejection, & some of them of Penitence & Reformation”. Within a week of their close, Governor Carleton reported complaisantly to London that his policy of ruling New Brunswick with a “strait hand” had met with “every success”. The province had been brought into “perfect order and obedience”. His factious opposition had, he noted discreetly, “failed” to win election to the Assembly. Following this failure they had “procured by every Artifice libellous petitions and published inflammatory pieces in a Newspaper”: “A prosecution has been carried on in the Supreme Court against the promoters of these disorders. The Rioters, Printers, and those who presented the Petition have been severally convicted and punished and ... faction is at an end here.”³⁶

* * * * *

To the outward eye, Carleton was correct. In December 1786 the rector of Saint John preached a special sermon before Saint John’s most influential dissidents on the *Pleasure and Advantage of Brotherly Unity*.³⁷ Although the sermon had reference ostensibly to the fluctuating fortunes of ancient Israel, no doubt he preached and was understood in a double sense. The “late calamities, owing to civil dissention” were Saint John’s; so also, apparently, was the “love and harmony” which now prevailed in the town. In the short term, at least, political dissention was at an end. Carleton could assure his superiors truthfully that the “most perfect tranquillity” now prevailed over every part of the province.³⁸

And what of the future? While the political faction which emerged in early Saint John, first in opposition to the agents and directors and then to Carleton’s High Tory administration, was still discernably at work as late as 1793,³⁹ there is no apparent link in personnel between the politics of the settlement process and

³⁶Letter, T. Carleton to Lord Sydney, 14 May 1786: PRO, CO 188, vol. 3.

³⁷G. Bisset, *The Pleasure and Advantage of Brotherly Unity* (Saint John, 1787) at 5. The address was a St John’s day sermon to the Masons of the 54th regiment, but Saint John’s civilian lodge – which was dominated by first and second-rank opposition leaders – would also have attended: see W.F. Bunting, *History of St. John’s Lodge, F. & A.M. of Saint John* (Saint John: J. & A. McMillan, 1895) c. 1 [CIHM #00329].

³⁸Letter, T. Carleton to E. Nepean, 1 June 1786: PRO, CO 188, vol. 3. It is striking how little resort was had to seditious libel prosecutions after 1786. The nine cases noted here are probably more than half of all such trials in the entire history of the province. I have found other cases only in 1801 (2), 1805, 1821, 1828 and 1830. The sedition panic of the 1790s in other jurisdictions seems not to have found judicial reflection in New Brunswick.

³⁹Letter, W. Chipman to J. Odell, 23 February 1793, quoted in Lawrence, *Judges of New Brunswick*, *supra* note 14 at 186-7.

the opposition faction that was to dominate New Brunswick politics beginning in the mid 1790s under the brilliant Scotch emigré James Glenie. Many who had opposed Carleton's regime through the tumultuous election of 1785 and its crushing aftermath had long since slipped back to the land of rebellion, such as the printer William Lewis; by 1792 Saint John's population had fallen to a mere 2000. Others, like Elias Hardy, made their peace with the dominant order. In this way New Brunswick's initially pronounced tendency towards what historians of the Revolution call "Whig loyalism"⁴⁰ was attenuated greatly.

But though there may be no overt link between events in early Saint John and New Brunswick's constitutional controversies of the 1790s associated with the clash between Carleton and Glenie, there is an evident structural parallel. In both cases what might have been a routine political squabble was transformed into a full-dress crisis of grand proportion because the colony's governing clique chose to make it so. In each case Carleton's administration might have chosen to respond to political challenge by political art but chose instead unflinching confrontation. In each case its ultimate weapon was delegitimization of its opposition through the charge of disloyalty. From this perspective the crises of the 1780s and the 1790s are effects of the same cause – the attempt of New Brunswick's governing elite to achieve psychological redemption through creation of a model Loyalist colony. Any deviation from that model was resisted to the uttermost.

Finally, it is instructive to reflect on the tactic used by Carleton's regime as its political trump card in the 1780s (as again in the 1790s) – the "Loyalty Cry". When it felt its "Gentlemanlike" vision of New Brunswick in political jeopardy through the rise of an opposition, the governing circle instinctively equated support for themselves with loyalty to king and constitution, and opposition to themselves with disloyalty and republicanism. In this sense, the sedition trials and related acts of official repression at Loyalist Saint John are the earliest notable setting for a tactic which would become a familiar one in 19th-century Canadian politics. It was a similar Loyalty Cry which was invoked during Lieutenant-Governor Craig's "reign of terror" in Lower Canada in 1810-11 and which smashed the Upper Canadian reformers at the election of 1836, triggering the rebellion of 1837. It was the same tactic which induced New Brunswickers to reverse their opposition to intercolonial union in 1866, thereby making possible Confederation. It was a Loyalty Cry which frightened Canadians away from free trade with the United States at the federal election of 1911. In different settings, in different generations politicians would find the Loyalty Cry useful in dishing their opponents because, for most of their history, British North Americans could not take continued independence from the United States for granted. Consciously or subconsciously, "loyalty" was almost always in question.

⁴⁰On Whig Loyalism see, for example, Calhoun, *Loyalists in Revolutionary America*, *supra* note 15 at 563.

Yet it will be noted that on this prototypical occasion, in early Saint John, the Loyalty Cry failed to work, at least in immediate terms. Despite the government's attempt to stampede the electorate by branding political dissenters as rebels, it was the opposition which, prior to the scrutiny, won a large majority at the Saint John polls on an almost universal manhood suffrage. In resisting the cry, the Loyalists themselves evinced a confidence in their attachment to the British constitution which their children and grandchildren would evidently lack. Ironically, however, the refusal of most Saint Johners to heed a counterfeit Loyalty Cry only triggered more overtly coercive measures from government. Carleton's regime demonstrated that it would go to almost any lengths to render 18th-century New Brunswickers passive and obedient; thereby the transformation from American Loyalist to New Brunswicker was well begun.