

THE POLITICAL HISTORY OF NEWFOUNDLAND
1832-1864

CANADIAN STUDIES IN HISTORY AND GOVERNMENT

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THE POLITICAL HISTORY
OF NEWFOUNDLAND

1832-1864

Gertrude E. Gunn

UNIVERSITY OF NEW BRUNSWICK

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PREFACE

THREE DECADES of disorder followed the establishment of representative government in Newfoundland in 1832. These decades have never been closely studied in a published work. D. W. Prowse in his *History of Newfoundland* (1896), which is still the standard, general, and popular work on the colony, offered intermittent glimpses and explanations of the political scene, interspersed with anecdote and recollection. Writing at random from Colonial Office records and for a wide public, he did not attempt a systematic narrative of political events or a detailed analysis of cause and effect. In such a work, a close study of discordant politics and dubious motives seemed to him neither necessary nor discreet. He declined the task of entering into the long discussion about responsible government, and he intimated that he had had to walk delicately in order to avoid offence.

Some historians have gone to Prowse and to a handful of local chroniclers for opinions, extracts, and abridgements. Others, basing their work largely on that of their predecessors, have described the "evolution" of the colony from representative to responsible government and related the political struggles of the first half of the nineteenth century to the contemporaneous contests in the rest of British North America and to the fixed and changing policies of the Colonial Office. Their stress has been on Newfoundland's general conformity to, and occasional deviation from, the pattern of political and constitutional development in the colonies. The political history of Newfoundland has, therefore, been related by, or derived from, those who were more or less involved in their own narration and anxious to gloss, vindicate, condemn, or ignore; or it has been condensed by those who were intent upon placing the island in a general context.

At the close of his book, *The Establishment of Constitutional Government in Newfoundland, 1783-1832*, which expounds the thesis that the colony was "retarded" and representative institutions were belatedly established, A. H. McLintock described the institution of the long-anticipated legislature as "but the prelude to years of internal political strife, economic chaos, and religious discord." There seemed to be a need for a return to the documents for a study focused on the pressures and processes which ensured for Newfoundland a political story peculiarly its own. This investigation of the structure of the early political parties, of the causes of popular tumult, and of the effects of constitutional changes, was undertaken, therefore, to fill this need.

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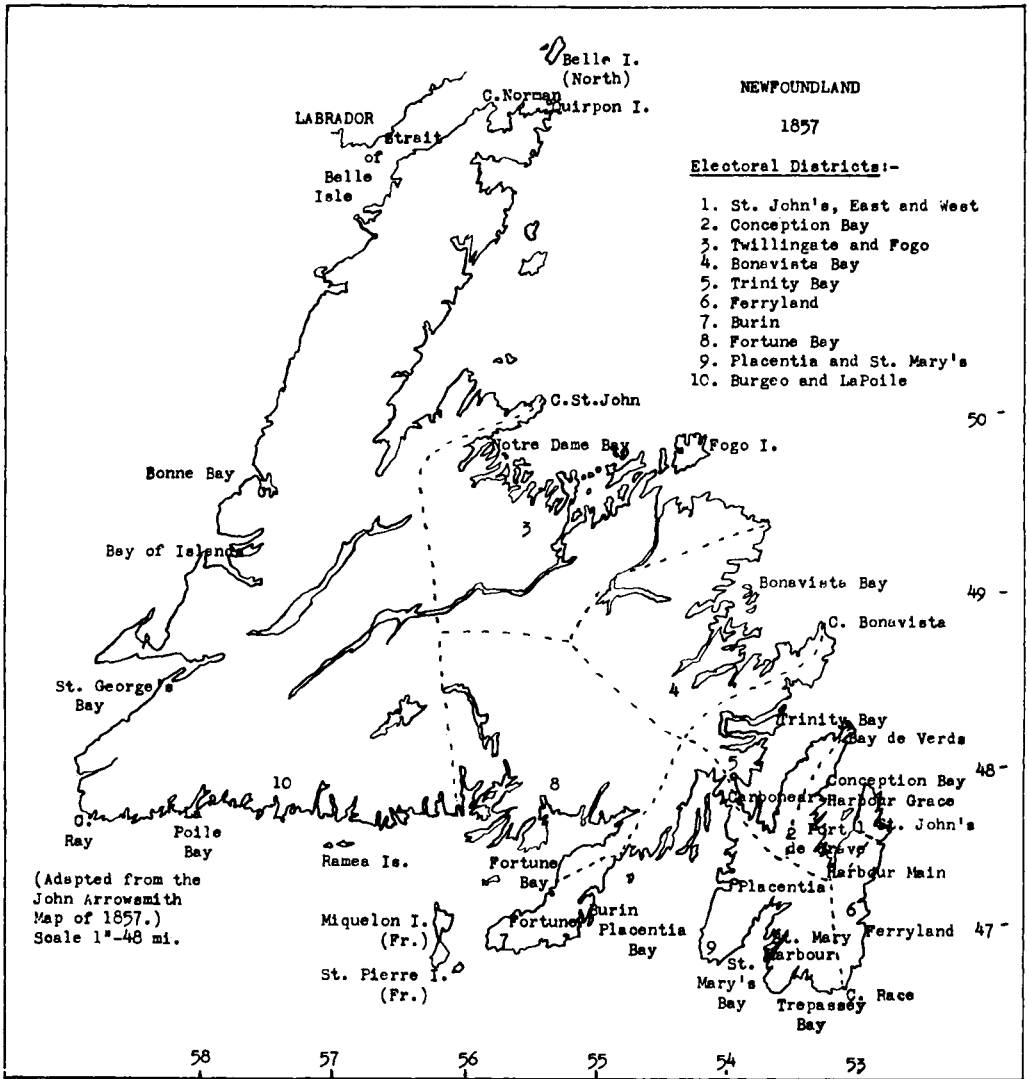
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PART I

REPRESENTATIVE GOVERNMENT



CHAPTER ONE

THE ESTABLISHMENT OF REPRESENTATIVE GOVERNMENT, 1832

ON JUNE 7, 1832, the day the Reform Bill received royal assent, the Whigs introduced their bill to provide Newfoundland with an elective assembly. After two centuries of illicit settlement and eight years of colonial status, the island was to acquire "the transcript of the constitution" which had been given the other colonies of British North America. The Governor had urged that representative government was ill suited to the condition of the population and for a time the Colonial Office had hesitated and considered alternatives. But pressure from the political reformers, the resident merchants, and the inhabitants of Newfoundland had its effect on a ministry which had championed the principles of political freedom and parliamentary reform. Doubts and objections were laid aside and it was hoped that a system which had brought advantages to other colonies would produce similar benefits in Newfoundland.¹ It was a concession in which idealism, economy, and expediency were inextricably mixed. From the more mature colonies there was already much evidence of its power to disrupt.

Newfoundland had only emerged in 1824 from its protracted minority under maritime government. It had been relieved of the obsolete laws protecting the monopoly of the West Country fishing merchants and had acquired a civil governor, Sir Thomas Cochrane, an official council, and a revised and extended supreme court. This break with the past did not satisfy the small group of reformers who had called for an end to autocratic government. They immediately renewed their pressure for a local legislature, arguing that such a body would best foster the interests and develop the resources of the country and eradicate the evils of long neglect.² The leading spirits in this agitation were Dr. William Carson, a Scottish physician, and Patrick Morris, an Irish merchant, both residents of St. John's.³ Carson, the District Surgeon, was a fearless, formal, and dogmatic liberal of the early nineteenth century who had championed the cause of democratic reform in Newfoundland ten years earlier and had earned the odium of the admiral-governors with his pamphlets advocating civil government, a local legislature, and the appropriation and cultivation of Crown lands.⁴ Morris was an impetuous, witty, and voluble pamphleteer and demagogue who had followed Carson into the political arena in 1825 and whose literary efforts were a stimulus in the renewed campaign for representative government.⁵ A reform committee again became active and petitions were framed and forwarded from St. John's and the principal outports.⁶ One of these, bearing the signature of 2,500 of the inhabitants, confronted Lord Goderich and Lord Howick in the Colonial Office soon after the Whigs took office in November 1830. It urged the concession on

the grounds of the island's commercial importance, its vast acreage of uncultivated soil, its rights as a British North American colony, and its need for local legislation.⁷ The Colonial Office response was to ask the Governor for a report on the wisdom of establishing local self-government.⁸

Sir Thomas Cochrane was a naval captain of forty-two whose only apparent qualification for the civil administration of Newfoundland, in the throes of political agitation and post-war depression, was a period of service on the North Atlantic Station (see Appendix A). A naval career which had begun, ostensibly, at the age of seven under his father, Admiral Sir Alexander Cochrane, had equipped him with Tory principles, a quarterdeck manner, and a love of ceremony, dignity, and lavish display. He had begun his government in St. John's with the construction of an enormous residence whose cost, five times the original estimate, had led the Treasury to veto his subsequent extravagant schemes for public works. But he had addressed himself with sense and energy to the task of alleviating some of the evils by which the colony was beset. He had recognized the folly of the established system of unconditional government assistance to the destitute and improvident and had attacked this problem by employing pauper labour in beginning the first roads from the capital. He had decided that agriculture, though unlikely ever to become a major pursuit, might be fostered sufficiently to remove the threat of famine recurrent with failures of the fishery. To this end he had begun, under his Commission, to grant small holdings at a nominal quit-rent to applicants who would cultivate the soil. He had deplored the total absence of municipal government and by-laws in St. John's and the consequent prevalence of squalor and disorder, and had urged the citizens to form a town council with powers of assessment. Hopes for this had foundered on factionalism and aversion to direct taxation, and the Colonial Office had refused to impose a town charter by Imperial act. He had sought to end the system under which the Chief Justice, combining legislative powers with judicial functions, was authorized to determine to what extent the laws of England were applicable to Newfoundland. He proposed that such laws as were suitable to the colony be selected from the British statutes, to be enacted, with supplementary laws, as a code for the island. This question was in abeyance when discussion about representative government was renewed.⁹

The Governor was informed by the Colonial Office that the population had increased to the point where pressure for some change could not long be resisted and he was asked whether the inhabitants yet included sufficient persons qualified to manage public affairs.¹⁰ Despite his admitted reluctance to jeopardize his popularity with the substantial merchants who had rallied to the cause, Cochrane felt that he could not conscientiously give it his support. He said that although the inhabitants numbered some 60,000 persons, there were in the community only two classes of persons—the small group comprising the merchants and their agents, and the large one comprising the fishermen whom they supplied. The wealth, intelligence, and respectability which he considered indispensable for membership in the assembly were confined to the mercantile class, but at all seasons the merchants and their agents tended to be tied to the demands of the trade. They seemed fully occupied in procuring supplies and provisions, in outfitting the fishery for seal and for cod, and in disposing of the catch and settling

the accounts of a business conducted almost entirely in terms of credit and truck. Merchants who resided in St. John's might conveniently offer themselves as candidates, but he doubted that respectable persons could be found to represent the outports. In some of these only the agents would be eligible and in no season, he said, could an agent absent himself from his post. Moreover, during the long winter the eastern outports were ice-bound and the absence of roads made access to the capital almost impossible. Another difficulty was that, save for a few outports, the whole of the population was scattered sparsely along the deeply indented eastern and southern coasts. For Cochrane, the "lower orders" were ruled out as potential representatives by poverty and ignorance, as well as by the nature of their calling, and between these and the merchants there was virtually no middle class of professional men, shopkeepers, and farmers from which legislators could be drawn. In his opinion, the present system was well suited to a colony whose people were as yet merely "children of a larger growth." He maintained that the group behind the agitation was very small and had resorted to deception in obtaining signatures for the petitions.¹¹

Cochrane pointed out, too, that the resident merchants had thrown their weight behind the movement for a legislature when Huskisson, as Colonial Secretary, had recommended that the expenses of the civil establishment in Newfoundland be met by a duty on most of its imported supplies.¹² Free importation of supplies necessary for the fishery had long been the mercantile tenet and the Colony's expenses had hitherto been met from the revenue raised on imported spirits, supplemented by Parliament's annual grant.¹³ Cochrane's Attorney-General, James Simms, equally opposed to an assembly, declared that it could only be a creature of the merchants, experimenting in measures designed to advance the mercantile interest rather than the welfare of the island. Nor, he said, could most of these merchants be identified with the permanent interest of the colony, since they were frequently replaced by younger partners from the west of England, or retired to England when they had acquired fortunes or become insolvent.¹⁴

Although the Governor failed to stress the ambivalence arising from the perpetual debtor-relationship in which the fishermen stood with the merchants, this conflict of obligation and resentment supplied yet another reason for hesitation about an elective assembly. The truck system could scarcely fail to breed in the fishermen dependence and improvidence on the one hand and distrust and suspicion on the other. It was insidious and self-perpetrating for it loaded the fishermen with debt, but did not induce them to save, and it cast the merchants as exploiters, but kept them as indispensable props.

The organization of the resident fishery had previously been largely feudal, the fishermen, as employees, turning over their catch to the exporting merchant in return for the gear and supplies necessary for the fishing season and for sufficient food and clothing to keep themselves and their families through the year.¹⁵ Under this system, the merchants assumed the duty of supporting the fishing population, like serfs, in good times and in bad. The former were able to amass large fortunes and the latter to live at a subsistence level. The growth of the population, however, led to a gradual modification of this system and found the merchants increasingly anxious to transfer the obligation of supporting the fisher-

men in bad times to the government. In outline, the practice in the shore-based cod fishery was this: The fisherman boat-owner went to his merchant in the spring and obtained on credit food and equipment for the three- or four-month season. At its close he returned with his catch, dried and cured, to set off against his account. The prices of the spring supplies and of the fish were set by the merchant and the quality and value of the fish determined by his culler. In good years a fisherman might wipe out his debt and obtain a balance in cash or, as was usual at this period, in notes for goods. In bad years there might be no balance and he might not cover his debt. The merchant might, or might not, tide him over the winter and refit him on credit for the next season, but successive bad fisheries burdened the fisherman with debt and made the merchant adamant about further advances. Then the fisherman, with no savings, with no alternative employment, and with no source of food save a small and sometimes failing "potato patch," turned to the government for relief.

The ship fishery for seals, which took place in March and April, and for cod, which lasted from June till October at Labrador, was also based on this system of credit and truck. These fisheries were conducted by a "planter"—that is, a shipowner or skipper—with a hired crew of fishermen who were paid not in wages but in half the proceeds of the voyage, the planter taking the balance. The merchant, as mortgagee, furnished the necessary supplies to the planter on the security of the proceeds of the voyage. Since his loan was usually about one-third of the estimated proceeds, these proceeds were actually distributed in thirds among planter, crew, and mortgagee.¹⁶ An account based on the experience of Philip Henry Gosse, who served as a junior clerk in an establishment at Carbonear in 1827 and 1828, relates that the amounts due to the crews were paid, amidst vehement disagreements, partly in cash and partly in notes for goods.¹⁷

The planters were a growing class of fishermen in the east-coast outports, especially in Conception Bay. According to Gosse, they numbered seventy in a population of 2,500 at Carbonear in 1828 and included several "worthy and respectable" persons whose houses afforded the only society the town possessed.¹⁸ Although some of the planters grew prosperous, many of them remained in or fell into the debtor class. For them, as for the individual fishermen, the vagaries of wind and weather, ice conditions and bait supply, French competition and fluctuating prices, brought good years and bad and sharp changes of fortune.¹⁹ The hired fishermen claimed the right to "follow" the planter's fish and oil into the hands of his supplier, the produce of the voyage being by law (5 Geo. IV, c. 51) subject in the first place to payment of wages. In a case of insolvency, the current supplier was the privileged creditor, after the satisfaction of wage claims on the proceeds of the voyage (c. 67). These devices for protecting the interests of fishermen and merchants provided the grounds for much dispute and litigation, and there were frequent civil suits before the local magistrates. Since the magistrates were for the most part, and inevitably, drawn from the merchant class, it often happened that the judge and the defendant were one, or that their interests were identical. Their rulings were so frequently biased as to make the inhabitants mock the magistracy and the justice dispensed by these courts.²⁰

By setting the prices for the material supplied for the fishery, and by paying for the fish and oil at prices determined by themselves, the merchants secured

their profits and insured themselves against the risk of a small catch, a bad cure, or a poor market, and against the possibility that the fishermen might, dishonestly, fail to bring their fish to the supplier. Prices on account were double the retail prices in England and were always higher in the outports than in St. John's.²¹ The prices to be paid for the fish and oil in St. John's and the outports were never known when the supplies were taken up in the spring, but were decided by the principal merchants, meeting together in July or August, on the basis of price reports from abroad. Once the price had been "broken" the only adjustments were made in favour of the merchants, the price dropping with reports of bad markets, but remaining steady when reports were good.²² In January and February of 1832 there were mass meetings of fishermen between Carbonear and Harbour Grace to attempt a combination which would compel their merchants and employers to adopt a different mode of dealing with them, as to the price given for fish and oil and the prices paid for supplies. A proclamation was issued declaring such meetings illegal.²³ There had been, however, with the increase in the population and the contraction of larger mercantile houses after the Napoleonic War, some growth of competition from shopkeepers with small capital, and from traders in schooners along the coasts. These persons imported goods for retail or purchased from the merchants with cash, fish, and oil.²⁴ Some fishermen were, therefore, able to avail themselves of cheaper prices and these shopkeepers and traders were to become the nucleus of another social class. One observer described the "fishocracy" in the last quarter of the century as comprising (1) the principal merchants, high officials, and some lawyers and medical men; (2) small merchants, important shopkeepers, lawyers, doctors, and secondary officials; (3) grocers, master mechanics, and schooner holders; and (4) fishermen.²⁵

A further ground for hesitation about conferring a popular franchise was the nearly equal division of the inhabitants into Protestants and Irish Roman Catholics (see Appendix E, Table I) and the tension which existed between the two groups. The danger of arousing sectarian strife in the island had been one of the factors in the decision to leave at rest the question of local government in St. John's,²⁶ but in his despatches adverse to a legislature Cochrane made no specific reference to sectarian and "racial" difficulties.²⁷ The census of 1827 showed the people in the districts in and about St. John's, Ferryland, and Placentia and St. Mary's to be predominantly Roman Catholic, those in Bonavista Bay, Trinity Bay, Fortune Bay, and Twillingate and Fogo to be predominantly Protestant, and those in Conception Bay and Burin to be almost equally divided as to creed (Appendix E, Table II). An unspecified number of the Protestants in 1827 were Dissenters from the Church of England, and by 1836 these, chiefly Wesleyans, numbered just under one-third of the Protestant population. In Conception Bay their strength was approximately that of the Anglicans, and in Burin it was greater. The merchants were, with very few exceptions, Protestant, as was half the fishing population, while the Roman Catholics, most of them southern Irish in origin or descent, were principally of the fishing and debtor class. The tendency of Roman Catholics, Anglicans, and Dissenters to cluster in separate harbours and coves, the isolation imposed in summer by occupation and in winter by absence of roads, and the thin and irregular attendance at the few schools

supported by the Society for the Propagation of the Gospel and by the Roman Catholic Church,²⁸ all served to foster a peculiar outpost insularity and a spirit of exclusive sectarianism. In St. John's and the larger outports of Conception Bay where Protestants and Irish Catholics were in habitual contact, the population seems to have lived, as in Ireland, in an uneasy state of suspicion and aversion. P. H. Gosse wrote of the mockery to which the Irish of Carbonear and other harbours subjected the Protestant fishermen from the north shore of Conception Bay, the latter being mild and guileless "giants" with peculiar manners and idiom and a strong dread of their tormentors. He declared that in 1827 amongst the Protestant population of the island there was "an habitual dread of the Irish as a class which was more oppressively felt than openly expressed and . . . an habitual caution in conversation to avoid any unguarded expression which might be laid hold of by their jealous enmity." He adds, "It was very largely this dread which impelled me to foresake Newfoundland as a residence in 1835; and I recollect saying to my friends that when we got to Canada, we might climb to the top of the tallest tree . . . and shout 'Irishman' at the top of our voices, without 'fear'."²⁹

The attitude of the Irish can be traced to the factors which led to their influx, to the prejudices they brought with them, and to the conditions they met and aggravated; that of the Protestants was a response to the reputation of the Irish for moving from docility to individual and concerted disorder. Famine and the suppressive laws against Irish industry during much of the eighteenth century, economic and political unrest towards its close, and the hope of high wages and speedy employment during and after the long wars with the French had stimulated the emigration from Ireland of thousands of individuals characterized by a very low standard of life and by a decided animus against English law, English landlords, and the English Church. The earliest Irish settlers, apparently of a superior type, were "youngsters" or "green" men engaged at Waterford and Cork by West Country fishing masters bound for the season in Newfoundland. The practice seems to have been to sign these servants for two summers and the intervening winter, and many of them remained in the island, marrying into the families of the planters or settlers.³⁰ The influx of hungry and destitute Irish peasants who came to join their relatives and friends during the eighteenth century was less happy. Much of the fourfold population increase between 1713 and 1756 was accounted for by these arrivals from Ireland; by 1752 the Irish numbered some 3,000 persons, or about half the population. Their numbers and their refusals to take the oath of abjuration aroused the anxiety of the naval captains who were present during the summer. In the winter when there was little employment and a high consumption of rum, they lived in idleness, drunkenness, and disorder. Irish names figure largely in eighteenth-century reports of felonies and brawls and in the heavy sentences of the courts.³¹

In 1784 a proclamation of religious liberty coincided with the arrival of the first Roman Catholic priest, the Prefect Apostolic, Dr. J. L. O'Donel. His activities, a source of complaint to some of the Protestant merchants and officials, promoted the growth of a vigorous Roman Catholic spirit which found its expression not only in the Church but in the Benevolent Irish Society, founded as a non-sectarian organization in 1806.³² As the eighteenth century closed, unrest

in Ireland and the "United Irish" rebellion accelerated emigration from that unhappy country. Some of the new arrivals had links with the rebels. In 1800 the projected massacre of the people of St. John's by Irish malcontents in the garrison and United Irishmen in the town was averted by the information given and the influence exerted by Bishop O'Donel. In 1801 he rendered patriotic service by instructing his priests to "inculcate a willing obedience to the salutary laws of England, and to the commands of the Governor and magistrates" and to dissuade their people from conspiring with the "infidel French."³³

During the prosperity of the war years, hopes of high wages induced thousands of poor and ignorant Irish to emigrate, while thousands more booked passage on the security of possible employment. Between 1811 and 1830 some 24,000 of these persons arrived in the appalling filth and overcrowding of the emigrant ships. In this period, outbreaks of typhus raged through the squalor of St. John's. The newcomers who obtained employment found at the end of the season that the deduction of their passage money from their wages left them nearly penniless.³⁴ Mounting prices thereafter kept them in the servitude of debt.³⁵ Those who failed to find employment remained derelict and destitute in the midst of the winter population, which passed the time in idleness and the consumption of rum. In 1815, when the population of St. John's was about 10,000, nightly armed patrols were necessary to guard the wharves and other property.³⁶ After the war, when prices and demand for cod fell, continued emigration augmented the debauched and idle floating population, aggravated the recurrent famine conditions and food riots, and worsened outbreaks of lawlessness and insubordination. In some of the outports, only the presence of a naval or military detachment kept the populace in order through the long winters.³⁷

Reforming zeal, political ambition, and mercantile self-interest would seem to have led the various proponents of representative government into denying or blinding themselves to the existing conditions or into using them as arguments for the change. Thus Morris, in undertaking to disprove the assertions of the Society for the Propagation of the Gospel that society in Newfoundland was retarded and degraded, resorted to attacks on the undeniable injustices and neglects in the colony's past. He declared that the island had reached the age for self-government.³⁸ Ignoring the dissensions which had arisen, he made it a grievance that the government had not established a civic administration in St. John's. He called for the establishment of constitutional government and an end to the "quackery" about alternatives. He called, too, for the full development of the resources of the island to support its increasing population.³⁹

In the reformers' arguments, assertions about the need to foster agriculture, about the potentialities of the soil, and about the enthusiasm for its cultivation had a prominent place. A petition of 1830, referring to "millions of uncultivated acres," announced that the colonists had discovered in the capabilities of the soil "new and unbounded sources of profitable employment."⁴⁰ In 1831, however, the Governor informed Lord Goderich that so far from applications for 500,000 acres having been received, as had been alleged, 15,000 acres was the total in demand.⁴¹ The fact was that in the known and accessible parts of the island the thin soil, the need for repeated fertilization, and the short and unreliable growing season gave the fishermen little incentive to extend their "potato patches" or to take

up full-time farming. Little was known of the interior beyond the fringe of forest from which firewood was cut, and what had been seen consisted of barrens and ponds, scrub vegetation and rock.⁴² Since the land had never been systematically explored, assertions about its arability were baseless and largely disproved in the course of time.⁴³

Diplomatic arrangements which, by allowing international competition, had deprived the colony of the right to exploit to the full its resources in the fishery, had also curtailed its use of the soil. Although there was productive land on the west coast, particularly about St. George's Bay, the prohibition against settlement on the "French shore" shut the colonists off from legal title and protection. The Treaty of Versailles of 1783, which ceded St. Pierre and Miquelon to France in full right, had established the limits between which French subjects could take and cure fish on the Newfoundland coast, the Treaty shore being defined as extending from Cape Bonavista on the east, around the northern and western coasts, south to Cape Ray. By a controversial Declaration appended to the Treaty, Britain had promised to prevent her subjects from interrupting by competition the prosecution of the French fishery, and to remove, for that purpose, such fixed settlements as were formed. The French interpretation of the Declaration as a guarantee of "exclusive rights" was to be a source of dispute and a block in negotiations for more than a century. Less drastic concessions were made to American fishermen by the Convention of 1818 when they were given rights of competition but not of interference with the expansion of settlement. The Convention conceded to American subjects the right to take fish on the south coast from the Rameau Islands to Cape Ray and on the west coast north to the Quirpon Islands, and to dry and cure their fish within their defined limits on the south coast, but only in such places as were and remained unsettled. Similar fishing, curing, and drying rights were conferred for the south coast of Labrador.

While size,⁴⁴ needs, length of settlement, and growth of population suggested that it would be invidious to withhold representative government from Newfoundland, there were, as have been noted, several reasons for believing that its advocates were not entirely scrupulous and that its concession might be less than a boon. Cochrane's objections were founded in the belief that the circumstances of the colony did not yet warrant so fundamental a change.⁴⁵ He proposed instead a legislative council with powers to enact laws, not at variance with the principles of the British constitution, for the interior government and policing of the island. Alternatively, he suggested that corporations be established for some of the towns and that the existing council of five officials be enlarged to comprise fourteen members, half of them representing the government and the rest the "influential" part of the community, this Council to draft laws for enactment by Parliament. He advocated the imposition of a duty on spirits to provide further revenue, the revision of the Judicature Act, and improvements in the magistracy. Such changes would be sufficient, he thought, for the colony's needs.⁴⁶ James Simms, his Attorney-General, believed that giving the council a popular aspect might satisfy those who complained of unconstitutional government.⁴⁷

For some time the weight of Cochrane's arguments had their effect at the Colonial Office. It seemed that the project for a legislature would be abandoned

and some alternative measure adopted to give the inhabitants a share in the management of their affairs.⁴⁸ In July 1831, however, the pressure for a legislature was astutely renewed in the House of Commons by the Tory member for Worcester, George Robinson, a partner in Robinson, Brooking, and Garland, principal merchants in the Newfoundland trade, and a member of the island's political committee. He opposed the vote of £11,000 for the civil establishment of Newfoundland, declaring that if the colony were given a legislature it would never ask the House for another farthing. Debates about the Reform Bill intervened, but on the evening of its third reading Robinson revived the question at a time and in a manner calculated to win Whig and Radical support. His arguments for economy and justice in the government of Newfoundland won him the backing of the Radicals and he extracted from the Ministry the equivocal assurance that steps were about to be taken to extend to Newfoundland "as much freedom as was compatible with local circumstances."⁴⁹

As 1831 ended and 1832 began there was a flurry of activity on the Newfoundland question. The Governor arrived for interviews with the Colonial Secretary and departed for Paris, convinced his opinion had prevailed. Robinson's partner, T. H. Brooking, came from St. John's to press the case for his fellow-petitioners.⁵⁰ James Stephen, as legal adviser to the Colonial Office, prepared, on the basis of his nineteen years of experience, a lengthy report on the value and limitations of colonial legislatures, and offered his recommendations for Newfoundland.⁵¹ By mid-January, after the "fullest and most deliberate consideration," the decision had been taken to grant the colony the constitution it had asked.⁵² Surprised and chagrined, Governor Cochrane could only assure Lord Goderich that he would forward the new arrangements as though they had originated with himself.⁵³

The constitution was embodied in four documents. These were the brief Act which empowered the Crown to exercise the prerogative in establishing a legislature, the Governor's Commission, his Instructions, and the Proclamation for an election.⁵⁴ Together these provided that Newfoundland should have an assembly of fifteen persons elected from nine defined districts, and a nominated council of seven named persons with both legislative and executive functions. The franchise was to be very wide, the vote being given to all registered male householders, either tenants or owners, who had been resident in the island for a year. It seems to have been decided that an adequate franchise could only be secured by making no stipulation whatever about property valuation, annual rent, annual income, or literacy. The qualifications for candidates were to be the same, except that they must prove two years' residence. The revenue from the Imperial customs duties was to be at the Assembly's command, except for a sum of £6,500 reserved for certain official salaries; the reserving clause was to be repealed when the Assembly had passed a Civil List Act satisfactory to the Home Government.

Although Newfoundland was granted the British North American "transcript" of the British constitution, the Colonial Office had deep misgivings about the provision for a legislative council. Stephen, in his report, had condemned these councils as "scarcely more useful than popular." He said that in theory the council's function was to check the radicalism of the assembly and to free the governor from direct conflict with the elected members. In practice, he said,

such councils acted only as defenders of their own privileges or as agents for the governor in unpopular measures; they relieved the governor from the responsibility he should bear without enhancing his authority. Far better, in Stephen's opinion, was the system in British Guiana where nominees and representatives were united in one legislative body. If such a body were established in Newfoundland, he believed that its members, too, would "mutually enlighten, assist and check each other" and the governor feel the full weight of his own responsibility.⁵⁵ With this view Goderich and Howick concurred.⁵⁶ It is surprising, therefore, that the Colonial Office chose to commit again what it had decided was a practical error.

It seems that Lord Goderich was influenced in his decision by the considerations of precedent and expediency raised by Stephen. The latter had pointed out that the Governor could be directly and lawfully authorized in his Commission to convoke an amalgamated body, but that such a Commission had never yet been issued. Further, the process of giving effect to a new constitutional theory would undoubtedly subject the Government to embarrassment in the House. The need to defend a novel constitution could be avoided if both branches of the Newfoundland Legislature could be induced to pass an act of union. This would provide for the admission to the Assembly of a certain number of government officers, *ex officio*, and for the dissolution of the Legislative Council.⁵⁷ Goderich instructed the Governor to propose such a bill, suggesting that three nominated members, the Colonial Secretary, the Attorney-General, and the Collector of Customs should sit in the Assembly and that the full Council should be retained only as an advisory body.⁵⁸ Lest the Assembly be hesitant about subverting the newly won constitution and the Council reluctant to pass a self-denying ordinance, Cochrane was to prepare opinion in advance by emphasis on Lord Goderich's strong desire for the union, and by judicious reference to disharmony in the other North American colonies.⁵⁹ Clearly, the Secretary of State hoped that gratitude might effect what convenience seemed to forbid. Aware of the deficiency of legislative experience in Newfoundland and of the disparity in the condition of its inhabitants, convinced of the wisdom of establishing an amalgamated body, the Colonial Office of 1832 lacked the flexibility and the resolution to undertake the experiment.

A second error the Colonial Office sought to avoid was the erection of an assembly in which the interests of St. John's would predominate at the expense of those of the widely scattered and sparsely settled outports. Earlier, before his conversion to the cause, Lord Howick had twice informed the House of Commons that there seemed no ready answer to this problem.⁶⁰ By February 1832, the decision having been taken, he could assure the petitioners of Poole, anxious for their long-vested interests in supplying the outports, that effective measures would be taken for obviating the difficulty.⁶¹ The measures would appear to have been electoral divisions which would ensure the under-representation of the commercial capital, a household franchise which would admit all but transients, and a members' qualification which would secure sufficient candidates. The census of 1827 showed that the population of 59,000 was distributed in nine more or less distinct areas of settlement, groups of outports, on the eastern and southern coasts. This suggested a basic constituency of about 6,500 persons, but only in

the four most populous districts, St. John's, Conception Bay, Trinity Bay, and Bonavista Bay, was this standard approached. The capital and Conception Bay were given three and four members respectively, the latter places one member each. The other five outport districts were below the standard, but four were given a member each, and the fifth, Placentia and St. Mary's, which contained a Roman Catholic population on the shores of adjoining south coast bays, was given two. In an assembly of fifteen members, the five smallest outport districts, with just over one-fifth of the population, would be proportionately over-represented by two-fifths of the members, while St. John's, with almost one-fourth of the population, would send only one-fifth (see Appendix E, Table I). There is no evidence that Cochrane suggested a political significance in the distribution and concentration of Roman Catholics and Protestants in the several districts, but rather some evidence that he did not.⁶² If he did make such a suggestion verbally, it would seem to have been dismissed as a problem to be solved within the colony.

The Governor's interviews with Lord Howick were apparently unfortunate. It was reasonable to assume, and Cochrane did assume, that his knowledge of the colony would be invaluable, but there was a gulf between the Governor and the Parliamentary Under-Secretary which seems to have been widened by their conferences about Newfoundland. Howick, seven years Cochrane's junior, was a didactic and dogmatic Whig, beginning a career in colonial management which was to be distinguished by a belief in representative institutions and a desire to lessen the economic and governmental burdens of the mother country.⁶³ One of his contemporaries has noted Howick's contempt for the opinion of others and the tenacity with which he clung to his own.⁶⁴ Cochrane declared that his opinions on the electoral divisions and qualifications were received in a petulant manner and with such an assumption of superior local knowledge that he resolved to make no further observations unless specifically asked.⁶⁵ Thus, the Governor's belief that the arrangements were injudicious seems to have been dismissed as a continuance of Tory obstructionism.⁶⁶

As an illustration of Whiggish faith in the panacea of parliamentary bodies under executive control, the constitution of 1832 is ideal. There is evidence of the hypnotic power of the parliamentary model in the colony's pressure for institutions whose limitations were elsewhere giving rise to complaint, and in the Colonial Office reluctance to impose a variant which they hoped the colony might have the wisdom to adopt. A representative body which was the empirical growth of centuries was conferred overnight upon a raw settlement which had grown up in illegitimacy and neglect; a franchise which was but a radical aspiration in the mother country was bestowed at once on unlettered fishermen whose existence she had only just ceased to ignore; and an upper chamber which was the natural expression of aristocracy in the old land was presented to a rude colony where nearly all lived by catching or trading in cod.

CHAPTER TWO

THE GENESIS OF PARTY, 1832-1836

EXCEPT in the capital, the general election in the autumn of 1832 engendered little excitement and a Assembly of Protestant and mercantile aspect was formed (See Appendix B, Table I). At Placentia and St. Mary's one of the two mercantile members chosen was a Roman Catholic and at Conception Bay a coalescing agreement brought the return of two Protestant merchants and two Roman Catholic "dealers" (persons who dealt or traded directly with a merchant).¹ In most of the outports the election does not seem to have been contested, but in St. John's four candidates stood for the three seats. They were Dr. Carson, the veteran reformer, William Thomas, a prominent merchant, Patrick Kough, a prosperous contracting carpenter, and John Kent, an auctioneer and commission agent. Of these, Dr. Carson was not returned. Prowse, the island's standard historian, has attributed Carson's defeat to the "proverbial fickleness" of the public and to an electioneering trick which ensured Kough the votes of the Wexford Irish. Carson himself alleged that candidates Kent and Kough brought forward swollen "tallies" of voters in order to crowd his voters from the poll.²

The pettiness and the small scale of the election at St. John's might tempt one to dismiss it as a municipal contest conducted at a low level; yet, since it inaugurated three decades of violent party strife, it bears closer examination. Of the three victorious candidates, William Thomas clearly represented the resident mercantile interest. He was a substantial merchant and gentleman-farmer whose family connection with the island went back to Cromwellian times. As deputy chairman of the political committee, he had in recent years been in the van of the movement for a local legislature.³ Like the officials of the colony he was a member of the Church of England. As a native, as a man of wealth and respectability, and as an advocate of an assembly, his qualifications were high, and he was apparently able to command support from all sections of the community. Patrick Kough was a well-to-do tradesman, a native of Wexford, and a Roman Catholic, whose skill and reliability had brought him responsible work at Government House and had earned him official esteem.⁴ His election called forth a petition from Dr. Carson who issued the first of his calls for the purity of parliaments, declaring that Kough's employment as a contractor for the government disqualified him from membership in the Assembly.⁵ This protest may have stemmed in part from personal chagrin, but to a man who had been fighting for almost a quarter of a century against despotism and officialdom in Newfoundland, the presence in the first Assembly of one who owed his advancement to official favour seemed ominous. Carson's initial defeat at the polls was probably due to the fact that he lacked the talents of a popular demagogue. His fearless,

reasoned arguments against the old system had made him bitter enemies among its defenders, but such arguments were not those to rally the support of an illiterate labouring people. He seems to have been a man who could dilate upon grievances without arousing the aggrieved.⁶

If Thomas and Kough represented conservative elements in the community, and Carson an intellectual liberalism of limited appeal, John Kent, then only twenty-six, could be termed a colonial reformer of the school of Howe, Papineau, and Mackenzie. He seems to have given some attention to proceedings in the North American colonies and he declared that Newfoundland must not look with complacency on what it had achieved. In his address to the electors of St. John's, he said:

Our constitution has, as yet, only half developed itself; but in that partial development a sufficient evidence is given of the desire of power to hedge around its prerogative with a force ductile to its will, but irresponsible to the people. In a council nominated by the Governor, composed of those holding office under the Government, or expectants for the place, and in which the leading interests are unrepresented, oligarchical principles must prevail. The task of prostrating those principles or of so modifying them as to make them useful now devolves on the people. . . . Your extensive franchise, amounting to almost universal suffrage, will enable you to do this.⁷

The appearance of a "popular" candidate caused some uneasiness among those who had favoured representative government, but who did not look for radical reform. The Governor observed that some of the first promoters of the constitution were beginning to have second thoughts.⁸ One of these, Henry Winton, editor of the *Public Ledger*, objected (September 18, 1832) to Kent as a newcomer qualified neither by length of residence nor by personal attainments to represent St. John's, the inference being that political opportunism rather than the interest of the colony was Kent's guiding principle. Kent had arrived in St. John's only eleven years earlier and did not occupy a significant place in the commercial life of the capital.⁹ He had, however, as a fellow-emigrant from Waterford, come under the wing of Dr. Michael Anthony Fleming, the Roman Catholic Bishop, whose sister he was later to marry.¹⁰ When Kent, irritated by the *Ledger's* aspersions, informed the public, with youthful rashness, that though he were an imbecile an irresistible influence would carry him into the House,¹¹ the *Ledger* and the community could be in no doubt as to what influence was meant. Nor did the Bishop deny that he had used or would use influence with his flock; rather he issued a statement supporting Kent and justifying by paternal analogy his right as Bishop to do so.¹² At this, the *Ledger*, on September 21, adopted a threatening tone, urging the disgrace of clerical interference in political matters and stating that if Dr. Fleming wished to retain the respect of the community, he owed it to himself to retire from the contest. It announced that the Bishop was not, as he appeared to think, beyond the reach of the press which had only begun to deal with him, and advised him that in his collision with it he should not overrate his strength. This provoked a mass meeting at the Roman Catholic chapel at which two resolutions were passed, one lauding Dr. Fleming for his efforts on behalf of the people, the other denouncing Winton for attacks on the Church and the Bishop.¹³ The Governor was told that the Bishop was present at the hustings on Kent's behalf.¹⁴

If the Governor, like Winton, saw a significance in this politico-religious combination, he gave no hint of it to the Colonial Office. A whole year was to elapse before he wrote a despatch describing the Kent-Fleming alliance.¹⁵ Nor could a perusal of the colony's newspapers remedy this failure, since Cochrane had made no arrangement for the regular transmission of these to the Colonial Office.¹⁶ The Governor was, in fact, a most haphazard correspondent. After ignoring the political scene for long periods he would pen lengthy, chaotic despatches describing events several months old.¹⁷ Informed of an established trend, the Colonial Office could then only labour in its wake with tardy advice.

Lord Goderich had instructed the Governor that the constitution would provide him with a "large scope for the exercise of circumspection and industry."¹⁸ Accordingly, Cochrane opened the Legislature in January 1833 with a ceremony which was designed to show that the Crown had not abdicated its function in the colony and with an address which called for unity of purpose and action in the new era. Glossing over late events, he congratulated the House on the complete harmony of the eight-day election in St. John's. He informed the members that their legislative tasks and responsibilities were great. He promised cooperation with them in all measures for the improvement of the island, stressing his detachment from all local influence and from all hope of personal gain.¹⁹

The vice-royal party had scarcely departed when the voice of democracy was heard contending against the influence of the Crown. Brown, a Roman Catholic member for Conception Bay, moved a resolution that the House proceed to the election of their own officers. The Governor had been instructed to maintain his right of appointment and Brown's motion was referred to the Committee on Privileges.²⁰ Although the Committee reported that the right belonged to the House, the members compromised by appointing the persons already named the Governor, a concession which the democrat, Kent, decidedly opposed.²¹ Early in the session Brown gave notice of another attempt to purify the House of official influence by announcing a bill to prevent contractors with the Government and Government officers from sitting in the Assembly. This was clearly aimed at removing Patrick Kough and the Colonial Treasurer, Newman Hoyles. In this effort Brown also failed, for though he piloted the Bill through a divided House, it was amended in the Council and the session closed without its enactment.²² A desire to avoid setting an awkward precedent in so limited a society apparently made the House reluctant to finalize such a bill.²³ Nor was Brown's third effort more successful. Facts were necessary to substantiate a claim that there was a Church of England monopoly of office. He moved for a return of the last census which would show the number of each religious creed and the names and creeds of the public officers. The Governor refused the request until the House should vote an appropriation for a new census.²⁴ For the moment the reformers were checked.

The democratic element in the Assembly was a significant factor in ensuring the rejection of the Colonial Office proposal for the union of the two legislative bodies. Laid before the House on January 9, it was rejected unanimously and without discussion.²⁵ Cochrane's analysis of the grounds for the refusal was no doubt correct. He said that the "democrats" feared the ascendancy of nominated councillors in their midst, while the more conservative members, the "constitu-

tionalists," feared the establishment of an unbridled democracy in which nominees would be outvoted and outvoted by representatives.²⁶ For opposite reasons both groups wanted the Legislative Council.

Since the Council could not be abolished, the Governor suggested that it be enlarged from six members to nine or ten, and made more representative by selecting half its members from the principal inhabitants. Accordingly he submitted a list of merchants. Further, he suggested the need for a separate executive council of officials and senior persons, since he believed it an anomaly that he must consult as advisers the very people who had already decided for or against the measure on which he desired advice. He also made a strong plea for the removal of the Chief Justice from the Council on the grounds that his political duties interfered with his judicial ones, and that persons who collided with him in political matters might attribute political motives to his conduct on the Bench.²⁷

Within a month these constitutional anomalies had produced a crisis. The Assembly had passed the colony's first Revenue Bill which laid small duties on wines and spirituous liquors from British and foreign sources. The Bill was rejected in a Legislative Council of four when Chief Justice R. A. Tucker, presiding, declared dogmatically that the duties were neither legal nor expedient. In this stand he was backed by the Attorney-General, who had opposed the granting of representative government. They argued that the Bill conflicted with the Imperial Act (6 Geo. IV, c. 114) which already taxed these items and that it discriminated against British produce.²⁸ Tucker said that the state of Newfoundland did not permit a double tax and maintained that so far from being ready for a legislature, the island was not far removed from "primitive barbarity," that the people were illiterate, and that the means were lacking to advance education and religion. He did not concede, it may be noted, that a colonial revenue might remedy these defects.²⁹ Further, he told the Council that if the Bill were passed, he would render it abortive from the Bench.³⁰ The Assembly declared that they could not but "consider the course pursued by the Council as manifesting a feeling more calculated to check the early operation of the Assembly than to promote the best interests of the Colony . . ."³¹ Cochrane was inclined to agree, the Bill having been passed by the persons who had a real stake in the island and having been rejected by the officials who had not. He repeated his request for a separate executive council.³²

On the immediate question of ensuring a revenue for the island, the Colonial Office acted with as much vigour as the Governor could desire. Tucker's stand was condemned and his conditional resignation confirmed.³³ Parliament was approached for a "last" grant for Newfoundland.³⁴ The Council and the Assembly were assured that the Revenue Bill was valid and advised that in future they must provide for their own expenditure.³⁵

On the broader question of constitutional amendment, the Colonial Office was still as hesitant as it had been concerning amalgamation. The Governor's Instructions authorized him to call one Council and must be amended if he were to call two. After so short a trial it was apparently inconvenient for the Secretary of State to have to seek an amendment. Since the removal of the Chief Justice from the Council would have to be effected in the same way, neither of these

changes were sanctioned. Members could be added to the Council by the issue of royal warrants, however, and three of Cochrane's slate were approved.³⁶

Since these decisions of May 1833 were not conducive to legislative harmony but produced instead the opposite effect, they will be examined more closely. The officials as a group having proved obstructive, the Governor recommended the addition of a mercantile element to the council which would, presumably, provide a body more receptive to the measures of the mercantile Assembly. For the Colonial Office such a change seemed to need no defence and from the Governor's list of "suitable" gentlemen they chose the first three: John Duncombe, William Thomas, and John Garland. Since the Governor had stressed the difficulty of finding respectable persons from the outports who could spare the time for the sessions, it is not surprising that his nominees were all residents of St. John's. But, having urged the dearth of respectable persons as a reason for refusing a legislature, he ensured, by priority of recommendation, that two of these persons, Speaker Garland and Mr. Thomas, would be removed from the House.³⁷ These merchants were no doubt willing to become "Honourable" councillors and to leave the debates of the Assembly in order to exert their influence in the Council, and Cochrane was undoubtedly predisposed to choose as his councillors those whom he chose to meet socially. If his aim, however, were to alter the composition of the Council so as to make it more harmonious with the Assembly, it was unwise to risk an unwanted alteration in the latter. Although the Assembly could be termed mercantile, there were already within its walls two reformers, Brown and Kent, who were vocal in questioning the establishment. Others might join them as seats were vacated. The Governor may have calculated the risk and decided to take it, although his despatches suggest that it had not seriously occurred to him.³⁸

On the religious question, the discontent among Roman Catholics and Dissenters about appointments to office of which Brown's resolution was a symptom, the Governor kept official silence. Perhaps his answer was his solid slate of Church of England councillors, but in making his selection he may not have deigned to notice the question at all. Although the population of St. John's was two-thirds Roman Catholic, most of the Catholics were members of what Cochrane termed, in the phrase of the day, the "lower orders." Of the rest, there were a few substantial citizens—merchants, professional men, and shopkeepers—from whom he could have chosen, had he been so disposed.³⁹ Apparently he numbered none of these among the principal inhabitants of St. John's. Whether he acted from religious bigotry or from social prejudice, or from both, his selections served to focus the ambitions of the Catholics upon the elected Assembly.

Certain coincidences of persons and events in 1833 may have played their part in the Colonial Office decision not to alter the constitution of Newfoundland and in the choice of a replacement for the recalcitrant Chief Justice. When the constitution came before the Colonial Office for review in the spring of 1833, Lord Stanley had just replaced Lord Goderich as Colonial Secretary in the Whig Ministry. His attention was engaged by the problems posed in the West Indies by the abolition of slavery and the regulation of apprenticeship.⁴⁰ It happened also that in March the Attorney-General of Upper Canada, Henry John Boulton, had been dismissed at Lord Goderich's direction for pursuing an