

The "trickle is worth noting": Common Law and Consumerism in Early Newfoundland History

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[See table of contents](#)

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REVIEW ESSAYS/NOTES CRITIQUES

The “trickle is worth noting”: Common Law and Consumerism in Early Newfoundland History

IN RECENT YEARS, NEWFOUNDLAND’S history from the 17th to the 19th centuries has been justifiably re-examined. The picture of an island suffering from retarded colonization, an isolated and only marginally efficient fishery, and a society lacking proper colonial government and laws has been probed, challenged, amplified and at times altered to the point where D.W. Prowse is no longer a starting point but merely a straw-person for understanding Newfoundland’s past and present.¹ Keith Matthews would be pleased at what his pioneering research and re-interpretation has sparked!² Two recent prize-winning studies, Jerry Bannister’s *The Rule Of The Admirals: Law, Custom and Naval Government in Newfoundland, 1699-1832* (Toronto, University of Toronto Press, 2003) and Peter E. Pope’s *Fish into Wine: The Newfoundland Plantation In the Seventeenth Century* (Chapel Hill, NC, University of North Carolina Press, 2004) take threads or trickles from Newfoundland’s past and build these at-first-glance limited themes into what has been applauded by the academy’s prize committees as outstanding scholarly studies that place Newfoundland at the forefront of the burgeoning British Atlantic historiographical world.³

Jerry Bannister’s book underlines the neglect and “isolated backwater” image of colonial Newfoundland in recent studies of “the trans-Atlantic links of the British Empire”. He employs the introduction and evolution of customary and common law on the island to capture how Newfoundland was “governed in the 130 years prior to the establishment of an elected assembly” (pp. 3-7). The rule of the fishing captains, established in 1699, was quickly supplanted by the Royal Navy, which constructed “a hybrid customary judiciary”, drawing on civil and naval authority to provide “an effective system of naval government” that persisted from the 1750s almost until the introduction of representative government (pp. 6-7).

Meticulously researched and arguing that reliance only on statute law and imperial edicts conceals the development of Newfoundland’s legal culture, Bannister emphasizes the Royal Navy’s role in providing “the infrastructure, personnel, legitimacy, and material force needed to administer law” (p. 281). It was a system first implemented by naval officer and governor George Brydges Rodney in the 1750s,

1 For the fullest assault on Prowse and modern-day implications, see Jerry Bannister, “Whigs and Nationalists: The Legacy of Judge Prowse’s *History of Newfoundland*”, *Acadiensis*, XXXII, 1 (Autumn 2002), pp. 84-109.

2 Keith Matthews’ original provocative “Historical Fence Building: A Critique of the Historiography of Newfoundland”, *The Newfoundland Quarterly*, 9, 3 (April 1978), pp. 21-30 was re-edited and re-published in *Newfoundland Studies*, 17, 2 (2001), pp. 143-65.

3 For an introduction to this world, see Luca Codignola, “How Wide Is The Atlantic Ocean? Larger and Larger”, *Acadiensis*, XXXIV, 2 (Spring 2005), pp. 74-80 and Nicholas P. Canny, “Writing Atlantic History: or, Reconfiguring the History of Colonial British America”, *Journal of American History*, LXXXVI, 3 (December 1999), pp. 1093-1114.

which eventually allowed civil magistrates to combine with naval authorities in offering Newfoundland's outpost society a combination of common law and custom altered to fit local realities. Thus, Newfoundland emerges as far from ungoverned and lawless, and the allegedly corrupt fishing admirals of Prowse – about whom conclusive evidence is lacking in any event – are quickly relegated to the sidelines while a basically military system of law and order takes centre stage. The excesses of naval administration of the law are sometimes clearly acknowledged, but “terror” was tempered with “mercy” (p. 187). Employing legal insights, Bannister is able to present a vivid picture of the social and economic realities of pre-representative government in Newfoundland. Revisionist with a vengeance, he still draws the line at portraying this “effective” system of law and government as beneficial to all classes, genders and ethnic groups. The law, after all, Bannister explains, “was an expression of social power” revealing “who ruled whom”. Merchants and planters were protected far more than servants/fishermen while the “dieters” and the potentially seditious Irish Catholics were particularly suspect. In sum, it was an “autocratic regime” marked by “violence and intimidation” where the growth of “judicial authority” did not bring any substantial measure of “social justice” (p. 288).

It is a compelling study, readable and well argued, if tediously single-minded and overly assertive at times. This dissection of common law, statute law, prerogative writ and local custom elevates customs and usage to “the centre of the island’s legal culture” (p. 15) and chastises politicians and scholars who missed this point. Beginning with reformers William Carson and Patrick Morris and extending through to Keith Matthews, Sean Cadigan, Patrick O’Flaherty, and even legal historian Christopher English, an unfortunate “fixation on written law” (p. 21) has apparently obscured common law’s importance and the Royal Navy’s significance. But Bannister’s evidence and argument might have been better served by a more positive and gracious approach to those labouring on slightly different aspects of Newfoundland’s political and socio-economic evolution. Likewise a tendency to overstate the significance of his case occurs when Bannister, all too briefly, places his 18th-century Newfoundland in a broader historiographical context. While his point is well taken that “state formation in the eighteenth century cannot be relegated to an ancillary role in the broader narrative of Canadian political history” (p. 286), one wonders whether the post-revolutionary British Empire can be convincingly divided into only two basic models with Newfoundland fitting neither. Moreover, in the pre-revolutionary empire, has sufficient comparative evidence and argument been presented concerning potential legal parallels in sister colonies? Or has the author converted an old Newfoundland negative exceptionalism into a new, equally unwarranted and overly positive exceptionalism?

Newfoundland exceptionalism in need of revision is also at the heart of Peter E. Pope’s *Fish into Wine*. From preface to conclusion this delightfully written, shrewdly analytical study wrestles with the uniquely Newfoundland questions of the supposed illegality of settlement, the assumed conflicts between fishers and settlers, and an allegedly underdeveloped and isolated colonial society “without government, ecclesiastical or civil” (pp. v, 10). One of Pope’s central themes is “the early development of a modern consumer society” (p. viii) in which 17th-century Newfoundland was a well-integrated and successful unit. An immensely valuable cod fishery trade was “the best (and of lightest coste that can be founde) to countervaille”

England's imbalance in trade that had developed in the late-16th century as it struggled to balance its wine imports from Europe by "exports to the wine-producing regions" (p. 91). A successful triangular trade, eventually linking England, the Iberian Peninsula and Newfoundland, "consisted of two steady flows and one trickle, but the trickle is worth noting". Small though the trade to Newfoundland might have been, it allowed the island "to share in the new wealth of Europe" in a trading process that turned fish into wine and some of that wine back into fish (p. 422). The focus of this intriguing archaeological/historical study is the overwintering fisherfolk/settlers resident on the English Shore of Newfoundland, particularly Ferryland and the family of Sir David Kirke.

Pope's re-creation of life on the 17th-century English Shore bristles with perceptively revealing aspects of the fishery, the people who worked in and profited from it, and comparative analysis firmly knitting Newfoundland into old world and new world patterns of development. Prior to Sir David Kirke's arrival, cod was already a vital part of Europe's American commercial interest, vastly exceeding the fur trade in value; but, as a London wine merchant, Kirke intended to subsidize his fur trade aspirations in the Gulf of St. Lawrence region as well as enhance his wine trade (p. 411). Taking over Ferryland from the Calvert family in 1638, Kirke now had an excellent geographic location – "a natural watering stop for transatlantic voyagers" from which to conduct "a multilateral trade in fish and wine" (p. 80). This fishing plantation proved an excellent investment which the family held on to after Kirke's political demise and death in 1654. His sometime residence on the island was imitated by his widow and four sons who operated fishing plantations until the French attack and destruction in 1697 (pp. 6-7). Although there were fluctuations in the international market, in wartime as well as more substantially in the 1680s, as well as other difficulties, cod enjoyed a "long-term price stability" compared to the falling prices encountered at times by "other American regional staples like wheat, sugar, and tobacco" (p. 39). Archaeological evidence at Ferryland reveals "the remnants of the infrastructure of a well-capitalized resident industry" from which Kirke and his heirs did "very well" indeed (pp. 8, 437, 142).

The Kirkes were key figures in the Ferryland area and, while not necessarily representative, other planters and merchants also found the cod trade viable if not lucrative. Annual planter family incomes, according to Pope, were in the £40 to £55 range, ranking them with English "yeomen freeholders", artisans and craftsmen (p. 261), while skilled "Newfoundland fishermen could expect incomes in the order of 150 percent of those paid ordinary Atlantic seamen" (p. 418). Even servants in the fishery, according to a 1675 report, did well: "A poore labouringe man will gett in a summers season near £20, their dayley food comes out of the sea; which were such a person in England, he would not gett £3" (p. 169). As Pope puts it, thousands of miles away a "bonfire of consumption that had been kindled in Europe" would soon visit the English Shore residents since they "had cash or credit and, not surprisingly, they expected a share of that warmth" (p. 406). Consequently their consumption habits were on a scale somewhat higher than their old world counterparts. Wine might have been an English middle-class luxury, but in 17th-century Newfoundland ordinary working people regularly drank "good liquor" such as wine, brandy and eventually rum while tobacco, still a novelty in England, was in wide use (pp. 382, 384-5, 357). Tippling houses abounded according to visitors. To Pope, access to trade goods

combined with the Newfoundland environment and fishing economy to lead servants to embrace “drinking and smoking” as “social activities that helped them deal with the difficulties of living in crowded conditions, close to the scene of production, and far from their own homes” (p. 350). His archaeological evidence confirms a quest for “the immediate satisfaction of the jug, the pipe, or a warm suit of clothes, rather than the longer-term gratifications of consumer durables, whether decorative pottery or better housing” (p. 385).

These snippets do not do justice to Pope’s portrait, but they at least hint at Newfoundland’s integration with a “wider, transatlantic cultural system” which gradually transformed this “resource periphery” into a “modern” place. The comparative approach is vital to this argument and, in examining population development, the author again presents a context that reveals that Newfoundland fared as well or better than some other newly planted colonial enterprises. For a time, prior to 1640, Newfoundland’s summer population of 5,000 to 6,000 was roughly comparable to the non-Native populations of New England and Virginia (p. 200). By 1660 the island’s overwintering population of 1,500 compared to Canada’s 3,000, while by 1700 the English Shore’s 1,700 to 1,800 overwinterers, plus a transient fishing servant population after 1680 of an additional 6,000, contrasted with Maine’s roughly 2,000 European inhabitants and Acadia’s 1,400 (pp. 201-2, 412). Newfoundland was in step with other colonies in a variety of other ways as well. Not only was “the extent and permanence of early settlement . . . underestimated” (pp. 4, 204), but “paper regulation has been overestimated as a practical attempt to eliminate settlement” (p. v). As in the Chesapeake region, there was an “acute sexual imbalance” because of the overwhelming numbers of male servants; a surprising number of planter households, however, were headed by women, and “planters’ wives must have acted” in roles similar to those played by New England women such as keeping accounts, guarding fishing rooms and supervising servants (pp. 215, 297-8). The high mortality rate of the West Indies and Chesapeake was substantially lower in northern climes leading Pope to speculate that “there is no reason to assume Newfoundland was a significantly less healthy environment than, say, Salem, Massachusetts, where the mortality rate among adults was about two-thirds the Chesapeake rate” (p. 230). Further afield, the transience of planters and servants “fell within the normal circumatlantic range”, comparable to the transient labour situation in rural England, while the thousands of men and women serving in the Newfoundland fishery revealed the fluidity of the “maritime world” and the seasonality of the North Atlantic (pp. 225, 221, 234).

Admittedly, at times, evidence and argument are rather stretched or qualified, as revealed in the above “must have acted” and “no reason to assume” interjections. This is particularly evident when Pope contends that the “assumption that there was little economic life outside the fishery is a tempting simplification” but “not necessarily an accurate assessment of the economic realities of later seventeenth-century Newfoundland” (p. 53). His discussion of boatbuilding as an “important activity”, along with timber harvesting for staves and flakes among other needs, and an agricultural potential unrealized because of high servant wages, labour deficiency, and the profitability of the fishery (p. 343), while no doubt at least partially valid, remains less than totally convincing. Above all, the implication that as Ferryland goes, so goes Newfoundland (and perhaps the Western world!), deserves questioning.

Pope admits that by the 1670s St. John's had emerged as the largest settlement on the Avalon Peninsula, but it "cannot provide anything like the thick context, archaeological and documentary, that has survived for the south Avalon community of Ferryland". He points out that Ferryland, as late as 1677, had more large plantations "than any other harbour in Newfoundland" including more populous St. John's (pp. 55 and 313). Since comparative data is lacking for St. John's and other outports, and until such time as studies balancing Ferryland and the Kirkes are produced, Pope's imaginative reconstruction of the English Shore will stand as a thoroughly researched, carefully analyzed and historiographically well-integrated study of a world about which we knew too little until now.

The expanding 17th-century Newfoundland economy collapsed in the 1680s and 1690s in the face of market and fish stock shifts, fluctuating prices, and tightening credit, and was capped off by the French attacks beginning in 1696, which devastated the English Shore. Over a century later, in the 1820s and early 1830s, as Bannister persuasively documents and argues in one of the strongest segments of his work, the old naval rule of law gradually crumbled, surrendering to attacks from both Newfoundland and English reformers. Both studies succeed in building what might be slender threads – common law and consumerism – into revealing vistas concerning Newfoundland's 17th- and 18th-century governance, economy and society. Jerry Bannister and Peter Pope deserve high praise for demonstrating that transatlantic linkages have always been a vital feature in understanding Newfoundland and other North Atlantic colonies. This approach recently enjoys a new vitality and attention as neighbouring, more southern Atlantic colonies are re-examined and re-integrated with this broader Atlantic world.

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