

Jonathan Belcher: Charge to the Grand Jury, Michaelmas Term, 1754

Jonathan Belcher et Thomas B. Vincent

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Documents

Jonathan Belcher: Charge to the Grand Jury, Michaelmas Term, 1754

Jonathan Belcher, newly appointed Chief Justice of Nova Scotia, landed in Halifax on the evening of Friday, 11 October 1754, after a 26-day voyage from London. On the following Monday morning, he was sworn in as a member of the Executive Council of the Province. It was an auspicious day, for that afternoon the King's commission appointing Charles Lawrence Lieutenant-Governor was read to the public. A week later, amid much pomp and circumstance, Belcher was inaugurated as the first Chief Justice of Nova Scotia and he began his official duties by swearing in the first Grand Jury.¹

The main function of the Grand Jury was to determine whether there was sufficient evidence to send a case to trial. In October 1754, three cases were pending decision, and the accused sat in His Majesty's Gaol in Halifax awaiting their hearings. Ann Westman was held "on suspicion of breaking into the house of Ann Davis and stealing several things"; she was ultimately tried and acquitted.² Samuel and Elizabeth Chip were "charged with robbery of Jonathan Foliard on the highway"; the Grand Jury discharged Elizabeth, but Samuel Chip was eventually put on board a man-of-war.³ Finally, the most dramatic case involved the murders of two British sailors, Isaac Jolly and Jonathan McDermot, at Musquash Cove on the Bay of Fundy. On 27 July, under orders of Captain Kenzey of His Majesty's sloop *Vulture*, a party of Royal Navy tars had attempted to board the sloop *Sally and Nancy* (probably from Massachusetts) to search her for contraband. As suspected, the *Sally and Nancy* had been running livestock and goods to the Acadian French, and the British patrol ship finally managed to corner her in Musquash Cove. The *Vulture* launched her pinnace manned by a boarding party of eight; as they neared the *Sally and Nancy*, some members of her crew began firing on them with muskets and with a swivel gun mounted on the deck. Isaac Jolly was

1 For a description of the ceremony surrounding the opening of the Supreme Court, see Beamish Murdoch, *The History of Nova Scotia* (Halifax, 1866), II, pp. 250-1.

2 "Return of His Majesty's Gaol in Halifax, October 29, 1754", RG 1, vol. 342, no. 43, and "A General Return of the Prisoners try'd at His Majesty's Supreme Court in Halifax from Michaelmas Term 1754 to Easter Term 1757", RG 1, vol. 342, no. 50, Public Archives of Nova Scotia [PANS].

3 *Ibid.*

killed instantly by a musket ball (probably fired by one Benjamin Street), while McDermot was mortally wounded by the swivel gun, manned by Samuel Thornton and John Pastree. The ship was boarded and taken, and the whole crew arrested.⁴ However, only three of the crew were bound over for trial by the Grand Jury: Samuel Thornton, Benjamin Street, and John Pastree. They were tried on 25 November before the Chief Justice himself, and "after a Hearing of about 10 hours, the Jury bro't in their Verdict, *Manslaughter*". All were given a six-month jail term and were "put on board a Man of War, July 23, 1755".⁵

No doubt the nature of the three cases pending the Grand Jury had some effect on the tone and substance of Belcher's first Charge. In addition, a recent incident at Lunenburg, although it occurred before Belcher's arrival, must have had some influence. In January 1754, the "Lunenburg riots" had necessitated sending troops from Halifax to settle the populace down. John William Hoffman, who became the scapegoat of the affair, had been threatened with charges of treason and sedition, but the Council reduced the charge to one of misdemeanor, tried Hoffman, and sentenced him to two years in jail or £100 fine. Hoffman was still in jail in Halifax in the fall of 1754, and the insurrection was still fresh in the minds of those concerned with order and good government in the Province.

The Lunenburg incident, however, served to sharpen a more serious and pressing anxiety relating to civil order — the problem of the Acadian French. Within a year, Belcher would be deeply and intimately involved in expelling these people from the Province. It was, then, with an acute sense of the historic and social significance of establishing a full judiciary in the emergent Province of Nova Scotia at a critical point in its political and social history that Belcher delivered his Charge to the first Grand Jury.⁶

THOMAS B. VINCENT

Gentlemen of the Grand Jury,

The important trust now devolv'd upon you, and the Solemn Appeal for the Execution of it, must unquestionably sway upon your Minds and Reflexions with such Awe and Influence that it will be unnecessary for the Court, to exhort you to a Zealous, Active, and faithful discharge of your Duty.

4 Depositions relating to the incident are contained in RG 1, vol. 342, nos. 44-45, PANS.

5 *Halifax Gazette*, 30 November 1754, and "A General Return of the Prisoners . . .", *op. cit.*

6 This document is found in the Belcher Family Papers, item 1 - 45, Special Collections Division, University of British Columbia Library.

In general, the Sword of Justice is now committed to your hands, and it highly imports you for the sake of your Country to wield it for the Safeguard and protection of the innocent, and to the terror of the noxious and guilty.

The religious Motives for the regulation of Civil Order and Government, laid before you and so excellently well adapted and urg'd this day, are so recent and forcible upon your Minds that Arguments from the Bench would but weaken the impressions from the Pulpit.

We stand under this obligation to our Divine, and in temporal Measures the whole Line and Circle of Duty remains for the Motions of our Governors, and their Subordinate Ministers of Justice.

It has been the usual, tho' I think unnecessary practice on convening Grand Juries, to enter into a disquisition of the Nature and Ends of Government, and to draw parallels between other Polities and our own. This proceeding can only tend to gratify the vanity of displaying Learning, but not to inform the Minds of a Jury.

It is of no avail, to consider the Rise and Original of Government, whether from compact or force, (Governments now in Idea and Speculation only) or to allude to the antient Polities of Sparta, Athens, and Rome when our own Government is celebrated for its Institution, and has been founded on the Wisdom and Experience of the Ages under this Signal characteristic of Liberty. Sufficient and happy is it for every British Subject that he hourly feels the Blessings of Liberty — that he moves in that Order and form of Government, which continually administers proofs of the policy and benignity of its institution — that he exercises his rights under the protection of a most gracious Sovereign, whose Royal and paternal Care, is extended to every part of His Dominions, however remote from his Throne.

No real Exigency can be represented without immediate direction for the happiness and protection of his Subjects.

With respect to this Province in point of Government, the late Appointment of the chief Chair of Administration, as it has been universally receiv'd so it ought ever to be acknowledg'd, as a Signal instance of His Majesty's Royal Regard to the true interests of this Colony. His Majesty has been pleased to delegate his Authority to a Personage who would have been elected from the Experience of His Abilities, Attention, and Care in the Service of this Province, to preside over us by the Unanimous Suffrages of the People.

With regard to the Province as to its Laws, the Institution of this Court at an additional Expense to Our Mother Kingdom is a Royal Pledge of His Majesty's tender Concern for the Rights and Liberties of his loyal Subjects in the Province.

As we are, Gentlemen, happily experiencing these Blessings, what can remain for us but a wise and thankful Enjoyment, in a course of Duty and quiet Application in our respective Spheres in Society.

In the infancy of this Colony, it is indubitable, that every Member will join with his Heart and vigorous hand, in promoting its prosperity and happiness — as the Settlement has been founded and is yearly continued at a vast Emission of the British Treasure. And altho' the Consequences may eventually be extended to the whole British Continent of America, and finally to Great Britain, yet we the Inhabitants reap the immediate Advantages from the Settlement.

No considerate Person will suffer himself to conceive, that any loyal Subject of His Majesty residing in this Province, *and especially any subsisting on Bread from the Crown*, can be so weak and infatuated, as to disturb and interrupt our Peace and happiness, by introducing distinction and Parties against the Government of this Province, or discovering any other Emulation than that of excelling in Activity for establishing all the ends of the Settlement of this Province.

If this spirit should ever arise in the Province from self-sufficiency, Arrogance, and Impertinence, from disappointed hopes or a pragmatcal air of vain Significance, we may boldly conclude that as such Persons are not with us they are against us, and Enemies to our Peace and Order. And as far as the force of our Laws can extend to silence destructive cabals, it will be incumbent on every Grand Jury, to present such Busy Bodies as Idlers in Society, and to restrain them within the Verge of due Submission and Obedience.

It is an excellent aphorism in the Christian System, Let every Man study to be quiet and to do his own Business, and the natural Application is, that Every Individual stands oblig'd to move and act in the Order assign'd to him by Providence, and in that Subordination necessary to the Being and Ends of Government.

Harmony and Union alone can establish the Administration upon its Solid Basis, and may not improperly be term'd the pure Oyl for accelerating the Wheels and Motions of Society.

Thus far, Gentlemen, for the sake of this Province, it has been necessary publically to urge these political Considerations, as it will be in vain to the Execution of Laws, if any Persons should be suffer'd in their Attempts to sap the very foundations of Government.

Happiness and Liberty might ever be thought sufficient Allurements to the Practice of every Social Duty — But so extravagant are the springs of human Actions that even Happiness and Interest cannot fix the Attention of human Minds, to an Observance of the Laws.

Hence, Gentlemen, arises the melancholy Necessity of enforcing the other Sanctions to Obedience, of Punishments and Penalties.

This leads me, Gentlemen, to give you that Solemn Charge, which it is part of your Oaths to carry into Execution.

This Court can only describe the Outlines of your Duty, and the performance remains for the Consultation of your own Conscience.

The general Rule is, that in all your deliberations you will attend to this first Principle, that the innocent may ever be secure in your Protection and that the Guilty may find no refuge.

To this end, it will be necessary to premise,

1) That in every doubtful Case, Life and Liberty must turn the Scale — and that it is for the public Interest that the Guilty should rather escape than the Innocent should be punished.

Hence, Gentlemen,

2) Circumstances and Suspicions you are ever to consider without some fact as the Slightest Evidence because there can be no certain Basis for founding any just inferences or conclusions.

3) The Credit and Character of Witnesses in their Country ought ever to be deliberately weigh'd.

4) Tho' Malice with full Evidence may be a good Prosecutor, yet it ought to awaken your Attention to guard so far against an apparently malicious Bias, as to require the most pregnant proofs and thorough Conviction of the truth of the Charge against the suppos'd Offender.

5) Let your Examination of the Witnesses be *viva voce* and not by depositions, that you may at all times discern the Countenance when it gives the Lye to the Tongue.

6) As far as your Jurisdiction will extend, where your Bills are ignor'd, you will apply some redress to the injur'd reputation and loss of Liberty to the Persons declar'd to be innocent.

7) That in all your deliberations you will constantly attend to the State and true Interests of this Province, and when they come in competition, rather to permit private inconveniences than a public Mischief.

8) That in cases necessary and advantageous to the Province, tho' the proper Means may not be in your Jurisdiction and power, yet as Representatives in some degree for your Country, it will be your Duty to remonstrate to the Legislature of the Province, the Necessity and Expedience of Laws for those purposes.

The several parts of your Duty by Bills and Presentments will fall under these four Classes

- 1) The Consideration of Crimes affecting the Lives
- 2) Those which regard the reputation
- 3) Such as respect the Property — as by Thing
- 4) Those which may affect the Liberty and peace of the Subject.

Under the first Class are reducible the several Felonies capital by Common Law or Statute.

Under the second Class you will consider Crimes attended with infamous

Judgments, such as Perjury, Subornation of Perjury, Notorious Public Frauds, Nusances, and Common Cheats.

Under the third Class you will inquire into offences against penal Statutes and the penal Laws of this Province.

In the first place, I must earnestly recommend it as the first Object of your Attention, that you will preserve that Veneration ever due and required by the Laws of the Being, Attributes, and Sacred Name of God and to the Doctrines of the Gospel of our Blessed Saviour, and this will lead you to enforce the Several Laws and Statutes against Blasphemy. Atheism, profane Oaths and Imprecations.

Another Subject of your Inquiry under this Head, will be all offences against the respective Laws for restraining the Crime of Drunkenness, the Parent of Idleness and the Bane of Society.

It is material and important to remind you of the several Laws fram'd for the due observation of the Lord's Day. Your Care, Gentlemen, will be exerted that all Ranks and Orders of People may attend the Public Worship of God — and that a due reverence and honour may be express'd to the Appointments and Solemnities of that day — not only by a cessation of labour but of every unlawful recreation — and by supressing riots and Gaming.

The Observation is Old and Universal in all States, that the Declension of Religion, even of a false and mistaken one, has been followed with the Declension of the Community itself.

As the highest Obligation for the Observance of human Laws, especially Oaths, arise from and depend upon the principles of Religion only, when this Bond therefore is once dissolved, the Laws will become but as a Dead Letter.

Gaming is another Subject for your consideration as an offence generally productive not only of the Misery and ruin of the Gamester and his Family, but of Idleness and Beggary to the State.

You cannot therefore, Gentlemen, exert yourselves with too much zeal in the instant enquiry whether Gaming is either publick or privately practiced. It is a compassion due to the Publick to present the offenders as the common pests of Society. If the inferior sort of People among us have unwarily or wickedly abandon'd themselves to this Vice, it is a happiness to find that it does not as in other places follow from the example of their Superiors. The severe Penalties inflicted by the Laws for Suppressing this Baneful practice will by your presentment of the offenders, be an effectual means to prevent the growth of this evil.

I have now, Gentlemen, observed upon the Points most Material for your present attention. The defects in inculcating will be abundantly supply'd, by your knowledge, experience, and approv'd Integrity in the Office and Business of a Grand Jury.

I have refrain'd explaining the Several Species of Crimes and Punishments

annex'd to them, as they will fall more properly within the province of Petty Jurys, and as in all Cases where doubts may arise you will have recourse to the Court for Special Directions.

The expectation of your Country, Gentlemen, is attentively fix'd upon your proceedings as in the event their Prosperity and happiness are so deeply involved, in a vigorous Execution of the Laws, for the Defence and Practice of Religion and Morality upon which must depend the being and quiet of this and every other Community.