CHAPTER SIX

CORRECTIONS IN NEWFOUNDLAND

Anthony Thomson

The history of settlement in Newfoundland by Europeans originated at the beginning of the first millennium with the Norsemen. Later, the island was re-discovered by John Cabot in 1497 and, at least since that date, European boats fished annually on the Grand Banks. In 1583, Sir Humphrey Gilbert formally claimed the island as British territory. While informal settlement occurred in the bays and coves, John Guy mounted the first organized expedition in 1610. A settlement consisting of 41 settlers was established at Cupids (formerly Cuper's Cove) on Conception Bay. This settlement was beset by violence from those who wished to prevent permanent settlement and from pirates, and lasted until 1628.1 During this period, there was a brief period with some governance. In 1615 Sir Richard Whitbourne, at Trinity, presided over "the first court of justice ever held in the island."2 According to Whitbourne, he returned to Newfoundland in 1615 (having been there first in 1579)

carrying with me a Commission out of the High Court of Admiralty authorizing me to impanel juries, and to make inquiry upon oath of sundry abuses and disorders committed amongst fishermen yearly upon that coast, and of the fittest means to redress the same....3

For eight years, Whitbourne returned to Newfoundland to adjudicate complaints.4 He held Courts of Vice-Admiralty around the island, but had few means to enforce his decisions.5

2 External Affairs, Canada, Newfoundland: An Introduction, pp. 18-19.
5 External Affairs, Canada, Newfoundland: An Introduction, pp. 18-19.
Before 1620, other settlements had been established: one at Harbour Grace (formerly Bristol's Hope); one near St. John's; one at Trepassey (Sir William Vaughan); one in Trinity Bay and another in the southern part of the Avalon Peninsula (Lord Falkland's); and a colony at Ferryland (Lord Baltimore). In 1637, these separate colonies were merged and given to Sir David Kirke, the Duke of Hamilton. "This was the last official attempt to colonize the Island."

The official British policy towards Newfoundland was one of profound neglect. Under the political influence of wealthy West Country merchants, the British government established regulations designed to prevent permanent settlement in Newfoundland. Under the Star Chamber, regulations were passed, beginning in 1633, forbidding ship owners from conveying settlers to the island. Under the "western Charter" of 1634, the interests of the West Country merchants were consolidated and colonization severely restricted. Those who lived in Newfoundland had no rights and were compelled to live at least six miles from the shore and were forbidden to cut wood. These onerous regulations were renewed and strengthened in 1661 and in 1670 following the restoration under Charles II.

Under a regulation of the Star Chamber of 1633, the custom of rule by Fishing Admirals was legalized. The "Western Charter" confirmed this practice that the first ship into the harbour shall be admiral. Formerly, the right to issue regulations in a given harbour in Newfoundland rotated among the fishing captains, who held power for a week. Under the new regulations, the first admiral in the harbour became the Admiral of the Harbour. He was empowered to act as a local governor, allotting space in the Bay and acting as judge in civil and minor criminal matters. The "Western Charter" provided for a rudimentary system of justice -- delinquents being returned to England to suffer imprisonment or worse. Those accused of killing someone or theft of a value of 40 shillings were to be sent to England for trial, where they faced a possible death sentence.

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6 External Affairs, Canada, Newfoundland: An Introduction, pp. 15-17.
9 Chadwick, Newfoundland: Island into Province, p. 6.
10 Chadwick, Newfoundland: Island into Province, p. 6.
12 Chadwick, Newfoundland: Island into Province, p. 6.
13 Cochrane, The Story of Newfoundland, p. 58.
Those sentenced had the right to appeal to a naval officer commanding a British ship, but these opportunities were rare.\textsuperscript{14}

The Act to Encourage the Trade to Newfoundland, passed in 1698, re-emphasized the penalties on settlers and remained the fundamental law in Newfoundland until 1824.\textsuperscript{15} Under the "Fishing Admirals", there was much "dissatisfaction, injustice, and cruelty." Settlers were treated brutally: "their property... was destroyed, they were imprisoned, they were beaten, some were killed." Those who received the displeasure of the "Admiral" "were heavily fined or brutally whipped."\textsuperscript{16} "The power of the Fishing Admirals decreased with the appointment of naval governors in the 18th century and gradually fell into disuse. The last vestige of their authority was swept away by statute in 1809, a few years before the appointment of the first year-round resident governor."\textsuperscript{17} Meanwhile, settlement in Newfoundland had grown from as few as 120 in 1683 to about 1,700 in 1697.\textsuperscript{18}

During the Commonwealth period, under Cromwell, the planters received protection for the first time. Fourteen Commissioners were sent to govern Newfoundland. They were authorized to fortify harbours for the protection of the country and the fishery and collect taxes.\textsuperscript{19} By the end of the 17th century, a form of competing power was in place. The French had settled at Placentia in 1662 and, in 1692, had captured and pillaged St. John’s. Consequently, a garrison was sent from England. The French again razed St. John’s in 1708. However, in 1713 by the Treaty of Utrecht, with the exception of fishing rights on the north and west coasts, the island of Newfoundland was ceded to the British.\textsuperscript{20}

The Commander of the Garrison was named Governor. This was purely a winter arrangement. Otherwise, naval admirals gradually wrested control from the Fishing Admirals. There was a short-lived attempt to establish a local government at St. John’s in 1711, to create certain laws and to enable the maintenance of a minister. In addition to the levying of fines for drunkenness and swearing, patrols were organized at night to prevent

\textsuperscript{14} Cochrane, \textit{The Story of Newfoundland}, p. 65.
\textsuperscript{15} Chadwick, \textit{Newfoundland: Island into Province}, p. 7.
\textsuperscript{16} Cochrane, \textit{The Story of Newfoundland}, pp. 58, 62, 65.
\textsuperscript{17} External Affairs, Canada, \textit{Newfoundland: An Introduction}, p. 19.
\textsuperscript{18} Chadwick, \textit{Newfoundland: Island into Province}, p. 7.
\textsuperscript{19} Cochrane, \textit{The Story of Newfoundland}, p. 61. The most notable of the Commissioners was John Treworgie.
thefts and fortifications were strengthened. This effort, however, lasted only two years.²¹

According to Cochrane: "Disorder, crime, and confusion continued with little check. There was no resident governor to rule the people, too small a military and naval force to protect them, and no real law courts to give them justice." Consequently, the residents petitioned to England for a change in status.²² Newfoundland was recognized as a colony in 1729 when the first Governor was appointed. Captain Henry Osbourne, a naval officer, divided the country into districts and appointed a Justice of the Peace in each. The result, Cochrane concluded, was 60 years of jurisdictional quarrelling. The Admirals, it was argued, derived their power from an Act of Parliament, while the Justices of the Peace were appointed by the Governor, and therefore received their authority from the King. The authority to govern Newfoundland, then, was in dispute because of the continuing power of the West Country merchants in England.²³ Cochrane argues that lawlessness prevailed in Newfoundland. He recounts a story of a Justice of the Peace in Bonavista who ordered a man whipped for theft, and then had to intervene to prevent a crowd from rescuing him from the punishment, and from doing likewise to the man who had charged the thief. The crowd then cut a large flake belonging to the J. P. with hatchets.²⁴

Cochrane reported that one principal trouble on the island continued to be the court. Magistrates were often corrupt and incompetent. They had no fixed salary, receiving a fee for each trial and a proportion of the imposed fines. The Justices also licensed the 108 public houses and pocketed the money. This system, according to Cochrane, lasted until 1791 when the first civil court was established. In 1792 a Supreme Court was established²⁵ under Chief Justice Reeves, "a particularly able man".²⁶

"Osbourne found ... that there were no prisons". Offenders were either fined or whipped.²⁷ Again, Baehre concluded, imprisonment was not the common punishment. Rather, "public executions for capital offences, banishment and transportation, the pillory or stocks, and pecuniary damages like fines and the occasional forfeiture of property"

²³ Cochrane, The Story of Newfoundland, p. 68.
²⁴ Cochrane, The Story of Newfoundland, p. 70.
²⁶ Cochrane, The Story of Newfoundland, p. 72.
²⁷ Cochrane, The Story of Newfoundland, p. 68.
were the main focus of punishments "meted out by the courts", Governor Osbourne levied a tax on the fishery "of half a quintal of fish per boat and half a quintal for each boat's room, with an equivalent amount for those who were not engaged in the fishery", using the money to erect prisons in St. John's and Ferryland and erect stocks in various places. "In about eighteen months a court-house and a prison had been erected in St. John's." The first courthouse-gaol was built in St. John's in 1730. According to Baehre, this first gaol (1730) featured "congregate confinement and a lack of classification", was "squalid and unhealthy", and "soon falling apart". This original courthouse and gaol "was situated on Duckworth Street just east of the present courthouse steps."

Joseph Banks visited Newfoundland in 1766 and described St. John's as "built upon the side of a hill facing the harbour, containing two or three hundred houses and near as many fish flakes interspersed.... For dirt and filth of all kinds St. John's may, in my opinion, reign unrivalled.... Here is no regular street, the houses being built in rows immediately adjoining to the flakes; consequently no pavement."

The law, which demanded that trials take place in England, had proven impossible because of the expense and the difficulty of summoning witnesses. Accused persons, then, were routinely freed. Even after a court had been set up in Newfoundland, at first "a sentence was not allowed to be carried out till it had been reported to the British authorities." Only in 1750 did Newfoundland get the power to try all types of offences with the exception of treason. In that year "a Governor's commission first empowered that officer to appoint commissioners for the trial of all felonies locally according [/] to

29 Cochrane, The Story of Newfoundland, p. 68.
32 Baehre, p. 10.
English law. By 1790 the expansion of St. John’s made it necessary for the Governor to establish a Court of Common Pleas for the hearing of civil cases. According to Chadwick, while the reform was noteworthy because of the de facto recognition of Newfoundland settlers, the result was a caricature of law and order. "The magistrates were ignorant or corrupt. They made up the law as they went along. Their greatest ingenuity was reserved for the punishments they invented." They were particularly harsh on the Irish Catholics, helping to initiate denominational strife.\(^{37}\)

The Royal Magazine described the government of Newfoundland in 1762 as follows:

all differences among the fishermen in the several harbours are determined by the Admiral of the harbour, who is the commander of any ship that first arrives in these harbours; from his judgement an appeal lies to the Commodore of the King’s ships stationed there, who determines in equity; and he is Governor in chief during his continuance there. Felonies are not triable in this island, but may be tried in any county in Great Britain. Subordinate to the commander in chief are the lieutenant-governors of Placentia and St. John’s, whose salaries are ten shillings per day; and in his case and the Admiral of the harbour’s absence, judgement in all cases, except felony, is given by the [/] lieutenant governor of Placentia and St John’s, the one and the other being lord chancellors, and judge arbitrarily in all cases.\(^{38}\)

Eventually in 1764, a collector of customs was appointed to Newfoundland and the navigation laws extended to the island, contrary to the wishes of the merchants who wanted the fishery exempt from taxation. The settlers had received some official recognition. Cochrane notes, however, that the oppressive laws against settlement and cultivation were still in effect and successive governors were responsible for enforcing them.\(^{39}\) Another era of oppression commenced with the appointment of Hugh Palliser as Governor in 1764. His determination to crush the settlers -- for the benefit of the home

\(^{37}\) Chadwick, *Newfoundland: Island into Province*, pp. 11-12.

\(^{38}\) "Government and Religion (1762)", in Peter Neary and Patrick O’Flaherty (eds.) *By Great Waters: A Newfoundland and Labrador Anthology*, 37. Editors cite *Royal Magazine*, VII (July 1762).

country and the British Navy -- coincided with a period of repression in colonial matters following the American Revolution. Palliser's Act (1775) consolidated this oppression.40

English writers attributed much of the conflict in Newfoundland at this time to the growing presence of Irish immigrants. For example, Captain Griffith Williams complained in 1765 that, after the Treaty of Aix la Chapelle, British troops were largely withdrawn to America and

the traders and inhabitants were left to shift for themselves without troops to support the magistrates in the execution of justice. At this time great numbers of Irish Roman Catholics were in the island as servants; but no sooner had the troops been sent away, than they became the most outrageous set of people that ever lived: robberies were committed almost every day in one place or other, the magistrates insulted in the execution of their office, and the Chief Justice murdered....

I am of opinion, that ... [t]he Irish Roman Catholics are useful as servants, but very dangerous in that part of the world, when in power.41

This increased immigration, however, did help to change the existing British policy regarding settlement on the island. By 1783 the settlers had triumphed de facto. What prosperity there was in Newfoundland was associated with periods of warfare. This prosperity, however, was vastly uneven. A new resident merchant class had grown, especially around St. John's, but the remainder of the population was "wretched in the extreme." Subject to "tyrannical treatment", and now placed in the position of "feudal pawns to their suppliers", the population faced "[d]isease, a poor diet ..., chronic poverty [and] ... inbreeding". "Schools there were none: no form of government existed and justice was what the summer Governors decided it to be."42 This increased penury was associated with the increase in crime noted by Williams, although he attributed it to ethnicity.

Governor Sir Thomas Duckworth recommended the creation of a local authority in

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42 Chadwick, Newfoundland: Island into Province, p. 9.
the colony. By 1804, the population of the island had grown to about 20,000. In 1811 in St. John’s, the "merchants themselves organized a fire brigade and what was called a vigilance committee, a kind of volunteer police force", as well as building a hospital. After 1813 the governors were allowed to grant land for cultivation. In 1817, the island had its first year-round resident governor. The island prospered during the Napoleonic wars, but the "Truck" system was established and Newfoundland sharply divided between the haves and the have-nots.

The system of justice, however, was fundamentally unreformed. By the end of the Napoleonic wars, a campaign for home rule was underway in Newfoundland, led by William Carson and Patrick Morris. To press their point, Morris petitioned to the King to endow Newfoundland with the rights of other American colonies and, in particular, "to cause the Courts of Justice to be reformed, so that the laws may be administered to them by competent judges." To strengthen their case, they cited the experience of Patrick Landergan who, in 1818, fell into a debt of 12 pounds for supplies. This, the petitioner note, was not unusual for planters at that time of year. However, the sum due "was immediately put in suit in the Surrogate Court at Harbour-Grace, and judgement passed against him by default. Consequently, his supplier bought his fishing room, valued at 150 pounds, for the cost of the debt, although he had personal property at the time "fully equal to satisfy the judgement". Upon the Sheriff appearing to "deliver possession of the room", in Landergan's absence, "some uncourteous language passed between his wife and the officer". The Sheriff subsequently complained about "resistance to his authority" and complained to the Court. Consequently, at a Surrogate Court at Port de Grave, held by Captain Buchan of the "Brig Grasshopper and Reverend John Leigh, the Episcopal Missionary at Harbour-Grace", Lundergan was summoned to appear. [l] Lundergan replied that he would attend Court the next morning. That night, however, he was seized

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43 Cochrane, *The Story of Newfoundland*, p. 79.
49 "A plea for reform: The case of James Landergan (1818)", in Peter Neary and Patrick O’Flaherty (eds.) *By Great Waters: A Newfoundland and Labrador Anthology*, p. 69. Editors cite: *A Report of Certain Proceedings* (St. John's 1821), and suggest it was "probably drafted by Patrick Morris" (p. 66).
by marines, taken aboard the Grasshopper, confined until morning, then tried on the evidence of the Sheriff's officer. Found guilty of contempt of court, Lundergan was sentenced to 36 lashes, immediately delivered by the Boatswain's mate to the point where he fainted. He was then "removed to the court house, where ... he was required to yield up the possession of his room, as the condition upon which the remainder of his punishment should be remitted". As a consequence, Lundergan, "his wife and four infant children, became outcasts upon the world." The petitioner concluded that: "Such is the manner in which the surrogates hold plea of civil suits in Newfoundland.... [T]he naval circuits are looked upon rather as the angry visitations of offended power, than as the dispensation of the mild and beneficent precepts of British law."50

According to the 1822 Blue Book, the High Sheriff at St. John's was John Bland. Appointed by the governor in 1809, Bland worked for a salary of 252 Pounds 10 Shillings (in addition to 18 Pounds in fees), and was supplied with an apartment in the Court House. The gaoler in St. John's was Rich Perchard (appointed in 1821). The majority of the gaoler's income came from fees (85 pounds per annum, in addition to a salary of 36 Pounds). The gaoler had an apartment in the Gaol. In addition, the Justices are listed (Chief Justice Francis Forbes, appointed 1816; Chief Justice Richard A. Tucker, appointed 1822).51

St. John's was policed by a Chief magistrate (appointed in 1818), who earned a salary of 250 Pounds; two Magistrates, appointed in 1810 and 1818 respectively, each paid 175 Pounds, a Clerk of the Peace who received no salary but 300 Pounds in fees, a High Constable (58 Pounds salary; 20 Pounds in fees); and 6 Constables (35 Pounds salary, 20 Pounds in fees). According to the Blue Book, Magistrates were "in daily attendance for administering the police of the town." They conducted a Court of Sessions for "general purposes and particular complaints". "There are other Justices of the Peace, who occasionally assist at the Sessions", but they were not listed in the Blue Book because "they receive no salary or emolument." The High Constable "Regulates the conduct of the constables, summons juries", in addition to other duties which were not specified. The Constables were "in constant attendance on the Magistrate serving warrants, apprehending criminals and disorderly persons". They attended on "all public

50 "A plea for reform: The case of James Landergan (1818)", in Peter Neary and Patrick O'Flaherty (eds.) By Great Waters: A Newfoundland and Labrador Anthology, pp. 68-69. Editors cite: A Report of Certain Proceedings (St. John's 1821), and suggest it was "probably drafted by Patrick Morris" (p. 66).
punishments” and performed “all duties of the police”.⁵²

An estimate of the population of the island of Newfoundland was made in 1827-1828. According to the census of that year, there were 60,088 residents of the island. The census listed the population as follows:

<table>
<thead>
<tr>
<th>Location</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>St. John's</td>
<td>15,165</td>
</tr>
<tr>
<td>Conception Bay</td>
<td>17,859</td>
</tr>
<tr>
<td>Trinity Bay</td>
<td>5,153</td>
</tr>
<tr>
<td>Bonavista Bay</td>
<td>4,671</td>
</tr>
<tr>
<td>Twillingate and Fogo</td>
<td>3,547</td>
</tr>
<tr>
<td>Bay Bulls</td>
<td>1,140</td>
</tr>
<tr>
<td>Ferryland</td>
<td>1,976</td>
</tr>
<tr>
<td>Trepassey and St. Mary's</td>
<td>847</td>
</tr>
<tr>
<td>Placentia</td>
<td>2,802</td>
</tr>
<tr>
<td>Burin</td>
<td>2,120</td>
</tr>
<tr>
<td>Fortune Bay</td>
<td>2,808</td>
</tr>
</tbody>
</table>

In addition, the return listed 2,000 others, a figure “for stragglers in detached and distant places, which those taking the census could not visit.”⁵³

Representative and Responsible Government

Colonial status was granted Newfoundland largely as a result of a change in Imperial policy. James Stephen, a senior Colonial Office Official, recommended in principle the establishment of legislative assemblies in colonies with a homogeneous population, and the Colonial Secretary, Lord Goderich, accepted the report.⁵⁴

Newfoundland was granted responsible government in 1832. Under the authority of Governor Cochrane, fifteen members were elected in the autumn on 1832 and the first House of Assembly opened on New Year’s Day, 1833.⁵⁵ At first there were two bodies, an elected General Assembly and an appointed Legislative Council, which clashed continuously. The Constitution was suspended in 1841 following numerous election riots and sectarianism and elected and appointed members sat together until 1848, when the

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⁵⁴ Chadwick, Newfoundland: Island into Province, p. 15.
⁵⁵ Chadwick, Newfoundland: Island into Province, p. 15.
original constitution was restored. Led by John Kent and P. F. Little, reformers agitated for responsible government, as had been granted in 1848 to Canada and Nova Scotia. This agitation bore fruition in 1855. "The new government consisted of an elected House of Assembly of 30 members, a nominated Legislative Council of not more than 15 members and an Executive Council of not more than seven, appointed by the Governor. The first premier was P. F. Little." At the time of responsible government, the population of the island was estimated at about 100,000, and that of St. John’s (1855) at about 30,000.

1831 gaol and House of Corrections

A replacement gaol (and house of corrections) of stone was built in 1831. According to Baehre: "It lacked proper ventilation and exercise facilities, featured tiny cells... and had no useful instruction or hope of reformation." According to the Estimates for 1834-1835, the gaol expenses were expected to amount to the following:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gaoler’s Salary</td>
<td>36</td>
</tr>
<tr>
<td>Dietary</td>
<td>345 16 3</td>
</tr>
<tr>
<td>Fees on Commitments</td>
<td>487 3</td>
</tr>
<tr>
<td>Clothing</td>
<td>60 9 10</td>
</tr>
<tr>
<td>Medical Attendance and Medicine</td>
<td>40</td>
</tr>
<tr>
<td>Wages of a Servant</td>
<td>20</td>
</tr>
<tr>
<td>Sweeping Chimney, Cleaning and Purifying, Brushes, Utensils, etc.</td>
<td>84 7 11</td>
</tr>
</tbody>
</table>

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Total 478 15 7

The gaoler was allowed 9 1/4 pence per day for each prisoner before conviction, and 6 pence per day after conviction.

The gaol was connected to the Court House. In 1833 James Allen, the Clerk of

56 External Affairs, Canada, Newfoundland: An Introduction, pp. 22-23.
57 Chadwick, Newfoundland: Island into Province, pp. 19-20.
Works, surveyed the building, including the Court House, the Sheriff’s and Gaoler’s apartments, the offices as well as the surrounding fence, and provided an estimate of the cost of repairs to the House of Assembly. A number of repairs were listed. Although numerous repairs were listed, Allan reported that: "The Prisons are generally in good condition, and only require to have the iron gratings of the doors repaired and a grate or stove set in the Debtor’s cell." In addition, he recommended widening the staircase leading from the prisons to the court: "It is at present so confining as scarcely to admit of a prisoner’s being conducted up with safety." The palisade fence was described as "almost entirely down" and requiring to be "newly erected". What remained was very decayed and forced out by the pressure from the soil. Allen also remarked, "no essential improvement can be made in the Prison", nor could any change be made "that would afford the means of employing the prisoners at hard labour."

Two other aspects of the gaol were in need of repair; one a health and nuisance concern and the other involving security:

It is found and complained of that the common privy of the gaol is, from its situation and connection with the building, so great a nuisance as at times to be almost insupportable, a shore being made there from, leading along Church Hill, and extending into the Harbour. When the wind blows from the southward, it rushes through this shore and the privy into the gaolers department and occasionally through the whole of the building. There is little or no water passes through it and the social is never carried off. This is an evil of so serious a nature as to demand immediate attention.

The privy, however, was deemed by Allen to be "a matter of no small difficulty to remedy." It could only be done "by entirely detaching the privy from the body of the building, or by erecting a new one in a more convenient place, frost proof, having a proper water closet and cistern, which the prisoners might be compelled to fill with water each

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60 “Survey and estimates of the Court House Buildings, St. John’s, 4 July 1833, Journals of the House of Assembly, Newfoundland, 1834, Appendix.
61 “Survey and estimates of the Court House Buildings, St. John’s, 20 February 1834, Journals of the House of Assembly, Newfoundland, 1843, Appendix.
62 “Survey and estimates of the Court House Buildings, St. John’s, 4 July 1833, Journals of the House of Assembly, Newfoundland, 1843, Appendix.
day."\(^{63}\)

The other serious matter concerned the entrance to the Court House on the south east side. This opening "afforded every facility to evil disposed persons to have communication with the prisoners". A partial remedy had been sought "by fastening the windows of the passage in front of the cells", but this "prevented the circulation of air which is much required for the preservation of the health of the prisoners." James Allen recommended that the entrance be removed to the western extremity of the north front. The total of these repairs was estimated to be 642 Pounds, 5 Shillings.\(^{64}\)

By 1834, Allen noted that the buildings were in "somewhat better condition, having had some partial repairs, during last Autumn." He suggested further that the proposed Gallery extending along the north front, should be entirely closed in, roofed, rough boarded and clapboarded in similar manner to the building generally”. He also recommended this gallery having "large sashes and frames corresponding with, and opposite to, those in the Court Hall. This would certainly be an improvement, as it would greatly facilitate the entrance to the various offices, whilst at the same time it would effectively cut off all communication between the Public and the Prisoners who might be confined in the gaol.

With this addition, bringing the total estimate to 712 Pounds, and 5 Shillings, Allen thought that "there is no reason to suppose that the building would not last for sixty years."\(^{65}\)

**Gaols in the Outports**

In 1834, in addition to St. John’s, five communities in Newfoundland had gaols, and in 12 communities constables were appointed. Gaols were located in Burin, Placentia, Ferryland, Trinity and Harbour Grace-Carbonear. In addition, Constables were appointed

\(^{63}\) "Survey and estimates of the Court House Buildings, St. John’s, 20 February 1834, Journals of the House of Assembly, Newfoundland, 1834, Appendix.

\(^{64}\) Journals of the House of Assembly, Newfoundland, 1834, Appendix, Estimates for repairs of Court House Buildings, 31 July 1833.

\(^{65}\) "Survey and estimates of the Court House Buildings, St. John’s", 20 Feb. 1834, Journals of the House of Assembly, Newfoundland, 1834, Appendix.
in Bonavista, Greenspond, Twillingate and Fogo, Trepassey and St. Mary’s, Fortune Bay, Bay Bulls, and Port-de-Grave. Estimates for the outport gaols for February/March 1834 listed an anticipated expenditure of 3 Pounds, 6 and 8 for "Gaolers" except in Harbour Grace, where 5 Pounds expenditures were anticipated. Year-end estimates (1834-1835 fiscal year) placed the annual expenditures for the gaoler at 20 Pounds except at harbour Grace, where 30 Pounds were expected. In addition, the estimates allowed for repairs to the gaols. In Burin, 110 Pounds were estimated for repairs, for dividing the Jury Room into two rooms for the Grand and Petit Juries respectively, and for "[e]nclosing the gaol with a proper and substantial fence, forming a yard round the building. In Placentia, accommodation for the circuit court had been neglected and a private room rented at ten pounds. In 1833, only "the shell of the building and two cells [were] completed". Consequently, 200 Pounds were required to "render the Court House available" and for a "fence to be placed around the Court House and gaol". Other estimates for similar repairs included the following: Ferryland, 100 Pounds; Trinity, 20 Pounds; and Harbour Grace, 60 Pounds. Further expenses for the gaols in the outports (dietary, fees, clothing, medical attention, cleaning, and so on, was expected to amount to 181 Pounds, 4 and 5 Pence.

In other parts of the island, the administration of justice was even more rudimentary. A petition from Robert Slade and others from Twillingate, concerned about "the increasing demoralization ... through the extensive use of spirituous liquor", also noted "the present inadequate mode of administering justice" in the district and requested "that a resident and competent magistrate possessing, under certain limitations, judicial authority, may be granted to that remote and excluded part of the Colony." Similarly, a petition from Bonavista Bay also complained of the "deplorable state as regards the administration of justice, the protection of property, and the comfort and security of individuals." In Bonavista Bay, with several thousand inhabitants, there is not a single gaol or place of confinement for offenders -- not an individual Magistrate -- no means whatever for the correction of offenders, or the protection of the peaceable and well-disposed, with the exception of a single Conservator of the Peace at Bonavista, who has no adequate means of

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66 Journals of the House of Assembly, Newfoundland, 1834, Appendix.
enforcing the very limited powers with which he is invested. Consequently each well disposed and peaceable member of society is quite at the mercy of lawless and evil-minded persons, who, taking advantage of this lamentable state of things, work mischief and wrong with impunity, and that recent numerous outrages have been committed in the said Bay. The petitioners set forth a [/] number of crimes and misdemeanours which are of recent occurrence, and state that the most daring thefts and robberies are committed with impunity, many not caring to discover the thieves since there is no redress to be had and much personal danger may be incurred.\textsuperscript{69}

The petitioners from Bonavista requested assistance and protection from the House of Assembly. At the same time, it should be pointed out that the outports tended to resist direct taxation. The petition from Robert Slade of Twillingate requested a law to oblige householders to contribute a portion of their labour to repair the roads. Similarly, Nicholas Codner and others from Torbay also petitioned for such a law. The reason for this request was to avoid the unpalatable alternative: "the small amount of labour thus to be contributed by individuals would be more lightly felt than the imposition of a more direct tax for the improvement of roads".\textsuperscript{70} An Act for repairing roads was deemed "oppressive" by petitioners from Carbonear, given depressed trade "and almost universal poverty and distress amongst the working classes, upon whom the great burden contained in the said Bill must necessarily fall."\textsuperscript{71} Similar resistance was felt in St. John's over a plan to incorporate the town because it would prove to place great "pecuniary burthens upon the inhabitants without check or control" and "place enormous powers in the hands of a few individuals" who would be given the power of taxation. The petitioners noted that St. John's was in need of regulation for the "abatement of nuisances -- cleansing streets -- establishing watches", but "such regulations should be of the most simple character" and

\textsuperscript{70} Petition from Robert Slade and others, Twillingate, \textit{Journal of the House of Assembly}, Newfoundland, 1834, p. 64; petition of Nicholas Codner and others, Torbay, \textit{Ibid.}, p. 65.
\textsuperscript{71} Petition from William Dalton and others, Carbonear, \textit{Journal of the House of Assembly}, Newfoundland, 1834, p. 74.
vested in appointed Commissioners.\textsuperscript{72}

In 1834, the magistrates at Harbour Grace were directed by the House of Assembly to investigate "the dietary and treatment of prisoners confined for debt in the gaol of Harbour Grace".\textsuperscript{73} Michael Keefe, a planter at Harbour Grace petitioned to the House, complaining that he "had been confined in gaol for debt since December last and that his health is impaired for lack of air and exercise". He had applied to the Deputy Sheriff "for leave to walk about in the gaol yard", but had not received any reply.\textsuperscript{74}

The Magistrates reported to the House that both the gaol and the prisoners at Harbour Grace were uniformly clean. "[U]pon their visits they have invariably found the prisoners satisfied with their treatment by Mr. Currie, the Gaoler". They did note that a prisoner, Peter Downing, had complained once or twice, but these complaints, "upon examination, appeared to be without any just cause."

The magistrates had investigated the complaints of Michael Keefe and John Parsons and visited all the prisoners, who "declared that they had no cause of complaint whatever." The Magistrates inspected the hammocks and bedding, and found them to be clean and ample. "The provisions are of very good quality -- the potatoes excepted", and these were declared to be "as good as the general produce of the last season." The "food furnished by the Gaoler for the 6d. per diem allowed for debtors, is more than the allowance for prisoners rated at 9 1/2 per diem. The Gaoler states the diet of debtors to have been a considerable loss to him."\textsuperscript{75}

With respect to his provisions, Michael Keefe complained only of the potatoes which were frequently "wet and unfit for use." He described his provisions as follows: "I have received the allowance of 1/2 lb. of bread, 1/2 lb. of fish, 1/2 lb. of potatoes, tea and molasses daily, also the soup three times a week, since the first week, but the soup I did not care about, having been supplied by my friends with other things." Since the 13th December (one day after being committed) -- "when I first applied for it -- he had received the allowance of 6 d. per day. Keefe cited three men who were refused admittance to visit

\textsuperscript{72} Petition of George Hutchings and others, St. John's, \textit{Journals of the House of Assembly}, Newfoundland, 1834, p. 71.

\textsuperscript{73} \textit{Journal of the House of Assembly}, Newfoundland, 24 march 1834, p. 61.

\textsuperscript{74} \textit{Journal of the House of Assembly}, Newfoundland, 8 may 1834, p. 130.

\textsuperscript{75} Report of the Magistrates of Harbour Grace, upon the state of His Majesty's Gaol there, and of the treatment of the Prisoners confined therein", Appendix, \textit{Journal of the House of Assembly}, Newfoundland, 18 March 1834. The signing magistrates were: Thos. Danson, J. Buckingham and J. Parkin.
him two or three days after he was committed, during the evening hours. One time when the Gaoler was not within, his son, who brought a breakfast, was refused admittance. In reply, the Gaoler John Currie said that he refused admittance to "James Fox and nine others at a late hour on a Sunday evening, when I thought it imprudent to admit him, -- Keefe never made any complaint to me." The Gaoler was permitted cross-examination. Keefe agreed that the gaoler tried to make the food brought by Keefe's family comfortable by warming it, and that he had not mentioned to the Deputy Sheriff or magistrates about the friends having been refused admittance. The Deputy Sheriff had also told him that if he "wished to go to the stove to warm yourself at any time for half an hour, the criminal prisoners should be locked up for the time". Keefe, however, argued that "it would make me more chilly than before." Since the 25th of January, when Keefe made application, the doors of the Debtor's Cell were opened so that he could walk across the passage. Keefe made it clear that the object of his petition was "to obtain my liberation or the privilege of the Gaol Yard."

The regulations regarding exercise were described by Gaoler Currie as follows: "The prisoners are all let out of their Cells half an hour before breakfast to wash at the Cistern, and again between meals, three or four at a time are let out, alternately, for exercise in the passage. -- They are dieted according to the Dietary List furnished, and are provided with clean shifting every Sunday, say, clean Shirt Drawers, Stockings, and such other clothing as is necessary.... The Cells are swept daily, and the whole Gaol washed once a week, it is also occasionally fumigated with Vinegar and white washed throughout once a quarter." A second prisoner at Harbour Grace had similarly petitioned the House of Assembly. Daniel M'Carthy was committed to Gaol on the 26th of July 1833 charged by Mary Barnes, a widow, "with having assaulted and put her in bodily fear". Brought before the Magistrates, M'Carthy "refused to give any surety, and used the most violent language, and threatened the life of Thomas Danson". Since then, M'Carthy had been...

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77 "Questions proposed to Mr. John Currie...", Journal of the House of Assembly, Newfoundland, Appendix, 17 March 1834.
79 "Questions proposed to Mr. John Currie...", Journal of the House of Assembly, Newfoundland, Appendix, 17 March 1834.
"brought up three times, but in every instance he has been unable to procure any one to go security for him. M'Carthy lodged with Bridget Egan, who applied and received "a supply of provision on account of the District"; M'Carthy's son was placed under the care of Johana Shehan and supplied with clothing and provisions. On March 21 1834, M'Carthy was released "on his own security, giving a solemn assurance of his further good behaviour". The Magistrates were, at that time, unaware that M'Carthy had petitioned the House. had they known, they would have felt it their "duty to have detained him in custody until his petition has been disposed of, or until the parties, at whose instigation he had made such Petition, had given the necessary securities for him". The magistrates added that M'Carthy had been in two former instances committed to Gaol for the most violent and aggravated breaches of the Peace".80

At the same time, the House of Assembly was attempting to reform the courts of the colony. In 1834 a committee was appointed "relative to the establishment of Courts of General Sessions of the Peace".81 Accordingly, the Legislative Council agreed to an "Act to amend the practice of the Supreme Court of Newfoundland", which repealed a British law: "An Act for the Better Administration of Justice in Newfoundland ... as relates to the establishment of circuit courts and courts of Sessions of the Peace" in Newfoundland.82

The House of Assembly also passed a Bill "to provide for the Banishment of persons convicted of certain offences, and also to provide certain modes of punishment in divers Criminal Cases".83 "The object of the Bill is to clothe the Courts exercising Criminal Jurisprudence in this island, with a discretionary power either of banishing such offenders convicted before them as they shall deem deserving of such a punishment, or of sentencing them to hard labour under regulations best adapted to the present state of the Colony." The legislative Council returned the Bill, objecting to a "Proviso added to the Bill by the Assembly" which stated that females were to be exempted from corporal punishment. In the view of the Legislative Council:

The punishment of whipping, as applied to females, the Legislative Council apprehend, would not be resorted to, except in very extreme cases, by any Court of Justice -- the spirit of the age being opposed to such methods of personal

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81 Journals of House of Assembly, Newfoundland, 1834, p. 77.
82 Journal of House of Assembly, Newfoundland, 1834, pp. 102-103.
83 Journal of the House of Assembly, Newfoundland, 1834, pp. 95, 99.
chastisement as are inconsistent with female delicacy, and, therefore, they do not deem it necessary to provide against the introduction of a practice which they are fully sensible the wisdom and discretion of our criminal Courts will prevent them from resorting to. If, however, the House of Assembly desire that any particular legislative decision should be made upon the subject, the Legislative Council will not object to a Proviso exempting females from the punishment of whipping.\textsuperscript{84}

**Her Majesty’s Penitentiary**

The St. John’s gaol was: "Destroyed in the Great Fire of 9 June 1846, prisoners spent the next thirteen years in a ramshackle stone building where some attempt was made to reform them in accordance with new principles of penology. Early in 1852, Richard Brace, an officer of the institution who had been influenced by the Quaker reformer, Elizabeth Fry, returned from England with plans for a prison system based on the famous Pentonville penitentiary.\textsuperscript{85} Although this plan was never carried out for financial reasons, the new St. John’s gaol which opened in 1860 did attempt to implement penitentiary discipline on a partial basis."\textsuperscript{86}

**The St. John’s gaol of 1860**

The Newfoundland Board of Works adopted a set of rules and regulations for the St. John’s gaol in 1860 emphasizing "silence, separation of prisoners, work, the restriction of visitors and letters, and the prohibition of alcohol".\textsuperscript{87} "In 1865, the Colonial Office [...] also sent a circular despatch on prison discipline to the colonies, including Newfoundland, which specified how to use the "Cat" (cat of nine tails), or lash."\textsuperscript{88}

\textsuperscript{84} *Journal of the House of Assembly*, Newfoundland, April 1834, pp. 109-110.
\textsuperscript{85} Baehre cites: O’Neill, 1976, p. 561.
\textsuperscript{86} Baehre, 1985: 10; Baehre cites: *Journals of the House of Assembly*, Newfoundland (1862), p. 413.
\textsuperscript{87} Baehre 1985: 10.
\textsuperscript{88} Baehre 1985: 10-11. Baehre cites: Despatches. Circular Despatch Enclosing Instructions, &c., Relative to the `cat` to be used in certain colonies in inflicting corporal punishment,
Baehre concludes that this recommendation was not implemented. Richard Brace complained that the structure of the gaol made it difficult "to curtail conversation and classify prisoners", and he objected to the use of the whip, arguing that he found it difficult "in getting any person ... to undertake this unpleasant duty", asking to be exempt "from carrying out the provisions of the Whipping Act."\(^{89}\)

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