

Section 3.—The Constitutional Development of Newfoundland prior to Union with Canada, 1949*

The history of government in Newfoundland goes back 400 years to the time when Newfoundland was an international fishing station, regarded officially in England as a "nursery for seamen" and a valuable fishery and by the West Country fish merchants of England as their special preserve. Down to 1800 the three main elements in the constitutional struggle over Newfoundland were the mercantile and naval policy of England with regard to the colonies, the influence of the West Country merchants in England and the agitations of the steadily growing population of the Island for local institutions.

The so-called Fishing Admirals constituted the earliest, if rudimentary, government. Their authority was at first based upon local custom but the seat of control over the fishery was at London. A statute of 1548 prevented Admiralty officers from exacting bribes from fishermen proceeding to Newfoundland, Iceland and Ireland. The Admirals, who seem to have operated under the wing of the Navy, remained entrenched despite an attempt of the English Government to establish some order through courts of Vice-Admiralty in 1615.† A Star Chamber rule of 1633 explicitly provided that the captain of the first ship to arrive in harbour should be Admiral of the harbour for the season. An Act of William III in 1699 gave the Admirals specific, though minor, judicial functions.

The Admirals were supposed to keep a record of all fisheries matters, act as judges in disputes and, in general, have full control in the harbour. Their justice was rough and often harsh. The only time of hope for the settlers during this early period was the short-lived government of the fishery by commission during the interregnum of Oliver Cromwell.

The first advance for the settlers was the appointment of Capt. Henry Osborne by the Crown as Governor of the Island in 1729.§ He was also appointed Commander-in-Chief of the Island. A local assembly modelled on the New England 'town meeting' had been set up in 1711 but it was a rather academic affair and lasted only two years.

The naval governors, of whom Osborne was the first, were concerned not only with executive functions arising from statutes, treaties and governmental instructions, or from their powers as Royal Governors, but also with their role under Admiralty instructions in the naval strategy against France. A contemporary writer‡ noted that "the government such as it is resides in the Admiralty" William Knox, a senior official in London, declared before Parliament a few years later: "The Island of Newfoundland has been considered, in all former times, as a great ship moored near the Banks during the fishing season, for the convenience of English fishermen. The Governor was considered as the ship's captain, and those who were concerned in the fishery business as his crew, and subject to naval discipline while there, and expected to return to England when the season was over".

* Prepared by the Department of External Affairs, Ottawa.

† See p. 89.

§ The sovereignty of the United Kingdom over Newfoundland had been recognized by the Treaty of Utrecht, 1713.

‡ Dr. Gardiner of Boston in 1784.