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THE STRUGGLE FOR THE NEW ENGLAND FORM OF TOWNSHIP GOVERNMENT IN NOVA SCOTIA

By D. C. HARVEY

The purpose of this paper is to discuss the form and origin of local government in Nova Scotia. Apart from Bourinot no one has hitherto attempted to deal with this subject; and he devotes only one very general paragraph to the period under review, as follows:

The Legislature appears to have practically controlled the administration of local affairs throughout the province, except so far as it gave, from time to time, certain powers to the Courts of Quarter-Sessions to regulate taxation and carry out certain public works and improvements. In the first session of the Legislature, a joint committee of the Council and Assembly chose the town officers for Halifax, viz., four overseers of the poor, two clerks of the market, four surveyors of the highways, two fence viewers, and two hog-reeves. We have abundant evidence that at this time the authorities viewed with disfavor any attempt to establish a system of town government similar to that so long in operation in New England.¹

This paragraph is typical of much that has been written about Nova Scotia in its obscurity, its lack of criticism, and its failure to offer any interpretation of existing conditions. One naturally desires to know whether any other form of local government had been known to the early Nova Scotians, or whether any attempt had been made to establish a system of town government similar to that in New England; and, if so, why the Legislature had insisted upon keeping control in their own hands.

In order to answer these questions it is necessary to recall the fact that the dominant element in the pre-Loyalist population of Nova Scotia came from New England and came to their new homes only after having received assurance that they would be living under the same institutions as they had left in the neighboring colonies. The northward migration itself was characteristic of the second half of the 18th century in New England. Between 1760 and 1775 it has been estimated that 100 towns were planted in New Hampshire, 74 in Vermont and over 20 in Maine. During the same period about 20 were established in Nova Scotia. They came from Massachusetts, Connecticut, New Hampshire and Rhode Island, where local self-government was practised to the full.

It is well known that in the older New England townships there was friction between the privileged and the unprivileged, and that some of both classes came to Nova Scotia. In fact, the majority of those who came to Nova Scotia sought to better their lot, both economically and politically. But Lawrence's proclamations had made no distinction between these potential immigrants; and, as the agents of the associated groups were able and prominent men, who had insisted upon definite terms of settlement, all were justified in expecting the fullest rights of self-government that had existed in the older colonies, among which was the fundamental right of holding town meetings and choosing town officers.

The following description of the New England planter applies as well to those who came to Nova Scotia as to those who went to Maine.

¹ John George Bourinot, *Local Government in Canada*: Baltimore, 1887, p. 44.

When a group of people desired to try their fortune in the interior, they would apply to the colonial legislature for a free township grant, and manage the allotments themselves. In the wilderness they did not abandon organized society, but took with them the *lares* and *penates* of their households, the New England institutions of church, school and town meeting; and in spite of early privations never lost sight of the amenities of settled community life.²

In New England, town organization had preceded county and state organization. Consequently, local life was active and comparatively independent. The exigencies of defence and self-help in general intensified this local solidarity. The town or township was, therefore, the true unit of political life; and it was brought only gradually under the superior authority of the state. In Nova Scotia, the New England planters had to deal with the central government at Halifax, from the beginning. It had been organized a decade earlier than the New England migration and it was determined to insist upon its authority, however willing it might be to delegate specific powers to local units. The fact that the central government granted the lands of the townships and also considerable assistance in transport and supplies to the immigrants gave an advantage to the Government in its efforts to limit the local autonomy of the New England townships.³

Without pausing to discuss the American aspects of an inquiry into the conduct of the Judges of the Inferior Court of Common Pleas for the county of Halifax in 1753, or the New England influence on the struggle for representative government in Nova Scotia, it is sufficient to notice, in passing, that New Englanders constituted the majority of the first General Assembly, and were the most prominent of the citizens of the capital at that time, two years before the Townships in Western Nova Scotia were instituted.

It should be remembered, however, that, while there were New Englanders in both the Council and the Assembly, the Council had enjoyed a monopoly in legislation for almost 10 years, had tasted the sweets of office, and, though willing to share its formal constitutional powers with the Assembly, was sensitive as to its leadership, influence, and prestige. For example, in adopting legislative procedure, it imitated English forms so closely as to use the Norman French formula for directing bills to the Assembly, until that body contemptuously insisted that the simple mother tongue was sufficient, and that the Council in its legislative capacity was not a House of Lords. Moreover, the Council numbered among its members the Chief Justice, who, though a New Englander and one of the earliest advocates of a complete constitution for Nova Scotia, had exerted himself to the utmost in purging the laws of the colonial alloy so as to refine the pure British gold. It is not surprising, therefore, to discover that, in the first sessions of the Legislature, the Council objected to the New England idea of having local officers elected at a town-meeting, and favored the British and Virginian systems of supervision by General Quarter Ses-

² Morison & Commager. *The Growth of the American Public*. New York, 1930, p. 61.

³ The discussion henceforth is based upon materials in the Public Archives of Nova Scotia: correspondence between the Governors of Nova Scotia and the Imperial Government, Inland letter books, Minutes of Council, Journals of the Council and Assembly, Township grants, Minutes of Quarter Sessions of the Peace, Statutes at Large of the Province of Nova Scotia, Proprietors' records, and miscellaneous papers. I am indebted to Mr. J. S. Martell, a graduate student of Dalhousie, who wrote an M. A. thesis, under my direction, on the period between 1758 and 1783, and assisted me in this study.

sions of the Peace, by which means the right hand of the Executive governments could be stretched, in theory, to the utmost bounds of settlement. If these facts are remembered, it may help to explain the rather puzzling manoeuvres of both Council and Assembly, in which credit for having initiated legislation seems to them quite as important as the efficacy of the legislation itself.

The first Assembly met on October 2, 1758; and, within two weeks, it had prepared a bill for the town of Halifax, which was to be governed by a President and Common Council. The Council took no immediate action on this bill but, a month later, it sent down one of its own, for erecting Halifax into a *parish*, with power to provide for its own poor. The Assembly replied that it could not take this bill into consideration, until it had heard what had become of its earlier bill, to provide for a municipal council. The outcome was a conference between the two houses; and a compromise between the two bills seemed to have been reached; but, when the Assembly had embodied this agreement in a bill, "for the choice of Town Officers for the Town and Suburbs of Halifax and for prescribing their duty" the Council again procrastinated, until a pointed question was asked by the Assembly, as to what had become of its bill. It then suggested another conference. But, by this time, the Assembly was on its diginty; and it informed the Council that, until it knew what were the objections to the bill, it could not instruct a committee properly for such a conference. This led to an exchange of recriminatory notes, from which it may be gathered that the Council resented the action of the Assembly, in going ahead with the bill, without having first submitted a draft to the Council's committee. Finally, on March 2, 1759, the Council formally vetoed the bill on the ground that it was "contrary to His Majesty's Instructions".

Curiously enough, it then drafted a bill, that had no apparent relation to the question at issue, but, through its machinery, became the model for township government in Nova Scotia, until the definitive act of 1765.

This bill was entitled "An Act for Preventing Trespasses," and was first sent to the Assembly, on March 3rd. It was returned, with amendments, by the Assembly, on the 10th, and sent down again to the Assembly, with revisions, on the 12th. The Assembly returned it, with further amendments, on the 15th, and, on the 19th, it passed the Council in final form.

The act itself, provided merely, for the erection of fences by the proprietors of land, for the restraint of cattle and hogs from wandering at will, and for keeping streets, lanes, and highways free from obstruction. Its interest, apart from the clash of wills and wits between the Council and the Assembly, in which the victory lay with the Council, lies in the following section on the powers, duties, and mode of appointment of town officers.

And be it further enacted, That the Committee of the General Assembly to be appointed for that end, shall, and are hereby empowered, to nominate four suitable overseers of the poor, two persons for Clerks of the market, two persons for fence viewers, two persons for hogreaves, and four persons for surveyors of highways, to serve for the town of Halifax, till the sessions of the Supreme Court, Court of Assize and General Gaol delivery, to be held in October next, at which time the Grand Jury of the said Court are hereby impowered to choose other meet persons to serve in their room, and so from year to year; and the said persons, so nominated or chosen, shall be sworn, to the faithful discharge of the duty of their several offices; and the person or persons who shall refuse to serve in the said offices, to which they are respectively nominated or chosen as aforesaid, shall forfeit and pay the sum of forty shillings each, and the said Committee or Grand Jury are hereby authorized to nominate or choose other persons to serve in their stead.

On March 30th, a joint committee of the Council and Assembly met and chose the officers, as enumerated above, to serve until released by the Grand Jury, in the following October; and so ended the first struggle of the New Englanders in Halifax to obtain municipal government.

It was while this first Assembly was in session that Governor Lawrence issued the two proclamations, that ultimately brought the New England planters to Western Nova Scotia, under what they regarded as definite promises of both central and local institutions of government similar to their own. The first proclamation was issued on October 12, 1758; and described, in general but enthusiastic terms, the lands that were available for settlement in Nova Scotia. The second was issued on January 11, 1759; in answer to specific enquiries from several prospective settlers or agents, communicated through Mr. Hancock of Boston and Messrs. Delancey and Watts of New York. The second proclamation contains *inter alia*, the following paragraph:

That the Government of Nova Scotia is constituted like those of the neighbouring colonies, the Legislature consisting of Governor Council and Assembly, and every township as soon as it shall consist of Fifty Families will be entitled to send two representatives to the General Assembly. The Courts of Justice are also constituted in like manner with those of the Massachusetts, Connecticut and other Northern colonies.

In April 1759, agents of prospective settlers from New England appeared, in person, before the Governor and Council with a number of still more specific questions, which were answered to their satisfaction; and from that date the New England migration was assured. There is no doubt that, although neither the proclamations nor the minutes of Council give details as to the exact mode of choosing town officers or as to the specific powers of the proprietors, the New Englanders, finding the word "township" freely used, accepted the term with all its implications. Further there is indirect evidence that Governor Lawrence and his Council felt committed to these implications: for in 1760 an act was passed "to enable proprietors to divide their lands held in common and undivided," and this was at first done, until His Majesty disallowed the Act. Likewise, in 1763, Charles Morris and Richard Bulkeley, two men who had been close to the mind of Lawrence, when he negotiated with intending settlers, made a report, in which they pronounced definitely in favour of incorporated towns, and asserted that the promise of these had been one of the chief inducements to settlement. Their statement is brief but convincing:

Upon application of the Settlers from New England for Townships to General Lawrence Among other promises to induce them to come, this was not the least Prevalent, that they should be Intitled to the same Priviledges they enjoyed in the other Colonys, and in Particular that of being Constructed into Townships and having officers Chosen by the respective Towns to regulate their own affairs, this would be very essential to establish peace and good order among them and promote their welfare.

From all this, it seems clear that the Townships established in Western Nova Scotia, between 1760 and 1765, were on a different footing from Halifax and Lunenburg, and would not submit to delinquency on the part of the central government without a struggle. Unfortunately, Governor Lawrence died suddenly in 1760; and Chief Justice Belcher, who assumed the reins of government on his death, taking certain strictures on the late Governor's generosity to the New England planters as a mark of confidence in himself and an instruction what to avoid in future, quarrelled with the old members of the administration, and used his position and legal know-

ledge to defeat the purposes of the Council, which was at this time favourable to the petitions from the New England settlers.

In the meantime (1759), Governor Lawrence and his Council had declared the metes and bounds of five counties: Halifax, Annapolis, Kings, Lunenburg and Cumberland; and proposed to set up judicial and administrative machinery as settlement proceeded. This involved the appointment of magistrates who met in Quarter Sessions and Judges of the Inferior Courts of Common Pleas, who frequently were identical with the magistrates. These judicial officers were destined to assume also the administrative functions of the counties.

During the next five years, the central government in Halifax was preoccupied with war and rumors of war, and with the actual problems of settlement, so that there was much that was haphazard about local administration; and the townships on the south shore and in Chignecto were not as closely supervised as were those of Kings County and Annapolis.

The proprietors of the first townships, in accordance with their understanding of the conditions of the grants, and with the act of 1760, immediately appointed their committees to apportion the town plot, the land for a school and a church, and the marsh land, cleared upland, and woodland. When this Act was disallowed, in 1761, their committees had to be appointed by the Governor and Council; and they could not, of their own accord, make any changes in their allotments. This led to considerable friction and discontent, and, in some instances, coercion had to be threatened by the central government.

In the session of 1761 the immediate administrative needs of the agricultural townships, apart from the allotment of land, was provided for, in two acts: the first "for ascertaining the Times and Places for the holding of the General Quarter Sessions of the Peace and the Inferior Courts of Common Pleas for the counties of Lunenburg, Kings County and Annapolis," and the second "for the repairing and mending Highways, Roads, Bridges and Streets, and for appointing Surveyors of Highways within the several Townships in this Province." The former extended the judicial organization that already existed in Halifax County to the three counties therein named; and the latter applied the principle of the Act of 1759 for the selection of necessary town officers. The latter dealt only with surveyors of highways, and provided that they should be chosen by the Grand Jury at the General sessions of the Peace. It was the British and Virginian not the New England way; and the principle of secondary not primary election; and it was soon expanded to include all town officers that were chosen prior to the Act of 1765. For example, in April 1761, the Grand Jury for King's County chose surveyors of highways, surveyors of lumber, fence viewers, and pound keepers for the townships of Horton, Cornwallis, Falmouth and East Falmouth (Newport). In November, they chose the constables for the same townships; and, in the following June, overseers of the poor were added to the list.

But the regulation of settlement in the townships was still a pressing matter. Some of the proprietors had not arrived, and others were coming, who had to be provided for. This, and the disallowance of the Act of 1760, led Lieut.-Governor Belcher, in 1762, to issue the following proclama-

tion, whereby the proprietors on the spot were to find that, in addition to choosing their committees, the government at Halifax was about to interfere actively in determining the personnel of the proprietary groups in the various townships.

Whereas many Rights are become vacant in several of the Townships in this Province, viz., Sackville, Amherst, Granville, Yarmouth, Barrington, Onslow, New Dublin, Chester, by failure in the Grantees of performance of the required condition of settling with their families within a limited time, I have therefore thought fit to publish this proclamation, giving notice that all persons who shall come as settlers to any of the above mentioned Townships with their families and stock, on or before the 15th day of September next, shall be entitled to shares according to the number in each family, and in proportion to the grants heretofore made until the number in each Township shall be completed.

This same year (1762) the townships of Liverpool, Barrington, and Yarmouth were organized as Queens County.

This gradual withdrawal of local autonomy and general extension of the authority of the central government over the townships led to an illuminating protest from Liverpool, in July 1762, in which the memorialists claim that as British subjects they were born to be free. The protest is, in part, as follows:

We your memorialists proprietors of the Township of Liverpool look upon ourselves to be freemen and under the same constitution as the rest of His Majestys King George's other subjects not only by His Majesty's Proclamation but because we were born in a Country of Liberty in a land that belongs to the Crown of England, therefore we conceive we have right and authority invested in ourselves (or at least we pray we may) to nominate and appoint men among us to be our Committee and to do other Offices that the Town may want. His present Excellency, your Honour and the Council of Halifax have thought proper to desrobe and deprive us of the above privilege which we first enjoyed. This we imagine is encroaching on our Freedom and Liberty and depriving us of a privilege that belongs to no body of people but our-selves.

They then denounce at some length the policy of the official committee for encouraging farmers rather than fisherman or traders, and conclude, with the petition "that we may have the privilege to choose our own Committee and other officers as it will greatly pacify us and the rest of the People of the Township; and what we must insist on as it belongs to us alone to rule ourselves as we think ourselves capable."

This protest and petition from Liverpool is interesting for its revelation of the mentality of its settlers and the independence of their spirit. As they were not as accessible from Halifax, as the agricultural townships, they, from the first, had been more or less a law unto themselves, and the judicial machinery of the county was not actually extended to them before the township act of 1765.

But, from King's county, an even more formidable budget of grievances was transmitted to the Board of Trade in 1763. This address was, in part, a protest against Lieut-Governor Belcher himself, and, to that extent, had the support of a number of the officials in Halifax, who had sat at the right hand of Lawrence.

As to the subject under discussion, they say that the principal inducement for them to come to Nova Scotia had been the assurance of the protection of government in all their civil and religious rights and liberties, as they had enjoyed them in the governments whence they came; but that they were now deprived of those rights and privileges.

That notwithstanding the Promise given us by the late Governor Lawrence—that we should have the Privilege of Naming and admitting Settlers of our own Country men in the several Townships in this Country Yet we find to our Great Grief

and Disappointment that many strangers not resident here are admitted by the Lieut-Governor and his Agent "Isaac Deschamps Esq." to the Exclusion of some Persons in the possession of their Lotts—who are thereby turn'd out of Possession without any Process of Law and thereby ruin'd.

That Towns are not incorporated agreeably to His Majesty's Instructions—whereby the Inhabitants are prevented from Transacting the necessary affairs of the Townships though we were promised the same should be—by the late Governor Lawrence—in the same manner as they are in the other colonies.

After listing a number of other grievances, not pertinent to this study, they make a direct attack on Lieut.-Governor Belcher: "And we apprehend that this uncommon and Tyrannical Conduct is set on foot and supported By the Lieut.-Governor and Commander-in-Chief."

The main plea of both these petitions was dealt with by Charles Morris, Chief Surveyor of Lands, and Richard Bulkeley, Secretary, as part of a report submitted, in October 1763. They supported warmly the idea of incorporating the towns and enabling them to choose a President and six assistants as a governing body, and such town officers as they needed. They suggested that the authority of the township government should be limited to the maintenance of the poor, making and repairing roads and bridges within their jurisdiction, building places of public worship, and supporting the clergy, agreeable to provincial law. In their opinion, these concessions would soon bear fruit, and complaints would cease.

When the Legislature met, in October 1763, the Council was in a mood to implement this report; but its efforts were frustrated by the Assembly. This is a complete reversal of the roles played by the Council and Assembly in the session of 1758; and is difficult to explain, in the absence of debates or a record of divisions in both chambers. The explanation seems to be that the Council was moved by the report of Morris and Bulkeley, and knew that incorporated towns had been promised the settlers, whereas the Assembly seems to have grown fond of its work and was reluctant to divide its sovereignty.

When the Council sent down a bill "to empower Towns to choose Town Officers, maintain their poor, and mend their streets and highways," the Assembly concluded that it needed so many amendments it would be better to draft a new one. Ignoring the first and last sections of the Council's bill they drafted one "to enable proprietors of the several Townships in this Province to maintain their poor"; and sent it up to the Council, with a request that it be accepted instead of the Township bill. The Council agreed to accept this substitute, if the Assembly would regard it as having originated in the Council. This was agreed to; and the bill became law, on November 26, 1763. The only concession to local self-government lay in the fact that the proprietors of the townships were allowed to meet annually, choose a chairman and then proceed to elect a number of inhabitants, who should be empowered to assess the whole for the relief of the poor. The same meeting should determine the total assessment that should be made for that year. This limited concession was a far cry from the varied rights and activities of the New England Town Meeting.

No further legislation, that bore directly or indirectly upon local self-government, was enacted in the next session of the Legislature, and no further protests seem to have come from the outlying counties. Where the Quarter Sessions did not meet, as on the south-west shore or at

Cobequid, the proprietors seem to have obtained permission to hold special meetings and to transact necessary business, that otherwise would have been attended to by the sessions. Finally, in 1765, legislation was enacted that, with slight amendments, fixed for more than a century the routine of local administration, and retained in the hands of the Executive government a potential control, through its appointment of magistrates and judges. This was V Geo. III CapI, "An Act for the Choice of Town Officers and regulating of Townships."

In principle, the Act was more conservative than either the Act of 1759 or that of 1761. They had left the choice of the officers mentioned exclusively to the Grand Jury; but by the Act of 1765 the Grand Jury could only *nominate* two or more persons for each office; and then, out of these, the Court of Quarter Sessions was to *choose* and *appoint*. Otherwise the machinery was the same; but the number of officers to be chosen was increased; and there was a proviso that the act should not be construed to restrain any privileges that might hereafter be granted by a charter of incorporation to any town or towns within the Province.

As it transpired, this proviso was meaningless, and may have been intended merely as a soporific. It is true that at the moment, when this legislation was being enacted, a petition was before the Legislature for the incorporation of the Town of Halifax; but, though the Council was willing, the Imperial government was not, and the Capital of Nova Scotia had to submit to the inefficient rule of magistrates in Quarter Sessions for almost a century longer.

This Act was a complete repudiation of the New England form of Township government; and it no doubt had some influence upon the attitude of the rural townships towards the American Revolution. Certainly, some of the settlers left the Province because of their dissatisfaction with what they regarded as broken pledges. But it prevented the formation of some 20 little republics in Western Nova Scotia, and it enabled the central government both to establish communication with the Townships and to retain a check upon their activities.

It is probably true also that The Imperial Government was wise in disallowing the Act of 1760, which had enabled the proprietors on their own initiative to divide Township lands held in common. This might have led to a number of small proprietary colonies that would have been still more independent of the central government and might have tried to establish an *imperium in imperio*. In fact, Alexander McNutt tried to assert the right of giving title to lands in his reservations, without reference to or recognition of the central government. This was but an expansion of the same principle. Whatever might have been, the central government finally regained control over the associated proprietors of the Townships by an act of 1767, whereby the Township lands could be apportioned and allotted in severalty, only after a writ had been obtained, to that end, from the Supreme Court, addressed to the provost marshall or his deputy; and he had to act by inquisition of a jury in the presence of two Justices of the Peace.

By these two acts, therefore, that of 1765 and that of 1767 the struggle for the New England form of Township government in Nova Scotia was brought to an end, and henceforth Nova Scotia, like Tudor England, made the Justice of the Peace its man-of-all-work.