

**Local Authority and District Autonomy:
The Niagara Magistracy and Constabulary, 1828-1841.**

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**A thesis submitted to the school of
Graduate Studies and Research in partial
fulfilment of the requirements for
the Ph.D. Degree in History**

January 1996

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ISBN 0-612-20023-X

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ABSTRACT

Traditional Upper Canadian historiography has emphasized the role of the Family Compact and the flow of authority from the provincial centre. It has stressed the dominance of the York elites and their control of the province through constitutional structure, the imposition of a Conservative ideology or patronage. Local magistrates, however, governed the districts and formed a counterweight to the Family Compact. The Lieutenant-Governor appointed magistrates to administer all district affairs and to judge all petty debt and petty crime. Once appointed the decisions of the magistracy were final and the distant officials at York did not interfere.

While the provincial government appointed the magistracy, their prestige and appointment was derived as much from district influence as from their connections with York. Previously appointed officials recommended suitable candidates who were often merchants and shopkeepers who provided district credit. Some were land promoters and entrepreneurs who developed the district commercial infrastructure. Many had historic roots in the Niagara, suffered the effects of the American Revolutionary War and served as militia officers during the war of 1812-14. A constellation of economic, social and political interests bound the magistrates to regional not central interests.

Although the magistracy formed an elite group with numerous legislated powers, they did not act alone. The magistracy appointed constables to serve writs, warrants and subpoenas, to apprehend criminals and to ferry people back and forth from the magistrates to the district gaol, to oversee township elections and to perform a myriad of lesser duties. The township constabulary was crucial to the workings of the judicial system and spread the authority of the magistracy throughout the district.

While some constables came from the upper reaches of their society, the magistracy selected the constabulary primarily from respectable farmers, innkeepers and local artisans. The majority was appointed from loyalist families and many had fought for the British as Butlers Rangers. Fathers and sons from this group had an historic allegiance to British institutions that was further expressed during the war of 1812-14. For their patriotism they had received bountiful land grants and had a vested interest in the new province. Constables as neighbours, relatives and friends acted as the bridge between the authority of the magistracy and the community.

This study finds that coincident interests, district prominence and a supportive constabulary solidified the rule of the magistracy at the local level. The provincial government was many miles away and had little influence in local affairs. The traditional stress on the importance of an all powerful York-based rule has skewed the picture. Although connected to the

provincial elite by their appointment, local judicial elites acting independently of the provincial government sustained local governance at the level of the district.

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Acknowledgements

I would like to thank my thesis advisor Michael Piva for his effort in overseeing this project. My gratitude also is extended to Patricia Kennedy at the National Archives and Karen Bergsteinson and the staff at the Ontario Archives for their inexhaustible assistance in unravelling the many record groups. The unfailing kindness of both Fred Armstrong and Keith Johnson who supported and encouraged this study was instrumental in its completion.

Preface

Historians have traditionally viewed Upper Canada through the prism of the Family Compact. Aileen Dunham and Gerald Craig¹ have focused on the constitutional formation and the power of the central officials to control all appointed office. In their view the High Tory York officialdom appointed politically like-minded men to public office, including that of the district magistracy. Since public office was held at the pleasure of the Lieutenant-Governor, these men were then directly accountable to the provincial executive who could remove them at will. The power of political patronage allowed the Family Compact to maintain their hegemony throughout Upper Canada.

Numerous articles and books have analyzed the York-based elite. Historians have underscored their elevated social position.² They have focused attention on the self-interested

¹Aileen Dunham, Political Unrest in Upper Canada 1815-1836 (Toronto: McClelland and Stewart, 1963), p. 30. Gerald Craig, Upper Canada: The Formative Years, 1784-1841 (Toronto: McClelland and Stewart, 1988), p. 111.

²Robert Burns, "Gods Chosen People: The Origins of Toronto Society", Canadian Historical Association Historical Papers (1973), pp. 213-228 and J.K. Johnson, "The Upper Canada Club and the Upper Canadian Elite, 1837-1840", Ontario History, LXIX (1977), pp. 151-168.

distribution of lands,³ elite control of the courts,⁴ centralized domination of the banks,⁵ leadership in the Welland Canal Company⁶ and early proposals for railways.⁷ Articles and books on charter members of the Family Compact like Sir John Beverley Robinson⁸ have reinforced the notion that the political centre dominated all major institutions.

³J.H. Richards, "Lands and Policies: Attitudes and Controls in the Alienation of Lands in Ontario During the First Century of Settlement", Ontario History, L (1958), pp. 193-209. See also Leo Johnson, "Land Policy, Population Growth and Social Structure in the Home District, 1793-1851", Ontario History, LXIII (1971), pp. 41-60, H. Pearson Gundy, "The Family Compact at Work: The Second Hier and Devisee Commission of Upper Canada, 1805-1841", Ontario History, LXVI (1974), pp. 129-146 and David Gagan, "Property and Interest: Some preliminary Evidence of Land Speculation by the Family Compact in Upper Canada, 1820-1840", Ontario History, LXX (1978), pp. 63-70.

⁴Terry Cook, "John Beverley Robinson and the Conservative Blueprint for the Upper Canadian Community", Ontario Historical Society, LXIV (1972), pp. 79-94 and Robert Hett, "Judge Willis and the Court of King's Bench in Upper Canada", Ontario History, LXV (1973), pp. 19-30.

⁵T.W. Acheson, "The Nature and Structure of York Commerce in the 1820s", Canadian Historical Review, L (1969), pp. 406-420.

⁶Hugh G.J. Aitken, "The Family Compact and the Welland Canal Company", The Canadian Journal of Economics and Political Science (1952), pp. 63-76.

⁷Peter A. Baskerville, "Entrepreneurship and the Family Compact: York-Toronto, 1822-1855", Urban Historical Review, IX (1981), pp. 211-229.

⁸Terry Cook, "John Beverley Robinson and the Conservative Blueprint for the Upper Canadian Community", Ontario History, LXIV (1972), pp. 79-94, Patrick Brode, Sir John Beverley Robinson: Bone and Sinew of the Compact (Toronto: The Osgoode Society, 1984). See also Paul Romney, Mr. Attorney.

This historiographic tradition was longstanding and durable. Indeed it formed the basis of my initial research. After examining the district magistracy: their process of nomination, their day to day workings and their authority with the community constabulary, the accepted York-based interpretations became increasingly debatable. There was a discontinuity between the traditional assumptions and the findings.

My research instead supported the thesis of a more recent work Patrons, Clients and Brokers by S.J.R. Noel. Noel posited that district elites were connected to the York-based clique, but their district influence operated independently of centralized provincial control.⁹ Noel described the political culture in the districts as a pattern of patron-client relationships based on a land for loyalty exchange. A patron garnered client loyalty by facilitating land ownership.¹⁰ In Noel's view the landed patrons shared their role with a local merchant elite which created a commercial clientism stronger than patronage. Noel maintained that the direct power of the provincial officials in the far flung districts of Upper Canada was more limited than the traditional York-centred historiography would have us believe.¹¹

⁹S.J.R. Noel, Patrons, Clients, Brokers: Ontario Society and Politics 1791-1896 (Toronto: University of Toronto Press, 1990) pp. 106-107.

¹⁰Noel, Patrons, Clients, Brokers, pp. 12-14.

¹¹J.E. Hodgetts pointed out that the capacity of the central authority was limited by the lack of a wide-spread provincial administration and few central social-policy initiatives before 1840. J.E. Hodgetts Pioneer Public Service: An Administrative History of the United Canadas 1841-1867 (Toronto: University of

Noel's thesis pertained mainly to the London District and dealt with rich landowners. I wanted to test Noel's thesis in another district and view it from the position of the district rulers, the local magistracy, and their day to day government of the district seen in the records of the Quarter Sessions of the Peace. Was the power of the Family Compact all pervasive or did local elites rule independently of York control? Did the centre control local elites or did the regionally-based magistracy rule their district with a high degree of autonomy?

To test Noel's thesis I needed a region of Upper Canada where the appointed system of local government was well-established and where the land had been settled for some time. It was also necessary to have a good set of magistrates records. The Niagara District of Upper Canada fitted both the criteria. It was the earliest settled district of Upper Canada and by 1820 practically all the land had been taken up. From the 1780s, loyalists and late-loyalists poured into the Niagara. From the early 1800s loyalist children were applying for their 200 acre bounty and many settled in the district. The records of the Quarter Sessions of the Peace did not begin before 1828, but they were complete. In the records of Quarter Sessions was correspondence of the magistracy with the central officialdom, recommendations of the grand jury, correspondence over the appointment of local licences, lists of jurors and constables and the district accounts as well as the trials.

The evidence found in the court records supported the notion that local elites ruled autonomously of York control. Instead of the central elites maintaining their hegemony, the local oligarchies were reinforcing their control of the districts. Members of the local oligarchy undercut the appointment procedure and offered as candidates the names of men acceptable to them. Former important Niagara officials including previously appointed magistrates controlled the lists of candidates.¹²

The preferred candidates had derived local prominence from regionally-based interests that were substantially tied to commerce. Candidates for the magistracy had a multi-faceted position in their society. Niagara magistrates were often merchants and shopkeepers who provided district credit and were bound to district economy. As large land owners and entrepreneurs, they developed capital projects like the Welland canal, the Niagara Harbour and Dock Company and the Erie and Ontario Railway. Many had historic roots in the Niagara. They had suffered the effects of the American Revolutionary War and, as local leaders, served as militia officers during the war of 1812-14.

Nor were magistrates ideologically the same as the High Tory elite. Magistrates held political beliefs that spanned the political spectrum. Candidates acceptable to the local elite included Reformers and well as Tories. There were no clearly defined party politics. Many Reformers as well as Tories would

¹²J.H. Aitchison, "Local Government in Upper Canada", pp. 80.

back government policies that were good for commerce and like John Clark would switch sides.

Upon an examination of the secondary literature on the Niagara, the magistrates were far from being agents of the Family Compact. They protected regional concerns held by both the magistrates and their community. From the wrangling over the War Losses to the Alien Debate the magistracy upheld community interests in face of the York-based officialdom. The judicial officials at York in fact contributed to the autonomy of the magistracy. This can be seen in the records of the Quarter Sessions. Although magistrates were appointed by the government at York, once appointed, the decisions of the magistrates were final. People could petition the Lieutenant-Governor over perceived injustices, but the distant provincial officials relied upon the judgement of the local magistracy and never interfered with the magistrates' judgements or decisions.

The independent rule of the magistracy became increasingly clearer upon the examination of the office of the local constable. Magistrates appointed a majority of the constables from the oldest families in the Niagara. Constables were farmers and petty business people drawn mainly from the middling group. As lay people with local interests constables formed a bridge between the magistracy and the community. Constables overwhelmingly cooperated with the magistracy to maintain the peace. In the records of the constables actions only there were only 6 instances where constables either failed to act or did not

act according to their orders. Constables as men with regional interests worked closely with the magistracy to maintain local order.

This study finds that coincident interests, district prominence and a supportive constabulary solidified the rule of the magistracy at the local level.¹³ The provincial government was many miles away and had little influence in local affairs. The traditional stress on the importance of an all powerful York-based rule has skewed the picture. Connections between the provincial centre and the districts was restricted by distance and the lack of a centrally-based bureaucracy in the districts. Although connected to the provincial elite by their appointment, local judicial elites acting independently of the provincial government sustained local governance at the level of the district.

¹³This interpretation departs from the interpretation of historians who have dwelt on atypical moments of violence and have concluded that the magistracy was ineffective. See Michael Cross, "The Shiners' War: Social Violence in the Ottawa Valley in the 1830s", Canadian Historical Review, LIV (1973), pp. 1-26, "Violence and Authority: The Case of Bytown", Law and Society in Canada: In Historical Perspective (Calgary: University of Calgary Press, 1979) and "The Laws are Like Cobwebs: Popular Resistance to Authority in Mid-Nineteenth Century British North America", Law in a Colonial Society: The Nova Scotia Experience, ed. by P. Waite, et al. (Toronto: Carswell Co. Ltd., 1984). See also Susan Lewthwaite, Susan, "Violence, Law, and Community in Rural Upper Canada", Crime and Criminal Justice, edited by J. Phillips, et al. (Toronto: University of Toronto Press, 1994).

Chapter I

The Niagara District: The Land, the People and the Economy

"The Niagara District was one of the oldest settled areas in the province and the grip of loyalism ... was strong. As the chief gateway into the province from the republic to the south, however, the Niagara peninsula could not easily be kept free of disturbing political - as well as social and religious - influences spreading up from below."

S.D Clark.¹

The Niagara District formed a land corridor between Lake Ontario to the north and Lake Erie to the south. Bounded westerly by a line west of the Forty Mile Creek to the Grand River and impeded only by the Niagara River to the east, it joined British North America to the United States. The obstacle of the great falls in the Niagara River created the longest portage route in the Great Lakes-St. Lawrence trading system that made the region a major transshipment route. Attracted by commercial opportunity, benevolent geography and prospects of cheap land, a heterogeneous collection of American immigrants settled alongside the early British loyalists and Butlers Rangers. A continuing influx of American preachers, teachers and books proclaiming republicanism coloured Niagara attitudes. Far from a landlocked backwater, the

¹S.D. Clark, Movements of Political Protest in Canada, 1640-1840 (Toronto: University of Toronto Press, 1959), p. 348.

Niagara District was a crossroad for commerce, migration and ideas.

The first settlement on the west bank of the river began during the American Revolutionary war. By 1779 some 1,346 soldiers, Butler's Rangers, Indian department officials and 64 distressed families drew rations at Fort Niagara to the east of the river.² The strain on supplies intensified with the gathering of about 5,000 Iroquois.³ Governor General Frederick Haldimand, concerned over the expense of supplies, encouraged the refugees to begin farming to supply food for the fort's increasing population.⁴ In 1780 settlement began on the west bank that had already been ceded by the Senecas to Sir William Johnson in 1764. An agreement with the Mississauga in 1781⁵ secured further land west of the river. By 1782, 16 families totaling 84 people had cleared 236 acres. Over the next two years this settlement increased to 184 farms.⁶

²Lieutenant Colonel William A. Smy, "The Settlement of Butler's Rangers in Niagara", United Empire Loyalists in the Niagara Peninsula, ed. by John Burtiniak, et al. (St. Catharines: Brock University, 1984), p. 17.

³Bruce Wilson, "Privilege and Place: The Distribution of Office in the Niagara Peninsula During the Loyalist Period", Immigration and Settlement in the Niagara Peninsula, ed. by John Burtiniak, et al., (St. Catharines: Brock University, 1981), p. 27.

⁴Marjorie F. Campbell, Niagara, Hinge of the Golden Arc (Toronto: The Ryerson Press, 1958), p. 116.

⁵Alun Hughes, "The Early Surveys of Township No. 1 and the Niagara Peninsula", in Niagara's Changing Landscapes, ed. by H.J. Gayler (Ottawa: Carleton University Press, 1994), p. 215.

⁶Janet Carnochan, "Names Only But Much More", Niagara Historical Society Transactions, XXVII (1916), p. 5.

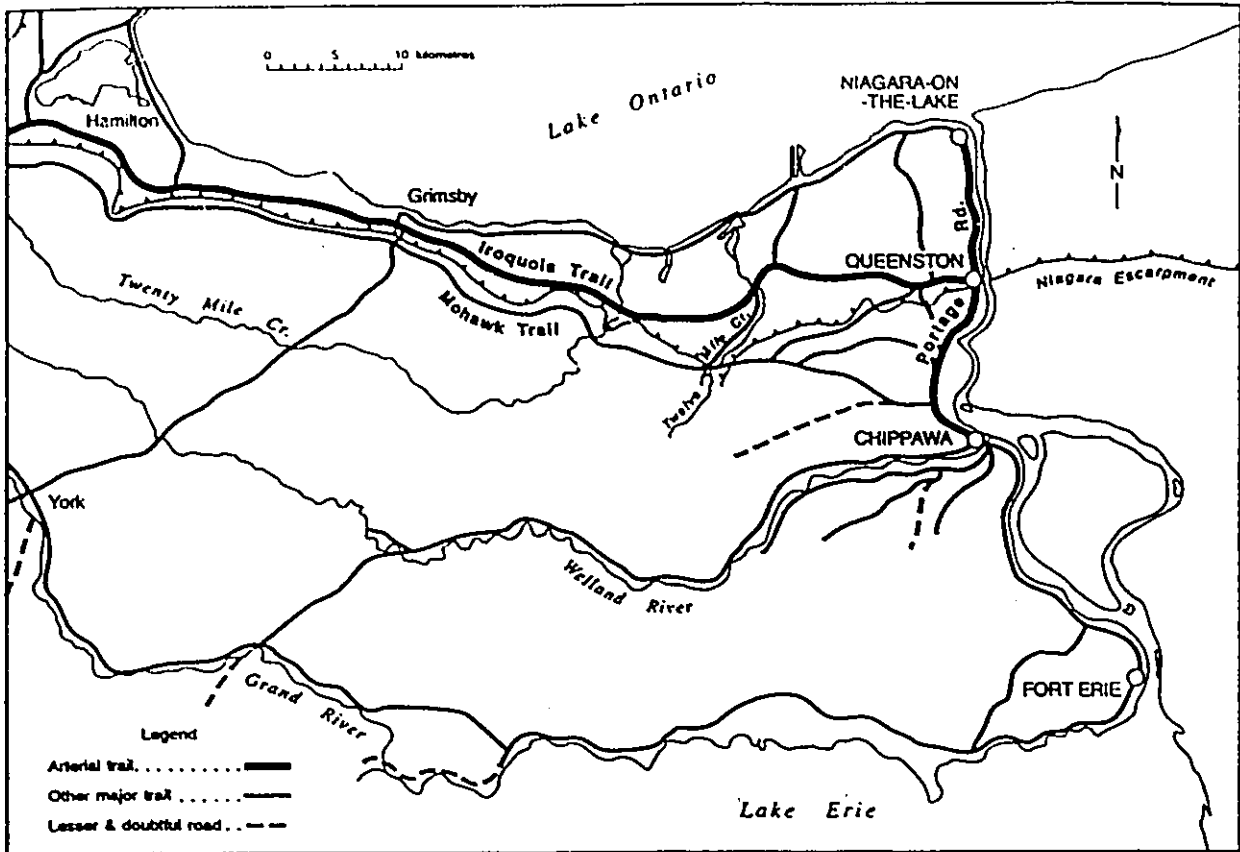
After the Revolutionary War settlement in the Niagara spread along the web of navigable rivers: the Niagara River, the Four Mile Creek, the Ten Mile Creek, the Twelve Mile Creek and the Twenty Mile Creek. These streams took their names from their distance from the Niagara River. To the south along Lake Erie, early settlement began in Bertie Township across from Buffalo and also spread up the Welland River and Chippawa Creek. Because settlement in the Niagara District predated the Constitutional Act of 1791, there were no Clergy and Crown Reserves.⁷ Without ninety-six unproductive 200 acre lots scattered through each township,⁸ settlement coalesced around the natural topography of rivers and old Indian trails. This promoted the emergence of a closely knit agricultural society. (See Figure 1.1)

The natural environment of the Niagara contributed to both the initial success and persistence of early settlers. Glacial lakes had discharged a rich delta of easily deforested soil around the edges of the peninsula, although to the interior heavy clay and dense forest inhibited early settlement. The 350 foot escarpment, running the full length of the peninsula, moderated the climate along the Lake Ontario shoreline providing the longest growing season in the province. The many navigable streams flowing from its brim furnished water power for grist and saw mills.

⁷On the problems of the Clergy Reserves see Alan Wilson, "The Clergy Reserves: Economical Mischiefs or Sectarian Issue?", The Canadian Historical Review, XLII (1961) pp. 281-299.

⁸John L. Ladell, They Left Their Mark: Surveyors and Their Role in the Settlement of Ontario (Toronto: Dundurn Press, 1993), p. 93.

Figure 1.1. Routes of Early Settlement in the Niagara c. 1790.



Source: W.B. Turner, "The Early Settlement of Niagara", Niagara's Changing Landscapes, ed. by Hugh J. Gaylor (Ottawa: Carleton University Press, 1994), p. 189.

Early travellers spoke of the Niagara as the garden of Upper Canada.⁹ Many of the newcomers put down roots and stayed. As a

⁹J.Howison Esq., Sketches of Upper Canada 1821 (London: G.& W.B. Whittaker, 1821), pp. 66-166. See also B. Mortimer, "From Pennsylvania to Upper Canada with John Heckewelder", Yankees in Canada, ed. by James Doyle (Downsview: ECW Press, 1980), pp. 27-28 and Francis Hall, Travels in Canada and the United States in

Niagara innkeeper and his wife recounted, they had come to the Niagara with few resources in 1797. In 1837 they had three farms with hundreds of acres and their nine children, most of whom were married, had farms of their own.¹⁰

Successful self-reliance encouraged an egalitarian ethos. Contemporary commentators passing through the district confirm Darroch and Soltow's findings that independent farm ownership created a more "leavened and open society".¹¹ The frontier experience where "magistrates, senators, counselors and colonels" personally carved independently-owned farms out of the bush "without any sense of degradation"¹² tended to moderate class distinctions. The inhabitants felt themselves equal to any who travelled through their district.¹³

The early refugees from the American Revolutionary War, the loyalists and military settlers, formed the core group. In 1789 the military and Butler's Rangers officers along with the rank-and-file soldiers and their families formed over twenty-seven

1816-1817 (London: Longman Hurst, 1818), pp. 201-205.

¹⁰Anna Jameson, Winter Studies and Summer Rambles in Canada (Toronto: Thorn Press, 1943), p. 20

¹¹Gordon Darroch and Lee Soltow, Property and Inequality in Victorian Ontario: Structural Patterns and Cultural Community in the 1871 Census (Toronto: University of Toronto Press, 1994), pp. 203-205.

¹²Thomas W. Magrath, Esq. to the Rev. Thomas Radcliffe, Dublin, January 1832, Authentic Letters From Upper Canada, ed. by Rev. Thomas Radcliffe (Toronto: Macmillan Co., 1953), p. 66.

¹³Jameson, Winter Studies and Summer Rambles in Canada, p. 20.

percent of the population.¹⁴ The government rewarded these first settlers with extensive property and 63% of them remained two decades after settlement. Before the arrival of the first Lieutenant-Governor, John Graves Simcoe in 1792, the loyalist migration had more than tripled the original 800 to 1000 families. By the mid 1790s the population had increased to over 6000, approximately one quarter of the total white population of the province.¹⁵

Although the military and other early loyalist immigrants were clearly pro-British, few were strictly of British origin.¹⁶ The earliest group to reach Fort Niagara exemplified the heterogeneous background of the newcomers. The wives of men fighting with the British Mrs. Nellis (Nelles), Mrs. Secord, Mrs. Young, Mrs. Buck, Mrs. Bowman and Mrs. Bonar together with thirty-two children walked up the old Indian trails to safety. The Secords like the Keefers, who settled in 1792, were originally French Huguenots. The Nelles and the Bonar (Bonheur) families were French while the Youngs (Jung), Bucks and Bowmans were German.¹⁷ The English were largely descendants of the early

¹⁴Bruce Wilson "Patronage and Power: The Early Political Culture of the Niagara Peninsula", The Capital Years: Niagara on the Lake 1792-1796, ed. by Richard Merritt, et al. (Toronto: Dundurn Press, 1991), pp. 46-47.

¹⁵Bruce Wilson, The Enterprises of Robert Hamilton: A Study of Wealth and Influence in Early Upper Canada 1776-1812, (Ottawa, Carleton University Press, 1983), pp. 4-6,

¹⁶Campbell, Niagara, Hinge of the Golden Arc p. 105.

¹⁷Ibid., p. 106.

Puritans. Lieutenant-Governor Simcoe's encouragement of German Quakers, Mennonites and Tunkers diversified the original loyalist settlement.

In 1792 Simcoe, in recognition of the superior farming ability of the Quakers, encouraged their resettlement in Upper Canada.¹⁸ Although not loyalists to the British cause,¹⁹ the Quakers had been pacifists during the Revolutionary War. Their consequent unpopularity caused many to move to Upper Canada. They preferred Niagara because of its accessibility to their sister settlements in Pennsylvania.²⁰ Before 1800, American Quakers formed the greater part of Pelham and Bertie Townships and had a significant presence in Louth and east Clinton.²¹ Those who had settled in the Niagara encouraged their brethren to join them. In 1824 the Colonial Advocate noted six large Pennsylvania wagons passing through Queenston and another group of Quakers from Bertie

¹⁸Simcoe to Dundas, 28 April, 1792, The Correspondence of Lieut. Governor John Graves Simcoe, With allied Documents Relating to His Administration of the Government of Upper Canada, ed. by E.A. Cruikshank, Vol.I, ed. by E.A. Cruikshank (Toronto: Ontario Historical Society, 1923), p. 142, (hereafter cited as Simcoe's Correspondence).

¹⁹Frederick Landon, Western Ontario and The American Frontier (Toronto: The Ryerson Press, 1941), p. 128.

²⁰Bruce Wilson, As She Began: An Illustrated Introduction to Loyalist Ontario (Toronto: Dundurn Press, 1981), p. 99.

²¹The History of the County of Welland (Welland: Tribune Printing House, 1887), pp. 292, 353. See also Landon, Western Ontario and The American Frontier, pp. 128-129.

Township who had returned with relatives and friends for the settlement at Waterloo on Lake Erie.²²

Tunkers from Pennsylvania also migrated to the Niagara between 1778 and 1780. Like the Quakers, they settled in Pelham Township and later on Black Creek in Bertie Township. The largest community of pacifists,²³ meanwhile, were the Mennonites, who were equally renowned for their farming. The government exempted Quakers, Tunkers and Mennonites from military service upon payment of an annual fine.

The Niagara also had African-American communities in St. Catharines and Niagara town.²⁴ The Butlers, William Claus²⁵, the Clements²⁶ and others had brought slaves with them. Some like Peter and Richard Martin, were members of Butler's Rangers and served to the end of the Revolutionary War.²⁷ By 1791 the pioneers in the Niagara District owned approximately 300 slaves,

²²The Colonial Advocate [Queenston], 3 June 1824.

²³The Niagara had the largest settlement of Mennonites in Upper Canada with 3,022 scattered through the district, F.H. Epp, Mennonites in Canada, 1786-1920: A History of a Separate People (Toronto: Macmillan of Canada, 1974), p. 72.

²⁴Campbell, Niagara, Hinge of the Golden Arc p. 315.

²⁵Ernest Green, "Upper Canada's Black Defenders", Ontario Historical Society, Papers and Records, XXVII (1931), p. 365.

²⁶Norman K. Crowder, Early Ontario Settlers: A Source Book (Baltimore: Genealogical Publishing, 1993), p. 24.

²⁷Peter and Richard Martin were slaves of Colonel John Butler. Green, "Upper Canada's Black Defenders", p. 365.

more than in any other part of the province.²⁸ There were also a number of "free persons of colour".²⁹ In 1788, a free African-American named Diamond was the first settler of Caistor Township. By 1792 he held 800 acres that he sold to Henry Dochstader.³⁰

The Six Nations Reserve on the Grand River further enhanced the diverse population of the Niagara. As British allies, the Iroquois Confederacy under Joseph Brant were anxious to secure land in British North America. In 1784, when Haldimand purchased the Niagara tract from the Mississaugas, an area of about 900 square miles (570,000 acres) on the lower reaches of the Grand River, was given to the Six Nations. By 1785 some 1,840 Iroquois settled in the Niagara District.³¹

The influx of Americans before and after the 1812 War added to the heterogeneous character of the Niagara. Before the war the original loyalists were joined by family, friends and others all too ready to take the oath of allegiance for free land.³² After the war the American shift westward that created six new western

²⁸Daniel G. Hill, "Early Black Settlements in the Niagara Peninsula", Immigration and Settlement in the Niagara Peninsula, ed. by John Burtiak, et al. (St. Catharines: Brock University, 1981), p. 71.

²⁹Michael Power and Nancy Butler, Slavery and Freedom in Niagara (Niagara-on-the-Lake: Niagara Historical Society, 1993), pp. 54-73.

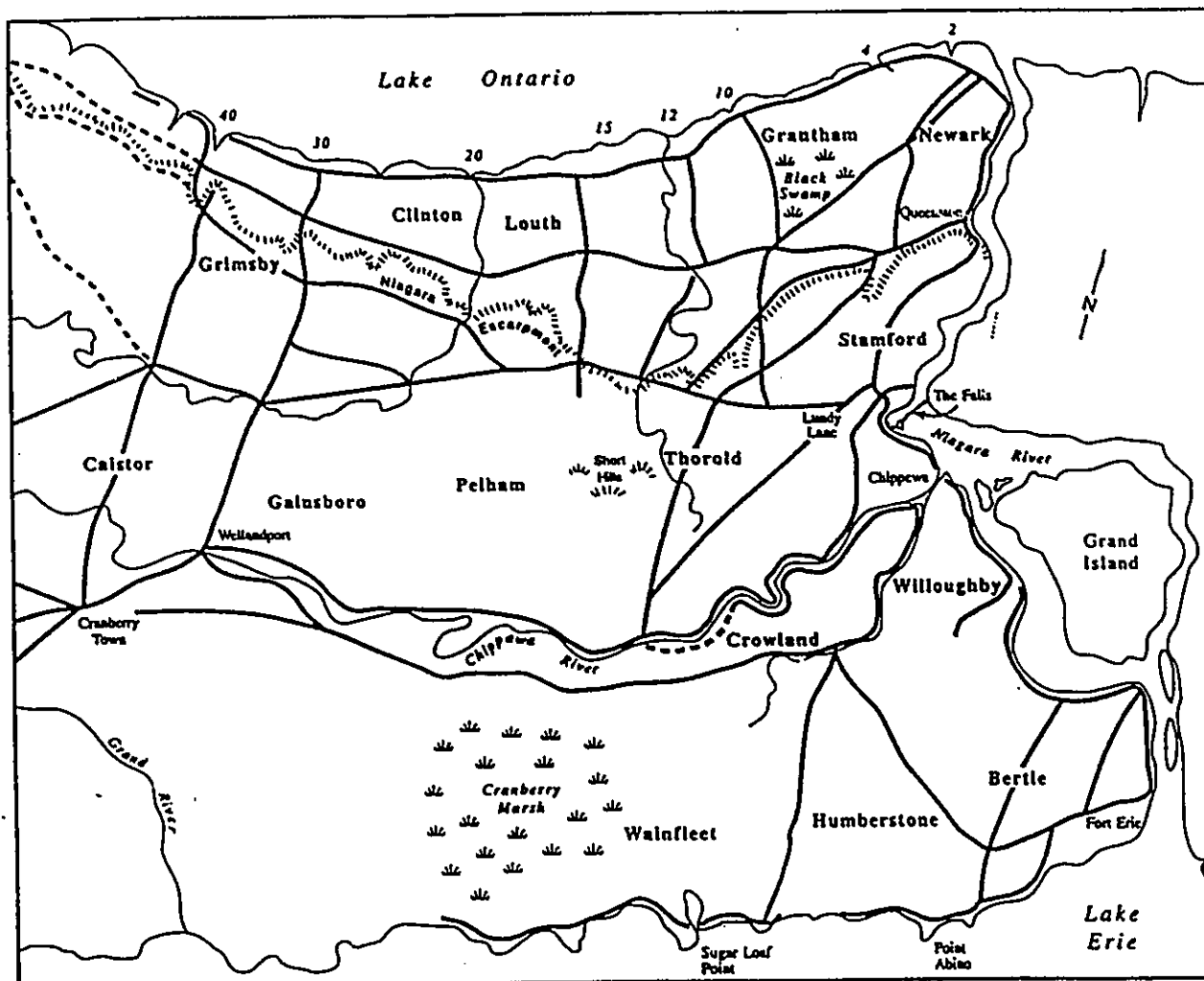
³⁰Ibid., p. 67.

³¹John L. Ladell, They Left Their Mark, p. 71.

³²A.L. Burt, The United States, Great Britain and British North America (Toronto: The Ryerson Press, 1940), p. 181.

states, also helped people the Niagara.³³ Rich land, favourable climate and the positive encouragement of Niagara landholders tempted many to settle in the Niagara. (See Figure 1.2)

Figure 1.2. Niagara Road Network and Settlements c.1815



Source: The numbers along the Lake Ontario shoreline refer to the creeks numbered from the Niagara River i.e., Twelve Mile Creek, Turner, "The Early Settlement of Niagara", p. 197.

³³Landon, Western Ontario and The American Frontier, pp. 46-47.

The religious affiliation of the Niagara population reflects the diversity of its settlers. A myriad of Protestant religions outnumbered the smaller Anglican community.³⁴ From 1795 to 1824, the Niagara was a major Methodist revivalist centre and American Methodist circuit pastors rode through the backwoods bringing their religion to the people.³⁵ American Methodists, Baptists, Congregationalists as well as the pacifists opposed the self-declared position of the Anglican church as the custodian of elite values that legitimised British rule.³⁶ From 1792 to after 1841 the Niagara elite consistently introduced and supported legislation to extend religious privileges for the large number of different sects in the Niagara.³⁷

The Niagara corridor that acted as a pathway for a heterogeneous immigration was also a major transshipment route. The obstacle of the great falls in the Niagara River created the longest portage route in the Great Lakes-St. Lawrence trading system. Until the opening of the Welland in 1829, all goods

³⁴Anglicans were only 14% of the population in 1839. General Return of the Population of Niagara for the Year 1839. Appendices of the Journals of the Legislative Assembly, V.I (1839-40), p. 150.

³⁵William Westfall, Two Worlds: The Protestant Culture of Nineteenth-Century Ontario (Kingston: McGill-Queen's University Press, 1989), p. 74.

³⁶Albert Schrauwers, Awaiting the Millennium: The Children of Peace and the Village of Hope (Toronto: University of Toronto Press, 1993), p. 146.

³⁷Wilson, "Patronage and Power: The Early Political Culture of the Niagara Peninsula", p. 60. The chronology of the lobby against the militia tax is found in Epp, Mennonites in Canada, 1786-1920, pp. 106-107.

destined for the south-west or Michilmackinac were funneled through the Niagara. In 1789 William Grant, Superintendent of Inland Navigation at the port of Quebec, estimated that the annual trade through the Great Lakes to the western country was at least £200,000 annually.³⁸ An early traveller, J.C. Ogden, noted the portage traffic through the Niagara.

There I have seen four vessels of 60 and 100 tons burden unloading at the same time and sometimes not less than 60 wagons loaded in a day ... This portage is an increasing source of wealth to the farmers for many miles round who carry from 20 to 30 hundred weight, for which they get 1s. 8d. New York currency, per hundredweight and load back with furs.³⁹

The nine mile portage provided extra income for the farmers and made the merchant group affluent beyond the general level of their society.⁴⁰

During the American Revolutionary War, merchants like Robert Hamilton and Samuel Street forged commercial connections with the Montreal trading houses of Todd and McGill as well as Forsyth, Richardson in order to supply the British military, the loyalist force under John Butler and the Indian allies. These men staked their claim to the highly profitable receiving and shipping business for the fur trade and the western trading posts.⁴¹ Hamilton and Street protected and increased their early commercial dominance by inviting trusted family and friends into

³⁸Campbell, Niagara, Hinge of the Golden Arc, p. 183.

³⁹Ogden cited in *Ibid.*, p. 274.

⁴⁰Wilson, The Enterprises of Robert Hamilton, p. 75.

⁴¹*Ibid.*, p. 11.

their business ventures.⁴² The Hamilton family connections included Robert, William and Thomas Dickson, Thomas Clarke, James Muirhead and Robert Nichol. Other Scots, William and James Crooks and Robert Grant also joined the early commercial group. Samuel Street Sr. brought his nephew Samuel Jr. into his business. James Kerby, Thomas Cummings and his son James, all formed part of the early commercial network that clustered around the transshipment of supplies and the fur trade. Increasingly the merchants aided by Robert Hamilton achieved appointments to the land board and the magistracy. By 1793 the merchants controlled the administration of the Niagara Peninsula.⁴³

Niagara towns and villages grew in response to the needs of the merchants, the military and the farmers. The first villages were the merchant-military centres of Newark (Niagara town) and Fort Erie on Lake Erie. The early merchants and traders moved over from Ft. Niagara to Newark. The Taylors, the Lymburners, the Streets, Clarks, Dicksons, Crooks and others opened stores and carried on trade in furs for goods brought from Montreal in batteaux.⁴⁴ From 1792 to 1796, Newark was the provincial capital. It remained the administrative centre of the district until 1863 when the court house and district government were moved to St.

⁴²For the kinship and family connection see Wilson, The Enterprises of Robert Hamilton, pp. 58-67.

⁴³Wilson "Patronage and Power: The Early Political Culture of the Niagara Peninsula", p. 58.

⁴⁴Campbell, Niagara, Hinge of the Golden Arc, p. 140.

Catharines. It was also the headquarters for British troops and the Indian Department.⁴⁵

By 1794, Newark already had 150 homes. On the eve of the 1812 war, when "muddy York" remained a straggling village,⁴⁶ Niagara town possessed graceful brick and frame homes, the old Legislature, and a fine Court House. The town was second in size only to Kingston.⁴⁷ Completely burned during the war in 1813, it had recovered by 1822 to hold 1000 residents and was sending its own member to the House of Assembly. The opening of the Welland canal and the subsequent rise of the new commercial centre of St. Catharines, however, slowed the growth of Niagara town. Yet Niagara town doubled its population to over three thousand between 1832 and 1848.⁴⁸

Fort Erie, the other military town lay across from Buffalo on Lake Erie. It commanded a good harbour and even before the American Revolution, Fort Erie became a British garrison for the protection of vessels engaged in the Indian trade. As early as 1796, Fort Erie had a ferry service to the United States and

⁴⁵David Fleming, A History of the Town of Niagara-on-the-Lake (Ottawa: National Historic Sites Service, 1971), p. 33.

⁴⁶Chris Raible, Muddy York Mud: Scandal and Scurrility in Upper Canada (Creemore: Curiosity Press, 1992), p. 7.

⁴⁷Sheppard, George, Plunder Profit and Paroles: A Social History of the War of 1812 in Upper Canada (Kingston: McGill-Queen's University Press, 1994), p. 36. See also Peter Moogk, "At Home in Early Niagara Township", The Capital Years: Niagara-on-the-Lake 1779-1796, ed. by Richard Merritt, et al. (Toronto: Dundurn Press, 1991), pp. 165-187.

⁴⁸James Durand, Reminiscences (Toronto: The Hunter, Rose Co., 1897), p. 216.

became the southern port in the transshipment network for the upper Great Lakes.

Along the Niagara River, villages grew with the portage trade. As the northern terminus, Queenston expanded quickly. By 1798 it possessed wharves and warehouses belonging to Samuel Street, Robert Hamilton, James Kerby and Robert Grant. In the 1820's it contained 100 homes, a population between 400 and 500 residents and eleven taverns.⁴⁹ Dotted along the portage road were the villages of Stamford, Drummondville (Niagara Falls) and Chippawa, the southern terminus of the grand portage.

Agricultural villages servicing surrounding farms, grew typically at mill sites, along Indian trails or at crossroads. Cooks Mills in Crowland Township, for instance, began with a saw mill and a grist mill on Lyons Creek. St. Johns in Pelham Township was at the intersection of an old Indian trail and the Twelve Mile Creek. Drawing on the water power of the Short Hills, by 1817 St. John's was a leading commercial centre with three grist mills, two saw mills, a tannery, a brickyard, two fulling mills, one woollen factory and an iron foundry.⁵⁰ It also had two taverns, a local store, an apothecary shop and a wagonmaker.⁵¹ St. Davids, St. Catharines, Jordan, Beamsville and Forty Mile

⁴⁹Campbell, Niagara, Hinge of the Golden Arc, p. 275.

⁵⁰Colin K. Duquemin, "St. Johns, Short Hills: From Bloom to Doom", Villages in the Niagara Peninsula, ed. by John Burtniak, et al. (St. Catharines: Brock University, 1980), p. 33.

⁵¹Ibid., p. 35.

Creek (Grimsby) each grew along the major wagon and stagecoach route from Queenston to Ancaster.

The final opening of the Welland Canal in 1832, meanwhile, increased the importance of St. Catharines. By 1826 it had already become the home of 600 people and had semi-weekly mail coaches to Buffalo. By 1842 it contained 1,483 inhabitants.⁵² The canal also created the villages of Port Dalhousie and Port Colborne at the northern and southern entry points into lakes Ontario and Erie. In addition Port Robinson where the canal crossed the Welland River, became a port of entry with customs and immigration houses as well as daily steamboats to Buffalo.⁵³ Other canal-villages, Thorold, Allanburg and Welland, grew to service the increasing traffic.⁵⁴ (See Figure 1.3)

The canal that provided year round water power drew manufacturers and millers to St. Catharines and Thorold in the centre of the district. As William Hamilton Merritt proclaimed at the turning of the first sod:

This canal, having the Niagara for its feeder at the commencement, will afford the best and the most numerous situations for machinery ... we will always have the same abundant and steady supply of water, which will be

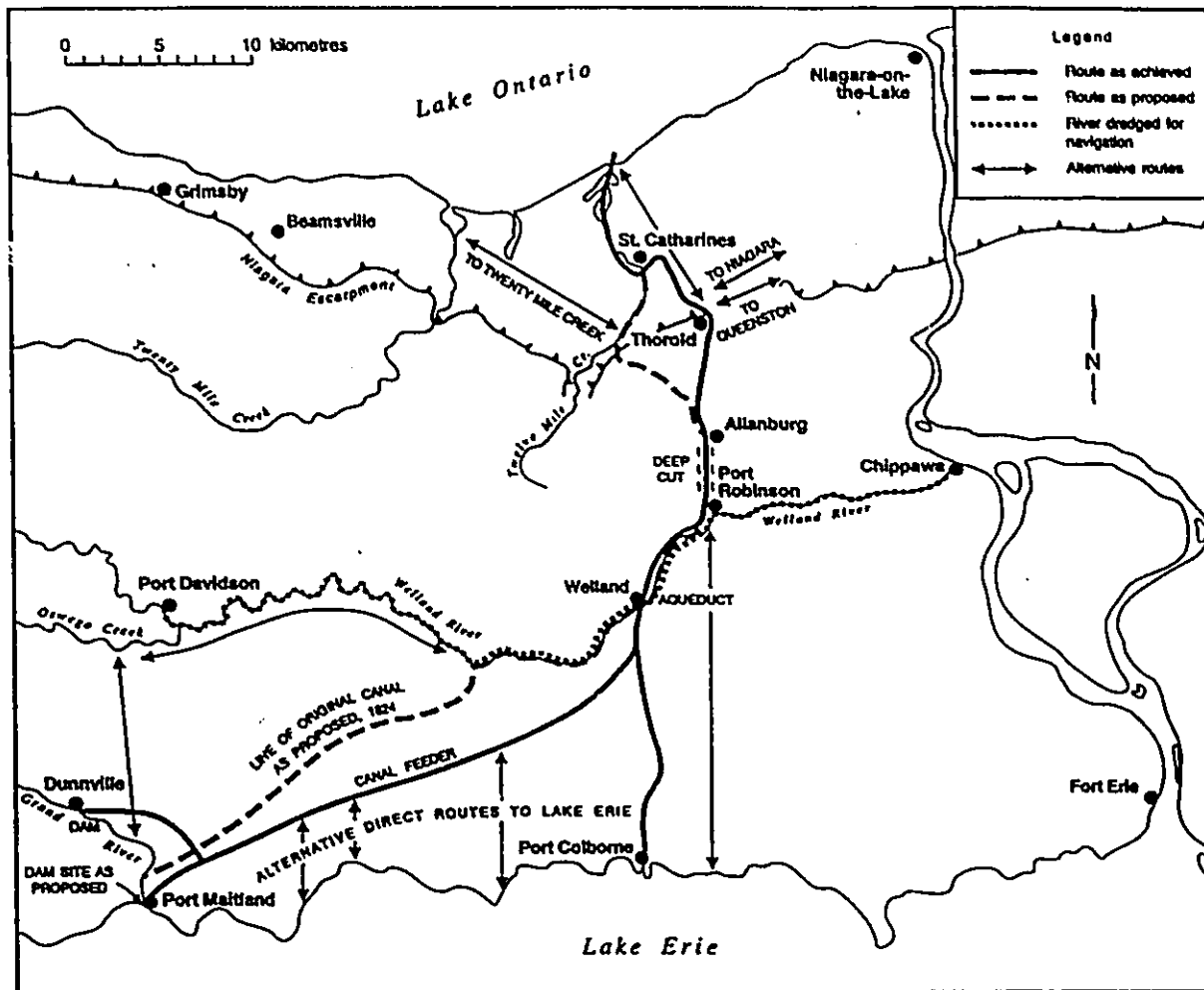
⁵²John N. Jackson, St. Catharines, Ontario: Its Early Years (Bellville: Mika Publishing Co., 1976), p. 245.

⁵³J.B. Hern, History of Crowland Township (Port Colborne: Port Colborne Citizen's Press, 1967), p. 103.

⁵⁴John N. Jackson, "Village Character and Form", Villages in the Niagara Peninsula, ed. by John Burtiak, et al. (St. Catharines: Brock University, 1980), pp. 5-6.

alternatively made use of without any detriment to transportation.⁵⁵

Figure 1.3. The route of the Welland Canal, the canal villages and proposed canal routes, 1833.



Source: Turner, "The Early Settlement of Niagara", p. 203.

Merritt's predictions came true. In 1816, the Niagara had 37 water-powered grist mills and 46 saw mills. By 1842 it had 42

⁵⁵James J. Talman, "The Impact of the Canal on the Community", *The Welland Canal*, ed. by John Burtiniak, et al. (St. Catharines: Brock University, 1979), p. 81.

grist mills, 29 oatmeal mills, 7 barley mills, 81 saw mills, 15 fulling mills, 29 carding mills, 118 threshing mills, all water powered⁵⁶ The Niagara was second to the much larger Home District in the number of tanneries and mills, and fourth in the number of distilleries.⁵⁷

The Welland canal became an integral part of the American Erie and Oswego canal system. Most of the traffic on the Welland was internal American trade⁵⁸ and, in the early years, the Welland linked traffic and trade as closely with American centres as with Montreal.⁵⁹ Trade and water power shifted the axis of commerce to the area around the canal. This contributed to the stagnation of towns like St. John's in Pelham Township and the river towns of Niagara, Queenston and Chippawa. By the late 1830s, Queenston's population had decreased to 300 and had only eight taverns.⁶⁰ Moreover, Niagara town that remained the district centre became more dependent on Tory appointments and, as a result, tended to be a Tory stronghold.

As trade and commerce expanded, the flow of information increased. An expanding network of post offices promoted

⁵⁶Talman, "The Impact of the Canal on the Community", p. 82.

⁵⁷Douglas McCalla, Planting the Province: The Economic History of Upper Canada 1784-1870 (Toronto: University of Toronto Press, 1993), p. 276.

⁵⁸Ibid., p. 124.

⁵⁹W.T. Easterbrook, North American Patterns of Growth and Development: The Continental Context (Toronto: University of Toronto Press, 1990), p. 171.

⁶⁰Campbell, Niagara, Hinge of the Golden Arc, p. 275.

communication not only with the rest of Upper Canada but also the United States and Great Britain. It was cheaper and faster to send mail to Britain via the Niagara and the Port of New York, than through Lower Canada to Halifax. In the early 1800s, the cross-border mail went from Niagara to Youngstown, New York. In 1830, the Canadian office was moved to Queenston. In its heyday, the Queenston office had 18 clerks who handled the mail supplied daily by seven stage coaches. Although much smaller than Queenston, 20 postal villages dotted the district by 1838.⁶¹

Niagara's geographic location that eased communications with Americans in peacetime proved disadvantageous in time of war. The Atlantic conflict between the British and the United States drew Americans and Upper Canadians into a war disliked on both sides of the river. People had friends in both countries and some, like Samuel Street Sr., owned property in the United States as well as Upper Canada.⁶² As William Hamilton Merritt later recalled, "twenty-four years passed in mutual services and friendly intercourse had nearly obliterated the old feelings" engendered by the Revolution.⁶³

⁶¹Ibid., p. 99.

⁶²Landon, Western Ontario and The American Frontier, p. 24 and Sheppard, Plunder Profit and Paroles, p. 37.

⁶³J.P. Merritt, The Biography of the Hon. W.H. Merritt (St. Catharines: 1875), p. 15.

Far removed from the cause of the war, the Niagara region suffered the brunt of the destruction.⁶⁴ In 1813, the Americans burned St. Davids and Niagara town. Troops destroyed the commercial infrastructure of wharves, store houses and boats, tore up the fruit trees to prevent cover and pillaged the surrounding agricultural community. Fully half the plundering resulted from the British military and Indian allies.⁶⁵ They as well as Americans looted farm produce, animals and poultry, requisitioned houses, horses, oxen and burned fences and trees throughout the district.⁶⁶

Instead of the war creating hostility to further American immigration, Americans continued to settle in the Niagara.

Immediately after the war of 1812-14, poured new Methodists and American Presbyterian preachers to replace those preachers who had withdrawn at the outbreak of hostilities in 1812 and into this area as well poured American school teachers, pedlars traders, merchants innkeepers, ... only too ready, if occasion called, to spread the gospel of republicanism.⁶⁷

American teachers and American textbooks spread democratic ideas.⁶⁸ Jacob Keefer, Chairman of the School Commissioners for Niagara between 1841 and 1846, reported that out of the 128

⁶⁴William Kirby, Annals of the Niagara, (Welland: Tribune Press, 1896), pp. 188-189, 206-207.

⁶⁵Sheppard, Plunder Profit and Paroles, p. 9.

⁶⁶Ibid., pp. 100-133.

⁶⁷Clark, Movements of Political Protest in Canada, 1640-1840, p. 348.

⁶⁸James H. Love, "Anti-Americanism, Local Concerns and the Response to Social Issues in Mid-Century Upper Canadian School Reform, with Special Reference to the Niagara District", (unpublished Ph.D. thesis, University of Toronto, 1978), p. 172.

teachers in the Niagara, 40 were Canadian born while the rest were either Americans or naturalised Americans. A disgruntled teacher from Pelham Township, William MacDougal, wrote later that the Declaration of Independence was suspended from the ceiling in #3 School in Pelham Township for all to see⁶⁹. MacDougal complained that the only acceptable teacher was "a Yankee, a Rebel or a Democrat".⁷⁰ After 1820 the cheaper American textbooks became increasingly popular. Although only 55 to 60% of eligible children attended Common Schools during the period,⁷¹ a substantial number of those students received instruction from American books. These texts stressed that "the happiest and best kind of government" was a "Republican" government.⁷²

The Niagara press also criticised Upper Canadian government. From 1807 to 1812, Joseph Wilcock's Niagara newspaper the Upper Canadian Guardian or Freeman's Journal, challenged the autocratic Executive Council and supported the heretical notion that the

⁶⁹MacDougal to Ryerson, 21 June 1849 quoted in Love, "Anti-Americanism, Local Concerns and the Response to Social Issues in Mid-Century Upper Canadian School Reform, with Special Reference to the Niagara District", p. 173.

⁷⁰William MacDougal to Ryerson, 16 June 1849, quoted in Love "Anti-Americanism, Local Concerns and the Response to Social Issues in Mid-Century Upper Canadian School Reform, with Special Reference to the Niagara District", p. 173.

⁷¹Love "Anti-Americanism, Local Concerns and the Response to Social Issues in Mid-Century Upper Canadian School Reform, with Special Reference to the Niagara District", p. 44.

⁷²Alison Prentice, The School Promoters: Education and Social Class in Mid-Nineteenth Century Upper Canada (Toronto: McClelland and Stewart, 1977), p. 91.

Council should be responsible to the people.⁷³ Bartemus Ferguson, the editor of the Niagara Spectator, strongly supported Robert Gourlay and was gaoled for his opinions.⁷⁴ After his release, Ferguson moved across the river to Lewiston, New York and continued his criticism in the Niagara Democrat. During the 1830s the Niagara Reporter, the Niagara Chronicle and the St. Catharines Journal often supported reform positions.⁷⁵ At times, even the conservative Gleaner criticised the provincial elites including Bishop Strachan and Sir John Beverley Robinson.⁷⁶

The critical press in the Niagara is illustrative of the more objective attitude in the district towards policies and perspectives of the York hierarchy. The early pro-Americanism of merchants like Robert Hamilton, the heavy post-loyalist American settlement and the function of the Niagara corridor as the prime immigration route into Upper Canada ensured that the Niagara had more extensive contacts with America than any other area of Upper

⁷³The political views of Joseph Willcocks, William Weekes and Judge Robert Thorpe are discussed in Graeme Patterson, "Whiggery, Nationality and the Upper Canadian Reform Tradition", Canadian Historical Review, LVI (1975), pp. 25-44,

⁷⁴Ferguson was prosecuted for seditious libel on 19 August 1819, found guilty, fined £50 and given 18 months in gaol and would not be released without £500 surety for his good behaviour for seven years. It was an exorbitant punishment. He petitioned for executive clemency on 4 March and was released. Robert L. Fraser, "Ferguson, Bartemus", Dictionary of Canadian Biography [D.C.B.], Vol. VI (Toronto: University of Toronto Press, 1987), pp. 247-248.

⁷⁵See for example the Reporter [Niagara] 17 October 1833 and the St. Catharines Journal [St. Catharines] 9 November 1834.

⁷⁶See for example the Gleaner, [Niagara] 8 September 1828 and the Gleaner, 30 June 1828.

Canada.⁷⁷ The closeness of the American border and American influence on education and religion were more immediate than the authority of the distant government at York. Niagara's acceptance of Americans also found expression in their tolerant attitude towards dissenting religions. The Niagara elite supported dissenters and pacifists in opposition to the Family Compact's desire that the province should be Anglican. While the York elite supported the war of 1812, the large settlement of loyalists and late-loyalists resented the destruction of their property by British troops for a distant British cause. Niagara farmers and the elite were not always submissive to the provincial government. Most farmers held notions of settler self-reliance and independence, while the wealthy merchant elite depended more upon trade and commerce than provincial government appointments for their financial success.

⁷⁷Wilson, "Patronage and Power: The Early Political Culture of the Niagara Peninsula", p. 60. Also see Landon, Western Ontario and The American Frontier, p. 24, and A.L. Burt, The United States, Great Britain and British North America (Toronto: The Ryerson Press, 1940), p. 181.

Chapter II

The District Magistracy: the Anatomy of Authority

"The institution of the justice of the peace is the most aristocratic in principle...at variance with all principles which are the foundations of representative government".

John Stuart Mill.¹

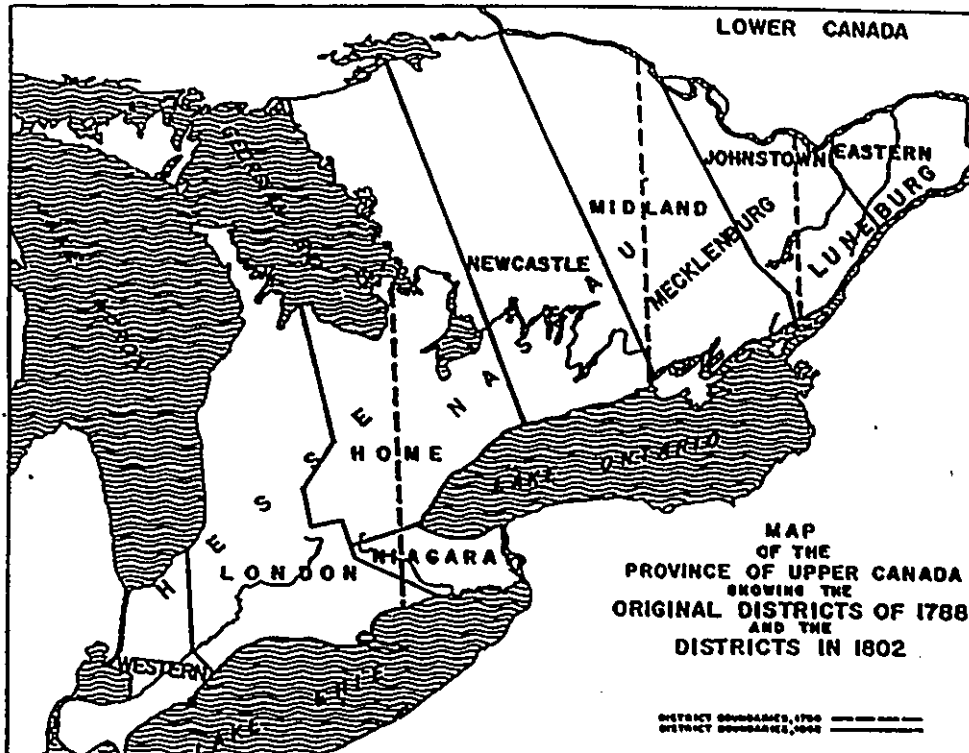
The founders of Upper Canada continued the English custom of local government by an appointed lay magistracy. Local magistrates decided all district administrative matters, adjudicated all crimes under the felony level and all petty civil offenses. District people could petition the Lieutenant-Governor over perceived inequities, but provincial officials did not intervene. Government by appointed magistrates was structurally oligarchic. The magistrates, however, did not uniformly impose the strict letter of the law on each offender. The criminal process relied upon private prosecution. The magistrates thus responded to public complaint and reacted to community problems in an ad hoc fashion. The magistracy also practiced eighteenth and early nineteenth-century exemplary justice. This allowed them considerable discretion to tailor their application of the law to differing local realities.²

¹Quoted in D. Fraser, Power and Authority in the Victorian City (New York: St. Martin's Press, 1979), p. 154.

²Brewer and Styles, An Ungovernable People, pp. 16-17.

Beginning in 1788 the area that was to become Upper Canada was divided east to west into four districts: Lunenburg, Mecklenburgh, Nassau³ and Hesse. (See Figure 2.1)

Figure 2.1. Districts established by Lord Dorchester in 1788, reorganised and renamed 1802.



Source: Armstrong, Chronology, p. 138.

In these districts local government and the courts were disconnected and both were highly decentralised. Early Niagara settlers followed customary democratic practices brought with them from the Thirteen Colonies: they elected township clerks,

³Nassau included the future Niagara District that was proclaimed in 1798. Armstrong, Handbook of Upper Canadian Chronology (Toronto: Dundurn Press, 1985), p. 186.

wardens, assessors, tax collectors, pathmasters, fence viewers, poundkeepers and constables to oversee their new settlements.⁴ Elected township officers acted independently of the civil court judges and the magistracy.

Magistrates and judges, appointed by the central government at Quebec, were strictly judicial figures. Until the creation of the Court of King's Bench in 1794, three district judges handled all civil cases in a Court of Common Pleas.⁵ The law was a compromise between the legal traditions of French Canada and those of the English-speaking merchants who arrived after the conquest. Suitors conducted their own cases, and the procedures were simplified to facilitate a swift and inexpensive process that corresponded to the limited resources of the litigants.⁶ Magistrates with a jury adjudicated petty crimes at Quarter Sessions, held four times a year.⁷ The lack of a gaol in which to detain prisoners often required expeditious justice. If the accused could not find bail to ensure that he would appear at Quarter Sessions, three magistrates could convene a court at any

⁴Janet Powell, Annals of the Forty, Vol.2 (Grimsby: Grimsby Historical Society, 1951), pp. 7-10.

⁵W.R. Riddell, The Courts of Upper Canada or Ontario (Toronto: Osgoode Hall, 1928), pp. 48-53.

⁶W.N.T. Wylie, Arbiters of Commerce Instruments of Power: A Study of the Civil Courts in the Midland District Upper Canada 1789-1812, (unpublished Ph.D. thesis, Queen's University 1980), pp. 48-49.

⁷For an over view of the early criminal courts see W.R. Riddell, "Criminal Courts and Law in Early Upper Canada", Ontario Historical Society, Papers and Records, XXIV (1927), pp. 210-221.

time, convict the accused without a jury and administer corporal punishment.⁸ Courts were usually held in local inns and taverns. In the frontier settlements there were no lawyers; there need be no juries. Criminal courts of higher jurisdiction in Montreal or Quebec City, meanwhile, were hundreds of miles away.

After the creation of Upper Canada the first Lieutenant-Governor, John Graves Simcoe (1792-1796), continued the office of the Justice of the Peace appointed for the original four districts. Despite the loyalty of the early settlers, the military and the Butler's Rangers, he doubted the allegiance of new immigrants who would be drawn to Upper Canada by free land.⁹ Wishing to avoid at all costs a repeat performance of the revolution to the south, Simcoe hoped that the magistracy, a quintessential form of British local rule, would impart British values to all settlers.

The first parliament of Upper Canada (1792-1796) increased the authority of the magistracy by adding extensive administrative powers to their legal authority. Simcoe believed that a fundamental cause of the American Revolution was the failure to provide ambitious colonial elites with sufficient power.

It has been justly considered that the Principle Cause of the American Revolt was the Want of an Aristocratical Power which might afford a legal Provision for the fair Claims and just

⁸W.R. Riddell, The Courts of Upper Canada or Ontario, p. 63.

⁹Simcoe to Hon. Henry Dundas, 30 June 1791, Simcoe's Correspondence, Vol.I, p. 27.

ascendancy of honourable Ambition, and not suffer it to waste its Energy in Dissatisfaction and Discontent.¹⁰

By investing local leaders with significant authority over their districts, Simcoe sought to reinforce their loyalty to the British Crown.

Simcoe's plan encountered some opposition. During the first session of the Assembly in 1792, a majority of the members sought to establish by legislation the customary election of local township officials.¹¹ David W. Smith, Surveyor General and member for Suffolk and Essex, mistrusted democratic elections of any kind and opposed the elections. "I conceive these meetings to be the Cause of the late unhappy Rebellion", he remarked, and "the Majority of the People should never be call'd together but to choose their Representatives for the House of Assembly". He proposed that the magistrates should appoint all township officials.

In 1793, the Act governing township officials seemed to incorporate the democratic notions of the early settlers.¹² The township inhabitants were free to elect a clerk, two assessors, a collector of assessments, two pathmasters, a pound keeper, a fence viewer and two town wardens. Simcoe rationalised his

¹⁰Simcoe to Henry Dundas, 23 November 1792, Simcoe's Correspondence, Vol.I, p. 264.

¹¹D. W. Smith to John Askin, 2 October 1792, Simcoe's Correspondence, Vol.I, p. 231.

¹²"An Act to Provide for the Nomination and Appointment of Parish and Town Officers within this Province", Upper Canada Statute, 33 Geo. III (1793) c.2.

liberal policy towards the democratic elections by stating that the settlers would more willingly obey people whom they had chosen.¹³ Moreover, he maintained, if a collector proved negligent or dishonest in collecting the district rates, the citizens could not charge the magistrates.

As Charles Buller, Chief Secretary to Lord Durham, later remarked the elected officials had little authority.

The inhabitants of these townships appear to have a very popular choice of nearly useless functionaries and a very perfect municipal machinery exists without being rendered available for the most important municipal purposes.¹⁴

With the exception of a brief interlude from 1835 until 1838,¹⁵ the appointed magistrates made all the decisions and the elected officials carried out their orders. They counted the people, collected the rates and oversaw the construction of roads and bridges. They also adjudicated minor disputes over the height of fences and roaming livestock.¹⁶

The appointed magistracy controlled the township meetings¹⁷ and supervised the township officials. Township meetings required a

¹³Simcoe to Dundas, 16 September 1793, Simcoe's Correspondence, Vol.II, pp. 53-54.

¹⁴Charles Buller quoted in E.A. Cruikshank, A Century of Municipal History 1792-1892, Part I. 1792-1841 (Welland: Tribune Print, 1882), p. 11.

¹⁵In 1835 a new Township Officers Act provided for the election of three commissioners in each district to supersede the justices of the peace in control of the township officers. This was repealed after the rebellion. Cruikshank, Municipal History, Part I, p. 10.

¹⁶Ibid., p. 186.

¹⁷J.H. Aitchison, "Local Government in Upper Canada". (unpublished Ph.D. thesis, University of Toronto, 1953), p. 186.

warrant from two magistrates. Constables, appointed by and accountable to the magistrates, presided over the elections and certified the list of elected candidates and the livestock and fence regulations.¹⁸ Magistrates could fine elected officials up to forty shillings for dereliction of duty and could remove or replace them.¹⁹ The magistrates also decided the amount of the fees, if any, for each office.

Real administrative power resided with the appointed magistracy.²⁰ The magistrates controlled district finance; they estimated the expenditures and determined the rate of taxation.²¹ Although they could not raise taxes for capital improvements without an application to the House of Assembly, once authorised, the magistracy had sole authority over capital expenditures. They decided on everything from the price of bread²² to which area

¹⁸A.O., Niagara Minute Books, Niagara Historical Society Collections, M.S. 193, A1, Reel 1, pp. 1, 27, 33.

¹⁹"An Act to Provide for the Nomination and Appointment of Parish and Town Officers within this Province", Upper Canada Statute, 33 Geo. III (1793), c.2.

²⁰W.C. Keele provides a complete view of the Magistrates' powers. W.C. Keele's Magistrate's Manual, Being a Complete Digest of the Criminal Law and A Compendious and General View of the Provincial Law; With Practical Forms for the Use of The Magistracy of Upper Canada (Toronto: Upper Canadian Gazette, 1835).

²¹" An Act to Authorise the Laying and Collecting of Assessments and Rates in Every District within the Province and to Provide for the Payment of Wages to Members of the House of Assembly", Upper Canadian Statute, 33 Geo.III (1793), c.3.

²²" An Act for Establishing a Police in the Town of Niagara", Upper Canada Statute, 59 Geo.III (1819), c.5, s.1.

would receive the vital roads and bridges. Their powers extended into the area of social welfare and district poor relief.²³

Magistrates also administered the valuable shop, inn and tavern licenses. People who wished to run an inn, a tavern, or a shop needed the prior recommendation of their local magistrate as well as the seal of approval of the assembled magistracy at Quarter Sessions. James Cummings was the only magistrate who opposed this procedure. When Collingwood Forsyth applied for a licence to run a "grocery and refreshment business" at the falls, Charles Richardson returned it saying it required magistrate Cummings' approval. Cummings disagreed.

Every man who applies for a licence, (in whatever occupation the law requires it), should have the free benefit of the law and there should be no hesitation in granting him the licence required. Should he abuse the licence so granted him, there is the law open to punishment and if convicted he suffers the consequences.²⁴

The rest of the magistrates, however, were not anxious to give up their local township power and the procedure continued throughout the period. Licensing and administrative decisions were taken at Adjourned Sessions held either before or after regular Quarter Sessions with only the magistrates present.

²³For a critical look at the magistrates' administration of Niagara poor relief see David Murray, "The Cold Hand of Charity: The Court of Quarter Sessions and Poor Relief in the Niagara District, 1828-1841", Canadian Perspectives on Law and Society: Issues in Legal History, ed. by W.W. Pue and B. Wright (Ottawa: Carleton University Press, 1988), pp. 179-206.

²⁴James Cummings to Charles Richardson, 20 July 1831, A.O., Niagara Court Records, R.G.22, Series 372, Box 10, File 11.

The legislation of 1793 also brought the constables under magisterial control.²⁵ Magistrates now nominated and appointed the local constables. Township magistrates sent names of trusted men to be ratified by the sitting magistracy at the April Quarter Sessions. Constables served for yearly terms with a three year hiatus unless they wished to continue.²⁶ There was no provision for fining the constables for dereliction of duty. This made it important that constables be carefully selected...

The first Assembly ensured the control of the magistracy over their district as well as district officials by mandating the construction of courthouses and gaols. The first session of the first parliament of Upper Canada required the initial four districts to build courthouses and gaols within eighteen months. District people paid for the buildings out of the district rates²⁷ and no new districts could be created without their prior construction. Courthouses and gaols provided a permanent public reminder that the magistracy, as the district parens patriae, had the authority to protect their community, detain and punish offenders and command obedience.

Statutory provision that the first public buildings be judicial formalised the importance of the magistracy. Before courthouses,

²⁵"An Act to Provide for the Nomination and Appointment of Parish and Town Officers within this Province", Upper Canada Statute, 33 Geo. III (1793), c.2.

²⁶Keele, Magistrate's Manual, pp. 125-132.

²⁷"An Act for Building a Gaol and Court-House in every District within this Province, and for altering the Names of the said Districts", Upper Canada Statute, 32 Geo.III (1792), c.8.

court had been held in a local tavern or inn that often contributed to a lack of sobriety.²⁸ In such circumstances justice was neither dignified nor ceremonious. The construction of courthouses removed the venue of Quarter Sessions from the temptations of inns and created a public space to display the assembled magistracy in the full panoply of traditional Quarter Sessions in January, April, July and October.

Courthouses provided the venue where the rituals of obedience to the law could be seen.²⁹ The greater community as well as litigants, witnesses and jurors attended Quarter Sessions. With few places of entertainment, local people attended court as a form of public morality play.³⁰ Although the court process could sometimes be uproarious,³¹ it also displayed the protective and punitive power of the law. As principal players, magistrates

²⁸ J.H. Aitchison, "The Courts of Requests in Upper Canada", Ontario Historical Society Papers and Records, XLI (1949), p. 129.

²⁹ Douglas Hay, "Property, Authority and the Criminal Law", Albion's Fatal Tree: Crime and Society in Eighteenth-Century England, ed by J. Hay et al. (New York: Pantheon Books, 1975), p. 28. J.C. Dent provides an excellent description of the interior of the Niagara Court House, the pomp and circumstance of Robert Gourlay's Assize trial and the overflowing attendance of the public. J.C. Dent, The Story of the Upper Canadian Rebellion, Vol.I, pp. 1-14.

³⁰ See Paul Craven, "Law and Ideology: The Toronto Police Court 1850-1880", Essays in the History of Canadian Law, ed. by David H. Flaherty (Toronto: The Osgoode Society, 1983), pp. 286-292.

³¹ J.K. Johnson describes an instance in the London District in 1805 where the prisoner was not only rude to his accuser in court, but was rescued by the constables who had been ordered to put him in the stocks. J.K. Johnson, Becoming Prominent: Regional Leadership in Upper Canada, 1791-1841 (Kingston: McGill-Queen's University Press, 1989), pp. 63-64

could be seen exercising their authority on behalf of local citizens.

The first courthouses and gaols were often a simple two story modified blockhouse design roughly 30 by 24 feet, with the gaol in the first story and the court rooms above.³² After 1815, the courthouses were often the largest buildings of the districts and were the "glory of the towns people".³³ The new Niagara courthouse was an elegant neo-classical building executed in Flemish-bond red brick³⁴ providing the largest court-room in the province.³⁵ (See Figure 2.2)

As new districts were proposed,³⁶ towns fought over the privilege of constructing judicial buildings.³⁷ Although

³²Marion MacRae, Cornerstone of Order: Courthouses and Town Halls of Ontario, 1784-1914 (Toronto: Clarke Irwin, 1983), p. 12.

³³Jameson, Winter Studies and Summer Rambles in Canada, p. 95.

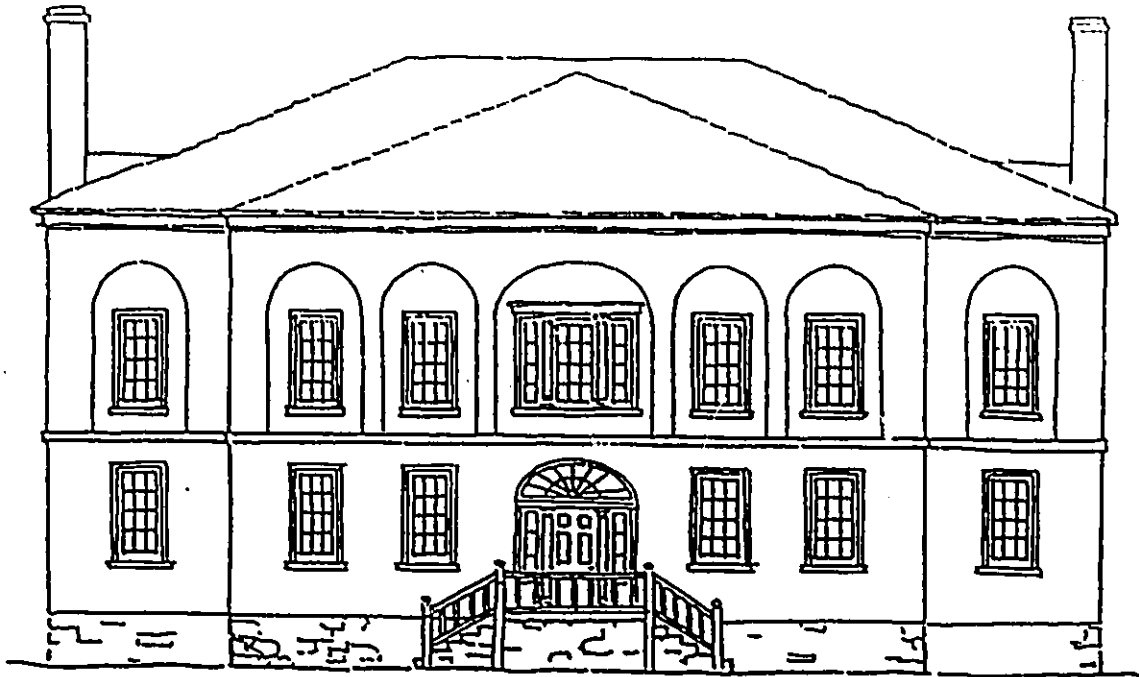
³⁴MacRae, Cornerstone of Order, pp. 24-25.

³⁵Dent, Upper Canadian Rebellion, Vol.I, p. 9.

³⁶People repeatedly petitioned for new districts. One from the county of Dundas clearly sets out the problems of an area without its own principle town. The petitioners want to form the counties of Grenville and Dundas into a new district. They claimed that they were being deprived of their tax monies. They had only two active magistrates in their county and only one attended the Quarter Sessions at Cornwall. Cornwall, the major town, had ten magistrates within three miles. The result was that they were always overruled when it came to improvements. House of Assembly, Upper Canada, Tuesday 11 February 1806, The Eighth Report of the Bureau of Archives for the Province of Ontario (Toronto: L.K. Cameron, 1912), pp. 391-392.

³⁷When the Eastern district was divided, the courthouse and gaol for the new Johnstown district were located at Johnstown situated now at the extreme edge of the new district. Elizabeth town wanted to have the courthouse and the gaol arguing that their location was more central. This argument went on for six years.

Figure 2.2. The Niagara Court House c.1815.



Source: MacRae, Cornerstones of Order, p. 24.

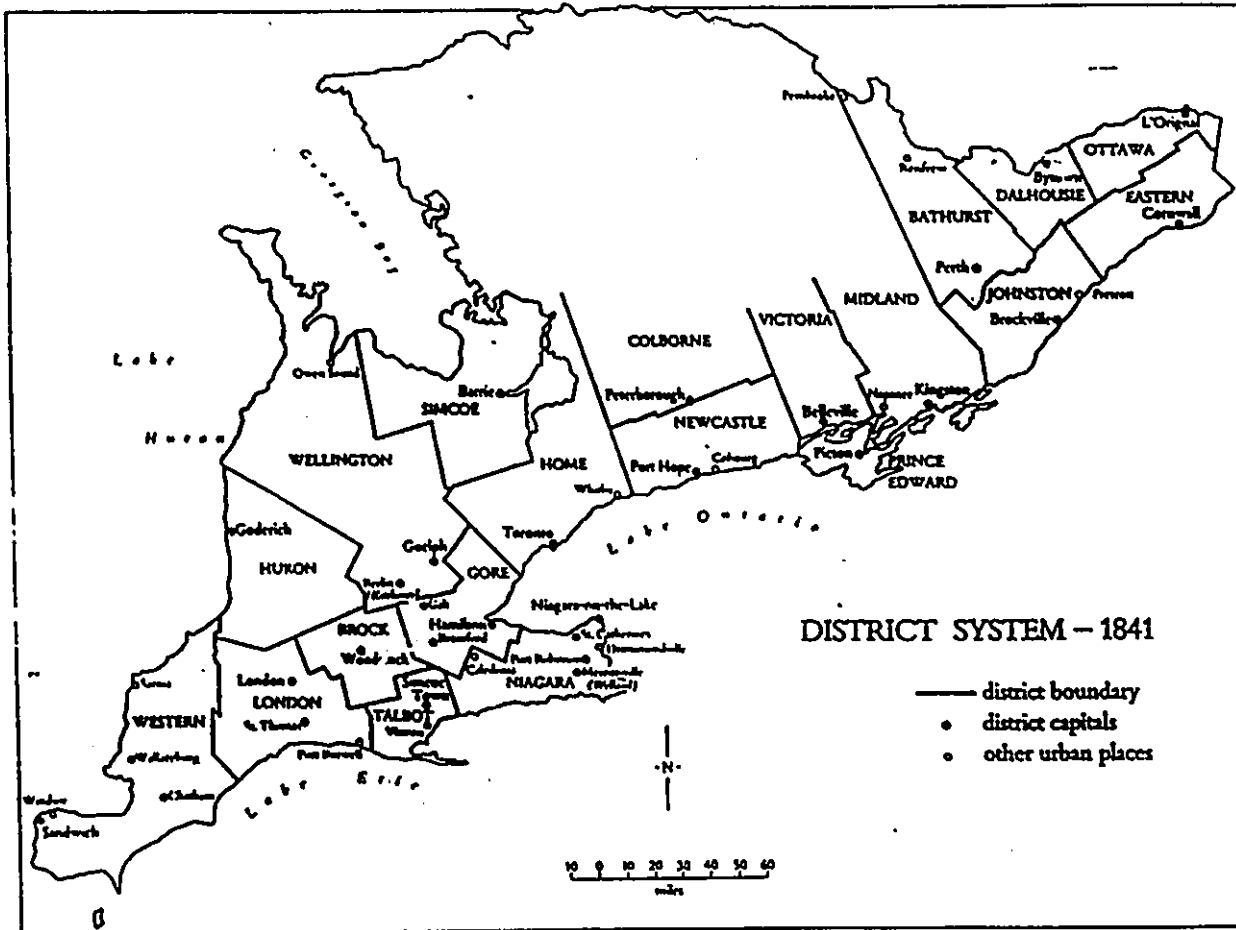
expensive for early agrarian communities, a courthouse and gaol ensured a permanent clique of salaried officials who substantially contributed to the prosperity of the town.³⁸ The court calendar regularly drew magistrates, jurors, litigants, witnesses, constables and onlookers from the surrounding district, as well as judges, lawyers, and their clerks on the Assize circuit. Courts lasted for weeks at a time and provided an

Ibid., pp. 65-66.

³⁸Joy Ormsby noted that officials and the merchants benefited Niagara-on-the-Lake. Joy Ormsby, "Building a Town: Plans, Surveys and the Early Years of Niagara-on-the-Lake", in The Capital Years: Niagara-on-the-Lake 1792-1796, ed. by Richard Merritt, et al. (Toronto: Dundurn Press, 1991), pp. 15-45.

influx of business. Inns, taverns, merchants, builders, coopers and blacksmiths thrived from the custom of the incomers. Invariably the district towns outstripped neighbouring villages in size and prosperity. (See Figure 2.3)

Figure 2.3. District towns and district system by 1841.



Source: Armstrong, Chronology, p. 140.

The first session of the Assembly provided for juries. Except for the petty debt court, the Court of Requests, and the future Summary Judgement Court created in 1834, juries were now

mandatory for every issue of fact in every court of justice.³⁹ The Upper Canadian jury system consisted of a grand jury to decide if sufficient evidence of malfeasance justified trying a case. A petty jury would then decide the case at trial. Four times a year, the Sheriff chose 12 petty jurors and over 13 grand jurors from the jury lists.

Fines, although rarely imposed, guaranteed the judicial obligations of the district bureaucracy as well as jurors.⁴⁰ After 1794 the magistrates could fine the Clerk of the Peace if he failed to provide the list of assessed people to the Sheriff. The Sheriff suffered the same consequences if he failed to return the panel of jury names for court. Jurors in turn could be fined if they did not serve. To prevent jury duty from being onerous, the jurors were to be chosen from different parts of the district and the Sheriff could not ask jurors to serve two years in succession.⁴¹ Fining jurors would be unpopular and the magistrates imposed them only once in the Niagara. In December 1838 there were too few grand jurors to obtain a quorum for Quarter Sessions. The magistrates fined the six people who had refused to sit.⁴²

³⁹"An Act to Establish Trials by Jury", Upper Canada Statute, 32 Geo.III (1792), c.2.

⁴⁰"An Act for the Regulation of Juries", Upper Canada Statute, 34 Geo.III (1794), c.1.

⁴¹Ibid.

⁴²Orders of the Quarter Sessions to the Sheriff, December, 1838, A.O., Niagara Court Records, R.G.22, Series 372, (1838), Box 33, Orders, File 14.

The Sheriff chose the jury members and could select those he wanted from the jury lists. As Jacob Upper, a local miller,⁴³ complained, the Sheriff never chose him for jury duty.⁴⁴ Although charges of jury-packing echoed throughout the period,⁴⁵ juries often had a mind of their own. Petty juries tended to acquit constables involved in assaults, but when the constables acted as bailiffs they acquitted the assaulting debtors. (See below Chapter VI, p. 189). Despite the power of the Sheriff, jury decisions did not always support the magistracy.

As the Sheriff supervised the jury appointments, the magistrates supervised the participation of litigants and sometimes witnesses as well. Litigants who lived far from the courts may have been tempted to mediate their problems without recourse to the formal justice system. Once a complaint was made, however, the magistrates ensured the court appearance of litigants and witnesses by taking a recognizance. Failure to appear meant the recognizance would be collected by the court.

In the cash-starved society of Upper Canada collecting recognizances proved difficult. In 1827 Attorney-General, John Beverley Robinson remarked on the attitude of the people.

⁴³Powell, Annals of The Forty, Vol.9, pp. 35-36.

⁴⁴Gleaner, 14 April 1832.

Jury ⁴⁵packing by Sheriffs was one of the "continuing grievances" in Upper Canada and led to calls for jury reform throughout the period. Gleaner, 18 February 1832. Also see J.A. Roebuck, Existing Difficulties in the Government of the Canadas, (London: C. & W. Regnell, 1836), p.11.

In the Courts of Quarter Sessions...witnesses, and defendants bound in recognizances to appear, seem very little to regard the conditions...[which] amounts to a serious impediment to the administration of Justice and many offenses go in consequence unpunished.⁴⁶

In 1833 the Assembly ensured a more organised system by passing a law that ordered recognizances be delivered before court opened.⁴⁷

In the courts of Quarter Sessions the magistrates had considerable influence over the proceedings. The magistrate who acted as chairman combined both the duties of judge and Crown prosecutor. If the defendant was represented by a lawyer, the chairman judged any challenge to his prosecution.⁴⁸ The magistrates also decided upon the sentences and the amount of the fines and their decisions were unappealable.

In the Courts of Requests (precursors of the later Divisional Courts) one or more magistrates resolved civil disputes over petty debt under the £10 limit.⁴⁹ Courts of Requests were held on the first and third Saturdays of each month.⁵⁰ Widespread petty

⁴⁶Attorney General John Beverley Robinson to Major George Hillier, 7 December 1827, N.A.C., Submissions to the Executive Council, R.G.1 E3, Vol.3, p. 65.

⁴⁷"An Act Relating to the Bailing and Commitment, Removal and Trial of Prisoners in Certain Cases" Upper Canada Statute, 3, Wm.IV (1833), c.3.

⁴⁸Romney, Mr. Attorney, p. 217.

⁴⁹Although the Court of Requests records for the Niagara have not survived, an account of their jurisdictions is given in J.H. Aitchison, "The Courts of Requests in Upper Canada", Ontario Historical Society Papers and Records, XLI (1949), pp. 124-131.

⁵⁰Keele, Magistrate's Manual, p. 260.

debt in Upper Canada⁵¹ led to a proliferation of these courts. By 1839 there were 22 Courts of Requests in the Niagara.⁵² Magistrates in Courts of Requests had considerable autonomy. There were no juries and no appeal.⁵³

The creation of Summary Judgement Courts⁵⁴ made prosecutions less difficult and burdensome. In 1834 the Assembly passed a Summary Judgement Act for the expeditious resolution of petty offenses. A magistrate could now sit at any time in his township and hold court without a jury as long as the penalty did not exceed the £5 limit.⁵⁵ Although a magistrate could even convict in absentia, the legislation provided the safety value of an appeal to the assembled magistrates at Quarter Sessions.

⁵¹See D. McCalla, "Rural Credit and Rural Development in Upper Canada, 1790-1850", Patterns of the Past: Interpreting Ontario's History, ed. by R. Hall, et al. (Toronto: Dundurn Press, 1988), pp. 37-54.

⁵²Committee No.7, Court of Requests, Appendix to the Journals of the Legislative Assembly, Vol.II (1839-40), p. 316.

⁵³Appeals for a conviction arising out of Quarter Sessions or Assize were not allowed until 1857. See Margaret Banks, "Evolution of the Ontario Courts 1788-1981", Essays in the History of Canadian Law, Vol.II, ed. by D.H. Flaherty (Toronto: The Osgoode Society, 1983), p. 514.

⁵⁴"An Act to Provide for the Summary Punishment of Petty Trespasses and other Offences", Upper Canada Statute, 4 William IV (1834), c.4. English Summary Judgement Courts were part of the extension of the magistrates powers in the 1820s. Jim Phillips, "A new Engine of Power and Authority: The Institutionalization of Law-Enforcement in England 1780-1850", in Crime and the Law: The Social History of Crime in Western Europe Since 1500, ed. by V.A.C Gatrell et al. (London: Europa Publications Ltd., 1980), p. 156.

⁵⁵"An Act for the Summary Judgement of Petty Trespasses and Other Offences", Upper Canada Statute, 4 Wm.IV (1834), c.4.

Depending on attendance, however, the convicting magistrate could be sitting at Quarter Sessions.

Appeals to Quarter Sessions were few. The court documents from 1834 to 1841 show only ten appeals from Summary Judgement. Six have no decision registered on the document, one was allowed, and three were reconvictions.⁵⁶ Although the number of appeals are too small to assess a trend, it appears that the assembled magistrates tended to uphold the decisions of their brethren in the townships.

Aside from their own district courts, the magistracy also participated with the provincial Courts of Assize. Courts of Assize with a judge from King's Bench was held yearly until 1837, and twice a year thereafter. The Assize courts adjudicated all felonies, serious civil crimes and tried those present in the district gaol. Magistrates often acted as the commissioners who made up the affidavits that supplied the information for the trials. In 1831 thirteen of twenty-one commissioners of

⁵⁶The no decisions are Mr. Stafford for Trespass, A.O., Niagara Court Records, R.G., 22, Series 372, April (1836), Box 23, File 7, John Macdonald for Theft, November (1837), Box 30, File 15, John Humphrey Tench for Assault, January (1838), Box 31, Filings, File 6, Martin Fite for Assault, April (1839), Box 34, File 5, Stevenson Hume for Assault, June (1840), Box 38, Correspondence, File 14 and John Kirpatrick Acting Contrary to a Still Licence, November (1840), Box 40, File 9. The single allowed appeal was Joseph Meddough for Assault, April (1836), Box 23, File 7. The three reconvictions were William Harris for Assault, August (1835), Box 21, Issac Hicks for Trespass, April (1836), Box 23, File 7 and Jacob Thompson et al. for Trespass, July (1840), Box 39, File 9.

affidavits were magistrates.⁵⁷ Magistrates also sat on the grand jury at Assize. Although Niagara Assize grand juries were not uniformly magistrates, the number of non-judicial people was always very small.⁵⁸ Since the number of grand jurors fluctuated, from 1828 to 1841 the number of non-magistrates was as low as two out of sixteen or as high as four out of twenty-three. The foreman, meanwhile, was always a magistrate.

Niagara M.H.A., Bartholomew C. Beardsley, complained to the House of Assembly that magistrates were "improper persons" to sit on Assize grand juries.⁵⁹ Their unsuitability arose from the their multiple positions of influence within the Assize process. Magistrates who collected the information for the trials, could sit as grand jurors, while an additional two magistrates also sat as associate judges to help adjudicate in the criminal trials. At different times, from 1828 to 1841, James Muirhead, Robert Grant, Abraham and Robert Nelles, Thomas Clark, William Dickson, James Kerby, William Hamilton Merritt, Thomas Butler and Robert

⁵⁷The commissioners taking affidavits for the court of King's Bench for 1831 are listed in The Upper Canada Almanac and Provincial Calendar (York: 1831), p.23. They were James Muirhead, Thomas McCormick, Robert Dickson, Samuel Street, the Hon. William Dickson, the Hon. Thomas Clark, Joseph Clench, Alexander Hamilton, William Hamilton Merritt, Jacob Keefer, Charles Richardson, James Black, Edward Campbell, Robert Burns, John Lyons, John Warren, Robert Grant, Johnson Clench, Charles B. Secord, W. A. Campbell and Warren Claus.

⁵⁸A.O., Court Records, R.G. 22, Series 134, Assize Minute Books (1792-1848), Vols. 6-7.

⁵⁹Gleaner, 4 February 1828.

Melville assisted the high court judges.⁶⁰ The overlap in Assize functions performed by magistrates could result in a perception of bias.

In William Forsyth's trial over his famous fence⁶¹ a magistrate acted both as an associate judge and as a prosecution witness. Forsyth owned the Pavilion Hotel at the falls, "one of the most comfortable houses of public entertainment in the country".⁶² In 1827, to keep the best view of the falls exclusively for his guests, he built a fence and a stairway down to the waters edge. A rival innkeeper, Mr. Browne who was losing customers to Forsyth complained alleging that the fence was built on military reserve property. The complaint reached Lieutenant-Governor Maitland who summered in Stamford Township. Rather than advising Browne to sue Forsyth, Maitland ordered the military to remove the fence. When Forsyth rebuilt it, Maitland again ordered the military to tear it down. In 1828 in a belated appearance of judicial fairness, Forsyth was charged with trespass. To uphold Maitland's decision, Thomas Clark one of the associate magistrate judges descended

⁶⁰Thomas Clark and Abraham Nelles were both members of the Legislative Council and, as such were J.P.s but they did not sit regularly as members of the local Court of Quarter Sessions. Not all legislative councillors followed this tradition. James Kerby was a member of the Legislative Council and was an active magistrate. A.O., Court Records, R.G. 22, Series 134, Assize Minute Books (1792-1848), Vols.6-7.

⁶¹The "Niagara Falls Outrage", as it was called, is described in Dent, Upper Canadian Rebellion, Vol.I, pp. 151-162.

⁶²Jameson, Winter Studies and Summer Rambles in Canada, p. 59.

from the bench, became a witness against Forsyth, then resumed his seat to help judge him guilty.⁶³

Thomas Clark and Samuel Street later bought the Pavilion Hotel. In 1833 when charged with the same offenses as Forsyth, they succeeded in having the previous negative decision overturned by judge Livius P. Sherwood. The latter trial was a civil one, in which magistrates did not sit with the judge.

Clark, however, was an associate judge with Sherwood in the same sessions. He could very well have been sitting with the judge during the same day his case was brought to trial. When Clark and Street won their case, the Niagara Reporter declared that "Justice has now taken place, but Forsyth is an injured man".⁶⁴

Although the magistracy had a pervasive presence at the Assizes, Assize petty juries consisting of district rate payers did not always yield to the interests of the magistracy as James Kerby found out. Magistrate James Kerby was the customs inspector at Fort Erie and, as customs inspector, had the right to run a ferry from Fort Erie to Buffalo. Attempting to keep all ferry business for himself, Kerby impounded ferries belonging to Mr.

⁶³A.O., Court Records, Series 390, Supreme Court of Ontario Judges Bench Books, The King Vs. William Forsyth, 5 September 1827.

⁶⁴Reporter [Niagara], 17 October 1833. The Colonial Secretary, Lord Glenelg also thought that the use of the military instead of the courts was illegal and he ordered the government to pay "full compensation" for the problems incurred and the lands lost by Forsyth, Glenelg to Colborne, 25 September 1835, "Calendar of State Papers, Upper Canada, 1836-1838", Series G, Report of the Public Archives for the Year 1936, ed. by Gustave Lanctot (Ottawa: J.O. Paternaude, 1937), Vol. 74, p. 374.

Lewis, Mr. Mackenzie and Mr. Haggart. The Assize petty juries, however, refused to support magistrate James Kerby in his fight for sole control over the ferries at Fort Erie. Kerby lost three cases at Niagara Assize. Despite the removal of a fourth trial to the Home District, the jury found for the ferry owners not Kerby.⁶⁵

Sometimes plaintiffs or defendants would choose a special jury at Assize where magistrates could sit as jury members. Special juries were drawn from the more prosperous people of the district.⁶⁶ They were often used if the government or political concerns were involved. In 1834, for example, Patrick Grant Beaton, the Secretary of the Welland Canal Co., charged William Lyon Mackenzie with libel. Mackenzie had suggested that Beaton was a man of "intemperate habits" and accused him of "dishonest practices". A special jury was struck to decide the issue. The St. Catharines Journal described the jury led by magistrate Malcolm Laing, as "Tory to the backbone".⁶⁷

The Journal, usually critical of Mackenzie,⁶⁸ viewed use of a special jury led by a Tory magistrate as a threat to free journalism and supported his cause. Although the defense evidence

⁶⁵E.A. Cruikshank, A Memoir of Colonel the Honourable James Kerby, His life in Letters (Welland: Welland County Historical Society, 1931), pp. 281-301.

⁶⁶"An Act for the Regulation of Juries", Upper Canada Statute, 34 Geo. III (1794), c.1, s.XI.

⁶⁷St. Catharines Journal, 9 November 1834.

⁶⁸St. Catharines Journal, 5 October 1837.

for Mackenzie, according to the Journal, was "full, convincing and decisive", the jury convicted. Mackenzie was charged a two shilling fine, but the real penalty, as with every trial, was the bill of costs. In this case it was a healthy £75. In response to the verdict the Journal wrote that newspapers were at the mercy of government policy. If charged, they, like Mackenzie, would find little protection.⁶⁹

Appointed magistrates had a pervasive presence in both provincial and district courts and they could sustain the authority of the central government as well as their own interests. There were limits to magisterial authority, but these often required a detailed knowledge of the law or hiring a lawyer. Although there was no appeal from Quarter Sessions, plaintiffs or defendants could remove a case to the Court of King's Bench through a writ of certiorari. This allowed a case to be retried,⁷⁰ but this entailed the expense of time and lawyers. A magistrate could also be indicted if his actions or judgement proceeded from an "unjust, oppressive, or corrupt motive".⁷¹ If it appeared that the magistrate was simply mistaken, but his intentions blameless no action ensued. Charging magistrates, however, proved difficult as a grand jury found out in 1832.

⁶⁹St. Catharines Journal, 9 November 1834.

⁷⁰Blackstone's Commentaries, Vol.IV, p. 320-321.

⁷¹Keele, Magistrate's Manual, p. 275.

In 1832 the grand jury of the Niagara Quarter Sessions brought a rare presentment against a magistrate.⁷² They accused John Crooks, brother to the Legislative Councillor James Crooks, of failing to turn over militia fines to the colonel of the regiment. A tax was levied against Quakers, Tunkers and Mennonites in lieu of militia duty. If they failed to pay, they could be fined and their houses and chattels sold for non-payment even in peacetime. It was an unpopular tax for the pacifists. It would be more unpopular if the magistrates were keeping the money. The magistrates realising that the presentment against Crooks could result in an indictment and possible loss of his magistracy, first sent it to the Attorney-General for a ruling.

Attorney-General Henry John Boulton had been elected as the M.H.A. for Niagara town (1830-1833) and was well known to the Niagara district magistrates. He advised them that if Crooks acted from "a corrupt motive" then he was indictable.⁷³ He believed this, however, to be "out of the question". Boulton interpreted Crooks' actions as a "misguided" payment to himself. According to Boulton, Crooks had been defraying his costs of prosecuting those who would not pay out of the fines paid in.

⁷²James Muirhead to Attorney General Boulton, 28 January 1832, A.O., Niagara Court Records, R.G.22, Series 372 (1832), Box, 11, Orders, File 4.

⁷³Attorney General Boulton to the Quarter Sessions, 29 March, 1832, A.O., Niagara Court Records, R.G.22, Series 372 (1832), Box 12, Correspondence, File 4.

Boulton advised Crooks to discontinue this procedure as it was "not legal".

Avoiding public censure maintained the authority of the magistracy as Robert Hamilton claimed in an earlier case. When magistrate John Warren was tried in 1807 for apprehending the wrong man, Hamilton denounced the public trial as injurious to their authority. "If the Bonds of respect for the People to the Magistrates are once broken", Hamilton stated "there is an end to all order and to all well doing".⁷⁴ The magistrates' refusal to accept a presentment of the grand jury and Boulton's support not only protected the magistracy from local control but also avoided an indictment and a public court case.

Only the Lieutenant-Governor could remove a magistrate, but he hesitated to do so if they were politically well-connected. People in the Western District petitioned the Lieutenant-Governor for four years to remove magistrate John Burwell. John Burwell was the brother of the Tory M.H.A., Col. Mahlon Burwell who was a great friend of John Beverley Robinson and Colonel Talbot's right-hand man.⁷⁵ The onslaught of petitions to remove Burwell lasted for four years. With the weakening of high Tory

⁷⁴Hamilton to Halton, 20 January 1807, quoted in "Introduction", Provincial Justice: Upper Canadian Legal Portraits from the Dictionary of Canadian Biography, ed. by R.L. Fraser (Toronto: University of Toronto Press, 1992), p. lvii.

⁷⁵The fight to remove Burwell started in October 1835 and ended 1839 when he was finally dismissed. N.A.C., Submissions to the Executive Council, R.G.1 E3, Vol.5, pp. 2-6, 24-139, Vol 6 p. 11. and Vol.6, pp. 81-85.

influence at the end of the era, Lieutenant-Governor Sir George Arthur finally removed him.

Niagara citizens also petitioned the Lieutenant-Governor over perceived inequities, but provincial officials generally refused to intervene in district affairs.⁷⁶ In a 1830 petition Solicitor General Draper agreed that the action of a deputy-Sheriff was illegal, but did not attempt to rectify it.⁷⁷ When some Niagara landowners petitioned the Lieutenant-Governor over the magistrates' refusal to act in accordance with jury decisions over a road placement, the Lieutenant-Governor simply accepted the magistrates' version of the facts.⁷⁸

Provincial officials also refused to mediate internal magisterial squabbles. In 1836 magistrate John Alma removed a sick half-naked woman from the streets, had her examined by Dr. Porter and, to keep her from dying of the cold, committed her as a vagrant to Niagara gaol.⁷⁹ The next morning magistrates Thomas Butler, Daniel McDougal, and Lewis Clement discharged her. Alma

⁷⁶See the Petition of William Forsyth against the judgement of the magistrates for an assault and the reply of the Lieutenant-Governor's office, N.A.C., Upper Canada Sundries, R.G.5, A1, Vol.108 (1831), pp. 61250-61796.

⁷⁷The petition of Joseph Markwell for relief against improper arrest and imprisonment, N.A.C., Upper Canada Sundries, R.G.5, A1 Vol.103 (1830), pp. 58330-58733.

⁷⁸See the lengthy petition of Hugh Freel, James MacFarland, John Cox, et al. to Lieutenant-Governor Sir John Colborne 23 February 1831, A.O., Niagara Court Records, R.G. 22, Series 372 February (1831), Box 9, Correspondence, File 6.

⁷⁹See the petition of magistrate John Alma to the Lieutenant-Governor, N.A.C., Upper Canada Sundries, R.G.5, A1 (1836), Vol.171, pp. 93645-93654.

petitioned the Lieutenant-Governor to prevent actions "by self constituted tribunals". The Lieutenant-Governor's office declined to interfere and, referring to Alma, wrote on the back of the petition "too humane perhaps".

Other limits to the authority of the magistracy were as ineffective as petitions. A writ of mandamus from King's Bench in theory could force the magistracy to follow provincial legislation or accept the decisions of a jury. As Edward McBride found, however, the granting of a mandamus could prove difficult. In 1824 McBride was elected to the House of Assembly as part of a wider Reform victory in Lincoln County.⁸⁰ He supported Robert Gourlay, the reform position on the Clergy Reserves and the Alien Bill. He also voted for the removal of the Chief Justice from the Executive Council.⁸¹ When McBride applied for his parliamentary salary, the magistrates refused to pay him.

In 1826 McBride applied to King's Bench for a mandamus to force the magistracy to follow provincial legislation that provided for his salary.⁸² The 1793 Act governing the payment of elected representatives stipulated an "every member" payment from

⁸⁰Peter M. Moogk, "McBride, Edward", Dictionary of Canadian Biography, Vol.VI (Toronto: University of Toronto Press, 1987), pp. 420-421.

⁸¹W.R. Riddell, The Court of King's Bench in Upper Canada 1824-1827 (n.p.: n.p., 191?), pp. 12-13.

⁸²The King vs. The Justices of the District Court of Niagara Upon the Relation of Edward McBride Esq. M.P., Reports of Cases Argued and Determined in the Court of King's Bench in York Upper Canada, ed. by Thomas Taylor (York: John Carey, 1828), Vol.I, p. 542.

the district rates.⁸³ A further Act in 1820 required that towns over 1,000 people where Quarter Sessions were held, elect a representative to the House of Assembly. In what the Hon. Mr. Justice William R. Riddell⁸⁴ called a "curious" decision, Chief Justice William Campbell and Judge Livius Sherwood upheld the magistrates.⁸⁵ Without a salary McBride left politics. As with magistrate Crooks, the central elites collaborated with the magistracy to perpetuate their authority. In this case they also rid themselves of an unwanted critic.

The magistracy with the support of provincial officials was impervious to petitions or pressure from reform M.H.A.s. When it came to managing district justice, there were ideological and practical limits. Eighteenth and early nineteenth-century theory of criminal prosecution rested upon the idea of exemplary punishment. In 1830, Attorney-General Henry John Boulton directed Charles Richardson, Clerk of the Peace, that, aside from the most glaring crimes,

⁸³"An Act to Authorize and Direct the Laying and Collecting of Assessments and Rates in every District within the Province and to Provide for the Payment of Wages to the Members of the House of Assembly", Upper Canada Statute, 33 Geo. III (1793), c.3, s.XXX.

⁸⁴William R. Riddell, an Ontario high court judge from 1906 to his death in 1945, was an historian of the Upper Canadian courts and legal system.

⁸⁵W.R. Riddell, The Courts of King's Bench in Upper Canada 1824-27, p.13. See also The King vs. The Justices of the District Court of Niagara Upon the Relation of Edward McBride Esq. M.P. see Taylor, Reports of Cases Argued and Determined in the Court of King's Bench, Vol.I, p. 542.

magistrates may exercise their discretion in allowing persons to compromise trifling misdemeanors where the interests of the public do not require an example to be made.⁸⁶

Magistrates could use their discretion to make an example of local troublemakers, while gaining loyalty from those they saved from prosecution.⁸⁷ The notion that every discovered offense should automatically be followed by prosecution is a modern one⁸⁸ which could only function with a widespread professional police and more public jails.

In the management of district crime the magistracy acted in a pragmatic, ad hoc fashion. Upper Canadian judicial process was based on private prosecutions where the onus to lay a complaint rested with the victim. The victim laid a complaint to a constable or magistrate and the constabulary apprehended the accused. Magistrates with the help of petty juries judged defendants only after there had been a complaint from a member of the public and an indictment by the grand jury. In victimless crimes or regulatory offenses magistrates maintained local order, but not with a vigorous application of the law that might excite opposition. Instead they judiciously followed public complaint

⁸⁶Henry John Boulton to Charles Richardson, 14 July 1830, A.O., Niagara Court Records, R.G. 22, Series 372, July (1830), Box 7, Correspondence, File 2.

⁸⁷John Beattie, Attitudes towards Crime and Punishment in Upper Canada, 1830-1850 (Toronto: Centre for Criminology, 1977), p. 9.

⁸⁸D. Phillips, "A New Engine of Power and Authority: The Institutionalization of Law-Enforcement in England 1780-1830", Crime and the Law, p. 158.

and adjusted the law to local situations.⁸⁹ The whole fabric of justice from prosecution to punishment was shot through with discretion that garnered and sustained their authority.⁹⁰ A magistrate like Bartholomew Tench who created discontent by directly imposing the strict letter of the law found little sympathy not only from the community, but also from the assembled magistracy at Quarter Sessions.

In 1834 magistrate Tench attempted to prevent Joel Skinner and two helpers, Darel Waterhouse and Robert Cram, from roofing a house on a Sunday.⁹¹ Tench was well within the law which forbade "worldly labour, business or work ... on the Lord's Day".⁹² When Skinner continued to work, Tench tried to arrest him. The people who had gathered around walked away and refused to help. Skinner was a U.E. descendant and probably a well-known member of his local community.⁹³ Tench reported the situation to Quarter

⁸⁹The conscripting of laymen as magistrates provided a means of adjusting law to the purposes and convictions of the community at large. Dawson, A History of Lay Judges, p. 293.

⁹⁰Brewer and Styles, An Ungovernable People, pp. 16-17.

⁹¹Information of Crowell Willson J.P., A.O., Niagara Court Records, R.G.22, Series 372 (January, 1834), Box 16, Filings, File 7.

⁹²Keele, Magistrate's Manual, p. 308.

⁹³Joel Skinner received his 200 acres in 1816, N.A.C., Upper Canada Land Petitions, R.G.1 L 3, Joel Skinner (1816), S11/48, Vol.457, Reel C-2811. He was appointed a constable in 1836.

Sessions and asked for a warrant to arrest Skinner. The assembled magistrates simply dropped the matter.⁹⁴

Although a magistrate had the power of arrest,⁹⁵ or could arrest an offender as an ordinary citizen, the collapse of the complainant, arresting and judging roles, so he could judge his own cause, led to a perception of bias. Moreover, Tench's attempted enforcement of Lord's Day legislation was unpopular in an agricultural society where people often had to work on Sundays. The application of a law that some members of the community viewed as an interference rather than protection alienated rather than united support for the magistrates.

The magistracy used their discretionary powers to tailor the application of the law to differing local communities. In another instance of moral meddling magistrate Tench wrote to Quarter Sessions that Ebor Rice, an innkeeper from Pelham Township had breached the tavern regulations.⁹⁶ He accused Rice of allowing gambling with dice and skittles [nine pins] and importing prostitutes from Buffalo. He reported that the entire settlement complained of Rice and then added "at least most of the respectable farmers do". Tench cautioned the magistrates that they would have to conduct the prosecution "with great ingenuity

⁹⁴Information of Crowell Willson J.P., A.O., Niagara Court Records, R.G.22, Series 372 (January, 1834), Box 16, Filings, File 7.

⁹⁵Keele, Magistrates Manual, p. 36.

⁹⁶Bartholomew Tench to Charles Richardson, A.O., Niagara Court Records, R.G.22, Series 372, Filings January (1836), Box 22, File 11.

to ensure a conviction". While some neighbours agreed that there was gambling, they were reluctant "to disclose anything to his [Rice's] prejudice".⁹⁷

Ebor Rice, whose family had settled in Pelham Township before 1800 was a loyalist who also fought with the 2nd Lincoln Militia in the 1812 War.⁹⁸ He also had served as a constable for Pelham in 1829, 1830 and 1833. Pelham Township was a largely Quaker settlement that disliked the militia tax⁹⁹ and had radical leanings.¹⁰⁰ Politically it would be unwise to alienate a trusted and obviously well-liked loyalist in a township where the authority of the magistracy was tenuous. Perceiving a lack of public support and the difficulty of obtaining witnesses the magistrates did not pursue the charges.

When the public was clearly outraged, the magistracy acted quickly. Following the discovery of John McIntyre's body in the spring of 1834, the magistracy received petitions from the inhabitants of Crowland, Wainfleet, Pelham and Thorald Townships

⁹⁷Ibid.

⁹⁸Ebor Rice received land for his service during the 1812 War, N.A.C. Executive Council Minute Books on Land Matters 1787-1867, R.G.1 L1, Book E, Vol. 44, p. 563.

⁹⁹Michael Graybiel to William Hamilton Merritt, 2 January 1833, N.A.C., Merritt Papers, R.G.24, E 1, Vol. VIII, Reel C7061, p. 885.

¹⁰⁰George Rykert to Col. James Fitzgibbon, 13 December 1837, cited in The Rebellion of 1837 in Upper Canada, ed. by C. Read and R. Stagg (Ottawa: Carleton University Press, 1988), pp. 317-318.

complaining of Henry Sloan's tavern.¹⁰¹ Henry Sloan had a tavern in Crowland Township that was notorious for uproarious behaviour. In December 1833 a drunken brawl erupted between McIntyre and George Stuart. Sloan separated the men and sent McIntyre on his way, but McIntyre fell in the canal and drowned. Taking the widespread complaint into consideration, William Hamilton Merritt, chairman of Quarter Sessions, promptly notified Sloan that he would be prosecuted for having a disorderly house, fined and would lose his licence. In the April Adjourned Sessions the order to prosecute Sloan was rescinded.¹⁰² To save Sloan the costs of a trial,¹⁰³ magistrates Merritt and David Thompson had in the interim visited Sloan who promised to give up his tavern.¹⁰⁴

Not every complaint reached the ears of the magistracy; some people preferred non-legal resolutions. In 1826 the Colonial Advocate reported a settlement between David Disher, a farmer

¹⁰¹Petition of the Inhabitants of Crowland, Wainfleet, Pelham and Thorald, A.O., Niagara Court Records, R.G.22, Series 372, March (1834), Box 16, Tavern and Shop Licences, File 43.

¹⁰²A.O., Niagara Court Records, R.G.22, Series 372, April (1834), Box 17, Orders, File 16, No. 2.

¹⁰³Gregory Marquis pointed out that a paternalistic magistracy limited the coercive impact of the law, thus generating respect and compliance. Gregory Marquis, "Doing Justice to "British Justice": Law, Ideology and Canadian Historiography", Canadian Perspectives on Law and Society: Issues in Legal History, ed. by W.W. Pue and B. Wright (Ottawa: Carleton University Press, 1988), p. 50.

¹⁰⁴William Hamilton Merritt to Charles Richardson, A.O., Niagara Court Records, R.G.22, Series 372, April (1834), Box 17, Tavern and Shop Records, File 8.

from Pelham Township, and an Irish labourer.¹⁰⁵ Disher was in a local tavern when a brawl erupted. Although not part of the fight, he was attacked and in defence bit off an Irishman's finger. When the Irishman threatened to go to court, Disher decided to settle. Disher and the Irishman met to decide their case.

In due time they brought in a verdict of £7.10.0 lawful money of this province ... David paid the fine and lamented his folly, Patrick received and duly acknowledged the price of his absent limb, and there the matter ended.¹⁰⁶

There were only nine documented out-of-court settlements during the period,¹⁰⁷ and Disher's settlement did not appear in the records. Since non-legal resolutions usually were private, it is difficult to assess their number.

Although the recourse to personal resolutions showed that spread of legal authority was not total, it is illustrative of magisterial acceptance that despite the close border only one

¹⁰⁵Colonial Advocate, 25 May, 1826, "Documents Relating to the Courts and the Administration of Justice", compiled and edited from contemporary sources by Leo A. Johnson, (published privately on computer diskettes by the Upper Canadian Documentary History Association, Box 274, Norwood, Ontario).

¹⁰⁶Ibid.

¹⁰⁷Usually the people had settled their difference and did not want to go to court. Alex Gordon for Assault. A.O., Niagara Court Records, October (1829), Box 4, File 51. Thomas Foster for Assault, July (1831), Box 10, File 27. John Smith for Assault, October (1832), Box 13, Filings, File 4. Joshua Cudney for Assault, January (1833), Box 13, File 38. William Rees for Assault, March (1833), Box 14, File 22. Mr. Ryan for Assault, October (1835), Box 21, Correspondence, File 15. Joel Eaton for Assault, October (1835), Box 21, Filings, File 25. James Martin for Assault, October (1835), Box 21, File 27. Aaron Helmer for Assault, December (1839), Box 36, File 25.

person sought resolution of a case on the American side.¹⁰⁸ Switching venues for a more favourable forum was not unknown. Magistrate Kerby had tried to gain a more advantageous hearing by removing his ferry case to Toronto. To gain a more sympathetic venue William Forsyth who had previously suffered the arbitrary power of the Lieutenant-Governor and the British military took a case to Buffalo.

In June 1829 two British officers from the 40th Regiment of Foot, William Denny and Edward White, rented a horse and wagon from Forsyth to visit the whirlpool at the falls.¹⁰⁹ It was a hot day and Forsyth accused the officers of severely abusing the horse by running it hard and, at the same time, breaking a whip. The officers paid for the whip, but refused to compensate Forsyth for the horse. When Denny and White proceeded by stage to Buffalo, Forsyth and several people who witnessed the alleged crime went with them. Three minutes after their arrival in Buffalo Forsyth charged the soldiers who were immediately taken into custody. A Justice of the Peace promptly tried and fined the officers \$50 for the horse. Denny and White returned to the Niagara and filed a complaint with magistrate James Cummings. Magistrate Cummings admonished Forsyth, but no action was taken. Although it was possible to resolve a dispute on the American

¹⁰⁸Information of magistrate James Cummings, A.O., Niagara Court Records, R.G.22, Series 372, July (1829), Box 4, Filings, File 5.

¹⁰⁹Ibid.

side, this is the only documented case where a Niagara person chose to do so.

Although residents could opt for a different venue or personal mediation, increasingly district residents resolved their disputes in front of the magistracy.¹¹⁰ From 1828 to 1840 the Niagara population rose 63%, from 20,617 to 32,504 inhabitants. Including trials at Quarter Sessions and Summary Judgement the cases rose from 46 in 1828 to 114 in 1840, an increase of two and a half times. The expanded numbers reflect Niagara's position as a port and border area¹¹¹ and the transient labour force on the canal.¹¹² They also reflect an increasing use of the district justice system to settle local disputes.

Expanded use of the magistrates' courts placed them more clearly in charge of their district and strengthened their already dominant position as district governors. Through their courts, in special juries and at Assize the magistracy held multiple positions of influence. Their authority also extended over other elected or appointed district officials. Although

¹¹⁰As Hay argued, the process of criminal law was critically important "in legitimising the status quo, in constantly recreating the structure of authority", Douglas Hay, "Property, Authority and the Criminal Law", Albion's Fatal Tree, p. 25.

¹¹¹The Niagara magistrates complained of the large number of criminals resulting from Niagara's position as a border area. The magistrates to Sir John Colborne, September 1835, A.O., Niagara Court Records, R.G.22, Series. 372, September (1835) Box 21, Correspondence, File 15.

¹¹²On the approach of the Gore magistrates to labourers in the Gore District see Weaver, Crimes Constables and Courts, p. 53-54.

local residents could petition the Lieutenant-Governor about perceived inequities, provincial officials did not interfere.

The magistrates were clearly the rulers of their district. Their legal governance, however, was exercised in a pragmatic ad hoc fashion. The magistracy did not impose prosecutions on the community but relied upon private complaint. Magistrates like Bartholomew Tench who directly attempted to inflict their standards on local communities were ignored. Instead, the magistracy tailored their legal rule to the demands of different localities. This mitigated the authoritarian structure and maintained magisterial authority.

Chapter III

"Fit and Proper Persons": The Appointment of the Magistracy

"Society should be ruled by wealthy proprietors who have an interest in the prosperity of the province".

Niagara Gleaner, 19 May 1838.

The magistracy who dominated local government in the Niagara also controlled district commerce. The district magistracy belonged to the upper echelon of well-to-do merchants, large land speculators, developers and entrepreneurs. They were part of the militia leadership and most belonged to prominent Anglican families who had lived in the district for many years. Occasionally, a well-educated or wealthy newcomer was welcomed into the charmed circle. Although not quite a "patent of nobility",¹ an appointment to the magistracy endowed life-long status upon men of some proven success and leadership. It indicated that a person or his family had been officially recognised by local as well as York elites. Moreover, the fusion of commercial power with government authority created a district elite securely tied to their community.

In the beginning Lieutenant-Governor Simcoe appointed magistrates on the advice of the County-Lieutenants. County-

¹Armstrong, "The Oligarchy of the Western District of Upper Canada 1788-1841", p. 520

Lieutenants appointed for each of the existing districts acted as the eyes and ears of the Lieutenant-Governor and supplied information on appropriate candidates for all district offices. The Duke of Portland, Secretary of State for the Home Department, however, considered them an unnecessary filter between the direct power of the Lieutenant-Governor and the people. In 1795 Portland advised Simcoe to discontinue the office.² Simcoe disagreed and argued that the County Lieutenants were crucial to the internal government of the colony. The position, however, was allowed to lapse; Robert Hamilton served as Niagara's last County-Lieutenant until his death in 1809.³ Thereafter sitting district magistrates and other local and provincial officials advised the Lieutenant-Governor on prospective candidates.

As with all offices, the Civil Secretary was inundated with petitions for patronage positions. One merchant at Dunnville who misunderstood the process wrote for himself.⁴ Thinking perhaps that being a merchant was the only qualification for the office, he wrote "so many of my professional brethren in this country enjoy this distinction... I trust that this application coming

²J.G. Simcoe to the Duke of Portland, 30 October 1795, in Simcoe's Correspondence, Vol.IV, pp. 115-118.

³"The appointments were for life, but no new appointments were made after 1807 and by 1812 changes in the military laws rendered the post largely honourable." J.K. Johnson, "Spenser, Hazelton", D.C.B., Vol.V (1983), pp. 771-773. See also Armstrong, Chronology, pp. 152-53.

⁴James Sinclair Egan for Magistrate, August 1836, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.169, pp. 92360-92362.

from myself" he added "may not appear irregular". Self-nomination or simply being a merchant, however, was not sufficient.

Candidates for the district bench had to be acceptable to members of the local elite. John Weaver recently argued that in the Gore District "the notables in one township did not know those in another", while the government at York remained ignorant of "the quality of potential magistrates".⁵ This was not the situation in the Niagara. Incumbent magistrates were well acquainted with the capable people in their district and kept officials at York well informed. For as George Rykert explained when he made his recommendations to Christopher Hagerman, bad appointments made magistrates "a curse" rather than "a blessing" to their neighbourhoods.⁶

Previously appointed magistrates and district officials scrutinised the list of aspiring candidates.⁷ In 1833 for example, Legislative Councillors James Kerby and James Crooks, Tory M.H.A.s John Clark and William Hamilton Merritt, members from old loyalist families George Adams and Thomas Butler, Judge George Ridout and Sheriff Richard Leonard recommended the final

⁵John C. Weaver, Crimes, Constables and Courts: Order and Transgression in a Canadian City, 1816-1970 (Kingston: McGill-Queen's University Press, 1995), p. 39.

⁶Magistrate George Rykert to Christopher Hagerman, 13 October 1838, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol. 207, p. 114487.

⁷J.H. Aitchison, provided a province-wide view of influential Tory officials reporting on the background of prospective magistrates, Aitchison, "Local Government in Upper Canada", pp. 62-64.

list.⁸ Candidates not acceptable to the magistracy and other officials then in place were passed over. Able local men like John Decew who angered members of the district hierarchy failed to achieve an appointment.⁹ In time the weight of local advice led to an entrenched district elite many of whom were connected by marriage or by family.

In an effort to ensure the magistracy acted in accordance with the policies and interests of provincial administration, magistrates were appointed "at pleasure" by the Lieutenant-Governor.¹⁰ The Lieutenant-Governor appointed magistrates by issuing periodic district-wide Commissions of the Peace under the Great Seal. Although magistrates named in the Commission held their appointment only until the next Commission, in practice they had been appointed for life "at the pleasure of the Crown". The "at pleasure" principle ensured that magistrates found unfit

⁸Names of Persons to be Added to the Commission of the Peace", May 1833, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.129, p. 71500. In the case of Judge George Ridout, the magistracy was largely an honorary title, whereas Richard Leonard had to resign his commission as a magistrate upon taking the position of Sheriff.

⁹John Decew was a loyalist, a prominent miller, and served frequently as assessor, collector and warden for Thorold Township. He was a founding member of the Niagara Library and in 1804, a director of the Niagara Agricultural Society. He commanded a company of the 2nd Lincoln Militia in 1812-1814. Decew was an outstanding member of his society and future-looking industrialist, but never elevated to the magistracy. His disagreement with William Hamilton Merritt over the placement of the Welland canal and his future political opposition to Merritt resulted in a lack of political favour that served to dampen rather than promote his business success. David Roberts, "Decow (Decew), John" D.C.B., Vol.VIII (Toronto: University of Toronto Press, 1985), pp. 207-208.

¹⁰Keele, Magistrates Manual, pp. 259-279.

for office could be summarily omitted from the following Commission of the Peace.

Magistrates could lose their position if they disagreed with the central government too overtly. During the administration of Lieutenant-Governor Sir Peregrine Maitland (1818-1828),¹¹ for example, John Clark aligned himself with Robert Gourlay and lost his appointment. Clark, a successful merchant and son of the Sheriff James Clark was related by marriage to the old loyalist Adams family. He had been appointed a magistrate in 1817. Along with other magistrates in the Niagara, Clark participated in Gourlay's democratic conventions. When the York government declared Gourlay persona non grata most Niagara magistrates expediently recanted their earlier support.¹² Despite the provincial government's disapproval, Clark strongly supported Gourlay and, as his chief character witness in Gourlay's libel trial in Kingston, was instrumental in his acquittal.¹³ When Clark successfully ran for the House of Assembly in 1820, Maitland omitted his name for the 1820 Commission of the Peace. To regain his position, Clark became a conservative, supported the government's Naturalization Bill of 1827 and was reappointed by Maitland in the next Commission of the Peace in 1828. John

¹¹Hartwell Bowsfield, "Maitland, Sir Peregrine", D.C.B., Vol.VIII (1985), pp. 596-604.

¹²Cruikshank, A Memoir of Colonel the Honourable James Kerby, His Life and Letters, pp. 53-54.

¹³See Robert Gourlay, Address to the Jury at Kingston Assizes in the Case of the King v. Robert Gourlay for Libel: with A Report of the Trial (Kingston: Kingston Gazette, 1818), pp. 6-16.

Mittleberger later remarked that Clark had become a political chameleon. He was ready, Mittleberger claimed, to support the government "in ever changing colours" and "think as he is instructed to think, no matter by whom".¹⁴

With the appointment of Lieutenant-Governor Sir John Colborne (1828-1836) the "at pleasure" principle was not securely tied to political support. Colborne, more accommodating to moderate Reformers,¹⁵ assured the magistrates that he would not remove those already appointed without just cause.¹⁶ A difference of political opinion with York would not necessarily bring expulsion from the magistracy. From 1828 to the end of the period no Niagara magistrate was ever removed.

Difference of opinion with sitting magistrates, however, could jeopardise future family appointments. Family members attempted to protect their place in the social order by securing future positions for relatives, particularly sons. If sitting magistrates quarrelled with an influential member of the local

¹⁴During the election of 1836, when Clark was representing himself as a man of the people, Mittleberger issued a political broadside describing his malleable allegiances. John Mittleberger to Sir Francis Bond Head, 22 July 1836, N.A.C., Upper Canada Sundries, Vol.168, p. 92087.

¹⁵Patrick Brode discussed Colborne's attitude to reform in Brode, Sir John Beverley Robinson, pp. 181, 185.

¹⁶Magistrate George Adams referred to an earlier letter circulated from the Lieutenant-Governor that stated that no magistrates would be dismissed "without just grounds for so doing". George Adams recommending magistrates John Clark, Joseph Clark and James Fitzgerald, 31 August 1833, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.132, pp. 73048-73051.

elite, they risked familial appointments as Edward Evans found out in 1836.

Evans who was appointed magistrate upon the creation of Rainham Township in 1828 served alone until 1836 when he applied to have his son, John, join him. Rainham Township formed part of the electoral district of the County of Haldimand and had a strong Reform presence.¹⁷ In the by-election of 1832 Evans, a Reformer and supported by the radical John Decew, opposed William Hamilton Merritt.¹⁸ Whether this election was as close and bitter as Merritt's next election in 1836, when he barely won against Decew,¹⁹ we do not know. Evans' opposition and his friendship with Decew, however, were not forgotten. When John Evans' name appeared on the proposed 1836 commission, Merritt successfully opposed the appointment.²⁰

Although the goodwill of previously appointed men was crucial, candidates had to be worthy of the office. Sir John Beverley Robinson, a central member of the Family Compact and Chief Justice (1829-1862), also perused the prospective lists to weed

¹⁷R. Harper, The Early History of Haldimand (Niagara: Harrison and Arell Martindale, 1950), p. 57.

¹⁸Petition in favour of Edward Evans, 5 May 1831, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.107, pp. 60650-60653.

¹⁹Robert Burns commenting on the election of 1836 reported that George Rykert had won by 102 votes, but Merritt "had a severe contest". He had only a 31 person majority. Burns to John Joseph, 14 July 1836, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.168, pp. 91686-91687.

²⁰Merritt to John Joseph, 22 April 1836, N.A.C., Upper Canada Sundries, R.G.5 A1., Vol.165, pp. 90262-90265.

out those who might bring disrespect to the bench.²¹ In 1833 for example Robinson opposed the appointment of Joseph Clark, son of John Clark M.H.A. and grandson of George Adams, a loyalist merchant magistrate. When Clark's name was proffered again in 1838, Robinson intervened to prevent it. He described Clark as a man of "violent temper" and "universally disliked" for being an inveterate liar. Robinson sarcastically wrote that Clark was "most decidedly unfit ... I do not think another man in the District not even his father would have recommended him".²²

While Robinson could exclude unsuitable candidates from well-connected Tory backgrounds, he supported the appointment of capable moderate Reformers.²³ In 1833 Robinson recommended Richard Woodruff, Dr. J.J. Lefferty and David Thorburn, all members of the local merchant elite. Dr. Lefferty, M.H.A. (1824-1830), criticized the Family Compact for its treatment of Robert Randal,²⁴ but he supported the Tory position that the Sheriff

²¹We have only a few of Robinson's notes to the Civil Secretaries on the appointment of the magistrates. See Robinson to Lt. Colonel William Rowan, n.d., 1833, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.129, pp. 71513-71517 and Robinson to John Macaulay, 19 July, 1838, Vol.199, pp. 110232-110233.

²²Robinson to John Macaulay, 11 July 1838, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.199, p. 110236.

²³Terry Cook, "John Beverley Robinson and the Conservative Blueprint for the Upper Canadian Community", Ontario Historical Society, LXIV (1972), pp. 79-94.

²⁴Lefferty supported Randal who had lost his Chaudiere property through the legal machinations of Henry John Boulton. Speech in the House of Assembly by J.J. Lefferty, from the Brockville Gazette, 26 February, 1830, "Documents Relating to the Courts and the Administration of Justice" compiled and edited from contemporary sources by Leo A. Johnson published privately on computer diskettes

should select the juries.²⁵ Woodruff and Thorburn, M.H.A.s (1835-1841), were friends of the highly respected Baldwin family.²⁶ While Lefferty and Woodruff received their magistracy in 1833, Thorburn waited until 1838.²⁷

The appointment process was not universally accepted and radicals supported by some American settlers in the Niagara called for the election of the magistracy. In 1832, William Lyon Mackenzie helped organize a series of township meetings throughout Upper Canada to discuss grievances. At Smithville and Niagara town local radicals called for the election of magistrates.²⁸ In 1833 the British Colonial Argus at St. Catharines published a draft constitution calling for "the people to elect their own Sheriffs, Magistrates and all others necessary for their own government".²⁹ Some American settlers in the

by the Upper Canadian Documentary History Association, Box 274, Norwood, Ontario.

²⁵Peter A. Russell, "Lefferty, John Johnston", D.C.B., Vol.VII (1988), pp. 496-497.

²⁶David Thorburn to William Woodruff 29 July 1840, Metropolitan Toronto Public Library, Robert Baldwin Papers, Correspondence, L5 A78, n.p.

²⁷In 1838 the Tory George Rykert also supported Thorburn and considered him "the most fit person" at Queenston. George Rykert to John Macaulay 4 September 1838, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.204, p. 113123.

²⁸Gleaner, 10 March 1832. See also H.V. Nelles, "Loyalism and Local power: The District of Niagara 1792-1837", Ontario History, LVIII (1966), pp. 99-114.

²⁹British Colonial Argus cited in Aitchison, "Local Government in Upper Canada", p. 74.

Niagara also complained of not having "the magistrates, including the highest, chosen by the people."³⁰

Although it was not strictly a move to democratic election, petitioners in some townships proposed popular candidates. In 1830 a hundred and fifty inhabitants of Crowland Township offered Ozias Buchner for the position.³¹ Crowland had no resident magistrate and Buchner was a respected member of his community. He had fought in the 1812-14 war and was a captain in the 3rd. Regiment of Lincoln Militia. In 1831 a second Crowland petition supported him.³² Robinson, however, simply declared him "unfit".³³ In 1836 a petition from the inhabitants of Gainsboro Township, still without a magistrate, proposed Thomas Hardy.³⁴ Robinson referred to Hardy as a "great fool", who had helped Mackenzie to

³⁰The author visited the Niagara District and talked with Americans who had settled there. He reported that one of the main complaints by the American settlers was their lack of democratic power over the magistracy as well as the House of Assembly, N.A.C. pamphlet 1604, The Canadian Crisis, (London: J. Rodwell, 1838), p. 10. In Lower Canada, the Patriote Party also advocated that magistrates be chosen by the people. See Gregory Marquis, "Doing Justice to British Justice: Law Ideology and Canadian Historiography", Law and Society: Issues in Legal History, ed. by W.W.Pue and B.Wright (Ottawa: Carleton University Press, 1988), p. 44.

³¹Petition of Ozias Buchner for Magistrate, 9 August 1830, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.101, pp. 57466-57467.

³²Petition for Ozias Buchner, 12 July 1831, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.109, pp. 61906-61907.

³³Sir John Beverley Robinson to Lt. Colonel William Rowan, n.d. [1833] N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.199, pp. 110232-110233.

³⁴Petition for a magistrate at Gainsboro, 3 December 1836, N.A.C., Upper Canada Sundries, Vol.173, pp. 94625-94628.

escape.³⁵ Popular candidates who failed to win Robinson's support or that of sitting magistrates never passed muster. Whether Hardy had helped Mackenzie or not, candidates linked even by gossip to the leader of the York rebellion in Upper Canada were unacceptable. Popular nomination with the taint of democratic support inherent in these petitions was an inappropriate avenue to the local magistracy.

Legal authority was conferred on local men of intelligence, respectability and property. Suitable candidates were often large landowners, men of some learning or appropriate family connection. Most were part of the successful commercial strata. Some had proven their loyalty by serving in the militia and most of them were Anglican. Numerous magistrates had resided in the district for some time, although latecomers like Malcolm Laing, Dr. John Mewburn or John Alma who had sufficient education or wealth, proved equally acceptable to local elites and John Beverley Robinson.

The possession of large property elevated the owner into the respectable strata. As Justice John Elmsley (1796-1802) argued, "the influence of extensive property gave effect to the Laws" and kept "the turbulent in good order".³⁶ The earliest settlers founded their family prominence on large estates in the Niagara. The merchant Robert Hamilton Sr. received 700 acres in

³⁵John Beverley Robinson to John Macaulay, 19 July, 1838, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.129, pp. 71513-71517.

³⁶John Elmsley cited in Bruce G. Wilson, The Enterprises of Robert Hamilton, p. 142.

recognition of "his services in the Establishment of this settlement".³⁷ He quickly applied for and received an additional three thousand acres. Other Scottish merchants Francis Crooks, Archibald Cunningham and William Dickson also received large grants.³⁸ Aside from the merchants, land was endowed upon educated professionals. Dr. Muirhead, an army surgeon and son-in-law to Colonel John Butler, received large grants as well as 1200 acres for his wife Deborah.³⁹ The Reverend Robert Addison, the first Church of England pastor,⁴⁰ quickly obtained twenty-seven land grants. These men were all magistrates before 1800.

Early land accumulation often went hand in hand with commercial investment. The provincial government rewarded new settlers who invested in mills and factories with four to six hundred acres.⁴¹ In 1790 Benjamin Canby, an American Quaker and a failed tanner from Pennsylvania, came to Upper Canada and built a saw mill in the Short Hills in Pelham Township.⁴² In addition to his initial 200 acres Canby received a further 600 acres and 1200

³⁷Simcoe's Correspondence, Vol.V, pp. 190-191.

³⁸Lillian F. Gates, Land Policies of Upper Canada (Toronto: University of Toronto Press, 1968), p. 66,

³⁹Petitions Read on the 6th of July, 1796, in Simcoe's Correspondence, Vol.V, p. 206.

⁴⁰H.E. Turner, "Addison, Robert", D.C.B., Vol.VI (1987), pp. 3-6.

⁴¹Gates, Land Policies of Upper Canada, p. 66.

⁴²Colin K. Duquemin, "St. Johns, Short Hills: From Bloom to Doom", Villages in the Niagara Peninsula, pp. 23-24.

acres of timber⁴³ for constructing a saw mill on the Niagara River.⁴⁴ In 1810 Canby purchased a further 19,500 acres from the Six Nations that formed the township of Canborough named after him.⁴⁵ In 1822 he was able to sell his original mill to Alexander Hamilton for £22,000. Although Canby had not come from the upper strata of American society,⁴⁶ his prosperity in Upper Canada elevated his family to district prominence. Canby became a magistrate in 1828 and both his nephew Samuel Birdsall and Samuel's son, James, later became members of the district bench.

Another early settler, George Adams, accumulated land for his commercial enterprise. Adams was first a partner with Canby in Bertie Township. He then moved to Grantham where he purchased 200 acres from Robert Hamilton. He constructed a tannery for which the government granted him an additional 400 acres and a town lot in Niagara.⁴⁷ Marriage with the loyalist daughter of Elias Smith brought 200 acres. By 1797 Adams had sufficient wealth to acquire

⁴³Ibid.

⁴⁴The Executive Council of the Province of Upper Canada, 1792-6, Simcoe's Correspondence, Vol.V, pp. 194-195.

⁴⁵Benjamin Canby. N.A.C., Upper Canadian Land Petitions, R.G.1 L1, (1797), C2/102. See also Historical Atlas of Lincoln, Welland and Haldimand (Toronto: H.R. Page Co., 1876), pp. 767-768.

⁴⁶Most loyalist immigrants enjoyed neither wealth nor privilege. Wilson, As She Began, p. 13.

⁴⁷Eighteenth Report of the Department of Public Records and Archives of Ontario, 1929 (Toronto: Herbert H. Ball, 1930), pp. 97, 142.

a further 900 acres from three discharged marines.⁴⁸ Adams had resided in the province for twenty years before he became a magistrate in 1814. His influence enabled him to obtain the office for his sons, Elias and William.

While millers and manufacturers received land for their early commercial investment, some families sought property as a future patrimony for their heirs, while others were land speculators. By 1809 in the Niagara District alone the Hamiltons owned 40,550 acres, the Streets 7,700, the Butlers 6,500, the Nelleses 4,200, the Canbys 3,300, and the Balls 2,500.⁴⁹ The Butlers, Robert Hamilton and Benjamin Canby⁵⁰ were land speculators who by 1834 had all sold well over two-thirds of their property. The Balls and Nelleses and the Streets who had sold less than a quarter of their holdings by 1834 kept their land for future generations.⁵¹

By the 1820's marriages amongst the early land-acquisitive families wove the elite into a tight web.⁵² Families like the Hamiltons, the Balls and the Nelles who were represented in the 1800 Commission continued their influence into the 1830s. In the immediate and extended Hamilton family were Robert Hamilton Jr.,

⁴⁸N.A.C., Upper Canadian Land Petitions, R.G.1 L1, (1795) A1/16, (1795) A1/22, (1792) A8, (1792) A3/27.

⁴⁹Wilson, The Enterprises of Robert Hamilton, p. 184.

⁵⁰Ibid., p. 98.

⁵¹Ibid., pp. 184-185.

⁵²Family interconnection also plays a prominent part in the Members of the House of Assembly throughout the Upper Canadian period. Johnson, Becoming Prominent, p. 159.

John Hamilton, who was a Legislative Councillor, Alexander Hamilton, appointed Sheriff in 1829, James Muirhead who served as president of the court of Quarter Sessions, Thomas Butler, president after Muirhead's death, John Clark, Dr. Mewburn and two members from each of the Tench and Warren families.

The Ball and Nelles family, two of the largest landholders in the district, were themselves intermarried. By the 1830s, three magistrates holding the surname Ball and five with the surname Nelles were spread throughout the district. These two families were allied by marriage to Lewis Clement, Ralph Morden Crysler, James Cummings and James Macklem. George Adams was also connected by family to John Clark, M.H.A., and William Hamilton Merritt. Three of the men appointed in 1800 passed their office to a son or nephew. Samuel Street Sr. was the uncle of Samuel Street, one of the wealthiest men in Upper Canada. Sons of Benjamin Pawling, Crowell Willson and George Adams became magistrates. By 1835 fifty-three out of ninety-six magistrates commissioned between 1828 and 1840 were connected by marriage or family.

Family and kin connections linked many magistrates to the most prominent in Upper Canadian society. Nine Legislative Councillors, Thomas Clark, William Claus, William Dickson, James Crooks, George Hamilton, John Hamilton, Robert Hamilton, James Kerby, and Abraham Nelles were related to founding Niagara families.⁵³ As J.K. Johnson pointed out "having a relative

⁵³Armstrong, Chronology, pp. 53-55.

already established as a person of consequence was useful" to an aspiring local leader.⁵⁴

Along with large property and the right family, professional status or a good education also counted. Malcolm Laing who moved to the Niagara from England in 1830 was appointed a magistrate in 1833. Laing had been educated at Harrow and was the nephew of the author, William Blake.⁵⁵ Dr. John Mewburn immigrated from England to the Niagara in 1832. He married into the Adams, Clark family and was wealthy enough to purchase considerable land. As an educated professional Mewburn was quickly elevated to the magistracy in 1833.⁵⁶ Three other doctors Dr. Muirhead, Dr. Sumner and Dr. Lefferty also served as magistrates.

Being an Anglican was an advantage in appointment to the district bench. (See Table 3.1) Adherents of the Church of England were only 14% of the Niagara population in 1839-40,⁵⁷ but 65% of the local bench. Presbyterians were also appointed in disproportionate strength to their numbers in the community.

⁵⁴Johnson, Becoming Prominent, p. 93.

⁵⁵John Murray supported Laing as an outstanding candidate. John Murray to Poulett Thompson, 13 September 1839, N.A.C., Applications and Recommendations for Appointments to Public Office and Relief for Pioneers 1803-1876, R.G.5 B7, Vol.4, #2.

⁵⁶John Mewburn to S.B. Harrison, 23 September 1839, N.A.C., Submissions to the Executive Council, R.G.1 E3, Vol.52, pp. 194-195.

⁵⁷Population Returns for the District of Niagara, Appendix to the Journals of the Legislative Assembly, (1839-1840), Vol.I, Part 1 & 2, p. 150.

TABLE 3.1.
Magistrates Religion

Denomination	Number	%
Anglican	33	64.70
Presbyterian	10	19.60
Methodist, Wesleyan and Episcopal	4	7.84
American Quaker	1	1.96
Mennonite	1	1.96
Catholic	1	1.96
No Creed	1	1.96
	51	

Source: The 1842 and 1852 Census, the Dictionary of Canadian Biography and Johnson, Becoming Prominent.

They formed 19.6% of the magistracy but only 12.8% of the community as a whole.

Canadian Methodism, the fastest growing religion, had long been tainted with American republicanism and was disliked by the Anglican elite at York. Methodist clergy, although zealous, were also thought less well-educated⁵⁸ and not of gentlemen status.⁵⁹ Methodist believers were as tainted as their pastors. After 1833, however, when the Canadian Methodist Church joined with the British Wesleyans, Methodism became more respectable. Four Methodists, Amos Bradshaw, Jacob Keefer, John J. Lefferty, and Richard Woodruff were appointed to the magistracy in 1833. At the

⁵⁸Radcliff, Authentic Letters from Upper Canada, pp. 114-115.

⁵⁹R.D. Gidney and W.P.J. Millar, Professional Gentlemen: The Professions in Nineteenth-Century Ontario (Toronto, University of Toronto Press, 1994), p. 36.

same time the only Mennonite, Michael Graybiel, was also appointed. The other anomalies were Benjamin Canby, a Quaker, and Moses Brady from Pelham Township who was listed on the 1852 census as having no creed.

Religion was not usually a source of conflict in the Niagara⁶⁰ and many people adapted their faith to local conditions. Religion as well as names, had changed at the border. The Lutheran Bahl family became the Anglican Ballis. The Lutheran Kieffer family also changed their spelling with their religion. George Keefer became an Anglican, while his son Jacob became a Methodist. Before there was a local Catholic Church, Catholic military officers paraded soldiers of their faith to Protestant services to keep them out of the local taverns.⁶¹ Anglicans, Presbyterians and Roman Catholics supported the building of one another's churches and rectories.⁶² Despite the ecumenical feeling, at least one member of the Niagara elite continued his antipathy towards voluntarist sects even beyond the grave. A codicil to the will of Sheriff Richard Leonard warned his heirs that any who attended revivalist prayer meetings would forfeit their inheritance.⁶³

⁶⁰Wilson, The Enterprises of Robert Hamilton, pp. 103-104.

⁶¹John W. Grant, A Profusion of Spires: Religion in Nineteenth-Century Ontario (Toronto: University of Toronto Press, 1988), p. 67.

⁶²Janet Carnochan, "Names Only But Much More", Niagara Historical Society Transactions, XXVII (1916), p. 38.

⁶³A.O., Court of Probate Estate Files, 1793-1859, R.G.22, M.S. 638, Stamford, 10/4/34.

A commission in the militia as well as membership in the Church of England demonstrated loyalty to the Crown. From the time of Lieutenant-Governor Simcoe the central elites in Upper Canada worried over the American military threat. The fear of American invasion, never far below the surface,⁶⁴ was realized in 1812-14 and during the American raids after the rebellions. With the siege mentality of Upper Canadian government, a good citizen was one who was not only "attached to the British constitution" but also was prepared to "defend it".⁶⁵ To provide backup for the British regulars, the Militia Act compelled every man from 16 to 60, with the exception of the Quakers, Tunkers and Mennonites, to serve in the sedentary militia. In the Niagara, there were four sedentary militia regiments from the County of Lincoln and one from the County of Haldimand.

Although the duties of the ordinary militiaman amounted to a single muster on the fourth of June, officers who were unpaid during times of peace were responsible for the cost of their uniforms, sometimes the equipment for their men as well as refreshments for the June 4th musters.⁶⁶ In wartime, they were expected to raise, drill, lead troops and defend the frontier. The ordinary militiamen had little status, but local elites competed for the officer positions as a mark of distinction.

⁶⁴Johnson, Becoming Prominent, p. 68.

⁶⁵John Macauley to the Niagara Magistracy, 26 December 1838, N.A.C., Submissions to the Executive Council, R.G.1 E.3, vol.38, p. 192.

⁶⁶Johnson, Becoming Prominent, pp. 71-74, 78.

Almost 69% of Niagara magistrates were militia officers and 67% of them had served as officers before their appointment.⁶⁷

In the Niagara District where the 1812 War was severe, the officers became local heroes. As memories faded, the ambivalence over the war was reinvented into military pride and patriotism for the victorious combatants.⁶⁸ Minimizing the crucial support of the British military, the House of Assembly claimed "It was the gallant defense ... by its own Militia" that had saved the province.⁶⁹ Twenty-six Niagara magistrates were officers during the 1812-14 War, including William Hamilton Merritt, John C. Clark, Robert Nelles, Samuel Street Jr., James Cummings, James Macklem, George Keefer and William Crooks.

The strength of the militia connection continued after the rebellions in 1837 with the threat of American raiding parties. In December 1837 John Croker who had served as a constable for Cayuga Township in 1831 wrote to William Hamilton Merritt, that he had 55 volunteers ready as well as 50 Indians in reserve if needed.⁷⁰ In January 1838, Lieutenant-Governor Sir Francis Bond

⁶⁷N.A.C., Militia Registers, R.G.9 IB5, Reels T3488-3489. See also L.H. Irving Officers of the British Forces in Canada During the War of 1812-15 (Welland: Welland Tribune Print, 1908), pp. 70-83.

⁶⁸David Mills, The Idea of Loyalty in Upper Canada, 1784-1850 (Kingston: McGill-Queen's University Press, 1988), pp. 25-26.

⁶⁹Journals and Proceedings of the House of Assembly (sic) 6 February 1816, p. 169, cited in Jane Errington, The Lion, the Eagles, and Upper Canada: A Developing Colonial Ideology (Kingston: McGill-Queen's University Press, 1987), p. 102.

⁷⁰John Croker to William Hamilton Merritt, 8 December 1837. N.A.C., The Merritt Papers, R.G.24 E 1, Vol.13, p. 2035.

Head commissioned two incorporated militia battalions for six months service, the Queen's Niagara Fencibles, led by Colonel James Kerby J.P. and the First Frontier Light Infantry. In March 1838 magistrate Kerby took over the entire militia command.⁷¹

While a commission in the militia was one stepping stone to the magistracy, membership in the commercial strata was another. Fully 61 out of the 73 magistrates, for whom an occupation can be found, were part of a bourgeois commercial group. (See Table 3.2)

TABLE 3.2.
Occupation of Magistrates

Merchant	40	Manufacturer	3
Farmer	32	Tavern keeper	1
Miller	27	Lumbering	1
Distiller	11	Financier	1
Shipper	5	Indian Trader	1
Ship Owner	5	Clerk	1
Tanner	4	Minister	1
Banker	5	Secretary of Corporation	1
Company Director	3	Cabinet Maker	1
Innkeeper	3	Book Keeper	1
Doctor	4	Fur Trader	1
Land Speculator	3	Manager of Corporation	1
Company President	3	Builder	1
Teacher	3	Grocer	1
		Newspaper Owner	1

165 occupations

Source: Dictionary of Canadian Biography, Upper Canada Census, 1842, 1851, Appendices to the Journal of the Legislative Assembly, Johnson, Becoming Prominent, and The Niagara Historical Society Transactions.

More than half of the magistrates were merchants and 33 merchants held or had held 75 other occupations. The commercial element in

⁷¹Cruikshank, A Memoir of Colonel the Honourable James Kerby, His Life and Letters, p. 169.

the magistracy was clearly the dominant group and had access to wealth that allowed them to invest in other ventures. Sixteen merchants combined merchandising with milling, while six had both mills and distilleries. Ten other millers were also distillers. The eight men who had the most occupations were William Hamilton Merritt, John C. Clark, Robert Nelles, Samuel Street, James Cummings, James Macklem, George Keefer and William Crooks, all charter members of the earliest settlement.

Magistrates with multiple businesses often were large entrepreneurs and provided the commercial infrastructure for entire villages. Magistrate William Crooks' factories, mills and store formed an extensive commercial complex that dominated the town of Grimsby.

[It] consists of a large Grist Mill, a Potash Manufactory, a Bark Mill, a Carding Machine, a Blacksmith's Shop, and a Tannery. Mr. Crooks has a Store in the village, is a large landowner, and has been a merchant in this Province for thirty years. He is also the Post-Master of the place, and a magistrate of the Gore and Niagara Districts.⁷²

Similar villages like Ball's Falls in Louth Township⁷³ were dotted along the waterways of the Niagara landscape. Magistrates like William Crooks and George Ball controlled most village business, provided the majority of jobs and refined produce from

⁷²Colonial Advocate, 1 July 1824, "Documents Relating to the Niagara", compiled and edited from contemporary sources by Leo A. Johnson (published privately on computer diskettes by the Upper Canadian Documentary History Association, Box 274, Norwood, Ontario).

⁷³Ball's Falls, with its grist, saw, carding mills, and shops was started by magistrate George Ball Sr., W.P.J. Millar, "George P.M. Ball: A Rural Businessman in Upper Canada", Ontario History, LXVI (1974), pp. 65-78.

the surrounding countryside for shipment to market. Their multiple businesses resulted in extensive local influence.

While most magistrates were involved with commercial ventures, some businesses were more acceptable than others. In the 1830s, complaints arose over magistrate William Anthony's ownership of a tavern. Although nothing is known about Anthony's early life, by the mid-1820s he owned steam grist and saw mills as well as a distillery on the Niagara River.⁷⁴ This placed Anthony within the acceptable occupational strata and in 1828 the government appointed him a magistrate. By 1834 Anthony also owned a "grocery" that was licensed to Harrison Thompson.⁷⁵ Groceries in Upper Canada sold liquor as well as merchandise and were usually taverns. When magistrate James Kerby informed the Lieutenant-Governor that Anthony kept a "Grog shop", the Lieutenant-Governor replied "his keeping a tavern is quite sufficient to make his removal from the Commission necessary."⁷⁶ Although Anthony retained his commission, tavernkeeping was obviously less acceptable than his other occupations of milling and distilling.

Milling and distilling as well as merchandising were acceptable avenues to the district magistracy. Although merchants could be the importer and exporters with contacts in Montreal and

⁷⁴Illustrated Historical Atlas of County Haldimand, Ontario, (Toronto, H.R Page and Co., 1879), p. 774.

⁷⁵Inhabitants of Bertie Township to the Quarter Sessions, 26 December, 1834, A.O., Niagara Court Records, R.G.22, Series 372, January (1835), Box 18, Tavern and Shop Records, File 26.

⁷⁶Cruikshank, A Memoir of Colonel The Honourable James Kerby, His life in Letters, p. 106.

Great Britain, some were also retailers. They provided farmers with all necessary supplies⁷⁷ as well as local credit.⁷⁸ Supplying credit to local farmers, however, had its pitfalls. Montreal suppliers, Auldjo Maitland, cautioned Thomas Cumming that giving credit "has been the ruin of many in your province, as well as in this".⁷⁹ Despite this advice, there is evidence in magistrates' wills that merchants continued to act as creditors. In 1833 merchant magistrate John Warren died intestate. The inventory of his estate showed 367 book debts, £856.5.10 considered good, £952.7.0 doubtful and £1194.11.9 bad.⁸⁰ The 1852 will of magistrate Moses Brady, listed book debts of which, £142.8.6 were good, £73.19.13 doubtful and over £2000. bad.⁸¹ Through charity, goodwill or bad judgement, the merchants were obviously carrying a number of their local customers.

Despite the financial drain of providing local credit, the wills of some merchants demonstrate considerable commercial success. Often wills can not be quantified. References to land frequently omit acreage while money, if specified, variously

⁷⁷McCalla, Planting the Province, p. 78.

⁷⁸Ibid. p. 147. See also W.P.J. Millar, "George P.M. Ball: A Rural Businessman in Upper Canada", Ontario History, LXVI (1974), pp. 65-78.

⁷⁹E.A.Cruikshank, "A Country Merchant In Upper Canada, 1800-1812", Ontario Historical Society Papers and Records, XXV (1929), p. 165.

⁸⁰John Warren Jr., A.O., Court of Probate Estate Files 1793-1859, R.G.22, M.S.638, 1/6/33.

⁸¹Moses Brady, A.O., Court of Probate Estate Files 1793-1859, R.G.22, M.S. 638, 25/6/52.

appears in pounds and dollars. Many widows are left a yearly amount, but no source for the allowance. Wills like that of James Cummings often obscure the size of the estate. Cummings, one of the most successful merchant entrepreneurs in the Niagara, simply left everything to his dear wife Sophia Macklem.⁸² The will of John Lees Alma, however, listed a complete inventory of his finances. Alma, an Anglican, immigrated from Ireland⁸³ to Niagara town where he carried on a flourishing retail trade.⁸⁴ His friendship with Attorney General, R.S. Jameson, no doubt helped him achieve his appointment to the magistracy in 1833. Alma left \$51,999.00 in cash, various mortgages, stocks and government securities.⁸⁵ While Alma had a large estate, some merchants were not as successful. John Clark left £850. in bequests and 9 lots to various relatives.⁸⁶

Some wills showed a high level of wealth. Richard Woodruff a merchant miller at St. Davids, left an estate valued at \$89,000.00, including \$35,220.00 in bequests, 3 farms and 2

⁸²James Cummings, A.O., Court of Probate Estates Files, R.G.22, M.S. 638, 17/5/48.

⁸³N.A.C. Upper Canada Census, 1851, R.G. 31, Lincoln County, p. 83.

⁸⁴Reports of the Alma family are found in letters of Anna Jameson in Clara Thomas, Love and Work Enough: The Life of Anna Jameson (Toronto: University of Toronto press, 1967), p. 75.

⁸⁵John Lees Alma, A.O., Surrogate Court Lincoln County, R.G.22, St. Catharines, (1890), No.1447.

⁸⁶John Clarke, A.O., Estate Files, R.G. 22, M.S. 638, Grantham (1862), No.105.

lots.⁸⁷ Mills, which proved very lucrative for their owners, also provided an essential local infrastructure for an agricultural community. With the insurance of year-round fast water along the Welland canal, Magistrates Thomas Butler, Ogden Creighton, William Hamilton Merritt and the Keefers constructed mills along its banks. George Keefer built a grist mill with four pairs of stones to grind grain into a commercially acceptable grade of flour. The mill was four stories high, ground 100 bushels of grain per day and rented for £250 per year.⁸⁸ Jacob Keefer's Welland Mills, another four story structure, produced 250 bushels of flour a day and annually rented for £500. From 1833 to 1851, yearly flour shipments from the six mills at St. Catharines rose from between 20 to 30,000 barrels to 137,500 barrels.⁸⁹ West of St. Catharines in Louth Township, the Ball's grist mills produced from 800 to 2000 barrels of flour per season.⁹⁰

While mills were clearly important for marketing local grain, they also showed that the millers had access to large investment capital. The larger commercial mills of the Merritts and Keefers required extensive capital and were likely to cost about £3,000.

⁸⁷Richard Woodruff, A.O., Estate Files, R.G.22, M.S. 638, St. Davids (1872), No.433.

⁸⁸N.A.C. Upper Canada Census, 1851, R.G.31, Village of Thorold, p. 2.

⁸⁹John N. Jackson, St. Catharines Ontario: Its Early Years (Belleville: Mika Publishing Company, 1976), p. 250

⁹⁰A.J. Rennie, Louth Township, Its People and Its Past (Louth: Louth Township Centennial Committee, 1967), pp. 16-17. See also Douglas McCalla, Planting the Province, p. 96.

while smaller mills cost from £500 to £1000 or more.⁹¹ The wealth created by flour mills in turn increased disposable income that allowed for secondary investment in other commercial ventures.⁹² James Macklem added a tannery and a distillery. George Keefer built a saw mill and a cotton factory with twenty looms and seven hundred spindles. Jacob Keefer built a saw mill that averaged a £209. profit for the first twelve years of operation.⁹³

Milling was often combined with distilling and ten of the eleven millers also ran distilleries. Consumption of local whisky was pandemic and in 1803 the grain distilled equaled the amount exported from Upper Canada.⁹⁴ Distillers not only produced whisky, but the resulting mash was used to feed hogs. A distillery in Stamford township manufactured about 7200 gallons of whisky, but also produced 100 to 150 barrels of pork per annum for shipment to Quebec or markets around Lake Ontario.⁹⁵

The wealth of the commercial elite was displayed in their homes and estates. While most people lived in log or one storey frame houses costing from £25 to £250,⁹⁶ some of the district

⁹¹Ibid., p. 97.

⁹²Jackson, St. Catharines, pp. 250-255.

⁹³William Ormsby, "Keefer, Jacob", D.C.B., Vol.X (1972), pp. 394-395.

⁹⁴McCalla, Planting the Province, p. 25.

⁹⁵Ibid., pp. 62, 81.

⁹⁶G.P. de T. Galzerbrook, Life in Ontario: A Social History (Toronto: University of Toronto Press, 1975), p. 32.

elite carried on a life of great elegance in mansions and graceful town houses. George Ball lived at "Locust Grove". His house was a Georgian brick home panelled in carved black walnut with large drawing rooms both upstairs and down, a dining room that could seat sixty and had servants quarters.⁹⁷ Robert Nelles took ten years to build "the Manor", using stone masons and ship's carpenters from Niagara. Finished in 1789, it was a gracious stone home with deep set windows, hand carved fireplaces, a kitchen wing and a private office for performing marriages.⁹⁸ Samuel Street Jr. lived a sumptuous life style at "Clark Hill" a stately square-towered mansion built on the heights overlooking the rapids on the Niagara River.⁹⁹

In Niagara town the six surviving magistrates' residences¹⁰⁰ show that these men lived a life of refinement amidst the rough and tumble of a frontier society. The houses are distinctive for their regency designs. Whether wood, brick or stucco over brick they featured fluted pilasters with Ionic capitals, elegant sweeping stair cases, large drawing rooms, sometimes small ballrooms and often wings for servant quarters. Not all

⁹⁷Ibid. p. 290.

⁹⁸Campbell, Niagara, Hinge of the Golden Arc, p. 337, and Janet Powell, Annals of the Forty, Vol.1, p. 34.

⁹⁹Campbell, Niagara, Hinge of the Golden Arch, pp. 230, 226.

¹⁰⁰The homes of Col. McDougal, R.M. Crysler, James Lockhart, Joseph Clench, John Alma and William Claus are discussed in J.P.Stokes and R. Montgomery, Old Niagara on the Lake (Toronto: University of Toronto Press, 1971), pp. 3,14,15,22,24,57.

magistrates lived in such a stylish manner, but the homes that have survived show an access to wealth well beyond the norm.

Some members of the commercial elite, however, found wealth a fleeting thing. By 1828 magistrate Alexander Hamilton had run through his portion of Robert Hamilton's considerable patrimony.¹⁰¹ With the help of John Strachan and the Jarvis family, Hamilton secured the appointment as the district Sheriff. As Sheriff he received an annual salary of £50 and over £200 in fees for selling land for back taxes or debt.¹⁰² The position as postmaster at Queenston, brought him 20% of all postage on letters going to the United States and Great Britain.¹⁰³ He also became a Surrogate Court Judge and Deputy Collector of Customs. By 1833 Hamilton had enough capital to build "Willow Bank" a palatial mansion at Queenston.¹⁰⁴ When the government positions ended with his death in 1839, however, his family was left practically destitute. John Macaulay, concerned over the fate of Alexander's nine children, commented "I really know not how they will manage to subsist."¹⁰⁵

¹⁰¹Bruce G. Wilson, "Hamilton, Alexander", D.C.B., Vol.VII (1988), pp. 374-376.

¹⁰²N.A.C., Lower Canada, Upper Canada and Canada: Blue Books of Statistics, 1821-1864, Vol.144, pp. 78-79.

¹⁰³Colin Troup, "Postal Villages in the Niagara Peninsula", Villages in the Niagara Peninsula, p. 97.

¹⁰⁴Bruce Wilson, "Hamilton, Alexander", D.C.B., Vol.VII (1988), pp. 374-376.

¹⁰⁵John Macaulay to Ann Macaulay 24 February, 1839, A.O., The Macaulay Papers, MS 78 R3, Reel 449.

Many magistrates, like Hamilton were part of the district officialdom. (See Table 3.3)

TABLE 3.3.
Public Appointments

Office	Numbers of Magistrates
Postmaster	13
Collector of Customs	12
Commissioner for Affidavits	11
Commissioner of Marriage Licences	6
Commissioner to administer the oath	5
Land Surveyor	3
Inspectors	3
Ferry Rights	2
Commissioner of Aliens	2
Assistant Judge	1
Sheriff	1
33 magistrates	59

Source: A New Almanac for the Canadian True Blues (York: Peter Baxter, 1834). A.O. Niagara Court Records, R.G.22, Series 372 (1828-1841), Box 1-40.

Some public appointments were not as rewarding as others. Customs inspectorships were usually lucrative,¹⁰⁶ but postmasters who served in the interior townships made little more than free postage on their mail. Assistant judgeships were also poorly paid. When the position of assistant judge for the District Court became vacant, the government offered it to magistrate James Muirhead, chairman of Quarter Sessions. Muirhead declined. He had learned that District Court judge George Ridout took "most of the compensation" for himself. As the fees were presently divided, he

¹⁰⁶Customs officers received £12.10 out of every £100 of illegal goods seized. See Cruikshank, A Memoir of Colonel the Honourable James Kerby, His Life and Letters, p. 270.

felt that there was not enough to "adequately" pay him.¹⁰⁷ Official appointments could only in a few cases replace the accumulation of wealth derived from local commerce.

The magistracy who had a firm grasp on the commercial life of the district held all the higher positions in the Niagara. As time went on, they were also successful candidates for the House of Assembly. The political climate in the Niagara had been largely reform during the 1820s, but increasingly the Niagara electorate chose members of the legal establishment as their provincial representatives. In 1828 none of the five elected representatives were magistrates. By 1830, when there were six seats, magistrates held three out of the six. The endowment of the magistracy on J.J. Lefferty and David Thorburn ensured that from 1834 to 1841, with the exception of Dennis Woolverton (M.H.A. 1834-36) all Niagara seats were held by either magistrates or Charles Richardson, Clerk of the Peace, and Gilbert McMicking, a coroner, both members of the district legal establishment.

An appointment to the magistracy was an official recognition of prominent local men. As Chief Justice Robinson argued "the advantages of education, and of superior natural intelligence, ... of wealth, and respectable stations in society" exerted "a very considerable influence".¹⁰⁸ Men of wealth, education and property

¹⁰⁷James Muirhead to Major Hillier, 3 March 1828, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.88, pp. 48250-48252.

¹⁰⁸Cited in "Introduction", Provincial Justice: Upper Canadian Legal Portraits, ed. by Robert L. Fraser, p. xxxviii.

added prestige to the district bench. As militia officers and Anglicans, the magistracy shared many of the same beliefs of the York hierarchy, but as commercial leaders and members of prominent local families their stature was securely tied to the district. Although the appointment was a provincial one, the weight of local opinion was very strong. Chief Justice Robinson might weed out unworthy candidates, but previously appointed magistrates and other officials provided a crucial stamp of approval. The approval of local men ensured that families maintained their place in the social order, while their disapproval could prevent it. The continuing advancement of men from prominent and successful local families ensured a tightly connected district hierarchy with local-standing district allegiances.

Chapter IV

Local Allegiances and Alliances

"Society was one in which the social identity was strong, in which alliances were formed in response to local needs, in which political and economic roles were fused".

S.J.R. Noel.¹

Following Mackenzie's and Lord Durham's criticism, historians have longed viewed the Upper Canadian social order through the prism of the Family Compact. Durham found it an oligarchy that possessed all the highest offices, wielded all the powers of government and dispensed official patronage.² People have disagreed over its size. Mackenzie wrote that it was a vast nefarious organisation connected by family,³ While the historian R.E. Saunders has limited it to the rule of eight men.⁴ Whatever its size or composition, belief in the rule of the Family Compact presupposed that all influence flowed from a centralised powerful group.

¹S.J.R. Noel, Patrons, Clients, Brokers, p. 18.

²John George Lambton, 1st Earl of Durham, Report on the Affairs of British North America (Montreal:1839), p. 56.

³The Selected Writings of William Lyon Mackenzie 1824-1837, ed. By Margaret Fairley (Toronto: university of Toronto Press, 1960), pp. 132-133.

⁴R.E. Saunders, "What was the Family Compact", Ontario History, XLIX (1957), pp. 177-78.

Upper Canadians, however, were more affected by the government of their districts than the York-based Family Compact.⁵ As lay people, the magistracy often held coincident interests with their community and provided leadership beyond their required duties as district governors. The magistracy, however, was never a monolithic group. Commercial rivalries, political differences and divergent opinions sometimes divided their leadership. Despite internal divisions, most magistrates were not political ciphers for the provincial government at York. Many magistrates were ambivalent towards provincial government policies and when regional concerns conflicted with the central elite, they supported their constituency.

The magistrates' attitude towards different religious sects in the Niagara often differed from that of the central government. Whereas the Family Compact was noted for its commitment to the Church of England as a state religion, the Niagara magistracy consistently promoted a more tolerant attitude toward religious minorities. In an effort to broaden religious tolerance and prevent district tension magistrates endeavoured to liberalise the religious privileges for dissenting congregations like the Quakers, Tunkers and Mennonites. The Niagara had the largest

⁵For the influence of district government with the local people see J. H. Aitchison, "Local Government in Upper Canada". Patrick Brode also made the argument that the district government was more influential than the central government at York, Brode, Sir John Beverley Robinson, p. 145.

Mennonite congregation in Upper Canada⁶ As well as a large complement of Quakers and Tunkers that together formed about eight percent of the population. Pacifist belief in mutual aid for others as well as themselves,⁷ however, resulted in an influence far beyond their numbers. They helped new settlers build homes and barns, began community schools⁸ and spread highly developed farming techniques.⁹ Although particularly law abiding and productive, their anti-war stance cost them an annual wartime tax of £5 or a peacetime tax of 20 shillings for each male family member.¹⁰ These taxes were onerous for large families who were threatened with the loss of their lands if not paid.¹¹ This led to conflict between the magistracy and their pacifist constituents who construed the tax as a support for war. When the magistracy used the tax money to build local roads, the improvements were often made to other parts of the district

⁶By 1841 there were 3,022 Mennonite in the Niagara. This was more than half of the provinces totals of 5,379. See Frank H. Epp, Mennonites in Canada, 1786-1920 (Toronto: Macmillan of Canada, 1974), p. 72.

⁷Epp, Mennonites in Upper Canada, 1786-1920, p. 84. For the Quakers see Schrauwers, Awaiting the Millennium, pp. 80-81.

⁸For a description of a Quaker school in Bertie Township in the Niagara see Fairley, The Selected Writings of William Lyon Mackenzie, pp. 32-33. See also Epp, Mennonites in Upper Canada, 1786-1920, p. 85.

⁹Epp, Mennonites in Canada, 1786-1920, p.76.

¹⁰Ibid., p. 100.

¹¹Henry Putman, Troup, Davitz and Peter Cross to R.S. Jameson, 18 April 1833, N.A.C., Upper Canada Sundries, R.G.5, A1, Vol.128, pp. 70661-70663.

instead of the pacifist communities. Occasionally, residents who viewed the pacifist anti-war position as disloyalty harassed and beat them.¹²

To promote acceptance of the pacifist community, magistrates David Thorburn, John Johnson and Michael Graybiel lobbied against the tax.¹³ Graybiel solicited the help of magistrates William Hamilton Merritt and John Clark to have the tax removed.¹⁴ At the very least, he wanted the fines applied towards the improvement of the roads in the pacifist settlements rather than expended on roads in other parts of the district. Johnson supported pacifist petitions¹⁵ And Thorburn advocated the repeal of the militia tax in the Assembly.¹⁶ After 1841 the Niagara Municipal Council, made up almost exclusively of magistrates, petitioned the government¹⁷ Until the law was finally repealed in 1849.¹⁸

¹²Petition of Lewis Willson, Samuel Birdsall, et al., AN.O., Niagara Court Records, R.G.22, Series 372, January (1829), Box 3, Petitions, File 9.

¹³From 1792-1812 Niagara magistrates introduced and consistently supported the extension of religious privileges for the many sects that had immigrated to the Niagara. Bruce Wilson "Patronage and Power: the Early Political Culture of the Niagara Peninsula", The Capital Years, p. 60.

¹⁴Michael Graybiel to William Hamilton Merritt, 2 January 1833, N.A.C., Merritt Papers, R.G.24, E1, Vol.8, p. 885.

¹⁵Epp, Mennonites in Canada, 1786-1920, p. 106.

¹⁶St. Catharines Journal, 17 November 1836.

¹⁷The chronology of the lobby against the militia tax is found in Epp, Mennonites in Canada, 1786-1920, pp. 106-107.

¹⁸Ibid., p. 107.

Religious tolerance to prevent conflict found expression in the Niagara magistrates' positive attitude towards the Irish Catholic minority. Catholic Irish canallers had settled along the Welland canal from Port Dalhousie to Port Colborne and by 1832 formed one-fifth of the population of St. Catharines.¹⁹ When an avowed Orangeman, John Aikins, applied to be a magistrate, William Hamilton Merritt spoke out against the "colour" of his politics and he was never appointed.²⁰ In contrast to the Bathurst District where the magistracy collaborated with the Orange Order against the Catholic Irish labourers at Bytown,²¹ The Niagara magistracy rejected their influence. Orange processions, magistrate Thomas Butler claimed, only led to anger and riot between "parties who hitherto in this district have lived on terms of amity and good fellowship".²²

The interest in maintaining public peace extended to the prevention of excessive drinking, a root cause of most local violence.²³ As Junius wrote, liquor had "killed more people,

¹⁹J.L.Runalls, The Irish on the Welland Canal, (St. Catharines: St. Catharines Public Library, 1973), p. 10.

²⁰William Hamilton Merritt to Lieutenant Colonel William Rowan, 13 July 1833, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.131, pp.72227-72229.

²¹Michael Cross, "The Shiners' War: social violence in the Ottawa Valley in the 1830s", Canadian Historical Review, LIV (1973), pp. 1-26.

²²Thomas Butler to All Niagara Magistrates, 8 July, 1839, AN.O. Niagara Court Records, R.G.22, Series 372, July (1839), Box 34, Orders, File 20.

²³Glazebrook, Life in Ontario, p. 62.

ruined more families, and destroyed more inhabitants than either fire, famine, fever or fury combined".²⁴ Magistrate George Keefer lead the fight against the heavy consumption of alcohol. Keefer held the first Temperance Meeting in 1829 and was the chairman of the first Niagara Temperance Society in 1830.²⁵ Because the temperance movement had the support of most of the Protestant churches, Gerald Craig intimates that the movement had Reform overtones.²⁶ Magistrate Keefer who was a Tory, probably held a more pragmatic view coloured by his judicial experience of dealing with many drunken assaults.

Magistrates took a leading role in education by acting as school patrons and as district school trustees. Most settler believed that education was a crucial lever for bettering one's social position.²⁷ By 1827 the Niagara contained one Grammar School and 37 Common Schools. Magistrates Robert Hamilton Jr., Robert Addison, Dr. James Muirhead (president of Quarter Sessions) Robert Dickson, and Sheriff Richard Leonard (a former magistrate) sat on the Education Board from 1826 to 1830.²⁸ The Trustees for the District Grammar School was often the same people as for the

²⁴Junius (Seymour Phelps), St. Catharines, A to Z (St. Catharines: st. Catharines Historical Society, 1856), at T.

²⁵Ibid.

²⁶Craig, Upper Canada, p. 208.

²⁷Gidney and Millar, Professional Gentlemen, p. 232.

²⁸Report of Niagara School Trustees (1826), N.A.C., Educational Papers 1791-1841, R.G.5 B11, Vol.III, No.94 and Report of Niagara School Trustees, (1830), Vol.IV, No.257.

Common Schools. In the 1830s magistrate Robert Melville, Daniel McDougal, George Ball, Thomas Butler who was chairman of Quarter Sessions after Dr. Muirhead, James Alma and James Lockhart all served.²⁹ Magistrate Jacob Keefer, one of the colony's leading industrialists, became Niagara's first school inspector.³⁰

Since the district Grammar School was located in Niagara town, St. Catharines magistrates supported a private academy for their area. In the 1830s magistrate George Rykert, William Hamilton Merritt, George Adams, and future magistrates Elias Adams and Henry Mittleberger subscribed to build the Grantham Academy.³¹ In 1833 magistrate George Keefer, James Black and George Adams served as Grantham Academy trustees.³²

Magistrates encouraged the education of local farmers and the improvement of agriculture. In 1793, Lieutenant-Governor Simcoe had established District Agricultural Societies. The Lieutenant-Governor acted as patron and gave a set of Arthur Young's Annals of Agriculture and an annual donation of ten guineas to foster agricultural education.³³ The early Niagara Agricultural Society

²⁹Robert Mellville to Lieutenant Colonel Rowan, 22 November 1832, N.A.C., Educational Papers, 1791-1841, R.G.5, B11, Vol.IV, #397 and Vol.V, No.428.

³⁰Bruce Curtis, True Government by Choice Men?: inspection, Education and State Formation in Canada West (Toronto: university of Toronto Press, 1992), p. 103.

³¹Junius (Seymour Phelps), St. Catharines, A to Z, at E.

³²Trustees of Grantham Academy to Sir John Colbourne, 20 November 1833, N.A.C., Educational Papers 1791-1841, R.G.5 B11, Vol.V, No.430.

³³Simcoe's Correspondence, Vol.I, p. 318.

consisted of 25 members. All but five belonged to the magistracy.³⁴ By the 1830s the board of directors was almost exclusively township magistrates.³⁵ Although Michael Cross depicted the Bathurst Agricultural Society as an elite social club where the local gentry merely paid "lip service" to agricultural improvement,³⁶ Agriculture Societies played a key role by supplying vital information on crop cultivation and by adding new breeding stock.³⁷ In 1832 when magistrate George Adams was president, he and magistrate Dr. Cyrus Sumner travelled to the United States and spent the government donation, now £100,³⁸ On prize stock for public auction.³⁹

Improved agricultural production would be worthless, however, if transportation costs remained high. When produce had to be carted over long distances, William Hamilton Merritt stated "it cease[d] to be worth raising".⁴⁰ To provide a cheaper

³⁴Carnochan, "Names Only But Much More", Niagara Historical Society Transactions, XXVII (1916), p. 17.

³⁵John Clark to William Hamilton Merritt, 23 February 1836, N.A.C., Merritt Papers, M.G.24, E1, Vol.1, pp. 75-78.

³⁶Cross, "The Shiners' War: social Violence in the Ottawa Valley in the 1830s", Canadian Historical Review, LIV (1973), p. 17.

³⁷Guillet, Pioneer Farmer and Backwoodsman (Toronto: the Ontario Publishing Co. Ltd., 1963), Vol.II, pp. 130-131.

³⁸The government money was increased to £100 in the 1820s, *Ibid.*, p. 129.

³⁹George Adams and the Sale of Cattle, 13 March 1832, N.A.C., Upper Canada Sundries, R.G.5 A 1, Vol.115, pp. 64484-64485.

⁴⁰Merritt quoted in Talman "The Impact of the Welland Canals on the Community", The Welland Canal, p. 83.

transportation route William Hamilton Merritt, George Adams, George Keefer, Richard Woodruff, R.M. Chrysler, and J.J. Lefferty⁴¹ Promoted the building of the Welland canal. A canal to avoid the falls and the rapids in the Niagara River was not a new idea.⁴² In response to Gourlay's 1818 questionnaire nine Niagara townships replied that a canal would most improve their township.⁴³ As the inhabitants of Crowland proposed

Nature invites art, in strong terms to open a canal... [to] reduce the carriage of commodities from about 42 miles to 19, and render the navigation entirely safe, besides conveying pure water through this part of the country that is a very desirable object.⁴⁴

A canal would allow easier passage between lakes Ontario and Erie, provide more mill sites along its length and auxiliary water for mills along the Forty Mile Creek during the dry summer season.

The proposed route for the canal had the effect of splitting the Niagara District magistracy into two camps. The St. Catharines group wanted the northern terminus of the canal at the mouth of the Twelve Mile Creek on Lake Ontario. Magistrates who had merchant businesses in Niagara town and along the river

⁴¹E.A. Cruikshank, "The Inception of the Welland Canal", Historical Society Papers and Records, Vol.XXV (1929), pp. 60-88.

⁴²Robert Hamilton had proposed the building of a canal to Lieutenant-Governor Simcoe in 1793 and six years later Hamilton, George Forsyth and Thomas Clark again took up the issue. Campbell, Niagara, Hinge of the Golden Arc, p. 293.

⁴³Robert Gourlay, Statistical Account of Upper Canada (New York: Johnson Reprint Corporation, 1966), pp. 210-242.

⁴⁴Ibid., p. 215.

foresaw the loss of commerce to the St. Catharines area and wanted the canal to empty into Lake Ontario at Niagara town.⁴⁵ Even as the canal was constructed, the axis of commerce was shifting to the Thorold, St. Catharines area.

The Channel of Commerce is completely altered, not a solitary country team is to be seen on mercantile purposes. 'Tis true a number of sleighs passes, but the primary object of their owners is LAW business, or on such matters as cannot be transacted by the canal monopoly. You have no idea of the distance the frontier is thrown behind by that extravagant monopoly and wild goose chase, the Welland Canal.⁴⁶

Although the Niagara group continued to lobby for the integration of Niagara town into the canal system,⁴⁷ The St. Catharines group won out.

The leadership of the canal promoters resulted in increased district prosperity for local contractors and suppliers. As the largest capital project in Upper Canada, the canal was a boon to

⁴⁵Colonial Advocate [Toronto] 23 March, 1826 found in "Documents Relating to the Niagara District", compiled and edited from contemporary sources by Leo A. Johnson, (published privately on computer diskettes by the Upper Canadian Documentary History Association, Box 274, Norwood, Ontario).

⁴⁶Gideon Guess to the Editor, Queenston 15 February, 1826, Colonial Advocate, 23 March, 1826 found in "Documents Relating to the Niagara District", compiled and edited from contemporary sources by Leo A. Johnson, (published privately on computer diskettes by the Upper Canadian Documentary History Association, Box 274, Norwood, Ontario).

⁴⁷Petition of certain inhabitants of the District of Niagara, Legislative Assembly Debates, Monday 12 February, 1827 in the Colonial Advocate, 15 February, 1827 found in "Documents Relating to the Niagara District", compiled and edited from contemporary sources by Leo A. Johnson, (published privately on computer diskettes by the Upper Canadian Documentary History Association, Box 274, Norwood, Ontario).

Niagara's internal economy.⁴⁸ Teamsters rented their services along with their horses and oxen⁴⁹ And farmers sold hay, straw and oats to feed them.⁵⁰ Local people supplied sand and lime⁵¹ And acted as contractors for hauling and carting.⁵² Magistrates and others opened stores in the new canal-villages to service the influx of canal workers and travellers.⁵³ With the security of a continuous flow of water, the Merritts, the Macklems, and the Keefers built flour mills, grain elevators and factories that provided construction further jobs and employment.

When the trade route shifted from the Niagara River to the Welland canal, the Niagara River magistrates initiated new strategies to reinvigorate their local economy. In 1831 James Muirhead, Thomas Butler, Daniel McDougall, R.M. Crysler, Lewis Clement, John Crooks, Thomas McCormick, James Lockhart, Robert Melville and Samuel Street Jr. Incorporated the Niagara Harbour

⁴⁸Talman "The impact of the Welland Canals on the Community", The Welland Canal, pp. 79-85.

⁴⁹Magistrate James Cummings to Samuel Street, 14 May 1828, Archives of Ontario, Samuel Street Papers, M.S.500, Reel 1, n.n.

⁵⁰Talman "The Impact of the Welland Canals on the Community", The Welland Canal, p. 82.

⁵¹Third Report from the Select Committee Appointed to Examine the Management of the Welland Canal, Appendices of the Journals of the Legislative Assembly, Vol.II (1836-1837), p. 113.

⁵²As many as 48 constables acted as contractors on the canal. For instance, David Price a constable for Humberstone in 1833 and 1834 was listed as a contractor. *Ibid.*, p. 113.

⁵³Duncan McFarland to William Hamilton Merritt, 11 November 1833, N.A.C., The Merritt Papers, R.G. 24 E1, Vol.8, pp. 913-914. See also Kirby, Annals of Niagara, pp. 224-225.

and Dock Co.⁵⁴ This company became the largest private boat builder in Upper Canada. There was extensive docking facilities for repairs and refitting. The Dock Co. Drew a large work force of Scottish mechanics and American artisans to Niagara town. It also spawned steam saw mills, a brass foundry, a steam engine factory, and a branch plant at Chippewa on the Niagara River to build boats for Lake Erie.⁵⁵

The split between the Niagara River magistracy and the St. Catharines group widened with the construction of the Erie and Ontario Railway. In 1833 James Cummings, Robert Grant, Samuel Street and Thomas Clark sought to increase traffic along the river route by building the Erie and Ontario Railway. Finished in 1839, the railway travelled the old portage route around the falls from Queenston to Chippewa. The Welland canal group, however, tried to block it. In a bid to keep traffic exclusively for the canal William Hamilton Merritt strongly opposed the new railroad.⁵⁶ Other magistrates who had invested large amounts of money in the Welland also lobbied against it. Magistrate Ogden Creighton who had invested £3,625. Of his relatives' money in the

⁵⁴Bruce S. Parker, "The Niagara Harbour and Dock Company", Ontario History, LXXII (1980), pp. 115-117.

⁵⁵McCalla, Planting the Province, pp. 119,170.

⁵⁶Cruikshank, A Memoir of Colonel, the Honourable James Kerby, His Life in Letters, p. 103, f.n.1.

Canal Co. Wrote Merritt that he would petition the Lieutenant-Governor to withhold his approval for railroad.⁵⁷

The district rivalry between the St. Catharines and the Niagara River magistrates, however, should not be overplayed. As far as the community was concerned, the competition for development only served to create more jobs. The commercial wealth of the St. Catharines magistracy was balanced by the flourishing Dock Co. And the construction of the railroad around the falls. Until 1863 when the district town moved to St. Catharines, Niagara town also benefitted from the permanent cadre of judicial officials, the influx of people drawn to court and remained the headquarters of the military. It was, however, more of a Tory stronghold that relied heavily on government contracts and appointments and had an outlook that contrasted with the commercialism of the canal magistrates. The Dock Company depended on orders for Upper Canadian ships and the navy, while the canal with its mills depended to a large extent on American and Upper Canadian commerce.

Occasionally, however, the interests of the two groups clashed in the courts. The liberal attitude of the St. Catharines magistracy and the more Tory attitude of the Niagara group is seen in their response to a riot. On 4 July 1833 there was an

⁵⁷Ogden Creighton to William Hamilton Merritt, 7 December 1831, N.A.C., Merritt Papers, M.G.24, E1, Vol.6, pp. 713-16.

anti-American riot at St. Catharines.⁵⁸ Luther Dyer, an American who had come to the Niagara in 1826, ran a hotel for Eleasor Stephenson who also owned the local stagecoach going to Michigan. In the afternoon, Stephenson asked constable William Henry Sanderson if he would join him in a glass of punch, the usual drink on the "fourth". Sanderson replied that he "would have no Yankee independence" and swore he would "whip any person" whom so celebrated. That evening, Sanderson joined a large crowd at the neighbouring inn of Matthew Dittrick. With Deputy-Sheriff Kidd and Tory magistrate George Adams watching, the crowd broke the inn's doors and windows and lobbed fire balls into the lower story and upper gallery.

William Hamilton Merritt laid complaints against the participants, including the constable, the acting sheriff and the magistrate. Merritt, angry at the lack of protection for Americans stated that "the affair should not be smuggled over".⁵⁹ The Gleaner, concerned over the possible loss of American workmen at Niagara, agreed. If Americans could not

look to the civil authority for protection while in peaceable pursuit of their several avocations against the blind fury of a purposely inflamed mob they will quit the province (as

⁵⁸The details come from a charge for an assault. The grand jury at Quarter Sessions refused to indict all people in the riot and would not indict for arson. Thomas Gilliland, William Henry Sanderson, Jacob Haines, et al. For Riot and Assault, AN.O., Niagara Court Records, R.G.22, Series 372 (1833), Box 14, File 45.

⁵⁹William Hamilton Merritt to the Civil Secretary 14 August, 1833 N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.108, pp. 61659-61661. See also the Presentment of the Grand Jury of the Niagara, 13 July 1833, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.131, pp. 72217-72222.

others have already done in consequence of this unnecessary outrage upon their feelings) and others have expressed their determination soon to follow and leave their employers to get along as they can.⁶⁰

Reflecting the more Tory attitude at Niagara town, the grand jury refused to bring in a true bill against Sanderson, Kidd and Adams as well as others involved in the riot. One of the injured men, Gilbert Belnap, charged William Henry Sanderson, Thomas Gilliland, and Jacob Haines for assault, but again the grand jury brought in a "no bill".⁶¹

During the unrest before and after the rebellions, magistrates also disagreed over the use of force and whether to muster the militia. The majority, however, upheld a policy of moderation. The conservative George Rykert M.H.A., wanted to call out the militia.⁶²

My greatest apprehensions... are from a set of rebels in our rear [Pelham Township] whom I am persuaded are only waiting for movements in other parts to pounce upon us like so many wolves hungry for pillage and plunder. There is no doubt of they are having been frequently assembled with Arms.⁶³

The majority of the magistrates led by Henry Mittleberger and William Hamilton Merritt preferred not to involve the militia

⁶⁰Gleaner, 27 July 1833.

⁶¹Thomas Gilliland, William Henry Sanderson, Jacob Haines, et al. For Riot and Assault, AN.O., Niagara Court Records, R.G.22, Series 372 (1833), Box 14, File 45.

⁶²George Rykert to Col. James Fitzgibbon, 13 December 1837, in Read and Stagg, The Rebellion of 1837 in Upper Canada, pp. 317-318.

⁶³George Rykert to C.A. Hagerman, 14, December, 1837, quoted in Clark, Movements of Political Protest in Canada 1640-1840, p. 392.

unless absolutely necessary. In an effort to quieten Pelham Township, both David Thorburn, a moderate reformer, and William Hamilton Merritt held meetings in Pelham and gained assurances that the township would be tranquil.⁶⁴ After the York rebellion, the attitude towards radicals in the Niagara was temperate. Contrasted with the severe mopping up operations in the Home and London Districts after 1837, people arrested on suspicion in the Niagara were quickly examined and released.⁶⁵

Although the magistracy was not always a cohesive group, most supported district concerns whenever they appeared threatened by the provincial government. Paul Romney argued that before the founding of the widely-read Colonial Advocate or the reform turmoil of the middle and late 1820s, Upper Canadians associated their grievances with the powerful men in their locality not the central administration at York.⁶⁶ This, however, did not apply to the Niagara. The aftermath of the 1812 war created a constellation of community complaint and criticism directed towards the provincial government. Most Niagara magistrates joined with their constituents and supported local concerns against the provincial policies. Nowhere is this clearer in their stance over the war losses issue.

⁶⁴Read and Stagg, The Rebellion of 1837 in Upper Canada, p. 316.

⁶⁵J.P. Merritt, The Biography of William Hamilton Merritt (St. Catharines: Leavenworth Press, 1875), p. 175.

⁶⁶Paul Romney, Mr. Attorney, p. 106.

The Niagara District that had seen almost continuous action in the 1812 War accounted for almost half of all war losses in Upper Canada. The 1823-6 commission documented 678 Niagara claims for a total of £182,169.⁶⁷ This represents much of the wealth of the community; the total 1821 assessed value of property in the District was £236,756.⁶⁸ As Sir Gordon Drummond, administrator and military commander from 1813-1815, stated the Niagara had been "devastated and impoverished" by the war.⁶⁹

During the war John Strachan, Chief Justice Thomas Scott, Thomas Ridout and Alexander Wood founded the Loyal and Patriotic Society to assist the sufferers. In 1813 they dispensed 70% of that year's aid to residents of the Home District. The Home District, however, had suffered less than the Niagara, Western, London or Gore Districts. By the end of the war, the society gave 11% of the aid to the Niagara District that had suffered most.⁷⁰

Despite the manifest devastation in the Niagara, the government at York also proved unsympathetic. Lieutenant-Governor Gore maintained that no compensation was needed. "Any injury arising to the inhabitants" he argued, "had been compensated by the means afforded to enrich themselves from the expenditure of

⁶⁷Sheppard, Plunder Profit and Paroles, p. 123.

⁶⁸N.A.C., Upper Canada, Canada West, Civil Secretary's Returns of Population and Assessments 1800-1862, R.G.5 B26, Vol.IV.

⁶⁹ Sir Gordon Drummond quoted in Sheppard, Plunder, Profit and Paroles, p. 115.

⁷⁰Ibid., pp. 130-131.

the army."⁷¹ Any early monetary advantage, however, was offset by the final destruction. Aside from the property losses, half of the total militia back-pays for Upper Canada, £28,784 was owed to the Niagara.⁷² When the original scheme to raise money from the sale of confiscated traitor's farms failed, the government delayed. The neglect of the provincial government seemed particularly unfair when the United States' government promptly repaid their people on the other side of the river.⁷³

Many families had lost not only property, but sons as well. The Thompson family provides a good example. In 1812 magistrate Cornelius Thompson⁷⁴ who had been an officer with the New Jersey Volunteers in the American Revolutionary War was in his fifty-seventh years and ill. His four son, William, Frederick, Augustus and Oliver, however, fought for the British. By the end of the war, Oliver had been killed in action, Frederick was seriously disabled, while Captain William and Lieutenant Augustus Thompson were taken prisoner and not released until 1815. By then magistrate Thompson himself had died.

⁷¹Lieutenant-Governor Gore quoted in E.A. Cruikshank, "Post-War Discontent At Niagara in 1818", Ontario Historical Society, Papers and Records, p. 15.

⁷²Ibid., p. 23.

⁷³Cruikshank, "Post-War Discontent At Niagara in 1818", Ontario Historical Society, Papers and Records, p. 24.

⁷⁴Ernest Green, "A Little Study in Loyalist Genealogy: the Tomsons of Perthshire", Ontario Historical Society, Papers and Records, XXXI (1936), pp. 114-134.

The Thompson farm, meanwhile, had been overrun by American troops and then occupied by British forces. The Americans stole a watch, a horse and saddle and turned their horses into the magistrate's meadows and his grain fields. It was the British, however, who created the most destruction as they picked the landscape clean. British troops and their Amer-Indian allies ransacked the area for fuel, food and transportation. At the Thompson farm, the British officers were welcomed into the main house but the rest was relegated to outlying buildings where they carried on "extensive robbing" to supplement their supplies. As one of the men reported "We burn rails, steal apples, pears and peaches at a great rate... The nests are kept very pleasant and clean from eggs... [and] we feed a turkey every day at the door that is doomed for our Sunday dinner." The British commandeered Thompson's hogs, geese and poultry, potatoes, apples and hay to the value of £189.17.6 while the Americans had caused only £54.5.0 damage. Nine years after the end of the war, the Thompson family was compensated £93.9.6.⁷⁵

The devastation of the war, Gerald Craig argued, created an anti-American sentiment despite the close relations and intermarriages on both sides of the border.⁷⁶ As Jane Errington pointed out, however, the war did not destroy the communal feelings between Americans and the residents of Niagara.⁷⁷ The

⁷⁵Ibid., pp. 119-120.

⁷⁶Craig, Upper Canada, p. 199.

⁷⁷Errington, The Lion, the Eagle, and Upper Canada, pp. 85-86.

anger over the neglect of war claim instead was redirected towards the government at York. In 1818 magistrate David Thompson stated the Niagara positions clearly.

Three years have lapsed since the din of arms ceased: but where are your rewards - What has become of your claims? Should we attribute such neglect to our Parliament, or can we suppose that the Supreme Government hath forbidden the fulfilment of Justice. In my opinion the fault lies with our own Representatives, and it is now high time for us to petition the Prince Regent.⁷⁸

The neglect over backs militia pay and lost property claims grated on magistrates as well as the general population in the Niagara.⁷⁹

The magistrates supported their own claims as well as those of their constituents.⁸⁰ Major David Secord, appointed to the magistracy in 1800, had amassed a considerable estate of 4,800 acres and at St. Davids (named after him) owned a merchant, milling, distilling complex destroyed by enemy fire 18 July

⁷⁸Cruikshank, "Post-War Discontent At Niagara in 1818", Ontario Historical Society Papers and Records, pp. 38-39.

⁷⁹Even Robert Nichol, the quarter master general of militia had to wait years for compensation. Nichol never recovered from his war losses of £4,202.10.0. His payment came a month after his death in 1824. Robert L. Fraser, "Nichol, Robert", D.C.B., Vol.VI, p. 545.

⁸⁰The list of some Niagara magistrates who had lost homes and property included Thomas Butler, Peter Ball, John Crooks, James Crooks, Thomas Merritt, John Clark, Dr. Muirhead, Destroyed at St. Davids was the Secord property and also the house and store of magistrate Richard Woodruff. Magistrates James Macklem, John Warren, Henry Warren, Alexander Grant, James Kerby, and Robert Hamilton also lost homes and stores. Carnochan, "Names only But Much More", Niagara Historical Society Transactions, pp. 23-25.

1814.⁸¹ Elected M.H.A.N.(1816-1820) he championed his cause as well as that of others in the Niagara. By the late 1820s, having still received no compensation, he continued to criticise the central government. He stated that the government had neglected and withheld

any aid or relief to His Majesty's faithful Subjects who fought and bled through the whole of the late war with the United States... it is upwards of twelve years since the most faithful promises and assurances were held out by the leading men of the province that all losses sustained by His Majesty's subjects in consequence of the late war with the United States of America should be paid.⁸²

Secord's losses were still unpaid in 1837 while others waited until the 1840s.

Magistrates in House of Assembly, in the Legislative Council and even Tory newspapers complained of the government's indifference. Robert Nichol, a magistrate for Niagara and member for Norfolk, condemned the government for failing to pay militia pensions to war widows and the disabled.⁸³ Magistrate J.J. Lefferty, M.H.A. Suggested that only those who had not suffered could be so niggardly.⁸⁴ In 1829 Legislative Councillor, Thomas Clark, submitted a petition from the Niagara residents and remarked "the hardship of their case is of long standing" and

⁸¹Campbell, Niagara, Hinge of the Golden Arch, pp. 288-289.

⁸²"Extract from Niagara Papers", Niagara Historical Society Transactions, No.31 (1919), p. 44.

⁸³Cited in Brode, Sir John Beverley Robinson, p. 62.

⁸⁴Gleaner, 13 February 1830.

should be addressed.⁸⁵ By 1832 the Tory Gleaner joined the plea for compensation.

Eighteen years have elapsed since the people were plundered of all they possess[ed] - their property destroyed where it could not be carried away - all this was done while in other parts of the Province the people were getting rich owing to the high wages obtained and the high price of everything the farmer had to sell.⁸⁶

The magistracy and the community unanimously condemned the provincial government's neglect.

The backlash against the provincial government's indifference over the war losses contributed to Niagara magistrates' disregard of provincial anti-American immigration policies. Although Niagara residents recommenced friendly relations with Americans on the other side of the river,⁸⁷ The war had strengthened the provincial elite's garrison mentality and heightened their early suspicions of the largely American settlement in the Niagara.

Heavy American settlement and continuing contact between the two countries at Niagara had resulted in early charges of pro-Americanism. Provincial officials feared that Niagara people preferred American beliefs in liberty and popular sovereignty to a Tory establishment founded on colonial dependence, conservatism

⁸⁵Thomas Clarke to Sir John Colborne, 23 January, 1829 N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.92, pp. 51035-51037.

⁸⁶Gleaner, 30 May 1832.

⁸⁷Errington, The Lion, the Eagle and Upper Canada, pp. 85, 123-124.

and traditional authority.⁸⁸ The first Deputy Surveyor-General for Upper Canada, David W. Smith, felt the republican sentiment threatened the establishment of British rule.⁸⁹ Francis Gore, Lieutenant-Governor (1806-1817), felt Americans who had immigrated to Upper Canada retained "those ideas of equality and insubordination much to the prejudice of this government."⁹⁰ Gore singled out the people of Niagara as being particularly unreliable in the event of a war.⁹¹

Sir Isaac Brock, the Administrator and Military Commander of Upper Canada (1811-1812), was equally uneasy about the political commitment of the Niagara people.

There can be no doubt that a large portion of the population in this neighbourhood [Fort George in the Niagara] are sincere in their professions to defend the country; but it appears likewise evident to me that the greater part is either indifferent to what is passing, or so completely American as to rejoice in the prospects of a change in government.⁹²

To ensure that Niagara people would turn out for a militia summons, Brock proclaimed martial law in the Niagara. Although

⁸⁸Neil MacKinnon makes the same point over the American loyalists who went to Nova Scotia. Neil MacKinnon, This Unfriendly Soil: the Loyalist Experience in Nova Scotia 1783-1791 (Kingston: McGill-Queen's University Press, 1986), p. 118.

⁸⁹D.W. Smith to John Askin, 2 October 1792, Simcoe's Correspondence, Vol.I, p. 231.

⁹⁰Clark, Movements of Political Protest in Canada 1640-1840, p. 229.

⁹¹Burt, The United States, Great Britain and British North America, f.n. 32, p. 183.

⁹²Brock to General George Provost, 12 July 1812, quoted in David Mills, The Idea of Loyalty in Upper Canada 1784-1850, p.26.

refusal to fight could mean arrest and imprisonment by the British army, militia desertions continued.⁹³

The experiences of the war crystallized pre-war suspicions over the large American settlement in the Niagara and elsewhere. After the war Lord Bathurst wanted to curb further American immigration⁹⁴ By banning the sale of Crown lands to American immigrants. Lieutenant-Governor Gore took more drastic action and attempted to halt all American immigration.⁹⁵ He sent out a circular that forbade commissioners to issue the oath of allegiance to anyone, office holders and loyalists and their children excepted, without express permission from his office.⁹⁶ John Strachan, indicative of the Family Compact's anti-Americanism,⁹⁷ Agreed that it was wise to check "emigration from

⁹³The lack of support for the war in the Niagara and elsewhere in western Upper Canada is discussed in Sheppard, Plunder, Profit and Paroles, p. 67.

⁹⁴Lord Bathurst's instructions are found in the reply which Lieutenant-Governor Gore made to Lord Bathurst in 1817. Gore to Bathurst, 7 April 1817, cited in Doughty and Story, Documents Relating To the Constitutional History of Canada 1819-1828 (Ottawa: J.O. Patenaude, 1935), pp. 1-3.

⁹⁵Gore to Bathurst, 7 April 1817, cited in Doughty and Story, Constitutional Documents, pp. 1-3.

⁹⁶S.R. Mealing, "Gore, Francis", D.C.B., Vol.VIII, pp. 336-341.

⁹⁷John Beverley Robinson's anti-Americanism can be found in Brode, Sir John Beverley Robinson, pp. 10, 35. See also Romney, Mr. Attorney, pp. 83-104.

the United States... until a nucleus could be formed of emigrants from the mother country".⁹⁸

Whereas the ban on the sale of Crown lands would have effectively raised the price of privately held property, the prohibition of all American immigration would send land prices plummeting. This was opposed in the Legislative Council by William Dickson and Thomas Clark, both large landowners in the Niagara.⁹⁹ In response to Gore's circular the Assembly went into committee of the whole and led by magistrate Robert Nichol another large Niagara landowner they decided that Gore had exceeded his authority by contravening British statutes.¹⁰⁰ To avoid an open challenge to his authority Gore prorogued the Assembly.

Despite Gore's policy, land speculators in the Niagara magistracy supported American immigration in an effort to sell property, recoup their finances and in the process inject population and commerce into the devastated post-war Niagara

⁹⁸John Strachan to Colonel Harvey, 23 June 1818, quoted in Mills, The Idea of Loyalty in Upper Canada 1784-1850, p. 35.

⁹⁹Bruce A. Parker and Bruce Wilson, "Clark, Thomas", D.C.B., Vol.VI, pp. 148-149.

¹⁰⁰"An Act for naturalising such Foreign Protestants and Others therein Mentioned, as are Settled or Shall Settle, in Any of His Majesty's Colonies in America", Geo.II (1740) c. VII maintained that people could take the oath of allegiance but a seven year wait was necessary for a person to obtain land. There was also the Imperial Act which allowed Lieutenant-Governor Simcoe to give the oath of allegiance and quickly settle Americans in Upper Canada without the need for a seven year wait, "An Act for the Encouraging New Settlers in His Majesty's Colonies and Plantations in America", Geo.III (1790), c. XXVII.

economy. Gore's prohibition had not only threatened the security of new settlers, but also compounded the problem of recouping money to pay war claims from the sale of confiscated traitor estates. Magistrates Alexander Hamilton, Robert Nichol, Robert Kerr, the Reverend Robert Addison, Thomas Clark and William Dickson advocated a continuing liberal policy towards American immigration,¹⁰¹ And Dickson, as a commissioner, continued to administer the required oath.¹⁰² Dickson who claimed to have lost an estimated £3668 in property during the war hoped to sell part of his 94,000 acres on the Grand River. When he openly flouted Gore's prohibition, Gore stripped him of his magistracy.¹⁰³

In the face of the provincial government's known antipathy to Americans, the magistrates who were the main employers continued to hire American workers. In 1819 the Tory Gleaner noted the continuing influx of Americans.

It is a well known fact workmen of no land could be engaged in this town last summers except those who came from the United

¹⁰¹For the hostile attitude of the early Niagara magistrates towards the limitation on American immigrants see Wilson, The Enterprises of Robert Hamilton, pp. 102-103. See also Cruikshank, "Post-War Discontent At Niagara in 1818", Ontario Historical Society, Papers and Records, p. 16.

¹⁰²The opposition of William Dickson and Robert Nichol are noted in the letter of Lieutenant Governor Gore to Earl Bathurst, Secretary of State for War and the Colonies. Gore to Bathurst 7 April 1817, Constitutional Documents, pp. 1-5.

¹⁰³Cruikshank, "Post-War Discontent At Niagara in 1818", Ontario Historical Society, Papers and Records, pp. 18-19.

States, both mechanics and labourers employed in this town was, and still is, nearly all from that country.¹⁰⁴

Aside from the labourers, the magistracy also continued to licence American innkeepers. After the rebellions of 1837 when it became politic to complain of American traitors, petitioners from Ten Mile Creek in Grantham Township, stated that the magistrates had been licensing "foreigners" [Americans] "for many years".¹⁰⁵ Thomas Bryant, from the Grand River, complained of the lumber crews from Lower Canada and the United States who frequented the inn of a rival Samuel B. King, "a foreigner" who had never taken the oath of allegiance but had been licensed by the magistrates. He related that their foremen encouraged the men to patronise King who held republican beliefs and to avoid "Bryant's dammed Tory house".¹⁰⁶

After the rebellions magistrates disagreed over they are licensing policy towards Americans. Some magistrates were willing to reassess their previous approval, while others felt that to remove licenses would damage the good relations with the largely American settlement in the Niagara. In 1838, magistrate John Clark, who had previously rented an inn to Matthew Hawing, now

¹⁰⁴ Gleaner, 29 January 1818, quoted in E.A. Cruikshank, "The News of Niagara a Century Ago", Ontario Historical Society, Papers and Records, Vol. XXIII (1926), p. 50.

¹⁰⁵ Inhabitants from 10 Mile Creek to the Magistrates, 20 December 1838, AN.O., Niagara Court Records, R.G.22, Series 372, December (1838), Box 33, Tavern and Shop Records, File 16.

¹⁰⁶ Thomas Bryant to Captain Daniel McDougal, 15 January 1838, AN.O., Niagara Court Records, R.G.22, Series 372, March (1838), Box 31, Shop and Tavern Licences, File 13.

considered him "an unfit person, a foreigner from Buffalo".¹⁰⁷ William Hamilton Merritt, however, disagreed with Clark. "I fear it will destroy the very good feeling" he argued "which so happily exists in this District between the magistrates and the inhabitants".¹⁰⁸

The provincial elite's anti-American policies and the unpaid war claims contributed to the wide-spread support for Robert Gourlay that again pitted many Niagara magistrates against the provincial government. Gourlay was well connected to the Niagara elite. His wife was a niece of Robert Hamilton and was a cousin to William Dickson and Thomas Clark. From July 1817 until his arrest in December 1818 Gourlay mobilised the Niagara as well as other districts to challenge the existing political order in Upper Canada. In his examination of popular resistance S.D. Clark argued that the Niagara was fertile ground for Gourlay's democratic conventions.

In 1818-19 it [the Niagara] was ready, in a way that perhaps no other part of the province was, for the organizational experience that the Gourlay movement offered it....[The] Niagara was the only area that had a vigorous reform press, and in the western half of the province, it was almost the only area where road facilities had developed sufficiently to make public meetings possible.¹⁰⁹

¹⁰⁷John Clark to Captain Daniel McDougal, 12 March 1838, AN.O., Niagara Court Records, R.G.22, Series 372, March (1838), Box 31, Shop and Tavern Licences, File 13, No.1.

¹⁰⁸William Hamilton Merritt to Charles Richardson, 1 January 1839, AN.O., Niagara Court Records, R.G.22, Series 372, March (1839), Box 33A, Tavern and Shop Licences, File 19, No. 31.

¹⁰⁹Clark, Movements of Political Protest in Canada 1640-1840, pp. 348-349.

Gourlay originally intended to gather information on the economic situation of Upper Canada and encourage immigrants from "the redundant population of England".¹¹⁰ An influx of new people, it was hoped, would solve the post-war depression.¹¹¹ The provincial elite initially welcomed Gourlay's plan for British immigration.¹¹² Both Colonel Samuel Smith, Administrator of the Province, and Chief Justice William Dummer Powell supported Gourlay's plan to publish a questionnaire eliciting information on thirty-one topics in the official newspaper, the Upper Canada Gazette. The 31 questions sought information on population, numbers of houses and mills, types of soil and the state of the roads.

On 8 November 1817 an impressive list of Niagara magistrates published a formal statement welcoming Gourlay's "statistical account of the province" and recommended that township meetings be held to supply him with information.¹¹³ Magistrates Thomas Clark, Robert Kerr, Robert Grant, James Kerby, Samuel Street, Thomas Dickson, Robert Addison, Thomas Butler, James Muirhead and George Keefer all signed the public announcement. That November meetings in towns and townships were held all over Upper Canada.

¹¹⁰Gourlay, Statistical Account of Upper Canada, p. Xxx.

¹¹¹For a detailed explanation of the post-war economy see McCalla, Planting the Province, pp. 36-37.

¹¹²Lois Milani, Robert Gourlay, Gadfly: forerunner of the Rebellion in Upper Canada 1837 (Toronto: ampersand Press, 1971), p. 105.

¹¹³Cruikshank, A Memoir of Colonel the Honourable James Kerby, His life in Letters, p. 53.

All of the Niagara townships as well as most of the townships in Gore, Western, London and Newcastle Districts sent in reports.¹¹⁴ The failure to compensate war claimants contributed to the support for Gourlay. Thirty-three percents of all signatory to the township reports from Western, London, Gore and Niagara Districts had claimed war losses.¹¹⁵

Support from the provincial elite, especially Anglican Bishop John Strachan, however, quickly waned.¹¹⁶ The thirty-first questions asked residents what, in their opinion, retarded the improvement of their particular township or the province in general.¹¹⁷ Some replies focused attention on the Clergy and Crown Reserves that were a major blockage to close settlement and the bane of early farmers who had to build roads along the fallow properties. The Clergy Reserves were also heartily disliked by the majority of residents who resented the primacy of the Anglican Church.¹¹⁸ Strachan, who Gourlay described as "an arrogant and paltry schoolmaster",¹¹⁹ brooked no opposition to the Clergy Reserves as a support for the Anglican church. He opposed

¹¹⁴Milani, Robert Gourlay, Gadfly, pp. 111,121.

¹¹⁵Sheppard, Plunder, Profit and Paroles, p. 196.

¹¹⁶Strachan mentions his early mistrust of Gourlay and his questionnaire in a letter to Colonel Harvey, Strachan to Col. Harvey, York, 22 June 1818, cited in Milani, Robert Gourlay, Gadfly, p. 105.

¹¹⁷Ibid., p. 99.

¹¹⁸Grant, A Profusion of Spires, pp. 88-93.

¹¹⁹William R. Riddell, "Robert (Fleming) Gourlay" Ontario Historical Society, Papers and Records, Vol.XIII (1915), p. 21.

Gourlay's questionnaire that he thought was simply a smoke-screen for his "dangerous incendiary" views.¹²⁰

Finding the provincial hierarchy intransigent, Gourlay called for a "radical change of system in the Government of Upper Canada".¹²¹ He organised a province-wide series of popular conventions to compose a petition to the Prince Regent protesting numerous abuses including the mishandling of the war losses, the lack of militia payment, the "scandalous" land abuses and government mismanagement which had resulted in "decay, discontent and poverty".¹²² Gourlay found support from the Niagara Spectator, edited by the government critic, Bartemus Ferguson.¹²³ With the help of the Spectator Gourlay gathered subscribers in the Niagara for his direct appeal to the Prince Regent.

Magistrate Thomas Clark who was in the middle of a legal battle with Robert Randal¹²⁴ Over the Bridgewater Work was anxious to maintain his provincial contacts. He quickly distanced himself from Gourlay and warned the people of Niagara "to weigh well how they attend to visionary enthusiasts".¹²⁵ Most magistrates and

¹²⁰Milani, Robert Gourlay, Gadfly, p. 105.

¹²¹Ibid., p. 26.

¹²²Cruikshank, "Post-War Discontent At Niagara in 1818", Ontario Historical Society, Papers and Records, pp. 43-44.

¹²³R.L. Fraser, "Ferguson, Bartemus", D.C.B., Vol.VI (1987), pp. 247-248.

¹²⁴Paul Romney, "Randal, Robert", D.C.B., Vol.VI, pp. 630-631.

¹²⁵Quoted in Cruikshank, "Post-War Discontent At Niagara in 1818", Ontario Historical Society, Papers and Records, p. 27.

settlers, however, quickly organised a series of townships meetings held throughout April 1818. Seventeen sitting or future magistrates acted either as local chairmen or township representatives to the Niagara District convention held at St. Catharines in May 1818.¹²⁶

Although magistrates as well as other respectable Niagara people supported the popular conventions, Lieutenant-Governor Sir Peregrine Maitland (1818-1828) considered them seditious. In October 1818, the Legislature passed an Act to prevent any meetings that might be held to make petitions to the King on any subject or matter of public concern.¹²⁷ The Niagara Gleaner, usually supportive of the government, called it

an obnoxious law... the whole community is disgusted... it is considered a mark of distrust set upon the people of Upper Canada... We have no hesitation in saying that nine-tenths of the freeholders of this province view it in that light.¹²⁸

The repressive legislation put a cold end to the meetings and many principal Niagara inhabitants including magistrates recanted their earlier support. They sent an address to Lieutenant-

¹²⁶These included George Ball, Robert Hamilton Jr., William Kerr, William Hamilton Merritt, David Secord, George Adams, John Clark, J.J. Lefferty, George Keefer, James Cummings, Crowell Wilson and David Thompson, all of whom had suffered losses during the 1812 war, *Ibid.*, pp. 27-32, 35-39.

¹²⁷"An Act for the Better Securing of this Province against all Seditious Attempts or Designs to Disturb the Tranquillity Thereof", Upper Canada Statute, 58 Geo.III (1818), c.11 forbade assemblies, committees or other bodies or persons elected or otherwise constituted or appointed to meet and deliberate upon matters of public concern or prepare or present petitions, complaints, remonstrances, declarations or other addresses to the King or Parliament.

¹²⁸Gleaner, 24 June 1819.

Governor Maitland stating that they were "happy, peaceable, and enjoying every Right consistent with rational liberty."¹²⁹ Not all magistrates agreed to sign the address. Amongst them were the influential Robert Grant, Thomas Dickson, William Johnson Kerr, William Hamilton Merritt and James Cummings.

In December 1818, the York elite charged Gourlay with sedition, under the Sedition Act of 1804. This act allowed any judges of King's Bench or any Executive or Legislative Councillor to order the arrest of a person suspected of seditious practices. If the person had not resided in the province for six months or had not taken the oath of allegiance, he could be asked to leave. If he refused to leave, he would be charged as a felon. Gourlay was arrested, but refused to take the oath stating he was already a British subject. He was tried, found guilty of remaining in the province after having been asked to leave and banished under threat of death.

Lieutenant-Governor Maitland further alienated many Niagara leaders by taking his revenge on Gourlay supporters. Maitland threatened to refuse to bestow lands for militia duty during the 1812-14 War on any one who had taken part in the conventions.¹³⁰ Maitland also removed Thomas Merritt, the father of William

¹²⁹Cruikshank, A Memoir of Colonel the Honourable James Kerby, His life in Letters, pp. 53-54.

¹³⁰Sheppard, Plunder, Profit and Paroles, p. 201. Also see Riddell, "Robert (Fleming) Gourlay", p. 50.

Hamilton Merritt, from his position as Sheriff.¹³¹ Merritt had assisted Gourlay with pen and paper during his imprisonment and delivered his letters to the newspaper. As was previously noted, Maitland also removed John Clark from his magistracy until he changed his politics.¹³²

District mistrust of the provincial authority was heightened by the attitude of the York Tory clique toward the Niagara Presbyterian congregation. Influenced by John Strachan the York government supported the primacy of the Church of England by reserving the revenue from the Clergy reserves for its support. Lieutenant-Governor Maitland agreed with this position.¹³³ The influence of the Church of England clergy, he thought, would help eradicate American republican ideas and shore up the Tory establishment. Moreover, the York elite distrusted the Presbyterians whether Scottish or American, who generally supported reform causes.¹³⁴

In 1819 Stamford Township residents led by the Legislative Councillor Thomas Clark and future magistrate Dr. J.J. Lefferty decided to rebuild the Presbyterian church that had been destroyed during the 1812 War. When they applied for aid from the

¹³¹Sheppard, Plunder Profit and Paroles, p. 241. Also see Riddell, "Robert (Fleming) Gourlay", p. 51.

¹³²See above chapter III, p. 78.

¹³³Hartwell Bowsfield, "Maitland, Sir Peregrine, D.C.B., Vol.VIII (1985), p. 601.

¹³⁴Clark, Movements of Political Protest in Canada 1640-1840, pp. 420-421.

Clergy Reserves, Lieutenant-Governor Maitland consulted with the Colonial Office. Both the British Attorney and Solicitor General decided that

provisions...for the support and maintenance of a protestant Clergy, are not confined to solely to the Clergy of the Church of England, but may be extended to Clergy of the Church of Scotland.¹³⁵

Maitland and Strachan first tried to withhold this favourable opinion and then attempted to evade it by offering limited assistance.¹³⁶ When word of the British decision finally found its way into the Niagara, it contributed to the mistrust of the central Tory clique. Niagara Presbyterians along with other religious congregations resented the primacy of the Church of England. When John Strachan later sent an ecclesiastical chart to England which underreported the number of Presbyterians in the province, the Gleaner reported, "the machinations of Bishop Strachan that good loyal subjects must be episcopalian subjects is ridiculous in the extreme"¹³⁷

A further polarisation of the Niagara magistracy and residents against the provincial government occurred during the alien controversy of the 1820s. Despite Lieutenant-Governor Gore's circular against issuing the oath to Americans, they had continued to immigrate and purchase land in the Niagara. Gore

¹³⁵The reply of the English law officers of the Crown is found in Doughty and Story, Constitutional Documents, p. 27.

¹³⁶Grant, A Profusion of Spires, p. 89. Maitland and Strachan's attitude is found in H. Bowsfield, "Maitland, Sir Peregrine", D.C.B., Vol.VIII (1985), p. 601.

¹³⁷Gleaner, 8 September 1828.

wrote to Bathurst that if there was another conflict, at the current rate of settlement the Americans would win by "acclamation".¹³⁸ Lord Bathurst replied that Americans could take the oath of allegiance, but "a previous continued residence of seven years in the Province is the indispensable condition"¹³⁹ To hold property and only property owners could vote or hold a seat in the House of Assembly.¹⁴⁰

Bathurst's interpretation precipitated questions over loyalists and late loyalists' property and civil rights that affected the Niagara settlement almost to a man. If those arriving after the war of 1812 could be dispossessed of their property, what about those whom Simcoe had invited to become immediate property owners and voters in the 1780s and 90s?¹⁴¹ Were the people who moved after the Treaty of 1783 British subjects or were they American and therefore alien? If they were aliens before they entered the province then they had no right to their land because they had not waited the seven years. Moreover, section 22 of the Constitutional Act of 1791 stated that no one

¹³⁸Lieutenant-Governor Gore to Bathurst, 7 April, 1817, Doughty and Story, Constitutional Documents, p. 3.

¹³⁹Bathurst relied upon the Act of 1740 which maintained that people could take the oath of allegiance but a seven year waits was necessary for a person to obtain land. "An Act for naturalising such Foreign Protestants and Others therein Mentioned, as are Settled or Shall Settle, in Any of His Majesty's Colonies in America", Geo.II (1740) c. VII.

¹⁴⁰Bathurst to Smith, 30 November 1817, Doughty and Story, Constitutional Documents, p. 5.

¹⁴¹Johr; Beverley Robinson to Samuel Smith, April 1818, *Ibid.*, pp. 6-9.

could vote or hold a seat in the Assembly unless he was a British subject.¹⁴²

The alien problem crystallized in 1821 and 1822 over the provincial election in Lennox and Addington of a Gourlay sympathizer, Barnabus Bidwell.¹⁴³ Bidwell had been Attorney General of Massachussets and treasurer of Berkshire County.¹⁴⁴ In 1810 he was charged with a discrepancy in the Berkshire accounts, immigrated to Upper Canada and took the oath of allegiance during the 1812 War. Sir John Beverley Robinson thought Bidwell was not gentleman enough to sit in the House of Assembly, but he did not want to withdraw from the House and "leave the field entirely to such scum".¹⁴⁵ In January 1822 a resolution supporting allegation of moral turpitude and lack of British citizenship voided Bidwell's election and he was expelled from the Assembly. In 1822 the Assembly passed a Statute that disqualified from membership all those who had taken an oath of abjuration against His Majesty's government, or who had been previously elected to the government in the United States.¹⁴⁶ Two years later Marshall Spring Bidwell, Bidwell's son, won the same seat. Attorney

¹⁴²Ibid.

¹⁴³Brode, Sir John Beverley Robinson, pp. 67-68.

¹⁴⁴G.H. Patterson, "Bidwell, Barnabus", D.C.B., Vol.VI (1987), pp. 54-58.

¹⁴⁵Sir John Beverley Robinson to John Macaulay, 18 November, 1821, quoted in Brode, Sir John Beverley Robinson, p. 68.

¹⁴⁶W. R. Riddell, "The Bidwell Elections", Ontario Historical Society, Vol.XXI (1924), p. 240. See also Paul Romney, Mr. Attorney, pp. 88-89.

General John Beverley Robinson took the position that Bidwell, as the son of an alien, was also barred from election. The British Law Officers of the Crown upheld that view.¹⁴⁷ After a lot of procedural wrangling the House of Assembly passed a law in January 1824 which confirmed his election, yet still disqualified his father.¹⁴⁸

As the question over civil and property rights raged, Robinson framed a provincial bill to allow colonists who had arrived after 1783 to take the oath of allegiance. This would make them naturalised citizens. The Niagara reformer Edward McBride retorted that naturalisation was an insult to settlers who had fought for the British in the 1812 war.¹⁴⁹ Moreover, the provincial legislature could not confer rights where an Imperial statute denied them. This meant under Bathurst's interpretation that colonists who had not observed the seven year naturalisation rule had no right to their lands. Without land they would have no right to vote or sit in the Assembly. The Naturalisation Bill was begrudgingly accepted by the opposition who, should it be defeated, might find themselves disenfranchised.¹⁵⁰

¹⁴⁷Opinion of the Law Officers on Bidwell's Case, 13 November 1824, Doughty and Story, Constitutional Documents, p. 5.

¹⁴⁸ Riddell, "The Bidwell Elections", p. 242.

¹⁴⁹McBride quoted in George Sheppard, Plunder, Profit, and Paroles, p. 229.

¹⁵⁰Hartwell Bowsfield, "Maitland, Sir Peregrine, D.C.B., Vol.VIII, p. 599.

A large number of Niagara magistrates as well as the settlers and their children, despite the privations and destruction of the 1812 War, could lose their vote and possibly their land. Before the passage of Robinson's Bill Robert Randal, a Niagara reform M.H.A. And late loyalist, wrote to Jacob Gonder that he had published a notice in the Colonial Advocate apprising the people of their "perilous situation".¹⁵¹ In his letter he warned that all people in the Niagara, United Empire Loyalists or not, who had moved to Upper Canada after 1783 would be very aliens.¹⁵²

After the Naturalisation Bill was passed, Niagara residents held a meeting at the home of James Secord in Willowby Township. They elected a committee to gather subscriptions to petition the Imperial Parliament that Robinson's Bill that they described as "unwise, impolitic and inimical to the Peace and happiness and Prosperity of this Province".¹⁵³ They also sought financial aid for Randal's trip to England. Ninety people subscribed including fourteen present and future members of the magistracy. Among them were George Keefer, Samuel Street, James Cummings and James

¹⁵¹Robert Randal to Jacob Gonder, 18 January 1827, AN.O., Gonder Family Papers, Niagara Historical Society Papers, MS 193, HVI, Vol.I, No. 105.

¹⁵²Ibid. Also see Maitland's letter to Bathurst where he asks the Imperial government to confirm the late loyalists legal title to property, but to exclude aliens from sitting in the House of Assembly, P. Maitland to Bathurst, 15 April 1822, Doughty and Story, Constitutional Documents, pp. 93-94.

¹⁵³AN.O., Gonder Family Papers, Niagara Historical Society Papers, MS 193, HVI, Vol.I, No. 107.

Muirhead, chairman of Quarter Sessions.¹⁵⁴ In 1827 Randal travelled to England with the petition to the British Parliament and returned with a confirmation that settlers who had immigrated before 1820 had full civil as well as property rights.¹⁵⁵ The Niagara Gleaner called him the "saviour of the country".¹⁵⁶

Although settled in 1827, the threat to property and civil rights continued to reverberate throughout the Niagara. "The alien issue" the Gleaner stated "rendered the government and administration so unpopular more unpopular than any other issue"¹⁵⁷ Attorney General Robinson who had been the central protagonist¹⁵⁸ Personified the threat to the property and civil rights of Niagara people. Dislike of Robinson spilled over in a Niagara town meeting in December 1827.¹⁵⁹ Robinson, facing a fight in his constituency at York from reformers who wanted

¹⁵⁴AN.O., Gonder Family Papers, Niagara Historical Society Papers, MS 193, HVI, Vol.I, No. 106.

¹⁵⁵Goderich to Maitland, 10 July 1827, Doughty and Story, Constitutional Documents, pp. 363-366.

¹⁵⁶Gleaner, 19 January 1829.

¹⁵⁷Gleaner, 19 January 1829.

¹⁵⁸G.M. Craig takes the position that Robinson had no intention of dispossessing the late Loyalists of their lands. Craig, Upper Canada, pp. 114-115. Brode in his laudatory book on Robinson also maintains that Robinson was sympathetic to the late loyalists. Brode, Sir John Beverley Robinson, p. 97. Romney, however, argued convincingly that Robinson was trying to disenfranchise the late loyalists many of whom held seats in the House of Assembly. See Romney, Mr. Attorney, pp. 82-104.

¹⁵⁹Gleaner, 24 December 1827.

Chapter V

The Ordinary Face of District Authority

"Men from all classes, with the notable exception of the labouring poor, contributed to the workings of the citizen judiciary."

John Brewer and John Styles.¹

Although magistrates supported regional interests, as appointed district rulers, the magistracy was an oligarchic form of local government. A privileged appointed few possessed a high degree of administrative and legal authority over their constituents. In the administration of district justice, however, the magistrates did not act alone. They appointed local men as constables to carry out their orders and to enforce their decisions. The magistracy recruited many of the oldest families in the Niagara to work for the district justice system. Constables were local farmers, innkeepers, artisans of every stripe; they were neighbours, relatives and friends. Most belonged to the middling strata in local society. A few militia officers, prosperous local businessmen and top township officials came from the upper reaches of district life. Constables drawn from the more ordinary members of the public bridged the authority of the magistracy and the community.

¹John Brewer and John Styles, An Ungovernable People, pp. 14-15.

Until recently, research on the community constable has been anecdotal and historians have assumed that their inferior judicial position was reflected in a lower social status. Lawrence Friedman argued that respectable people in colonial America disliked the office and avoided serving by hiring lower-class substitutes.² T. Robert Gurr viewed the early American constabulary as indistinguishable from the criminal strata. On the theory that it took a thief to catch one, pre-modern constables "were drawn from the lowest ranks of society, from the same group whose criminality was of the greatest concern".³ Furthermore, far from eliciting consent to the justice system, the choice of people from the lowest classes produced a garrison mentality in both the constabulary and the people that resulted in mutual distrust.⁴

In contrast, Joan Kent's comprehensive study of seventeenth-century English constables found that the office was not universally thrust upon the lower orders.⁵ Instead, most constables came from the better-off village and country people, while others belonged to the respectable "upper half" of local

²Friedman, Crime and Punishment in American History, pp. 27-28.

³Ted Robert Gurr, Politics of Crime and Conflict: A Comparative History of Four Cities (Beverly Hills: Sage Publications, 1977), p. 704.

⁴T.V. Dibacco, "The Melting Potter: The Urban Policeman in America", The Police in Society, ed. by E. Viano and J. Reiman (Lexington: Heath and Co., 1974), p. 63.

⁵Joan Kent, The English Village Constable (Oxford: Clarendon Press, 1986), pp. 149-151.

society. They were tradesmen, craftsmen or farmers. Some were the village elite. Far from being a hated position, families held the office as a familial right, passing the office from father to son over several generations. An examination of the social background of Niagara constables substantially supports Kent's research.

Guidelines for the appointment of constables are found in both Blackstone and W.C. Keele, but they reveal little about the people appointed.⁶ Magistrates were directed to exclude the upper reaches of the legal and medical professions. Gentlemen could receive an exemption upon application to the court of King's Bench. Keeping the King's peace presupposed a loyalty to the Crown that made foreigners, although naturalized, unfit for office. Blackstone advised barring keepers of public houses, inns or taverns from office. Keele, however, softened the prohibition. He directed that "No man that keeps a public house ought to be made a constable, if there are other persons in the parish to serve". Moreover, if a "very poor" or "ignorant" person were chosen, he could be replaced.

The 1793 Act for the Nomination and Appointment of Parish and Town Officers defined the appointment procedure.⁷ It specified

⁶In Upper Canada, until the publication of W.C. Keele's Magistrates Manual in 1835, the authority on legal and constitutional structure including the appointment of constables was Blackstone's Commentaries, Vol.I, p. 355. With the publication of Keele, the magistrates were given a further authority on constables. See Keele, Magistrate's Manual, p. 125.

⁷"An Act for the Nomination and Appointment of Parish and Town Officers within This Province, "Upper Canada Statute, 33 Geo.III (1793) c.II, s.X, XI.

that township magistrates submit a list of acceptable candidates to the April Quarter Sessions. The assembled magistrates at Quarter Sessions reviewed the township lists that were ratified and returned. The constables were then sworn in and legally empowered to act. There is no evidence to conclude that constables ever refused their appointment. Nor did constables employ surrogates. In the thirteen years between 1827 and 1841, none of the 539 constables hired substitutes.

Appointment rather than popular election solidified the authority of the magistracy. Before 1793 the early settlers, following English and American tradition, had elected constables along with their other township officials.⁸ Elected constables while answerable to local magistrates were also accountable to their local residents.⁹ This increased the level of community influence, local constraints and obligations.¹⁰ The Upper Canadian constabulary, chosen and appointed by the magistrates, were answerable only to the magistracy. This did not entirely eradicate community influence, but the magistracy were free to choose supportive men to uphold the social order that the magistrates represented.

The assembled magistrates at Quarter Sessions scrutinised the township lists to weed out inappropriate candidates. In 1828 a

⁸Powell, Annals of the Forty, Vol.2, pp. 7, 10. See also Blackstone's Commentaries, Vol.IV, p. 273.

⁹Kent, English Constable, p. 63.

¹⁰Ibid., pp. 223-224.

rare working list showed that William Pew's and Thomas McMahon's names had been "struck off by the court". Pew, a former constable from Stamford, had refused to execute a warrant of magistrate James Cummings;¹¹ Pew was never reappointed. McMahon, was a Grantham Township innkeeper who had been charged in the same April Quarter Sessions with not complying with his innkeeper's license. He had been accused of keeping "a common ill governed and disorderly house that was frequented by persons of evil name and fame, and of dishonest conversation".¹² Although McMahon was found not guilty, he was not appointed until 1833.

The appointment of trusted men was crucial to the legitimacy of district judicial government. The constable acted as the representative of the magistracy. In a sense, the people met their government every time a constable acted in his official capacity. Careful choice of respected men promoted the acceptability of the magistracy, whereas constables of questionable integrity could invoke distrust and disrespect.

In a rare complaint John Jordon of Smithville wrote to Quarter Sessions that he was astonished to find Peter Winne acting as a constable even though he had been charged with embezzlement.¹³ Winne, appointed a constable in 1835, had been deputized as a

¹¹Filing of Grand Jury 9 July 1828, A.O. Niagara Court Records, R.G. 22, Series 372, July (1828), Box 2, Filings, File 5.

¹²Thomas McMahon Keeping a Disorderly House, A.O., Niagara Court Records, R.G.22, Series 372, April (1828), Box 1, File 38.

¹³John Jordon to Charles Richardson, 18 January 1836, A.O., Niagara Court Records, R.G.22, 372, January (1836), Box 9, Correspondence, File 22.

bailiff by Daniel McDougal J.P., to sell the property of John Rhodes who had been convicted of selling spirits without a license and was unable to pay the £20 fine. Winne sold the property and pocketed the money. He was subsequently caught and put in gaol. It is possible he finally paid the money to the court for he was not tried and was released. Jordon wrote Charles Richardson, Clerk of the Peace, that Winne should not be serving. Winne was not reappointed for, as Jordon's letter suggests, it was damaging to the authority of the magistracy to use constables of questionable integrity.

As always there is an exception. In 1833, Constable Francis Procter from Niagara town was accused of stealing two girths amounting to four shillings from shopkeeper James Mason Dike.¹⁴ Although he failed to appear at the first trial, the magistrates had the Sheriff bring him in. The evidence was fairly damning; even his wife concluded he was guilty. Although the magistrates sentenced him to four weeks in gaol, he does not appear in the gaol records. Procter who had been appointed for four years from 1828 through 1833 was reappointed for an additional five terms.

Occasionally a magistrate appointed a constable on an ad hoc basis. If a constable could not be found to assist a township magistrate, the magistrate appointed a special constable and notified Quarter Sessions. Following the correct procedure in April 1830, magistrate R.F. Dee, wrote the assembled magistrates

¹⁴Francis Procter for Larceny, A.O., Niagara Court Records, R.G.22, Series 372, January (1833), Box 13, Files 46, 47.

that in the absence of constable Chester Wadsworth at Queenston, he temporarily had appointed Charles Pointer¹⁵ to arrest a burglar. Magistrates were the only people who could appoint special constables.

Some townships even by the mid-1830s resisted the appointment procedure¹⁶ In January 1831, the Quarter Sessions grand jury reported that unlawful individuals were acting as constables.¹⁷ In 1834 a Humberstone Township magistrate, Bartholomew Tench, noted on his list that constables David Price, William Steel and James Hall had been elected at the township meeting.¹⁸ Even though elected, the assembled magistrates approved the Humberstone list. Price and Steel, whom the magistrates reappointed in 1835, were both sons of United Empire Loyalists. Whether constables were elected in other townships it is difficult to tell. In 1835 the assembled magistrates at Quarter

¹⁵R.H. Dee to Quarter Sessions, 27 August 1829, A.O., Niagara Court Records, R.G.22, Series 372, April Adjourned Sessions (1830), Box 6, Accounts, File 17, No.18.

¹⁶The wide-spread movement to elect magistrates, sheriffs as well as constables was submerged but never eradicated. See Aitchison. "Local Government in Upper Canada", pp. 70-78.

¹⁷Grand Jury to Quarter Sessions, 29 January, 1831, A.O., Niagara Court Records, R.G.22, Series 372, January (1831), Box 8, Grand Jury Presentment, File 32.

¹⁸Notation of Bartholomew Tench on the Constable List 1834, A.O., Niagara Court Records, R.G. 22, Series 372, April Adjourned Sessions (1834), Box 17, Constable List, File 3.

Sessions sternly reminded their township brethren that constables were to be "recommended" not elected.¹⁹

If a constable had not been legally appointed, an arrest could be set aside. There is, however, only one known instance of this. In 1837, Henry Campbell from Dunnville arrested William Telfer for debt and conducted him to Niagara gaol.²⁰ Upon hearing that Campbell, who had been appointed for 1836 but not for 1837 had acted outside his authority, the court ordered Telfer's release. In Telfer's case, however, there were extenuating circumstances. Both the magistrates and grand juries felt imprisonment for debt was "a disgrace to the statute book", failed to protect the creditor and was injurious to the community.²¹ Telfer benefited from the magistrates' dislike of imprisoning debtors and the chairman of the Quarter Sessions, Thomas Butler, freed him.

Constables were appointed for one year and, unless they expressly desired to continue, they could not be asked to serve again for a three year period.²² Most men were appointed for a single term. (See Table 5.1)

¹⁹Orders of the Magistrates 24 March 1835, A.O., Niagara Court Records, R.G. 22, Series 372, March (1835), Box 19, Orders, File 18, No.14.

²⁰Complaint of William Telfer, 16 July 1837, A.O., Niagara Court Records, R.G.22, Series 372, July (1837), Box 29, Gaol Records, File 15.

²¹Grand Jury to Quarter Sessions, 7 January 1839, A.O., Niagara Court Records, R.G.22; Series 372, January (1839), Box 33A, Grand Jury Presentments, File 14.

²²"Act to Provide for the Nomination and Appointment of Parish and Town Officers", Upper Canada Statute, 33 Geo.III (1793), c.II, s.XI.

TABLE 5.1.
Length of Constable Appointments, 1828-1841

Number of Constables	Number of Years Served	Percentage
388	1	72.0
82	2	15.2
40	3	7.4
11	4	2.0
11	5	2.0
2	6	.4
2	7	.4
1	8	.2
2	9	.4
Total 539		100%

Source: A.O. Niagara Court Records, R.G. 22, Series 372, Box 1-40.

One hundred and fifty-one or 28% of the total served for two years or more. The greatest number of constables serving two years or more predictably show up in the well populated Niagara Township that contained the town of Queenston a major crossing to the United States, the port of Niagara and the courthouse and gaol. Similarly, constables who served more than two terms lived in the two adjacent townships of Stamford and Grantham. Stamford Township encompassed the tourist area of the great falls and the town of Chippawa. The township of Grantham contained St. Catharines. From 1825 St. Catharines was a major town for canal workers and a fast-growing mill and commercial centre. The two men who acted for nine years were Francis Procter from Niagara town and Chester Wadsworth from Queenston in Niagara Township.

Constables from the sparsely populated townships to the west or along the north shore of Lake Erie, however, tended to serve a single term. Magistrates appointed 305 of the 539 constables from families who had settled prior to the 1812 War. The war was a critical defining time for the people of Niagara.²³ The collective memory of privation and destruction tended to weld the pre-war settlers together into a group with common bonds.²⁴ (See Table 5.2) The military group belonged primarily to the officers and men from the Butler's Rangers, although men also fought with the New Jersey Volunteers, the South Carolina Royalists and other regiments. In other districts, particularly in the eastern end of the province, military appointments dominated the magistracy.²⁵ The men who served with Butler's Rangers, however, had been small farmers and some with no land at all.²⁶ They started in a new

²³J.K. Johnson stated that "the 1812 War was the most significant single occurrence in Upper Canadian history". It was even more so for the people of the Niagara District. See Johnson, Becoming Prominent, p. 69.

²⁴David Mills, The Idea of Loyalty in Upper Canada, 1784-1850, pp. 25-26.

²⁵See Christopher Moore, "The Disposition to Settle: the Royal Highland Emigrants and Loyalist Settlement in Upper Canada, 1784", Historical Essays on Upper Canada, ed. by J.K. Johnson and Bruce Wilson (Ottawa: Carleton University Press, 1989), p. 68.

²⁶Bruce Wilson, The Enterprises of Robert Hamilton, pp. 42-46.

TABLE 5.2.
Time of Constable Settlement

Families	Number	Percentage of Known Group	Percentage of Total Number
Loyalist Military Loyalist Families and those before 1812	180	53.9	33.4
After 1814	30	9.7	5.6
Unknown	204		37.8
Total	539	100.0	100.0

Sources: E.A. Cruikshank, The Story of the Butlers Rangers, (Welland, Tribune Printing House, 1893). N.A.C., British Military Records, R.G.8, C Series and Upper Canada Land Petitions, R.G.1 L3. The 1842 and 1851 Census. W.D. Reid, The Loyalists in Ontario, (Lambertville, N.J., Hunterdon Press, 1973). Edward M. Chadwick, Ontario Families: Genealogies of United Empire Loyalists and Other Pioneer Families of Upper Canada, (Toronto, Rolph Smith and Co., 1894).

country with little capital, lacked entrepreneurial experience and were often of middle age. Their background failed to provide them with the skills to rival the merchants then in place. They had, however, experienced the disorder of war and had an interest in an orderly society. Over the thirteen years constables from the military families formed 54% of the known group and 33% of all appointed constables. When constables from military families are added to those settled before 1812, they represent 56.6% of the total number and 91% of the known number.

Military men who had fought for the British had a considerable vested interest in their new society and were rewarded with

property. The Reads of Grantham provide a good example. George and William Read fought with the Butler's Rangers²⁷ and are described as two of the oldest families on Ten Mile Creek that travels through Grantham and Stamford Townships. By 1796, George received additional military and family lands, although the acreage was not specified.²⁸ His son Cornelius applied for his 200 acres in 1811,²⁹ fought in the 1812-14 War, was appointed a constable in 1831 and acted as the commissioner of the township in 1836.³⁰ William Sr. was persecuted during the American Revolution spending two years in gaol for his loyalty to the Crown. In 1795, his original grant of 300 acres was increased to 600 for building an Anglican church.³¹ In 1796 he was given a further 800 acres.³² William Jr., who also received the loyalist

²⁷E.A. Cruikshank, The Story of the Butler's Rangers, pp. 116-121. Cruikshank's list of the Butler's Rangers combines several older lists, the list of disbanded rangers who settled at Niagara reported by Lieutenant-Colonel A.S. Depayster in 1784 and the old U.E. list published as "Appendix B" to the Centennial of the Settlement of Upper Canada by the United Empire Loyalists, 1784-1884.

²⁸Simcoe's Correspondence, Vol. V, p. 206.

²⁹Cornelius Read, N.A.C., Upper Canada Land Petitions, R.G.1 L3 (1811), R10/21, Vol.426a, Reel C-2742.

³⁰"The Read Family" Niagara Historical Society Transactions, No.37 (1925), pp. 19-31.

³¹William Read, N.A.C, Upper Canada Land Petitions, R.G.1 L3 (1795), R2/42 Vol.423, Reel C-2745.

³²Simcoe's Correspondence, Vol. V, p. 206.

land bounty was an innkeeper who served as a constable in 1835, 1838 and 1839.³³

The appointment of men from well-established loyalist families ensured a cadre of men loyal to the Crown. Many who fought for the British during the Revolutionary War also fought in the 1812 War. Their historic loyalty legitimized their participation in local governance. This extended to sons as well. Despite the loss of the court records prior to 1828, there is a pattern of loyalist fathers and sons acting for the magistracy as the Wright family of Grantham Township demonstrates. Two Wrights, a John and a Samuel were Butler's Rangers.³⁴ John Wright Sr., an innkeeper, was an early settler and partner in a tannery with magistrate E.S. Adams.³⁵ He served in the 1st Regiment of the Lincoln Militia during the 1812 war as a secret agent for Major-General Richard Stoven, crossing the river to gain information on the enemy. When Fort Niagara was taken, he procured cattle and flour to provision the troops.³⁶ He acted as constable in 1828 and 1829; his son John Jr. served in 1840.

Constables appointed from the earliest families intermarried and formed a complex web of kinship connections to many families within the district. Constables from the House family, for

³³William Read, N.A.C., R.G.1 L3, Upper Canadian Land Petitions, R16/8, Vol.431, Reel C2745.

³⁴Cruikshank, The Story of the Butler's Rangers, pp. 116-121.

³⁵Junius (Seymour Phelps), St. Catharines A-Z, 1856, at O.

³⁶John Wright, N.A.C., Upper Canada Land Petitions, R.G.1 L3, W12/81 Vol.528, Reel C2954.

instance, were spread through six townships. The brothers John and Daniel House fought with the Butler's Rangers and settled in the Niagara.³⁷ John House of Bertie Township married Christina Anger U.E.³⁸ Two of Christina's brothers served as constables for Bertie, Charles for one year and John for four. Augustus, the son of John House settled on 200 acres in Willoughby Township and served as a constable in 1838.³⁹ Harmon House, a son of Daniel House, settled in Clinton Township and was a constable in 1838.⁴⁰ His sister Elizabeth married Erastus Darby of Clinton who served for four years as a constable.⁴¹ There are three other Darbys in Crowland and Grantham Townships. George Adam Darby was one of the earliest farmers in Crowland, having taken up his loyalist lands in 1785.⁴² Constables Peter Darby of Crowland and William Darby of Grantham are probably both related to George Adam Darby. James House, the son of Harmon House, was appointed for three years in Clinton.⁴³ His sister Margaret married Joseph Smith of Louth

³⁷Cruikshank, The Story of the Butler's Rangers, p. 119.

³⁸W.D. Reid, The Loyalists in Ontario, (Lambertville: Hunterdon House, 1973), p. 156.

³⁹Ibid., p. 156. See also Augustus House, N.A.C., Upper Canadian land Petitions, R.G.1 L3 (1805), H7/41, Vol.225a, Reel C-2045.

⁴⁰Reid, The Loyalists in Ontario, p. 155.

⁴¹Ibid., p. 155.

⁴²George Adam Darby, N.A.C., Upper Canada land Petitions, R.G.1 L3 (1795), D2/1, Vol. 150, Reel C-1742.

⁴³James House, N.A.C., Upper Canadian land Petitions, R.G.1 L3 (1839), H22/15, Vol.241, C-2097.

Township.⁴⁴ Smith, part of the early loyalist settlement, was born in 1805 in Upper Canada,⁴⁵ and served as a constable in 1838.

Family connection amongst the early settlers in Upper Canada, was the "most important factor" in appointment to office and a distinguishing feature in local prominence.⁴⁶ There are 359 different surnames amongst the 539 constables. Disregarding the surnames Smith and Wilson, 88, roughly one quarter had more than one person with the same name. Moreover, the considerable intermarriage amongst the older families would increase the family connection.

Many of the constables were Canadian born. Of the 167 constables who were located for place of birth, 109 were born in Upper Canada and grew up within the close-knit milieu of the Niagara. As David Wood argued, founding families and their children who continued to reside in their area became influential members of their local society.⁴⁷ They were familiar with other

⁴⁴Reid, The Loyalists in Ontario, p. 156.

⁴⁵The 1851 Census, lists Joseph Smith as a farmer, born in Upper Canada of 46 years of age, N.A.C. 1851 Census Canada West 1825-1881, R.G. 31, Welland County, Louth Township, Vol.208, p. 15, Reel C-11736.

⁴⁶Frederick H. Armstrong, "The Oligarchy of the Western District of Upper Canada 1788-1841", Historical Essays on Upper Canada, pp. 527-528. Keith Johnson argued that the continuity of family interconnection has been a distinguishing feature of local prominence beyond the Upper Canadian period to the present day in Johnson, Becoming Prominent, pp. 159-160.

⁴⁷David Wood, "Population Change on an Agricultural Frontier: Upper Canada, 1796 to 1841", Patterns of the Past: Interpreting Ontario's History, ed. by R. Hall, et al. (Toronto: Dundurn Press,

first families, often intermarried and were well-known to their local communities.

Local constables showed a wide religious affiliation. The Niagara had a long history of religious tolerance⁴⁸ and many people frequented churches of different denominations, often paying for pews in several churches at the same time.⁴⁹ Jacob Dockstader, the high constable from 1828 to 1834, subscribed for the Presbyterian church in 1826; but he became a warden of the Anglican church in 1829.⁵⁰ Whereas 82% of the magistracy belonged to the established churches, with slight variation constables were appointed generally in proportionate numbers to the district congregations. (See Table 5.3) Methodists, Anglicans and Baptists are over represented in the constables when compared to the numbers for the district as a whole. Methodists and Anglicans, however, retain their ordinal position. Presbyterians are clearly underrepresented in the constable group when compared to the strength of their district affiliation. Although Catholics in

1988), p. 64.

⁴⁸Wilson, The Enterprises of Robert Hamilton, pp. 103-104.

⁴⁹Janet Carnochan, The History of Niagara (Toronto: William Briggs, 1914), p. 82.

⁵⁰Janet Carnochan, "Names Only But Much More", Niagara Historical Society Transactions, XXVII (1916), pp. 30, 32.

Table 5.3.
Religion of Constables and the District

Denomination	Number of Constables	Percentage of Constables	Percentage for District
Not Described	30	26.3	37.4
Methodist	28	24.6	17.9
Church of England	25	21.9	14.1
Baptist	10	8.7	3.3
Presbyterian	8	7.0	12.8
Church of Scotland	3	2.6	.4
Catholic	-	-	3.3
Other	10	8.8	10.8
Total	114	100.0	100.0

Source: The 1842 and 1851 Censuses and Population Return for the District of Niagara, Appendix to the Journals of the Legislative Assembly, (1839-1840), Vol.I, Part 1 & 2, p. 150. The other category includes Lutheran, Universalist, Dunkard, Shaker and Mennonite.

Upper Canada formed 17.1% of the population by 1842,⁵¹ they formed only 3.3% of the Niagara population in 1839-40. There was one Scottish Catholic magistrate, Daniel McDougal who had fought in the 1812 War, but there were no Catholic constables.

Whereas religious affiliation was widespread, magistrates tended to appoint constables who were middle aged.(See Table 5.4)

⁵¹Johnson, Becoming Prominent, p. 97.

TABLE 5.4.
Age at Appointment

Years	Number	Percentage
below 20	3	2.1
20 to 30	39	27.3
30 to 40	51	35.7
40 to 50	27	18.9
50 to 60	16	11.1
60 to 70	6	4.2
70 to 80	1	.7
Total	143	100.0

Source: The 1841 and 1852 Census. N.A.C., Upper Canada Land Petitions, R.G.1 L3.

The historian David Gagan estimates that middle age began at thirty in Upper Canada. This places almost 55% of the 143 constables in that category.⁵²

There are an additional 31 constables who belong to the early settlement, but for whom no exact age can be found. Nicholas Smith was clearly an older man. He had joined the Butler's Rangers as a fifer and drummer. After the war he received a grant of 200 acres in Grantham Township and a further 200 acres for his loyalist wife Catherine May.⁵³ By 1790 he moved to Pelham and was wealthy enough to build a stone house for his family of fourteen

⁵²David Gagan, "The Prose of Family Life: Literary Reflections of The Family, Individual Experience and Social Structure in Nineteenth-Century Canada", Journal of Social History, IX (1976), p. 373.

⁵³Reid, The Loyalists in Ontario, pp. 220, 298.

children.⁵⁴ Nicholas was a Lieutenant in the militia during the 1812 War.⁵⁵ He and three of his sons, James, Henry and Frederick⁵⁶ were appointed to the constablenesship. Although there is no way to discern his age, Nicholas Smith, appointed in 1828, 1835 and 1838, over forty years after the end of the Revolutionary War, was probably a local patriarch.

Age and property conferred "dignity and a set of duties".⁵⁷ The patriarchal nature of the nineteenth-century family formed a social as well as a civic blueprint. This extended both to superiors and those at the same or lower social levels.⁵⁸ The ideology of a well-ordered society where families obeyed fathers as people obeyed their governors strengthened the conservative character of district government⁵⁹ and dovetailed with the rule of the appointed magistracy.

⁵⁴Powell, Annals of the Forty, Vol.1, p. 4.

⁵⁵L. Homfray Irving, Officers of the British Forces in Canada During the War of 1812-15 (Welland: Tribune Print, 1908), p. 77.

⁵⁶Reid, The Loyalists in Ontario, p. 298.

⁵⁷L. Davidoff and C.Hill, Family Fortunes: Men and Women of the English Middle Class, 1780-1850 (Chicago: University of Chicago Press, 1987), p. 19

⁵⁸The rule of the state as a well-governed family was a prevalent notion that continued from Blackstone's day to well into the nineteenth century. See P.Corrigan and D. Sayers, The Great Arch: English State Formation as Cultural Revolution (Oxford: Basil Blackwell, 1985), pp. 81, 95-96. For a discussion of patriarchy in the family across Lake Ontario in Oneida County New York see M.R. Ryan, Cradle of the Middle Class: The Family in Oneida County, New York, 1790-1865 (Cambridge: Cambridge University Press, 1981), pp. 31-35, 65-75.

⁵⁹Westfall, Two Worlds, pp. 34-35.

Magistrates appointed many middle-aged men from loyalist military families who had a widespread political affiliation. Information on the political beliefs of the lesser-known people in Upper Canada is thin. There are constables appointed after 1828, however, who had been elected officers of Gourlay's political conventions in 1818.⁶⁰ Both Thomas Ottaway Page from Bertie Township and David Davis from Willoughby Township were selected chairmen, while Samuel Glover from Crowland Township was elected a clerk. Frederick Smith from Stamford Township, Jacob Upper from Thorold Township and Stephen Farr from Wainfleet Township were members of the organizing committees.

In 1827 when the reformer, Robert Randal, was attempting to raise money to travel to England to petition the British government over the alien issue, he wrote to many townships in the Niagara District to help. Only the list of the Willoughby Township Committee has survived. The organizer of the Willoughby committee was captain Jacob Gonder, the father of Jacob Gonder Jr. who was appointed a constable in 1831. Eight future constables donated money for Randal's trip.⁶¹ Two constables were suspected radicals. After the 1838 rising in the Short Hills in Pelham Township, the Niagara magistracy jailed 39 people who were

⁶⁰Cruikshank, "Post-War Discontent at Niagara 1818", Ontario Historical Society Papers and Records (1933), XXIX, pp. 20-39.

⁶¹The seven were Erastus Moses, who acted as secretary, David Davis, Lewis Palmer, John Burns, Augustus House, John Snyder and Alexander Wintermute. A.O., "Gonder Family Papers", Niagara Historical Society Papers, MS 193, H VI, Vol.1, No.105, No.106, No.107.

tried at Niagara Assize for high treason.⁶² Although constable Ebor Rice, an innkeeper from Pelham Township, and constable Street Chase, a wagon maker from Thorold Township were found not guilty, they were suspected of radical politics.

Constables were also drawn from a wide range of occupations. Although agriculture remained the primary occupation for most people, after 1828 the local economy began to diversify. With the construction of the Welland canal, the founding of the Niagara Harbour and Dock Co. and the building of the railway, there was a proliferation of towns as well as an increase in local craftsmen and factories. In 1828, constables were usually farmers, innkeepers, blacksmiths or wheelwrights. The percentage of farmer constables, however, decreased from 40% in 1828 to 25% in 1840. Constables who were shopkeepers, local artisans of many stripes, manufacturers and millers multiplied with growing towns and villages. (See Table 5.5)

Although most were independent farmers or the middling sort of local petty businessmen, there was considerable variation running from labourer at the lowest end to miller, distiller, and manufacturer, occupations held by the magistracy.⁶³ The list also

⁶²Carnochan, "Names Only But Much More", Niagara Historical Society Transactions, XXVII (1916), p. 40.

⁶³Douglas Hay points out that only those with an interest in property could be trusted with carrying out the directives of the J.P.s. Hay, "Property, Authority and the Criminal Law", Albion's Fatal Tree, p. 38.

TABLE 5.5.
Occupation of Constables, 1828-1841

Occupation	No.	Occupation	No.
Farmer	121	Hatter	1
Innkeeper	112	Peddler	1
Tavernkeeper	12	Grocer	1
Shopkeeper	12	Painter	1
Blacksmith	10	Teamster	1
Carpenter	6	Mason	1
Distiller	6	Saddler	1
Shoemaker	3	Tanner	1
Wheelwright	3	Wagonmaker	1
Miller	3	Foundry Owner	1
Carriagemaker	2	Public Servant	1
Sawyer	2	Builder	1
Gentleman	2	Cabinetmaker	1
Brewer	1	Lumberman	1
Postmaster	1	Ferryowner	1
Cooper	1	Labourer	1
No. of Constables 247		No. of Occupations 313	

Source: The 1842 and 1851 Census. A.O., Niagara Court Records, R.G.22, Series 372, Box 1-40.

shows that the magistracy disregarded the guidelines over the appointment of innkeepers and tavernkeepers.

The largest number of constables had farms. The majority of the constables were loyalist or loyalist children who received bountiful land grants of at least 200 acres. Farms over 170 acres in Upper Canada/Canada West were considered large and only one sixth of the agricultural community had acreage of that size.⁶⁴ Post-war families who did not receive the loyalist land grants

⁶⁴McCalla, Planting the Province, p. 71.

often had smaller farms or none at all. Neither Francis Procter nor Chester Wadsworth of Niagara Township received the substantial land settlements awarded to the pre-war grouping. Procter, as a British subject and former military man, received 100 acres.⁶⁵ Wadsworth, however, did not fare as well. Wadsworth emigrated to Upper Canada from the United States just after the 1812-14 war. He secured the post as deputy customs officer in 1825⁶⁶ and by 1828 he owned a successful inn at Queenston. Swearing undying loyalty, he petitioned for land. Wadsworth wrote that his dedication to his adopted country caused him to be wounded in a skirmish with smugglers from the United States. He recounted that he had a good supply of horses, oxen, cows, wagons and utensils to set up a profitable farm. Land grants had been curtailed in 1826, however, when the government turned to selling property⁶⁷ and Wadsworth failed to obtain his desired farm.⁶⁸

Appointing farmers came well within the parameters laid out by Blackstone and Keele, but the magistracy in the Niagara obviously disregarded their instructions concerning innkeepers. Inns were

⁶⁵Francis Procter, a long time innkeeper in the town of Niagara, had been a corporal in the Royal Artillery Drivers for eight years, and was discharged at Woolwich in 1814. In 1828 he applied for land but only received 100 acres, N.A.C., Upper Canadian Land Petitions, R.G.1 L3, P15/55, Vol.406 Reel C2492 and P15/57b Vol.406 Reel C2492.

⁶⁶Chester Wadsworth, N.A.C., British Military and Naval Records, C Series, R.G.18, Vol.1702, p. 230.

⁶⁷Johnson, Becoming Prominent, p. 24,

⁶⁸Chester Wadsworth, N.A.C., Upper Canadian Land Petitions, R.G.1 E3, W15/54, Vol.530a, Reel C2956.

supposed to have room for guests, taverns and tippling houses were drink establishments or shops licensed to sell liquor.⁶⁹ Often it is difficult to distinguish between the terms inn, tavern, public house, house of entertainment, ale house and tippling house. In the Niagara, despite the disqualification in the guidelines, innkeepers were the second largest occupational category. Many of the founding families also invested in inns that would make innkeepers acceptable to the magistracy. Fully 65% of innkeepers belonged to the first families in the Niagara. The number of innkeepers appointed as constables went from 15 in 1828 to 22 in 1840.

Inns were often the first substantial buildings in the townships. They were the focal point for local social and civic gatherings and innkeepers who were at the centre of community life knew most people in their area.⁷⁰ Inns served as the venue for Courts of Requests, Courts of Summary Judgements, township elections, places of worship, meetings of the Masonic Lodge and the local Agricultural Society. As the resting place for travellers, they were a major pipeline for outside news. In central locations throughout the townships, inns also provided temporary goals for constables ferrying people long distances to and from Niagara town. Moreover, the "lamentable prevalence of

⁶⁹Richard Merritt, "Early Inns and Taverns", The Capital Years p. 187.

⁷⁰Landon, "The Common Man in the Era of the Rebellion in Upper Canada", Canadian Historical Association Report (1937), p. 78.

drunkenness"⁷¹ at inns resulted in assaults, brawls and riots, and it was wise to have a constable handy. Forty-nine percent of innkeepers served for more than one term. The Niagara magistracy, however, did not follow their brethren in the Home District who after 1823 appointed all innkeepers as constables.⁷²

Inns varied considerably in size. Dilly Coleman, who acted as a constable in 1835 and 1838, had an inn that could accommodate a 100 guests at Port Robinson on the Welland Canal. It was the site of Coleman's ball and the Agricultural Society meetings, both attended by the elite of the area.⁷³ The luxurious Pavillion Hotel at the falls, run by William Forsyth until taken over by Thomas Clark and Samuel Street, could sit 75 people for dinner.⁷⁴ For some of the smaller inns, the obligatory four good beds for guests and a stable for horses were honoured more in the breach than in the observance. Some inns consisted of no more than the innkeepers house with a bar/dining-room and a loft for guests. The "house" of James Humphrey, magistrate Robert Grant wrote the Quarter Sessions was "not suitable for people or horses" and only

⁷¹Jameson quoting magistrate Reverend Magrath of the Home District in Jameson, Winter Studies and Summer Rambles in Canada, p. 55.

⁷²According to James Jones this rule lasted until 1887 in James E. Jones, Pioneer Crimes and Punishments in Toronto and the Home District (Toronto: George N. Morang, 1924), p. 169.

⁷³J.B. Hern, The History of Crowland Township (Port Colborne: Port Colborne Citizen's Press Ltd., 1967), p. 103.

⁷⁴Jameson, Winter Studies and Summer Rambles in Canada, p. 66.

encouraged "tippling and gambling".⁷⁵ Whether large or small, government reminders that inns existed exclusively for the accommodation of travellers, were disregarded by the local population. Inns, as public houses, were open seven days a week catering to the large thirst of Upper Canadians.

Ownership of an inn showed substantial access to capital and in the cash-starved society of Upper Canada innkeepers were paid in hard currency.⁷⁶ Although it does not apply to all inns, the cost of a three bedroom inn in Niagara town can be gleaned from the War Losses. Charles Fields, a constable in 1838 and 1839, received £700 for his inn destroyed in the 1812-14 war. It consisted of two parlors, one bar and tap room, three bedrooms, one billiard room, two dining rooms, and a kitchen. It was described as three different two story buildings brought under one roof, wood-framed and bricked.⁷⁷ The innkeeper often reduced his expenses by residing in part of the establishment while maximizing his profit from the sale of alcohol. Whisky, three and a half pence per gill (five ounces), could yield more than 500 percent profit.⁷⁸

⁷⁵Robert Grant to Quarter Sessions, 5 January 1836, A.O., Niagara Court Records, R.G.22, Series 372, Box 22, Tavern And Shop Licenses, File 20.

⁷⁶Travellers often noted the expense of various inns, see Guillet, The Pioneer Farmer and Backwoodsman pp. 121, 124-125.

⁷⁷N.A.C., War Losses, R.G. 19 E5a, Vol.3740, No.19, Reel T1126.

⁷⁸From a report of Joseph Pickering in 1826 found in E.C. Guillet, Pioneer Inns and Taverns (Toronto: Published by Author, 1954), p. 19.

The local tavern was also a community gathering place. Taverners, however, did not appear in the constable lists until 1834. After that date magistrates appointed one or two a year. Nine out of the 12 tavern owners came from founding families and 6 were elected to township office.

The group of carriage makers, shoemakers, carpenters, masons and tanners might be small craftsmen working on their own, but others often were manufacturers employing local people. J.P. Hill, a constable in Clinton Township in 1836, listed his occupation as saddler. Hill actually had two businesses, a shop and a tannery and was a local employer. On the 1851 census, he stated that his shop represented a capital investment of £625 from which he derived a yearly income of £100.⁷⁹ His tannery had a capital investment of £500 and a yearly income of £150.

Although Blackstone and Keele exempted "gentlemen" from constable appointments, John Croker from Haldimand (appointed for 1831 and 1840) and Frederick Mcphearson from Gainsborough (appointed for 1829) listed themselves as "gentlemen". The "gentleman" designation usually meant a sufficient level of wealth to make working for a living unnecessary. As Gagan pointed out the title of "gentleman" did not carry the same respect as it did in the old country.⁸⁰ Mcphearson, however, was an obviously

⁷⁹N.A.C., 1851 Census of Canada West 1825-1881, R.G.31, Welland County, Clinton Township, Vol.204, p.87, Reel C-11736.

⁸⁰Gagan, "The Prose of Family Life: Literary Reflections of The Family, Individual Experience and Social Structure in Nineteenth-Century Canada", Journal of Social History, IX (1976), p. 374.

outstanding person in his township. He was elected to township office continuously from 1835 to 1839. He served two times as the township clerk and the rest as assessor and collector. For John Croker who in 1839 found himself in prison for debt, the title did not connote wealth.

While constables mainly belonged to the middling strata, men came from a wide spectrum of local society. Hiram Brooks, part of the early military settlement, was appointed as a constable for Gainsborough Township 1835 and 1836. When he had arrested Jacob Dutcher for a felony, Alexander McLeod, the deputy Sheriff, noted on his invoice that Brooks was a "poor man" and needed his fee.⁸¹ At the higher end of the occupational scale constables who had mills and distilleries followed occupations that were the pursuits of the magistracy.⁸² Three of the constables were millers and six were distillers. Three distillers, William Henry from Stamford, James House from Clinton and Ebor Price from Pelham combined distilling with innkeeping.

Constables with profitable businesses placed them in the upper reaches of district society. The income needed to become part of the "respectable" class in Upper Canada was a minimum £200 to £300 pounds per year.⁸³ Constable J.P. Hill with an assessed

⁸¹Hiram Brooks Invoice, A.O., Niagara Court Records, R.G.22, Series 372 (1836), Box 24, Accounts, File 1, No. 14.

⁸²Milling and distilling were amongst the top six occupations held by M.H.A.s, Johnson, Becoming Prominent, p. 10.

⁸³Peter Russell, "Attitudes to Social Structure and Social Mobility in Upper Canada, 1815-1840", (unpublished Ph.D. Thesis, Carleton University 1981), p. 28, quoted in Johnson, Becoming

income of £250 per year fits well within the category. Assessment of real property and possible income, however, did not measure wealth as Michael Doucet and John Weaver have shown.⁸⁴ Often personal wealth and the access to credit was much higher than their assessment would indicate. Although many craftsmen may have had considerably smaller businesses, manufacturers like Hill moved within the district elite.

While some constables were prominent members of their local society, they often do not appear more "respectable" than other inhabitants. Constables as ordinary people often succumbed to the propensity of Upper Canadians for drink. Whisky, the "vin du pays" of Upper Canada, was available in groceries as well as taverns and inns. As the Gleaner pointed out "you can hardly turn the corner of the street but you may see a grocery shop ... [and] all are Dram Shops".⁸⁵ Occasional drunkenness was no barrier to office. Constable James W. Smith of Canboro was obviously drunk at the town meeting in Canboro in 1838. The grand jury at Quarter Sessions felt his "disorderly and improper manner" made him "incapable, [and] unworthy of holding the situation of officer of the peace".⁸⁶ Smith who had been elected to township office as a

Prominent, p. 41.

⁸⁴Michael Doucet and John Weaver, "Town Fathers and Urban Continuity: The Roots of Community, Power and Physical Form in Hamilton, Upper Canada, in the 1830s", Historical Essays on Upper Canada, p. 431.

⁸⁵Gleaner, 7 January, 1828.

⁸⁶A.O., Niagara Court Records, R.G.22, Series 372, Grand Jury Presentment, (March, 1839), Box 33A, File 13.

pathmaster and fenceviewer in 1836, 1837, and warden in 1839, was reappointed to the constabulary in 1840.

Pandemic drinking led to a prevalence of assaults at every social level. In the year of his appointment magistrate John Alma was convicted for an assault at Quarter Sessions.⁸⁷ Partaking in the occasional brawl barred neither Alma nor constables from their appointment. In 1831, William Forsyth Jr., found himself in a vicious brawl with Michael Morgan and threatened to kill him.⁸⁸ The magistrates at Quarter Sessions fined Forsyth £5 and one month in prison and as a further penalty he was to remain in gaol until the fine was paid. Forsyth petitioned the Lieutenant-Governor, but the Lieutenant-Governor's office took the advice of the sitting magistrates over the seriousness of the offense and did not intervene.⁸⁹ In spite of his record, Forsyth was appointed a constable in 1835.

Although the accounts are not often clear, sometimes constables used physical violence to settle old scores or indulged in acts of intimidation. In 1831 Constable Francis Procter was convicted of assaulting Joshua Stothers, a barber of Niagara town.⁹⁰ As Stothers recounted it, he was standing

⁸⁷John Alma for Assault, A.O. Niagara Court Records, R.G.22, Series 372, January (1833), Box 13, File 33.

⁸⁸William Forsyth Jr. For Assault, A.O., Niagara Court Records, R.G.22, Series 372, July (1831), Box 10, File 26.

⁸⁹James Muirhead to Edward MacMahon 21 July 1831, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.108, pp. 1452-1459.

⁹⁰Francis Procter for Assault, A.O., Niagara Court Records, R.G.22, Series 372, July (1831), Box 10 File 36.

innocently in the street talking to a woman in front of Hall's house when Procter for no apparent reason viciously attacked him and tore his clothes. Many of the plaintiffs, however, sound suspiciously innocent. One recounted that he and the defendant were returning from a prayer meeting when all of a sudden the other man attacked him.⁹¹ Constables, as ordinary people, were typical of the rough and tumble life of Upper Canada.

While some constables appear to be no better than the people they apprehended, others as militia officers were clearly local leaders. As Keith Johnson pointed out, a commission in the militia was a status appointment that marked the holder as a man of local prominence.⁹² These appointments were greatly sought after and they were usually endowed upon members of the well-connected magistrates' families. Officer's commissions in each regiment were limited to a colonel, a lieutenant-colonel, a major, from five to ten captains, lieutenants, and ensigns.⁹³ Seventeen constables appointed after 1828 held militia office during the 1812-14 War. Most were ensigns, but six attained the appointment of lieutenant. Two men, George Lawrence⁹⁴ and Ralph

⁹¹Samuel Hicks for Assault, A.O. Niagara Court Records, R.G.22, Series 372, October (1831), Box 11, File 18.

⁹²Johnson, Becoming Prominent, p. 79.

⁹³The listing of the 1812-15 militia regiments for the Niagara are found in Irving, Officers of the British Forces, pp. 70-83.

⁹⁴George Lawrence was a Captain in the 1st Lincoln Militia. Irving, Officers of the British Force, p. 72.

Walker served as captains.⁹⁵ After the war eighteen other constables became officers. Amongst this group Adam Brown⁹⁶ and Joseph Clement⁹⁷ reached the level of major. As militia officers, these 35 constables were clearly part of the district leadership.

Commissions in the militia showed a recognition of local prominence by one's superiors, whereas township office was an acknowledgment of respect by one's local community. Yearly, township people elected a clerk, two assessors, a collector of assessments, two wardens and several pathmasters, poundkeepers and fenceviewers. The lists of township officials found in the Quarter Session records from 1828 to 1840 are fragmentary at best,⁹⁸ but they reveal that out of the 539 different men appointed as constables, 129 also were elected township officials. Forty percent of the 129 were elected for two years or more. A complete list would no doubt confirm that a much higher number were elected to positions of township prominence.

⁹⁵Ralph Walker served as a Captain in the 4th Lincoln Militia. Ibid. p. 80.

⁹⁶N.A.C., Register of Militia Officers in Upper Canada, R.G.9 IB 5, Vol.5, p. 47.

⁹⁷N.A.C., Register of Militia Officers in Upper Canada, R.G.9 IB 5, Vol.7, p. 74.

⁹⁸From 1828 to 1835 only several names appear for each year. From 1835 to 1839 some townships are complete, with the exception of 1838 when only one name is found. Only the 1840 list is complete. The returns are found in A.O., Niagara Court Records, R.G. 22, Series 372 Box 1 to Box 40. Sometimes the township officers are found in the Orders files, in the Petitions or in the Court Cases. Only beginning in 1835 do we have files listed as Township Officers. Some of the positions are also listed in the lists of dispersements for the district.

Some township offices carried more distinction than others. The lesser posts of pathmaster, poundkeeper and fenceviewer numbered about fifteen or twenty for each township. The more prestigious offices of clerk, warden, collector and assessor numbered four or five and were reserved for the local oligarchy.⁹⁹ In some townships the magistracy pursued the top positions. Magistrate George Keefer held elected office for seven terms as warden, collector or assessor in Thorold Township.¹⁰⁰ In Willowby Township magistrate Thomas Cummings and his son magistrate James Cummings perpetually held the highest office of clerk for twenty years.¹⁰¹

Local innkeepers who served as constables also were elected to township office and many held the highest positions. Thirty-seven percent of elected township officers were innkeepers and 64% of those belonged to the select upper group. For example, Barton Farr, an early settler, was an innkeeper in Canboro Township. Appointed as a constable in 1834 and 1835, he was a lumberman, farmer and leader of his own troop of cavalry.¹⁰² Farr

⁹⁹H.V. Nelles, "Loyalism and Local Power: The District of Niagara 1792-1837", Ontario History, LVIII (1966) p. 103.

¹⁰⁰Ibid., pp. 57-58.

¹⁰¹Thomas Cummings clerk for 16 years was followed by his son magistrate James Cummings for an additional 8 years, Cruikshank, A Century of Municipal History 1792-1892, pp. 68-69.

¹⁰²On June 25 1838 at his hotel Farr arrested James Morreau, the leader of the Short Hills uprising. In applying for the £500 reward, he stated that the reward money would purchase further swords and pistols for his volunteer company of cavalry for Haldimand County.,, Historical Atlas of Lincoln, Welland and Haldimand (Toronto, H.R. Page, 1876), p. 776. See also Barton

who was elected almost continuously to township office from 1836 to 1840,¹⁰³ twice held the position of warden. He continued his local prominence to become Reeve in 1850.¹⁰⁴ Constables like Barton Farr had considerable local stature as well as significant experience in the governance of their township.

Constables who were elected to public office showed a large number of incumbents in the more prestigious offices. Fifty-seven percent of the 129 constables filled the lesser posts, while 43% filled the top posts. Seven of them, Frederick McPherson in Gainsboro (1835 and 36), Dennis Palmer in Grimsby (1836 and 1839), Lewis Wilson in Pelham (1838), John Ramsden in Crowland (1839), Robert Henry in Clinton (1839), James Adams in Rainham (1839) and Solomon Secord in Grantham (1840) were elected clerk, a position reserved for the most respected members of the township.

While township office meant that some constables were members of their local hierarchy, some belonged to the families of the district magistracy. Eleven constables were connected by marriage or birth to the magistrates. George Adam Darby married the

Farr, N.A.C., Upper Canadian Land Petitions, R.G.1 L3 (1838) F22/18 Vol.195A, Reel C-2022.

¹⁰³In 1836 he served as an overseer of roads, poundkeeper and fenceviewer. In 1837 he again served as poundkeeper, in 1839 as warden and poundkeeper and in 1840 as warden.

¹⁰⁴M.A. Clark, Canboro Township (Grimsby: Independent Print, 1950), p. 10.

daughter of magistrate Benjamin Pawling M.H.A. (1792-96).¹⁰⁵ Charles Anderson married the only daughter of Major William Henry Nelles J.P.¹⁰⁶ Powell Wilson was the nephew of both William Powell J.P. and Edmund Risley J.P.¹⁰⁷ William Ball, Dennis and John Keefer, Charles and William Nelles, Edward and Solomon Secord and John Street were sons of the most prominent families in the magistracy.

Five constables had the requisite social status to be appointed to the magistracy in 1843.¹⁰⁸ Two township clerks, Lewis Wilson, appointed a constable for Pelham Township in 1829 and 1834 and Robert Henry, appointed a constable in Clinton Township in 1838, became magistrates. A William Steele was also elevated to the district bench. There are two Williams, a father and son by the same name.¹⁰⁹ William Sr. was appointed as a constable in 1837 for Stamford Township and William Jr. served for 1834 and 1835 for Humberstone Township.¹¹⁰ A John Merritt, appointed

¹⁰⁵George Adam Darby, N.A.C. Upper Canada Land Petitions, R.G.1 L3 (1795), D2/1, Vol.150, Reel C-1742.

¹⁰⁶Powell, Annals of The Forty, Vol.3 (1953), p. 12.

¹⁰⁷Ray Millar and Thomas B. Wilson, "Descendants of Christian Risley, U.E.", Ontario Register, Vol.1, No.2, pp. 214-237.

¹⁰⁸The Upper Canada Almanac and Provincial Calendar, (Toronto: R.Stanton, 1843), pp. 42-43.

¹⁰⁹Reid, The Loyalists in Ontario, p. 307.

¹¹⁰In 1795 the Steeles, originally from Ireland came to the Niagara District from New York with four sons and a daughter. In that year, William Sr. applied for land stating that he had lost all his land during the Revolutionary War, had been fined for his loyalty, imprisoned in Gosham Gaol and for an additional six weeks at West Point from which he escaped. See William Steele, N.A.C.,

constable in 1835 for Caistor, was more than likely connected to, or was a son of William Hamilton Merritt. Henry Smith, a son of Nicholas Smith,¹¹¹ appointed as a constable in Pelham 1837, also became a magistrate.

While only a few constables were elevated to the magistracy, most came from the middling strata of military and loyalist families who had proven their loyalty to British institutions. They had benefited from considerable land grants and had a vested interest in their community. Constables from this group knew and were well-known by their neighbours. The tendency of the earliest families to intermarry ensured that constables were directly connected to many within the district including the district magistracy. Although historians of the early police in the United States have found that constables were distrusted by their local communities, in the Niagara many were elected by their neighbours as township officials. Although constables were laymen with no specialized training, township officials and those who were appointed militia officers had considerable experience in local leadership. As respected neighbours relatives and friends, constables who had a wide correspondence with their community formed an acceptable bridge between the authority of the magistracy and the community.

Upper Canada Land Petitions, R.G.1 L3 (1795), S1/122, Vol.448, Reel C-2806.

¹¹¹Reid, The Loyalists in Ontario, p. 298.

Chapter VI

The Constables: The Spread of Authority

"If we wish to understand the behavioural norms of the society, we should look not at the top of the governmental pyramid but at the bottom, where the common man and his local government interacted."

Donald Akenson¹

While the magistracy had considerable legal and administrative powers, they exercised their authority at a distance from the problems of maintaining the public peace. Magistrates examined suspected offenders and adjudicated in the courts. They, however, passed the burdens of enforcing local order and the strains which that enforcement entailed to the local constables. Constables suffered personal danger, abuse and occasional public resistance in attempting to quell riots or assaults, arresting and delivering offenders, and serving warrants, writs and summons. Despite these difficulties, the constables routinely insured the participation of litigants, witnesses and others in the court process. The local constable may have been a minor figure in the justice system, but he proved a major player in spreading the authority of the magistracy throughout the district. They travelled long distances and carried the magistracy's authority

¹Donald Akenson, The Irish in Ontario: A Study in Rural History (Kingston: McGill-Queens University Press, 1985), p. 105.

to the periphery of the districts and, if necessary, across the American border.

Most historians have ignored the role of the Upper Canadian constable. As DeLloyd Guth recently remarked their history has remained a "dark age, lacking even the glimmer of research".² The dearth of research has led most historians to assume that constables were as ineffectual or incompetent as Shakespeare's Dogberry.³ C.K. Talbot, C.H. Jaywardene and T.J. Juliani stated that local communities must have felt their presence superfluous.⁴ Historians who have viewed constables in the light of modern professional police standards, meanwhile, have emphasized their inadequacy. Lawrence Friedman argued that untrained constables in colonial America could not be expected to do their job.⁵ Allan Greer also found that early constables in Montreal failed to master the streets.⁶ Michael Cross contended that in the 1830s a combination of low fees and frequent gaol

²DeLloyd J. Guth, Police Powers in Canada: The Evolution and Practice of Authority, ed. by R.C. MacLeod and David Schneiderman (Toronto: University of Toronto press, 1994), p. 17.

³John M. Beattie, "Crime, Policing and Punishment in England 1550-1850", Criminology: A Readers Guide, ed by J. Gladstone, et al. (Toronto: Centre for Criminology, 1991), p. 31.

⁴C.K. Talbot, C.H.S. Jaywardene, T.J. Juliani, Canada's Constables: The Historical Development of Policing in Canada (Ottawa: Crimcare Publications, 1985), p. 33.

⁵Friedman, Crime and Punishment in American History, p. 28.

⁶A. Greer, "The Birth of the Police in Canada", Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada, ed. by A. Greer and I. Radforth (Toronto: University of Toronto Press, 1992), p. 19.

escapes disheartened Bytown constables who consequently disregarded the orders of the magistracy.⁷

The Upper Canadian constable was not a professional policeman. Rather he acted as a professional citizen. Constables were part of the "curiously eighteenth-century world" of Upper Canada⁸ where public position and private life were highly connected.⁹ Community order was a communal responsibility and reflected differing standards of acceptable local behaviour. Constables did not routinely apply the law to each and every offender, but relied upon public complaint and the directions of the magistracy. To the modern observer this fashion of maintaining local order appears erratic and at times haphazard, but, as John Beattie has pointed out, it had many defenders.¹⁰

Despite modern conceptions about the role of the community constabulary, their cooperation was essential to the workings of the district justice system.¹¹ Constables executed magistrates' writs, warrants, subpoenas. They shepherded prisoners and witnesses to court or to gaol and could also be directed by the magistrates to act as a bailiff. Whether for debt or in cases of

⁷Michael Cross, "The Shiners' War: Social Violence in the Ottawa Valley in the 1830s", Canadian Historical Review, LIV (1973) p. 12.

⁸Westfall, Two Worlds, p. 196.

⁹S.J.R. Noel, Patrons, Clients, Brokers, p. 18.

¹⁰Beattie, Attitudes towards Crime and Punishment in Upper Canada, 1830-1850, p. 9.

¹¹Keele, Magistrate's Manual, pp. 125-128.

distress for rent the constable could break into houses to seize household goods to be sold or held (distrained) until compensation was made. In these cases, however, he must show the warrant or make the offender aware of its provisions. As well constables acted for the coroner. They summoned the inquest juries, the witnesses and attended the inquest. Occasionally they also assisted the Sheriff by guarding the gaol. If a prisoner escaped, however, the Sheriff was responsible for any cost incurred by the constables who went in pursuit.¹² The magistrates appointed a high constable to organize the constabulary, but his position differed little from the regular constabulary.

Once a task was completed, the constable submitted a list of his actions to Quarter Sessions for payment. The actions found in the constable invoices provide the evidential basis for an analysis of their activities. (See Table 6.1) Fifty-five percent of the actions ordered by magistrates included serving warrants, subpoenas and summons to litigants and witnesses for trials. Included within this category was attending Courts of Quarter Sessions and King's Bench guarding prisoners and bringing prisoners to and from the gaol. Policing involved a

¹²The accounts over the apprehension of Benjamin Anderson were rejected by the magistrates because they were the responsibility of the Sheriff, A.O., Niagara Court Records, R.G.22, Series 372, March (1834), Box 16, Accounts Rejected, File 28. In 1834 we have a constable's order to pay constables for a gaol break in 1833, but Chairman Muirhead remarked that this was not to be considered a precedent, A.O., Niagara Court Records, R.G.22, Series 372, January (1834), Box 16, Orders, File 10, No. 3.

TABLE 6.1.
Constables Actions

	No.	Percentage
Magistrate Ordered		
Court Work for Trials	1331	55.5
Policing	300	12.5
Administrative	34	1.4
Social Services	10	.4
Coroner Ordered	90	3.7
Sheriff Ordered	25	1.0
High Constable Ordered	25	1.0
Magistrate or Constable Arrests, Custody and Search	582	24.3
	2397	100.0

Source: A.O. Niagara Court Records, R.G. 22, Series 372, Box 1 to 40.

litany of tasks ordered by the magistrates from putting prisoners in the stocks, guarding houses to escorting prisoners to the gaol or to Kingston prison. The magistrates also used the constables to help them with administrative tasks that meant notifying townships of their yearly meetings, making lists of township officers, notifying people of their appointments and circulating proclamations. Sometimes the magistrates ordered constables to perform social services by furnishing clothes for prisoners or by looking after the blind and infirm.

Arrest, custody and search could be initiated by a magistrate or constable. Constables could arrest those suspected of treason or felony, or acting in any way that would manifestly endanger

life. This discretionary power extended to any person who, in the constable's opinion, was about to commit a breach of the peace, by threat, assault or profanity. Constables could break into a dwelling place to arrest, to stop a fight or to suppress disorderly drinking or noise. Upon arrest, the constable was obliged to take the offender before a magistrate as quickly as possible or keep the offender in custody until a magistrate could be found. They also had the discretionary power to commit people directly to the stocks for fighting, or to gaol to prevent a felony, with the proviso that offenders be kept in gaol no longer than it took to find a magistrate.¹³

In apprehending criminals or stopping assaults or riots constables had the right to defend themselves and could imprison anyone who insulted, assaulted or opposed them, physically or verbally, in the exercise of their duties. If threatened, a constable could compel a person to find surety for good behaviour or commit him to gaol. Constables were empowered to respond in kind to anyone who offered violent resistance. If such confrontations resulted in death, the constables could not be charged with murder. Indeed, no action could be brought against a constable executing his duty unless the magistrates deemed that he had acted improperly.¹⁴

¹³Keele, Magistrate's Manual, p. 36-37. See also Blackstone's Commentaries, Vol.I, pp. 354-56.

¹⁴Keele, Magistrate's Manual, pp. 127-129.

Constables were paid a fee for service from the public purse of the district. (See Table 6.2) The fees for local constables were

TABLE 6.2.
Fee Schedule for Constables

Action	Fee
Arrest for felony, misdemeanor etc	£0.5.0.
Searching for goods under a search warrant	£0.3.9.
Conveying goods (over 20 lb.) within 1 mile of J.P	£0.1.3.
Conveying goods (over 20 lb.) over the mile limit per mile.	£0.10.0.
For every assistant (ordered by a J.P)	£0.2.6.
Conveying prisoner to gaol (all expenses included) per mile	£0.1.0.
Taking prisoner for further examination (within 1 mile)	£0.2.6.
Conveying felons to J.P. (within 1 mile)	£0.2.6.
Conveying prisoners over 1 mile (all expenses included) per mile	£0.1.0.

Source: This is the first list of fees in the Niagara. P.A.O., Niagara Court Records, R.G.22, Series 372, October (1836) Box 25, Orders, File 16.

never princely and were a modest charge on district finances. For the year 1829/30, the constables cost £104.18.7 out of the total district expenses of £2652.17.7.¹⁵ To put the matter in perspective, in the same year, the Clerk of the Peace, Charles Richardson, charged the district £196.0.1. In 1839/40 with a larger population the total disbursements were £2953.16.0. The

¹⁵The only complete yearly treasurer accounts to have survived in the legal records are those for the years 1829/30, 1831/32, 1832/33, 1836/37 and 1839/40.

payments to constables had risen to £198.13.4, but the Clerk of the Peace, received £370.17.6.

In an effort to ensure accountability, the magistrates in April 1829 ordered that "all constable charges were to be certified by the magistrate under whose warrant they act or the magistrate before whom prisoners are brought".¹⁶ The practice was strictly followed. In 1835, Constable J.H. Lacey submitted an invoice for apprehending Absolom Jones, keeping him for three days and bringing him from Pt. Robinson to Niagara Gaol. His invoice, however, had not been authorized.¹⁷ Lacey travelled halfway across the district to have it signed; then returned it to the magistrates at Niagara town.¹⁸

Waiting for payment was one of the many burdens placed on the local constables. Constables were responsible for all expense in conveying prisoners to the magistrates or to Niagara gaol. If the prisoners were impecunious, and most were, the constables bore the costs for meals and lodging. Since prisoners did not go willingly they often had to pay for a sleigh or wagon and team of horses. As constable Moses recounted, when he apprehended Abraham Eastwood "he lay down and would not get up". Moses attempted to

¹⁶A.O., Niagara Court Records, R.G.22, Series 372, January (1829), Box 3, Orders, File 40, No. 13.

¹⁷Accounts Rejected April 1835, A.O., Niagara Court Records, R.G.22, Series 372, January, (1835), Box 18, Accounts, File 3, n.n.

¹⁸J.H. Lacey Invoice, A.O., Niagara Court Records, R.G.22, Series 372, July (1835), Box 20, Accounts, File 1, No. 5.

drag him along, but in the end was forced to hire a sleigh.¹⁹ Violent prisoners were often bound hand and foot. This also necessitated some conveyance.²⁰ If constables needed assistants, they were responsible for their costs as well. In 83 cases constables required assistants and paid for their meals and lodging. The magistrates paid for the constables actions and reimbursed them for any added expense only after the magistrates had assessed their accounts at the following Quarter Sessions.

In addition to the cost of conveying prisoners, constables were burdened with the unpopular role of acting as a bailiff. The prevalence of petty debt in Upper Canada and the lack of hard currency placed constables in the unenviable position of having to seize goods and chattels from their neighbours. In 1829 when constable George Lacey visited the Badgely's, he was invited into the house. Upon producing an order of execution from the Court of Requests to collect goods and chattels amounting to £4.12.3, the climate changed. Joseph Badgely called him a "dammed old scoundrel" and became violent. Both he and his wife, Sarah, threw him out.²¹

When bailiff constables were obstructed in their duty, their assailants were charged with assault. In the cases of bailiffs,

¹⁹Erastus Moses Invoice, A.O., Niagara Court Records, R.G.22, Series 372, January (1831), Box 8, Accounts, File 27, No. 24.

²⁰Erastus Moses Invoice, A.O., Niagara Court Records, R.G.22, Series 372, April (1829), Box 3, Accounts, File 29, No. 3.

²¹Sarah Badgely for Assault, A.O., Niagara Court Records, R.G.22, Series 372, April (1829), Box 3, File 46.

however, the petty juries were sympathetic to the debtors. In seventeen cases where residents clearly obstructed and assaulted a bailiff,²² the magistrates tried three at Summary Judgement and found all the obstructing debtors guilty. In contrast, in the fourteen cases adjudicated at Quarter Sessions, the petty juries found ten of the assaulting debtors innocent.

Some constables as well as assaulters exhibited their dislike of bailiff cases by neglecting to appear at trial. This effectively nullified the assault charges.²³ When the case against Mrs. Badgely came to court in April, neither the constable nor Mrs. Badgely appeared and the grand jury brought in a no bill.²⁴ When the magistrates charged Joseph Badgely in October over the same incident, again the litigants stayed away and the costs of attempting to bring the case to court were charged to the district.²⁵ Even when there had been considerable danger, some constables would not attend court. When constable John Clark tried to seize the property of Robert Kay, Kay loaded a gun and pulled the trigger. Luckily it failed to fire. The case

²²As the result of haphazard record keeping, it is never clear whether the assaults were the result of bailiffs actions or other reasons.

²³John Collins and Margaret Caution for Assault, A.O., Niagara Court Records, R.G.22, Series 372, January (1832), Box 11, File 47.

²⁴Sarah Badgely for Assault, A.O., Niagara Court Records, R.G.22, Series 372, April (1829), Box 3, File 46.

²⁵Joseph Badgely for Assault, A.O., Niagara Court Records, R.G.22, Series 372, October (1829), Box 4, File 45.

came to court twice in 1837, but the litigants failed to appear and the case did not proceed.²⁶

Knowing the tendency of juries to convict bailiffs, in 1828 a pair of bailiffs fiercely resisted their court appearance. When constables Titus Root and William Burch attempted to seize the property of David Skinner there was a brawl and both sides charged the other with assault.²⁷ Skinner, the debtor, was willing to face trial, but Root and Burch locked themselves in Root's house and refused to appear. Magistrate Samuel Street ordered constable William Pew to break into Root's house and arrest them.²⁸ Pew needed seven men for the arrest and four men to escort them to Niagara gaol.²⁹

Constables often faced personal danger and abuse in making arrests. Constable Edward Defield was sent by magistrate Robert Grant to arrest Benjamin Nickals for debt.³⁰ Taking constable

²⁶Robert Kay for Assault, A.O., Niagara Court Records, R.G.22, Series 372, April (1837), Box 28, File 16 and Robert Kay for Assault. Ibid., November (1837) Box 30, File 24.

²⁷A.O. Niagara Court Records, R.G.22, Series 372, January (1828) Box 1, File 1. This is the only trial to appear in January 1828 and the magistrates did not note who was found guilty. Other information is found in A.O. Niagara Court Records, R.G.22, Series 372, January (1828), Box 1, Filings, File 2, January, (1828), Box 1, Accounts, File 5, No. 40,

²⁸Samuel Street to Quarter Sessions, n.d., A.O. Niagara Court Records, R.G.22, Series 372, January (1828), Box 1, Filings, File 42.

²⁹William Pew Invoice, A.O., Niagara Court Records, R.G.22 Series 372, April (1828), Box 1, Accounts, File 5, No. 40.

³⁰Benjamin Nickals for Resisting Arrest, A.O., Niagara Court Records, R.G.22, Series 372, March (1831), Box 9, File 22.

John Stewart with him, Defield caught up with Nickals and attempted to arrest him. Nickals, sitting in his wagon, resisted. He beat off Stewart and drove over him as he took off yelling the "he would go where he pleased and do what he pleased". Nickals was finally apprehended, tried at Quarter Sessions and sentenced £5 and costs. As an additional penalty, the magistrates ordered him to remain in custody until he paid the costs and the fine.

In an effort to reduce the risks of personal injury, constables would sometimes surprise the accused by taking him at night.³¹ In 1828 constable James Dunlap from Grantham was sent to arrest Charles and Michael Anger and a Mr. Armstrong for grand larceny.³² To make the arrest easier Dunlap took two men with him and made the arrests when the suspects were sleeping.

Constables had considerable powers to arrest and apprehend those who offered resistance, but this was easier said than done. In the midst of a riot constables were powerless to keep the peace. On 11 November 1833, a fight took place between two younger members of the McGarvey and Woodruff families at St. Davids.³³ Constable John Hannett first attempted to equalize the

³¹John Talbot Invoice, A.O., Niagara Court Records, R.G.22, Series 372, March (1831), Box 9, Accounts, File 1, No. 8. Walter Elliot Invoice, A.O., Niagara Court Records, R.G.22, Series 372, March (1835), Box 19, Accounts, File 1, No. 30.

³²James Dunlap Invoice, A.O., Niagara Court Records, R.G.22, Series 372, October (1828), Box 2, Accounts, File 28, No. 38.

³³Dwight Croft, John Servos, Henry Swan, Richard Woodruff Jr., William Woodruff, George Shaw, Royal David Secord and Isaac Hosier for Riot, A.O., Niagara Court Records, R.G.22, Series 372, January (1834), Box 16, File 17.

fight by insisting young McGarvey should be able to remove his coat. When the fight turned into a riot and those who had gathered began throwing stones, Hannett withdrew. The McGarveys later charged the rioters. Henry Swan and William Woodruff Jr. were found not guilty, but six others were fined £1 each and £11.12.6 in costs.³⁴

When tempers were high assailants often redirected their anger towards constables who intervened.³⁵ In 1828 constable Nicholas Smith stopped a fight between Hiram Vinica and Henry Fee. Fee, however, returned with three cannalers and recommenced beating Vinica. When Smith again intervened, they turned their fists and clubs on him. When the case against Fee came to trial, the grand jury found a true bill, but the petty jury found Fee not guilty. Since James Muirhead, the chairman of Quarter Sessions, who presumably had personal knowledge of the event had laid the complaint,³⁶ the magistrates penalized Fee with £0.12.6 costs despite the not guilty verdict.³⁷

³⁴William McGarvey vs. Richard and William Woodruff et al. for a Riot, A.O., Niagara Court Records, R.G.22, Series 372, January (1834), Box 16, File 17.

³⁵Henry Fee for Assault, A.O., Niagara Court Records, R.G.22, Series 372, , January (1829), Box 3, File 18 and Box 4, File 50.

³⁶Since neither Nicholas Smith or Hiram Vinica laid the complaint, presumably James Muirhead had some personal knowledge of the event, but no details were provided. There was simply a notation on Charles Richardson's trial account, Account of Charles Richardson, Clerk of the Peace, A.O., Niagara Court Records, R.G.22, Series 372, April (1829), Box 3, File 30.

³⁷Henry Fee for Assault, A.O., Niagara Court Records, R.G.22, Series 372, January (1829), Box 3, File 18. and Box 4, File 50.

Constables not only risked obstruction and injury, they could be charged by disgruntled citizens and face expensive court actions. In 1834 William Tufford brought two suits at Assize against constable Amos Farwell from Grimsby accusing him of malfeasance in collecting militia fines from the pacifist community in the Niagara.³⁸ Tufford lost the first case and the second was non-suited (did not proceed).³⁹ Tufford then fled the province to avoid paying the court costs leaving constable Farwell liable for the £70.4.2 cost of his defence.⁴⁰ In a letter Farwell reminded the magistrates that they must "uphold them in the due discharge of the important trust placed in them as constables"⁴¹ and they paid his costs.

The district's geographic position as the gateway to the United States placed an additional burden on Niagara constables. In the transient society of Upper Canada, people travelling south crossed either at Detroit or along the Niagara River. In the 1830s it is estimated that two-thirds of the large influx of immigrants to Upper Canada passed through to the more prosperous

³⁸Petition of Amos Farewell, A.O., Niagara Court Records, R.G.22, Series 372, September (1834), Box 17A, Orders, File 18.

³⁹The 1834 Assize Court Records are not extant so the details of the Assize trial are therefore unknown.

⁴⁰This was a large amount. The annual wage for skilled labourers went from £35 for bakers to over £90 for millwrights and bricklayers, McCalla, Planting the Province, p. 115.

⁴¹Petition of Amos Farewell, A.O., Niagara Court Records, R.G.22, Series 372, September (1834), Box 17A, Orders, File 18.

nation to the south.⁴² After the rebellions, settlers by the thousands travelled via the Niagara and Western Districts on their way to Iowa and beyond.⁴³ The border along the Niagara River, easily crossed by boat or ferry in summer or ice in winter, was extremely porous. Ferries above and below the falls allowed people to cross to the American side within minutes.⁴⁴

Suspicious people were carefully watched. While constable John Kiff was working on his farm, he observed two men who hid in the woods from horsemen passing on the road.⁴⁵ Securing the help of his neighbour Jacob Davis, Kiff approached the men and inquired where they were headed. The men replied that they were going "over the river". Both men were carrying large bundles. Kiff unsatisfied with their stories and, suspicious that they might be thieves, followed them to Queenston. There, with the help of Timothy Street and his son, he succeeded in arresting one of them

⁴²M.L. Hansen and J.B. Brebner, The Mingling of the Canadian and American Peoples, Vol.I, (New Haven: Yale University Press, 1940), p. 111.

⁴³Read and Stagg, The Rebellion of 1837 in Upper Canada, pp. cxii-cxiv and pp. 416-424. Hansen and Brebner, The Mingling of the Canadian and American Peoples, Vol.I, p. 118.

⁴⁴The steam ferry "Waterloo" was capable of making the three quarter mile run from Black Rock (Buffalo) to the lower ferry landing in three minutes. By 1841 there were sometimes eight ferries crossing the Niagara River. Campbell, Niagara the Hinge of the Golden Arch, p. 196.

⁴⁵N.A.C., Alexander Hamilton, Records of the Sheriff and Various Courts of the Niagara District 1818-1837, M.G.21 I26, n.d., n.p.

and took him to the local magistrate. The person was not named; thus his case could not be followed at Quarter Sessions.

In 1840 at Queenston, David Baxter on his way to the United States stopped at Robert Tune's grocery for food.⁴⁶ While Tune got him some buns and ginger beer, Baxter stole three bank notes amounting to \$6. Tune pursued the man, but lost him. In the small town, word of the robbery and description of the suspect spread quickly. A Mrs. Easton noticed a man of Baxter's description passing her house and went for constables Edward Bolton and Thomas Honor. When the ferryman saw the constables in pursuit, he refused to let Baxter aboard. Baxter was taken to Niagara where he confessed. He was tried and received two years hard labour at Kingston Penitentiary.

Niagara constables bore the burden of dealing with the prostitution and larceny problems associated with port and border towns.⁴⁷ In 1829, the Grand Jury reported on crime to the Quarter Sessions.

[There are] so many women of loose habits - an alarming and increasing evil - prowling the streets at all hours, infesting the stables and other houses in the town and stealing such loose property as happen to fall in their way and carrying unlawful weapons for the purpose of gratifying a malignant and

⁴⁶David Baxter for Larceny, A.O., Niagara Court Records, R.G.22, Series 372, September (1840), Box 39, File 14.

⁴⁷Judith Fingard gives an overview of the problems identified with the port of Halifax in the nineteenth century in Judith Fingard, "Jaibirds in Mid-Victorian Halifax", *Law in a Colonial Society: The Nova Scotia Experience*, (Toronto: The Carswell Co. Ltd. 1984), pp. 81-103.

vindictive spirit to the great danger of His Majesty's subjects.⁴⁸

Although prostitutes were not tried at court, at various times magistrates would order their arrest. Constables put them in gaol often with no charge listed on the invoice.⁴⁹ At other times they were listed as vagrants.⁵⁰ These women were often not named and not listed in the Gaol Accounts.⁵¹

Constables in the countryside as well as the towns dealt with the prevalence of assaults associated with widespread drinking. When feuds or quarrels erupted, the inhabitants well-plied with local whisky could be savage.⁵² On Sunday 5 July 1835 at the Nelles Settlement a group of men and women gathered at McGuire's Tavern to settle an old feud with Edward Armstrong.⁵³ When Armstrong appeared, he was viciously attacked with axes and

⁴⁸Presentments of the Grand Jury, July 1829, A.O., Niagara Court Records, R.G.22, Series 372, July (1829), Box 4, Grand Jury Presentment, File 6, No.4.

⁴⁹The magistrates would order the constables to arrest certain women and put them in gaol. Often no names are given, nor is there a charge on the invoice. Peter J. Smith Invoice, A.O., Niagara Court Records, R.G.22, Series 372, October (1829), Box 4, Accounts, File 34, No. 13, Francis Procter Invoice, October (1829), Box 4, Accounts, File 34, No.23.

⁵⁰Sometimes they were listed as vagrants. Francis Procter Invoice, A.O., Niagara Court Records, R.G.22, Series 372, July (1835), Box 20, Accounts File 1, No. 20.

⁵¹A.O., Niagara Court Records, R.G.22, Series 372, July (1835), Box 20, Gaol Account, File 11.

⁵²Susan Lewthwaite noted the prevalence of severe violence in the countryside, Susan Lewthwaite, "Violence, Law, and Community in Rural Upper Canada", Crime and Criminal Justice, pp. 353-386.

⁵³Jeremiah Collins et al. for Riot and Assault, A.O., Niagara Court Records, R.G.22, Series 372, July (1835), Box 20, File 25.

knives. Magistrate Nelles wrote to Quarter Sessions that the case was much worse than he could express.⁵⁴

When many people were involved, the constables needed considerable help to bring in the assailants. Christopher Young, an innkeeper, needed two assistants to arrest five of the people involved with the attack on Edward Armstong. They guarded the prisoners for one night and two days while magistrate Nelles examined the assailants at Young's inn.⁵⁵ Young required a further three constables to bring the five prisoners 60 miles that took 4 days with a team and wagon. For his fees and expenses for meals, lodging, conveyances and assistants, Young charged the magistracy £17.14.11.

With the amount of crime in the Niagara, the gaol was always full. As the Niagara District grand jury reported to the House of Assembly in 1835 the gaol was never meant to hold more than 20 prisoners, but it had contained more than 35 at one time.⁵⁶ It

⁵⁴The assembled magistrates at Quarter Sessions fined the four instigators of the riot £5 each plus a total of £42.2.5 in costs. In addition, they were ordered to remain in gaol until he paid the money. Ibid.

⁵⁵Christopher Young Invoice, A.O., Niagara Court Records, R.G.22, Series 372, July (1835), Box 20, Accounts, File 2.

⁵⁶The Niagara gaol had 8 separate cells or rooms. Looking at the court records, the numbers of prisoners confined in the gaol there could be as low as 11 in January 1828 to a high of 54 in October 1835. The average number of people incarcerated at any one time in the Niagara gaol was 26, more than three to a room. A.O., Niagara Court Records, Gaol Accounts, 1828-1840, R.G.22, Series 372, Box 1-40. Niagara Gaol Reports, 8 September 1835, N.A.C., Appendices to the Journals of the Legislative Assembly, Vol.1 (1836), No.44.

was also notoriously insecure.⁵⁷ In 1833, James Robinson, agent for the Niagara Falls Co., broke in, assaulted Joseph Scobell, a debtor, and left.⁵⁸ To keep prisoner gaol breaks to a minimum, the military assisted the Sheriff and maintained a guard. In 1835 when the government threatened to recall the troops, the magistrates protested to the Lieutenant-Governor that the military were still needed to prevent escapes because they had a "host of criminals" in the gaol.⁵⁹

The prevalence of crime and the placement of Niagara gaol at the north-eastern tip of the district ensured that many constables were frequently obliged to travel many miles to court.⁶⁰ Journeys over 10 or 12 miles took more than a day and

⁵⁷In 1834, Sheriff Alexander Hamilton protested that the district should bear the responsibility for escapes because the gaol had been notoriously badly built. Criminal prisoners simply removed the floor boards and made tunnels, while the debtors were allowed to have the liberty of the day room and the gaol limits that allowed them to walk about the town. Alexander Hamilton to Charles Richardson, A.O., Niagara Court Records, R.G. 22, Series 372, July (1834), Box 17, Gaol Records, File 25. Supervision in also was lax. Five to six quarts of liquor was daily passed through the windows. A.O., Niagara Court Records, R.G.22, Series 372, April (1836), Box 23, Grand Jury Presentment, File 11.

⁵⁸A.O., Niagara Court Records, R.G.22, Series 372, July (1833), Box 14, Filings, File 29, No.1. When Robinson was charged with assault and battery the court did not proceed. James Robinson for Assault, A.O., Niagara Court Records, R.G.22, Series 372, October (1833), Box 15, File 29.

⁵⁹Letter to Lieutenant-Governor Colborne from the Inhabitants of Niagara, A.O., Niagara Court Records, R.G.22, Series 372, September (1835) Box 21, Correspondence, File 15. See also the Civil and Private Secretary, Edward McMahon, to the Niagara magistrates, A.O., Niagara Court Records, R.G.22, Series 372, July (1836), Box 24, Correspondence, File 8.

⁶⁰St. Catharines Journal, 9 September 1837.

placed a difficult burden on constables from the remoter regions of the district. Although the Niagara roads were said to be better than most,⁶¹ even by the late 1830s roads were slow-going except in winter. Of the 377 actions where mileage is given the average trip was 23 miles, a two to three day journey. Forty percent of the actions involved journeys over the average distance.

The longer the journey the greater the chance of escape. In thirteen years, there were only 18 instances where prisoners escaped. The great majority of the constables delivered their prisoners to Niagara gaol. Escorting prisoners over long distances became more difficult, however, if the constable acted alone as Richard McGuire found out. McGuire was an innkeeper from Indiana, one of the most westerly settlements. He apprehended Thomas Fembly, William Cross and Isaac Loughts on suspicion of a felony.⁶² The local magistrate ordered two of the men be taken to Niagara gaol. Constable McGuire kept the men in custody at his inn for two days waiting for a team of horses. It took six days to travel the 72 miles, during that time he spent £11.15.6 for the support of himself and his prisoners. As they got close to Niagara town, William Cross escaped. McGuire stated that the roads were so bad he was lucky to get there at all; he was not charged for losing his prisoner.

⁶¹Jameson, Winter Studies and Summer Rambles in Canada, pp. 82-83.

⁶²Richard McGuire Invoice, A.O., Niagara Court Records, R.G. 22, Series 372, June (1838), Box 32, Accounts, File 1, No. 35.

Constables not only risked escapes, members of the community occasionally opposed their arrests and rescued the prisoner. In 1832 constable Peter Young arrested Isaac Germain for stealing a pocketbook from the inn of Seth Keith.⁶³ Keith, having found the pocketbook, went to Niagara to obtain bail for Germain. Germain persuaded Young to go to Keith's inn and await his return. Constable Young spent "two or three" hours drinking at Keith's inn, leaving Germain in the waggon outside. When Germain requested to be loosened and have some dinner, he escaped on one of Keith's horses. When Young found his prisoner missing, Keith restrained him from following. According to one witness, Keith gave him a dollar to help him on his way. Keith was charged at Assize for effecting a rescue, but the witnesses were vague and judge John Beverley Robinson directed a not guilty verdict.

Despite the many burdens associated with keeping the peace, constables were diligent in the execution of their office. Constables often went to considerable trouble and expense to guarantee the apprehension of offenders. In doing so they responded not only to the directions of the magistracy, but also reflected local concerns over law and order. Most of the arrests related to property crime, although personal crimes particularly murder often entailed an extended search before the arrest was made. Not all constables wrote the reason for the arrest on their

⁶³The King Vs. Seth Keith, A.O., Supreme Court of Ontario Judges Bench Books, J.B. Robinson, Assize 1831-34, R.G.22, Series 390, September (1832), Box 21, File 3.

invoices,⁶⁴ but there were 438 cases where the reason was given. (See Table 6.3) The largest number of cases were property crimes.

TABLE 6.3.
Reasons for Arrest

Charge	No.	Percent
Property Crime	188	42.92
Personal Crime	146	33.33
Morality	56	12.78
Sedition	17	3.87
Court Offenses	16	3.65
Regulatory Offenses	15	3.42
	438	100.00

Source: A.O. Niagara Court Records, R.G. 22, Series 372, Box 1 to 40.

Running the gamut from larceny to arson, property crimes comprised 42.9% of the reasons for bringing someone to a magistrate or to Niagara gaol. Larceny, even of the seemingly most insignificant variety, was cause for an extended search. After a trip of 146 miles, constable Charles Henderson brought in Jesse Brown, wanted for having stolen a pair of blue pantaloons. He searched for Brown travelling from Niagara to Toronto to Hamilton and back to Toronto where Brown was finally located.⁶⁵

⁶⁴The reason for an arrest is not always given on the invoices. Often the constable will note that accused has committed a felony or misdemeanour or he will write suspected felony or suspected misdemeanour.

⁶⁵Charles Henderson Invoice, A.O., Niagara Court Records, R.G.22, Series 372, January (1837), Box 26, Accounts, File 2, No. 66.

In a more serious case of arson constable Abraham Chapman logged 225 miles in the search and return of Nelson Petty who was suspected of burning the barn of Mr. Jennings in Wainfleet. After he apprehended Petty, Chapman bought irons to prevent an escape and then, in the dead of winter, hired a sleigh to travel the five days from Wainfleet to Niagara gaol. Magistrate David Thompson acknowledged the largeness of the bill, £13.4.0, but commented that it barely covered half of Chapman's expenses. He also lauded Chapman for his extraordinary effort.⁶⁶

Crimes against the person, including assaults, riots, rapes and suspected and attempted murders represented 33.% of the arrests. In serious cases magistrates sent constables across the American border. Both Constables Francis Procter and John Talbot⁶⁷ crossed to the United States to search for John Fitzgerald, who was suspected of killing his wife. When Procter failed to find Fitzgerald, Elisha Ives, a constable from Willson, New York, pursued Fitzgerald, took him to Stockport gaol and then delivered him to the Niagara Sheriff. The court paid Ives £7.10 for his efforts.⁶⁸ In 1833, the Chief Constable, Jacob

⁶⁶Abraham Chapman Invoice, A.O., Niagara Court Records, R.G.22, Series 372, March (1834), Box 16, Accounts, File 7.

⁶⁷John Talbot Invoice, A.O., Niagara Court Records, R.G.22, Series 372, January (1833), Box 13, Accounts, File 20, No. 23.

⁶⁸The Niagara magistrates had to send over documents to prove there were grounds to charge Fitzgerald. The documents went to the Governor of New York. When he was satisfied over the legality of the proceedings, Fitzgerald was placed in custody and returned to the Sheriff of Niagara. A.O., Niagara Court Records, R.G.22, Series 372, March (1833), Box 14, Accounts, File 1, n.n.

Dockstader, travelled "to the other side" to arrest George Martin in a case of rape.⁶⁹ In 1835 Procter crossed the river twice in murder cases, once at the behest of the coroner Dr. Miller⁷⁰ and again to bring in a witness to murder.⁷¹ In the same year, constable Donald McDonald went to Buffalo to apprehend a man wanted for a murder in Toronto.⁷²

Constables followed more than murderers to the American side. In 1829, Samuel Street, J.P., ordered Erastus Moses across the river to find Nicholas Handlin who had escaped from George Lacey and Johnathon Doan.⁷³ Constable John Wright crossed into American territory for twelve miles to apprehend a thief who had stayed at his inn. The man had not only failed to pay his bill but also stole clothes, £10 in cash and some papers.⁷⁴ In 1836 the magistrates ordered constable Joseph Evans to take Hiram Vinica, a lunatic from Massachusetts, back to the United States and

⁶⁹Jacob Dockstader Invoice, A.O., Niagara Court Records, R.G.22, Series 372, October (1833), Box 15, Accounts, File 2, No. 34.

⁷⁰Francis Procter Invoice, A.O., Niagara Court Records, R.G.22, Series 372, October (1835), Box 21, Accounts, File 1.

⁷¹Francis Procter Invoice, A.O., Niagara Court Records, R.G.22, Series 372, April (1836), Box 23, Accounts, File 1, No. 22.

⁷²Donald Macdonald Invoice, A.O., Niagara Court Records, R.G.22, Series 372, October (1836), Box 25, Accounts, File 2, No. 50.

⁷³Erastus Moses Invoice, A.O., Niagara Court Records, R.G.22, Series 372, January (1829), Box 3, Accounts, File 1, n.n.

⁷⁴Gleaner, 4 September 1830.

deliver him to a Justice of the Peace at Buffalo.⁷⁵ In 1838 during the hysteria over the Patriot invasions, the Niagara magistrates sent constables to the United States to locate two witnesses in a case of larceny and the court paid them £2 to testify.⁷⁶

Americans also crossed to the Upper Canadian side to arrest suspected criminals. In 1837 at Smith's tavern in Grimsby the Sheriff of Lockport, New York arrested a Mr. Olney who was accused of coining and forgery.⁷⁷ In 1837 there was also the famous case of Solomon Mosley, an American slave who had stolen a horse in order to escape to Upper Canada. With the approval of Lieutenant-Governor Sir Francis Bond Head, his former master was in the process of taking him back to Kentucky when the Niagara African-American community intervened and Mosley escaped.⁷⁸

While constables on both sides of the border were mainly concerned with personal and property offenses, 12.78% of the arrests concerned the protection of district morals. Most arrests related to more overt offenses of prostitution or keeping a bawdy house. When requested, however, the magistracy also protected the outraged sensibilities of religious groups. In July 1829, eight

⁷⁵It was an expensive bill, £5.13.6, but it was cheaper and more convenient than keeping him in the public gaol. Joseph Evans Invoice, A.O., Niagara Court Records, R.G.22, Series 372, July (1836), Box 24, Accounts, File 1, No. 60A.

⁷⁶Clerk of the Peace Records March 1838, A.O., Niagara Court Records, R.G.22, Series 372, March (1838), Box 31, File 10.

⁷⁷St. Catharines Journal, 8 June 1837.

⁷⁸St. Catharines Journal, 28 September 1837.

men from Grantham Township accused Solomon B. Rose of blasphemous conversation.⁷⁹ After preaching a sermon at a local school house, Rose had declared that "he wished to God that all Church of England prayer books, catechisms and creeds were eradicated from the earth". The Grantham men wanted Rose charged. The court sent Jacob Dockstader, the high constable, who searched for 142 miles before he arrested Rose.⁸⁰

While most constables diligently followed the orders of the magistrates, when the sanctions of the law applied to them, constables could also react violently. In 1829 Constable Frederick Buchner attempted to execute an order of the Court of Requests and seize the goods and chattels of Constable Samuel Hicks.⁸¹ Hicks knocked Buchner down twice and threw him out of his house. Because he was a constable, Hicks was fined a healthy £5 plus costs and he was never reappointed. The magistracy did not condone constables who obstructed the law.

Occasionally a constable took advantage of his position, resolved a local case and lined his own pocket by collecting his fee on the spot. In 1831 magistrate William Anthony notified Quarter Sessions that constable John F. Stewart instead of arresting James Fields for theft settled the problem himself.

⁷⁹Matthew McMullin to Quarter Sessions, A.O., Niagara Court Records, R.G.22, Series 372, July (1829), Box 4, Filings, File 5.

⁸⁰Jacob Dockstader Invoice, A.O., Niagara Court Records, R.G.22, Series 372, October (1829), Box 4, Accounts, File 34, No. 12.

⁸¹Samuel Hicks for Assault, A.O., Niagara Court Records, R.G.22, Series 372, July (1829), Box 4, File 17.

Stewart had apprehended James Fields accused of stealing £2 from John Johnson a fellow canal worker.⁸² Stewart convinced Fields to return the £2 to Johnson, charged £2.5 for his services and let him go. This was reported to magistrate William Anthony by Constable Lacey, who had been asked to arrest Fields, but now had lost his fee. Magistrate Anthony filed a complaint to Quarter Sessions, but no action ensued.

Despite the actions of a few renegades and the many burdens of enforcing judicial orders, the great majority of the constabulary carried out their duties. Out of 2397 actions ordered by the magistrates or other legal officials, only 6 constables either refused to act or failed to act in accordance with their orders. These were William Pew, Peter Berger, Thomas Putman, Emmanuel Hoover, Luther Boardman and Andrew Oliphant. According to W.C. Keele, the high constable could be charged for the negligence of any petty constable.⁸³ From the court records, however, the four high constables in Niagara from 1828 to 1841, Jacob Dockstader, Lewis Donnally, Donald McDonald and Bernard Roddy were never held accountable for the petty constables. If a constable failed to carry out their duties, the magistracy charged them in the courts.

Failure to follow the orders of a magistrate sometimes resulted from a conflict between acceptable forms of local

⁸²Magistrate Anthony to Quarter Sessions, A.O., Niagara Court Records, R.G.22, Series 372, July (1831), Box 10, Filings, File 15.

⁸³. Magistrate's Manual, p. 126.

behaviour and the differing expectations of a magistrate. Magistrates who were officiously strict could undermine the supportive relationship with their constables. Such was the situation with magistrate James Kerby of Bertie Township. Colonel Kerby, the leading militia officer in the Niagara, was an autocratic⁸⁴ and disliked magistrate.⁸⁵ In 1833 Kerby notified Quarter Sessions that he was ill supported by his constables, particularly Henry Putman and Robert Deeming.⁸⁶ According to Kerby, they failed to help arrest Philip Anger and George Huffman who allegedly assaulted Benjamin Chadwick, an innkeeper at Waterloo Ferry. Kerby underlined the unsavoury character of Anger and Huffman. He wrote that Anger and Huffman had "shamefully abused and insulted the neighbourhood" and "put all constables in this quarter at defiance". Deeming and Putman were obviously not the only constables who failed to assist magistrate Kerby. When the cases against Anger and Huffman came to trial at Quarter Sessions, the juries upheld the judgement of the constables. The

⁸⁴Kerby was very strict about smuggling and alienated his community by using paid informers. He also attempted to funnel all local trade with the United States on his ferry by impounding all others. This won him local dislike by other ferry owners as well as hurting local businesses at Fort Erie. Cruikshank, Colonel The Honourable James Kerby, His Life in Letters, pp. 261-329.

⁸⁵Campbell, Niagara, Hinge of the Golden Arc p. 194.

⁸⁶James Kerby to Charles Richardson, 10 April 1833, A.O., Niagara Court Records, R.G.22, Series 372, October (1833), Box 15, Correspondence, File 26.

grand jury found insufficient evidence to try Anger and Huffman was found not guilty.⁸⁷

Constable Putman, who refused to arrest Anger and Huffman was one of the few ever to be charged with misconduct.⁸⁸ Putman had arrested David Clancy who had stolen \$1529 in bank notes from Robert Acton. Constables Wintermute and Putman, accompanied by Acton, escorted Clancy from Bertie to Niagara gaol. When they got within two miles of Niagara town, Clancy confessed and offered to return the money in exchange for his freedom. Both Acton, the victim of the robbery, and constable Putman agreed that it was best to "let him clear out". Constable Wintermute protested and took in the prisoner. The magistrates tried Putman for misconduct, but the petty jury at Quarter Sessions found him not guilty. A jury was equally sympathetic to constable Peter Berger of Crowland Township. In 1833 John Kalor charged Berger with perjury for allegedly lying over the service of a writ. The petty jury found Berger not guilty.⁸⁹

From 1828 to 1841, the only constable to be charged and found guilty of acting contrary to the directions of the magistracy was

⁸⁷George Huffman for Assault, A.O., Niagara Court Records, R.G.22, Series 372, October (1833), Box 15, File 26 and Philip Anger for Assault, Ibid., Box 15, File 16.

⁸⁸Henry Putman for Misconduct, A.O., Niagara Court Records, R.G.22, Series 372, October (1833) Box 15, File 31.

⁸⁹Grand Jury Presentment, 11 July 1833, A.O., Niagara Court Records, R.G.22, Series 372, July (1833), Box 14, Filings, File 29.

Andrew Oliphant of Lundy's Lane.⁹⁰ Oliphant, acting as a bailiff against Joseph Smith, was specifically charged for the minor infraction of not showing his warrant. Instead he seized Smith's farm implements and added a six shillings three pence supercharge for himself. Smith resisted and demanded to go to Dr. Lefferty J.P. to straighten out the problem, but Oliphant refused. Perhaps Oliphant thought that Smith would never complain. Joseph Smith and the witness Isaac Dees were both African-American. Magistrates James Mewburn and Colonel Delatre sitting in Summary Judgement in Stamford Township found Oliphant guilty and fined him £2.1.6.⁹¹

The magistrates disposed of the charges against the remaining three constables without a trial. In 1828, the grand jury at Quarter Sessions wanted to charge William Pew of Stamford for his refusal to arrest Abner Cook who had allegedly assaulted John Higsby, but the magistrates ordered that no proceedings be taken.⁹² In 1839 Emmanuel Hoover and Luther Boardman refused to transport a soldier, charged with a felony from Humberstone

⁹⁰Andrew Oliphant for Not Showing his Warrant, A.O., Niagara Court Records, R.G.22, Series 372, January (1839), Box 33A, Summary Judgements, File 10.

⁹¹In a cash starved rural society this was a large fine. If a skilled printer made £1.15 per week, £2.1.3 works out to almost two weeks wages. See Frederick H. Armstrong "Reformer as Capitalist: William Lyon Mackenzie and the Printers Strike of 1836", Ontario Historical Society (1967), p. 190.

⁹²Alexander Hamilton Order Concerning William Pew, A.O. Niagara Court Records, R.G.22, Series 372, July (1828), Box 2, Filings, File 5.

Township to Niagara gaol.⁹³ They were not charged with misconduct; and Boardman was reappointed in 1840.

With few exceptions, the constabulary cooperated with the magistracy. Despite the odd rescue and the expected resistance of criminals, constables carried out their tasks to maintain public order. There were few complaints over the actions of community constables who attempted to keep the public peace. This differs from the attitude of the residents of Stamford Township towards the centrally paid Niagara Frontier Constabulary. In 1839 the government at York appointed a provincially salaried police to relieve the militia who had been guarding the border after the rebellions. Niagara farmers disliked serving in the militia and Colonel J.B. Bucknall Estcourt complained that many men were often "absent without leave".⁹⁴ With the appointment of the Frontier Constabulary, the government discharged the militia.

Under the authority of stipendiary magistrate, Lieutenant-Colonel Graves Swan,⁹⁵ the force consisted of a Superintendent,

⁹³Major Richard Web to Charles Richardson, A.O., Niagara Court Records, R.G.22, Series 372, March (1839), Box 34, Correspondence, File 6.

⁹⁴Cruikshank, Colonel The Honourable James Kerby, His Life in Letters, p. 239.

⁹⁵The office of Stipendiary Magistrate and the Frontier Constabulary were not mentioned in the Court Records for the Niagara. Letters and allusions to it are only found in the National Archives in Upper Canada Sundries, R.G.5 A1, in the listing of the Public Accounts of Upper Canada, R.G.1 E 15 B and in the Submissions to the Executive Council, R.G.1 E5.

W.B. Roberts and twelve salaried men.⁹⁶ The Frontier Constabulary differed from the urban police at York. They did not act in the larger towns of Niagara or St. Catharines to keep order, but were spread along the Niagara river from Queenston to Chippawa in Stamford Township. The mandate of the Niagara Frontier Constabulary was to stop American raiding parties⁹⁷ who were burning barns, houses,⁹⁸ inns and churches along the Niagara river border. Swan estimated that the force would cost £340 per quarter.⁹⁹ This estimate was larger than the central government had intended and more than the yearly bill for the district constabulary. Swan who had difficulty obtaining the salaries for his officers sometimes had to pay them from his own pocket.¹⁰⁰

Instead of protecting the people and the magistracy from incendiarism the Frontier Constabulary began to uniformly enforce local regulations. In the fall of 1839, the Frontier Police

⁹⁶Colonel Swan to J.B. Harrison, 3 October 1839, N.A.C., Upper Canada Sundries, R.G.5 A 1, Vol.230, pp. 125841-125844.

⁹⁷Cruikshank, Colonel The Honourable James Kerby, His Life in Letters, pp. 251-255.

⁹⁸American raiding parties had burnt the houses and barns of magistrates Laing and Mewburn. Niagara Magistrates to S.B. Harrison, 24 September 1839, N.A.C., Submissions to the Executive Council, R.G.1 E 5, Vol. 37, p. 133.

⁹⁹Colonel Swan Requesting Remittance For Salaries, 16 January 1840, N.A.C., Upper Canada Sundries, R.G.5 A 1, Vol.236, pp. 130038-130043.

¹⁰⁰Ibid. See also Colonel Swan to T.G. Ridout, 18 February 1840, N.A.C., Upper Canada Sundries, R.G.5 A 1, Vol.240, p. 131524-131525 and Colonel Swan to T.G. Ridout, 10 March 1840, Ibid., Vol.241, pp. 131841-131842.

systematically fined those driving sleighs without bells.¹⁰¹ Without previous public notice the police armed with large sticks stopped the sleighs took people to the police office at Drummondville or the nearest magistrate and fined them \$2. If they refused to pay, a bailiff charging further costs seized and sold their goods. Seventeen people were fined. Nine, including a Dr. Lee who had been prevented from seeing a patient until he went to the police office and paid his \$2, swore out affidavits in front of magistrate James Cummings that the Frontier Constabulary were acting in a high-handed and frightening manner.¹⁰²

The public of Stamford called a township meeting to petition the Lieutenant-Governor. The document was signed by 325 men representing most of the 378 families in Stamford.¹⁰³ The petition accused the Frontier Constabulary of entrapping the public by lying in wait at corners and using paid informers. Stamford people denounced the "unnecessary severity and tyrannical conduct" of magistrate Swan and his Frontier Constabulary. The inhabitants argued that the Constabulary had exceeded their mandate that was "to protect the magistrates and

¹⁰¹N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.239, pp. 130859-130899.

¹⁰²Petition of the People of Lincoln to The Lieutenant Governor, Sir George Arthur, 24 January 1840, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol. 236, p.130931.

¹⁰³The numbers of the people of Stamford are taken from N.A.C.; Appendix to the Journal of the Legislative Assembly (1839-1840), Vol.I, Population Returns, p. 150.

the people" from incendiarism.¹⁰⁴ Instead, the police were accused of fomenting dissent in an area that had been "to[o] much disturbed already".¹⁰⁵

Magistrate Swan minimized the complaints by attributing them to former rebels.¹⁰⁶ Stamford and Niagara Township magistrates, however, supported their constituents. Magistrate Cummings obviously assisted those who swore out the affidavits. Magistrate Samuel Street Jr. also disliked the process. When the police took an offender to Street to pay the fine, Street was at first unwilling to act until Superintendent Roberts convinced him to do so.¹⁰⁷ Magistrate William Mylne who sent the Stamford petition to M.H.A. David Thorburn, J.P., noted that the people of Stamford Township had a strong case.¹⁰⁸ The provincial government, however, disagreed and the force remained.

The reaction of the Stamford residents to the Frontier Constabulary proved an exception to the supportive relationship that existed between the citizen constables and their community.

¹⁰⁴Niagara Magistrates to S.B. Harrison, 24 September 1839, N.A.C., Submissions to the Executive Council, R.G.1 E 5, Vol. 37, p. 133.

¹⁰⁵Petition of the People of Lincoln to The Lieutenant Governor, Sir George Arthur, 24 January 1840, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol. 237, pp. 130452-130455.

¹⁰⁶Graves Swan to Lieutenant Governor, Sir George Arthur 16 January 1840, N.A.C., Upper Canada Sundries, R.G.5 A1, Vol. 237, p. 1300452.

¹⁰⁷N.A.C., Upper Canada Sundries, R.G.5 A1, Vol.239, p. 130939.

¹⁰⁸Petition of the People of Lincoln to The Lieutenant Governor, Sir George Arthur, 24 January 1840. N.A.C., Upper Canada Sundries, R.G.5 A1, Vol. 237, pp. 130452-130455.

Complaints from the magistrates and ordinary citizens over the actions of the constables were rare and the relationship between the magistracy and the community constabulary was overwhelmingly a supportive one. Despite the obstacles of distance, the resistance of criminals and possible unpopularity in the eyes of their neighbours, only 6 constables refused to act or failed to act in 2397 orders they received. Constables like Henry Putman and Robert Deeming might be reluctant to arrest people for minor infractions, but many others like Nicholas Smith attempted to keep the peace despite considerable risk to themselves. When requested, constables subordinated their interests for the good of the community and travelled long distances to preserve district peace. Although a minor official constables were a major player in bringing local people within the authority of the district justice system and in so doing helped unify the district under the governance of the local magistracy.

Chapter VII

Conclusion

Lieutenant-Governor Simcoe established the framework for an aristocratic society in the wilderness of Upper Canada.¹ He believed that "British Customs, Manners, & Principles"² would attach the new province securely to the British Crown and halt the elective principle "operating so universally as it does in the United States".³ Backed by the Constitutional Act of 1791, the Lieutenant-Governor and the Executive Council would have considerable power over the Assembly and the province. County Lieutenants⁴ appointed by the Lieutenant-Governor and the Executive Council would scrutinize all district appointments, particularly those to district magistracy. A magistracy, chosen from loyalist military officers⁵ would provide ambitious local elites with control⁶ over the administrative and legal affairs of their district. Lifetime appointments to the Executive Council,

¹J.G. Simcoe to the Duke of Portland, 30 October 1795, Simcoe's Correspondence, Vol.IV, p. 115.

²J.G. Simcoe to Hon. Henry Dundas, 30 June 1791, Simcoe's Correspondence, Vol.I, p. 27.

³J.G. Simcoe to the Duke of Portland, 30 October 1795, Simcoe's Correspondence, Vol.IV, p. 117.

⁴Ibid.

⁵Ibid., p. 116.

⁶Simcoe to Henry Dundas, 23 November 1792, Simcoe's Correspondence, Vol.I, p. 264.

County Lieutenancy and the magistracy would encourage the aristocratic flavour of Upper Canada, and authority based on appointed office would flow from the provincial centre to the periphery of the districts.

By 1794 Simcoe realized that his ambitions for the rapid settlement of Upper Canada hinged on the development of agriculture and the shipping and supply trade of the St. Lawrence.⁷ He did not abandon his grand design but adapted it to the realities of an expanding settlement based on trade. His accommodation with previously mistrusted merchant elite,⁸ led to Robert Hamilton's appointment as County Lieutenant in 1796. Hamilton in turn mainly chose other merchants rather than military officers for the district bench.⁹ In the Niagara the district magistracy which had been given so much administrative and legal authority quickly came to be dominated by local merchants.¹⁰

Merchants who were tied to expanding agriculture development, the shipping trade and the supply of commercial goods were integral to their local communities and derived local prominence from their regionally-based interests. As merchants

⁷Wilson, The Enterprises of Robert Hamilton, p.127. See also Noel, Patrons, Clients and Brokers, p. 56.

⁸J.G. Simcoe to Henry Dundas, 16 September 1793, Simcoe's Correspondence, Vol.II, pp. 53-55.

⁹Robert Hamilton to E.B. Littlehales, 15 June 1796, Littlehales to Hamilton, 10 July 1796, Simcoe's Correspondence, Vol.IV, pp. 299, 328.

¹⁰Wilson, The Enterprises of Robert Hamilton, pp. 40-44.

and retailers they provided local credit. Others as entrepreneurs developed the district infrastructure by building wharfs, warehouses, mills, foundries and improved transportation by promoting the Welland canal and the Ontario and Erie railway. Their appointment as militia officers further strengthened their district bonds. As magistrates, merchants were involved with every aspect of district life from the issuing of licences to deciding on the price of bread. A merchant magistracy whose allegiance was based more on the "economic interests of their class"¹¹ than any particular ideology promoted district development and formed a counterweight to provincial authority.

The close American border and the peninsula's position as the gateway for goods and supplies flowing between the Great Lakes, meanwhile, affected both the Niagara magistracy and local residents. The early and later American settlement promoted by the Niagara elites created a community which was adverse to British class or religious structures. The tolerance of Americans also found expression in the supportive attitude towards the many religious sects. Both newspapers and magistrates resisted the York-based policy that a good citizen was an Anglican citizen. Members of the Niagara hierarchy sought liberalization of religious privileges and supported the use of the Clergy Reserves for local non-Anglican congregations. The position of the district as a commercial corridor ensured the continuing

¹¹Donald Creighton, The Empire of the St. Lawrence: A Study in Commerce and Politics (Toronto: Macmillan, 1956), p. 222.

prominence of the merchant elite who relied more upon successful trade than government appointments.

This explanation departs from structural or ideological arguments which emphasize York-centred control of the province through constitutional structure, ideology or patronage. The notion that the Family Compact with the collusion of the central courts ruled Upper Canada reads out the agency of the magistracy as well as the constables. Central imposition of a Conservative ideology falls into the same fallacy. People were more affected by the government of their district than the distant government at York. Authority did not radiate from an all powerful provincial hierarchy to the periphery of the districts, but coalesced in the districts around the nucleus of the district justice system.

Although the provincial government named the magistrates, an appointment to the magistracy was tied to the advice of previously appointed local officials. Influential local magistrates ensured the appointment of relatives and friends, whereas magistrates like William Hamilton Merritt rejected candidates whose family criticized the local clique or whose influence might prove divisive. Sir John Beverley Robinson weeded out those less worthy of the office, but Robinson decided on lists made in the Niagara.

Once appointed, the magistracy governed independently of York control. The obstacles of distance and poor communications which lessened the authority of the provincial government

contributed to the influence of the magistracy. The administrative and judicial decisions of the magistrates were final. Local people could petition the Lieutenant-Governor over perceived inequities, but distant provincial officials relied upon the judgement of the local magistracy. The only provincial institution which visited the district, the travelling Court of Assize, was heavily influenced by the magistracy who acted as commissioners for affidavits, grand jurors and associate judges.

The influence of provincial officials in the Niagara was tenuous. Although many of the magistracy as Anglicans and militia officers probably held common beliefs with the York elite, the Family Compact had little authority within the district. The magistracy with the help of the constabulary acted independently of the government at York to consolidate their authority.

In control of all local affairs, magistrates were not submissive agents of the Family Compact. Far from being political ciphers of the provincial government, the magistracy opposed provincial government policies which threatened their interests as well as those of their constituents. They supported the need for compensation for losses incurred during the 1812 War and criticised the provincial government's delay. The magistracy promoted the post-war economy by encouraging American immigration in the face of the Family Compact's displeasure. Most of the Niagara magistracy also supported Robert Gourlay. When Gourlay's plan for British immigration stalled, magistrates participated in Gourlay's democratic political conventions and criticized the

government at York. When the provincial government attempted to reclassify many of the early settlers as aliens, magistrates helped fund Robert Randal's successful British appeal to safeguard their civic and political rights.

The magistracy consolidated their position by appointing as constables supportive community men from the next social echelon of farmers and petty business people. While most constables were part of the middling strata, some as militia officers and elected township officials came from the upper reaches of their local society. Constables who were elected to township office often had considerable experience in the governing of their area and were popular local men. As neighbours, relatives and friends, local innkeepers and business people, constables bridged the authority of the magistracy and the community.

Magistrates appointed a majority of constables from the old military families who had fought for the British. Many fathers and sons also fought in the 1812 War. Along with other loyalists and late-loyalists who settled before 1812, they and their children received generous land grants and had a vested interest in the peace and order of their local society. The neglect of the war losses by the York-based government and its threat to their civic and property rights during the alien issue effected these settlers with the greatest force. Magistrates who defended their community and its interests forged district alliances.

The community constabulary was integral to the centralizing force of the district justice system. Constables delivered writs,

warrants, subpoenas, proclamations, presided over township elections, kept order in court and ferried people to the magistrates and to the Niagara gaol. Constables ensured that litigants and witnesses participated within the court process. They spread the authority of the magistracy throughout the district and across the American border, if necessary. Without a willing constabulary the district justice system would collapse.

Despite the considerable burden of enforcing magistrates orders constables were diligent in the performance of their duties. They faced physical danger, abuse and local unpopularity while acting on unpleasant missions for the magistracy. Constables travelled long distances and were responsible for their prisoners and all expences until their invoices had been scrutinized at Quarter Sessions. The peninsula's position as the chief gateway to the United States, the amount of crime associated with port and border areas and the large migrant population working on the Welland Canal placed a further burden on the Niagara constabulary. Despite the many difficulties, only six constables either refused to carry out their orders or failed to execute them properly.

The rule of the magistracy was not absolute. Constables could lose their prisoners, petty juries often upheld the public against the actions of constable bailiffs and private settlements still existed. Nor did magistrates or constables attempt to uniformly prosecute each and every offender. The magistracy and constabulary operated in a pragmatic ad hoc fashion to keep the

peace. They acted on public complaint and used considerable discretion in the application of the law. Their reactive rather than pro-active stance contributed to their acceptance.

This argument departs from the conflict position taken by most historians who have addressed moments of disorder or opposition in the Upper Canadian justice system. Dwelling on atypical moments of behaviour, historians have emphasized the lack of control of local magistrates or their constabulary over their district. Certainly assaulters, thieves and debtors opposed the constabulary, nor did the magistrates treat each and every offender the same. They used considerable discretion and tailored the application of the law to differing communities. An examination of the constabulary and the magistracy of the Niagara District of Upper Canada, however, shows that the magistracy and constabulary worked together to maintain local order. While the Niagara District does not represent all districts in Upper Canada, an examination of the processes of law enforcement in other districts may show a similar pattern.

A Note On Methodology

Beginning with the names of magistrates and constables and their township of residence found in the Ontario Archives Records of the Niagara Quarter Sessions of the Peace RG 22 Series 372, each individual was traced through many government records at the National Archives. The appointments of the magistrates to their legal office as well as to other lesser posts can be found in Record Group (RG) 68 General Index to Commissions. The Registers of Militia, RG 9,IB5, complete from 1824, contain the commissions in the militia for both magistrates and constables. Information on land holdings and often details of family history during the loyalist exodus to Upper Canada can be found in the Upper Canada Land Petitions RG1, L3. The Upper Canada Sundries RG5, A1 contains the correspondence received by the provincial civil secretary. This series contributes a mine of information about the earliest settlers. Further detail pertaining to the war of 1812 can be found in RG8, C Series, British Military Records and in the War Losses Claims RG 19, E5A. Information on the religion of Upper Canadians is found mainly in the Census Records of 1842 and 1851. Both the 1842 and 1851 census for the Niagara District, however, are incomplete and by 1851 many people have moved or died. Many prominent figures have their own papers which also have been searched. The search through these record groups and partial searches through many others resulted in a profile for most of the players in the study. Biographical detail on each person, however, is often incomplete for every category.

Printed Sources

Many of the constables and magistrates were members of the old loyalist families. There are a number of published volumes which trace the old loyalist families. They often provide family and marriage connections. E.M. Chadwick's two volume Ontario Families, W.D. Reid's The Loyalists in Ontario and N.K. Crowder's Early Ontario Settlers: A Source Book list many of the newcomers. L.H. Irving's book on the British military during the war of 1812, Officers of the British Forces in Canada During The War of 1812-15 provides information about officers but not the rank and file. The newspapers in the Niagara are incomplete at best, but contain current views regarding community events and people.

Secondary Sources

The large number of local Niagara histories, lists of loyalist names, books on individual people and genealogies provided helpful detail. The works of Janet Carnochan, E.A. Cruikshank and Mr. Justice William Riddell, all of whom wrote much about the Niagara District uncovered further information about the people of Upper Canada.

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