Religious Liberty and Protestant Dissent in Loyalist New Brunswick

No major aspect of collective life in early New Brunswick is more resistant to detailed inquiry than religious allegiance. We know little of the religious background of arriving Loyalists, and the first generation of settlement was so geographically unstable that worship patterns were fluid and written records few.[1] A survey of religious alignments in the Loyalist period does, however, disclose two salient features: a resolute beginning by the Church of England in the 1780s, conteracted at the turn of the century by the dramatic rise of Protestant dissent. So rapidly did the initial Anglican momentum dissipate and so successful were dissenting preachers in filling the void, that Archdeacon George Best's 1825 ecclesiastical survey of the province could claim merely that Anglicans "form a majority over any single sect".[2] The juxtaposition of these conflicting forces created the potential for profound controversy between the colony's appointed governing elite and its people. That a political crisis was averted was due to official realization early in the 19th century that the Anglican vision was already beyond reach, and to the fact that most Dissenters seem to have born their statutory disabilities with equanimity.

Although Anglicans came to accept the inevitability of religious pluralism in New Brunswick, this spirit of resignation was not yet apparent in the 1790s or the early years of the 19th century. Perhaps because open political warfare and widespread legal confrontation were ultimately averted, we have failed to notice the considerable Anglican-Dissenter legal conflict that was generated for a time. Collected below are all known instances of legal proceedings against Dissenters in matters of religious conscience. The compilation is offered as part of an inquiry into the legal and sociological 'constitution' of Loyalist New Brunswick. Elsewhere I have tried to show how particular legal disputes (over slavery; over the reception date) can be used as an elucidating context for exploring the *mentalité* of the Loyalist governing elite.[3] Confronta-

[1]Concerning the religious background of the Loyalists we know with certainty only the following: that a party of Anglicans founded Kingston, that companies of Baptist and Quaker Loyalists settled Beaver Harbour and that St. Andrews was predominantly Scotch Presbyterian. There is no reason to think that a majority of arriving Loyalists were Anglican in background. There is, on the other hand, considerable reason to suppose that a substantial minority of Loyalists — both before and after arrival — had no connection with the public exercise of religion. The most authoritative estimate suggests that in the last quarter of the 18th century only about sixty to seventy percent of colonial Americans were "church adherents": P. Bonomi & P. Eisenstadt, "Church Adherence in the Eighteenth-Century British American Colonies" (1983) 39 *William & Mary Quarterly* 245 at 274-75. Recognizing this, Attorney-General Bliss defended New Brunswick's 1786 law against profanation of the Lord's Day on the ground that, "The habitual licentiousness of many persons who retired here after the late War will certainly require all the restraints of this Law, and the several Stattutes against immorality to make them give over their irregular manners and become sober and decent": "Observation" on S.N.B. 1786, c.5, PRO CO 190/2.

[2]G. Best, "Report, Etc. of the means of Religious Instruction at present afforded in the Province of New Brunswick, with Observations on the best Method of increasing the same", 27 April 1825, in [Society for the Propagation of the Gospel], *Sermon...with The Report of the Society for the Year 1825* (London, 1826) at 96. In 1832 Charles Simonds asserted in the House of Assembly that four-fifths of New Brunswickers were Dissenters: *Journal of the House of Assembly...[for] 1832* at 55.

[3]D.G. Bell, "The Reception Question and the Constitutional Crisis of the 1790s in New Brunswick" (1980) 29 *UNB LJ* 157; "Slavery and the Judges of Loyalist New Brunswick" (1982) 31 *UNB LJ* 9.

(1987), 36 *UNB LJ* 146.

tions over questions of religious liberty, when they can be studied systematically, may prove similarly revealing. As the initiative in law enforcement necessarily rested with a local magistracy which was overwhelmingly Anglican, instances of prosecution or threatened prosecution can suggest as much about the attitudes of leading Churchmen as about the activities of dissent. Because few early New Brunswick criminal records are extant — and those few scattered chaotically across private collections in several repositories — the list presented here is the product of research in a diversity of sources. It is limited to cases in which Protestant Dissenters fell foul of statutory disabilities. All are instances of legal confrontation over a question of religious conscience. Excluded are the following situations in which Dissenters were entangled in legal disputes, because they involved either no confrontation or no issue of conscience:

— Crimes committed by Dissenters when under the influence of religious impressions: John Lunt (rape, 1792 — acquitted); Archelaus Hammond (rape, 1792 — acquitted); Peter Clark (assault, 1802); Amos Babcock (murder, 1805); several instances of the crime of blasphemy;[4]

— Property-based disputes between Anglicans and Dissenters: the Sheffield parsonage case (1792-93);[5]

— Legal disabilities placed on Roman Catholics, relating to voting and holding office. These legal impediments arose not from local considerations but from the automatic reimposition of some of the milder disabilities traditionally placed on Catholics on account of suspected disloyality. Unlike the fetters placed on Protestant Dissenters, the measures against Catholics did not represent a deliberate provincial policy to discourage non-conformity nor did they lead to legal confrontation over issues of conscience;[6]

— Contraventions of the *Marriage Act* by Presbyterians: James Wilson (1819); Alexander MacLean (1825). Wilson and MacLean repeatedly solemnized marriages, but both claimed that they did not thereby violate the law because they fell within its "Kirk of Scotland" exception. Thus their actions do not have the character of confrontations with a law they professed to be observing rather than transgressing.[7]

II

At the end of the 18th century the public exercise of religion in the North Atlantic world was still valued chiefly in political terms. In a community without police, when the very idea of a standing army was odious, religious teaching was the principal instrument of social control. Only the constant preaching of self-restraint — sporadically reinforced by the law's rituals of

[4]D.G. Bell, ed., *Newlight Baptist Journals of James Manning and James Innis* (Saint John: Acadia Divinity College, 1984) at 16, 45, 81-83, 142-44, 182-86, 331-54.

[5]*Ibid.* at 70-71, 301-08; J. Moir, ed., *Church and State in Canada, 1627-1867: Basic Documents* (Toronto: McClelland & Stewart, 1967) at 50.

[6]J. Garner, *Franchise and Politics in British North America, 1755-1867* (Toronto: University of Toronto Press, 1969).

[7]*Newlight Baptist Journals, supra,* note 4 at 374-75; Petition of the Kirk Session of Miramichi, 18 January 1819: RG24 S27-P25, Provincial Archives of New Brunswick (P.A.N.B.). In his *Letter Addressed to the Rev. James Milne* (Saint John, 1818) George Burns, minister of the Kirk of Scotland at Saint John, suggested (at 18-19) that he routinely solemnized marriage in the unfettered manner of the Anglican clergy by the expedient of presuming that everyone who applied to him for marriage was within the communion of the Church of Scotland.

public terror — allowed the propertied to sleep safely in their beds. Without the restraining hand of religion, lectured Chief Justice Belcher of Nova Scotia in the earliest surviving charge to a Canadian grand jury, "the Laws will become but as a Dead Letter".[8] Christians — Dissenters as well as Churchmen — sought through religion to order the unmannerly, riotous, unpoliced world about them.[9] The question of religious allegiance was interwoven with that of political loyalty. In the 18th century subjects were expected to evidence their loyalty to the king's government by adopting the king's religion. With the English monarch as the "only supreme governor" of church as well as state, the reinforcing mythologies of religion and the law united at a common apex. This theory, epitomized in the brazenly erastian Church of England, never translated well to the mainland colonies of pre-Revolutionary America. Not all the American provinces had an established church, and of these the strongest — in Massachusetts and Connecticut — were Congregationalist establishments rather than Anglican. When the new, distinctively "Loyalist" colony of New Brunswick was created in 1784 the men who crafted its institutions were determined to remedy this constitutional defect. The core of the governing elite was from New England, the region in which during the Revolution Anglicanism had been most completely identified with Loyalism and dissent most firmly allied with the Patriots. Charged with the founding of a model British colony in the wake of the revolutionary defeat, Governor Thomas Carleton and his advisors accepted axiomatically that the surest way to cement the future loyalty of their subjects was to make the Church of England the dominant vehicle of religious aspiration.

As most New Brunswick Loyalists were from New York and New Jersey it is unlikely that anything like a majority entered exile as adherents of the Church of England. Equally, however, there is no reason to doubt the general Anglican assumption that most Loyalists arrived in New Brunswick quite prepared to adopt the king's religion as part of the passage into a new colonial society. The practical exigencies of settling a wilderness were such that if the Loyalists were to have any religious instruction at all, it would be from the fully-subsidized Anglican "missionaries" of the Society for the Propagation of the Gospel. The SPG and other Anglican charities soon settled ten Anglican ministers in the colony, opened schools for the youth, blacks and Indians and joined with the British and colonial governments in subsidizing the erection of churches. In contrast, the ministerial and financial resources of dissenting groups within the colony were at first negligible. While most New Brunswick Loyalists did not arrive as Anglicans they would in time have become

[8]Thomas Vincent, ed., "Jonathan Belcher: Charge to the [Halifax] Grand Jury, Michaelmas Term, 1754" (1977) VII(#1) *Acadiensis* 103 at 108.

[9]Even those Dissenters who emphasized a passionate "new birth" conversion experience nevertheless characterized sin as a "disorderly walk" and described the most fulfilling religious meetings in terms of their "solemnity". The point is well articulated in R. Isaac, *Transformation of Virginia, 1740-1790* (Chapel Hill, NC: University of North Carolina Press, 1982) at 169-71.

Anglicans had the Church's ministers inclined towards service rather than sinecure.[10]

Given the ideological and practical context in which New Brunswick was founded, it is not surprising that one of the earliest pieces of legislation to emerge from the colony's General Assembly was *An Act for preserving the Church of England, as by Law established in this Province, and for securing Liberty of Conscience in matters of Religion.*[11] The purposes of the Act were to affirm the Church of England's "established" status in the province, to regulate the conduct of Anglican ministers and to put religious dissent on the psychological defensive. The Act, though in some respects carefully contrived, was a masterpiece of inept draughting. Historians have always been confused by the inconsistency between its title, which speaks of the Church of England as "established" in the province, and the text, which makes no reference to the concept. The government's privately-expressed rationale for the Act is equally equivocal: "The establishment of the Church is conformable to the Nova Scotia Law, and the old English Statutes on these Subjects being left in force it is reasonable to suppose that nothing further will be wanting if the law is duly carried into execution".[12] Just which "old" (i.e., pre-Restoration) statutes Carleton's regime could have had in mind is difficult to say. Most had been rendered obsolete in their pre-1660 form by subsequent relaxation; and, in any event, legislation in ecclesiastical matters was generally thought not to be 'received' in the colonies.[13] The notion of "conformity" to the relevant Nova Scotia legislation is also a curious one. It cannot indicate a belief that pre-

[10]Although the Church of England was expanding rapidly in New York and New Jersey it cannot have numbered much more than ten percent of the population before the Revolution: P. Ranlet, The New York Loyalists, PhD thesis, Columbia, 1983 at 177; J. Woolverton, *Colonial Anglicanism in North America* (Detroit: Wayne State Press, 1984) at 244-45. On the practical problems of the Church in early New Brunswick see D.G. Bell, "Charles Inglis and the Anglican Clergy of Loyalist New Brunswick" (1987) 7(#1) *Nova Scotia Historical Rev.* 25.

[11]S.N.B. 1786, c.4. Although this was the final bill to receive royal assent at the 1786 legislative session it was promoted to the fourth chapter of the printed version of the statutes. As manuscript versions of the Act do not survive in the files of the General Assembly at the Provincial Archives of New Brunswick, one cannot reconstruct the most important details of its legislative history. The journals of the upper and lower house do, however, reveal that the bill was initiated in the Council, then sent down to the House of Assembly, where it was successfully amended. It is presumably this amendment process which accounts for the almost incomprehensibly convoluted final section (imposing oath and licensing requirements). The oath and licensing requirements had their most direct English precedent in the *Act for the further relief of protestant dissenting ministers and schoolmasters [Dissenters' Relief Act]* (U.K.) 19 Geo. 3 c.44 [1779]. The regulation of itineracy had some American colonial precedent. Quakers were expressly relieved from compliance with the Act, a proviso which by the end of the 18th century was routine in both England and America.

[12]"Observation" on S.N.B. 1786 c.4: PRO CO 190/2.

[13]B. Murdoch, *Epitome of the Laws of Nova-Scotia*, vol. I (Halifax, 1832) at 227; J.E. Coté, "The Reception of English Law" (1977) 15 *Alta L. Rev.* 29 at 80-81. Although it is also doubtful if any pre-1660 English religious penal statute was in force in New Brunswick, it is notable that in 1801 Supreme Court Judge Joshua Upham denounced a Kings County Baptist preacher for "railing against the Church [of England], for reviling and traducing the characters of reverend, grave, and respectable clergymen, duly authorized, and regularly approved and licensed; for dissuading persons from going to Church, and treating it with contempt and rudeness, which no Establishment can tolerate; for speaking in derogation of the Book of Common Prayer, and discouraging the use of it": J. Upham to J. Innis, 13 July 1801, in *Newlight Baptist Journals, supra,* note 4 at 213-15. Such allegations are presumably intended to take their legal force from the *Act for the uniformity of common prayer and service in the church, and administration of the sacraments [Act of Uniformity]* (U.K.) 1 Eliz. c.2 [1559]: see *Blackstone's Commentaries*, vol. IV (1769) at 50-51. It is also notable that in 1795 an Opposition bill was introduced into the House of Assembly specifying that pre-1750 English statutes for the support of the Anglican clergy or for penalizing Dissenters and Roman Catholics and the *Act of Uniformity* were not among the English statutes 'received' as the law of the province. Such a measure, even had it been enacted, would have been legally superfluous. The bill's significance was political: "Reception Question", *supra,* note 3 at 164-65.

partition Nova Scotia statutes continued in force in New Brunswick; Carleton's regime framed its legislation on exactly the opposite assumption.[14] If the observation was meant merely to indicate that the New Brunswick law was not unlike that of Nova Scotia then it was simply disingenous. The Nova Scotia legislation of 1758 had proclaimed, in the plainest possible language, the services of the Church of England as the "fixed form of worship amongst us".[15] The New Brunswick Act, in contrast, merely presumed an Anglican establishment rather than constituted one. Of more direct interest in the present context is the fact that the 1786 statute sought to hinder the activities of non-Anglicans in two ways: it compelled their ministers, like those of the Church of England, to take oaths of fidelity and allegiance before officiating in the province, and it required itinerant dissenting preachers to be licensed by the governor. Whether this licence provision applied only to preachers who did not hold a pastorate in the province or whether it also extended to settled pastors when officiating beyond their parish of residence was left unclear, an ambiguity occasionally exploited to harass Dissenters.

The object of the *Act for preserving the Church of England* was not legally to "establish" the Church in New Brunswick. It is true that the Church received glebe grants from the Council, occasional building subsidies from the Assembly, ministerial stipends from the British government and enjoyed a measure of control over what became King's College; Church establishment as a sociological fact is not in question. But establishment in the conventional legal sense meant financial support from direct taxation, a subject on which the Act — unlike its Nova Scotia counterpart — was deliberately silent. Neither was its purpose to suppress religious dissent. Even Bishop Charles Inglis, who from 1787 had ecclesiastical jurisdiction over the province, readily conceded that using the force of law to oppress dissent would serve only to inflame its zeal. The Act was intended, rather, to signal unequivocally that New Brunswick was to be an Anglican colony in which Dissenters would merely be tolerated on good behaviour, while providing the government with a certain practical leverage over itinerant preachers. These chiefly political and symbolic objectives were highlighted in the official observations transmitted to the British government: "This Act is considered of importance to the Religious peace of the Province, and by giving a restraining power over unsettled and itinerant preachers must also help to secure its political quiet".[16] The fact that only a handful of dissenting preachers actually took the oath of allegiance or submitted to be licensed for itineracy strengthens the inference that it would accomplish its purpose chiefly through its symbolism.[17] Yet licencing was a sufficiently lively issue in 1791, when Dissenters were first making application

[14]See, for example, Thomas Carleton's opening speech to the legislative session of 1786 in *Journal of the House of Assembly...[for] 1786* at 5-6, and D.G. Bell, "A Note on the Reception of English Statutes in New Brunswick" (1979) 28 *UNB LJ* 195 at 198 n.15.

[15]*An Act for the establishment of religious public Worship in this Province, and for suppressing Popery*, S.N.S. 1758, c.5. This Nova Scotia establishment, though unambiguous in its language, was purely nominal.

[16]"Observation", *supra*, note 12.

[17]Fewer than ten dissenting preachers subscribed the oath roll in the provincial secretary's custody between 1786 and 1820: RS307, P.A.N.B. Presumably even fewer submitted to be licensed to preach.

under the Act, for the Executive Council to adopt policy guidelines;[18] and, in 1801, when white Baptist preachers were for the first time active in the province, Bishop Inglis offered his own detailed observations regarding the circumstances in which licences should be granted.[19] By the latter date, however, Carleton's regime had so long neglected to enforce the letter of the law that those occasions when it was invoked took on the appearance of oppression. What follows is a summary of all known instances in which Dissenters were in some manner subjected to the operation of the *Act for preserving the Church of England*. All involve preachers of the Congregationalist, Allinite (i.e., "Newlight" or radical Congregationalist), Wesleyan or Baptist sects. None involves an agent of the rather more respectable Quaker, Roman Catholic and Scotch Presbyterian forms of dissent.

DAVID GEORGE, 1791 George (c. 1743-1810) was one of thousands of blacks who arrived in the Maritimes as Loyalists at the end of the American revolutionary war. A settler of Birchtown (near Shelburne), he preached as a Baptist in Nova Scotia and the St. John Valley with considerable success among both blacks and whites until his departure for Sierra Leone in early 1792.[20] In the summer of 1791 George became one of the first Dissenters to preach at Saint John since Henry Alline's day. Voices of indigenous authority within the black community were always viewed with suspicion by the dominant culture, and a few days after George's arrival "many of the inhabitants made a disturbance, declaring that nobody should preach there again without a licence from the Governor". George was acquainted with Judge Isaac Allen, through whose influence the requisite licence under the *Act for preserving the Church of England* was issued. The terms of the licence sought carefully to confine his labours to the black population.[21]

SETH NOBLE, 1791 Noble (1743-1807) was the settled Congregational minister in Maugerville from 1774 until his flight in 1777. He had played a prominent role in agitating the St. John Valley pre-Loyalists into a state of open rebellion

[18]The Executive Council minute of 2 September 1791 provided that:

> Applications having been made to the Lieutenant Governor, for Licence to preach, by persons who are thought by no means qualified for public Instructors; His Excellency, with the advice of the Council, resolves that no such Licence shall be granted, except for particular districts, and to persons of regular academical education, of unexceptionable moral Character, and sound political principles: Executive Council Minutes, P.A.N.B.

Apart from one respectable Presbyterian, the only dissenting preachers known to have applied for licence before this date were David George and Seth Noble.

[19]Printed in *Newlight Baptist Journals, supra,* note 4 at 315-18. These Inglis observations on licensing dissenting preachers are sufficiently elaborate as to suggest that licensing became a major issue with Carleton and his circle in 1801, but such an inference would be mistaken. What happened was that a "Newlight Preacher" (probably the Baptist Benjamin Fairweather) applied to the Governor for licence to preach during Bishop Inglis' lengthy residence in Fredericton in 1800-01. The Council suggested that Inglis might examine the applicant and decide whether he should be licensed. The Bishop prudently declined, but offered his "Observations" instead: C. Inglis to J. Inglis, 20 March 1801, Inglis Papers (1984), MG1 vol.2430, Public Archives of Nova Scotia.

[20]James Walker, "David George" in V *Dict. Can. Biog.* (1983) 340.

[21]"An Account of the Life of Mr. David George", in J. Rippon, ed., *Baptist Annual Register* (London, 1793) 473 at 480-81. As George's licence is the only one surviving its merits quoting. The 1792 date is evidently a misprint for 1791.

> Secretary's Office, Frederick-town
> 17th July, 1792 [*sic*]
>
> I do hereby certify, that David George, a free Negro man, has permission from his Excellency the Lieutenant Governor, to instruct the Black people in the knowledge, and exhort them to the practice of, the Christian religion.
>
> Jon. Odell, Secretary

at the outbreak of the Revolution.[22] When Noble returned from Maine in 1791 to leave his motherless children with their Maugerville relatives his former congregation sought and received Lieutenant-Governor Carleton's permission for him to preach, pursuant to the *Act for preserving the Church of England*. Carleton was unaware of Noble's treason, which had taken place several years before the arrival of the Loyalists. When, however, Carleton did learn of Noble's remarkable past, he immediately recalled his permission and threatened that if "M'r Noble, after this Notification, offends against this Law, the penalty will be exacted".[23]

WILLIAM BLACK, 1791 Black (1760-1834) is considered the father of the Wesleyan variety of Methodism in Canada, though his importance has been rather exaggerated in the denominational scramble for heroic progenitors. A pre-Loyalist settler in Amherst, Black made his first visit to Saint John towards the end of 1791. Here his preaching against shipbuilding on the Lord's Day soon made him obnoxious. A complaint was lodged with Elias Hardy, Clerk of the Peace and the town's leading lawyer, that Black was preaching without the requisite licence. Black informed Hardy that "immediately after his arrival...he had consulted two of the principal magistrates...respecting the law in question; that these had assured him that the statute was never designed to prevent any minister regularly ordained, and of sober character, from preaching; and that, in their opinion, it would be quite sufficient for him to transmit the credentials of his ordination to the Governor, who, they had no doubt, would give him a licence". He also secured the recommendation of Judge Joshua Upham. Black did, however, cease preaching pending arrival of a licence from Fredericton. When none was forthcoming within two weeks he left for Nova Scotia.[24]

WILLIAM GRANDIN, 1792-93 Grandin was one of a number of American Wesleyans who preached in the Maritimes towards the close of the 18th century. An American itinerant, Grandin was of the class of Dissenter the *Act for preserving the Church of England* was most directed against. In the winter of 1792-93 Grandin's successful labours on the Nashwaak were interrupted when Walter Price, the pugnacious rector of St. Mary's parish, initiated his prosecution for preaching in defiance of the Act. This and the simultaneous harassment of William Earley, prompted the Wesleyan preacher Duncan McColl, a disbanded Scottish soldier settled in St. Stephen, to visit Lieutenant-Governor Carleton and protest at the "rough usage offered to us in the Province". "They said that the law was against us, because we were not licensed by the Governor; neither had we taken the usual oaths." McColl admitted the latter, which was required of all denominations of preachers, but disputed the need to be licensed: "[I] considered a call from a body of subjects, and being regularly licensed by our connexion, excluded the necessity of a licence from his Excellency". Carleton submitted the question to the Executive Council who, according to McColl, agreed with him that he need not be licensed. How this could have helped Grandin — who, unlike McColl, did not have a pastorate and who, as an American, would have had difficulty taking the oath of allegiance — is unclear; and it may be that either McColl or his editor conflated the events of 1792 (prosecution of Grandin and Earley) with those of 1793 (the date of McColl's own com-

[22] J.M. Bumsted, "Seth Noble" in V *Dict. Can. Biog.* (1983) 627; *Newlight Baptist Journals, supra*, note 4 at 58-60.

[23] J. Odell to J. Mersereau, 5 August 1791: F67, N.B.M. One of Noble's detractors left a description of this unsuccessful attempt to preach:

> [M]'r Noble arose up in the Pulpit. A Man stept up and handed Him a Letter. He Sat Down to rise no more. I inquired afterward what was the cause. I was tould that some person had gone to the Governor and informed Him of M'r Nobles past transactions. The Governor had Sent Him a letter forbid[d]ing Him to officiate to that people under the penelly of several Hundreds of Pounds: "Reminiscences of Mrs. Mary Bradley", New England Historic Genealogical Society, Boston.

[24] T.W. Smith, *History of the Methodist Church...of Eastern British America*, vol. I (Halifax, 1877) at 225-27.

pliance with the oath requirement).[25] In any event, as McColl correctly recalled, "Brother Grandine's case was thrown out of court".[26]

WILLIAM EARLEY, 1792 Earley, like Grandin, was an itinerant American Wesleyan. While Grandin was being harried on the Nashwaak, Earley was in Sussex being similarly treated by Anglicans eager to use the *Act for preserving the Church of England* to frustrate the work of those who preached dissent. "The resident magistrate resolved to prevent him from preaching, and sent a constable,...[who] seizing him by the shoulder, dragged him out of the house. ... After...examination of several witnesses, the magistrate informed him that he would impose a heavy fine." Earley had, however, taken the precaution of procuring the Governor's licence "permitting him to preach in any part of the province, so long as his conduct should be in accordance with the character of the ministry". If this is taken at face value, then Carleton's regime evidently had not insisted that the American Earley take the prescribed oaths before being licensed. A few days thereafter the magistrate again sought to arrest Earley but he escaped apprehension by living for some time in a barn, then fleeing to Nova Scotia.[27]

EDWARD MANNING, 1793 Manning (1766-1851) is one of the greatest figures in Canadian Baptist history. A fervent Newlight within the tradition of Henry Alline, he turned antipaedobaptist and became one of the most influential forces guiding the Newlight Baptist movement towards denominationalism and respectability.[28] Manning's first visit from his Annapolis Valley home to New Brunswick came in 1793, when he preached the whole settled length of the St. John River. Manning's Allinite zeal aroused fear and distrust and, predictably, he was accused of preaching in violation of the *Act for preserving the Church of England*. When the matter was brought before Isaac Allen of Kingsclear, a judge of the Supreme Court, he declined to have Manning arrested before hearing him preach. Manning, unaware of the Judge's presence, acquitted himself so well that he received Allen's encouragement rather than censure and, evidently, was allowed to continue preaching unlawfully.[29]

WILLIAM JESSOP, 1794 An American Wesleyan stationed at Saint John in 1794, Jessop — like William Black in the same place three years earlier — was denounced before the Clerk of the Peace for preaching without licence. Jessop then made his application to the authorities in Fredericton although, as an American, he was reluctant to take an oath of allegiance.[30] In reply, Provincial-Secretary Odell suggested that Jessop apply first to Bishop Inglis, "who has episcopal Jurisdiction in this province".[31] Such a suggestion, apparently so mischievous and so out of line

[25]McColl's certificate of compliance with the oath requirement reads as follows:

> Fredericton
> 11th March, 1793
>
> I do certify that the within named Duncan McColl hath taken the Oaths and subscribed the Declaration [against Transubstantiation] by Law required.
>
> Jon'n Odell

McColl Collection: Maritime Conference Archives (M.C.A.), Halifax. Note that the Declaration against Transubstantiation was not actually required by the Act.

[26]"Memoir of the Rev. Duncan M'Coll" (May 1841) I *British North American Wesleyan Methodist Magazine* 331 at 335-36; *The King* v. *William Grandin* (Hilary Term, 1793): RS30 B1, P.A.N.B.

[27]Smith, *History of the Methodist Church*, vol. I, 269-70.

[28]B. Moody, "Edward Manning" in VIII *Dict. Can. Biog.* (1985) 610.

[29]I.E. Bill, *Baptists of Saint John, N.B.: Two Sermons* (Saint John, 1863) 4. I have been unable to trace the documentary source of this story but it is confirmed by an independent account in the Jarvis Ring Memoirs: Atlantic Baptist Historical Collection, Acadia University.

[30]There is a detailed account of this incident in S. Humbert, *Rise and Progress of Methodism, in the Province of New Brunswick, From its Commencement until about the Year 1805* (Saint John, 1836) at 25-26.

[31]The relevant documents are printed in *Newlight Baptist Journals, supra,* note 4 at 309-11.

with the handling of some of the other Wesleyan cases, may mean simply that Jessop's ordination had been Anglican rather than Wesleyan. There is nothing to indicate that Jessop ever received his licence.

JAMES INNIS, 1801 A soldier stationed at Fort Howe (Saint John) during the latter part of the Revolution, Innis (c. 1744-1817) gathered an Allinite society around his Norton parish home in the 1790s. In 1800 he became a Baptist and was ordained pastor of a small church from the same neighbourhood. When in the early years of the 19th century the Baptists were making their first inroads in the St. John Valley, worried Anglicans reported that Innis was denouncing the Church and its Prayer Book and "reviling and traducing" the clergy, all in "the character of a Dissenting preacher".[32] At last in 1801 Joshua Upham of Hampton, a judge of the Supreme Court, wrote Innis a long cautionary letter in which he invoked both Blackstone and the Bible to encourage him to moderation. He also urged Innis to apply to Lieutenant-Governor Carleton for the proper licence.[33] Whether Innis complied is unknown, though his signature does not appear on the State Oath roll.

THOMAS ANSLEY, 1805 The son of Sussex Loyalists, Ansley (1769-1831) was reared a member of the Church of England. His father may have been the Sussex magistrate who persecuted the Wesleyan William Earley. Ansley turned Baptist in the great religious stir of the early 19th century and became an unordained preacher.[34] The fall of 1805 found him in St. David, Charlotte County, a neighbourhood that would soon be notorious for religious extravagance. Here Ansley's intemperate zeal prompted his arrest, no doubt for non-conformity with the licencing statute.[35] After two days Ansley resolved the problem by escaping, and did not again preach in Charlotte County for a quarter century.

ISAAC CASE, HENRY HALE, 1806 In the latter half of 1806 Case and Hale — ordained Baptist preachers from Maine — gathered churches in St. Andrews, St. George and St. David — the earliest Baptist churches in Charlotte County.[36] Predictably, this successful incursion by American sectaries was resented hotly by those who feared the establishment of centres of influence not completely aligned with the government. The result was that Case and Hale were threatened for their non-compliance with the *Act for preserving the Church of England*. In Case's words, "[W]e met a gentleman that examined us by what authority we came into that kingdom to preach; and as a magistrate, he forbid our preaching in that kingdom; and told us if he found us there when he returned, we might expect to suffer the consequences of it".[37] Nothing came of the threat.

HENRY HALE, 1810 In 1809 Hale returned to New Brunswick to spend a full year in the Belleisle region of upper Kings County. Here his preaching triggered scores of conversions in a well-documented neighbourhood "reformation". American Dissenters were always apt to be accused of preaching republicanism as well as salvation. According to the aggressively Anglican Walter Bates, sheriff of Kings, Hale taught that "all the institutions in this country were carnal and of the Devil and that as children of God it was their duty to destroy [them]", and there is some suggestion of an attempt to arrest him.[38] On 16 July 1810, in the very week that

[32] *Ibid.* at 201-15.

[33] Printed in *ibid.* at 213-15.

[34] *Ibid.* at 192-94. The published S.P.G. reports indicate some confusion as between Ansley and his father, but it can hardly be doubted that it was the junior Ansley who applied to Inglis for ordination.

[35] Different but reconcilable accounts of the Ansley affair are found in "Memoir of the Rev. Duncan M'Coll" (Sept. 1841) I *British North American Wesleyan Methodist Magazine*, 491 at 492, and in I. Case to Secretary, 27 September 1806 (Feb. 1807) III *Massachusetts Baptist Missionary Magazine* 268 at 269.

[36] *Newlight Baptist Journals, supra,* note 4 at 178-80.

[37] I. Case to Secretary, 27 September 1806 (Feb. 1807) III *Massachusetts Baptist Missionary Magazine* 268 at 270.

[38] *Newlight Baptist Journals, supra,* note 4 at 197-98, 363; D. Merrill to Secretary, 17 August 1810 (Mar. 1811) X *Massachusetts Baptist Missionary Magazine* 35.

the Baptist preacher James Innis was apprehended for defying the *Marriage Act*, Hale scrambled to regularize his position by applying for the requisite statutory licence. According to his journal he "called on his honor the president [of the Executive Council, Major-General Martin Hunter] for licence to preach the gospel and was refused without submit[t]ing to the following prerecisites, viz., be examined respecting my education. 2[nd]ly be confined to a particular parish, then take the oath of elegious [allegiance]. Then I should have liberty to preach in one Parish. Not being [willing] to submit to the above, the President gave me verbal liberty...to preach as I had done untill I should hear farther from him".[39] Hale's experience illustrates both the strength and the weakness of the licensing provision. It did succeed in putting dissent on the psychological defensive — in reminding Dissenters, especially Americans — that they preached in New Brunswick only at the sufferance of the authorities and should mind their tongues. Yet as a tool for actually preventing the work of dissenting preachers, the *Act for preserving the Church of England* was hopelessly ineffective. The oath of allegiance requirement — probably intended as a total prophylaxis against Americans — had not kept them out but had provided them with an honourable excuse for non-compliance with the Act. If it were not to be used against Henry Hale — who had spent nearly a year in the province and was rumoured to have preached sedition — then it would rarely be used against anyone.

WIGGINS, 1812 It appears that the only person ever successfully prosecuted under the licensing statute was an otherwise unknown Kings County Wesleyan lay preacher named Wiggins. Nothing that is known about the case indicates why Wiggins was particularly obnoxious, but Walter Bates, the county sheriff, had a settled aversion to Dissenters. The only knowledge of the incident comes from an 1812 letter from Saint John to the Wesleyan Missionary Society: "Our Dear Brother Wiggings has been brought before the [Kings County] Corporation of Kingston for preaching the gospel; he said he had preached the gospel for a length of time, and that he intended to persue that sacred Duty; and they Sentenced him [to] one month imprisonment".[40]

DUNCAN McCOLL, 1813 A settler in St. Stephen at the close of the Revolution, McColl (1754-1830) was the founder of Wesleyanism in Charlotte County and the only permanently-stationed Wesleyan preacher in New Brunswick in the Loyalist period. His record as a soldier and his sobriety of character meant that he was unlikely to be troubled seriously under the *Act for preserving the Church of England*. Nevertheless, as noted in connection with William Grandin, McColl did take the required oath of allegiance in 1793. There is no evidence that he did so in response to any move against him personally, but he was challenged under the Act in curious circumstances twenty years later. During the War of 1812 the New Brunswick and Maine settlers along the St. Croix River boundary necessarily followed a policy of non-belligerence. McColl was a principal architect of that policy, evidencing it by preaching freely on both sides of the boundary. Such cosiness with the enemy on the part of a dissenting preacher aroused predictable Anglican alarm as to McColl's politics. In this regard Provincial-Secretary W.F. Odell was heard to mutter that McColl was preaching without a licence. McColl was obliged to silence the rumour by pointing out that he had received a certificate of compliance with the Act from Odell's father two decades earlier.[41]

THOMAS STOKOE, 1815 On 15 May 1815 Thomas D. Stokoe, a shipwright from South Shields, arrived at the mouth of the Miramichi to practise his trade but soon began preaching as a Wesleyan. Thereupon he was dismissed by his employer, who wanted his brother settled there as a Presbyterian minister, and warned by "a

[39] *Newlight Baptist Journals, supra,* note 4 at 209.

[40] S. Bamford to Wesleyan Missionary Society, 22 November 1812: WMS Reel A-258, Public Archives of Canada (P.A.C.).

[41] J. Campbell to D. McColl, 3 January 1814: McColl Collection, M.C.A.; "Memoir of the Rev. Duncan M'Coll" (Nov. 1841) I *British North American Wesleyan Methodist Magazine* 571 at 572-73.

Magistrate that he must not preach without a Licence from the Governor". Stokoe is otherwise unknown.[42]

Despite the apparent ineptness of its draughting, the equivocal character of the *Act for preserving the Church of England* was no accident. So many of New Brunswick's initial statutes were adapted from those of Nova Scotia that failure to replicate the resounding language of that colony's 1758 establishment law must have been deliberate. The Act's calculated ambiguity resulted from an attempt to give the governing elite some sort of nominal establishment without at the same time offending the considerable contingent of Presbyterians in the House of Assembly and the province at large. Both the oath of allegiance requirement (which applied equally to all denominations) and the licensing for itineracy provision could be explained away as aimed mainly at Americans. Although the House did force an amendment to the Council's bill, the measure passed both chambers without division.[43] Moreover, despite the fact that the Act would be invoked in a dozen neighbourhoods between 1791 and 1815 to embarrass the activities of dissenting preachers, there is no evidence that the law itself ever became politically controversial.[44] It survived to pass quietly away at the middle of the 19th century as part of the general constitutional housecleaning associated with the coming of Responsible Government.[45] Noting the equivocal character of the *Act for preserving the Church of England*, Bishop Charles Inglis observed that the real measure of Anglican establishment would be determined by the religious legislation adopted subsidiary to the 1786 statute. He had particularly in mind the content of New Brunswick's much-discussed marriage legislation.[46] In this Inglis proved a shrewd prophet. The potential for religious

[42]W. Bennett to Wesleyan Missionary Society, 2 April 1816: WMS Reel A-258, P.A.C.

[43]*Supra*, note 11. The inference that the Act's equivocal character was due to the fact that a more decisive attempt at statutory establishment would have run into political trouble is strengthened by Inglis' unsuccessful attempt to gain statutory incorporation of New Brunswick vestries in 1788. Though he "pleaded strongly for such a law" the "friends of the Church were doubtful about it, apprehending the Dissenters would oppose it": C. Inglis to Canterbury, 4 Dec. 1789: Inglis Papers, Public Archives of Nova Scotia.

[44]For two not unfavourable Baptist assessments of the *Act for preserving the Church of England*, see D. Benedict, *General History of the Baptist Denomination*, vol. I (Boston, 1813) at 308; D. Dunbar, *Concise View of the Origin and Principles of the Several Religious Denominations Existing at Present in the Province of New Brunswick* (Eastport, ME, 1819) at 4, 45. While there is no evidence that Dissenters ever considered the Act to be a political grievance in the sense that the *Marriage Act* became, there were at least two occasions in which James Glenie introduced parallel measures for preserving the Church of Scotland. One such bill passed the House of Assembly but was lost in the Council: *Journal...of the House of Assembly...[for] 1802* at 682; *Journal...of the House of Assembly...[for] 1803* at 10. It is also worth noting that in 1802 Major Daniel Murray, one of the members for York County, attempted to tighten the anti-American, anti-itinerant provisions of the Act. When his bill was lost without recorded vote, the frustrated Murray immediately introduced a bill to repeal the *Act for preserving the Church of England* altogether. It was not carried beyond first reading: *Journal of the House of Assembly...[for] 1802* at 674.

[45]The title of the *Act for preserving the Church of England* disappeared when a comprehensive consolidation of provincial statutes reduced it to merely *Of the Church of England* R.S.N.B. 1854 c.107. It was at this point, as well, that the oath of allegiance requirement and all mention of religious dissent were silently dropped. The Assembly affirmed the wider significance of the statutory change in a resolution stating that continuing legislative recognition of the Church of England was not intended to import any special status. Some legal vestiges of the church-state tie did, however, continue until 1869, when the Church of England in New Brunswick was at last freed from the necessity of having the lieutenant-governor's consent to appointment of rectors: *An Act relating to Presentations to Rectories* S.N.B. 1869, c.6. For a learned and useful discussion of the background of this enactment see *Doe dem. St. George's Church* v. *Cougle & Mayes* (1870), 12 N.B.R. 96.

[46]C. Inglis to T. Carleton, 24 October 1789: Lawrence Collection (Chipman Papers) MG23 D1 vol.7, P.A.C.

controversy so carefully obviated in the establishment law became a reality in the fifty-year saga of the *Marriage Act*.

III

For five years after the creation of the province, New Brunswick had no legislation regarding solemnization and dissolution of marriage. Couples were free to marry in any manner they saw fit, often in a ceremony conducted by a magistrate rather than a clergyman.[47] The want of legislation on marriage was no oversight but a reflection of discord over the scope of such a measure. At the 1786 legislative session Attorney-General Jonathan Bliss sponsored an "Act for regulating Marriage and Divorce and for prohibiting and punishing Polygamy, Incest and Adultery".[48] Already displaying the independence of spirit that would marginalize him within the governing elite, Bliss proposed what would come to seem a remarkably liberal measure. The bill would have given the privilege of solemnizing marriage to all justices of the peace and to every "Person in Holy Orders" — here it notably refrained from adding "of the Church of England". As well, it expressly permitted blacks, mulattos and Quakers to intermarry after their own fashion. This measure, withholding any pre-eminence from the clergy of the Church of England, reflects the sentiment of the House of Assembly at least as accurately as the same sessions's *Act for preserving the Church of England*; its breadth is also attributable to the fact that in 1786 there were only seven Anglican clergy exercising their vocation in the province. When Bliss' marriage bill was sent up to the Council for concurrence it was amended in a way the House would not accept. Thus New Brunswick's first legislative session ended without producing a marriage law.

At the 1787 session Bliss reintroduced his marriage bill. It passed both chambers, but only because the House agreed to the Council's imposition of a suspending clause, so that the Act would not become law unless approved by

[47]Concerning New Brunswick marriage practices in the years before statutory regulation, Lieutenant-Governor Carleton commented:

> Nova Scotia having been chiefly set[t]led from New England they have followed their practice of performing Marriages by Justices of the Peace, who take different modes of celebration, some using the form of the Church of England, and others only pronouncing the parties joined in lawful Wedlock on their mutual declaration of consent. As this Province was formerly part of Nova-Scotia the same usages prevail here, and, from the want of Clergymen amongst us, the Justices cannot always avoid this which the common People consider as a part of their duty: T. Carleton to Lord Sydney, 31 July 1789: F67, N.B.M.

Of New Brunswick marriage practices without either clergyman or magistrate note Williamson to Williamson, June 1791 ("if they get a prayerbook they read the form and join hands and so the job is finished"), Williamson CB Doc, N.B.M., and the Joseph Gubbins journal for 20 July 1811 ("the mutual consent of the parties is often the only contract"), H. Temperley, ed., *Gubbins' New Brunswick Journals* (Fredericton: Kings Landing Corp., 1980) at 23.

[48]RS24 S1-B6.1 (*sic*): P.A.N.B.

the King in Council.[49] Thereupon the measure was subjected to the ill-disguised hostility of Lieutenant-Governor Carleton, the quibbling of the Bishop of London and the Attorney-General of Nova Scotia and, most telling of all, the lengthy and ponderous observations of the newly-appointed Bishop Charles Inglis. It was Inglis who pointed out that Bliss' bill failed to accord any pre-eminence to the supposedly "established" Church of England, that it allowed "trading" magistrates to marry even where Anglican clergymen were resident, and that the "Holy Orders" reference was vague enough to accommodate even Newlights. "New and Whimsical Sects", he lectured Carleton, "are daily springing up; and the Preachers, or as they call themselves, the *ministers* of those sects, will take advantage of the Law where it is obscure or dubious & undertake to Solemnize marriages, to the great injury of Society".[50] In the face of such comprehensive criticism the 1787 enactment was doomed. After much delay a radically different *Act for regulating Marriage and Divorce, and for preventing and punishing Incest, Adultery, and Fornication* was placed before the 1791 legislative session.[51]

The 1791 marriage law, as enacted, signalled unequivocally that solemnization of marriage was to be the prerogative of clergy of the Church of England. There were only two categories of exception. In parishes without a resident Anglican clergyman, marriage could be solemnized by a justice of the quorum, of which there were perhaps forty in the province; and, where *both* parties to the marriage were Quakers or within the communion of the Kirk of Scotland or Church of Rome, marriage might take place according to denominational usage. Thus, the *Marriage Act* gave a virtual monopoly on marrying to Anglican clergy in parishes where they were resident. No Methodist, Congregationalist, Baptist or Newlight preacher would be able to marry his adherents except in the unlikely event that he were also a justice of the quorum. The renewed assertiveness of the friends of Anglican establishment in the wake of Bishop Inglis' appointment and the hostility of the British government to the Attorney-General's liberal marriage law virtually assured the 1791 measure of success. As significant, however, as the fact that the bill passed was the considerable open opposition it provoked in the House of

[49]Lieutenant-Governor Carleton explained the vicissitudes of the marriage bill at the sessions of 1786 and 1787 in terms slightly different from those disclosed in the journals of the House and the Council:

> The Bill passed the Assembly during their first Session. It then contained many more objectionable articles, and was rejected by the Council sitting in their legislative capacity. The following year it was again brought forward by the Attorney General, who patronized it, and, being at length amended by the omission of its most obnoxious parts, was, by a kind of compromise, tendered for my consent under a restraining Clause: T. Carleton to Lord Sydney, 31 July 1789: F67, N.B.M.

The versions of the bill which survive give no clear indication of the nature of the "objectionable articles" and "obnoxious parts" that were pruned away. The copy of the 1787 bill actually used in the House of Assembly's proceedings (with the characteristic annotations on the dorse) is that in Lawrence Collection (Chipman Papers) MG23, D1, vol. 7, P.A.C. A contemporary copy of the bill as approved is in RS24, S2-B5, P.A.N.B. The suspending clause is explicable solely in terms of the Act's divorce provisions, which were directly contrary to Thomas Carleton's official Instructions: see (1905) 6 *Coll. N.B. His. Soc.* 404 at 434. It is, however, realistic to suppose that the Council hoped that the English authorities would express such distaste for so liberal a law that it would never be heard from again. In great measure this is what occurred.

[50]C. Inglis, "Observations on a Bill for regulating marriages in the Province of New Brunswick", 20 October 1789, in C. Inglis to T. Carleton, 24 October 1789: Lawrence Collection (Chipman Papers) MG23 D1 vol.7, P.A.C.

[51]S.N.B. 1791, c.5. The proposer of the measure is unknown.

Assembly. Four Presbyterian legislators were so bold as to vote to allow Presbyterian clergy to marry on the same basis as Anglicans; six Assemblymen (five Presbyterians and a Methodist) were prepared to vote to allow ministers of all denominations to solemnize marriage; and the Act itself passed the House by an unemphatic ten votes to seven.[52]

Passage of the 1791 *Marriage Act* was followed immediately by a campaign for alteration. The first group to petition the Assembly for liberalization was the Congregationalist society of Sunbury County, the oldest congregation of Dissenters in the province.[53] Their 1792 petition prompted James Glenie to bring forward an amending bill, which died in committee. In 1794 and 1795 three Wesleyan petitions against the *Marriage Act* were submitted to the House, in response to which William Black (father of the Wesleyan preacher) sponsored two amending bills. Both were defeated, but the second by only fourteen votes (mostly Anglicans) to eleven (mostly Presbyterians).[54] In 1802 the province's recently-organized Baptist churches took their turn in petitioning for inclusion under the Act. The resulting bill, which would have permitted licensed ministers of both the Wesleyan and the Baptist sects to solemnize marriage, actually passed the House but received an immediate hoist in the Council.[55] Again in 1803 a measure to liberalize the law — this time for the benefit of the Wesleyans only — passed the House only to be thrown out in the Council.[56] Thus, in the twelve years following adoption of the *Marriage Act* a total of eight petitions and five bills came before the Assembly on behalf of the three principal religious groups excluded from its coverage. This agitation coincided with a decade of intense political struggle between the forces led by James Glenie and Thomas Carleton. There is not an exact correlation between the strength of the rival alignments in the House of Assembly and supporters and opponents of the *Marriage Act*, yet Glenie's conspicuous role in the Dissenters' campaign ensured that the marriage agitation would to some extent be viewed as part of the general political manoeuvering of the day.[57] It may not, therefore, be entirely by chance that the end of the Glenie-Carleton confrontation in 1803 coincided with the close of the first phase of agitation against the marriage law. For nearly a decade the issue lay politically dormant until it was brought to a focus by the calculated defiance of a Baptist preacher.

Demeaning though the *Marriage Act* was for Dissenters, there are only three occasions on which preachers are known to have solemnized marriage in

[52] *Journal...of the House of Assembly...[for] 1791* at 199, 201-03.

[53] RS24 S6-P14, P.A.N.B.

[54] RS24 S8-P3; S9-P6, P7: P.A.N.B.; *Journal of...the House of Assembly...[for] 1794]* at 421.

[55] RS24 S15-P7, P8, P11, and probably P6: P.A.N.B.; *Journal of...the House of Assembly...[for] 1802* at 684. *Journal of the Legislative Council [for 1802]* at 272. Sponsorship of the bill is uncertain.

[56] *Journal of...the House of Assembly...[for] 1803* at 28; *Journal of the Legislative Council [for 1803]* at 291. Sponsorship of the bill is uncertain.

[57] For a summary see A.G. Condon, *Envy of the American States: The Loyalist Dream for New Brunswick* (Fredericton: New Ireland Press, 1984) at 158-72.

defiance of it.[58] Curiously, all involved Baptist ministers resident in the parish of Norton (Kings County) between 1809 and 1811. No doubt there were other such occasions but either they did not come to notoriety or the authorities preferred to look the other way. With the rapid gains of the Wesleyans in the 1790s and the Baptists in the first decade of the 19th century, the perceptible loss of momentum of the Church of England and the collapse of unified leadership within the ruling elite, New Brunswick's appointed rulers knew better than to provoke a confrontation with religious dissent. These prudential considerations help account for the regime's equivocal conduct towards the Baptist preacher James Innis when it became known that on 17 September 1809 he had illegally married a St. Martin's couple. A 65-year-old veteran of the Revolutionary war, Innis was probably the oldest active Baptist preacher in British North America. Never more than a marginal figure within the diffuse Maritime Baptist movement, he was without a significant following. Moreover, Innis' offence was of the most pardonable type, as the parish of St. Martins had neither a resident Anglican clergyman nor a justice of the quorum; a couple seeking regular marriage would have to journey to the rector of Saint John. All of these factors must have persuaded Attorney-General Thomas Wetmore to proceed against Innis with caution. Innis was not arrested until the summer of 1810 and, when the time for trial arrived, the Crown refused to bring on his case. Wetmore's concern was evidently to intimidate Innis rather than make a martyr of him. There matters likely would have rested had Innis not been so foolish as to marry a second couple. This prompted the Attorney-General to renew prosecution, and on 11 October 1811 Innis was fined and sentenced to a year in gaol.[59] On the following day Wetmore laid what appears to have been a similar information for unlawful marrying against Gilbert Harris, like Innis an ordained Kings County Baptist on the Newlight fringe of the movement. Harris took flight and his case was never proceeded with.[60]

Perhaps the most interesting aspect of the Innis case is the defence the preacher tried to persuade his lawyer to assert. It was grounded on the terms of Governor Charles Lawrence's 1759 proclamation to intending settlers of Nova Scotia promising "free liberty of conscience...Papists excepted" and on the *Coronation Oath Act* whereby sovereigns were made to promise to uphold the Protestant religion.[61] The argument based on Lawrence's proclamation resurfaced in the petition for alteration of the *Marriage Act* presented to the House of Assembly early in 1812, while Innis was still in gaol.[62] It is also notable that in 1819 Edward Manning, Nova Scotia's leading Baptist, sent Stephen

[58]There were, of course, other actual or threatened prosecutions for solemnizing marriage in contravention of the *Marriage Act*, but not in the context of an act of dissent. For example, on the same day that James Innis was sentenced for unlawful marrying, Elias Scovil, the rector of Kingston, was fined £20 for solemnizing marriage without either publishing banns or licence from the governor. Note also the text accompanying note 7.

[59]The Innis prosecution is discussed more fully in *Newlight Baptist Journals, supra,* note 4 at 210-11, 240-41, 279-80.

[60]*Ibid.* at 150, 374. Curiously, Harris had complied with the oath of allegiance requirement shortly after his ordination.

[61]Lawrence's proclamation is partially reprinted in *Church and State in Canada, supra,* note 5 at 34; *Act for establishing the coronation oath* [*Coronation Oath Act*] (U.K.) 1 W. & M. c.6 [1688].

[62]RS24 S21-P3, P.A.N.B.

Humbert, New Brunswick's leading Wesleyan and a member of the House of Assembly for Saint John, his own tattered copy of the rare document so that New Brunswick's Dissenters could frame their case more knowledgeably.[63] The emergence of this "proclamation" argument in the wake of Innis' prosecution indicates that Dissenters — Wesleyans as well as Baptists — had ceased to view their efforts merely as directed against a particular law and had come to invest their grievance with a mythic dimension. Neither Innis, nor Humbert, nor the petitioners of 1812 (all Loyalists) could honestly have claimed that they had settled what became New Brunswick on the strength — or even with knowledge — of the Lawrence proclamation; but the unifying force of a myth depends on belief rather than fact. The martyrdom of the otherwise unattractive James Innis gave New Brunswick Dissenters the means of constructing a myth of oppression.

Fortunately for the religious tranquility of the province and in conspicuous contrast to the case of Upper Canada, this is not, in the main, what occurred. Continuing agitation for liberalization of the *Marriage Act* was subsumed in the larger political cleavage emerging between the elected House of Assembly and the appointed Council. In 1812, with Innis still serving his sentence, the House voted by the emphatic margin of sixteen to five to expand the scope of the marriage law. For a third time the Council rejected the proposal.[64] The ritual was acted out a fourth time in 1821.[65] By the end of the 1820s the House had so often passed, and the Council as often rejected, proposals for reform that the House was moved to petition London for imperial intervention. This manoeuvre, coinciding with a similar appeal and for a similar reason from Upper Canada, was successful, as the British sought ways to make colonial councils seem less obnoxious. At the legislative session of 1834 a bill finally passed to extend the privilege of solemnizing marriage to the "Teachers or Ministers of any denomination of Christians in this Province".[66] This legislation did not, however, actually repeal the *Marriage Act* and thereby put all denominations on a equal footing. Churchmen, Kirkmen, Papists and Quakers continued to solemnize marriage under the 1791 law. Clergy of all other Christian groups who sought the benefit of the liberalization of 1834 had to petition individually for the privilege of marrying. Like the residual Church control over King's College, this last statutory reminder that Dissenters were a fraction less equal than Churchmen provided one more rallying cry for Reformers as they pushed in the 1840s to bring about the fullness of Responsible Government.[67] In 1848 and 1849 ministers of the six largest Dissenting

[63]E. Manning to S. Humbert, 4 November 1819: Manning Papers, Atlantic Baptist Historical Collection, Acadia University.

[64]*Journal of...the House of Assembly...[for] 1812* at 12; *Journal of the Legislative Council [for 1812]* at 379.

[65]RS24 S29-B22, P.A.N.B. The best account of the final stages of the *Marriage Act* agitation is still J. Hannay, *History of New Brunswick*, vol. 1 (Saint John, 1909) at 440-43.

[66]*Act to extend the privilege of solemnizing Marriage to all Ministers or Teachers of the several religious congregations in this Province*, S.N.B. 1834, c.46.

[67]See G.E. Fenety, *Political Notes and Observations*, vol. I (Fredericton, 1867) at 68; T.W. Acheson, *Saint John: The Making of a Colonial Urban Community* (Toronto: University of Toronto Press, 1985) at 130.

groups omitted from the Act of 1791 were given the right to solemnize marriage without the necessity of petitioning individually.[68] At the watershed statutory revision of 1854, the cluttered patchwork of marriage laws was swept away by comprehensive legislation allowing solemnization of marriage by "[e]very Christian Minister or Teacher".[69]

D.G. BELL*

[68] *Act in Addition to an Act, intituled An Act to extend the privilege of solemnizing Marriage to all Ministers or Teachers of the several Religious Congregations in this Province*, S.N.B. 1848, c. 62; *Act in amendment of and in addition to an Act, intituled An Act in addition to an Act, intituled 'An Act to extend the privilege of solemnizing Marriage to all Ministers or Teachers of the several Religious Congregations in this Province'*, S.N.B. 1849, c. 71. Thus by 1849 four religious groups solemnized marriage under the Act of 1791, six more came under the legislation of 1848 and 1849, and all other Christian groups (Disciples of Christ, Adventists, and, if considered Christian, Mormons) were under the Act of 1834.

[69] *Of Marriage*, R.S.N.B. 1854, c. 106.

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