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Power and Agency in Newfoundland and Labrador's History

Sean Cadigan

Gerald Sider, *Between History and Tomorrow: Making and Breaking Everyday Life in Rural Newfoundland* (Peterborough, ON: Broadview Press 2003)
Jerry Bannister, *The Rule of the Admirals: Law, Custom and Naval Government in Newfoundland, 1699-1832* (Toronto: University of Toronto Press 2003)

IT IS DIFFICULT TO IMAGINE a more important historical question than who or what actually makes history. English-Canadian historiography, like Anglo-American historiography generally, long cherished the notion that powerful elites did most of the making. The flourishing of social history since the late 1960s has meant that those old, treasured notions must take into account the importance of a popular agency in history. In the case of the writing of Newfoundland and Labrador's history, it is surprising to see that the older ideas are still alive, in the work of Jerry Bannister. Equally astonishing, Bannister's work draws on Gerald Sider's anthropological reordering of Newfoundland history. Sider's *Between History and Tomorrow* is ostensibly interested in the concepts of culture and class which dominated social history. However, his imposition of what Marx called a "supra-historical" theory of merchant capital bears little similarity to history. Although a much better researched work than Sider's, Bannister's *The Rule of the Admirals* argues that only the propertied classes, and their state functionary allies, are important in understanding the history of 18th-century Newfoundland.

According to its title page, Sider's book is the "significantly expanded and updated" second edition of *Culture and Class in Anthropology and History: A Newfoundland Illustration* (Cambridge: Cambridge University Press 1986). The author promises that he has expanded on his original analysis of merchant capital in Newfoundland fishing communities to show its relevance in understanding the subse-

Sean Cadigan, "Power and Agency in Newfoundland and Labrador's History," *Labour/Le Travail*, 54 (Fall 2004), 223-43.

quent "historical logic of industrial capitalism," which destroyed the fishery. (xi) Sider's new prologue and epilogue propose that the fate of the fishery reflects the manner in which rural people have been caught "between history and tomorrow," between the historical logic of petty commodity production in "traditional" rural, fishing outport communities dominated by merchant capital, and the logic of a state-supported industrialization of the fishing industry. Somehow, this contradiction between history and tomorrow lies at the heart of broader "contradictions of citizenship" and "the inability of capital to generate and harness all the inequalities that are necessary for its continuation." (10) Sider is unclear about why it is important to know that "capital" uses, but does not create, political and economic inequalities, which are "constructed" by some unnamed process or persons as "race, gender, citizenship, literacy, and place of origin." (12) In Newfoundland, Sider argues, economic inequality consisted of rural fishing people being trapped in locally fragmented and isolated communities. Such fishing people were unable to resist merchant capital's exploitation through truck credit and its political influence over state policy. Already isolated from political power, fishing people were too rooted in the traditionalism of their community cultures to perceive and resist the state programs that sponsored a shift in the focus of merchant capital's social destructiveness to industrial capital's additional ecological destructiveness. (24)

Sider's argument rests on shallow research, and ignores a booming literature on the relationship among modernization, industrialization, and the current ecological problems of the fishery.[1] He might have engaged in serious criticism of any of these works to argue that his twenty-year old argument is relevant to understanding the current, ongoing ecological crises of the fisheries. Instead, Sider off-handedly suggests the view that the peculiarities of locale and the harness of merchant capital made rural Newfoundlanders into the Mexicans of Canada. Sider's evidence of the Mexican-Newfoundlander is the fact of an increased out-migration of fishing people, which accelerated from the time of the fishing moratoria of 1992. According to Sider, out-migrating Newfoundlanders suffer from "differential citizenship," a phenomenon which in the United States typifies employers' use of illegal Mexican immigrants as workers who do not have the same entitlements to government services and protective legislation as legal citizens. Sider intimates that Newfoundlanders who migrate to Toronto similarly lose rights of citizenship, but he offers absolutely no evidence of this. He does raise very good points about the manner in which Newfoundland and Labrador are never compensated for the manner in which their people and government contribute to the "human capital" of the national economy, but Sider provides no evidence that there is a differential citizenship at work. (308-24)

[1] I have reviewed many of these works in "Whose Fish? Science, Ecosystems and Ethics in Fisheries Management Literature since 1992," *Acadiensis*, 31, 1 (2001), 171-95, but the literature has continued to grow rapidly since then.

According to Sider, the reason so many Newfoundlanders have had to leave their communities to seek work abroad was that, as petty commodity producers in the fishery, they "*are characteristically forced* [emphasis is mine] into situations where they must sell their commodities at exchange rates that are somewhat below the full social costs of producing these commodities." (313-14) The passive voice he uses is typical of the way he sidesteps the whole issue of what precisely led to the Mexican-Newfoundlander. Sider argues that the contradictions of petty commodity production, over time, impoverished fishing communities. They also led to an unspecified social and economic shift from the production of fish by equally unidentified social or economic groups to the "production of humans for export." (309-15) Sider is reluctant to discuss rigorously evidence of an actual historical process that led to the change he sees. His emphasis on the importance of petty commodity production suggests that the work of his first edition is key, which leads us back to the original importance of merchant capital in determining the history of Newfoundland and Labrador.

Sandwiched between the second edition's prologue and epilogue is a reproduction of the first edition, without any new commentary or amendment. In the new prologue, Sider reiterates that the "purpose of the first edition was to use the village fishery as a doorway into the logic of merchant capital. In its general features, merchant capital was ... the fundamental form of economic, political, and social organization in Newfoundland...." (2) Merchant capital determined that petty commodity production would dominate Newfoundland through a number of processes. First, merchant capital dispersed the rural population in small villages around the coastline to constrain "village-level capital formation." Second, merchant capital prevented import substitution and local economic diversification by impeding local agricultural development; merchants blocked the development of roads that would have opened up interior resources. Third, merchant capital used truck credit practices to prevent the accumulation of capital among fishers. Fourth, merchants refused to invest in the fishing industry. Finally, merchant capital's accentuation of locale and its impoverishment of rural people, produced "deeply local" cultures, which "shielded" them from the worst abuses of merchant capital, yet ill-equipped them to deal with the wider transformations of the fishing industry. (23-9) Although Sider claims that he attempts to address "the more thoughtful" critiques of the first edition, I found no such attempt in the reprinting of the first edition material.

The first edition of Sider's book prompted a great deal of criticism, none of which Sider has chosen to address in the second edition. Perhaps the most important criticism was of the manner in which Sider treated Newfoundland as an illustration of an *a priori* theoretical construction of the logic of merchant capital in

historical development.[2] Sider's historical anthropological method is to arrive theoretically at his conclusions about the nature of culture and class first, then pick and choose isolated phenomena and anecdotes which best confirm the initial preconceptions. The end result is that Sider's interpretation of Newfoundland history is tautological – merchants dominated Newfoundland because they dominated it. It conflates assumptions about the theoretical conservatism of merchant capital with the actual motivations of merchants, and ignores the reality that merchants almost everywhere dominated early colonial North American social formation. It is impossible to explain different colonial histories by the nature of merchant capital itself, as opposed to the wider factors that shaped the social and economic environment in which historical merchants operated. Sider accepts too easily as historical the theoretically conservative role Marx assigned to merchant capital in his heuristic models on the origins of capital. (98-103) The result is that Sider confuses merchant capital — a concept — with historical merchants in their actual relationships with fishing people.[3]

Sider's *a priori* theoretical determination of evidence reflects the inadequate historical research he uses to support his arguments about merchant capital. Sider's poorly researched argument about merchant capital's opposition to agricultural development, for example, is simply wrong. His second edition provides no evidence to suggest that we should dismiss the dominant explanations for the littoral pattern of dispersed settlement: it followed directly from fishing people's need to be close to fishing grounds, to good areas of waterfront property that were suitable for drying fish, and to coastal forests for winter trapping, hunting, and wood-cutting for subsistence requirements and use in the fishery. Sider's proof of mercantile opposition to agriculture is his assertion, based on outdated works and ignorance of more recent contradictory scholarship, that a merchant-dominated naval administration opposed real property rights until 1824, and that "quiet possession of property" only emerged for premises directly related to fishing.[4] Merchants and governments further opposed the development of roads that would better link communities together, and open up land for farming. Although fishing families had subsistence-oriented garden plots, Sider argues, commercial farming could not develop;

[2]The best single criticism of Sider's first edition that I have read is J.K. Hiller's contribution to the Hiller, Peter Narváez, and Daniel Vickers panel review, "Newfoundland's Past as Marxist Illustration," *Newfoundland Studies*, 3, 2 (1987), 265-9.

[3]For earlier criticism of this formulation, see Sean Cadigan, "Planters, Households and Merchant Capitalism: Northeast-Coast Newfoundland, 1800-1855," in Daniel Samson, ed., *Contested Countryside: Rural Workers and Modern Society in Atlantic Canada, 1800-1950* (Fredericton 1994), 150-59; my own criticism relied generally on Ian McKay's examination of Sider's published papers, which preceded the first edition of his book. See McKay, "Historians, Anthropology, and the Concept of Culture," *Labour/Le Travailleur*, 8/9 (1981/82), 205-11.

[4]The criticism of Sider, complete with references to the earlier literature on settlement that he ignored, may be found in Hiller, "Newfoundland's Past as Marxist Illustration," 267.

consequently fishing people remained dependent on fish merchants in the absence of import substitution, and no gentry or middle class of farmers emerged to challenge the hegemony of merchant capital. (195-208)

Certainly historians are right to emphasize the importance of agriculture in colonial history. Elsewhere, it was the catalyst in domestic market diversification and drew merchants into the facilitation of local trade and development. In Newfoundland, however, climate and soil could not support significant commercial agricultural development. If petty producers in the 19th century could have withdrawn into farming, or substituted local agricultural supplies for imported goods they had to take on credit from merchants, they might have struggled successfully against the dominance of merchant capital. But such producers faced no official obstacles to their farming. On the contrary, official attitudes toward agriculture ranged from indifference to strong encouragement. Thus, the post-1815 depression in the fish trade, growth in the resident fishery, and rapid development of the permanent Newfoundland population led to an almost desperate official interest in the encouragement of farming. Governments only opposed large-scale commercial ventures that would take land away as the means of subsistence from fishing people without generating sufficient alternative employment. Otherwise the outskirts of St. John's filled quickly with the commercial farms owned by local merchants, officials, and artisans, such as butcher Robert Brine, who had obvious interests in trying to raise more livestock locally. By 1825, the Newfoundland government hoped that commercial agriculture could diversify the economy as merchants restricted credit in the fishery in the wake of persistent poor market conditions. The colonial government began to provide poor relief on the condition that fishing people improve their supplementary agriculture as a counterweight to downturns in the fishery. The government began to encourage road-building to prospect for better farm land, and required work on roads as a form of able-bodied relief. The search for better inland agricultural resources proved disappointing. Through the end of the 19th century, governments and people found that soil and climate supported little more than supplementary root-crop cultivation, and some animal husbandry to supply the St. John's market; it was even difficult to raise enough feed to over-winter livestock. The material conditions of Newfoundland ecology rather than the theoretical nature of merchant capital constrained and shaped people's experience with agriculture.[5]

[5]Cadigan, "The Staple Model Reconsidered: The Case of Agricultural Policy in Northeast-Coast Newfoundland, 1785 to 1855," *Acadiensis*, XXI, 2 (Spring 1992), 48-71; Cadigan, "Artisans in a Merchant Town: St. John's, Newfoundland, 1785-1855," *Journal of the Canadian Historical Association/Revue de la Société historique du Canada*, new series, 4 (1993), 95-119; Cadigan, "The role of agriculture in outport self-sufficiency," in R.E. Ommer, ed. *The Resilient Outport: Ecology, Economy, and Society in Rural Newfoundland* (St. John's 2001), 241-62.

Sider's view of truck suffers from the same problems. He fails to see truck between fish merchants and fishing people as a historical process; it appears to have always existed, changing only to become progressively more exploitive. Truck was there during the migratory fishery of the 17th and 18th centuries, which relied on labour employed on fixed wages or shares, and it made the transition in the first half of the 19th century to the small-scale household fisheries, which relied on family labour in petty commodity production. Sider first examines merchant capital in terms of its intrusion on the relationship between masters and servants in the older, migratory fishery. He follows the manner in which statute law and custom in the migratory fishery developed a privileged wage lien for servants against the fish and oil of their masters, whether bye-boat keepers in the migratory fishery or planters in the resident fishery. The lien existed because masters so depended on mercantile control of their exchanges that they could rarely guarantee servants' wages. Without such guarantees, servants would have little interest in agreeing to serve for a fishing season, and, even if they did, might end up not earning enough to be able to return home at the end of the fishing season. Law and custom therefore required that merchants agree that servants had the first lien for wages on any fish or oil they received from masters in a fishing season. In return for such legal guarantees, Sider contends, servants faced laws that forfeited their wages if they were disobedient during their term of employment. (116) The wage lien was part of the custom of current supply, by which the merchant who gave credit to a planter in the fishery in a current season was the most secured creditor over those who had extended credit in previous seasons. In return, planters were legally obliged to return all of their fish and oil to their current supplier until their debts were satisfied. The wage lien came to an end as the migratory fishery collapsed, supposedly in the first four decades of the 19th century, and with it, according to Sider, came the end of servant contracts. Resident planters continued to trade in direct truck relationships to merchants, tightly bound by the custom of current supply.

For Sider, the importance of the wage lien is that it illustrates the manner in which a custom might provide the basis for the intrusion of merchant capital's domination in the relationship between fishing masters and servants. However, his analysis is inadequate on a number of grounds. First, Sider cites the work of Steven Antler to support his view that the mid-19th-century changes in the custom of current supply intensified truck, but then ignores Antler's complementary argument that the wage lien encouraged differentiation in fishing communities by supporting the development of more market-oriented relationships between capital and labour, or a price system in the fishery. Sider touches on some of the problems associated with the lack of such a price system, especially in his consideration of the manner in which its "demonetarizing of the village economy" impoverished fishing people. He otherwise seems unaware of Antler's general argument, or refuses to deal with it, and fails to explain exactly how he thinks truck came about. (167) Antler argued that mercantile influence lay behind the Newfoundland courts' erosion of the wage

lien, and thereby forestalled the emergence of a more industrial form of fishing that might have challenged mercantile hegemony.[6] Second, there is little evidence to suggest that the wage lien may be linked to masters' and merchants' efforts to discipline servants by deducting wages for disobedience.

To the contrary of Sider, the wage lien probably gave servants more freedom from discipline by masters. The same lien, along with current supply probably undercut differentiation in the fishery and increased the resident household, or planter, fishery's dependence on merchant credit. The British parliament enshrined the customs in Palliser's Act of 1775, named after the governor whose advice helped shape the new law, to ensure that fishing servants received enough wages to return to Britain at the end of their term of service. The act required that British fishing servants had to have prearranged, written, and fixed wage agreements with their masters before they began the fishing voyage. No master could advance more than half the wages in credit to a servant. The remaining half wages had to be paid in good bills of exchange in Great Britain on the return of servants at the end of the fishing season. Masters also had to guarantee the availability of return-passage fare. Palliser's Act insisted that the law of current supply apply, giving servants the first lien against an insolvent or bankrupt master's catch. The second lien went to merchants who were current suppliers. Subsequent Newfoundland judicature acts extended this wage and lien system to the resident fishery, which worsened the problems planters faced due to poor market conditions and credit restrictions. To hire labour, planters had to accept wages fixed by written contract before they could know how the season might fare. The law prevented masters from cutting servants' wages in order to survive the fishing season solvent. Furthermore, the law of current supply meant that, if planters tried to sell fish to anyone else, their current suppliers of credit might sue in defence of their preferential liens, possibly forcing the planters into insolvency. If planters wanted to be sure to avoid prosecution, they had to continue to deal with current suppliers regardless of the prices that they charged for supplies or gave for fish. The law allowed servants and current suppliers to squeeze planters and leave them little room for capital accumulation from the employment of wage labour.[7]

Sider also examines truck in terms of the alleged decline of winter supply. He argues that fishing people accepted truck, even if it kept fish prices low, because their supplying merchants extended them winter supplies on credit, as well. Extending credit for winter supplies was risky because merchants could not be sure that the fishers they supplied would be able to return enough fish and oil to pay for those supplies and the necessities of the fishing season. The result, Sider suggests, occurred as early as 1825, in the plan for the firm of Slade and Kelson drawn up by

[6]Steven Antler, "Colonial Exploitation and Economic Stagnation in Nineteenth Century Newfoundland," unpublished PhD. thesis, University of Connecticut, 1975, *passim*.

[7]Cadigan, *Hope and Deception in Conception Bay: Merchant-Settler Relations in Newfoundland, 1785-1855* (Toronto 1995), 92-3.

their agent in Catalina, Trinity Bay: Alex Bremmer. The Slade and Kelson plan was to cut off winter supply for clients who had no hope of satisfying their debts to the firm. The firm would provide winter supplies to the best clients of the firm so that they would not lose their supply of fish to potential competing merchants, but such clients would not be able to supply all of the fish required by the trade. Consequently, Slade and Kelson would have to provide winter supplies to an intermediate set of clients. The firm could only manage to do this by charging all of their clients higher prices for all goods extended on credit to cover the potential losses of winter supply. Over time, this strategy of using some fishers' credit to cover others' debts could not prevent some fishers from trading with other firms. Such "leakage" forced firms to restrict credit for winter supplies further, forced fishing people to rely more on state relief, and eventually produced the financial crisis of the 1920s and 1930s, which led to the collapse of responsible government. (131-51, 221-59)

Using a particular Gramscian definition of hegemony, Sider argues that fishing people were unable to resist truck because merchant capital undermined their cultural capacity for solidarity and opposition. In the absence of a counter-balancing gentry, with its related development of civil institutions, merchant capital, with truck as its direct form of appropriation, continued to reign over fishing people. The cultural expression of this dominance among the kin-based, household fisheries of many small communities scattered around the island was an invented cultural "traditionalism." Truck prevented the dissolution of the ties between fishing people and merchants by the corrosive influence of wage labour and working-class formation. Conscious of, but powerless to resist their dependence on merchant credit, and also aware of the inequalities among themselves that grew out of truck, fishing people could only disguise exploitation through invented customs such as telling cuffers, mummering, and scoffing. Such customs diffused potential community tensions without direct confrontation of merchant capital. To alleviate the tension arising from clashes with merchants, fishing people might tell cuffers, or tall tales that exaggerated merchants' slights among themselves, but without directly holding merchants to account. To deal with growing inequalities among themselves, fishing people might use the Christmas tradition of visiting neighbours in disguise, with its merriment of drinking, singing, and dancing, to allow boat crews to form and reform without insult or slight. Finally, according to Sider, people might hold scoffs, or large feasts by which those who were doing poorly in trade with merchants might steal food from those who were doing better in a more symbolic and ritualistic redistribution of wealth. (260-78)

Sider's discussion of such customs, in addition to his analysis of rural Newfoundlanders' linguistic "idioms," has most infuriated local critics, especially in his insensitivity to the differentiation of customs by time and place.[8] He does not

[8]Sider is fascinated by vernacular vocabulary, such as the tendency of many Newfoundlanders to use "after" to express the past tense, i.e. instead of saying "I have been antagonized by Sider's book," one might say "I am after being antagonized by Sider's book."

seem to realize, for example, just how peculiar his notions of mummering, cuffers, and scoffs are, and provides little evidence to suggest that his particular examples may be an adequate basis for generalization. Again, he has let his over-bearing theory drive interpretation without regard for evidence. Careful historical documentation of the changing nature of customs over time and place is absent in Sider's analysis. For example, most of his discussion of the Slade and Kelson plan is actually an extended block quote from documents prepared by Bremmer. Sider does not show that the firm actually tried to put the plan into effect, or that the Slade and Kelson plan was typical of mercantile credit strategies generally. William Kelson, the Newfoundland partner of the firm, was still struggling with the idea of withdrawing winter credit five years after Bremmer wrote. He warned the English partners of the dire consequences that might arise from such withdrawal, and that he had been warned by one planter that the restriction of credit would mean that "'he with others *would fight for it*! — that they would have *Bread* or *Blood*!'"[9] Kelson feared that his firm would restrict credit because of the changing ecological conditions of the fishery that his clients depended on, and consequently became a champion of regulating limits on the development of more exploitative fishing gear. He maintained, until the end of his days, that poor fishing people had a moral right of access to fish that must not be jeopardized by the concentration of capital and resulting depletion of fish populations in the fishery.

The relationship between fishing people and merchants was more complex than Sider suggests. Kelson had reason to fear collective action by his clients if he restricted credit, but we have no evidence that fishing people used customs to alleviate the social tension underlying these threats and fears. There is further evidence that leakage, or clients' trading with firms other than those of their supplying merchants, was a form of protest against the credit practices of the latter. The firm of Baine, Johnston and Company (BJC), for example, found that its best fishers tended

"After" may also be used to indicate, as Sider points out, "a future, intended, or desired action." Thus, instead of saying "I will be seeking more historically grounded interpretations of Newfoundland culture," one might say "I am after seeking more historically grounded interpretations of Newfoundland culture." Apparently, such usage is more than a local colloquialism; the use of "after" is a linguistic expression of rural Newfoundlanders' subordination to merchant capital because "it is almost always used to refer to future encounters with the powerful and the dominant, or to situations where the poverty or helplessness of people is felt as a strong constraint ...."(153) Robert Paine has pointed out that "'after' is actually used independently of any power connection and is not an idiom that arose in the Newfoundland outport culture, but rather is an Anglo-Irish translation of a Gaelic idiom that, in crossing the Atlantic, passed into several regional Englishes." See Paine, "That Outport Culture," *Canadian Review of Sociology and Anthropology*, 25, 1 (1988), 153; see also F.L. Jackson, "The Marxist Mystification of Newfoundland History," *Newfoundland Studies*, 6, 2 (1990), 269.

[9]Cadigan, "The Moral Economy of the Commons: Ecology and Equity in the Newfoundland Cod Fishery, 1815-1855," *Labour/Le Travail*, 43 (Spring 1999), 27.

to trade elsewhere when it restricted credit, and that poorer fishers threatened its agent at Battle Harbour with violence if he did not release winter stores during the winter of 1929-30. The company hoped that the Newfoundland government would restore order, but police reinforcements could not be sent in winter, and local people from the communities of the southern coast of Labrador would not help the local magistrate against local store-breakers because most people were related to each other, and sympathized with people who would not let their families starve. The BJC had to release stores, replace their unpopular local agent, spend more on their more profitable clients, and pressure the government to underwrite some of the costs of issuing winter credit. Resistance is much more complicated than Sider can see through his dark lens of theory. Fishing people's threatened store-breaking at Battle Harbour, like other, more widespread episodes of store-breaking and rioting during crises in the fishery in 1816-17, the 1830s, and the 1930s, did not result in the overthrow of merchants. However, the measure of historical agency by exploited peoples is not whether they were successful in ending the conditions of their exploitation; it is rather their capacity to challenge hegemony. The people of Battle Harbour offered such a challenge by forcing the issue of relief in place of winter supplies, by breaking with established merchants, or by forcing winter supplies from them.[10]

Other reviewers have noted that Sider may be generally perceptive about the influence that merchants exercised in rural Newfoundland, despite his empirical deficiencies.[11] There is no mystery here; to see the power of fish merchants in the history of Newfoundland outports is something like being able to hit the broad side of a barn. The poverty of Sider's approach is that it pursues a particular theory of merchant capital at the expense of primary research, and ignores the activities of fishing people that do not fit with his theory. The key to good history, and good Marxism, is the careful engagement between theory and evidence. Instead, Sider reduces history to static, ahistorical categories; his work is a good example of the type of theory-driven, structurally obsessed history that E.P. Thompson so well rejected. While Thompson cited the first edition of Sider's book as "a group of astute studies of Newfoundland fishing villages," this was an approval of Sider's proposal that we may conceptualize customs as dynamic elements within, and defining elements of, the specific social and material contexts of communities.[12] It is impossible to believe that Thompson would have been able to approve of Sider's methodology. Theory, in Thompson's work, developed properly only by constant exchange with intensive research, particularly of the archival sort. Moreover,

[10]Cadigan, "Battle Harbour in Transition: Merchants, Fishermen and the State in the Struggle for Relief in a Labrador Community during the 1930s," *Labour/Le Travail*, 26 (Fall 1990), 125-50.

[11]Paine, "That Outport Culture," 153-5.

[12]E. P. Thompson, "Introduction: Custom and Culture," in his *Customs in Common: Studies in Traditional Popular Culture* (New York 1991), 13-14.

Thompson's commitment to a historical methodology of "provisional and approximate knowledge," that is of contingent conceptualization based on a rigorous interrogation of evidence, and a historical logic based on a commitment to the prioritizing of engagement in debate with other historians, is completely at odds with Sider's unwillingness to engage in the responses to his work, or in systematic research.[13]

While Sider's work rests on almost no historical research, the same may not be said for Jerry Bannister's *The Rule of the Admirals*. Bannister has examined Newfoundland and Labrador, Canadian, and British archives, supplemented by printed primary and secondary sources. Bannister takes issue with an old historiography that saw Newfoundland's lack of representative institutions of colonial self-government as out of step with developments in the other colonies of the British empire. He points out that the administration by naval authorities and subordinate civil magistrates that emerged in Newfoundland was not unusual in the empire, and refers to the institutions of this administration as the *naval state*. Bannister's central task is to reconstruct the "the history of a form of governance that remained basically intact for almost a century," and the core of such governance was legal culture and its corresponding institutions. (7) As such, Bannister's work is strongest as a conventional form of political history, with an ancillary preoccupation with an elitist construction of customary law. In the end, he produces a history, which for all of its primary research, is still overly selective in the manner in which interpretation drives the representation of evidence, and tends to over-generalize about Newfoundland generally from narrow legal research.

Bannister's book successfully refutes older views that the fishing admirals and naval administrators of the 17th and 18th centuries were despotic, inefficient and arbitrary in the exercise of their authority. He establishes that early 18th-century Newfoundland was not anarchic, but rather had propertied classes capable of forming Lockeian compacts with each other. Newfoundland also had a judiciary of fishing admirals, formed from the first masters of English ships to reach particular harbours during a particular fishing season. The judiciary followed the law of the 1699 Act to Encourage the Trade to Newfoundland (popularly known as King William's Act). The administrative needs of the fishery meant that it had become customary, by the 1680s, for naval commodores on the Newfoundland station to supplement the fishing admirals with the informal judiciary of their subordinate officers as naval surrogates. By 1729, the willingness of naval officers on the Newfoundland station to use their ships, related resources, and authority to take responsibility for the local needs of governance meant that British authorities were ready to establish the commodore of the naval squadron as Newfoundland's governor, with a complementary civil magistracy. Once established, the naval state proved to be dynamic, constantly developing in the context of locally "contingent

[13]Thompson, "The Poverty of Theory or an Orrery of Errors (1978)," in his *The Poverty of Theory and Other Essays* (New York and London 1978), 37-50.

events and contested decisions." (65) Responsive to the needs of the propertied classes, mostly merchants, and to its own imperative to govern effectively, the naval state developed judicial districts, organized junior naval officers into the judges and officers of surrogate courts, supported the expansion of a civil magistracy against the hold-over of the old fishing admirals, and developed other courts, such as those of the St. John's Assizes or the governor's court. The naval governors used naval ritual and armament to rule with an awful majesty, and to dispense swift and sure criminal and civil justice.

Bannister defines the study of governance by the Fox-Genovese and Genovese formulation of "the central historical question: who rules whom and how." (8) Historical agency, for Bannister, is the prerogative of elites. While he argues that customary law animated the naval state in the 18th century, unlike those writing in the tradition of E.P.Thompson, he separates this law conceptually from popular, "plebeian" engagement with the law. In the Bannister formulation, Newfoundland's customary laws "were constituted and overseen by officials (naval and civil magistrates), and private citizens from the propertied ranks of society (merchants and prominent townspeople)." (15) The development of law lay only in the purview of such officials and propertied people. Bannister requires this formulation to support his argument that, although by statute the naval state was apparently administratively limited, customary law provided it with an adequate basis for the effective colonial government of Newfoundland. Those who were not propertied, for the most part servants working in the fishery, appear in this study primarily to serve as the occasion of this or that development in the naval state. The propertyless are never agents of change, except insofar as they are sources of misconduct in their employment and, especially in the case of Irish servants, sources of wider social disorder.

Bannister feels that social historians have given too much agency to working people, whether they might be referred to as servants, plebeians, or the propertyless, by overstating "the case against mercantile influence" in Newfoundland history. (86)[14] But no Newfoundland historian has ever denied the power of the merchants; most local social histories of fishing people have focused on the manner in which mercantile power was not solely or finally determining in Newfoundland history. These histories have argued that fishing people were not merely slaves or victims of merchants even though their exploitation by the latter is undeniable. It is possible to find many instances in which the less powerful have managed to shape history, to force it to be other than the will of the powerful, and to gain some recog-

[14]Bannister cites my essay "Planters, Households and Merchant Capitalism," but he more directly addresses Olaf Janzen's point that I, along with historians Peter Pope and John Crowley, have argued that truck was a much more contested terrain between merchants and fishers than an older historiography, which referred to fishers as simple "slaves" of merchants, would have it. See Olaf Janzen's letter to the editor, "Response to Garfield Fizzard's essay, 'Newfoundland's First Known School....'" *Newfoundland Studies*, 12, 1 (1996): 50-3.

nition of the moral authority and prerogatives of a common humanity. In a central chapter, entitled "An Unruly Set of People," Bannister cites example after example of the perceptions of naval commanders, merchants, and missionaries to determine how people generally perceived law and authority. Elite views may well tell us much about more general perceptions, but there is no substitute for finding out what the people themselves thought and did. Without this kind of research, it is easy to conclude, as Bannister does, that written and local law cannot be conceived as having originated "from the plebeian servants or being designed for their use," and that "the struggle in Newfoundland was between competing forces within the law of the ruling elites." (96-7) Thus in his view, E.P. Thompson's "model of opposing law (a proto-capitalist force in the transition to an industrial economy) and custom (the means to resist the encroachment of bourgeois hegemony through a defensive claim to ancient local practices that constitute law)" does not apply to the case of early Newfoundland. (97)

Bannister is openly inspired by Sider's preoccupation with the agency of merchant capital, especially in his definition of paternalism as a code governing the "conditional privileges, not inalienable rights" that magistrates and merchants granted fishing servants. In Bannister's history, servants have no say over their relationship with their masters; they dangle only in the historical winds, to be buffeted by that fact that "what paternalism granted it could also take away." (245) Bannister's disemboweling of popular agency in history draws on Sider's analysis of the case of George Cartwright. He agrees with Sider that Cartwright alone decided when he might dole out rewards and punishments to the servants of his fishing, furrier, and trading station on the southern coast of Labrador during the 1770s, usually food and strong drink for their celebrations and achievements, and beatings for their disobedience. (Bannister 245-6, Sider 124-7)

Sider's, and consequently Bannister's, argument is only possible through an overly selective use of Cartwright's journal as evidence. Sider concedes at least that servants might occasionally have their master at their mercy. He acknowledges, for example, Cartwright's Christmas of 1770 experience; servants lit a roaring yule log fire, got very drunk, and fired off guns all night long, not more than six feet away from where Cartwright lay awake miserable and afraid. (123-30) Incidents such as Cartwright's Christmas-time misery suggest that he was never absolutely in control. There is evidence that servants occasionally were openly insubordinate. Such was the case in July 1777, when one of Cartwright's boat crews "formed a combination" to resist his authority. Their master was quite pleased with his brutal discipline of these servants, but the next year Cartwright faced a more serious challenge to his authority. Many of his servants took advantage of the presence of an American privateer on the southern Labrador coast. The privateer had first attacked a nearby merchant's station, but some of Cartwright's ex-servants who were there guided the ship to Cartwright's premises. As the privateer approached, boats' crews in Cartwright's employ joined it. By 28 July, Cartwright noted that "many of

my people had entered on board the privateer." By 30 August, with about 33 of Cartwright's servants as recruits, the privateer sailed away, leaving Cartwright plundered; he estimated that he had lost about £14,000 in the raid, "which I have great reason to fear, will prove my ruin."[15] Neither Sider nor Bannister deal with this incident, which suggests that Cartwright's "domination" of his servants was partial. Their quick rebellion against him by joining American revolutionaries, many of whom were British naval sailors, suggests that Cartwright's servants contested authority within a trans-Atlantic tradition of revolutionary protest from below, a tradition which demands a concession of popular agency in the negotiation of power and authority.[16]

Bannister distinguishes between his "top-down" model of paternalism and the various treatments of paternalism by myself and Bryan Palmer. But he is wrong to imply that we have discussed paternalism simply as "reciprocity and communal links." (246) Instead, we have emphasized that political power in pre-industrial society arose from class relationships, which were lop-sided but never one-sided. Palmer used paternalism to conceptualize the manner in which the elites of pre-industrial British North America, whether merchants, land agents, estate holders, early industrialists, or political oligarchs, had to exercise power in ways that reflected the uneven and highly localized developments of labour markets and resource exploitation. These developments gave exploited peoples, whether skilled mechanics, unskilled labourers, or agricultural settlers a material basis from which

[15]George Cartwright, *A Journal of Transactions and Events, During a Residence of Nearly Sixteen Years on the Coast of Labrador ....*, vol. II (Newark, GB 1792), 237, 361-7.

[16]Bannister also passes over a threatened insurrection among Irish soldiers in the St. John's garrison in 1799-1800. While he mentions the episode, its primary importance is in reinforcing the argument that ethnicity and sectarianism were at least as important as class, especially in the eyes of naval authorities. Their vigorous suppression of the conspiracy was a response to the persistent nuisance of sectarian strife rather than to a potentially counter-hegemonic, class-based challenge to the social order in the port. It is interesting to note that George Winter, son of St. John's merchant John Winter, in begging a lease from the naval governor to build a lime kiln, based his plea on his and his father's long service in the various volunteer corps. He noted that, in 1799-1800, they had stood ready when "disaffection reared its Hydra head, and almost threatened to shake that noble Fabrick, throughout the Empire, (our Glorious Constitution) and it behoved every Loyal Subject to step forward and crush the monster...." Winter's petition may be found in the papers of one of Newfoundland's most famous naval goverors: Provincial Archives of Newfoundland and Labrador, Duckworth Papers, MG 204, M-3717, F. 1980-1982; Winter to Duckworth, St. John's, 1 October 1811. This reference to the hydra further suggests, as does Cartwright's own servant insurrection through enlistment in the cause of American Revolutionary privateers, that we must acknowledge the counter-hegemonic elements of popular agency. The literature on this is rich, but the obvious starting point must now be Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: sailors, slaves, commoners, and the hidden history of the revolutionary Atlantic* (Boston 2000).

to demand that elites justify their power. There is no argument that the world turned upside down in the preindustrial world; Palmer makes clear that paternalism mainly tied oppressors to "their social superiors." It is true that the seemingly benevolent acts of paternalism by the powerful were "one part self-conscious creation[s] by the merchants, independent producers, and landed gentry," but they were also "a negotiated acceptance by the various plebeian subjects of the producing classes." The powerful, in other words, were not entirely free to dictate the terms of paternalism at will, but were rather engaged in a constant process of negotiation with the prerogatives of the rest of their communities. Such prerogatives never developed into wider collective action or class conflict because of the highly localized and fragmented nature of the social formation.[17] My own work on paternalism examined it as the ideological expression of a moral economy in which popular notions of fairness and justice governed the exchanges, including "rule," between social elites and the much less politically powerful, economically exploited.[18]

There is no room for such negotiation between the powerful and the less powerful in Bannister's work. This is clear in the importance it attaches to whipping, "a hallmark" of the naval state's justice for servants. Bannister argues that the judicial apparatus of the naval state acted squarely within the dominant English legal culture of criminalizing the law of master and servant and drawing on naval corporal punishment, using the lash regularly to discipline servants. Bannister's evidence for the constant use of whipping is thin: he found that whippings generally accounted for about 19 per cent of the punishments handed out by district courts between 1751-96, and between 20-28 per cent of the punishments handed out by magistrates in the Ferryland and Trinity records he examined. However, of the 67 whippings ordered by the district courts, Bannister's own evidence suggests that only thirteen, for "insolence, idleness" and "breach of contract, desertion" arose from breaches of the laws governing the relationship between masters and servants. This amounts to roughly 20 per cent of the sentences for whipping, or 4 per cent of all the punishments (n= 352) handed out by the 18th-century Newfoundland district courts. This small number is hardly decisive evidence that servants cowered before the lash and the authority of their masters. Bannister claims, without compelling

[17]Bryan D. Palmer, *Working-Class Experience: Rethinking the History of Canadian Labour, 1800-1991*, 2nd. ed. (Toronto 1992), 42-7.

[18]Cadigan, "Paternalism and Politics: Sir Francis Bond Head, the Orange Order, and the Election of 1836," *Canadian Historical Review*, LXXII, 3 (1991), 319-47. In addition to drawing on Palmer's work, I found two essays by E.P. Thompson to be very important, and they continue to influence my work: "Eighteenth-Century English Society: Class Struggle without Class?" *Social History* 3 (1978) and "The Moral Economy of the English Crowd in the Eighteenth century," *Past and Present*, 50 (1971), 76-136. The latter reappeared in *Customs in Common*, as did many of the ideas, revised and expanded on, of the former essay in Thompson's "Introduction: Custom and Culture," and "Custom, Law and Common Right" in the same volume.

evidence, that court records "indicate only a portion of the total punishments that actually took place." (293)

While Bannister questions that the wage lien embedded in Palliser's Act favoured fishing servants, I have argued that the lien fostered a wider tendency on the part of the Harbour Grace District courts to pass out sentences that balanced servants' and masters' interests. In my view, the long-term effect of the wage and lien system was to privilege fishing servants much more than their counterparts in other industries of the Anglo-American world. The act's provision for the imprisonment, whipping, and forfeiture of wages by deserting or negligent servants was in keeping with the criminalization of servants' breach of contract in the Anglo-American law of master and servant, but local courts ignored these provisions in favour of emphasizing the contractual obligations of masters to pay wages. The Harbour Grace courts, for example, never used imprisonment or whipping to discipline negligent or deserting servants. Servants almost always won suits against evasive masters for wages in the surrogate courts and courts of session. Although they were less likely to win cases against masters who deducted wages for negligence, servants still won between 30 and 40 per cent of such suits between 1787 and 1799. Surrogates and magistrates, even in cases lost by servants, rarely allowed masters' deductions for negligence to stand without some arbitration in favour of their employees. Naval surrogates allowed masters to deduct only the actual amount of damages that arose from the negligence; they did not allow punitive awards. In commenting on my own work, Bannister claims that "Cadigan ... still sees law primarily through the prism of statute." (21) This claim is inaccurate, but convenient in maintaining the assertion that Thompson's arguments about opposing law do not apply in the Newfoundland case. I argued that Palliser's Act was not important merely as statute. The act became a basis for servants' complaints and defenses against masters, which began to shape the law in ways that became customary in the Bannister sense, and in the sense of Thompson's plebeian or popular law. While the Board of Trade had designed the wage law of Palliser's Act primarily to induce servants to return home, local courts' rigid enforcement of the wage guarantees unintentionally transformed the act into a defense of servants' rights.[19]

Bannister's implied counter-argument is that Conception Bay is atypical of the wider Newfoundland trends. Conception Bay was unique in the sense that the resi-

[19]Cadigan, "Merchant Capital, the State, and Labour in a British Colony: Servant-Master Relations and Capital Accumulation in Newfoundland's Northeast-Coast Fishery, 1775-1799," *Journal of the Canadian Historical Association/Revue de la Société historique du Canada*, new series, 2 (1991), 17-42. At the time, I was thinking about the analyses of the law of master and servant in Karen Orren, *Belated Feudalism: Labor, the Law, and Liberal Development in the United States* (Cambridge 1991), 84-114; Robert J. Steinfeld, *The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1350-1870* (Chapel Hill, NC 1991); and Christopher L. Tomlins, *Law, Labor and Ideology in the Early American Republic* (Cambridge 1993).

dent fishery developed there far in advance of the areas Bannister studied; its history indicated a trend in the law of master and servant that spread throughout the island and Labrador in the 19th century. I acknowledged in my earlier work that naval authorities claimed that whipping was more common in the migratory fishery, but argue that it had become uncommon as a punishment for servants by the turn of the century. Bannister claims that, even in the first decade of the 19th century, servants still had reason to fear the whip. (222-52) Such fear was likely becoming more uncommon throughout the island, just as it had in Conception Bay, because of the manner in which the development of residence drove political change. The Harbour Grace court records yielded only one instance of whipping ordered by surrogates in 1787, comprising 2 per cent of the total 64 verdicts handed out in that year, while two of eighteen verdicts were for whipping (11 per cent) the next year. The extant surrogate court records (there are gaps from 1798 to 1806 and 1810 to 1812) indicate that no further whippings were ordered until two in 1820. Altogether, of the 3949 cases I examined between 1787 and 1825, there were only two more instances of whipping, resulting in a total of four.[20] The two other whippings, of planters James Lundrigan and Philip Butler in 1820, are key to understanding the end of the naval state. Yet Bannister does not directly deal with them in this regard. To Bannister, the whippings of Butler and Lundrigan are simple *causes célèbres* upon which they could play the sympathy of British reformers who saw the supposedly commonplace corporal punishments of Newfoundland as outrageous and outmoded. Otherwise, the naval state collapsed because of a conventional colonial reform struggle against taxation without representation. The end of the naval state came between 1824 and 1832 because of the actions of a coalition of local merchants, members of the St. John's bourgeoisie, and their allies in the British parliament. (256-88)

But the naval state did not collapse only because of the actions and debates of the political and mercantile elite. The collapse also came because of the post-1815 depression in the fishing industry and related dominance of the resident fishery. This change in the fishery undermined the naval state immediately through civil unrest and rioting among unemployed fishing servants. Given the period he addresses, Bannister curiously fails to mention one of its most famous episodes, the "Winter of the Rals." During the winter of 1816-17, as merchants restricted credit, masters let go their servants, and fire destroyed mercantile stores in St. John's, the prospect of a large, discontented servant population troubled authorities. Looming distress in Conception Bay led the Court of Sessions in Harbour Grace to order unemployed servants to report to St. John's for shipment out of the island, or be flogged and jailed. The prospect of being treated like criminals or starving led un-

[20]My figures are based on research I completed for Cadigan, "Whipping Them into Shape: State Refinement of Patriarchy among Conception Bay Fishing Families, 1787-1825," in Carmelita McGrath, Barbara Neis, and Marilyn Porter, eds., *Their Lives and Times: Women in Newfoundland and Labrador, A Collage* (St. John's 1995), 48-59.

employed servants in St. John's, Carbonear and Harbour Grace to form bands that rioted for relief and broke open merchant stores to seize food. Authorities preferred to think of the rioters as a disorganized rabble, and called them "Rals," an Irish term for rascals, but the rioters displayed discipline and organization, taking only the food they needed to survive. The naval governor, Francis Pickmore, had left Newfoundland for the season; the responsibility for dealing with this "Winter of the Rals" fell to Captain David Buchan as the senior naval officer and surrogate. Pickmore had hoped that Buchan could use public works to employ some servants, and deport the rest. However, Buchan did not have the revenue to spend on public works, and the government realized it did not have the legal right to deport or flog people simply for being unemployed. The naval captain had to issue naval stores to relieve distress, and the government provided aid to those who voluntarily wished to leave Newfoundland.[21]

The "Winter of the Rals" made administrators of Newfoundland's naval government, especially Buchan, aware that the consequences of the migratory fishery's decline and the growth of the resident fishery would make local society difficult to govern. The government placed its hopes in the patriarchal reorganization of a resident fishery by households that relied primarily on family labour. Authorities expected that male household heads would keep their families and other dependents in check. However, the growing importance of women in the shore work of curing and drying fish, and in the crucial supplementary farming of their households, challenged official expectations that society would conform to official models of patriarchal acquiescence. Butler and Lundrigan each received sentences of 36 lashes of the cat-of-nine-tails for their contempt of court, not because they rebuffed court officers who attached and seized property to satisfy the debts their merchants took legal actions for, but because of their wives refusal to obey the court's officers. There is no evidence to suggest that the surrogates, especially Anglican minister John Leigh, acted out of sectarian reasons, and they had never ordered corporal punishments in other more obvious and occasionally violent cases of contempt. The only difference between Butler and Lundrigan and the other offenders was that their cases involved wives openly defying the ideology of women's passive confinement to the private sphere of the patriarchal family.

Political reformers such as William Carson and Patrick Morris opportunistically portrayed the incidents as examples of the supposedly brutal and arbitrary authority exercised by naval authorities, but their complaints about the whippings also suggest that they felt that such corporal punishment had long become a thing of the past. The suits brought against Buchan and Leigh in the Supreme Court by Butler and Lundrigan, with the Reformers' support, led to Chief Justice Forbes's expression of disapproval for the harsh sentences meted out by the surrogates in these instances. The Butler and Lundrigan affair further undermined the legitimacy of the naval state in the eyes of imperial authorities. British authorities had already been

[21]Cadigan, *Hope and Deception*, 54-7.

preoccupied by the naval state's inability to meet the government needs of residence, and began to accept Reformers' arguments that if they, and not the naval state dupes of West Country merchants, controlled the development of Newfoundland, its economy would flourish, especially by agricultural development. The Butler and Lundrigan affair was the final discrediting of the naval state, as British authorities planned civilian colonial representative institutions.[22]

Bannister's emphasis on the importance of whipping as a punishment is understandable in light of his adherence to the Fox-Genovese and Genovese formulation about power in history. Although their specific object of critical analysis was on Fogel and Engerman's work on slavery, Fox-Genovese's and Genovese's formulation was also an oblique attack on Herbert Gutman's social history. Gutman, supposedly, was guilty of "a bourgeois swindle" in his celebration of the capacity of working people to build cultural traditions in opposition to the cultural imperatives of capitalism and its related forms of exploitation. In their view, Gutman overly celebrated slave and working-class culture and over-emphasized the political potential of class consciousness among small elites within the working class as it changed over time. But Fox-Genovese and Genovese confused the discovery of previously under-appreciated oppositional tendencies in the history of exploited peoples with their romanticization.[23]

Oddly, while Bannister draws inspiration from Fox-Genovese and Genovese, his own analysis superficially resembles Gutman's criticism of Fogel and Engerman's position on the benevolence of American slavery. Gutman argued that Fogel and Engerman misrepresented whipping as uncommon in American slavery because they averaged the number on whippings over a two-year period as recorded in the diary of Louisiana planter Bennet H. Barrow in the early 1840s rather than observing the frequency of such whippings, or considering the impact of wit-

[22]Cadigan, *Hope and Deception*, 123-40; Cadigan, "Whipping Them into Shape," 48-59. The Butler and Lundrigan affair is a useful reminder of the neglect of gender as an analytical category in Sider's and Bannister's works. There are very vew studies that offer helpful arguments about the role of gender in social and state formation in Newfoundland. The exception is Barbara Neis, "From 'Shipped Girls' to 'Brides of the State': The Transition from Familial to Social Patriarchy in the Newfoundland Fishing Industry," *Canadian Journal of Regional Science*, XVI, 2 (1993), 185-202.

[23]Bannister cites Elizabeth Fox-Genovese and Eugene D. Genovese, *Fruits of Merchant Capital: Slavery and Bourgeois Property in the Rise and Expansion of Capitalism* (New York 1983), 212, but their original argument was "The Political Crisis of Social History," *Journal of Social History*, 10 (1976), 205-220. David Montgomery more usefully addressed the issue in his review essay "Gutman's Nineteenth-Century America," *Labor History*, 19 (1978), 416-29, and the rhetorical excesses of the exchanges between Gutman and Fox-Genovese and Genovese are well summarized in Ira Berlin's "Introduction: Herbert G. Gutman and the American Working Class," in Berlin, ed., *Power and Culture: Essays on the American Working Class* (New York 1987), 46-59.

nessing such whippings on other slaves.[24] Bannister correctly echoes Gutman's and Greg Dening's caution that we must consider the social context of whipping alongside its frequency. (230)[25]

It has to be borne in mind that Gutman was making his particular point in response to an argument that whipping was insignificant within the context of slavery. Gutman's own response to the Fox-Genovese and Genovese maxim was that it was at least as important to understand how the supposedly ruled reacted to, and transformed, what was done to them. The Gutman argument implies that a group of people legally subjected to the possibility of whipping, such as in the Newfoundland fishery, would be able to perceive that the punishment was uncommon and in decline at least as much as they could perceive its barbarity. To be closed to this possibility would be to accept the equally functionalist perspectives of Fox-Genovese as well as Fogel and Engerman, that social experience varies only with the vagaries of rulers' decisions — whether paternalistic or market-oriented — about how they might rule.[26] Bannister is not open to this possibility; it would not fit in with his argument that only the exercise of power by elites matters in the case of the law and fishing servants in Newfoundland.

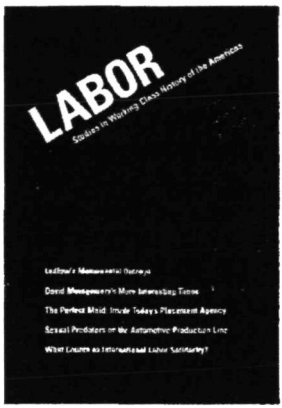
Over thirty years ago, the practitioners of the "new" social history began to do much more than add the history of common people to the categorical lists of the discipline. They insisted that we appreciate the agency of such people — that we could no longer see other categories of history, most notably political and economic history, as being beyond change that originated with such common people as well as with the powerful. The effects might not always be what they hoped for, but that does not change the fact that working and exploited peoples caused change. They acted in relationship to other classes of exploiters. The process of hegemony is to take oppositional undercurrents and transform them into the more open currents of class domination. But perhaps the most insidious implication of hegemony is the manner in which it can transform historical agency into only that of the powerful; it alienates common people from their own potential to transform history. Gerald Sider's preoccupation with the determining role of a theoretical concept, merchant

[24]Gutman's classic criticism of Robert W. Fogel and Stanley L. Engerman, *Time on the Cross: The Economics of American Negro Slavery* (Boston and Toronto 1974), 107-57, was *Slavery and the Numbers Game: A Critique of "Time on the Cross"* (Urbana 1975), 14-41.

[25]Dening estimated that about 22 per cent of the cases brought against sailors by their British naval masters in the Pacific between 1765 and 1795 resulted in floggings. He established a low of just over 8 per cent for the infamous Bligh's *Providence* and a high of over 45 per cent for Vancouver's ship *Discovery*. Bannister may only approach such percentages by treating all acts of whipping as if they were punishments designed to discipline servants in their employment relationships; see Greg Dening, *Mr. Bligh's Bad Language: Passion, Power and Theatre on the Bounty* (Cambridge 1992), 113-56.

[26]See Gutman's discussion of this with Michael Merrill, as recorded in Henry Abelove, *et al.*, *Visions of History* (New York 1984), 210-12.

capital, in Newfoundland history, is just as alienating. His study of Newfoundland makes the actual history of rural people into a caricature, largely because of its impoverished research. Jerry Bannister's work reveals that a greater concern for research is no guarantee of a better understanding of agency in history. His *a priori* commitment to the Fox-Genovese and Genovese formulation means that he only finds the intentions of the powerful to be important in the creation of law in 18th-century Newfoundland because that is all he looked for. While power may be the preserve of elites, historical agency is not.



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