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# Mr. Nisbet's Legacy, or the Passing of King William's Act in 1699

ALAN CASS

## INTRODUCTION

*AN ACT TO ENCOURAGE THE TRADE TO NEWFOUNDLAND*, 10 & 11 Wm. III, cap. 25, popularly known as King William's Act, was given royal assent on 4 May 1699.<sup>1</sup> This was the only act of Parliament that regulated the English fishery in Newfoundland until the supplementary act 15 Geo. III cap. 31 of 1775, *An Act for the Encouragement of the Fisheries ... and for securing the Return of the Fishermen, Sailors and others* ... Parliament did not repeal the act of 1699 until the act of 1824, 5 Geo. IV, cap. 51, *An Act to repeal several Laws* ... This act had been the legislative basis of the regulation of the fishery for 75 years, and its foundation for some 125 years. King William's Act has also been central to historians' interpretations of eighteenth-century Newfoundland. Unfortunately, officials such as Governor Hugh Palliser deliberately misrepresented the act in an attempt to have it support the policy they pursued.<sup>2</sup> Some of those involved in the fishery represented the act as having been intended to restore the ship fishery and restrain the inhabitant fishery. This point of view was published and made available to bolster this late-eighteenth-century partisan policy. Since a policy favouring the ship fishery was promoted for 50 years from 1775, the misrepresentations of the 1699 act became inseparable from the actual history of the period. Even today, historians, antiquarians, and genealogists cannot rid themselves of the influence of the language and ideas of that policy. Settling inhabitants are sometimes portrayed as "deserters" from fishing ships who "squatted" illegally in distant coves to escape detection by the Royal Navy. Such are the myths of our history.

The concerns of later officials who interpreted King William's Act and the distortion of the historical record by their attempts to suborn the act's provisions through misrepresentation have hampered our efforts to understand the 1699 act and the Newfoundland fishery in the early eighteenth century. Eighteenth-century Chief Justice and historian John Reeves was concerned with the act's provisions and perceived omissions. He was mainly concerned with constitutional and judicial history, and so viewed the act as if it were part of those histories.<sup>3</sup> The legislators who drafted the act did not consider questions of either the form of government appropriate for Newfoundland or the range of legal regimes in Newfoundland, so the act hardly apprehended these subjects. The power to create these colonial institutions probably still lay within the royal prerogative.<sup>4</sup> When the need for greater local policing in Newfoundland became apparent to officials, they could not find the legal basis for it within the act's provisions. Subsequent commentators condemned the act on this ground even though it had not been intended to restrict local government.<sup>5</sup>

Later historians saw the act as exemplifying the goals of both trade and imperial policies, and judged it as ineffective.<sup>6</sup> One of the most important historians of this period, Keith Matthews, described the purposes of King William's Act as explicitly encouraging the migratory fishery, restraining inhabitancy, and "deliberately refraining from establishing institutions of law and government on the Island."<sup>7</sup> After casting the purposes of the act this way, Matthews then considered it ineffective in achieving the goals he thought the act embodied. For all the centrality of the act in our historical narratives, historians have tended to read the intention of Parliament from the text of the act. However, an examination of deliberations leading to the passage of the bill tells a different story. Again, the legislators did not consider questions of trade or empire when passing the bill. They only considered who could fish in Newfoundland, and how they should go about it. The act was limited in the extent of its purview.

Did the act actually define a government policy or a merchants' policy? The act created problems for English officials throughout the eighteenth century when it did not seem consistent with their policy; so they evaded it, ignored it, or re-interpreted it at those times.<sup>8</sup> Historians have relied upon the official instructions to convoy commanders, the commanders' reports, and correspondence in the official archives for much of their understanding of eighteenth-century Newfoundland, and then interpreted the act in light of their understanding of the period, as well as the text of the act.<sup>9</sup> I suggest that the official interest in Newfoundland has not been a good basis for judging the effectiveness of the act. The merchants did not want a colonial regime which could interfere with the fishery and cost money, so they judged the act more favourably.<sup>10</sup>

Historians have also noted the influence of the act in the development of political and legal formations in Newfoundland. However, as Patrick O'Flaherty pointed out, "the long-term effects of King William's Act have not been carefully stud-

ied.”<sup>11</sup> O’Flaherty has given the act and its effects considerable attention.<sup>12</sup> He has been joined by historians interested in the legal history of Newfoundland who have studied both the meaning and the effects of the act.<sup>13</sup> These studies have moved our knowledge of the effects of the act a long way from those “myths” Peter Pope described as part of the traditional historiography of Newfoundland, although as we have seen they are still coloured by those myths.<sup>14</sup> The revisionism Pope sees as a “tall order” could be helped by a closer understanding of the circumstances affecting the drafting of the act. The Thomas Nisbet of the title of this article was influential in shaping the act, and through examining his interventions we can recover the intent of the act. That is a necessary first step before assessing its effectiveness.

## THE GENESIS OF THE BILL

The genesis and the development of the act of 1699 have been a mystery — no contemporary accounts of the intentions or the participation of any principal law-makers in the process survive.<sup>15</sup> Contemporary documents merely note the passage of the bill through the two houses of parliament, without commentary.<sup>16</sup> The few surviving records of debates from the 1698-1699 session of parliament are silent on the Newfoundland Trade Act, although Sir Richard Cocks may be alluding to it in his diary as “biassed by private ends” when talking of the fishery.<sup>17</sup> No mention of the act appears to exist among the extant correspondence from the period.<sup>18</sup> It is mentioned in the minutes of the Board of Trade with respect to Thomas Nisbet, however.<sup>19</sup> And four items that concern the Newfoundland Trade Act occur in the papers of William Blathwayt, now held at Colonial Williamsburg.<sup>20</sup> One is a copy of a bill presented to the House of Commons, 25 March 1699, for first and second reading. This was delivered to the Board of Trade but removed by Blathwayt.<sup>21</sup> The other items are a representation from the merchants of Exeter, giving their reasons for passing the bill that was presented for first and second reading, and two anonymous printed sheets, one favouring and one opposing the bill.<sup>22</sup> None of these documents shed light on the origins of the act.

This lack of information has given rise to speculation about the authors of the act and their intentions. Historians Matthews and Jerry Bannister see the hand of government or the Board of Trade in the act, while others see it as a result of West Country influence.<sup>23</sup> Many see the act as a compromise between the opinions of the government and West Country merchants, and a statutory enactment of the previous charters regulating the Newfoundland trade, with some new additions. It thus fits into a wider set of assumptions and policies about the Newfoundland trade.<sup>24</sup> The timing of the act has also been a mystery because no specific stimulus for legislative action on the Newfoundland trade immediately before or during the 1698-1699 sitting of Parliament is apparent.

An educated guess about the timing of the act and the reasons for its introduction can be made from circumstantial evidence. In the early months of the session three presentations on the Newfoundland trade came from the Board of Trade, Captain Norris the Newfoundland convoy commander, and some fishing-ships' captains. Each contained suggestions for a review of the regulation of that trade. These suggestions, together with a chance petition for a bill to give statutory embodiment to the Company of the Royal Fishery of England, were probably enough to prompt the idea of drafting an act for the Newfoundland fishery and trade. That act then became part of the partisan struggle of that session, which itself helps to explain the content of the legislation. Like the act itself, the act's passage through the House of Commons was problematic.

A draft bill on the Newfoundland trade was presented to the House of Commons for first reading on 25 March by Sir Edward Seymour. It was read a second time on 27 March, and then committed to a select committee for further consideration. As noted above, a copy of the draft bill was delivered to the Board of Trade 28 March, and the text of the bill must also have been available to the public. The 29 March minutes read:

Mr. Thomas Nisbet with Mr. David Waterhouse and another merchant offered verbally some objections to the Bill for encouraging the trade to Newfoundland. They said they were to be heard before the Committee of the House, and were told the Board could not properly interpose unless required to do so.<sup>25</sup>

Nisbet, a merchant with an interest in the Newfoundland trade, was probably from London. David Waterhouse was a bill acceptor for the Newfoundland trade.<sup>26</sup> Neither Nisbet nor Waterhouse were members of the House of Commons, nor were they top-ranking merchants. They may have represented many colleagues from the ranks of middling traders, those making their way up and those most affected by any statutory changes in the conditions of their trade. They had reservations about the contents of Seymour's draft bill, sufficient to want to intervene before the select committee. The Board of Trade was not involved in drafting the bill, and only if requested would its members have made a representation. No record shows that the Board made any representation on the bill.

Why would Seymour present a draft bill that generated objections from London-based Newfoundland traders? How would the House of Commons members view a difference of opinion between Sir Edward and the London merchants? The answer to the first depended as much on Seymour's current posture in the politics of the house as on the merits of the case for his bill; the answer to the second depended on how a majority of the members viewed Seymour's position as well as the bill's merits. It is necessary to make a detour through the history of the House of Commons during the first session of the fourth parliament of William III to answer these questions.

THE HOUSE OF COMMONS, DECEMBER 1698-MAY 1699

Under the Triennial Act, the Parliament of 1695-1698 was prorogued 5 July 1698, and then dissolved. The elections of July and August 1698 brought new members to the House of Commons, many of whom were opposed to the current administration of the "Court Party" and to King William's desire to retain many of his armed forces.<sup>27</sup> The opposition often styled the "Country" party, and opposed standing armies in peacetime both on theoretical and financial grounds. They preferred the idea of the militia, that is civilians as arms holders.<sup>28</sup> They were also interested in fiscal restraint in general, because the main direct tax, the land tax, fell directly upon the country landholders. The Country party were also against financing war through the raising of loans through such institutions as the Bank of England, which they thought gave the government too much independence of the house in financing its affairs. The leaders of this faction in the House of Commons were Sir Edward Seymour Bt., member for Exeter, Sir Christopher Musgrave, member for Oxford University, both old Tories; and Paul Foley, member for Hereford, and Robert Harley, member for New Radnor, who were "New Country" or "old Whig."<sup>29</sup>

There was no ministry as we know it, as King William III was his own prime minister, and, although earlier he had tried to have a bi-partisan administration, by 1698 he depended upon the leaders of the Court party to support his policies. It was from amongst these men that he appointed the chief officers of state. The most important of these in the House of Commons were Charles Montague, Chancellor of the Exchequer and member for Westminster; Sir John Hawles, Solicitor-General and member for Mitchell and Bere Alston; Lord Coningsby, member for Leominster; Goodwin Wharton, Lord of the Admiralty, member for Buckinghamshire; and Lord Ranelagh, Paymaster-General and member for Marlborough. Montague, Coningsby, and Ranelagh were also members of the Privy Council, in which they were joined by James Vernon, Secretary of State and member for Westminster. The Clerk of the Privy Council, William Blathwayt, was also Secretary at War, member for Bath and a member of the Board of Trade. Vernon and Blathwayt supported the King's interest, but felt themselves less bound to the parliamentary Court party.

At the end of 1698 and beginning of 1699 James Vernon was sole Secretary of State, and the government officer most directly involved in Newfoundland affairs. The Secretary of State was responsible for home, foreign, and colonial affairs, and was also the conduit from the King when he required action by the other departments of state. The other departments were often managed by a board appointed to conduct their affairs. The Commission of Trade and Plantations, or Board of Trade, was not an executive branch, but an overseeing agency. It could, through the Secretary of State, request executive action from boards such as the Admiralty, Treasury, or Ordnance, and often made representations to the King with recommendations for action.

The relationship of the various boards and departments to the Houses of Parliament was unclear even to contemporaries. Many, if not most, of the various board members and officers of government were members of one of the two Houses. In their official capacity they could bring forward bills in the House, which they could also do in their private capacity. The failure of a bill brought forward by an officer of the crown did not mean the defeat of the government, nor necessarily the resignation of the officer. The king met with the senior officers of state in a cabinet council most Sundays when he was in England, but the business does not seem to have been parliamentary management except for the money votes.<sup>30</sup>

The Court party in the House of Commons looked to support from the many members who had been given official offices, support the opposition saw as the result of bribery, and which was an unwarranted drain upon the exchequer. The Court party lost much of its support in the votes on the army estimates and seemed unable to recover. Vernon's letter to the Duke of Shrewsbury of 5 March 1699 notes their plight: "my Lord Chancellor or Mr. Montague, who are still called ministers, though there are none that I see who take upon themselves any management. I hope they will recover out of their consternation; and the other gentlemen do not appear so united as to make a fixed party."<sup>31</sup> The Court managers had suffered a serious defeat in the passage of the Disbanding Bill for the land forces, which not only reduced the size of the army far below what William thought necessary, but removed all non-English-born personnel. The ministers were also being hounded on the state of the navy and on the supply bills for the year.<sup>32</sup> At the point the Newfoundland bill came up for consideration, the ministry was not promoting any policy other than trying to hold the line on the armed forces and to pass supply bills.

## PARLIAMENTARY SESSION TO 25 MARCH 1699

The Country interests had been granted leave to bring in several bills that were embarrassing to the ministry. One of these, the Irish Woolen Bill of Sir Edward Seymour, went against the tenor of the policies the ministry was itself pursuing for Ireland.<sup>33</sup> H.F. Kearney observed that the passage of that act showed that in the case of commercial bills, passage by Parliament does not prove they were in accordance with ministry policy. The constitutional forms of the acts could give the historian a misleading impression of the state's role in them.<sup>34</sup> We shall find that it was not the state, but commercial interests, that dictated the form of the Newfoundland Trade Bill as well.

Seymour's Irish Woolen Bill was read for a first time 21 December 1698, read a second time 7 January 1698/9, and committed to a committee of the whole House.<sup>35</sup> This committee was chaired by Sir Joseph Tredenham, member for St. Mawes in Cornwall, and Seymour's brother-in-law.<sup>36</sup> Another piece of business was put before this Committee of the whole House on 18 January, when it had re-

ferred to it for consideration the "Representation of the Commissioners for Trade and Plantations" that had been laid before the House that day by William Blathwayt. This representation had been requested by the House on 7 January so that it could see what papers the commissioners had relating to the encouragement of the woollen manufactures of the kingdom.<sup>37</sup>

The commissioners' representation was identical to the full text of one they had made to the king on 23 December 1697. This had included, amongst the discussions of many different trades, a discussion of the Newfoundland trade. The Commissioners gave reasons for the decline in the Newfoundland Trade,<sup>38</sup> and suggested as one encouragement for the fishery that "there be a due execution of the Western Charter."<sup>39</sup> Although the committee of the whole House was studying the Irish Woollen bill, this recommendation was brought to its attention. The Committee completed its work on the Irish bill before 22 February, when the report was made by Tredenham, the amendments voted on, and the bill ordered engrossed.<sup>40</sup> Seymour's work on his bill was done when the report stage was reached.

Early in 1698/9 the annual statistical returns and reports from Captain Norris's sojourn in Newfoundland in the summer of 1698 were coming to hand. (Captain Norris was Commander-in-Chief of the Royal Navy convoy ships and Governor of the Fort and Garrison at Newfoundland.<sup>41</sup>) Norris reported on his commission to the Council of Trade and Plantations and to the Admiralty, reports received or read in early February 1698/9. These reports contained the returns of the fishery for the 1698 season, as well as a petition of the masters of ships in Newfoundland to Captain Norris.<sup>42</sup>

The 1698 season was the first after the signing of the Treaty of Ryswick ended the Nine Years War. The migratory fishery expanded with the return of peacetime conditions, but because there had been a much smaller fishery during the war years, there were now insufficient experienced workers to provide for all the fishing ships' complements. The reduced wartime ship fishery together with the French destruction and dislocation of the inhabitants in the winter of 1696/7 had disturbed the regular allotment of fishing rooms in the harbours of Newfoundland.

The masters' petition complained of "the great abuses and encroachments made by the inhabitants and boatkeepers on ships' fishing rooms in this country and especially in this harbour" (St. John's), about the boatkeepers ("from our area" — that was South Devon) taking all the able fishermen and shoremen, getting the fastest ships to take them so that they could get the best fishing rooms, making the fishing ships rent rooms, and other complaints. It argued that inhabitants should not take rooms before the fishing ships arrived and that only free ships outfitted and cleared from England should be allowed, and that no second voyages be allowed unless cleared out from England. It also claimed that the New Englanders were constant traders dealing rum to debauch the fishermen. Eleven of the masters signing the petition were, according to the list of fishing ships,<sup>43</sup> from Topsham, with two (Arthur Holdsworth, admiral, and Edward Bulley, vice-admiral) from Dartmouth



and two from London. Four of the Topsham masters had been fishing out of Petty Harbour, just to the south of St. John's.

The Board of Trade received the report on 6 February 1698/9, and its contents may well have been known within interested government and parliamentary circles within the week.<sup>44</sup> Captain Norris was of the opinion that "the merchant adventurers have the preferable encouragement before the planters and boat-keepers," suggesting that "In relation to the trade of Newfoundland, I am humbly of the opinion it cannot be more beneficial to the general good than under its old constitution."

On Monday 20 February 1698/9 a Petition from the Company of the Royal Fishery of England was presented to the House of Commons. The petition asked that the company be re-established by Act of Parliament, because under its establishment by Letters Patent (Charles II, 25 September 1678) subscriptions (to its capital) were lacking. It was ordered that leave be given to bring in such a bill "for the Encouragement of the Royal Fishery of England."<sup>45</sup> (Seymour had been a subscriber to the Royal Fishing Company of 1664 and to the Company of the Royal Fishery of England of 1677.<sup>46</sup>) Almost immediately it was recorded in the journal: "Ordered that leave be given to bring in a bill for encouraging the trade to Newfoundland; and that Sir Edward Seymour, Mr. Gwyn, and Mr. Scobell, do prepare, and bring in, the bill."<sup>47</sup>

The establishment of the English trade and fishery to Newfoundland had earlier been made by grants (1610, 1637), commission (1633), charters (1623, 1634, 1661, 1676), orders-in-council (1661, 1663, 1671, 1675, 1677), and laws, rules, and ordinances (1653). This led to conflicting regulations and confusion, and since 1680 there had been no overriding set of regulations, rather a minimal consensus, probably based upon the 1634 Charter.<sup>48</sup> The representation from the masters of ships in St. John's showed that the current situation was not satisfactory for the fishing ships from Topsham (Exeter), so it appears that Seymour, the member for Exeter, saw an opportunity to establish the fishery under a statute. Furthermore he could fashion the statute in ways agreeable to his West Country constituents and perhaps discomfiting to the ministry's London financier friends.

The committee charged with drawing up the bill consisted of Seymour, his nephew Francis Gwyn, member for Sir Edward's pocket borough of Totnes, and Francis Scobell of Cornwall and the Middle Temple, member for Grampound, who was also on the committee drafting the bill for the Royal Fishery. Seymour had been a member of the Privy Council from 1673 to 1689, so he had been in the council when the Western Charter of 27 January 1675/6 was issued.<sup>49</sup> It was this charter from early 1676 that formed the basis for the bill which Seymour presented to the House on 25 March 1699.

In the meantime, the question of Newfoundland and its garrison had arisen on 4 March in the committee of the whole House to which the annual supply bill had been referred.<sup>50</sup> Seymour opposed the sums proposed for the Newfoundland and West Indies garrisons as new expenditures and too large. He thought that the colo-

nies should maintain the garrisons themselves. He added that it was “not in the interest of England to encourage Planters in Newfoundland, but rather to encourage the fishing ships sent from England.” However, there was no governor in Newfoundland while the French had one, and to keep the coast in English hands a small garrison of 40 men was kept in a fort at St. John’s. Charles Montague agreed that the garrison was useful, but believed that if the English government abandoned it, Newfoundland could not afford to pay for it. The balance of trade was against England except in the plantations, which could never raise the money to finance their garrisons.

In the same vein, Sir James Houlblon, a merchant and a member for London, pointed out that the Portuguese had lost the plantation trade in sugar from Brazil because the cost of maintaining garrisons had been put on the planters (presumably to their financial discomfort). Houlblon also pointed out that plantations were being neglected in Barbados (in Barbados a 4.5 percent duty was collected on dead exports, to a total of £15,000 per annum in 1700, part of which was used to pay the governor’s salary, some re-directed to the king’s household expenses).<sup>51</sup>

Arthur Moore, member for Great Grimsby, felt that a garrison was not suited to Newfoundland — the soldiers would exact duties from the fishermen drying their fish there. The island should be defended by the vessels already committed to its defence. The debate continued as to whether it was appropriate to have soldiers over-winter in Newfoundland where so many died. It was pointed out that the numbers of inhabitants in Newfoundland had decreased and consequently the possible militia, while no fleet could possibly secure so great a coast. A militia was preferable to regular soldiers because the militiamen were seasoned to the climate.

Sir Christopher Musgrave considered a governor unnecessary in Newfoundland, and likely to take advantage of the inhabitants. Montague closed with the observation that governors of plantations should be paid from England, not by assemblies. Only in this way could the true interest of England be maintained, so that if manufacturing in the plantations was contrary to England’s interest then there was a force to keep the planters in order.

This round of debate illuminates the thoughts of members on what were general Newfoundland questions — garrisons, governors, militia, duties, stationed ships, and wherein lay the interests of England. The debates were recorded by William Cowper, who sat in the “Mony-Chair” as chairman of the committees of supply and of ways and means, 11 January to 4 April 1699.<sup>52</sup> Cowper noted in an aside to Seymour’s first speech that the advantage from Newfoundland to England was £300,000 per annum. This was the figure given in Captain Norris’s abstract of returns received by the Lords Commissioners of Trade 6 February 1698/9.

Members of the House were aware of the value of the Newfoundland fishery, particularly its help in maintaining England’s balance of payments, but, with the desire for stricter fiscal economy, they were not willing to extend the obligation to defend the island. In the case of Newfoundland, this meant no governor (the ten

shillings a day extra already paid to Captain Norris while in Newfoundland — a rate of £180 p.a. on top of his captain's salary — compared with the £240 p.a. paid from the exchequer to the Bermuda governor).<sup>53</sup> Montague wished to have a larger supply, to help the king keep his troops, and so sought reasons for extending the obligations of the exchequer to the plantation government and defence.

The debate over the king's army came from within the strongly held convictions of both parties. Seymour had been a lord treasurer and in the bipartisan war-time ministry until 1694, when his opposition to a general excise tax had led to his removal from office. Such extra taxes were needed to fund the type of massive loan made when the Bank of England was founded. The Bank was backed by many rich London financiers and merchants, mostly Whigs, giving them an outlet for their capital during a period of trade difficulty.<sup>54</sup> Sir James Houblon was a director of the Bank of England, his brother Sir John the first governor. Seymour had a strong dislike of the London financiers and their merchant supporters.

The Members of Parliament were right in not wishing to commit themselves to an increase in overseas obligations, because many of the existing obligations could not be met. The Ordnance Office found it difficult to meet the demands for stores in Newfoundland, because the Treasury said they did not have the money to give them, although Council authority had been given.<sup>55</sup> The commander of the St. John's garrison, Colonel Gibson, had had to buy a ship to make a voyage to New England to get victuals on credit for the garrison, and these were expected to be paid for by applying to the agent for Massachusetts, Sir Henry Ashurst, member for Wilton, who had had a bill of credit issued to him for paying extraneous costs.<sup>56</sup>

These considerations dominated Board of Trade thinking on Newfoundland. When the King in Council asked the Board for "a Representation upon the Business of Newfoundland" on 24 March, the Board dealt with its own activities in relation to other government departments rather than upon the issues perplexing the trade.<sup>57</sup>

## SIR EDWARD SEYMOUR'S BILL

The bill to encourage the trade to Newfoundland that Seymour presented to the House on 25 March 1699 contained a preamble that later proved to be the only part of the act to survive in the final version.<sup>58</sup> The preamble was unexceptionable, as it used the language of many previous trade acts.<sup>59</sup> The bill continued with a description of how the Letters Patent of 27 January 1675/6 had been granted, and then decreed that the clauses of those Letters Patent (except as altered by this bill) be continued in force. The force of the bill was exclusionary, aimed at excluding bye-boat keepers (fishermen who kept their boats in Newfoundland but travelled each year to Newfoundland from their homes in England) and at encouraging the inhabitants to leave Newfoundland, and to keep the trade confined to English fishing ships. The description of the granting of the Letters Patent of 1676 said that it

was in response to “the humble petition of the merchants, owners and masters of the ships and inhabitants of the Western Ports of this Kingdom adventuring to Newfoundland in fishing voyages.” Seymour’s bill favoured this group of adventurers.

The tenor of the draft bill was to allow only ship fishermen from England, Wales, and Berwick on Tweed to trade with and fish in Newfoundland, with the exception of inhabitants with families who could remain on the fishing rooms (stretches of shore with buildings for the drying of fish) they were rightfully possessed of before the passing of the act. Nothing was said about the clause in the 1676 Letters Patent that nobody was to plant within six miles of the coast. This had been a *de facto* ban on planting, as distinct from shore activities accompanying fishing, but had never been observed. The presence of inhabitants was now taken for granted. Over-wintering inhabitants were said to be useful in securing the boats, stages (for landing fish), salt, and supplies left on the island by the migratory outfits. They also helped to maintain the right of English sovereignty by occupation.

Seymour’s bill refined the clause from the Letters Patent that prohibited the carrying of passengers to Newfoundland. Now only ships crews, co-owners of ships and sharers of the voyage, together with those families going to settle and their waged servants, but not sharers, would be allowed passage. This would exclude bye-boat keepers, who travelled as passengers from England to fish from their boats laid by in Newfoundland. All the fishing ships were to outfit in England, except for supplies of salt, for the whole season for their whole ship’s company. This section was aimed at restricting the New England supply trade. The bill also included articles prohibiting throwing ballast stones into the harbour and defacing and destroying stages and flakes. It also sanctioned the practice that the captain of the first ship to enter a harbour would be admiral, and he would ensure the proportioning of the fishing rooms, see the rules put in operation, and, at the end of the season, submit an account of their harbour to the Committee of Trade and Plantations. Each of these articles had been included in almost all previous regulations.

The bill was read a first time after it had been presented to the House 25 March, and then read a second time 27 March. After that reading, the bill was committed to a select committee of 24 named members, the members who sat for the counties of Cornwall, Devon, and Dorset, for the seaports, and all members who were merchants.<sup>60</sup> The named members included Seymour, Sir Bartholomew Shower, member for Exeter, Francis Gwyn, Peter Shakerly, Sir Joseph Tredenham, John Gurdon, and Sir Henry Ashurst. There were slightly more members with an inclination to or adherence to the Court party than there were of Country persuasion included in the committee.<sup>61</sup>

## THE SELECT COMMITTEE ON THE NEWFOUNDLAND BILL

The committee met in the Speaker’s Chamber at 5 p.m. on 27 March 1699. We are extremely fortunate to have the minute book of the under-clerk, James Courthope,

who took the minutes of the meetings of the Newfoundland Trade Bill committee.<sup>62</sup> These minutes give the dates of the meetings and some of what transpired. They do not list the members attending, nor name the members speaking. They do name witnesses and their testimony in several cases. They give a good idea of how the bill was amended.

At the meeting 27 March the Committee adjourned until the next morning. On 28 March the Committee met and chose Francis Gwyn as chairman.<sup>63</sup> Gwyn may have been put forward by Seymour, in much the same way as Tredenham was chosen chairman of the Irish Woolen Committee, so that Sir Edward had a relative in the chair but could present his own arguments to the committee. Unfortunately for Seymour, a family problem now arose.

On 24 March, leave was given "to bring in a Bill to enable Popham Conway esq. and his brothers, to make leases of their estates: and that Mr. Sloan do prepare, and bring in, the Bill."<sup>64</sup> Popham Seymour Conway and his brothers Francis and Charles were Sir Edward Seymour's sons. They had inherited their cousin's, the Earl of Conway's, estate upon his death without heirs, while still minors, and took the Conway name. They were now trying to gain access to some of the wealth against their father's wishes. The bill was presented for first reading on 30 March, on which day Seymour was granted "leave to go into the Country upon Extraordinary Occasions," the formula used when family business called one from the House.<sup>65</sup> He did not return to the House this session. The bill would go forward without him.

The Newfoundland Trade Bill committee met Thursday 30 March 1699 with Gwyn in the chair. The bill was read over and some merchant witnesses appeared who made their objections to it. One witness, Mr. Nisbet, claimed that "restraining this trade would be a great detriment to England," and that if the six-mile rule were to be put into effect it would be prejudicial to the merchants.<sup>66</sup> This was probably the Thomas Nisbett, merchant, who was named as a Commissioner to take Subscriptions to the Land Bank in the list presented to the House 15 February 1698/9.<sup>67</sup> A Mr. Manston was a witness who appeared to support the bill, declaring that the "By Boats takes up the ships fishing ground and become planters, and great numbers goe and settle in New England. Navigation is not promoted nor increased by the By Boat men."<sup>68</sup> Mr. Manston could have been either Henry Manston or Thomas Manston, masters of ships from Topsham, who signed in St. John's the petition in late 1698 to Captain Norris about the encroachments of inhabitants and boatkeepers on ships' fishing rooms.<sup>69</sup> The meeting of the Committee was then adjourned to meet again Monday 3 April 1699.

At this next meeting several merchants appeared again as witnesses, but before proceeding to testimony the original charter was laid before the committee — presumably to give the members who were less conversant with the trade some background on how the trade had been regulated. Which original charter they read is hard to know because the reading of the first clause could have been from either the

Charter of 1634 or that of 1675/6. The clause as quoted was, "If any man shall kill another or if any shall steal the goods of any other to the value of 40s., the offender shall be brought into England," which applied to the first clause of both charters, but continued, "and tried in any County as his Majesty shall direct," which was in neither charter.

No other reading of any other clause from the charter was noted in the minutes, but a totally new clause was brought forward: there should be two green men for each boat, one of whom should have been at sea but one year, and the other who had never been to sea (from an erasure it seems the latter was originally limited to two years at sea, but argued down to being no years at sea).

It was then reported that several persons came forward in support of Seymour's Bill, and read and entered as testimony the printed sheet "Some Reasons humbly offered to the Honourable the House of Commons for passing the Newfoundland Bill," much of which is quoted verbatim in the minutes. The Committee meeting was then adjourned to Saturday 15 April.<sup>70</sup>

On this day "several clauses were offered to be added to the Bill." Who suggested them is not mentioned. Nisbet is noted as taking exception to 1680 as too distant a definitive date, to having vice-admirals as judges, and to taking the stages from planters who had built them. Someone noted that there had been great infringements upon ships' rooms since 1680, but Nisbet's opposition to that date found its way into the final act, when 1685 was set as the definitive date for ships' rooms.<sup>71</sup> On the question of vice-admirals, he lost his argument. On the planters' rooms, the final act established that those rooms that had been built and were subsequently built by planters and others that had not been ships' rooms since 1685 were to be retained for their use by planters and others.

A William Holman and a Thomas Scott, both merchants of London, had on 21 February 1698/9 presented a petition to the House on behalf of the owners of two ships, that a bill be brought in that they be made free.<sup>72</sup> The Navigation Act of 1696, 7 & 8 William III, c. 22, had forbidden foreign-built vessels the plantation trade, making them "unfree."<sup>73</sup> The petitioners from St. John's to Captain Norris had proposed that only "free" ships provisioned and cleared from England be allowed in the Newfoundland trade, and Holman may have wished to preclude any such clause in the act, as he was being interested in the Newfoundland trade. The entry in the minute book for Monday, 14 April, merely states that the committee met and proceeded upon the bill.

The committee met next day and decided upon a number of clauses. The clause concerning bye-boat keepers had been postponed, but it was now decided that they should take the two green men, one with no experience, the other with one year's experience. The bye-boat keepers were not to take up ships' rooms. A proposal was made that the customs collectors in the ports should take bond that the bye-boatkeepers had two green men in every six, and that the masters of ships had one

green man in every five. (The final act called for the collectors to take oaths and issue certificates of compliance, but not take bonds.)<sup>74</sup>

The committee met next day, Tuesday, 19 April, on which day a clause was proposed to restrain the planters, which, if it followed the previous argument, was one to make planters take two green men in six. Another proposed clause, not adopted, but which led to a different one included in the act as passed, proposed that "in case difference arises about the stages and shippes the Comander of any of his Majesty's Ships of Warr there present shall determine the right." Had this proposal been accepted, it would have taken much of the authority of the fishing admirals from them, even more than Nisbet had wanted, but the act as passed left the fishing admirals with determination in the first instance, with leave to appeal their decisions with any of the commanders of his majesty's ships acting as convoys.<sup>75</sup>

The committee adjourned until Friday when it was proposed that encouragement be given to the inhabitants. This may have been against the proposal to restrain the planters put forward the previous meeting. It was proposed that the planters have the "liberty of men that have been in the Sack ships & those that have been formerly in Newfoundland and as many green men as they please which is liberty enough & will sufficiently supply the planters." This would have given the planters two sets of experienced men to hire in Newfoundland, the employment of whom would not have interfered with any English hiring. The sack ship men referred to were part of the North Atlantic maritime labour pool.<sup>76</sup> "Those that have been formerly in Newfoundland" probably referred to the winter servants who had also served the inhabitants the previous summer, many of whom had long experience in the fishery. The act as passed though, decreed that the inhabitants take two green men in six.<sup>77</sup>

The final meeting of the committee was on Saturday, 22 April, when several more clauses were presented and the bill ordered reported to the house. The work of the committee was done, and as we shall find, the final form of the act was in place.<sup>78</sup>

## THE PASSING OF THE ACT

On Monday, 24 April, in the House of Commons, the Newfoundland trade committee was ordered to report the following morning. Mr. Gwyn then reported the committee had considered the bill and had made several amendments. The report was ordered to be taken into consideration the next morning, but this was postponed to 1 May.<sup>79</sup>

Monday, 1 May, the House divided on the question whether to take the report into consideration. This was decided in the affirmative, there being 83 yeas against 63 nays. The tellers for the yeas were Peter Shakerly (Chester) and James Lowther (Carlisle), and the tellers for the nays were Sir William Coryton, member for Cal-



lington (Cornwall) and John Perry, member for New Shoreham.<sup>80</sup> Shakerly, Coryton, and Perry generally voted with the Country party, Lowther with the Court. None represented constituencies with other than occasional connections to Newfoundland, but both Shakerly and Lowther were active in promoting commercial navigation in Chester and Whitehaven. Lowther and Perry were active members of the house, often being named to committees and acting as tellers. Lowther, Shakerley, and Coryton were members of the Inns of Court.<sup>81</sup> Lowther, Coryton, and Perry had served on the committee of the House that had considered the petitions on Newfoundland received from various towns in late 1696 and early 1697, at the time of the French raids and the loss of the Newfoundland harbours. This committee was of the opinion that "the trade to Newfoundland doth very much promote navigation, increase seamen, and is of great profit to this nation, and of advantage to us in the balance of trade," very much the language of the preamble to the 1699 act.<sup>82</sup>

On 2 May it was reported in the Commons journal that, "An ingrossed bill for encouraging the trade to Newfoundland was read a third time." The bill passed, and was given the title, "An act to encourage the trade to Newfoundland." Francis Gwyn was ordered to carry the bill to the Lords to ask for their approval.<sup>83</sup> The Lords read the bill the first time that day.<sup>84</sup> The House of Lords read the bill for a second time on Wednesday, 3 May, and then, as a committee of the whole House, studied the bill for a considerable time. Upon resumption of the House, the Earl of Stamford reported that the committee had gone through the bill, and thought it fit to pass without any amendment.<sup>85</sup> Next day it had a third reading, was then passed, and the Commons notified.<sup>86</sup> The Royal assent was given that day, which was also the day that session of Parliament was prorogued.<sup>87</sup>

## CONSEQUENCES OF THE BILL

As we have seen there is no evidence that this was a government bill, coming either from a ministry or from the Council of Trade and Plantations. The evidence strongly suggests that having been given relevant grounds, Seymour realized an opportunity to attack his opponents through a partisan bill. The original Seymour bill was a direct descendent of the anti-bye-boatkeeper proclamations of 1660 and 1675. It came from the opposition of the freemen of Exeter (Plymouth was no longer as important in the Newfoundland trade) to the ventures of nearby villagers in a trade that the freemen thought they should monopolize.<sup>88</sup> They wanted to control the entry into the trade, and to have restraints imposed upon the trade, such as restricting the supply of the fishery to old England. But as a restrictive measure it went against the practices of many other merchant groups who gained from an expansive trade.<sup>89</sup> When Seymour left for the country the bill was refashioned by merchants and ships' masters interested in what Patrick O'Flaherty has called "the



micro-management of the trade.” The proposers of the amending clauses aimed to solve the current irritants of the allotment of rooms and the allotment of experienced servants with as little restraint of trade as possible, and they appear to have succeeded.

The “micro-managers” did not try to create some overarching scheme of government for the island. The act was not the effort of officials who wanted a structure of government to control what happened on the island. Most opposition to the act came from officials, with some opposition from merchant groups who wished to restrain what they saw as competitors — usually the New Englanders, but often interlopers in general. It is difficult to measure the opposition of officials, for often it was self-serving at the same time as appearing to be unbiased. An interesting example is provided by George Larkin, who provided a report, often quoted, on the efficacy of the act in 1701.<sup>90</sup>

In late 1698 Sir Charles Hedges, Judge of the Court of Admiralty and Member of Parliament for Orford, wrote to William Blathwayt at the Plantation Office recommending a protégé of his for some office of law or admiralty in the plantations. George Larkin had been Hedges’s clerk for five years, then a Deputy Judge Advocate of the fleet, but had been unemployed since the peace.<sup>91</sup> Nothing seems to have come of this request, but in 1700 Sir Charles Hedges became a Secretary of State, and so a non-working member of the Board of Trade, and was in a better position to secure some employment for Larkin. Larkin was sent on a roving commission to the North American colonies including Newfoundland. His subsequent report on Newfoundland was full of the oft-repeated horrors of that station’s lack of law, and contained strong hints that it required the seasonal or permanent appointment of a justice like himself. In some of his arguments he anticipated John Reeves, who was appointed the first Chief Justice of Newfoundland in 1791, by 90 years.<sup>92</sup>

Larkin and Reeves both saw the need for a justice system in Newfoundland, but a justice system required and engendered state institutions that seemingly could only be erected at the expense of the fishery. Most venturers to Newfoundland did not want to be obligated to support any institutions of state — as they constantly said, the fishery could not bear the cost. The only two agencies of control that cost the venturers nothing were the naval commanders and the fishing admirals who visited the island each summer. A general court of venturers, principal inhabitants and navy commanders such as met under Captain Crowe in 1711, to hear and decide disputes and make recommendations at the end of the season, together with a commission of peace, would have been a possible cheap solution to keeping order.<sup>93</sup>

Since 1670 (and before) a convoy of warships from England to Newfoundland had provided protection of the fishing ships and the fishing effort during the fishing season. The commanders of the warships had been available to try to ensure a measure of tranquility and dispute resolution in conjunction with the fishing admirals.<sup>94</sup> The naval commanders were, however, often critical of the lack of effort on the part

of the fishing admirals and also on the capacities of the fishing admirals to do their duties.<sup>95</sup>

The very unsure administrative capacities of the fishing admirals individually were diminished even more by their transience — the first-comer to a harbour may never have been to that harbour or to Newfoundland before.<sup>96</sup> The turnover of vessels and masters from year to year in the period 1698 to 1701 was very great — a two-thirds turnover each year. There were one or two vessels and masters who returned year after year to the same harbours, such as Phil Stafford to Petty Harbour, Stephen Tucker to Port de Grave, and Arthur Holdsworth to St. John's, who gave a semblance of continuity.<sup>97</sup> These regular masters of fishing ships ("commonly called *kings* in that country") and the skilled fishermen that the masters and owners recruited from the villages whose populations had always supplied the fishing crews, were probably the main repository of knowledge of the rooms and the fishing grounds.<sup>98</sup> Masters who made occasional voyages to Newfoundland such as Thomas and Henry Manston (there in 1698, but not subsequently) were probably dependent upon the skilled fishermen in their crews for the knowledge of the shores and fishing grounds that was necessary to succeed in the fishing part of the voyage.

The lack of intimate knowledge of the various harbours and coves by the fishing admirals was probably of small importance when the admirals could call upon the more expert testimony of experienced fishermen and inhabitants when deciding on the extent and usage of fishing rooms.<sup>99</sup> What was also called into question was the fishing admirals' knowledge of the law and their impartiality. Even Commodore Mitchell, who reported in 1708 that the admirals kept their journals, handed them in, and kept order without reference from him (sufficiently unusual responses from the naval commodore for Reeves not to quote them in his history), thought that the admirals favoured their customers.<sup>100</sup> The masters of vessels were involved in a calling that required a fair knowledge of law, and not necessarily just maritime law. The problems of *tuum* and *meum* so emphasized by both Larkin and Reeves were faced by masters as both agents of owners and carriers of the goods of others. These, however, were problems of the *tuum* and *meum* of chattels, not problems of real property. The Newfoundland Trade Act did not grant real property rights, only chattel property rights, so that the admirals did not need to know the *tuum* and *meum* of real property. They would have been competent registrars of protests, and known who was competent to make surveys. They were not empowered to adjudicate cases of debt or wages. They would have been competent to adjudicate those areas, anchorages, nets, marks, and ballast that they were called upon to police by the act. These were the duties of the water bailiff. When they did not do these duties, it was a lack of the profits of justice compared to the profits available from fishing that showed them where their interests lay and made them unavailable as arbitrators. The naval commanders were under no compunction to produce any tangible result with their time, other than to demonstrate that they had fulfilled their instructions, so had time to act as arbitrators. During wartime, when cruises called, the

commanders were often also reluctant to spend the time to fulfill their instructions to act as civilian overseers when prizes could be caught.<sup>101</sup>

The Answers to the Heads of Inquiry, the Returns of the Fishery, and the commentaries made by the commodores with these returns, together with the replies of the West Country boroughs to questions posed by the Board of Trade, have provided much of the evidence for the history of the eighteenth-century Newfoundland trade. If the view of the importance of the trade is taken from these documents, we would concur with the conclusion of P.J. Marshall, "For all the attention given to them, furs and fish did not make essential contributions to the British economy."<sup>102</sup> The problem of this evidence is the narrowness of its base. The Newfoundland fishery had not been the sole preserve of the West Country since the early seventeenth century, and perhaps earlier. The core crews and regular masters came from the West Country, but there were many other parties interested in the trade who had at times recourse to involve themselves in the fishery. The importance of the fishery was less, in the view of many, than the importance of the trade it engendered. There were merchants and tradesmen in many fields who had a reason to look to the returns of the Newfoundland trade for vital inputs. The Board of Trade did not regularly correspond with these merchants and tradesmen, though it might hear from them on specific issues.

The House of Commons, at the time of King William's Act, was alive to the value of the trade to areas other than the West Country, because it had members who were merchants and financiers knowledgeable about different strands of the atomistic trade. It may well have been that none of them had ever been to Newfoundland, but some had long experience with the importance of the trade.

One such merchant was Sir James Houblon. He had started as a dyer. The dyeing tradesmen took their dyestuffs from various sources, mainly the Mediterranean area and the East and West Indies. Houblon was involved in the Mediterranean trade from Newfoundland in the 1650s and 1660s.<sup>103</sup> He was one of the two London merchants who wrote to the Lords of Trade in 1675 supporting the residents of Newfoundland.<sup>104</sup> Houblon's main argument appears to have been that inhabitants could operate with less capital ("employ less stock") than could ship fishermen. He was also of the opinion that loss of the fisheries would not only result in the loss of seamen, but also that the "Nation's stock would be impaired."<sup>105</sup> Houblon became involved in maintaining the "Nation's stock" in 1694, when he became a founding director of the Bank of England, and also went to Europe to found a bank to help with the payment of English troops there.<sup>106</sup> He was joined as a Member of Parliament by other merchants with interests in the Newfoundland and Mediterranean trades. Arthur Shallett, member for Weymouth, traded with both Newfoundland and Spain and Portugal.<sup>107</sup> William Joliffe, member for Poole, was a Levant merchant. Another dozen members had mercantile business with the Mediterranean area.<sup>108</sup>

Other merchants were interested in the Newfoundland trade and the East India trade. The members for Dartmouth had since the 1660s been associated with the East India trade. Keith Matthews mentioned two members for Dartmouth in the 1670s, Sir John Frederick and Sir Nathaniel Herne, who were Londoners but probably anti-inhabitant.<sup>109</sup> Both these merchants were interested in obtaining bullion from Spain for remittance to the East Indies.<sup>110</sup> Their relatives Sir Joseph and Nathaniel Herne were the members for Dartmouth in 1698/9. Sir Josiah Child had been a member for Dartmouth in competition with Frederick and Herne, and he was vehemently anti-settlement, as was his fellow pamphleteer Charles Davenant, member for Great Bedwyn in 1698/9.<sup>111</sup> The writings of Child and Davenport were important to the Old East India Company interest and to the Country party's view of mercantile affairs.<sup>112</sup> Both Child and Davenant have been quoted expressing the prevailing view of official policy, but theirs was just one side of a partisan argument within the governing circles.<sup>113</sup> The merchant John Pollexfen, member of the Board of Trade but not a member of the house in 1698/9, engaged Davenant in a short pamphlet war about the direction trade should take. He was against trading monopolies, especially the East India Company's monopoly. He thought all the king's subjects should have the freedom to trade.<sup>114</sup> This was also the intent of the king's instructions when he was asked for them.<sup>115</sup>

The argument about the Newfoundland trade was whether an English-based ship fishery, supplied only from England, was preferable from a national point of view to a promiscuous fishery carried on by inhabitants, bye-boat keepers, New Englanders, as well as by ship fishermen, all supplied by Ireland, New England, and England.<sup>116</sup> Both fisheries profited England, but some of those with special interests in a monopoly for the English West Country corporations argued that the ship fishery encouraged English ship-building, ship outfitting and boat-building and other trades. It was also argued, usually when convoys were required, that it trained seamen, who when trained were available to man naval vessels in time of war. These were advantages that were of national consideration, but they were not the reasons why anybody invested in the Newfoundland fishery. They were not good reasons to adopt a restrictive policy, which would profit only a smaller group whose investment potential for expansion was relatively limited.

The merchants and others who wished to gain access to saltfish without necessarily being involved in the fishery itself promoted the promiscuous fishery. They needed saltfish as an item of trade, particularly to obtain foreign trade credits from those countries where the fish was marketed — Spain, Portugal, Italy, and the Levant. They favoured an atomistically capitalized trade, one that was not vertically integrated, so that there were opportunities to buy saltfish in Newfoundland from independent producers. Sir James Houblon calculated that small independent producers required less capital than larger integrated production units, and so a smaller charge for capital was put upon the fish price. The other advantages for the expansive fishery were that it could obtain supplies from the cheapest source — as with

items from Ireland or the American colonies, and that the use of ships and ships crews across the Atlantic was economized by not taking fishing ships and their large crews to the markets in southern Europe.

The important national advantage of the promiscuous fishery was its capacity to expand effort very quickly when required. The financial demand for foreign credits to re-liquidate the money supply after wartime stringencies after 1697 could be met by the fishery. Dr. Dwyrd Jones has amply detailed the argument that the Newfoundland saltfish trade was an important part of the financing of both imports and money supply during the years 1698-1701.<sup>117</sup> Contemporaries spoke of the fishery's importance in the "balance of trade," and for most of the time this had been directed at the import of tropical and industrial goods. The East India traders, Frederick, Herne and Child, had become partners with Dartmouth merchant adventurers to access fish for the Iberian markets to exchange for bullion to export to the east.<sup>118</sup> The varying fortunes of the fishery were often the result of varying demands for tropical goods or East Indian trade. That the Newfoundland fishery made important contributions to the balance of trade has not been denied. The scale of these contributions has sometimes been ignored because contemporary official figures often left them out of accounts.<sup>119</sup> It was not the most valuable contributor to the balance, but it did not have the bottlenecks that slowed expansion of other export items.<sup>120</sup>

The problems that the freemen of Exeter had faced in 1698 were the sort of bottlenecks that followed the quick expansion of the trade after the war. King William's Act was intended to ameliorate these bottlenecks by providing for the equitable division of rooms and skilled personnel among all the groups of venturers who wished to take part in the fishery. It was intended to allow any of the King's subjects to take part without any other restraint than was customary. It allowed a free market for labour, supplies, and capital, within the context of the navigation acts and other imperial acts. This allowed expansion, but it could also see dramatic declines in effort when investment was not forthcoming. The atomistic structure of the fishery allowed for declines. Boatkeepers who had outfitted several boats when demand and investment were high, could reduce their outfit to one or two, or even smaller boats, when investment was off. Ship-owners sent their ships on different trades. The system of King William's Act seems to have worked well for the first 75 years of the eighteenth century, allowing the fishery to rise and fall with demand and investment. The system did not encourage nor discourage settlement, and the inhabitant population grew slowly with a high turnover of people because of the insecurities of the industry.

There were unexpected consequences of the act. The titles to rooms set by the act, section seven, were not real property titles, but chattel property titles. This was Nisbet's legacy — a legal right to occupy and use what you had cleared. The rooms were not held from anyone, incurred no obligation and so did not confer any political identity upon the possessor. This is still the case in many parts of the island. In

the cove in which I live there are no legal addresses, land boundaries are a matter of communal memory, and there is no institution of local government.<sup>121</sup> Whenever there is a matter of general interest, some principal inhabitants call a meeting of all the householders to discuss the matter. Any decision concerning the matter is made by the consent of all the householders. This seems to be the ancient and immemorial way of doing things. The fact that the earliest rooms were held under socage tenure was forgotten long before King William's Act, and with it the idea of charter rights of local government.<sup>122</sup>

The lack of real property in Newfoundland made the adoption of civil courts operating under common law academic, and the courts that grew around the courts of sessions and surrogate visits had not followed common law procedures. The property in rooms being a chattel property was also not subject to inheritance laws, and so was partible. This was the meaning of Fane's opinion in 1728.<sup>123</sup> These things were clear, but what was not clear was how much the narrowness of common law procedures were displacing the wider maritime and municipal procedures and practices in official minds.<sup>124</sup> Under admiralty law a ship's crew could sue collectively, under common law this was not possible. Under common law the supplying merchant could sue the boatkeeper for debt, whilst under other practices the merchant was only owed a share or dividend of the voyage. The problems of debt as a residual effect of shared ventures were a constant irritant in Newfoundland, and folk and customary attitudes did not correspond to common law findings.<sup>125</sup> As O'Flaherty commented, the consequences of the act have been little studied.<sup>126</sup> It is hoped that a revised view of process by which King William's Act was written, and a view of the act as effective in promoting an open fishery and trade rather than legislation which everyone ignored, will prompt a reassessment.

## Appendix

Copy of the Bill now depending in the House of Commons for Encouraging the Trade to Newfoundland, March 25, 1699.

Whereas the Trade to and Fishing at Newfoundland is a beneficial Trade to this Kingdom not only in the employing great numbers of Seamen and Ships and exporting and consuming great quantities of Provisions and Manufactures of this Realm, whereby many Tradesmen and poor Artificers are kept at work, but also in bringing into this Nation by Returns of the Exports of the said Fishery from other Countrys great quantities of Wine, Oyle, Plate, Iron, Wool and sundry other useful Commodities to the increase of his Majesty's Revenue and the Encouragement of Trade and Navigation. And whereas his late Majesty Charles the Second by Letters Patent bearing date at Westminster the twenty seventh day of January in the twenty-seventh year of his said Majesty's Reign, upon the humble Petition of the Merchants, Owners and Masters of the Ships and Inhabitants of the Western Ports of this Kingdom, adventuring to Newfoundland in Fishing Voyages, and after due Consideration had of the best Ways and Measures of regulating, securing and improving the Fishing Trade at Newfoundland, did then grant, ordaine, ratify and confirme certain Powers, Rules and Orders for the better Government of the said Fishing Trade, as by the said Letters Patent relation thereunto had, may appear.

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the Authority of the same,

Imperial Act 10 and 11 William III, cap 25  
An Act to Encourage the Trade to Newfoundland

Whereas the Trade and Fishing at Newfoundland is a beneficial Trade to this Kingdom, not only in the employing great Numbers of Seamen and Ships, and exporting and consuming great Quantities of Provisions and Manufactures of this Realm, whereby many Tradesmen and poor Artificers are kept at work, but also in bringing into this Nation, by Returns of the Effects of the said Fishery from other Countries, great Quantities of Wine, Oil, Plate, Iron, Wool, and sundry other useful Commodities, to the Increase of his Majesty's Revenue, and the Encouragement of Trade and Navigation.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same,



that the said Letters Patent granted by the said King Charles the Second, bearing date the twenty seventh day of January in the said twenty seventh years of his said Majesty's Reign for regulating the Newfoundland fishery and all and every the Clauses, Powers and Directions, Penalties, Forfeitures, Matters and Things whatsoever therein contained (except what is hereafter by this Act otherwise allowed, explained or provided for) are and shall be continued in force as if the same were herein and hereafter particularly writed and mentioned.

And whereas it was further enacted by the authority aforesaid that it shall and may be lawfull for all his Majesties Subjects of this his Realm of England, Dominion of Wales and Town of Berwick upon Tweed, trading or that shall trade to Newfoundland and the said Rivers, Creeks, Lakes, Harbours or Roads in or about Newfoundland or any Islands adjoining thereby to have, use and enjoy the free Trade and Traffic and shall and may freely traffic and conduct trade and Art of Merchandise and shall peaceably have use and enjoy the Freedom of taking Bait and fishing in any of the Rivers, Lakes, Creeks, Harbours or Roads in or about Newfoundland, and the said Seas, or or any of the Islands adjoining thereto, with liberty to go on shore in any part of the Newfoundland or the said Islands, for the curing, salting drying and husbanding of their Fish and making of Oyle, and for the cutting of all Wood and Trees for the building and making of Stages, Rooms, Trayn-fats, Hurdles, Ships, Boats and other Necessaries for themselves and their Servants, Seamen and Fishermen and all things which may be useful or advantageous to their fishing as fully and freely as at any time heretofore hath been used and enjoyed there by any of the Subjects of his Majesty's Royal Predecessors and that without any Hindrance, Interruption, Denial or Disturbance whatsoever so as they submit unto and observe these Rules

That from henceforth it shall and may be lawful for all his Majesty's subjects residing within this his Realm of England, or the Dominions thereunto belonging, trading or that shall trade to Newfoundland, and the Seas, Rivers, Lakes, Creeks, Harbours, in or about Newfoundland or any of the Islands adjoining or adjacent thereunto, to have, use and enjoy the free Trade and Traffick, and Art of Merchandize and Fishery, to and from Newfoundland and peaceably to have, use, and enjoy the Freedom of taking Bait and Fishing in any of the Rivers, Lakes, Creeks, Harbours or Roads, in or about Newfoundland, and the said seas, or any of the Islands adjacent thereunto, and Liberty to go on shore on any part of Newfoundland, or any of the said Islands for the curing, salting, drying and husbanding of their fish, and for making of Oil, and to cut down Woods and Trees there for building and making or repairing of Stages, Ship-rooms, Trainfats, Hurdles, Ships, Boats, and other Necessaries for themselves and their servants, Seamen and Fishermen, and all other Things which may be useful or advantageous to their Fishing Trade,



and Orders in and by this Act proscribed and ordained touching the same.

2) And Be it further enacted by the Authority aforesaid that no Ballast, Prest Stones or anything else hurtful to the Harbours there shall be thrown out to the Prejudice of the said Harbours but that it shall be carried ashore and laid where it may do no Annoyance.

3) And be it further enacted by the Authority aforesaid that noe Person whatsoever either Fisherman or Inhabitant shall destroy deface or work any Detriment to any Stage, Cookroom, Flakes, Spikes, Nayles or any other thing thereto belonging whatsoever either at the end of the Voyage when he hath done and is to depart that Country or to any such Stages as he shall fall into at his coming into the Country but that he or they shall content themselves with such Stage as he or they shall take, the same shall be done with Timber gotten out of the Woods and not by the ruining and breaking down of other Stages upon Paine.

as fully and freely as at any Time heretofore hath been used or enjoyed there by any of the Subjects of his Majesty's Royal Predecessors, without any Hindrance, Interruption, Denial or Disturbance of or from any Person or Persons whatsoever; and that no Alien or Stranger whatsoever (not residing within the Kingdom of England, Dominion of Wales, or Town of Berwick upon Tweed) shall at any Time hereafter take any Bait, or use any sort of Trade of Fishing whatsoever in Newfoundland, or in any of the said Islands or Places above-mentioned.

II. And for preserving the said Harbours from all Annoyances; Be it further enacted by the Authority aforesaid, That from and after the twenty-fifth Day of March one thousand seven hundred, now next coming, no Ballast, Prest Stones, or any Thing else hurtful or to annoying any of the harbours there, shall be thrown out of any Ship or otherwise, by any Person or Persons whatsoever, to the Prejudice of the said harbours, but that all such Ballast and other Things shall be carried on Shore, and be laid where they may do no Annoyance.

III. And be it further enacted by the Authority aforesaid, that no Person or Persons whatsoever shall (at his Departure out of the said Country, or at any other Time), destroy, deface or do any Detriment to any such Stage or Cookroom; or to the Flakes, Spikes, Nails, or to any other Thing whatsoever thereto belonging, as he or they shall fall into at his or their coming into the said Country, but that he or they shall (during his or their Stay there) content him and themselves with such Stage or Stages only as are needful for him or them, and shall also (at his or their Departure thence) leave all such his or their stage or stages, without doing or causing to be done any wilful Damage to any of them;

and that for the repairing of such Stages as he or they shall so take, during his or their Abode there, the same shall be done with Timber fetcht out of the Woods there, and not by the ruining, breaking down, demolishing, prejudicing, or any wise injuring the Stage or Stages of any other Person or Persons whatsoever.

4) And be it enacted by the Authority aforesaid according to ancient Custom every Ship or Fisherman that first enter the Harbour on behalf of the ship shall be Admiral during the season wherein for the time being he reserve only so much Stage or Flake or both as are needful for the number of Boats which he shall use with an overplus only for one boat more than he uses as a Privilege for his first coming, and that every Ship coming after doe content himself with what he shall have necessary use for, without keeping or detaining any more to the Prejudice of others next coming. And that any that are possessed of several Places in several Harbours with intent to keep them all before they resolve upon which of them to choose, be bound to resolve to send Advice to such Aftercomers in those Places so shall expect his Resolution and that within ... Days if the Weather shall soe allow, that the Aftercomer may likewise choose his Place and so on without Prejudice by others Delay; and that the Admirals of the respective Harbours doe proportion the Rooms to the good of All Ships in the Harbour they fish in according to the number of Boats they keep.

IV. And be it further enacted by the Authority aforesaid, That (according to the ancient Custom there used) every such Fishing Ship from England, Wales or Berwick, or such Fishermen as shall, from and after the said twenty-fifth day of March, first enter any Harbour or Creek in Newfoundland, in behalf of his Ship, shall be Admiral of the said Harbour or Creek during that Fishing Season, and for that Time shall reserve to himself only so much Beech or Flakes, or both, as are needful for the Number of such Boats as he shall there use, with an Overplus only for the Use of one Boat more than he needs, as a Privilege for his first coming thither; and that the Master of every such second Fishing Ship, as shall enter any such Harbour or Creek shall be Vice Admiral of such Harbour or Creek during that Fishing Season; and that the Master of every such Fishing Ship coming next, as shall enter any such Harbour or Creek, shall be Rear Admiral of such Harbour or Creek during that Fishing Season; and that the Master of every Fishing Ship there, shall content himself with such Beech or Flakes, as he shall have necessary Use for, without keeping or detaining any more Beech or Flakes, to the Prejudice of any other Ship or Vessel as shall arrive there; and that such Person or Persons as are possessed of several Places in several Harbours or Creeks there, shall make his or their Election of such Place as he or they shall choose to abide in; and shall also, within eight and forty Hours after any Aftercomers into such Place or Places shall demand such his or their Resolution touching such his or their Election (if the Weather will so soon permit, or so soon after as the Weather will permit) give or send his or their Resolution

5) And be it enacted by the Authority aforesaid that noe Fisherman or Inhabitant in Newfoundland doe or shall take up or possess any of the Stages, Cookrooms, Beaches or Places for taking Bait or Fishing before the arrival of the Fishermen out of England, and that they be all provided for; Excepting to the said Inhabitants such Stages as they are rightfully possessed of before the making of this Act, and that noe Person be deemed or taken to be an Inhabitant there, but such as have their Families there resident with them.

to such Aftercomer or Aftercomers, touching such his or their Election of such Place as he or they shall so choose to abide in for the Fishing Season, to the End that each Aftercomer or Aftercomers may likewise choose his or their place or Places of his or their Abode there; and in case any Difference shall arise touching the said Matters, the Admirals of the respective Harbours where such Difference shall arise, or any two of them, shall Proportion the Place to the several Ships, in the several Harbours they fish in, according to the number of Boats which each of the said Ships shall keep.

V. And whereas several Inhabitants in Newfoundland, and other Persons, have, since the Year of our Lord one thousand six hundred eighty-five, ingrossed and detained in their own Hands, and for their own private Benefit, several Stages, Cookrooms, Beeches, and other Places in the said Harbours and Creeks (which before that Time belonged to Fishing Ships, for taking of Bait, and fishing and curing their Fish) to the great Prejudice of the Fishing Ships that arrive there in the Fishing Season, and sometimes to the Overthrow of some of their Voyages, and to the Great Discouragement of the Traders there; Be it further enacted by the Authority aforesaid, That all and every such Person or Persons, as since the said year of our Lord one thousand, six hundred eighty-five, have or hath taken, seized or detained any such Stage, Cook-room, Beech, or other Place for taking Bait or Fishing, or for the drying, curing, or husbanding of Fish, shall on or before the said twenty-fifth Day of March relinquish, quit and leave, to the publick Use of the Fishing Ships arriving there, all and every the said Stages, Cook-rooms, Beeches and other Places for taking Bait and Fishing, and for drying, curing and husbanding of Fish.

VI. And for the preventing the ingrossing and detaining of all such Stages, Cook-rooms, Beeches and other Places, by any Person or Persons for the Time to come;

Be it enacted by the Authority that no Fisherman or Inhabitant of Newfoundland, or any other Person or Persons whatsoever, shall, at any time after the said twenty-fifth Day of March, seize, take up or possess any of the Stages, Cook-rooms, Beeches or other Places, which at any Time since the said Year of our Lord one thousand six hundred eighty-five, did or at any time hereafter shall belong to any Fishing Ship or Ships, for taking Bait, or Fishing, or for drying, curing or husbanning of Fish, before the Arrival of the Fishing Ships out of England, Wales, and Berwick, and until all such Ships shall be provided with Stages, Cook-rooms, Beeches and other Places for taking Bait and Fishing, and for drying, curing and husbanning of Fish.

VII. Provided always, That all such Persons, as since the twenty-fifth Day of of March one thousand six hundred eighty-five, have built, cut out or made, or at any Time hereafter shall build, cut out or make, any Houses, Stages, Cook-rooms, Train-fats, or other Conveniences, for fishing there, that did not belong to Fishing Ships since the said Year one thousand six hundred eighty-five, shall and may peaceably and quietly enjoy the same to his or their own use, without any Disturbance of or from any Person or Persons whatsoever.

VIII. And be it further enacted by the Authority aforesaid, That all and every Person whatsoever, that shall go over with their Servants to Newfoundland, to keep Boats on a Fishing Voyage, commonly called By-Boatkeepers, shall not pretend to or meddle with any House, Stage, Cook-room, Train-fat, or other Conveniency, that did belong to Fishing Ships since the Year one thousand six hundred eighty-five, or shall be cut out or made by Ships, from and after the said Twenty-fifth Day of March one thousand seven hundred.

6) And be it further enacted by the Authority aforesaid that no Master or Owner of any Fishing Ship do transport or carry any Seamen or Fishermen or other Persons in his Ship to Newfoundland other than such as belong to his or their or others' Ships Companys and such as are engaged in the Voyage and have Share or Shares of the said Voyage or such as intend to settle there with their Families, and other than such as shall be Servants to Fishermen and Inhabitants there and actually receive Wages from them being Servants as aforesaid, and not go interested in the Profits of the Voyage.

7) And be it further enacted by the Authority aforesaid that no Master or Owner of any Fishing Ship do transport or carry in any one Ship for a fishing Voyage more than ... Persons to one hundred tunns Burthen of the said Ship and so proportionably for all Ships of a greater or lesser Burthen.

8) And be it further enacted by the Authority aforesaid that the Masters and Owners of all Ships trading out of England, Wales or Berwick aforesaid to Newfoundland according to the number of Men in their respective Ships do provide in England, Wales or Berwick Victuals and other Necessaries carried in the fishing Craft (except salt) for the whole Voyage or fishing Season for themselves and Company.

IX. And be it further enacted by the Authority aforesaid, that every Master of a By-boat or By-boats shally carry with him at least two Fresh Men in six (viz.) One Man that hath made no more than one Voyage, and one Man who hath never been at Sea before; and that every Inhabitant shall be obliged to employ two such fresh Men, as the By-boat keepers are obliged for every Boat kept by them; and that, further, all Masters of Fishing Ships shall carry with them, in their Ship's Company, at least one such fresh Man that never was at Sea before, in every five Men they carry; and that the Master of each such By-boat, and each such Fishing Ship, shall make Oath before the Collector, or other principal Officer of the Customs of the Port or Ports from whence such Ship intends to sail, that each Ship and By-boat's Company have such fresh Men therein as this Act directs; and that the said Officer or Officers is and are impowered and required to administer the aforesaid Oath to the said Masters of Ships and By-boats, and give a Certificate thereof under his Hand, without any Fee, Gratuity or Reward for so doing.

X. And be it further enacted by the Authority aforesaid, That every Master or Owner of any Fishing Ship going to Newfoundland (after the said twenty-fifth day of March) shall have in his Ship's Company every fifth Man a Green-man, (that is to say), not a Seaman, or having been ever at Sea before.

XI. And be it enacted ... no Person or Persons [shall] ... obliterate, expunge, cut out, deface... Mark or Marks of any Boat or Boats etc, ... nor remove or take away any Boat or Train-fat ...

XII. And be it enacted ... That no Person ... shall ... rind any of the Trees there standing ... nor ... set on Fire any of the Woods ... Or cause Destruction of the same, for any Uses ... except only for necessary Fuel for the Ships and Inhabitants, and for the building ... of houses, ships, boats and Train-fats ... Stages, Cook-rooms [etc.] ...

9) And be it further enacted by the Authority aforesaid that the Admiral, Vice Admiral and Rear Admiral of and in every Port and Harbour in Newfoundland for the time being, be and are authorised and required to preserve Peace and Good Government among the Seamen and Fishermen in their respective Harbours as well as on Shore, to see the Rules and Orders concerning the Regulation of the Fishery duly put in Operation.

10) And be it further enacted by the Authority aforesaid, that the Admirals do yearly keep Journals of their Proceedings there and at their Return in England deliver copies of them with an Account of the number of Ships, Boats, Stages and Train-fats and of those Seamen belonging to and employed in their respective Harbours unto his Majesty's Committee for Trade and Plantations.

XIII. ... Be it enacted by the Authority aforesaid, that all Robberies, Murders and Felonies ... done and committed in or upon the Land in Newfoundland.... shall and may be enquired of, tried, heard, determined and adjudged ... in any Shire ... by Virtue of the King's Commission of Oyer and Terminer....

XIV. And be it further enacted by the Authority aforesaid, That the Admirals of and in every Port and Harbour in Newfoundland for the Time being, be and are hereby authorised and required (in order to preserve Peace and good Government amongst the Seamen and Fishermen, as well in their respective Harbours, as on the Shore) to see the Rules and Orders in this present Act contained, concerning the Regulation of the Fishery there duly put in Execution; and that each of the said Admirals do yearly keep a Journal of the Number of all Ships, Boats, Stages, and Train-fats, and of all Seamen belonging to and employed in each of their respective Harbours, and shall also (at their return to England) deliver a true Copy thereof, under their own Hands, to his Majesty's most Honourable Privy Council. .

XV. And be it further enacted by the Authority aforesaid, That in case any Difference or Controversy shall arise in Newfoundland, or the Islands thereunto adjoining, between Masters of Fishing Ships and the Inhabitants there, or any By-Boat Keeper, for or concerning the Right and Property of Fishing Rooms, Stages, Flakes, or any other Building or Conveniency for Fishing or Curing Fish, in the several Harbours or Coves, the said Differences, Disputes and Controversies, shall be judged and determined by the Fishing Admirals, in the several Harbours and Coves; and in Case any of the said Masters of Fishing Ships, By-boat Keepers or Inhabitants, shall think themselves aggrieved by such Judgement or Determination, and shall appeal to the Commanders of any of his Majesty's Ships of War, appointed as Convoys for Newfoundland, the said Commander is

here-by authorised and impowered to determine the same, pursuant to the Regulation in this Act.

XVI. And to the End that the Inhabitants, Fishermen, Seamen, and all and every other Person and Persons residing or being at Newfoundland, or any of the said Islands, or other Places, may with all Devotion join in their solemn Prayers and Addresses to Almighty God, for the obtaining of his Blessing upon their Persons and Endeavours; Be it hereby enacted, that all and every the Inhabitants of Newfoundland, or the said Islands or Places adjacent near thereto shall strictly and decently observe every Lord's Day, commonly called Sunday; and that none of the said Inhabitants (who keep any Tavern, Alehouse, or other publick House for Entertainment) shall entertain or sell, vend, utter or dispose of to any Fisherman, Seaman, or other Person whatsoever upon any Lord's Day or Sunday, any Wine, Beer, Ale, Cyder, strong Waters or Tobacco, or any other Liquor or Liquors whatsoever.

XII. (This clause is an explanatory clause about two earlier acts on the Greenland Fishery put in because it was requested of the Committee April 15, 1699.)

## Notes

<sup>1</sup>Great Britain, *The Journals of the House of Commons*, Volumes 1-56 (London, 1803-1820), Volume 12, 687. (Referred to as *CJ*).

<sup>2</sup>*Five Representations made by the Board of Trade on the Fishery and Trade of Newfoundland*. Printed by order of Parliament, London, March 1793. These five representations show the recurrence over the eighteenth century of arguments made in the seventeenth century about limiting the Newfoundland fishery to English (British)-based ships. According to Ian K. Steele, *Politics of Colonial Policy: The Board of Trade in Colonial Administration 1696-1720* (Oxford: Clarendon Press, 1968), 161, the 1718 report by the Board of Trade on Newfoundland was prepared not only from its own papers, but from the works of Hakluyt, Purchas, and Josiah Child. The draft bill which accompanied the report basically repeated the bill which we shall see Seymour presenting in March 1699, and which was reversed by the house. On the pernicious influence of Palliser and other officials on an altered policy see Keith Matthews, "Lecture XX: British Policy towards Newfoundland, 1763-1793," *Lectures on the History of Newfoundland 1500-1830* (St. John's: Breakwater, 1988), 122-128.

<sup>3</sup>John Reeves, *A History of the Government of the Island of Newfoundland* (London, April 1793) (see its preface — it was originally written for the advice of the Board of Trade in 1791. Great Britain, Public Record Office [PRO], add. ms. 38396, Liverpool Papers, vol. 207), published as a counter to the attacks on government policy and (Reeves's own) 1792 Judicature Act by the merchants in a parliamentary enquiry into the Newfoundland trade. Sheila Lambert, ed., *House of Commons Sessional Papers of the Eighteenth-Century*, vol. 90, *George III, Newfoundland 1792-9* (Wilmington: Scholarly Resources, 1975) First Report, 26 March 1793, 111-130 (William Newman's and John Jeffries's evidence), 152-156 (Peter Ougier's evidence). On Reeves's capacity as a historian of constitutional and legal issues see Michael Weinerl, "John Reeves and the Controversy over the Constitutional Role of Parliament in England during the French Revolution," *Parliaments, Estates and Representations* 5.1 (June 1985), 71-77, especially 72; and for a more conventional view of Reeves see Mark Warren Bailey, "John Reeves, Esq. Newfoundland's First Chief Justice: English Law and Politics in the Eighteenth Century," *Newfoundland Studies* 14.1 (Spring 1998), 28-49.

<sup>4</sup>Charles M. Andrews, *The Colonial Period of American History, Volume IV; England's Commercial and Colonial Policy* (New Haven and London: Yale University Press, 1964), 386.

<sup>5</sup>Reeves, *History of Newfoundland*, 46, 48, 55, 57, 66, and 145-150.

<sup>6</sup>Patrick O'Flaherty, *Old Newfoundland: A History to 1843* (St. John's: Long Beach Press, 1999), 57, for instance, comments on Dr. Keith Matthews's dilemma of both condemning the act for what it did and then proclaiming its ineffectiveness. It was ineffective if the law was considered, as was often stated, as favouring the ship fishermen and disfavoured the inhabitants, as promoting English commerce rather than both English and colonial commerce, or as promoting a "nursery of seamen" rather than as opening the fishery to investment by any of the king's subjects.

<sup>7</sup>Matthews, *Lectures*, 122.

<sup>8</sup>For instance, the onward migration of seamen and fishermen from Newfoundland to mainland American colonies was viewed as against policy. There was no statutory (nor proclamatory) prohibition on this migratory movement (nor on a reverse flow of seamen), but because English employers thought it decreased the number of possible employees, and



thus perhaps increased their wages, they denounced it to the Board of Trade as a “nuisance.” The Board of Trade then asked the Commodore in his instructions what measures had been taken to remedy this nuisance, and this became seen as a part of policy.

<sup>9</sup>John E. Crowley, “Empire versus Truck: The Official Interpretation of Debt and Labour in the Eighteenth-Century Newfoundland Fishery,” *Canadian Historical Review* 70.3 (1989), 311-336, especially 315. This reliance upon the official documents has led to errors of fact. In the case of the onward migration of seamen it has been stated that King William’s Act required English ships to bring all their crews back to England at the end of the fishing season. (For instance, W. Gordon Handcock, *Soe long as there comes noe women* [St. John’s: Breakwater Books, 1989], 85.)

<sup>10</sup>Reeves, *History of Newfoundland*, 90-96, for responses of merchants in earlier years. PRO, BT 1/2, f.182, Bristol merchants to Lord Sheffield, 14 January 1792, for an example of the many complaints against subsequent acts other than King William’s Act.

<sup>11</sup>O’Flaherty, *Old Newfoundland*, 57.

<sup>12</sup>Patrick O’Flaherty, “King William’s Act (1699): Some Thoughts 300 years Later,” *Newfoundland Quarterly* 93.2 (Winter 2000), 21-28.

<sup>13</sup>Jerry Bannister, *The Rule of the Admirals: Law, Custom, and Naval Government in Newfoundland, 1699-1832* (Toronto: University of Toronto Press, 2003), especially 3-103; Christopher English, “Introduction” and “The Legal Historiography of Newfoundland,” Bruce Kercher and Jodie Young, “Formal and Informal Law in Two New Lands: Land Law in Newfoundland and New South Wales under Francis Forbes,” and Trudi Johnson, “Defining Property for Inheritance: The Chattels Real Act of 1834,” in *Essays in the History of Canadian Law — Two Islands: Newfoundland and Prince Edward Island*, ed. Christopher English (Toronto: University of Toronto Press, 2005), 3-16, 19-38, 147-191, and 192-216. Christopher English, “The Development of the Newfoundland Legal System to 1815,” *Acadiensis* 20 (1990), 89-119, should be ignored on King William’s Act as he seems to be describing a totally different text to the one normally given (89, 97, 99-100, 104). This does not detract, however, from the excellent interpretation in the article of the informal and formal judicial systems that arose in the eighteenth century (108-113).

<sup>14</sup>Peter Pope, “Comparisons: Atlantic Canada,” in *A Companion to Colonial America*, ed. Daniel Vickers (Malden, MA, and Oxford, 2003), 489-507.

<sup>15</sup>Alexander Campbell McEwen, *Newfoundland Law of Real Property: The Origin and Development of Land Ownership*, PhD thesis, University of London, 1978, Chapter III, 34-38, gives a restricted version of the material available and the progress of the bill through the House and the committee stage.

<sup>16</sup>*CJ* 12, 519 (20 February 1698/9), 613 (25 March 1699), 615 (27 March 1699), 664 (25 April 1699), 674 (1 May 1699), 675 (2 May 1699), 687 (4 May 1699). Great Britain, *Journals of the House of Lords* (referred to as *HL*) (London, n.d.) 16, 461 (2 May 1699), 462 (3 May 1699), 463 (4 May 1699). *CJ* 13, 299 (26 March 1700).

<sup>17</sup>D.W. Hayton, ed., *The Parliamentary Diary of Sir Richard Cocks, 1698-1707* (Oxford: Clarendon Press, 1996), 23.

<sup>18</sup>Among those referred to were George Payne Rainsford James (editor), *Letters Illustrative of the Reign of William III from 1696 to 1708*, 3 vols. (London, 1841) for the correspondence of James Vernon, Secretary of State and member for Westminster; Lady A.A. Houblon, *The Houblon Family, Its Story and Times* (London, 1907) for any recollection by Sir James Houblon, London merchant and member for London, and who had made represen-

tations in the past (1675) on the Newfoundland trade (PRO, Colonial Office CO 1/34 fols. 27 and 197); British Library, *Blathwayt Papers*, various add. mss. of correspondence between William Blathwayt (Secretary of War, Commissioner of Trade and Plantations and member for Bath) and other officials; Suffolk Record Office (Ipswich), *Correspondence and Papers of the Gurdon Family* (HA 54/1/2, 38-80) for correspondence between both Sir William Cooke Bt., member for Norfolk, and John Gurdon, member for Sudbury, and Thornhagh Gurdon; Cheshire Record Office (Chester), *Borough Records, Mayor's Letters*, M/L/4 fols. 554 to 562, for correspondence between Peter Shakerly, member for Chester, and Henry Bennett esq., Mayor of Chester; Cumbria Record Office, *Lonsdale Archive*, D/Lons/W2/2/1-9, for letters from James Lowther, member for Carlisle, to Sir John Lowther. John Gurdon and Peter Shakerly were nominated members of the committee that reviewed the Newfoundland Trade Act (*CJ* 12, 615), and Shakerly and Lowther were tellers for the yeas at the division on the committee's report, 1 May 1699 (*CJ* 12, 674). There is no mention of the Newfoundland Trade Act in any of the correspondence.

<sup>19</sup>*Calendar of State Papers, Colonial* [CSPC], *Volume 17. America and West Indies 1699*, ed. Cecil Headlam (London, HMSO 1908), 119, memorandum 216, 29 March.

<sup>20</sup>Provincial Archives of Newfoundland and Labrador [PANL], St. John's, Newfoundland, *Blathwayt Papers*, Collection MG 224 on microfilm. Volume 19.

<sup>21</sup>PRO, Colonial Series 194, volume 1, folio 130, note 28 March 1699, recording delivery of the bill "An Act to Encourage the Trade to Newfoundland," but "Mr. Blathwayt had this bill away." (No copy of the bill remained in the Colonial Series.)

<sup>22</sup>According to Harold Horwitz, in the 1690s "the London printers began to do a substantial trade in 'Cases', 'Reasons', and similar pieces offering arguments for or against individual measures; produced in runs of several hundreds they were distributed gratis to M.P.s." Harold Horwitz, *Parliament, Policy and Politics in the Reign of William III* (Manchester, 1977), 321. Between 20 February and 25 March both supporters and opponents of the bill paid for and composed these printed pieces.

<sup>23</sup>Keith Matthews, *Collection and Commentary on the Constitutional Laws of Seventeenth Century Newfoundland* (St. John's: Maritime History Group, Memorial University of Newfoundland, January 1975), 199-201, attributes the act to the government. Jerry Bannister, *The Rule of the Admirals*, 31, thought the act "reflected imperial policy with respect to Newfoundland" acting through the Board of Trade ("than the Board of Trade had originally envisaged"). Harold Innis, *The Cod Fisheries: A History of an International Economy* (Toronto: University of Toronto Press, 1940, rev. ed. 1954), 107-108, attributes the act to the House of Commons, as does Patrick O'Flaherty, *Old Newfoundland*, 55-57. Daniel W. Prowse, *A History of Newfoundland from the English, Colonial, and Foreign Records* (London: Macmillan, 1895), 225, assumed a Minister propounded the act under the influence and possible bribery of Devonshire interests. Ralph Greenlee Lounsbury, *The British Fishery at Newfoundland 1634-1763* (New Haven: Yale University Press, 1934), 210 and 213, attributes the act to West Country influence, although he concedes that little was known about the passage of the act.

<sup>24</sup>A good example, and a most extensive speculative review of the act, is Patrick O'Flaherty's article "King William's Act."

<sup>25</sup>CSPC vol. 17, 119.

<sup>26</sup>Memorial University of Newfoundland, Maritime History Archive [MHA], Matthews Papers, 5.01.236 "London Notes"; see n. 67 also.

<sup>27</sup>Henry Horwitz, "Parties, Connections, and Parliamentary Politics, 1689-1714," *The Journal of British Studies* 6 (1966-7), 62-69.

<sup>28</sup>For a wider elucidation on these matters see J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975 and 2003), Chapters 12 and 13, "Court, Country and Standing Army," and "The Augustan Debate over Land, Trade and Credit," especially 426-436.

<sup>29</sup>D.W. Hayton, "The Country Party 1698-1699," *Parliamentary History* 6 (1987), 145-160, and Eveline Cruickshanks, Stuart Handley, and D.W. Hayton, *The History of Parliament; House of Commons, 1690-1715*, 5 vols. (Cambridge: Cambridge University Press, 2002), especially Vol. I, 437, 451-452.

<sup>30</sup>Jennifer Carter, "Cabinet Records for the Reign of William III," *English Historical Review*, 77 (January 1963), 95-114. Horwitz, *Parliament, Politics and Policy*, 208. Sir George Clarke, *The Later Stuarts, 1660-1714* (Oxford: Clarendon Press, 1955), 152.

<sup>31</sup>James, ed., *Letters Illustrative*, Vol. II, 266.

<sup>32</sup>D.W. Hayton, ed., "Debates in the House of Commons, 1697-1699," *Camden Miscellany Volume XXIX*, Camden Fourth Series, Volume 34 (London: Royal Historical Society, 1987), Chapter V, 392-401.

<sup>33</sup>H.F. Kearney, "The Political Background to English Mercantilism, 1695-1700," *Economic History Review*, 2nd series, XI (1958-9), 484-496.

<sup>34</sup>Kearney, "Political," 495-496. Julian Hoppitt, "Patterns of Parliamentary Legislation, 1660-1800," *The Historical Journal* 39.1 (1996), 109-131, remarks on the government struggling to control legislative initiatives involving public business during the 1690s and 1700s (118).

<sup>35</sup>*CJ* 12, 364, 389.

<sup>36</sup>*CJ* 12, 445. Cruickshanks, *HC 1690-1715*, Vol. 5, 409.

<sup>37</sup>*CJ* 12, 389.

<sup>38</sup>This includes the passage that Innis, *Codfisheries*, used as the foreword to Chapter V, 95, under the title of "Parliamentary Debates (1699)."

<sup>39</sup>*CJ* 12, 433-434.

<sup>40</sup>*CJ* 12, 502, 516, 522-523.

<sup>41</sup>*CJ* 12, 477.

<sup>42</sup>*Blathwayt Papers*, Norris to Council, 13 November 1698. Received 2 January 1698/9, read 6 February, delivered by Mr. Blathwayt. Received Admiralty 3 February.

<sup>43</sup>*Blathwayt Papers*, "List of Ships and their ladings that are trading to Newfoundland this fishing season."

<sup>44</sup>PRO, Colonial Office Series CO 391/11 ff. 423-4, CO 195/2 ff. 270-272.

<sup>45</sup>*CJ* 12, 518-519.

<sup>46</sup>Cruikshanks, *HC 1690-1715*, 409.

<sup>47</sup>*CJ* 12, 519.

<sup>48</sup>Matthews, *Constitutional Laws*, 13, 77, 31, 65, 127, 167, 133, 139, 145, 159, 181, 187, 117, commentary 1-11, 193-194. See PRO CO 194/1/196 for Norris's preference for "its Old Constitution" in his opinions sent to the Lords Commissioners of Trade, 17 March.

<sup>49</sup>Hayton, *Cocks Diary*, Appendix 1, "Brief Biographical Notices of MPs mentioned in the Text," 294-309, for biographical details. Seymour had earlier (1667) been appointed to a committee of "gentlemen of Devon" that had been appointed to enquire into misgovern-

ment in Newfoundland by governors, and which had taken depositions at Totnes. John Reeves, *History of Newfoundland*, 12.

<sup>50</sup>*CJ* 12, 549-551. Hayton, *Debates*, 399-400.

<sup>51</sup>*CJ* 13, 420, 448.

<sup>52</sup>Hayton, *Debates*, 392.

<sup>53</sup>*CJ* 12, 599.

<sup>54</sup>Dennis Rubini, "Politics and the Battle for the Banks, 1688-1697," *English Historical Review* 85 (October 1970), 693-714. Dwyrd W. Jones, *London Merchants and the Crisis of the 1690s: War and Economy in the Age of William III and Marlborough* (Oxford: Blackwell, 1988).

<sup>55</sup>I.K. Steele, *Politics of Colonial Policy; The Board of Trade in Colonial Administration 1696-1720* (Oxford: Clarendon Press, 1968), 43.

<sup>56</sup>PRO, Edward Bateson, ed. *Calendar of State Papers*, Domestic Series; vol. 10 William III, 1699-1700 (HMSO, 1937. New York, Kraus Reprint, 1969), 250, 253.

<sup>57</sup>PRO, CO 391/11, 423-424, Representation ordered, 24 March 1699; CO 195/2/ 277-280, Council of Trade and Plantations to the King, 30 March 1699. This was approved and instructions were to be given to the Treasury, Ordnance Office and the Admiralty for the convoys to Newfoundland, supplies and recruits for the garrison there.

<sup>58</sup>PRO, CO 194/1/130, "Memorandum of a Copy of a Bill now depending in the House of Commons for Encouraging the Trade to Newfoundland. March 28, 1699." The copy is missing, and a note says "Mr. Blathwayt had this bill away." This is the copy in the Colonial Archives, Williamsburg. This copy was not printed, but was written in formal round hand — the hand of the under-clerk copier. See Appendix of this paper for the text of this bill.

<sup>59</sup>It consisted of what Jacob Price refers to as "the lobbyist's deck of cards" when promoting trade regulatory bills. These were that the trade 1) created markets for produce and national manufactures; 2) employed ships and seamen; 3) created work for the indigent and poor tradesmen; 4) brought returns to the gain of the king's revenue; plus others peculiar to the specific trade. Price was referring to the bill for enlarging the Russia Trade to which leave was given 9 January 1698/9. With the fisheries (as in the case of the petition for the Royal Fishery company) they were often referred to "as nurseries of seamen," but this was left out of the Newfoundland preamble. Its special claim to fame was the import of plate that it promoted, which was in the preamble. Jacob Price, "The Tobacco Adventure to Russia," *Transactions of the American Philosophical Society*, 2nd series, li, 1961, 42.

<sup>60</sup>*CJ* 12, 615.

<sup>61</sup>A comparison of the lists of members for ports, members who were merchants, and the named members of the committee (including the shire members), Cruickshanks, *HC 1690-1715*, vol. I, 581-594, 731-738, *CJ* 12, 615, with the lists given in I.F. Burton, P.W.J. Riley, and E. Rowlands, *Political Parties in the Reigns of William III and Anne: The Evidence of Division Lists* (London: The Athlone Press, 1968), 41-59, David Hayton, "The 'Country' interest and the party system, 1689-c.1720," in *Party and Management in Parliament, 1660-1784*, ed. Clive Jones (New York: St. Martin's Press, 1984), 37-85, and in Henry Horwitz, "Parties, Connections," 62-69, gives rough totals of 54 Country members to 58 Court members.

<sup>62</sup>Orlo Cyprian Williams, ed., "The Minute Book of James Courthope," *Camden Miscellany* vol. XX (London: Royal Historical Society, 1953). Williams points out that this is an extremely rare document, for it was never an official document to be preserved. It was a working document from which the report of the committee could be prepared.

<sup>63</sup>Williams, "Minute Book," 75.

<sup>64</sup>*CJ* 12, 611.

<sup>65</sup>*CJ* 12, 624, 625.

<sup>66</sup>Williams, "Minute Book," 76. This testimony accords well with the printed sheet "Several Reasons ... against passing the Bill ..." *Blathwayt Papers*, PANL MG 224.

<sup>67</sup>*CJ* 12, 510. Keith Matthews has a note stating that "Thomas Nisbet, David Waterhouse and others offered verbal objection to the bill," giving a coded source, identifiable only as CTP correspondence (see n. 26). He identifies Thomas Nisbet as a Newfoundland merchant and David Waterhouse as a bill acceptor dealing with Newfoundland bills. Memorial University of Newfoundland, MHA, Keith Matthews Papers, Box 5, files 5.01.168 (10/11 William), 5.01.236 (London); Keith Matthews Name Files, "Thomas Nisbet." Thomas Nesbitt was a substantial householder in the London census for the 1695 tax, *Surnames Beginning with 'N', London Inhabitants within the Walls*, 211-217, <http://www.british-history.ac.uk/report>.

<sup>68</sup>Williams, "Minute Book," 76.

<sup>69</sup>Henry and Thomas Manston were from Lympstone, just south-east of Topsham and Exeter. Henry sometimes traded directly with the Peninsula, on the account of John Adams. Thomas fished and traded mainly on his own account, but on occasion on the account of John Pym. John Pym of Exeter had written a letter in March 1698 to Simon Cole, to be brought to the attention of the Committee of Trade, complaining of the bye-boat keepers and unfree ships trading from foreign ports. Memorial University of Newfoundland, MHA, Keith Matthews Name Files, quoting Lympstone Parish Baptismal Records, 1666 & 1669, Exeter Port Books, 1692, 1695, 1698, 1699, 1700, 1701. CSPC (American and West Indies), volume 16, Item 306, also Colonial Office CO 194/1, fol. 97.

<sup>70</sup>Williams, "Minutes," 76-77.

<sup>71</sup>Appendix, Act 10 & 11 William III, Article V. On Vice-Admirals as Judges, Articles IV and XV. On Planters' Rooms, Articles V, VI, and VII.

<sup>72</sup>*CJ* 12, 520, 542, 590. The Bill was not passed this session.

<sup>73</sup>Newfoundland was not considered a plantation, CSPC 1685-1688, para. 1097.

<sup>74</sup>Williams, "Minute Book," 81-2. Appendix, "Act 10 & 11 William III," Article IX.

<sup>75</sup>Appendix, Act "10 & 11 William III," Article XV.

<sup>76</sup>Peter Pope, *Fish into Wine: The Newfoundland Plantation in the Seventeenth Century* (Chapel Hill, NC, 2004), 239, notes that Newfoundland became a market for marine labour at an early date. John Mannion, "Irish Migration and Settlement in Newfoundland: The Formative Phase, 1697-1732," *Newfoundland Studies* 17.2 (Fall 2001), 268, wonders how the large crews of trading vessels were employed while in Newfoundland. It appears they may have been hired to planters.

<sup>77</sup>Williams, "Minute Book," 82. Appendix Act 10 & 11 William III, Article IX.

<sup>78</sup>Williams, "Minute Book," 83.

<sup>79</sup>*CJ* 12, 661, 664.

<sup>80</sup>*CJ* 12, 669.

<sup>81</sup>Cruikshanks, *HC 1690-1715* vol. III, 733-734 (Coryton), vol. IV, 683-9 (Lowther), vol. V, 131-132 (Perry), 450 (Shakerley).

<sup>82</sup>*CJ* 12, 588 (18 November 1696), 682 (29 January 1696/7).

<sup>83</sup>*CJ* 12, 675.

<sup>84</sup>*HL* 16, 461.

<sup>85</sup>The Committee of the Whole House was chaired by Thomas Grey, Earl of Stamford, later one of the Lords Commissioners for Trade and Plantations, a position he had held before, in 1675. Of the 69 peers in attendance on 3 May 1699, at least 39 were whigs and probably favourable towards the amended bill. Parliamentary Archives, House of Lords Manuscript Minutes, 3 May 1699, in HL/PO/JO/5/1/34, Minutes of Proceedings, 24 August 1698-24 October 1699. Clive Jones, "'A fresh division lately grown amongst us': Party Strife, Aristocratic Investment in the Old and New East India Companies and the Vote in the House of Lords on 23 February 1700," *Historical Research* 68 (1995), 302-317.

<sup>86</sup>HL 16, 462, 464.

<sup>87</sup>CJ 12, 687; HL 16, 464.

<sup>88</sup>Keith Mercer, "Document: *Some Considerations Touching ... By-boats*: James Yonge on the Fisheries Controversy of the 1660s," *Newfoundland Studies* 19.1 (2003), 212, states that 90 percent of all bye-boat keepers in Newfoundland in 1675 and 1680 were from Teignmouth, Dartmouth, and Torbay/Torquay. Keith Matthews, *Collection*, 141, also identifies the bye-boat keepers as belonging to the Torbay and Teignmouth areas and outside the borough areas (though not outside the customs areas centered on the boroughs of Dartmouth and Exeter). James Yonge, "Some Considerations ...," *Newfoundland Studies* 19.1 (2003), 226, lists one of the objections to the bye-boat keepers as being that the Newfoundland fishery was a matter of trade and so belonged to the merchants, who had privileges that should not be encroached upon. (The merchants were the freemen of the boroughs.) Yonge countered that objection by saying that fishing itself was not the work of a merchant, hazarding the fish abroad was.

<sup>89</sup>Jack P. Greene, "Empire and Identity from the Glorious Revolution to the American Revolution," *Oxford History of the British Empire*, Vol. II (Oxford: Oxford University Press, 1998), 223-224, identifies two views of identity and trade within the British Empire, one expansive, and thus inclusionary, the other restrictive, and so exclusionary. In our period the Court party consisted of many who espoused an expansive view of trade (often an interested view) and the Country party held a restrictive view of trade (J.D. Rogers called the latter "Little Englanders." *Historical Geography of Newfoundland* [Oxford: Clarendon Press, 1911], 119-120).

<sup>90</sup>Bannister, *Rule of the Admirals*, 33-34, gives a straightforward account of Larkin's mission and report.

<sup>91</sup>British Library, Sir Charles Hedges' Letterbook, Additional ms. 24107, fol. 177, 12 December 1698, Sir Charles Hedges to Mr. Blathwayt.

<sup>92</sup>Reeves certainly liked the cut of his jib, and quoted Larkin's report lavishly in his history. Reeves, *History of Newfoundland*, 32-43. Larkin's report of 20 August 1701 is to be found in PRO, CO 194/2, 132.

<sup>93</sup>Reeves, *History of Newfoundland*, 52-53.

<sup>94</sup>Jerry Bannister, "The Fishing Admirals in Eighteenth-Century Newfoundland," *Newfoundland Studies* 17.2 (Fall 2001), 170-171.

<sup>95</sup>Reeves, *History of Newfoundland*, 41-91, quotes many complaints.

<sup>96</sup>Reeves, *History of Newfoundland*, 76, quotes this observation by one of the commanders.

<sup>97</sup>Lists of ships in Newfoundland are given in the Returns of the Fishery: 1698, CO 194/1, 273-277; 1699, CO 194/1, 335-346; 1700, CO 194/2, 45-53; 1701, CO 194/2, 166-175. Twenty-four vessels in total visited Petty Harbour in the four years, but only five were there for two or more years. Twenty-three vessels were in Harbour Grace in the four years,



but only six were returnees. Seventeen vessels in all were in Port de Grave, of which only four returned for a second or subsequent visit.

<sup>98</sup>Reeves, *History of Newfoundland*, 76, for the quotation.

<sup>99</sup>Bannister, *Rule of the Admirals*, 53-54, for instances at a later date. Almost all cases reported in the local records involve local witnesses, but most local records are only extant for the second half of the eighteenth century onwards.

<sup>100</sup>PRO, CO 194/4 ff. 247-250. Commodore John Mitchell, *Answers to the Heads of Inquiry*, 23 October 1708, sections 12 and 13 (p. 248).

<sup>101</sup>The fullest account of the admirals, their jurisdiction, and their activities is given in Bannister, *Rule of the Admirals*.

<sup>102</sup>Peter Marshall, "British North America, 1760-1815," *Oxford History of the British Empire*, 372-393, quotation 386.

<sup>103</sup>Lady Alice Archer Houlblon, *The Houlblon Family, Its Story and Times* (London, 1907), Vol. I, 125.

<sup>104</sup>Pope, *Fish into Wine*, 70, 109-110. Pope identifies Houlblon as a West Country merchant, although in Keith Matthews, "Historical Fence Building: A Critique of the Historiography of Newfoundland," *Newfoundland Studies* 17.2 (2001), 143-165, edited by Peter Pope, the pro-settlement argument is stated to have been made by two London merchants (p. 157). Lady Houlblon, *Houlblon Family*, Vol. I, 207.

<sup>105</sup>PRO, CO 1/34 f.27, James Houlblon to Sir Robert Southwell, 25 March 1675.

<sup>106</sup>Cruikshanks, *HC 1690-1715*, vol. IV, 396-398.

<sup>107</sup>Cruikshanks, *HC 1690-1715*, vol. V, 455-457.

<sup>108</sup>Cruikshanks, *HC 1690-1715*, vol. I, 733-734.

<sup>109</sup>Matthews, "Fence Building," 157.

<sup>110</sup>K.N. Chaudhuri, "Treasure and Trade Balances: The East India Company's Export Trade, 1660-1720," *Economic History Review*, 2nd series, vol. 21 (December 1968), 501, Table 3.

<sup>111</sup>B.D. Henning, ed., *History of Parliament: The House of Commons 1660-1690* (London, 1983), vol. II, 57-59 (Sir Josiah Child), 363-365 (Sir John Frederick), 538-539 (Sir Nathaniel Herne). D. Waddell, "Charles Davenant (1656-1714) — A Biographical Sketch," *Economic History Review*, 2nd series, vol. XI (1958-1959), 279-288.

<sup>112</sup>J.G.A. Pocock, *Machiavellian Moment*, 436-446, on Charles Davenant and the Country position. D.W. Waddell, "Charles Davenant," 282 on his links with the East India Company and his anti-Court stance. Harold Innis, *Codfisheries*, 107, 116, for some of Child's views on the fishery and trade.

<sup>113</sup>Frederick Madden and David Fieldhouse, eds., *The Classical Period of the First British Empire, 1689-1783: The Foundations of a Colonial System of Government: Select Documents ... vol. II* (Westport, CT, and London: Greenwood Press, 1985), 3, present such an argument on behalf of Child and Davenant.

<sup>114</sup>Cruikshanks, *HC 1690-1715*, vol. V, 170-171.

<sup>115</sup>*Acts of the Privy Council of England: Colonial Series* (London: His Majesty's Stationary Office, 1910-12), vol. II, 31. When the question was raised of whether Mediterranean passes should be given to plantation ships, the king was in favour of granting passes to the ships of all his subjects. This was the policy adopted.

<sup>116</sup>*Five Representations*, Representation 29 April 1765, 63.

<sup>117</sup>D.W. Jones, *War and Economy in the Age of William III and Marlborough* (Oxford: Blackwell, 1988), Chapter 2, "War, Logistics, and the Economy at Risk," especially 55, Chapter 7, "Trade, The Currency and Paying for the Wars," 218-222.

<sup>118</sup>D.W. Jones, *War and Economy*, 270; K.N. Chaudari, "Treasure and Trade Balances," 501, Table 3.

<sup>119</sup>Patrick K. O'Brien, "Inseparable Connections: Trade, Economy, Fiscal State, and the Expansion of Empire, 1688-1815," *Oxford History of the British Empire*, vol. II, 55 and 63, quotes Elise S. Brezis, "Foreign Capital Flows in the Century of Britain's Industrial Revolution: New Estimates, Controlled Conjectures," *Economic History Review*, 2nd series, 48.1 (1995), 46-67, as a source for information on the British balance of payments during the eighteenth century. Elise S. Brezis's figures have been attacked because they do not take account of, among other transactions, the returns from sales of Newfoundland saltfish — see R.C. Nash, "The balance of payments and foreign capital flows in eighteenth-century England: a comment," *Economic History Review* 50.1 (1997), 110-128, especially 112. Brezis assumed that in the triangular trades most of the profits went to colonial America, which in the case of the Newfoundland fish trade was incorrect. Most Newfoundland fish exported belonged to British principals and was carried in British-owned vessels. Elise S. Brezis, "A Reply," *Economic History Review* 50.1, 129-132, especially 132. Unfortunately, Nash is limited to the work done by Shepherd and Walton on Newfoundland contributions to the British balance of trade in the later eighteenth century, which were acknowledged by them to be deficient (J.F. Shepherd and G.M. Walton, *Shipping, maritime trade and the economic development of colonial North America* [Cambridge, 1972] because they used only the shipments from St. John's (the only port in Newfoundland in the 1770s with a customs house). Consular reports from the importing stations in Portugal, Spain, and Italy gave quantities of Newfoundland fish imported, but generally suffered from giving Newfoundland F.O.B. prices (or worse official prices) rather than current market prices. Lambert, ed., *House of Commons Sessional Papers*, vol. 90 (Newfoundland), 339-349 (Trade with Portugal 1773 and 1785); PRO, BT 6/89 ff. 100-106, British ships at Leghorn 1766-1783.

<sup>120</sup>Jacob M. Price, "The Imperial Economy, 1700-1776," *Oxford History of the British Empire*, vol. II, 98-99, for pressures on the expansion of traditional export trade items.

<sup>121</sup>Bristol's Hope, formerly Muscetto Cove, later Mosquito.

<sup>122</sup>O'Flaherty, "King William's Act (1699)," 25, comments upon charter rights to local government lost or never exercised.

<sup>123</sup>*Ibid.*, 26.

<sup>124</sup>A parallel situation is described by William M. Offutt, "The Atlantic Rules: The Legalistic Turn in Colonial British America," in *The Creation of the British Atlantic World*, ed., Elizabeth Mancke and Carol Shammas (Baltimore and London: Johns Hopkins University Press, 2005), 160-181, 354-359, where the early colonists had unified courts that gave them legal systems suited to their needs, but that later they were subject to common law rules that were not as applicable.

<sup>125</sup>Ideas such as the one that a man's debts died with him.

<sup>126</sup>The recent publications by the Osgoode Society have carried the studies much further. Jerry Bannister, *Rule of the Admirals*; Christopher English, *Essays in the History of Canadian Law*.



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