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HERBERT B. ADAMS, Editor

History is past Politics and Politics are present History—*Freeman*

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THIRTEENTH SERIES

I-II

GOVERNMENT OF THE COLONY OF SOUTH CAROLINA

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PREFACE.

The following monograph aims to give a description of the government of South Carolina during the colonial period, from the constitutional standpoint. As the current course of events had been fairly well related by several interesting writers, it seemed best to omit all mention of political history except where necessary to explain constitutional changes. It is hoped that the topical method adopted will give a clearer idea of the constitutional changes than would a chronological account. The foot-notes have been made perhaps more numerous than was necessary, but the object in so doing was to show the reader where to turn for a fuller investigation of the subject treated, rather than to furnish authorities for statements in the text.

E. L. W.

CHAPTER I.

The Sources of South Carolina Colonial History.

The sources of the colonial history of South Carolina consist of the laws and records of South Carolina, the documents in the State Paper Office in London, and newspaper articles, pamphlets and books written during the colonial period, either by residents of or visitors to the colony. The condition of these sources at the present time is very unsatisfactory. Many of the statutes are lost, especially those passed during the proprietary period, where the omissions are so many as to render a correct description of the earlier years of the colony practically impossible. Eleven statutes are known to have been passed by the Assembly before the year 1682, but their titles as well as their provisions are lost. Of the twenty-one acts passed between the years 1682 and 1685, the titles alone are preserved, while of those passed between 1685 and 1700 more than one-third cannot now be found. The acts passed subsequently to the opening of the eighteenth century are in a better state of preservation.

The first collection of the statutes of South Carolina was made by Chief Justice Trott shortly after his arrival in the colony in 1698, and was printed at Charleston in 1736.[1] The first volume contains such acts passed prior to 1728 as were still in force at the time of publication, with the titles of all expired or repealed acts, except those passed prior to 1682, which Trott considered of too little importance even to mention.[2] The second volume included such acts passed be-

[1] See "Statutes at Large of South Carolina," II., 602; III., 191, 393, 447, 512, 540.

[2] Trott's "Laws of South Carolina," pp. xi.-xiv. In 1721, Trott had published at London a volume entitled "Laws of the British Plantations in America. relating to the Clergy, Religion and Learning," which has no connection with the one above mentioned.

tween the years 1728 and 1736 as were still in force, the charter of 1665, the Fundamental Constitutions and the so-called Temporary Laws of the Proprietors. The second compilation was published by Judge Grimké in 1793, immediately after the refusal of the Assembly to accept the report of the commission appointed in 1785 to digest and codify the laws of the State.[1] It is on the same general plan as Trott's volume, containing such acts as were deemed by the compiler to be in force at the time of publication, with the titles of acts expired or repealed. In 1804 a continuation containing the acts passed between the years 1791 and 1804 was published by Faust. The next collection was issued by Judge Brevard in three volumes in 1814, in the form of an alphabetical digest of all statutes deemed by him to be in force in South Carolina, whether passed by the South Carolina Assembly, the British Parliament or the United States Congress. The next and last collection was made by authority of the Assembly of South Carolina, and was printed in ten quarto volumes, 1836-1841, under the title of *Statutes at Large of South Carolina*, arranged as follows: Volume I., charters and all constitutional acts; volumes II. to VI., all acts not otherwise classified; volume VII., acts relating to Charleston, courts, slaves and rivers; volume VIII., corporation acts and the militia acts passed after 1793; volume IX., acts relating to roads, bridges and ferries, and the militia acts passed prior to 1793; volume X., an index and a chronological list of all acts of the Assembly. The edition is not as accurate as might be wished, and the attempt at classification failed to accomplish the results intended, on account of the large number of omnibus bills passed by the Assembly and the neglect of the compilers to insert cross-references. This edition also suffers in having been prepared by two commissioners not entirely in sympathy with each other.[2]

[1] See "Statutes at Large," IV., 659. This volume was cited by the writers prior to the middle of the present century generally as "Public Laws," or simply "P. L."

[2] Volumes I. to VI. were edited by Thomas Cooper, and volumes VII. to X. by David J. McCord.

Furthermore, the omissions are many and frequent; in some cases no reason is assigned for the omission, while in others the statement is simply made that the omitted acts contain nothing of importance, or that they are too illegible to be read; especially is this true of the tax acts passed after 1740, and the earlier acts relating to Charleston, the roads, bridges and the militia. All private acts are also omitted, although enumerated in the appendix to the tenth volume. The sixth and ninth volumes contain appendices giving in full several acts stated in earlier volumes to be lost. The general index in the tenth volume, as well as the several indices at the end of each preceding volume, are very meagre and unreliable. In fine, marks of haste and inattention are apparent throughout the entire work. The acts of the Assembly passed since the appearance of the *Statutes at Large* have been gathered into volumes under the same title and are considered as a continuation of the preceding ten volumes. The acts of the Assembly were numbered consecutively from 1682 to 1866, since which time they have been numbered consecutively by volumes, the acts passed in three or four successive years being grouped into one volume. Since the numbers on the original acts do not agree with those given by Trott, Grimké or Cooper, it becomes necessary in citing an act either to give the name of the collection referred to, with the number of the act, or to give the volume and page of the collection in which it is printed. The latter is the custom usually followed, although some trouble is experienced in referring to volumes 14 and 15 of the *Statutes at Large*, owing to the fact that they have been reprinted and the pages of the reprinted edition do not coincide with the pages of the original. In 1838, after six volumes of the *Statutes at Large* had appeared, William Rice issued a *Digested Index of the Statute Law of South Carolina.* The part covering the years 1790 to 1836 was very carefully prepared by the compiler; but the part covering the period prior to 1790 was taken bodily from Grimké's index, and is therefore not as accurate or as full as could be desired.

The journals of the colonial Council and Assembly, as well as the records of the parishes, are likewise in a very unsatisfactory condition. None of them have ever been printed, except in extracts, and many of the original manuscript volumes have been lost or destroyed. Since 1849, the colonial records have been arranged and indexed and deposited in the office of the Secretary of State at Columbia. The journals of the Council to 1786 have been bound in forty volumes, averaging about three hundred and fifty pages each. The first volume includes the records from 1671 to 1720; it is very fragmentary, and most of it was copied from an old Book of Records in the Ordinary's office at Charleston. The original was without arrangement or connection. The latter part of the volume was copied from loose sheets of the Council journals found in the Secretary of State's office in Charleston. There are omissions from 1672 to 1674. There are records of three meetings in 1674 and of one each in 1675, 1680 and 1681. In succeeding volumes there are many breaks between 1723 and 1742. There are no records for the years 1760-63, 1775-82 and 1785. The journals of the Commons House were similarly bound in forty volumes, containing the records from 1692 to 1776. Six of these volumes have since been lost: vols. 11, 15, 20, 36, 37 and 38, including the years 1737-39, 1741, 1745, 1762-69. There are omissions between the years 1694 and 1713, and no records are found of meetings between September, 1727, and February, 1733, and of a few meetings held in later years.[1]

It it to be greatly regretted that the earlier statutes and records of the colony are in such a wretched condition. Much help, however, is to be obtained from the documents in the State Paper Office in London.[2] Theoretically, this

[1] See the "Report of the Committee of the South Carolina Historical Society in the matter of Procuring Transcripts of the Colonial Records of this State from the London Record Office."

[2] This office was created by the Public Records Act, 1 and 2 Vict., c. 94, passed August 14, 1838. In it are deposited all the records and documents not needed for current use, which are placed under the care of the Master of the Rolls. The documents of the Board of Trade were deposited in this office in 1842.

office contains copies of all statutes passed or records made in or concerning the colonies; but the negligence of the proper officials to procure these copies, or to take proper care of such as were obtained, is evident even from a very superficial inspection. A systematic publication of abstracts of these documents was begun in 1856, under the title of *Calendars of State Papers.*[1] Thus far but nine volumes of the *Calendars of Colonial Papers*, which are edited by W. Noel Sainsbury, have been published,[2] and as the last volume concludes with the year 1676, the amount of information to be obtained from them relative to South Carolina is comparatively small, although valuable. The Historical Society of South Carolina, during the three years following its organization in 1855, issued three volumes of *Collections*, containing, in addition to addresses and short articles, abstracts of the earlier documents in the State Paper Office relating to South Carolina. These abstracts are much briefer than those published in the *Calendars*, but their value can hardly be overestimated. The war put an end to the activity of the Society. After the reconstruction period the Society was reorganized, but lack of funds prevented the continuation of the earlier publications. The later publications of the Society consist mainly of speeches and reports of committees, the most valuable of which have been bound as part one of the fourth volume. Through the efforts of the Society, the Legislature of South Carolina in 1891 appointed the "Public Record Commission of the State of South Carolina," consisting of the Secretary of State and four others, to obtain from the public archives of England transcripts of such documents relating to the history of South Carolina as are necessary or important, and to have them

[1] "Calendars" is interpreted to mean "chronological catalogues." They are published under several heads: Venetian, Spanish, Henry VIII., Domestic, Foreign, Treasury, Scotland, Ireland, Carew, Colonial, &c.

[2] Five of the nine relate to the East Indies entirely. The "Calendars of Domestic Papers" also contain a few documents relating to South Carolina.

copied and deposited with the Secretary of State.[1] It is the intention to publish these documents in a manner similar to that already adopted by New York, New Jersey and North Carolina. The *Colonial Records of North Carolina*, so ably edited by Col. Saunders, contain many documents, especially in the first two volumes, which throw much light upon South Carolina history and institutions. Occasional general helps are to be obtained from the *Documents Relative to the Colonial History of the State of New York*, edited by E. B. O'Callaghan, and the *Documents Relating to the Colonial History of the State of New Jersey*, edited by William A. Whitehead.

Extracts from the laws and records of South Carolina are to be found in several places. The Fundamental Constitutions and the two Carolina charters are to be found in Poore's *Charters and Constitutions*. Rivers' *Sketch of the History of South Carolina* and his supplementary *Chapter* each contain appendices giving in full many of the instructions to the early governors, reports, laws, etc. Extracts of other laws of more or less importance are to be found in Dillon's *Oddities of Colonial Legislation*, Goodell's *American Slave Code*, Niles' *Principles and Acts*, Williams' *Negro Race in America*, *Report of Board of Agriculture of South Carolina*, the Charleston *Year Books*, and the Reports of the *Royal Commission on Historical Manuscripts*. This commission was established by the Queen, April 2, 1869, to report upon semi-public and family archives. Thus far thirteen reports in thirty-six volumes have been issued, enumerating papers in the possession of private institutions and families and giving abstracts of the more important. The papers relating to South Carolina are few and are contained principally in the second, fourth, fifth and eleventh reports, the most important being contained in the Shelburne manuscripts in the fifth report and the Townshend manuscripts in the fourth part of the eleventh report. The manuscripts

[1] "Statutes at Large of South Carolina," XX., 1059.

relating to trade, and referring to the relations existing between the colonies and England, are many, but very few are given beyond their titles.

Of newspapers and pamphlets relating to South Carolina issued during the colonial period, very little need be said. There were three papers published in the colony previous to 1776.[1] In them are to be found unofficial records of the Assembly and essays upon the questions of the day, many of which were reprinted, with other letters, in papers published in other colonies or in Great Britain.[2] The pamphlets issued about the colony were many, and were mainly published for the purpose of fostering emigration to the colony.[3] The more valuable have been reprinted in Carroll's *Historical Collections of South Carolina*, Force's *Historical Tracts*, French's *Collections of Louisiana*, Weston's *Documents Relating to South Carolina*, and the Charleston *Year Books*, annual publications of the Charleston Council since 1880.

The secondary authorities are in general very poor. Several sketches or descriptions of South Carolina were published during the colonial period, but none of them merit the name of histories. The first history was written in 1779 by Rev. Alexander Hewatt, and was published in London. Hewatt was a native of Scotland, and had been pastor of the Presbyterian church in Charleston for several years previous to the Revolution, during which time he had obtained much information in regard to the colony. The history of the later period covered by his book is fairly correct; but the history of the earlier period shows but a slight acquaintance with the subject. The next history was written by David Ramsay, South Carolina's most noted historian, and was

[1] "The South Carolina Gazette," 1731 to 1800, with some intermissions; "The South Carolina and American General Gazette." 1758 to 1780; "The South Carolina Gazette and Country Journal," 1765 to 1775; all weeklies and published at Charleston.

[2] Especially in the "London Magazine" and the "Gentleman's Magazine."

[3] Several were published in Germany and in Switzerland in 1711 and 1728 to 1735.

published in 1808.[1] It is interesting, but follows Hewatt too closely to be considered absolutely accurate. In 1826 Robert Mills published his *Statistics of South Carolina*, a book filled with small facts gleaned from many sources and told in an interesting manner. The book can hardly be termed a history, however. In 1840 the novelist, William Gilmore Simms, issued a history of South Carolina which practically closed with the year 1783. It contains the generally accepted account of South Carolina history, but gives no evidence of independent research.[2] In 1856 William James Rivers, now president of Washington College, Maryland, issued his *Sketch of the History of South Carolina*, with an appendix containing a large number of rare and valuable documents. The volume, which closes with the Revolution of 1719, is reliable in every respect, and is the only carefully written sketch of the early history of South Carolina that has thus far been published. Rivers in 1874 published a *Chapter in the Early History of South Carolina*, relating to the Revolution of 1719, with an appendix of documents, and also wrote the chapter on the Carolinas in the fifth volume of the *Narrative and Critical History of America*, edited by Justin Winsor. In 1883 the South Carolina Board of Agriculture issued a *Report*, which consists of a carefully written description of the State, with statistics, and several short articles written by specialists in their particular subjects.[3]

There have also been published several well written accounts of various phases of South Carolina history: Gregg's *Old Cheraws*, Logan's *History of the Upper Country*, O'Neall's *Annals of Newberry*, *Reminiscences* by Cardozo, Fraser and Johnson, *Memoirs* by Drayton and Moultrie, accounts of the Lutheran Church in South Carolina by

[1] Ramsay's "History of the Revolution in South Carolina" also contains many references to the colony.

[2] A second and enlarged edition appeared in 1860. Many of Simms' other writings refer to South Carolina colonial history.

[3] School histories have been written by Davidson and by Weber.

Bernheim, the Episcopal Church by Dalcho, the Baptist Church by Furman, and the Presbyterian Church by Howe, and sketches of the Charleston churches in the Charleston Year Books. The general church histories of the various denominations also give good and fairly accurate accounts of the religious sects in the colony. An account of education in colonial South Carolina has been written by Edward McCrady, Jr., entitled *Education in South Carolina Prior to and During the Revolution.* Brief accounts also appear in B. J. Ramage's *Local Government and Free Schools in South Carolina*, and in Colyer Meriwether's *History of Higher Education in South Carolina.* Nothing has as yet been printed relative to slavery in colonial South Carolina. In fact, there seems to be no original material upon this subject aside from the *Statutes at Large.*

Documents referring to the colony of South Carolina indirectly are to be found in the *Journals of the House of Commons* and the *Journals of the House of Lords.* The statutes of Great Britain have been reprinted several times. The most complete edition is known as the *Statutes of the Realm*, which closes with the accession of Queen Anne. Editions of the *Statutes at Large of Great Britain* were printed in 1763 and in 1783, but both omit several acts relating to the colonies. Both also omit the acts of the Commonwealth Parliaments, which may be found, however, in Scobell's *Acts and Ordinances.* Other books bearing indirectly upon the history of South Carolina are: Stokes' *View of the Constitution of the British Colonies in* 1776, which contains specimens of instructions and commissions of Governors, Pownall's *Administration of the Colonies*, and the three books by Chalmers,—*Opinions of Eminent Lawyers, Revolt of the Colonies*, and *Political Annals of the Colonies.* They are a mine of information, but are not safe to follow blindly.

CHAPTER II.

Colonial Dependence.

The era of discovery, which began in the latter part of the fifteenth century, brought with it the peculiar doctrine of title by discovery; that is to say, newly discovered territory, not under the dominion of any Christian or Mohammedan prince, became the property of the sovereign under whose flag the discoverer sailed. The Pope, it is true, granted away these newly discovered territories by right of the so-called *Donation of Constantine*, but the claim of the various European countries to the soil of North America rested mainly upon discovery and subsequent settlement.[1] The most extraordinary part of this doctrine was that the newly discovered country belonged to the sovereign personally and not to the nation as a whole; hence the British Parliament had no right to pass any bill relating to the portion of North America claimed by the English Crown.[2] It should be noticed, however, that this conception of the King's power was not fully concurred in by Parliament, as is shown by the fact that on three several occasions bills were passed by both Houses relating to the American colonies, in spite of the protest of the Secretary of State that Parliament by so doing was trespassing upon the royal prerogative. These bills were passed in the years 1621, 1626 and 1628, but

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[1] Story, "On the Constitution," c. 1, §2; Donaldson, "Public Domain," p. 1; Johnson *et al.* v. M'Intosh, 8 Wheaton's Reports, 573.

[2] None of the navigation acts passed prior to 1640 extended to the colonies. See 1 Eliz., c. 13; 5 Eliz., c. 5, §§ 8, 11; 13 Eliz., c. 11; 35 Eliz., c. 7, §§ 8, 11; 39 Eliz., c. 18, § 8; 43 Eliz., c. 9, § 6; 1 Jac. I., c. 25, § 6; 21 Jac. I., c. 28, § 1; 3 Car. I., c. 4, § 10; 16 Car. I., c. 4.

failed to receive the royal assent,[1] and the King continued to administer the affairs of the colonies independently of Parliament.[2] As there were no sessions of Parliament between the years 1629 and 1639, the question did not again arise until the outbreak of the Civil War.[3]

When Parliament took the executive power away from Charles I., it assumed the responsibility of managing the colonies, and then for the first time really legislated for them. Several ordinances were passed in line with the policy pursued by the former royal government, designed to confine the colonial trade to Great Britain and in British ships.[4] Hence, at the Restoration trouble arose, for Parliament refused to surrender its right to legislate over the colonies, and the King refused to recognize this right claimed by Parliament. A compromise was, however, effected by which Charles II. allowed Parliament to legislate for the colonies, but retained to himself the sole power of administration. There is no documentary evidence of such an agreement, but the fact that such a division of powers was made under such circumstances leads one to believe that a compromise was effected. Had an open agreement been made in regard to this matter, and the legal relation of the colonies agreed upon and distinctly understood in England and America, it is possible, if not highly probable, that

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[1] See "Journals of the House of Commons," I., 578, 591, 626, 654, 819, 825, 830, 831, 863, 874, 884, 886, 898. They are reprinted in Knox's "Controversy between Great Britain and Her Colonies Reviewed," Appendix, 81-87. "Statutes of the Realm," IV., 1208.

[2] See Sainsbury's "Calendars," I., 26, 84, 239, 251. For a proclamation setting forth the King's view of the question in 1625, see Sainsbury's "Calendars," I., 73.

[3] See further Forsyth's "Cases and Opinions on Constitutional Law," 20; Pownall's "Administration of the Colonies" (5th edit.), I., 49, 50, 142; Chalmers' "Revolt of the Colonies," I., 29, 67; "Annual Register," 1766, p. [41; Lind's "Remarks on the Principal Acts of the Thirteenth Parliament of Great Britain," 170-182; Bancroft, "Remarks on the Review of the Controversy," 23, 24; Knox's "Controversy," 147-149.

[4] See Scobell's "Ordinances," I., 113; II., 87, 132, 176.

a separation of the colonies from the mother government would not have taken place. It was this indefiniteness which was at the root of the whole difficulty. In the case of Philip Craw *vs.* John Ramsey, decided in the year 1672,[1] the court stated that the colonies belong to the realm of England, though not in it territorially, that the colonies could not make laws binding England, and that they could not be separated from England except by act of Parliament. In other words, the view was gaining ground that the powers of the Crown over the colonies could be limited in certain cases by act of Parliament, and this view would not have been expressed in open court without the King's consent.

The Revolution of 1688 changed matters somewhat. The Crown was placed at the disposal of Parliament, thus making Parliament the supreme power in the realm and giving to that body the right of colonial administration as well as of legislation. In 1706 was published a statement by Chief Justice Vaughan[2] to the effect that the King could have no rights adverse to those of Parliament, and that attempts like those of James I. and Charles I. to govern the colonies as a part of their own private patrimony would not be allowed. The colonies were declared to be a part of England and subject to laws made for them by Parliament. The next step was to assert the right of Parliament to amend any patent granted to the King, or to declare void such parts as abridged in any way the rights of Parliament over the colonies.[3] These rights were not pressed at first. The colonies continued to be governed by expedients, the King managing the colonies according to his own will, while Parliament merely oversaw and regulated his actions. But the amount of oversight gradually increased.[4] The first acts passed by Parliament in regard to the colonies regulated trade and commerce alone, merely extending to them pro-

[1] Vaughan's Reports, P. 274, at p. 300. [2] *Ibid.*, p. 400.

[3] In 1714. "North Carolina Colonial Documents," II., 136, 143.

[4] See for example, "Journals of the Commons," XXII., 488-490, 549, 550, 590.

visions similar to those existing in England for several centuries previous.[1] With the increase in trade came the need of more stringent rules and closer supervision, and it became necessary to appoint English officials to be resident in the colonies. The acts were passed by Parliament, but the officials were appointed by the King, through the instrumentality of the Board of Trade.

From passing acts relating to the colonies in general, Parliament gradually turned its attention to passing acts relating to specific colonies, mentioning them by name. Thus in 1710 it was forbidden to cut down pine trees fit for masts in New England, New York and New Jersey. In 1751, Massachusetts, Rhode Island and Connecticut were forbidden to issue paper money and declare it to be a legal tender. In 1767, New York was forbidden to pass any act or resolution until provision had been made to furnish the King's troops with necessaries. In 1730, permission was given to carry rice from Carolina to the continent of Europe direct, a privilege later extended to Georgia and Florida.[2] Finally, in 1766, Parliament formally announced that the colonies "have been, are, and of right ought to be subordinate unto, and dependent upon, the Imperial Crown and Parliament of Great Britain; and that the King's Majesty, by and with the advice and consent of Parliament, had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the colonies . . . in all cases whatever."[3] To-day the ultimate control over the colonies is vested in Parliament. Many colonies, to be sure, govern themselves, but

[1] See 12 Car. II., c. 18; 15 Car. II., c. 7; 22 and 23 Car. II., c. 26; 25 Car. II., c. 7; 7 and 8 W. III., c. 22.

[2] 9 Anne, c. 17; 24 Geo. II., c. 53; 7 Geo. III., c. 59; 3 Geo. II., c. 28; 8 Geo. II., c. 19; 10 Geo. III., c. 31.

[3] All colonial votes or resolutions denying or questioning the right of Parliament in this respect were declared void. 6 Geo. III., c. 12. See also "Journal of the Commons," XXX., 499, 500, 602; XXXII., 185; "Journals of the Continental Congress," I., 29, October 14, 1774; Chalmers' "Revolt," I., 413.

their constitutions were obtained from Parliament, by whom they may be amended, altered or revoked at any time.

It has already been stated that according to the early views the title to the New World was vested in the Crown. The sovereign ruler had the right to do with it as he pleased, to govern it personally or through another, and charters or patents once granted were deemed valid until the breach of some condition gave the Crown a right to repeal them. The earlier patents were given to encourage discovery or conquest. The first English grant of land for the purpose of colonization was that made by Queen Elizabeth to Sir Walter Ralegh in 1584. All subsequent charters given by the English monarchs were modeled upon this one to Ralegh, although varying greatly in detail. In general, the grantees were given power to govern themselves or their colonies, according to certain rules and limitations laid down by the Crown, but were expressly forbidden to do anything contrary to the laws of England. The English settlers were grouped into districts, each under a separate government and known by different names. In England they were referred to collectively as plantations.[1] Districts over which Governors were appointed by the King were generally spoken of as "provinces"; where the Governors were elected by the inhabitants, as "colonies." The settlers generally spoke of all the districts as "colonies" because of the idea of dependence contained in the word "province."[2]

South Carolina was first visited by Europeans in 1520. In that year Lucas Vasquez de Ayllon landed near Port Royal, spent a few days in examining the country and then returned to Hispaniola. In 1525, having received a commission from the Emperor Charles V. as Governor of the

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[1] Parliament referred to them, in the legislative acts, as "Dominions thereunto belonging."

[2] See Pownall (5th edit.), I., 50-61, 141; Stokes, 2; Bancroft, "Review of the Controversy," 14-21. Thus South Carolina, although never a "colony" from the English point of view, is referred to in this monograph as such in accordance with the American usage.

country that he had discovered, he returned to the place before visited, but his ships foundered and his men perished, and South Carolina failed to come under the rule of Spain.

The next attempt to settle the country was made in 1562, when Jean Ribault landed at Port Royal with several Huguenots, who had been sent over at the expense of Charles IX. of France, upon the earnest solicitation of the Huguenot leader, Admiral Coligny. A fort was soon erected, named in honor of the King, Arx Carolina. Ribault returned to France for reinforcements, and the remainder of the colony soon followed him. In 1564 another French expedition landed at the mouth of St. John's river, Florida, but it was swept away in the following year by the Spaniards, who laid claim to the country.[1]

Sixty years passed by before any further attempt was made to settle South Carolina. In 1629, Charles I. of England granted to his Attorney-General, Sir Robert Heath, the territory south of Virginia, under the name of Carolana. Two or three feeble attempts were made to colonize this territory, but no settlement was ever actually made under this grant.[2]

On the restoration of Charles II. he sought to reward

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[1] An excellent account of these French colonies is given in Gaffarel's "Histoire de la Floride Française." See also Hakluyt, "Voyages, Navigations, Traffiques and Discourses of the English Nation," III., 304-360; French's "Historical Collections of Louisiana," III., 197-222; I. (N. S.), 165-362; II. (N. S.), 158-190.

[2] The patent is given in "North Carolina Colonial Records," I., 1-13, and Coxe's "Carolana," 109-112. See Sainsbury's "Calendars," I., 102, 109, 110, 190, 194, 207; II., Nos. 476, 525; IV., No. 151; "South Carolina Historical Society's Collections," I., 200-202; Neill, "English Colonization of America during the Seventeenth Century," 213, 214. The early Virginia charter had included Carolina within its limits. It is worthy of note that the first patent covering the district was granted by the Emperor Charles V.; that the first attempt to found a colony there was made at the expense of Charles IX. of France, that a charter to settle the country was given by Charles I. of England, and that a settlement was actually made during the reign of Charles II. of England. It is therefore perhaps unnecessary to discuss the question whence Carolina received its name.

those who had been most instrumental in causing his return to the throne. Among other grants, he gave, under the name of Carolina, the territory included between 31° and 36° north latitude, and extending from the Atlantic to the Pacific, to eight noblemen: the Earl of Clarendon, his companion in exile, who had materially contributed to his return; General Monk, later Duke of Albemarle, who had also aided in his return; the Earl of Craven, a member of the Privy Council and a distinguished military leader; Lord Ashley, an astute politician and later Earl of Shaftesbury; Sir George Carteret, who had sheltered Charles in his flight; Sir William Berkeley, who, as Governor of Virginia, had for a time prevented that colony from recognizing Cromwell; and Sir John Colleton, an active partisan of the King during the Protectorate. The charter is dated March 24, 1662-3. At the time there were a few straggling settlers in the territory; some Virginians had settled on the Chowan, and a few adventurers from Massachusetts had settled on Cape Fear river; to the former was given the name of Albemarle; to the latter, that of Clarendon. Two distinct forms of government were adopted for these settlers.[1] At the same time the King declared the patent to Heath void for non-settlement, and ordered the Attorney-General to proceed by *inquisition* or *scire facias* to revoke all grants of the territory of Carolina made prior to 1662.[2] Heath had sold his patent to the Earl of Arundell. After passing through several hands it was transferred, in 1696, to Daniel Coxe of New Jersey. The patent was never legally declared void, and Coxe's descendants, after twice obtaining from the Board of Trade a recognition of the validity of their patent, received from the Crown in 1768, in settlement for their claims to the territory of Carolina, one hundred thousand acres of land in the interior of New York, including the

[1] For the forms see Sainsbury's "Calendars," III., No. 1620; Rivers, "Sketch," 335-337; and "North Carolina Colonial Documents," I., 75-92.

[2] The Order in Council is given in Rivers, "Sketch," p. 65, note.

present towns of Paris, Kirkland and Westmoreland and part of the city of Rome.[1]

Several colonists arrived from England and the Barbadoes and efforts were made to colonize the territory; but as these settlements were found to be on land not included within the grant to the Proprietors, the King was induced, June 30, 1665, to grant a new charter, very similar in contents to the former, but extending the limits of Carolina on the north to 36° 30′, the present northern boundary of North Carolina, and on the south to 29°, to include the settlements already made. The Proprietors were given the land in free and common socage,[2] with all the rights that any Bishop of Durham "ever heretofore had, held, used, or enjoyed, or of right, ought or could have, use or enjoy" in his Palatinate. The rights and privileges of the Bishops of Durham had been very extensive, but since the Reformation they had steadily decreased in number, until, in 1646, the Palatinate was abolished. Charles II. restored the bishopric, depriving it of all feudal incidents, however. Hence the rights and privileges of the Bishop of Durham were much less extensive in 1663 than in earlier years, which accounts for the insertion in the patent of the words "ever heretofore had." They seem to have been at their height at the opening of the fourteenth century, and an enumeration of the rights of the Bishop in the year 1300 will give an idea of the powers conferred by Charles II. upon the eight noblemen in 1665. They included the right to hold courts of all kinds and to appoint court and other

[1] See "Historical Manuscripts Commission," 11th Report, Appendix, Part IV., pp. 254-256; Coxe, "Carolana"; "New York Colonial Documents," VII., 926; MacPherson's "Annals of Commerce, Manufactures, Fisheries, and Navigation," III., 480; "North Carolina Colonial Records," I., 35, 519. See also Jones, "Annals and Recollections of Oneida County," 59, 60, where an abstract of the grant is given. See also "Laws of New York," 1810, c. 139; 1811, c. 105.

[2] In which the service rendered is fixed and certain, as opposed to military tenure, where the service is uncertain.

officials of all grades, to issue writs, precepts and mandates, and to raise forces and levy subsidies in their own name, to have a mint and coin money, to pardon treasons, murders, felonies and misdemeanors, to have a Parliament, grant charters, create a nobility, and receive forfeitures and escheats of every description.[1] A few of these rights, however, were somewhat abridged by subsequent provisions in the charter. In return for these extensive grants and privileges, the Proprietors were to give the King one-fourth of all the gold and silver found in the colony, pay a yearly rental of twenty marks and recognize him as their sovereign lord. Practically these three provisions were valueless, for no Carolina mines were worked until after the Revolutionary War, and the Proprietors seem to have been as remiss in paying their yearly rental[2] to the King as the colonists were in paying quit-rents to them, while the King was recognized as sovereign lord only when it seemed dangerous not so to recognize him.

It early became evident that a general scheme of government must be devised if the territory was to be properly governed. The scheme adopted was that drawn up by Shaftesbury, with the aid of his friend, the philosopher John Locke. This document, generally referred to as the Grand Model, but to which the name "Fundamental Constitutions" was given, was adopted July 21, 1669, and was informally assented to individually by the colonists who sailed from England a month later. The Proprietors later referred to this as a "rough sketch"[3] and sent to the colonists for their ratification, in accordance with the provisions of the charter, a revised set bearing the date March 1, 1669-70. Failure to persuade the settlers to assent to the revised form resulted in two modifications bearing the dates of January 12, 1681-2 and August 17, 1682, respec-

[1] See Sir Thomas Duffus Hardy's Introduction to the "Register of Richard de Kellawe," in the "Rolls Series."

[2] "North Carolina Colonial Records," II., 722.

[3] Chalmers' "Annals," II., 331.

tively. These, as well as a revision by the Assembly in 1687, the settlers refused to consider, and the Proprietors made no serious effort to force them upon the colonists. A final revision by Governor Archdale, April 11, 1698, met the fate of its predecessors.[1]

According to the Fundamental Constitutions, the number of Proprietors was always to remain eight, none of whom, after 1701, was to be allowed to dispose of his share, which descended to heirs male. Eight offices were created, of which each Proprietor was to hold one: Palatine, Admiral, Chamberlain, Chancellor, Constable, Chief Justice, High Steward, and Treasurer. The eldest Proprietor was Palatine; the other Proprietors chose their offices in order of seniority.[2] Each officer was at the head of a supreme court. The Palatine's court consisted of all the Proprietors. Its duties were to call assemblies, elect officers, locate towns, dispose of money, approve or veto measures proposed by the colonial Council, etc. Each of the other courts consisted of the proper Proprietor and six Councillors, concerning whose election very elaborate provisions were made. The Chancellor's court had charge of the great seal, licensed printing, made treaties with the Indians, etc. The Chief Justice's court heard appeals, registered documents, etc. The Constable's court had charge of the arms, garrisons, forts and the militia. The Admiral's court looked out for the forts, tide-waters and shipping. The Treasurer's court had charge of matters relating to finance. The High Steward's court had charge of trade, manufactures, public buildings, roads, drains, bridges, fairs, surveys, locating towns, etc. The Chamberlain's court cared for ceremonies, her-

[1] Sainsbury's "Calendars," III., Nos. 84, 157, 284; Trott's "Laws of South Carolina," pp. viii.-x. The first set contained 111 articles; the second and third, each 120; the fourth, 121; the fifth, 41. The set generally referred to by the writers is the second, although they almost invariably speak of it as the first.

[2] After 1708 the Palatine was elected by all the Proprietors collectively, and the other offices were abolished. See "South Carolina Historical Society Collections," I., 176.

aldry, pedigrees, registries of births, marriages and deaths, fashions, games and sports. Each court had twelve Assistants to prepare and put in order any business referred to it. Each was of the highest grade and no appeal could be taken from its decisions.[1] The other provisions, relating to the nobility, local courts, legislature, lands, towns, etc., will be considered in their proper places. The form of government actually adopted in South Carolina, however, differed greatly from the scheme as outlined. The small number of inhabitants at first rendered it impossible to put the elaborate "Constitutions" into operation, and the larger number of inhabitants later refused to permit its introduction. Temporary laws were therefore sent over by the Proprietors[2] and adopted at the outset, and the form later assumed in the history of the colony was a development of this temporary form, which will be explained at length in subsequent chapters.

The amount of friction between the colonists and the Proprietors was considerable. In the early years of the colony the Proprietors had expended large sums of money in the hope of ultimately obtaining large returns. Their colonial possessions, however, proved rather a burden instead of a source of income. The settlers, on the other hand, had many complaints and, feeling that the Proprietors were not treating them fairly and justly, they did not render them the obedience which the Proprietors felt to be their due. Furthermore, troubles arose between the Proprietors and the Crown. The revocation of the extensive grants made by the earlier Stuarts was desired by James II. His Attorney-General was ordered to proceed by writ of *quo warranto* against the charters of the colonies of Rhode Island and Connecticut, and against the Proprietors of Maryland, Carolina, Delaware, East and West Jersey

[1] See §§ 1-6 and §§ 28-49 of the second set of Fundamental Constitutions, which is the set referred to in this monograph.

[2] Sainsbury's "Calendars," III., Nos. 515, 713, 867, 1307.

and Pennsylvania.[1] The Proprietors of Carolina retained their charter by offering to surrender it and delaying its surrender until after the Revolution of 1688. In 1689, 1695, and again in 1700, William advised the repeal of all charters, and Anne, in 1706, formally instituted proceedings against the Carolina charter, but the Proprietors continued to govern their possessions until the Carolina Revolution of 1719.

The causes of the Revolution of 1719 were many, but may all be included under the general head of dissatisfaction with the Proprietors. In the first place, the failure of the Proprietors to aid the settlers in money or by troops to protect the colony against the savage attack of the Yemassees in 1716 and their subsequent appropriation of the Indian lands to their own private use did not tend to conciliate a body of men at the time smarting under earlier injustices. Furthermore, there was great dissatisfaction with Chief Justice Trott, who was said to be partial in his decisions, to increase his fees illegally, to argue cases in his own court and to decide in court upon the validity of papers previously drawn up by himself. Complaints of these practices were answered by the Proprietors with a censure. Again, the Council and Assembly were dissolved for listening to and favoring reforms in the government. Finally, various salutary acts of the Assembly were disallowed, notably the reform in the method of holding elections. A new Council was appointed which consisted entirely of friends of the Proprietors. The Governor undertook to regain many privileges which had been surrendered by his predecessors. A war with Spain had been declared and a Spanish invasion was expected. The Governor summoned the militia to be prepared in case of an attack. But a conspiracy was formed quietly and quickly, and November 28, 1719, the militia informed the Governor that the colonists had decided for the future to recognize the King, and not the Proprietors, as their sovereign. A similar message

[1] "North Carolina Colonial Records," I., 352, 354, 359.

was sent by the newly elected Assembly. An attempt of the Governor to temporize meeting with failure, he issued a proclamation dissolving the Assembly. But the Assembly resolved its election to have been illegal and adjourned to a neighboring tavern, where it continued to sit as a "convention." A proclamation was issued directing all officials to remain in office until further orders. A Governor was selected who gave new commissions to the officers of the militia, and the machinery of government continued in operation without a break. All attempts of the proprietary Governor to regain control of the government failed, for no one was found to obey his orders.[1] The Revolutionary Convention, December 23, 1719, next resolved itself into a colonial Assembly and appointed a new Chief Justice, Secretary and other public officials. Letters were sent to the Board of Trade explaining their conduct and asking that Carolina be made a royal colony.[2] The Crown had long desired to be rid of proprietary governments, but hesitated to declare the charter forfeited until it was evident that the settlers actually preferred a royal form of government.[3] September 27, 1720, the Attorney-Gereral was ordered to bring a *scire facias* to vacate the charter, and a royal Governor over South Carolina was appointed for the first time. The Proprietors saw their American possessions melt away, but looked on listlessly[4] until 1726, when they made an earnest effort to regain the colony by the appointment of officers

[1] For an account defending the Proprietors and condemning Gov. Johnson and the colonists in unmeasured terms, see Chalmers' "Revolt," II., 86-92.

[2] The letters are given in full in Rivers, "Chapter," 39-50. See "Collections," II., 143, 144.

[3] For a full account of the Revolution, see Yonge, "A Narrative of the Proceedings of the People of South Carolina in the year 1719," printed in full in Carroll's "Historical Collections of South Carolina," II., 143-192.

[4] An attempt to sell the colony to some Quakers for £230,000 failed to be consummated. See Townshend Papers, in "Historical Manuscripts Commission," 11th Report, Appendix, Part IV., p. 255.

of administration and justice.[1] Failing in this and subsequent attempts,[2] they finally offered to sell their charter to the King.[3] The title of seven-eighths of the colony[4] of Carolina was transferred to the Crown for £17,500, and seven-eighths of the quit-rents for £5,000, the colonists at the time being £9,500 in arrears. The share of one of the Proprietors, Lord Carteret, was not purchased. His undivided eighth was exchanged in 1743 for a strip of land lying between 35° 34′ north latitude and the southern boundary of Virginia, and extending from the Atlantic to the Pacific, which, however, was lost to him by the war of the American Revolution.[5] Carolina, which under the Proprietors had been considered a single colony, though containing two distinct governments, was, after the purchase by the King, considered two colonies, and ever after referred to as such.[6]

After 1719, South Carolina was governed as a royal province, and the method of governing such dependencies remains now to be described. The colonial governments were at first modeled upon that of Durham, but they very early began to be treated as was the Island of Jersey, which had come to England as a part of Normandy, but had been retained on the surrender of continental Normandy to France. The government of Jersey was vested in the King, and appeals from the Jersey courts lay to the King in Council as Duke of Normandy.[7] The great increase in the number of colonies during the reign of Charles I. induced that monarch to appoint a "committee" to oversee their manage-

[1] "Collections," I., 172, 173, 175, 197, 198, 235.

[2] "Collections," I., 239, 242.

[3] "Collections," I., 174, 175, 243; "North Carolina Colonial Records," II., pp. iii. and 721; III., 6, 32-47; Townshend Papers, *supra*, p. 256; "Journals of the Commons," XXI., 166, 179, 330; 2 Geo. II., c. 34.

[4] There were eleven Proprietors by this time.

[5] Carroll, I., 360; "Collections," II., 284; "North Carolina Colonial Records," IV., 655-663.

[6] The Albemarle colony received the name of North Carolina and the Ashley River colony that of South Carolina.

[7] See Pownall (5th ed.), I., 61-63.

ment. By the commission, which bears date of April 28, 1634,[1] twelve persons were appointed, under the name of "Commissioners of Foreign Plantations," to make laws and orders for the colonies, to impose penalties for ecclesiastical offences, to remove Governors, to appoint Justices and to establish courts.[2] But the commission seems to have made no attempt to govern the colonies, and a return was soon made to the former system of appointing a sub-committee of the Privy Council for foreign plantations.[3]

October 20, 1643, upon the rupture with the King, a committee was appointed by the House of Commons,[4] which managed the colonies after a fashion until the execution of the King, January 29, 1649.[5] During the following month the House of Commons decreed the abolition of royalty and of the House of Lords, and placed the executive power in the hands of a Council of State consisting of forty-one members.[6] The Council was subdivided into several committees, and all matters of importance were referred to the proper committee before consideration by the Council as a whole. The "Committee for Trade and Plantations" was early established,[7] but was later divided into a "Committee for Trade" and a "Committee for Plantations."[8] These gave way, December 2, 1652, to a standing committee of

[1] The plan had been broached three years before. See Sainsbury's "Calendars," I., 138.

[2] *Ibid.*, I., 177. Another commission, similar to the above, was issued two years later, *Ibid.*, I., 232. It is given in full in Rymer's "Foedera," XX., 8-10; Hazard's "State Papers," I., 344-347; Pownall (4th ed.), Appendix, pp. 67-73; (5th ed.), Appendix, II., 155-163.

[3] Sainsbury's "Calendars," I., 281 *et seq.*

[4] "Journals of the Commons," III., 283. The ordinance is given in full in Hazard's "State Papers," I., 344-347 and 633-634.

[5] "Journals of the Commons," III., 296, 299; IV., 475, 476, 648, 695; V., 171, 405, &c.

[6] See the letter by the Council to the colonies, July 24, 1649, in Sainsbury's "Calendars," I., 330.

[7] March 2, 1650, *Ibid.*, I., 335.

[8] February 18, 1651, *Ibid.*, I., 352.

twenty-one members of the Council, who transacted all the business relating to trade and plantations, without reference to the Council of State.[1] Thus, for example, this committee granted a charter to Rhode Island, appointed Governors over several of the colonies, heard complaints and corrected abuses as far as possible.[2]

The desire of the House of Commons to retain entire control of the colonies after the Restoration was checked, July 4, 1660, by the Privy Council appointing a Committee for Plantation Affairs.[3] The Commons, however, demanded a committee, independent of the Privy Council, to enforce the Navigation Act which had recently been passed. In accordance with this demand, Charles II. appointed, November 7, 1660, a standing Council of Trade,[4] and on the first day of the following month a standing Council for Foreign Plantations.[5] Both councils included members from the Privy Council as well as nobles, gentlemen and merchants; the duty of the former was to carry out the provisions of the Navigation Act as it related to Great Britain, while the duty of the latter was to obtain reports from the colonial Governors, hear complaints, maintain justice, make the governments uniform in the various colonies and bring them under stricter control.[6] After two slight reorganizations[7] of the Council for Foreign Plantations, it was consolidated, September 16, 1672, with the Council of Trade, under the name of Council of Trade and Plantations.[8] But ap-

[1] *Ibid.*, I., 394, 477.

[2] Chalmers' "Revolt," I., 85-93.

[3] The patent is printed in full in "New York Colonial Documents," III., 30.

[4] For the commission see "New York Colonial Documents," III., 30-32.

[5] Ditto, *Ibid.*, III., 32-34.

[6] Sainsbury's "Calendars," I., 492. The instructions are printed in "New York Colonial Documents," III., 34-36.

[7] July 30, 1670, the membership was reduced from forty-eight to ten, increased March 20, 1671, to sixteen. See Sainsbury's "Calendars," III., Nos. 342, 470.

[8] Sainsbury's "Calendars," III., Nos. 923, 992.

parently there was some dissatisfaction with the Council, for, two years later, the King revoked their commission and transferred their duties to the Privy Council.[1] The Privy Council, March 12, 1675, appointed several committees; among others, one called Lords of the Committee of Trade and Plantations, to which the duties formerly exercised by the Council, with some modifications, were given.[2] February 16, 1689, this Committee was reduced from twenty-one to twelve and the members thereof were appointed by the Crown instead of by the Privy Council.[3]

This Committee of Trade and Plantations with its various changes existed until 1696. On January 31 of that year resolutions were introduced into Parliament favoring the establishment of a Council of Trade, the members of which were to be appointed by Parliament. The duties of this Council were to consider the trade and manufactures of the plantations and to ascertain the best method of improving the same for the benefit of English merchants.[4] A bill was later introduced embodying the substance of these resolutions.[5] But the King, on the fifteenth day of May, rendered further action unnecessary by establishing a Board of Trade and Plantations, consisting of seventeen members, including the Chancellor, President of the Privy Council, Lord Treasurer, Bishop of London, Lord Admiral, Chancellor of the

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[1] Sainsbury's "Calendars," III., No. 1412; IV., No. 429; "New York Colonial Documents," III., 228; Chalmers' "Opinions," p. vii.

[2] The patent is given in "New York Colonial Documents," III., 229, 230, and "North Carolina Colonial Records," I., 223. See also Pownall (5th ed.), I., 65, and McCulloch's "Miscellaneous Essay Concerning the Courses Pursued by Great Britain in the Affairs of her Colonies: With Some Observations on the Great Importance of our Settlements in America, and the Trade Thereof," 23-26; Sainsbury's "Calendars," IV., Nos. 460, 461, 463, 464, 648, 649, 650.

[3] "New York Colonial Documents," III., 572; Sainsbury's "Calendars," IV., No. 879.

[4] The resolutions are given in full in the "Journals of the Commons," XI., 423, 424.

[5] February 12, 1696. *Ibid.*, XI., 440.

Exchequer, and the two Secretaries of State.[1] This Board received from the Privy Council all the books, papers, etc., relating to trade and the plantations. Their duties were similar to those of their predecessors: to examine all acts passed in the colonies, review the proceedings of colonial Assemblies, examine complaints, redress grievances, prepare all colonial instructions, recommend suitable persons for colonial appointments, and make annual reports to the King, copies of which both Houses of Parliament generally demanded and received.[2]

The duty of the Board was, in reality, to advise the King, and its power and usefulness depended to a very great extent upon the attention paid to its advice. A strong Ministry almost entirely ignored it, while a weak Ministry paid great deference to it. All colonial matters coming to the attention of any official were referred to the Board, to be decided as might seem best. But their decisions were not final. They were frequently rendered useless by the caprice of the Ministry or King. On the whole, however, it must be admitted that the Board performed very creditably the task assigned to it, although the routine work was performed almost entirely by its secretary. The many and intricate law questions that were continually arising were referred at first to the Attorney and Solicitor-General for opinion. But with the increase of business, one of the King's counsel was appointed[3] to attend to the law department of the Board. The power of the Board steadily decreased after the accession of George III., until in 1768 its authority was revived and a Secretary of State for the Colonies was appointed,

[1] "New York Colonial Documents," IV., 145-148. Vol. III., pp. xiii.-xix., contains a list of all members of the board until its abolition in 1782.

[2] McCulloch's "Miscellaneous Essay," 29-41; Chalmers' "Revolt," I., 270; Chalmers' "Opinions," p. viii. See for example, "Journals of the Commons," XXI., 934; XXII., 488-490, 590; XXX., 448-451.

[3] In 1714.

who was made an *ex-officio* member of the Board.[1] In 1782, after the close of the American Revolution, the Board was abolished as unnecessary, and the care of the English colonies again returned to the Privy Council.[2]

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[1] In regard to the duties of Secretary of State see "New York Colonial Documents," III., p. v.; IV., 754; VII., 848; VIII., 7.

[2] McCulloch's "Miscellaneous Essay," 52-62; Chalmers' "Opinions," pp. viii.-xx.

CHAPTER III.

Governor and Council.

Section 59 of the Fundamental Constitutions provided that the eldest Proprietor in Carolina should act as Governor. Before 1690, however, the Governor of Carolina was named by the Palatine;[1] after that date he was appointed by a majority of the Proprietors,[2] subject, after 1696, to the approval of the Crown, to whom he gave bonds, with satisfactory security, for the proper observance of the navigation acts.[3] When South Carolina became a royal province the right to appoint Governors became vested in the Crown. This power, however, was generally exercised by the Board of Trade, who considered applications for governorships and recommended to the King for appointment such persons as seemed most worthy, and the King generally appointed the nominee of the Board.[4] There are several instances, however, of the failure of the King to commission nominees of the Board, or even to wait a year or two before finally ratifying the appointment. The custom generally was to appoint a needy Englishman to the office, although in a few cases a prominent man in the colony was selected. It was also not uncommon to transfer a Governor from one colony to another.

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[1] Rivers, "Sketch," 352, 354, § 1; Sainsbury's "Calendars," III., No. 867.

[2] Rivers, "Sketch," 430; "Collections," I., 126, 133.

[3] 7 and 8 W. III., c. 22, § 16, and 8 and 9 W. III., c. 20, § 69. "North Carolina Colonial Records," I., 461. See "Collections," I., 152, 165, 177, 181, 206, 212; II., 216, 228, 241, 246, 248, 249, 254; Chalmers' "Revolt," I., 274. The Crown refused to accept Joseph Blake as Governor because of his known hostility to the navigation acts. "Collections," I., 214; "North Carolina Colonial Records," I., 530.

[4] See McCulloch, "Miscellaneous Essay," 41; "New Jersey Colonial Documents," VIII., 23-26.

The intention of the Proprietors at the outset was to divide the territories into several distinct colonies, over each of which a Governor was to be appointed; but ere long these colonies had been reduced to two,—Albemarle and Ashley River. In 1690, the Proprietors, having decided to unite the two governments and rule them as one colony, appointed the Governor of Albemarle as Governor of Ashley River also. But this arrangement did not give entire satisfaction, for the interests of the two colonies were very diverse, and the Governor resided in Charleston and governed North Carolina by means of a deputy.[1] Thus in 1712 the Proprietors returned to the old system of two Governors for the two colonies, although no formal division between the two was made. The Revolution of 1719 was confined to the southern colony alone, and between 1720 and 1728 the inhabitants of the southern colony were governed by an appointee of the Crown, while the inhabitants of the northern colony paid allegiance to the appointee of the Proprietors. During the royal period each colony had a Governor entirely independent of the other.[2]

After appointment, a Governor received his commission. Commissions were at first very brief, simply informing the recipient of his appointment to office;[3] but by the middle of the eighteenth century they had become greatly extended, stating his duties and powers at great length.[4] With his commission, which was couched in general terms, he also received instructions which were more specific in character. A Governor received but one commission, while his instructions were innumerable. The latter varied greatly in the early years, but in time they became fixed, and one set differed but little from its predecessors.[5] The Governor was

[1] "North Carolina Colonial Records," I., 384, 389, 554, 694.

[2] On the question of boundaries see "North Carolina Colonial Records," V., 372-393; VIII., 554-574.

[3] A fac-simile of Gov. Smith's commission of 1693 is given in "Harper's Monthly" for December, 1875, p. 17.

[4] Stokes, pp. 150-164, gives one in full.

[5] See "Collections," II., 175, 189, 194.

expected to enter upon his duties as soon as he could conveniently, generally within a year from the time of receiving his commission. James Glen, however, did not start until five years had elapsed after the issue of his commission. Immediately upon his arrival in the colony the Governor called a meeting of the Council, where his commission was read and recorded and he himself took the oaths of Allegiance and Supremacy, signed the Declaration against Transubstantiation, etc., as required of all English officeholders, which acts inaugurated him into office.[1]

The extent of the Governor's powers is well shown by his title. His commission appointed him "Captain-General and Governor-in-Chief in and over the Province, and Chancellor, Vice-Admiral and Ordinary of the same."[2] His powers were executive, legislative, judicial, ecclesiastical and military. He could remove any official or councillor for cause and appoint a temporary successor or fill a vacancy, while several officials were under his direct appointment. He alone called, prorogued and dissolved the Assembly and granted pardons and reprieves. He also acted as Chief Justice in the Court of Errors, probated wills and granted administration. But his powers were somewhat abridged in the later colonial period by his being compelled to obtain the consent of the Council before anything of importance could be done or any appointment be made.[3] Moreover, he was expected to be in constant communication with the Board of Trade,

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[1] Stokes, 150, 177. The oaths were required by 1 Eliz., c. 1; 3 Jac. I., c. 4; 12 Car. II., c. 18, § 2; 13 and 14 Car. II., cc. 3 and 4; 15 Car. II., c. 7; 25 Car. II., c. 2, § 9; 1 W. & M., cc. 1 and 8; 1 W. & M., Sess. II., c. 2, § 3; 3 W. & M., c. 2; 7 and 8 W. III., c. 22, § 4; 8 and 9 W. III., c. 20, § 69; 6 Anne, cc. 7, 14 and 23; 1 Geo. I., Stat. II., c. 13, § 1; 4 Geo. III., c. 15, § 39; 6 Geo. III., c. 53. They are collected in Stokes, 178-183.

[2] Stokes, 149; Carroll, II., 220. Under the Proprietors his powers were not as extensive. Prior to 1712 he was merely Governor, "Collections," I., 160.

[3] The powers are stated in full in the various commissions, but they varied greatly from time to time. See Stokes, 150-164; Rivers, "Chapter," 66, § 37; 79, § 46.

who heard complaints against him and redressed grievances, having his bond to sue upon if necessary.[1] He was also expected to send home copies of all documents signed, proclamations issued, and all records of the courts, Assembly and Council.[2] But these expectations were seldom realized, and the State Paper Office at London contains many requests from the Board of Trade to Governors to forward documents.

The question of the Governor's salary caused less trouble in South Carolina than in other colonies. Until 1719 it was paid by the Proprietors, although an attempt was early made by them to throw its payment upon the colonists.[3] But after South Carolina came under the control of the Crown the latter always insisted that a stated annual salary be paid by the colony. This, however, South Carolina refused to do.[4] Tax bills and appropriation acts were passed annually for the year last past, and then only after other legislation had been approved, thus forcing the Governor to call an annual session of the Assembly or wait indefinitely for his salary.[5] His salary as paid by the Proprietors at first was £200 a year,[6] later increased to £400; under the Crown it was £500 sterling a year, besides house-rent.[7] In addition to these "annual gifts" of the Assembly and a small salary from the King, the Governor received a large income

[1] For crimes and oppression Governors were tried before the King's Bench in England, 11 and 12 W. III., c. 12.

[2] "New Jersey Colonial Documents," VIII., 26; Postlethwayt, I., 426.

[3] In 1677, "Collections," I., 101, 155.

[4] *Ibid.*, II., 119, 135, 145, § 25.

[5] See Johnson's "Reminiscences," 8. For an exception see "Collections," II., 287.

[6] Sayle received but £40, Sainsbury's "Calendars," III., No. 474; West, £60, Rivers, "Sketch," 391.

[7] "Collections," I., 138, 152, 155, 165, 299; "Statutes," III., 317, 336, 360, 392, 447; IV., 63, 137, 199, 224, 278; "Historical Manuscripts Commission," 11th Report, Appendix, Part IV., 255. An act was passed in 1712 to erect a Governor's house, but its provisions were never carried out. See "Statutes," II., 380-381.

from fees for licenses, writs, probate of wills, letters of administration, etc.[1]

A Governor served during pleasure, and was liable at any time to be confronted by a successor. Under the Proprietors, prior to 1691, the Governor could be removed by the Palatine alone;[2] after that date, by six Proprietors against the will of the Palatine.[3] After 1721 he was removable by the King alone. He was generally allowed, by and with the consent of the Council, to appoint an acting Governor during his absence, a right frequently exercised.[4] Lieutenant-Governors were frequently appointed in the islands, but seldom on the continent. Col. Broughton was the only Lieutenant-Governor commissioned in South Carolina.[5] If the Governor died or withdrew from the colony without designating a successor, the vacancy was filled by the Council before 1721; after that date the duties of Governor were performed by the senior councillor in appointment.[6] The salary of a Lieutenant-Governor or acting Governor was half that of the Governor, with fees, but with no allowance from the King.[7] After the departure of Governor Campbell, in September, 1775, the civil administration of the colony was conducted by the Provincial Congress through committees. This Congress drew up a constitution, which was promulgated in March, 1776, and under which South Carolina was governed until the adoption of the more permanent constitution of 1778.

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[1] See tables of fees, "Statutes," II., 3, 19, 40, 87, 145; III., 415; Townshend Papers, in "Historical Manuscripts Commission," 11th Report, Appendix, Part IV., 265-6.

[2] Rivers, "Sketch," 352, 354, § 1.

[3] Rivers, "Chapter," 60, 61, § 7.

[4] Rivers, "Sketch," 341; Rivers, "Chapter," 61, § 19; "Collections," I., 111; "North Carolina Colonial Records," I., 706; Sainsbury's "Calendars," III., No. 606.

[5] Stokes, 163, 234, 235; "Collections," II., 263.

[6] "Collections," I., 154, 182; II., 172, 176, 177, 208; Rivers, "Sketch," 341; Rivers, "Chapter," 66, § 34, 76; Stokes, 164.

[7] "Statutes," III., 447, 481, 511; IV., 223, 248, 278; "Collections," II., 177; "New York Colonial Documents," VIII., 347.

The Council was intended by the Proprietors to be the governing body of the colony. Hence, the provisions of the Fundamental Constitutions relating thereto were very elaborate. They provided that the Council should consist of fifty members, comprising the eight Proprietors and the forty-two councillors connected with the seven supreme courts.[1] Monthly meetings were to be held, at which controversies were to be decided, questions relating to war and peace settled, treaties drawn up and bills prepared for the consideration of Parliament, the popular legislative body. Thirteen should form a quorum, but no business should be transacted unless one Proprietor or a specially authorized deputy were present.[2] But this system was never put into practice, and the form of the Council subsequently adopted was a development of the form temporarily prescribed in 1670 and 1671. According to these temporary laws promulgated by the Proprietors, the Council consisted of ten members, five appointed by the Proprietors and five by the freemen of the colony, who, with the Governor, ruled the colony in every particular.[3] In 1671, the Council was increased to fifteen members, the additional five consisting of the five eldest of the nobility.[4] In 1690, the number was reduced to seven, one being appointed by each of the Proprietors (except the Palatine, who appointed the Governor).[5] In 1719, six months before the Revolution, the number was increased to twelve, appointed by the Proprietors jointly.[6] Throughout the royal period the number remained at twelve,

[1] See page 27.

[2] Fundamental Constitutions, §§ 28, 50-60.

[3] Sainsbury's "Calendars," III., Nos. 86, 213, 514, 688, 721; Rivers, "Sketch," 347. The Councillors representing the freemen were chosen by the Assembly after 1672. Rivers, "Sketch," 352, § 1; 366, § 3; "Collections," I., 115.

[4] Rivers, "Sketch," 366, § 3; 369, § 3; 352, § 1; Sainsbury's "Calendars," III., Nos. 514, 867.

[5] Rivers, "Chapter," 61, § 9; 67, § 43; "Collections," I., 165.

[6] "Collections," I., 170; Carroll, II., 158; "North Carolina Colonial Records." II., p. vi.

all being appointed by the King through the Board of Trade, though generally nominated by the Governor from substantial men in the colony.[1] Appointments were made for an indefinite period of time, and could be revoked at pleasure.[2] The King generally appointed a new set of councillors with each newly commissioned Governor,[3] and Governors were allowed to suspend councillors for cause, immediate notice of which, however, was expected to be sent to the Board of Trade.[4] Vacancies were variously filled at different times. Before 1690, the eldest councillor elected by the Assembly became a proprietary councillor in case of vacancy. Under Sothell, vacancies were filled by the remaining members of the Council. From 1691 to 1721, vacancies were filled by the Governor with the consent of the Council. After 1721, vacancies were temporarily filled by the Governor until the wishes of the King were made known, and generally the Governor's appointee was confirmed.[5]

Meetings were held irregularly at the call of the Governor.[6] A quorum consisted of three, but the Governors were always requested to do nothing, except in cases of extraordinary emergency, unless seven were present.[7] As the members served without pay, and during the earlier period at least

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[1] "Collections," I., 284; II., 145, 146, 176, 274, 295; III., 321; Rivers, "Chapter," 18, 68-70; Carroll, II., 220; Stokes, 237.

[2] "Collections," I., 88, 109, 111, 118, 185; Rivers, "Chapter," 61, § 6.

[3] The new councillors took the various oaths at the first meeting they attended. "Collections," I., 87; II., 176; Stokes, 151, 152, 177, 237.

[4] "Collections," I., 88, 109, 161, 165; II., 146, 172, 176; Stokes, 153, 240.

[5] Rivers, "Sketch," 353, 355, 430; "Collections," I., 127; II., 176, 274; III., 321; Rivers, "Chapter," 61, § 10; Sainsbury's "Calendars," III., No. 713, § 9; No. 867, § 4.

[6] "Collections," I., 82; Rivers, "Chapter," 65, § 33. The Surveyor-General of the Customs and the Superintendent of Indian Affairs were allowed seats after 1720. Stokes, 237; Carroll, II., 220; "Collections," II., 126.

[7] "Collections," II., 172, 176; Rivers, "Chapter," 71; Stokes, 153.

were compelled to pay for fire, light and contingent charges,[1] it is not surprising that the meetings were poorly attended. In fact, it was often impossible to obtain a quorum, although the Governor had power to suspend members absenting themselves without cause.[2] Under the Proprietors, the Governor being the Palatine's deputy, was entitled to a seat and vote as a member of the Council, a right he generally exercised. During the royal period, however, the Governor was not a member of the Council and was not entitled to a seat in it, although he continued to sit as a member for several year after the Revolution of 1719.[3]

The duties of the Council were advisory, legislative and judicial. In the early history of the colony all legal questions came before it for decision; but with the growth of the colony and the establishment of regular judicial tribunals it relinquished the greater part of its legal business to the courts, retaining only the right to act as a court of appeals and a court of chancery.[4] Its legislative functions were greater. At first, its ordinances had the force of laws. But after the establishment of a second house, composed of delegates elected by the freemen of the colony, it took the form of an upper house, bearing in some respects a resemblance to the English House of Lords, with which body it has been frequently compared. But by far the greater part of its work consisted in giving advice to the Governor, to whom it supplied the place of a cabinet or privy council.[5] With

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[1] Carroll, II., 155.

[2] Rivers, "Chapter," 70, §§ 11, 13; "Collections," I., 170, 284; II., 176, 304. Shortly after his arrival in South Carolina, Gov. Glen wrote to the Board of Trade that he was unable to obtain a quorum, as one member was sick, four had been in England for several years, two were away on a leave of absence, one was in New York, and two others lived too far away to attend meetings. "Collections," II., 295. See also "Considerations on Certain Political Transactions," 72.

[3] Rivers, "Chapter," 47; "Collections," I., 142; II., 286, 304. See Chalmers' "Opinions," I., 231; Forsyth's "Opinions," 67, 79; "New York Colonial Documents," VI., 40, 41.

[4] See pages 82, 86.

[5] Stokes, 239; Carroll, II., 144.

its consent the Governor summoned and dissolved the Commons House of Assembly, issued proclamations, etc. What could or could not be done without its consent varied greatly at different periods; but, in general, it may be said that nothing of importance could legally be done by the Governor without the consent of the Council first obtained.[1] Copies of all records and votes of the Council were demanded by the Board of Trade; but Governors were known to send home expurgated or illegible copies of the records, or at times none at all.[2]

The Secretary was an official second only to the Governor in importance. He was appointed by the Proprietors until 1720, and by the King after that year.[3] His salary was £40 a year under the Proprietors and £200 under the King.[4] His duties were to keep the records of the Council, record all judicial and ministerial acts of the Governor, write commissions, record land patents, and, in earlier years, to act as Register of Deeds.[5] He, as well as the Governor, was constantly urged to send copies of all records to the Proprietors, and later to the Board of Trade.[6]

The only other colonial officer needing mention here is the Treasurer. Before 1707, he was appointed by the Proprietors, and until 1721 was known as the Receiver. At first, his duties were to collect fines, receive the quit-rents, pay the expenses of government, and remit the surplus, if any, to the Proprietors.[7] In other words, he acted as the

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[1] "Collections," I., 154, 182; II., 96; Rivers, "Chapter," 67, § 41; 90, § 95.

[2] Rivers, "Chapter," 91; McCulloch, "Miscellaneous Essay," 40, 43, 44, 61; Postlethwayt, I., 426, 467.

[3] "Collections," I., 89, 110; Rivers, "Sketch," 416; Rivers, "Chapter," 62; Carroll, II., 221.

[4] "Collections," I., 155; II., 275; Carroll, II., 155; "Historical Manuscripts Commission," 11th Report, Appendix, Part IV., 255.

[5] "Letter from South Carolina," 27; McCulloch, 39; "Collections," I., 227; II., 177.

[6] Rivers, "Chapter," 78, § 39; "Collections," I., 88, 145, 168.

[7] "Collections," I., 146, 155, 159; "Letter from South Carolina," 27.

fiscal agent of the Proprietors. Until 1707, there was also another Treasurer, appointed by the Assembly, to receive and keep all moneys belonging to the colony.[1] As it seemed unnecessary to have two treasurers in the colony when the work could be performed by one, the Assembly, in 1707, very quietly declared its right to appoint the Receiver to act for the Proprietors and the Assembly jointly,[2] a right, however, questioned by the Proprietors as long as they retained control of the colony.[3] During the royal period, the King appointed a Receiver-General of the Quit-rents,[4] but the colonial Treasurer, who acted as Receiver also, was appointed by the Assembly.[5] His duties were to receive all dues and taxes and to pay out money as directed by the Assembly.[6] In 1771, two joint Treasurers were appointed; in 1776, the treasury department was placed under the care of three commissioners.[7]

[1] See for example "Statutes," II., 203, § 16.

[2] "Statutes," II., 299. Reiterated in 1707, 1716, 1719 and 1720. See "Statutes." II., 305, § 12; 655, §§ 23, 24; III., 61, § 21; 103.

[3] "Collections," I., 166.

[4] "Collections," II., 275; Carroll, II., 221; Sainsbury's "Calendars," II., 57.

[5] "Statutes," III., 148, § 1; 166, § 21; 197, § 20; 565, § 28; Pownall (2d ed.), 52; Carroll, II., 221; "Collections," II., 303.

[6] "Statutes," II., 351, § 1; 654, § 23; III., 166, § 21; 200, § 20; 565, § 28.

[7] "Statutes," IV., 326, 342.

CHAPTER IV.

The Assembly.

The General Assembly of colonial South Carolina consisted of three branches: the Governor, the Council, and the representatives of the freemen. The charter conferred upon the Proprietors the right to pass laws "with the advice, assent and approbation of the freemen of the province." The Proprietors endeavored to follow this provision literally. In their Fundamental Constitutions they provided for a biennial session of Parliament, which was to consist of the Proprietors, the nobility and one freeman from each colonial precinct. The members were to sit in one room, and each person was to be entitled to one vote. But no bill was to be considered that had not been previously approved by the Grand Council, nor was any act to be binding until it had been approved by the Palatine and three Proprietors or their deputies.[1] The early parliaments were conducted according to this scheme, but they had few acts to approve, since nearly all were passed as ordinances of the Council.[2] The delegates of the freemen were greatly dissatisfied with this meagre share in the government, and ere long a change took place. Parliament no longer ratified or disallowed the legislation of the Council, but framed its own bills upon the latter's *recommendation*, and shortly afterwards gained equal rights with the Council in the initiation of legislation.[3] At about the same time (1689) the Proprietors ordered the Council to levy no taxes without the consent of Parliament,

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[1] Fundamental Constitutions, §§ 51, 71-76.

[2] Rivers, "Sketch," 348, 369; Sainsbury's "Calendars," III., Nos. 213, 612, 692; Carroll, II., 71, 297.

[3] Rivers, "Sketch," 396, 416. See extract from the Journal of the Commons, May 15, 1694, in Winsor's "America," V., 314.

whereupon the latter body not only claimed the sole right to introduce all money bills, but even refused to allow the Council to amend them, in spite of instructions to the contrary from the Proprietors.[1] The name of "Parliament" gave way, in 1691, to that of "Assembly," and the Council assumed for itself the position of the British House of Lords, referring to the delegates of the freemen as the "Lower House." This was bitterly resented by the latter, and was frequently the cause of altercation between the two bodies. The delegates of the freemen were generally known as the "Commons House of Assembly," or simply the "Assembly."[2]

According to the Fundamental Constitutions, each colonial precinct was to be allowed to send one member to the Assembly.[3] Until the colony should be divided into precincts, the Proprietors directed the Assembly to consist of twenty members. They did not represent any particular district, but represented the colony at large and were all elected at Charleston, thus rendering it an easy task for the government to secure the election of its own creatures.[4] With the growth of the colony came a demand for reform.

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[1] "Collections," I., 123, 237, 302; Rivers, "Chapter," p. 78, § 35. See extract from the Commons Journal, 1745, in Winsor's "America," V., 334; "Considerations on Certain Transactions," 26, 27, 41; "Answer" to preceding, 24, 30-38.

[2] The Commons objected to the use of the term "Upper House" as early as 1700 and as late as 1775. See Ramsay, I., 52; Carroll, I., 129; Stokes, 28; "Southern Literary Messenger," March, 1845, p. 142; "Historical Magazine," November, 1865, p. 346; Drayton's "Memoirs," II., 12, 13; "Considerations on Certain Political Transactions," 33-46, 78; "Answer" to preceding, 91, 93-99, 110. In 1729, the Board of Trade forbade the use of "Commons House," substituting therefor "Lower House of Assembly." See "Collections," II., 119. This order was quietly ignored.

[3] § 71.

[4] Rivers, "Sketch," 348, 355, 366; Sainsbury's "Calendars," III., Nos. 86, 514; Carroll, II., 148. A picture of the tumultuous election of 1701 at Charleston is given in Crafts, "Pioneers in the Settlement of America," II., 183.

The Proprietors suggested a few changes in 1691,[1] but nothing was done until 1716, when an election act[2] was passed which entirely changed the system of holding elections. For religious purposes the colony had been divided into parishes in 1706, and the election act provided for the election of members of the Assembly by parishes, each parish being allowed a certain number of representatives, varying according to population. A supplementary act was passed the following year,[3] and an Assembly elected in accordance with the new act. But the Proprietors disallowed both acts,[4] whereupon another act was passed in 1719, similar to the preceding,[5] which, although disallowed,[6] was nevertheless declared by the Assembly, after the Revolution of 1719, to be still in force.[7] In 1721, a new act was passed, substantially the same as the preceding, which remained in force, with slight changes in 1745 and 1759, until the outbreak of the American Revolution.[8] As it was a prerogative of the Crown to grant representation in the colonial Legislatures, the Board of Trade in 1730 disallowed the act of 1721.[9] No attention, however, was paid to the disallowance. By the election act of 1716, the number of members of Assembly was placed at thirty, increased to thirty-six by the act of 1719. With the erection of new parishes and the division of old, the number, by 1775, had been increased to forty-eight, very unequally distributed.[10] Throughout the entire colonial period there was a property qualification for members of the

[1] "North Carolina Colonial Records," I., 377.

[2] "Statutes," II., 683-691.

[3] "Statutes," III., 2-4.

[4] "Collections," I., 167, 171, 190; "Statutes," III., 31, 69.

[5] "Statutes," III., 50-55. [6] "Collections," I., 171.

[7] February 12, 1720, "Statutes," III., 103.

[8] "Statutes," III., 103, 135-140.

[9] See Chalmers' "Opinions," I., 294; "Collections," II., 191, 193, 194, 305; III., 121; Story, § 184; "New York Colonial Documents," VII., 946; "New Jersey Colonial Documents," IX., 637-638.

[10] Representation was confined to parishes alone throughout the entire colonial period.

Assembly. Under the Proprietors it consisted of a freehold of five hundred acres of land anywhere.[1] Under the King, it consisted of a freehold of five hundred acres of land in South Carolina and twenty slaves,[2] or other property to the value of £1,000 proclamation money; moreover, a member must be a natural-born subject of Great Britain or her colonies, or naturalized by act of the British Parliament, twenty-one years of age and a resident of South Carolina for the preceding twelve months.[3]

According to the Fundamental Constitutions, the Assembly was to meet upon the first Monday of November in alternate years, without special summons; extra sessions could be called by the Palatine's court on forty days' notice.[4] This arrangement was followed in the early years of the colony, but after the reorganization of the government in 1691 Governors were allowed to summon Assemblies at will.[5] Writs for the election of members were issued by the Governor by and with the advice and consent of the Council.[6] They were followed by a proclamation, dated and signed by the Governor, summoning the Assembly to meet at a certain time and place for the transaction of business.[7] The members met at the appointed time[8] and place, signed the Declaration against Transubstantiation, took the oaths of Allegi-

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[1] Fundamental Constitutions, § 72; Rivers, "Sketch," 355; Dalcho, "An Historical Account of the Protestant Episcopal Church in South Carolina," 16.

[2] Ten until 1745.

[3] These provisions varied slightly at different times. See "Statutes," II., 689, § 20; III., 3, §§ 3, 4, 6; 52, § 9; 137, § 8; 657, § 2; IV., 99, § 3; 356; Chalmers' "Opinions," I., 268, 271-276; "New York Colonial Documents," VII., 946.

[4] § 73. Sainsbury's "Calendars," III., No. 514.

[5] Rivers, "Sketch," 366, § 2; Rivers, "Chapter," 63, § 20; "Collections," II., 172; Weston, 202.

[6] Rivers, "Chapter," 63, § 20; "Collections," II., 304; Stokes, 154; "Statutes," II., 687, § 15.

[7] See "Collections," II., 96.

[8] Generally at ten o'clock in the morning, Porcher's "Memoir of General Christopher Gadsden," p. 4.

ance and Supremacy, declared that they possessed the necessary qualifications,[1] organized and sent two members to the Governor to deliver their message to him. This was accepted, and a reply promised, which was sent later.[2] The Speaker was chosen by the House, but was approved by the Governor, generally at the time of delivering his first speech to them.[3] The Clerk was theoretically appointed by the Governor, although the custom was for the Assembly to nominate and the Governor to approve or refuse.[4] A quorum was early fixed at a majority of the members. When the number of members was increased to thirty-six in 1719 a quorum was fixed at nineteen, and it remained at that figure until the close of the colonial period. Seven could meet, choose a chairman and adjourn or summon absent members to appear. Less than seven were adjourned by the Governor and Council to a stated day.[5] The statutes of 1685 were passed by only seven members, the remaining thirteen having been expelled by the Governor for refusing to acknowledge the validity of the Fundamental Constitutions.[6]

The procedure and customs of the English House of Commons were imitated by the Assembly as far as pos-

[1] For provisions respecting oaths see "Statutes," II., 691, § 28; III., 4, § 5; 53, § 10; 55, § 20; 137, § 9; 140, § 19; 657, § 3; 692, § 3; IV., 100, §§ 4, 5, 7; "Collections," I., 87; Stokes, 154.

[2] "Collections," I., 290; II., 97, 98. See, for example, the "South Carolina and American General Gazette," December 13, 1769, pp. 1 and 3; Carroll, II., 103.

[3] "Collections," II., 119; Carroll, I., 228; II., 166, 442; Weston, 201; "Letter from South Carolina," 19.

[4] "Collections," II., 119, 273. See also I., 134, 247, 248, 249; II., 128; III., 301; Chalmers' "Revolt," II., 170, 175, 192; Carroll, II., 221. Gov. Johnson, in 1730, allowed the Assembly to appoint its own clerk. Chalmers' "Revolt," II., 169.

[5] Fundamental Constitutions, § 78; "Statutes," II., 80; 605, §§ 3. 4; 691, §§ 26, 27; III., 55, §§ 18, 19; 139, §§ 17, 18. Glen thought the number too high. "Collections," II., 305. De Brahm is in error in stating it to be thirteen. See Weston, 201.

[6] "North Carolina Colonial Records," II., 842-852.

sible.[1] After the early period, all bills originated in the House of Assembly.[2] There the bill was referred to the appropriate committee, which, in due time, reported to the House. The bill was read twice and then sent to the Council by two of its members. The Council read it twice and returned it by the Master in Chancery, with amendments if any. The Assembly then read it a third time and again sent it to the Council. If the latter passed it, it was again returned to the Assembly, and the Clerk was ordered to have it engrossed. In case of disagreement between the two branches, a joint committee was appointed to bring in a compromise bill or to bring about an understanding between the two branches. At the close of the session, the Governor, Council and Assembly met in the council chamber. The Speaker read the titles of the bills agreed upon by the two branches and presented them to the Governor for approval or disapproval. If he disapproved, his veto was final.[3] If he approved, the bill was signed by himself and, after 1719, by the Speaker, when it became a law.[4] This is the reason why all acts passed during a session of the Assembly bear the same date. Under the Proprietors the bill did not become a law until the signatures of the Governor and at least three Councillors had been obtained. The enacting clause varied greatly in wording during the history of the colony, although the general idea remained the same. In the earlier years the clauses mention the Palatine and Proprietors, with the advice and consent of the Commons or General Assembly; in the later, the three departments of the Legislature are mentioned,—Governor, Council, and Assembly.[5]

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[1] Stokes, 242; "Statutes," III., 53, § 12; 137, § 11; "Collections," I., 289, 305; Carroll, I., 298; "Letter from South Carolina," 19.

[2] See "Considerations on Certain Political Transactions," 46.

[3] Stokes, 156; "Collections," II., 172.

[4] Fundamental Constitutions, § 76; Rivers, "Sketch," 348; Rivers, "Chapter," 64, § 27; "Letter from South Carolina," 20; "Considerations upon Certain Political Transactions," 46, 47.

[5] The various changes are best shown in the acts passed in the years 1685, 1690, 1716, 1721, 1726, 1731 and 1775.

The Assembly was allowed to pass no act repugnant to the laws of England. A provision to this effect had been inserted in the charter to the Proprietors, and was repeated in the commissions to the Governors.[1] The Proprietors forbade the Assembly to pass acts diminishing or altering any powers granted them by the charter.[2] Furthermore, the Governors were instructed, after 1720, to approve no private acts or any acts affecting the rights of the Crown unless they contained a clause suspending the effect thereof until the pleasure of the King were known.[3] The question whether or not an act were repugnant to the laws of England was settled by the King in council. Copies of all bills passed and records of all meetings held were demanded by the Proprietors, or King, after 1720, for approval, an instruction generally disregarded by all colonial officials.[4] Prior to 1720, the Assembly was responsible to the Proprietors alone, and the Crown punished the latter for approving improper legislation, rather than the former for indulging in it.[5] All acts were supposed to be sent to the Proprietors for approval immediately after passage, and all expired at the end of two years unless within that time they had been approved. Hence, the Assembly in the seventeenth century was accustomed to pass acts for such short periods of time that they must necessarily expire before the Proprietors would have an opportunity to disallow them.[6] During the

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[1] Rivers, "Sketch," 336; "Collections," I., 131; Stokes, 155; Carroll, II., 220.

[2] "Collections," I., 131.

[3] Rivers, "Chapter," 71, 72; "Collections," II., 177; "New Jersey Colonial Documents," VIII., Pt. I., 28, 35. This suspending clause was rarely inserted, however. Pownall (2nd ed.), 45.

[4] Fundamental Constitutions, § 56; "Collections," I., 87, 131, 142, 160, 161, 165, 170; II., 177; Rivers, "Chapter," 78, § 40; McCulloch, "Miscellaneous Essay," 38, 39; "Representation of the Board of Trade," p. 4; Postlethwayt, I., 462.

[5] "Collections," I., 207; II., 250; "North Carolina Colonial Records," II., 143.

[6] Rivers, "Chapter," 65, §§ 27, 29; "Collections," I., 156, 168; "North Carolina Colonial Records," II., 136; "Statutes," II., 3, 139; "Representation of the Board of Trade," p. 5.

royal period a similar policy was pursued. All acts passed by the Assembly were sent to the Board of Trade within three months after their passage and continued in force for eighteen months, unless sooner disallowed by the Crown. If not definitely allowed before the end of that time, they ceased to continue in force. Acts once disallowed by the King could not be re-enacted without his consent first obtained.[1] The veto power of the Proprietors and King was used with the greatest freedom.

The Assembly was summoned, prorogued and dissolved by the Governor.[2] The departure or death of a Governor did not dissolve the Assembly, nor, after 1696, did the death of the King determine an Assembly until six months had passed after notification given of his death.[3] The Assembly could only adjourn from day to day.[4] The Fundamental Constitutions called for biennial sessions of Parliament, and the life of an Assembly throughout the greater part of the colonial period remained at two years, unless sooner dissolved by the Governor,[5] although a session was generally held annually.[6] The Assembly met at Charleston,[7] the capi-

[1] Rivers, "Chapter," 73, §§ 19, 20; 77, § 34; "Collections," II., 172, 177; Stokes, 156; Weston, 202; Chalmers' "Opinions," I., 362.

[2] See Fundamental Constitutions, § 73; Rivers, "Chapter," 65, § 30; "Collections," I., 154, 289; II., 172; Stokes, 156, 242; "Statutes," II., 605, § 2. The Governor could prorogue or dissolve it even before it met. Chalmers' "Opinions," I., 232, 270, 271.

[3] Chalmers' "Opinions," I., 245, 247, 255; II., 2; "Statutes," IV., 149, 150. See 7 and 8 W. III., c. 27, § 21; 1 Anne, St. I., c. 8, §§ 2-6; 6 Anne, c. 7, § 8; 1 Geo. II., St. I., c. 5, § 2; 1 Geo. II., St. II., c. 23, § 7.

[4] Stokes, 242; Rivers, "Chapter," 77, § 35; "Collections," II., 176.

[5] Fundamental Constitutions, § 73; "Statutes," II., 80; III., 692. From 1721 to 1745, the period was three years. "Statutes," III., 140, § 21; Carroll, II., 220. From 1745 to 1747, it was one year. "Statutes," III., 657, § 5. Stokes probably had this last period in mind when he stated that elections were annual. Stokes, 242.

[6] "Statutes," II., 80; III., 140; Weston, 202. But the colonists had no right to "demand" annual sessions. See Chalmers' "Opinions," 188-189, 243; "New York Colonial Documents," VII., 946.

[7] A summons to meet at Beaufort in 1772 was resolved to be oppressive. See "Answer to Certain Political Considerations," 64, 72, 74; Fraser's "Reminiscences," 99.

tal of the colony, in hired apartments, until 1755, when a State House was completed.[1] Charleston remained the capital of South Carolina until 1787,[2] when, in consequence of the growth of the interior, a town was laid out in the central part of the State for a capital, and at this place, Columbia, the Assembly of South Carolina has since sat.

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[1] "Statutes," III., 244, 264, 317, 336, 393, 446, 482, 511, 750; IV., 59; Weston, 195; Shecut's "Medical and Philosophical Essays," 20. None was built in accordance with the act of 1712, "Statutes," II., 378.

[2] "Statutes," IV., 751.

CHAPTER V.

The Land System.

South Carolina lies between 32° and 35° 12′ north latitude and 78° 30′ and 83° 30′ longitude west of Greenwich. In shape it strongly reminds one of an isosceles triangle, having as the equal sides the boundary lines on the north and southwest, with the coast as the base line. The area has been variously estimated, from 24,080 square miles by Ramsay in 1808, to 34,000 square miles by the Federal government in the census of 1870.

The State may be divided into seven regions, fairly well marked and parallel to one another. The first, and the one which is of most interest to us, is the Coast Region, which includes the coast and the salt marshes bordering upon the sea. From Winyaw Bay to North Carolina there are no islands, the coast being a smooth, hard beach. South of Winyaw Bay the shore is lined with islands; those between Winyaw Bay and Charleston harbor being numerous, low and small, while those south of Charleston are much larger. The principal products of the region to-day are corn, cotton, small grain, rice and sweet potatoes. The early settlers paid very little attention to agriculture, but exported pearl and pot ashes, skins, naval stores, etc. Rice was introduced in 1693, and has been a staple product ever since. Indigo was introduced in 1742 and soon became an important article of export. Very little, however, has been produced since 1800 and almost none since 1850. Indian corn was at first neglected; it became a staple article of export about 1740. Cotton is mentioned as early as 1664, but very little was exported prior to the Revolution. The Lower Pine Belt or Savannah Region includes the territory for fifty miles inland parallel to the Coast Region, containing in all about ten

thousand square miles. Fresh water rivers and swamps abound. The land is practically a plain, rolling slightly along the river banks. The average slope is about three and a half feet per mile. The Upper Pine Belt is generally referred to as the middle country; it lies from one hundred and thirty to two hundred and fifty feet above the sea level, and extends across the State, comprising generally the counties of Barnwell, Orangeburgh, Sumter, Darlington, Marlboro' and Marion, with parts of Hampton and Colleton, and containing about six thousand square miles. The land is level and rolling, and rises the more rapidly in the west. The lakes are numerous, but small, and are located chiefly in the swamps, which cover about one-sixth the area of the district. The slope of the Upper Pine Belt is gradual. North of it is an irregular line of high hills two or three hundred feet higher than the Pine Belt Region. This is known as the Red Hill Region, and includes the hills from Aiken to Sumter counties, some sixteen hundred miles in extent. East of the Santee the region is not continuous. The climate is dryer and more bracing than in the lower region. Just above the Red Hills are the Sand Hills. This region includes the greater part of the counties of Aiken, Lexington, Richland, Kershaw and Chesterfield, with an area of about twenty-five hundred square miles. The hills rise from the Savannah river to a plateau which falls at the Congaree and Wateree rivers. The region west of the Congaree is more elevated than that east of the Wateree. The Piedmont Region includes nearly all the northern part of the State, and is known as the "upper country," having an area of about ten thousand square miles. The elevations vary from two to nine hundred feet in height. There is a general rise of three hundred and fifty feet from the south to the north. The rivers furnish excellent water power, and quarries of granite and slate abound, while the precious metals are to be found in various parts of the region. The Alpine Region includes the extreme northwestern part of the State, having an area of twelve hundred square miles. The land

is rolling table-land and mountainous, containing gold, copper and other metals, none of which have been extensively mined.[1]

According to the Fundamental Constitutions[2] the territory was to be divided into counties. Each county, which contained three hundred and eighty-four thousand acres, was to be divided into eight seigniories, eight baronies and twenty-four colonies. Each Proprietor was to receive one seigniory, each barony was to be divided between one Landgrave and two Cassiques, and the colonies were to be settled by the common people. Counties were to be laid out twelve at a time, and after they had become sufficiently well settled another group of twelve was to be laid out. The Landgraves and Cassiques were to be appointed by the Proprietors and were to form an hereditary nobility, whose land was to be inalienable. Any settler holding between three and twelve thousand acres of land could have his holding declared a manor, which was alienable. But this system was never carried into effect, although several patents were granted to Landgraves and Cassiques.[3] In 1682, South Carolina was divided into three counties, to which a fourth was added in the early part of the eighteenth century. These county divisions, however, played no part in the history of the colony, and were practically obsolete long before 1775.[4]

The first colonists landed at Port Royal in accordance with the expressed wishes of the Proprietors, but a month later moved farther north, settling on the southern side of Ashley River near its mouth, and giving their settlement the name of Charles Towne.[5] In a few years, however, the settlers

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[1] See "South Carolina Agricultural Report," pp. 1-200.

[2] §§ 3-6, 9-19.

[3] Sainsbury's "Calendars," III., Nos. 492, 721; IV., Nos. 584, 590.

[4] See "Collections," I., 82; Rivers, "Chapter," 63; Carroll, II., 409, 445; "Statutes," III., 370; IV., 262-264; "North Carolina Colonial Records," I., 377.

[5] Sainsbury's "Calendars," III., Nos. 86-90, 105, 106, 124, 163, 191, 255. Letters describing the voyage are given in full in "Charleston Year Book," 1886, 241-279.

moved over to the neck of land opposite, known as Oyster Point, which could be more easily defended in case of attack, and possessed better deep water facilities, and old Charles Towne was soon deserted.[1] April 23, 1671, the Council voted to lay out three colonies: Stono, to the west of Charles Towne, James Towne, on James Island, and Oyster Point, mentioned above.[2] Stono was settled by emigrants from the West Indies, James Towne by nineteen Dutch families who had recently arrived from New York.[3] Others followed them from New York and from Holland, but they were very soon scattered and their town deserted.

Aside from the English emigrants from the West Indies, the largest accession in the seventeenth century came from France. The persecution of the French Protestants by Louis XIV. drove the Huguenots from their native land. They fled to England, Holland, Germany, and especially to America. Of those who sought refuge in England, many were transported to the colonies at the expense of the Crown.[4] But by far the largest number emigrated immediately after the Revocation of the Edict of Nantes in 1685, settling principally in New York, Philadelphia, and Charleston and vicinity: Orange Quarter on Cooper river, Strawberry Ferry, Jamestown on Santee river, and St. James, Goose Creek.[5]

Between 1700 and 1730, very few emigrants settled in South Carolina. The limits of the colony then were the

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[1] See "Charleston Year Book," 1883, 463; "Collections," I., 102; Rivers, "Sketch," 393, 394; Mills, "Statistics of South Carolina," 385; Drayton, "View of South Carolina," 200.

[2] See the entry in "Charleston Year Book," 1883, 463.

[3] "Charleston Year Book," 1883, 379; Sainsbury's "Calendars," III., Nos. 428, 432, 664, 746; Brodhead, "New York," II., 176.

[4] Three of the first settlers in 1670 had been French refugees in England. See "Huguenot Society of America, Proceedings," No. 1, pp. 34, 40; "Charleston Year Book," 1885, 298. Two shiploads were transported to the Carolinas in 1679. Rivers, "Sketch," 392.

[5] See "Huguenot Society," as above, 31-36. There were four hundred and thirty-eight French in South Carolina in 1698. See Rivers, "Sketch," 447; "Collections," II., 198.

Santee on the north, the Edisto on the south, and Dorchester, twenty miles inland from Charleston. No serious attempts to settle the interior of the colony were made until the surrender of the colony to the King.[1] In 1729 at the suggestion of Gov. Johnson, the King ordered eleven townships to be laid out: two each on the Altamaha, Savannah and Santee, and one each on the Wateree, Black, Waccamaw, Pedee and Edisto rivers. Each township was to contain twenty thousand acres, was to be laid out in the form of a square, and was to contain a town in which the settlers were to receive building lots in addition to their fields outside.[2] The Assembly appropriated £5,000 currency a year for seven years, to be spent in laying out these townships and in purchasing tools for and paying the passage of intending settlers.[3] These townships were finally laid out as follows, not all in squares and few containing the required number of acres: Kingston, on the Waccamaw; Queensborough (never settled), at the union of the Great and Little Pedee; Williamsburg, on the Black; Fredericksburg (Kershaw county), on the Wateree; Amelia, at the union of the Congaree and Wateree; Saxe-Gotha, opposite Columbia; Orangeburg, on the Edisto; Purysburg, on the Savannah; and New Windsor, opposite Augusta, Georgia. The two on the Altamaha were never laid out. Perhaps the King, in ordering these townships to be laid out, was influenced by persons in England who were desirous of colonizing tracts of land in the New World.[4] As early as 1722, Purry, a Swiss, had petitioned for

[1] The efforts of 1721-1723 were directed solely towards establishing frontier towns on the Savannah river. See "Statutes," III., 123, §§ 4, 9; 177-178; 180, § 2; 182, § 15. Aside from the attempt in 1696, "Statutes," II., 124, which was never carried out, "Collections," III., 305, the inducements offered intending settlers consisted principally in freedom from quit-rents for a term of years after settling.

[2] "Collections," II., 122, 177; Carroll, II., 123-125.

[3] "Collections," I., 307; "Statutes," III., 301, § 25; 340, § 6; 366.

[4] A colonization sociey was suggested in 1730. See "Collections," II., 127, 128.

and received a grant of land on the Savannah whereon he might settle a colony of Swiss. In 1730, a new grant of sixty thousand acres was made to him by the King under certain conditions, and the Assembly guaranteed to support three hundred persons for one year and to supply them with tools and utensils. In December, 1732, Purysburg, above mentioned and named in his honor, was settled.[1] In the same year, 1732, the territory south of the Savannah, which had hitherto been unsettled, was set off as an independent province under the name of Georgia. South Carolina ceased to be a frontier colony, and from that time on the colony grew rapidly.

The interior townships were quickly settled. £5000 a year proved to be insufficient to furnish emigrants with tools and to provide for their support. From 1735 to 1766, the money arising from the duty on negroes was appropriated to their use. In 1740, in addition to conveyance and tools, a cow and calf were promised to every group of five persons settling together in a frontier township within five years. In 1761, the method of granting the bounty was changed, but a bounty in some form was offered all emigrants until the breaking out of the American Revolution.[2] After the Swiss came the Scotch-Irish. A small colony of Scots had settled at Port Royal, in 1684, under Lord Cardross, but it had been broken up by the Spaniards a year or two later.[3] In 1733, a large colony of Scots settled in Kingston and Williamsburg townships, the first to be laid out after Purysburg. They were followed by another band of colonists in 1746, after the

[1] "Collections," I., 196, 233, 248, 273; II., 123, 125, 127, 131, 160, 166, 179; III., 317; Chalmers' "Opinions," I., 161, 162; Forsyth's "Opinions," 152; "Statutes," III., 340, § 6; Carroll, II., 126; Mills, 369, 370.

[2] "Statutes," III., 409, § 1; 559, §§ 6, 9; IV., 39, 153, 309. For several curious methods of granting aid, see "Statutes," III., 591; 593; 674, § 7; 741, §§ 6-8; 781; IV., 5, 6.

[3] "Collections," I., 92, 109, 124; II., 273. Howe, "Presbyterian Church in South Carolina," I., 78-84, 117, 118. A few Scotch had settled on Edisto Island in 1700. See Mills, 471; Ramsay, II., 540.

battle of Culloden, for whom the High Hills of Santee were reserved.[1] Following the Scots came the Welch from Pennsylvania and Delaware. They arrived in 1735, and occupied the greater part of Marion and Marlboro' counties.[2] But by far the greater number of emigrants came from Germany. The majority of Germans emigrating to America previous to 1728 had settled in Pennsylvania, but the short-sighted policy adopted by the Pennsylvania Proprietors in that year caused future emigrants to settle in South Carolina, where so many inducements were offered them. They settled first in Orangeburg township, and later in New Windsor, Amelia, Saxe-Gotha, and Fredericksburg townships, until, by 1775, they had spread themselves over the entire western portion of the colony.[3] In 1761, two more townships were laid out on the upper Savannah on the same plan as those of 1731: Londonderry, settled by Germans, five or six hundred in number, and Hillsborough, containing the town of New Bordeaux, settled by Huguenots, numbering two hundred and twelve.[4] A new element began to enter South Carolina about the year 1750. The French and Indian War caused the settlers on the frontiers of Pennsyl-

[1] Gregg, "Old Cheraws," 43; "Agricultural Report," 382, 485; Carroll, I., 324, 380; Mills, 579-581, 740, 765; Howe, I., 212. Sixteen hundred more settled in the colony between 1763 and 1773. See Mills, 489; Baird, "Religion in America," 75. These were, in all cases, Scotch Protestant Irish and not Catholic Irish, as stated in McGee, "Irish Settlers in America," 26.

[2] Gregg, 46-53; Mills, 471, 638; "Agricultural Report," 382, 485; Ramsay, II., 540; Furman, "Charleston Association," 61.

[3] "Collections," I., 297, 306, 307; II., 120, 122, 186, 290, 293; Bernheim, "German Settlements in the Carolinas," 42, 43, 128, 161-170, 224, 233, 234; Mills, 611, 614, 639, 656, 662, 692; "Statutes," IX., 95.

[4] See "Agricultural Report," 383; Carroll, II., 485-488; Bernheim, 161-165; Redington's "Calendars," I., Nos. 1445, 1680, 1683. The documents relating to the New Bordeaux settlement are given in full, preceded by a brief sketch by W. Noel Sainsbury, in "Collections," II., 77-103. See also Moragne's "Address delivered at New Bordeaux, November 15, 1854"; Mills, 348; "Agricultural Report," 383, 425.

vania, Maryland and Virginia to seek new lands in which to dwell. The upper lands of the Carolinas were opened by treaty with the Cherokees, in 1755, and the emigrants naturally entered these fertile lands in large numbers. They settled by families or in groups of two or three families, and retained their former communication and trade relations with Philadelphia, Baltimore and Richmond, instead of forming new relations with Charleston.[1]

The Proprietors earnestly desired the colonists to live in communities for the purpose of mutual protection and trade,[2] but the low, marshy lands were so much better fitted for agriculture on a large scale than for town building that the few towns which were laid out were very soon deserted. In 1775, there were but three towns of any size in South Carolina, and those were seaport towns. Chief of these was Charleston, which was the seat of government and the most flourishing town in the South. The land on which the town was built was low and flat, containing several little ponds and creeks, many of which were not filled up until after the Revolution. The streets were broad and uniform, intersecting one another at right angles. Owing to the unhealthiness of the surrounding country, the wealthy planters were in the habit of resorting to Charleston during the winter months. Consequently Charleston became the social center of the colony. Society there was gay and brilliant. Luxury and comfort abounded. The houses of the wealthy planters were generally built of brick and sumptuously furnished. The season was spent in assemblies, balls, dinners, parties, concerts, theatricals, sports, gaming and extreme dissipation.

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[1] "Agricultural Report," 383, 425, 615, 616; Mills, 489, 496-498, 512, 536, 537, 571, 572, 585, 586, 595, 604, 622, 629, 639, 671, 692, 724, 740, 754, 771. An excellent account of the settlement of the "back country" is given in Gregg, "Old Cheraws," 126-161.

[2] "Collections," I., 112, 142; II., 172; Rivers, "Sketch," 358, § 16; 387, § 1; Rivers, "Chapter," 48; Sainsbury's "Calendars," III., Nos. 86, 492, 630, 688, 918.

The history of colonial Charleston is the history of the wealthy aristocracy of South Carolina.[1]

The second town of importance was Port Royal, where the French had settled under Ribault in 1562 and where the Proprietors had wished the colonists to settle in 1670. During the Spanish wars, a fort was erected at Port Royal and named Fort Beauford, in honor of one of the Proprietors. After the close of the Yemassee war, in 1717, a town slowly grew up around the fort, and in 1795 it contained two hundred and fifty inhabitants.[2] The third town, Georgetown,[3] was settled at about the same time as Port Royal, with which town it has kept pace ever since, the two being about equal in population in 1775.[4] Besides these three towns, there were a few inland villages which may be mentioned in passing. Prominent among these was Dorchester, on the Ashley river, some twenty miles from Charleston. It was settled by a Puritan colony in 1696, and contained some three hundred and fifty inhabitants in 1707, with a Congregational church and a fort. It began to decline with the removal of the Congregationalists to Georgia, in 1752, and the inhabitants were few in numbers in 1775. The place is now in ruins.[5] Wilton, also called New London, near the mouth of the Edisto river, is mentioned as early as 1683, and contained eighty houses in 1708.[6] Other villages were Childsbury, Edmundsbury,

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[1] Carroll, I., 502; II., 484; Mills, 392; Rochefoucauld, "Travels," I., 158, 556; De Crèvecœur, "Letters from an American Farmer," I., 214, 215. An excellent summary is given in Lodge's "Short History of the English Colonies in America," 184, 185.

[2] See "Collections," I., 145, 160, 181, 182; III., 289; Carroll, I., 324; II., 490; Drayton's "View," 200, 208; Mills, 365-369, 453; "Agricultural Report," 663-667; Winterbotham's "America," III., 248.

[3] Also referred to as Winyaw, Winyah, Winyeau, Wyneah, Wynyeau and Wingate.

[4] "Collections," II., 173; "Agricultural Report," 684-7; Mills, 556-562; Carroll, II., 490.

[5] See Mrs. Poyas, "Our Forefathers," 85-88; Carroll, II., 452; Mills, 507; "Harper's Magazine," December, 1875, p. 12; "Charleston Year Book," 1883, 386.

[6] Dalcho, 16; Mills, 507; Howe, I., 163; Carroll, II., 453.

and Jacksonborough.[1] Towns were also laid out in the interior townships, but none of them contained more than a few inhabitants. A few houses, inhabited principally by Indian traders, were clustered around the frontier forts, but aside from these there was, in 1775, no town inland worthy of the name, with the single exception of Camden, which had been settled by Quakers from Ireland in 1750.[2] In fact, the whole interior was without a name, and portions were referred to in the constitutions of the State adopted in 1776 and in 1778, as the "District between the Broad and the Catawba," the "District east of the Wateree," the "District between the Savannah and the north fork of the Edisto," the "District between the Broad and the Saluda," and the "New Acquisition."[3]

The title to the lands lay originally in the Indians, and according to the view of the day the Crown had the sole right to purchase this title from them.[4] The Proprietors, on a few occasions, purchased land of the Indians, but, as a rule, they seemed to think that the grant from the King was sufficient.[5] It was their intention to retain the fee in themselves and to grant the use of the land to others, reserving a small quit-rent only as rental. The amount of the grant and of the quit-rent varied at different periods in the history of the colony. Before 1696, each settler was granted one hundred acres of land for himself and for each man-servant brought over by him, at a penny per acre quit-rent.[6] In 1694, the quit-rent was reduced to one shilling sterling per hundred

[1] Mills, 506, and Appendix, 34; Dalcho, 368; Carroll, I., 332; Davis, writing in 1798 (Travels, 61, 67) states that Ashepoo village contained three houses, and Coosawhatchie one. See also Rochefoucauld, I., 592; Carroll, I., 501.

[2] Mills, 586, 590.

[3] 1776, § 11; 1778, § 13. See Moultrie's "Memoirs," 17.

[4] Carroll, I., 490; see Johnson & Graham's Lessee *v.* M'Intosh, 8 Wheaton's Reports, at p. 573.

[5] "Collections," I., 107, 109; "Statutes," II., 583, 584. Generally speaking, the lowlands were not purchased from the Indians, while the uplands were. Ramsay, I., 150.

[6] Rivers, "Sketch," 366, § 4. From 1669 to 1671, the amount of the grant was one hundred and fifty acres. Sainsbury's "Calendars," III., Nos. 86, 918.

acres, at which figure it remained until 1731, when it was raised to the former figure of one penny per acre.[1] Those wishing to purchase land in large quantities could obtain one thousand acres for £20, at an annual quit-rent of ten shillings.[2] The fee of the land was seldom parted with,[3] except in the case of grants to friends, and even then a peppercorn rent was generally reserved.[4]

The method of granting land was extremely simple. The settler, having selected land not already occupied, made application therefor to the Governor, who issued a warrant, signed by himself and three councillors, directing the Surveyor-General to survey the number of acres to which the grantee was entitled. This warrant was taken by the applicant to the Surveyor-General, who surveyed the land and gave a certificate to that effect. This certificate was taken to the Governor, who then gave the grantee a deed of the land granted.[5] This easy method of obtaining land led many

[1] "Collections," I., 137, 155, 157, 158, 176, 177, 180; II., 89, 91; "North Carolina Colonial Records," I., 390, 554; "Statutes," II., 97, § 2; 102, § 13; 133; 291, § 6; Carroll, II., 125. From 1699 to 1702 the rate was one penny per acre. "Collections," I., 149, 151. For a case of a grant at three shillings per hundred acres, see "Collections," II., 131. The figures given in Grahame's "United States History," II., 150, are entirely inaccurate. Baronies paid £20 a year rent. "Collections," I., 126.

[2] "Collections," I., 158, 178; "North Carolina Colonial Records," I., 694; "Statutes," II., 102, § 14; Carroll, II., 403.

[3] Until 1695, one thousand acres were sold at £50, and from 1702 to 1709, at £20. "Collections," I., 120, 124, 125, 151; Carroll, I., 144; II., 32, 403; "North Carolina Colonial Records," I., 555. Ludwell in 1691 was authorized to sell land in lots of six thousand acres, at five shillings per acre, without rents. "North Carolina Colonial Records," I., 383.

[4] See, for example, "Collections," I., 112, 117, 118, 137, 192; II., 173; III., 308.

[5] "Collections," I., 157; Rivers, "Sketch," 349, 359, 399-403; Carroll, I., 104; II., 32; Blome, "Present State," 159. The Surveyor-General was appointed by the Proprietors, or the King after 1720, and gave security for the faithful performance of the duties of his office. "Collections," I., 98, 156; II., 275; "North Carolina Colonial Records," I., 211; Sainsbury's "Calendars," III., 711; Carroll, I., 61; II., 221, 461. He was paid by fees, regulated by the Assembly. See the "Statutes." The system was practically the same throughout the whole colonial period. The form of the deed is given in "Statutes," II., 96, §§ 1, 2.

speculators to take up large tracts and to avoid the conditions inserted in the deeds.[1] Thereupon the Proprietors, in 1699, forbade grants of more than five hundred acres to be made to any one person, and declared that all lands should escheat unless a settlement was made thereon within four years from the time of the grant.[2] In 1710, the time was reduced to six months, and the Governor was forbidden to grant any land whatever except on special warrant from the Proprietors,—a provision not finally repealed until 1731.[3]

In order to keep track of grantees and to know who were responsible for the payment of quit-rents, the Proprietors established a system of registration. No title to land was allowed to pass until the deed had been duly registered with the Register, several minor regulations being adopted to prevent the fraudulent obtaining possession of land.[4] It proved to be almost impossible to collect the quit-rents. In the early history of the colony only a small percentage of the land granted was under cultivation, and very few consequently were able to pay the rent demanded.[5] On several occasions the Proprietors agreed to receive merchantable commodities in place of money,[6] and upon one occasion they abated three years of rent on condition that the settlers

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[1] "Collections," I., 102.

[2] "Collections," I., 149; "North Carolina Colonial Records," I., 555. The Assembly had recognized the evil and, five years before, had passed an act for avoiding grants of land that remained unoccupied for two years, unless the grantee paid quit-rents thereon. "Statutes," II., 79; 102, § 15; 117; 135; Chalmers' "Opinions," II., 44, 100.

[3] "Collections," I., 155, 156, 158, 159, 167. 171, 190, 191, 285; II., 231. Grants as before were allowed from 1713 to 1718. "Collections," I., 162. In 1773, grants of land were again forbidden. "New York Colonial Documents," VIII., 357.

[4] Carroll, II., 32; Rivers, "Sketch," 359, § 22; "Collections," I., 113; "Statutes," II., 97, 100, §§ 1, 8.

[5] The statement in Grahame's "History of the United States," II., 129, that not one acre in a thousand was under cultivation, must be extravagant.

[6] See, for example, the case in 1695. "Collections," I., 124, 136; "Statutes," II., 97, 98.

fortify Charleston.[1] But in spite of this the arrearages amounted to £2000 sterling in 1699, which gradually increased to £9000 in 1729.[2] The King, at the time of the purchase of the colony, very generously remitted the arrearages of quit-rents on condition that provision be made for their payment in the future.[3]

An act was passed by the Assembly, in 1731, which was intended to settle the whole question.[4] The Auditor-General, who had been appointed over all the colonies in 1715,[5] was authorized to open an office in Charleston, where all deeds were to be registered. The registry was to describe lands by metes and bounds, give their location in county and parish, the rents payable, and to trace back the history of the deed to the original grantee. Rents were payable in proclamation money, March 25 of each year, by the persons in whose names the lands stood in the registry. Neglect to pay for five years worked a forfeiture of the lands to the King. In addition to this registry in the office of the Auditor-General was the registry in the colonial registry of deeds. Registers had been appointed in the early history of the colony, but the work was performed by the Surveyor-General or the Colonial Secretary until the close of the colonial period.[6]

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[1] In 1695. See "Statutes," II., 102-104; "Collections," I., 135, 139, 140, 141.

[2] "Collections," I., 148, 155, 167; Carroll, I., 274. At the close of the proprietary period, the quit-rents amounted to about £500 a year. See "New York Colonial Documents," IV., 612; "Report of the Board of Trade to the King," 126.

[3] "Collections," II., 175, 177; Chalmers' "Revolt," II., 169; "Statutes," III., 289; 301, § 23.

[4] "Statutes," III., 289-301. A subsequent act, passed in 1744, was practically a re-affirmation of the act of 1731. "Statutes," III., 633-637.

[5] "Collections," I., 223.

[6] See Fundamental Constitutions, §§ 81-83; Sainsbury's "Calendars," III., Nos. 247, 868, 870; IV., No. 582; "Collections," I., 99, 174; II., 275; Chalmers' "Opinions," I., 164; "Letter to Bern," 27; Carroll, II., 221; "Statutes," II., 4; III., 296, § 18; 416.

CHAPTER VI.

The Parish.

For forty years and more the entire management of colonial affairs was vested in the General Assembly. If a bridge were to be built, a road to be laid out, a public building or fort to be erected, a ferry to be established, creeks to be cleaned, canals to be cut, drains to be dug, pilot boats to be built, buoys to be placed in the harbor, or even local taxes to be raised, an act of the Assembly was passed ordering the same to be done and appointing a commission to supervise the work. Charleston, the only town of any importance in the colony, was governed by the Assembly. The records of the town contain no mention of Aldermen, Council, Selectmen, Mayor or other local governing officials. Centralization was complete; local government was unknown.[1]

In 1704, an act was passed establishing the Church of England in the colony and dividing the colony into parishes, each to contain a church which was to be presided over by an Episcopal clergyman.[2] The plan had reference to religious worship only, and no thought seems to have been entertained of making the parish a local unit of government. But once established, the advantages arising from the parish system became so apparent that very early the parish became the unit of local government in South Carolina. The act of 1704 proving unsatisfactory to the English government, it was repealed,[3] and in 1706 another act was passed nearly identical with the former, with the objectionable clauses

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[1] See the "Statutes"; "Charleston Year Book," 1880, 254; 1881, 326, 332.

[2] "Statutes," II., 236-245.

[3] "Collections," I., 152; "Statutes," II., 281.

omitted or modified.[1] By this act the colony was divided into ten parishes,[2] which, by 1775, had increased, by the division of old parishes or the creation of new out of territory unsettled in 1706, to twenty-four, all having equal rights, duties and privileges.[3]

As the parish was a purely ecclesiastical division organized for the sole purpose of propagating the Episcopal religion, the officers placed over it were naturally only such as were necessary for an ecclesiastical organization: rector, churchwardens, vestrymen, sexton, clerk and register of births, marriages and deaths; and these remained, with the single addition of the overseers of the poor, the only parish officers during the colonial period. The duties of the rector, who was *ex officio* a member of the vestry, remained of an ecclesiastical and religious character throughout the colonial period. All parish business was managed by two churchwardens and seven vestrymen, elected annually on Easter Monday in each parish by such conforming Episcopalians as were either freeholders or taxpayers in the parish. Vacancies arising in the vestry were filled at a special meeting of the parish, while vacancies among the wardens were filled by the vestry. The two bodies deliberated apart and not necessarily at the same time. The vestries held regular quarterly meetings, while the wardens met whenever they chose. Their duties consisted, at first, in paying parochial charges and in keeping all parish property in repair; but with the growth of

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[1] "Statutes," II., 283-293. The act of 1706 was not an amendatory act to that of 1704, as several writers seem to think. See further on this point: Carroll, I., 145-158; II., 429-444; De Foe, "Party Tyranny"; "Case of the Protestant Dissenters in Carolina"; "Journal of the House of Lords," XVIII., 130b, 134a, 143b, 144, 151.

[2] The act of 1704 had provided for six parishes only. See also "Statutes," II., 328-330; 687, § 14.

[3] The townships were promised by the King equal rights with the parishes as soon as they contained one hundred families, but the Assembly uniformly neglected to confer such rights until the inhabitants had adopted Episcopacy. See Carroll, I., 297; II., 124, 220; Ramsay, I., 109.

parish functions their duties were greatly increased.[1] The register was annually appointed by the vestry, took the customary oaths, kept records of vestry proceedings and of all births, christenings, marriages and burials.[2] The duties of the clerk were to keep the parish records, and of the sexton to take care of the parish church and cemetery. Both were appointed by the vestry and served during pleasure.[3]

The care of the poor fell to the parishes after 1712. Previous to that time they had been under the care of a close board of five commissioners, appointed in the first instance by the Assembly.[4] After 1712, the vestry of each parish annually appointed a Board of Overseers, consisting of two or more members, who, with the wardens, had the entire charge of the parish poor. A settlement in a parish was gained by a continuous residence there for three months,[5] "as a native, householder, sojourner, apprentice or servant," unless possessing a home in another parish, and great care was taken to prevent paupers, or any who it was feared might become paupers, from obtaining a settlement.[6] Until 1825, there was but one workhouse in South Carolina, and that was built at Charleston about the year 1740.[7] In addition to

[1] See §§ 2, 20, 21, 22, 23, 27, 28, 30, 31 of the act of 1704; §§ 28, 29, 30, 31, 34, 35, 38, 39 of the act of 1706; "Statutes," II., 368, §§ 6, 7; 397, § 7.

[2] §§ 24, 25 (1704); §§ 32, 33 (1706). The Proprietors had desired to have a register in each seigniory, barony and colony, Fundamental Constitutions, §§ 84, 87; but the rector at Charleston, appointed in 1698, seems to have been the only register prior to 1706. "Statutes," II., 120, 121, 139, 215; "Collections," I., 144.

[3] §§ 28, 29 (1704); §§ 36, 37 (1706); "Statutes," II., 373, § 16.

[4] The earliest act upon the subject was passed in 1694, and is lost. The act of 1696, supplemented by the act of 1698, continued in force until 1712. "Statutes," II., 78, 116, 135. For the act of 1712, which continued in effect with few and slight changes until 1783, see "Statutes," II., 593-598.

[5] After 1768, twelve months, as in the other colonies. "Statutes," VII., 91, § 5.

[6] See further, "Statutes," II., 117, § 5; 136, § 4; III., 491, §§ 4, 5; 721, § 2; "Charleston Year Book," 1881, 333.

[7] "Statutes," III., 430, 480, 736; IV., 141; VI., 241, 242; VII., 90-92; "Charleston Year Book," 1881, 43, 44; 1887, 150; 1888, 98.

aid granted by the parishes, there were three charitable societies which gave aid to poor orphans, principally by education: the South Carolina Society, organized in 1738 at Charleston; the Winyaw Indigo Society, organized in 1755 at Georgetown, and the Fellowship Society, organized in 1762 at Charleston.[1]

The roads were, to a certain extent, under the control of the parishes. Before 1721, no new road was laid out except after the passage of a special act and the appointment by the Assembly of a Board of Commissioners, generally consisting of five members, to carry the act into effect.[2] In 1721, the various acts relating to roads were repealed and a Highway act passed, intended to cover all roads in the colony.[3] The colony was divided into thirty-three districts, and the roads in each were placed under the care of a commission, varying in number from three to eleven members each. In four cases the bounds of the districts coincided with those of parishes, but the majority of parishes were subdivided into two, three and even six divisions, while in five cases the duties of the commission consisted mainly in keeping creeks clean and in repair.[4] The members were all appointed in the first instance by the Assembly, and vacancies were filled by the remaining members, or by the Governor if the remaining members failed to fill the vacancy within a reasonable time. In no case were the members elected by the parish, as stated by some writers. Members were appointed or elected for life. Resignations were not allowed to be accepted until 1741, and then only after three years of service.[5] Additional members were at times added by the Assembly to several of

[1] "Statutes," V., 183; VIII., 106, 107, 110-114, 192, 246, 255, 351, 365. The Fellowship Society also maintained a hospital. "Rules of the Incorporated South Carolina Society," pp. vii, viii.

[2] See "Statutes," IX., 1-50.

[3] "Statutes," IX., 49-57.

[4] For later acts appointing commissioners to clear creeks and lay out drains see "Statutes," VII., 492-496, 506-508, 513-519; IX., 129, § 9.

[5] "Statutes," IX., 129, § 8.

the boards,[1] and several new boards were appointed, with all the powers of the old, especially when new parishes were created.[2] When all the members of a board died, leaving no successors, the Assembly made entirely new appointments.[3] The roads in Charleston were under the care of the Governor, Council and five other members until 1764, after which date they were placed under the care of a board appointed as in other parishes.

In addition, there were a few other local officials in Charleston appointed, in the first instance, by the Assembly, with vacancies filled by the remaining members or by the Governor. The more prominent of these were the Fire Commissioners, whose duty was to see that all the inhabitants possessed ladders, fire-hooks, buckets, etc., ready for use in case of fire; a Sealer of Weights and Measures;[4] Gaugers and Measurers;[5] a Flour and Tobacco Inspector,[6] and Packers, who examined all rice, beef, pork, tar, pitch, rosin and turpentine before exportation.[7]

Finally, the parish became the unit of election of members to the Commons House of Assembly. Of the early elections very little can be said beyond the fact that they took place at Charleston.[8] An attempt, in 1683, to have half of the members chosen at Charleston and the rest at Wilton

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[1] See, for example, "Statutes," III., 222, § 2; IV., 256, § 5; IX., 127, § 3.

[2] "Statutes," IV., 9, § 8; IX., 127, § 3; 145, §§ 1, 12; 182, § 4.

[3] "Statutes," IX., 162, § 1.

[4] After 1693. "Statutes," II., 77, 96, 122, 186, 278, 346.

[5] After 1710. "Statutes," III., 347, § 2; 500, §§ 10-14; 587; 690, §§ 14, 15; 751; IV., 47; 96; 207; 291, §§ 6-12; 540. After 1768, they were elected by the residents of Charleston.

[6] After 1771. "Statutes," IV., 327-331.

[7] After 1693. "Statutes," II., 77, 96, 216, 264, 298, 615; III., 103, 500, 587, 686-690, 751; IV., 47, 96, 207, 295, 333, 349, 382, 541. There were Packers in Georgetown and Port Royal, also, elected by the residents of the respective towns.

[8] The Fundamental Constitutions are singularly silent upon the question of elections. See § 75.

failed.[1] Very little departure from the original system was made until 1716, when the election act was passed, reference to which has already been made.[2] The method of procedure as detailed by the election act and its successors was practically the same. Forty days before the election, writs[3] calling for the same were issued by the Governor and Council to the various churchwardens, who gave public notice of the time and place of the election.[4] The churchwardens had entire charge of the balloting. They were obliged to be present during the hours of voting, and were heavily fined for stuffing the ballot-box or opening ballots before the closing of the polls. Voters were exempt from arrest on civil process while on their way to or from the polling places and for forty-eight hours after the votes had been counted. Bribery and intimidation at the polls were severely punished, and, when done by the person elected, lost him his election. The qualifications of voters varied somewhat throughout the period, but in general it may be stated that a voter had to be a free white male Protestant, twenty-one years of age, a resident of the colony for a certain period of time, and possessing fifty acres of land or its equivalent value in personalty. After 1745, voters were allowed to cast their votes either in the parish of residence or in which they held the required amount of property. Elections were conducted in a very simple manner. The balloting took place at the parish church. The ballots were prepared by the voters and deposited by them in a ballot-box prepared for the purpose by the churchwardens. The polls were kept open for two days, when the votes were counted by the wardens and the successful candidates informed of their election.[5]

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[1] Dalcho, 16; "Collections," I., 125.

[2] See "Statutes," II., 73, 130, 249; "Collections," I., 130. See page 49.

[3] For the form, see "Collections," I., 289.

[4] A copy of one of these notices is given in Gregg, 168.

[5] In addition to the acts of 1716, 1719 and 1721, see "Statutes," III., 657; IV., 99.

A few words on the subject of naturalization may not be out of place here. The rule in England had been the same as in other countries,—a man owed allegiance to the Crown in whose dominions he was born. Aliens were without rights, but, in time of peace, were tacitly allowed many rights of Englishmen. Parliament might naturalize foreigners, which was generally done by means of special acts. Sailors, however, serving in the British navy or on board of British whaling vessels were generally allowed to become naturalized under certain conditions.[1] The individual colonies likewise passed acts, conferring the rights of natural-born persons upon foreigners settling within their limits and complying with certain requirements. The occasion of the passage of naturalization acts in South Carolina was the presence of the French refugees,—quiet, law-abiding and very desirable citizens. The act of 1691 conferred upon the French and Swiss residents the same rights and privileges as were possessed by free-born South Carolinians.[2] This act was disallowed by the Proprietors, in common with other acts passed by Sothell's Assembly.[3] At the earnest solicitation of the Proprietors, however, another act was passed, six years later, similar to that of 1691, allowing naturalization papers to be obtained by such applicants as had taken the oath of allegiance to the King.[4] This act, like its predecessor, applied only to such alien Protestants as were at the time actual residents of the colony. In 1704, the act was extended to include aliens settling in the colony in the future.[5]

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[1] See 6 Anne, c. 37, § 20; 13 Geo. II., c. 3, § 2; 22 Geo. II., c. 45; 29 Geo. II., c. 5; 2 Geo. III., c. 25; 4 Geo. III., c. 22; 8 Geo. III., c. 27, § 3; 13 Geo. III., c. 25; 14 Geo. III., c. 84; "Collections," II., 249. For other early English naturalization acts, see 7 Anne, c. 5, §§ 2, 3; 10 Anne, c. 5; 1 Geo. I., Stat. II., c. 29; 4 Geo. I., c. 21; 13 Geo. III., c. 21.

[2] "Statutes," II., 58-60. According to the Fundamental Constitutions, citizenship was to be gained by merely signing the Grand Model. See § 118.

[3] "Collections," I., 128, 129.

[4] "Statutes," II., 131-133; "Collections," I., 131, 141, 145.

[5] "Statutes," II., 251-253; III., 3, § 3; "Collections," I., 149. The statements of Daly in his monograph on "Naturalization," pp. 15, 16, are somewhat mixed and inaccurate.

But naturalization in one colony gave no rights in another.[1] In 1740, the British Parliament passed an act to obviate this difficulty, by conferring the rights of citizenship upon foreign Protestants who had resided for seven years in the colonies and had taken the various oaths prescribed by Parliament, thus rendering individual colonial acts unnecessary.[2]

According to the Fundamental Constitutions,[3] incorporated towns were to be governed by a mayor, twelve aldermen and twenty-four common councilmen. The Proprietors were to appoint the Mayor and Aldermen from the Council chosen by the householders. Aside from the parish, however, there was no trace of local government in South Carolina until after the close of the Revolutionary War. As early as 1694, the Proprietors had recommended the Governor to give a charter to the inhabitants of Charleston.[4] But no town during the colonial period was actually incorporated.[5] The interior of the colony, which was not embraced within the limits of a parish, was absolutely without local government of any kind until 1785, when the State was subdivided into counties, principally for judicial purposes.[6] The parish system remained, however, in the lowlands until the reconstruction period, and even to-day several of the townships are known as parishes.

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[1] Chalmers' "Opinions," I., 344.

[2] 13 Geo. II., c. 27. See also 20 Geo. II., c. 44; 26 Geo. II., c. 26; 27 Geo. II., c. 1; 13 Geo. III., c. 25. Baird's remarks in his "Huguenot Emigration to America," II., 173-175, to the effect that the Crown refused to sanction colonial naturalization acts are misleading. Such acts were not disallowed until after the passage of the British colonial naturalization act of 1740. See Chalmers' "Opinions," I., 344; II., 123; "New York Colonial Documents," VIII., 402; "New Jersey Colonial Documents," X., 412.

[3] See § 92.

[4] "Collections," I., 137.

[5] The act of the Assembly incorporating Charles City and Port in 1722 was disallowed. See "Collections," I., 158, 159, 265, 266, 267, 272, 275, 277; II., 155, 162; Chalmers' "Opinions," II., 53-56; Chalmers' "Revolt," II., 96. Charleston was not incorporated until 1783. See "Statutes," VII., 97.

[6] "Statutes," IV., 661-666.

CHAPTER VII.

The Judiciary.

By their charter, the Proprietors were empowered to establish courts and forms of judicature, appoint judges, hold pleas, award process, and hear cases, civil and criminal. The system as outlined by them in the Fundamental Constitutions was very elaborate and was founded upon the subdivisions of the county. Courts were to be erected in each seigniory, barony and manor, to be presided over by their proper lord, and also in the four precincts of the county, each to be presided over by a steward and four justices. All court officials were to possess certain property qualifications and to be residents of their respective judicial districts. Appeals were to be allowed in certain cases from the above courts to the county court, and from the latter to the Proprietors in all criminal cases, and in civil cases when the matter in dispute exceeded £200 in value or related to title to lands.[1]

Such an elaborate system, however, could not be put into operation until the colony had been sufficiently well settled. Hence no attempt was made to establish a judicial system until the division of the colony into counties in 1682, all judicial business being attended to by the Governor and Council.[2] In that year a court was erected at Charleston for Berkeley county, and the intention was to erect courts in the other counties as soon as they were sufficiently populated to warrant it.[3] But no courts were ever erected in them, and the court at Charleston remained practically the only court of record for civil business in South Carolina until the eve

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[1] Fundamental Constitutions, §§ 16, 61-63.

[2] Rivers, "Sketch," 348, 352, 354.

[3] Rivers, "Chapter," 62; "Collections," I., 87, 134.

of the Revolutionary War.[1] The court claimed all the powers, rights and privileges exercised by the Court of Common Pleas at Westminster. Sessions were held quarterly, and all writs and process ran in the name of the Proprietors, or King after 1719.[2]

The principal judicial officials were the Justices, Clerk, Provost Marshal, and Attorney-General. The Proprietors had intended to have a Chief Justice and four Associate Justices preside over each county court, and the first appointments were made in accordance with this intention.[3] But the small amount of business rendered so many Justices unnecessary, and from 1694 until 1732 a Chief Justice alone was appointed.[4] After the reorganization of the judicial system in 1731, two Associate Justices were appointed, to whom, in 1744, was given the power to hold court in the absence of the Chief Justice.[5] Appointments were made by the Governors and removals were frequently made to create vacancies for favorites.[6] The salary of the Chief Justice was £60 a year during the proprietary period and £100 during the royal. The Assistant Justices served without pay.[7] The duties of the Clerk were to keep records of all processes and actions tried in the court. Under the Proprietors the duties were performed by the Secretary of the colony; under the King, by a patentee of the Crown.[8] The Provost-Marshal

[1] Carroll, II., 221.

[2] "Statutes," VII., 190, § 2; 186, § 8; 189, § 1; 190, § 6; III., 324, § 4. See also Stokes, 157; "Collections," II., 172; Pownall (1st ed.), 75.

[3] Fundamental Constitutions, § 61; "Collections," I., 116, 130, 131, 134; Rivers, "Chapter," 61, § 11.

[4] "Collections," I., 126, 156, 197; II., 129, 275; Stokes, 157.

[5] "Collections," II., 186; "Statutes," III., 326, § 7; 632, § 7; Ramsay, II., 154.

[6] "Collections," I., 90, 92, 130, 131, 134; II., 273, 306, 309; "North Carolina Colonial Records," I., 705; Rivers, "Chapter," 61, § 11; Stokes, 158; Carroll, II., 427. For cases of appointment for life, see "Collections," I., 127, 246, 247, 250. The Assembly never appointed the Justices as stated in the "Statutes," I., 430.

[7] "Collections," I., 145, 155; "Statutes," III., 317, § 32; 448, § 32.

[8] "Collections," I., 92, 112, 117, 174, 250; Rivers, "Chapter," 62, § 13; "Statutes," III., 275, § 4; Grimké, 271, § 20.

was the general executive officer of the courts, possessing the same powers and liabilities as the English sheriff, to whose duties his were similar.[1] During the proprietary period he was appointed by the Governor, and Governors were occasionally known to sell the office to the highest bidder. During the royal period, however, the office was held by a patentee of the Crown, the same person holding the office of Clerk and Provost-Marshal and performing his duties by deputy until 1769, when the colony purchased the right to appoint its own Clerk and Provost-Marshal.[2] The Marshal was also the public jail-keeper, and his house, or his deputy's, remained the colonial prison until 1770, when a jail was erected.[3] An Attorney-General was also appointed, generally by the Governor, to prosecute offenders against the law.[4]

Criminal jurisdiction was retained by the Governor and Council until 1701, when a criminal court was established at Charleston, under the name of "Court of General Sessions of the Peace, Oyer and Terminer, Assize and General Gaol Delivery." Its jurisdiction was practically the same as that possessed by similar courts in England. The officials connected with the Court of Common Pleas held similar positions in the Court of General Sessions, and the two courts were managed as two divisions of the same court.[5]

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[1] Rivers, "Chapter," 62, § 14; 80, § 51; "Statutes," II., 611-613, 682; III., 85; 117, § 1; 118, § 4; 186, § 8; 190, § 5; 275, § 4; 284, §§ 37, 38; VII., 188, § 12; 190, §§ 3-5; "Collections," II., 178; "Letter to Bern," 26; Chalmers' "Opinions," I., 145.

[2] "Collections," I., 87, 174, 187, 237, 250; II., 131, 191; III., 323. The correspondence relating to the sale is given in Weston, 106 *et seq.* See also "Collections," I., 163, 164, 186, 187, 233; Redington's "Calendars," II., No. 528. He was paid by fees. "Statutes," III., 415, 422.

[3] "Statutes," II., 166, 167, 415; III., 284, 638; IV., 323-325; VII., 202; "Collections," III., 323. See also "Statutes," II., 425, 453.

[4] "Collections," I., 130, 136, 144, 153, 155, 156; II., 129, 273; Weston, 201.

[5] "Statutes," II., 167, § 3; 286, § 45; III., 97; 236; 268; 282, § 30-32; 543, § 5; VII., 194, § 1; Rivers, "Chapter," 62, §§ 17, 18; Stokes, 158.

In addition to the officials already referred to, there were Justices of the Peace and Constables. The former were appointed by the Governor. Their duties were many and minor in character. They could commit trespassers to jail, admit prisoners to bail, give certificates of ownership of horses and the like. They also had jurisdiction in petty cases under forty shillings, in imitation of the London Court of Conscience, tried offenders against the Sunday law, and settled claims for damages caused by the erection of dams. They were paid by fees.[1] The Constables likewise date back to 1685, if not earlier. They were appointed by the Justices of the Court of General Sessions. Their number was large, how large it is impossible to state. Their duties were of a minor and miscellaneous character; they served writs in small cases, conveyed prisoners to jail, whipped negroes, summoned jurors, collected several local taxes, and notified the Court of General Sessions of all wrong actions coming to their notice.[2] As in other colonies, the number of lawyers was very small. Fifty-eight were admitted to the bar between the years 1748 and 1775. The records of those admitted before that date are lost.[3]

The jury system in South Carolina was in many respects unique. Jurors were not returned by the Sheriff, as elsewhere. Every three years lists of jurymen were prepared by the Chief Justice, Coroner and Treasurer. All freeholders paying a minimum tax of £2 were liable to service as

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[1] "Statutes," II., 1, 27, 28, 34, 47, 74, 289, 397, 443-446, 452, 454, 482, 598; III., 99, 131, 139, 268, 603, 609, 705; IV., 177, 184; Grimké, 213; Chalmers' "Opinions," II., 161; Stokes, 158; Weston, 81; Carroll, II., 221; "Collections," II., 172; 3 Jac. I., c. 15; 6 Edw. I., c. 8.

[2] "Statutes," II., 27, 34, 47, 74, 94, 96, 117, 138, 183, 208, 270, 278, 287, 299, 332, 361, 388, 594, 598, 629; III., 99, 283, 555, 586, 638, 751; IV., 47, 96, 207, 294, 333, 349, 382, 540; VII., 2, 403. "Collections," I., 186; "South Carolina and American General Gazette," March 11, 1768.

[3] See "Statutes," II., 447; VII., 173, § 29; Ramsay, II., 159; Grimké, 271, § 15. By the Fundamental Constitutions, § 70, no one was to be allowed to plead the cause of another for money.

petit jurors, while those paying a tax of £5 or more were liable to service as grand jurors. The names of all were written upon separate pieces of paper and placed in a box prepared for this purpose. This box contained six compartments: into the first were placed the names of those liable to grand jury service; into the third, those liable to petit jury service; into the fifth, the names of those residing in Charleston. The box had three locks, with three different keys, one each in the possession of the Chief Justice, Coroner, and Treasurer, and could be opened only in the presence of all three. As a general rule, jurors were drawn at Charleston during the session of the court preceding that in which they were to serve. Thirty slips were drawn[1] from the first compartment for grand jury service, forty-eight from the third for criminal jury service, thirty more from the third for civil jury service, and thirty from the fifth to serve at special courts. The names of the persons drawn were entered in the session book by the clerk, and the slips were placed in the second, fourth and sixth compartments respectively. This process was continued until all the slips had been withdrawn from the odd-numbered compartments and placed in the even, when it was begun over again. Those whose names had been drawn were summoned by the Provost-Marshal to appear at the next session of the court. Of those appearing, twenty-three in the case of the grand jury and twelve in the case of the petit were drawn for actual service. The grand jurors were sworn by the clerk of the court and then retired to examine the bills filed by the Attorney-General. These were indorsed good or bad according as they were found against or for the prisoner, and were returned to the clerk of the court. The duties of the petit jury were the same as to-day, to decide the facts in the case presented for their consideration. In criminal cases a prisoner was allowed to except against twenty jurors. Surgeons and butchers were forbidden to sit on the jury in criminal

[1] The custom was to have the drawing done by the first boy who appeared after the box was opened. See Carroll, I., 105.

cases. Others exempt from jury service of all kinds were: members of the Council and of the Assembly, Justices, Assistant Justices, and all other court officials and such persons as were exempt by the laws of England. This description of the jury system is taken from the jury act of 1731,[1] which continued in force, with a very few slight changes, throughout the remainder of the colonial period.[2] The earlier acts are lost,[3] but the system as above outlined was in use before 1710, and is said to have originated with Gov. Smith in 1693.[4]

In the first years of the colony, when the Governor and Council possessed jurisdiction in all cases, appeals were unnecessary. When courts of law were created, the right of appeal to the Governor in Council was reserved. During the proprietary period appeals seem to have been allowed in all cases, but during the royal period they were allowed, with a few exceptions, only when the matter in dispute exceeded £300 sterling in value. In this appellate court the Governor sat as Chief Justice, the Council as Associate Justices, and the colonial Secretary as Clerk. Writs were served by the Provost-Marshal.[5] Appeals were furthermore allowed from the Governor in Council to the Proprietors or King in Council. Under the Proprietors, all cases were appealable; under the King, only those where the matter in

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[1] "Statutes," III., 274-282.

[2] "Statutes," III., 543, § 4; 631, § 3; 728, § 3; IV., 43, § 3; VII., 196, § 6. For the changes, see "Statutes," III., 282, § 5; 323, §3; 554, §§ 1-5; 630, §§ 3-6; 728, § 3; IV., 43, § 3; 195, § 3; VII., 187, § 11; 203, § 15.

[3] Passed in 1695, 1697, 1702, 1704 and 1712. "Statutes," II., 96, 130, 185, 256, 378.

[4] "Letter to Bern," 23, 24; "Harper's Monthly," December, 1875. p 17. The act of 1692, the first jury act passed in South Carolina, was disallowed by the Proprietors. "Statutes," II., 76; Rivers, "Sketch," 436-439. See further, Weston, 203-205; Fundamental Constitutions, §§ 66-69.

[5] Rivers, "Chapter," 62, §§ 15, 16; 81, § 53; "Collections," I., 171; Stokes, 184, 223; "New Jersey Colonial Documents," VIII., Pt. 1, 188-189.

dispute exceeded £500 sterling.[1] The law applied by these courts was, generally speaking, the common law of England, the first settlers being supposed to carry with them the underlying principles of English law and customs in existence at the time of their departure. To make this sure, the Assembly, in 1712, enacted that the English common law, where not altered by nor inconsistent with the customs and laws of the colony, was to be in force in South Carolina, except the ancient tenures and the ecclesiastical law.[2]

Such was the composition of the judicial system of South Carolina during the greater part of the colonial period. There was considerable dissatisfaction with the system, and several efforts were made to improve it, especially in 1721.[3] Five precinct courts were then established: at Waccamaw, Wando, Echaw, Wilton, and Beaufort, each presided over by five Justices of the Peace, appointed by the Governor. The jurisdiction of the courts was somewhat extended, including all criminal actions not extending to life or limb, and all civil actions up to £100 sterling. In addition, the court heard all actions relating to violations of the slave code, punished obstinate and incorrigible servants, granted and revoked liquor licenses, heard questions relating to wills and administration, had charge of orphans, compelled executors to account, and examined the accounts of the churchwardens and overseers of the poor. Appeals were allowed under certain restrictions to the Court of Common Pleas at Charleston. The procedure was practically the same as in the Charleston court. It was intended to build courthouses, prisons and inns in each district. But for some reason the.

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[1] "Collections," I., 205, 225; "North Carolina Colonial Records," II., 161; "New Jersey Colonial Documents," VIII., Pt. 1, 189-190; Fundamental Constitutions, § 65.

[2] "Statutes," II., 413, § 5. See also "Collections," I., 131, 132; Chalmers' "Opinions," I., 195, 197, 220; II., 202; Forsyth's "Opinions," pp. 1, 2; "Journals of Congress," I., 27-31; Daws *v.* Pindar, 2 Modern Reports, 45; Blankard *v.* Galdy, 2 Salkeld's Reports, 411; Rex *v.* Vaughan, 4 Burrows' Reports, 2494, at p. 2500; Gordon *v.* Lowther, 2 Lord Raymond's Reports, 1447.

[3] "Statutes," II., 99; VII., 166-183; Chalmers' "Opinions," I., 355.

precinct court system proved unpopular and soon fell into disuse.[1]

Until the passage of the Circuit Court act in 1769, therefore, all court business was transacted at Charleston. The principal reason for the passage of the act was the fact that the new settlers in the "back country" from Pennsylvania and Virginia needed protection from the freebooters who were overrunning the territory. The first act was passed in 1768. Its disallowance by the Crown because of certain provisions which it contained was followed by the passage of a similar act the following year, with the objectionable clauses omitted.[2] Semi-annual sessions of the court were ordered to be held at Orangeburgh, Camden, Ninety-Six, Cheraws, Georgetown and Beaufort, to hear all actions, civil and criminal. The Justices of the courts at Charleston sat also at the sessions of the Circuit courts. Writs and process issued from and were returnable to the Court of Common Pleas at Charleston, leaving only the trial to be conducted at the Circuit court. Circuit Sheriffs and Clerks were appointed by the Governor. The procedure in other respects was practically the same as in the Charleston court.[3]

There yet remain to be mentioned the courts of Chancery, Admiralty, the Ordinary, and the Coroner. It was the intention to have a Coroner in each county, but there seems never to have been a Coroner in the colonial days outside of Charleston. He is first mentioned in 1685, but his duties

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[1] A supplemental act passed in 1727 was disallowed by the King. The act of 1721 was not expressly repealed until 1759, although obsolete certainly by 1730. "Statutes," III., 273, 287; IV., 76; "Collections," II., 119, 132.

[2] For the approval, see "Collections," II., 191, 192. Unfortunately, the act inserted in the "Statutes," VII., 197-204, is the disallowed act of 1768; the approved act of 1769 is inserted in Judge Grimké's "Public Laws," 268-272, although in a somewhat mutilated condition. See Redington's "Calendars," III., No. 1196.

[3] See also "Statutes," IV., 325, § 10. The salaries were increased as follows: The Chief Justice was granted an annual salary of £500; Assistant Justices, £300; Attorney-General, £200; Clerk of the Court of Common Pleas, £300; all in sterling.

were not fully defined until 1706.[1] He was appointed by the Governor, and his duties consisted mainly in examining into the cause of violent and sudden deaths. His court was held whenever and wherever he pleased. All testimony was given in writing, as well as the verdict of the jury, and the Coroner reported the result to the next Court of General Sessions.

The Governor was Ordinary of the colony, and as such had the right to collate to benefices and grant probate of wills and letters of administration. The right to collate to benefices was never exercised in South Carolina.[2] Wills were proved by an oath before the Ordinary that the document was the last will of the deceased.[3] Administration was granted only after the issue of a citation which had been read in church by the minister on the Sunday preceding the granting of administration. Administration granted in one colony did not extend to another, nor to England; nor did administration granted in England extend to the colonies in case of realty. Personalty was distributed according to the law of the deceased's domicil; but if the deceased died intestate in the colonies, leaving personalty in England, administration was granted in England, although his domicil were in the colony. Records of probate of wills and granting of administration were kept by the Secretary of the colony.[4] All ecclesiastical questions were referred to the Bishop of London, or were heard by his commissary in South Carolina.

Chancery jurisdiction seems to have existed in South

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[1] "Statutes," II., 6, 269, 482; VII., 181, §§ 6, 7.

[2] "Statutes," II., 438, 440, 466-470, 523; "Collections," II., 303; Stokes, 159, 184, 185.

[3] The Proprietors appointed a special official to grant probate of wills and administration. "Collections," I., 157, 185; II., 178; Stokes, 203.

[4] Stokes, 211; Chalmers' "Opinions," I., 28, 29; Forsyth's "Opinions," 45; "Letter to Bern," 27; Pipon *v.* Pipon, Ambler's Reports, 25; Burn *v.* Cole, Ambler's Reports, 416; Atkins *v.* Smith, 2 Atkins' Reports, 63.

Carolina upon the same precarious footing that it existed in the other colonies. There is no trace of the assent of the Crown to the establishment of any Court of Chancery in South Carolina. Nevertheless, the jurisdiction was exercised in the colony from an early day.[1] The Proprietors formally appointed the Governor and Council a Court of Chancery as early as 1691, and the Assembly recognized this appointment in the year 1700.[2] The Governor acted as Chancellor, the Councillors as Assistants, and the Secretary of the colony as Register or Clerk. The court sat quarterly, and heard cases similar to those heard in the English Court of Chancery. Appeal was allowed to the King in Council when the matter in dispute exceeded £300 sterling in value.[3]

The question of admiralty jurisdiction has been a troublesome one to describe, but it becomes comparatively simple when the fact is borne in mind that there were two sets of Admiralty courts in the colonies during the greater part of the colonial period, and that at one time there were three: Colonial Courts of Admiralty, English Courts of Vice-Admiralty, and the Court of Vice-Admiralty over all America. The various charters granted by the Crown in the seventeenth century included the land, coast, bays and inland waters from the Atlantic ocean westwards. Thus the admiralty jurisdiction of the colonies was very limited, being confined to acts committed at the mouths of rivers or at sea near the coast,[4] and few colonies supported special courts of Admiralty, the jurisdiction being placed generally in the hands of the Governor and Council,[5] or, as in South Caro-

[1] Chalmers' "Opinions," I., 182; Keath, "A Collection of Papers," 179.

[2] Rivers, "Chapter," 62, § 16; "North Carolina Colonial Records," I., 435; II., 632; "Statutes," X., Appendix, p. 6.

[3] For the acts relating to the colonial Court of Chancery, see "Statutes," II., 414, § 5; III., 324, § 5; VII., 208-211. See also "Collections," II., 295; Stokes, 184, 194; Carroll, II., 155, 220, 221.

[4] "Statutes," II., 446, 447; Stokes, 161, 162; "Collections," II., 172; Douglass' "Summary," I., 216; Sainsbury's "Calendars," IV., 972.

[5] See Chalmers' "Opinions," II., 227.

lina, in the hands of the regular judicial tribunals.[1] The early intention of the English government seems to have been to extend the jurisdiction of these colonial courts of Admiralty, and violations of the provisions of the navigation acts were at first directed to be punished in such courts. As it became more and more evident that the navigation acts could not be enforced when offenders were tried before juries who had themselves been guilty of the same act as the accused, it was decided to establish in each colony branches of the English High Court of Admiralty.[2] The establishment of these courts of Vice-Admiralty rendered the colonial courts of Admiralty superfluous, and the latter very generally disappeared before the close of the colonial period.

The first Court of Vice-Admiralty in South Carolina was established in 1697.[3] During the proprietary period the Judge of Vice-Admiralty was generally appointed by the Proprietors through the Governor, subject to the approval of the English Commissioners of Admiralty; during the royal period the Lords Commissioners of Admiralty appointed each Governor a Vice-Admiral in his colony. The Governor himself, however, seldom sat, but generally appointed a Judge to sit for him in this court. He also appointed the other officers of the court: Register or Clerk, Marshal or Sheriff, and Advocate-General or prosecuting officer.[4] The jurisdiction of the court was similar to that of the English High Court of Admiralty, and included maritime causes, cases of prizes taken in war, and violations of the navigation acts, the last being concurrent with the earlier colonial courts of Admiralty, as before stated.[5] Appeals were

[1] "New Jersey Colonial Documents," II., 133-134.

[2] "Collections," I., 211.

[3] "Collections," I., 197; "North Carolina Colonial Records," I., 471, 473, 490.

[4] "Collections," I., 153, 178, 207; II., 207, 273, 276; "North Carolina Colonial Records," I., 389, 490; Rivers, "Chapter," 83, § 61; "Statutes," III., 420; Carroll, I., 359; II., 221; Stokes, 166-176, 184, 233.

[5] Stokes, 167–172, 233, 270; Chalmers' "Opinions," II., 188-196; Forsyth's "Opinions," 91-93; Chalmers' "Revolt," I., 272, 275, 301.

allowed direct to the English High Court of Admiralty, except cases of prizes taken in war, which lay to commissioners especially appointed for this purpose.[1] There were two methods of trying pirates: by the first, the offender was tried before a jury of twelve, the court consisting of the Admiral or Vice-Admiral and two or three persons especially commissioned by the King for this purpose, the trial being conducted as at common law. By the second method, the Vice-Admiral or any admiralty official in the colony could of his own motion summon seven substantial citizens to act as a court, hear the evidence, and decide the case by a majority vote, even sentencing the pirate to death. The first method was adopted in England in 1535, the second in 1700, and both methods were early extended to the colonies.[2]

It has already been stated that violations of the navigation acts were tried before either court of admiralty at the option of the prosecutor. The fact that juries failed to convict, even in the clearest cases of smuggling, led prosecutors to ignore the colonial courts of Admiralty and to bring their suits in the courts of Vice-Admiralty, where all cases were tried without a jury.[3] The officers of the Vice-Admiralty courts were frequently colonial residents and averse to convicting their fellow-citizens of smuggling. Hence it became evident to the English government in 1763, when duty acts

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[1] Stokes, 175; Chalmers' "Opinions," II., 227, 228; Forsyth's "Opinions," 377; Jameson's "Essays," p. 14; 17 Geo. II., c. 34, §§ 5, 8, 9; 22 Geo. II., c. 3; 29 Geo. II., c. 34, §§ 5, 8, 9.

[2] 27 Hen. VIII., c. 4; 28 Hen. VIII., c. 15; 11 and 12 W. III., c. 7; 4 Geo. I., c. 11, § 7; 6 Geo. I., c. 19, § 3; 8 Geo. I., c. 24; 18 Geo. II., c. 30; "Collections," I., 223; II., 263, 276; Rivers, "Chapter," 82, § 56. Courts-martial also came under the supervision of the Admiralty courts. See, for example, 22 Geo. II., c. 33, §§ 6-19; 29 Geo. II., c. 27; 30 Geo. II., c. 11, §§ 2, 6, 7; 31 Geo. II., c. 6, §§ 2, 6, 7; 32 Geo. II., c. 9; 33 Geo. II., c. 8; 4 Geo. III., c. 8.

[3] "Collections," I., 154, 218; "Journals of the House of Commons," XIII., 502-505. As an exhibition of the feeling of the Assembly upon the question of smuggling, see "Statutes," II., 167-173, where prosecutors were obliged to give bonds for £50 to pay costs in case the accused was declared innocent. The act was of course disallowed by the Board of Trade. "Collections," I., 219.

were passed and an energetic attempt was made to enforce the navigation acts, that some new kind of machinery must be devised if the acts were to be enforced. As a result, a third court was created, known as the "Court of Vice-Admiralty over all America," before which all violations of the navigation acts were to be tried. The history of the court is very obscure. It was located at Halifax, as it was thought that more satisfactory verdicts could be obtained by its establishment in a territory uninfluenced by the traditions of the older possessions. Furthermore, the judge and other officials of the court were appointed by the Lords Commissioners of Admiralty directly and were sent over from England. The court was actually constituted and opened for business in 1764. The result was a strong protest from every colony against the injustice of a system which permitted a prosecutor to call an accused from Georgia to Halifax to defend himself against an unjust charge. Hence within a year from the time of establishing the court the Lords Commissioners of the Treasury requested its removal from Halifax to Boston and the establishment of two other similar courts,—one at Philadelphia, the other at Charleston. The impracticability and uselessness of the whole scheme soon became apparent, and the jurisdiction of the court was transferred to the old courts of Vice-Admiralty, while the new court fell speedily into disuse, although not formally abolished.[1]

These courts of Vice-Admiralty in each colony continued in use until the outbreak of the Revolution, when they suddenly collapsed because of their entire dependence upon the mother-country. Thereupon, November 25, 1775, the Con-

[1] 4 Geo. III., c. 15, § 41; 8 Geo. III., c. 22; "Annual Register," 1774, p. [216. For reference to the documents, see "Journals of the House of Commons," XXX., 508, 591. See also "South Carolina Gazette," June 9, 1766, p. 4. A sketch of the court is given in Tuttle's "Historical Papers," 271-273, reprinted from "Mass. Historical Society, Proceedings," XVII., 291-293. See also Washburn's "Judicial History of Massachusetts," 175. At the same time, appeals were allowed from colonial courts of Admiralty to colonial courts of Vice-Admiralty.

tinental Congress recommended the re-establishment in each colony of the original Courts of Admiralty, allowing appeals to Congress under certain restrictions. In accordance with this recommendation, Admiralty courts were re-established in each of the colonies by act of the various Assemblies, but provision was generally made, as in South Carolina, for a jury trial. The appeals to Congress were referred to a standing committee on appeals until the ratification of the Articles of Confederation, when a regular Court of Appeals was established, with three judges, and called the "Court of Appeals in Cases of Capture." The end of the war rendered its further existence unnecessary.[1]

[1] See Bancroft Davis, "The Committees of the Continental Congress"; Jameson's "Essays," No. 1; "Papers of the American Historical Association," III., 383-392; "Statutes," IV., 348.

CHAPTER VIII.

Militia.

The scattered condition of the settlers, living in the midst of enemies—negroes and Spaniards as well as Indians—made it necessary for them to be organized upon a military basis. As to the form of the organization in the early years of the colony, it is now impossible to speak with accuracy, since none of the militia acts passed prior to 1703 are in a legible condition. That the Assembly devoted considerable time to the subject is evidenced by the fact that thirteen acts relating to the militia were passed between the years 1682 and 1698.[1] The form was evidently settled by 1700, since the acts of the eighteenth century vary but little from one another.[2] According to these acts, the militia consisted of all the white males in the colony between sixteen and sixty years of age: merchants, tradesmen, planters and servants;[3] but the governing and professional classes,[4] generally speaking, were exempt from military service, except in time of alarm. Each one furnished his own arms and accoutre-

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[1] "Statutes," II., 1, 40, 63, 77, 94, 96, 121, 124, 135, 139, 182; VII., 12; IX., 617.

[2] Militia acts were passed in the years 1703, 1707, 1721, 1734, 1738, 1739, 1747 and 1755, of which the last two remained in force until 1783. See "Statutes," II., 278, 350, 604, 618, 361; III., 221, 250, 270, 326, 373, 487, 587, 646; IV., 16, 17, 46, 95, 207, 294, 332, 349, 350, 383; IX., 617-663.

[3] White servants were temporarily exempted in 1744. "Statutes," III., 629, § 28.

[4] Members and officers of the Council and of the Assembly, judicial, customs and administrative officials, the clergy, pilots, ferrymen, strangers who had resided in the colony for less than three months, and servants for six months after completing their term of service.

ments,[1] which had to be kept in the house ready for use in case of emergency, and were inspected by the officers of the company six times a year.

The inhabitants of the parishes and townships were formed into companies, each parish having generally one or two companies, varying in size.[2] The Governor commissioned the captains of the various companies, and each captain appointed two sergeants[3] and a corporal for his company. The companies of the different counties were formed into regiments, varying in number according to the population.[4] The regimental officers—colonel, lieutenant-colonel, major and adjutant—were commissioned by the Governor,[5] who was the commander-in-chief of all the forces in the colony.[6] Each company was drilled six times a year.[7] Whenever three or more companies happened to be drilling upon the same day within six miles of one another, the colonel of the regiment was allowed to assemble them together and train them as a battalion. There was also held once a year a general muster of all the companies in a regiment. As the offi-

[1] Gun, cover for the lock, cartridge box, twenty cartridges, belt, ball of wax, worm, wire, four flints, sword, bayonet or hatchet, powder, bullets, powder horn and shot pouch.

[2] In 1671, the number of men in the militia was 150, Sainsbury's "Calendars," III., No. 472; in 1699, 1500, "Collections," I., 210; in 1708, 950, Rivers, "Sketch," 232, 233; in 1715, 1500, "Collections," III., 232; in 1719, 2000, "Historical Manuscripts Commission," 11th Report, Appendix, Part IV., 255; in 1720, 1600, Rivers, "Chapter," 92; in 1721, 2000, "Report of the Board of Trade to the King," 117; in 1742, 4000, "Collections," III., 289; in 1763, 7000, Carroll, II., 479; in 1770, 8000, Weston, 202; in 1773, 13,000, "American and West Indian Gazetteer," 1778, art. Carolina.

[3] One, before 1739.

[4] In 1708, there were two regiments of militia; in 1774, twelve. Rivers, "Sketch," 232; Weston, 202; Drayton's "Memoirs," I., 352, 353.

[5] See also Carroll, I., 508; II., 221; Weston, 81; Rivers, "Chapter," 65, 82.

[6] Stokes, 185; Rivers, "Chapter," 65; "Collections," I., 87; "North Carolina Colonial Records," I., 177; Sainsbury's "Calendars," III., No. 87.

[7] Notice of the muster was given in the earlier period by beat of drum; in the later, generally by an advertisement in the Gazette.

cers of each regiment prescribed such military exercises as they saw fit, the confusion resulting when two regiments attempted to drill together can be better imagined than described.[1]

The statement has already been made that the members of the Council and Assembly were exempt from militia service. Until 1747, however, they were obliged to appear on horse and properly armed in time of alarm. After that year they were relieved from further service because of the formation of troops of horse. When the first company of cavalry was formed is not stated,[2] but there were two, if not more, in existence as early as 1740.[3] The members were exempt from service in the foot companies, but were obliged to attend four musters a year at Charleston, with horse and proper arms and ammunition provided at their own expense. For several years the inhabitants of Charleston had been drilled in the use of cannon at the batteries of Charleston and at Fort Johnston on James Island. In connection with the Charleston regiment, an artillery company was formed, March 1st, 1756. After 1760, the members provided themselves with uniforms, arms and accoutrements, while the colony furnished them with an artillery chest and carriages for ammunition and powder. The company was officered by a captain, captain-lieutenant, two lieutenants, three lieutenant-fire-workers and four sergeants, while the one hundred privates were classed as bombardiers, gunners and matrosses, serving in turn. The company was accustomed to drill from eight to twelve times a year. A second company was formed in 1775, when war was expected with England. The two companies were formed into a battalion and placed under the command of a major.[4] In addition, there

[1] Drayton's "View," 103.

[2] The acts of 1703, 1707, 1721 and 1734 gave the Governor permission to form such companies at his pleasure.

[3] See "South Carolina Gazette," January 26 and February 9, 1740.

[4] "Statutes," IX., 664-666; IV., 209, 296, 334, 350, 383, 541; Johnson's "Reminiscences," 206-209; Weston, 202.

were three independent companies located in Charleston and containing from eighty to one hundred men each. The first was of light infantry, organized in 1765;[1] the second was a company of grenadiers, organized at about the same time;[2] the third was a company of fusileers, consisting entirely of Germans, organized July 17, 1775, for the express purpose of offering resistance to England should an appeal to arms become necessary.[3]

In addition to militia service, the inhabitants of the colony were liable to patrol duty, made necessary by the system of slavery, and the inhabitants of Charleston were liable to the additional duty of keeping watch. In the early years of the colony, when the number of slaves was small, the government of the negroes was placed in the hands of all the whites, and patrol duty was unnecessary; but with the increase in the number of slaves came the adoption of the patrol system, which not only served to keep the slaves in subjection, but also removed from them several indignities to which they had previously been subjected. The first act was passed in 1704,[4] and called for patrol duty in time of alarm only. The next reference to the patrol is found in the militia act of 1721.[5] But no system was adopted until 1734,[6] and that system underwent alterations in 1737[7] and 1740.[8] The act of 1740 remained in force, with slight alterations in 1746[9] and 1839,[10] until the close of the Civil War.

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[1] "South Carolina Gazette," June 9, 1766.

[2] Carroll, I., 508; Letter written from South Carolina in 1772, reprinted in the "Southern Literary Messenger," March, 1845, p. 140, and in the "Historical Magazine," November, 1865, p. 343.

[3] Rosengarten, "The German Soldier in the Wars of the United States," 18, 33. This company did good service for the Patriots throughout the Revolutionary War.

[4] "Statutes," II., 254, 255. [5] "Statutes," IX., 639, 640, §§ 26-29.

[6] "Statutes," III., 395-399. [7] "Statutes," III., 456-461.

[8] "Statutes," III., 568-573.

[9] "Statutes," III., 681-685, 751; IV., 47, 96, 207, 295, 333, 350, 384, 541.

[10] "Statutes," XI., 57-61.

According to these acts, the boundaries of the patrol districts were identical with those of the militia, and all who were liable to militia duty were likewise liable to patrol.[1] The organization of the patrol varied somewhat in the different acts. In 1721, the captains of the various militia companies appointed persons to ride patrol in their respective districts, and relieved them from time to time. In 1734, the patrol in each militia district was put under the charge of three commissioners. They appointed a captain, who enlisted four men to patrol the district, subject to the approval of the commissioners. The change in 1737 consisted in the election of the captain by fifteen members of the patrol appointed by the commissioners. The acts of 1740, 1746 and 1839 contained very elaborate provisions upon the subject, which in brief were as follows: The officers of each militia company divided their district into patrol districts, over each of which was appointed a captain of patrol. Each muster day certain persons were detailed to ride patrol until the next muster day. Any one appointed was obliged to serve, provide a substitute or pay a fine. The duties of the patrol were various, but consisted mainly in visiting and examining at least as often as once in two weeks every plantation in the district, searching negro houses for "offensive weapons" and stolen goods, arresting and whipping negroes away from their masters' plantations without permission, pursuing runaways, and in fine preserving peace and order among the negroes.

The watch at Charleston was established very early in the history of the colony,[2] and acts relating thereto were passed almost yearly from 1685 to 1701.[3] According to these early acts, all male inhabitants, female heads of families (when

[1] The act of 1734 temporarily exempted patrols from militia duty, and the act of 1737 further exempted them from parish, road and jury duty.

[2] Ramsay says 1675, "History," I., 125; Rivers says 1671, "Sketch," 99.

[3] "Statutes," II., 76, 77, 94, 96, 121; VII., 2, 4, 7, 17, 18.

there was no male), and non-resident householders were obliged to perform watch duty or provide substitutes. The watchers were divided into four groups, from each of which six were appointed nightly to stand watch, under the direction of the constables, in each of the four quarters of the city, to quell all disturbances and arrest such suspicious characters as were found out late at night.[1] The constables' watch was superseded in 1703 by a military watch, consisting of a captain and lieutenant, appointed by the Governor, with twenty-four watchers, enlisted by the captain, of whom sixteen served nightly, receiving a small salary for their services.[2] Later in the year the inhabitants were divided into twenty squads, each watching by turns, under the direction of commissioners appointed by the Assembly.[3] In the following year the management of the squads was placed under the direction of the captains of the militia companies.[4] Other minor changes were made in 1707 and 1708.[5] In 1709, a return was made to the earlier system of constables' watches, where all the inhabitants served in turn without pay.[6] How long this system lasted, and when or what changes or modifications were made therein, cannot now be stated. Acts passed in 1711 and 1713[7] contained similar provisions, but all subsequent acts relating to this subject are lost.[8]

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[1] "Statutes," VII., 2, 3, 4, 7, 17, 18. [2] "Statutes," VII., 23-27.

[3] "Statutes," VII., 33-35. [4] "Statutes," II., 255, § 5.

[5] "Statutes," VII., 49-54; IX., 11, § 11.

[6] "Statutes," VII., 54-56. [7] "Statutes," VII., 57, 60.

[8] Acts were passed in 1719, 1720, 1741, 1761. "Statutes," III., 102, 153, 588; IV., 153; "Collections," II., 286.

CHAPTER IX.

Taxation.

The cost of running the government in the early period was very slight. Until 1713, tax acts were intermittent and few, for the government was supported by the Proprietors out of the quit-rents, and direct taxation was resorted to only in cases of emergency, generally to raise money to pay debts contracted by expeditions against St. Augustine or to put down attacks by the Indians.[1] But after the Revolution of 1719 the government was supported entirely by taxes levied upon the settlers. The custom thereafter was to pass an act each year, specifying the exact amount of money to be raised. At first these tax acts were passed at the opening of the fiscal year, but by 1775 they were generally passed some six months after the close of the fiscal year. Sometimes two years or even more would pass by without the passage of a tax act.[2] The various tax acts are long, and after 1721 are followed by long appropriation clauses appropriating every penny raised to some specific object.

The method of collecting the tax varied somewhat year by year, each tax act stating the amount of tax, the time of payment and the method of collection. According to the tax act of 1686,[3] the earliest tax act extant, the tax was assessed by thirteen freeholders appointed by the Council, and collected by two tax receivers. In 1690, the tax was collected by the constables. But the system adopted after 1700 was much more complicated. Each tax act generally appointed

[1] Prior to 1713, tax acts were passed in 1682, 1683, 1685, 1686, 1691, 1693, 1701, 1702, 1703 and 1704. Of these, all are lost except those of 1686, 1701 and 1703.

[2] None were passed between the years 1727 and 1730, or between 1769 and 1777.

[3] "Statutes," II., 16, 17.

by name three sets of officials: Inquirers, Assessors, and Collectors. The acts passed after the middle of the century, however, generally combined the duties of the three sets of officers into one, except in Charleston, where one set performed the duties of Inquirers and another the duties of Assessors and Collectors.

The duty of the Inquirers[1] was to take under oath an inventory of the taxable property in their respective parishes. This was done in the earlier days by personal visit to each inhabitant in the particular district. In the later days each taxpayer was expected to hand the Inquirers a written report of his taxable property yearly. For concealment of property, a taxpayer was heavily punished. In case of refusal or neglect to render an account, the Inquirers were allowed to state the amount according to their best information, knowledge and judgment, and the delinquent was assessed double rates. The Inquirers, by a certain day named in the act, prepared a list stating the amount and location of the property of each inhabitant of the parish and published it for correction, giving the corrected list to the Assessors a week or two later. The Assessors, whose number was generally five in Charleston and two or three in the other parishes,[2] met at a certain hour upon a certain day at a certain house, all carefully described in the tax act, and there received the reports of the Inquirers and levied the tax in accordance with the rules prescribed in the act. Assessors were not bound to follow the returns of Inquirers strictly, but were allowed at their discretion to deviate from them and assess according to any better knowledge that they might possess. Any one believing himself to be overrated could appeal to the Assessors for an abatement of taxes.[3]

[1] Their number generally varied from two to six, according to the size of the parish.

[2] After 1724. Before that date their number was larger. By the act of 1701, the Inquirers acted as Assessors. "Statutes," II., 182, § 2.

[3] In 1682, 1703 and 1715, a board was constituted to hear appeals. "Statutes," II., 17; 208, § 7; III., 269, § 8.

Having completed their labors, the Assessors issued a report, a copy of which was posted upon the door of the parish church. After 1721, the Assessors generally acted as Collectors in the various parishes.[1] Prior to 1721, the taxes were paid at Charleston; after that date, to the Assessors in each parish, who forwarded the money to the colonial Treasurer at Charleston upon a certain day.[2] The Inquirers, Assessors and Collectors not only generally served without pay, but were heavily fined for refusing to serve or for neglect of duty.[3]

The amount raised from taxation varied greatly year by year, from £400 in 1682 to £285,000 in 1761.[4] At first, only property was taxed. In 1690, a poll tax was collected from each freeman and each white servant above the age of sixteen.[5] In 1701, a poll tax was levied upon freemen alone.[6] In 1703, land, stocks and abilities were taxed.[7] After 1719, storekeepers outside of Charleston were assessed at the same rate as those within,[8] and in 1716 a tax was placed upon negroes.[9] Property of transients was not taxed until 1739, when a tax was levied upon itinerant merchants selling goods in Charleston.[10] Town lots outside of Charleston remained untaxed until 1760. Clergymen and property devoted to pious, charitable or educational uses were untaxed after 1739. After 1716, one-sixth of the total tax was gen-

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[1] The tax was variously collected before 1721.

[2] The property of delinquent taxpayers was levied upon for nonpayment.

[3] The acts of 1720 and 1721 allowed the Assessors 2½ per cent. of the amount assessed. The amount of the fine was generally £50 until 1764, after which time it was increased to £300.

[4] In 1703 it was £4000; in 1719, £35,000; in 1738, £8000; in 1739, £35,000; in 1751, £60,000; in 1752, £39,000; in 1756, £91,000; in 1757, £260,000; in 1758, £166,000; in 1759, £97,000; in 1761, £285,000; in 1762, £162,000; in 1765, £103,000; in 1766, £35,000; and in 1769, £70,000.

[5] "Statutes," II., 41.

[6] "Statutes," II., 182, § 1.

[7] "Statutes," III., 206, § 1.

[8] "Statutes," III., 70, § 5.

[9] "Statutes," II., 627, § 1.

[10] "Statutes," III., 535, §§ 31-35.

erally assessed upon the inhabitants of Charleston. Any one owning realty in Charleston and also in the country paid rates in Charleston for his town property and in the country for his country property; and in like manner slaves of Charleston inhabitants working principally in the country were rated in the country tax, and *vice versa*. The ratio of tax upon the various articles varied somewhat year by year, but some idea of the ratio may perhaps be obtained from the act of 1764, the heaviest passed during the colonial period. This act levied a tax of 40s.[1] upon each slave; 40s. upon each one hundred acres of land; 20s. for each £100 value of town lots, buildings, wharves, etc.; 20s. upon each £100 at interest; 4 per cent. upon annuities; 40s. upon each free negro paying no other tax, and 20s. upon each £100 invested in stock in trade, profits, faculties, professions, factorage and trade. This method of collection remained practically unchanged until 1798.

Besides the direct tax, considerable money was raised from the tariff.[2] The first tariff act was passed in 1691, and consisted of an export duty upon furs and skins.[3] This was followed a few years later by an import duty upon liquors and tobacco.[4] The number of dutiable articles steadily increased, until in 1775 they included, in addition to the above, sugar, bread, flour, fish, lumber, cocoanuts, Indians, negroes, vinegar, molasses, lime-juice, cocoa, chocolate, butter, cheese, candles, tallow, pork, beef, cranberries, oil, biscuit, ham, bacon, soap, timber, horses, indigo, pitch, tar, ginger, cotton, preserves, sweetmeats, spermacetti, beeswax, peas, corn, fruits, goods, wares and merchandise, etc., etc.[5]

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[1] A shilling in 1764 was worth about three cents. See Chapter X.

[2] The amount varied from year to year. In 1710, the amount raised was about £4500; in 1721, about £8000; in 1728, about £15,000; in 1732, about £13,000; in 1772, about £98,000. See Carroll, II., 259; "Statutes," III., 149, 334; Anderson, "Historical and Chronological Deduction of the Origin of Commerce," 190; "Collections," I., 303.

[3] "Statutes," II., 64-68.

[4] In 1695. "Statutes," II., 96.

[5] "Statutes," III., 744, § 17.

The customs officials were of two classes: Comptrollers and Waiters, both appointed by the Assembly. The duties of the Comptrollers consisted in keeping records of all vessels entering and leaving port and in overseeing the collection of the duties. They were paid by fees, regulated by the Assembly. The duties of the Waiters were to be at the wharves when vessels came in and to aid in enforcing the customs laws. They received a salary, at first of £40 a year, increased to £100 by 1740. Of the three ports of South Carolina, Charleston was by far the most important, yet no colonial custom-house was erected there until 1770.[1] The first Comptroller was appointed in 1703 and the first Waiter in 1716. Customs officials were appointed at Beaufort and Georgetown after the opening of those ports in 1740.[2]

The method of collecting the duties varied but slightly throughout the entire colonial period.[3] In brief it was as follows. A sea-captain on arriving in port made a manifest, signed under oath, of all goods contained in his vessel, and made oath that no goods had been landed secretly. Importers similarly under oath made three copies of their manifest, containing a list of goods imported, place of export and names of the vessel, captain and importer. These copies were given to the Comptroller of the port, who filed one away and countersigned the other two. The importer then carried the countersigned copies to the Treasurer, to whom he paid the duties upon the goods imported. The Treasurer filed away one of the copies and endorsed the other, which was then taken to a Waiter, who placed it on file and gave the captain permission to unload the goods. Likewise, ex-

[1] At a cost of £60,000. "Statutes," IV., 257-261, 326.

[2] A Receiver and a Waiter were appointed in each in 1740, and a Comptroller in 1743.

[3] Tariff acts were passed in 1691, 1695, 1703, 1707, 1711, 1716, 1719, 1721, 1723, 1740 and 1751, which last continued in force until 1783. See "Statutes," II., 64-68, 96, 201, 247, 304, 308, 326, 366, 652-661; III., 56-68, 159-170, 193-204, 270, 556-568, 670, 743-751; IV., 264, 332, 576-582. Duties were both *ad valorem* and specific, the former generally prevailing.

porters made entry of dutiable goods with the Comptroller and Treasurer, and the captain on receiving the goods on board his vessel did the same, after which he received a permit to sail. The rules adopted to prevent smuggling were many, but only two or three of the more important need be mentioned here. Previous to 1721, goods could not be landed until the duty upon them had been paid. After that date importers were allowed to unload on giving bond to pay the duty within three months.[1] Goods landed in the night-time or sold on board ship were forfeited. Finally, customs officials, when properly armed with search warrants, were allowed in the daytime to search vessels or buildings wherein goods were suspected to be concealed. The system in the earlier years was simpler than in the later, but the general scheme remained the same throughout the entire colonial period.

There was also a small tonnage duty, levied for the first time in 1686. This duty was payable at first in powder, a half-pound of powder for each ton of ship measurement.[2] In 1690, a Powder Receiver was appointed, and the tax was allowed to be paid in money, fifteen pence being considered the equivalent of a half-pound of powder.[3] The powder was kept in a brick powder-house, erected in Charleston in the early years of the eighteenth century.[4] This money equivalent slowly increased in amount until 1761, when it was placed at two shillings currency.[5] The Powder Receiver was appointed at first by the Governor, but later by the Assembly.[6] The method of collection was very simple. Captains on entering port entered the tonnage of their vessels with the Treasurer at the time the manifest was made. The Treasurer notified the Powder Receiver,[7] who collected the

[1] The act of 1707 had accorded a similar privilege.

[2] "Statutes," II., 20, § 1.

[3] "Statutes," II., 42-44.

[4] "Statutes," II., 213.

[5] "Statutes," III., 589, § 1.

[6] "Statutes," II., 43; III., 685, § 1.

[7] After 1761, the entry was made with the Powder Receiver direct.

tax and gave a receipt therefor. The Secretary was forbidden to give clearance papers to any captain until he had produced a certificate showing the payment of the tonnage duty.[1]

The passage of the navigation acts and acts of trade by the British Parliament necessitated the appointment of a duplicate set of customs officials in the American colonies. Hence captains of vessels were obliged within twenty-four hours after their arrival at a colonial port to give the Governor or some one designated by him an inventory of the goods imported, to tell where the goods were loaded and to prove the vessel to be English.[2] The official just referred to soon came to be known as the Naval Officer, who was generally appointed by the Governor and gave security to the Commissioners of the Customs for the faithful performance of his duties,[3] which were to keep records of the entrance and clearance of all ships, grant certificates for the clearance of ships, and send the Commissioners of Customs at London yearly lists of ships that had entered or cleared his ports.[4] The collection of duties for the English government, in addition to the colonial duties which have been already described, was placed in the hands of the English Commissioners of the Customs, with power to appoint Collectors in the various colonial ports.[5] The Governors acted as Collectors at first,

[1] Tonnage acts were passed in 1686, 1690, 1695, 1698, 1703, 1707 and 1746. "Statutes," II., 20, 42-44, 82-84, 150-153, 213, 214, 278, 308; III., 685, 686, 588-590. The act of 1707 is lost.

[2] 15 Car. II., c. 7, § 8. The method in detail is described in 15 Geo. II., c. 31. For provisions respecting colonial goods allowed to be carried to Mediterranean ports, see 3 Geo. II., c. 28; 12 Geo. II., c. 30; 4 Geo. III., c. 27; 5 Geo. III., c. 48, § 2.

[3] During the proprietary period he was appointed by the Proprietors and confirmed by the Commissioners of Customs. See "Collections," I., 144, 155, 156, 161, 162; II., 207; "North Carolina Colonial Records," I., 492.

[4] 15 Car. II., c. 7, § 8; 7 and 8 W. III., c. 22, § 5; Chalmers' "Opinions," I., 168; "Collections," I., 144, 147, 148, 232, 247, 261; III., 321.

[5] 25 Car. II., c. 7, §§ 2, 3; 7 and 8 W. III., c. 22, § 11; Douglass' "Summary," I., 216; "Collections," I., 147.

but after the erection of custom houses in the colonies, Collectors were appointed in each port.[1] The first English Collector at Charleston was appointed in 1685. Collectors were appointed at Port Royal and Georgetown shortly after the close of the proprietary period.[2] In the later colonial period three Surveyors-General of the Customs for America were appointed: one for the northern, one for the central, and one for the southern colonies. Their duties were to oversee the Collectors in the various ports and to represent the Commissioners of Customs in America. The office was abolished in 1774, and the Collectors were expelled on the breaking out of the Revolution.[3]

In addition to the revenue derived from the tariff and internal taxation, the colony received small sums from various sources, the more noteworthy being those arising from licenses to sell liquor and to engage in the Indian trade. In 1695, the liquor license fee was placed at £5 for a permit to sell all kinds of liquors, and at £3 to sell everything but wine.[4] Until 1709 the license fees were a perquisite of the Governor.[5] In 1711,[6] the granting of liquor licenses was placed under the care of a board of three commissioners. In 1741, the board was done away with, and the Treasurer was authorized to grant licenses upon the recommendation of two Justices of the Peace of the parish where the applicant wished to sell. The fee was also increased; a first-class license cost £6 currency in Charleston and £5 in the country; a second-class license which did not allow liquor to be drunk on the premises cost £4 4s. in Charleston and 16s. in the country.[7]

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[1] Chalmers' "Revolt," I., 126.

[2] Chalmers' "Revolt," I., 193; Carroll, I., 359; "Collections," I., 119, 159, 178, 285, 295; II., 120, 173.

[3] Carroll, II., 220; Chalmers' "Revolt," I., 127; "Collections," II., 126, 195.

[4] "Statutes," II., 85, 86, 113-115, 157, 190, 198, 336. The acts of 1683 and 1693 are lost. "Statutes," II., pp. v. and 77.

[5] "Statutes," II., 338, § 7; 364, § 6. [6] "Statutes," II., 365, § 7.

[7] "Statutes," III., 521-525, 752; IV., 47, 96, 207, 294, 333, 350, 383, 541.

In 1751, the Governor was given power to limit the number of liquor licenses to be granted.[1]

The question of regulating the Indian trade seems to have given the Assembly a great deal of trouble. In 1707,[2] commissioners were appointed to have entire charge of the Indian trade and to grant licenses to traders. In 1719, the commissioners were formed into a corporation. In 1721, a return was made to the old system, but the commissioners were given power to settle quarrels between the Indians and whites and to redress grievances of all kinds. In 1722, the powers of the board were transferred to the Governor and three members of the Council, who were given the right to employ a supervisor to manage the Indian trade. This gave way in the following year to the appointment of a single commissioner, with entire management of the Indian trade. In 1731, the commissioner was given additional powers to enforce his judicial decisions, and succeeding acts tended largely to increase his powers. The fees for licenses varied greatly at different times. In 1707 they were established at £8 currency a year. In 1721 they were reduced to £3. In 1723 they were increased to £30, and three persons were allowed to trade with one license. In 1731 a license was fixed at £30, and a trader was allowed to have two sub-traders on payment of £20 additional,—confined, however, to a certain territory. In 1734 the fee was increased to £50, lowered two years later to 10s. In 1739 it was placed at 16s., at which figure it remained until the outbreak of the Revolution.[3] The amount of money derived from license fees is not stated, but probably it was inconsiderable.

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[1] "Statutes," III., 752; IV., 207, 294, 333, 350.

[2] The act of 1692 is lost. "Statutes," II., 55. The Proprietors attempted to regulate the Indian trade as early as 1677. See Rivers, "Sketch," 388.

[3] The following is a list of statutes passed relating to the Indian trade: "Statutes," II., 55, 66-68, 309-316; III., 86-96, 141-146, 184-186, 229-232, 327-334, 399-402, 448, 449, 517-525, 587, 646, 763-771.

No county tax was ever levied during the colonial period.[1] There was no system whatever in the collection of local taxes. Each board of commissioners collected its own taxes whenever and as frequently as it pleased. Outside of Charleston the principal local taxes consisted of the road and poor rates. In Charleston there were, in addition, several others. Thus the fire commissioners provided the town with ladders, fire-hooks, buckets, engine, etc., and assessed the inhabitants annually to pay the expenses of the fire department.[2] In like manner the cost of supporting the Charleston watch was defrayed by a tax upon the inhabitants of Charleston, collected sometimes by Assessors specially appointed for the purpose and sometimes by the colonial tax officials at the same time that the colonial taxes were collected.[3] In like manner the buoys and pilot-boat in Georgetown harbor and the pilot-boat at Beaufort were at various times supported by local taxes.[4]

The roads were built and kept in repair in practically the same manner throughout the entire colonial period. Until 1721, each road was under the care of a separate board of commissioners. In 1721 the various boards were united into thirty-three separate boards, each having in charge one or more roads, creeks or drains.[5] With the growth of the colony, other boards were added. The duties of the various boards remained practically the same throughout the entire period: building and keeping in repair the roads, bridges, etc., under their especial care. Sometimes the work was per-

[1] The taxes called for by the precinct-court act of 1721 were never levied. "Statutes," VII., 174, § 2; 183, § 15.

[2] "Statutes." VII., 11, § 15; 20, § 15; 41, § 1; III., 535, § 30; VII., 59, 60. The department was created in 1698. In 1739, the support of the department cost the town £200.

[3] "Statutes," III., 509, § 33; 535, § 30; VII., 25, §§ 8-10; 52; 53. The cost of supporting the Charleston watch was, in 1703, £550; in 1708, £840; in 1738, £819 8s. 4d.; in 1739, £1042 8s. 8d.

[4] "Statutes," III., 407, 678-680, 712-714, 757-759, 760-763; IV., 48, 97, 151, 156, 157, 208, 265, 295, 321, 332, 348, 382.

[5] "Statutes," IX., 49-57.

formed by the males of the district; sometimes it was hired out and the cost assessed by the commissioners upon the inhabitants to be benefited by the road. The acts are many and vary greatly in detail, but the general idea of all was the same.[1] In Charleston the custom was to assess the inhabitants and hire the work done. After 1764 a tax of £1400 was annually assessed upon the inhabitants of the town to pay for the care of the streets.[2]

It finally remains to speak of the tax for the support of the poor. Until 1712, the poor were supported out of the colonial treasury.[3] In 1712 their support was thrown upon the parishes in which they resided, the churchwardens and vestry assessing the inhabitants for their support.[4] A large number of legal fines for various offenses were granted the wardens for the support of the poor, a few of the more interesting of which are the following: Fines levied on intimidators at the polls;[5] on officials receiving more than the legal fee;[6] on persons refusing to serve in certain offices to which they had been elected;[7] for neglecting to whip slaves found illegally away from their master's plantation;[8] for illegally giving slaves tickets without their master's consent;[9] fines on Constables, Justices of the Peace and Jailors for neglect of duty in not enforcing the provisions of the slave code;[10] fines on masters giving their slaves permission to spend Sunday in Charleston,[11] or to work where they pleased,[12]

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[1] "Statutes," IX., 1-150.

[2] See "Statutes," IV., 205, § 29; 228, § 29; 253, § 32; 283, § 31; 309, 332; IX., 50, § 1; 697-705.

[3] "Statutes," II., 117, § 3. Charleston looked after its own poor. "Statutes," II., 135, § 3.

[4] "Statutes," II., 593, § 3. See also II., 606, § 1; III., 117, § 6; IV., 50.

[5] "Statutes," II., 689, § 23; III., 54, § 15; 139, § 14.

[6] "Statutes," III., 414, § 1. [7] "Statutes," IV., 50, § 2.

[8] "Statutes," VII., 352, § 2.

[9] "Statutes," VII., 372, § 2; 386, § 2.

[10] "Statutes," VII., 364, § 31.

[11] "Statutes," VII., 364, § 31. [12] "Statutes," VII., 408, § 33.

or neglecting to report the finding of stolen property upon their slaves,[1] or maltreating[2] or not giving them sufficient food or clothing,[3] or for neglecting to have at least one white person upon a plantation for every ten slaves kept there;[4] for neglecting to publish a slavery act at the head of the militia;[5] for firing a gun unnecessarily after dark;[6] fines on masters for refusing to give a certificate of discharge to a servant who had served his time.[7] or maltreating[8] or turning him away when sick;[9] for getting a servant drunk or trading with him;[10] fines for violations of the Sunday law,[11] or going to church unarmed, or, if armed, not taking the arms into church;[12] fines on officials neglecting to enforce the law relating to pedlers, or pedlers refusing to show their licenses on demand;[13] fines on persons for selling wood short length or coal short measure, or refusing to serve as Measurer;[14] fines on bakers for adulterating their bread;[15] fines for voluntarily communicating smallpox to another, or not giving public notice of infected houses;[16] for leaving a vessel when in quarantine;[17] for running a lottery, or buying or selling lottery tickets, or gambling;[18] fines on Sheriffs for neglecting to fur-

[1] "Statutes," VII., 364, § 31.
[2] "Statutes," III., 18. § 13; VII., 399, § 6.
[3] "Statutes," VII., 411, § 38.
[4] "Statutes," III., 272, §§ 1, 3.
[5] "Statutes," III., 698, § 4.
[6] "Statutes," VII., 412, § 41.
[7] "Statutes," III., 17, § 10.
[8] "Statutes," III., 624, § 11.
[9] "Statutes," III., 628, § 25.
[10] "Statutes," III., 625, § 12.
[11] "Statutes," II., 398, § 9.
[12] "Statutes," VII., 417, § 1.
[13] "Statutes," III., 489, § 9; 488, § 3.
[14] "Statutes," III., 690, § 14; IV., 292, §§ 7, 8.
[15] "Statutes," III., 717, § 4.
[16] "Statutes," III., 513, § 1; IV., 106-109; 182-185.
[17] "Statutes," III., 177, § 4.
[18] "Statutes," III., 730; IV., 159, § 2; 160, §§ 7, 8; 180.

nish a watch or for not watching, or getting drunk while on watch;[1] fines for butchering cattle or hogs or erecting slaughter-houses, cattle-pens, sheep-pens or hog-sties within the Charleston intrenchments;[2] fines for letting chimneys catch fire;[3] for boiling pitch, tar, rosin or turpentine in Charleston, or keeping stills in Charleston;[4] fines on clerks of the county courts for practicing law;[5] fines for refusing to work upon the roads;[6] fines on ferrymen for non-attendance to their duties;[7] fines for killing deer in the night-time or hunting more than seven miles away from home;[8] and fines for selling meat, butter or fish in Charleston except at the appointed markets.[9] These are but a few of the fines specially appropriated for the support of the poor. It is impossible to state the amount derived from them, as the majority were levied by Justices of the Peace, who kept no records of their proceedings, and in many cases by commissioners with scarcely any trace of judicial procedure; and, finally, few of these fines lasted for more than a few years. Probably the amount raised from them was very inconsiderable, and the poor were supported principally by a local tax upon the inhabitants of the parish.

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[1] "Statutes," VII., 4, § 2; 8, § 1; 34, § 4; 51, §§ 7, 8.

[2] "Statutes," VII., 12, § 19; 21, § 19; 22, § 24; 38, §§ 1. 7; 76, §§ 1, 3; IX., 702, § 15.

[3] "Statutes," VII., 11, § 14; 20, § 14; 22, § 24; 42, §4.

[4] "Statutes," VII., 42, §§ 5, 6.

[5] "Statutes," VII., 168, § 8.

[6] "Statutes," IX., 55, § 21.

[7] "Statutes," IX., 61, § 3; 65, § 7; 68, § 3; 76, § 4; 77, § 1; 79, § 3; 81, § 1; 122, § 4.

[8] "Statutes," IV., 310, 311.

[9] "Statutes," IX., 692-697, 705-708.

CHAPTER X.

The Currency.

The currency problem that presented itself in South Carolina was practically the same as that in the other colonies. In none of them were the precious metals found in any appreciable quantity. On the other hand, the commercial policy adopted by England was of a character calculated to withdraw from the colonies what little coin they did possess. Hence we might expect a continual stringency in the money market; and such indeed was the case. In fact, very little coin was to be found in any of the colonies, and that came chiefly from Mexico and the West Indies, finding its way into the English colonies through the illicit trade carried on by the latter with the former. These coins were of various values and were variously received in the different colonies. There was no standard of value in any colony and money circulated anywhere from par to fifty per cent. discount, according to the agreement made by the parties.[1] To obviate this difficulty and to settle the values of foreign coins in the colonies, Queen Anne issued a proclamation stating in English currency the value of the principal coins in circulation in the colonies. This proclamation did not make the coins mentioned therein legal tender, but merely gave them a stable value in all the colonies, which was generally about twenty-five per cent. less than sterling. The proclamation was issued June 18, 1704. As it was very generally disregarded in the colonies,[2] Parliament passed an act three years later levying a fine of £10 upon any one re-

[1] "New York Colonial Documents," IV., 669; Chalmers' "Revolt," I., 320; "Annual Register," 1765, p. 27]; Carroll, I., 268.

[2] "Historical Manuscripts Commission," 5th Report, p. 228; "Journals of the House of Commons," XXIII., 527.

ceiving these coins at a higher rate than that mentioned in the proclamation.[1] The amount of foreign coin in the colonies was by no means sufficient to satisfy the needs of the colonists. In South Carolina, as early as 1687, several commodities were given a standard value in the payment of debts,[2] and taxes were allowed to be paid in rice or even other merchantable commodities.[3]

In 1703, South Carolina issued her first paper money. The unfortunate expedition against Saint Augustine during the preceding year had saddled the colony with a heavy debt, to pay which a tax was levied upon the settlers.[4] Instead of waiting until the money should be collected, the expedient was resorted to of paying the debt immediately by the issue of bills of credit, which it was expected would be retired at the end of the year. £6000 were accordingly issued, in bills of various denominations, ranging from 50s. to £20 each, bearing interest at twelve per cent., and declared to be a legal tender and receivable for taxes.[5] The continuation of Queen Anne's War made it necessary not

[1] The values given the coins were as follows; halves, quarters, etc., proportionately:

Sevil pieces of eight, old plate,	4s. 6d.
" " " new "	3s. 7d. 1 far.
Mexico," "	4s. 6d.
Pillar, " "	4s. 6d. 3 far.
Peru, " "	4s. 5d.
Cross Dollars,	4s. 4d. 3 far.
Ducatoons of Flanders,	5s. 6d.
Ecu's of France or Silver Lewis,	4s. 6d.
Crusadoes of Portugal,	2s. 10d. 1 far.
Three Gilder pieces of Holland,	5s. 2d. 1 far.
Old Rix Dollars of the Empire,	4s. 6d.

6 Anne, c. 30. Also enacted in South Carolina in 1712; "Statutes," II., 563-565. See also I., 428.

[2] "Statutes," II., 37.

[3] Ashley, "Memoirs and Considerations Concerning the Trade and Revenues of the British Colonies in America," 50.

[4] The tax act called for £4000, and a duty act was expected to raise the remainder. "Statutes," II., 201-210, 229-232.

[5] "Statutes," II., 210-212, §§ 10-15.

only to use the funds collected for the withdrawal of the bills of credit, but also to levy additional taxes in order to repair the fortifications at Charleston, repel invasion and undertake expeditions against Saint Augustine. Therefore the bills, instead of being redeemed at the end of the year, were simply continued in circulation, and the lack of coin in the colony gave them a ready circulation.

The continuation of the war also called for the issue of more bills, which were generally in smaller denominations than the first.[1] In 1712 was passed the Bank Act, so called, which authorized the emission of £52,000 in bills to take the place of those already issued and to pay debts already incurred.[2] The corporation created by this act was not a bank in our sense of the term. The nine members therein named were merely authorized to issue a certain number of bills of credit, which were to be redeemed at a certain time and in a certain manner. The act conferred no power to do banking business of any kind.[3] With the outbreak of the Yesmassee War in 1715 came another issue of bills, and before the close of the war £50,000 in paper had been issued.[4] By the terms of issue, these various bills were to be redeemed within a certain number of years,[5] were receivable for customs and taxes, and when once returned to the treasury could not be reissued. After several bills had been retired from circulation, however, the custom was to authorize the issue of new bills to take the place of the old and to provide for the establishment of a sinking fund for their future payment, a provision, however, seldom carried out in the earlier years of the eighteenth century.

In fact, the whole matter soon fell into great confusion. With each fresh issue of bills came a decrease in their pur-

[1] See "Statutes," II., 302-304; 352-354; Carroll, II., 256, 257.

[2] "Statutes," II., 389; IX., 759-765.

[3] The first bank in South Carolina was chartered in 1801. "Statutes," VIII., 1.

[4] "Statutes," II., 627, 640, 653-655, 682.

[5] Sometimes two or three, sometimes twenty or thirty.

chasing power. At the time of the first issue in 1703 and for a few years thereafter, the bills depreciated but slightly in value.[1] But after the large increase in 1712, their depreciation was very rapid. By 1710, they had depreciated about fifty per cent.[2] At the outbreak of the Yemassee War, sterling was four times as valuable as currency; at its close, six times; and at the outbreak of the Revolution of 1719, eight times.[3] From then until 1775, sterling remained at a fairly constant advance over paper of from seven to eight hundred per cent.[4]

At first, no serious objection was offered to the issuing of paper money; but its rapid depreciation after the passage of the Bank Act in 1712 frightened the merchants trading with the colony to such an extent as to cause the Proprietors to forbid any future issues;[5] and a standing instruction to the Governors, after the purchase of the colony by the King, was to prevent any increase in the amount of outstanding paper.[6] This instruction caused a great deal of friction between the Governor and Assembly. An act passed in 1722 providing for the issue of £120,000 in bills was disallowed by the Crown.[7] Nevertheless the Assembly calmly ordered the bills to be printed and put into circulation. The Governor upheld the prerogative of the King and refused to assent to any further inflation of the currency. In 1726, matters came to a crisis. The Assembly refused

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[1] See Hawks and Perry, "Documentary History of the Protestant Episcopal Church of South Carolina," p. 24.

[2] Carroll, II., 257.

[3] Carroll, II., 145.

[4] "Statutes," II., 131, § 1; 335, § 1; 447, § 32; 511, § 34; 672, § 1; IV., 19; 279, § 31; "Collections," I., 301. In 1732, the Assembly formally declared proclamation money to be five times as valuable as currency. "Statutes," II., 373, § 2.

[5] "Collections," I., 165, 167, 270, 300; Chalmers' "Opinions," II., 27.

[6] "Collections," I., 272, 302; II., 159, 300. See also "Journals of the House of Commons," XXIII., 527, where several resolutions of the House are given in 1740.

[7] "Statutes," III., 188-192; 219-221; "Collections," I., 278.

to pass any bill until the Governor assented to an increase in the amount of paper money outstanding. This deadlock continued until 1731, when the King finally gave his assent, provided proper provisions were made for the future redemption of all paper issued. £106,500 were issued, and harmony was again restored to all branches of the legislature.[1] Of subsequent issues, little need be said. Bills were issued every few years to supersede those in existence or to defray expenses of war, but sinking funds were always provided for, and these later bills seem always to have been redeemed when they fell due.[2]

The amount of paper issued in the other colonies was very large and had depreciated very materially, although in none to such an extent as in South Carolina. At the request of the merchants, Parliament took the matter in hand in 1740 and requested the King to issue instructions to the Governors forbidding the further issue of legal tender paper.[3] This was done, but the colonies persisted in doing as before. In 1744, a bill was ordered to be brought into Parliament to prevent the future issue of paper money,[4] but the long and earnest petitions of the colonists[5] postponed the evil day until 1751, when Parliament formally decreed that all acts of the New England colonies creating bills of credit and endowing them with a legal tender quality were void,[6] a provision extended to the other colonies in 1764.[7]

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[1] "Collections," II., 126, 177; "Statutes," III., 305-307. See the accounts of this interesting struggle in "Collections," I., 300-305; Rivers, "Chapter," 22-39.

[2] For the more prominent acts relating to bills of credit, see "Statutes," II., 210-212, 302-304, 352-354, 389, 604, 627, 640, 663-665, 682; III., 34-36, 188-192, 219-221, 305-307, 349-350, 411-413, 423-430, 461-464, 671-677, 702-704, 776; IV., 113-128, 144-148, 154-155, 312-314, 323, 324, 335-336.

[3] "Journals of the House of Commons," XXII., 527.

[4] "Journals of the House of Commons," XXIV., 658.

[5] See "Journals of the House of Commons," XXV., 792, 793, 818, 819.

[6] 24 Geo. II., c. 53.

[7] 4 Geo. III., c. 34. See also 13 Geo. III., c. 57.

APPENDIX I.

Population of South Carolina.

Date.	Whites.	Slaves.	Totals.
1671, March.[1]	200	..	..
1671-2[2]	399	..	..
1672[3]	406	..	..
1680[4]	1,200	..	..
1685[5]	2,500	..	..
1699[6]	1,100 families.	..	..
1700[7]	5,000-6,000	..	..
1701[8]	7,000	..	..
1703[9]	..	..	8,160
1708[10]	4,080	4,100	8,160
1708[11]	..	..	12,000
1714[12]	..	10,000	..
1715[13]	6,250	10,500	16,750
1715[14]	6,300	..	..

[1] Sainsbury's "Calendars," III., No. 474.

[2] Winsor's "Narrative and Critical History of America," V., 310; "Charleston Year Book," 1883, p. 379.

[3] Sainsbury's "Calendars," III., No. 736.

[4] Carroll, II., 82.

[5] Winsor, V., 309; "Charleston Year Book," 1883, p. 385.

[6] Rivers, "Sketch," 443; "Collections," I., 210. Also four negroes to one white.

[7] Carroll, I., 132; Drayton's "View," 103.

[8] Humphreys, "Historical Account of the Incorporated Society for the Propagation of the Gospel in Foreign Parts," 25; Hawkins' "Missions," 23.

[9] Rivers, "Sketch," 232.

[10] "Collections," II., 217.

[11] Carroll, II., 460.

[12] Rivers, "Sketch," 251, note.

[13] Chalmers' "Revolt," II., 7.

[14] Rivers, "Chapter," 92.

Date.	Whites.	Slaves.	Totals.
1716[1]	..	10,000	..
1720, Jan. 12.[2]	6,400	..	..
1720, Mar. 14.[3]	9,000	11,828	..
1721[4]	9,000	12,000	..
1721[5]	14,000	..	..
1723[6]	..	..	23,000
1723[7]	14,000	18,000	32,000
1723[8]	4,000	32,000	36,000
1724[9]	..	16,000-20,000	..
1724[10]	14,000	32,000	..
1729[11]	2,000 men.	..	..
1730[12]	6,000-7,000	22,000	..
1730[13]	..	28,000	..
1731[14]	..	40,000	..
1733[15]	..	40,000	..
1734[16]	7,333	22,000	29,333
1734[17]	6,000	30,000	..
1735[18]	..	40,000	..

[1] "North Carolina Colonial Records," II., 233.

[2] Rivers, "Chapter," 92; "Collections," II., 239.

[3] Rivers, "Chapter," 19, 56.

[4] "New York Colonial Documents," IV., 610; "Historical Manuscripts Commission," 11th Report, Appendix, Part IV., p. 254.

[5] Drayton's "View," 103.

[6] Carey's "American Pocket Atlas," 154.

[7] Drayton's "View," 103.

[8] "History of North America," London, 1776, p. 189; "Collections," I., 279.

[9] Carroll, I., 267. [10] Carroll, II., 261. [11] "Collections," II., 120.

[12] Gay and Bryant's "United States," III., 107.

[13] Buckingham, "Slave States of America," I., 31; "The First Century of the American Republic," p. 217.

[14] Carroll, II., 129.

[15] "Georgia Historical Society's Collections," I., 149.

[16] Carroll, I., 306; Drayton's "View," 103.

[17] Force's "Tracts," IV., No. 5, p. 9.

[18] Ramsay, I., 110; II., 233.

Date.	Whites.	Slaves.	Totals.
1739[1]	..	40,000	..
1740[2]	5,000	40,000	..
1743[3]	..	40,000	..
1749[4]	25,000	39,000	64,000
1749[5]	30,000	..	..
1750[6]	..	..	64,000
1752[7]	25,000	..	..
1753[8]	30,000	..	..
1754[9]	40,000	..	..
1755[10]	25,000	..	..
1755[11]	30,000	..	..
1759[12]	140,000	108,000	248,000
1763[13]	30,000-40,000	70,000	..
1765[14]	40,000	80,000	120,000
1765[15]	40,000	90,000	130,000
1766[16]	40,000	95,000	135,000
1770[17]	..	81,728	..
1770[18]	..	75,178	..
1773[19]	75,000	110,000	185,000

[1] Carroll, I., 331.

[2] "Georgia Historical Society's Collections," I., 167.

[3] Winsor, "America," V., 335. [4] Weston, 92.

[5] Buckingham, "Slave States of America," I., 43.

[6] Melish, "United States," 270; Buckingham, I., 43.

[7] "New York Colonial Documents," VI., 993; "New Jersey Colonial Documents," VIII., Part 2, 132.

[8] Mills, 177.

[9] Bancroft, IV., 129; Last revision, II., 391. [10] *Ibid.*

[11] "London Magazine," May, 1755, quoted in "Massachusetts Historical Society's Collections," VII., 200.

[12] Hawkins' "Missions." [13] Carroll, II., 478, 479.

[14] Carroll, I., 503; Drayton's "View," 103.

[15] Buckingham, I., 34, 43. [16] Melish, "United States," 270.

[17] Anderson, 188; "North American and West Indian Gazetteer," 1778, Article Carolina; Winsor, "America," V., 335.

[18] Winsor, "America," V., 335.

[19] "Historical Magazine," November, 1865, p. 346.

Date.	Whites.	Slaves.	Totals.
1773[1]	65,000	110,000	175,000
1775[2]	60,000	80,000-100,000	..
1775[3]	70,000	104,000	174,000
1775[4]	75,000	..	..
1783[5]	..	..	200,000
1787[6]	..	..	180,000
1790[7]	140,178	108,805	249,073

Population of Charleston.

Date.	Whites.	Slaves.	Totals.
1707[8]	..	..	3,000
1722[9]	..	..	300
1732[10]	..	..	3,000
1763[11]	4,000	4,000	8,000
1765[12]	5,000-6,000	7,000-8,000	..
1767[13]	4,000	6,000	..
1770[14]	5,030	6,276	11,330
1773[15]	..	..	14,000
1775[16]	5,500	..	..

[1] Winsor, V., 335; "North American and West Indian Gazetteer," 1778.

[2] Moore's "Laurens' Correspondence," 181.

[3] Winsor, V., 335.

[4] Simms, "South Carolina in the Revolutionary War," 66.

[5] Smyth's "Tour," I., 207.

[6] Bonnet, "Reponse aux Principales Questions qui peuvent être faites sur les États-Unis de l'Amerique," I., 190.

[7] United States Census. The more reliable of the above figures are given in Dexter's "Population in the American Colonies."

[8] Carroll, II., 450.

[9] Chalmers' "Opinions," I., 55. Perhaps "voters" is meant.

[10] "Collections," III., 316.

[11] Carroll, II., 484.

[12] Carroll, I., 503; "Charleston Year Book," 1880, 254.

[13] Köhler, "Reisebeschreibungen."

[14] Also 24 free negroes. Anderson, 187; "North American and West Indian Gazetteer," 1778, Article Carolina.

[15] *Ibid.*

[16] Chalmers' "South Carolina," 36.

Date.	Whites.	Slaves.	Totals.
1783[1]	..	..	8,000
1784[2]	..	..	10,000-12,000
1790[3]	8,089	8,270	16,359

[1] Smyth's "Tours," II., 84. [2] Schöpf, "Reise," I., 262.
[3] United States Census.

APPENDIX II.

Governors of South Carolina.

Proprietary Governors.

Name.	Years of Service.
William Sayle,	1670-1671
Col. Joseph West,[1 2]	1671-1672
Sir John Yeamans,	1672-1674
Col. Joseph West,[1 2]	1671-1672
Joseph Morton,	1682-1684
Col. Joseph West,[4 5]	..
Sir Richard Kyrle,	1684
Col. Robert Quarry,[2]	1684-1685
Joseph Morton,[2 3]	1685-1686
Sir James Colleton,	1686-1690
Seth Sothell,[6]	1690-1691
Thomas Smith,[5]	..
Philip Ludwell,[7]	1691-1693
Thomas Smith,[7 3]	1693-1694
Joseph Blake,[2]	1694-1695
John Archdale,[7]	1695-1696
Joseph Blake, Jr.,[8]	1696-1700
Col. James Moore,[2]	1700-1702
Sir Nathaniel Johnson,[7]	1703-1710
Col. Edward Tynte,[7]	1710
Robert Gibbes,[2]	1710-1711
Charles Craven,	1711-1716
Robert Daniel,[9]	1716-1717
Robert Johnson,	1717-1719

[1] Nominated by Gov. Sayle. [2] Elected by the Council.
[3] Second term. [4] Third term. [5] Did not serve.
[6] Elected by the people.
[7] Also Governor of North Carolina at the same time.
[8] Appointed by Gov. Archdale. [9] Appointed by Gov. Craven.

Revolutionary Governors.

Name.	Years of Service.
Arthur Middleton,[1]	1719
Col. James Moore,[2]	1719-1721

Royal Governors.

Name.	Years of Service.
Francis Nicholson	1721-1725
Arthur Middleton,[3 4]	1725-1730
Robert Johnson,[3]	1730-1735
Thomas Broughton,[5]	1735-1737
William Bull,[6]	1737-1743
Samuel Horsey,[7]	..
James Glen,	1743-1756
William Lyttleton,	1756-1760
William Bull, Jr.,[4]	1760-1762
Thomas Pownall,[7]	..
Thomas Boone,	1762-1763
William Bull, Jr.,[3 4]	1763-1765
Lord Charles G. Montague,	1766-1769
William Bull, Jr.,[4 8]	1769-1775
Lord William Campbell,	1775

[1] President of Revolutionary Assembly.
[2] Second term; elected by Commons House of Assembly.
[3] Second term. [4] President of the Council.
[5] Commissioned Lieutenant-Governor in 1726.
[6] Senior Councillor. [7] Did not serve. [8] Third term.

THE EARLY RELATIONS

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BY

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History is Past Politics and Politics are Present History—*Freeman.*

THIRTEENTH SERIES

III-IV

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CONTENTS.

THE EARLY RELATIONS BETWEEN MARYLAND AND VIRGINIA.

Introduction.

The purpose of this paper is to give an account of the relations between Virginia and Maryland from the settlement of the latter colony to the agreement between Lord Baltimore and the agents of Virginia in November, 1657, when Lord Baltimore was permitted to assume control of the government of his province, which had been taken out of his hands five years before by the commissioners of Parliament and since that time held by the Puritans.

The unfriendly relations, which existed between Maryland and Virginia for a long period and which have been perpetuated in a local way in the boundary disputes of our own times, were the historic outcome of the loose and careless way in which the English territory in the New World was granted out by the King, and the want of geographical knowledge on the part of those who had jurisdiction over matters involved in the first controversies. The original grant to the Virginia Company included a large part of the present area of the United States. The territory subsequently granted to Lord Baltimore was, of course, carved out of this original grant to the Virginia Company. While the Virginians strenuously opposed the Maryland charter, it is not likely that any serious difficulty would have arisen, had it not been for Claiborne's settlement on Kent Island. His case was not decided in

England until 1638, six years after the charter of Maryland was granted to Cecilius Calvert. Meanwhile, in every act of resistance to the Proprietary of Maryland, Claiborne was backed by the strongest expressions of encouragement and approval from the King and from the Council of Virginia.

A few years later the relations between the two colonies were further complicated by the expulsion of a large number of Puritans from Virginia and their settlement in Maryland. During the Protectorate, when the hand of Lord Baltimore was powerless, these Puritans quarreled with the Catholics and a state of civil war for some time prevailed. Claiborne was in no way responsible for this state of affairs, and although he was one of the commissioners appointed by Parliament for the reduction of the colonies to the authority of the Commonwealth of England, he seems to have had very little to do with Maryland at this period.

As the Puritan element in the early history of Virginia has been almost entirely overlooked, more space has been given to the history of the Puritans in that colony than would otherwise have been necessary.

I.

Opposition to Lord Baltimore's Charter and the Dispute over Kent Island.

In October, 1629, George Calvert, Baron Baltimore, arrived in Virginia on his way to England from his plantation in Newfoundland. He had already addressed a letter to his majesty signifying his intention of asking for a grant of land in Virginia,[1] in order that he might transfer his colony from Newfoundland to a more congenial climate. He was rather coldly received by the Virginians, who had received some intimation of his intention to settle in their midst. Being

[1] Maryland Archives, Council Proceedings, I, 15.

very zealous in their efforts to exclude Romanists from their colony, they tendered to him the oaths of supremacy and allegiance. These as a professed Catholic he could not take, and accordingly departed for England.[1] The following brief entry on the Virginia Court Records is the only reminiscence of this visit, but it serves to illustrate the state of feeling existing at the time in reference to this distinguished visitor. "Thomas Tindall to be pilloried two hours for giving my Lord Baltimore the lie and threatening to knock him down."[2]

This visit of Lord Baltimore to Virginia made the inhabitants of that colony uneasy, knowing as they did the high favor in which he stood at court. A petition, therefore, was addressed to the King, on the 30th of November, 1629, by Dr. John Pott, the Governor, Samuel Mathews, Roger Smith, and William Claiborne, members of the Council, telling of Lord Baltimore's visit, and asking for a confirmation of their rights and protection for their religion.[3]

In May of the following year Claiborne, the Secretary of the colony of Virginia, was sent to England for the purpose of preventing the confirmation of a grant of land about to be made to Lord Baltimore south of the James.[4] The protest was successful for the time being. Lord Baltimore, however, did not relinquish his plan, and two years later succeeded in obtaining a grant north of the Potomac of as extensive a territory, and with as ample powers of government, as he could have hoped for. He died in April, 1632, before the papers passed the seal, and the grant was confirmed to his son Cecilius Calvert on the 20th of June, 1632.

Lord Baltimore's charter described the territory conveyed as *hactenus inculta* and inhabited only by savages. This was not true of the whole territory as Kent Island in the Chesapeake

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[1] Maryland Archives, Council Proceedings, I, 16.

[2] Hening, I, 552.

[3] Maryland Archives, Council Proceedings, I, 16.

[4] Browne, *History of Maryland*, 16.

had been previously settled under the Virginia government by William Claiborne, the Secretary of State of that colony. Claiborne had been for several years engaged in trading with the Indians along the waters of the Chesapeake and its tributaries. For this purpose licenses were issued to him by the Governors of Virginia in the years 1627–28–29, giving him ample authority to trade with the natives for corn, furs, or any other commodity, and to make discoveries.[1] In the year 1629, he seems to have established a trading post on Kent Island, although the island was not regularly settled until two years later.

Encouraged by the success of his enterprises in Chesapeake Bay, Claiborne decided to extend his trade beyond the limits of Virginia. For this purpose he entered into partnership with certain parties in London, Clobery and Company, and obtained a special license from the King, dated May 16, 1631.[2] This license seems to have been drawn up by Sir William Alexander, the Scottish Secretary, under the privy seal of Scotland, and was obtained with a special view to carrying on trade with Nova Scotia, although the New England colonies were also mentioned in it, and Claiborne was authorized to trade for corn, furs, or any other commodity, in all those parts of America for which patents had not already been granted for sole trade. Nova Scotia had been granted to Sir William Alexander several years before, under the Scottish seal, to be held of the Crown of Scotland.[3] This accounts for Claiborne's license being issued under the seal of Scotland instead of England. It is hard to say just what the validity of such a paper was, or whether it had any validity at all. It was certainly equally as valid as the grant to Sir William Alexander under the seal of Scotland,[4] which was never called in question. It is important to note this license, because it was

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[1] Maryland Archives, Council Proceedings, II, 158–161.
[2] *Ibid.*, I, 19.
[3] Purchas, Vol. IV, 1871.
[4] Chalmers, *Annals*, 212.

on the technicality that a paper under the seal of Scotland could not be argued against one under the seal of England, that the case was decided against Claiborne by the Commissioners of Plantations in 1638. Governor Harvey of Virginia also issued a license to Claiborne a few months after the one just referred to, authorizing him to "go unto the plantations of the Dutch, or unto any English plantation."[1]

In 1631 Kent Island was "planted and stocked" by Claiborne and his partners. The trading post was converted into a regular plantation. Captain William Claiborne, according to his own statement, "entered upon the Isle of Kent, unplanted by any man, but possessed by the natives of that country, with about 100 men and there contracted with the natives and bought their right, to hold of the Crown of England to him and his company and their heirs, and by force or virtue thereof William Claiborne and his company stood seized of the said Island."[2] There is no mention in the Virginia records of any formal grant to Claiborne by the Governor and Council, and his own language seems to imply that there was none, but that he based his claims solely on occupancy and purchase from the Indians.

The principal objections that have been raised to Claiborne's title to Kent Island may be classed under two heads, (1) that the Virginia colony had no right to the land in question at the time of its settlement, as their charter had been taken away several years before; and (2) that, even recognizing the jurisdiction of Virginia, Claiborne had no grant of land from the government of that colony, and hence that the settlement was merely a trading post.

The first of these objections is untenable. The colony of Virginia had as much right to Kent Island, at the time it was settled by Claiborne, as they had to the land upon which they were seated at Jamestown. There was no charter for

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[1] Maryland Archives, Council Proceedings, II, 163.
[2] *Ibid.*, II, 162.

either, but their rights had been repeatedly confirmed by the King, and all rights in the colonies at this time depended absolutely upon his word. The fact that the charter of the London Company had been annulled did not affect the rights of the colony to settle lands within the territory originally comprised in the grants to the Company, provided such lands had not already been granted by the Crown to other parties. This principle is distinctly stated in the commission issued to Governor Wyatt by James I shortly after the dissolution of the Company in 1624,[1] and again in a proclamation from Charles I in 1625, in explanation of the Quo Warranto proceedings.[2] This right was also confirmed by a special letter on the subject from the King's Council to the Governor and Council of Virginia, under date of July 22, 1634, in these words: "We do hereby authorize you to dispose of such proportions of lands to all those planters, being freemen, as you had power to do before the year 1625."[3]

In answer to the second objection it may be said that although there is no record of a grant to Claiborne, throughout the entire controversy with Lord Baltimore the Virginia Council recognized the validity of his title. It is further stated that there was no regular settlement on the island but only a trading post. Such was not the case. It appears from certain depositions taken in Virginia in May, 1640, in the case of Claiborne vs. Clobery, *et al.*, that the island was stocked with between 150 and 200 cattle, that orchards and gardens were laid out, that mills were constructed, and that all the usual appurtenances of a permanent plantation were there.[4] It also appears that women were resident upon the island,[5] a fact which has been often denied, and there is also reference made

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[1] Hazard, *Collection of State Papers*, I, 189.

[2] *Ibid.*, I, 203.

[3] Chalmers, *Annals*, Chap. V, note 16.

[4] Maryland Archives, Council Proceedings, 11, 187, 196, 199, &c.

[5] *Ibid.*, 183 and 236.

to a child, who was slain by the Indians.[1] In the year 1632, the plantation was represented in the Virginia Assembly by Captain Nicholas Martian,[2] an ancestor of George Washington.[3] The minister in charge of the settlement was Rev. Richard James, a clergyman of the Established Church.[4]

Such was the condition of affairs when, on the 20th of June 1632, the charter of Maryland was granted to Lord Baltimore. This grant called forth a loud remonstrance from the Virginia people.[5] They protested against the division of their territory and the dismemberment of their colony. They claimed that the mere fact of the dissolution of the Company did not infringe the rights of the colony to lands within the former grants to the Company. This protest came from the colony as a whole and not from Claiborne, as has sometimes been stated. The matter was heard and answered at the Star Chamber July 3, 1633. Their Lordships decided to "leave Lord Baltimore to his charter and the other parties to the course of Law.[6] This was not a decision against Claiborne's claims to Kent Island, but against the wholesale claim of the colony of Virginia to all lands, whether vacant or settled, within their former grant.

Claiborne and his associates, hoping no doubt that the remonstrance of the Virginia colony would be effective in preventing Lord Baltimore's settlement in their territory, had deferred making any special plea on their own behalf until the result of the general decision should be known. As soon, however, as the decision was rendered against the claims of Virginia, Claiborne and his partners began to petition the King and Council for the protection of their interests. They claimed that they were not within Lord Baltimore's jurisdiction, as his charter comprehended only unsettled lands,

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[1] Maryland Archives, Council Proceedings, II, 206.

[2] Hening, I, 154.

[3] *Virginia Magazine of History and Biography*, April, 1894.

[4] Dr. Ethan Allen, *MS. Sketch of Old Kent Parish*, in Whittingham Library.

[5] Maryland Archives, Council Proceedings, I, 17.

[6] *Ibid.*, I, 21.

while they were a part of the colony of Virginia, having settled the island under that government before the grant to Lord Baltimore. The first petition was that of Sir John Wolstenholme and "other planters with Captain William Claiborne in Virginia," showing that they had settled the island with great expense, and praying that they might enjoy the same without interruption, and that Lord Baltimore might settle in some other place.[1] This was in November, 1633, just as Leonard Calvert was setting sail with the first colonists for Maryland.

Before leaving England the first settlers received from Lord Baltimore a set of instructions by which they were to be governed in planting the new colony. The fifth article of these instructions contains directions concerning Captain Claiborne. Lord Baltimore seems to have taken in the situation and to have recognized the importance of conciliating Claiborne. He directed his brother, upon his arrival in Virginia, to write to Claiborne; invite him to an interview; to tell him that his Lordship, understanding that he had "settled a plantation there within the precincts of his Lordship's patent," was "willing to give him all the encouragement he could to proceed;" and that Clobery and Company had asked for a grant of the island to them, "making somewhat slight of Captain Claiborne's interest," but that his Lordship had deferred the matter until he could come to an understanding with Claiborne. The article concludes with the command that if Claiborne refuses to come to him, he is to let him alone for the space of one year.[2] Unfortunately, these instructions were not carried out in all particulars.

In July preceding, the King had written to the Governor and Council of Virginia informing them that Lord Baltimore was about to settle Maryland and commanding them to treat him with the courtesy and respect due to a person of his rank,

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[1] Maryland Archives, Council Proceedings, I, 24.

[2] Calvert Papers, 131.

and to allow his servants and planters to buy and transport to their colony such cattle and other commodities as the Virginians could spare.[1] Lord Baltimore did not conduct to America in person his colony, but sent it out under the command of his brother Leonard Calvert. Leonard arrived in Virginia with his people in February, 1634, and remained there a few days in order to procure fresh supplies before proceeding to Maryland. While in Virginia he had an interview with Claiborne in which he formally notified him that henceforth he must consider himself a member of the Maryland colony and must "relinquish all relation and dependence" upon Virginia. At the next meeting of the Virginia Council a few days later, on the 14th of March, 1634, "Claiborne requested the opinion of the board, how he should demean himself in respect of Lord Baltimore's patent and his deputies now seated in the Bay." "It was answered by the board that they wondered why there should be any such question made. That they knew no reason why they should render up the rights of that place of the Isle of Kent, more than any other formerly given to this colony by his Majesty's patent; and that, the right of my Lord's grant being yet undetermined in England, we are bound in duty and by our oaths to maintain the rights and privileges of this colony. Nevertheless, in all humble submission to his Majesty's pleasure, we resolve to keep and observe all good correspondence with them, no way doubting that they on their parts will not intrench upon the interests of this his Majesty's plantation."[2] Backed by the authority of the Governor and Council of Virginia, Claiborne refused to consider himself a member of the Maryland colony and to yield his right to trade in the waters of the Chesapeake without license from Lord Baltimore.

Shortly after the Maryland colony had arrived at St. Mary's, charges were preferred against Claiborne by Captain Henry

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[1] Maryland Archives, Council Proceedings, I, 22.
[2] *Ibid.*, II, 164.

Fleete to the effect that he was inciting the Indians to acts of hostility against the new settlement. Complaint was immediately made by the Maryland authorities to the Governor of Virginia, who put Claiborne under bond not to leave Jamestown until the charges were investigated. For this purpose commissioners were appointed by both governments, who met at Patuxent on the 20th of June, 1634, and proceeded to examine the Chief of the Patuxents and other principal men as to the truth of Fleete's charges. The commissioners on the part of Virginia were Samuel Mathews, John Utie, William Peirce, and Thomas Hinton; those on the part of Maryland were George Calvert and Frederick Winter. Claiborne and several others were also present. The result was a complete vindication of Claiborne. The Chief of the Patuxents indignantly denied the charges, giving Captain Fleete the lie, and saying that if he were present he would tell him so to his face. He further added that he wondered that they should take any notice of what Fleete said, whereupon the Virginia commissioners, by way of explanation, said that the gentlemen of Maryland "did not know Captain Fleete so well as we of Virginia because they were lately come."[1] Fleete himself subsequently admitted the charges to be false, saying, by way of apology, that he had not made them under oath.[2] Fleete had been a rival of Claiborne in the fur trade, and upon the arrival of Baltimore's colony had pursued exactly the opposite policy, casting in his lot with the government at St. Mary's. Hence it was natural for one, who upon other occasions gave evidence of unscrupulousness of character, to try to prejudice the minds of the Marylanders against his rival.[3]

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[1] Maryland Archives, Council Proceedings, II, 164–167.

[2] Calvert Papers, 141.

[3] While allowing for his propensity to misrepresent facts when it was to his interest to do so, we know Fleete did good service to both colonies. Returning to Virginia he made friends with Claiborne. Some twenty years later these old rivals jointly petitioned the Virginia Assembly for authority to make discoveries towards the South and West. Fleete ended his career in Lancaster County, Virginia.

The charges against Claiborne, however, reached the ears of Lord Baltimore, and in September, 1634, he ordered his brother to seize the person of Claiborne and to detain him a close prisoner at St. Mary's until his Lordship's pleasure might be known. Calvert was also directed to take possession, if possible, of the plantation on Kent Island.[1]

At first Governor Harvey of Virginia seems to have taken the popular side of the controversy, but after the Marylanders were actually settled at St. Mary's, seeing no doubt that Lord Baltimore's influence would ultimately prevail against all attacks upon his charter, he warmly espoused the cause of the new colony. This, as we shall see, led to an insurrection in Virginia the following year, the upshot of which was that Governor Harvey was deposed from office and sent to England.

On the 15th of December, 1634, Lord Baltimore sent to Secretary Windebank to ask for a letter of thanks from the King to Sir John Harvey, for the assistance he had given to his Maryland plantation against "Claiborne's malicious behavior and unlawful proceedings." He said that his plantation, then in its infancy, would be in great danger of being overturned, if such letters were not sent off by the ship then ready to sail. Three days later a private letter from Secretary Windebank was obtained thanking Governor Harvey and desiring him to "continue his assistance against Claiborne's malicious practices." About ten days later the King wrote to Governor Harvey, stating the reasons for his grant to Lord Baltimore and desiring him to continue his assistance to Maryland. The tone of this letter, however, is very different from that of the one written by Secretary Windebank.[2] There is no mention in it of Claiborne or his "malicious practices." Charles I seems to have been a staunch friend to Claiborne. Throughout the whole controversy the King seems to have been on his side, and there is not a word against Claiborne

[1] Maryland Archives, Council Proceedings, II, 168.
[2] *Ibid.*, I, 25–27.

and his claims to Kent Island, with the exception of the private letter referred to above from Secretary Windebank to Harvey, until the decision against him by the Commissioners of Plantations in 1638. It is difficult to understand the cause of his influence with the King.

In October, 1634, the King was petitioned by Clobery and Company, Claiborne's partners in London, stating that Baltimore was about to dispossess them of Kent Island by force. This petition was occasioned by Baltimore's letter of September 4, to Governor Calvert, ordering him to seize the person of Claiborne and to take possession of the plantation. It drew from the King a very remarkable letter to the Governor and Council of Virginia, dated October 8, 1634, in which he says that Baltimore's interference with the planters on Kent Island is "contrary to justice and to the true intention of our grant to the said Lord: we do therefore hereby declare our express pleasure to be that the said planters be in no sort interrupted in their trade or plantation by him or any other in his right, ... and we prohibit as well the Lord Baltimore, as all other pretenders under him or otherwise to plantations in those parts to do them any violence, or to disturb or hinder them in their honest proceedings and trade there."[1] The King had made the grant to Lord Baltimore and he here explains the meaning of that grant.

Relying upon this letter and other assurances from the King, and from the Council of Virginia, Claiborne continued to trade in the waters of the Chesapeake. On the 5th of April, 1635, a pinnace from Kent Island in command of Thomas Smith was seized in the Patuxent River by Captain Fleete and Captain Humber for trading in Maryland waters without a license from the Proprietary. Smith showed copies of his Majesty's commission and the letters confirming it, but the Marylanders disregarded them saying they were false copies,[2] and the vessel

[1] Maryland Archives, Council Proceedings, I, 29.
[2] Calvert Papers, 141.

and goods were confiscated. This brought matters to a crisis. For the future Claiborne took the precaution of arming his vessels to prevent their being seized by the Maryland authorities. A collision soon took place, April 23, 1635, in the waters of the Pocomoke, between a vessel belonging to Claiborne, under command of Lieutenant Ratcliffe Warren, and two from St. Mary's under Captain Thomas Cornwalleys. The Marylanders lost one man, while on the other side Warren and two of his men were killed and the vessel surrendered. A second fight occurred on the 10th of May, also in the Pocomoke River, in which Thomas Smith commanded a vessel of Claiborne's, and more blood was shed. Claiborne's men seem to have been the successful parties in this fight, and they were able to maintain themselves on Kent Island and continue their trade for two years longer.

The news of these disturbances in Maryland reached Virginia at a very critical time. The opposition to Maryland and hence to Governor Harvey, who espoused the cause of the new colony, had been steadily on the increase. Claiborne was a man of great influence in Virginia, and the charges brought against him and the order to seize his person had caused considerable indignation in that colony. Nearly all the Councillors were his staunch personal friends. The feeling of the Virginians towards the neighboring colony had become extremely bitter. Captain Thomas Young, writing from Jamestown, July 13, 1634, says—"Here it is accounted a crime almost as heinous as treason to favor, nay, almost to speak well of that colony of my Lord's, and I have observed myself a palpable kind of strangeness and distance between those of the best sort in the country which have formerly been very familiar and loving one to another, only because the one hath been suspected but to have been a well-wisher to the Plantation of Maryland."[1] Governor Harvey, writing to Secretary Windebank, December 16, 1634, says that he accounts the

[1] Streeter Papers, Appendix, p. 291.

day when he did service to Lord Baltimore as the happiest of his life, but regrets that his authority is no longer very great, being limited by the council, almost all of whom are against him in whatever he can propose, especially if it concerns Maryland. It is the familiar talk of the Virginians, he says, "that they would rather knock their cattle on the head than sell them to Maryland." He adds that he has great cause to suspect that this faction is nourished from England, for during the past summer Captain Mathews received letters from England, upon the reading of which he "threw his hat upon the ground, scratching his head, and, in a fury stamping, cried a pox upon Maryland."[1]

Other causes of complaint against Harvey were that he undertook to rule without his Council, appropriated public fines to his own use, and intrigued with the Indians.[2] He had Claiborne turned out of office and Richard Kemp appointed Secretary in his place. The feelings of the people were greatly excited, especially in York County, where Anthony Panton, the minister at Kiskiack, gave expression to the popular indignation, roundly abusing Secretary Kemp, calling him "a jackanapes," and saying that he would shortly be turned out as Claiborne had been.[3] Matters came to a crisis in April, 1635.[4] Another cause of complaint was the tobacco monopoly and Harvey enraged the people by refusing to send the protest of the Assembly to England. A petition to the Council for a

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[1] Maryland Archives, Council Proceedings, I, 29.

[2] Letter from Mathews to Sir John Wolstenholme, May 25, 1635.

[3] Robinson MS., p. 78.

[4] The materials, from which this account of the mutiny against Harvey is derived, are found largely in the McDonald Papers, Vol. II, pp. 163–208, in the Virginia State Library. The De Jarnette Papers and the Sainsbury Papers, in the State Library, and the Robinson and Randolph MSS. in the library of the Virginia Historical Society contain additional matter relating to Panton and his controversy with Kemp. The letters of Harvey and Mathews, giving accounts of the mutiny, are published in the Virginia Magazine of History and Biography, April, 1894. Kemp's account has never been published.

redress of grievances was circulated and the people assembled in crowds to sign it. Mathews, after relating the above mentioned causes of complaint, says that Harvey "had reduced the colony to a great strait by complying with the Marylanders so far that between them and himself all places of trade for corn were shut up from them and no means left to relieve their wants without transgressing his commands which was very dangerous for any to attempt. . . . The inhabitants also understood with indignation that the Marylanders had taken Captain Claiborne's pinnaces and men with the goods in them whereof they had made prize and shared the goods amongst them, which action of theirs Sir John Harvey upheld contrary to his Majesty's express commands."[1] The reference is to the seizure of the pinnace in command of Thomas Smith in the Patuxent, April 5. The news of the fight on the Pocomoke, April 23, did not reach Virginia until after the insurrection was over.

On April 27, a meeting was held at the house of William Warren at York to petition the council against Harvey, at which the chief speakers were Captain Nicholas Martian, who had formerly represented Kent Island in the Assembly, Francis Pott, a brother of Dr. John Pott the former Goverdor, and William English, the High Sheriff of York County. The next morning the Governor had the three arrested. When they demanded the cause of their commitment he answered that they should know at the gallows. The next day Pott was examined before the Council in regard to the petition he had circulated. He said that "if he had offended he did appeal to the King for he was sure of no justice from Sir John Harvey." Upon this he was again committed and the Council adjourned for that night. When they convened again the next day, the Governor, walking up and down the room in an excited manner, demanded that martial law should be executed against the prisoners. The Council insisted that

[1] Letter from Mathews to Sir John Wolstenholme, May 25, 1635.

they should have a legal trial. The Governor then asked the Council if they had knowledge of the petition, or of the people's grievances. George Minifie replied that the chief grievance was the detaining of the letters of the Assembly to his Majesty. Whereupon Harvey, rising in a great rage, struck him a severe blow on the shoulder, saying, "I arrest you upon suspicion of treason to his Majesty." Then Captain Utie, who was nearby, laid hands on the Governor, saying, "And we the like to you, Sir!" Samuel Mathews, afterwards Governor, then took Harvey in his arms and compelled him to be seated. While the Governor was struggling with Mathews and Utie, Dr. John Pott, brother of one of the prisoners, cautioning Harvey's servants not to interfere, waved his hand and 50 musketeers surrounded the house. As soon as the excitement had cooled down, Mathews told the Governor that the people's anger was beyond control unless he would consent to go to England to answer the complaints against him. At first Harvey would not hear to this, but finally agreed that if they would draw up their propositions in writing he would consider the matter. Two days later, finding that the insurrection was not confined to York County, but extended over the entire colony, he resolved to go to England, and signified his intention to the Council upon these conditions: (1) that they would select one of the Council, whom he should nominate, Governor until the King's pleasure should be known; (2) that they would swear upon the Holy Evangelists to offer no hostility to those of Maryland; and (3) that Captain Mathews, Captain Peirce, and Mr. Minifie should likewise go to England. The Council would not consent to these conditions and Harvey was forced to yield the point. A proclamation was then published in the name of the Council, stating that Harvey would go to England and commanding all persons to disperse to their several homes. The Council then set at liberty the three prisoners, and after issuing a call for an Assembly adjourned.

The Assembly met May 7, 1635, and, in conjunction with the Council, elected Captain John West of Kiskiack, a brother

of Lord Delaware, Governor, until the King's pleasure should be known. Harvey was sent to England in the custody of Francis Pott, his late prisoner, and Thomas Harwood representatives of the Assembly.

This action of the Virginians in deposing his Majesty's representative was nothing more nor less than open rebellion, and Charles declared that Harvey should be sent back, "though he stay but a day."[1] Mathews, West, Utie, Peirce, and other leaders of the insurrection were summoned to stand trial in England, while Harvey and Kemp wreaked their vengeance on Panton, the minister at Kiskiack, who had remained in the colony. His goods were confiscated and he was banished from the colony for "mutinous, rebellious and riotous actions." But in the end the popular cause triumphed. In 1639, Harvey was removed from office, and Sir Francis Wyatt, who had before served the colony as Governor with great credit, succeeded him. Kemp retained his office of Secretary through the influence of Lord Baltimore. The sentence against Panton was reversed and the leaders of the insurrection were restored to their estates, which had been confiscated by Harvey.[2]

When Harvey was sent to England in 1635, he said, speaking of the conduct of the Virginians, "it is to be feared that they intend no less than the subjection of Maryland, for whilst I was aboard the ship and ready to depart the colony, there arrived Captain William Claiborne from the Isle of Kent, with the news of an hostile encounter 'twixt some of his people and those of Maryland."[3] The new government, however, did

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[1] Sainsbury Papers, Vol. III, p. 137.

[2] Sainsbury Papers.

NOTE.—To show how imperfectly the affairs of this period of Virginia history have been understood, Burk, who denounces Claiborne in strong terms, censures Harvey for not delivering him up to the Maryland authorities, when, as a matter of fact, Harvey was himself under arrest for the very reason that he had taken sides with Baltimore against Claiborne. See Burk, *History of Virginia*, II, p. 40.

[3] Maryland Archives, Council Proceedings, I, 38.

not undertake the reduction of Maryland, but recognized and attempted to uphold Claiborne's claims in a peaceable way. West, the acting Governor, writing to the Commissioners of Plantations in March, 1636, says: "Without infringing his Majesty's grant to the Lord Baltimore, we have taken the nearest course for avoiding of further unnatural broils between them of Maryland, and those of the Isle of Kent. As we find those of Maryland in our limits we bind them in deep bonds, to keep the King's peace towards those of the Isle of Kent, as also Captain Claiborne the Commander of the Isle of Kent towards those of Maryland."[1]

In view of the unsettled state of affairs in Virginia and of the probability of the appointment of a new governor, Lord Baltimore made an attempt, early in the year 1637, to have himself appointed Governor of Virginia. He did not make the proposition openly but approached his Majesty through the mediation and influence of his friend Secretary Windebank. He offered to undertake to increase his Majesty's revenue from Virginia £8000 yearly, and to do this without imposing any additional taxes or duties.[2] Whether or not he thought that his appointment would have such a pacifying effect upon the Virginians, and so promote the general prosperity of the colony, as to increase the King's revenue to the extent of £8000, is not recorded. It is possible that he may have regarded this as the only solution of the Claiborne difficulty. However this may be, he did not receive the appointment, and we do not know that his Majesty ever considered the proposition.

Meanwhile, there seems to have been no serious trouble between the Kent Islanders and the inhabitants of St. Mary's until December, 1637, when the island was surrendered to the Maryland authorities through the treachery of George

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[1] Maryland Archives, Council Proceedings, I, 40.
[2] *Ibid.*, I, 41–42.

Evelin.[1] Evelin was sent over by Clobery and Company in the fall of 1636, to look after their interests on Kent Island. Since the settlement of Maryland they had almost entirely neglected Claiborne,[2] fearing to risk any more capital in the venture, while their title to the island was in dispute. Claiborne carried on the trade as best he could by means of his own servants and resources. The disturbances which had arisen between him and the settlement at St. Mary's had greatly interfered with the trade and curtailed the profits therefrom. Clobery and Company seem to have become dissatisfied with the condition of things and sent over Evelin to look after their interests. He arrived at Kent Island in December, 1636. At first Evelin either was or pretended to be an ardent supporter of Claiborne's claims to the island, and asserted boldly in the presence of the inhabitants that the King's commission to Claiborne and his subsequent letter in confirmation thereof were firm and strong against the Maryland patent.[3] He even went so far as to use abusive language in reference to the Calvert family, saying that Leonard Calvert's grandfather had been but a grazier, while he himself was a dunce and blockhead at school. By such means he won the confidence of the people and probably of Claiborne himself. In February, 1637, a supply of servants and goods arrived from Clobery and Company, consigned to Evelin instead of to Claiborne, and with them a power of attorney for Evelin, and instructions to Claiborne requiring him to assign to Evelin the control of the servants, goods, and all property belonging to the joint stock, and to come to England in order to explain his proceedings and adjust his accounts. He was also directed to take an accurate inventory of their property and to require

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[1] The materials for this account of the surrender of Kent Island are drawn from certain depositions taken in Virginia, in May, 1640, in the case of Claiborne vs. Clobery *et al.*, obtained from the English State Paper Office, and published in the Maryland Archives, Council Proceedings, II, pp. 181–239.

[2] Maryland Archives, Council Proceedings, II, 193.

[3] *Ibid.*, II, 215.

of Evelin a bond for its safe keeping. Accordingly in May, 1637, a few days before his departure for England, he offered, in the presence of the freemen and servants of the island, to surrender entire possession to Evelin, if he would give bond to the amount of £3000 not to alienate the island to the Marylanders, and not to carry away any of the servants. This Evelin refused to do, saying that he wanted no assignment from Claiborne and would take possession whether he would or not.[1] After a second attempt to get a bond from Evelin, Claiborne under protest left him in possession of the settlement and sailed for England.

Now that Evelin was in full possession of the island he developed his plans very rapidly. Whatever his original intention, he now determined to unite his fortunes with the settlement at St. Mary's, and to effect the reduction of the island to the authority of Lord Baltimore. To this end he opened negotiations with Leonard Calvert, and instead of attending to the business of Clobery and Company occupied his time with visits to St. Mary's. But the subjection of the island was a far more difficult task than he had anticipated. He tried in vain to persuade the inhabitants to renounce their allegiance to Claiborne and to submit to the jurisdiction of Lord Baltimore. They could not be moved. Finally despairing of accomplishing his end by peaceful measures, he endeavored to persuade Leonard Calvert to reduce the island by force. Calvert was for some time reluctant to resort to force, but the importunity of Evelin at last prevailed over his scruples, and in December, 1637, he led an armed expedition of about 40 men by night against the island, captured the fort, and succeeded in reducing the inhabitants to submission. Evelin was appointed Commander of Kent Island by a Commission dated December 30, 1637. Thomas Smith and John Boteler, two of the principal men on the island, were arrested and taken prisoners to St. Mary's.

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[1] Maryland Archives, Council Proceedings, II, 215–216.

Warrants were soon issued for the arrest of a large number of persons on the island, either on pretence of answering a suit of Clobery and Company for debt, or on charges of sedition, piracy, and murder. These proceedings provoked an outbreak, and in February, 1638, while the Assembly was in session at St. Mary's, Calvert found it necessary to lead a second expedition against the island. After some days he succeeded in again reducing it to his authority. In return for his services Evelin was made "Lord of the Manor of Evelinton" near St. Mary's. Now that his object was accomplished he paid no further attention to Kent Island, but retired to his manor, taking with him a number of servants and other property belonging to Clobery and Claiborne, and even digging up the fruit trees in Claiborne's garden and transporting them to Maryland.[1] Clobery and Company had reason to regret the confidence they had reposed in Evelin. The reduction of the island was in no way authorized by them and they continued to unite their petitions with Claiborne against Lord Baltimore.

Upon the return of Governor Calvert from Kent Island, the Assembly proceeded to try Thomas Smith, who had commanded Claiborne's vessel in one of the encounters on the Pocomoke, on an indictment for murder and piracy. As there were no legally organized courts, the Proprietary having vetoed all previous acts of the Assembly, Smith was tried before the bar of the House, Secretary Lewger acting as prosecuting attorney. He was found guilty with only one dissenting voice and sentenced to be hanged. It has been stated that this sentence was never executed, as there is no official record of it. But in the depositions in the case of Claiborne vs. Clobery *et al.*, before alluded to, it is distinctly stated that he was hanged,[2] together with Edward Beckler, another adherent of Claiborne's.

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[1] Maryland Archives, Council Proceedings, II, 196 and 211.
[2] *Ibid.*, II, 187.

The same Assembly, March, 1638, passed a bill of attainder against William Claiborne, declaring him guilty of piracy and murder and "that he forfeit to the Lord Proprietary all his lands and tenements which he was seized of on the 23rd day of April, 1635."[1] In pursuance of this act the property of Claiborne on Kent and Palmer's Islands was attached and appropriated to the use of the Lord Proprietary.[2] In view of the fact that the acts of this Assembly were vetoed by Lord Baltimore it would be interesting to know by what legal right Claiborne's property was confiscated.

A few days after the passage of this bill of attainder against Claiborne, the Lords Commissioners of Plantations, to whom the various petitions of Claiborne and Lord Baltimore had been referred, delivered their opinion, April 4, 1638, declaring the right and title to the Isle of Kent and other places in question to be absolutely belonging to Lord Baltimore.[3]

A few months before this decision the King had ordered the Commissioners not to allow any patents, commissions, or letters, in any way prejudicial to Lord Baltimore, to pass the seal.[4] The decision was given without reference to the claims of Virginia, or to Claiborne's plea that he was a member of that colony. Lord Baltimore had a charter from the King, and Claiborne had only a trading license under the seal of Scotland. Chalmers says: "The principle of this decision strikes deep into the validity of the patents of Nova Scotia, passed under the great seal of Scotland in 1621–25; because the privy Council allowed no force to a license under the privy signet of that kingdom when pleaded against a grant under the great seal of England. Yet, it is to be lamented, that similar adjudications have not been at all times perfectly uniform, and with a spirit of inconsistence which equity

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[1] Maryland Archives, Proceedings of the Assembly, I, p. 23.
[2] Maryland Archives, Council Proceedings, I, 76.
[3] *Ibid.*, I, 71.
[4] *Ibid.*, I, 55.

reprobates, different men have received different measures of justice."[1]

In a similar dispute, some fifty years later, between Lord Baltimore and William Penn the Commissioners of Plantations went back on the principle of this decision of 1638. In the decision of 1685, by which half of the Delaware Peninsula was adjudged to Penn, they declared "that the land intended to be granted by the Lord Baltimore's Patent was only land *uncultivated and inhabited by savages*, and that this tract of land now in dispute was inhabited and planted by *Christians* at and before the date of the Lord Baltimore's Patent."[2]

Clobery and Company made one more effort. On the 28th of June, 1638, more than two months after the decision, they addressed the following complaint to Secretary Coke: "The many wrongs and oppressions which we suffer from Lord Baltimore's people in Maryland, who have lately with armed men coming in the night surprised our plantation, removed our servants, and wholly ruinated what we had there, enforceth us to renew our complaint to his Sacred Majesty."[3] On the 14th of July, the King wrote to Lord Baltimore, stating that he had referred to the Commissioners the examination of the truth of these complaints and requiring him to "perform what our former general letter did enjoin and that the above named planters and their agents, may enjoy in the meantime their possessions, and be safe in their persons and goods there, without disturbance or further trouble by you or any of yours till that cause be decided."[4] On the 21st of July, David Morehead delivered this letter to Lord Baltimore in the presence of George Fletcher, Thomas Bullon, Captain William Claiborne, and William Bennett, and demanded an answer, so that instructions might be sent to his deputies by the ships about to sail, according to the tenor of his Majesty's

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[1] *Annals*, 212.

[2] Maryland Archives, Council Proceedings, II, 455.

[3] *Ibid.*, I, 77.

[4] *Ibid.*, I, 78.

letter. Baltimore refused to give an answer, saying that he would wait upon his Majesty and give him satisfaction therein.[1]

After the decision of 1638, Claiborne, having given up all hope of obtaining a redress of grievances in England, returned to Virginia, and endeavored to recover his personal property from the Maryland government. To this end, as it would have been rather unsafe for him to venture into Maryland himself, in view of the act of attainder passed against him two years before, he gave a power of attorney to George Scovell, August 21, 1640. To Scovell's petition the Governor and Council replied, that whatever estate Captain Claiborne left in that province at his departure in March, 1637, was possessed by right of forfeiture to the Lord Proprietary for certain crimes of piracy and murder. If the petitioner could find out any of the said estate not held by that right he would do well to inform his Lordship's attorney of it that it might be recovered to his Lordship's use.[2]

Claiborne seems to have given up all idea of recovering his possessions in Maryland, and to have settled down quietly in Virginia. In 1642, Charles I appointed him Treasurer of Virginia for life.[3] This was an attempt no doubt to conciliate him for the losses he had suffered in Maryland.

In the year 1644, while the civil war was raging in England, Claiborne, who had all along been closely identified with Samuel Mathews and the democratic element in the colony, determined to cast in his lot with the Parliamentary party, and renewed his claims to Kent Island, in the hope that they would be recognized now that the Protestant party was in power. Accordingly during the temporary absence of Governor Berkeley in England, he regained possession of Kent Island, the inhabitants of which were glad to welcome him back. Very little is known of his proceedings at this time,

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[1] Maryland Archives, Council Proceedings, II, 174.

[2] *Ibid.*, I, 92–93.

[3] Hazard, *Collection of State Papers*, I, 493.

but the fact of his having acquired control of the island is established beyond doubt.[1]

About the same time Richard Ingle, also a Parliamentarian, took St. Mary's, the seat of government, and forced Governor Calvert to flee for safety into Virginia. There is no evidence of any agreement between Ingle and Claiborne, although it is possible that there was a tacit understanding. They kept control of Maryland for about two years. Towards the close of the year 1646, Calvert collected his scattered forces and with the assistance of Governor Berkeley, who had now returned from England, succeeded in recovering the lost province. Baltimore had the year before given up all hope of retaining Maryland and had directed his brother Leonard to gather together whatever personal property he could and make his escape. But Leonard thought differently, and subsequently Lord Baltimore himself turned Parliamentarian and thus saved his possessions.

II.

The Rise of the Puritans in Virginia and their Expulsion under Governor Berkeley.

The first portion of this paper has been occupied with events of a political nature. It is now necessary to consider the policy of the two colonies in regard to religious matters, especially their treatment of the Puritans and the causes which led to the expulsion of a large number of them from Virginia and their settlement in Maryland.

The religious element did not enter into the settlement of the southern colonies in as marked a degree as it did into the settlement of New England. Religion, however, was to the men of the seventeenth century very much a matter of course. The whole English nation, Cavalier and Puritan alike, clothed their thoughts in the language of Scripture in a way which to

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[1] Maryland Archives, Provincial Court Proceedings, I, 281, 435, 458–459.

us at the present day seems the veriest cant. Hence in the earliest charters of Virginia, although the enterprise was at first purely commercial, we find the strongest expression of religious sentiments and purposes, and a clergyman of the Established Church accompanied the first colony to Jamestown. The Anglican Church thus became established in Virginia and throughout the colonial era that colony was the stronghold of episcopacy in this country. But it was episcopacy of a modified type. The American branch of the English Church occupied quite an anomalous position. It presented the paradox of an episcopal church without an episcopate. No Anglican bishop ever set foot upon the shores of America prior to the Revolution, and the Bishop of London, whose jurisdiction over Virginia was recognized in a measure from the first by virtue of the residence of the London Company within his diocese, was not even represented by a commissary until 1689. In that year the Rev. James Blair was sent out with formal authority to act as commissary, and from that time forward some of the less important functions of the office of bishop were exercised by a representative. It is hardly necessary to add that throughout the colonial period the rites of ordination and confirmation were not performed in the colonies.[1] The vestries claimed the right of presentation and the Governor the right of induction, but as a matter of fact induction rarely ever took place. It became customary for the vestries to hire their ministers from year to year without presenting them to the Governor.[2] Thus church government in Virginia, while theoretically episcopal, was practically congregational.

To the uncertainty of tenure was added another circumstance, which was more or less of an obstacle in the way of ministers coming to the colony. This was the fact that salaries

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[1] Hawks, *Ecclesiastical Contributions*, I, 73.

[2] Campbell, *History of Virginia*, 278, also Bishop Perry's *Collection of Papers*, 261, ff.

were paid in tobacco, the amount in pounds being fixed by statute. The bad quality of the tobacco in certain parishes left them almost entirely without the ministrations of the Established Church.[1] This condition of affairs, added to the practical independence of the vestries, favored the growth of dissenters, and it is a striking fact that the Puritans and afterwards the Quakers congregated in those parishes where the bad quality of the tobacco did not favor the growth of the Established Church.

The governors showed their loyalty to the establishment by requiring the Assemblies to pass, at the beginning of each session, a body of statutes enjoining strict conformity to the rights and ordinances of the Church of England. These acts, which became especially strict from Harvey's time on, were largely formal. They were a re-echo of those passed in England under the influence of Archbishop Laud, and were intended, no doubt, to catch the eye of that zealous and all-powerful prelate, but there was no Laud in this country to secure their enforcement, so they were largely deprived of their severity.

As regards the matter of religious toleration a comparison with the mother country and the New England colonies is decidedly favorable to Virginia. There is no record of the infliction of the death penalty in Virginia for reasons of a spiritual nature.

Such being the organization of the established church in Virginia, it is not strange that Puritans found a refuge there from the persecution that was directed against them in England.

About three years after the congregation of dissenters, who were to become famous as the Pilgrim Fathers, left England to seek in Holland a refuge from religious persecution, another little band of Puritans passed silently and unobserved to the new world. They were not separatists like those who went to

[1] Hugh Jones, *Present State of Virginia*, 106; Col. Byrd's Diary, 42.

Holland, but they escaped from their native land to avoid the same persecution. They reached Virginia on the 10th of May, 1611, in company with other colonists sent out by the London Company under the command of Sir Thomas Dale, who had just been appointed High Marshall of Virginia. Dale succeeded Lord Delaware, who had been compelled by ill health to leave the colony two months before. He was not commissioned as Governor, but was to act as such until the arrival of Sir Thomas Gates. Prior to coming to Virginia, Dale had served in the Netherlands as captain of an English company in the service of the States General. He was granted a leave of absence for three years in order to come to Virginia.[1] He was thus an experienced soldier and it was no doubt for this reason that he was appointed High Marshall.

As soon as Gates arrived Dale left Jamestown, accompanied by about 350 men, some of whom were Puritans and others Dutch laborers, and proceeded up the James to form a new settlement, named by him Henricopolis (contracted into Henrico) in honor of Henry, Prince of Wales. This was the second settlement made in Virginia. He selected for the site of his town a peninsula about 12 miles below the present city of Richmond. The river at this point makes a remarkable bend, and after flowing in a circuit of seven miles, returns to a point within 120 yards of the place of deviation. A place admirably adapted for defense against the Indians, Dale's city had three streets of well-framed houses, a handsome church, and the foundations of another to be built of brick, besides store-houses and watch-houses. On the opposite side of the river was a tract of land secured by forts and a palisade about two miles and a half in length. This tract was known as Hope-in-Faith, and the forts which defended it were called Fort Charity, Fort Elizabeth, Fort Patience, and Mount Malady, the last being used also as a hospital.[2] These names

[1] Brown, *Genesis of the U. S.*, 446.

[2] Stith, 124. Hamor's Narrative in Smith's *General History.*

in themselves are suggestive of the Puritan origin of the settlers.

Dale was accompanied by Rev. Alexander Whitaker, gratefully remembered as the apostle of Virginia. He was a son of the distinguished Puritan divine, Dr. William Whitaker, Master of St. John's College and Regius Professor of Divinity in the University of Cambridge.[1] Dr. Whitaker distinguished himself by controversial writings against the Church of Rome and took a leading part in framing the Lambeth Articles, which were strongly Calvinistic.[2] At the time that Whitaker the younger decided to go to Virginia, he was a graduate of Cambridge of five or six years standing, and in possession of a comfortable living in the north of England. "Without any persuasion, but God's and his own heart, he did voluntarily leave his warm nest; and, to the wonder of his kindred and amazement of them that knew him, undertook this hard but heroical resolution to go to Virginia, and to help to bear the name of God unto the Gentiles."[3]

In 1613 Whitaker went back to Jamestown with Dale, who was again placed in command of the colony by the return of Gates to England. One of his letters, dated Jamestown, June, 1614, to a cousin in London, is very remarkable and throws considerable light on the condition of the church in the colony. He says: "But I much more muse that so few of our English ministers, that were so hot against the surplis and subscription, come hither, where neither is spoken of."[4] Whitaker was drowned in the James River in the Spring of 1617, under circumstances which have not come down to us.

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[1] Purchas, IV, 1770. [2] Anderson, *History of the Colonial Church*, I, 135.
[3] Crashaw, Introduction to Whitaker's *Good Newes from Virginia.*
[4] Purchas, IV, 1771.

In 1613 Pocahontas married John Rolfe, and Whitaker was called upon to instruct her in the principles of the Christian religion, and to officiate at her baptism and marriage. In the celebrated painting of the baptism in the rotunda of the Capitol at Washington, he is represented as clothed in the surplice which he himself tells us was not in use in Virginia.

The years 1619–20–21, brought large accessions to the population of the colony, due to the liberal policy of the Company under the intelligent management of Sir Edwin Sandys and the Earl of Southampton. In 1619 the English separatists, who were then in Holland, obtained from the London Company, through the influence of Sandys, a patent authorizing them to settle in Virginia. They embarked in the Mayflower in 1620 and directed their course toward the mouth of the Hudson, then a part of Virginia. A storm, however, drove them out of their course and carried them to the north beyond the limits of the London Company's territory. The incident is interesting as illustrating the policy of the Company at this time. When a few years later the King was preparing to dissolve the Company and evidence was being collected against prominent members, it was charged against Sandys that he had intended to establish a free popular state of Brownists and separatists in Virginia with himself and his friends at its head.[1] Sandys, of course, never entertained any such idea as this, but he did undoubtedly encourage the emigration of Puritans to Virginia.

About this time two Puritan settlements were begun in the colony, which were destined to have a considerable influence upon the future history of both Virginia and Maryland.

The first, in Warrosquoyacke Shire, now Isle of Wight County, was commenced in 1619 by Captain Christopher Lawne on a creek which still bears his name. Lawne was a member of the first Assembly which met at Jamestown, June, 1619. He died the next year and his patent was renewed to his associates. The name of the plantation was changed to Isle of Wight, from which the county afterwards took its name.[2]

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[1] Appendix to 8th Report of Royal Commission on Historical MSS., Parts II and III, p. 45.

[2] Records of the London Company.

In 1621 Edward Bennett, a wealthy merchant of London, settled a colony of Puritans on Lawne's Creek. Bennett's name occurs as Deputy-Governor of the Merchant Adventurers resident at Delft,[1] where so many English Puritans flocked that it became almost a second London. At a general court, held November 1621, the London Company confirmed a patent to Edward Bennett for having planted 200 persons in Virginia.[2] At this time 50 acres of land where allowed for every person transported to the colony. Bennett himself did not come to Virginia, but placed the plantation in charge of his nephews, Robert and Richard Bennett, the latter of whom was subsequently governor of Virginia. William Bennett, another relative, was the first preacher in charge of the settlement.

This plantation received a severe blow from the Indian massacre of March, 1622. More than 50 were killed. During the next year 26 of those who survived the massacre died, leaving according to a census taken in February, 1624, 29 whites and 4 negroes.[3] The settlement prospered, however, in spite of these heavy losses.

In January 1622, Captain Nathaniel Basse settled at Basse's Choice, in Warrosquoyacke, not far from the Bennett plantation. He received patents for transporting 100 persons.[4] Basse had been associated with Lawne in 1619. In March 1632 he was commissioned by Governor Harvey to invite such of the inhabitants of New England as were dissatisfied with the climate to come further South and settle on Delaware Bay.[5] None availed themselves of the invitation. The Puritans who settled in Virginia came direct from England, and although a number of them afterward went to New England, there is no evidence of any coming from New England to Virginia, except indeed the three preachers in 1642, whose

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[1] Neill, *English Colonization of America.*

[2] Records of the London Company.

[3] Hotten, *Lists of Emigrants.*

[4] Records of the London Company.

[5] Randolph MSS., Vol. III, 219.

stay was short. These Puritan settlements in Warrosquoyacke seem to have steadily increased in numbers and in 1629 they sent 4 burgesses to the assembly, among them Richard Bennett and Nathaniel Basse.[1]

In November 1621, Daniel Gookin arrived out of Ireland with 50 men of his own and 30 passengers, "exceedingly well furnished with all sorts of provision and cattle," and planted himself at Newport News. He is mentioned as having undertaken to transport "great multitudes of people and cattle" to Virginia, and received patents for 300 people.[2] After the massacre of 1622 the colonists were ordered to abandon the outlying plantations and to concentrate their forces about the stronger ones. Gookin's settlement at Newport News was one of those ordered to be abandoned, but he refused to obey the order and gathering together his dependants, who amounted in all to only 35, remained at his post, "to his great credit and the content of his adventurers."[3]

In 1637 Gookin received a grant of 2,500 acres in Upper Norfolk, now Nansemond County, and in 1642 he was appointed commander of the county. He and his son, who accompanied him, were both natives of Kent County, England, though they had traded in Ireland. They were Puritans and closely associated with the Bennett settlement in the adjoining county.

The Puritans seem to have encountered not the slightest opposition on account of their religious views until the arrival of Governor Berkeley in 1642. The administration of Sir William Berkeley, one of the best known and most distinguished characters of the colonial period, marks a new epoch in Virginia history. For more than thirty years he was the most conspicuous figure in the affairs of the colony, and that too during a period marked by events of a most striking and unusual character. He was a perfect type of the Cavalier,

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[1] Hening, I, 139.

[2] Records of the London Company.

[3] Stith, 235.

narrow-minded, hot-headed, out-spoken, and withal very zealous in his support of the Established Church. He once expressed the wish that the ministers in the colony would pray oftener and preach less, and added: "But I thank God there are no free schools, nor printing, and I hope we shall not have them these hundred years." The political principles and religious tenets of the Puritans were equally offensive to him, and he soon found occasion for displaying his hostility towards them. This was afforded by the presence in Virginia of three congregational preachers from New England.

We have before alluded to the fact that the bad quality of the tobacco in certain parts of the colony did not favor the growth of the Established Church. This was especially the case in Nansemond County, where the Puritans were congregated. Rev. Hugh Jones, writing in 1724, says: "Some parishes are long vacant upon account of the badness of the tobacco, which gives room for dissenters, especially Quakers, as in Nansemond County."[1] Colonel Byrd in his Diary, written in 1728, confirms this statement. "We passed by no less than two Quaker meeting houses, one of which had an awkward ornament on the west end of it, that seemed to ape a steeple. I must own I expected no such piece of foppery, from a sect of so much outside simplicity. That persuasion prevails much in the lower end of Nansemond County, for want of ministers to pilot the people a decenter way to Heaven. The ill reputation of the tobacco in those lower parishes makes the clergy unwilling to accept of them, unless it be such whose abilities are as mean as their pay. Thus, whether the churches be quite void or but indifferently filled, the Quakers will have an opportunity of gaining proselytes. 'Tis a wonder no Popish missionaries are sent from Maryland to labor in this neglected vineyard, who we know have zeal enough to traverse sea and land on the meritorious errand of making converts. Nor is

[1] Present State of Virginia, 106.

it less strange that some wolf in sheep's clothing arrives not from New England to lead astray a flock that has no shepherd."[1] This last sentence is rather strange, for Colonel Byrd probably knew nothing of the missionary efforts of the New England preachers nearly a century before. These passages were, of course, written at a much later period than the one under consideration, when the Quakers were quite numerous in that section of the colony, but they are of great interest as showing that the Church of England had never been well established there.

Whatever the cause it is quite certain that at the time of Governor Berkeley's arrival in Virginia the parishes of Upper Norfolk, or Nansemond as it was afterwards called, were vacant, and the inhabitants being more religiously inclined than most of the Virginians of that day, decided to appeal to their brethren in New England for aid. During the summer of 1642 Philip Bennett was dispatched with letters to the elders at Boston. He arrived there safely in a small pinnace, while the General Court was in session. The letters were read publicly in Boston on a "Lecture Day." They were signed by Richard Bennett, afterwards Governor, Daniel Gookin, John Hill, and others, 71 in all, and dated 24th of May, "from Upper Norfolk in Virginia." They bewailed their "sad condition for the want of the means of salvation," and earnestly entreated a "supply of faithful ministers, whom upon experience of their gifts and godliness they might call to office." After a day spent in special prayer the elders decided to respond to the appeal and selected three ministers. Those who consented to go were John Knowles of Watertown, William Thompson of Braintree, and Thomas James of New Haven. The General Court was made acquainted with the decision of the elders, which it approved, and on the 8th of

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[1] Colonel William Byrd, *History of the Dividing Line between Virginia and North Carolina*, p. 42.

September, the Governor was ordered to commend the ministers to the Governor and Council of Virginia.[1]

The voyage proved a difficult one. They were wrecked off Hellgate and the Dutch Governor gave them "slender entertainment," but Isaac Allerton of New Haven, who happened to be there, provided them with a new pinnace and they were enabled to continue their voyage. After encountering "much foul weather" they reached Virginia eleven weeks after leaving Narragansett. Winthrop says that the dangers and difficulties which continually beset them made them seriously doubt whether they were called of God or not, but they were kindly received in Virginia, not by the Governor, "but by some well-disposed people who desired their company."

The letters commending them to Governor Berkeley might as well have been left behind, for at the first meeting of the Assembly, March 1643, the following act was directed against them. "For the preservation of the purity of doctrine and unity of the Church, it is enacted that all ministers whatsoever, which shall reside in the colony, are to be conformed to the orders and constitution of the Church of England, and not otherwise to be admitted to teach or preach publicly or privately, and that the Governor and Council do take care that all non-conformists, upon notice of them, shall be compelled to depart the colony with all convenience."[2]

Governor Berkeley issued a proclamation in accordance with this act which effectually silenced the Massachusetts preachers and compelled them to leave the colony. James and Knowles were the first to go. Knowles reached Boston the latter part of April. He reported that their efforts had been attended with great success, and that "though the State did silence the ministers, because they would not conform to the order of England, yet the people resorted to them in private houses to hear them as before." Thompson was the last to leave.

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[1] Winthrop's *Journal*, Mather's *Magnalia*, and Johnson's *Wonder-working Providence.*

[2] Hening, I, 277.

Cotton Mather chronicles the success in Virginia in a quaint poem, one stanza of which is as follows :

> "A constellation of great converts there
> Shone round him, and his heavenly glory were;
> Gookin was one of them ; by Thompson's pains,
> Christ and New England a dear Gookin gains."

The reference is to Daniel Gookin, Jr., whose father was the head of the Puritan settlement in Nansemond. Young Gookin, thus converted under Thompson's preaching, left Virginia the following year, and went to New England, where he soon became a man of prominence.[1]

On the 17th of April, 1644, about a year after the expulsion of the New England ministers, occurred the second great massacre in the history of Virginia. The Indians, taking advantage of the disorder occasioned by the civil war in England, determined upon a general and concerted massacre of the whites. It is intimated by some historians that they were incited to this act by certain parties who were dissatisfied with Berkeley's rule, presumably the Puritans, but there is no foundation for such a suggestion. The Governor had set apart Good Friday, April 18, as a special day of prayer for the success of the King's party. Just on the eve of this fast-day the Indians made their attack, which was entirely unexpected, and about 300 colonists were killed. Winthrop remarks that it is very observable that this calamity befell the Virginians shortly after they had driven out the godly ministers from New England.

Lord Baltimore, in view of these troubles and of the attitude of the Virginia government towards dissenters, made known through Captain Edward Gibbons, a Boston merchant

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[1] Gookin resided at Cambridge and represented that town in the General Court. In 1651 he was Speaker of the House of Deputies, and for more than 30 years he was Superintendent of Indian Affairs, with the title of Major-General. He died March 19, 1687, aged 75. He was the author of a history of the Indians.

who traded with the southern colonies, that any nonconformists would be welcomed in Maryland and guaranteed religious freedom. It is not probable that any availed themselves of the invitation at this time.

One of the most remarkable results of the massacre, if we may give full credence to the accounts that have come down to us, was the spiritual change which it wrought in Rev. Thomas Harrison, Governor Berkeley's chaplain. "After this visitation of Providence he became quite another man." He expressed his regret "with sorrow and concern" that, while he had openly encouraged the New England preachers, he had secretly used his influence with the Governor against them. But the Governor became "the more hardened and dismissed his chaplain, who was now grown too serious for him."[1] Upon this Harrison crossed over the James and took the place of the preachers he had helped to expel in ministering to the spiritual wants of the Nansemond Puritans. The Governor issued special orders against his refractory chaplain, and as a last resort swore at him, but all in vain. Harrison could not be turned aside from his purpose and he continued to preach to the people.

Just at this time Berkeley was called to England, where the civil war was at its height. When he returned to Virginia after a year's absence he found that colony on the verge of a revolution. Mathews and Claiborne had declared for Parliament. Claiborne and Ingle were in possession of Maryland, and Governor Calvert was a fugitive in Virginia. After assisting Calvert to regain his lost province, Berkeley once more turned his attention to Harrison and the Puritan settlement south of the James.

On the 3d of November, 1647, another act was passed against nonconformists. "Upon diverse information presented to this Assembly against several ministers for their neglects

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[1] Calamy, *Nonconformists' Memorial*, III, 174.

and refractory refusing after warning given them to read Common Prayer or Divine Service upon Sabbath days . . . it is enacted that all ministers in their several cures throughout the colony do duly upon every Sabbath day read such prayers as are appointed and prescribed unto them by the said Book of Common Prayer."[1]

The Puritans had felt for some time that their position was insecure and had seriously considered the question of leaving Virginia. Several letters on this subject had passed between Harrison and Governor Winthrop of Massachusetts. Under date of November 2, 1646, from Elizabeth River, Harrison writes: "Had your propositions found us risen up, and in a posture of removing, there is weight, and worth, and force enough in them to have staked us down again." In a second letter dated Nansemond, November 14, 1647, a few days after the passage of the act above cited, he says: "74 have joined here in fellowship, 19 stand propounded, and many more of great hopes and expectations."[2] Evidently the act of the Assembly had not disconcerted them.

The next year, however, the Governor made another attempt to uproot this nest of dissenters. William Durand, an elder in the Nansemond church, and Richard Bennett were banished. They took refuge in Maryland. Harrison was also ordered to depart the colony by the third ship at furthest. He went to Boston to take advice of the elders there as to the best course for the Virginia Puritans to pursue. He reached there on the 20th of August, 1648, and reported that the Nansemond church had grown to 118 members and that by conjecture fully 1000 others were of like mind. He also stated that many of the Virginia Council were favorably disposed toward Puritanism.[3]

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[1] Hening, I, 341.

[2] Massachusetts Historical Collections, Ser. IV, Vol. VII, 434.

[3] Savage's *Winthrop*, II, 407.

Meanwhile the Virginia Puritans had been invited by Captain William Sayle, afterward Governor of South Carolina, to join him in a Puritan settlement which he had begun in the Bahamas. But they "being very orthodox and zealous for the truth," as Winthrop informs us, would not decide the matter without advice from New England. Winthrop advised them strongly against leaving Virginia, "seeing that God had carried on his work so graciously hitherto, and that there was so great hope of a far more plentiful harvest at hand."

Harrison returned to Virginia for a short time during the winter of 1649, but was soon in Boston again.[1] His congregation meanwhile petitioned the Council of State in England for his reinstatement, and on the 11th of October, 1649, an order was sent to the Governor of Virginia.

"Sir: We are informed by the petition of some of the people of the congregation of Nansemond in Virginia that they had long enjoyed the benefit of the ministry of Mr. Harrison, who is an able man and of unblamable conversation, who hath been banished by you for no other cause but for that he would not conform himself to the use of the Common Prayer Book. We know that you cannot be ignorant that the use of the Common Prayer Book is prohibited by the Parliament of England, and therefore you are hereby required to permit the same Mr. Harrison to return to his said congregation to the exercise of his ministry, unless there be sufficient cause as shall be approved of the Parliament or this Council when the same shall be represented unto us. Of your compliance herein we expect to receive an account from yourself of the first opportunity."[2] This letter came too late to be of any service, even if the old Cavalier Governor had been disposed to pay any attention to an order of Parliament.

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[1] Massachusetts Historical Collections, Ser. IV, Vol. VII, 436.

[2] Sainsbury Papers, 1640–1691, p. 19, in the Virginia State Library. Briggs, *American Presbyterianism*, app. VI.

By the time it reached Virginia the greater part of Harrison's congregation had moved to Maryland.[1]

The government of that province had been reorganized the year before on a Protestant basis. Leonard Calvert had died in June 1647, a few months after he had succeeded, with the assistance of Governor Berkeley, in reëstablishing himself at St. Mary's. Upon his death bed he appointed Thomas Greene, a Catholic, to succeed him as Governor. Meanwhile Lord Baltimore, like a great many other Catholic noblemen, had turned Parliamentarian, in the hope that, with the overthrow of the Royalists and the Established Church, the Catholics would receive recognition and be allowed the free exercise of their religion. His position, however, was at best insecure, and in order to make sure of his province he reorganized it by the appointment of a Protestant Governor and Secretary, with a Protestant majority in the Council.[2] William Stone, formerly of Northampton County in Virginia, was appointed Governor by a commission dated August 6, 1648.

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[1] Harrison is a most interesting character. Calamy (*Nonconformists' Memorial*, I, 330) says that Harrison was born at Kingston-upon-Hull and brought up in New England. The fact of his being Governor Berkeley's chaplain would seem to render this improbable. He was probably raised in Virginia, where there were several families of the name at an early date. After leaving Virginia he went to Boston. Here he married Dorothy Symonds, a cousin of Gov. Winthrop, and in a short time went to London, where he attained great distinction as a preacher. He did not, however, forget his old congregation, for on the 28th of July, 1652, he addressed to the Council of State a petition "on behalf of some well-affected inhabitants of Virginia and Maryland." When Henry Cromwell was appointed Lord Lieutenant of Ireland, Harrison entered his service as chaplain, and upon the death of the Lord Protector he preached a funeral sermon before a large gathering in Christ Church Cathedral, Dublin. At the Restoration he returned to England, but was soon silenced by the Act of Uniformity, upon which he went back to Dublin and exercised his ministry as a dissenter, having a "flourishing congregation and many persons of quality for his constant auditors."

[2] Bozman, *History of Maryland*, 333.

About this time Richard Bennett and William Durand were banished from Virginia and took refuge in Maryland. At their solicitation Governor Stone invited the Nansemond congregation to his province, and within the next year fully 300 Puritans migrated from the lower James to Maryland and settled on the Severn near the present site of Annapolis. They called their settlement Providence.[1] The movement did not take place all at once. A few families went during the spring and summer of 1649, and the others followed in the fall. The supremacy of the Puritan party in England had produced little effect upon Governor Berkeley, who remained a staunch Royalist to the end. It is probable that the execution of Charles I. had produced somewhat of a reaction in Virginia. The inhabitants of that colony had in the main been well treated by the Stuarts, and they were not prepared for such extreme measures as their brethren at home, who had experienced all the horrors and excitement of a long civil war. In addition to this a number of Cavaliers came to the colony about this time, one ship alone, in September 1649, bringing over as many as 330. These, of course, had great influence in shaping public sentiment. Under these circumstances Berkeley, knowing that Parliament was too much occupied for the present with domestic affairs to interfere with him, continued his persecution of the Puritans, and in October, 1649, an act was passed condemning the execution of Charles and declaring that any one, who should undertake to defend the "late traiterous proceedings" against the King, should be adjudged accessory post factum to his death.[2] Upon the passage of this act those Puritans who were still wavering in their decision quickly left the colony. In Maryland they were granted a large tract of land, local government, and religious freedom.

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[1] For the further history of this settlement see, "A Puritan Colony in Maryland," by Daniel R. Randall, J. H. U. Studies, 4th Series, No. VI, 1886.

[2] Hening, I, 359.

It had been the policy of the Maryland government, or rather of the Lord Proprietary, from the first to admit Protestant settlers on equal terms with Catholics. The credit of this toleration has been claimed by Catholics and Protestants alike. Whatever credit is due to any one is due to the Lord Proprietary, Cecilius Calvert. He, however, adhered to this policy for political and economic and not for religious reasons. It may be reasonably doubted whether the exclusion of Protestants from an English colony would have been allowed under any circumstances. At any rate he did not attempt it. Although toleration had been the policy of the government from the start, it was not guaranteed by any formal document until the appointment of Stone, the first Protestant Governor, in 1648. In the oath required of him is the following clause: "I do further swear that I will not by myself nor any person directly or indirectly trouble, molest or discountenance any person whatsoever in the said Province professing to believe in Jesus Christ and *in particular no Roman Catholic* for or in respect of his or her religion."[1] This principle was also embodied in the famous *Act Concerning Religion* passed by the Assembly on the 21st day of April, 1649. It tolerated only those who believed in Jesus Christ. Those who denied the divinity of Christ or the doctrine of the Trinity were to be punished with death and the forfeiture of estates. It is probable that a majority of this Assembly were Protestants.[2] The act, however, did not originate with the Assembly, but was passed in exactly the form in which it was submitted by the Proprietary. This Assembly was held shortly before the settlement of the Puritans at Providence, and so they had nothing to do with it. They, however, very quickly rose to political prominence. At the very next Assembly, April 1650, James Cox, one of the two burgesses sent from Providence

[1] Maryland Archives, Council Proceedings, I, 209.
[2] Bozman, *History of Maryland*, II, 354.

was elected Speaker. The Protestants were now decidedly in the majority, both in the Assembly and in the colony at large.

III.

Puritan Supremacy in Virginia and Maryland.

It was not until toward the close of the year 1650 that the Parliament of England found itself sufficiently free from the more urgent demands of domestic affairs to take any steps towards settling the government of the colonies. In October 1650, an act was passed prohibiting all trade or intercourse with Virginia or the West Indies for their "divers acts of rebellion," and the Council of State was given power to send ships to any of the plantations aforesaid and "to enforce all such to obedience, as stand in opposition to the Parliament." The term Virginia was still used in a very broad and indefinite sense as applying to any of the American colonies, and the expression *Maryland in Virginia* frequently occurs in documents of this period. The fears of Lord Baltimore were very naturally aroused at the prospect of commissioners being appointed to settle the affairs of the colonies, especially as Charles II. had been proclaimed King in Maryland, as well as in Barbadoes and Virginia, although it had been done without his knowledge or approval. He now found himself in an extremely awkward position. On the one hand he had incurred the resentment of the King, because he "did visibly adhere to the rebels in England, and admitted all kinds of sectaries and ill affected persons into his plantation." For these reasons his charter was annulled, so far as Charles had power to do so, and Sir William Davenant, the poet, was appointed Royal Governor of Maryland. On the other hand he was not quite sure of his position with Parliament, and reports were being circulated in his province to the effect that the proprietary government was about to be dissolved. These reports caused such uneasiness that the Puritans of

Providence, who had taken a very prominent part in the Assembly of 1650, refused to send delegates to the one to be held in 1651, saying that they preferred to await the action of Parliament. About the same time Governor Berkeley, who no doubt was the informant of his Majesty in regard to the conduct of Lord Baltimore in admitting "all kinds of sectaries and ill affected persons into his plantation," seems to have considered that province a fit place for encroachments, now that his Majesty had recalled the charter, and authorized Edward Scarborough of Accomac County to take possession of Palmer's Island, a very desirable trading post at the mouth of the Susquehannah, formerly held by Claiborne.

Baltimore, however, was determined not to let the control of his province pass from his hands without a struggle. It required all the influence he could bring to bear upon the Council of State to prevent the name of Maryland from being inserted in the commissions about to be issued for the reduction of the colonies to the authority of Parliament. He was, however, prepared for the issue. The protection which had been extended to the Puritans, and the act of toleration passed by the Assembly in 1649, now stood him in good stead. He went before the committee with a certified declaration from the principal Protestants in his province to the effect that they enjoyed entire freedom and liberty in the exercise of their religion. The declaration was signed by the Governor and the three Protestant members of the Council, eight burgesses, and upwards of forty inhabitants of the colony.[1] He also disowned the act of Greene in recognition of Charles II, and adduced the evidence of several Protestant merchants to show that Maryland neither was nor had been in opposition to Parliament. The amount of political sagacity and shrewdness, which he displayed in reorganizing his province on a Protestant basis and recognizing by statute the principle of religious

[1] Bozman, *History of Maryland*, II, 672, where the declaration is given in full.

toleration just as the top wave of the great Puritan revolution was carrying everything before it, is truly remarkable. He was in a measure successful; the name of Maryland was stricken out, but in the final form in which the instructions were issued a circumlocution was used which practically included it. The paragraph alluded to is as follows: "Upon your arrival at Virginia you or any two or more of you shall use your best endeavors to reduce all the plantations within the Bay of Chesopiack to their due obedience to the Parliament of the Commonwealth of England."[1] This, of course, by any reasonable construction would be taken to include Maryland.

The commissioners named to carry out these instructions were Captain Robert Denis, an officer in the Navy, who was put in command of the fleet, Thomas Stagge, Richard Bennett, and William Claiborne. In case of the death or absence of Captain Denis, Captain Edmund Curtis, commander of the frigate Guinea, was instructed to act as commissioner and take charge of the expedition. Bennett and Claiborne, who were in Virginia at the time, probably knew nothing of their appointment until the expedition arrived there.

The other commissioners embarked on board two ships, with a force of 750 men, towards the latter part of September, 1651. On the voyage out, the ship which bore Denis and Stagge with the original commission was lost. Curtis, upon whom the command now devolved, and who had a copy of the instructions, continued the voyage, touching at Barbadoes. Here he found that Sir George Ayscue, who had been sent out several months before to reduce that island, was still held in check by the inhabitants. After assisting him to force them to surrender, Captain Curtis sailed for Virginia and arrived before Jamestown early in March, 1652.

Governor Berkeley, who had learned of the approach of the frigate, had made active preparations for resistance and was no doubt sincere in his intentions. He had distributed muskets

[1] Thurloe State Papers, I, 197.

among the inhabitants of Jamestown and manned some Dutch ships that happened to be in the harbor. The maritime policy of England at this time was largely directed towards breaking up the carrying trade of the Dutch, and one of the chief objects in sending the expedition against the colonies was to suppress the illicit exportation of tobacco in Dutch ships, which, in spite of all restrictions, had greatly increased during the continuance of the civil war in England. These ships were thus very willing to render their assistance to Governor Berkeley. Before carrying out such warlike measures, however, a conference was held, the Assembly was summoned, and the Virginians quietly decided to submit to the authority of the Commonwealth of England.

The articles of surrender between the commissioners of Parliament and the Assembly of Virginia were concluded and signed, March 12, 1652. The Virginians obtained the most liberal terms from the commissioners. The most important provisions were that the act of submission should be considered voluntary and not forced by conquest, that there should be full indemnity for all past acts against Parliament, that those who refused to submit should have a year in which to remove themselves and their property from the colony, and that the use of the Book of Common Prayer should be permitted for one year.[1] The fourth article is of special interest to us: "That Virginia shall have and enjoy the ancient bounds and limits granted by the charters of the former Kings, and that we shall seek a new charter from the Parliament to that purpose against any that have intrenched upon the rights thereof." This, of course, was a blow at Maryland. The articles were signed by Richard Bennett, William Claiborne, and Edmund Curtis.

Various attempts have been made, under the impression that the Virginians at this time were all Cavaliers, to explain this seemingly unaccountable conduct of Governor Berkeley

[1] Hening, I, 363.

in surrendering the colony at the bidding of a single frigate. There is not the slightest mystery involved in the matter. The general misapprehension in regard to this surrender and the provisional government afterward established, is due to the fact that the strong Puritan element in the colony has been entirely overlooked. The more radical dissenters had, indeed, been driven out by Governor Berkeley, but there remained behind a large and influential class, who were Puritans in politics if not in religion. The Cavalier immigration, which has given such a romantic tinge to the entire colonial period, had scarcely begun at this time. Bennett was the leading spirit among the dissenters while Claiborne and Mathews, although not identified with the Puritans in religion, had all along been the leaders of the popular party, having brought about the insurrection under Governor Harvey and deposed him from office, and furthermore both had declared for Parliament in 1644. Under these circumstances it is not strange that the assembly should have forced Governor Berkeley to surrender the government into the hands of Bennett and Claiborne, and that such liberal terms were agreed upon.

After the settlement of Virginia, the commissioners proceeded to St. Mary's to require from the Maryland government the formal recognition of their authority. This was done in pursuance of the instructions given them to reduce *all the plantations within the Bay of Chesapeake* to the authority of Parliament. This clause certainly justified them in considering Maryland within the scope of their commission, whatever may have been the intention of the Council of State in England. Captains Denis and Stagge, the only two of the commissioners who had been present when the instructions were issued, were lost on the way out. Curtis, Bennett, and Claiborne had therefore received no verbal instructions, but were governed solely by the written ones. It has been stated by most of the Maryland historians that Bennett and Claiborne took advantage of the powers loosely defined in their

instructions to usurp control of the government of Maryland in order to give Claiborne an opportunity to settle his old score with Lord Baltimore. There seems no justification whatever for such an opinion. Captain Curtis, the Commander of the expedition, who had no connection with the colonies and hence no personal interests involved, interpreted the instructions as including Maryland, and it was in his ship and under his command that Bennett and Claiborne first went there. Their action was subsequently confirmed by the authorities in England.

Furthermore, Claiborne had nothing to expect in the way of support or recognition of his claims to Kent Island from the Puritans of Providence. He had never been identified with the Puritan dissenters. This is shown by the fact that the Assembly of 1650, which was largely Puritan, and of which James Cox, one of the burgesses from Providence was Speaker, passed an act prohibiting all compliance with Claiborne under penalty of death and confiscation of property.[1] The year before Claiborne had had some correspondence with Governor Stone in regard to Kent Island.

When they reached St. Mary's the commissioners simply required a formal submission on the part of the Governor and Council "so as that they might remain in their places conforming themselves to the laws of the Commonwealth of England in point of government only and not infringing the Lord Baltimore's just rights." In conformity with the laws of England the commissioners demanded that they should subscribe to the *engagement* "to be true and faithful to the Commonwealth of England as it is now established without King or House of Lords," and that all writs and warrants should be issued in the name of the Keepers of the Liberty of England. To the first of these demands the Governor and Council responded that they were perfectly willing to agree, but in regard to the second, as writs and warrants had always

[1] Maryland Archives, Assembly Proceedings, I, 287.

been issued in the name of the Lord Proprietary and not in the King's name, they would not consent to the change. As Governor Stone persisted in his refusal to submit to these demands, and the commissioners had no power to deviate from their instructions in this particular, Stone was deprived of his commission, and by a proclamation, issued on the 29th of March, the government of the province was vested in a Council, consisting of Robert Brooke, Esq., Colonel Francis Yardley, Mr. Job Chandler, Captain Edward Windham, Mr. Richard Preston, and Lieutenant Richard Banks.[1] The commissioners then returned to Virginia to meet the Assembly which they had summoned before going to Maryland.

The Assembly met on the 30th of April, 1652. Bennett was elected Governor and Claiborne was restored to his old place as Secretary of State. Under the provisional government the Governor and other officers were elected by the Assembly.[2] Bennett was succeeded as Governor in 1655 by Edward Diggs. Diggs in turn was succeeded in 1656 by Samuel Mathews, who continued in office until his death in 1660. Claiborne continued as Secretary throughout the whole Commonwealth regime.

As soon as the affairs of the two colonies were thus satisfactorily settled, Captain Edmond Curtis returned to England with the frigate. Thus the two remaining commissioners, Bennett and Claiborne, were left in undisputed control of both colonies. Bennett was Governor of the colony from which he had so recently been expelled as a dissenter, and Claiborne, by a strange turn of fortune, found himself in virtual control of the province of his old rival, from which he had been banished years before as a traitor and convict. Both appear to have acted with singular moderation. Bennett, who more than any one else had reason for feelings of personal enmity to Berkeley, seems not to have displayed the least resentment. Berkeley was allowed to retire to his private plantation, where

[1] Maryland Archives, Council Proceedings, I, 275. [2] Hening, I, 371.

he remained not only during the prescribed year but all through the period of the provisional government, and this in spite of the fact that he did not take the oath of allegiance to the Commonwealth. Claiborne, on the other hand, in spite of the fact that all the civil disturbances between Catholics and Protestants which followed in Maryland have been fathered upon him, appears to have had very little to do with the affairs of that province. From a careful examination of the records, it appears that he was in Maryland only twice after the reduction of that province, and upon both of those occasions in company with Bennett in the legitimate discharge of his duties as commissioner. He seems to have devoted himself to the duties of his office as secretary and to the affairs of his plantation on the Pamunkey. There is nothing whatever to show that he interfered with the affairs of Kent Island at this period. The only mention of his name in that connection occurs in a treaty negotiated with the Indians, July 5, 1652, which speaks of "the Isle of Kent and Palmer's Island which belong to Captain Claiborne." This paper was signed by Richard Bennett and four others appointed by the Governor and Council of Maryland to negotiate the treaty, and it may be that Bennett had this clause inserted as a mere assertion of Claiborne's claim. There is positive evidence, on the other hand, that the government of the island continued subordinate to the Maryland authorities.[1]

Towards the latter part of June, about two months after the departure of Captain Curtis, Bennett and Claiborne returned to Maryland. If they had usurped control of that province with sinister intentions through a misconstruction of powers, as has been so often stated, we would naturally expect to find them exercising their power in an arbitrary way, now that they were left without any check upon their authority. But their conduct was the very reverse. When they reached St. Mary's they found that Governor Stone, whom they had

[1] Maryland Archives, Council Proceedings, I, 290, 291.

deposed from office on their first visit, had reconsidered the matter and was now willing to accede to their demands and to agree to issue all writs in the name of the Keepers of the Liberties of England. They immediately reinstated him in his office and also reappointed Lord Baltimore's former Secretary, Thomas Hatton, by a proclamation of June 28, 1652.[1]

For a while affairs went on smoothly in Maryland, but towards the close of the year 1653 the relations between Stone and the Puritans of Providence became very strained. Stone imposed new oaths upon them and arbitrarily dismissed several of them from office. On the 3d of January, 1654, a petition was addressed to the commissioners by the Puritans complaining of their grievances, especially the oath, saying: "This oath we consider not agreeable to the terms on which we came hither, nor to the liberty of our consciences as Christians and free subjects of the Commonwealth of England."[2] To this petition Bennett and Claiborne replied by letter telling them to remain in obedience to the Commonwealth of England. On the 1st of March a second petition was presented to the commissioners, to which they returned a like reply. About the same time, Stone, in direct violation of his agreement with them, issued a proclamation saying that henceforth all writs should be issued in the name of the Lord Proprietary as formerly. He did this at the direction of Lord Baltimore. This act brought Bennett and Claiborne to Maryland once more. On the 4th of July Stone issued a proclamation in which he charged the commissioners with leading the people "into faction, sedition, and rebellion against Lord Baltimore," and prepared to resist their authority. The commissioners, at the head of a party of Puritans from Providence and Patuxent, then advanced towards St. Mary's and Stone consented to resign the government. By proclamation of July 22, 1654,

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[1] Maryland Archives, Council Proceedings, I, 275.

[2] Virginia and Maryland, or Lord Baltimore's Case Answered, &c. Force Tracts, II, 28.

the government of the province was again vested in a Council with William Fuller at the head. The commissioners ordered an Assembly to be summoned to meet on the 20th of October, "For which Assembly all such shall be disabled to give any vote or to be elected members thereof as have borne arms in war against the Parliament or do profess the Roman Catholic religion."[1] This was the last act of the commissioners in Maryland. Cromwell approved their conduct in settling the civil government of Maryland by a letter dated September 26, 1655: "It seems to us by yours of the 29th of June and by the relation we received by Colonel Bennett that some mistake or scruple hath arisen concerning the sense of our letters of the 12th of January last; as if by our letters we had intimated that we would have a stop put to the proceedings of those commissioners, who were authorized to settle the civil government of Maryland, which was not at all intended by us, nor so much as proposed to us by those who made addresses to us to obtain our said letter; but our intention (as our said letter doth plainly import) was only to prevent and forbid any force or violence to be offered, by either of the plantations of Virginia or Maryland from one to the other upon the differences concerning their bounds, the said differences being then under the consideration of ourself and Council here; which for your more full satisfaction we have thought fit to signify to you."[2] The boundary dispute referred to was over the location of Watkins' Point.

The Puritan Assembly which met in October, 1654, passed an act concerning religion, by which toleration of the Catholic religion was withdrawn.[3] This act was copied almost bodily from the one passed in England shortly before.

When Lord Baltimore heard that Stone had again surrendered the government of the province, he wrote a letter to

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[1] Maryland Archives, Council Proceedings, I, 311.

[2] Thurloe State Papers, IV, 55.

[3] Maryland Archives, Proceedings of the Assembly, I, 340.

him upbraiding him for his conduct and commanding him to take control of the government again. Upon this Stone gathered together his forces and marched against the Providence settlement. A battle was fought on the Severn, March 25th, 1655, in which the Puritans, under Fuller, were completely successful, and Stone and most of his followers taken prisoners.[1] This left the Puritans in undisputed control of the province.

In July 1656, Lord Baltimore appointed Josias Fendall Governor, but he was Governor only in name. The Puritans continued in control of the province until the agreement with Lord Baltimore, November 30th, 1657.

Meanwhile the Virginians had been using every effort, through their agent in England, Samuel Mathews, to prevent the government of Maryland from being again placed in the hands of Lord Baltimore, and even attempted to have his charter revoked. In the first instance the matter was referred by the Council of State to a Committee of the Navy, who reported on the 31st of December, 1652, favorably to the claims of Claiborne and the Virginians.[2] This report was never acted upon. For the next five years a very bitter paper warfare was waged between Lord Baltimore on the one hand and the agents of the colony of Virginia on the other. No new points were brought out on either side. Lord Baltimore prepared his "Reasons of State Concerning Maryland in America," an attempt to show that it was to the advantage of the Commonwealth of England that Maryland should continue a separate government from Virginia, and the agents of Virginia set forth their "Objections against Lord Baltimore's Patent, and Reasons why the Government of Maryland should not be put in his hands," claiming (1) that the Maryland charter was an infringement of the rights of the colony of

[1] Bozman, *History of Maryland*, II, 524.

[2] Virginia and Maryland, or Lord Baltimore's Case Answered, etc., p. 20. Force Tracts, Vol. 2.

Virginia, (2) that it comprehended only unsettled lands, whereas Kent Island had been settled under the Virginia Government "before the name of Maryland was ever heard of," and (3) that Lord Baltimore was a Catholic and a Royalist. Numerous other documents to the same effect appeared on both sides.[1]

In 1655, Bennett was sent over to England to assist Mathews in his attack upon the Maryland charter. He was succeeded as Governor by Diggs. The following year Diggs was also sent to England, and Mathews was elected to succeed him. Mathews was still in England at this time and he seems to have remained there until November, 1657, when the controversy was finally concluded and Lord Baltimore allowed to assume control of his province once more.

This agreement was brought about in a rather strange way. Cromwell seems to have paid very little attention to the complaints and petitions of either party. They were all referred to the Council of State and Board of Trade, but there seemed no likelihood of a decision. The Protector was rather inclined at this time to cultivate the good will of the Catholic Peers, who were none of them very zealous Royalists. The agents of Virginia, under these circumstances, seem to have despaired of accomplishing the destruction of Lord Baltimore's proprietary rights, and to have thought it best to come to an agreement with him on the best terms they could secure for their Puritan brethren in Maryland without waiting for a decision from the Council of State. Bennett and Mathews thus ceased to act in their capacity as agents for the Virginia government, and in the negotiations which followed acted as the representatives of the Maryland Puritans. The settlement seems to have been brought about through the influence of Diggs, who acted as intermediary between the two parties in negotiating the terms. A formal paper was drawn up and signed on the 30th

[1] Thurloe State Papers, V, 482–487; Hazard, *Collection of State Papers*, I, 620–630.

of November, 1657, by Lord Baltimore, on the one side, and Bennett and Mathews on the other, in the presence of Edward Diggs, and others. The terms of the settlement were as follows: (1) Lord Baltimore was not to call in question any act committed since the disturbances in the province began; (2) the people in opposition were to have patents for such land as they could claim under Lord Baltimore's conditions of plantation; and (3) Lord Baltimore promised never to give his consent to the repeal of the act of 1649, whereby all persons professing belief in Jesus Christ were allowed freedom of conscience.[1]

The Maryland Puritans accepted these terms and Puritan supremacy in Maryland came to an end.

There were no civil disturbances in Virginia under the provisional government. In January, 1660, Governor Mathews died. Richard Cromwell had resigned the Protectorate several months before. There was no ruler in England and no governor in Virginia. There had been a reaction in both countries and in March, 1660, two months before the Restoration in England, Governor Berkeley was called upon to undertake once more the government of the colony, this time by election of the House of Burgesses. Charles II was proclaimed King in Virginia in October, 1660,[2] and not before the Restoration as has been sometimes stated.

Under her Puritan Governors Virginia reached a high pitch of prosperity, and at the time of the Restoration possessed free-trade, universal suffrage and religious freedom. This prosperity, however, was short-lived. Upon the Restoration the Navigation Act was enforced, the suffrage again limited, and severe laws against dissenters enacted.

After the settlement with Lord Baltimore the Virginians seem to have become reconciled to the loss of territory involved in the Maryland grant, and the two colonies settled down into relations of cordial friendship, which have seldom been

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[1] Maryland Archives, Council Proceedings, I, 332.

[2] Hening, I, 526, f. n.

interrupted, except in a local way over boundary disputes. Claiborne was compensated to some extent for his losses in Maryland by grants of land at various times from the Virginia government, which amounted in the aggregate to more than 20,000 acres. But he never recovered from the sense of injustice received at the hands of the Maryland authorities. This is illustrated by the following incident.

In January 1677, the commissioners who had been sent over to Virginia to compose the disturbances growing out of Bacon's rebellion, wrote to his Majesty that the independent provinces of Maryland and North Carolina were very prejudicial to his Majesty's interests in Virginia, and recommended that the government of those provinces might be assumed by his Majesty.[1] This seems to have kindled once more a spark of hope in the breast of Claiborne, who was now approaching the close of his life, and in March, 1677, he laid his claims before the commissioners, enclosing almost all the papers relating to the controversy. At the same time the Virginia Assembly, in an address to the King, stating their grievances, urged the cause of Claiborne's petition, showing: "that the Island of Kent in Maryland, granted to, seated and planted, by Colonel Claiborne, Sen., formerly a limb and member of Virginia (as may appear by our records, they having sent delegates to this assembly, and divers other Indian proofs and evidences), is since lopt off and detained from us by Lord Baltimore."

The commissioners referred Claiborne's petition to the King, as not being within their powers to decide, since it concerned another province, and we hear nothing further of it.

Shortly after this Claiborne died in New Kent County, Virginia, where he had settled more than twenty years before, receiving a large grant of land from the Assembly on the Pamunkey River. He organized the county and named it New Kent in remembrance of his old settlement in the Chesapeake.

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[1] Burk, *History of Virginia*, II, 259.

While it was ordained that the interests of one man should be sacrificed to the future of a great and prosperous commonwealth, we cannot help recognizing the strength of Claiborne's claims and admiring the resolution and persistency with which he defended them. He was thoroughly convinced of the justice of his cause and received for a long time the encouragement of his King, and always the hearty approval of the Virginians. In spite of the abusive epithets that have been heaped upon him, there is no reason why the slightest stigma should attach to his personal character.

The Puritans, who played such an important part in the early history of Maryland and Virginia, seem not to have left any impression that can be directly attributed to them on the political institutions of either colony. In Virginia there was always a strong undercurrent of democracy, which cropped out more than once, notably in the insurrection under Harvey and in Bacon's rebellion nearly half a century later, but these popular movements cannot with any degree of confidence be attributed to Puritan influence. In matters of religion, on the other hand, we would naturally expect to find, in Maryland, at least, some survival of the influence of the Puritan settlers, but this nowhere appears. Their influence was probably in the course of time counteracted by the Catholics.

In Virginia it was different. The Puritans who remained after the Restoration, although not radical enough to separate from the Established Church left, nevertheless, a profound impression upon that Church. If the Cavaliers outstripped them in numbers and political power, they certainly did not in spiritual force, for a spirit of moderate Puritanism continued to dominate both the clergy and laity of the Episcopal Church and its influence has not yet been lost. Three quarters of a century after the Cavalier immigration Rev. Hugh Jones wrote: "In several respects the clergy are obliged to omit or alter some minute parts of the Liturgy, and deviate from the strict discipline and ceremonies of the church; to avoid giving offence, through custom, or else to prevent absurdi-

ties and inconsistencies. Thus surplices, disused there for a long time in most churches, by bad examples, carelessness and indulgence, are now beginning to be brought in fashion, not without difficulty; and in some parishes where the people have been used to receive the Communion in their seats (a custom introduced for opportunity for such as are inclined to Presbytery to receive the sacrament sitting) it is not an easy matter to bring them to the Lord's table decently upon their knees."[1] Green says that "the habit of receiving the Communion in a sitting posture had been common" in England, but was stopped by Laud, when he became Primate in 1633.[2] It is clear that this habit had been introduced into Virginia by the early Puritans; for Rev. Hugh Jones wrote before the Presbyterian immigration had made itself felt. His book was written in 1724 just after an attempt on the part of the Bishop of London to bring the Virginia Church under stricter discipline.[3] Surplices did not come into general use in Virginia until far into the present century and in some parishes not until within the last fifty years. The Virginia diocese has always claimed to be extremely low church and it still differs radically both in doctrine and ceremonial from most of the other dioceses of the same denomination. This conservatism, we claim, is a survival of the influence of the early Puritan settlers, enforced, no doubt, by the Huguenots, who came in later, a number of whose ministers occupied Episcopal parishes.

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[1] Present State of Virginia, 69.
[2] Green, *History of the English People*, III, 159.
[3] Bishop Perry's Collection of MSS., 257, ff.

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THE RISE AND DEVELOPMENT

OF THE

BICAMERAL SYSTEM IN AMERICA

A Dissertation Presented to the Board of University Studies of the Johns Hopkins University for the Degree of Doctor of Philosophy

BY

THOMAS FRANCIS MORAN, A. B.,

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CONTENTS.

THE RISE AND DEVELOPMENT OF THE BICAMERAL SYSTEM IN AMERICA.

Introduction.

The purpose of this study is to trace the rise and development of the bicameral system from its beginnings in Massachusetts to its incorporation into the Federal Constitution. The acknowledged importance and universal application of this principle of government would seem to warrant a study of the various steps and, in so far as may be, of the causes which led to its introduction into the federal and all of the state constitutions. It is not necessary at this late day to exalt the importance of the bicameral principle. "The division of the legislature into two separate and independent branches," says Kent, "is founded on such obvious principles of good policy, and is so strongly recommended by the unequivocal language of experience, that it has obtained the general approbation of the people of this country." [1] It is, however, no part of the object of this paper to discuss the advantages or disadvantages of the system. Its philosophic aspects have attracted the attention of Kent,[2] Story,[3] Lieber [4] and a host of other political writers of eminence both in Europe and America. With this phase of the subject we have nothing to do. It is to the historical evolution of the system that we turn our attention.

[1] Commentaries, I, Sec. 222. [2] *Ibid.*, Secs. 222–224.

[3] Commentaries, II, 26–45.

[4] Civil Liberty and Self Government, Chap. XVII. See also John Adams' Defence of the American Constitutions.

CHAPTER I.

The New England Colonies.

Section I.—Massachusetts.

In tracing the rise and development of the bicameral system in America, we naturally begin our study with Massachusetts, since it is here that we first find a colonial legislature consisting of two houses. In 1629 a charter was granted in England to the "Governor and Company of Mattachusetts Bay in Newe-England." In the following year the company and their charter were transferred to America. In accordance with this patent the whole body of freemen elected annually a governor, deputy-governor, and eighteen assistants[1] for "ordering of the generall buysines and Affaires." The legislative power, however, resided in the general assembly of freemen. The freemen met four times a year for the purpose of enacting laws. This plan soon seemed impracticable, and, in October, 1630, the power of electing governor and deputy-governor and of enacting laws was given to the assistants. The number of assistants actually performing the functions of their office was at times as low as five. Here, then, was an incipient oligarchy. The natural result followed. This vast power could not be placed in the hands of a privileged few with impunity. In performing their functions of office it became necessary for the assistants to levy a tax. In 1631 the people of Watertown refused to pay the tax thus levied on the ground that it was "taxation without representation." The pastor, elder, and a

[1] Poore's *Charters and Constitutions*, I, 932.

few leading members of the Watertown church, when summoned before the Governor and assistants, declared that "it was not safe to pay moneys after that sort, for fear of bringing themselves and posterity into bondage."[1] They further say that they consider the government "no other but as of a mayor and aldermen, who have not power to make laws or raise taxations without the people." The assistants reply that the government is "rather in the nature of a parliament," and that the assistants, being chosen by the freemen, are their legal representatives, and so vested with power to levy taxes. The Watertown men concede the point, make a written apology for their obstinacy, and, according to the Journal of Governor Winthrop, go home apparently satisfied. Yet this protest, though apparently of no avail, was the origin of a very important constitutional change. The train of ideas thus set in motion led to the introduction of the representative system in 1632.[2] In May of that year each town chose two deputies to meet in the General Court with the Governor and assistants and to advise with them with regard to the raising of a "publique stocke."[3] We have here an analogue of the English Parliament. In this humble legislative Assembly the germs of the bicameral system are plainly discernible. The assistants were elected by the people at large while the deputies were chosen by the various towns. This difference in the modes of election naturally led both to think of themselves as constituting two separate bodies, though they deliberated and voted as one. What was to be their real status? Were they

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[1] Winthrop's *History of New England*, I, p. 84 (Savage's edition).

[2] Neither in the Massachusetts Records nor Gov. Winthrop's Journal is there any expressed connection between the Watertown case and the introduction of the representative system, yet the general drift of the matter indicates that such must have been the case. Doyle, in speaking of the introduction of the representative system says: "We can hardly err in supposing that this was the direct result of the protest made by the men of Watertown." *Puritan Cols.*, Vol. I, 106.

[3] Winthrop, I, 91; Massachusetts Records, I, 95.

to continue to deliberate and to vote as a single body, which they outwardly were, or as two separate bodies, which they were in reality? The charter made no provision for the body of deputies, hence their relation to the assistants was not defined. The question was therefore left for decision to the unwritten law of the constitution and was decided in accordance with English precedent with which the colonists were of course familiar. The test case was not long in presenting itself. It came in 1634. In September of that year the people of Newtown (now Cambridge) asked the permission of the General Court to remove to Connecticut. Their principal reason for moving was that they might have more land for pasturage. This request naturally met with some opposition. When the matter came to a vote the Governor, fifteen deputies, and two assistants voted to grant the request, while the Deputy-Governor, ten deputies, and "the rest of the assistants" voted to deny it.[1] The number of assistants voting upon the question was probably seven; hence a majority of the deputies voted in the affirmative, a majority of the assistants in the negative, and a majority (18 out of 34) of the entire Court, if taken as a single body, in the affirmative. The deputies claimed that the motion was carried, while the assistants held that it was lost. The protest of the assistants was entered "because there were not six assistants in the vote, as the patent" required.[2] A deadlock ensued and business was brought to a stand-still. In order to solve the perplexing

[1] Winthrop, I, 168; Barry's *History of Massachusetts*, I, 273-4.

[2] Winthrop, I, 168. This provision was contained in the charter. (Poore, *Charters and Constitutions*, I, 937). The charter, however, was somewhat modified by later legislation of the General Court. Provision was made in the patent for eighteen assistants, but up to 1640 their number did not exceed twelve. Seven of the assistants were constituted a quorum by the charter; but in March, 1631, after some of them had returned to England, the General Court resolved that when there were fewer than nine assistants in the colony a majority of the number so present should constitute a quorum and that their acts should be as binding as if the full number of seven or more were present. Massachusetts Records, I, 84.

problem a day of fasting, humiliation, and prayer was observed; and, after a sermon upon the subject by the Rev. John Cotton, "the affairs of the court went on cheerfully."[1] The assistants carried their point and made good their claim, in this instance at least, to a negative upon the acts of the deputies. The victory was not a signal one, however. The turn which matters now took in the Newtown case no doubt diverted attention from the real point at issue and aided the assistants in sustaining their claim. Boston and Watertown ceded some of their land to Newtown[2] and the main cause, certainly the alleged one, for removal was taken away. Although the Newtown case was thus disposed of and a precedent established in favor of a negative on the part of the assistants, the relations between the two bodies were not definitely settled and a clashing of authority was inevitable. Finally in 1636 the General Court pronounced upon the matter in the following terms:

"And whereas it may fall out that in some of theis Genall Courts, to be holden by the magistrates & deputies, there may arise some difference of judgem^t^ in doubtfull cases, it is therefore ordered, that noe lawe, order, or sentence shall passe as an act of the Court, without the consent of the great^r^ p̃te of the magistrates on the one p̃te, & the great^r^ number of the deputyes on the other p̃te; . . ."[3]

This act rendered the two bodies coördinate in legislative authority and introduced one of the most essential features of the bicameral system. They continued to sit together, however, until 1644. The immediate cause of their separation was the famous case of Mrs. Sherman's pig, or, as dignified old Governor Hutchinson puts it, the "controversy between the two houses at this time was occasioned by a difference in sentiment upon the identity of a swine which was claimed by a poor woman as

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[1] Winthrop, I, 169.

[2] Massachusetts Records, I, 129; Winthrop, I, 169.

[3] Massachusetts Records, Vol. I, p. 170.

having strayed from her some years before, and, her title being disputed by a person of more consequence, divided not the court only, but the whole country."[1] The case was brought for final hearing to the General Court and the controversy was much more animated than the matter at issue would seem to deserve. Fifteen deputies and two assistants were favorable to Mrs. Sherman, while eight deputies and seven assistants espoused the cause of Captain Keayne. Seven assistants refrained from voting. As an outcome of the controversy the General Court resolved that the two bodies should sit apart, that bills might originate in either, and that a bill having passed one house should go to the other for "assent or dissent." Bills passed by both houses were to be "ingrossed" and "read deliberately" on the last day of the session before final assent was given. The reasons assigned by the General Court for the above resolution were that "divers inconveniences" resulted from the sitting together of the two bodies, and that they accounted it the part of "wisdome to follow the laudable practice of other states who have layd groundworks for government & order."[2] We have here a conscious and avowed reversion to English precedent. As Professor Fisher justly remarks, "the form of government was now assimilated to the English model."[3]

William C. Morey, in speaking of the bicameral system, says: "It would be difficult to imagine how any institution could be regarded as more indigenous to the soil or more completely shaped by the peculiar circumstances of time and place than was this system as it took its rise in Massachusetts."[4] The system was certainly "shaped by the peculiar circumstances of time and place," but can hardly be called "indigenous to the soil." The system in its growth and development,

[1] Hutchinson's *History of Massachusetts*, I, 135. (Ed. of 1795.)

[2] Massachusetts Records, II, 58–9.

[3] Colonial Era, 113.

[4] Annals of the American Academy of Political and Social Science, Sept. 1893, p. 13.

as typified by the case of Massachusetts, was essentially American; but the bicameral principle did not originate on this side of the Atlantic, and the development of the institution in America was directly influenced, as we have seen, by the English model. The charter under which the colony was founded was not a complete scheme of government and it was repeatedly enlarged and modified by enactments of the General Court. Such modifications are scarcely ever made, and certainly were not in this case, with unanimity. When confronted with such constitutional questions the people of Massachusetts made such application of English precedent and English custom as seemed suited to the exigencies of the occasion. When the people of Watertown refused to pay the tax on the ground that they had no direct representation in the government, the matter was adjusted, after some delay, by introducing a system of town representation. Again, the bicameral system was resorted to as a solution of the difficulties attending the Newtown case and the case of Sherman *v.* Keayne. It seems entirely probable that these great principles of government would, sooner or later, have found their way into the American system regardless of English precedent; but it is also clear that the familiarity of the colonists with the practical working of these institutions in England hastened their introduction into American legislatures. It must be borne in mind that these men were Englishmen and imbued with English political ideas; and, although many of them had left England to escape persecution, they still believed the English government to be the best in the world, and hated, not the government itself, but its administration in the hands of the Stuarts.

Section II.—New Hampshire.

Although the colony of New Hampshire was founded at a comparatively early period, it was not until 1679 that she set out upon an independent governmental career. Up to this date the New Hampshire settlements consisting of the four

towns of Portsmouth, Hampton, Dover, and Exeter, were under the jurisdiction of Massachusetts. On September 18, 1679, however, a royal commission[1] was issued by Charles II constituting New Hampshire a separate province and naming for her a president and council. John Cutts[2] was named in this document as president,[3] and a council of six was designated—three from Portsmouth, and one from each of the remaining towns. The President and Council were authorized to appoint three additional councillors,[4] and were instructed to summon a general assembly. All laws passed by this assembly were to be submitted to the President and Council for approval and then sent to England for final approval or rejection.[5] The President was empowered to recommend to the Assembly the passage of any laws which he thought conducive to the general welfare of the colony. The first General Assembly under this frame of government convened on March 16, 1680, at Portsmouth.[6] At this meeting, as at all subsequent ones, joint sessions excepted, the two branches, following the evident intention of the commission, sat apart.[7] The temper of the people regarding their legislative prerogatives is plainly discernible in an act passed at this session by the Assembly and approved by the President and Council. It was enacted that "no Act, Imposition, Law or Ordinance be made or imposed upon" the people "but such as shall be made by the said Assembly and approved by the Presid[t] and Councill."[8] It is clear that the representative Assembly was determined to assert itself as a very important factor in legislation. Provision was made for meetings of the General Assembly to

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[1] New Hampshire Provincial Papers, I, 373; Poore, *Charters and Constitutions*, II, 1275.

[2] He is called Cutt in the Commission.

[3] Prov. Papers, I, 374.

[4] *Ibid.*, 375.

[5] *Ibid.*, 379–80.

[6] *Ibid.*, 382.

[7] See Belknap's *History of New Hampshire*, I, 178–9; also Farmer's Belknap's *Hist. of N. H.*, 453.

[8] Prov. Papers, I, 382–3; Farmer's Belknap, 453–4.

be held annually at Portsmouth, on the first Tuesday in March.[1]

President Cutts died in 1682, and, after a short interval, was succeeded by Edward Cranfield. His commission[2] of May 9, 1682, authorized him "to make, constitute, and ordain laws, statutes and ordinances" "by and with the advice and consent of" the Council and Assembly, "or the major part of them respectively." A council of ten members was named in the commission and the Governor was given a negative on all laws. It is evident from the language above quoted from the commission that the intention was to continue the bicameral system in the legislature. This was done.[3] The Assembly, however, was almost a nonentity during the iniquitous administration of Cranfield. Owing to a disagreement it was dissolved by the Governor in 1683, and the legislative power was assumed by the Governor and Council.[4] Being in want of money the Governor summoned another Assembly, which met on January 14, 1684. He submitted to them a money bill which was drawn up and previously passed by the Council. This method of originating money bills was deemed "unparliamentary" by the popular representatives, and the bill was promptly rejected. The Assembly was just as promptly dissolved, January 15.[5] Another Assembly called in July of the same year was almost immediately dissolved, and was the last one in Cranfield's administration.[6]

Under the rule of Andros laws were enacted by the Governor and Council without the aid of a popular assembly. On April 18, 1689, after the news of the deposition of King James and the coronation of William and Mary reached New Hampshire, Andros was called upon to surrender the govern-

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[1] Prov. Papers, I, 395. [2] *Ibid.*, 433.

[3] See Belknap, I, 193. "No *Journal of the House* separate from the joint Journal of the Council and Assembly is found till 1711." Bouton in preface to Prov. Papers, Vol. III, pt. II.

[4] Belknap, I, 201. [5] *Ibid.*, 203–4.

[6] *Ibid.*, 214.

ment.[1] From this time until 1692 affairs were in a decidedly unsettled condition.[2] Finally, on March 1, 1692, a commission[3] was issued to Samuel Allen designating him as Governor. This commission and the instructions[4] issued on March 7 of the same year constituted a frame of government the legislative department of which differed in no way from that provided for in the commission and instructions of Governor Cranfield. The names of a council of ten members appear in the instructions. It was the evident intention that the two houses should sit apart and constitute two coördinate branches of the legislature. That they did so in actual practice is evident from an inspection of the records.[5]

The constitution of January 5, 1776, provided for a legislature consisting of a House of Representatives and a Council. The two branches were to be distinct and coördinate.[6]

Section III.—Connecticut.

In Connecticut the development of the bicameral system took place not as a consequence of the jealousy existing between the parts of the legislative body, as was the case in Massachusetts, but was due to a large extent to the harmonious relations existing between the assistants and deputies.

According to the *Fundamental Orders*[7] of January 14, 1639, the legislative body, called the General Assembly or General Court, was to consist of the Governor, magistrates, and four deputies from each of the confederating towns.[8] The magistrates were elected by the whole body of freemen and the deputies by the people of the respective towns. The magis-

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[1] Prov. Papers, II, pt. I, 21.
[2] *Ibid.*, II, pt. I, 30.
[3] *Ibid.*, II, pt. I, 57.
[4] *Ibid.*, II, pt. I, 63.
[5] See Minutes of the Council in Prov. Papers, II, pt. I, 109 ff.; also Journal of Council and Assembly in Prov. Papers, III, pt. II, 5 ff.
[6] Charters and Constitutions, II, 1279–80.
[7] *Ibid.*, I, 249.
[8] Windsor, Hartford and Wethersfield.

trates and deputies composed one house and were presided over by the Governor, who, in case of a tie, cast the deciding vote. The deputies were, however, authorized to meet by themselves at some time previous to the meeting of the General Assembly "to aduise and consult of all such things as may concerne the good of the publike."[1] This fact together with the different modes of election seems to foreshadow the further differentiation of functions and the eventual separation of the two bodies.

The *Fundamental Orders* were succeeded by the charter of 1662.[2] It was this charter which the younger Winthrop was sent to secure and in the negotiation of which he was so eminently successful. The King evidently gave him all he asked for, and, as a consequence, this charter left little to be desired. In the language of Professor Johnston, it "raised the Connecticut leaders to the seventh heaven of satisfaction."[3] It was practically a confirmation of the *Fundamental Orders* with two changes of importance, both of which were desired by the colonists. The number of deputies was changed to two and the Colony of New Haven was included. The latter provision was as agreeable to Connecticut as it was odious to New Haven. The charter provided for a legislative body,—a governor or deputy-governor, twelve assistants, and a number of deputies not exceeding two from each "Place, Town, or City." The Governor, Deputy-Governor, and assistants were to be chosen by the whole body of freemen in primary assembly, while the deputies were to be elected by the people of their respective localities. All constituted one house, and that they dwelt together in peace and harmony—a condition of things quite unusual in colonial legislatures—is evidenced by a resolution of the General Court of 1678. In May of that year the Governor, Deputy-Governor, and assistants were constituted a "standing councill to issue all such occasions and matters as"

[1] Charters and Constitutions, I, 251.

[2] *Ibid.*, 252–7.

[3] Genesis of a New England State, Johns Hopkins University Studies, Vol. I, No. 11, p. 26.

should "fall in in the intervalls of the Generall Court."[1] As the regular meetings of the Court took place in May and October, such a standing committee seemed a necessity. This resolution is an important step in the separation of the two bodies. It was, as Professor Johnston has remarked, "the prelude to the inevitable introduction of a bi-cameral system."[2] The confidence thus reposed in the assistants seems not to have been abused, for the authority conferred upon them in 1678 was regularly continued at the May and October meetings of the Court until 1686. At this time there arose a complication of affairs which placed matters of the gravest importance in the hands of the Governor and Council. Under date of May 27, 1686, Edward Randolph, a royal commissioner and forerunner of Edmund Andros, wrote to Governor Treat and Council asking them to surrender their charter. He said that a writ of *quo warranto* had been issued against Connecticut, and that he had been intrusted with the serving of it. He would greatly prefer, however, he said, to have the people of Connecticut gain royal favor by a voluntary surrender of their charter before the service of the writ. He proclaimed the intention of the King as being "to bring all New England under one Governem^t^," and boldly asserted that nothing remained for the people of Connecticut but "an humble submission and dutifull resignation" of their charter. He counselled haste in the matter. "S^rs^," said he, "bless not yourselues w^th^ vaine expectation of advantage & spinninge out of time by my delay: I will engage tho' the weather be warme the writs will keep sound and as good as when first landed."[3]

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[1] Colonial Records of Conn., 1678–1689, p. 15.

[2] Connecticut, 269.

[3] Letter of Edward Randolph to Gov. Treat and Council, in Colonial Records of Conn., 1678–1689, pp. 352–4.

The writs would certainly be as sound and as good as when first landed, for they were even then perfectly worthless. Randolph's voyage was an unusually long one—about six months in duration—and the time for the return of the writs had expired before he reached America.

Governor Treat and his Councillors, however, were decidedly of the opinion that something did remain aside from "humble submission" and "dutifull resignation." A meeting of the Council was accordingly called, and on June 11, 1686, an answer was drafted and sent to Mr. Randolph. In this emergency the Governor called a special session of the General Court for July 6, 1686. He reported the action taken by himself and Council upon the receipt of Mr. Randolph's letter, and that action was approved.[1]

This Randolph episode was a very important incident in the development of the bicameral system. Heretofore, the business transacted by the Council in the recesses of the General Court was largely of a routine character, and report upon it was not deemed essential; but in this case, when the very liberties of the colony were at stake, Governor Treat and Council deemed it wise and expedient to lay the whole matter before the General Court in special session and ask their endorsement. This was the beginning of a system of report and approval whereby all important matters passed upon by the Governor and Council were reviewed by the entire Court. This custom was, too, an important step toward the separate voting and separate deliberation of the two bodies.

After approving the action of the Council the General Court appointed that body a committee to prepare an address upon the matter to the King.[2]

Mr. Randolph, finding but cold comfort in the resolute replies of the Council, served the writ on July 20–21, at midnight. Another extra session of the Court was deemed necessary and was called for July 28, 1686. At this meeting the Governor and Council were instructed to appoint an agent to represent the colony in England.[3] Mr. William Whiting, a London merchant, was accordingly commissioned to act in this capacity. At the next meeting of the Court this action

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[1] Colonial Records of Connecticut, 1678–1689, p. 208.
[2] *Ibid.*, p. 208. [3] *Ibid.*, 213.

was reported to that body and approved by it.[1] The weighty matters with which the Council was now dealing and the general colonial aversion toward anything savoring of unrestricted authority combined to render this method of report and approval a popular one.

Andros landed December 20, 1686, and demanded the surrender of the charter. A special session of the Court convened on January 26, 1687, and the Council was again empowered to take such action as seemed wise and expedient.[2] The outcome of the matter is well known. Andros governed as viceroy from 1687 to his expulsion, in April of 1689. In the interim charter government was, of course, suspended.

Immediately after the resumption of charter government in 1689, steps were taken toward making it obligatory upon the Council to submit certain of their acts to the General Court for approval. In May of 1689, the deputies expressed their desire by vote that all matters concerning the "charter or government" should be decided by the General Court, in special session if need be, and not left to the independent action of the Council.[3] This advice was soon acted upon by the Court. The custom which obtained before the viceroyalty of Andros of constituting the Governor and Council a standing committee for the transaction of business in the recesses of the General Court was continued, but was modified in one essential particular: it was now definitely and repeatedly stated that there were certain matters with which the Council was not to deal. Naturally enough the matters thus sacredly guarded had to do with their charter liberties and the levying of taxes. In October of 1691, the General Court, after conferring the usual authority upon the Council, added the proviso that they (the Council) "rayse no money nor make no alteration of o^{r} charter government."[4] In October of 1692, it is likewise

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[1] Colonial Records of Connecticut, 1678–1689, pp. 217–218.
[2] *Ibid.*, p. 226. [3] *Ibid.*, 252–3. [4] *Ibid.*, 1689–1706, p. 62.

"provided [that] they doe not intermeddle with the altering or parting with any of our charter rights and priviledges without the consent and appoyntment of our Generall Court."[1] Again in October, 1697, the same restriction is placed upon the acts of the Council.[2] This custom marks another step in the evolution of the bicameral system.

It is noticeable that during the period between 1689 and 1698 the acts of the Council, even those not relating to taxes and the charter, were submitted with greater frequency and regularity to the General Court for approval.[3] In 1698, however, instead of approving isolated acts of the Council a general approval was expressed in the following terms: "This Court declared their approbation of what hath been acted by the Council since Octob[r] last."[4] This substitution of general for specific approval marks another step in the process of the separation of the two bodies. The Council in the meantime still continued to serve the colony in various capacities. In April of 1690 that body was appointed a "Councill of War," and two years later was commissioned to try several persons "indicted for familiarity with Satan."[5] Duties of far more importance from a legislative standpoint, and of peculiar interest in our present study, devolved upon the Council in 1698. In May of that year they were instructed to make an inquiry as to the extent to which the laws of England were in force in America and to report the result to the General Court. They were also instructed *to prepare and report bills* for the regulation of courts of justice, to suggest proper methods of raising revenue, and to devise a plan for the suppression of vice.[6] This process of legislation approximates very closely the essential features of the bicameral system, and little was wanting to make the evolution of that system complete. The

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[1] Colonial Records of Connecticut, 1689–1706, pp. 84–5.
[2] *Ibid.*, 226.
[3] See *Ibid.*, pp. 47, 149, 202, 205.
[4] *Ibid.*, 251.
[5] See *Ibid.*, pp. 76, 102, 205.
[6] *Ibid.*, 261–2.

final step in the process was taken in October of 1698, and is thus recorded: "It is ordered by this Court and the authoritye thereof, that for the future this Gener[ll] Assembly shall consist of two houses; the first shall consist of the Govern[r] or, in his absence, of the Deputye Govern[r], and Assistants, which shall be known by the name of the Upper House; the other shall consist of such Deputies as shall be legally returned from the severall towns within this Colonie, to serve as members of this Generall Assembly, which shall be known by the name of the Lower House, wherein a Speaker chosen by themselves shall preside: which houses so formed shall have a distinct power to appoint all needfull officers, and to make such rules as they shall severally judge necessary for the regulating of themselves. And it is further ordered that no act shall be passed into a law of this Colonie, nor any law already enacted be repealed, nor any other act proper to this Generall Assembly but by the consent of both houses." [1]

Section IV.—Rhode Island.

Although agitation for the separation of the two branches was begun at a very early period on the part of the deputies, more than a half century elapsed between the granting of the first charter and the introduction of the bicameral system. This long delay was, in large part, due to the peculiar method of its introduction, and particularly to a compromise upon the matter between the magistrates and deputies in May, 1668.

The English Parliamentary Commission granted a charter or patent to the Providence Plantations on March 14, 1644. The first General Assembly was held at Portsmouth, May 19–21, 1647. At this Assembly the charter, an exceedingly liberal one, was adopted, and the government systematically organized. A majority of the freemen of the colony were

[1] Colonial Records of Connecticut, 1689–1706, p. 267.

present and declared forty a quorum to do business.[1] Thus early do we find the germ of the representative system in the government of the new colony.[2]

The charter of 1663 vested the government of the colony in a governor, deputy-governor, ten assistants, and eighteen deputies.[3] As in Connecticut, the Governor, Deputy-Governor, and assistants were chosen annually by the entire body of the freemen, while the deputies were elected by the people of the respective towns.[4] Here as in Connecticut the different modes

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[1] Colonial Records of Rhode Island, I, 147.

[2] See Arnold's *History of Rhode Island*, I, 201–2.

The method devised by this Assembly for the passing of laws was a curious mixture of the representative system and the referendum. Any town of the colony—Providence, Portsmouth, Newport or Warwick—could initiate legislation. When a town desired the passage of a certain law, the matter was discussed and voted upon in the town-meeting. In case of an affirmative vote, a copy of the bill was sent to each of the other towns to be debated and determined in like manner. A report of the action taken by the various towns was then referred to a "Committee for the General Courte" consisting of six members from each town. This committee, acting as a central canvassing board, determined whether or not the proposed measure had been sanctioned by the "Major parte of the Colonie." If so, the matter was declared a law to stand until the next meeting of the General Assembly. The final disposition of the matter was then made. It was, in short, the duty of the committee to promulgate laws, not to pass them. The initiative in legislation was, however, given to them to be exercised in this way. They were authorized to discuss and determine among themselves any matter presented to them that might "be deemed necessary for the public weale and good of the whole." The various members then reported the action of the committee to their respective towns, by whom it was discussed and voted upon. The votes were sealed and forwarded to the General Recorder of the colony to be opened and counted in the presence of the President. In case it was found that the proposition had received a majority vote, it was declared a law to stand until the next meeting of the General Assembly, by which it was either confirmed or rejected. Colonial Records of Rhode Island, I, 148–9. See also Arnold's *History of Rhode Island*, I, 203.

[3] Newport was allowed six deputies, and the remaining towns four each. It was also provided that any town subsequently added should have two deputies.

[4] Charters and Constitutions, II, 1597–1599. Colonial Records of Rhode Island, II, 7–11.

of election constitute the germ of the bicameral system; and, though all sat in the same house, the time was not far distant when separation was to be sought. It is evident from the records that steps looking toward this end were taken almost immediately. It was recorded in October of 1664, that there had "been a long agetation about the motion whether the magistrates [assistants]" should "sitt by themselves and the deputyes by themselves."[1] The matter was put over to the next meeting of the Assembly. It appears that this "long agetation" was caused by petitions from Warwick and Portsmouth asking for the separation of the two bodies. No further action seems to have been taken until March of 1666. The petitions of the two towns were now duly discussed, and after "haveing well weighed such conveniances" and "inconveniancyes" as might result from the separation, the Assembly decided to grant the request, and accordingly ordered that the deputies and assistants should sit apart. The settling of the details of the change was put over to the meeting of the following May.[2] At that time, however, no action was taken owing to the small attendance of the deputies. In September the Assembly seemed undecided as to the advisability of the change and ordered the temporary suspension of the enactment by which the separation of the two bodies was to have been effected. All members of the Assembly thus continued to constitute one house.[3] In October of the same year (1666), a definite decision was reached. At this time the Assembly, "having had long and serious debates about the premises," ordered that the two bodies should constitute one house as heretofore until further action be taken.[4]

It is not at all strange that at this time the debate upon the merits of the bicameral system should have been "long and serious," inasmuch as it had not fully demonstrated its applicability to American conditions, and certainly was not

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[1] Colonial Records of Rhode Island, II, 63. [2] *Ibid.*, 144–5.
[3] *Ibid.*, 150–1. [4] *Ibid.*, 181.

then what De Tocqueville afterwards termed it—"an axiom in the political science of the present age."[1]

In May, 1667, the Governor and Council began a series of frequent meetings[2] to dispose of important matters arising in the intervals of the General Court. The hostility of the French and Dutch together with the surly mutterings of Indian enmity which culminated in King Philip's War rendered this a critical period in the existence of the new colony. These separate meetings served to differentiate further the functions of the two bodies.

The agitation for the final separation of the two bodies seems to have gone steadily on; and in May, 1668, it resulted in a compromise which was destined to delay the introduction of the bicameral system in its complete form for nearly three decades. At this time the deputies requested that they be allowed to withdraw from the Assembly "to consider of such affaires as they may think fitt to propose for the well beinge of the Collony." This request was granted, but with the proviso that they return to the Assembly in half an hour. It was further enacted that the same permission be accorded the deputies in the future in case a majority of them should desire it. No law was to be passed in their absence.[3]

In 1672 a method which still quite meets the approval of politicians was resorted to in order to allay the jealousy arising between the two bodies. The Treasurer was instructed to provide, at public expense, a dinner "ffor the keepinge of the Magistrates and Deputies in love together, for the ripeninge of their consultations, and husbandinge of their time."[4]

Although as a result of various compromises and devices the deputies continued to sit in the same chamber with the magistrates, it is clear that certainly as early as 1672 they looked upon themselves as a separate and distinct body. They considered themselves the House of Commons for Rhode

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[1] Democracy in America, I, 87 (Reeve's translation).
[2] Records, II, 191. [3] *Ibid.*, II, 223. [4] *Ibid.*, 445.

Island, and were not slow in claiming some of the most important prerogatives of the English body. On Nov. 6, 1672, it was enacted "that noe tax nor rate from henceforth shall be made, layd or levied on the inhabitants of this Collony without the consent of the Deputys present pertaining to the whole Collony." In the preamble the reason for this legislation is set forth. It is declared that "the House of Commons is the peoples representatives there, and the Deputys the representatives of the freemen here;" and as no tax can be levied in England without the consent of the House of Commons, so, too, is it equally just that tax legislation for the colony should meet the approval of the deputies.[1] The power of the deputies was further increased by another act of the same date providing that no law concerning the "King's honor" or "the peoples antient right and libertys" should be passed without the presence of "the major part of the Deputys belonging to the whole Collony." It was added that any act of the nature indicated, passed contrary to the above provision should be "voyd and of none effect."[2]

The deputies had now attained some of the most important attributes of the bicameral system, but it is plain from the course of events that they were to be satisfied with nothing less than complete separation. On May 6, 1696, they express their desire by way of formal resolution "that it may be made an act of this Assembly, and pass as a vote of the house, that all the Deputies of each respective town, shall sit as a House of Deputies, for the future, and have liberty to choose their Speaker among themselves, and likewise the Clerk of the Deputies; and that the majority of the Deputies so assembled, shall be accounted a lawfull House of Deputies."[3] This was agreed to, and the Governor and Council were constituted the upper house of the Assembly.

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[1] Records, II, 472–3. [2] *Ibid.*, 473. [3] *Ibid.*, III, 313.

CHAPTER II.

The Middle Colonies.

Section I.—New Jersey.

The first legislative Assembly that ever convened in New Jersey was bicameral; and, though this was in apparent contradiction to the terms of the charter, and notwithstanding the fact that strenuous efforts were made to revert to a single-chambered legislature, the system was never abolished. The colony was organized under the *Concessions*[1] of February 10, 1665. By this instrument the government of the colony was vested in a legislative body composed of a governor, a body of councillors, not less than six nor more than twelve in number, and twelve representatives or deputies chosen by the "ffreemen or cheife Agents to others of the Province." The Governor was to be appointed by the Proprietors and the Council by the Governor. Thus councillors and deputies came to be regarded at once, and rightly so, as the conservators of the interests of the Lords Proprietors and the people respectively. To this fundamental difference were largely due the early introduction of the bicameral system and much of that discord which characterized the legislative proceedings of New Jersey throughout the entire colonial period.

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[1] "The Concessions and Agreement of the Lords Propriators of the *Province* of *New Cesarea* or *New Jersey* to and with all and every the *Adventurers* and all such as shall settle or plant there." New Jersey Archives, I, 28–42. Leaming and Spicer's "Grants and Concessions," etc., 12–26.

It is reasonably, though not absolutely, clear from the language of the *Concessions* that the Proprietors intended that the Governor, councillors, and representatives should constitute a General Assembly of one house. This seems plain from the fact that the Governor or Deputy-Governor is designated as the presiding officer of the legislative body constituted as above indicated. The phraseology is, however, indefinite and at times ambiguous; and it was obviously to the advantage of the councillors to avail themselves of this ambiguity and to insist on sitting apart from the deputies, since the increasing growth of the colony would soon cause the deputies far to outnumber the councillors.

It was not until April 7, 1668, that the Governor issued a call for an assembly. The burgesses were directed to choose "able men that are freeholders" to join with the Governor and Council "in the Management of affaires."[1] In obedience to this call the first legislative Assembly of the colony was convened on May 26, 1668. The councillors immediately insisted on sitting by themselves, and contended that such an arrangement was in harmony with the evident intention of the *Concessions*. The fact, however, that there were ten deputies present and only seven[2] councillors had, no doubt, considerable weight in bringing them to this conclusion. It must have been plain that in any instance when the interests of the Proprietors were opposed to those of the people—and such instances were certain to arise—the councillors would be outvoted by the deputies. It seems plain, too, that the Council was impelled in the matter more by an instinct of self-preservation than by any conscientious scruples regarding the interpretation of the *Concessions*. To become a legislative nonentity was not a pleasing prospect. At any rate, they carried their point and the two branches of the Assembly deliberated apart.[3] This meeting lasting but four days seems to have been harmonious.

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[1] New Jersey Archives, I, 56–7.
[2] Leaming and Spicer, 77.
[3] *Ibid.*, 84.

It was brought to a close at the request of the deputies. They sent a communication to the Council saying that they had perused certain bills submitted to them by that body but asked that final action be deferred until next meeting. To this the Council assented. At the next meeting held on Nov. 3, 1668, it became evident that the differences between the two branches of the Assembly were, for the time at least, irreconcilable. The deputies were not to be easily reconciled to the bicameral arrangement, and the councillors seemed intent on thwarting the popular advantage to be gained from an assembly of one house. Early in the session, Nov. 6, 1668, the deputies express themselves to the Council thus: "We finding so many and great Inconveniences by our not setting together, and your apprehensions so different to ours, and your Expectations that Things must go according to your Opinions, though we see no Reason for, much less Warrant from the Concessions, wherefore we think it vain to spend much Time of returning Answers by writings that are so exceeding dilatory, if not fruitless and endless, and therefore we think our way rather to break up our meeting, seeing the Order of the Concessions cannot be attended unto."[1] In reply to the above the Council request the deputies to appoint two of their number to confer with them regarding the alleged infringements of the *Concessions*. "If reason will satisfy you," the reply continues, "we shall be very well pleased that you proceed according to the Lords Proprietors Concessions and the Trust imposed upon you, if not you may do what you Please, only we advise you to consider well of your Resolutions before you break up."[2] Such correspondence as this, however, was hardly conducive to arbitration; consequently on the following day, November 7, the Assembly adjourned not to meet again for seven years. As might be expected the colony drifted rapidly toward anarchy. A rival government was set up under the leadership of James Carteret, and deputies elected by the popular party met at

[1] Leaming and Spicer, 90. [2] *Ibid.*, 90–91.

Elizabethtown on May 14, 1672,[1] and proceeded to act as the lawful Assembly of New Jersey. In this critical juncture prompt action was indispensable for the preservation of the authority of the Proprietors. Philip Carteret the Governor and James Bollen, Secretary of the Council, proceeded at once to England and laid the whole matter before the Lords Proprietors. Inasmuch as the *Concessions* of 1665 had been the object of such bitter contention, and since that instrument had been so differently interpreted by the Governor and Council on the one hand and the deputies on the other, it seemed incumbent upon the Lords Proprietors to declare the "true intent" of the disputed clauses. This they did in an instrument bearing the date December 6, 1672, and styled, "A DECLARATION of the true intent and Meaning of us the LORDS PROPRIETORS, and Explanation of there Concessions made to the Adventurers and Planters of New-Caesarea or New Jersey."[2] It is clear from a perusal of this document that its title is a misnomer. It is not a "declaration of the true intent and Meaning . . . . and Explanation of the Concessions" but a very essential modification of that fundamental instrument. The effect of this *Explanation* was to enhance very materially the power of the Council at the expense of the General Assembly as a whole. The Proprietors, naturally enough perhaps, favored the Council in their exposition of the mooted clauses. It is evident, too, that they were induced more by expediency than by considerations of abstract justice or by a logical construction of the terms of the *Concessions*. The "explanation" of most importance for our present purpose is the declaration regarding the deliberations of the General Assembly. "WE the LORDS PROPRIETORS," they affirm, "do understand that in all Generall Assembly's, the Governor and his Council are to set by themselves, and the Deputies or Representatives by themselves, and whatever they do propose to be presented to the Governor and his Council, and upon

[1] New Jersey Archives, I, 89–90. [2] *Ibid.*, I, 99.

their Confirmation to pass for an Act or Law when Confirm'd by us."[1] Whatever may have been the intent of the *Concessions* of 1665, the above is clearly a declaration for the bicameral system.

On Nov. 5, 1675, a meeting of the General Assembly was held after an interval of seven years. Although the sessions were now regular it was evident that the new dispensation was not at all satisfactory to the deputies. The attitude and temper of the two houses are clearly disclosed in the correspondence[2] which took place between them at a meeting from Oct. 19 to Nov. 2, 1681. The deputies objected to the *Explanation* of Dec. 6, 1672, on the ground that it curtailed their power to the advantage of the Council, and further contended that the *Concessions* of 1665 should "be taken according to the Letter wthout any Interpretacon whatsoever." They characterize the *Explanation* as "a Breach of the Concessions" and "desire and Expect that the same may be made voyd and of none effect." They state in their communication to the Council that their action is not hasty or ill-advised, but that on the contrary they have "perused and well weighed" the contents of the document under consideration. To this the Council submitted the somewhat tart rejoinder that if they "had alsoe the Benefitt of understanding," they "would neither have desired nor Expected the same to be made voyd." They declare it "a matter of lamentac'on that the Representatiues of this Province should be soe shorte sighted that they cannot see that he which runnes may Read." A joint meeting is

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[1] New Jersey Archives, I, 100–101. The *Explanation* also granted to the Governor and Council the power "to appoint the Times and Places of meeting of the General Assembly, and to adjourn and summon them together again:" a power formerly vested in the General Assembly as a whole. New Jersey Archives, I, 99.

On July 31, 1674, Sir George Carteret in a body of "*Instructions*" to the Governor reiterates the *Explanations* of 1672, thus proclaiming again the bicameral system. New Jersey Archives, I, 167–175. Leaming and Spicer, 55–67.

[2] New Jersey Archives, I, 354–365.

proposed for discussing the points at issue. Failing in this, recourse is again had to pot and kettle correspondence. The crisis came on Nov. 2, 1681. On that day the Clerk of the Council appeared in the House of Deputies at the head of a committee and requested that body to accompany him to the council chamber, there to discuss, and, if possible, settle their points of difference. The Speaker replied that the deputies wished "to consider of it a little." Thereupon the Clerk of the Council declared the "Pretended house of Deputies" dissolved, and left upon the table a letter in which the Council had "freed their minds." The letter charges the deputies with considering themselves the entire Assembly; and adds that if they were at all qualified to act as representatives they would have good manners enough to prevent them from assuming so much. "It was Lucifers Pride," say the councillors, "that Putt him upon settling himselfe where God never intended to sett him and his Presumption produced or was the forerunner of his fall." The deputies are accused of arrogating to themselves powers never given to them by the *Concessions* or the laws of England. In addition they are twitted with being more zealous for private and selfish ends than for the welfare of the colony. "Private Spiritts in men in publique employ^{mt} are the Jewels that addorne yo^{r} brests." "Everything being beautifull in its season and soe we bid you fairewell" is the parting shot from the Council's well supplied magazine of invective. Thus ended in failure the strenuous endeavor of the deputies to revert to the *Concessions* of 1665 and a single-chambered legislature.

In 1683 the Proprietors issued "*The Fundamental Constitutions*"[1] for the government of the province, but attached certain conditions with which the people were to comply before availing themselves of the privileges of the new instrument. Although this new frame of government was not put into operation,[2] it is interesting to note the changes in the constitu-

[1] New Jersey Archives, I, 395. [2] See Mulford's *History of New Jersey*, 219.

tion of the legislature. The law-making power was vested in a "Grand Council" to be composed of the Proprietors or their proxies and the representatives. They were to constitute one house, but in voting a distinction was made between the Proprietors and the representatives. One-half of the Proprietors and one-half of the representatives were to constitute a quorum; and the votes of two-thirds of the representatives and one-half of the Proprietors present at any meeting were necessary for the passage of a bill. This constitution, then, if put into operation,[1] would establish a peculiar kind of unicameral legislature in which the system of checks and balances so potent in bicameral legislatures would operate.

The legislative Assemblies thus far noticed are those of New Jersey up to July 1, 1676; after that date they belong to the history of *East Jersey*. On the date just mentioned the province was divided[2] into East and West Jersey by the *Quintipartite* deed. Although of secondary importance for our present purpose, a brief consideration of the West Jersey legislature is essential. The fundamental law was comprised in "*The Concessions and Agreements*"[3] of March 3, 1677. The legislature consisted of one house. The whole province was to be divided into one hundred "proprieties" and the inhabitants of each were to choose one representative. These "Deputies, Trustees or Representatives" were to constitute the "General, Free and Supream Assembly." The Assembly met for the first time on November 25, 1681, and for a time continued to meet regularly. Finally on April 15, 1702, the

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[1] The reasons why this constitution—which appears in many ways an improvement upon the old form—was not adopted, do not appear in the records. The Deputy-Governor did not press its adoption, as he was instructed to do, and there were certain features of it not entirely agreeable to the colonists. See Mulford, p. 221.

[2] New Jersey Archives, I, 205.

[3] "The Concessions and Agreements of the Proprietors, Freeholders, and Inhabitants of the Province of West New-Jersey in America." New Jersey Archives, I, 241–270. Leaming and Spicer, 382.

two colonies of East and West Jersey were surrendered [1] to the Crown, united, and made a royal province. Lord Cornbury was appointed to govern both New York and New Jersey, and his commission [2] and "*Instructions*" [3] constituted the fundamental law of New Jersey throughout the remainder of the colonial period.[4] The legislature was composed of thirteen councillors named in the "*Instructions*," and twenty-four representatives chosen by the people—twelve from East and twelve from West Jersey. The sessions were to be held alternately at Perth Amboy and Burlington—in East and West Jersey respectively. The Council and House of Representatives, following the custom of East Jersey, sat apart.[5]

Another change of some importance was made in the legislature in 1738. In that year New Jersey was separated from New York, and the Governor of New Jersey withdrew from the deliberations of the Council.[6]

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[1] Leaming and Spicer, 615; Archives, II, 452.

[2] Archives, II, 489. [3] *Ibid.*, 506.

[4] Cf. Gordon's *History of New Jersey*, 54–5.

[5] Journal and Votes of the House of Representatives of New Jersey, p. 21.

[6] Mulford, p. 335. Frothingham (*Rise of the Republic*, p. 20, n.) says that the House and Council sat together. It is plain from the records that they did not. For instance, in the records of the first meeting of the House of Representatives, held in 1703, we find the following entry: "A message from y^e^ Council by Maj^r^ Sanford, That they have agreed to a Bill Entituled a Bill for Regulating y^e^ purchasing of Lands from y^e^ Indians, w^th^ some Amendm^ts^, to w^ch^ they desire the Concurrence of this H^s^." (pp. 20–1, Journal and Votes of the House of Representatives of New Jersey. Other instances of the same tenor appear on the same pages.)

Frothingham further says: "In 1738, the council was made a separate branch; the governor withdrew from it, and no longer was the presiding officer." (Note, p. 20.) As authority for this statement he refers to Mulford, 335, and herein lies the explanation of the error into which Mr. Frothingham has fallen. What Mulford says is this: "The Council were made a separate branch of the Legislature; the Governor refraining from *immediate* participation in any measure relating to Legislative proceedings." (History of New Jersey, p. 335.) Mulford evidently does not mean to say that the Council was separated from the House at this time, but that the Governor, who formerly presided over the Council, now withdrew and left that body

Section II.—New York.

For New York the story is quickly told. True to the governmental instincts of the Teutonic race, and inspired by the example of the New England colonies, the people of New York began to move for a representative government immediately after that colony came into the possession of the Duke of York; but the experience of the Stuarts with popular assemblies was not particularly reassuring, and, as a consequence, the request was postponed until it seemed necessary to make the grant for financial reasons. Intimations that the boon of self-government would be granted were forthcoming from time to time. In a letter[1] to a New York officer, under date of Feb. 11, 1682, the opinion was expressed that "his R^{ll} H^{s}" would "condescend to y^{e} desires of y^{t} Colony in granting y^{m} equall priviledges, in chooseing an Assembly &^{c} as y^{e} other English plantations in America" had. The Duke himself expressed a like intention in a letter of March 28, 1682, upon the condition, however, that the colony "provide some certaine fonds for y^{e} necessary support of y^{e} governem^{t}."[2] The hopes thus raised were soon realized. In the "*Instructions*" to Governor Dongan, issued Jan. 27, 1683, that official was ordered to summon a representative Assembly to join with himself and Council in making laws "fitt and necessary to be made and established for the good weale and governem^{t}" of

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of itself a separate branch. Mulford was fully aware that the two houses did not sit together up to this time, as he mentions instances in which bills passed by one house were rejected by the other. "The bill prepared by the committee was passed by the House, and sent to the Governor and Council; but it met the fate of the preceding ones, it was rejected by a majority of the Council." Such is the language of Mulford in speaking of the fate of a bill at the meeting of December 7, 1710. (History of New Jersey, p. 310.) Other examples of similar import appear on the pages of Mulford.

[1] Colonial Documents of New York, III, 317. [2] *Ibid.*, 317–318.

the colony.[1] Governor Dongan did as he was directed, and on Oct. 17, 1683, the first legislative Assembly of New York was convened.[2] It was a bicameral body, the Governor and Council constituting one house and the representatives the other.[3] At this meeting a very important act was passed—the "Charter of Libertys"[4]—in accordance with which the government of the colony was to be organized and administered under the superior control of the Duke of York. This charter provided that representatives chosen by the people should, with the Governor and Council, constitute "the supream and only legislative power under his Roy^all Highnesse." Provision was made for two distinct houses. It was provided "Thatt all bills agreed upon by the said Representatives, or the major part of them," should "bee presented unto the Governor and his Councell for their approbacon and consent," and that "all and every which said bills so approved of and consented to by the Governor and his Councell," should "be esteemed the laws of the province." The charter was sent to the Duke of York and approved by him, October 4, 1684.[5] Shortly[6] after

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[1] Colonial Documents, III, 331.

[2] Journal of the Legislative Council of New York, Introduction, p. xi.

[3] Appended to the first bill of the session—the "Charter of Libertys"—to be mentioned presently, is found the following memorandum:

"New-Yorke, Oct. 26, 1683.

"The Representatives have assented to this bill, and order it to bee sent up to the Governo'r and Councell for their assent.

"M. Nicolls, *Speaker.*"

"After three times reading, it is assented to by the Governour and Councell this thirtieth of October, 1683. Tho. Dongan.

"John Spragge, *Clerk of the Assembly.*"

Brodhead's *History of the State of New York*, II, 661, Appendix E.

[4] The Charter is printed in full in Appendix E of Brodhead's *New York*, II, 659.

[5] Historical Magazine for Aug., 1862, Vol. VI, p. 233; Chalmers' *Annals*, I, 588; Brodhead's *New York*, II, 416, n.

[6] March 3, 1685.

his coronation, however, he vetoed it.[1] Governor Dongan was accordingly notified in a body of "*Instructions*"[2] issued May 29, 1686, that the charter was "repealed & disallowed." The law-making power was placed in the hands of the Governor and Council, and the representative body was abolished. The powers of the Governor were more specifically designated in his commission[3] of June 10, 1686. He was empowered "with the advice and consent of" the "Council or the major part of them, to make, constitute and ordain Laws, Statutes and Ordinances for the publick peace, welfare & good Government"[4] of the province. All such laws, however, were to be sent to England for royal approval within three months after their passage. In obedience to these instructions Governor Dongan dissolved the Assembly, January 20, 1687.[5]

The government of the colony thus devolved upon Dongan and his Council of five. This form was continued, under Andros as well, until Leisler took the government in his own hands in 1689. At his call an Assembly met in April, 1690, and again on September 15, of the same year. Both of these consisted of two houses. News of the usurpation was immediately sent to England,[6] and, on November 14, 1689, a commission[7] was issued to Henry Sloughter to be Governor of the colony. By this commission the representative Assembly so ruthlessly brushed aside by James II in 1685, was revived. The Governor was empowered "with the consent of" the

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[1] Colonial Documents, III, 357.

In a document entitled "Observacôns upon the Charter of New York," and bearing the same date as the veto, are set forth various reasons for withholding, or rather withdrawing, the royal assent. It is urged among other things that the charter "seems to take away from the Governor and Councill the power of framing Laws as in other Plantations." This observation is made upon that clause which provides that bills passed by the representatives should be presented to the Governor and Council for their approval. Colonial Documents, III, 358.

[2] Colonial Documents, III, 369. [3] *Ibid.*, 377. [4] *Ibid.*, 378.

[5] Journal of the Leg. Coun. of New York, Introduction, XVII.

[6] Colonial Documents, III, 585. [7] *Ibid.*, 623.

"Councill and Assembly or the major part of them," "to make constitute and ordain Laws Statutes @ ordinances for y^e^ publique Peace, welfare and good Government" of the province.[1] This commission with some slight modifications formed the fundamental law of New York until the Revolution.[2] The first session of the legislature was held on April 9, 1691.[3] The two houses sat apart, the Governor presiding over the Council.[4] In 1736, however, it was declared "inconsistent" for the Governor to sit and vote as a member of the Council; hence he withdrew, and it was made a standing rule that the oldest councillor present should preside.[5]

Section III.—Pennsylvania and Delaware.

These two colonies may well be treated together inasmuch as the organic connection between them was not totally severed until the Revolution. Both were governed under the same colonial charters, and it was not until a comparatively late period that the bicameral system was introduced into their legislatures.

The first charter of government for Pennsylvania was that granted by William Penn on July 11, 1681.[6] This may be dismissed at once since it makes no provision for a legislative body.

The second "frame of government"[7] was granted on April 25, 1682, and by it a legislative body was constituted consisting of a Governor, Council, and General Assembly, the two latter

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[1] Colonial Documents, III, 624.

[2] Cf. Thompson's *History of Long Island*, I, 168.

[3] Smith remarks that the laws passed by this Assembly were the first ones deemed valid by the courts. History of New York, I, 98, n.

[4] The Governor and Council were appointed by the Crown. Colonial Documents, III, 623.

[5] Journal of the Leg. Coun. of New York, XXIX.

[6] "Certain Conditions, or Concessions," etc. Charters and Constitutions, II, 1516.

[7] *Ibid.*, 1518.

bodies being chosen by the people. The Council was to consist of seventy-two members and the Assembly of two hundred.[1] The Governor or his Deputy presided and had a "treble voice." The power of initiating legislation was in the hands of the Governor and Council. It was their duty to "prepare and propose" bills to be affirmed or rejected by the Assembly. Penn had given the science of government much and serious thought, and this mode of legislation seems to have been his favorite scheme. He would revert to the old Greek method of having legislation prepared in a *boulê*. Such a system, however, is not in harmony with Teutonic instincts and traditions, and a short space of time served to demonstrate the fact that the people would insist upon originating legislation in their popular assemblies. It should be added, however, that in this scheme of Penn's some provision was made for amendment by the Assembly. For the first eight days of the session the members of the Assembly were to "confer with one another" regarding the proposed legislation. If they so desired, a committee of twelve from the Council would be "appointed to receive from any of them proposals, for the alteration or amendment of any of the said proposed and promulgated bills." Upon the ninth day of the session the Assembly was to "give their affirmative or negative" to the proposed legislation.

Thus far our narrative has had to do with Pennsylvania alone; but on Aug. 24, 1682, Penn received by deed[2] from the Duke of York that land which has since become known as Delaware. From this time on we find the terms "*Province*" and "*Territories*" used to designate Pennsylvania and Delaware respectively. In the latter part of the same year the Province was divided into three counties—Bucks, Philadelphia, and Chester—and the Territories, likewise, into three—New Castle,

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[1] These numbers were found to be too large and were afterward reduced.

[2] Proud's *History of Pennsylvania*, I, 201; Hazard's *Annals of Pennsylvania*, 1609–1682, 588, 590.

Kent, and Sussex.[1] These "three lower counties" were formally annexed to the Province by an "*act of union*" passed by the first Assembly on Dec. 7, 1682.[2]

The first Assembly under the charter met at Philadelphia on March 10, 1683.[3] In this the counties upon the Delaware were represented.[4] At this session a request was made by the Assembly for a new charter. The request was granted by the Governor, and a new charter drawn up by a committee[5] of six from each body was accepted and signed by Penn on April 2, 1683.[6] This was to constitute a frame of Government for "Pennsylvania and Territories thereunto annexed." The Council was to consist of eighteen and the Assembly of thirty-six, both elected by the people. Although the method of passing laws remained the same in the charter, a very essential change was made in practice. The Assembly complained that their prerogatives were restricted within too narrow bounds by being allowed only to confirm or reject bills, and demanded the right to originate legislation. This idea was embodied in a resolution of the Assembly and was approved by the Governor. Although protests were made by Penn against this privilege, it was exercised at intervals until 1696; at which time it was incorporated in a new frame of government.[7] The Assembly was now for the first time granted the charter privilege of originating bills. Bills passed by the Assembly were to be sent to the Governor for his approval or rejection, "with the advice of the Council."

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[1] Proud, I, 234. [2] *Ibid.*, 206; Hazard, 611.

[3] Colonial Records of Pennsylvania, I, 57. The Council met on this date and the Assembly two days later. Cf. Proud, I, 235.

[4] Three councillors and nine assemblymen were chosen from each county, making seventy-two in the entire body. This number was much smaller than that called for by the charter, as it was deemed inconvenient to elect the large number there specified. The Governor approved the change. Proud, I, 237–8.

[5] Colonial Records, I, 69. [6] Charters and Constitutions, II, 1527.

[7] See Gordon's *History of Pennsylvania*, 79–80, 106; Proud, I, 394–5; Hazard's *Annals*, 609. For this frame of government, see Poore's *Charters*, II, 1531.

Finally on the 28th of October, 1701,[1] the charter was issued which remained in force until superseded in Pennsylvania and Delaware by their respective state constitutions, both drafted in 1776. This charter provided that the legislative power should be vested in a representative Assembly composed of four members from each county. Laws were to be enacted by the Governor with the "consent and approbation" of this Assembly. Penn also, by letters patent,[2] appointed a "Council of state" consisting of ten men, who, among other duties, were to serve the Governor in an advisory capacity. Bancroft says,[3] in writing concerning the government in Pennsylvania in 1754, that the right to revise legislative acts was denied to the Council and that long usage confirmed the denial. This is no doubt legally true, but an inspection of the records reveals the fact that in practice the Council really did amend legislative acts. The Governor had a veto on all bills, and acted with the advice of the Council; hence it was necessary for the Assembly to frame their laws in such a way as to meet the approval of the Governor and his Council. This they did. At a meeting of the Council held January 22, 1749, three bills were sent to the Governor for his approval. Amendments were proposed to all of them, and they were returned to the Assembly.[4] Instances are also cited where the Assembly give notice to the Council that they agree to the amendments proposed.[5] In this legislation the theory differs from the practice. It somewhat resembles the method in vogue at the present time whereby members of Congress ascertain in advance the kind of bill to which the President will give his signature.

Up to the date of the last charter, Pennsylvania and Delaware were governed by the same legislature, with the exception of a period of two years extending from 1691 to 1693. The friction between the two colonies, however, had been all

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[1] Charters and Constitutions, II, 1536.
[2] Proud, I, 451, n.
[3] II, 397. (Last revised edition.)
[4] Colonial Records, V, 426.
[5] *Ibid.*, 426–7.

but continuous; consequently Penn provided in the new charter of 1701 that the Province and Territories might have separate legislatures in case of continued disagreement. The Territories demanded by virtue of this clause a legislature of their own, and in 1703 an agreement was effected by which their wish was realized. The two colonies retained their distinct legislatures under the same executive until the Revolution. The legislatures, as above noted, consisted of single chambers. In Delaware, the bicameral system was introduced by the constitution of 1776,[1] while in Pennsylvania the legislature consisted of a single house until the adoption of the constitution of 1790.[2] A unicameral legislature was the natural outcome of Penn's ideas of government as embodied in his various charters. Even in her first state constitution, that of 1776, Pennsylvania still clung to the single-chambered legislature. In this the influence of Franklin is apparent. He was in pre-revolutionary days, as Bancroft says, "the soul of the Assembly," and always resisted any change from what he termed the simplicity of a legislature of one house. He was also the President of the constitutional convention which drew up the state constitution of 1776, and then also championed with ability and success the idea of a single house.

[1] Charters and Constitutions, I, 273. [2] *Ibid.*, II, 1548.

CHAPTER III.

The Southern Colonies.

Section I.—Maryland.

It required but five years for the Maryland colony to outgrow the primary assembly and to appreciate the superior efficiency of the representative form. The several hundreds and the Isle of Kent were each instructed to elect deputies or burgesses to represent them at a meeting of the Assembly to be held at St. Mary's on Feb. 25, 1639. This they did, and on the first day of the session an act was passed "For the Establishing the house of Assembly."[1] It was declared by this act that the House of Assembly should consist of the Lieutenant-General, the Secretary of the province, the gentlemen summoned by special writ of the Lord Proprietary, the burgesses, and "such other Freemen (not haveing Consented to any the Elections as aforesaid)." In order not to make the transition from the primary to the representative assembly too abrupt, it was provided that those freemen who wished to do so might refrain from voting and then demand seats in the Assembly. This was actually done in some instances and seats were granted accordingly. The absurdity of the plan was soon seen, however, and it fell into disuse.

It was to be expected that those summoned by special writ would be looked upon as representing the interests of the

[1] Proceedings of the Assembly, 1637/8–1664, pp. 81–2. See also Chalmers' *Annals*, I, 213; Bacon's *Laws of Maryland*, 1638, ch. I; Griffith's *Annals of Baltimore*, 7.

Lord Proprietary, and that the burgesses would consider themselves the only true representatives of the people. A strong community of interest sprang up among the burgesses and received emphatic expression in 1642. On July 18 of that year the burgesses, "either actuated by the spirit natural to representatives, or animated by the example of the Commons of England,"[1] desired to sit by themselves and have a negative on the acts of the remaining members of the Assembly.[2] It seems plain that the separation was desired not by a faction of the burgesses but by the entire body. This is evident from the fact that the motion was made by Burgess Robert Vaughan "in the name of the rest." The request was denied, however, by the Lieutenant-General, and for eight years longer the Assembly continued to sit as one house. It is clear that in the meantime the burgesses were becoming exceedingly jealous of their prerogatives, or rather of what they considered their prerogatives. For example, in July of 1642 the Lieutenant-General wished an appropriation for a military expedition against the Indians. The matter met with serious opposition on the part of the burgesses. In the course of the discussion the Lieutenant-General plainly apprises them that it is not his intention to counsel with them upon the advisability of such an expedition, in as much as decision in matters relating to peace and war was vested in him by the patent. In short, he desired to know the amount of their appropriation and not their opinions.[3] It is not the wont of representative bodies, however, to subside under a rebuff from an agent of the king. Royal opposition serves only to consolidate. Consequently, on Aug. 1, of the same year, Mr. Greene, burgess from St. Mary's hundred, objected to the passage of a certain bill on the ground that it was not voted for by the major part of the

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[1] Chalmers, I, 219.

[2] Proceedings of the Assembly, 1637/8–1664, p. 130; Bacon's *Laws of Maryland*, 1649, ch. XII.

[3] Proceedings of the Assembly, 1637/8–1664, 130–1.

burgesses, although it secured a majority of the Assembly as a whole.[1] Although the matter was decided against him and the Assembly declared one house, the claim of Mr. Greene, without precedent though it was, is interesting in showing that the line of demarcation between the burgesses and those summoned by special writ was being more distinctly drawn.

The separation was finally effected on the first day (April 6) of the session of 1650, by an act "for the settling of this present Assembly." It ran thus: "Bee it Enacted by the Lord Prop^{r} wth the aduise & consent of the Counsell & Burgesses of this prouince now assembled. That this p^{r}nt assembly during the continuance thereof bee held by way of Vpper & Lower howse to sitt in two distinct roomes a part, for the more convenient dispatch of the business therein to bee consulted of. And th^{t} the Gou^{r} & Secretary, or any one or more of the Counsell for the Vpper howse."[2] The burgesses, "or any fiue or more of them" were to constitute the lower house. The two branches were declared to "haue the full power of, & bee two howses of Assembly to all intents and purposes." It was further declared that all bills passed by the two houses and indorsed by the Governor should be laws of the province, "after publicōn thereof, ... as fully to all effects in Law as if they were aduised & assented unto by all the ffreemen of the province personally." From this time on we find the laws of the colony enacted "*By the Lord Proprietary with the advice and assent of the upper and lower house of this Assembly.*"[3]

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[1] Proceedings of the Assembly, 1637/8–1664, 141.

[2] *Ibid.*, 272–3. See also, Bacon's *Laws*, 1650, ch. I; Griffith's *Annals of Baltimore*, 13–14.

[3] Bacon says (*Laws of Maryland*, 1649, ch. XII), that the two houses were separated in 1649. There is, he says, no record of the act by which this was done, but he argues that the separation must have been made at some time prior to the last day (April 21) of the session of 1649, since the laws passed on that date were enacted "*By the Lord Proprietary, with the Assent and Approbation of the Upper and Lower Houses.*" The laws of this session as printed in the Maryland Archives, however, purport to have been passed by the Lord Proprietary by and with the consent of the General Assembly, no

Section II.— Virginia.

The account of the introduction of the system into the Virginia legislature must of necessity be brief, since the sources now available do not relate in a satisfactory way the details of the process of the separation of the Council and the House of Burgesses.

In June of 1619, Governor Yeardly issued a call for a legislative Assembly to consist of two burgesses from each plantation, town or hundred. This, the first representative Assembly that convened in America, met in Jamestown on July 30, 1619. The twenty-two burgesses met in one body

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mention whatever being made of "Upper and Lower Houses." It is true, however, that in the manuscript book of laws (Liber C and W H), from which Bacon drew, we do find the upper and lower houses mentioned in the enacting clauses of laws of April 21, 1649; but the manuscript volume from which the laws were compiled (Liber A), as printed in the Maryland Archives, is older and considered by the editor, Dr. William Hand Browne, to be more reliable than the one used by Bacon. By adopting the reading of the laws as found in the Maryland Archives we are relieved from the necessity of supposing, as Bacon does, that an act was passed separating the two houses in 1649, but that the record of it has been lost. If such an act were passed in 1649, why repeat it in 1650? It seems more reasonable to suppose that the copyist of Liber C and W H, used by Bacon must have inserted the reference to the upper and lower houses, without considering that such an expression was not applicable to 1649.

Chalmer's states (*Annals*, I, 219-20), that the separation was made "during the distractions which ensued" in 1649; but since in his account of the colony of Maryland, he leans confidingly upon the arm of Bacon, the origin of his error, if such it be, is apparent.

Hannis Taylor (*The Origin and Growth of the English Constitution*, p. 24) says that the legislature was divided into two chambers in 1647, and refers the reader to Winsor, *Nar. and Crit. Hist. of Amer.*, III, 536, and to Doyle, *Virginia, etc.*, pp. 286–291 for an account of the early Assemblies. The writer in Winsor, Mr. W. T. Brantly, says, however, on the page above indicated that "At this session [1650] there was first made a permanent division of the Assembly into two houses." Doyle, however, says (p. 291) that the separation was made in 1647. In this he is obviously incorrect. C. E. Stevens in his *Sources of the Constitution*, p. 18, copies Taylor's statement, apparently without consulting Winsor.

with the Governor and Council, and so continued to do until 1680. The testimony of Beverley is definite upon this point. "Before the year 1680," he says, "the council sat in the same house with the burgesses of assembly, much resembling the model of the Scotch parliament; and the Lord Colepepper, taking advantage of some disputes among them, procured the council to sit apart from the assembly; and so they became two distinct houses, in imitation of the two houses of parliament in England, the lords and commons; and so is the constitution at this [1705] day."[1] Culpepper seems to have been adroit in playing off one branch of the Assembly against the other to subserve his own interests and further his political schemes. More than once does he appear in this role.

Section III.—The Carolinas.

In the legislative history of the Carolinas there is little that is of importance to us in our present study, since in South Carolina the bicameral system has prevailed from the beginning of the legislative history of that colony, and in North Carolina it is impossible to determine just when or how the system originated.

According to the "*Concessions*"[2] issued by the proprietors in 1665 for the government of North[3] Carolina, the legislative power was vested in a General Assembly consisting of twelve "Deputyes or representatives" together with the Governor and Council. The latter body was to be appointed by the Governor, and was to consist of not less than six nor more than twelve members. This Assembly was to constitute one

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[1] History of Virginia, 187–8, Campbell's Edition.

[2] Colonial Records of North Carolina, I, 79–92.

[3] It seems convenient to use the terms "North" and "South" but the division between the two was not really made until they became royal colonies.

house[1] over which the Governor or his Deputy was to preside.

The *Fundamental Constitutions*[2] of Locke and Shaftesbury of 1669 provided for a "Parliament" consisting of the proprietors or their deputies, landgraves, cassiques, and popular representatives. They were to sit together in one room and each member was to have one vote.[3] All bills were to be prepared by a Grand Council, and nothing whatever was to be proposed in the Parliament which had not previously been passed by the Council.[4] It was readily seen by the proprietors that this constitution could not be enforced at once on account "of the want of Landgraves and Cassiques and a sufficient number of people;" hence a temporary constitution,[5] embodied in a list of instructions to the Governor and Council, was sent over in 1670 and put into operation. This constitution provided for a unicameral legislature consisting of twenty representatives chosen by the people and five deputies appointed by the proprietors. All laws were to be ratified by the Governor and three at least of the five deputies. Although this Assembly consisted of a single chamber it is not difficult to perceive the germ of the bicameral system in this provision for ratification by the three deputies. It was no doubt from this idea that the upper house was evolved. It is impossible to say just when the separation of the deputies and representatives took place. It was probably a gradual process which received formal recognition in 1691. Since the deputies could defeat any measure by refusing to ratify it, it seems probable that they did not care to attend the sessions of the

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[1] The language of these "*Concessions*" is almost identical with that of the New Jersey Concessions of Feb. 10, 1665, under which two houses were organized. The Carolina construction of the document seems far more plausible.

[2] Charters and Constitutions, II, 1397.

[3] *Ibid.*, 1404. [4] *Ibid.*, 1403.

[5] Colonial Records of N. C., 181.

Assembly except when they wished to promote some legislation favorable to the interests of the proprietors.[1]

On Nov. 8, 1691, a body of instructions[2] was issued to Governor Ludwell. This document constituted a new frame of government for the colony. The legislature was now to sit in two houses. The lower house was to consist of twenty representatives, while the landgraves, cassiques and deputies were designated as the upper house.

In 1729 proprietary government in North Carolina ceased with the sale of the colony to the crown, but in the instructions[3] to the royal Governor the legislature of two houses is plainly continued.[4]

The constitution of 1776 provided for a Senate and a House of Commons.[5]

South Carolina had a separate legislature but was under the same Governor with the northern colony until 1712. Sources of information for the early history of the Carolinas are very meager, but it seems clear that the legislature of South Carolina, practically from its beginning, consisted of two houses. Ramsay says[6] that the first legislature assembled in 1674[7] and consisted of the "governor, and upper and lower house of assembly; and these three branches took the name of parliament." The legislative records do not begin until 1682.[8] It seems plain, too, that though the legislature consisted of two houses, it lacked some of the most essential attributes of the bicameral system in its highly developed form. Although no serious attempt was made to put the Fundamental Constitutions into operation as a whole, yet an effort was made to apply some of their provisions. On December 16, 1671, a short set of instructions was framed for Governor Yeamans in

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[1] See Bassett's *The Constitutional Beginnings of North Carolina*, J. H. U. Studies, Twelfth Series, III, 57–8.
[2] Colonial Records, I, 373.
[3] *Ibid.*, III, 90.
[4] See Sec. 14 of the Instructions, p. 93.
[5] Charters and Constitutions, II, 1411.
[6] History of South Carolina, I, 34–5.
[7] This date is doubtful.
[8] Statutes of South Carolina, I, Preface, iii.

which he was directed to have all legislation prepared in the Council. "For there is noe thing to be debated or voted in y^e^ Parl^t^., but w^t^ is proposed to them by y^e^ Councill."[1] The popular branch, however, would not consent willingly to have its power thus curtailed, and agitation upon the matter continued until the final settlement in 1694. In that year Governor Smith made the following significant announcement to the Assembly: "The proprietors have consented that the proposing power for the making of laws, which was heretofore lodged in the governor and council only, is now given to you as well as the present council."[2] "Henceforth," says Rivers,[3] "the Assembly claimed the privileges and usages of the House of Commons in England, and the proprietors allowed the claim." Under the royal government the bicameral system was retained.[4]

Under the constitution of 1776[5] the legislature consisted of two houses, and the Council was chosen by the Assembly. The constitution of 1778[6] provided for a Senate and a House of Representatives.

Section IV.—Georgia.

The history of Georgia contains almost nothing of importance for our present purpose. The colony was surrendered to the Crown in 1752, and two years later a royal government[7] was established much resembling that of South Carolina. The legislature was bicameral, as might have been expected; but in making a state constitution in 1777, Georgia followed the precedent of Pennsylvania and established a legislature consisting of a single house.[8]

In the constitution of 1789, however, provision was made for "two separate and distinct" houses.[9]

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[1] Rivers' *Historical Sketch of South Carolina*, App., p. 369.

[2] Rivers, 171. Quoted from MS. Journal of the Commons, May 15, 1694. Also quoted in Winsor, *Nar. and Crit. Hist. of Amer.*, V, 314.

[3] p. 171. [4] See Ramsay, I, 95. [5] Charters and Constitutions, II, 1617.

[6] *Ibid.*, 1621.

[7] Cf. Stevens' *History of Georgia*, II, 370–389; also Jones' *History of Georgia*, II, 460–487.

[8] Charters and Constitutions, I, 378, 379. [9] *Ibid.*, 384.

CHAPTER IV.

The Federal Constitution.

When the framers of the Constitution met in 1787 many of them were not novices in the science of constitution-making. On May 10, 1776, Congress had "recommended to the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigencies of their affairs" had "been hitherto established, to adopt such government as" should, "in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general."[1] Eleven[2] of the states acting upon this recommendation had adopted new constitutions before 1781. The experience of these four years so prolific of new constitutions could not fail to be beneficial to the members of the Federal Convention, and particularly so from the fact that many of them had been members of the constitutional conventions in their respective states.[3] We are not surprised, then, to find immediate precedents for many of

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[1] Journals of Congress, Vol. II, 166. The resolution was published with a suitable preamble on May 15. *Ibid.*, 174.

[2] Connecticut prefixed a few short introductory paragraphs to her charter and retained it until 1818. Rhode Island substituted the sovereignty of the Commonwealth of Rhode Island for that of the King and thus retained her charter until 1842.

[3] Nathaniel Gorham was a member of the Massachusetts convention and one of a committee appointed to draft the constitution. Madison was a member of the Virginia convention of 1776. Gouverneur Morris, Jay, and Livingston were appointed a committee to draft the New York constitution of 1776. Morris also took a prominent part in the debates of the convention.

the elements of the Federal Constitution in these early state constitutions. This is especially true in case of the bicameral system. When the motion was made in the Convention that the national legislature should consist of two houses, the delegates from Pennsylvania alone voted in the negative. All of the states except Pennsylvania and Georgia had the bicameral system in their legislatures and naturally favored its introduction into the national legislature. The sentiment in Georgia was evidently in favor of two houses, although she had at the time a single-chambered legislature. The delegates from that state voted with the majority, as we have seen; and, in 1789, the system, pure and simple, was introduced by her new constitution. It is highly probable, too, that Pennsylvania was in favor of the system, as we find it incorporated in her constitution of 1790. Madison tells[1] us that the delegates from Pennsylvania voted in the negative on this question probably in deference to the opinion of Franklin, who favored a legislature composed of a single house.[2]

The views of the states thus expressed through their constitutions could not fail to attract the attention of the members of the Federal Convention. Colonel Mason, in speaking of the advisability of having the national legislature to consist of two branches, said[3] that he was thoroughly convinced that the American people desired more than one house in their national legislature and cited as proof of his assertion the fact that all of the states except Pennsylvania (and he should have excepted Georgia,[4] also), had incorporated the bicameral system into their constitutions.

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[1] Elliot's *Debates*, V, 135.

[2] The fact that Congress under the Articles of Confederation was composed of a single house was no doubt largely due to the influence of Franklin. The committee that drafted the Articles based them upon the plan of the same name submitted to Congress by Franklin on July 21, 1775. This plan, of course, provided for a unicameral legislature. The connection between the two documents is evident from a comparison of their texts. For Franklin's plan of 1775, see the Secret Journals of Congress, Vol. I, p. 283.

[3] Elliot's *Debates*, V, 217.

[4] Charters and Constitutions, I, 378.

Of the two opposing plans of government, that introduced by Governor Randolph and familiarly known as the "Virginia Plan" provided for a legislature consisting of two houses; while the plan brought before the Convention by Mr. Patterson, and known as the "New Jersey Plan," advocated a legislature composed of a single house. It must not be supposed, however, that the advocates of the "New Jersey Plan" were of necessity antagonistic to the bicameral system. They believed that the Articles of Confederation should be "revised," "corrected," and "enlarged," and were opposed to the drafting of a form of government either entirely or essentially new. Indeed many of them considered that the Convention would be exceeding its authority by going beyond the mere revision of the Articles. Consistent adherence to this idea would involve the advocacy of a single-chambered legislature such as existed under the Articles of Confederation.

Thus by 1790, the Federal and all of the state legislatures were composed of two houses; and the legislatures of all of the other states upon their admission were similarly constituted, with the single exception of Vermont. Although not admitted until 1791, Vermont formed a constitution as early as 1777. This constitution[1] was an adaptation of the Pennsylvania constitution of 1776. This was due to the influence of Dr. Thomas Young, a man of note and a citizen of Philadelphia. Dr. Young had shown a great interest in the affairs of Vermont and, when in a letter[2] dated April 11, 1777, he recommended[3] the Pennsylvania constitution as a model, his suggestion was speedily adopted. It has been thought that the Vermont constitution was drafted by Dr. Young, but there seems to be no positive evidence upon the matter.

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[1] Charters and Constitutions, II, 1857.

[2] This letter is printed in Thompson's *Vermont*, pt. II, 106.

[3] "This constitution," says Dr. Young, "has been sifted with all the criticism that a band of despots were masters of, and has bid defiance to their united powers." Thompson's *Vermont*, pt. II, 106.

The constitutions of 1786[1] and 1793[2] continued the single-chambered legislature, but an amendment to the latter, adopted in 1836,[3] made "the general assembly of the State of Vermont" to consist of a Senate and a House of Representatives.

From 1836 to the present time the state legislatures have uniformly consisted of two houses.

In conclusion, then, we may note the fact that the causes which operated to separate the colonial legislatures into two branches were different in the different colonies; and in most of them there was a gradual evolution of the system influenced either consciously or unconsciously by the English model. This English influence no doubt accelerated the appearance of the bicameral system. It was only six years after the founding of the colony of Massachusetts Bay that the two branches of the legislature were declared coördinate, and after a lapse of fourteen years they were deliberating as well as voting separately.

Our survey of the subject also leads us to conclude that the bicameral system in the Federal Constitution is, in its growth and development, essentially American; but the bicameral principle, the germ and genesis of the institution, must be sought on foreign soil. That there should be a sentiment in the Convention of 1787 all but unanimous in its favor, is not strange when we consider the abundant precedent therefor in the state constitutions, the colonial governments, and more remotely, in the English Constitution. In the gradual evolution of the system we would naturally expect to find it a feature of the Articles of Confederation, and such doubtless would have been the case were it not for the influence of Franklin and the example of the Continental Congress.

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[1] Charters and Constitutions, II, 1869.

[2] *Ibid.*, 1877.

[3] *Ibid.*, 1883.

VITA.

Thomas Francis Moran was born in Columbia, Jackson County, Michigan, on January 9, 1866. He completed the high school course in the public schools of Manchester, Michigan, in June, 1883. In the fall of the same year he entered the University of Michigan, from which he was graduated in 1887 with the degree of A. B. From 1887 to 1892, he was Principal of the public schools of Elk River, Minnesota. In the fall of 1892, he entered upon a three years' course of graduate study in the Johns Hopkins University, taking History as the principal subject and Economics and Sociology as first and second subordinates respectively. He was for a short time in the spring of 1893, engaged as instructor in History and Civics in the Minnesota State Normal School at St. Cloud.

VI-VII

White Servitude in the Colony of Virginia

JOHNS HOPKINS UNIVERSITY STUDIES

IN

HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is Past Politics and Politics are Present History.—*Freeman*

THIRTEENTH SERIES

VI-VII

WHITE SERVITUDE IN THE COLONY OF VIRGINIA

A STUDY OF THE SYSTEM OF INDENTURED LABOR IN THE AMERICAN COLONIES

BY JAMES CURTIS BALLAGH, A.B.

A DISSERTATION PRESENTED TO THE BOARD OF UNIVERSITY STUDIES OF THE JOHNS HOPKINS UNIVERSITY FOR THE DEGREE OF DOCTOR OF PHILOSOPHY.

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CONTENTS.

SOURCES.

The materials upon which this study is based are largely contained in:

I. The Records of the Virginia Company of London, of which two MS. copies are extant:

(a) The Collingwood MS. (1619-1624), 2 v. folio, Library of Congress, Washington, D. C., prepared for the Earl of Southampton from the original records of the Company, now lost, in 1624, and compared with them page by page by the secretary, Edward Collingwood, and attested by his signature. Through the copious abstracts by the late Conway Robinson, Stith's History of Virginia and the publications of the Rev. E. D. Neill, this MS. is largely accessible in print.

(b) The Randolph MS., formerly the property of John Randolph of Roanoke, now in the library of the Virginia Historical Society, Richmond, 2 v. folio, an 18th century transcript of the Collingwood MS.; and 1 v. folio of miscellaneous correspondence, orders, instructions, etc. (1617—).

II. Documents, correspondence, orders, instructions, proclamations, laws by the Company, Governors' commissions, etc., 1587-1730, to be found in Purchas, Hakluyt, Force, Brown's Genesis of the United States (1605-1616), Smith's works (1606-1624), Calendars of English State Papers (Colonial, East Indies, Domestic, 1578-1676), Jefferson MSS. (1606-1711), MacDonald, De Jarnette, Sainsbury and Winder collections (Virgina MSS. from the British Record Office, 20 v. folio, 1587-1730), Colonial Records of Virginia (1619-1680), Land Books (1621—), and reprints of valuable early papers in the Virginia Historical Register and the Virginia Historical Magazine.

III. (a) The Records of the General Court of Virginia (1670-76), the Robinson MS. (1633—), containing valuable

abstracts from the General Court records and other papers since destroyed, the MS. Letters of Wm. Fitzhugh (1679-1699), the MS. Letters of Wm. Byrd (1683-1691), and the Virginia Gazettes (1737—), all in the possession of the Virginia Historical Society.

(b) The MS. County Records of Accomac (1632—), York (1633-1709), Essex (1683-86), Henrico (1686-99), State Library, Richmond, Virginia.

(c) Hening, Statutes at Large of Virginia (1623-1792), and contemporary descriptions of Virginia; Whitaker (1613), Hamor (1614), Rolf (1616), "A Declaration," etc. (1620), Bullock (1649), Williams (1650), Hammond (1656), Blair, Chilton and Hartwell (1696), Beverley (1705), Jones (1724).

Such other authorities as have been referred to will appear in the appended bibliography.

I desire to express my thanks to Philip A. Bruce, Esq., of the Virginia Historical Society; to Messrs. W. W. Scott and W. G. Stanard, of the Virginia State Library; to Col. R. A. Brock, of the Southern Historical Society, and to Hon. A. R. Spofford, Librarian of Congress, for their courtesy in rendering these authorities accessible to me; also to Professors Adams, Emmott and Vincent, of the Johns Hopkins University, for valuable suggestions.

J. C. B.

INTRODUCTION.

The chief interest in the colonial history of America has always centered in the development of political institutions, which, from their importance and endurance, have become of wide significance. For this reason it has been customary to overlook, or to treat as processes subsidiary to the political evolution, many interesting social and economic developments, which were of great moment in the history of the colonial period as furnishing the material background of this political development and giving it its distinctive character.

In this paper an attempt has been made to trace the growth and significance of one such social institution as a result of the peculiar conditions under which the actual colonization took place. Though the study is limited to the experience of a single colony, that experience becomes, through the exceptional position occupied by that colony, broadly characteristic of the institution in general, and in all important particulars typical of the legal form which servitude assumed in the other colonies.

The main ideas on which servitude was based originated in the early history of Virginia as a purely English colonial development before the other colonies were formed. The system was adopted in them with its outline already defined, requiring only local legislation to give it specific character in each colony. Such legislation was in some cases directly copied from the experience of Virginia, and when of independent or prior origin was largely determined by conditions more or less common to all the colonies, so that in its general legal character the institution was much the same in all. The similarity was more striking, both in theory and in practice, in the agricultural colonies of Virginia, Maryland and Pennsylvania, and particularly in them was it of industrial importance.

The conditions in the other middle colonies, New England, the Carolinas and Georgia, were somewhat different and not so favorable to the existence of such an institution. It consequently neither reached so full a development nor continued to exist so long, but while it did it was of considerable social and economic importance, and its effects, though not so marked, were much the same.

The object of the present paper, then, is to show:

First, the purely colonial development of an institution which both legally and socially was distinct from the institution of slavery, which grew up independently by its side, though the two institutions mutually affected and modified each other to some degree.

Second, that it proved an important factor in the social and economic development of the colonies, and conferred a great benefit on England and other portions of Europe in offering a partial solution of their problem of the unemployed.

WHITE SERVITUDE IN THE COLONY OF VIRGINIA.

CHAPTER I.

SERVITUDE UNDER THE LONDON COMPANY.

The failure of individual enterprise to establish a permanent colony in America, and the example of successful commercial corporations, led to an adoption in England of the corporate principle in regard to colonization as well as to trade. The Virginia Company of London, created by letters patent from King James I., April 10, 1606, was organized as a joint stock company on the general plan of such commercial corporations, and particularly on that of the East India Company. The two Companies had the same Governor. The distinction between them lay in the fact that the avowed object of the Virginia Company was to establish a colony of which trade was to be a result, while the India Company aimed at trade alone, and the colonization which resulted was merely incidental.[1]

Though the Virginia Company was composed of two separate divisions, the London Company and the Plymouth Company, the former, which alone effected a permanent colonization, is of interest to us. The charter members of this Company were largely merchants of London, and after its organization was perfected two classes of membership were distinguished: first, "Adventurers," who remained in Eng-

[1] Stephens, p. viii.; Bruce, I., 112, 136, 138, 154, 165; S. P. E. I., 10, 215; Cunningham, Growth of English Industry and Commerce, p. 268, cf. 125, 151, 267. Charter of 1606, Brown, p. 72. The peculiar feature of a Royal Council for the government of the Virginia Company was a result of this distinction.

ıd and subscribed money towards a capital stock; and, ɔecond, "Planters," who went in person as colonists, and were expected by their industry or trade to greatly enlarge the stock and its profits. Shares of adventure were granted for each subscription of £12 10s. to the stock, and also for each "adventure of the person," entitling the holder to participate proportionately to his shares in all divisions of profits, both those resulting from the industry of the colonists and those resulting from trade, and besides this to receive a land grant of some nature for each share. A community of property and of trade was to be established in the colony for five years after the first landing of the colonists, and at the end of that time doubtless a division of profits and of land was promised.[1]

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[1] Nova Britannia, Force, I., 24, 28; Brown, Genesis of the U. S., I., 228, 229; Charter of 1609; Va. Mag. of Hist. and Biog., Oct., 1894, Vol. II., 156, 7, Instructions to Yeardley: Decl. of Anct. Planters, Col. Rec. Va., 81. We have nothing extant to show the exact terms on which the colonists of 1606-7 as a whole, and the "supplies" until 1609, came to Virginia. When we come to the latter year we have in a pamphlet (Nova Britannia) and in a "broadside" of the Company, both issued to attract new adventurers and planters, a perfect outline of the Company's policy at that time. There is nothing, however, so far as I have been able to discover, that contradicts the view that the outline as we have it for 1609 was in its general character that of 1606, the chief difference being the length of the term, which was probably five years in 1606 instead of the seven years of 1609; on the contrary, all the evidence we have goes to substantiate this theory. In 1618, the instructions to Yeardley ordered that 100 acres of land be granted to *each share* owned by every planter, whether sent by the Company or transferred at his own charge before *the coming away of Dale* in 1616. This included some of the colonists of 1607. The patent of 1606 specially authorizes the council of the colony to pass lands, declaring all lands passed "by letters patent shall be sufficient assurance from the said patentees, so divided amongst the undertakers for the plantations of the said several colonies," and shows that a division of land was contemplated. (Brown, I., 63.) This is established by the fact of Ancient Planters of 1607 receiving in later years grants of lands for their personal adventure, and also for subscriptions to stock. Captain Gabriel Archer's brother inherited one grant

This so-called communal system was provided for in his Majesty's instructions issued a short time after the granting of the patent to the Company. They were to "trade together all in one stocke or devideably, but in two or three stocks at most and bring not only all the fruits of their labours there, but also all such other goods and commodities which shall be brought out of England or any other place into several magazines or store-houses," and "every person of the said several colonies" was to "be furnished with all necessaries out of those several magazines or store-houses for and during the term of five years." An officer called the treasurer or "cape merchant" was to administer this magazine in connection with the President and Council, accounting for all goods taken into and withdrawn from this joint stock.[1]

The position of an early planter was thus theoretically that of a member of the Company, who was to receive in lieu of his service for a term of years his maintenance during that time, or his transportation and maintenance, at the Company's charge. For the adventure of his person, as well as for every subscription of £12 10s., he received a bill of adventure which entitled him to the proportion that

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of land from him, and Anthony Gosnold, in 1621, received a share for personal adventure sixteen years before at his own charge. Cf. Brown, II., 814; Neil, Va. Co., 257; Arber's Smith, 390; Burke, Vol. II., 332, 333, 334, under names Dodds, Simons, Martin. It is not to be supposed that mere adventure or gold-seeking would have constituted a sufficient motive to induce many persons to make such an experiment. A land grant of some kind was undoubtedly promised before 1609 in addition to the proportional share of profits. This was in accordance with the policy under which earlier attempts at discovery or colonization had been made. Gilbert's Articles of Agreement with the Merchants Adventurers in 1582, under his patent of 1578, show the same general principle of Adventurers of the purse or person and of land grants, and Carlyle's project presents a scheme of "Adventurers" and "Enterprisers" who are to share equally in the lands, &c., discovered. Sainsbury MS., I., 32, 35; Haklyut, III., 234, 235; Va. Hist. Mag., Oct. '94, 186.

[1] Brown, I., 71, 72. Instructions, Nov. 20, 1606.

would fall to a single share in a division of land and profits. As a member he stood on an equal footing with all other members and stockholders.[1] Practically, however, as we shall see, he was, at least during the first twelve years of the Company's government, little better than a servant manipulated in the interest of the Company, held in servitude beyond a stipulated term, and defrauded of his just share in the proceeds of the undertaking.

The administration of Sir Thomas Smith, the first Treasurer of the Company, even when we allow for the exaggerated statements of the planters, was undoubtedly hurtful to the welfare of the infant colony. His policy was one of immediate gain. The success of the East India Company, whose first Governor he also was, as a trading corporation, probably led to his desire to conduct the Virginia Company on much the same principles. The welfare of the colonists was neglected, and the project of true colonization seems to have been lost sight of in the desire to exploit the riches of an unknown country and to discover the long sought-for passage to the South Seas. Though some £80,000 had been spent in twelve years, the Company, when turned over to Sir Edwin Sandys in 1619, was in debt £8000 or £9000, and there had survived but a bare fourth of near two thousand colonists that had been sent over.[2] Restrictions had been put upon the planting of corn, and the colonists were wholly dependent on the poor supplies from England or the doubtful generosity of the Indians. This policy had reduced the

[1] Va. Co. Rec., II., 94, 111. Stith, Append. 26. Later, when separate courts were established, subsequent to the charters of 1609 and 1612, for governing the Company, whenever members had a voice in these courts, the Virginia colonist enjoyed a like privilege, if he happened to be in England.

[2] Va. Co. Rec., I., 4, 64, 181. Va. Hist. Mag., Oct., 1893, 157. Of more than 800 colonists sent during the first three years, only about sixty survived; of a still larger number sent before 1619, but 400 were alive when Yeardley came, and half of these were unfit for work. Arber's Smith, Introd., cxxix.; Col. Rec. Va., 72, 80.

colony in 1609 to but fifty persons, and discontent with the aristocratical form of the Company's government and its bad administration led to a petition for a new charter. This charter constituted the London Company of Virginia a separate corporation from the Plymouth, defined the boundaries of its territory, and vested it with powers that gave it a more independent and republican character.[1]

To obtain fresh settlers the Company now issued broadsides and pamphlets, with specious promises, which, however honest its purpose, were certainly never fulfilled. There is evidence, however, in these advertisements to indicate that the Company consciously imposed on prospective settlers. One broadside solicits "workmen of whatever craft they may be—men as well as women, who have any occupation, who wish to go in this voyage for colonizing the country with people—they will receive for this voyage five hundred reales[2] for each one—houses to live in, vegetable gardens and orchards and also food and clothing at the expense of the Company—and besides this they will have a share of all the products and profits that may result from their labour, each in proportion, and they will also secure a share in the division of the land for themselves and their heirs forevermore."[3] A letter to the Lord Mayor, Aldermen and Companies of London offers similar terms and a definite grant of "one hundred acres for every man's person that hath a trade or a body able to endure days labour, as much for his child that are of yeares to do service to the colony with further particular reward according to their particular merits and industry." The full policy of the Company appears in a pamphlet issued by it about the same time; the object was to raise both men and money. Shares were set at twelve pounds ten shillings, and every "ordinary" man, woman and child above ten years that went to the colony to remain

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[1] Stith, Append. 8; Nova Britannia, Force, I., 23.

[2] The equivalent of £12 10s., or the expense of transportation. Brown, I., 252.

[3] *Ibid.*, 248.

was allowed for his person a single share as if he had subscribed the required sum of money. Every "extraordinaire" man, as Divines, Governors, Ministers of State and Justice, "Knights, Gentlemen, Physitians," or such as were "of worth for special services," were rated and registered by the Council according to the value of their persons. The Company on its part agreed to bear all the charges of settling and maintaining the plantation and furnishing supplies in a joint stock for seven years. There was to be no private trading, and "as we supply," they say, "from hence to the Planters at our owne charge all necessaries for food and apparel, for fortifying and building of houses in a joynt stock so they are also to return from thence the encrease and fruits of their labours for the use and advancement of the same joynt stock till the end of seven years; at which time we purpose (God willing) to make a division by Commissioners appointed of all the lands granted unto us by his Majestie to every one of the colonists according to each man's several adventure agreeing with our Register booke which we doubt not will be for every share of twelve pounds, ten shillings, five hundred acres at least." A large increase of the stock is anticipated from the success of the colony, "which stock is also (as the land) to be divided equally at the seven years end or sooner, or so often as the Company shall think fit for the greatness of it to make a dividend." It was hoped that this would free them from further disbursements and would be an encouragement to the planters, as their share in the profits would thus be larger from a smaller number of shares owned by adventurers coming into the dividend. In order to secure promptness in the payment of subscriptions, every man was to be registered according to the time his money or person began to adventure. The division of lands was to be just, and to insure this it was to lie in scattered lots both good and bad, while the commissioners were to be chosen equally by adventurers and planters.

Regardless of these professions, when the seven years had

passed the Company proposed to allow only fifty acres of land to a share in a division of land about to be made, and alleged in excuse that they were not in possession of more, and that it was "not as yet freed from the encumber of woods and trees nor thoroughly survayed," yet they hoped "future opportunity will afford to divide the rest which we doubt not will bring at least *two* hundred acres to every single share." The division was in fact to be made not in performance of their obligations, but as a measure to raise further money for the expenses of the Company. No adventurer was to be permitted to share in the division unless he made a further subscription of £12 10s. (or more if he chose) to the Company's treasury. If he failed to do this he was to wait for some future division for his share, which would lie in some remote place and not along James river and "about the New Townes erected," as the lands of the present division did. The Company even went to the extent of admitting *new* adventurers, on a payment of the subscription, to equal shares in the division, in utter disregard of the rights of the old adventurers and of the planters in Virginia. Captain Argall was sent with commissioners and surveyors in 1616 to effect this division, and was granted in his own right a large plantation in the colony. It does not appear that the Virginia planters, except large shareholders like Captain John Martin and Lord Delaware, and possibly the men who had obtained their freedom in 1617 for building Charles City, ever participated in the division at all.[1]

No general private ownership of land in severalty seems to have existed in Virginia until the arrival of Yeardley as Governor in 1619. The body of the colonists were forcibly kept[2] out of their rights, and if they had estates, had no assur-

[1] Nova Brit., Force, I., 24, 25. New Brit., Brown, I., 273, 274. The charter of 1609 empowered the appointment of such a commission.

[2] Brown, II., 777, 778, 779. "A Brief Declaration," 1616; Va. Hist. Mag., Oct., 1893, 158. Discourse of the Old Company. 1625; Va. Co. Rec., II., 196; Winder MS., I., 16. In justice to the Company, however, it should be said that its finances were

ance of their titles before that time. Certain corporate rights to land, however, belonged, as early as 1617, to such cor-

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in a very bad state. They had suffered greatly from traducers of the plantation both in England and Virginia. Many of the original subscribers became so disheartened by this or the mismanagement of the Company that they refused to pay up their subscriptions, and the Company was compelled to go into debt, relying upon the private purses of its warmest supporters. The state of affairs became so bad by 1612 that the Company took care to secure in its third charter the insertion of a special clause empowering them to collect subscriptions from its members. (Brown, II., 625.) In Nov. and Dec., 1610, on the report of Sir Thomas Gates of the imperative necessity of supplies, the Company determined that all adventurers, both those already free of the Company (*i. e.*, who had paid up), and those who desired to be free, should subscribe at least the sum of £75, to be paid in three years, twenty-five each year, "towards a newe supply to be sent for the relief of the said colony in Virginia." Many members and other persons came to the relief of the Company, but a number of knights and gentlemen who subscribed refused to pay, and the Company was forced in 1613 to petition for the King's writ to sue in the High Court of Chancery for the amounts due. Brown, II., 623-630, Brooke to Elsmere.

Lotteries were also used as a means of obtaining ready money, and in one to be drawn in 1614, every man who adventured £12 10s. in the lottery could have either his prize or a Bill of Adventure to Virginia, with his part in all lands and profits arising from it. Adventurers who had not paid up their subscriptions were permitted, on the payment to the Treasurer, in *money*, of double the sum for which they had subscribed, both to be free of the Company and to share in the lottery for the whole amount paid in. If not satisfied with their drawings they could have Bills of Adventure instead. The Company even declares that if the colonists in Virginia were "now but a little while supplied with more hands and materials, we should the sooner resolve upon a division of the country by lot, and so lessen the General charge by leaving each several tribe or family to husband and manure his owne" (*Ibid.*, II., 762, 763, 764).

Whatever difficulties incident to a new plantation the Company may have had to overcome, these were undoubtedly enhanced by the maladministration of Sir Thomas Smith and his officers. The accounts were left in such a disorderly state when the government was turned over to Sandys that Smith's integrity was open to grave doubts. Though his accounts were carefully examined and he was given an opportunity to clear up the discrepancy, it was never satisfactorily explained. Va. Co. Rec., I., 181; II., 83, 84, 251.

porations as Bermudas Hundreds, and a few "particular plantations" had been established by the common action of a number of adventurers or planters banded together in societies, sometimes with exceptional grants of jurisdiction that made them practically independent manors. Though the grants themselves in some cases dated as early as 1616, the establishment of these independent proprietaries was comparatively slow, and they increased in number very little before 1619.[1] The year 1616 seems to have marked a change in the policy of the Company toward land grants, and in general to the disadvantage of the colonist. When an actual division of land was made to shareholders in 1619 only those who had subscribed or had come to the colony before the departure of Dale in 1616 were considered to hold "Great Shares," or "Shares of Old Adventure," which entitled them to a grant of 100 acres, while the holders of shares issued since that time could claim but 50 acres a share.[2] Though a few exceptional grants were possibly

[1] Va. Mag. Hist. and Biog., Oct., 1893, 158, 160, Discourse of the Old Company. *Ibid.*, Oct., '94, 160, Instructions to Yeardley. MS. Rec. of Va. Co., III., 140; Robinson MS., 146; Winder MS., I., 16; Company's Register, 1615-23; Col. Rec. of Va., 20 *et seq.*, Va. Co. Rec., I., 62, 65.

The first of the societies known as Hundreds of any importance was Smith's Hundred, so called from Sir Thomas Smith, one of the subscribers to its fund, and it seems to have been established subsequently to April, 1618. In 1620 it became Southampton Hundred. Another was Martin's Hundred. Other plantations were established either by some ancient adventurer or planter, associating others with him, as Argall's, Martin's and Lord Delaware's plantations, or by new adventurers joining themselves under some one person, an example of which is seen in Christopher Lawne's plantation. The failure of the Company itself as a successful colonizing agent and its very weak financial condition was the sole occasion of this private enterprise.

[2] No dividend, except of lands, was ever declared in favor of the colonists, nor is there any record of a division of profits amongst the adventurers generally. The division of land that was made fell far short of the promises of the Company under which the shares were taken. The Ancient Planters, by the Company's orders, in 1619 were to have the 100 acres as a first

made to individuals by governors before Yeardley, they had no assurance of their titles, and we can regard no earlier date than 1619 as that of the full and general establishment of the rights of private property in land in Virginia.[1]

This communal system continued without a break until the year 1613, when a variation was introduced in the conditions of service of a number of the colonists and in their relation to the land. A sort of qualified property right was given them by the introduction of a tenancy-at-will on small

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division, and a future increase of this was promised only to those who had gone at their own charge. Their rights to be favored above those who went after the greatest hardships were over were apparently recognized by the Instructions, but they themselves in their first Assembly seem to have felt sufficient doubt as to its possible construction to petition the Company that "they have the second, third and more divisions as well as any other planter," and shares also for their male children and *issue*. The latter request was not granted, but they appear to have been put on equal footing with other planters in subsequent land grants, which depended on a peopling of the tract first granted. I can find no evidence of a second or third division ever having been made. Arber's Smith, 526; Va. Hist. Mag., Oct., '94, 156, 157; Va. Co. Rec., I., 14, 15; Stith, 139; Col. Rec. Va., Assembly of 1619.

[1] I can find no authority whatever, except an erroneous reading of Stith (p. 139), for Chalmers' assertion that private property in land was instituted by Dale in Virginia in the year 1615 by a grant of 50 acres in fee to every free man in the colony. All the evidence we have proves conclusively that no such grant of lands was made, nor does Stith ascribe the change in the Company's policy at this time to Dale; it was the result, however, of the prosperous condition of the colony, which was largely the work of Dale. Dale was in England June 12, 1616, probably before the time of the issue of the Brief Declaration relating to the dividend of 50 acres, and it is possible if this were so that he was consulted in the matter. There is no authority, however, for the statement that it was due to his influence. From the "Declaration" itself it seems to have been dictated by other motives. Chalmers gives Stith as his authority on this point, and the mistake has crept into Virginia histories on the sole authority of Chalmers. He further errs in the date, while Stith gives it correctly. Stith, 139; Chalmers' Pol. Annals, 36; Campbell, 116; Cooke, 110; Burke, I., 177; Doyle, Va., Md. and the Carolinas, 152.

tracts of land belonging to the Company, either at a fixed rent or on certain conditions of service to the colony.[1]

This change was brought about by the intolerable conditions of servitude and the right which the few remaining colonists of 1607 probably had to demand a release under their five-year contracts now expired. The Bermuda planters petitioned Governor Gates for permission to plant corn for a subsistence, as the Company had been derelict in furnishing supplies. This petition was denied unless they accepted a tenantship-at-will, paying a yearly rent of three barrels of corn and giving a month's service to the colony.[2] The condition of the rest of the colonists was less fortunate; they were either *retained* in their servitude or granted, as tenants, small farms on condition of giving eleven months of the year to the benefit of the common store, from which they received but two barrels of corn.

By 1616 further modifications had taken place, chiefly in favor of the farmer class, who had become a source of profit to the Company and now numbered nearly a third of the colonists. The time of their service was reduced to thirty-one days, rendered at their convenience, and they were allowed to rent laborers from the colony as their servants. They paid a small rent for their farms and were responsible for their own maintenance and that of their servants. These laborers were men transported at the Company's charge, and could be disposed of by the Governor for the best interests of the colony, as their maintenance would otherwise devolve upon the Company. Governor Dale placed a number of these on a tract of land called the "common garden," and applied the proceeds of their labor to the maintenance of their overseers and the public officers of the colony. The skilled laborers and artificers, such as carpenters and smiths, constituted another class and worked at their trades for the

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[1] Stith, 131, 132; Chalmers, 34; Purchas, 1766 (Hamor).

[2] Decl. of Anc. Planters, Col. Rec. of Va., 75; Chalmers, 39; Stith, 132; Purchas, 1766.

colony, while they had land and time allotted them to till ground for their maintenance.[1] The freedom thus given to officers, farmers and skilled laborers was only conditional, depending on a responsibility for their own maintenance, while full control continued to be exercised over those who depended on the Company for support. This system continued without any important change until 1619.

Some distinction of classes existed in the colony from the earliest days. Society was influenced by its personnel, and doubtless also by the fact that many of the colonists, unable to pay their transportation, were either sent upon the common charge of the Company or of adventurers in England. Many of the gentlemen among the first immigrants took with them valets and servants on stipulated wages. The Company also, beside its seamen and soldiers, had servants in its employ on wages.[2] This class, however, was small and exceptional, and the bulk of the colonists went as members of the Company, either at their own charge or at the charge of the Company or of some private person. The hardships of the early years left little opportunity for the growth of an aristocratic sentiment, though we find the distinctions of class frequently recognized and the offices absorbed by a limited number of gentlemen. Beyond this, little practical distinction existed. All were colony servants alike and suffered much the same exactions.

Up to 1613 they were worked as hirelings of the Company, receiving but a miserable support in lieu of their services. A portion of them, we have seen, then became tenants on the Company's land on hard conditions of tenure.

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[1] Va. Hist. Reg., I., 107-110, Rolf's Relation, 1616; Purchas, Pilgrimes, 1766, Hamor's Narrative; Purchas, His Pilgrimage, 837; Va. Co. Rec., I., 65. The farms consisted of three acres, and the rental of a servant was two barrels and a half of corn.

[2] Smith, Hist. of Va., I., 241; Neil, London Co., 13, Early Settlement; Third Rept. of Royal Comm. on Hist. MSS., Appd., 53; Arber's Smith, 107, 122, 448, 486, 487, cxxix.; MS. Rec. Va. Co., III., 142; Brown, II., 550.

Others, through the influence of Dale, were induced to serve the colony in the "building of Charles City and Hundred"[1] three years longer, on the promise of absolute freedom from the "general and common servitude" so much abhorred. They were allowed but a month in the year and a day in the week to provide for themselves, and were afterwards deprived of half of this time, so that they were forced, as they say, "out of our daily tasks to redeem time wherein to labour for our sustenance thereby miserably to purchase our freedom."[2] The favored Bermuda planters were finally given a charter of incorporation and enjoyed better terms, but were bound to the performance of certain duties for a limited time before they could have their freedom.[3]

When Lord Delaware came in 1610 with fresh supplies he thoroughly organized the colony as a labor force under commanders and overseers.[4] Dale afterwards applied a rigorous military system adopted from the Low Countries, and enforced it with great severity in carrying out his plans for establishing new plantations. The colonists were marched to their daily work in squads and companies under officers, and the severest penalties were prescribed for a breach of discipline or neglect of duty. A persistent neglect of labor was to be punished by galley service from one to three years. Penal servitude was also instituted; for "petty offences" they worked "as slaves in irons for a term of years." The planters affirm that there were "continual whippings and extraordinary punishments," such as hanging, shooting, breaking on the wheel, and even burning alive, but it is likely they much exaggerated the state of affairs. The system at least proved salutary. Towns were built and palis-

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[1] Col. Rec. Va., 68, 81.

[2] Stith, 132; Purchas, Pilgrimes, 1766; Col. Rec. Va., 75, 76. "Having most of them served the colony six or seven years in that general slavery."

[3] Va. Hist. Reg., I., 109, Rolf's Relation, 1616.

[4] Lord Delaware's Letter to the Patentees in England, July 7, 1610; Hist. of Travaile into Virginia Britannia, Introd., Hakluyt Soc., 34.

aded, and the colony was reduced to thorough order.[1] Under the arbitrary rule of Governor Argall this system was to some extent revived. "Three years' slavery" to the colony was the penalty for a violation of his edicts, and absence from church was punished with "slavery" from a week to a year and a day.[2]

No freedom was granted from the common servitude until March, 1617, when the three-year contract made by Dale with the men of Charles City Hundred had expired and they demanded their "long desired freedome from that general and common servitude." Governor Yeardley willingly assented to this reasonable request, as they had now served the colony for nine or ten years.[3] No further extensive grant of freedom was made until he came as Governor in 1619, bringing a proclamation of freedom to most of the ancient planters. Whenever it was obtained before this it was only at an "extraordinary payment," and throughout the first administration of Yeardley and that of Argall the great majority of the colonists remained in their former condition, which the ancient planters with little exaggeration termed "noe waye better than slavery."[4] Their rights as English-

[1] Col. Rec. Va., 68, 69, 81; Force, III., 1647, Laws; Cal. State Papers, Col. 39. Dale's justification is to be found in the character of the colonists with whom he had to deal. Cf. Letter Dale to Salisbury, Brown, I., 506.

[2] See MS. Rec. Va. Co., III., 143, for a number of these edicts. Two instances may serve to illustrate the policy of her government. Goods were to be sold to the colonists from the magazine at 25 per cent. profit, while the price of tobacco was fixed at 3 shillings. A violation of this edict was punished with three years' servitude to the colony. "Every person to go to church Sundays and holydays or lye neck and heel on the corps du guard the night following and be a slave the week following, second offence a month, third offence a year and a day."

[3] Col. Rec. Va., 77; MS. Rec. Va. Co., III., 142.

[4] Col. Rec. Va., 75, 78, 81. "Good Newes from Virginia," 11, 21, 32 and E. D. The numerous letters sent by the Governor and General Assembly, 1621-1623, to prevent a re-establishment of Sir Thomas Smith's government in the Company, while expressed in extravagant language, bear witness to the very ar-

men, guaranteed by the first charter of the Company, had practically no recognition before the arrival of Yeardley.

In 1618 the popular party in the Virginia Company triumphed over the court party, and Sir Thomas Smith was ousted from the governorship and Sir Edwin Sandys elected in his stead. An almost complete change of policy was the result; a new Governor was sent in the person of Yeardley to supplant the rapacious Argall. Yeardley carried with his commission an important concession of rights to the Virginia planters. A new regime of freedom and representative government, coupled with full rights of private property in land and a responsible governorship, now began in the colony. Yeardley did not bring freedom to all the ancient planters, but only to all those who had gone at their own charge previous to the departure of Dale in 1616, and to those who, sent at the Company's charge, had already served the full time of their servitude to the colony.[1] Many were, however, still retained in servitude until the end of their terms, and the Company, until its dissolution in 1624, continued to send others at the Company's charge on terms of servitude modified to suit the changed conditions in the colony.

We see, then, that the colonist, while in theory only a Vir-

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bitrary treatment of the colonists during the first twelve years of the Company. Facts were attested by many persons who had been actual sufferers, and affirm that many of those whose lives had been recklessly sacrificed were not of mean rank, as alleged by Smith and Alderman Johnson, but of "ancient houses and born to estates of £1,000 by the year, some more, some less who likewise perished by famine, those who survived who had both adventured their estates and persons were constrained to serve the colony (as if they had been slaves) seven or eight years for their freedoms who underwent as hard service and labors as the basest fellow that was brought out of Newgate." "Rather than be reduced to live under like government," they say, "we desire his Majestie that Commissioners may be sent over with authority to hang us." Winder MSS., I., 47-52. Cf. *Ibid.*, 30, and MS. Rec. Va. Co., III., 168, 179, 180, 235. Cf. "Good Newes from Virginia," II., 21, 32 sq.

[1] Va. Hist. Mag., Oct., 1894, 157.

ginia member of the London Company, and entitled to equal rights and privileges with other members or adventurers, was, from the nature of the case, practically debarred from exercising these rights. As a planter absent in Virginia he could not sit nor have a voice in the councils of the Company; he was entirely dependent on the Company's good faith for the performance of its obligations, and had recourse to no means to enforce their performance. He was kept by force in the colony,[1] and could have no communication with his friends in England. His letters were intercepted by the Company and could be destroyed if they contained anything to the Company's discredit. He was completely at the mercy of the edicts of arbitrary governors, and was forced to accept whatever abridgment of his rights and contract seemed good to the Governor and the Company.[2] His true position was that of a common servant working in the interest of a commercial company. In lieu of his support, or of his transportation and support, he was bound to the service of this company for a term of years. Under the arbitrary administration of the Company and of its deputy governors he was as absolutely at its disposal as a servant at his master's. His conduct was regulated by corporal punishment or more extreme measures. He could be hired out by the Company to private persons, or by the Governor for his personal advantage.

Suggested by the policy of the Company, there gradually grew up after the year 1616 and the establishment of separate plantations, the practice on the part of societies of planters, and later of private persons, of transporting servants to settle and work their lands very much on the same conditions

[1] Not till winter of 1616-17 was any freedom to return to England given to the Virginia colonists. Brown, II., 798.

[2] The charter of 1609, which gave the Company a more independent government, was of no advantage to the colonists, as the Governors appointed were given arbitrary powers. Col. Rec. of Va., 75, 76; Stith, 132, 147, 148; Arber's Smith, cxxix., 488; Force, III., 16.

of service as those made by the Company.[1] This developed, as property began to be acquired by the planters generally, into the common mode of transporting servants on contracts by indenture for a limited time of service, varying in individual cases according to the terms of the contract.[2]

In 1619, under the new Governor of the Company, an important modification was introduced regarding its servants in Virginia and colonists who should be afterwards transported at the common charge. The plan instituted by Dale of making a part of the colonists farmers or tenants at a fixed rent, and others servants on a large tract of land for the Company's use, had worked successfully in raising revenues for the government, and the Company now proposed, by an extension of this experiment, to relieve the colonists "forever of all taxes and public burthens," by setting apart large tracts of "publick land" to be worked by a system of tenantship-at-halves. Such a system had been commended to Governor Argall in 1617, and orders had been issued setting apart various tracts of land, but the provisions were not carried out until the governorship of Yeardley, when tracts of three thousand acres were set apart in each of the four boroughs, and a special tract of like size was reserved for the Governor at Jamestown. These were for the general

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[1] Va. Co. Rec., II., 32, 41, 42, 196.

[2] It is impossible to say just when the first actually "indented" servants were introduced into Virginia. They became a distinct class after 1619, and formal indentures were probably in use that year applying to servants sent to the planters. The Assembly of 1619 provided that all contracts of servants should be recorded and enforced. Whether indentures had been used by the Company or private persons previous to this is not clear. They seem to have been applied to the Company's tenants after 1619. The manuscript records of the Company contain a reference, under the date 1622, to a boy's indenture, and it is probable indentures were used in 1619. A registry was kept of persons transported in the Company's ships, but those sent otherwise by private persons were not included in it until 1622, when so much trouble had been occasioned by verbal contracts that the Company's bookkeeper was required henceforth to register all contracts for service. Col. Rec., 21, 28; Va. Co. Rec., II., 17, 23.

revenue of the government. Other tracts of half the size, called "borough lands," were given as common lands to each borough for the support of their "particular magistrates and officers and of all other charges." For endowing a "university and college" ten thousand acres were allotted in the territory of Henrico.[1] Men were to be placed on the land as tenants-at-halves on contract to remain there seven years, returning half the profits of their labor to the Company and enjoying the other half themselves. They were apportioned as the revenues to be raised demanded, and increased from time to time. Within less than a year 500 persons were sent on these terms.[2] Not only were the old public offices, such as the governor's and secretary's, to be thus supported by the allotment of a fixed number of tenants, which must be kept intact by successive incumbents, but whenever a new office was created or any project of public importance undertaken this became the common mode of insuring its support.[3]

By a special application of the English system of apprenticeship, well established in England after the Statute of Apprentices of Elizabeth, 1563, which put a premium upon agricultural apprenticeship, an attempt was made to round out this tenantship and insure its perpetuity. One hundred poor boys and girls who were about to starve in the streets of London were sent in 1619, by the aid of the mayor and council of the city, to be bound to the tenants for a term of years, at the end of which they were to become themselves

[1] Instructions to Governor Yeardley, 1618; Va. Hist. Mag., Oct., 1894, 155, 156, 158, 159; MS., Libr. of Supreme Court, Wash. Va. Rec., cap. 23, 221, p. 72.

[2] Va. Co. Rec., I., 22, 26; Stith, 163, 165; Force, III., No. 5, 10; *Ibid.*, 82; Collingwood MS., I., 30-35.

[3] Va. Co. Rec., 45, 59, 111, 119, 130-137, 151, 152. *Ibid.*, MS. Rec., III., 123, 161, 170. The office of the marshal, vice-admiral and treasurer, when created, were to be so supported; the "physician general" had tenants, and the ministers also six apiece for their glebes. The support of the East India school, of the iron works and of a glass furnace was to be provided for on the same plan.

tenants-at-halves on the public lands, with an allowance of stock and corn to begin with. Industrial apprenticeship was also provided for to encourage trade and to stop the excessive planting of tobacco. The term was usually limited to seven years, or in the case of girls, upon marriage or becoming of age. Apprentices soon began to be disposed of to the planters on their reimbursing the Company for the charges of their outfit and transportation, and the records in several cases suggest a suspicion of speculation.[1]

The intent was probably to establish a kind of *metayer* system, though the tenant was at liberty at the expiration of his term to remove to "any other place at his owne will and pleasure." It was supposed that the terms were sufficiently advantageous to induce him to enter into further contracts for successive periods of seven years. The success of the earlier plan introduced by Dale led the Company to hope not only for the support of the government, but for large returns in excess, and the design was to make it a permanent and certain source of all the necessary revenues. It was frustrated, however, by the maladministration of the system on the part of the government and officers. The tenants were frequently seated on remote and barren lands, or defrauded in their contracts, being taken from their places and hired by the year to planters, so that almost from the beginning the system was a failure, and instead of providing a revenue it was not even self-supporting. The public tenants were particularly neglected in favor of those belonging to the officers, and several propositions were made at differ-

[1] Cal. S. P., Col. 19; Neill, London Co., 160, note, 161, 235; Cunningham, II., 42; Robinson MS., 68; MS. Rec. Va. Co., III., 162; Va. Co. Rec., I., 25, 36, 39, 40-42, 91, 97, 100, 124, 140, 169.

[2] Force, III., No. 5, 14, 15; Va. Co. Rec., I., 40-42; Hening, I., 230. Though the Company was forced by the city of London to grant exceptional terms to tenants who had been formerly apprentices, by assigning them at the expiration of their tenantship a land grant of twenty-five acres in fee, yet it stipulated for the privilege of re-engaging them for further terms if the tenant freely consented.

ent times for a change in the terms of tenantship, but it was never effected. The system practically came to an end with the dissolution of the Company in 1624, but even as late as 1642 some few tenants remained, showing that the Company's plan of renewal of terms had been practiced.[1] It had degenerated by this time into the payment of a fixed rent or into planting for the benefit of the owner.[2] The growth of a class of strictly indented servants was also a factor in the failure of this tenantship. Servants were much less costly, and rapidly became more profitable.[3] Fifty servants were sent to serve the public in 1619, and in the next year a hundred more, say the records, "to be disposed of among the old planters which they exceedingly desire and will pay the Company their charges with very great thanks."[4] These men had been selected with great care, but the Company was unfortunate in being forced by the repeated orders of King James to add a number of dissolute persons whom he was determined, by the exercise of mere prerogative, to remove from England as an undesirable class.[5]

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[1] Va. Co. Rec., I., 117, 169, 173; Smith, II., 40, 106, 107; Va. Co. Rec. MS., III., 161, 163, 166, 170, July 5, 1621; Va. Hist. Reg., I., 159; Hen., I., 230; Appd. 8th Rept. Royal Com. on Hist. MSS., pts. II. & III., 39-44. Geo. Sandys, March 30, 1623, writes to his brother, Sir Samuel Sandys: "The tenants sent on that so absurd condition of halves were neither able to sustain themselves nor to discharge their moiety, and so dejected with their scarce provisions and finding nothing to answer their expectations, that most of them gave themselves over and died of melancholy, the rest running so far in debt as left them still behind-hand and many (not seldom) losing their crops while they hunted for their belly." Cf. Nichols to Worsenholme, p. 41.

[2] Robinson MS., 188.

[3] Va. Co. Rec., I., 87; MS., *Ibid.*, III., 171; Neill, London Co., 230; Force, III., 14. The average cost of a tenant was 16, of a servant 6 pounds.

[4] Va. Co. Rec., I., 67, 83.

[5] Stith, 165, 167, 168; Neill, London Co., 163; Va. Co. Rec., I., 25, 26, 33, 34. The Company was ordered to send the "men prest" in Nov., 1619, but it postponed doing so for nearly two months, in the hope of being relieved of the necessity. The

The new life which began in Virginia in the year 1619 greatly encouraged industry and husbandry and led to a large increase of independent proprietaries in a few years. Special inducements were offered by large grants of land and exceptional privileges to associations of planters and adventurers for the establishing of separate plantations. Liberal grants were also made to tradesmen and to members of the Company in proportion to their shares. To encourage immigration additional grants were made to them for every person transported to the colony in the next seven years.[1] A large number of servants and tenants was needed on these plantations, and for some time the importation by private persons was larger than that by the Company.[2] In 1619 the number of tenants and servants was sufficiently large to make necessary some regulation of the future conditions of their servitude by law. The first General Assembly of Virginia held in that year gave legal sanction and recognition to the servitude by the passage of special enactments providing for the recording and strict performance of all contracts between master and servant. The right of free marriage was limited in the case of female servants, and servants in general were prohibited from trade with the Indians. Corporal punishment was provided as a penalty in cases where a free man suffered fine unless the master remitted the fine, and a general discretionary power was given to the Governor and Council for regulation of other cases.[3]

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importunity of the king, however, compelled it to yield. One hundred persons had been included in the first order, but it is probable that only half of these were sent to Virginia, and they were allowed to be selected. The Somers Island Company probably yielded to the request of the Virginia Company and took the rest. Collingwood MS., I., 47.

[1] Va. Hist. Mag., 160, 162, 164 (Oct., 1894); Col. Rec. Va., 78, 81; Va. Co. Rec., I., 39; II., 124, 128, 196.

[2] *Ibid.*, I., 123, 137, 148, 153, 154, 161; II., 148, 150. In the four years 1619-23 forty-four patents were issued to as many different people for the transportation of a hundred persons each to Virginia; in the twelve years preceding only six patents had been granted.

[3] Col. Rec. Va., 1, 21, 24, 25, 28; Laws, 1619.

The main principles on which the institution of servitude was based were by this time clearly developed, and its growth henceforth consisted in the gradual addition of incidents originating in customs peculiar to colonial conditions, which, recognized by judicial decisions, became fixed in local customary law, or by the enactment of special statutes were established as a part of the statutory law.

CHAPTER II.

INDENTED SERVITUDE.[1]

In the policy of the London Company towards its colonists during the first twelve years we have seen the beginning and gradual development of an idea which, adopted and amplified by the later government of the Company and in the administration of Virginia as a Royal Colony, grew into the system here called Indented Servitude, which throughout the colonial period was widely extended in all the American colonies and became an important factor in their economic and social development. Gradually, and not always consciously, it was formed into a hard and fixed system, in some respects analogous to the later institution of slavery, from which, however, it was always broadly distinguished both in social custom and in law.

The servitude thus developed was limited and conditional. With respect to its origin it was of two kinds, resting on distinct principles:

First. Voluntary Servitude, based on free contract with the London Company or with private persons for definite terms of service, in consideration of the servant's transportation and maintenance during servitude.

Second. Involuntary Servitude, where legal authority condemned a person to a term of servitude judged necessary for his reformation or prevention from an idle course of life, or as a reprieve from other punishment for misdemeanors already committed.

Though involuntary on the part of the servant, this kind

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[1] The term Indented Servitude has been used as the one best characteristic of the system at large. Strictly indented servants not only formed the largest class, but gave legal definiteness to the system of white servitude.

involved a contract between the authority imposing the sentence and the person that undertook the transportation of the offender,[1] and the master's right to service resting upon the terms of this contract made or assigned to him was practically on the same footing as involuntary servitude.

The great body of servants was comprised in the former class. They were free persons, largely from England, Wales, Scotland and Ireland, who wished to go to the colony as settlers to better their condition, but were too poor to bear the charges of their transportation.[2] They consequently entered into a voluntary contract with any one that would assume these charges and their maintenance for such a term of years as would repay the outlay, placing themselves for this limited time at the disposal of the person for any reasonable service. The contract was made in Great Britain with resident planters or the agents of colonists, but more frequently with shipmasters who traded in Virginia and disposed of the servant on their arrival as they saw fit. The agreement was by deed indented, and hence arose the term "Indented" Servants.[3] This class of so-called "Kids" was

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[1] The right to the stipulated term of servitude was given to *any one* that would contract for the servant's transportation, and he seems to have had free disposal of this right when he reached Virginia. Va. Co. Rec., I., 91; II., 10, 11; Eng. Statutes at Large, 4 Geo., c. II.; Anson, 7, 43. This was probably in England a Contract of Record.

[2] Jefferson's Works, IX., 254 sq.; Jones, Present State, 53, 54.

[3] Neill, Va. Carolorum, 57, note. An indenture of 1628, made after assignments of contracts were recognized in Virginia, may be taken as typical of those generally in use. A husbandman of Surrey County, England, contracts and binds himself to a citizen and ironmonger of London "to continue the Obedient Servant of him, the said Edward hurd his heirs and assignes and so by him or them sente transported unto the countrey and land of Virginia in the parts beyond the seas to be by him or them employde upon his plantation there for and during the space of ffour yeares—and will be tractable and obedient and a good and faithful servant onyst to be in all such things as shall be Commanded him—In consideration whereof the said Edward hurd doth covenant that he will transporte and furnishe to the said Logwood to and for Virginia aforesaid—and allowe unto him sustenance meat and drink apparel and other necessaryes for his livelyhood and sustenance during the said service"—sealed and delivered in the presence of two servants.

supplemented by a smaller class of persons who went on agreements for fixed wages for a definite time.

The other large class was supplied chiefly from English paupers, vagrants and dissolute persons sent under the arbitrary exercise of royal prerogative or by court sentences, and later by the action of English penal statutes. In the earlier years it included a large number of poor children from the counties and towns of England, who were sent to apprenticeship on easy conditions.[1] The penal regulations of the colony up to the year 1642 tended also to recruit this class.[2] A very large number of the convicts sent to the American plantations were political and not social criminals. Of the Scotch prisoners taken at the battle of Worcester sixteen hundred and ten were sent to Virginia in 1651. Two years later a hundred Irish Tories were sent, and in 1685 a number of the followers of Monmouth that had escaped the cruelties of Jeffreys. Many of the Scotch prisoners of Dunbar and of the rebels of 1666 were sent to New England[3] and the other plantations. As early as 1611 Governor Dale, anxious to fill out the number of two thousand men for establishing military posts along James river, had recommended that all convicts from the common jails be kept up for three years. They "are not always," he said, "the worst kind of men, either for birth, spirit, or body and would be glad to escape a just sentence and make this their new country, and plant therein with all diligence, cheerfulness and comfort." This request passed unheeded, and the earliest

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[1] Cal. State Papers, Domestic, 584; Stith, 168. Blackstone, I., 137, note; IV., 401 and note; Reeves, 598.

[2] The servitude for offenses, early instituted by the governors ıd continued by the courts, can hardly be regarded as ;operly a part of the system, however. It was strict penal servitude in the interest of the commonweal. These convicts were not held by the colonists, but employed on public works as servants of the colony, or in service to the Governor in his official capacity, except in specific cases. Robinson MS., II., 12, 13, 65; Va. Co. MS. Rec., III., 215, 224. Cf. Hening, I., 351; II., 119, 441; III., 277.

[3] Mass. Hist. Coll., Vol. IX., 2, Dale to Salisbury.

introduction of any of the criminal class seems to have been in 1618, when a man convicted of manslaughter and sentenced to be hanged was reprieved, "because he was a carpenter and the plantation needed carpenters."[1] In the early years of the seventeenth century England suffered, particularly in her border counties, from a number of malefactors whom it was impossible to bring to justice. Magistrates and most of the gentlemen of the counties countenanced them, and even had them in their employ for private ends. Many schemes were proposed to the king for remedying the evil and compelling the justices and officers to perform their duty. Transportation had been made use of before, and the king now proposed to send the offenders to Virginia.[2] From 1618 to 1622 a number came, but the large increase was in the latter half of the century. In 1653 an order of the Council of State appointed a committee concerning the transportation of vagrants to the foreign plantations. In 1661 another committee was appointed to further the sending of people, and power was given to Justices of the Peace to transport felons, beggars and disorderly persons.[3]

Sufficient numbers had been sent under this power, and by the transportation of political offenders, to furnish ringleaders for an attempt to subvert the government in 1663. In consequence of this and the danger of the continued importation of "great numbers" of these "wicked villaines," the General Court, upon the petition of the counties of Gloucester and Middlesex, issued an order prohibiting any further importation of them after the twentieth of January, 1671.[4] Through the influence of Lord Arlington this order

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[1] *Ibid.*, 1-4; Middlesex Rec., II., 224. Others were granted r prieves earlier on condition of transportation, but it is probat that they went elsewhere than Virginia. Sir Thomas Smi was Governor of the East India Company at this time.

[2] Surtees Soc., Vol. 68, 419, 420, Appd.; Bacon, Essay on Plantations.

[3] Cal. State Papers, Col. 28, 441; cf. Ashley, Economic Hist. Eng., 366.

[4] Rec. Genl. Ct., 1670-2, 5, 52; Hening, II., 191; Rob. MS., 8, 67, 257, 261.

was confirmed in England and was made to apply to the other American colonies as well as to Virginia.[1] A strict system of search was applied to every ship that entered Virginia ports, and for the next half-century the colony had a respite from this class of "Newgaters" and "Jail Birds."[2] Their transportation was now diverted to the West Indies, but this proved so ineffectual in putting a stop to petty felonies that in the 4th year of George I. (1717) Parliament passed a statute over the most vigorous protests from the Virginia merchants in London, making the American colonies practically a reformatory and a dumping-ground for the felons of England.[3] In 1766 the benefits of this act were extended to include Scotland, though Benjamin Franklin, on the part of Pennsylvania, memorialized Parliament against it, and in 1768 the more speedy transportation of felons was ordered.[4] The practice was only stopped by the War of the Revolution. The preamble of the act of 1779 significantly remarks that "whereas the transportation of felons to His Majesty's American Colonies is attended with many difficulties," they are now to be sent to "other parts beyond the sea, whether situate in America or not."[5] They were finally disposed of in convict galleys or sent to the new penal colonies in New South Wales or at Botany Bay.[6]

Virginia, contrary to some of the colonies, never favored the importation of this class. They were seldom reformed, and their "room" was held much more desirable than their "company," says Jones.[7] Many attempts were made to pre-

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[1] Cal. State Papers, 242; Rec. Genl. Ct., 52.

[2] Rec. Genl. Ct., Apl. 6, 1672, 52.

[3] Geo. I., c. 11, Statutes at Large; Va. MSS. fr. B. R. O., Vol. II., pt. 2, p. 579.

[4] 6 Geo. III., c. 32; Ford, Works of Franklin, Vol. X., 120; 8 Geo. III., c. 15.

[5] 8 Geo. III., c. 74.

[6] Lecky, England in the Eighteenth Century, VI., 254.

[7] Jones, Present State, 53, 54; Beverley, 233; "Va. Verges," 1622.

vent their coming by the imposition of heavy duties, but they were not finally and effectually prohibited until 1788.[1] The ability given the States to lay a tax of $10 on all persons imported was incorporated into the Constitution of the United States, mainly through the efforts of George Mason of Virginia, and was partly designed to keep out convicts.[2] From this attitude of the colony it probably received a much smaller number than some of the other colonies.[3]

Another important source of involuntary servitude was found in the practice of "spiriting," which grew up in the reign of Charles I. and continued throughout the Commonwealth period and the reign of Charles II. It was an organized system of kidnapping persons, young and old, usually of the laboring classes, and transporting them to the plantations to be sold for the benefit of the kidnapper or shipmaster to whom they were assigned.[4] It became widely extended in England, but Bristol and London were the centers of the traffic. Throughout London and the parishes of Middlesex county its agents, called "spirits," were distributed; men and women, yeomen, tradesmen, doctors and a class of rogues and idlers who earned a livelihood by this means.[5] The ladies of the court, and even the mayor of

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[1] Va. MSS. fr. B. R. O., 1697, p. 320; 1723, 1729, March 26; Hening, XII., 668. Cf. III., 251; V., 24, 546.

[2] Madison Papers, Vol. III., 1430; Article I., sec. 9, Constitution of U. S.

[3] Lodge, Colonies, 242; Lecky, VI., 254 sq. Franklin's Works, X., 119.

[4] Middlesex Records, III., 38, 94, 245. The offense, when discovered, which was probably not true of one in twenty cases, was treated with remarkable leniency by the courts. Under the Civil Law it would have been punished with death, but we meet with petty fines of a few shillings, even when the "spirit" confessed the crime, and in one case only 12d.; a few hours in the pillory, or imprisonment till the fine was paid seems to have been considered by the judges a sufficient atonement. The Session Rolls of Middlesex show that a large number of the cases were not even brought to trial, though true bills had been brought against the offenders.

[5] Middlesex Rec., II., 306, 326, 335, 336; III., 100, 184, 229, 253, 257, 259, 271, 326, &c.; IV., 40, 70-87, 245; Cal. State Papers, Col. 411.

Bristol, were not beneath the suspicion of profiting by this lucrative business. All manner of pretenses were used to decoy the victims aboard ships lying in the Thames or to places where they could be assaulted and forcibly conveyed on board, to be disposed of to the ship's company or to merchants.[1]

The practice first arose in connection with the West India plantations. Barbadoes and other island plantations probably received a much greater number than the American colonies.[2] We find a case belonging to Virginia as early as 1644.[3] In 1664 the abuse had grown so bad that tumults were frequently raised in the streets of London. It was only necessary to point the finger at a woman and call her a "common spirit" to raise a "ryot" against her. The Lord Mayor and aldermen of London, and a number of merchants, planters and shipmasters, sent petitions urging the establishment of a registry office to put an end to the practice.[4] The office was established in September of that year, and was to register all covenants and issue certificates to the merchants.[5] The penalty for not registering any person who was to be transported as a servant was £20, and the consent of friends or relatives in person at the office was necessary for the transportation of any one under twelve years of age, and good reasons had to be shown for such transportation. Even these strict regulations failed to stop the practice, and in 1670 it was necessary to resort to Parliament to prevent the abuse by imposing as a penalty death without benefit of clergy.[6]

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[1] *Ibid.*, 449; Va. MS. fr. B. R. O., 1640-91, 170.

[2] Middlesex Rec., Vol. III., 276; IV., 65, 69-73, 78, 79, 155, 196, 245.

[3] Va. MSS. fr. the British Record Office, Vol. I., 46. Cf. State Papers (Calendar), 411, 457.

[4] Cal. State Papers, Col. 220; Middlesex Rec., IV., 181.

[5] Cal. State Papers, Col. 221, 232. The office had been proposed in 1660.

[6] This and the lessened demand for servants was sufficient to put an end to the abuse.

Further technical distinctions arose in law determined by the title under which servitude was due. Thus, where verbal contracts alone existed, or where it was specially stipulated for, "Servitude according to the Custom" took place, and the servant was held for the customary term, whatever it might be, unless a contract was proved. After the statute of 1643, which set a definite term for all servants brought in without indentures, this became known as *servitude by act of Assembly*. Spirited servants, as a rule, came under this act. The servitude of felons and convicts, after the penal statutes, was known as servitude by act of Parliament, and that of offenders sentenced in Virginia as servitude by order of court. These distinctions were of little practical importance, however, as all servants except convicts met with the same treatment both in social custom and in law.

The servants in Virginia were usually English, Scotch or Irish, but there were also a few Dutch, French, Portuguese and Polish.[1] They were usually transported persons, but

[1] Jones, 54; Robinson MS., II., 255; Howe, Va., 207. Before the statute of 1661, which made negroes generally slaves, a number were held as servants for a term, and even afterward a few seem to have remained servants. Robinson MS., 10, 30, 250, 256; MS. Rec. Va. Co., III., 292; MS. Rec. Genl. Ct., 161, 218; 1673, 1675. From 1656-1676 and after 1691, Indian children sold by their parents, and captives, could legally be held only as servants; but the disposition was, when not restrained by law, to make them slaves. Acts of 1676 and 1682 legalized Indian slavery, but it was prohibited in 1670, and finally in 1691 by an act for free trade with all Indians, which the General Court construed as taking away all right to their slavery. Many were, however, unjustly reduced to slavery up to 1705, as the act was supposed to date from the revisal of 1705, and not from 1691. Hening, I., 396; II., 15, 143, 155, 283, 491, 562; III., 69 and note. Robinson MS., 256, 261, 262; MS. Rec. Genl. Ct., 29, 218. (*Vid.* Jeff. Cases in Genl. Court, p. 123; Robin *et al.* vs. Hardaway, 1772.) Mulatto bastards were also made servants; but the number from these sources was comparatively so insignificant that a consideration of them may be omitted. A proposition was even entertained of making servants of the women sent over for wives, whether they married or not.

residents in the colony also sold themselves into servitude for various reasons. The demand for servants before the rise of slavery was always very great in the American colonies and was further enhanced by that of the island plantations. It was the impossibility of supplying this by the regular means that furnished the justification professed in the English penal statutes[1] and gave encouragement to the illicit practice of spiriting. In the early years before these means were resorted to, dealing in servants had become a very profitable business. The London merchants were not slow to see the advantages of such a trade; a servant might be transported at a cost of from £6 to £8 and sold for £40 or £60, and a systematic speculation in servants was begun both in England and in Virginia.[2] Regular agencies were established, and servants might be had by any one who wished to import them "at a day's warning."[3] Others were consigned to merchants in Virginia or sent with shiploads of goods on a venture.[4] The demand continued unabated till near the last quarter of the seventeenth century. The numbers were so considerable in 1651 that the Commissioners of the Commonwealth who were sent to demand the submission of Virginia were authorized, in case of resistance, to levy the servants for reducing the colony.[5] From this time to the beginning of the decline of the system the yearly importations were very large, the number imported from 1664 to 1671 averaging 1500 a year.

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[1] Hening, III., 449; 4 Geo., c. 11, etc.

[2] Append. to Eighth Rept., etc., 41; Cal. State Papers, Col. 36, 76, 77, 100; Smith, II., 105; Purchas, His Pilgrimage, p. 1787.

[3] Verney Papers, Camden Soc. Pub.; Neill, Virginia Carl. 109.

[4] Cal. State Papers, Col. 36, 258, 268.

[5] "New Description of Virginia," London, 1649; Thurloe State Papers, Vol. I., 198. The general muster of 1624 shows the number of servants then in Virginia as 378 in a population of 2500. They were well distributed, most of the planters having but one or two. Afterwards many planters brought in as many as 30, and in 1671 the servants were 6000, 15 per cent. of the population. Hening, II., 515.

Several causes combined to fasten the system very early upon Virginia: the stimulus given to the acquisition of wealth resulting from the establishment of private property in land;[1] the phenomenally rapid growth of tobacco culture, occasioned by the productiveness of labor employed in it, and the returns to be had in ready money from its sale;[2] the increasing cost of hired labor; the "head right" of fifty acres which was received for every person transported;[3] but particularly the unfortunate condition of the laboring classes in England, whose real wages (owing to the great rise in prices in the latter part of the sixteenth century) were exceedingly low and gave rise to a large class of unemployed.[4]

Legal Status of the Servant.—The history of the legal development of the institution properly begins with 1619 and falls broadly into three general periods:

First, 1619-1642, characterized by the development of certain incidents of servitude from practices originating in the first twelve years of the Company's government. These gradually become fixed during this period chiefly in Customary Law.

Second, 1642-1726, in which the incidents of the former period are extended and further established by Statute Law,

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[1] Col. Rec. Va., Declaration, etc. The ancient planters regarded the massacre of 1622 as a judgment on their greed.

[2] The tobacco culture was introduced into Virginia by Governor Yeardley in 1616, and even in this year restrictions had to be imposed to prevent the planters from altogether neglecting corn. In 1619, Secretary John Pory tells us that their "riches consist in Tobacco," and their "principall wealth" in servants, "but they are chargeable," he says, "to be furnished with armes, apparel and bedding and for their transportation and casuall both at sea and for their first yeare commonly at lande also, but if they escape they prove very hardy and sound able men." Purchas, His Pilgrimage, 837, Rolf's Relation; Campbell, 117; Pory to Carleton, Mass. Hist. Soc., IX., 4th, 9, 10.

[3] Smith, 165; Mass. Hist. Coll., Vol. IX., 4th sec., p. 10, note. See Pory to Carleton; Va. Co. of London, Va. Hist. Coll., Vol. VII.; Vol. I., 14, 15.

[4] Cunningham, 201, 422. Purchas, His Pilgrimage, p. 1821.

and the system reduced to legal uniformity in contrast to the somewhat varying practices of the courts in the former period. The institution reaches also in this period its highest practical development.

Third, 1726-1788, the period of decline of the system in consequence of the rising institution of negro slavery.

First Period, 1619-1642.—After the Assembly of 1619, until near the middle of the century, very little direct legislation appears in regard to servants, but in this interim there grew up many customs recognized by the tribunals which affected very seriously the personal rights of servants. One of the earliest and most important customs was the right assumed by the master to assign his servant's contract whether he gave his consent or not. This originated in the practice with the Company of disposing of apprentices and servants to planters on their agreeing to reimburse the Company for the expenses of the servant's transportation, and in the custom with officers of the government of renting their tenants and apprentices to planters in order to insure an easier or more certain support. The depressed condition of the colony following the Indian massacre of 1622 made the sale of servants a very common practice among both officers and planters.[1] In 1623 George Sandys, the treasurer of Virginia, was forced to sell the only remaining eleven servants of the Company for mere lack of provisions to support them, and a planter sold the seven men on his plantation for a hundred and fifty pounds of tobacco. The practice was loudly condemned in England and bitterly resented on the part of servants, but the planters found their justification in the exigencies of the occasion, and their legal right to make the sale seems never to have been actually called into question.[2] Assignments of contracts for the

[1] Neill, London Co., 356, 375; Append., 8th Rept. Com. on Hist. MSS., 6, 39; Cal. S. P., Col. 36.

[2] App. 8th Rep., I. and III., 39, 41-44; Smith, Hist., II., 40; Va. Hist. Mag., Oct., 1893, 162. The servants wrote indignant letters to their friends. One says he was "sold like a d——

whole or the unexpired portion of the servant's term became from this time forward very common. As a result the idea of the contract and of the legal personality of the servant was gradually lost sight of in the disposition to regard him as a chattel and a part of the personal estate of his master, which might be treated and disposed of very much in the same way as the rest of the estate. He became thus rated in inventories of estates, and was disposed of both by will and by deed along with the rest of the property.[1]

But aside from these incidents of property which attached to the condition of the servant, his position before the law was very little different from that of the freemen of the colony. His personality was recognized by the enactment of special laws for his protection and in his being subjected, with the rest of the colonists, to the payment of a poll tax for the support of the government and of tithes to the minister. In the early period, like a freeman, he was liable to military service in behalf of the state. He enjoyed rights of trade, except with the Indians, and could acquire property. His testimony was always received in court, unless he was a convict, and he was a valid witness to contracts.[2] His religious instruction was provided for in the same manner as that of freemen. The courts carefully guarded his contract and effected speedy redress of his grievances. He might sue and be sued, and had the right of appeal to the supreme judiciary of the colony, and throughout this period he enjoyed the important political right of the suffrage on an equality with freemen, a right which in most cases had not been exer-

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slave," but admits that his master's whole household "was like to be starved." Rolf says the "buying and selling of men and boies or to be set over from one to another for a yearly rent or that the tenants or lawful servants should be abridged their contracts" was held "a thing most intolerable in England."

[1] Accomac Rec. MS., 61, 82 (1635); Robinson MS., 9; York Co. Rec., 86.

[2] Hening, I., 123, 143, 144, 157, 196.

cised before.[1] In penal legislation, however, the distinction was generally made between the servant and the freeman in the servant's liability to corporal punishment for offenses for which a freeman was punished by fine or imprisonment. A law of 1619 provided that "if a servant wilfully neglect his master's commands he shall suffer bodily punishment," but the right of the master to regulate his servant's conduct in this way was of slow growth and had no legislative sanction before 1662. During this period correction remained in the hands of the Assembly and of the courts.[2]

When Wyatt came as Governor in 1621 he was instructed to see that all servants fared alike in the colony and that punishment for their offenses should be service to the colony in public works, and by a law of 1619 servitude for wages was provided as a penalty for all "idlers and renegates."[3] That such provisions should be realized it was necessary for the servant to perform service in addition to the term of his contract. In this we have the germ of additions of time, a practice which later became the occasion of a very serious abuse of the servant's rights by the addition of terms altogether incommensurate with the offenses for which they were imposed. It became a means with the courts of enforcing specific performance of the servant's contract, and was so applied contrary to the common law doctrine relating to contracts, which only provided for damages in cases of breach of contract and not for specific performance.[4]

The common law of England had the character of national law in the colony, and accompanied the colonists as a personal law having territorial extent. Although the relation of master and servant in the case of apprenticeship as an extension of the relation of parent and child, guardian and ward, was an effect of the common law having personal

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[1] *Ibid.*, 150, 157, 330, 333, 334, 403, 411, 412 (also 217); Acc. Rec. MS., 2, 24, 54, 76, 84; Col. Rec. Va. Laws, 1619.

[2] Col. Rec. Va., 1619, 25, 28; Hening, I., 127, 130, 192.

[3] Col. Rec. Va., 12 *et seq.*; Hening, I., 117.

[4] Robinson MS., 52.

extent, yet the relation of master and servant in indented servitude was unknown to that law, and could neither be derived from nor regulated by its principles. It had to depend entirely for its sanction on special local statutes, or on the action of tribunals which had no precedents before them and acted as the necessities of the occasion demanded, with little regard to established doctrines of the common law. The growth of the institution is thus marked by the development of local customary and statute law, and only very gradually assumed a fixed shape as this development proceeded.[1]

The master's title to service rested on the provisions of the contract. These were very varied, sometimes specifying, besides the ordinary conditions, treatment of a special nature, sometimes stipulating for a trusteeship of such property as the servant possessed, and sometimes for gifts of land or of apparel and corn sufficient to set the servant up as a freeman when his term had expired.[2] Such provisions were recognized by the courts in their strict enforcement of the contract, and led to the establishment of customary rights such as additions of time and freedom dues. A servant might claim on the expiration of his term freedom dues in apparel and corn whether stipulated for or not. Their amount was at first customary and determined where sued for by appointees of the court, but finally they became fixed in statutory law.[3]

Monthly courts were held as early as 1622, and by virtue of their general jurisdiction over all cases not involving more than a hundred pounds of tobacco (which was later extended to £5 and £10 causes and to those of less than 1600 pounds of tobacco) they had jurisdiction over disputes between master and servant within this limit, and the Commissioners as conservators of the peace had power to regulate the conduct

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[1] Hurd, Law of Freedom and Bondage, I., 116, 129, 139, 210, 220; Reeves, Eng. Law, II., 598; Anson, Law of Contract, 213 sq.

[2] Acc. Rec. MS., 88 (1637); Essex Rec. MS., 140 (1686).

[3] Hening, I., 303, 319, 346; II., 66, 70. Rob. MS., 8; Acc. Rec. I., 10, 272, 273, 519; II., 58, 68; MS. Rec. Genl. Ct., 158; Col. Rec. Va., 81.

of the servant whenever necessary. Before this the Governor and Council or the General Assembly had had sole jurisdiction of all causes. After quarter courts were established in 1632 appeals lay to it, as before to the Governor and Council, and to the Assembly as the supreme appellate court in the colony. The servant by his right of suit in these courts and of appeal had a speedy and effective remedy for his grievances, and the rulings of the justices established many precedents which greatly mitigated the conditions of his servitude.[1] The judges when they were acquainted with the English law at all put a most liberal construction upon it and generally in favor of the servant. In breaches of contract *discharge* was often granted for insufficient reasons, and for misusage or non-fulfilment of any of the conditions by the master, the servant, if he did not obtain his freedom, might have his term lessened and be granted damages. The courts also often enjoined such action on the part of the master as would repair the injuries sustained by the servant. In 1640 a master who had bought a maid-servant, "with intent to marry her," was ordered by the General Court to do so within ten days or to free her on the payment of 500 lbs. of tobacco. And where insufficient food and clothing

[1] In 1643 the ten monthly courts were reduced to six County Courts, with jurisdiction over cases above 20 shillings, or 200 lbs. of tobacco. Cases of less amount could be decided in the discretion of any commissioner. The inconvenience of resorting to the general court at Jamestown caused a grant in 1645 of general jurisdiction of all cases in law and equity to the county courts. Two years later the jurisdiction of the General Court was limited to cases of 1600 lbs. of tobacco in value or over. In 1662 there were 17 county courts having jurisdiction in all cases "of what value or nature whatsoever not touching life or member," and the name Commissioner was changed to Justice of the Peace. The Quarter Courts now became the General Court, held twice a year, and appeals lay to it as formerly, and from it to the Assembly. In 1659 appeal to the Assembly had been limited to cases involving more than 2500 lbs. of tobacco. This limitation was removed in 1661, and justice facilitated by a reference of all cases except those of the winter term to itinerant chancellors.

were provided servants were taken away until the master corrected the fault.[1] When the record of his contract was not sufficient to protect the servant on the expiration of his term from the greed of his master, he might make it appear upon testimony in the County Court that the conditions of the contract had been fulfilled and receive a certificate of the fact, which thus became indisputable evidence of his right to freedom. The courts also recognized the servant's right to acquire and hold property.[2]

In the practices of the courts regulating the punishment of servants we see the way prepared for later provisions of the statute law not so favorable to them. By virtue of the power of the courts to regulate the private as well as the public conduct of servants, and by the discretionary power given by enactments to the Governor and Council, they might be subjected to indignities of punishment not worthy of a freeman. In but few cases did the courts permit servants' offenses to be punished by fine; the usual penalty was whipping or additional servitude to the master or to the colony. This probably would not have been the case if the servant had generally had anything wherewith to discharge a fine, but as he had not, some other means of satisfaction was found necessary. Penal legislation regarding servants did not differ greatly in severity, however, from that applied to freemen, except in the case of absconding servants, where very severe punishment was early inflicted, designed by its severity to prevent recurrence of the offense.[3] Towards the

[1] Rob. MS., 8, 9, 27, 68, 243 sq.; Acc. Rec., 2, 39, 44, 58, 76, 35. 45, 85, 86, 91, 82. In 1637 a bad character, John Leech, threatened to have his master "up to James City to see if he could not get free of a year's service," alleging "that his master had not used him so well as he formerly had done," and that he would use against him speeches made by the master against the Governor and Council.

[2] Rob. MS., 8, 9, 68; Acc. Rec., 35, 76, 82.

[3] Robinson MS., 9-13, 27, 66, 69; Acc. Rec., 107. A number of servants, for a conspiracy "to run out of the colony and enticing divers others to be actors in the same conspiracy," were

end of the period the servant's great abuse of his rights of trade, by allowing himself to be tempted by loose persons to embezzle and sell his master's goods, made necessary some restriction. The Assembly of 1639 conditioned this right henceforth on the master's consent, imposing severe penalties upon persons who should induce any servant to trade secretly, and the courts seem to have rigidly enforced the provisions of this act.[1]

Before the close of the first half of the century, then, we have seen the growth, mainly through judicial decisions, of certain customary rights on the part both of the servant and of the master as recognized incidents of the condition of servitude. These were on the part of the servant the right to a certificate of freedom, to freedom dues and to the possession of property; on the part of the master, to the free assignment of the servant's contract by deed or will, to additions of time in lieu of damages for breach of contract, and the right of forbidding the servant to engage in trade. Corporal punishment and additions of time have also become the ordinary modes of regulating the servant's conduct and punishing his offenses.

Second Period, 1642-1726.—From the year 1642 the statute books begin to fill with legislation concerning servants, mainly confirming or modifying such rights as had been already developed and subjecting the system of servitude to more uniform regulation. Until 1643 no definite term had been fixed by law for the duration of servitude when not expressed in indentures. The terms specified in the indentures varied from two to eight years, the usual

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to be severely whipped and to serve the colony for a period of seven years in irons. This was in 1640. "Saml. Powell for purloining a pair of breeches and other things from the house of Capt. Jno. Howe decd. shall pay ffower dayes work to Elias Taylor with all charges of the court and the sheriff's ffees and to sit in the stockes on the next Sabbath day with a ribell in his hatt from the beginning of morninge prayer until the end of the sermon with a pair of breeches about his neck."

[1] Hening, I., 275, 445; Robinson MS., 10, 17 (1640).

one being from four to five years, but until this time custom had regulated the servitude of such persons as came in without indentures, and what was known as servitude "according to the custom of the country" had begun to grow up. Where no contract but a verbal one existed there was always room for controversy between master and servant, each trying to prove an agreement that would be to his advantage. To put a stop to such controversies the Assembly passed a law definitely fixing the term in all cases where servants were imported "having no indentures or covenants," according to the age of the servant. The master was at first the judge of the servant's age, but as this naturally worked to the servant's disadvantage, the judgment of ages was put in the hands of the county courts after 1657. Unless the master produced his servant in court for this purpose within four months after arrival he could only claim the least term allowed by the law, and after 1705 the servant had two months allowed in which to prove an alleged indenture for a less time.[1]

By the beginning of the period several abuses had grown up that prevented or seriously interfered with the master's realization of his right to service. Hitherto there had been no legal restriction to prevent a man-servant from marrying, though by an act of 1619 a female servant could not marry without the consent either of her parents or of her master, or of both the magistrate and minister of the place, upon pain of severe censure by the Governor and Council. The right of free marriage was one which for very obvious reasons would work to the disadvantage and inconvenience of the master, particularly if the marriage was made without his knowledge, and in 1643 a law was passed providing "that what man servant soever hath since January 1640 or hereafter shall secretly marry with any maid or woman servant without the consent of her master he or they so offending shall in the first place serve out his or their tyme or tymes

[1] Hening, I., 257, 411, 441; II., 169, 297, 447.

with his or their masters—and after serve his master one complete year more for such offence committed," and the maid "shall for her offence double the tyme of service with her master or mistress." When the offender was a free man he had to pay double the value of the maid's service to her master and a fine of 500 lbs. of tobacco to the parish. For the offense of fornication with a maid-servant the guilty man was required to give her master a year's service for the loss of her time, or, if a freeman, he might make a money satisfaction. In 1662 the master's losses from neglect of work or stolen goods and provisions were sufficient to make necessary a further restriction upon the secret marriage of servants. The act provided that "noe minister either publish the banns or celebrate the contract of marriage between any servants unless he have from *both their masters* a certificate that it is done with their consent," under penalty of the heavy fine of ten thousand pounds of tobacco. Servants, whether male or female, guilty of marriage contrary to the act, with each other or with free persons, suffered the addition of a year's time to their servitude, and the guilty free person was condemned to a like term of service or the payment of 1500 lbs. of tobacco to the master.[1]

Another great abuse was the practice which greedy and wealthy planters had of covenanting with runaway servants as hirelings or sharers on remote plantations, thus encouraging them by more favorable terms to desert their proper service. This had been anticipated by an enactment of the Assembly of 1619, which provided "that no crafty or advantageous be suffered to be put in practice for inticing away tenants or servants of any particular plantation from the place where they are seated," and that it should be the "duty of the Governor and Counsell of Estate most severely to punish both the seducers and the seduced and to return them to their former places." But by 1643 the practice on the part of these planters had become so flagrant that com-

[1] Col. Rec. Va., 28; Hening, I., 253, 438; II., 114; III., 444.

plaints of it were made at every quarter court, and the Assembly enacted that any person so contracting with a servant and entertaining him for a whole year, without a certificate of the freedom of the servant from the commander or commissioner of the place, should forfeit to the master twenty pounds of tobacco for every night the servant was entertained, while the servant was to be punished at the discretion of the Governor and Council.[1]

But more than anything else the habit on the part of servants themselves of absconding from their masters' service, stealing their masters' goods and enticing others to go with them, worked to the detriment of the masters and the peril of the colony. The courts had attempted by the most severe punishments to put a stop to the practice. Whipping, additions of time from one to seven years, branding, and even servitude in irons, proved ineffectual. The possibility of entire escape from servitude or of service on better terms proved too great a temptation, and with an unruly class of servants such attempts became habitual. Statute after statute was passed regulating the punishment and providing for the pursuit and recapture of runaways; but although laws gradually became severer and finally made no distinction in treatment between runaway servants and slaves, it was impossible to entirely put a stop to the habit so long as the system itself lasted. The loss to the master was often serious even if he recovered the servant. A loss of time from several months to a year or more, and the expense of recapture, which at first fell upon him, made the pursuit of the servant often not worth while for the remaining time for which he was entitled to his service.[2] The rise of this practice was not due to the severity of the service to which the servant was subjected. The courts, we have seen, provided a speedy remedy for any misusage, and by an act of 1642 it was provided that "where any servants shall have just cause

[1] Col. Rec. Va., 22; Hening, I., 253, 254, 401.

[2] MS. Rec. Genl. Ct., 201; Hening, III., 277, 452, 458.

of complaint against their masters or mistresses by harsh or unchristianlike usage or otherwise for want of diet, or convenient necessaryes that then it shall be lawful for any such servant or servants to repair to the next commissioner to make his or their complaint." The commissioner was then required to summon the master or mistress before the county court which had discretion to settle the matter, taking care "that no such servant or servants be misused by their masters or mistresses where they shall find the cause of the complaint to be just." Runaways began to increase with the importation of an undesirable class of servants, a few of whom were present in the colony from the earliest days, and who during this period were largely recruited by the addition of felons and "spirited" persons. They were the common offenders, and by their habits corrupted the better class of servants.[1] When this class grew more numerous in the latter half of the seventeenth century servants became so demoralized that they would run away in "troops," enticing the negro slaves to go with them. In counties whose situation made escape peculiarly easy the abuse was very great. In 1661 it had become so bad in Gloucester that the Assembly authorized that county to make whatsoever laws it saw fit to meet the case of such runaways.[2] Servants would plot how they might run away even before they landed in Virginia,[3] and under the liberty given them on the plantations, and with an accessible back country, it was not a difficult matter to accomplish. They frequently made their escape to the adjoining provinces of Maryland and North Carolina, where their condition being unknown they might enjoy their freedom, or if discovered their recovery was attended with such difficulties as to insure their safety.

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[1] MS. Rec. Va. Co., Library of Congress, II., 21; Westover MSS., II., 240. Cal. State Papers, Col. 19: Domestic, 447, 594, 1635, July 8, Dec. 5. Purchas, His Pilgrimage, 1809 (Virginia Verges); Neill, Lond. Co., 120, 160, note.

[2] Hening, II., 273. [3] *Ibid.*, III., 35.

The right of the master to claim his servant in another jurisdiction was one not always recognized, even though the institution existed there, as it depended on colonial legislation having an intercolonial application. In the absence of statutes providing for the return of fugitive servants from one jurisdiction to another, the justices refused to take the responsibility of acting, and so frequently much injustice and inconvenience resulted. The only redress left to the master was the power to levy on goods in Virginia belonging to inhabitants of the province in question.[1] North Carolina became such an asylum for absconding servants and slaves that it was popularly known in Virginia as the "Refuge of Runaways." The Eastern Shores of Virginia and Maryland were also favorite resorts. Servants frequently escaped to the Dutch plantations and sometimes even to New England. To restrict the practice and to prevent absconding debtors, a pass was required for any person leaving the colony, and masters of ships were put under severe penalties not to transport any servant or slave without such a pass or license from his master.[2] Certificates of freedom were also required to be given in due form to every servant on the expiration of his term, and under the power given by the statutes any person travelling in the colony, if not able to give an intelligent account of himself or to show his certificate, might be taken up as a runaway. The law for the capture of runaways was at first very inefficient, and went through a number of experimental changes before one that was effective was discovered. In the first acts relating to runaways no

[1] Hening, I., 539; Northampton Rec., II., 149; Hening, 1661, Drummond's servant. An interesting question might have arisen as to the master's claim had a runaway servant escaped to England or to a foreign country where the institution was not recognized. No such case seems to have occurred. A transported felon would probably have been seized and treated as an escaped convict in England, but what remedy the master could have had in this case, or when the fugitive was not a felon, is not clear.

[2] Hening, III., 271; IV., 173; IX., 187.

means of discovery and no method of pursuit and return to the master were prescribed. The pursuit seems at first to have devolved upon the master, but the loss resulting from this caused the General Court in 1640 to direct pursuit to be made by the sheriff and his posse at the expense of the county from which the fugitive escaped. Pursuit by hue and cry, adopted from the English custom, seems also to have been in use, but by 1658 it had been so much neglected that a special act for its enforcement was necessary.[1] Constables also pursued under search-warrants, but they neglected their duty, and in 1661 the Assembly had to promise them rewards of 200 lbs. of tobacco from the master. This proved insufficient and had to be increased and even paid out of the public revenues, to be reimbursed by the master. Additional rewards from £3 to £10, according to the value of the servant and his distance from home, were offered by masters. In 1669 the practice was so bad that any one was permitted to take up a runaway and receive a reward of 1000 lbs. of tobacco from the public, to be reimbursed by the servitude of the offender "to the country when free of his master."[2]

In consequence of the growth of these abuses, and designed as a corrective of them, we find a great extension of the principles of additions of time and of corporal punishment, to such a degree in fact as to prove often a source of great injustice to the servant. The principle of additions of time, we have seen, was early extended by the action of the

[1] Hening, I., 255, 401, 483, 539. Reeves, V., 355 (rev. ed.). The hue and cry was an ancient method of pursuing offenders in England, and rested on the statute of Winchester, 13 Edward I., 81, 82, c. I., and on 28 Ed. III., c. II. In Virginia a warrant was issued by the governor or some of the council, or a commissioner of the county, and masters of households were put under penalty of 100 lbs. of tobacco for its speedy conveyance from house to house.

[2] Hening, II., 21, 273; Va. Gazettes, 1736, Dec. 17, Feb. 25, Mar. 11. To facilitate discovery, habitual runaways had their hair cut "close above the ears," or were "branded in the cheek with the letter R." Hening, I., 254, 440, 517.

courts beyond its application as a punishment merely, and became the ultimate resort of the master in his legal claim of damages for breaches of contract by the servant;[1] but some confusion seems to have existed in the minds of the judges and the framers of the later statute law as to the exact theory on which the principle should be applied. Though continued as a punishment until the abolition in 1643 of servitude to the colony for offenses, it seemed in the case of several kinds of offenses, both before and after that time, to partake of the nature of damages to the master for loss resulting from the offense, as well as of a penalty for the offense itself. In other cases it was clearly viewed in the light of damages alone. It was of the former character generally in such offenses as secret marriage and fornication, and of the latter for unlawful absence from his master's service or for acts of violence toward his master or overseer. The term of servitude that was imposed was determined by the offense or the damage sustained, and was, except in a few offenses, not excessive, varying from one to two years.

[1] MS. Rec. of Genl. Ct., 1640, 3, 8, 9, 10, 11, 12, 13, 16, 52, 53; Acc. Rec. MS., 1633, 10. The practice of the courts was not uniform, however. The General Court, on the 9th of July, 1640, ordered two runaway servants to be punished by whipping and "to serve out their time and add a year to their master to recompense his loss by their absence"; but a few months later a master was denied his claim to three months service due him by a servant's loss of time. At a court held the following week, the master of certain runaways is given a year's additional service, or "longer if said master shall see cause" for their loss of time, and for sheriff's fees paid by masters, "the servants shall make good the same at the expiration of their time by a year's service apiece to their said masters." A maid-servant who was guilty of fornication was ordered to "serve her full time to her master as by covenant," and her husband to make satisfaction "for such further damages" as the master should make appear. The Accomac county court ordered a servant "to perform the full term of his indentures faithfully and truly" or to stand to the "censure" of the court. This was a case where recourse might have been had on the freedom dues as damages, but the court left these to the servant.

In such cases as fornication or having a bastard the addition might be considerable. A woman-servant, for having a bastard, served her master from one and a half to two and a half years, and if the bastard were by a negro or a mulatto she might be sold to additional service for five years for the benefit of the public. Besides the master's claim on the female servant he might claim also a year's service from the guilty man, but in both cases the servant was given liberty to discharge this claim by a money satisfaction as in the case of free persons.[1]

The greatest abuse of additions, however, arose in connection with runaway servants. Before terms were definitely specified by statutes they were capable of very arbitrary assessment at the hands of the courts. The length of the term was sometimes left to the discretion of the master or was adjudged more than he himself cared to exact. Additional terms from two to seven years, served in irons, to the public, were prescribed in extreme cases.[2] The additions possible under the statutes were also very great, as ultimate recourse was had on the servant for all the expenses of his capture and return to his master. These expenses included rewards, sheriff's fees and jail fees. These latter were not fixed until 1726, and were a source of great abuse. When the master refused to pay these expenses, or could not be found, the servant was publicly sold or rented for such a time as would repay the public disbursements, and was then returned to his master to serve the remainder of his time and that due by addition.[3] The act of 1643 provided that runaways from their "master's service shall be lyable to make satisfaction by service at the end of their tymes by indenture (vizt.) double the tyme of service soe neglected, and in some cases more if the commissioners—find it requisite and con-

[1] Hening, I., 438; II., 114, 115, 168; III., 87, 140, 452. By an act or 1662 the father was liable to make satisfaction to the parish by additional service for the keeping of the child.

[2] Robinson MS., 9-13; MS. Rec. Genl. Ct., 154, 161.

[3] Hening, I., 255, 539.

venient," and subsequent acts allowed the master to recompense himself by service for all expenses to which he had been put in recovering his servant. The rate at which he could do this was fixed by the act of 1705 at one year's service for every 800 lbs. of tobacco, or a month and a half for a hundred pounds.[1] The servant, however, might commute this penalty by giving security for the payment of these expenses within six months, and the master was forced to accept security or payment when offered. The servant was also protected from injustice by the necessity imposed upon the master of presenting his claim in the next county court after the return of the runaway, or becoming liable to the loss of it altogether.[2] Where the master's goods had been stolen, or negroes enticed to accompany the runaway, the addition of time sufficient for compensation might be large. The servant was required to serve for the lost time of the negro as for his own, since the negro was held by a statute of 1661 to be "incapable of making satisfaction by addition of time."[3] Additions thus frequently amounted to as much as four or five years, or even seven in some cases, and were often more than the original term of servitude.[4]

Corporal punishment as a common mode of regulating the servant's conduct was acquired by the master as a legal right during this period, and when retained in the hands of the local magistrate or other officers it became, under the power given by the statutes, readily susceptible of abuse. The extension of this important power beyond the administration of the courts was largely a result of the necessity of providing some severe correction in the case of runaways.

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[1] Hening, II., 458.

[2] *Ibid.*, III., 456, 458, 459; IV., 168, 171; XII., 191.

[3] *Ibid.*, II., 26. This is said to be the first statute sanctioning negro slavery in Virginia, but as early as 1625 the status of the negro, according to Jefferson, was determined by a case in the General Court. Jeff. Cases, Genl. Ct., 1730, etc., 119, note.

[4] MS. Rec. Genl. Ct., 1672, 3, 12, 15, 35, 44, 154, 158, 161, 188.

The servant had generally no means wherewith to remit a fine, and so in penal offenses, where free persons were fined, we have seen that the servant was whipped, unless his master discharged the fine. In many cases also it was a general punishment both under the laws of England and under those of the colony, so that a law of 1662 provided for the erecting of a whipping-post in every county; but even before this time the master had assumed the right of administering corporal punishment to his servant. In this year it became a right recognized by law, but when a master received an addition of time for his servant's offense it remained doubtful whether corporal punishment could also be administered. This question was settled by the Assembly in 1668. It was declared that "moderate corporal punishment" might be given to runaways either by the master or by a magistrate, and that it should "not deprive the master of the satisfaction allowed by law, the one being as necessary to reclayme them from perishing in that idle course as the other is just to repaire the damages sustained by the master."[1] The power thus given was doubtless abused, for in 1705 an act was passed restraining masters from giving "immoderate correction," and requiring an order from a justice of the peace for the whipping of "a christian white servant naked," under penalty of a forfeit of forty shillings to the party injured. The act is significant as showing also the master's right to employ corporal punishment as a regulation of the conduct of servants in general.[2]

Slaves were for the first time included in the act against runaways in 1670, and it was provided "that every constable into whose hands the said ffugative shall by any commissioner's warrant be first committed shall be and hereby is enjoyed by vertue of this act (though omitted in the warrant) to whip them severely and convey him to the next constable (toward his master's home) who is to give him the like correction and soe every constable through whose precincts

[1] Hening, II., 75, 115, 118, 266. [2] *Ibid.*, III., 448.

he passeth to doe the like."[1] In 1705 the severity of this act was somewhat mitigated by requiring justices who made the commitment to the constable to specify in their warrants the number of lashes to be given the runaway, "not exceeding the number thirty nine." Corporal punishment was also extended in offenses committed against the master solely. In 1673 the General Court ordered that a servant "for scandalous false and abusive language against his master have thirty nine lashes publicly and well laid on in James City and that he appear at Middlesex County Court next and there openly upon his knees in the said court ask forgiveness which being done is to take of any further punishment allotted him."[2]

Besides the power to regulate his servant's conduct and enforce the performance of his duties, the master acquired a sort of general control over his servant's person and liberty of action. By custom the servant enjoyed frequent respites from service and might freely employ this time as he saw fit. In consequence of an abuse of this privilege, however, it became necessary to restrict it upon the consent of his master. The plot of certain servants in Gloucester county in 1663 to rise against their masters and subvert the government caused great alarm throughout the colony, and led to a strict regulation of the liberty previously allowed servants of leaving their masters' plantations and assembling together. To suppress "unlawful meetings of servants," an act directed "that all masters of ffamilies be enjoyned to take especial care that their servants do not depart from their houses on Sundays or any other dayes without particular lycence from them," and the different counties also were empowered to make by-laws for preventing unlawful meetings and for punishing offenders.[3]

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[1] Hening, II., 278. [2] MS. Rec. Genl. Ct., 44, 136.

[3] Hening, II., 195; cf. 171, 441; Neill, Va. Carolorum, 295, 296. Beverley, 55, 56. The attempt was made by a number of transported Oliverian criminals, who made use of the general political and religious discontent of the time. It was not a servile insurrection due to the harsh treatment of servants.

Though the servant's right to the personal enjoyment of his property was recognized when protected by the terms of his contract or by the courts, his disposal of it became conditioned on his master's consent by the acts against dealing with servants, and the right of trade was practically taken away.[1] The habit had also grown up on the part of masters of converting to their own use goods brought in by their servants or afterwards consigned to them. In 1662 an act was passed to restrain this, providing that all servants "shall have the propriety in their owne goods and by permission of their master dispose of the same to their future advantage." The revisal of 1705 confirmed the right of servants to goods and money acquired "by gift or any other lawful ways or means," with "the sole use and benefit thereof to themselves," making no reference to the necessity of the master's consent for a disposal of them. The continuation of the act against dealing with servants was a practical limitation, however, of any rights they may have had.[2] The servant's right to the possession of his personal estate now rested on statute and not on the occasional action of the courts or the will of his master; but he could not during servitude acquire a freehold interest in land, and tenancy of small tracts with the permission of the master was exceptional.[3]

Other important rights became fixed or limited by

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[1] Hening, I., 274, 445; II., 119.

[2] Hening, II., 165; III., 450, 451; IV., 49. The servant frequently enjoyed the right of trade, however, with his master's consent, and many masters, besides paying wages or making gifts of money and stock, allowed servants the use of tracts of land. (Bullock, Account of Va., 1649, 52, 59.)

[3] Hening, IV., 46, 47, 49. An act of 1713 restrained a servant and overseer from keeping horses "without the license in writing of his master or mistress," nor could the master give license for the keeping of more than one, the reason by the act alleged being that great numbers were kept by persons who had no interest in land, and were so "suffered to go at large on the lands of other persons," which was "prejudicial to the breed of horses" and "injurious to the stocks of cattle and sheep."

the statute law of the period and certain new rights were developed. The servant's claim to freedom dues recognized by the custom of the country and enforced by the courts was at first only a general one and not specific, the amount granted varying according to the will of the master or of the court in which it was sued for, unless it had been specified in the contract. A clause was inserted in the act of 1705 confirming this right and making it thereafter certain in amount. Every male servant was to receive upon his freedom "ten bushels of indian corn, thirty shillings in money or the value thereof in goods and one well fixed musket or fuzee of the value of twenty shillings at least"; a woman-servant, fifteen bushels of Indian corn and forty shillings in money or value. In later times these dues were discharged by a money equivalent and gifts of apparel.[1]

The freedom of a servant could be proved either by reference to the registry of his contract or to a court record, if he did not himself have a certificate of the fact from the county court or commissioner or from his master. In 1662, to facilitate the discovery of runaways and to protect innocent persons from arrest as such, or from penalties for entertaining suspected runaways, the clerk of the county court was directed to issue a certificate of freedom to every servant who adduced proof before the court of the expiration of his term.[2] Though designed as much for the protection of the master as of the servant, it became of great importance to the latter as his title to liberty and a guarantee that his rights as a free man would be fully respected. The necessity of such a guarantee appears not only from the restrictive nature of the legislation of this period, but from the records of the old General Court. Meager as they are, they present a number of instances of servants suing for their freedom who were either held or sold for periods longer than their lawful time.[3] The right was much abused, however, on the part of

[1] Hening, III., 151.

[2] Hening, I., 254; II., 116.

[3] MS. Rec. Genl. Ct., 150, 156, 158, 161, 162, 166, 173, 204, 218 (1673-75).

the servant. Heavy penalties had continually to be inflicted to prevent the theft of certificates or the use of forged or counterfeit ones. Stringent regulations had to be put on the granting and re-issuing of them, and where the servant made a fresh contract for service the certificate was to remain in the hands of the master till the contract expired.[1] The servant was further protected from an involuntary extension of his contract with his master by any intimidation or pressure brought to bear upon him by reason of his unequal position. After 1677 no contracts for further service or for freedom dues could be made by a master with his servant during servitude except with the approbation of "one or more justices of the peace," under penalty of having to free his servant. By 1705 any contract for "further service or any other matter relating to liberty or personal profit" between master and servant had to be made in the presence and with the approbation of the court of the county. A practical limitation was also put upon the master's absolute right of assignment of his servant's contract. As the white servant was considered a Christian, as originally from a Christian land, the principle was established that he could only be held in servitude by Christians or those who were sure to give him "christian care and usage." Thus free negroes, mulattoes or Indians, although Christians, were incapacitated from holding white servants, and so also were all infidels, such as "Jews, Moors and Mohometans." Where any white servant was sold to them, or his owner had intermarried with them, the servant became "ipso facto" free.[2]

An important right acquired by the servant during this period was the power given him to bring his complaint into court by petition "without the formal process of an action." This right, confirmed by the act of 1705, proved a great boon to the servant in case of unjust usage. The county court had full discretion in such a case and might free or sell

[1] Hening, I., 254; II., 116; III., 454, 455.

[2] Hening, III., 450.

the servant away from his master. The right was extended to complaints of every character affecting the servant's rights. He could in this way sue for his freedom dues, his property or wages, or for damages for unlawful whipping. Another right granted by the act was that of commutation by a money satisfaction of corporal punishment for breach of the penal laws, and of additions of time for the expenses of capture in the case of runaways.[1] A right which was implied, if not expressly stipulated for in the contract, was that of a sick or disabled servant to claim support and medical attention at his master's charge during servitude, without any reciprocal right on the part of the master to further service therefor. The master was prevented by the liability of his goods and chattels to seizure from avoiding this obligation by freeing his servant and throwing him upon the parish.[2]

Such rigor as is perceptible in the legislation of this period, and in general regarding the servant, we have seen appears particularly in the case of runaways, and is to be traced to the influence of the developing institution of slavery. Little practical distinction was made in the treatment of runaway servants and slaves where the practice was habitual, and the servant by his association with the negro fugitive became subjected to indignities that would not otherwise have been inflicted.[3] The influence of slavery is also to be traced in the disposition to regard the servant as property and subject to the same property rights as the rest of the personal estate. As an important part of his master's estate he had become liable to the satisfaction of his debts and could be levied on equally with the goods and chattels.[4]

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[1] Hening, III., 448, 452, 453, 459.

[2] *Ibid.*, III., 449, 450.

[3] *Ibid.*, III., 456; IV., 170, 171.

[4] Northampton Co. Rec., 147, 149; Fitzhugh's Letters, July 22, 1689. Fitzhugh writes to Mr. Michael Hayward that his debtor's estate is probably sufficient to save his debt, as he has "4 good slaves with some other English servants, and a large stock of tobacco"; York Co. Rec., 86.

The conception of the servant as a portion of the personal estate is shown to be fully developed by an act of 1711, which directed that servants and slaves should be continued on the plantation of a person who died intestate, or who did not otherwise direct in his will, to finish the crop, upon which they were to remain in the hands of the executors or administrators; while the slaves were then to pass to the heirs at law, as by the act of 1705 they had been declared to be real estate.[1]

The period is thus characterized by a twofold development: first, on the part of the master, from a conception of his right to the service guaranteed by the contract and to such incidents as enabled him to realize this right, to a conception of property in the servant himself which he would employ to the utmost advantage allowed him by the law; and on the part of the servant, from a desire to fulfil the conditions of his contract to a desire in general to escape from servitude whether based on lawful contract or on the exaction of his master: secondly, a reduction of the relation of master and servant to fixity and uniformity throughout the colony by the action of statute law in ascertaining their respective rights and duties.

Third Period, 1726-1788.—During this period the institution of white servitude gradually declined before the growing institution of negro slavery, which proved economically far superior to it. We find the development of no new rights on the part of the master, and on the part of the servant only that of assent to the assignment of his contract. This was not granted until 1785, when the system itself was practically at an end. The contract could now be assigned only on the free consent of the servant, attested in writing by a justice of the peace.

The various modifications introduced affecting rights already established were generally in mitigation of the servant's condition, and point to a very rapid decline of in-

[1] Hening, IV., 284.

dented servitude after the middle of the century. This is indicated by a reduction of penalties for such abuses as harboring runaways or dealing with servants, and by the repeal in 1763 of former acts providing for the servitude of persons who came in without indentures, while making no provision to regulate it in future. In 1765 the practice of binding the bastard children of a white woman-servant or free woman for thirty-one years was declared by the Assembly to be "an unreasonable severity to such children," and the term was limited to twenty-one years for males and eighteen for females. By the act of 1769 they were to be treated as apprentices, to be instructed and to claim all the rights of other apprentices.[1] Unimportant changes were introduced in the law relating to runaways designed to facilitate their recovery with least expense to the master and consequently with least injustice to the servant.[2] Freedom dues were fixed with a money equivalent, and were the same for both men and women. Injury to a servant might be redressed by "immediate discharge" from service by order of a court. The legislation as a whole was not important and developed no new principles. The legal fixity of the conception of the servant as a piece of property is apparent, and becomes further developed through the influence of slavery and as a result of the long terms, of from seven to fourteen years, on which the English felons were transported to the colony.[3]

The act of 1785 legally defines servants as "all white persons not being citizens of any of the confederated states of America who shall come into this commonwealth under contract to serve another in any trade or occupation." This definition excluded slaves, hirelings who were citizens of any of the confederated states, but included convicts (whose importation was not finally prohibited until 1788) and apprentices from abroad. The term of servitude was limited

[1] Hening, III., 445, 451; V., 552; VI., 359, 360; VIII., 134, 135, 136, 337.

[1] Hening, V., 552, 557; VI., 363; VIII., 135, 136.

[3] Hening, XII., 150, 151, 191; 6 Geo. III., c. 32; 8 Geo. III., c. 15.

to a period not exceeding seven years, except in the case of infants under fourteen who might be bound by their guardians until the age of twenty-one, and all servants, the act declares, "shall be compellable to perform such contract *specifically* during the term thereof." Corporal punishment by order of a justice was the power in a master's hands of enforcing such performance, and the benefit of the servant's contract was to pass to "the executors, administrators, and legatees of the master."[1]

We have seen that the relation of master and servant was at first a relation between legal persons, based on contract, and that such property right as existed consisted in the master's right to the labor and services of his servant, while the servant enjoyed a reciprocal right to support and, to some extent, to protection and instruction from his master; that gradually the conception of property grew at the expense of that of personality, and that with a limited class of servants personal liberty became so restricted that they stood in respect to their masters in a position somewhat analogous to that of slaves. The broadest practical and legal distinction was made, however, between the servant in general and the slave, and the institution of white servitude differed widely from that of slavery, both in nature and in origin. It rested for its sanction on national or municipal law alone, while slavery was based upon international as well as municipal law. In extent servitude was of limited duration, while slavery was for life. The personality of the servant was always recognized and his status could not descend to his offspring, as was the case with the slave's, nor did the master at any time have absolute control over the person and liberty of his servant as of his slave. The servant always had rights which his master was bound to respect, and besides the guarantee of personal security enjoyed a limited right to private

[1] Hening, XII., 190, 191; *Ibid.*, Justice, 417, 418; Hening, XII., 668.

property. The conception of the servant himself as a piece of property did not go beyond that of personalty, while the slave did not remain as personal estate, but came to be regarded as a chattel real or as real estate. The mutual effects of the institutions upon each other are shown, however, in the growth of this conception of property, and particularly also in the legislation respecting runaways, unlawful assemblies, or absence from the master's plantation. Servitude may thus be regarded as preparing the way both legally and practically for the institution of slavery as it existed in Virginia.[1]

Social Status of the Servant.—The actual condition of the servant, though in great measure determined by his legal status and by certain social laws, was also largely influenced by many customs that had no sanction in law, and the distinction between servant and slave became as clearly defined under the action of these and the practical working of the law as in the letter of the law.

In regard to employment a marked distinction was frequently made between the servant and the slave. The industry of the colony was chiefly agricultural, its staple

[1] Hurd, Law of Freedom and Bondage, I., 116, 129, 139, 210, 220. Robinson MS., 10, 243, 250, 256, 261. This is shown in the application of corporal punishment and of additions of time, and in the disposition to claim negro and Indian servants as slaves. In 1640 the addition of time for a negro runaway servant was, in a case brought before the General Court, servitude "for the time of his natural life here or elsewhere." Hening, II., 118, 288, 481; III., 277; IV., 168, 171, 174, 202; Va. Gazettes, 1737; Tucker's Blackstone, Appd., 55-63. Though slavery assumed a comparatively mild form in Virginia, much of the criminal law relating to slaves was of a very discriminating and harsh character, as was also the procedure. Cf. acts of 1723, 1748, 1764, 1772; Minor, Institutes, I., 161 et sq. Until 1772 no restriction was put on the outlawry of a slave, he might be killed in resisting arrest, and until 1788 the murder or manslaughter of a slave by his master might go unpunished, the presumption being that he would not wantonly destroy his own property.

The influence of servitude upon slavery will be discussed at greater length in a monograph on Slavery in Virginia, now in preparation.

throughout the seventeenth century being tobacco. Where the servant was engaged in field labor he was worked side by side with the negro slave, under the direction of overseers who were frequently the best of his own class. This was not in itself a hardship, as the work was the same as that of the planters themselves and of every common freeman, and the servant was not required to do more in a day than was done by his overseer. As the number of negroes began to increase, the harder and greater part of the work was put upon them, and the servant, as more intelligent, was reserved for lighter and finer tasks. Though associated with the negro, he was not compelled to live with him in "gangs" and "quarters," and, unlike him, could make complaint if insufficient clothing or lodging were provided.[1] Women-servants were commonly employed as domestics, as by an act of 1662 they became "tythable" and their master subject to the payment of levies for them if they were put "to work in the ground"; the negress, however, had no such exemption in her favor and was frequently employed in field labor with the men. With regard to their labor, the slave, Beverley says, was better off than the husbandmen and day-laborers of England, and the servant's lot was still easier.[2] Very large numbers of the servants were also artisans and skilled workmen and were employed in building and other trades. Almost every profession was represented, and on the large plantations, which provided mostly their own necessities, there was a great demand for such servants and for industrial apprentices. Many servants were thus taken into the families of their masters in various capacities, and were treated with as much consideration as if working under a free contract for wages. Considerable domestic manufacturing was of necessity carried on at all

[1] Va. MS. B. R. O., 302; Jones, Present State, 36.

[2] Beverley, 219; Jones, Present State, 37; Hening, II., 170; Fitzhugh, MS. Letters, Jan. 30, 1686-87; Force, III., L. and R., 12.

times, and after the introduction of large numbers of slaves for the field labor, white servants were generally utilized for that purpose. They were thus better housed, clothed and fed than the negro, as a result of the position they occupied toward their master as well as from the protection afforded them by the law.[1]

Besides a general social obligation of protection and defense recognized by most masters toward their servants as dependents, the law only held a servant responsible for his own free acts and not for those performed under the orders of his master.[2] Where the servants were apprentices a high personal trust was involved, and the master, besides occupying the position of guardian, was bound to render religious and secular as well as mechanical instruction. Not only was attendance at church required by law, but all servants and apprentices were to be instructed together with their masters' children every Sunday "just before evening prayer" by the minister of the parish. When such obligations were recognized, the great distinction between the positions of a servant and a slave is at once manifest.[3] Where these obligations rested upon the provisions of the contract they seem to have been carefully guarded by the courts. A servant complained in a general court of 1640 of her "master's ill usage by putting her to beat at the mortar for all his household" when he had promised "to use her more like his child than a servant" and to teach her to read and instruct her in religion, and the court considering the "grevious and tyran-

[1] Carpenters, joiners, sawyers, bricklayers, blacksmiths, engravers, weavers, shoemakers, tailors, saddlers, bakers, teachers, surgeons and other craftsmen were imported. Va. Gazettes, 1736 sq.

[2] Col. Rec. Va. Laws, 1619, 21, 28; Winder MSS., I., 245 (1667); Hening, III., 462, 463; IV., 425.

[3] *Ibid.*, I., 143, 144, 157; II., 260; III., 459; IV., 133; XII., 681; Jones, 92, 94; Stat. at Large Va., III., 124. Before 1667 baptism had in many cases been refused to slaves and their offspring, since doubts existed as to its effect on their status. It was then settled that baptism did not free the slave.

ical usage" of her master, ordered her to be freed, though she had yet a year to serve, and to receive her freedom dues.[1]

Frequent respites from service were also granted. It was not only the custom to allow servants Saturday afternoons as well as the Sabbath for free disposal, but all the old holidays were rigidly observed. An industrious servant was thus given an opportunity to lay up a competence for his start in the world as a free man. Tenure of small tracts of land was sometimes permitted by masters, and with the live stock given him he might raise cattle, hogs and tobacco and so become possessed of considerable property. The evolution from the days of the London Company of an aristocracy of wealth rather than of blood was a somewhat slow process, so that there was nothing in the servant's position itself (except that it debarred him from the possession of landed property and consequently of certain civic rights) to condemn him to a very inferior social position. No odium attached to his condition or person as to the slave's, and where he proved worthy of consideration he might enjoy many of the social privileges that would have been accorded him as a free man.[2]

The servant himself was disposed to regard his condition as only that of a free man rendering services for a sort of wages advanced to him in his transportation and maintenance, and his legal disabilities as only a temporary suspension of his rights necessary to insure a more complete realization by his master of the right to service. Constantly looking forward to his full freedom, he considered his position as analogous to apprenticeship, or to that of the ordinary hired laborer rather than to that of the slave. The natural pride of the free man sustained by this feeling, together with the strong race prejudice that has ever separated

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[1] Robinson MS., 8.

[2] Force, III., L. and R., 14; *Ibid.*, Virginia's Cure, 7, 10; Bullock, 52 sq. Instances are related of their appearing at social gatherings in their masters' houses on equal footing with the family and their guests.

the Englishman from an inferior and dependent race, and his religious sentiment as a Christian, or at least of Christian origin, sufficed to make a very great practical distinction between his social position and that of the negro and Indian, slave or free. These sentiments were effective with the better class of servants in keeping them aloof from association with such inferiors. With convicts and the lower classes, where such considerations were not always sufficient, the law took precaution by the most stringent measures to uphold them and to prevent race contamination. Freemen and servants alike were subjected to severe penalties for intercourse with negroes, mulattoes and Indians, and intermarriage with them or with infidels was prohibited by many statutes prescribing the punishment both of the offender and of the minister who performed the ceremony.[1] The

[1] Hening, I., 146, 552; II., 170; III., 86, 252. The Governor and Council in court in 1630 ordered "Hugh Davis to be soundly whipped before an assembly of negroes and others for abusing himself to the dishonor of God and shame of a christian by defiling his body in lying with a negro which fault he is to acknowledge next sabbath day." A similar case came before the court the next year. Very few negroes, however, were brought to Virginia before the latter half of the century, but the records of the general court during the period (1670-76) of increased importations of negroes under the African Company, having no reference to the recurrence of the offence, points to a disposition on the part of the whites in general to avoid race contamination. The growth of a considerable class of mulattoes, particularly mulattoes by negroes, is appreciable towards the end of the century, however, and is shown by the passing of several acts to restrict it. The first statute on the subject, that of 1662, imposed double fines for fornication with a negro, but no occasion for restricting intermarriage seems to have arisen till 1691, when an act was passed "for prevention of that abominable mixture and spurious issue which hereafter may encrease in this dominion as well by negroes, mulattoes and Indians intermarrying with English or other white women as by their unlawful accompanying with one another," and punished the intermarriage of a free white man or woman with a negro, mulatto or Indian, bond or free, with banishment forever from the colony within three months after the marriage, and the justices of the county were "to make it their perticular care that this act be put into effectual execution." The revisal

limitation of servants' marriages upon the master's consent was a sufficient safeguard in their case, and but little responsibility may be regarded as attaching to them for the growth of the mulatto class. As was natural between two dependent classes whose conditions were different and widely in favor of one class, race prejudice and pride were at their strongest and developed jealousies which did not exist between the master and his dependent or the freeman and the slave. A disposition on the part of servants to keep themselves free from all association with negroes is very perceptible.

The presence in the latter part of the seventeenth century of quite a number of the English lower classes and criminals, together with a greater development of the aristocratic sentiment from the influx of a considerable number of gentlemen just after the civil war in England,[1] had the effect of les-

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of 1705 altered this penalty to the imprisonment of the offender six months and a fine of ten pounds Virginia currency, the person who performed the marriage forfeiting ten thousand lbs. of tobacco. When a woman-servant was guilty of having a mulatto or negro bastard she was, as a free woman, sold for five years as a punishment, or subjected to a fine of fifteen pounds, while the necessity of the master's license barred the unlawful intermarriage of servants. Where the offense occurred, then it was more likely to do so in the case of a free person than of a servant, as the master would not be likely to give his consent to any such marriage, having much to lose and nothing to gain from the service of the issue which might be sold away from him by the churchwardens of the parish. In one instance a girl was given her freedom because her master had consented to such a marriage, and such rulings of the courts probably checked exceptional cases. The practical distinction to be made between servants as whites, and negroes and Indians was one constantly recognized by the courts and the Assembly. The consideration of racial distinction alone seems to have led the Assembly in 1670, when the question of the legal power of the free Christian Indian or negro to hold a servant came up, to declare in the negative. Hening, II., 168, 280; III., 86, 87, 453, 454; Rob. MS., 256.

[1] Beverley, 232, 233; Wirt, Life of Henry, 34. Va. MSS. B. R. O., Vol. II., pt. I., 291. The importance of the introduction of these persons into Virginia society has been probably exaggerated. Gov. Nicholson, writing to the Lords of Trade, Dec. 2, 1701, says: "Fit and proper persons for executing the several

sening the barrier between servant and slave and increasing that between the ruling and dependent classes. Yet with the middle classes, the smaller planters and the yeomanry, who still constituted the great body of the inhabitants, and were to an important extent recruited from the freed servants themselves, no such caste feeling was produced, and the general social position of the servant continued to be widely distinguished from that of the slave.

The real condition of the servant in the American colonies was much better than has generally been supposed, and was decidedly better in Virginia than in some of the other colonies. Though what was practically white slavery seems to have existed in some of the island plantations of England, there is no instance, so far as I have been able to discover, of a white person sold into slavery in Virginia. How far the general character of white servitude differed from slavery has been sufficiently shown, and in considering the apparent barbarities to which a servant was subjected we should remember that neither in England nor on the Continent was the condition of the dependent classes any better. The doctrine of the rights of man had not yet arisen in the seventeenth century, nor was it until the latter part of the next century that its practical fruits began to appear. It was reserved for the revolutionary movement of the eighteenth and nineteenth centuries, which brought political and re-

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offices and imployments decrease—in twenty or thirty years if the natives cannot be prepared fewer or none will be found capable of executing the several offices, for there is little or no encouragement for men of any tolerable parts to come hither, formerly there was good convenient land to be taken up and there were widdows had pretty good fortunes which were encouragements for men of good parts to come but now all or most of these good lands are taken up and if there be any widdows or maids of any fortune the natives for the most part get them, for they begin to have an aversion to others calling them strangers. In the civil war several gentlemen of quality fled hither and others of good parts but they are all dead, and I hope in God there never will be such a cause to make any come in again." Beverley, who was opposed to Nicholson and his government, confirms this view.

ligious liberty to America and a great part of Europe, to completely develop the idea of personal liberty. Not until the late years of the eighteenth century was feudal serfdom generally abolished on the continent of Europe, and as late as 1835 the prison and the flogging board still constituted a part of the equipment of every Hungarian manor.[1] In England villeinage passed away comparatively early as a result of the social disturbances of the fourteenth century, though a case was pleaded in the courts as late as 1618. Its extinction was thus gradual without any legislative abolition, and it was many years before the principle of free contract labor was fully worked out. The tendency of the agrarian reforms of England, in contrast to those of some continental countries, was to develop a class of landless freemen whose position was worse than if they had possessed land on semi-servile conditions. The small farmer gradually gave way before the capitalist farmer, and the large laboring class that was formed was stripped of all interest in the soil. These laborers were compelled to work by the various statutes regulating labor and apprenticeship under some master, and had to do so generally on long terms, with fixed wages and hours of labor, and restrictions were placed on departure or dismissal from service under severe penalties. The system introduced by the final statute of laborers, the so-called Statute of Apprentices of 1563, embodying the results of many previous measures, had the effect of checking migration of servants and in general of lengthening the period of servitude, and remained effective until the industrial revolution which followed the introduction of machinery.[2]

Some improvement in the economic condition of English servants is discernible during the latter part of the seventeenth century, but not much can be said as to the betterment of the social condition. Where they were in their master's household, and received rations and apparel in part pay-

[1] Fyffe, Mod. Europe, I., 21, 24, 26.

[2] Taswell-Langmead, Constitutional History of Eng., 316, note; Cunningham, 40-42, 184, note, 192, 198-200, 362, 387, 388.

ment of wages, they were not generally as well fed and clothed as the indented servants in Virginia. Their labor was more burdensome and the arbitrary treatment to which they were subjected was frequently more severe. Corporal punishment was a common mode of regulating their conduct, and shackles were used to prevent their running away. For extreme maltreatment on the part of the master the only redress was discharge from service, or in some cases a paltry forfeit of less than a pound to the servant. They were frequently discharged from their service contrary to the statute, and besides maltreatment their wages and apparel were often withheld. The condition of the English servant was thus sufficiently bad to make numbers of them migrate to Virginia in the hope of bettering it.[1]

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[1] Cunningham, 192, 193, 196; Beverley, 220; Jones, 92. Oldmixon, 290: "If hard work and hard living," he says, "are signs of slavery, the day laborers in England are much greater slaves." Middlesex Co. Rec., II., 22, 100, 101, 120, 130, 138; III., 23, 117, 318; *Ibid.*, S. P. Rolls, Oct. 8, 1655; *Ibid.*, 6 Chas. I., p. 34; 18 Chas. I., 117; 13 Chas. II., 318; Aug. 27, 1652, p. 209; 4 Chas. I., 23. The Middlesex records and sessions rolls give a number of interesting cases that throw light on the condition of the English servant. For an assault upon his master, an offense which would have been punished in Virginia by whipping or addition of time, a servant was in 1618 adjudged "to be imprisoned for a year, to be flogged on two market days at Brainford, to be put one day in the stock at Acton and on his knees in the open church to ask forgiveness of his master and afterwards to be reimprisoned." Unruly and disorderly servants and apprentices were sent to houses of correction, when they became effective after 1609, "to labour hardlye as the quality of their offence requireth." In 1652 a servant on covenant for a year's service complained of her mistress, and the sessions found "that the said lady did violently beat her servant with a great stick and offered to strike her with a hammer and that the said lady doth retain the wages due," and ordered dismissal and payment. In another case a master confesses "that he hath most uncivilly and inhumanly beaten a female servant—with great knotted whipcord—so that the poor servant is a lamentable spectacle to behold." Another master was held to answer "for giving his servant immoderate correction by beating him with three roddes one after the other." A case which must be regarded as very exceptional occurred in 1655. An ap-

That the servant sometimes met with very harsh treatment cannot be denied, however. In a case of judicial punishment by a commissioner of a county court, before the punishment had been regulated by statute, a servant was whipped almost to death, and the passing of an act by the Assembly in 1662 prohibiting private burial of servants or others, because of the occasion thus given for "much scandall against divers persons and sometimes not undeservedly of being guilty of their deaths," shows that sometimes the master abused his right of corporal punishment in an extreme degree.[1] The cruelty of some masters was sufficient towards the middle of the seventeenth century to interfere seriously with the importation of servants, and the Assembly in 1662 attempted to put a stop to it by giving the servant an easy remedy upon complaint to the commissioners for all his grievances. From this time forward harsh treatment may generally be considered as exceptional. Beverley says of the treatment of servants, "The cruelties and severities imputed to that country are an unjust reflection, no people more abhor the thought of such usage than the Virginians nor try more to prevent it now whatever it was in former days." This statement seems to be borne out by other contemporary authorities and by the records of the courts, which show that every safeguard was thrown around the servant, and that wherever the slightest pretext for freeing him appeared it was taken advantage of. Justice was readily accessible. Every few miles a justice might be found to whom complaint could be made, and the county courts, which met in

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prentice complained that his master made him work on Sunday and further misused him "by fastening a lock with a chain to it and tying and fettering him to the shoppe and that said master, his wife and mother did most cruelly and inhumanly beat his said apprentice and also whipped him till he was very bloody and his flesh rawe over a great part of his body, and then salted him and held him naked to the fire being so salted to add to his pain."

[1] Acc. Rec., 80; Hening, II., 35, 53. In 1661 the Assembly confirmed an order of the General Court forbidding a man and his wife "to keep any maid servant for the term of three years."

the early times as often as necessity required, and later every month, redressed servants' grievances in a "summary" manner.[1]

A servant could legally sue for his freedom on retention in service after his contract had expired, or for his master's violation of the act of 1676 by attempting to make any contract with him to his damage, or upon purchase by negroes, mulattoes, Indians or infidels, or upon the intermarriage of any such person with his owner; but the courts going beyond this in the discretionary power granted them by law, would free a servant for breach of the terms of indenture by the master, for breach of a contract to marry, for a second complaint of ill usage, and sometimes even upon a first com-

[1] Force, I., L. and R., 4; Hening, I., 435; II., 117, 118, 129, 488; Beverley, 219, 220, 222; cf. Bullock, Jones, Virginia's Cure, Leah and Rachel, pp. 11, 12, 15-17. John Hammond in 1659 warns servants against mariners, shipmasters and others who imported them merely for gain, and advises them to covenant for liberty, to choose their own master and a fortnight's time after their arrival in which to do so, "for ye cannot imagine," he says, "but there are as well bad services as good but I shall shew ye if any happen into the hands of such crooked dispositions how to order them and ease yourselves when I come to treat of the justice of the country which by this they may prevent." From this traffic in servants by middlemen it is evident that much deception and fraud might be practiced upon the unwitting, both before and after reaching Virginia. They were deceived in making their contracts by such general stipulations as for an allotment of land "according to the custom of the country," which was represented to them as being 50 acres, when no allotment to the servant was customary at all until after 1690. False indentures seem to have been made also, either through corruption in the registry office or by forgery, as a number of blank indentures, properly signed and sealed, were brought to the notice of the Assembly in 1680, and all judgment of their validity, when alleged, was lodged in the discretion of the justices. The practice of selling men on shipboard to the highest bidder, or of consigning them to merchants at Jamestown or other ports for sale, might, of course, result very unhappily for servants. and during the voyage to Virginia they often suffered great hardships for want of clothes, bedding and diet. These were mild, however, compared to the "horrors of the middle passage" in the days of slavery.

plaint where no fault of the servant appeared. The number of such suits occurring both in the General and the county courts, and the fraudulent concealment of indentures, show a continual disposition on the part of the master to extend the servitude, though unjustly, for as long a period as possible.[1] By the acts giving the master additions of time for the birth of a bastard child to his servant a premium was actually put upon immorality, and there appear to have been masters base enough to take advantage of it. This was restrained by an act of 1662, which provided that the maid-servant should be sold away from her master in such cases and no compensation allowed him for the loss of her time. Complete freedom would probably have been granted but for the harmful effect on the servant herself.[2]

The speedy rendering of justice to the servant through the special procedure provided in his case, and the unrestricted right of appeal to the higher courts, placed him in an exceptional position. The fact that the law was interpreted in the most favorable light possible for the servant, and that no fear was ever entertained of a servile insurrection, except in the single case of the Gloucester plot of 1663, which was due to political rather than social reasons, may be regarded as confirming the positive statements of contemporary writers as to the comparatively easy conditions of servitude during the

[1] Hening, II., 280, 388; III., 447; IV., 133; MS. Rec. Genl. Ct., 159, 162, 166, 173, 204, 218, 238; Robinson MS., 2, 8, 256, 265; Gen. Ct., 154, 156, 158, 161; MS. Rec. Va. Co., III., 233, 292; Acc. Rec., 2; Essex Rec., 132; Henrico Rec., 85; Force, III., L. and R., 16. Verbal agreements were sometimes alleged, and where proven, or where the servant could not produce his indenture, they might be enforced. An indenture, however, was an effectual bar to any such agreement.

[2] Hening, II., 167; III., 453; MS. Rec. Genl. Ct., 8. The number of false pleas brought into court by servants to get a reduction of their time, and the offenses of which they appear to have been guilty, show that the master was more likely to be imposed on than the servant. Genl. Ct., 8, 12, 15, 44, 47, 158, 188, 1675, Oct. 2; Acc. Rec., 85; Henrico Rec., 41; Robinson MS., 27.

period of indented service. We may conclude that where the servant showed himself at all deserving his lot was in general very easy and frequently much better than he had ever before enjoyed.[1]

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[1] Except in the early period and in 1777, the servant was free from the obligation of military service, and, as in the case of slaves, the law did not allow the sale of spirituous liquors to them. Hening, III., 400; VI., 74; VII., 93, 101; IX., 32, 81, 271, 275, 592; Sparks' Washington, Vol. II., 168, 169.

CHAPTER III.

THE FREEDMAN.

We have seen that by provisions of the statutes and under the practice of the courts a servant might legally obtain his freedom in several ways; the ordinary mode, however, was on the expiration of the term of his contract. He might then claim a certificate of freedom, and with his title to liberty resting on this or on the records of a court, all his legal disabilities were at once removed and he became "as free in all respects and as much entitled to the liberties and privileges of the country as any of the inhabitants or natives."[1]

To determine the place and influence of the servant as a freedman in the very complex social and economic development of the colony is by no means an easy matter. Merged as he was in the general class of free men, such effects as were due to his presence were not easily distinguishable. The process itself was largely unconscious on the part of the people and but barely recorded in contemporary history. Little historic material has thus survived on which to base satisfactory conclusions. Enough remains, however, to give decisive proof of a very rapid evolution of servants when free, and to show that they did not continue as a class at all, and so could not have formed, as has been mistakenly supposed, the lowest stratum of Virginia society in the eighteenth century. The various classes that made up the society of colonial Virginia were separated from each other only by the broadest and most general distinctions, and graded almost imperceptibly into one another. The law recognized no distinction whatever except in the case of the

[1] Beverley, 220 sq.

twelve councillors. The class which stood at the head of the social order and formed a kind of aristocracy was mainly an outgrowth of the official class and of landed proprietors, who, having acquired wealth or large estates, had been able to preserve them in their families for several generations through the action of the law of entails. A number of wealthy would-be aristocrats, without real culture and refinement, together with the poor but proud younger sons of the aristocrats, hung on to and aped the manners of the class above them; but the solid middle class of independent yeomanry, with plain and unpretentious manners, was far more numerous, and even in the latter part of the eighteenth century formed nearly half the population of the colony. The lowest class of all is described by a contemporary as "a seculum of beings called overseers, the most abject, degraded, unprincipled race."[1]

The freed servants may in all justice be said to have recruited all these classes at different periods during the continuance of indented servitude, but toward the beginning and in the first years of the eighteenth century probably more largely that of the small independent planters or laborers and the class of overseers. Though pride and wealth generally acted to make the upper classes hold themselves aloof from the lower, the good-will and generous hospitality characteristic of all classes gave them all more or less of a common life and freedom of association with each other, and where those elements were present in any man that would merit his rise he was not likely to be kept down by any false ideas due to caste sentiment. The rapidity with which some freedmen rose to positions of trust and distinction is abundant proof of the opportunity which lay open to all that possessed true desert. Many servants were besides this of better origin and education than the generality of freemen, and were frequently employed in such respon-

[1] Wirt, Life of Patrick Henry, 33, 36; *Id.*, British Spy, 192-194; Anbury, Travels through the interior parts of America, London, 1789, 371-376.

sible positions as teachers, and many ministers were imported on conditions almost parallel to those of indented servants.[1]

In the first half of the seventeenth century their rise to prominence was often very rapid. Several members of the Assembly of 1654 were men who had been servants, and in 1662 we are told that "the Burgesses which represent the people . . . are usually such as went over servants thither," who "by time and industry . . . have acquired competent estates."[2] Intermarriage of free persons and servants was very common. Masters sometimes bought female servants for their wives, and it was not uncommon for men-servants to marry into their masters' families when they gained their freedom.[3] No impassible social barrier thus seems to have

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[1] Col. William Preston, of Smithville, Va., bought at Williamsburg, about 1776, a gentleman named Palfrenan, as a teacher for his family; he was a poet and a scholar, a correspondent and a friend of the celebrated Miss Carter, the poetess, and also of Dr. Saml. Johnson. This man educated many of the Prestons and Breckenridges in Virginia and Arkansas. The distinguished Wm. C. Preston of S. C. was one of his pupils. Richmond Standard, June 9, 1880, Letter of Mrs. Floyd; Va. Hist. Mag., Oct., 1894, p. 236, Will of Col. John Carter (1669).

[2] Neill, Va. Car. 279, 290; Force, III., Virginia's Cure, 16; Howe, 207. Peter Francisco, a Revolutionary soldier celebrated for his personal strength, had been an indented servant for seven years. "He was a companionable man and an ever welcome visitor in the first families in this region of the state," says a contemporary living in Buckingham County. Cf. "A Declaration," etc., 4, 57; York Rec., 1633-34; Rob. MS., 52; Col. MS., 17.

[3] Rob. MS., June 3, 1640; Wm. Byrd's Letters, June 9, 1691; Bullock, 52 sq. Bullock advises English fathers to send their daughters to Virginia rather than their sons, and promises that they "will receive instead of give portions for them." "Maid servants," he says, "of good honest stock may choose their husbands out of the better sort of people. Have sent over many but never could keep one at my plantation three months except a poor filly wench made fit to foille to set of beauty and yet a proper young fellow served twelve months for her." He tells men-servants how they may prosper by their service and lay up a competence, "and then," he says, "if he look to God, he may see himself fit to wed a good man's daughter." Bullock was a Yorkshireman and had had seven years' experience in Virginia when he wrote in 1649. Cf. McDonald, II., 68.

existed, nor were opportunities lacking for the material improvement of the servant. To better his fortune when out of indenture at least two courses were open to him. He might remain with his master or some other person as a hired man or tenant upon his lands, or he might become an independent planter by taking up whatever unoccupied land in the community had proved too barren to be already patented by freemen, or by moving to the frontier where abundance of good land was to be had on the easiest terms.

There was a constant demand for labor, both agricultural and mechanical, throughout the colonial period, a demand satisfied neither by the indented servants nor by the large importations of slaves. The wages of hired labor were consequently always high, particularly those of artisans or tradesmen of the slightest capacity. Freedmen who were content to become members of the laboring class had abundant opportunity and inducement to do so. Until domestic manufacturers were checked by the repressive measures of the English Board of Trade, considerable encouragement was given to skilled workmen to exercise their crafts or to establish themselves in an independent position. When the profits of tobacco-planting increased, however, this industry probably absorbed a large number of freedmen, as very favorable conditions of tenantship were offered on the great estates, where men usually held on what constituted practically a life tenure. The disposition to become a freeholder, however, particularly after the servant enjoyed a claim to land in his own right, was most marked of all.[1] In the

[1] Acc. Rec., 36, 37, 42; Va. MS. B. R. O., V., pt. 2, pp. 302, 317, 336, 386, Nov. 11, 1708, Nov. 29, 1728; Robinson MS., 180; Bullock, 62 sq.; Beverley, 225; Hening, I., 208, 301; II., 172, 472, 503; III., 16, 30, 50, 53, 75, 81, 108, 121, 187, 197. Large importations of craftsmen had been made by the planters without satisfying their needs, and men were specially encouraged to remain in the employ of their former masters or to serve the community in their trade. Many servants received in addition to their transportation and support, wages equal to those paid the best servants in England. Though the colony was chiefly agricultural in character

earlier times, though the person importing him could claim fifty acres for his importation, the servant does not appear to have been legally entitled to any grant of land from the government. A grant was frequently stipulated in the contract with a master, and became also in some places a custom, which like freedom dues was recognized by the courts. In 1690 the instructions to Governor Howard directed that every servant receive a patent of fifty acres in fee on attaining his freedom, and it is probable that henceforth he was regarded as having a legal claim to such a grant. Before this the rules for leasing or patenting lands in many cases allowed him to acquire the tenancy of small tracts at a nominal rent, and lands were also left with other bequests to ser-

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and dependent on England for many of the ordinary articles of manufacture well into the eighteenth century, it is a great mistake to suppose that no manufacturing or attempts to build up trade appeared in Virginia. The fact that attempts were not largely successful was due not to domestic causes alone, but to the policy of the English Board of Trade, whose interest it was to keep Virginia agricultural for the benefit resulting to English commerce. The repeated efforts of the Assemblies to develop manufactures and to crush out the slave trade were defeated in England rather than in Virginia. In the late years of the seventeenth century and early years of the eighteenth, the difficulty of obtaining goods from England and the low price of tobacco gave the planters excuse for establishing considerable manufactories on their plantations; cotton, woolen and linen goods were made, and shoemaking and tanning were undertaken on a somewhat large scale. These industries grew to such an extent that great fear was aroused among English merchants of the loss of a very profitable part of their trade. The letters of the Lords of Trade are full of questions in regard to this new departure, and of recommendations and instructions to discourage it as much as possible. In 1707 as many as four counties on the south side of James river were given over to the production and manufacture of such goods, and a considerable trade had sprung up with New England and the islands. The Lords recommended the Queen the next year, from fear of a great loss to her revenues, to appoint a fleet and a convoy to sail from England every year with all such commodities as the planters needed, to prevent their applying their labor to any other product than tobacco. Exports of corn, pork and "great cattle" were made from Virginia to New England as early as 1639. Rob. MS., 180.

vants in their masters' wills.[1] The practice of the sale of rights to land due for the importation of people, to the colony, both by the holders of them and by the secretary, for the small sum of four or five shillings, and the modes of granting out lapsed and escheated lands, made it a very easy matter in later times for the servant to become the proprietor of landed property[2] in the old settled communities,

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[1] Va. MSS. B. R. O., 318; *Ibid.*, II., pt. I., 81 (1698); Henrico Rec., 36; Hening, I., 161, 209; Rob. MS., 57, 61. In 1626 much of the common land that had belonged to the London Co. was leased to the large number of tenants and servants, then freed, in such quantity and for such a number of years as seemed necessary, at the yearly rent of one pound of tobacco per acre. Cf. McD. MS., I., 295.

[2] Beverley, 220, 226, 227; MS. Rec. Va. Co., III., 219; Va. MSS. B. R. O., 335, 342; Hening, I., 125, 173, 197, 291, 468; Virginia's Deplorable Condition, 164. Titles to land in the first instance rested on patents granted for special services, for consideration, or for the importation of persons to the colony as settlers. A condition of ceding the land within a limited period after the patent's issue accompanied such grants comparatively early. Where this condition was not fulfilled the land lapsed and a new patent might be issued to any one petitioning the General Court and the Governor, on similar terms, the theory being that land grants were made to encourage settlers only. Seating involved considerable expense for improvements, the building of a house, clearing and planting three acres of every fifty, and a full stocking of the land. All this was more than the patentee to large tracts could undertake. It was not an uncommon thing for the right to land to lapse several times over, unless it could be disposed of by sale. The sale of rights became thus as general as the sale of the land itself, and they were readily purchasable for very small sums. After 1705, fifty-acre rights, according to the Royal Instructions, could be bought at five shillings per right. Escheated lands also, where the escheat was not traversed and no equitable right was shown to the lands, could be easily obtained on petition to the Governor by payment into the treasury of a composition of two pounds of tobacco for each acre. In the early years, however, no time limit was imposed upon the seating of lands, and the abuse of land-grabbing, which had begun almost immediately on the general introduction of property in the soil in 1619, had had sufficient time to result in the concentration of all the best lands along the river-courses in the hands of comparatively few persons. This was facilitated by the ownership or the buying up of large numbers of fifty-acre claims, called "head rights," for the importation of set-

and when good land could not be obtained in this way there was always room for him on the frontier. Though much of the frontier land was patented out in large tracts, to lie unsettled for a time, it was gradually broken up into small ones and disposed of by the owners to squatters and settlers, so that the Piedmont and western parts of Virginia became characterized by farms of moderate extent rather than by large plantations as in Eastern Virginia.[1]

The growth of this class of small farmers was effective in developing over a large portion of the State a very strong type of peasant proprietorship, and sufficiently shows that the servant was under no necessity of becoming either a pauper or a criminal. That he did to some extent recruit these classes is what might naturally be expected from the introduction of English convicts as servants, and after they came in some numbers we have indications that they were responsible for much of the crime committed; but pauperism in Virginia before the first quarter of the eighteenth century was almost unknown.[2]

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tlers. Claims were admitted for the members of a man's family, himself as well as his wife, children, and all servants imported at his charge, and even for the negroes brought in (this latter kind was soon denied). Corrupt practices prevailed also in the offices issuing the grants, head rights were used many times over, and rights could be purchased of the secretary at three to four shillings, or even a half-crown. In this way large tracts came into the possession of a few men, to lie mostly barren and uncultivated unless tenanted. Tracts of 20,000, 30,000 and 50,000 acres existed of which not fifty were under cultivation. When the two new counties of Spottsylvania and Brunswick were set apart during Spottswood's government, with an exemption from quit-rents for several years, Spottswood himself was accused of taking 40,000 acres.

[1] Hening, IX., 226; Va. MS. B. R. O., May 31, 1721, Spottswood to Lords of Trade; Spottswood's Letters, II., 227. The abolition of the system of entails, which had been stricter in Virginia since 1705 than even that of England, was a further step in this process after 1776 in eastern Virginia also. Spottswood, writing in 1717, says that frontiersmen were generally of the servant class.

[2] Beverley, 223, 258; Jefferson, Works, IX., 255; Jones, 116 sq. The convict class was probably never at any one time very

Under the stimulus of regained freedom and the abundant opportunity afforded for individual endeavor, the freed servant may in general be regarded as growing up with the country, as becoming an independent and often valued citizen, and materially aiding in the development of the resources of the colony. Trained by his long apprenticeship in the best practices of agriculture or of his trade, and thoroughly acclimated, he was better able than a new-comer to take a place profitably both to himself and to the public in the social and political order.

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large in Virginia, as their importation was discountenanced and every effort made to stop it. Beverley speaks of Virginia as "the best poor man's country in the world—but as they have nobody poor to beggary so they have few that are rich—few ask alms or need them." A testator left five pounds to the poor of his parish, but it was nine years before the executors could find a person poor enough to accept the gift. Where the poor existed, provision was made for them in some planter's family at the public charge.

CONCLUSIONS.

From what has been said the importance of the system of white servitude in colonial development is apparent. Such effects as were due to it were to some extent obscured by the institution of slavery, which, existing for some time alongside the earlier system and finally supplanting it, either greatly counteracted or enhanced its influence. Yet it is possible to make some general deductions as to the social and economic results which followed its introduction into the American colonies. Its superiority to a system of perfectly free labor under colonial conditions could not be doubted if it were certain to lead to the development of a class of independent freeholders. The benefit to production to be derived from long and certain terms of service with contract labor was sufficiently shown in the experience of contemporay England. We can see how advantageously such an extension of the time and certainty of labor supply as was involved in indented servitude, together with the power of control by the master and the economy of providing for large numbers of servants together, would work in a new and sparsely settled country whose industry was chiefly agricultural and dependent for success on a foreign trade and consequently on the efficient management of large landed estates by a capitalist class.[1] Some form of cheap labor was a necessity; the slavery of Christians and white

[1] In Virginia and Maryland the existence of such a staple as tobacco, which could only be produced profitably on a large scale and constantly required large quantities of new land, made such a development certain from the first. Tobacco was introduced into Virginia in 1616 and almost immediately became the staple product. The ready adoption of the system in the New England colonies, where such conditions did not exist, however, shows its industrial efficiency.

men was naturally abhorrent, that of Indians impracticable on a large scale, and negro slavery was comparatively slow in becoming an object of desire to the Virginia planters. The gradual and tentative development in practice of indented servitude from what at first was theoretically but a modification of free contract labor clearly shows its recognized economic superiority to such a system as existed in England. Designed not only as a labor supply, but as an immigration agency, it had generally the effect of an industrial apprenticeship, greatly strengthening the position of the capitalist employer and developing a class of industrially efficient free men. It supplied the entire force of skilled and domestic labor of the colony for more than half a century, and continued, after slavery as a general labor supply had supplanted it, to be the source of all high-grade labor well into the eighteenth century. It provided for the growth of a strong yeomanry during the seventeenth and eighteenth centuries, preventing a complete absorption of the land into large estates; and in furnishing a great number of independent settlers and citizens, particularly for the back territory, it had a most marked effect on the political as well as the economic development of the country.[1]

The moral influence of the system cannot in general be said to have been good. The tendency was to harden the master's feeling towards servitude and to prepare him for a more ready adoption of slavery, and the introduction of undesirable classes into a society already lax in habit was not likely to improve the moral tone or the social welfare of the colony.[2]

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[1] By the temporary disfranchisement of the servant during his term, common after the middle of the seventeenth century, a serious public danger was avoided. There could be no guarantee of the judicious exercise of the suffrage with this class who, for the most part, had never enjoyed the privilege before. Their servitude may be regarded as preparing them for a proper appreciation of suffrage when obtained, and the duties of citizenship. In the later days of public improvement and town-building, the imported craftsmen were a valuable class.

[2] Spottswood Letters, II., 227.

In comparison with the institution of negro slavery, the superiority of white servitude for social and moral considerations seems to have been recognized by the Virginia planters, but from a purely economic point of view its inferiority was fully apparent, and from the first considerable importation of negro slaves the ultimate destruction of the system was easily foreseen. The slowness with which negro slavery was adopted shows a conscious effort on the part of Virginia, so long as it was permitted to act freely, to resist the encroachment upon servitude. At the same time that English policy was forcing[1] slavery upon the colony it cut

[1] It is a significant fact that the first negroes were brought to Virginia in 1619, the same year in which the principles of indented servitude may be said to have been fully developed, and yet forty years later there were but three hundred negroes in the colony. From 1664 to 1671 several shiploads of negroes were brought in, and there were two thousand slaves and six thousand servants in Virginia. By 1683 the number of servants was nearly doubled, according to Culpepper, while the negroes numbered only three thousand. (Hening, II., 515; Culpepper's report, Doyle, 383.) From this time servitude gave way before slavery, forced on the colonies by the large importation of negroes by the Royal African Co. under its exclusive charter. It was the policy also of the King and the Duke of York, who stood at the head of the African Co., to hasten the adoption of slavery by enactments cutting off the supply of indented servants. In 1698 the African trade was thrown open to separate traders, and an active competition at once sprang up between them and the African Co., the separate traders making large importations and underselling the Company. Though a law of 1660 gave practical encouragement to the importation of negroes by the Dutch, the colonists had become sufficiently aware of the dangers of slavery in 1699 to lay a discriminating duty upon them for three years, and upon alien servants in favor of the Welsh and English born. The act was continued in 1701, allowing a rebate of three-fourths the duty where the negroes were transported out of the Dominion within six weeks. The duty was continued by the acts of 1704 and 1705 where the duty was laid simply upon "negroes or other slaves." The excuse of revenue was alleged, and brief limitations given to the acts in order to secure their confirmation in England, but the slave traders readily saw that the design was to lay prohibitive duties, and they secured the withholding of the King's assent to as many as thirty-three different acts passed by the Virginia As-

off the supply of indented servants, and the decline of the system after the last quarter of the seventeenth century was very rapid. The final extinction of indented servitude in Virginia did not take place till some time after the close of the Revolutionary War; as late as 1774 there was still some demand for servants,[1] and the importation of convicts was not finally prohibited until 1788. The real efficiency of the system, however, had ceased long before. Even in the late years of the seventeenth century negro slaves were more in demand for supplying old plantations or beginning new ones than servants, and where a demand existed for white servants it was for artisans and apprentices, and large prices had to be paid to get good ones.[2] White servitude survived after the downfall of the system in an apprenticeship of domestic growth, originating in the binding of poor or bastard children for a term of years for their instruction and to save the parish the expense of their support; but this had no historic connection with the apprenticeship which constituted a part of indented servitude, and itself finally passed away under the regime of perfectly free labor.

The experience of Virginia was largely repeated in the other colonies, and the general effects of the system were

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sembly to discourage the slave trade. (Hening, I., 540; III., 193, 213, 225, 229, 233; Tucker's Blackstone, I., Appd., 51; Minor, Inst., I., 164). The importation of negroes, however, could not be checked, and the chief advantage Virginia reaped from these acts was a large revenue for her public works. In 1705 the number of 1800 negroes was brought in, and in 1708 there were 12,000 negro tithables compared with 18,000 white, while the revenue from white servants was too inconsiderable to deserve notice. (Va. MS. B. R. O., Nov. 27, 1708, Jennings to Lds. of Trade.) Intended insurrections of negroes in 1710, 1722, 1730, bear witness to their alarming increase, and by the middle of the century the blacks were almost as numerous as the whites. Va. MSS. B. R. O., V., pt. 2, p. 352; II., pt. I., 211; 1708, Nov. 21; 1710, June 10; 1712, July 26; 1722, Dec. 22; Burke, 210; Cal. Va. State Papers, I, 129, 130.

[1] Ford's Washington, II., 408, note.

[2] Fitzhugh, Letters, Jan. 30, 1686-87, 1686, Aug. 15, 1690; Wm. Byrd's Letters, Feb. 25, 1683, June 21, 1864, Mar. 29, 1685, 1686, May, June, Nov.

much the same in all. The influence on internal development was even more clearly marked in Maryland and Pennsylvania than in Virginia. In Pennsylvania the large number of German settlers who came in this way, driven from home by religious or political persecution, became the most valued of citizens.[1] The rise and influence of the freedman in Maryland was as perceptible as in Virginia. Though that colony was unfortunate in receiving a larger number of the convict class, very few of them seem to have remained in the country on attaining their freedom, but returned to Europe or migrated to distant settlements.[2] In the other southern and middle colonies and in New England servants were not numerically so large a class, and their rise and absorption into the higher classes became from social and political reasons even more easy than in Virginia and Maryland.[3]

The actual conditions of servitude varied somewhat in the different colonies, assuming in some respects a harsher, in others a milder character than we have seen in Virginia. Thus in Massachusetts the elective franchise seems to have been exercised by servants only up to the year 1636, and the qualification of church membership was required of all voters to 1664. In Virginia the "inhabitants" voted for burgesses until 1646, and until 1670 the freed servant enjoyed the suffrage along with other free men, there being no property or other qualification.[4] The terms of servitude also in many

[1] Kalm, Travels, I., 29, 388, 390. They were frequently in good circumstances, and sold themselves to learn the language or methods of agriculture.

[2] Gambrall's Colonial Life of Maryland, 165, and Neill's Founders, 77, quoted in Brackett, Negro in Md.; Eddis, Letters, 63, 66, 67.

[3] Plymouth Col. Laws, VIII., pt. III., 34, 35, 47, 58, 61, 65, 81, 140, 195.

[4] Hurd, I., 254 sq.; Bancroft, I., 322; Conn. Rev. S., 40; Hening, I., 300, 334, 403, 411, 475; II., 82, 280, 356, 380; Col. Rec. Va. Assemb., 1619. Hurd, I., pp. 228-311, gives a valuable abstract of all laws relating to bondage in the colonies.

of the colonies were longer than in Virginia. In Maryland the common term seems to have been five years. Seven-year terms were frequent in Massachusetts, and in Rhode Island even ten. Provision was taken for the strict enforcement of the full term, and enfranchisement was not encouraged. Additions of time, corporal punishment, limitation of the rights of trade and free marriage, and provisions for the capture and return of runaways, were much the same.[1] Greater numbers of Indian and mulatto servants seem to have been made use of in New England than in the other colonies, though the importation of white servants was specially encouraged by the enactments against Indian slave-trading. Georgia and the Carolinas also encouraged the importation of servants of the better class, while the colonies in general made an attempt to protect themselves against convicts and servants of undesirable classes, as Irish Papists and aliens.[2]

The wide prevalence of the system, not only in the American but in the island plantations of England, had a most important bearing on the social economy of Great Britain and of other European countries, similar in a less degree to the effect of the large European emigration of the present day. Not only were many of the evils of a congested population lessened, but elements of the greatest social and political danger were effectively gotten rid of by forced transportation.[3] The effect on England of the removal of large num-

[1] Eddis, 63; Hurd, I., 271 sq., 309, 310; Pa. Laws, 1700-1, 13 sq., 230, 552.

[2] Hurd, I., 271 sq.

[3] 4 Geo., c. 11; 6 Geo. III., c. 32; 8 Geo. III., c. 15; 19 Geo. III., c. 14; Prendergast, 52, 53, 163, note; Carlyle's Cromwell, II., 457; Neill, Va. Vet., 102, 103. As the Stuarts systematically encouraged the deportation of troublesome persons and petty criminals to the American colonies, so Oliver Cromwell in preparing for his settlement of Ireland did not hesitate to transport large numbers of the dispossessed Irish as slaves to the West Indies, or as servants to the English plantations in America, nor to sell the survivors of the Drogheda massacre as slaves to Barbadoes. Until stopped by the War of the Revolution, the

bers of political and social offenders was wholly beneficial; and though many of the emigrants from the Continent were religious or political refugees, a great number were also from the poorer classes, and their withdrawal was a considerable economic relief.

In conclusion an important political effect on the American colonies should be noted. The infusion of such large numbers of the lower and middle classes into colonial society could only result in a marked increase of democratic sentiment, which, together with a spirit of rebellion against the unjust importation of convicts and slaves, increased under British tyranny the growing restlessness which finally led to the separation of the colonies from the mother country.[1]

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penal statutes of the Georges continued to send the felons of Scotland and England to the American colonies. (Cf. DeFoe, "Moll Flanders" (1686) and "Captain Jack.") Large numbers of servants were brought into Maryland and Pennsylvania from Germany, Switzerland and Holland. They were generally known as "Redemptioners," from redeeming their persons from the power of the shipmaster who transported them, usually by a voluntary sale into servitude. The system continued in active operation in Maryland well up to the year 1819. Cf. Laws, Feb. 16, 1818.

[1] Franklin, Works (Bigelow ed.), IV., 108, 254. Jefferson, Works (Ford ed.), II., 11, 52, 53.

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VITA.

James Curtis Ballagh was born at Brownsburg, Virginia, Oct. 10, 1866. Prepared in private and public schools, he entered the Washington and Lee University at Lexington, Virginia, in 1883, and, completing the studies of the freshman year there, was matriculated in the University of Virginia, October, 1884. He remained there until near the close of the session of 1887-8, graduating in several schools of the University, but was prevented from obtaining his degree by severe illness which necessitated a residence for the next three years in California and the South for the restoration of his health. He was Associate Principal of the University High School and Professor of Mathematics in the Southern Female College at La Grange, Georgia, during the winter of 1889. The following summer he studied at the University of Virginia, and was Assistant Professor of Natural Sciences in the Tulane University of New Orleans, Louisiana, for the session 1890-91. In the autumn of 1892 he returned from a journey around the world and entered the Johns Hopkins University, where he has since studied in the graduate department of History and Politics, receiving, in June, 1894, the degree of Bachelor of Arts *extra ordinem*.

THE GENESIS OF CALIFORNIA'S FIRST CONSTITUTION (1846-49)

A Dissertation Presented to the Board of University Studies of the Johns Hopkins University for the Degree of Doctor of Philosophy

BY

ROCKWELL DENNIS HUNT, A. M.

Professor Elect of History and Political Science, University of the Pacific

1895

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THIRTEENTH SERIES

VIII

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A DISSERTATION PRESENTED TO THE BOARD OF UNIVERSITY STUDIES OF THE JOHNS HOPKINS UNIVERSITY FOR THE DEGREE OF DOCTOR OF PHILOSOPHY.

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PREFATORY NOTE.

This work is primarily a study in local constitution making. The vital relations to the whole country of many of the questions involved, however, have compelled attention to the national import of events and conditions having otherwise only provincial scope. The present study represents a more comprehensive monograph including a detailed account of the "Legal Status of California" from the American conquest to the adoption of the Constitution, which will perhaps appear in another connection. I am aware that there is a vast amount of literature on the early American history of California, and recognize the direct or indirect value of almost all of it: but comparatively little of it all is other than personal or merely popular, while much abounds with error. In studying existent constitutional conditions I have endeavored, following the excellent advice of Hon. Horace Davis, to "get into the feeling of the people:" in this endeavor contemporaneous literature, often wholly unscientific, has been of assistance. In presenting this work to the public I desire to make acknowledgments for suggestion or assistance to Hon. Horace Davis and Mr. T. H. Hittell, of San Francisco, W. J. Davis, Esq., of Sacramento, General John Bidwell (pioneer of '41), of Chico, and Professor H. B. Adams, of Baltimore; also to the several pioneers with whom I have conversed, especially Dr. Benj. Shurtleff and Mr. G. N. Cornwell, of Napa, California, Mr. Joseph Sims, of Sacramento, and Mr. J. L. Stieff, of Baltimore.

"O California, prodigal of gold,
Rich in the treasures of a wealth untold,
Not in thy bosom's secret store alone
Is all the wonder of thy greatness shown.
Within thy confines, happily combined,
The wealth of nature and the might of mind,
A wisdom eminent, a virtue sage,
Give loftier spirit to a sordid age."

—Title page California Notes, by C. B. Turrill.

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THE GENESIS OF CALIFORNIA'S FIRST CONSTITUTION (1846-49).

CHAPTER I.

Introduction.

The tenure by which the province of California was held to Mexico before the American conquest of the former was very slight. This fact afforded the greater temptation to other nations to obtain possession of this vast and desirable territory. Doubtless France and England, and perhaps Russia, had hopes of securing the prize. The government of the United States, also, ever since the explorations of Lewis and Clark in 1804, kept a jealous watch of the concerns of California. Whatever may have been the designs of interested nations, "California lay in the path of American empire," and the Monroe Doctrine stood as a menace to European aggression.[1]

The acquisition of the province of California by the United States was an act in the drama of the war with Mexico. It was a political act whose national import was fraught with tremendous significance. The dangerous, if not wholly unconstitutional,[2] policy of forcible annexation was begun by Andrew

[1] *Cf.* Willey, *Thirty Years in Cal.*, pp. 5-6; Schouler, *Hist.*, IV, 446.

[2] Mr. Jones, in Convention, declared: "A clear and plain clause of the [U. S.] Constitution, and the whole spirit of the Constitution, and the whole spirit of the Government of the United States, were violated when Texas was acquired, and when this country was conquered." Browne's *Debates in Cal. Convention*, p. 101.

Jackson in his scheme for Texas.[1] While war was pending with Mexico, the province of California was being jealously watched. San Francisco bay, as the President stated, seemed most desirable for our commerce; and Mexico was unsuccessfully urged to sell her western territory lying north of the thirty-seventh parallel.[2] In the fall of 1842, Commodore Jones, who had been cruising on the South American coast of the Pacific, was led to believe that Mexico had declared war on the United States. Forthwith he sailed to Monterey and astounded the commandant there by demanding immediate surrender. The conquest was premature. Scarcely had Commodore Jones issued his proclamation to the Californians announcing the conquest of the province, when he received advices convincing him of his error: thus he was compelled to restore the town to its former possessors, and to retire, with such grace as the circumstances would admit, to his ships.[3] Mexico naturally took alarm at this unseasonable occurrence.

Polk entered upon his administration with four great measures clearly set before him, one of which was the acquisition of California.[4] His first hope was to buy the province, but in any case its acquisition was firmly fixed in the President's purpose.[5]

In the meantime, the native Californians were far from content with the feeble yet despotic Mexican rule. The more intelligent of them foresaw that there must soon be some change of flags in their country, and General Vallejo headed a party who were for an independent republic, with the ultimate design of entering the American Union.[6] British interest and interference made it easily appear to American

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[1] *Cf.* Schouler, IV, 247. [2] *Ibid.*, IV, 253.

[3] Greenhow, *Hist. Oregon and Cal.*, 367–8.

[4] Letter of Geo. Bancroft to Schouler, quoted in Schouler, IV, 498.

[5] *Cf.* Schouler, IV, 534.

[6] Willey, *Thirty Years*, pp. 6–7; *cf.* Shuck, *Representative Men of Pacific*, p. 229.

officials as well as to native born Californians that England entertained serious intentions of securing possession of that territory, and served greatly to stimulate American aggression. The several hundreds of American immigrants stood ready to welcome and assist aggressions on the part of the United States.

The Mexican war was begun; and California was seized with a lofty contempt for the rights of native Californians. However ungracious or unrighteous the seizure of this country may have been, it proved a master stroke of policy, although eventually an extremely costly one. With the conquest itself, and with the national importance early attained by this Minerva of the Pacific,—severely testing the stability of our republic in its integrity,—this sketch cannot be primarily concerned. The question of slavery extension, which had become paramount in American politics, was the actuating cause in California's conquest, and the rock of offense upon which, through California's entreaties for admission, our Union well-nigh split. After the admission of Texas in 1845 there were twenty-eight States, in fifteen of which slavery existed; but after the admission of Iowa, in 1846, and of Wisconsin, in 1848, the slave States and the free States were numerically equal. That free States could be admitted only when accompanied by slave States seems to have been an admitted principle.[1] What disposition was to be made of rapidly developing California? Could slavery be rightfully introduced into this western country? If so, could slave labor be successfully employed under these unique conditions? These and related questions possessed an absorbing interest.

But slavery had been abolished in the republic of Mexico in 1829;[2] according to a recognized principle of international law, the institutions, rights, and laws of a conquered country remain in force until legally changed by the conquering government. At the moment of the American conquest,

[1] *Cf.* Von Holst, *Hist.*, II, 139. [2] *Ibid.*, III, 392.

therefore, slavery did not exist in the Mexican province of California, and the express prohibitive law was an inherent obstacle at the threshold of the slavery extensionists' desire.[1] The admission of Iowa and Wisconsin having neutralized the advantage of the South in securing Texas, it was clearly perceived by Southern leaders that unless they obtained possession of this new territory, the fruits of the war with Mexico would be lost to them.[2] It was obvious that slavery could not be introduced into California without first meeting and settling the gravest difficulties. It was with great reluctance that the South became convinced that the spoils of the Mexican war must be divided, a common view being that the parallel of 36° 30′ would be extended to the Pacific.

Viewed from a local standpoint, many causes militated against the introduction of slavery. Geographical position was itself a safeguard. It was early observed that neither the soil, the climate, nor the production of any portion of California was adapted to slave labor, and that property in slaves would be utterly insecure in that country.[3] While many of the Southern settlers cared little about the question either one way or the other, those from the Northern States were generally opposed to this extension, not only on the moral principle that slavery is wrong, but also on grounds of local application and political expediency.[4] After the gold discovery, when citizens of all ranks became diggers, the introduction of slaves would have been far more vigorously opposed, although few then cared anything about slavery in the abstract, or greatly interested themselves in the Wilmot Proviso.

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[1] *Cf.* Rhodes, *Hist. U. S.*, I, 93-4; Von Holst, III, 392, *et seq.* See also letter of N. P. Trist to Secy. Buchanan, quoted in Von Holst, III, 334.

[2] *Cf.* Fitch, in *Century*, XL, 779.

[3] See Buchanan's letter, quoted in *Cal. Star*, Mar. 25, 1848.

[4] *Californian*, June 19, '47, March 15 and May 24, '48; *Cal. Star*, March 25, '48; *Alta California*, Feb. 22, '49. *Cf. Daily Evening Bulletin* [S. F.], May 23, '78, II, 1; *Sac. Record-Union*, Sept. 9, '84, I, 4; Colton, *Thirty Years in Cal.*, 374.

Mexicans were viewed with contempt by American citizens. It has always been true that powerful nations have had the weakness of encroaching, on occasion, upon races deemed to be inferior, and often of trampling, with no great scruple, upon technical justice for the sake of aggrandizement. But the native-born Californians were by no means wholly contemptible. The earliest American settlers in the territory of California held Mexicans as of little more consequence than Indians. The constant rumors about the establishment of an independent government there, or of other revolutionary movements, occasioned much talk on the part of the Californians about expelling the Americans, whose settlement in their province they viewed with manifest displeasure. On the other hand, the Americans were extremely suspicious, and wanted but a pretext in order to engage in acts of war, although in 1844 not over a hundred men could have been mustered into an army.[1] A change of temper, however, began to be observable before the American conquest; and it was not long after that event before native Californians came to be distinguished from Mexicans. The intelligence and refinement of many natives was admitted, and a friendly relationship sprang up between them and the Americans.[2] Most of the Hispano-Californians came to think of Mexico only as a foreign nation, and gradually they began to mingle with the Americans,[3] who, it was seen, were inevitably to become the predominant element in California. After the conquest was fully achieved, which, indeed, occasioned little real difficulty, the Californians, for the most part, readily acquiesced in the new régime, and their more enlightened leaders were treated by Americans with a high degree of respect and more than ordinary courtesy; seven of their

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[1] Bidwell (pioneer of '41), in *Overland Monthly*, XVI, 563–4; *cf.* O'Meara, *Ibid.*, XIV, 626.

[2] *Californian*, Nov. 17, 1847.

[3] *Cal. Star*, Apr. 1, 1848.

number were members of the Constitutional Convention,[1] in which they received marked attention.

The discovery of gold was an event of the very highest importance. California became El Dorado. The unsuited system of mongrel law, which had been feebly perpetuated from the Mexican dominion, was rendered virtually null by the sudden influx of wealth and a population so vast and varied, and the authorities were brought to "entire dependence upon the humor and caprice of the people."[2] Soldiers deserted, seamen left their vessels in the harbor, lawyers despised their fees, editors ceased their publications,—all to rush wildly to the mines.

The mania for gold gave an abnormal impulse to trade and commerce. San Francisco harbor was transformed into a forest of masts. The political confusion deepened, and causes for the Governor's solicitude multiplied; but the lawless element was not suffered to predominate, even the mining camps maintained strict regulations, and withal an enormous impetus was given to the movement for general organization.

The political and constitutional, as well as the social, conditions of territorial California were unique. Never were law and administration more needed: seldom has an enlightened community endured so inadequate a legal system and so precarious an administration. The early Californian leaders, Castro, Vallejo, and Pico, were too discreet to attempt an expulsion of the Americans after the conquest; and the Americans were not permitted to throw off the unsavory Mexican law. The persistent desire for admission into the federal Union was itself doubtless a bar to the much-needed local organization. The profound national significance of this new acquisition at a time when there was but one question in American politics is the key that must be constantly in the hand of the student who would gain a comprehensive view of the local, distracted situation. Slave extension created California: California effectually checked slave extension.

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[1] Their names are in Browne's *Debates in the Convention*, 478–9.

[2] McGowan and Co's. Guide-book, "California" [1850], 158.

CHAPTER II.

Desire for Organized Government, and Congressional Failure.

The earliest American settlers of California went to that country as a province of Mexico under Mexican law. As adopted citizens of Mexico, therefore, they were living under Mexican law at the time when the territory was taken possession of by the United States forces in 1846: thus, speaking technically, they could claim no other rights than such as are allowed, under the laws of nations, to a conquered people. But these same settlers, who were really loyal Americans, were placed in a unique position inasmuch as about nine-tenths of the army which conquered the country was composed of their own numbers. As foreigners residing in a province of Mexico, they had united for self-defense and had tendered their services to Captain Frémont, the only United States officer then in California.[1] In reality, therefore, the American portion of the inhabitants were the conquerors and not the conquered. The acquisition of California by some means had been the fixed policy of the administration at Washington: whether wisely or unwisely, the American inhabitants of the territory were a most powerful agency in the conquest. They

[1] See an interesting editorial on "Military Despotism" in the *Californian*, June 5, 1847. It recognized that on technical grounds the American inhabitants might be considered part of a conquered people, but urged that some allowance should be made in the unique situation, and that the Americans should at least "have all the advantages which can be afforded by a military government."

ardently desired to see California a Territory of the United States, and ultimately a member of the Union.[1]

The population of California in the summer of 1846, exclusive of Indians, was estimated at about 10,000; and probably less than one-fifth of that number were foreigners. These latter, however, most of whom were from the United States, had been rapidly increasing by immigration, while the natives were increasing very slowly, or not at all. It became more and more evident that the very institutions of the country must suffer radical changes. To resist these changes and prevent the filling up of the country with foreigners, some steps were taken by a few native Californians: but Mexico has been severely censured for her disregard and utter neglect of her province on the appearance of United States forces.[2] She was charged with great stupidity and weak cowardliness. For the American inhabitants to resist changes which would plainly and inevitably lead to the introduction of their own loved institutions were utterly unnatural and not for a moment to be expected.[3] But on the other hand, the rapid extension of American political principles and the speedy establishment of American civil institutions were eagerly desired: it will be the purpose of this chapter to inquire into the reality and intensity of this desire for an organized form of government previous to the adoption of the State Constitution in 1849—a period having a most vital influence on the subsequent history of the great State of California. Argument is not needed here to show that the Mexican provincial government was in itself ill-adapted to the needs of the rapidly increasing aggressive American population, and quite unsuited to their taste and temperament. In short, the

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[1] *Californian*, Jan. 28, 1847.

[2] See *Californian*, Aug. 22, and Sept. 5, 1846.

[3] For years before the American conquest the foreigners in California would have welcomed a change from the feeble Mexican régime to a strong, permanent government under the U. S.—Bidwell, *Overland Monthly*, XVI, 564; private MS.

American inhabitants of California would be satisfied with nothing but some adequate form of American government, and for this a clamor was set up almost immediately at the conquest, which did not entirely cease until California was fully received into the American Union in 1850.

The American conquest, an episode in the war with Mexico, left California in the power of United States forces as a temporary military possession.[1] According to a familiar principle of international law the customs and usages existing at the time of the conquest were proclaimed to continue in existence under the military rule, until some other government should be provided by competent authority. But no effectual measures were employed to perpetuate even the Mexican civil law, itself entirely inadequate under the new conditions; hence California had no suitable, properly constituted system of government from the conquest to the adoption of the Constitution.

The first number of California's first newspaper[2] urges the establishment of a colonial government whose legislature should elect a delegate to proceed to Washington and claim formal recognition for the Territory of California, and a seat in Congress. Likewise the *California Star* early[3] urged the calling of a convention to form a constitution for the Territory. These expressions—reflections of wide-spread popular opinion and desire,—found their justification in the unsatisfactory existing order of things and in a vague sense of Anglo-Saxon freedom and American self-government, rather than in legal and constitutional grounds.

It will be remembered that the conquest of California was not completed until the fall of 1846, and that there was serious revolt still later. Conservative Commodore Sloat was suc-

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[1] I here give substantially the view of the President. For other views, and references to the discussion, see Bancroft, V, Ch. XXII., especially p. 602, n. 21.

[2] *Californian*, August 15, 1846. [3] February 13, 1847.

ceeded by aggressive Commodore Stockton, who immediately took steps to complete the conquest. Stockton's bold proclamations, issued from Monterey on July 28, and from Los Angeles on August 15–22, are in strong contrast to Sloat's moderate but skillfully-drawn proclamation of July 7.[1] Sloat had assumed, without sufficient warrant, that California was to be permanently a Territory of the United States and that its peaceful inhabitants were to "enjoy the same rights and privileges as the citizens of any other portion of that territory." Californians of all classes received this proclamation most favorably, for it was friendly in its tone, and it held out the promise of good permanent government. Stockton, moved by "daily reports from the interior of scenes of rapine, blood, and murder," proclaimed that he would not confine his operations "to the quiet and undisturbed possession of the defenceless ports of Monterey and San Francisco;" but declared his intention of marching "against these boasting and abusive chiefs" of the interior and of the south. That his language was highly colored by imagination is evident from the fact that the conquest was completed without a single battle, and that no enemy was seen.[2] Los Angeles was taken without resistance, and from that point Stockton issued, August 17, an important proclamation, declaring California entirely free from Mexican dominion and affirming that so soon as circumstances might permit, the Territory would be governed "by officers and laws, similar to those by which the other Territories of the United States are regulated and protected."

No one in 1846 could possibly have foretold the actual status of the territory of California for a single year; much less could one have divined the vicissitudes and unparalleled conditions of the three years preceding the adoption of the

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[1] Sloat's proclamation is in Bancroft, V, 234–7; Stockton's proclamation of July 28 is in Annals of S. F., 103–4; his important one of August 17, is in *California Star*, January 7, '49.

[2] Bidwell, in *Century*, LXI, 523.

Constitution. During Sloat's brief rule there was little cause for anxiety. He had come as a friend, and had promised a permanent government. Stockton came as an intimidating conqueror: he held out the hope of an organized Territorial government as soon as circumstances would admit of such, but declared *ad interim* strict martial law, permitting the people, to be sure, to elect the civil officers of their towns and "to administer the laws according to the former usages of the Territory." It was precisely this military rule, continued with some modifications until the ratification of peace with Mexico, that evoked repeated expressions of increasing dissatisfaction and of growing desire for organized civil government. The American population of California during 1846 and 1847 was very small, widely scattered, and altogether in a position extremely disadvantageous for efficient, united political action of any kind. But it had become evident to the settlers that the country was destined to be permanently American; and it is not surprising that a clamor began to arise for American laws and institutions, and that expressions of dissatisfaction with the impotent Mexican government and seemingly harsh military rule grew louder and louder. It cannot be charged to the discredit of the early settlers that they thus manifested dissatisfaction with the existing order of things, and evinced an earnest and persistent desire for organized government. They were, for most part, honest, energetic, and intelligent pioneers who had been accustomed to law and order. California being no longer under the corrupt and despotic rule of Mexico, they were not unreasonable in expecting better things from the United States. But their greatest grievance was the very want of law adequate to the protection of life and property, and to the complete administration of justice.[1] As the population increased, causes for disaffection multiplied. Those Americans who had lived under the Mexican régime had

[1] *Cal. Star*, Jan. 9, 1847, and *passim*; *Californian, passim*, etc.

learned to accommodate themselves measurably to the existing conditions and to the use of the Spanish language: but in proportion as the American population increased after the conquest, and gradually gained the ascendency of numbers, it was unreasonable to expect the new comers to adapt themselves to the effete Mexican laws, at best only partially perpetuated and imperfectly administered, and laboriously to acquire mastery of a language plainly and speedily being superseded by their own English.

Before Commodore Stockton had established a civil government in California,[1] General Kearny superseded him. Kearny's proclamation of March 1, 1847, gave hope of the early establishment of a free Territorial government, and virtually promised that the people would soon "be called upon to exercise their rights as freemen in electing their own Representatives to make such laws as may be deemed best for their interest and welfare."[2] Thus the people were again stirred to hopefulness and urged on in the chase after the phantom of Territorial organization, destined ever to elude their grasp. The establishment of a civil government at that time would have been welcomed with keen satisfaction, and would have had, it was believed, "a most salutary effect, whatever difficulties may have occurred during the military occupation."[3]

But the desired government was not established under Kearny's rule. By the time that he was succeeded by Colonel Mason,[4] many persons had begun to think that there were actually no laws in force "but the divine law and the

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[1] Stockton had prepared a plan for civil government, which, however, was never put in full operation. For the projected system see Cutts' *Conquest*, 121–125. In his report Stockton assumed that the change from military to civil rule naturally and necessarily followed the conquest of the country. See *Report*, 40, cited by Bancroft, V, 285. Hittell says the plan of government was issued and promulgated. *Hist. Cal.*, II, 586.

[2] This proclamation is in the *Californian*, Mar. 6, '47.

[3] *Californian*, Mar. 13, 1847. [4] May 31, 1847.

law of nature:" the "former usages," whose existence had been proclaimed, had become so intangible and evanescent as to lead the editor of the *Star* to acknowledge his inability to discover the whereabouts of any general written laws whatever.[1] "Lex," in the *Californian*, calls to the attention of Governor Mason the fact that "nothing has as yet been done to maintain 'the authority and efficiency of the laws;' nearly five months have elapsed since this [Kearny's] declaration was made, and yet not one single law has been enacted to meet the necessity of any case; and in order to enable the authorities to give efficiency to the law, not one single law, *supposed to exist* in the territory, enacted by the legislature of Mexico, or by the junta of this [San Francisco] department, has yet been defined."[2]

Congress had been busy with the great concerns of the war with Mexico: all early negotiations had failed of peaceful issue. While a keen interest in the acquisition of California was already manifest in Washington, Congress could hardly be expected at this early stage, while war was yet in progress, to mature plans for the permanent Territorial organization of the conquered country: and it did, in fact, adjourn on March 3, 1847, having made no provision for the government of California.

Colonel Mason came with full power to establish a temporary civil government in California,[3] and immediately began studying the existing conditions and formulating the Mexican laws believed to be in force. Before the designs of Governor Mason had become generally known, the law-loving settlers, disappointed in their hope of civil organization under Kearny, grew more clamorous in the expression of their desires under the new executive. The feeling that they had been grievously wronged, if not wilfully deceived, began to take hold of them

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[1] *Cal. Star*, Mar. 27, 1847. [2] *Californian*, July 17, 1847.
[3] See instructions, Cal. Mess. and Cor., 244–5.

in earnest.[1] The expectation of tidings of peace and of a scheme for civil government from Washington doubtless influenced Mason to delay his own plans, or entirely to relinquish them.[2] This relinquishment was a sore disappointment to the agitators for organization, for they had been led to believe that the Governor had actually commenced work on his civil organization, which, had it been executed, "California may be considered as fairly set out on the road to prosperity and greatness:"[3] but they were brought to an attitude of hopefulness by the sanguine expectation of Mason that peace was at hand, and that a communication from Washington would early gratify their desire. And besides, Congress was in session, and would presumably provide for this important province.

All these hopes proved unfounded, and the clamor for civil government was vigorously renewed.[4] Mason's code was

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[1] See the long and impassioned editorial on "Civil Organization," in the *Californian*, January 5, 1848. I quote briefly: "In view of our civil rights, in view of the security of person and property, in view of all the sacred rights and privileges secured to us by the fundamental laws of our government, we must say that we have acquired nothing, but have lost everything. . . . We know nothing of the design of the present Executive, in reference to the organization of a civil government; but we do know that the people very much desire such organization. . . . Our Executive being fully aware that the people are extremely anxious that a civil government should take place, that our government *wishes to provide* a government for us *with the least possible delay*, . . . we cannot doubt, even for a moment, but that the most sanguine expectations of the people will soon be realized." *Cf.* Address of J. R. Browne, in *First Annual of Ty'l. Pioneers of California*, 55.

[2] *Californian*, May 3, '48.

[3] *Ibid.*, April 26, '48; *California Star*, April 22.

[4] I quote from an interesting but somewhat erratic editorial in the *Californian*, December 29, 1847. "The subject of a civil organization seems now to agitate the public mind throughout the entire territory. . . . Our citizens are everywhere, with the greatest imaginable solicitude and enthusiasm, inquiring why it is that they are thus neglected. . . . They say that they are American citizens, and they are. They say that they, too, are entitled to the sacred privileges and immunities guaranteed to us by irrevocable, constitutional law, and they are. . . . Wherever we go, the

never published;[1] tidings of peace did not arrive for several months; and the violent debates of Congress ended at a late date without legislation. Before the opening of the session in December President Polk had satisfied himself that the province of California should never be surrendered, and hence that the civil jurisdiction and laws of the United States should be extended over it. He therefore in his annual message had recommended the establishment of a "stable, responsible, and free government" over the Californias and New Mexico. "I invite the early and favorable consideration of Congress to this important subject," he had said;[2] but Congress, in a session which lasted more than eight months, failed to consider it effectually.

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serious and destructive defects of our government are the chief topics of conversation. . . . That the people are extremely desirous of an organization, must be apparent to every officer in the territory, who has upon any occasion condescended to hear a suggestion from that source. . . . But what the people desire, what we, as good and loyal citizens, are entitled to, what the United States '*wish and design*,' what the President unequivocally sanctions and approves, and what natural right demands, is some kind of a government, which will, at least, render life, person, and property secure. Whether temporary or permanent, it matters not, but we hope that a government will at once be organized fully adequate to the purposes for which it is designed, and at least, coexistent with the evils which it is designed to remove."

[1] *Alta California*, June 14, 1849; *Californian*, August 14, 1848. Bancroft says that Mason "formally promulgated a code printed in English and Spanish," citing only the article in the *Californian* which mentions the fact that the code was *printed*. History VI, 263. The *Alta*, however, definitely states that while the code was printed, in consequence of the news of peace "Governor Mason never published nor attempted to enforce those laws;" and continues: "we have shown that since the peace the government abandoned its design of promulgating a code of laws based upon the Mexican law, even after those laws were printed and partially bound." Gen. Bidwell writes in a private letter: "In regard to 'Mason's Code:' if it was ever promulgated I never heard of it. That it was printed and circulated without my hearing of it I can scarcely credit." It was July, 1849, when General Riley caused to be published "such portions of the Mexican Laws . . . as are supposed to be still in force and adapted to the present condition of California." Browne's Debates, *Appendix*.

[2] *App. to Cong. Globe*, XVIII, 3.

In the meantime an event of the profoundest significance had happened. Gold had been discovered. The news was being disseminated; the tide of immigration had begun. The already growing desire for organized government was greatly accelerated.[1] The need was almost infinitely increased, and better administration of justice seemed to be absolutely imperative.[2] Could honest Americans hope longer for the promised civil organization from Washington, or should they themselves take the initiative?[3]

The first excitement of the gold discovery had not yet died away, nor, indeed, had the immigrants begun to arrive in very large numbers, when tidings of peace with Mexico reached Governor Mason.[4] No one could doubt that California was a permanent part of the United States. Here, then, was the message which had been so long awaited by Mason and which legally put an end to military rule. The tidings were taken by the citizens as an omen of generally diffused benefit and the opening of the brightest possible prospect.[5] Unfortunately no scheme for legal Territorial government accompanied the tidings of peace: instead of passing from military rule, under which the people had grown so restive, to a permanent and satisfactory form of civil government, California passed, without perceptible change, into a period of mere *de facto* government, more popularly known as the No-Government period.

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[1] Bidwell, Private MS., 5.

[2] It is thought unnecessary to point out in detail the unique and precarious conditions imposed by the immigration of the gold-hunters. They are among the most familiar facts of California history.

[3] See editorial in *Cal. Star*, May 20, 1848, from which I quote: "The people of this territory have been induced from the first hour of its occupation by the forces of the United States to believe a territorial government would be early granted, that the welcome boon of a wise administration of wholesome laws, was a prize already within their grasp. . . . The people of this territory are now awaiting the promised administration of decisive law. They require it—they expect it, and to it they are entitled."

[4] Aug. 6, '48.

[5] *Californian*, Aug. 14, 1848.

At this critical stage there was among lovers of law and order genuine and widespread solicitude for California's future. Colonel Mason fully appreciated the delicacy of the situation, and used his best efforts to conciliate all parties; but what could he do now but await the arrival of the *St. Mary's*, sloop-of-war, with the long-expected Territorial government? After conference with Commodore Jones, he decided that in default of Congressional action he would immediately recommend "the appointment of Delegates by the people, to frame laws, and make other necessary arrangements for a Provisional Government for California."[1] The *Californian* had despaired of Congressional action. It had said: "Months, and perhaps years, will elapse before the national legislature will arrive at a harmonious conclusion of a territorial government for California. The much vexed subject of slavery . . . will prove an insuperable barrier to dispatch."[2] But Mason, careful perhaps to a fault not to exceed his instructions, waited for news from Washington. The *St. Mary's* arrived with the news of Congressional failure, and the question of a regular Territorial government for California was believed to be settled,[3] although the subsequent Congress was yet to be the scene of many a tempestuous discussion and violent conflict—all to terminate, once more, in dogged dead-lock.

The leaders of popular thought now believed that the people might set out, with none to hinder, to prepare for themselves a provisional government. "The cause is urgent and the times admit of no delay."[4] It was hoped that every true American citizen would lend hand and influence in rearing and supporting a wise government.[5] That this belief took firm hold on the popular American mind is evidenced by tokens

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[1] *Star and Californian*, Nov. 25, 1848.
[2] Oct. 21, 1848.
[3] *Star and Californian*, Dec. 16, 1848.
[4] *Ibid.*
[5] On the difficulty of securing deliberate action from those migratory strangers, see Willey, in *Overland Mo.*, IX, 14.

not to be mistaken. On December 11, the citizens of San José met "for the purpose of taking into consideration the propriety of establishing a Provisional Territorial Government, for the better protection of life and property" until the United States should extend its protection by furnishing government and laws for California. Resolutions of a temperate and judicial character were adopted, recommending that delegates from the several districts be sent to a general convention in that pueblo at an early date.[1] Similar provisional government meetings were held in San Francisco, Sacramento, Monterey, and Sonoma.[2] These large and usually unanimous meetings may be considered a fair index of the feeling of the principal communities of the entire territory.[3] The subject engaged the serious thought of the ablest minds. Mere mention of the names of a few leaders will be sufficient to indicate that the movement was neither sporadic nor irrational, much less disloyal and revolutionary. Burnett, Norton, Colton, Botts, Lippitt are some of those who took the initiative in this movement towards a provisional government. These preliminary movements were clearly not dictated by political faction, nor had they any connection with instructions from Washington:[4] they were without doubt the honest expression of the best popular feeling. "There were no partisans in the matter, where there was only one great party and that included the whole thinking population."[5]

Popular progress toward organization was uninterrupted for several months. The citizens of San Francisco created

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[1] See report of meeting and resolutions in full in *Star and Californian*, Dec. 16 and 23, 1848. These and succeeding contemporaneous reports are both interesting and important as reflecting widespread and really intelligent opinion.

[2] For contemporaneous accounts of these meetings, consult: *Star and Californian*, as above; *Placer Times*, July 9; and *Alta California*, Jan. 25, Feb. 22, Mar. 22, 1849; etc.

[3] *Cf. Alta California*, Jan. 4, 1849; Annals of S. F., 135-6.

[4] Colton, *Three Years in Cal.*, 373. [5] Annals of S. F., 136-7.

for the temporary government of that district the so-called Legislative Assembly of fifteen members. Mason, as *de facto* governor, did not see fit to interfere with these popularly initiated movements. Similarly, General Smith, Mason's military successor, while not formally recognizing the legal existence of the San Francisco Legislative Assembly, did not actively interfere with its government nor with the general organizing tendency.

The district of San Francisco came to have a commanding influence in this movement: yet there was by no means that coherency and singleness of purpose in respect of detail that was needful for dispatch. Moreover, local conditions, especially the difficulty of communication and travel in that notable winter, were forbidding, and interposed delay. Nevertheless the leading American citizens in California held to the one great purpose of organized government with remarkable persistence. Undaunted by difficulty, they proceeded with growing confidence in working out for themselves the great problem, and seemed to be almost within sight of success, when unlooked-for events called for readjustment of program.

In the spring of 1849 General Riley superseded Colonel Mason as *de facto* governor of California. He recognized the grave difficulty of undertaking to administer the civil affairs in a province which was neither a State nor an organized Territory: he desired to keep the military authority, so intolerable to the people, as perfectly hid from view as possible. While the undisputed fact of his military authority was itself offensive to leading settlers, they denied that he possessed any civil authority whatever. But as chief executive of the province, he must needs act in civil capacity: hence arose the controversial conflict between *de facto* (or *ex-officio*) Governor and people. While General Riley awaited the final news from Congress, the people of the several districts proceeded, with characteristic American regularity, in their arrangements for a civil government proceeding from their own initiative.

But what of Congress now? The short session had begun December 4, 1848, and ended March 3, 1849. President Polk had again referred to the subject of California's needs, this time affirming that the condition of the country imperatively demanded the immediate organization of a Territorial government.[1] To be sure, the very limited power of the executive had continued to be exercised; but the only government that remained after the conclusion of peace with Mexico was that established by military authority during the war, now a mere *de facto* government at best, resting on the presumed consent of the inhabitants. In view of the extraordinary exigencies of the case, Polk was most urgent in warning Congress to provide legal organization. But the same national difficulties which had blocked action at the last session proved too great to be overcome now. Indeed, the consideration of the territorial condition of California was not fairly begun in the Senate until late in February, 1849, when Walker introduced his amendment to the general appropriation bill.[2] Then followed an extended constitutional debate in which Webster and Calhoun figured as leaders.[3] After great display of dialectics Walker's amendment in a modified form passed the Senate by a close vote, on February 26. This would extend the Constitution of the United States over the newly acquired territory west of the Rio Grande, and give the President authority "to prescribe and establish all power and useful regulations in conformity with the Constitution," and to alter the same at his discretion as circumstances demanded. On the following day the House passed a territorial bill excluding slavery from the new Territories. Walker's amendment was defeated in the House, and the

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[1] Ex. Doc. 2 S., 30 C., H. R. I., 12; *cf.* Hittell, II, 701–2.

[2] *Cf.* Von Holst, III, 443 *et seq.*

[3] For Webster's opinion as to the proper course to pursue, see Curtis, Webster, II, 353, 362–4. Calhoun's views are set forth in his Works, IV, 535–541.

House bill was killed in the Senate Committee. A joint committee reported its inability to unite upon any plan. The last session of the Congress came; the debate continued far beyond midnight. The stormy scenes of the Senate chamber on that last night of the Thirtieth Congress have perhaps never been equalled in the annals of American legislation.[1] It was nearly four in the morning when Webster succeeded in securing a vote on the motion to drop Walker's amendment. The motion once adopted, the appropriation bill quickly passed both Houses, and Congress adjourned having failed to make any provision concerning the new territories. The troublesome subject was thus left for a new Congress and a new administration.[2]

Immediately on learning that Congress had the third time failed to make provision for the government of California, General Riley asserted his civil authority in a most emphatic manner by issuing a call for a general Constitutional Convention,[3] and by proclaiming the so-called Legislative Assembly of San Francisco, the head and front of the settlers' movement, to be an illegal and unauthorized body.[4] The Assembly, on its part, protested against Riley's intervention, and reasserted what it believed to be its undoubted right; *viz.*, the right of self-government, in default of suitable government by the United States. The issue was sharply defined; but the citizens were too much in earnest in their desire for efficient government to allow themselves haughtily to stand out against the *de facto* Governor and hold themselves aloof from his really practicable measures just announced: therefore they were not long in acceding to his time and place for the Convention, although their leaders did hold to the last that while Riley,

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[1] *Cf.* Von Holst, III, 454; Fitch, *Century*, XL, 784; Willey, *Ov. Mo.*, IX, 14.

[2] *Cf.* Schouler, V, 119.

[3] Cal. Mess. and Cor., 776–780: dated June 3, '49.

[4] *Ibid.*, 773–4: dated June 4.

as any other person, had power to suggest or recommend, he had no power to appoint or command. Had the settlers cared less about the government of their province and more about carrying a point of law—which is indeed perplexing enough, but which they thoroughly believed in[1]—their real end would doubtless have been defeated, and their mild revolution would have taken on the serious aspect of open defiance. Fortunately they were not sticklers for what was after all a technicality. If there were those who wished to maintain their position at all costs, the ardent desire of that overwhelming class of hard-headed Americans whose one aim was paramount, the means subordinate, proved a sufficient corrective. The pressing need of government and desire for it, the personal respect which General Riley commanded, and the patent practicability of his plans overruled objections, united parties, and gave the key to ultimate success.

Why this intense and persistent desire for organized government in California? Why not be content in that wildly exciting and highly dramatic period with the very wildness and drama? Had not those argonauts left restraint and law and conventionality that they might enjoy weird freedom?

The population of California had increased from about 10,000 in the summer of 1846 to 26,000 at the beginning of 1849, and to 50,000, by the first of August of the same year.[2] The first census, that of 1850, showed a total population of 92,597, or an industrial population of 77,631: of these, mining gave direct employment to 74 per cent., while many others were indirectly dependent on mining. A mere recital of the most familiar facts regarding the increase and character of population is sufficient evidence, *a priori*, of the need of adequate and suitable government. The need was sorely felt, and the highly unsatisfactory condition of affairs was impa-

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[1] Burnett, *Recollections and Opinions*, 331–2.

[2] *Californian*, Aug. 22, 1846; Vassault, *Overland Monthly*, XVI, 287 *et seq.*

tiently declaimed against. The military executives and the national administration recognized the need no less than did the people, but virtually confessed themselves powerless to satisfy the demands of the anomalous conditions. While many of the radical settlers were passionate in their utterances, and often unwarranted in their denunciation of officials, even the most conservative admitted that "something ought to be done towards developing a civil organization of government."[1] The feeble attempt to retain in force the old Mexican laws, as might be expected, had ended in almost complete failure. Apart from the fact that these laws were rendered inapplicable under the changed conditions, the Americans, who were to be governed by them, and the authorities, who were to administer them, were alike totally ignorant or comparatively unfamiliar with them.[2] California had been conquered by Americans: the immigration of settlers now made Upper California an American community. To engraft the semi-barbaric Mexican system of law upon such a community would be utterly opposed to the American spirit and sure of partial failure: yet even such an engraftment was never fully made, nor scarcely rationally attempted.

Again, there was no recognized legal system of taxation for governmental support. Congress extended the United States revenue laws over California, with San Francisco as a port of entry, but provided no legal government: hence there were loud protests against the imposition of a system of taxation not only without representation of the people, but, so far as Congress was concerned, without any government at all.[3]

A most potent cause of anxiety for new government was the feeling, fostered by promise and flattery, that the existing unsatisfactory arrangement was merely temporary, and that either through Congress, or the administrative authorities, or

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[1] See *Californian*, Jan.–Feb., '48.

[2] *Cf.* Vassault, *Overland Monthly*, XVI, 288–9; Bidwell, Private MS., 3.

[3] See address of S. F. Assembly, *Alta Cal.*, June 14, 1849.

popular action, organization would soon be an accomplished fact. Thus the people were exasperated by Congressional delay; they wearied of governors' promises and hopes which repeatedly proved unfounded; and yet they lacked facilities themselves for early concert of action. They were still left, according to extravagant "Pacific," "after two years of anarchy, precisely as [they] stood at the start,—sans law, sans order, sans government."

Admitting the complaints to have been often unwarranted and sometimes wholly irrational, it is yet clear that at no time after the conquest were person and property sufficiently protected.[1] But the supreme need arose after the immigration of the gold hunters had set in. The immigrants previous to the gold excitement had for most part come to California to settle permanently. They were a set of honest, sturdy American pioneers, whose native capacity to improvise and adapt served them well in many a unique relation. But now came a heterogeneous tide of adventurers and speculators from all lands, not one-tenth of whom expected to dwell permanenly in California.[2] The gaming table became a breeding place for drunkenness and crime of every sort. San Francisco was for a time terrorized and almost dominated by an irresponsible organization known as the Hounds, who afterwards styled themselves Regulators. Law was wanting, justice was defeated, and villainy became temporarily rampant. But the peace-loving citizens of San Francisco vindicated promptly and with a strong hand their integrity and their honor; and in their summary defense of justice, they forshadowed the stern régime of the California Vigilance Committees.[3]

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[1] The editor of the *Californian*, December 29, 1847, by no means the most passionate writer of the day, employs this rhetorical period: "Crime, rapine, and inhumanity, stalk abroad throughout the land, unchecked and unawed. Murder is committed here, and manslaughter there; to-day we hear of theft and robbery, and to-night of burglary, rape, and arson."

[2] Dr. Benjamin Shurtleff fixes the proportion at not more than 3 per cent.

[3] See Bancroft, Popular Tribunals, I, on the Hounds, the Regulators, etc.

It could no longer be said that the desire for organized government was universal: indeed, the great majority of these later pioneers cared little or nothing about general laws or a civil government,—they came seeking gold. But, as already pointed out, the desire for government and the preliminary movements in that direction on the part of those most solicitous for California's welfare grew with the gravity of the situation. Not a few of the new comers patriotically joined the advocates of a more effective rule; and among those Americans who gave the subject any just consideration, there seemed to be no dissenting voice.

The sudden appearance of a large lawless element and the consequent increase of crime and added insecurity gave adhesiveness to the law-loving citizens, demonstrated the inadequacy of existing institutions, and intensified the desire for a new régime, a régime which could be inaugurated only by a General Convention and thorough organization. The popular movement towards a civil government, the magnanimous acquiescence in the plans of General Riley, and finally, the Convention itself,[1] held at a time when fortunes were being made in a day, furnish most unimpeachable evidence of the long existence, the continuity, and the intensity of the popular desire for organized government. The exciting scenes and anomalous conditions of California were the comment of the nations: the desire for government was universally known.[2]

[1] A perusal of the debates of the Convention will reveal the sentiment of citizens reflected by delegates. For example, see Gwin's remark, p. 198. "We all know that we ought to have had a government; that such a case never existed before in the history of any Government, that such a great country as this should have been neglected as it has been." Report of Ways and Means Committee, p. 201: "No portion of the Territory of the United States ever more needed the paternal care of a Territorial Government. We are without public buildings, court houses, jails, roads, bridges, or any works of internal improvement." Tefft's remarks, 366, &c.

[2] See Snyder's remark in Convention, Debates, 182: "We have been waiting anxiously for a long time for a government. It is well known, sir. All over the world is it known. And never has the world presented such a picture; a people at peace with nations, occupying a proud and lofty position, an integral part of the great American Union, without a civil government."

CHAPTER III.

The Constitutional Convention.

General Riley's proclamation set apart the first day of August, 1849, for the election of delegates to a general Convention which should form a State Constitution or a plan for Territorial government. The Convention was to meet on the first of September, in the town of Monterey, California's early capital. To the Spanish population of the south the proclamation was comparatively unintelligible; the people of San Francisco inclined at first to dispute Riley's right to issue the call; and the miners at the north could hardly be supposed to interest themselves in political or civil affairs.[1] But the necessity for organization was patent, and the desire for better government was strong: this opportunity for a consummation was not to be neglected. General Riley, General Smith, and Thomas Butler King stimulated the people by every means to hold preparatory meetings. In some districts scarcely any steps were taken until a few days before the election, but for most part the efforts were successful.[2] The prospect for success, at first doubtful, improved as election day drew near. The native Californians showed unexpected cordiality of sentiment. San Francisco laid reluctance aside, and even the miners began casting about for suitable candidates.[3] The amount of interest actually taken had not been anticipated.

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[1] Willey, *Constitutional Convention in Monterey;* also in *Overland Monthly*, IX, 14.

[2] *Cf.* Frost, *Hist. of Cal.*, 124.

[3] Willey, *Constitutional Convention.*

The election of delegates proceeded, with fair regularity, on the day appointed. In one or two instances the election was not held on the day appointed, although the delegates were nevertheless admitted.[1] The delegates were elected by the scheming of no political parties nor combination of interests: competent men were sought.[2] On Saturday, September 1, the members elect were generally in Monterey, ready for business.

The Convention[3] proceeded to organize on Monday, September 3. The meeting place was the upper story of a spacious building of yellow sandstone, known as Colton Hall, perhaps the only building in California well suited to the purpose.[4] Kimball H. Dimmick had been appointed Chairman, *pro tempore*, and Henry A. Tefft, Secretary, *pro tempore*. The first question was on the eligibility of delegates to seats in the Convention and the apportionment of representation in the several districts.[5] The greater part of two days was consumed in arriving at a satisfactory adjustment: forty-eight delegates were at length accounted regular members of the Convention.

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[1] Browne's *Deb.*, 8; *cf.* Frost, 124

[2] Ex. Doc., 1 S., 31 C., H. R., VIII, 59, pp. 1–6; *cf.* Willey, *op. cit.*

[3] The one essential source for proceedings of the Convention is Browne's *Debates in the Convention.* The *Alta California* has copious reports beginning with Sept. 13. These are from the pen of Edw. Gilbert, editor of the paper. Taylor's *Eldorado* is also an excellent source.

[4] Taylor describes the hall in *Eldorado*, 149: "it [the stone] is of a fine yellow color, easily cut, and will last for centuries in that mild climate. The upper story in which the Convention sat, formed a single hall about 60 feet in length by 25 in breadth. A railing running across the middle divided the members from the spectators. The former were seated at four long tables, the President occupying a rostrum at the further end, over which were suspended two American flags and an extraordinary picture of Washington, evidently the work of a native artist."

[5] The Governor's proclamation of June had fixed the apportionment, but on account of the subsequent change in relative population, he now recommended, through Secretary of State Halleck, a delegate, "that additional delegates be received from some of the large and more populous districts." Browne's *Deb.*, 8.

For the office of President there was considerable canvassing, the leading names mentioned being Dimmick, Boggs, Semple, Foster, Snyder, and Gwin. Numerous candidates presented themselves for the Secretaryship.[1] Dr. Robert Semple, of Sonoma, was duly elected President, and in his brief address he struck the key-note of the Convention: "We are now, fellow citizens," said he, "occupying a position to which all eyes are turned. . . . It is to be hoped that every feeling of harmony will be cherished to the utmost in this Convention. By this course, fellow citizens, I am satisfied that we can prove to the world that California has not been settled entirely by unintelligent and unlettered men. . . . Let us, then, go onward and upward, and let our motto be, 'Justice, Industry, and Economy.'"[2] Organization was completed by the election of subordinate officers, William G. Marcy being elected Secretary, and J. Ross Browne, Reporter.

Here was a unique Constitutional Convention. Several nationalities were represented, but members of American birth were in the majority, and it was to frame an American constitution that the delegates had come together. The Convention was a body of men, not of national reputation or extraordinary learning, but disinterested, competent, and earnest. The body was raised above national prejudice and local interests by the honest and patriotic purpose which animated it.[3] The personnel included many of those already most conspicuous by their endeavors to establish the commonwealth of the Pacific:[4] the Constitution of 1849 was not the sudden creation of unintellectual gold hunters; it was made possible only by the men of sense and by the controversies of the interregnum.[5]

The framers of the Constitution undertook their grave task amid extraordinary embarrassments and difficulties. The

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[1] *Alta Cal.*, September 13, 1849. [2] Browne's *Deb.*, 18.
[3] Colton, *Three Years in California*, 410.
[4] *Cf. Daily Evening Post*, [S. F.] June 22, 1878, I, 2.
[5] *Cf.* Royce, *Cal.*, 199.

three leading classes of the population of California, *viz.*, the native Californians, the earlier English-speaking settlers, and the miners, held such divergent sentiments and were such utter strangers to one another, that it might well seem an impossible task to bring them to an agreement upon the fundamental law of an incipient State. General discussion and a common understanding had been impracticable. It may be doubted if the members of any previous convention in the United States, with similar purpose, ever came together so totally unacquainted with each other and so entirely wanting in general concert of plans or policies of action.[1] This much, however, they were agreed upon,—that their task was to frame a constitution for the recently conquered and now almost wholly unorganized territory of California: by virtue of this constitution's conformity with the doubtful wishes of Congress, the province, of vague boundary and in a highly distracted condition, was to seek admission into the American Union. Recent contests in Congress of unwonted violence and repeated failure to legislate, left no doubt that the situation was extremely delicate and would demand the utmost skill.

The difficult task fell to a body of perhaps the youngest men that ever met for similar purpose.[2] Mr. Botts was "impressed with the absence of those gray hairs which he had seen in assemblies of this solemn character in the older States."[3] There was great dearth of books of reference in Monterey during the session of the Convention. It was believed that there were not above fifty volumes of law or history in all the town.[4] Considerable inconvenience resulted

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[1] Willey, *Constitutional Convention; Ov. Mo.*, IX, 14.

[2] Fitch, in *Century*, XL, 786.

[3] Browne's *Deb.*, 27–8. The average age of delegates was 36 years. Carrillo, aged 53, was the oldest; Jones and Hollingsworth, aged 25, the youngest.

[4] Botts, in Browne's *Deb.*, 274. Lucia Norman (Youth's *History of Cal.*, 141) extravagantly says that "copies of the State Constitutions of Iowa and New York were the only ones that could be obtained!" But precedents were not so scarce. Many State Constitutions were used, and frequently mentioned in the debates: and see Ord's remark in Convention; he "had looked over the whole thirty Constitutions." Browne's *Deb.*, 36.

from the want of a printing press, and the burden of the secretaries was correspondingly heavy until the adoption of a favorable resolution.[1]

The foundations of the new commonwealth were laid under adverse circumstances, yet with signal ability.[2] The Convention commanded respect as a dignified and intellectual body of earnest, honest men who did honor to California.[3] Only through the largest concessions could unanimity be reached.[4] The dignity of the occasion, the gravity of the task, and the importance of the result were appreciated by the delegates. Mr. Gilbert gave expression to a common sentiment when he declared: "The people will consider our acts in this Convention, and if they ratify them, those acts will go before the Congress of the United States, . . . and before all the nations of the world."[5]

The Hispano-Californian delegates, seven in number, were treated with a high degree of respect, and to them were extended special courtesies.[6] The proportion of native Californians to the Americans was about equal to that of the respective populations.[7] General Vallejo, a man of commanding presence and dignified expression, was better acquainted with American institutions and laws than any of his kin. Of good Spanish family, educated and liberal, he enjoyed great popularity and was for years after the Convention known as "the most distinguished of living Hispano-Californians."[8]

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[1] Browne's *Deb.*, 38.

[2] *Cf.* Editorial in *Bulletin* [S. F.], May 23, '78, II, 1.

[3] *Cf.* Frost, 125; Browne, *Anniversary of Territorial Pioneers*, p. 56; Taylor, *Eldorado*, 148–150; etc.

[4] "No cloud ever cast its shadow on equal incongruities grouped in cliffs and chasms, pinnacles and precipices, without having it broken into a thousand fragments." Colton, *Three Years in California*, 410.

[5] Browne's *Deb.*, 149–150; *cf.* 58, 122, 141, 371, 424, 434.

[6] *Ibid.*, Bott's remarks, 371; *et passim.* [7] *Cf.* Taylor, *Eldorado*, 148.

[8] Shuck, *Repres. Men of the Pacific*, 225, *et seq.*; *cf.* Taylor, *op. cit.*, 157; Fitch, *Century*, XL, 787; etc.

Perhaps none was more accomplished or better educated than De la Guerra, of Santa Barbara, who afterwards became a State senator. Carrillo was a pure Castilian, of strong character, intelligent, and somewhat prejudiced against Americans. Pico's face was expressive of shrewdness and mistrust. These, with Castro, a man of stout frame and handsome face, Dominguez, and Covarrubias, comprised the native Californians. Pedrorena was a native of Spain. Of the other foreign born delegates, Captain Sutter, a Swiss, stood prominent. One of the earliest of the pioneers, universally known for his fort at Sacramento, he was a man "of good intellect, excellent common sense, and amiable qualities of heart."[1] Shannon, a native of Ireland, showed ability as a lawyer: he it was that introduced into the Declaration of Rights the section against slavery. The voices of Sansevaine, of Bordeaux, and Reid, of Scotland, were scarcely heard on the floor of the Convention.

It would be out of place here to particularize at length regarding the Americans. Many incessant toilers were among them, and few had come with ulterior ambitious schemes. Gwin, however, a Southerner of education and experience, seems to have come to California for the express purpose of seeking election to the United States Senate. He had served in Congress, had attained prominence in the Texas agitation, and had sat in the recent Constitutional Convention of Iowa. His experience in deliberative assemblies and knowledge of parliamentary usage gave him superior advantage;[2] and his ability in debate, added to marvelous powers of leadership, gave him exceptional authority as the ablest politician in the Convention. Other Southerners who figured conspicuously were McCarver, lately an Oregon farmer; Botts, a Virginia lawyer and good debater; Jones, one of the youngest mem-

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[1] Taylor, *op. cit.*, 158.

[2] On Gwin, see Phelps, *Contemp. Biog. of Cal's. Rep. Men*, I, 31; Fitch, *op. cit.*, 784–5; Bancroft, VI, 291; etc.

bers of the Convention and of short residence in California; Wozencraft, a genial physician of scholarly habit; and Moore of Florida, whose profession is set down as "elegant leisure." Three of the most assiduous workers were Captain Halleck, Riley's Secretary of State, who had rendered invaluable service in preparing the way for the Convention,[1] and who since became famous as lawyer, author, and general; Gilbert, the able young editor of the *Alta California*, to whom the people of San Francisco were indebted for excellent reports of the Convention's labors; and Dimmick, a New York lawyer of three years' residence in California. Lippitt, Norton, and Steuart will be remembered as leading members of the so-called San Francisco Legislative Assembly, of good ability, and earnest advocates of good government. Larkin is known as the "first and last American Consul to California."[2] Robert Semple, a five years' resident of the territory, proved himself a dignified and competent President of the Convention.

It is obvious that no such assembly of men could in any country be called together without representing a great diversity of views and sentiments. The object for which they had met was known to be of profoundest significance in relation to the one overshadowing question of national politics, the most antagonistic phases of which had their adherents in the Convention. Even the most violent Southerners, however, had little or no desire to see slavery then introduced into so unfavorable a community.[3] As the Convention proceeds, therefore, ulterior designs begin to appear, and intimation of political duplicity is not entirely wanting. The debates on the boundary question betray the artifice employed by some leading members. Yet, in general, the Convention proved its own sufficient corrective, and the resultant action was seldom unwise.

The first regular session was "opened with prayer to Almighty God for His blessing on the body, in their work,

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[1] Willey, in *Overland Mo.*, July, 1872.

[2] *Daily Evening Post*, June 22, 1878, I, 2.

[3] *Cf.* Royce, *Cal.*, 265.

and on the country."[1] On the following day provision was made whereby the Convention should be opened each day with prayer. The clergy of Monterey, consisting of Rev. Padre Antonio Ramirez and Rev. S. H. Willey, were requested to act as chaplains; and it was unanimously agreed "That the officiating clergy of this House be admitted to the privileged seats of the House."[2]

The President being duly sworn by the Secretary of State, he administered the oath to the members. The important preliminary question whether the assembly should proceed to form a State or a Territorial Government engaged the Convention but briefly, when by a strong vote State organization was decided upon.[3] The few who opposed State organization were for most part either native Californians or old and conservative settlers. Gwin observed, in a subsequent debate, that those members voting against State organization represented the districts south of 36° 30′, and that the "Representatives here from that region are unanimous in their votes against the establishment of a State Government."[4] He thus without sufficient warrant insinuated the identity of the slave interests with the desire of delegates from the southern districts. The popular sentiment favoring the formation of a State had increased with remarkable rapidity, and for several months the organization as a Territory under the United States Constitution had scarcely with seriousness been thought of.[5]

The machinery of the House was completed by the appointment of a Committee on the Constitution, of two members from each of the ten districts represented, with Myron Norton as chairman;[6] and a Committee on Rules and Regulations of five members.

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[1] Willey, *Constitutional Convention.* [2] Browne's *Deb.*, 54.

[3] *Ibid.*, 23. The vote was 28 to 8. [4] *Ibid.*, 197.

[5] See King's Report, Ex. Doc. 1 S., 31 C., H. R., VIII, 59. This is quoted from at length in Frost's History, 118, *et seq.*

[6] Browne's *Deb.*, 30. Bancroft seems to have committed the error of supposing Gwin chairman because first named. See his note in *History*, VI, 290.

On the day after its appointment the Committee on Constitution, without having had proper time for deliberation and reflection,[1] reported a very unoriginal Declaration of Rights of sixteen sections. After sundry changes, usually of an unimportant nature, had been made, Shannon of Sacramento, in accordance with a pledge previously given to his constituents, moved to insert, as an additional section: "Neither slavery nor involuntary servitude, unless for punishment of crimes, shall ever be tolerated in this State."[2] Surprising as it may at first appear, this vital section was, almost without debate, unanimously adopted. The preponderance of sentiment in the Convention—much more in the territory at large—was undoubtedly in favor of a free State; but that not a vote was recorded for slavery is matter for wonder, for fifteen members had emigrated from slave States.[3] It is impossible to believe that the vast national bearing of this decision was then fully appreciated. It is hardly inaccurate to affirm that it was the "pivot-point with the slavery question in the United States."[4] The institution of American slavery had passed the zenith of its power, and henceforth was destined steadily to decline. The great Commonwealth of California, entering the Union as the sixteenth free State, forever destroyed the equilibrium between North and South.

The unanimous vote for a free State, however, by no means put at an end the question of slavery in all its phases. One of the most exciting discussions was on a section, introduced by McCarver, prohibiting the entrance of "free persons of color" into the State. Slave holders, it was urged in defense of the section, would bring their slaves to California and free them in great numbers for brief service in the gold mines.[5]

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[1] *Cf.* Norton's remarks, Browne's *Deb.*, 34. [2] *Ibid.*, 43.

[3] Willey, quoted in *Sacramento Record-Union*, Sept. 9, 1884, I, 4; *cf. Bulletin* [S. F.], May 23, '78, II, 1.

[4] Willey, *Constitutional Convention; cf.* Willey, *Thirty Years in Cal.*, 31–32.

[5] Browne's *Deb.*, 138.

They would be a burden on the community,[1] and degrade white labor;[2] for they are not only most wretched, ignorant, and depraved beings,[3] but idle, disorderly, and unprofitable.[4] It would be impossible to unite free and slave labor: the two races "can never intermingle without mutual injury."[5] On the other hand, members were asked to remember that the Constitution emanating from this Convention was "to be subjected to the scrutiny of all the civilized nations of the earth:" "let it not be said that we have attempted to arrest the progress of human freedom."[6] The Declaration of Rights adopted excludes slavery: is it not inconsistent to debar any race of men from a free State?[7] "Let Africans be placed upon the same footing with natives of the Sandwich Islands, Chileans, and Peruvians, and the lower classes of Mexicans."[8] A freeman should not be denied the rights "which you award to all mankind."[9] There are many free negroes in New York who are intelligent, shrewd, respectable citizens.[10] Let the Legislature make whatever laws it sees fit: this Constitution should not provoke discussion in Congress, and thus "jeopard the interests of California."[11] McCarver's proposition was adopted in Committee of the Whole,[12] but after further consideration in Convention, the proposed section was defeated by a large vote.[13]

When the section on Corporations came under consideration, a most extraordinary opposition to banks was manifested. Botts, fearful that some member desired "to steal through this House a bank in disguise," avowed his chief object to be "to crush this bank monster." He recalled the "desolating operations" of 1836–37, and urged that no loop-hole be left, for then "this insinuating serpent, a circulating bank, will find its way through."[14] Price argued for a sound currency

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[1] Browne's *Deb.*, 138. [2] *Ibid.*, 143, 145. [3] *Ibid.*, 144.
[4] *Ibid.*, 145. [5] *Ibid.*, 147, 152. [6] *Ibid.*, 141, 149.
[7] *Ibid.*, 143. [8] *Ibid.*, 141, 150. [9] *Ibid.*, 149.
[10] *Ibid.*, 143. [11] *Ibid.*, 143, 146, 150. [12] *Ibid.*, 152.
[13] *Ibid.*, 339. The vote was 8 to 31. [14] *Ibid.*, 125.

to secure the stability of trade. The nation had recently been subjected to the most trying experience by reason of this "monster serpent, paper money:" "Let us provide then the strongest constitutional guards against the vicissitudes which we know the people of the United States have suffered."[1] Lippitt offered an amendment which stripped the section of its more objectionable features, which being accepted, the section was adopted. Corporations were to be formed under general laws, "but shall not be created by special act, except for municipal purposes."[2] Little real disagreement had been shown, and a large part of the discussion was based on mere suspicion and prejudice against banks.[3]

To provide a satisfactory and just system of taxation for such a commonwealth as California was obviously difficult. The large Californian land holders of the south objected—not without reason—to a tax which, though nominally equal, they feared would fall almost wholly upon them, while the great shifting population of the north and in the mines would enjoy the benefits of a government supported by the few. The difficulty was overcome in part by Jones' amendment providing that assessors and collectors should "be elected by the qualified electors of the district, county, or town in which the property taxed for State, county, or town purposes, is situated."[4]

Considerable interest was manifested in the question of separate property for married women.[5] Many of the arguments are amusing, and they throw a side-light on the social status of the country. The husband, at the time of marriage, argued Lippitt, is supposed by common law to come into possession of the wife's property and is thus made responsible for her debts.[6] Let us not experiment in this Constitution. This question is proper subject for legislative enactment.

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[1] Browne's *Deb.*, 113. [2] *Ibid.*, 129. [3] *Cf. Ibid.*, 130, 132.
[4] *Ibid.*, 364–376. [5] *Ibid.*, 257–269.
[6] *Ibid.*, 262. Lippitt declares: "I am wedded to the common law." *Ib.*, 260.

Botts descanted upon the frailty of woman and the evils of woman's rights, and was for expunging the section from the Constitution.[1] But Norton denied the relevancy of both common and civil law,[2] and Dimmick pointed out that "women now possess in this country the right which is proposed to be introduced in this Constitution;" it is no experiment here.[3] It was further argued that such a provision would be a safeguard, for men will wildly speculate in California; and the gallant Captain Halleck, "not wedded either to the common law or the civil law, nor as yet, to a woman," conceived that it would be a great "inducement for women of fortune to come to California."[4] The section as proposed, granting the wife power to hold separate property, was finally adopted. This is believed to be the first time that a section recognizing the wife's separate property was embodied in the fundamental law of any State. Kindred sections were those prohibiting the Legislature from granting any divorce and requiring it to enact a homestead law.[5]

The debates on education showed a warm interest in the subject and great unanimity in favor of establishing a well-regulated system of common schools. No one could foretell positively what Congress would do; but assuming that in the matter of lands Congress would be as bountiful as it had been to Oregon and Minnesota, a liberal provision was made for public education; and with excellent foresight the Convention set apart the income of lands for the establishment of a State University.[6]

In the settlement of the Judiciary, the main point of disagreement was as to the monetary limitation of the jurisdiction of the Appellate Court. After a debate which roused considerable excitement, an amended section was adopted giving

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[1] Browne's *Deb.*, 259–60. [2] *Ibid.*, 265–6. [3] *Ibid.*, 262–3.
[4] *Ibid.*, 259. [5] Art. IV, § 26, and Art. XI, § 15.
[6] Browne's *Deb.*, 202–211; *cf.* Bancroft, VI, 298; *Evening Post* [S. F.], June 29, '78, II, 6.

the Supreme Court "appellate jurisdiction in all cases when the matter in dispute exceeds $200.00."[1] A minor but lively discussion arose upon the section instructing judges not to charge juries with respect to matters of fact; but the objections were overcome, and the section adopted.[2] The Judiciary was made elective, and consisted of Supreme Court, District Courts, County Courts, and Justices of the Peace.

By far the most animated debate of the entire Convention, a debate which assumed a character of real interest and profound significance, was that upon the question of boundary.[3] This contest, the longest and most strictly sectional of the session, came dangerously near to wrecking the Constitution. California, as a Mexican province ceded to the United States, was of vast but not strictly defined territorial extent, embracing the great desert east of the Sierra Nevada and the fertile district inhabited by Mormons. The parallel of 42° formed the northern boundary;[4] the Pacific ocean formed the natural boundary on the west; and the line between Upper and Lower California, conformable to the treaty of Guadalupe Hidalgo, the boundary on the south: thus the great point in dispute was the eastern boundary line.

On September 18, the Committee on the Boundary, through Chairman Hastings, made its report, which was referred to the Committee of the Whole.[5] Its opinion was that the extent of Mexican California, then estimated at 448,691 square miles, was entirely too vast for one State; and the eastern boundary recommended was the intermediate one of

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[1] Browne's *Deb.*, 233. [2] *Ibid.*, 234–9.

[3] Besides the full report of this contest in Browne's *Debates*, several short accounts are to be found. Some of these are Taylor, *op. cit.*, 152–4; *Evening Post* [S. F.], June 29, 1878, II, 5; Hittell, II, 766–8; Bancroft, VI, 291–6. See also Lippitt, *Century*, XL, 794–5; Vassault, *Overland Monthly*, XVI, 290, *et seq.*

[4] Established by treaty with Spain, Feb. 22, 1819. See *Treaties and Conventions*, 1017.

[5] Browne's *Deb.*, 123–4.

the 116th parallel. The debate opened in the morning session of September 22 and continued till late at night.[1] Sundry amendments, fixing as the eastern boundary various lines, were proposed and considered. The disagreement was complete and apparently irreconcilable.

The main argument centred about the controversy between the party favoring the widest or full extent of territory and the party that wished to prescribe narrow limits. Gwin at once took a leading part in the contest by his amendment favoring the large extent. In defense of this it was urged that the Convention had met to form a Constitution for the whole of California, and it was not in its province to dismember the State.[2] If the limit be placed at the Sierra Nevada, where were the inhabitants beyond, especially the thousands of Mormons, to seek justice? These should be included for protection; and besides, there might be vast wealth in this great extent of territory.[3] But, on the other hand, Semple argued that "it is evidently not desirable that the State of California should extend her territory further east than the Sierra Nevada," the great natural boundary.[4] Such an immense territory as that proposed would be unwieldy, and could never be subjected to the operation of our laws. The great distances would require the legislators months of travel to reach the capital. Moreover, the thousands of inhabitants at the Salt Lake have no representation in this Convention and no recognition in the Governor's proclamation: they cannot, therefore, be compelled to come within the State of California.[5] California has no more right to include all this territory than Louisiana did all the territory known as Louisiana.[6] The South in Congress will not permit a State to settle the question of slavery for territory as large as all the Northern States in the Union:[7] whereas it is "clear that

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[1] Browne's *Deb.*, 167–200.
[2] *Ibid.*, 186, 188.
[3] *Ibid.*, 175, 178–9, 193.
[4] *Ibid.*, 168; *cf.* 182.
[5] *Ibid.*, 170–1, 185, 191; *cf.* 421.
[6] *Ibid.*, 187.
[7] *Ibid.*, 173.

that question is settled beyond dispute, if we establish a reasonable boundary."[1]

A minor controversy, deemed to be conciliatory to the main issue, was on the expediency of leaving the question of boundary open, for settlement in Congress. Halleck's proviso to Gwin's amendment, that the Legislature should have power to accede to any proposition of Congress limiting the boundary to the Sierra Nevada,[2] met with little opposition from advocates of the larger boundary. A vital consideration was the immediate admission of the State by Congress: keep the question of slavery out of Congress, said Sherwood, by taking all the territory and leaving Congress to cut it off at the Sierra Nevada if it wishes.[3] But, replied Semple, "Congress has no right to dismember us; and if she does, it can only be with the consent of our Legislature."[4] And Hastings urged that an open boundary meant the open question of slavery, which, in turn, precluded the possibility of a State Government for several years, whereas the great object was to secure speedy admission into the Union.[5]

Thus the debate continued; many members participated. It is evident that members had a very vague conception of the real extent of the territory they were endeavoring to include in the State.[6] Probably none of the advocates of the larger boundary entertained the thought or desire that California would long retain all the territory described. And in this seems to lie the explanation why Gwin's amendment was adopted[7] in Committee of the whole: Halleck's proviso greatly mollified its rigidity.

The actual bearing of the slavery question in the boundary discussion was tardily manifested: it was at first touched shyly and with great apparent reluctance. But as the debate proceeded, and more especially when the Committee's report was

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[1] Browne's *Deb.*, 177. [2] *Ibid.*, 169; *cf.* 175.
[3] *Ibid.*, 181–2. [4] *Ibid.*, 176. [5] *Ibid.*, 173.
[6] *Cf. Ibid.*, 176, 180, 194. [7] *Ibid.*, 200.

taken up in Convention,[1] the real importance and application of the question began to be recognized, and sinister motives were charged. "It is a question," declared Tefft, "in comparison with which, everything else that has been argued here, is trifling. I believe gentlemen will see when our Constitution comes to be considered in the halls of Congress, that it is a matter of vital importance, not to California alone, but to our whole Confederacy."[2] The ulterior design of the pro-slavery members was, there is little reason to doubt, to make the State so large as to insure a subsequent division, by an east-and-west line, into two large States, of which the southern was to be organized as a slave State.[3] It is plain, however, that not all those voting for the larger boundary were parties to this duplicity. The people of California had declared positively against slavery, the Convention had unequivocally pronounced against it: it is not remarkable, therefore, that the friends of slavery fought with the utmost vigor for such vast territory as would necessitate a division. This was their last hope of forming a new slave State from the acquired territory of the Pacific.

The question being resumed in Convention on October 8, Hastings' substitute, proposing an intermediate line running through the midst of the Nevada desert, was quickly adopted, and ordered engrossed for third reading. But McDougal's motion to reconsider the motion to engross reopened the discussion and ended in a reconsideration of Hastings' proposition. The advocates of the Sierra Nevada boundary were now confident of success, but great was their consternation when the report of the Committee of the whole was again concurred in. Upon the announcement of the vote, the utmost excitement and confusion prevailed.[4] The wrecking of the entire work of the Convention was narrowly averted.

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[1] Oct. 8, Browne's *Deb.*, 417–458. [2] *Ibid.*, 424.
[3] Lippitt, in *Century*, XL, 794–5; *cf.* Vassault, *Overland Mo.*, XVI, 290.
[4] *Ibid.*, 441; *cf.* Taylor, *Eldorado*, 152–4.

The activity of the defeated party, however, secured a second reconsideration on the following day, for the section had not yet been engrossed. The motion to engross was finally lost, and the proposition of Jones, fixing the present boundary, was adopted by a large majority.[1] Thus was settled the most vexed and exciting question of the Convention, the boundary controversy.

Other sections that elicited discussion of an interesting character were those two, essentially ethical, prohibiting lotteries and forbidding duels. Both sections were adopted as reported, and incorporated in the Constitution.[2] Ord's curious proposition, that no "clergyman, priest, or teacher of any religious persuasion, society, or sect, shall be eligible to the Legislature," quickly fell under the ridicule of Hastings, who moved to insert the words, "Lawyers, physicians, or merchants," and of Shannon, who asked the gentleman to be so good as to introduce "miners" into his list.[3] It was quite generally understood that San José should be the permanent seat of the new government, but a lively controversy arose from the competition of the different localities for the first session of the Legislature. The advantages of no fewer than seven towns[4] were urged, but the controversy ended by adopting the committee's proposition and selecting San José.[5] A section of the Schedule which gave rise to some contention was that on the apportionment of representation for the State Legislature.[6] The real contest was occasioned by the nature of the population in the different sections, especially in the mining region, where, it was claimed, the population was exceedingly transitory. Members dilated upon the great numbers of their respective constituents, and sought for them the largest representation permissible.

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[1] Browne's *Deb.*, 458. [2] *Ibid.*, 90–93 and 246–255. [3] *Ibid.*, 136–7.

[4] San José, San Francisco, Monterey, Benicia, San Luis Obispo, Santa Barbara, and Stockton.

[5] Browne's *Deb.*, 239–246. [6] *Ibid.*, 404–416.

The Great Seal of the State, adopted after a short but interesting debate, was believed to be, as symbolic of the new State, very appropriate. The work was presented to the Convention by Caleb Lyons, but the real designer was afterward found to be Major Garnett.[1] Minerva, full grown from the brain of Jupiter, stands in the foreground, while at her feet crouches a grizzly bear feeding upon grape clusters. At his side stands a miner with rocker and bowl. Ships are seen on the waters of the Sacramento, and the snowy peaks of the Sierra Nevada form a fitting background. The legend "Eureka" is surmounted by thirty-one stars, the last representing the new State of California.

[1] Browne's *Deb.*, 304, 322–3, 466–7; *cf.* Hittell, II, 773.

CHAPTER IV.

The Constitution Completed.

The Constitutional Convention completed its labors on Saturday, October 13, 1849, under circumstances highly dramatic. With the dawning of that day of beauty and sunshine dawned a new era for California.[1]

The day and night preceding the final adjournment exceeded in social interest the Convention's entire previous term of existence. An elaborate ball was given on the last night, and all were brought to a happy and congratulatory mood.[2] The perplexing questions of the Convention were all settled, and throughout the various elements of the heterogeneous assembly there was evolved a general harmony.

The members had, after some disagreement, voted themselves compensation at the rate of $16.00 per day and $16.00 for every twenty miles of travel; and the President's per diem was fixed at $25.00.[3] In view of the times and opportunities this was moderate. The officers of the Convention were liberally provided for, their per diem allowance ranging from Secretary, $28.00, to Page, $4.00.[4] The sum of $10,000 was voted to J. Ross Browne, stenographic reporter,

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[1] Bayard Taylor's contemporaneous account of the Closing Scenes of the Convention (*Eldorado*, 158–167) is most interesting and valuable. Gilbert's editorial on Signing the Constitution (*Alta Cal.*, Nov. 22, 1849) is rich in detail, eloquent and patriotic. *Cf. Sacramento Union*, Sept. 9 and 12, 1859; Shuck, *California Scrap Book*, 67.

[2] Taylor, *op. cit.*, 158, *et seq.*

[3] Browne's *Deb.*, 289–92.

[4] *Ibid.*, 107, 363–4.

his contract being to furnish 1000 printed copies of the entire proceedings in English and 250 in Spanish.[1] General Riley was voted a salary of $10,000 per annum during his continuance in office as Executive, and Captain Halleck, $6,000 per annum, as Secretary of State.[2] It was ordered that certified copies of the Constitution in English and Spanish be presented to the Executive, and that 8,000 copies in English and 2,000 copies in Spanish be printed and circulated.[3] The valuable services of Honorable Robert Semple, President of the Convention, were duly recognized[4] by the unanimous adoption of a vote of thanks; and the kindness and courtesy which marked the intercourse of General Riley with members were likewise remembered. Provision was made for the transmittal to General Riley of a copy of the Constitution, with the request that he forward the same, at the earliest opportunity, to the President of the United States.[5] Mr. Hamilton was employed for five hundred dollars to engross the Constitution upon parchment.[6] The rhetorical, optimistic Address to the People, presented by Steuart, was unanimously adopted,[7] and all was in readiness for the formal signing of the Constitution.

"At a few minutes past three, preliminary matters having been disposed of, the delegates commenced the signing. Scarcely had the first man touched his pen to the paper when the loud booming of cannon resounded through the hall. At the same moment the flags of the different Head-Quarters, and on board the shipping in the port, were slowly unfurled, and run up. As the firing of the national salute of *thirty-one* guns proceeded at the fort, and the signing of the Constitution went on at the hall, the captain of an English bark then in port paid a most beautiful and befitting compliment to the occasion and the country, by hoisting at his main the American flag above those of every other nation, making, at the moment that the thirty-first gun was fired, a line of colors from the main truck to the vessel's deck. And when, at last, that thirty-first gun

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[1] Browne's *Deb.*, 163–4. [2] *Ibid.*, 476. [3] *Ibid.*, 462. [4] *Ibid.*, 473–4.
[5] *Ibid.*, 473. [6] *Ibid.*, 475. [7] *Ibid.*, 474–5.

came—the FIRST GUN FOR CALIFORNIA!—three as hearty and as patriotic cheers as ever broke from human lips, were given by the Convention for the New State."[1]

A most affecting part of the day's proceedings occurred after the Convention had adjourned *sine die*. The members in a body repaired to General Riley's house, where, after a cordial greeting, the pioneer among pioneers, Captain Sutter, on behalf of the Convention, expressed gratitude for the aid and coöperation given by the Executive. The General's reply was "a simple, fervent, and eloquent recital of a patriotic desire for the good of California,"[2] concluding with a rare tribute to his Secretary, Captain Halleck.

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[1] *Alta Cal.*, Nov. 22, 1849.

[2] *Ibid.* I quote these brief addresses from Browne's *Deb.*, 476–7. Sutter to Riley: "General: I have been appointed by the delegates elected by the people of California to form a Constitution, to address you in their names and in behalf of the whole people of California, and express the thanks of the Convention for the aid and coöperation they have received from you in the discharge of the responsible duty of creating a State Government. And, sir, the Convention, as you will perceive from the official records, duly appreciate the great and important services you have rendered to our common country, and especially to the people of California, and entertains the confident belief that you will receive from the whole people of the United States, when you retire from your duties here, that verdict so grateful to the heart of every patriot: 'Well done, thou good and faithful servant.'"

Riley's reply: "Gentlemen: I never made a speech in my life. I am a soldier—but I can *feel;* and I do feel deeply the honor you have this day conferred upon me. Gentlemen, this is a prouder day to me than that on which my soldiers cheered me on the field of Contreras. I thank you all from my heart. I am satisfied now that the people have done right in selecting delegates to form a constitution. They have chosen a body of men upon whom our country may look with pride; you have formed a constitution worthy of California. And I have no fear for California while her people choose their representatives so wisely. Gentlemen, I congratulate you upon the successful conclusion of your arduous labors; and I wish you all happiness and prosperity." After interruption by cheers he concluded: "I have but one thing to add, gentlemen, and that is, that my success in the affairs of California is mainly owing to the efficient aid rendered me by Captain Halleck, the Secretary of State. He has stood by me in all emergencies; to him I have always appealed when at a loss myself; and he has never failed me."

The Constitution was completed, and California was already a State. The Americans were proud to have erected a great Commonwealth on the shore of the Pacific; the delegates of whatever nationality had become *Californians;*[1] the native members joined in the spirit of the occasion, and were at last convinced that "they were conquered but to become the brothers and friends of the conquerors."[2]

The first Constitution of California was not one of those documents that "spring full-armed from the heads of Olympian conventions:"[3] it was not pretended indeed to originate a constitution, but from existing chaos to create a system of fundamental law by selecting from all republican forms of government the good and applicable.[4] Gwin, with politic foresight, had brought with him a copy of Iowa's Constitution of 1846, and this he proposed as a model for the present Constitution.[5] For a time, since there was great dearth of reference books, it seemed as though this model might be closely followed. But other State Constitutions were obtained, and that of New York soon became a favorite.[6] The authority of the various State Constitutions very naturally had a most important influence with the Convention,[7] although some members had an aversion to precedents and desired to create a constitution having an original stamp.[8] Hastings proposed the Constitution of the United States as a guide, since he urged, "the record of the debates on that Constitution embraced the principles of all the State Constitutions."[9] Notwithstanding the scarcity of reference books, precedents, either directly or indirectly consulted, were very numerous. Ord had seen the entire thirty State Constitutions;[10] and

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[1] *Cf.* Address to the People, Browne's *Deb.*, 474.
[2] *Alta Cal.*, Nov. 22, '49; *cf.* Taylor, *Eldorado*, 166.
[3] Jameson, *J. H. U. Studies*, IV, 196.
[4] *Cf.* Gwin's remark, Browne's *Deb.*, 116. [5] *Ibid.*, 24.
[6] *Cf. Evening Post* [S. F.], June 22, 1878, I, 3.
[7] *Cf.* Shannon, in Browne's *Deb.*, 143.
[8] *Ibid.*, 33, 51, 379. [9] *Ibid.*, 28. [10] *Ibid.*, 36.

besides constant reference to individual States,[1] the English Constitution and the Mexican law were cited.[2]

The Declaration of Rights reported by the committee consisted of sixteen sections, the first nine of which were copied from New York and the last seven from Iowa.[3] The changes made were favorable to Iowa, but in general the article, with the addition of several sections, was approved as reported. The influence of the Constitutions of New York and Iowa is easily apparent in almost every article of California's Constitution: other States, as Michigan, Virginia, Louisiana, and Mississippi, while leaving an influence, are not at all to be compared to the two great models. An evidence of the Convention's wisdom is its close adherence to well selected models, embodying fundamental laws and principles whose soundness had been thoroughly tested. It would have been extremely hazardous and probably disastrous for an assembly of such heterogeneous personnel, many of the delegates being unused to legislation, to venture upon really new constitution making.

Yet a high order of skill was required to bring to completion a satisfactory Constitution for a commonwealth whose history was absolutely unique and whose early admission into the Union was seen to be extremely doubtful. It was fortunate that the Convention was ruled by no demagogue, no faction, no party. The mixed character of the personnel proved a safeguard.[4] The claims of Northern sentiment and

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[1] Browne's *Deb.*, 24, 31, 34, 36, 50, 143, *et passim.*

[2] *Ibid.*, 36, and 37, 314, *et passim.*

[3] It is commonly stated, following Gwin's remark (Browne's *Deb.*, 31) that eight sections were copied from each State. A comparison of documents shows the error. Section 9 of California is an exact copy of Section 10 of New York and does not appear in Iowa's Declaration of Rights. The divorce and lottery clauses, however, are to be found in Article III, Sections 28–29 of Iowa's Constitution. For the Constitution of '46 of New York, see Poore's Charters and Constitutions, 1351, *et seq.* Poore has omitted Iowa's '46 Constitution, reprinting by mistake the Constitution of '57. *Cf. Ib.*, 537 *et seq.*, and 552, *et seq.* Iowa's '46 Constitution is in Parker, *Iowa As It Is* [1856], pp. 207–234.

[4] *Cf.* Bancroft, VI, 303.

Southern chivalry had to be regarded; ardent Americans, fresh from "the States," were tempered by older pioneers and Hispano-Californians; all were compelled to submit to repeated compromise, and thus a moderate, judicial and workable Constitution was created.

The achievement illustrates the great capacity of the American people for self-government. The Constitution offered to the citizens of California for their consideration and their votes sprang immediately into great favor, and the members of the Convention were warmly praised for having done their work faithfully and "adjourned with unimpaired good will."[1] The document received the highest commendations from all sources, as the "embodiment of the American mind, throwing its convictions, impulses, and aspirations into a tangible, permanent shape."[2]

It does not lie within the province of this paper to present a detailed analysis of California's first Constitution; its salient features have already been sufficiently indicated. It made California a free State. It was advanced, liberal, and thoroughly democratic: founded upon social and political equality, it was enlightened in its provisions for education and catholic in its guaranty of religious freedom. All political power was declared to be inherent in the people, and all officers of the government were made elective. Although the achievement of an assembly extremely heterogeneous and in the main unused to law making, it embodied the principles of the best political and jurisprudential philosophers; and, contrary to the expectation of some of its framers,[3] it endured for thirty years as the fundamental law of the

EMPIRE STATE OF THE PACIFIC.[4]

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[1] *Alta Cal.*, Oct. 25 and Nov. 1; *Placer Times*, Nov. 3, 1849. The Constitution was ratified by the people on Nov. 13 by an almost unanimous, though small, vote. The day was very stormy.

[2] Colton, *Three Years in Cal.*, 411. *Cf.* Von Holst, III, 463; Bancroft, VI, 302–3; Taylor, *Eldorado*, 148, *et seq.*; Frost, 125; Browne, *Am. Ter. Pioneers*, 56; Fitch, *Century*, XL, 787; M'Gowan's *Guide Book, Cal.*, 165, etc.

[3] Browne's *Deb.*, 129, 273.

[4] See *Alta Cal.*, Nov. 22, 1849.

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LIFE.

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History is Past Politics and Politics are Present History.—*Freeman*

THIRTEENTH SERIES

IX

BENJAMIN FRANKLIN AS AN ECONOMIST

BY W. A. WETZEL, A. M.

A DISSERTATION PRESENTED TO THE BOARD OF UNIVERSITY STUDIES OF THE JOHNS HOPKINS UNIVERSITY FOR THE DEGREE OF DOCTOR OF PHILOSOPHY.

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CONTENTS.

PREFACE.

In the works of so versatile a writer as Franklin expressions of opinion can be found upon nearly every topic in the entire economic field. The purpose of this monograph has been not to weave together fragmentary expressions into an artificial whole, but rather to present such of Franklin's views as seem fairly entitled to the rank of economic theories.

Emphasis has been laid upon Franklin's strictly economic doctrines to the neglect of his political or socio-philosophical theories, such as the nature of civil society or the functions of the state.

The writer also desires to thank Dr. J. H. Hollander, of the Johns Hopkins University, for the many valuable criticisms and suggestions made by him in the preparation of this monograph.

JOHNS HOPKINS UNIVERSITY, *May* 14, 1895.

BENJAMIN FRANKLIN AS AN ECONOMIST.

I.—ECONOMIC WORKS OF FRANKLIN.

Probably nothing from Franklin's ready pen was written in a purely scientific spirit. Whatever discoveries he made, whatever improvements he suggested, whatever he contributed to the literature of the day, he did it all "to extend the power of man over matter, avert or diminish the evils he is subject to, or augment the number of his enjoyments."[1] Whether we are studying Franklin the Electrician, the Economist, or the Politician, it is impossible to turn to any really finished and extended treatise, for his busy life would not allow the leisure necessary to construct such a work. His contributions to economic science must be drawn from various sources. There are first of all a number of essays containing a mixture of economics and politics. These were called out by the politics of the time in which they were written, and usually appeared in current periodicals either in this country or abroad. Some of them were afterwards reprinted and distributed by Franklin among men with whom they would do the most good. In order that we may comprehend the full import of these essays we must give them their proper historic setting.

For our purpose we may divide the life of Franklin into three parts: (1) Franklin the Editor, 1706-1757. It was during this time that *Poor Richard's Almanac* was published in connection with the *Pennsylvania Gazette*. With the exception of a brief residence in London in 1724, Franklin lived in Pennsylvania during this period. (2) Franklin the Advocate, 1757-1775. In 1757 Franklin was sent to England by the Pennsylvania Assembly to present a petition to the King with reference to the disputes between the Proprietors and

[1] Letter to Sir Jos. Banks, President of the Royal Society, London, Sept. 9th, 1782, *vid. Works*, (Bigelow ed.), vol. VIII., p. 169.

the Assembly. Later, as matters in the colonies grew more serious, he was appointed colonial agent for Massachusetts, New Jersey and Georgia, so that he was kept in London almost continuously until 1775. This period brought forth some of the most valuable of his economic pamphlets. (3) Franklin the Diplomatist, 1775-1785. During this period Franklin resided in France, where, one dare almost say, his diplomatic services contributed as much to the cause of American independence as did the military services of Washington.

Franklin was born in Boston in 1706. Seventeen years later we find him walking up Market street, Philadelphia, "with a roll under each arm, and eating a third," as he expresses it in his *Autobiography*.[1]

The year that Franklin arrived in Philadelphia marked the first issue of paper money in Pennsylvania. Many erroneous views were still held by the statesmen of his time concerning trade and money. Only that country was considered prosperous which could show a balance of trade in its favor. It was deemed unwise to allow gold or silver coin to be exported from the country. Colonies were considered beneficial to the mother country only in so far as they exchanged gold and silver coin for the finished products of the mother country, while trade laws were passed which attempted to mark the only channels through which colonial trade could flow. When there is added to this fact increased demand for money in our new and rapidly developing country, one can easily see why the colonists were continually clamoring for more currency. Massachusetts led the way in 1690.[2] New York, Rhode Island and South Carolina quickly followed. Pennsylvania followed very cautiously in 1723.[3] Two issues were made in this year, one of £15,000, the other

[1] Bigelow edition, p. 112.

[2] *Vid. Proceedings of Massachusetts Historical Society* for 1862-1863, p. 428.

[3] For a full account of the early history of paper money in Pennsylvania, *vid.* Proud's *History of Pennsylvania*, vol. II., p. 171 *et seq.*

of £30,000. £4,000 of this currency were intended to pay the debts of the colony. The rest was issued for the benefit of the people. In order that the currency might be amply protected it was secured in the loan office either by a deposit of plate or by a mortgage on real estate or ground rents. In no case did the amount issued to an individual borrower exceed one-half of the value of the security deposited. In order that the benefit might be as general as possible, no one could borrow more than £100. Borrowers were charged 5% interest, and were compelled to return to the treasury one-eighth of the principal annually. All the notes were to be called in at the end of eight years, that is, in 1731. As early as 1729 men began to discuss the desirability of another issue. The arguments for and against a cheap money used at that time bear a strong resemblance to the arguments on the same subject current in the papers at the present day. It was at this time that Franklin's *Modest Inquiry into the Nature and Necessity of a Paper Currency* appeared.[1] Although written in the spirit of the practical politician, it contains, as we shall see, some sound economic principles. Our respect for Franklin's sagacity is increased when we remember that at that time he was only twenty-three years old.

The state of affairs in Pennsylvania at the beginning of the eighteenth century is best described in Franklin's own words:[2]

"About this time there was a cry among the people for more paper money, only £15,000 being extant, and that soon to be sunk. The wealthy inhabitants opposed any addition, being against all paper currency from the apprehension that it would depreciate as it had done in New England, to the injury of all creditors. We had discussed this point in our Junto,[3] where I was on the side of an addition, being per-

[1] Ingram (*History of Political Economy*, p. 171) incorrectly dates this publication 1721.

[2] *Vid. Autobiography*, (Bigelow ed.), p. 185.

[3] The Junto was a debating society organized in 1720 by Franklin among his Philadelphia friends "for mutual improvement." Half a century later it became the American Philosophical Society, of which Franklin was the first President. This society contributed much to the advancement of pure science.

suaded that the first small sum struck in 1723 had done much good by increasing the trade, employment and number of inhabitants in the province. . . . Our debates possessed me so fully of the subject that I wrote and printed an anonymous pamphlet on it, entitled 'The Nature and Necessity of a Paper Currency.' It was well received by the common people in general, but the rich men disliked it, for it increased and strengthened the clamor for more money, and they happening to have no writers among them that were able to answer it, their opposition slackened and the point was carried by a majority in the House." He adds, very naïvely: "My friends there, who considered I had been of some service, thought fit to reward me by employing me in printing the money, a very profitable job and a great help to me."

The next twenty-five years of colonial history show plainly the beginnings of the political trouble which came to a crisis in 1776. Through this entire period we find Franklin, as a loyal subject of Great Britain, doing all in his power to strengthen the tie between the mother country and the colonies. Now we find him pledging his own property for the payment of horses and wagons for the Braddock campaign. Now he is a delegate to the Albany Convention, where he suggests a Plan of Union for the colonies.[1]

One of the bones of contention between England and her colonies was the subject of manufactures. England had for many years excluded the colonies from the carrying trade. As early as 1724 complaint was entered by British shipbuilders, supported by the Board of Plantations, that their trade was declining through the increase of ship-building in New England. It was maintained that workmen were emigrating and that there was "danger that this most important trade for the maintenance of our navy would be transplanted

[1] This plan of union, which was one of his pet schemes, "the Assemblies did not adopt, as they all thought there was too much *prerogative* in it; and in England it was judged to have too much of the *democratic*."

to the New England colonies."[1] English statesmen advocated earnestly the policy of prohibiting colonial manufactures. It was argued that the colonists should raise raw materials and possibly manufacture enough for their own consumption, but not for the general market. The exportation of woolen manufactures from one colony to another was even prohibited by Parliament in 1699. The manufacture of hats, the material for which was abundant in the New England colonies, was also most vigorously restricted. In 1750 a committee of the House of Commons, with Charles Townshend as its chairman, undertook to inquire into the subject of iron manufactures. The ironmongers and smiths of Birmingham prayed that from "compassion to the many thousand families in the kingdom who otherwise must be ruined, the American people" might be subjected to such restrictions "as may secure forever the trade to this country." Townshend's committee introduced a bill which allowed American ore to be admitted free of duty, but which forbade the erection of "any mill for slitting or rolling iron, or any plating forge to work with a tilt-hammer, or any furnace for making steel," because the "nailers in the colonies could afford spikes and large nails cheaper than the English." The proposal to demolish every slitting mill in America was lost by a bare majority. As a compromise the House insisted that no more new mills be erected and that every existing mill must give a full account of the extent of its manufactures. This was in 1750. In 1751 appeared a strong article from Franklin's pen, entitled *Observations concerning the Increase of Mankind and the Peopling of Countries.*[2] This essay marks an important epoch in the history of the theory of population. Godwin, Malthus, Adam Smith, all used it in treating this subject. Yet it was not population, but manufactures, that called out the article. Not the "love of

[1] *Vid.* Cunningham's *Growth of English Industry and Commerce*, vol. II., p. 329; also Bancroft's *History of United States*, ed. of 1883, vol. II., p. 356.

[2] *Vid. Works*, (Bigelow ed.), vol. II., p. 223.

truth," but Townshend's bill, inspired Franklin to write this paper. After showing that in America "our people must at least be doubled every twenty years," he insists that "notwithstanding this increase, so vast is the territory of North America that it will require many ages to settle it fully; and till it is fully settled, labor will never be cheap here, where no man continues long a laborer for others, but gets a plantation of his own; no man continues a journeyman to a trade, but goes among those new settlers and sets up for himself. Hence labor is no cheaper now in Pennsylvania than it was thirty years ago, though so many thousand laboring people have been imported." On account of this dearness of labor, he argues that England need not fear American competition in manufactures in foreign markets. Therefore, he says, "Britain should not too much restrain manufactures in her colonies. A wise and good mother will not do it. To distress is to weaken, and weakening the children weakens the whole family."[1] He says elsewhere:[2] "It is the multitude of poor without land in a country, and who must work for others at low wages or starve, that enables undertakers[3] to carry on a manufacture."

Before we close the first period of Franklin's life we must speak of one more article. In 1732 appeared the first number of *Poor Richard's Almanac*. It was published annually thereafter for twenty-five years. These almanacs are a strange combination of sense and nonsense. In one of them he makes the following apology for its miscellaneous character: "Be not thou disturbed, O grave and sober reader, if among the many serious sentences in my book thou findest me trifling now and then and talking idly. In

[1] This paper was printed in Boston in 1755. The same year it was reprinted in London. In 1760 it appeared in the *Annual Register*, of which Edmund Burke was the editor.

[2] *Interest of Great Britain Considered*, *Works*, (Bigelow ed.), vol. III., p. 86.

[3] On the use of the word *undertaker*, *vid.* also *Works*, (Bigelow ed.), vol. IV., p. 337.

all the dishes I have hitherto cooked for thee, there is solid meat enough for thy money. There are scraps from the table of wisdom that will, if well digested, yield strong nourishment for the mind. But squeamish stomachs cannot eat without pickles, which it is true are good for nothing else but to provoke an appetite. The vain youth that reads my almanac for the sake of an idle joke will perhaps meet with a serious reflection that he may ever after be the better for."[1] The almanac was filled with proverbial sentences "such as inculcated industry and frugality." In 1757 these proverbs were collected by Franklin and published in the form of a "harangue of a wise old man to the people attending an auction." The discourse was called the *Way to Wealth.*[2] It has been said that this "wonderfully popular piece" has been oftener printed and translated than any other work from an American pen.[3] It is a discourse on economic conduct.

We next find Franklin in a broader field of action. As has already been stated, in 1757 he was sent to England to guard the interests of Pennsylvania against the encroachments of the Penn family. With the exception of a short visit to America in 1762, he resided in London as the colonial agent of four of the colonies until 1775. His reputation as a scientist and a philosopher had preceded him. Everywhere in Europe his friendship was courted by the scholars of his day. His name was added to the list of honorary members in most of the learned societies of Europe. Yet he was ever the same unassuming citizen, always watching for an opportunity to use his political and economic knowledge for the good of the American colonies.

As the last war with France was drawing to a close, it became plain that England would not be able to retain both

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[1] *Works*, (Sparks ed.), vol. I., p. 122.

[2] *Works*, (Bigelow ed.), vol. I., p. 441.

[3] P. L. Ford, *Bibliography of Franklin*, p. 55. Ford gives more than one hundred and fifty editions, printed in every modern European tongue. He adds that his list is far from complete.

Canada and Guadaloupe. Which should she retain, and which should she restore to France? The question had been discussed for some time by the English statesmen, with possibly the advantage on the side of giving up Canada. Franklin saw the great need of ridding the American continent of French influences both in Canada and Louisiana. So appeared in 1760 his *Interest of Great Britain considered with Regard to her Colonies and the Acquisitions of Canada and Guadaloupe.*[1] It is safe to say that the retention of Canada by Great Britain was partly due to the arguments used in this essay. It was because Britain feared that manufactures would spring up in America if the colonies became densely settled that she was willing to extend her colonial territory. This pamphlet contains many interesting statements concerning manufactures and population.

The American paper currency had never become very popular with the English merchants. In both New England and the Carolinas they had lost very heavily through its depreciation. So strong did the opposition to these bills become that in 1764 the English Board of Trade, of which the vacillating Hillsboro was chairman, reported against the further emission of paper bills of credit in America as legal tender. Franklin again appeared as the champion of cheap money, this time not for Pennsylvania alone, but for all the colonies. He was then almost sixty years of age, and was respected by all for his practical judgment, wide experience and close observation of commercial matters. His *Remarks and Facts Relative to the American Paper Money*,[2] written in reply to Hillsboro's report, is conservative in spirit and is an able, although politically unsuccessful, plea for the colonial currency.

One other article worthy of mention falls within this period of Franklin's life. In 1769 he published his *Positions*

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[1] *Works*, (Bigelow ed.), vol. III., p. 69.

[2] *Vid. Works*, (Bigelow ed.), vol. IV., p. 79. The title of this article as well as of others is not the same in the different editions of Franklin's works.

to be Examined Concerning National Wealth.[1] This paper contains the strongest statements of physiocratic doctrine to be found in all of Franklin's works, and shows plainly the influence of the French economists. Franklin visited France for the first time in the fall of 1767. In the summer of 1768 we find him acknowledging the receipt of a collection of Quesnay's works and Dupont's *Physiocratie.*[2] In the spring of 1769 appeared his own physiocratic work, the *Positions to be Examined Concerning National Wealth.* Of Franklin's relations with the Physiocrats more will be said later in this essay.

Franklin returned to America in 1775. The following year he was sent to France to solicit aid for the colonists in their struggle for independence. We now have Franklin the Diplomatist. His writings assume more of a political than an economic character. One would naturally expect to find him more intimately connected than ever with the French economists. But a study of his works shows that all his time was taken up with the manifold duties that devolved upon him as the agent of the colonies not only in France but in all Europe. Then, too, the Physiocrats as well as Franklin were soon forced by the political turmoil of the times to leave the quiet fields of philosophy and enter the more active arena of politics.

A few articles from Franklin's pen, falling within this period, deserve notice in this connection: (1) *Great Britain and the United States compared as regards a Basis of Credit,*[3] was written to show that it was safer to lend money to the United States than to England; (2) *The Reflections on the Augmentation of Wages which will be occasioned in Europe by the American Revolution*[4] is interesting, because it foreshadows the arguments by which the wage fund

[1] *Vid. Works,* (Bigelow ed.), vol. IV., p. 235.
[2] *Vid. Works,* (Bigelow ed.), vol. IV., p. 194.
[3] *Vid. Works,* (Bigelow ed.), vol. VI., p. 43.
[4] *Vid. Works,* (Bigelow ed.), vol. X., p. 46.

theory was overthrown; (3) *The Internal State of America*, and the (4) *Information to those who would remove to America*[1] were written to draw European emigrants to America; (5) the *Paper Money of the United States*[2] is a summary of the history of American paper money.

Thus far I have spoken of the more formal of Franklin's economic works. But as valuable as any of these for the economic student are some of Franklin's letters. Among his correspondents were the most eminent philosophers of his age. Now and then one will find a long letter of an almost purely economic character. Such for example is the letter to Benjamin Vaughan, written in 1784. We find in this letter the distinction frequently made by the early economists between productive and unproductive consumption, as well as some sound economic principles concerning luxury.[3] Franklin's views on the subject of population crop out in a letter to John Alleyne, written in reply to the question at what age a man should marry.[4] But not all of Franklin's letters are so rich in material for the economic student. For example, in a letter to Jared Elliot,[5] 1747, he discusses the origin of springs, sea-shells imbedded in rock, a new kind of grass seed, steel saws, mills for grinding flax-seed, the cultivation of hemp, and, last of all, the economic effect of import duties. Connecticut had passed a law levying a tax of 5% on certain goods imported from other colonies. Franklin's arguments against the tax in this letter largely anticipated later writers on the same subject.

It has been said by Parton that the reason Franklin was not asked to write the Declaration of Independence was that he would not have been able to do so without inserting a joke here and there. Franklin often resorted to humor to teach his contemporaries some important economic lesson.

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[1] *Vid. Works*, (Bigelow ed.), vol. X., p. 63; vol. VIII., p. 172.
[2] *Vid. Works*, (Bigelow ed.), vol. VII., p. 339.
[3] *Vid. Works*, (Bigelow ed.), vol. X., p. 11.
[4] *Vid. Works*, (Bigelow ed.), vol. IV., p. 196.
[5] *Vid. Works*, (Bigelow ed.), vol. II., p. 75.

Note, for example, his *Wail of a Protected Manufacturer*:[1] "I am a manufacturer and was a petitioner for the act to encourage and protect the manufacturers of this state. I was very happy when the act was obtained, and I immediately added to the price of my manufactures as much as it would bear so as to be a little cheaper than the same article imported in paying the duty. By this addition I hoped to grow richer. But as every other manufacturer whose wares are under the protection of that act has done the same, I begin to doubt whether, considering the whole year's expenses of my family, with all these separate additions which I pay to other manufacturers, I am at all a gainer. And I confess I cannot but wish that except the protecting duty on my own manufacture, all duties of the kind were taken off and abolished." In a similar strain is written the article *On the Price of Corn and Management of the Poor*.[2] This article appeared first in the *London Chronicle* in 1766. Later it figured as one of fifteen papers on economic subjects in the *Lord Overstone Collection of Scarce and Valuable Economical Tracts*, edited by J. R. McCulloch in 1859. It was again reprinted in France in the *Éphémérides du Citoyen*, a physiocratic journal. "I am one of that class of people," says the author, "that feeds you all, and at present is abused by you all; in short, I am a *farmer*." The article was written to show how unjust were the laws forbidding the farmers to export their products. If it is a good principle to prohibit the exportation of a commodity, says the farmer, stick to the principle and prohibit the exportation of cloth, leather, shoes, iron and manufactures of all sorts. Then commodities ought to be cheap enough. Against this artificial attempt to cheapen commodities, the farmer is made to say that "some folks seem to think they ought never to be easy till England becomes another Lubberland, where it is fancied that streets are paved with penny-rolls, the houses tiled with pancakes, and chickens ready roasted cry 'Come eat me.'" The paper throughout is an able defense of the agricultural class against the popular prejudices of that day.

[1] *Vid. Works*, (Bigelow ed.), vol. X., p. 118.

[2] *Vid. Works*, (Bigelow ed.), vol. IV., p. 64.

II.—PAPER MONEY AND INTEREST.

Franklin, in the article on the *Nature and Necessity of a Paper Currency*, lays down a number of monetary principles which are in substance as follows: (1) A great want of money in any trading country occasions interest to be at a very high rate. Conversely, a plentiful currency will occasion interest to be low. (2) Want of money in a country reduces the price of its produce. Conversely, a plentiful currency will cause the trading produce to bear a good price. Inasmuch as prices adjust themselves to the amount of money in the country, this proposition is true. (3) Want of money in a country discourages laborers and handicraftsmen (who are the chief strength and support of the people) from coming to settle in it; and induces many that were settled in it to leave the country and seek entertainment and employment in other places where they can be better paid. Conversely, a plentiful currency will encourage great numbers of laborers to come and settle in the country. (4) Want of money in the province occasions a greater consumption of English and European goods in proportion to the number of people than there would otherwise be. Conversely, a plentiful currency will occasion a less consumption of European goods in proportion to the number of the people.[1]

In the statement of these principles Franklin displays the politician rather than the economist. He loses sight entirely of the distinction between a medium of exchange and capital. Yet it is safe to say that these "laws," though false in many particulars, helped in no small measure to carry his point. As Franklin says,[2] there was no one able to answer him, "the opposition slackened," and the bill to increase the paper currency of Pennsylvania "was carried by a majority in the House."

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[1] *Vid. Works*, (Bigelow ed.), vol. I., p. 360.

[2] *Autobiography*, (Bigelow ed.), p. 186.

In determining the value of money, Franklin makes a distinction between coin and bullion which shows a careful study and a comprehension of monetary problems such as are seldom found among students twenty-three years old. He says:[1] "To make a true estimate of the value of money we must distinguish between money as it is bullion which is merchandise, and as by being coined it is made a currency. For its value as a merchandise and its value as a currency are two distinct things, and each may possibly rise and fall in some degree independent of the other.[2] Thus if the quantity of bullion increases in a country it will proportionately decrease in value; but if at the same time the quantity of current coin should decrease (supposing payments may not be made in bullion), what coin there is will rise in value as a currency." "Money as bullion or as land," he continues, "is valuable by so much labor as it costs to procure that bullion or land. Money as a currency has an additional value by so much time and labor as it saves in the exchange of commodities." If money as a currency saves one-fourth of the time and labor of a country (which under a system of barter would be spent in hunting suitable persons with whom to exchange), it must on that account have one-fourth added to its original value.

This is a very loose and broad statement, such as the economic writers of his day were prone to make. It cannot be accepted without limitation. But it is interesting as showing that Franklin was on the trail of that principle in finance which later became the corner-stone of Ricardo's theory of money.[3]

On the conditions assumed by Franklin, that the State alone coins money, this distinction between gold as bullion and gold as coin becomes of the utmost importance. Upon

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[1] *Vid. Works*, (Bigelow ed.), vol. I., p. 377.

[2] *Vid.* also Ricardo, *Political Economy*, 1st American edition, p. 380.

[3] *Cf.* Walker, *Political Economy*, p. 147; also Prof. Smart, *Fortnightly Review*, November, 1893, *Is Money a mere Commodity?*

it depends the possibility of a seigniorage above cost of coinage and of a paper currency. And Franklin clearly saw this. We must bear in mind that at this time he was not working in the interest of pure science. He had, to quote one of his own sayings, "an ax to grind." He was framing an argument for the issuing of paper money by the State.

We have mentioned the report of the English Board of Trade of 1764.[1] It had been urged in this report: (1) That the paper currency carried the gold and silver out of the colonies; (2) That the English merchants trading in America had lost through the use of this currency; (3) That the restrictions of paper money in New England had benefited trade very much in that region; (4) That every medium of trade should have an intrinsic value; (5) That debtors in the Assemblies made paper money with fraudulent views; (6) That in the middle colonies, where the credit of the paper money was the best, the bills did not retain their nominal value.

Most of these declarations are questions of fact. One only is a question of theory. Must the medium of exchange have intrinsic value? On this point Franklin speaks with no uncertain voice. He maintains[2] that men will not hesitate to take anything as full payment of debt provided they have the assurance that they can repass the article at the same value at which they received it. At that very time, said Franklin, three pennyworth of silver were passing in England for sixpence. For this difference between the nominal and intrinsic value there was nothing, not even paper. And as Ricardo so plainly demonstrates, a paper currency is nothing more than money, for the coining of which the State charges not one, nor five, but one hundred per cent. seigniorage.

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[1] *Vid.* p. 14.

[2] *Remarks and Facts Relative to the American Paper Money, vid.* p. 14, *supra.*

As to the last charge, that even in the middle colonies the bills did not retain their nominal value, but depreciated whenever the quantity was increased, Franklin maintained that the bills were as stable in value as silver. In England, with the changing demand for exportation, the price of bullion varied from 5s. 2d. to 5s. 8d. per ounce, a fluctuation of nearly ten per cent. When bullion was selling for 5s. 8d. per ounce, could it be said that all the coin and all the bank notes in England had depreciated ten per cent.? It was only in this sense that Pennsylvania bills could be said to have fluctuated in value. With the first issue of paper money a silver dollar exchanged for 7s. 6d. in paper. And this ratio was maintained steadily for forty years, although in the meantime the quantity of paper bills was increased from £15,000 to £600,000.

Böhm-Bawerk has described "Turgot as the first who tried to give a scientific explanation of Natural Interest on capital." Turgot's doctrine, as characterized by the Austrian economist, "bases the entire interest of capital on the possibility always open to the owner of capital, to find for it an ulterior fructification through the purchase of rent-bearing land," and is called the fructification theory of interest.[1] Yet it is clear that almost fifty years before the *Réflections* were published Franklin attempted to explain Natural Interest in the same way as did Turgot (1729-1776). Turgot's theory is summed up as follows:[2] A definite capital must yield a definite interest, because it may buy a piece of land bearing a definite rent. To take a concrete example: A capital of $10,000 must yield $500 interest, because with $10,000 a man can buy a piece of land bearing a rent of $500.[3] Franklin, it will be remembered, had been arguing for an increase of the paper currency. In determining the

[1] *Capital and Interest*, p. 63.

[2] *Ibid.*, p. 64.

[3] For the full statement of Turgot's views, *vid. Réflections*, Daire edition, sec. 57 *et seq.* References cited in *Capital and Interest.*

"natural standard of usury," he says that where the security is undoubted it must be equal to "the rent of so much land as the money lent will buy. For it cannot be expected that any man will lend his money for less than it would fetch him in as rent if he laid it out in land. . . . Now if the value of land is twenty years' purchase, five per cent. is the just rate of interest for money lent on undoubted security."[1]

Upon certain aspects of monetary theory Franklin's views changed with the course of political events. In the *Modest Inquiry* (1729) he held that an overissue of paper money was impossible. In the *Paper Money of the United States* (1781) he stated that the depreciation of the Continental currency was due to overissue. In the *Remarks and Facts* (1767) he maintained that paper money should be a legal tender. In a letter to Veillard (1788) he held that "the making of paper money with such a sanction is a folly." In the *Remarks and Facts* he opposed interest-bearing paper money. In a letter to Samuel Cooper (1779) he stated that to prevent the depreciation of the Continental currency he proposed in Congress "that the bills should bear interest."

[1] *Works*, (Bigelow ed.), vol. I., p. 372.

III.—WAGES.

The *Reflections on the Augmentation of Wages* was written in Paris and published in the *Journal d'Economie Publique*.[1] The article is worthy of our consideration because of the stand that the author takes with reference to the prevalent idea that wages must necessarily be low in a country which wishes to enjoy a large foreign trade. This idea, says Franklin, is both cruel and ill-founded. The object of every political society should be "the happiness of the largest number." And if in order to possess a large foreign trade "half the nation must languish in misery, we cannot without crime endeavor to obtain it, and it becomes the duty of the government to relinquish it. To desire to keep down the rate of wages, with the view of favoring the exportation of merchandise, is to seek to render the citizens of a state miserable, in order that foreigners may purchase its productions at a cheaper rate; it is at most attempting to enrich a few merchants by impoverishing the body of the nation; it is taking the part of the stronger in that contest, already so unequal, between the man who can pay wages and him who is under the necessity of receiving them."

But, says Franklin, while it is necessary that the price of goods intended for export be low, it is not necessary that wages be low in order that the price of commodities may be low. "The labor necessary to gather or prepare the article to be sold may be cheap, and the wages of the workman good. Although the workmen of Manchester and Norwich, and those of Amiens and Abbeville, are employed in the same kind of labor, the former receive considerably higher wages than the latter; and yet the woolen fabrics of Manchester and Norwich, of the same quality, are not so dear as those of Amiens and Abbeville." The price of an article may be

[1] *Works*, (Bigelow ed.), vol. X., p. 46.

lowered: (1) By using improved machinery; (2) By employing intelligent and active workmen; (3) By the judicious division of labor. "Now these methods of reducing the price of manufactured articles have nothing to do with the low wages of the workmen. In a large manufactory, where animals are employed instead of men, and machinery instead of animal power, and where that judicious division of labor is made which doubles, nay, increases tenfold both power and time, the article can be manufactured and sold at a much lower rate than in those establishments which do not enjoy the same advantages; and yet the workmen in the former may receive twice as much as in the latter."

Insufficient wages occasion the decline of a manufactory, while high wages promote its prosperity. "High wages attract the most skilful and most industrious workmen. Thus the article is better made, it sells better, and in this way the employer makes a greater profit than he could do by diminishing the pay of the workmen. A good workman spoils fewer tools, wastes less material, and works faster than one of inferior skill; and thus the profits of the manufacturer are increased still more."

It would be idle to look for a scientific law of wages in Franklin's writings. Franklin very seldom formulated laws. In the article *On the Laboring Poor*[1] he stated incidentally that "as the cheapness of other things is owing to the plenty of those things, so the cheapness of labor is in most cases owing to the multitude of laborers and to their underworking one another in order to obtain employment." It is in this article also that Franklin made the oft-quoted statement that "our laboring poor receive annually the whole of the clear revenues of the nation."

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[1] 1768, *vid. Works*, (Bigelow ed.), vol. IV., p. 154.

IV.—POPULATION.

Through all of Franklin's works on population there runs the same thought, that the people will "increase and multiply in proportion as the means and facility of gaining a livelihood increase."[1] He describes three economic societies:[2] that of the hunter, the farmer, and the manufacturer. In the first two societies people can increase only as new land is added to the community. "Our people," he says, "being confined to the country between the sea and the mountains, cannot much more increase in numbers, people increasing in proportion to their room and means of subsistence."[3] After all the land is taken up, the hunter and the farmer must give way to the manufacturer, and, he adds, all the penal laws in the land will not be able to prevent manufactures under such circumstances. After society has reached the manufacturing stage there will be a rapid increase in population, until population again presses upon subsistence. When this stage is reached the population must necessarily remain stationary. "Europe is generally full settled with husbandmen and manufacturers, and therefore cannot now much increase in people."[4]

The rate of increase of population depends on both the number of marriages and the age at which marriages take place. Franklin advocated early marriages because: (1) Early ones stand the best chance of happiness. Habits are

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[1] *Interest of Great Britain Considered, vid. Works,* (Bigelow ed.), vol. III., p. 95.

[2] Referred to in Malthus' *Essay on Population,* 6th ed., vol. I., p. 36.

[3] *Vid. Works,* (Bigelow ed.), vol. II., p. 475. This argument was used effectively whenever Franklin wanted colonial territory extended.

[4] *Observations concerning the Increase of Mankind and Peopling of Countries, Works,* (Bigelow ed.), vol. II., p. 228.

not yet set and form more easily to each other; (2) By early marriages youthful dissipation is avoided; (3) Parents who marry late often die before the children are grown up. "Late children are early orphans"; (4) Early marriages bear more children.[1]

"The married state is the happiest state. Man and woman have each of them qualities and tempers in which the other is deficient and which in union contribute to the common felicity. Single and separate they are not the complete human being; they are like the odd halves of scissors; they cannot answer the end of their formation."[2]

Owing to the cheapness of land in America marriages are more numerous and occur earlier here than in Europe. Franklin preceded Malthus in pointing out the influence of a high standard of living on the increase of population, in other words, the preventive check to population. "The greater the common fashionable expense of any rank of people the more cautious they are of marriage." In cities, where living expenses are higher and luxuries more common, "many live single during life, and continue servants to families, journeymen to trades," so that cities do not by natural generation supply themselves with inhabitants. Malthus looked upon this check as beneficial to a society, while Franklin considered it a great misfortune to his country. We must remember that Franklin was influenced by the picture of a country suffering for the want of men; Malthus, by the picture of a country suffering for the want of bread. Franklin advocated schemes for the increase, Malthus for the decrease of population.

This natural law of numbers and subsistence, Franklin says, is universal throughout the vegetable and animal kingdoms.[3] If the face of the earth were vacant of plants it might soon be overspread with one species, as for example

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[1] *Vid. Works*, (Bigelow ed.), vol. IV., p. 196. Letter to John Alleyne.

[2] To John Sargent, *vid. Works*, (Bigelow ed.), vol. VIII., p. 257.

[3] *Vid. Works*, (Bigelow ed.), vol. II., p. 232.

with fennel. And were it empty of other inhabitants it might in a few ages be replenished from one nation only, as for instance with Englishmen.[1] "In fine, a nation well regulated is like a polypus; take away a limb, its place is soon supplied. Cut it in two, and each deficient part shall speedily grow out of the part remaining. Thus if you have room and subsistence, of one nation you may make ten nations equally populous and powerful."

Nor do we need legislative enactments to adjust properly the number of inhabitants among the nations of mankind. "The waters of the ocean may move in currents from one quarter of the globe to another, as they happen in some places to be accumulated and in others diminished; but no law beyond the law of gravity is necessary to prevent their abandoning any coast entirely. Thus the different degrees of happiness of different countries and situations find, or rather make their level by the flowing of people from one to another, and where that level is once found, the removals cease. Add to this that even a real deficiency of people in any country occasioned by a wasting war or pestilence is speedily supplied by earlier and more prolific marriages, encouraged by the greater facility of obtaining the means of subsistence. So that a country half depopulated would soon be repeopled till the means of subsistence were equalled by the population. All increase beyond that point must perish or flow off into more favorable situations. Such overflowings there have been, of mankind in all ages, or we should not now have so many nations. But to apprehend absolute depopulation from that cause, and call for a law to prevent it, is calling for a law to stop the Thames lest its waters, by what leave it daily at Gravesend, should be quite exhausted."[2]

What has been the influence of Franklin upon Malthus? It has been said that Franklin's work suggested Malthus'

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[1] Quoted by Malthus, *Essay on Population*, sixth edition, vol. I., p. 2.

[2] *On a Proposed Act of Parliament for Preventing Emigration, vid. Works*, (Bigelow ed.), vol. V., pp. 421-422.

Essay on Population[1] This seems to be claiming too much for the subject of our essay. In 1797 appeared Godwin's *Enquirer*.[2] Certain parts of this called out Malthus' *Essay on Population* in 1798, the first edition of which, it would seem, contained no reference to Franklin. After the first edition Malthus studied his subject more carefully, and found many works of which he had not before been familiar, and from which he quoted in his later editions. In the preface to the second edition of his work Malthus said the *Essay on the Principles of Population* which he published in 1798 was suggested by a paper in Mr. Godwin's *Inquirer*. "The only authors from whose writings I had deduced the principle, which formed the main argument, of the essay were Hume, Wallace, Dr. Adam Smith and Dr. Price. . . . In the course of this inquiry I found that much more had been done than I had been aware of when I first published the essay." Among the writers who had preceded him, Malthus mentions Franklin, from whose works he quotes in the later editions.[3] Franklin, it seems, was the first to attempt to fix the rate of increase of population under favorable circumstances. As early as 1760 he asserted that the American population was doubled by procreation alone every twenty or twenty-five years.[4] Malthus in his later editions adopted Franklin's estimate of the rate of increase of population in America. It was this estimate that aroused the ire of the sarcastic Godwin. "Dr. Franklin," said he,[5] "is in this case particularly the object of our attention, because he was the first man who started the idea of the people of America being multiplied by procreation so as to double

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[1] *Vid.* Thorpe, *Benjamin Franklin and the University of Penna.*, p. 142.

[2] The full title of the work is, *The Enquirer; Reflections on Education, Manners and Literature.*

[3] *Vid.* for example, vol. I., pp. 2 and 36, of sixth edition.

[4] This appears time and again throughout his works. *Vid. Works*, (Bigelow ed.), vol. III., pp. 92, 417; VI., p. 49.

[5] *Population, an Enquiry concerning the Power of Increase in the Numbers of Mankind*, pp. 119 *et seq.*

every twenty-five years. . . . Dr. Franklin has obtained a great name. But when he launches into assertions so visionary, I must say that a great name goes with me for nothing. Dr. Franklin, born at Boston, was eminently an American patriot. And the paper from which these extracts were taken[1] was expressly written to exalt the importance and glory of his country. If this paper were without a date, I should have thought it had been written long before Franklin was twenty-five years of age."[2] While it is true, then, that Franklin anticipated Malthus in pointing out the relation between population and subsistence, and the influence of a high standard of living as a preventive check to population, yet we cannot claim any direct influence of Franklin's writings on the first edition of Malthus' essay. Whatever influence he exerted originally came indirectly through the writings of Dr. Price and Adam Smith. Dr. Price was one of Franklin's regular correspondents, and Smith adopted Franklin's views with reference to the increase of population in the colonies.

We have already said that in his later editions Malthus availed himself of the work of Franklin. It is worth mentioning here that the first edition of Malthus did not contain his preventive check to population. "Throughout the whole of the present work," he says in his preface to the second edition,[3] "I have so far differed in principle from the former as to suppose the action of another check to population, which does not come under the head of either vice or misery." Inasmuch as Malthus in the interval between the appearance of the first and the second edition of his work made himself familiar with Franklin's writings on population, one is led to believe that the influence of Franklin may be seen in Malthus' preventive check to the increase of population.

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[1] *The Peopling of Countries, vid. Works,* (Bigelow ed.), vol. II., p. 223.

[2] Godwin places the date of this paper in 1731. In this he is incorrect. The paper appeared in 1751. Hence Franklin was not twenty-five, but forty-five years old.

[3] *Vid.* p. 7.

V.—VALUE.

Franklin has been called the father of the Labor theory of value.[1] This is incorrect. It is true that as early as 1729, in his first paper of an economic character,[2] Franklin states this theory very fully. But the close resemblance between his language and that of Sir William Petty who preceded him by more than fifty years,[3] leads one to conclude that Franklin, who lived in London in 1724, must have known of Petty's work. Compare, for example, the following quotations taken from the works of Franklin and Petty. The same commodities are compared, in the same ratios, and the same Latin phrase used at the end:

FRANKLIN, 1729.

"By labor may the value of silver be measured as well as other things. As, suppose one man employed to raise corn while another is digging and refining silver. At the year's end, or at any other period of time, the complete produce of corn and that of silver are the *natural price of each other;* and if one be twenty bushels and the other twenty ounces, then an ounce of that silver is worth the labor of raising a bushel of

PETTY, 1662.

"Labor is the father and active principle of wealth, lands are the mother." And again, "If a man can bring to London an ounce of silver out of the earth in Peru in the same time that he can produce a bushel of corn, *then one is the natural price of the other.*

Now if by reason of new and more easy mines a man can get two ounces of silver as easily as formerly he did one, then corn will be as cheap at 10s.

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[1] Thorpe, *Benjamin Franklin and the University of Pennsylvania, vid.* p. 142.

[2] *The Nature and Necessity of a Paper Currency, vid. Works,* (Bigelow ed.), vol. I., p. 371.

[3] Petty's *Essay on Taxes and Contributions* appeared in 1662.

that corn. Now if by the discovery of some nearer, more easy or plentiful mines, a man may get forty ounces of silver as easily as formerly he did twenty, and the same labor is still required to raise twenty bushels of corn, then two ounces of silver will be worth no more than the same labor of raising one bushel of corn and that bushel of corn will be as cheap at two ounces as it was before at one, *caeteris paribus.*" *Nature and Necessity of a Paper Currency. Works* (Bigelow ed.), vol. I., p. 371.

the bushel as it was before at 5s., *caeteris paribus.*" *Essay on Taxes and Contributions*, p. 32.

It may be interesting in this connection to cite Smith's illustration of the same theory: "If among a nation of hunters it usually cost twice the labor to kill a beaver which it does to kill a deer, one beaver should naturally exchange for, or be worth, two deer."[1] We observe that in all the quotations the word *natural* occurs. Each is striving to find a *natural* measure for value. This is not strange to one familiar with the philosophy of that day. We notice, too, that with Franklin and Petty time is the chief element in gauging value. Smith adds a third, "the different degrees of hardship endured."

The interesting part about Franklin's theory of value is the change that he makes after his contact with the French economists. The year 1767 is an important date in Franklin's economic career. It will be remembered that this marks his first visit to Paris, and also the beginning of that correspondence between him and the economists which was kept up for many years. It is not too much to say that even if Franklin had never seen a line of the *Tableau Economique*

[1] *Vid. Wealth of Nations*, B. I., ch. 5.

or the *Physiocratie*, his economic writings would still have been in many respects what we should call physiocratic. And yet we must admit that for certain doctrines he is directly indebted to the French school. A few months after he had received the *Physiocratie* he sums up as follows his labor theory of value:[1]

"Food is always necessary to all, and much the greatest part of the labor of mankind is employed in raising provisions for the mouth. *Is not this kind of labor, then, the fittest to be the standard by which to measure the values of all other labor, and consequently of all other things whose value depends on the labor of making or procuring them?*"[2]

In determining the value of manufactured articles, he comes out more plainly still on the physiocratic side. Though six pennyworth of flax, he says, be worth twenty shillings, when worked into lace, yet the very cause of its being worth twenty shillings is that, besides the flax, it has cost 19s. 6d. in subsistence to the manufacturer.[3]

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[1] *Vid.* Letter to Lord Kames, Feb. 21, 1769, *Works*, (Bigelow ed.), vol. IV., p. 229. Also quoted in Tytler's Life of Kames, vol. II., p. 115.

[2] The italics are my own.

[3] *Vid. Positions to be examined*, *Works*, (Bigelow ed.), vol. IV., p. 235, 4 April, 1769.

VI.—AGRICULTURE.

After what has been said, we are prepared to learn that Franklin estimated very highly the value of agriculture in his economic system. Such is the fact. He always took great interest in the welfare of the farmers. It was among them that he expected to find the greatest industry and frugality. Throughout his entire life he was on the lookout for new grasses or new plants which could be introduced in the colonies.[1]

While abroad he tried to introduce silk culture in America. "I send you," he says in a letter to Cadwallader Evans,[2] "a late French treatise on the management of silk-worms. . . . There is no doubt with me that it [silk culture] might succeed in our country. It is the happiest of all inventions for clothing. Wool uses a good deal of land to produce it, which if employed in raising corn would afford much more subsistence for man than the mutton amounts to. Flax and hemp require good land, impoverish it, and at the same time permit it to produce no food at all. But mulberry trees may be planted in hedgerows, on walks or avenues, or for shade near a house where nothing else is wanted to grow. The food for the worms is in the air, and the ground under the trees may still produce grass or some other vegetable good for man or beast. Then the wear of silk garments continues so much longer, from the strength of the materials, as to give it greatly the preference."

In many of his private letters Franklin describes agriculture as "the most useful, the most independent, and therefore the noblest of employments." He calls agriculture and fisheries the great source of increasing wealth in the United

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[1] *Vid. Works*, (Bigelow ed.), vol. II., p. 75, letter to Jared Elliot; vol. VI., p. 21, letter to Philip Mazzei.

[2] *Vid. Works*, (Bigelow ed.), vol. IV., p. 268.

States. "He that puts a seed into the earth is recompensed, perhaps, by receiving forty out of it. And he who draws a fish out of our water draws up a piece of silver."[1] If a country will be attentive to these, the power of rivals, with all their restraining and prohibiting acts, cannot hurt it. "We are sons of the earth and the seas, and like Antaeus in the fable, if in wrestling with Hercules we now and then receive a fall, the touch of our parents will communicate to us fresh strength and vigor to renew the contest." It is the "industrious, frugal farmers" who are the mainstay of the nation, and who cannot be ruined by the luxury of the seaports.

It is to be remembered that about 1768 Parliament was very much agitated over the Boston Resolutions not to import any goods manufactured in England. In a letter of this date,[2] Franklin gauges the value of agriculture to any society. He says: "After all, this country (*i. e.* England) is fond of manufactures beyond their real value, for the true source of riches is husbandry. Only agriculture is truly productive of new wealth." In this respect, too, Franklin is in entire accord with the Physiocrats.

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[1] *The Internal State of America*, p. 16, *supra.*

[2] To Cadwallader Evans, 20 Feb., 1768, *vid. Works*, (Bigelow ed.), vol. IV., p. 120.

VII.—MANUFACTURES.

Franklin maintained that the shape which the economic life of a society would take depended on the number of the people in that society. "The natural livelihood of the thin inhabitants of a forest country is hunting; that of a greater number, pasturage; that of a middling population, agriculture, and that of the greatest, manufactures."[1] He often had occasion to convince the English people that so long as land was abundant in the colonies the English need not fear American competition in manufactures. According to Franklin, a system of manufactures in a country implies:

(1) A large population. "They who understand the economy and principles of manufactures know that it is impossible to establish them in places not populous." Everybody knows, he says, that all the penal and prohibitory laws that were ever devised will not be sufficient to prevent manufactures in a country whose inhabitants surpass the number that can subsist by the husbandry of it. It is because there are many poor without land in a country that undertakers can carry on a manufacture and afford it cheap enough to prevent the importation of the same kind from abroad and to bear the expense of its own exportation. (2) A great system of commerce. This is necessary to supply the raw materials. (3) Machines for expediting and facilitating labor. (4) Channels of correspondence for vending the wares, together with the confidence and credit necessary to support this correspondence. (5) Mutual aid of different artisans, that is, in the language of the modern economist, a high degree of division of labor. "Manufactures, where they are in perfection, are carried on by a multitude of hands, each of which is expert only in his own part, no one of them

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[1] *Vid. Works*, (Bigelow ed.), vol. III., p. 86. *Interests of Great Britain considered with reference to her Colonies.*

a master of the whole." Hence, in order to establish a new industry in a new country it is necessary to import "a complete set" of workmen.

But wherein lies the advantage of manufactures to a society if "only agriculture is truly productive of new wealth"? Even though "riches are not increased by manufacturing," yet Franklin claimed that manufactures are often *advantageous* for the following reasons: (1) Provisions in the shape of manufactures are more easily carried for sale to foreign markets. "And where the provisions cannot be easily carried to market, it is well to transform them." It was because the farmers of western Pennsylvania did not have the necessary means of transportation to market their wheat that they converted it into whiskey. This explains why they so vigorously opposed Hamilton's internal revenue tax in what is commonly called the Whiskey Insurrection. (2) In families where the children and servants have some spare time, it is well to employ it in making something, for example by spinning or knitting. For "the family must eat whether they work or are idle." (3) Another advantage of manufactures is in this, that by their means our traders may more easily cheat strangers. Few, where it is not made, are judges of the value (*i. e.*, cost of production) of lace. The importer may demand 40s. and perhaps get 30s. for that which cost him but 20s.

There are then, says Franklin, three ways by means of which a nation can acquire wealth. The first way is by war, as the Romans did, in plundering their conquered neighbors. This is robbery. The second is by commerce, which is generally cheating. The third, by agriculture, the only honest way, "wherein man receives a real increase of the seed thrown into the ground, in a kind of continuous miracle, wrought by the hand of God in his favor, as a reward for his innocent life and his virtuous industry."[1]

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[1] *Vid.* (1) Letter to Cadwallader Evans, *Works*, (Bigelow ed.), vol. IV., p. 120; (2) *Positions to be examined concerning National Wealth*, vol. IV., p. 235.

When we read such physiocratic statements as the one laid down by Franklin that manufactures are only another shape into which so much of provisions and subsistence are turned, we ought constantly to remember the condition of laboring men then engaged in manufactures. While Franklin was in England he made a tour of investigation through some of the manufacturing towns. He gave the result of his observations in a letter to a friend,[1] a part of which we quote: "Had I never been in the American colonies, but were to form my judgment of civil society by what I have lately seen, I should never advise a nation of savages to admit of civilization. For I assure you that in the possession and enjoyment of the various comforts of life, compared to these people, every Indian is a gentleman." Is it a wonder that Franklin asserted that only agriculture is truly productive?

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[1] To Joshua Babcock, *vid. Works*, (Bigelow ed.), vol. IV., p. 441.

VIII.—FREE TRADE.[1]

Franklin was always a firm believer in the utmost freedom of trade. This he based on *natural* right. "There cannot be a stronger natural right," he said,[2] "than that of a man's making the best profit he can of the natural produce of his lands." In a letter to a friend,[3] he "admires the spirit with which the Irish are at length determined to claim some share of that freedom of commerce which is the right of all mankind, but which they have been so long deprived of, by the abominable selfishness of their fellow-subjects. To enjoy all the advantages of the climate, soil, and situation in which God and nature have placed us, is so clear a right as that of breathing, and can never be justly taken from men but as a punishment for some atrocious crime."

The self-interest of the traders will be sufficient to guide the direction of trade and to fix prices. It seems contrary to the nature of commerce, he says,[4] for government to interfere in the prices of commodities. Trade will best make its own rates. This is as true of foreign as of domestic trade. The state whose ports are open to the world is the one whose goods will bring the highest price, and whose money will buy the cheapest goods.[5]

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[1] Most collections of Franklin's works contain the *Essay on Principles of Trade*, a paper full of sound economic doctrine. The essay was written originally by George Whatley, and revised by Franklin. Franklin later disclaims all right of authorship to the article. In a letter to Whatley he asks for a copy of Whatley's "excellent little work, the *Principles of Trade*." For this reason we have given no notice to this paper.

[2] *Causes of the American Discontent*, 1768, *vid. Works*, (Bigelow ed.), vol. IV., p. 107.

[3] To Sir Edwin Newenham, *vid. Works*, (Bigelow ed.), vol. VI., p. 405.

[4] *Remarks on a Plan for the Future Management of Indian Affairs*, *vid. Works*, (Bigelow ed.), vol. III., p. 479.

[5] Letter to Livingstone, *vid. Works*, (Bigelow ed.), vol. VIII., p. 304.

Nor did he believe in import duties for the sake of encouraging new industries. "When the governments (that is, of the separate states before 1787) have been solicited to support such schemes by encouragements in money or by imposing duties on importations of such goods, it has been generally refused on this principle, that if the country is ripe for the manufacture, it may be carried on by private persons to advantage, and if not, it is a folly to think of forcing nature. The manufacture of silk, they say, is natural in France, as that of cloth in England, because each country produces in plenty the first material. But if England will have a manufacture of silk as well as that of cloth, and France, of cloth as well as that of silk, these unnatural operations must be supported by mutual prohibitions or high duties on the importation of each other's goods, by which means the workmen are enabled to tax the home consumer by greater prices, while the higher wages they receive makes them neither happier nor richer."[1] Franklin looked at the problem from the consumer's point of view. "We hear much," he says, "of the injury the concessions to Ireland will do to the manufacturers of England, while the people of England seem to be forgotten as quite out of the question. If the Irish can manufacture cottons, and silks, and linens, and cutlery, and toys, and books so as to sell them cheaper in England than the manufacturers of England sell them, is not this good for the people of England?"[2]

The effect of trade restrictions is concisely put in a *Note respecting Trade and Manufactures*.[3] "Suppose a country, X, with three manufactures, as cloth, silk, iron, supplying three other countries, A, B and C, but is desirous of increasing the vent, and raising the price of cloth in favor of her

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[1] *Information to those who would remove to America, vid. Works,* (Bigelow ed.), vol. VIII., p. 181. It will be remembered that this was written in France.

[2] Letter to Benjamin Vaughan, *vid. Works,* (Bigelow ed.), vol. IX., p. 96.

[3] *Vid. Works,* (Bigelow ed.), vol. IV., p. 21.

own clothiers. In order to do this, she forbids the importation of foreign cloth from A. A in return forbids silks from X. Then the silk workers complain of a decay of trade. And X, to content them, forbids silks from B. B in return forbids iron ware from X. Then the iron workers complain of decay, and X forbids the importation of iron from C. C in return forbids cloth from X. What is got by all these prohibitions? Answer.—All four find their common stock of the enjoyment and conveniences of life diminished." Franklin, the day after he returned from England, May 6th, 1775, was elected a delegate to the second Continental Congress. In this Congress he introduced resolutions of free trade with continental Europe. But Congress refused to act on them at that time. We cannot close this part of our essay without referring to one more public act of Franklin's. It had long been a favorite idea with him that "free ships make free goods." He believed in allowing free course to neutral ships of commerce in time of war, and had the honor as his last public act in Europe of signing a treaty with Frederick the Great, a clause of which embodied this favorite idea.[1]

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[1] *Vid.* (1) *Works*, (Bigelow ed.), vol. IX., p. 89; (2) Bancroft, *History of the United States*, edition of 1883, vol. VI., p. 152.

IX.—TAXATION.

In the examination before the House of Commons in 1766, Franklin divided taxes into two kinds.[1] An external tax he defined as a "duty laid on commodities imported." This duty is added to the first cost and enters into the price of the article. It is a voluntary tax, inasmuch as any one may avoid the tax by not buying the article. An internal tax he defined as a tax laid within the colony. It is a voluntary tax if levied by the representatives of the people, but involuntary if imposed by Parliament, in which the colonies are not represented. On general principles Franklin believed that a State should raise its revenue by direct taxes rather than by import duties. Import duties are objectionable, he said, because: (1) They are only another mode of taxing your own people; (2) The law is difficult to execute, leads to smuggling; (3) It prevents wholesome exchange of products between two countries, and this destroys honest trade.[2]

It has just been said that Franklin held that an import duty enters into price. More than this, he maintained that a tax on exported articles is paid by the consumer. "All goods brought out of France to England or any other country are charged with a small duty in France which the consumers pay."[3]

Although on purely economic grounds Franklin favored direct taxes, yet we find that as a means of raising revenue for the United States just after the adoption of the Constitution he advocated import duties. This called forth a

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[1] *Vid. Works*, (Bigelow ed.), vol. III., p. 422.

[2] *Vid.* (1) Letter to Jared Elliot, *Works*, (Bigelow ed.), vol. II., p. 78; (2) Letter to Wm. Franklin, *ibid.*, vol. IV., p. 130.

[3] Letter to Wm. Franklin, *ibid.*, vol. IV., p. 131; Letter to Shirley, *ibid.*, vol. III., p. 381.

shower of letters from his French correspondents, who called him to task for his economic apostasy. In his replies to these letters we find the same reasons given for his actions: (1) That the war debt made import duties necessary; (2) That an indirect tax would not bear so grievously on the people, who were still sensitive on the subject of taxation; (3) That to collect a direct tax in a sparsely settled country was too expensive. "I am of the same opinion with you respecting the freedom of commerce, especially in countries where direct taxes are practicable. This will be our case in time when our wide-extended country fills up with inhabitants. But at present they are so widely settled, often five or six miles distant from one another in the back country, that a collection of a direct tax is almost impossible, the trouble of the collectors going from house to house amounting to more than the value of the tax. . . . Our debt occasioned by the war being heavy, we are under the necessity of using imports, and every method we can think of, to assist in raising a revenue to discharge it, but in sentiment we are well disposed to abolish duties on importation, as soon as we possibly can afford to do so."[1]

In a letter to Mr. Small[2] he gives as another reason, that the legislators, who are landowners as well, "are not yet persuaded that all taxes are finally paid by the land."

The discourse of Father Abraham in the *Way to Wealth*,[3] although not contributing anything to a theory of taxation, contains a number of aphorisms on voluntary taxation which may not be out of place here. The taxes of the government are indeed heavy, says Father Abraham, but "we are taxed twice as much by our idleness, three times as much by our pride, and four times as much by our folly; and from these taxes the commissioners cannot ease or deliver us by

[1] *Vid.* Letter to the Abbé Morellet, *Works*, (Bigelow ed.), vol. IX., p. 383; also Turgot, *Œuvres*, (Daire ed.), I., 409.

[2] *Works*, (Bigelow ed.), vol. IX., p. 414.

[3] *Vid.* p. 13.

allowing an abatement." "Dost thou love life?" he says; "then do not squander time, for that is the stuff life is made of." And "if time be of all things the most precious, wasting time must be the greatest prodigality," because "lost time is never found again, and what we call time enough always proves little enough." . . . "Away then with your expensive follies," says Father Abraham, "and you will not then have so much cause to complain of hard times, heavy taxes, and expensive families. Goods in the shape of fineries and knicks-knacks are more likely to prove evils in the end."[1]

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[1] A number of similar aphorisms on economic conduct are contained in *Necessary Hints to those that would be Rich*, 1736, (*Works*, Bigelow ed., vol. I., p. 440), and in the *Advice to a Young Tradesman*, 1748, (*Works*, Bigelow ed., vol. II., p. 118).

X.—FRANKLIN AND THE PHYSIOCRATS.

As has been already stated, Franklin made his first visit to Paris in 1767. It will be remembered that this was the year in which the colonial taxes on teas, glass, paints were voted by Parliament. Already France was beginning to show signs of encouraging the colonies to withdraw from the mother-country. Durand, the French minister in London, courted the friendship of Franklin, and no doubt encouraged him to visit Paris. In order that Franklin might be well received in France, Durand gave him "letters of recommendation to the Lord knows who." Franklin suspected that Durand was trying "to blow up the coals between Great Britain and her colonies," but hoped they would "give them no opportunity."[1] Franklin felt that in making this visit to France the greatest caution and secrecy would have to be observed. In a letter to his son regarding this visit, he requests him to "communicate nothing of this letter but privately to our friend Galloway." While this visit was largely of a political character, it is of the greatest interest to the economic student, because it was at this time that Franklin came first into direct contact with the Physiocrats. At once the closest intimacy sprang up. This no doubt was due to the many points of similarity in his views and their system of thought. Franklin was always very favorably disposed towards the industrious and frugal farmer. In the opening lines of the essay on the *Price of Corn* he says: "I am one of that class of people that feeds you all and at present is abused by you all. In short, I am a farmer." Franklin came from a country in which it could not be denied that agriculture was the most important source of wealth. He could not do otherwise, then, than to assent to

[1] *Vid. Works*, (Bigelow ed.), Letter to William Franklin, vol. IV., p. 32.

the physiocratic dictum that everywhere agriculture alone is productive. Then again, from the very beginning he advocated the utmost freedom of trade, whether domestic or foreign. We have seen that he opposed the Connecticut Tariff as well as the attempt to regulate the trade with the Indians. In these broad-minded views also he found himself in entire accord with the Physiocrats, for we are beginning to see that there is more to the physiocratic system than the "sterility of manufactures." In advocating the liberal, unselfish policy which should take in "the interest of humanity, or the common good of mankind"[1] he was in harmony with physiocratic philosophy as well as independent of French influence. Besides, the words *nature* and *natural* appealed as strongly to Franklin's mind as they did to those of the Physiocrats. With him agricultural labor fixes the *natural* price of commodities. His rate of interest is a *natural* rate, determined by the rent of so much land as the money lent will buy. Freedom of trade is based on a *natural* right. Manufactures will *naturally* spring up in a country as the country becomes ripe for them. His law of the increase of population is based on the more fundamental law in *nature* that numbers are constantly crowding subsistence. The law of the adjustment of population among the different countries of the world is a *natural* law based on the comparative well-being of mankind.[2] Under these circumstances we can easily account for the friendly letters that passed between Franklin and the Economists.

The father of the school of Economists, as is well known, was Quesnay. Among the leading disciples were Mirabeau, the "friend of men," from *Ami des Hommes*, the title of one of his books; Dupont[3] de Nemours, Du Bourg, and Turgot,

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[1] *Vid.* his letter to Hume, 1760, *Works*, (Bigelow ed.), vol. III., p. 127.

[2] *Vid.* for example the quotation on p. 27. Every shipload of steerage passengers landed in Castle Garden shows with what force the principle still operates.

[3] The Dupont family afterwards emigrated to the United States and established the celebrated Dupont Powder Works. *Vid.* Hale's *Franklin in France*, vol. I., p. 7.

with all of whom Franklin became intimately acquainted. The correspondence between Franklin and these men began immediately after his return to London. A letter from Dupont to Franklin early in 1768 runs as follows: "I had already known you as a savant, geometer, naturalist, as the man whom nature permitted to unveil her secrets. But now my friend, Dr. Barber Du Bourg, has been kind enough to send me many of your writings relative to the affairs of your country. I have taken the liberty to translate some of them.[1] At every page I find the philosophical citizen, bringing his genius to bear for the sake of the happiness of his brother and the dearest interest of humanity. These writings have made me regret more than ever that I did not meet you while you were in Paris. If, to our good fortune, you shall come here again, promise me, I beg you, to repair my loss as completely as possible."[2] With the letter came a copy of Dupont's *Physiocratie*. The letter of Franklin in reply to the former is interesting as showing how close was the friendship between him and the Economists. We quote it in full:[3]

"I received your obliging letter of the 10th May, with the most acceptable Present of your Physiocratie, which I have read with great Pleasure, and received from it a great deal of Instruction. There is such a Freedom from local and national Prejudices and Partialities, so much Benevolence to Mankind in general, so much Goodness mixed with Wisdom, in the Principles of your new Philosophy, that I am perfectly charmed with them, and wish I could have stayed in France

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[1] Very probably for publication in the *Éphémérides du Citoyen*, of which Dupont was the editor. We know certainly that the article on the *Price of Corn and Management of the Poor* was so published. *Vid. Works*, (Sparks ed.), vol. II., p. 235, also Palgrave's *Dictionary of Political Economy*, article "Ephémérides."

[2] Quoted by Hale, *Benjamin Franklin in France*, vol. I., p. 13.

[3] *Vid. Works*, (Bigelow ed.), vol. IV., p. 194.

for some time, to have studied in your school[1] that I might by conversing with its founders have made myself quite a Master of that Philosophy. . . . I am sorry to find that that Wisdom which sees the Welfare of the Parts in the Prosperity of the Whole seems yet not to be known in this Country. . . . We are so far from conceiving that what is best for Mankind or even for Europe in general, may be best for us, that we are ever studying to establish and extend a separate Interest of Brittain, to the Prejudice of even Ireland and our own Colonies. . . . It is from your Philosophy only that the maxims of a contrary and more happy conduct are to be drawn, which I therefore sincerely wish may grow and increase till it becomes the governing Philosophy of the human Species, as it must be that of superior Beings in better Worlds. I take the Liberty of sending you a little Fragment that has some Tincture of it, which on that account I hope may be acceptable.

Be so good as to present my sincere Respects to that venerable Apostle Dr. Quesnay, and to the illustrious Ami des Hommes (of whose Civilities to me at Paris I retain a grateful Remembrance) and believe me to be, with real and very great Esteem, Sir,

Your obliged and most obedient humble Servant,

B. FRANKLIN."

Franklin revisited Paris in 1769. But if his first mission was political, his second was still more so. We find very few letters after this date which are not entirely political in their character. Franklin after 1770 was too busy a man to take much interest in the philosophical disquisitions of the

[1] This school is described as follows by Grimm: "They begin with a good dinner, then they labor; they chop and dig and drain; they do not leave an inch of ground in France. And when they have either labored all day in a charming saloon, cool in summer, and well warmed in winter, they part in the evening well contented, and with the happy satisfaction that they have made the Kingdom more flourishing." *Vid.* Hale, *loc. cit.*, p. 8. Rather a pleasant school to study in!

Economists. It was on this second visit that he arranged with Du Bourg for a French translation of his works. Later many letters passed between Franklin and Du Bourg, chiefly with reference to this translation. In one of them Du Bourg sends the "compliments of Dupont and the Marquis of Mirabeau." Dupont himself sends Franklin a copy of one of his later works, which calls out another very interesting letter from Franklin. "Accept my sincere Acknowledgements and Thanks," he says,[1] "for the valuable Present you made me of your excellent Work on the Commerce of the India Company, which I have perused with much Pleasure and Instruction. It bears throughout the Stamp of your Masterly Hand, in Method, Perspicuity, and Force of Argument. The honorable Mention you have made in it of your Friend is extremely obliging. I was already too much in Debt for Favors of that Kind. I purpose returning to America in the ensuing Summer if our Disputes should be adjusted, as I hope they will be in the next session of Parliament. Would to God I could take with me Messrs. Dupont, Du Bourg and some other French Friends with their good Ladies. I might then by mixing them with my Friends in Philadelphia form a little happy Society that would prevent my ever wishing again to visit Europe."

This gives us some idea of the intimacy that existed between Franklin and the Economists. Franklin returned to Paris in 1776. But this time it was Franklin the Diplomatist. One can almost say that with the year 1770 closed Franklin's philosophical career. In a letter to the President of the Royal Society he longs "earnestly for a return of those peaceful times when I could sit down in sweet society with my English philosophical friends, communicating to each other new discoveries and proposing improvements of old ones; all tending to extend the power of man over matter, avert or diminish the evils he is subject to, or augment

[1] 2 October, 1770, *vid. Works*, (Bigelow ed.), vol. IV., p. 368.

the number of his enjoyments."[1] Philosophy with him had always been simply a means of benefiting his fellow-man. When he could do this better as a diplomatist, he very willingly set aside philosophy for diplomacy.[2]

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[1] *Vid. Works*, (Bigelow ed.), vol. VIII., p. 169.

[2] For other letters between Franklin and the French philosophers, *vid.* index to *Works*, (Bigelow ed.), vol. X., under the names Le Roy, Condorcet, Rochefoucauld, Veillard, Du Bourg, Morellet, Chaumont.

XI.—FRANKLIN AND THE ENGLISH PHILOSOPHERS.

During Franklin's first sojourn in England he was made a member of the Royal Society. Here he met the first philosophers of the country. In the summer of 1759 he made a journey to Scotland, where he became acquainted with Lord Kames, Dr. Robertson and the philosopher Hume. How much he enjoyed this visit we may know from a letter he afterwards wrote to Lord Kames. "On the whole, I must say, I think the time we spent there was six weeks of the *densest* happiness I have met with in any part of my life; and the agreeable and instructive society we found there in such plenty has left so pleasing an impression on my memory that did not strong connections draw me elsewhere, I believe Scotland would be the country I should choose to spend the remainder of my days in."[1] Franklin was not the man to let so valuable an acquaintance as that of Lord Kames to go by unimproved. We find many letters passing between them, in which each asks the other's criticism on some project. Now we find them discussing the "preferable use of oxen in agriculture," now agricultural labor as a measure of value.

Kames in one of his letters asked Franklin to send him all his publications. Franklin tried to get them, but finally had to write that he could not find them. "Very mortifying this, to an author, that his works should so soon be lost." Early in 1769 Franklin wrote to Kames that he had "thrown some of his present sentiments into the concise form of aphorisms, to be examined between us, if you please, and rejected or corrected and confirmed, as we shall find most proper." In reply to this letter Kames wrote that he had "a

[1] *Vid. Works*, (Bigelow ed.), vol. III., p. 42. Also quoted in Tytler's Life of Kames, vol. I., p. 370.

great fund of political knowledge reduced into writing, far from being ripe, but fit for your perusal. If you will come to my aid, I know not but that we shall make a very good thing of it."[1] A few months later appeared Franklin's *Positions to be Examined Concerning National Wealth*, probably strengthened and improved by the criticisms of the Scotch philosopher.

With Hume, too, Franklin corresponded for many years. After having received from Hume a copy of the *Essay on Commerce*, he wrote that it could not "but have a good effect in promoting a certain interest too little thought of by selfish man. I mean the interest of humanity, or common good of mankind."[2]

When Hume learned that Franklin was about to leave England, he wrote that he was very sorry that Franklin intended soon to leave the old hemisphere. "America has sent us many good things, gold, silver, sugar, tobacco, indigo. But you are the first philosopher and indeed the first great man of letters for whom we are beholden to her." In reply, Franklin wrote that the value of everything depends on the "proportion of the quantity to the demand." England has plenty of wisdom. Hence, Franklin says he should market his share of this commodity "where from its scarcity it may probably come to a better market."[3]

In Watson's *Annals of Philadelphia*[4] we read that "Franklin once told Dr. Logan that the celebrated Adam Smith when writing his *Wealth of Nations* was in the habit of bringing chapter after chapter as he composed it, to himself, Dr. Price, and others of the literati; then patiently hear their observations, and profit by their discussions and criticisms, even sometimes to write whole chapters anew and even to reverse some of his propositions." John Rae, in his recent

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[1] *Vid. Works*, (Bigelow ed.), vol. IV., p. 224.

[2] *Vid. Works*, (Bigelow ed.), vol. III., p. 127.

[3] *Vid. Works*, (Bigelow ed.), vol. III., p. 193.

[4] Vol. I., p. 533.

Life of Adam Smith (p. 150), quotes Dr. Carlyle as saying that Franklin met Smith at a dinner given by Dr. Robertson, during Franklin's first visit to Scotland.[1] Later, Smith, in a letter to Strahan, who was one of Franklin's most intimate friends, asked to be remembered "to the Franklins" (meaning Benjamin Franklin and his son). Another letter written by Hume to Smith is interesting in this connection. It will be remembered that Franklin for a time was held in rather bad repute in London on account of the Hutchinson letters. Regarding this matter, Hume writes to Smith as follows: "Pray what strange accounts are these we hear of Franklin's conduct? I am very slow in believing that he has been guilty in the extreme degree that is pretended, though I always knew him to be a very factious man. And faction next to fanaticism is of all passions the most destructive of morality. How is it supposed that he got possession of these letters? I hear that Wedderburn's treatment of him before the Council was most cruel, without being in the least blameable. What a pity!"[2]

There can be no doubt that Smith and Franklin were acquainted with each other. But to what extent Franklin contributed to the *Wealth of Nations* it is impossible to determine. It is true that Franklin and Smith spent at least two years in London at the same time. Smith came to London in the spring of 1773 with his book, as he thought at the time, almost ready to be printed. During the next three years he made many changes, especially in the chapter on the colonies, while the passage on American wages was inserted for the first time.[3] One would naturally expect that

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[1] *Vid.* p. 50.

[2] *Vid.* Burton's *Life and Correspondence of D. Hume*, vol. II., p. 471.

[3] *Vid.* John Rae, *loc. cit.*, p. 256. It is interesting to note in this connection that Franklin later, in his *Reflections on the Augmentation of Wages*, quotes from this chapter that part which he is supposed by some to have written, the portion referring to wages in the colonies. It is the only direct quotation from the *Wealth of Nations* found in all of Franklin's economic works.

Smith, under such circumstances, would avail himself of Franklin's accurate knowledge of colonial affairs. Franklin's estimate that in the colonies the population was doubled every twenty or twenty-five years was accepted by Smith.[1] Then, too, Franklin often had occasion to defend the colonial paper currency with his pen. No doubt he understood the nature of paper money as well as any Englishman living at the time. If Smith consulted him at all, it is more than likely that he did so with reference to the chapter on money. But here at least Franklin was not very successful in causing Smith "to reverse his propositions," as Dr. Logan would have us believe. The American paper currency, which was the pride of Franklin, was characterized by Smith as "a scheme of fraudulent debtors to cheat their creditors."[2] And concerning the law forbidding the further issue of paper money in the colonies, Smith said that "no law could be more equitable than the act of Parliament so unjustly complained of in the colonies."[3] It will be remembered that it was in opposition to this law that Franklin wrote his *Remarks and Facts Relative to the American Paper Money*.[4] It may be true that Smith occasionally consulted Franklin in revising his work, but we are forced to believe that the view expressed above is very much exaggerated.

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[1] *Vid. Wealth of Nations*, Book I., ch. 8, (Bohn ed.), vol. I., p. 71.

[2] *Vid. Wealth of Nations*, Book II., ch. 2, (Bohn ed.), vol. I., p. 331.

[3] *Ibid.*, p. 332.

[4] *Vid.* p. 14.

XII.—CONCLUSION.

The subject of this essay has been described[1] as a man of expedients rather than principles, sagacious in dealing with immediately practical questions, but satisfied with the crudest speculation as to the operation of causes in any degree remote. It is further urged against him that not only did he not advance the growth of economic science, but that he seemed not even to have mastered it as it was already developed. This language is certainly too severe. Either we must be willing to give a place in economic science to Franklin, or we must deny the same privilege to all writers on economic matters who preceded Adam Smith. It is true that Franklin was largely a man of expedients, if by that we mean that he was interested in that truth which could be immediately applied for the good of mankind. But we maintain also that Franklin was a man who understood thoroughly the working of certain economic principles. No one else saw more clearly than he did the injurious effect of the many trade restrictions prevalent in the civilized world in his day. In that "great reaction of the eighteenth century against artificial conditions of life," in that movement of liberty, industrial as well as political, we claim that Franklin was one of the first as well as one of the leading factors. And it must be admitted that on the subject of population he did not always indulge in the "crudest speculations as to the operation of causes in any degree remote." No one knew better than he did the causes both of the increase of population and of the adjustment of people among the nations of the earth.

Nor can it be said that Benjamin Franklin did not master the science as it was already developed. We must remem-

[1] C. F. Dunbar, *Economic Science in North America.* North American Review, January, 1876.

ber here the fragmentary condition of English economics before 1776. The claim has already been made that Franklin was familiar with Petty's *Essay on Taxes and Contributions*. Of course there is no means of finding out how much he had read of the other early English economists. But the fact that his opinion on all economic matters (or rather politico-economic, for that is the only kind of economics that the seventeenth and eighteenth centuries knew) was sought by all the philosophers of his day is enough to prove that Franklin understood eighteenth century economics fairly well. The only system of economics of which we can speak during this period is the physiocratic system. What English-speaking man, we ask, understood this system better than Franklin?

The subject of our essay, then, was more than a man of expedients, and he had some knowledge of economic science as it had been developed up to his time. And unless this paper has been written in vain, we shall admit that some of Franklin's essays deserve a place in the history of economic literature. In his works we find the following theses:

(1) Money as coin may have a value higher than its bullion value.

(2) Natural interest is determined by the rent of so much land as the money loaned will buy.

(3) High wages are not inconsistent with a large foreign trade.

(4) Population will increase as the means of gaining a living increase.

(5) A high standard of living serves to prolong single life, and thus acts as a check upon the increase of population.

(6) People are adjusted among the different countries according to the comparative well-being of mankind.

(7) The value of an article is determined by the amount of labor necessary to produce the food consumed in making the article.

(8) While manufactures are advantageous, only agriculture is truly productive.

(9) Manufactures will naturally spring up in a country as the country becomes ripe for them.

(10) Free trade with the world will give the greatest return at the least expense.

(11) Wherever practicable, State revenue should be raised by direct taxes.

Franklin, then, deserves a place in the history of early economic literature, and especially in the history of American economics. He is the first American who deserves to be dignified by the title Economist.

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THE PROVISIONAL GOVERNMENT OF MARYLAND (1774-1777)

A Dissertation Presented to the Board of University Studies of the Johns Hopkins University for the Degree of Doctor of Philosophy

BY

JOHN ARCHER SILVER, A. B.

1895.

JOHNS HOPKINS UNIVERSITY STUDIES
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HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is Past Politics and Politics are Present History—*Freeman*

THIRTEENTH SERIES

X

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THE PROVISIONAL GOVERNMENT OF MARYLAND.

The form of government which the Lord Proprietor had established in the Province of Maryland, and to which it had been almost[1] continuously subject since its foundation in 1634, came to an end in the early struggles of the Revolution. After a comparatively short interval, a new constitution was drawn up and adopted, and the new government of the State was put in the place of the old Proprietary government. But the one did not abruptly end, nor the other abruptly begin. The powers of the Proprietary government were only gradually forced into disuse, to be as gradually assumed by another, rising Authority, which eventually established and, in its turn, gave way before the new State government. It is the history of the government of the Province during this transitional period, or of what is known as the Provisional Government of Maryland, that this paper is designed to study. It proposes to trace the powers of that Government in their rise, growth, and exercise, from the first expression of the popular will, in the Conventions of 1774, in organized resistance to the importation of the taxable articles of commerce, through successive Conventions, to the assumption of complete sovereignty in establishing and inaugurating a more permanent and fully

[1] During the years 1652 to 1657 and 1691 to 1715, the political overlordship of the Proprietor was exchanged for that of the Protector and the Crown, respectively.

organized form of authority in the new State government of 1777. The thread of interest running through the whole is the gradual assumption of sovereign powers by the people in Convention until they found themselves the sole Power in the Province. This may be marked off in three stages: first, the tentative assertion of certain rights and the imperfect and undeveloped executive organization of the first year, beginning with the first Convention of 1774; secondly, the fuller and bolder assertion of power and the more organized and effective means of execution of the second year; and, finally, the Provincial declaration of independence, the framing of a new constitution, and the setting-up of a new government. In the first period, the new, rising Power struggled to a position of equality with the Proprietary Power, as a second Authority in the Province; in the second, it became the chief Power and overshadowed the old Authority; and, in the third, it cleared the field of its rival and sat supreme, yielding up its existence, finally, to the child of its own begetting.

I.

The Provisional Government, as before suggested, did not spring forth full-fledged, Minerva-like, from the brains of the cleverest statesmen, but was of gradual growth. In its origin, it was nothing more than an association of the freemen of the Province for the purpose of rendering an effective resistance to the encroachments of the English Government and of defending themselves, meanwhile, in the exercise of their rights. Its roots strike down to the non-importation agreement previously entered into for the purpose of commercial opposition, and the organs used in its exercise were the same as those originated by its forerunner. The prototype of the future Convention first appears in the meeting of some of the inhabitants at Annapolis, June 20, 1769, in response to the call of a few merchants for the purpose of pledging themselves to a non-importation agreement, and the organs of the earlier

Provisional Government may first be seen in the central and county committees originated by that meeting to enforce its resolutions. As yet, however, the functions of correspondence and observation were combined in the same committee. In October, 1773, the Provincial Assembly appointed a special committee of correspondence for the whole Province, whose duty was to obtain full and early information as to the doings of the British Parliament, and to communicate with the sister colonies on the subject of defense.

Various causes had, however, contributed to prevent the development of this earlier action until the startling news of the passage of the Boston Port Bill and of the oppression of the people of Boston arrived in May.[1] At once, "a meeting of the principal inhabitants [of Baltimore] was called, and a committee of twelve persons was appointed to correspond with Boston, the neighbouring colonies, and particularly with the towns of the Province, to collect the public sense of this important concern."[2] The committee sent the news on to Annapolis and to the different parts of the Province. Public feeling ran high in sympathy with the oppressed Bostonians,[3] and the counties were not slow to respond. All minds were turned to the revival of the non-importation agreement, and, to this end, a general meeting at Annapolis naturally suggested itself. During the latter part of May and the early part of June, the inhabitants of the counties met at their respective courthouses, or other convenient meeting-places, and passed a series of resolutions[4] recognizing the cause of Boston as the

[1] Samuel Adams transmitted the news, together with a resolution of the Boston town-meeting of May 13th, "that if the other colonies would come into a joint resolution to stop all importations from Great Britain, and every part of the West Indies, till the Act blockading up the harbor be repealed, the same will prove the salvation of North America and her liberties." See Scharf's *Hist. of Md.*, II, 143.

[2] Letter of the Baltimore committee to the Boston committee of June 4th, quoted in Scharf's *Hist. of Md.*, II, 146.

[3] Eddis' *Letters*, May 28, 1774.

[4] For the resolutions of the different county meetings, see the *Maryland Gazette*, June 2, 9, 16, and 30, 1774.

common cause of all the colonists, and the duty of each and all to unite in effectual means to obtain a repeal of the obnoxious Act.[1] To this end, they expressed themselves strongly in favor of a union of all the colonists pledged neither to import to, nor export from, Great Britain any articles of commerce, and they agreed to enter such a Provincial and Continental Association under oath, and to break off all trade and dealings with that colony, county, or town that should refuse to enter such an Association. In order to carry out these resolutions, each county elected a committee to correspond with the other counties and keep themselves informed of the rapid progress of events, and also a committee to represent them in the general meeting of all the county committees soon to be held at Annapolis.

Upon the assembling of these deputies in the first Provincial Convention[2] on June 22, and, after deciding to determine all questions by a majority vote by counties, the letters from Boston, Philadelphia, and Virginia, recently received, and the recent parliamentary bills against the colonies, were laid before them, and, "after mature deliberation," they resolved that the bills in question were "cruel and oppressive invasions" of the natural and constitutional rights of the people of Massachusetts. They reiterated the recent resolutions of the county meetings, endorsed the plan of a non-importation and non-exportation union, and they agreed to enter such a union and to break off all trade and dealings with those who should refuse to join it. They further suggested to the merchants that they ought not to take advantage of the scarcity of goods under the non-importation agreement, soon to be enforced, to raise their prices. They thanked the friends of lib-

[1] "Nothing can be plainer than that the suffering of Boston is in the general cause of America, and that union and mutual confidence is the basis on which our common liberties can only be supported." Letter of the Annapolis committee of correspondence to the Baltimore committee, May 26, 1774.

[2] See *Proceedings of the Conventions of the Province of Maryland*, pp. 3–5.

erty in Great Britain for their patriotic efforts to prevent the present calamity; they resolved to open a subscription in the several counties for the poor of Boston, and they appointed delegates "to attend a general congress of deputies from the colonies, at such time and place as may be agreed on, to effect one general plan of conduct, operating on the commercial connexion of the colonies with the mother country, for the relief of Boston and preservation of American liberty."

Although not the first of its kind, for the meeting of the merchants and freemen in 1769 was for the same purpose, this Convention stands out distinct in its representative character and in the permanent nature of its results. It was attended by ninety-two deputies, many of whom were among the best men of the Province, who had been elected in the usual way by the freemen of the counties and who were, therefore, really representative of the mass of the people. Moreover, it was the only representative assembly in the Province at the time, for the legislative Assembly had been prorogued in the previous March and was not destined to meet again until under a new régime. Though the Proprietary Government was still active in the exercise of its functions, and the people had no desire as yet to overthrow it, it is nevertheless true that the voice of the people, through their representatives in Convention, spoke from the source of sovereign power and, though their resolutions applied only to the regulation of their commerce, they soon made it apparent that they meant to exercise sovereign authority therein. Standing as it did at the beginning of a long line of similar Conventions, each of which was to exhibit the people in the exercise of a larger degree of sovereign power, it may be looked upon as embodying the nucleus of the Provisional Government.

Events soon occurred to try the value of these resolutions. In August, the brigantine *Mary and Jane* arrived in the harbor of St. Mary's river with some chests of tea, consigned to merchants in Bladensburg and Georgetown. The Frederick county committee called a meeting of the freemen, and re-

quested the consignees of the tea to be present. Upon which occasion, it was resolved that such an importation of "the detestable plant" was dangerous to the liberties of the colonists, in that it assented to the claim of the British Parliament to tax them, and, in order to prevent the pernicious practise of further importations of the kind, the vessel, with its tea, was ordered and compelled to sail back to England.[1] A more notable instance of the same kind occurred in October, on the arrival of the brig *Peggy Stewart* at Annapolis, with tea on board, when the owner of the vessel, although not the consignee of the tea, and a member of the Non-Importation Association, paid the duty on it. A general meeting of the citizens censured the proceeding, and a larger meeting of county delegates was called to consider the matter. Mr. Stewart, the owner of the vessel, published an apology, and offered to burn the tea publicly to appease the people's wrath. Nothing was done, however, until the larger meeting assembled, when considerable animosity was manifested toward him and the owner of the tea, and they were made to present themselves and sign a humiliating paper. But, upon the question being put, "Whether the vessel should be destroyed?", it was decided in the negative by a considerable majority. Yet Mr. Stewart, "from an anxious desire to preserve the public tranquillity, as well as to ensure his own personal safety," went on board, run the vessel aground, and, in view of all the people, set fire to it with his own hands and let it burn to the water's edge.[2]

Meanwhile, all eyes were turned on the Continental Congress, in session from September 5 to October 26 at Philadelphia. The deputies from twelve colonies there signed certain Articles of Association, pledging their colonies not to import any articles of commerce whatsoever from Great Britain and Ireland after the first day of the next December, to discontinue any exportation thither after September 10, 1775,

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[1] *Maryland Gazette*, August 11 and 18, 1774.

[2] *Md. Gazette*, Oct. 20 and 27, 1774. Eddis' *Letters*, Oct. 26, 1774.

and to break off dealings with that colony which should not join the Association or should violate its Articles.[1]

Shortly after the close of Congress, in the early part of November and in response to its direct suggestion, the freemen of the counties qualified to vote for representatives to the Assembly, met at their respective courthouses and appointed a committee "to observe the conduct of all persons touching this Association" and to carry its Articles into effect; also a committee of correspondence, frequently to "inspect the entries of their custom-houses, and inform each other, from time to time, of the true state thereof, and of every other material circumstance that may occur relative to this Association."[2] Deputies to the next Provincial Convention were also appointed.

In response to the call[3] of the Congressional delegates of the Province, fifty-seven deputies from the counties attended the new Convention, which met on November 21st. The proceedings of Congress were laid before them and unanimously approved of, and it was resolved that "every person in the Province ought, strictly and inviolably to observe, and carry into execution, the association agreed on by the said Continental Congress." But, from the want of sufficient notice, several counties were not fully represented, and an adjournment was ordered to December 8th, when "matters of very great importance" were to be taken into consideration.[4]

Eighty-five deputies, a goodly representation of the people, were present at this adjourned meeting.[5] The chief business

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[1] *Journals of the American Congress*, Oct. 20, 1774.

[2] *Journals of Congress*, Oct. 20, 1774.

We see here, for the first time, the differentiation of the powers of the original committee in the formation of two, one of correspondence and one of observation, and we note the fact that this was done at the suggestion of the Continental Congress. It is important to emphasize the formation of these committees, for they were to be the organs through which the Provisional Government was to exercise its authority in the several counties.

[3] *Md. Gazette*, Nov. 3, 1774.

[4] *Proceedings of the Conventions of the Province of Maryland*, p. 6.

[5] *Ibid.*, pp. 7–10.

before them was the confirmation of the resolutions of the Continental Congress, relative to the non-importation and non-exportation of articles of commerce, and the passage of certain resolutions providing for their enforcement. They, therefore, first of all, reiterated the previously expressed approval of the resolutions of Congress, they thanked their delegates for the faithful discharge of their important trust, and resolved strictly to obey and carry out the Association. Following the lead of Congress, they endeavored to encourage the home manufacture of woolens, linens and cottons, by resolving that no lambs dropped before the first day of each May, or other sheep under four years of age, ought to be killed; "that every planter and farmer ought to raise as much flax, hemp and cotton as he conveniently can," and that no flax-seed of the present year's growth ought to be exported. The resolution of the previous Convention, recommending merchants not to take advantage of the scarcity of goods to sell their wares at a much advanced price, having been disregarded, they felt called upon to fix the percentage by which such advance price should be regulated, and they delivered themselves, at the same time, against the practice of engrossing merchandise. They resolved that, in all cases where the county committee declared a breach of these resolutions, no gentlemen of the law ought to prosecute a suit in favor of the offender; they recommended to the people to acquiesce in, and observe the determinations of, the several county committees; they besought them to put away "all former differences about religion or politics, and all private animosities and quarrels of every kind," and cordially unite in defense of the common rights and liberties. A general committee of correspondence for the whole Province was appointed, and the other colonies were recommended to enter into similar resolutions for mutual defense and protection. But, perhaps, the most noteworthy feature of their proceedings was the resolution to support to their utmost any colony in which "the assumed power of parliament to tax the colonies shall be attempted to be carried into execution by force," and

their determination to raise a Provincial militia. Feeling, as they said, that a well-regulated militia is the natural strength and only stable security of a free government, and that it would relieve the mother country from any expense in their protection, and obviate the pretence of taxing them on that account; they recommended to all the inhabitants of the Province, who were between sixteen and fifty years of age, to form themselves into companies, choose officers, provide themselves with arms and ammunition, "use their utmost endeavors to make themselves masters of the military exercise," "and be in readiness to act in any emergency." Moreover, knowing the need of money for the purchase of arms and ammunition, they authorized the county committees to raise the sum of ten thousand pounds, in sums apportioned to each county according to its population, in the way they should each best see fit. Finally, the Convention appointed delegates to the next general Congress, giving them "full and ample power to consent and agree to all measures which such Congress shall deem necessary and effectual to obtain a redress of American grievances;" it called a new Convention to meet April 24th, of the next year, and directed the several counties to choose deputies for the same.

If, in the Convention of the previous June, we saw the germ of the Provisional Government in the meeting of the freemen of the Province in Convention, exercising in their sovereign capacity the right to regulate their commerce by passing a series of resolutions recommending the formation of a commercial non-intercourse Association of the colonies against Great Britain, we here note its great development in the solemn entrance into that Association by the Convention, and the formation of the committees of observation and correspondence, as the organs through which the will of the people was to operate in the several counties. But, besides this advance from the former resolution of readiness to enter such an Association to the present formal participation in it, and the formation of organs through which to work, the people

in this Convention took a long step forward in the assertion of sovereign power by their militia regulations, which, as Mr. Bancroft says, "took the sword out of the hands of the Governor, to whom all military appointments had belonged," and gave it into the hands of the people.[1] They had up to this point, therefore, made a partial use of the sovereign powers of the regulation of their commerce and of the raising of a military force for the warlike defense of their liberties, and they had, moreover, partially created an organization through which their will should be enforced. The Provisional Government appears at this stage as no longer in the germ, but as partly developed. As yet, however, the resolves of the Convention were in the form of recommendations, the execution of which depended upon an approving public sentiment. To it constant appeals were made, and nothing was done without its direction and authority.

Soon after the close of the Convention, and in response to its recommendations, the freemen of the several counties met to carry out the organization of defense. They unanimously approved of the proceedings of the Continental Congress and of the late Provincial Convention, and resolved that the terms of the Continental Association, lately entered into, should be strictly and inviolably observed and executed. They appointed persons to offer the subscription-paper for the money to be raised for the purchase of arms and ammunition to every freeman, and to make returns of the subscriptions, together with the names of those who had refused to subscribe, to the end "that their names and refusal may be recorded in perpetual memory of their principles."[2] Deputies were appointed to the next Convention, and the organization of the committees of observation and correspondence were completed.[3] The people be-

[1] Bancroft, *American Revolution*, I, 207.

[2] For example, see proceedings of the Charles County meeting, *Md. Gazette*, Jan. 19, 1775.

[3] For proceedings of the County meetings, see *Md. Gazette*, Dec. 29, 1774, Jan. 5, 19, 26, Feb. 2, and 9, 1775.

stirred themselves also in carrying out the militia recommendations of the Convention. Almost at once, two companies were formed in Annapolis,[1] to be followed soon after by the formation of other companies in different parts of the Province.[2] There was visible everywhere the spirit of determined opposition and the preparation for a military defense.[3] Moreover, the committees of observation and correspondence, having been fully organized, now set to work to enforce the Articles of the Non-Importation Association, which went into effect on the first of December. Numerous instances occur in the columns of the *Maryland Gazette* of their effective action. In those cases in which goods had been imported from Great Britain after December 1, they sold them at public auction, according to Article X of the Continental Association, and, after imbursing the owner for their cost, forwarded the profit as a contribution to the poor and needy sufferers of Boston;[4] in case such goods had arrived after February 1, 1775, they were not allowed to land, but were sent back to England.[5] Where anyone tried to import tea, not only was it not allowed to land, but the importer was called before the committee and obliged to apologize publicly for his daring.[6] Merchants who tried to sell their goods at a great advance over the cost price, thus taking advantage of the scarcity of goods and making the means of subsistence hard to obtain, fell under their censure.[7] Moreover, those who publicly disparaged the means taken to defend the people's rights, and branded them as treasonable, were brought before them, severely censured, and forced to disavow or apologize for their rash words.[8] The committees were thus a real power in the counties.

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[1] *Md. Gazette*, Dec. 22, 1774.
[2] *Md. Gazette*, Jan. 5, 12, and 19, 1775.
[3] Eddis' *Letters*, March 13, 1775.
[4] *Md. Gazette*, Dec. 15, 1774, Jan. 5, Feb. 23, March 2, 1775.
[5] *Md. Gazette*, April 6, 1775. [6] *Md. Gazette*, Jan. 12, Feb. 2, 1775.
[7] *Md. Gazette*, April 13, 1775. [8] *Md. Gazette*, Jan. 26, 1775.

On the 24th of April, 1775, a new Convention of one hundred members assembled at Annapolis.[1] First of all, they proclaimed their allegiance to the King "as the sovereign, constitutional guardian, and protector of the rights and liberties of all his subjects." Then, on hearing of the coming of the British troops to New York, they expressed their great alarm and deep concern for that Colony, and endeavored to inform themselves as to what was expected of them under the circumstances. They resolved to stop all exportations to British North America until further orders from the Continental Congress; they earnestly recommended to the people of Maryland to continue the forming and exercising of the militia throughout the Province, as directed by the last Convention, and to complete and apply the subscriptions for the purpose of providing arms and ammunition. They re-appointed their former delegates to Congress, and directed them "not to proceed to the last extremity, unless in their judgments they shall be convinced that such measure is indispensably necessary for the safety and preservation of our lives and privileges," remembering that they have "nothing so much at heart as a happy reconciliation of the differences between the mother country and the British Colonies in North America, upon a firm basis of constitutional freedom," and they pledged the Province, so far as was in their power, to carry into execution such measures as shall be agreed on and recommended by the general Congress. They "recommended to all ranks and denominations of people, to use their utmost endeavors to preserve peace and good order throughout this province"; and, in consequence of the distressed state of the colonies, they set apart May 11th as a day of public fasting and humiliation. They sent a committee to the Governor to ask for the delivery of the Provincial arms and ammunition into their hands, fearing, as they said, an uprising of the slaves in the disturbed

[1] See *Proceedings of the Conventions*, p. 11–16.

state of affairs,[1] or "that some ship of war may arrive in the harbor of Annapolis, whose commander might probably have instructions to seize"[2] them. The Governor, upon the advice of his Council, agreed to commit the care of the arms to such gentlemen of the militia as he himself had appointed, and, on the regular application the next day of the militia colonels of four counties, under the militia act of the Province, he handed over to them about one hundred stand of arms, thus yielding to the popularly-constituted authority under the guise of constitutional form.

This was the first point of friction of the newly-constituted authority with the old régime. The commercial and warlike opposition inaugurated by the previous Conventions, and by the operations of the county committees, and by the formation of the militia had not been considered repugnant to the oaths of allegiance, and there was no thought nor desire as yet, nor for a long time to come, to break the bonds of union with the mother country.[3] The people were still loyal in a true sense to the King and the Lord Proprietor, and meant to do nothing more than defend themselves in the exercise of their cherished rights. The importance of this friction with the Governor, therefore, was in its forecast, that, while not wishing to interfere in the administration of their Chief Magistrate, they were yet determined in any case of need to assert their real superior sovereignty.

During the next three months of May, June and July, events went on accumulating, winning over most men's minds to realize the need of a thoroughly organized and decisive defense. The alarming news of the first shedding of blood at Lexington and Concord, and of the battle of Bunker-Hill, two months later, made ardent patriots of many former luke-warm

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[1] Letter of Gov. Eden to his brother, April 28, 1775, in Scharf's *Hist. of Md.*, II, 179.

[2] Eddis' *Letters*, April 27 and 28, 1775.

[3] Proceedings of the meeting of the inhabitants of Baltimore county, Jan. 16, 1775, in *Md. Gazette*, Jan. 26, 1775.

sympathizers, and clearly and firmly drew the line of distinction between Loyalists and Patriots. On May 26th, Congress recommended to the colonies to put themselves in the best state of defense immediately, and, on June 14th, made a call upon Maryland for two companies of riflemen to join the forces at Boston. The Frederick county committee hastened to raise the companies and started them off by the middle of July. A continental army had now been constituted, with proper rules and regulations, and a commander-in-chief appointed; two million dollars had been issued in continental currency, and the colonies had been recommended to choose treasurers and make provision for sinking their proportion of the new bills.

To take these matters into consideration and to make necessary provision therefor, the Maryland delegates to Congress, under the authority granted to them by the last Convention, called the deputies from the several counties in the Province, to meet in a new Convention at Annapolis on July 26th following.

II.

With the assembling of this Convention, which was more fully representative of the people than any hitherto held, being attended by one hundred and forty-one deputies, and which came after actual hostilities had broken out, showing the extent to which things must go before the adjustment of difficulties with the mother country, a new epoch begins in the relations of the people to the Proprietary Government. Already, the Governor had seen the rise of a new Power in the Province, and had noted with increasing alarm its rising importance. But the Proprietary Government was still the permanent form of authority and its civil power was still unchallenged. The people had but risen in defense of their liberties against the aggressions of the English Government, and, although they had asserted the right to regulate their commerce and to form a militia in their defense, the Governor

sat secure in the exercise of all the other of his powers. This Convention, however, was to encroach on his civil power and to inaugurate measures which were gradually to overthrow it altogether and drive him out of the Province. It is necessary, therefore, to study its doings in some detail.

The more important matters for consideration were put immediately into the hands of committees.[1] While awaiting their reports, the Convention took into consideration certain petitions from those who had fallen under the censure of the county committees for breaches of the Continental and Provincial Resolves. They thus became a supreme court of appeal, from the judgment of the county committees of observation in such matters, and, within these bounds, exercised unlimited authority. As seemed best to them, they heeded the petitioner's desire and ameliorated the sentence given by the county committee on the ground of its being too severe,[2] or they completely set it aside as not having been founded on fact,[3] or they upheld it and rejected the petition of the complainant.[4] In one case,[5] they were appealed to by a citizen who, having gone security for the appearance of another and having allowed him to escape, feared that injury would be done his person and property; whereupon they expressed their desire that all persons should refrain from all manner of violence to that person or his property, and they empowered the committee of his county to inquire into the matter, and report whether there had been any collusion between the one

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[1] Committees were appointed to consider the ways and means to put the Province in the best state of defense, to inquire into the practicability and expense of establishing manufactories of arms, and to consider of the way to lay such restrictions upon the courts of law as may be necessary and expedient. See Proceedings of the Convention for July 27, 29, and Aug. 2, 1775.

[2] Maryland Archives, Journal of the Convention, July 28, and Aug. 12, 1775.

[3] Maryland Archives, Journal of the Convention, Aug. 3, 1775.

[4] *Ibid.*, Aug. 12, 1775. [5] *Ibid.*, Aug. 14, 1775.

who had given the security and the one who had absconded. Being "strongly impressed with an idea of the confusion and disorder which must inevitably ensue, and the disunion which must necessarily follow, from the people at large being collected and inflicting punishments before a cool and temperate investigation of the case, and consequently the injury which may be thereby done to the common cause of Liberty," they took occasion to express the hope that "the virtue of the people, and their attachment to the liberties of America, will guard them against the commission of the excess apprehended." In another case,[1] where certain charges had been preferred by the Baltimore county committee against Robert Christie, Sheriff of Baltimore county, based on an intercepted letter, in which the said Christie represented the inhabitants of Baltimore as engaged in treasonable and rebellious measures, and suggested that a few British soldiers would keep them very quiet, the Convention resolved that the said Christie had shown a spirit inimical to the rights and liberties of America and ought to be considered an enemy to the country, and that no one ought to have any dealings with him except to furnish him with necessaries and provisions. They also banished him from the Province, ordering him, meanwhile, to place in the Treasurer's hands the sum of £500 sterling, as his proportion of the charges and expenses incurred in the defense of America. These acts mark a new departure in the Convention's exercise of power. Hitherto, the committees of observation had used a police power in the enforcement of the non-importation agreements, but now, for the first time, we see that power used by the Convention to quiet the people and preserve public peace and order, and to banish a political offender and confiscate a portion of his goods. The Governor still had his sheriffs and magistrates, but they were now afraid to exercise their functions against the people, and the Convention found itself

[1] Md. Archives, Journal of the Convention, Aug. 7, 1775.

occupying their place as supreme arbiter and preserver of the public peace.

The committee appointed to consider the means of putting the Province in the best state of defense, reported in favor of the formal association of the freemen, as a first measure. Every freeman was to be urged to sign a document, prepared by the committee for the purpose. The document rehearsed the people's grievances against the English Government, the chief of which were the determined purpose of the latter to tax the colonists without their consent, to alter their Charters and Constitutions at will, and to subdue them by military force. It recited the course of the Continental Congress with reference to these facts, and the suggestion of the Congress to the colonies to put themselves in the best state of defense. In signing this document, the freemen solemnly pledged themselves, to one another and to America, to unite in approving the armed opposition of the colonists to the British troops, being firmly persuaded of the necessity of repelling force by force. They were also to unite in promoting and supporting, to the utmost of their power, the armed and commercial opposition already begun. Finally, realizing that the energy of the civil government was greatly impaired, they were to unite and associate in the maintenance of good order and the public peace, to support the civil power in the execution of the Laws, so far as was consistent with the plan of opposition, to defend every person from every species of outrage to person or property, and to prevent any punishment from being inflicted on any offenders, other than such as should be adjudged by the Civil Magistrate, Congress, the Convention, the Council of Safety, or county committees of observation. The members of the Convention were the first to sign the Association, and, then, it was ordered to be presented by the county committees of observation to all the freemen within the Province, and a return was to be made to the next Convention of the names of all those who should sign it, and of all those who should refuse to sign it, "to the end that the Convention may take order therein."

This "Association of the Freemen of Maryland" has been spoken of as if it overthrew the Proprietary and inaugurated the Provisional Government,[1] and as if it were the basis and cornerstone of the latter.[2] The impression is given that it was the charter of liberties, so to speak, of the Provisional Government, which, accordingly with it, suddenly sprung into being and overthrew the previous forms of authority. But, as I have tried to show in the foregoing, this new Power grew up only gradually, and had, previous to this time, actually exercised some very important functions of governmental authority. There was also no intention of the people as yet to withdraw their allegiance from the King and the Proprietor, and no desire to throw off the existing forms of control even now. Moreover, this document, although very important, contained little that was new. The freemen simply agreed formally to unite, firstly, in approving the use of force in repelling force; secondly, in promoting the present commercial and armed resistance; and, thirdly, in upholding the power of the Civil Magistrate in preserving order. The Governor's powers were not thus done away; the sheriffs, magistrates, justices, and Provincial officers generally, still held their commissions from him, and there was no attempt to remove them. The only new things in the document were, first, the formal and binding character of its resolves, and, second, the placing of the organs of the new order of things, namely, the Continental Congress, the Convention, the Council of Safety, and the committees of observation, on the same plane of authority with the civil power of the Governor. These Articles of Association did not, therefore, originate the Provisional Government, nor did they exhibit it as having suddenly arisen and overthrown the former Authority. They were not primarily concerned with government at all, but with the union of all the freemen in a commercial and armed defense of their liberties.

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[1] See Scharf, *Hist. of Md.*, II, 183 f.

[2] See McMahon, *Hist. of Md.*, 416.

But, incidentally, they show us the Provisional Government as having emerged from its former state of tentative beginning and as acting, side by side, with the old forms of power, and with at least as much authority.

To carry on the armed resistance, the Convention provided for the purchase and importation of arms and ammunition,[1] for the erection of a powder mill,[2] for the establishment of saltpetre manufactories in different parts of the Province,[3] and for the complete formation and organization of a military force.[4] Forty companies of minute-men were directed to be enrolled, each county being required to furnish its proper quota. All the other able-bodied effective freemen, except clergymen, physicians, those of the Governor's household, and such as objected on religious scruples, were directed to enrol themselves as soon as possible in some company of militia, and swear an oath of allegiance to the Convention or Council of Safety to march whenever and wherever they should direct. The committees of observation were to appoint enlisting officers, and, as soon as enlisted, the minute-men and militia were to assemble and elect their officers, the names of whom were to be sent to the Convention or the Council of Safety, whereupon commissions were to issue to them. Regulations were made regarding the formation of the companies into battalions, with one company of light infantry to each battalion; rules were made regarding the exercise and conduct of the troops, and the rank of the officers. Finally, the county committees were ordered to make diligent enquiry after, and report the names of all those who should refuse to enrol themselves, according to the resolves of the Convention, and against all such no further proceedings were to be taken but by its future order.

For the purpose of raising and arming the military force, and for encouraging the manufacture of salt-petre and powder,

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[1] Md. Archives, Proceedings of the Convention, Aug. 14, 1775, p. 30.
[2] *Ibid.*, p. 29 f. [3] *Ibid.*, p. 30. [4] *Ibid.*, pp. 16–22.

money was needed, and the Convention, following the lead of Congress, now, for the first time, made use of the power to issue bills of credit.[1] Supervisors were appointed to procure proper plates and paper, and to have bills issued to the amount of 266,666⅔ dollars, each of which bills was to entitle the bearer to receive gold and silver at the rate of four shillings and six pence per dollar. They were to be issued on the credit of the Province, and to be redeemed and sunk on or before January 1, 1786, by taxes or other legislative provision, for which purpose the Convention bound its constituents, and pledged the faith of the Province. Two treasurers were appointed, one for each Shore, to receive and pay out the money, subject to the orders of the Convention and the Council of Safety. Thus a new power of government was made use of by the people in Convention in drawing upon the credit of the Province to issue bills to enable them to carry out their revolutionary measures.

But they were to go still farther and interfere with the operation of the courts of law and virtually direct their proceedings.[2] They resolved that all suits pending, in which there was no real dispute, be settled speedily in some amicable way, and that all suits in which there were real disputes, and which could not be settled amicably, or tried with justice to the parties concerned, be discontinued, during the times of public calamity, until otherwise ordered by a future Act of Assembly or resolve of Convention, and that the future Assembly ought to take measures to bar the Act for the limitation of suits and provide for their reinstatement. They made a further regulation to the effect that where witnesses could not be present at the trial, depositions might be taken before justices of the court and in the presence of the adverse party. But their most important action with reference to this subject was to provide for the election by each committee of observation of a

[1] Md. Archives, Proceedings of the Convention, Aug. 14, 1775, pp. 24–27.
[2] *Ibid.*, Aug. 14, 1775, pp. 31–33.

committee of seven, from its own number, who were to meet on the first and third Mondays of each month to grant permission for the trial of suits. Certain actions[1] might be commenced or continued without applying for its permission, while in all other cases it must be sought. In certain[2] of these latter cases, the Committee, when applied to, were obliged to give licences to carry on the suit, whereas in other cases[3] they were allowed to use discretionary power. Moreover, judgments which had been obtained since the court terms of the last spring on suits begun in any other way than those above mentioned, were ordered to be stayed of execution. While the Proprietary Courts still exercised their functions, the Convention by this action asserted the power to control them. The licensing committee was its agent, and though certain suits could be begun without licenses, it had decided what such should be, and in all cases had exercised direct restrictive authority. Another stage in its assertion of power is thus marked.

That the orders and regulations of the Convention might be carried into execution, it was felt necessary to provide for the appointment of some executive organ, which should act during its recess. Accordingly such a body was appointed,

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[1] E. g., those "founded in the wrong done to the person or property, such as Ejectment, Trespass, Trover, Replevin, Detinue; also all real Actions; also actions for wards, and for Money or Tobacco actually had and received by one person for the use of another; Attachments under the late Acts of Assembly, and against persons non-resident; actions, or process on Loan Bonds." Md. Archives, Proceedings of the Convention, Aug. 14, 1775, p. 32.

[2] E. g., actions "where debtors refuse to renew their obligations, or other securities, or to give reasonable security, or to liquidate and settle their accounts, and give Promissory notes for the balances, or to refer their disputes, if any, to one or more indifferent persons, or are justly suspected of intention to leave the Province, or defraud their creditors." Md. Archives, Proceedings of the Convention, Aug. 14, 1775, p. 32.

[3] E. g., actions brought "by and against Executors and Administrators, as such, and their securities, and . . . . against Guardians for the recovery of filial portions, or the Rents and profits of orphans' Estates." Md. Archives, Proceedings of the Convention, Aug. 14, 1775, p. 32.

under the name of the Council of Safety, consisting at first [1] of sixteen members, eight from each Shore, whose term of official life was to continue to the close of the next succeeding Convention, then to give place to a newly elected Council. Its chief function was to act as the executive agent of the Convention, but it possessed as well discretionary powers of a very high order. It had control of the military force of the Province, with power to issue commissions, appoint court martials, and displace officers; it could call out the troops whenever and order them wherever it thought best, with the single restriction that it could not order the militia out of the Province nor the minute-men further than the adjoining counties of the neighboring colonies. Moreover, it could do whatever it should see best for the defense and security of the Province; it could issue orders on the Treasurers for the payment of expenses, and could require reports from them as to their doings. It was a sort of high court of appeal, exercising judicial functions upon those cases sent to it by the county committees, involving breaches of the Continental Resolves. These powers, too, could be used in cases of emergency by a majority of the members for either Shore; five men could, thus, at times, exercise supreme control over their respective Shores, but it was recommended that such powers should be exercised by such a few only in cases of great emergency, and that, as soon as possible thereafter, a general meeting of the whole Council be called and the matters laid before it. The Council thus exercised executive and judicial and, on occasion and to a limited degree, legislative functions as well. It drew its powers from the Convention, as the latter, in turn, drew

[1] The number was afterwards changed to nine, five from the Western and four from the Eastern Shore. Though it was originally the idea of the Convention to cause half of the number to retire at each new election, to prevent "any abuse of power from the continuance of authority in the same hands," yet, after the reduction of the number from 16 to 9, the same members were reëlected at each new election, with an insignificant exception or two.

its powers from the people, and each was responsible for the use made of them to its originator. Though, therefore, such extensive powers were placed in such a few hands, they do not seem to have been abused, which fact was due to the excellent character and good sense of those to whom they were committed.

In order to carry out their regulations in the counties, the Convention ordered a reëlection of the committees of observation. They had heretofore, as has been seen, been of great use in putting into effect the non-importation resolutions and in forming the militia. But they had been of a more or less incomplete and temporary nature. Now, it was ordered that they should be elected in each county, varying in number from 53 in Frederick to 14 in Caroline county, by all the freeholders and other freemen "having a visible estate of £40 sterling,"[1] on a set day, the second Tuesday of the next September, and they were to hold office for the year following. Their duties were to be the same as before: to carry into effect the Continental and Provincial resolutions; to keep a sharp lookout for breaches of the same; to call the offenders before them and censure them as they saw fit; and, when they might have probable proof that anyone was guilty of any great offense, such as would tend to disunite the people, they were to cause the arrest of the offender and send him to the Council of Safety for trial. They were, further, to have charge of the correspondence of the county, and to elect from their own number five persons to attend to it; they were also to choose seven of their number to be a committee to license suits. They thus became the real and effective authorities in the counties, and the people were ordered to respect and acquiesce in their determinations.

Before concluding, the Convention appointed delegates to Congress to serve until the next Convention, with "full and

[1] The qualification of those entitled to vote for burgesses under the Proprietary regulations.

ample power to consent and agree to all measures which such Congress shall deem necessary and effectual to obtain a redress of American grievances";[1] it called a new Convention to meet in the next March, and directed each county to elect, in the regular way at its September election, five delegates, with full power to represent and bind the county to the conclusions of the Convention. Finally, it recommended to all the people to "pay the public taxes, and interest money due the Loan office, it being the design of this Convention to prevent oppression and imprisonment of poor Debtors, but not to give any pretence of non-payment to those who are of sufficient ability to pay their just debts,"[2] and, hearing that certain military captains had lent their aid in suppressing a riot in Baltimore county in which a mob had snatched from the sheriff a man imprisoned for debt, and that they had returned the man to the custody of the sheriff, they communicated their approval to the captains, and put on record their intention to support the civil power in the ordinary administration of justice.

In looking at the work of the Convention as a whole, it is impossible not to notice a great advance in its exercise of the powers of government. In fact, the tendency seems to be to magnify its importance unduly, and to see in it the sudden formation of a new Authority, while, as a matter of fact, that Authority had been made use of before. But, while previous Conventions had concerned themselves only with a commercial and armed opposition to the measures of the British Government, this one felt it its duty not only to carry on this opposition to its utmost ability, but, in the overawed state of the Proprietary Government,[3] to provide also for the maintenance of the public peace. To sum up its actions, it had ordered the

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[1] Proceedings of the Convention, Aug. 14, 1775, p. 34.

[2] *Ibid.*, p. 33.

[3] See Eddis' *Letters*, July 25, 1775; also Thomas Johnson's letter of Aug. 18, 1775, to General Gates, quoted in Scharf's *Hist. of Md.*, II, 186.

enlistment of all the people into military companies; it had provided for their organization and control; it had issued bills of credit on the credit of the Province; it had framed Articles of Association, calling upon all to unite in promoting the common cause. To obviate any hindrance to the people in their patriotic efforts, it had assumed a censorship over the courts; it had acted as a supreme court of appeal in all cases involving breaches of the Continental Resolves; and, for the purpose of carrying out its orders, it had established an executive body for the whole Province,[1] and had reformed the executive organs of the counties. It had thus made use of all the functions of government[2]—executive, legislative, and judicial. Yet, in all this, it was but true to its *raison d'être*, that is, to carry on an effective resistance, and, in making use of so many new sovereign powers, it had no intention of overthrowing the Authority that had hitherto exercised them.[3] The people were still loyal to the Powers across the sea, and almost another year was to go by before that loyalty was to be withdrawn. The authority of the Governor and his civil agents, though mainly formal,[4] was still respected and obeyed, but, by these successive assertions of power by the Convention, the Proprietary Government had received a shock from which it was never to recover, and henceforth, in comparison with its past, was more of a shadow than a reality. From this time

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[1] For the Governor's opinion of the Council of Safety, see his letter of August 27, 1775, quoted in Scharf's *Hist. of Md.*, II, 188, as having been written to an English nobleman. I am indebted to Dr. B. C. Steiner for the information, obtained after a careful investigation of the matter, that this letter was really addressed to Lord Dartmouth, Secretary of State for the Colonies, and was the one the answer to which was intercepted, and caused so much trouble in Maryland, and finally the departure of the Governor.

[2] See Eddis' *Letters*, Aug. 24, 1775.

[3] See Address of the Council of Safety to Gov. Eden. Proceedings of the Convention, Md. Archives, p. 72.

[4] See Letter of Thomas Johnson to General Gates, Aug. 18, 1775, quoted in Scharf's *Hist. of Md.*, II, 186.

on, the new government was plainly the chief Power in the Province, but it confined itself to the promotion of defensive measures, leaving still to the old Power many of its functions, and, where necessary, even aiding it and counselling the people to obey it.

Soon after its close, and in accordance with its direction, the people assembled in the various counties and ratified its acts by choosing committees to carry them out,[1] and, though we hear in one instance[2] of strife at the polls, owing to party prejudice, yet, on the whole, the elections passed off quietly, and the people with great unanimity supported the doings of the last Convention. The committees were busy in enforcing the Continental Resolutions; in seeing to the enlistment of the militia; in presenting the Association document to every freeman to sign; in taking a general account of the arms in the counties; and in noting the names of those who refused to enlist and to sign the Association; while the Council of Safety was chiefly engaged in contracting for the manufacture and furnishing of arms and ammunition, and in granting commissions to the military officers. On one occasion, on the rumored approach of the enemy's war vessels, the Council of Safety recommended the public officers of the Proprietary Government at Annapolis to make ready to remove their public documents at a moment's notice, thus subjecting the Proprietary's record officers to their direct control. On the whole, the machinery of the new control worked well and smoothly. We read in Eddis' *Letters*[3] of one instance where some over ardent patriots tried to get a public meeting of the citizens of Annapolis to brand all those who had refused to sign the Association as enemies of America, and tried to have them banished, and such events may have been repeated elsewhere, but they were soon frustrated by the good sober sense of the people, and

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[1] See *Md. Gazette*, Sept. 14, 21, 28, and Oct. 19, 1775.
[2] See Eddis' *Letters*, Sept. 27, 1775.
[3] Eddis' *Letters*, Sept. 27, 1775.

the authority of the Council of Safety was upheld in such matters.

Towards the close of the year, it was felt to be necessary that the people should again assemble in Convention to take measures to put the Province in a better state of defense, and provide for a more complete and compact organization of the military force. Accordingly, at the call of the Council of Safety, the newly elected deputies gathered at Annapolis on December 7. They agreed to change the nature of the military forces somewhat in providing that no further minute-men should be enlisted, and that those already enlisted under the regulation of the last Convention should be paid off, and be disbanded by the first of the next March. On the other hand, every able-bodied freeman between the ages of sixteen and fifty was directed to enrol himself in the militia before that time under penalty of a fine and the delivery of his arms to the committee of observation for his county. All those newly enlisting, as well as those who had previously done so, were to take the oath of allegiance to the Convention and to the Council of Safety. To put the Province in the best state of defense at once, they ordered one battalion of regulars, seven independent companies, and two artillery companies to be immediately raised and put in the public pay, and they proceeded to elect their officers by ballot and issue commissions to them. They divided the Province into five military districts, with a brigadier-general over each; they stationed troops wherever they thought best, and they handed over the direction of them to the Council of Safety. To encourage the making of arms and ammunition, they resolved upon the erection of a gun-lock manufactory at Frederick, of a saltpetre manufactory in each county, to be run under the direction of a specially appointed supervisor, and they decided to carry out the resolve of the last Convention, to erect a powder mill where the saltpetre might be made into powder.

Besides these measures of defense, they resolved to encourage home industry, and advances of certain sums of money were

ordered to certain individuals for the manufacture of linen, for the working of lead veins, and for the building of a rolling, slitting, and sheeting mill. They resolved that the Parliamentary post should be prohibited from travelling in and through the Province, and they enjoined the committees of observation to enforce this regulation. They resolved that no boat belonging to the Province should leave its shores without a license from them or the Council of Safety, or a committee of observation, stating its destination; and if any skipper should go to any other place, unless absolutely necessary, or carry any person or letter, of which due notice should not have been previously given, he and all those accessory to such misbehavior were to be liable to imprisonment.[1] They also issued bills of credit to the amount of 535,111⅓ dollars, to be redeemed and sunk before January 1, 1786, the former issue to be redeemed by these new bills and then to be destroyed. They laid out a new district in Frederick county, and directed its inhabitants to elect a deputy to the Convention and a committee of observation. They exercised, moreover, the same police power that former conventions had made use of. A deputy who had broken the Continental Resolves was deprived of his seat and a new election was ordered to fill his place; one person, who would not enrol in the militia, and who prevented others from so doing, fell under their censure, and, in general, they exercised the right of sitting in judgment on all actions injurious to the cause of liberty. They manifested their intention of upholding the civil administration of the Proprietary's functionaries in recommending that the taxes assessed by the last Assembly be collected; of disproving of the non-payment of the levies; in offering to aid the officers in collecting them; and in handing over a person charged with misconduct to a civil magistrate, that order might be taken therein according to the due course of the law. The committees of observation were directed to present the "Association" to every freeman who

[1] Proceedings of the Convention, Dec. 12, 1775.

had not yet signed it, and it was ordered that all those who should refuse to do so before April 11 next, should give up their arms or be forcibly disarmed by the committee, who might also, in their discretion, require bond of non-subscribers for good behavior. If they should wish to leave the country, they were to be free to do so and to take their goods with them; but if they should leave their estates behind, these were to be burdened with a share of the common expense. In refractory cases, the committee was given the power to imprison.

This Convention, like its predecessors, made use of all the different powers of government, and yet, at the same time, it permitted and aided the old régime in the exercise of much of its civil power. There was little new in its resolves, but it is especially interesting from the declaration of its attitude to the Crown and Parliament of Great Britain and to the questions of Independence and State Federation, which were then deeply agitating the minds of the colonists.[1] In electing their delegates to the Continental Congress, heretofore, they had usually given them "full and ample power to consent and agree to all measures which such Congress shall deem necessary and effectual to obtain a redress of American grievances."[2] At this time, however, it was felt to be a matter of so much delicacy that a committee was entrusted with the drawing up of a formal detailed document of instructions. The mildness and equity of the English Constitution, to which they owed their blessings of prosperity and happiness, were recalled to mind, and they gave it as their judgment that it was the best known system "calculated to secure the liberty of the subject,

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[1] It is important to value rightly the conservative peace-making influence of Governor Eden in mediating between the English Government and the Patriots in the Province. His judicious but difficult conduct aided greatly in keeping Maryland free from British troops, and in restraining the over-zealous and ultra-radical patriots from forcing Independence before its time. It was during his absence from the Province in the summer of 1774 that the spirit of opposition burst forth in organized resistance.

[2] Proceedings of the Convention, pp. 36, 10, 41.

to guard against despotism on the one hand, and licentiousness on the other." They recommended to their delegates "to keep constantly in view the avowed end and purpose for which these colonies originally associated,—the redress of American grievances, and securing the rights of the colonists." They directed them, in case any proposition should be made by the Crown or Parliament leading to a happy reconciliation on the grounds of constitutional freedom, to do all in their power to further it, and not to assent to any proposition of independence or foreign alliance or colonial federation leading to a separation with the mother country, unless they should deem it absolutely necessary for the preservation of colonial liberties. If such a proposition should be assented to by a majority of the colonies in Congress, their delegates were to call a meeting of the Convention at once, and to know that the Province would not be bound by such an assent except by the vote of its representative body. They were, however, directed to join with the other colonies in all necessary means of defense until the Peace.[1] Moreover, in referring to the King's speech of the last October, and to the responding addresses of Parliament, they left no doubt as to their position. They expressed their strong attachment to the English Constitution and their affection for the House of Hanover, and affirmed, that to be free subjects of the King of Great Britain was, in all its consequences, to be the freest members of any civil society in the known world, and they disclaimed any desire for independence, maintaining that their only motive in taking up arms was to defend their lives and liberties.[2]

The new Council of Safety sat nearly every day, and occasionally, under press of business, on Sunday, busy in carrying out the resolves of the Convention and of Congress. It was chiefly engaged in issuing commissions to militia officers; in arranging for the victualling and clothing of the troops; in

[1] Proceedings of the Convention, Jan. 11, 1776.
[2] *Ibid.*, Jan. 18, 1776.

contracting for the making of arms and ammunition; in issuing orders on the Treasurers to pay subsist and advance money for the support of the troops; in seeing to the fortifications of Baltimore and Annapolis; in issuing instructions and sailing orders to the captains of vessels exporting provisions from the Province; and, in general, in executing measures of defense. It did not hesitate to issue orders to the Proprietor's Commissary and Land officers and to the clerk of the Provincial court at Annapolis, but its directions were by no means arbitrary, and it frequently backed up its acts by reference to the resolves of the Convention.

The business of the courts was going on as previously arranged; the Proprietor's officers were duly executing their functions, and the Governor himself was sitting quietly at Annapolis, greatly respected, and ostensibly possessed of his authority, though he was wise enough to pursue a policy of inactivity and, where possible, to exert his powers for the making of peace. But events were soon to occur which were to make his departure necessary, and thus to loosen greatly the bond which bound the Province to its Proprietor.

In the latter part of March, a certain Alexander Ross, on returning from a visit to Lord Dunmore's fleet, whither he had gone on private matters, was stopped by a Virginia captain of militia, and on his person were found some letters addressed to Governor Eden, more particularly, a circular letter and a private letter from Lord George Germaine.[1] In the most important one, Governor Eden's zeal for the public service, and the unalterable attachment shown by him to the King's person and government, was approved of. A letter from him containing "a great deal of very useful information," and a "confidential communication of the character of Individuals," were spoken of, and he was directed to assist the operations of the British troops in the southern colonies, if they should come near Maryland. The letters were sent im-

[1] Journal and Correspondence of the Council of Safety, April 16, 1776, ff.

mediately to General Lee, commanding the troops in Virginia, and to the Virginia Council of Safety, whereupon the latter body forwarded them to the Baltimore committee of observation, directing it to forward them to Congress. General Lee sent a private letter to Samuel Purviance, the chairman of the Baltimore committee, with whom he was on good terms, directing him to send at once to Annapolis and seize the person and papers of the Governor. The letters reached Baltimore April 14, and the committee not being then in session, Mr. Purviance, on his own responsibility, sent an officer with a few men to Annapolis to seize the Governor secretly, and, at the same time, he forwarded the letters to Congress and wrote an unsigned private letter to President Hancock, in which he spoke of the Council of Safety and Convention as timorous and inactive, and as being afraid to execute the duties of their station. The letters were forwarded also to the Council of Safety, and upon their receipt the Council sent a delegation to the Governor, to show him a copy of the intercepted letters and to request a sight of his letter to Lord Dartmouth of August 27 last, and to ask his parole not to leave the Province until the meeting of the Convention. He replied that he had sent away the copy of the letter, with all his valuable papers, the autumn before, and could not remember the particulars, but observed that they might be convinced there was nothing of a nature unfriendly to the peace of the Province in it, because the troops going to the southward had not been ordered to Maryland. "He asserted also upon his honour that he had not endeavoured to enflame the ministry by traducing the characters of individuals." On being asked to give his parole that he would not leave the Province till the meeting of the Convention, the Governor complained of being unjustly suspected; gave them his letters from William Eden, Esquire, his brother and one of the under secretaries of State, also one from Lord Dartmouth, and desired time until the next day to give his answer. At the set time, he refused to give his parole, holding it impossible so long as he should act

as Governor to become a prisoner at large in his Province. But, he told them that he had no intention of leaving, so long as his stay would tend to preserve the public tranquillity. This was taken as his parole in effect, and the committee thanked him for his resolution to remain, and expressed their hope that he would not regard their action as an insult or indignity. On the next day, the Council received an earnest request from Congress to seize both him and Ross and their papers, and to send such as related to the American Dispute to it without delay. This they considered as uncalled-for interference with their internal affairs and naturally resented. They replied that they had already taken such measures as were competent in their judgment to the occasion; that they were not convinced that the Governor had carried on any dangerous correspondence, and that they considered the seizure and imprisonment of the head of the civil government a measure of too much delicacy and magnitude to be adopted without calling and consulting the Convention.[1] They were, moreover, greatly incensed at the anonymous letter of Purviance to President Hancock traducing them, and at the fact that the Congress would not let them have it to use against the writer. They "considered the authority of the whole Province trampled upon and insulted,"[2] and they called a Convention for May 7 to take the matter into consideration. Meanwhile, being suspicious of the plan concerted by General Lee and Samuel Purviance, they decided to investigate matters thoroughly, and accordingly summoned Purviance and other members of the Baltimore committee to appear before them, with all the papers and proceedings of the committee relative to the intercepted letters. On which occasion, they questioned them at length and in detail,[3] and were disgusted with Purviance's answers.[4]

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[1] Journal and Correspondence of the Council of Safety, April 18 and 19, 1776.

[2] *Ibid.*, April 19, 1776.

[3] *Ibid.*, April 24, 1776.

[4] *Ibid.*, April 25, 1776.

He was obliged to enter into a recognizance for the sum of £500 for his appearance before the next Convention.

On the meeting of that Convention,[1] on May 8, the Council of Safety laid all their proceedings relative to Purviance and the Eden affair before it, and sought its approval of their actions. A committee inquired into the Purviance affair and found him guilty of the three charges: of usurping a power to direct the operations of the military force, at a time when the Council of Safety, to whom such power solely and properly belonged, was sitting, and might, without inconvenience, have been applied to; of having given instructions to seize the Governor under color of his office as Chairman of the Baltimore committee, and as if at its request, whereas it was not consulted nor acquainted therewith; and, finally, of having written and spoken derogatively of the Convention and Council of Safety.[2] The Convention saw in his actions the influence of General Lee meddling in the affairs of the Province,[3] and, while greatly resenting this outside interference, they resolved to let Purviance off with a severe reprimand,[4] in which their indignation at the real author of his actions was made plain.

The Eden affair was considered in committee of the whole for several days. Finally, the course pursued by the Council of Safety was approved of, and no evidence was found of the Governor having held an unfriendly or injurious correspondence with the Ministry as regarded America. But, since it appeared from the intercepted letters that an expedition was to be sent to the southern colonies, which might have important consequences to Maryland, and since the Governor had been directed to assist it, and must, if he should remain in the exercise of his power, execute the instructions of the Ministry, and, moreover, since the powers of government, in the absence of the Governor, would devolve on the President of his Coun-

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[1] Proceedings of the Convention, pp. 125–162, May 8–May 25, 1776.
[2] *Ibid.*, May 10, 1776. [3] *Ibid.*, May 22, 1776.
[4] Proceedings of the Convention, May 22, 1776.

cil, and thus the established form of government would not be dissolved or suspended by his departure, it was decided to signify to him that the public quiet and safety required his departure and that he should have full liberty to depart peaceably with his effects.[1] A complimentary address was drawn up and sent to him at the hands of a committee, expressing their appreciation of his conduct, their wishes for his return to the government of the Province at the conclusion of peace, aud their hope that he would, upon his arrival in England, represent their temper and principles with the same candor that he had ever shown in his attempts at reconciliation.

Besides exercising the same executive, police, and judicial powers as those exercised by previous Conventions, this one took a step or two forward. It gave to the Council of Safety authority to subpœna witnesses when necessary, and to compel their attendance under penalty of fine and imprisonment. Owing to the marine warfare, which had begun under the direction of Congress and had grown to large proportions, they established a new court of admiralty. Because sundry officers appointed to maintain peace and order objected to take the oaths to the Proprietary Government, they resolved to dispense with them, and directed the officers to take simply the oaths of their office without fear of any penalties. Because the people who had taken up arms in defense of their rights and liberties could not, with sincerity and devotion, pray for the success of His Majesty's arms, they directed that every prayer for the King found in the Book of Common Prayer, except the second collect in the communion service,[2] be omitted in all churches and chapels until the end of the unhappy differences.[3] Finally, in reply to the resolution of Congress recommending them to form a permanent government representative of the

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[1] *Ibid.*, May 24, 1776. On this motion the vote stood 36 to 19.

[2] This is especially important as marking the Convention's exercise of authority over the Established Church.

[3] Proceedings of the Convention, May 25, 1776.

people, they said that they had the sole and exclusive right of regulating their internal affairs, that they would continue as heretofore to act with cheerfulness and alacrity in the common cause, and, if necessary, that they would enter into a further compact with the other colonies to do so, but that they did not think it necessary that every kind of authority under the Crown should be totally suppressed and all powers of government exerted under the authority of the people. In accordance with this sentiment, they renewed, to their newly reëlected delegates to Congress, their instructions of the previous January.

On reviewing the events and results of the year about ending with this Convention, one is struck by the great advance made by the people in the acquisition of the powers of government and, at the same time, by the conservative use made of them. At the beginning of the period, the power of the people in Convention was just beginning to assert itself in a proposed commercial and armed opposition, and the Governor's power was then little diminished. But that year saw the people's authority rise first to a position of equality and then to one of actual superiority, and finally drive the acknowledged head of the old régime out of the Province. A thoroughly competent Provisional Government of defense had grown up, a large military force had been raised and organized, the civil government had been encroached upon, and many of the bonds which bound the Province to the mother country had been loosened, but, withal, the progress had been cautious and only such as was necessary for the defense of the people's liberties. There was a great hesitation about taking the final step. As yet the people were not ready for it, and even the departure of the Governor[1] was looked upon as only temporary. But events were not long in bringing about the final severance of all political ties with England. To declare their colonial in-

[1] The President of the Council remained as his representative, and the Magistrates, Justices, and Sheriffs still held their commissions from him.

dependence and to set up a new State government was the last act in the drama of the Provisional Government.

III.

The people of Maryland were very slow, as has been seen, in making up their minds to declare their independence of Great Britain. The great amount of freedom previously exercised in the regulation of their internal affairs, and the happiness and prosperity enjoyed under the old régime, had endeared the English Constitution to them. The many and strong ties of blood, language, religion, and common interest, bound them closely to the mother country. The troubles and oppression which gave rise to the war bore down upon them less as concrete realities than as violations of their abstract rights. Finally, the fear of interference in the regulation of their internal affairs by the representative body of the United Colonies, made them loathe to break away from the protecting arm of the English Constitution and plunge into the uncertainties of Colonial Federation while yet there remained the faintest hope of "a reconciliation on the firm ground of constitutional freedom." Consequently, Maryland held out to the end, and was one of the last of the colonies to declare its Independence.

For a long time, however, some of the clearest minded of its citizens had seen the inevitableness of the step. We are told that, "sometime after the commencement of hostilities, and a long time before the Declaration of Independence," at a dinner at the house of Charles Carroll, Barrister, and in the presence of the Governor, Thomas Johnson declared that "the first Hessian soldier that puts his foot on the American soil will absolve me from all allegiance to Great Britain!" and that Samuel Chase, at the same time and place, exclaimed, "By God! I am for declaring ourselves independent!"[1] Though these expressions may have been used on

[1] Quoted in Scharf's *Hist. of Md.*, II, 218, footnote.

the spur of the moment, there was back of them the more or less conscious conviction that Independence would be the inevitable outcome of the struggle.

For some time to come the mass of the people did not share these views. The instructions to their Congressional delegates in January, 1776, were explicit in directing them not to join in any such movement, and they were repeated by the Convention in May. But, by that time, the logic of events was plainly pointing in the direction of Independence. On May 15th, Virginia directed her delegates to declare in its favor in Congress. Massachusetts, Rhode Island and North Carolina had taken more or less similar steps and, now, on June 7th, the matter was debated in Congress and, after a few days, was postponed for three weeks to give the deputies who had been directed to oppose it time to consult their colonies. The Maryland delegates informed the Council of Safety of the fact, and asked them to call the Convention at the earliest possible moment, in order to get "the explicit sense of the Province on this point." They suggested also that the deputies collect the opinion of the people at large, in some way, before the meeting of the Convention. They themselves were plainly in favor of taking the decisive step. The Council had already called the Convention to meet on June 21st in order to consider the request of Congress to have the Maryland troops sent out of the Province,[1] not feeling possessed of the proper authority to give the order themselves. In communicating this fact to the delegates in Congress, they said it was now too late to make the necessary inquiry before the meeting of the Convention; and that, as they presumed, the first business of the Convention would be the regulation of the movement of the militia in accordance with the desire of Congress, the committees of observation could, if necessary, be directed to collect the sense of the people on Independence and report to the Convention. The Council was apparently not yet in favor

[1] Proceedings of the Council of Safety, June 10, 1776.

of it and was unwilling to take this responsibility upon themselves, as they suggested that, "any mode their representatives may think proper to point out would be better relished by the people, than for us to put them into a violent ferment in a way that might not be approved of." This was apparently not very satisfactory to their delegates in Congress, who were anxious to have the Convention remove their previous instructions and declare in favor of Independence. As soon as they could leave Congress, Matthew Tilghman, Thomas Johnson and Samuel Chase came down from Philadelphia and endeavored to rouse the people to give the necessary instructions to their deputies in the Convention. Under the pressure of events and the increasing sentiment in favor of the movement,[1] this was not very difficult. Several county meetings directed their deputies to rescind the former instructions and authorize the Congressional delegates to join with those of the other colonies in declaring Independence.

When the Convention met, therefore, on June 21, many of the deputies were prepared for the action about to be taken. Still, the energetic action of the leaders was necessary to bring over many of the halting moderates. Their first work was to write to Congress, requesting the leave of as many of their delegates as could be spared, and to desire that the questions of Independence, Federation and Foreign Alliance be postponed until their return, which was promised to be as soon as possible. Then, while awaiting their attendance, they gave their attention to minor matters.

In response to the Charles county meeting, they resolved to determine all questions in future by a majority of members, and not, as heretofore, by a majority of counties; they decided that the yeas and nays might be taken and entered whenever desired by any member, and they resolved to open their debates

[1] For the last six months, the leaders of the movement had been disseminating their views in papers and letters. See Stone's Letter to Jenifer, Correspondence of the Council of Safety, Md. Archives, April 24, 1776.

and proceedings to the public except in cases where it should be otherwise ordered. All these measures marked a great advance in parliamentary procedure, making the Convention more sensitive to, and a better register of, popular opinion.

They took another step in severing their relations to the Proprietary Government. The Governor had departed on June 24, and, on the next day, they ordered one of his last orders to be disobeyed. The Assembly had been prorogued, from time to time, since the Spring of 1774, and its legal existence had ended in the Autumn of 1775. To provide for a new Assembly, the Governor, shortly before his departure, had ordered writs to be issued in the Proprietor's name, providing for the election of delegates. The Convention now ordered the writs to be disregarded and no elections to be held. This was really the death-knell to the Proprietary Government. The departure of the Governor had been regarded as only temporary, but now the orders for constituting the proper legislative Assembly, under the old régime were disregarded, and it was henceforth plain that the break with it must be complete and a new government constituted by the authority of the people. Henceforth, all that remained of the Proprietary rule was the subordinate officers of the civil and judicial administration, and these continued to exercise their functions several months longer.

The Convention proceeded to consider the request of Congress to have them furnish troops to act with Pennsylvania and Delaware, and they agreed to furnish four battalions of militia, consisting in all of 3,405 men, under the command of a brigadier-general.

Finally, on June 28, the much desired withdrawal of the previous instructions and restrictions upon their delegates in Congress was resolved upon, and they were now directed to join with the delegates from the other colonies in declaring "the United Colonies free and independent States; in forming such further compact and confederation between them; in making foreign alliances, and in adopting such other measures

as shall be adjudged necessary for securing the liberties of America." They pledged the colony to hold itself bound by the resolutions of a majority of the United Colonies, "provided, the sole and exclusive right of regulating the internal government and police of this colony be reserved to the people thereof."[1] This was an actual declaration of Independence, but it was followed on July 3 by the formal document,[2] which stated the rights of the colonists, the infringements of the same, and their withdrawal of allegiance from the King of Great Britain, and declared their intention of entering into such further colonial union and foreign alliance as should be necessary, and their determination to form a new government to regulate the internal affairs and police of the colony.[3]

Independence having been declared, the next thing was to arrange for the formation of the new government. For this purpose, it was thought best to go to the people. Elections for deputies to a new convention, whose duty it should be to form the new government, were ordered to be held at certain specified places in each county, usually at the court-houses, on August 1. The qualifications for voters were fixed much as in former elections. "All freemen, above twenty-one years of age, being freeholders of not less than fifty acres of land, or having visible property in this colony to the value of £40 sterling, at the least," were to vote for deputies in the several counties and in the town of Baltimore. For Annapolis, any freeman could vote who was twenty-one years old, and who owned a whole lot of land there or had a visible estate of £20 sterling within the Province, or who had served five years in the city and was a housekeeper. In every case, the further requirements of one year's residence in the place where one should offer himself to vote, and freedom from the censure of

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[1] Proceedings of the Convention, June 28, 1776. [2] *Ibid.*, July 6, 1776.

[3] It is noteworthy that, from now on, the word "colony" is generally used where "province" had been formerly employed, indicating the end of its peculiar provincial existence and its sense of union with the other colonies.

the authorities for breaches of the Continental Resolves was necessary. Each county was to elect four delegates, Frederick being very large was allowed four from each of its districts. An innovation was now made in the representation of the people in that, for the first time, the town and city of Baltimore and Annapolis were classed by themselves, and each was allowed to return two delegates. The elections were to be free, and to be held in the usual *viva voce* manner. To this end, no one was to be allowed to go to the polls armed, no muster of the militia was to be made on the election day, nor were the soldiers to collect at the time and place of holding them, nor were any ten militia men to be allowed to vote successively if any one should object. Furthermore, no one holding a commission or office in the regular forces by land or by sea was to be eligible to become a representative, or to hold any place in the civil department, or to have a right to vote while holding such commission or office. Every regulation was made on the old basis of representation, together with the innovations in the cases of Baltimore and Annapolis, to ensure the people a free voice in the election of delegates to frame a new government. The authority of the people was recognized as the basis of this new Power, and everything was done to have a full and free representation of the people in the new Convention. The old principle of free property qualification for suffrage was, however, still adhered to as a characteristic of the age.

The civil officers whose commissions had issued from the Proprietary Governor were now exercising their functions only by sufferance, but, there being no convenient way as yet to replace them, the Convention authorized them, with the exception of the customs officers, to continue in office until the next Convention should replace them by functionaries with commissions from the new State Government. The Proprietary officers were thus allowed to continue[1] in the Colony even after the Declaration of Independence.

[1] Eddis and his colleague of the Loan Office continued to perform their duties until June 1, 1777. See Eddis' *Letters*, June 1, 1777.

Certain other matters of considerable importance were attended to by the Convention. The Statute of Treasons enacted under Edward III, fixing the trial of traitors before a petit jury with the penalty of death and the confiscation of property, was adopted as law. It was decided that counterfeiters and conscious passers of such money should suffer death without benefit of clergy. It was resolved that private debts contracted between September 10, 1775, and July 10, 1777, might be paid in country produce and manufactures. Other matters, such as ordering the advance of money to aid home manufacturers in the production of goods, orders to the Council of Safety to contract for arms and ammunition, and judgment on cases of appeal on the breaches of the Continental Resolves, were also attended to.

The action of the Convention on the resolutions of the Virginia Convention relative to the Eden affair is, however, particularly interesting as showing the determined opposition to all outside interference with their internal affairs. The Virginia Convention had, on May 31, directed a letter to be sent to the President of the Maryland Convention expressing their deep concern because Governor Eden had not been seized and their reasons for refusing to give him a passage through their Colony or the Bay adjoining.[1] The Maryland Convention now replied that the Virginia resolutions were hasty and betrayed a disposition to meddle in their affairs, that they had never interfered in the affairs of Virginia and that they could not believe that the Virginia Convention (as it said) thought they had promoted the Governor's passage "to assist in their [Virginia's] destruction under a pretence of his retiring to England." They said, further, that they were the only proper judges of the propriety of the act, and that, if the Virginia

[1] Virginia had insinuated that Eden's passage had been promoted "to assist in their destruction under a pretence of his retiring to England." It had appealed to the people of Maryland against the Convention, and it thus became necessary for the Convention to vindicate its proceedings.

Convention had had the evidence before them, they would not have been at a loss to know why the Maryland Convention acted as it did. The same spirit was manifest here as had been evidenced before in the action upon the directions of Congress to form a new government. Maryland was determined, at all costs, to resist all outside interference and to maintain the sole and absolute right to regulate its internal affairs.

Before adjourning on July 6, the Convention reappointed its delegates to Congress, replacing John Hall by Charles Carroll of Carrollton, and giving them as full and ample power to represent the Colony as any before had been given. They also reappointed the Council of Safety, with one exception, with power to serve until the end of the next Convention. Then, fixing the date for the meeting of the new Convention for August 12, and directing the Council of Safety to call a meeting of the present one if necessary before August 1, they adjourned, providing for their dissolution on August 1.

After declaring American Independence, Congress directed President Hancock to send a copy of the document to each of the Colonial Conventions, to the end that it might be by them proclaimed in the presence of the people. On July 11, the Council of Safety received the Declaration, together with a letter from the President, and it thereupon sent copies of them to the committee of each county requesting them to have the Declaration proclaimed in the manner they should judge most proper for the information of the people,[1] which was accordingly done with proper solemnity and festivity. On the meeting of the new Convention, the Council laid the document before that body, and, on this occasion, the sanction of the representative and authoritative body of the Colony was added to the previous approval of the people.[2]

When the Convention assembled on August 14, it was found that in several instances the regulations of the last Con-

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[1] Correspondence of the Council of Safety, July 16, 1776.

[2] Proceedings of the Convention, August 14, 1776.

vention fixing the qualifications of voters and the places for voting had been disregarded, and some irregularly elected deputies had been returned. The regulation excluding all those actually in the military service of the Colony from voting or becoming candidates for election, seems to have been the chief cause of trouble. In Queen Anne, Prince George, Worcester, and the lower districts of Frederick county, deputies had been appointed by the aid of the vote of the soldiery, and in Kent county, owing to the trouble growing out of the enforcement of this regulation, no election had been held.[1] In all these cases, the Convention upheld the regulations of its predecessor, declared all such elections null and void, and ordered new ones on the old basis.[2]

Before entering upon the all-important work before them, certain rules[3] regulating procedure and debate were agreed upon, which, from their simple, natural character, make one wonder why they had not been previously adopted. Consistently following the endeavor of previous Conventions, they were determined to keep the military from influencing the civil department of government, which they desired to be founded on the calm, sober judgment of the people, and they resolved that any member who should accept a commission in the flying camp, should vacate his seat in the house.[4]

They soon set themselves to their chief task, the formation of a new government. On August 17, they appointed a committee[5] of eminent men "to prepare a declaration and charter

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[1] In Charles county, though held partly at one place and partly at another, yet, because of the unanimous consent of the voters, they were allowed to stand.

[2] The personnel of the Convention was much changed. Out of a total of 76 members, the late elections had returned fully two-thirds of that number as new men. Council of Safety Correspondence, Letter to Md. Deputies, July 9, 1776. Proceedings of the Convention, Aug. 15, 1776.

[3] Proceedings of the Convention, Aug. 15, 1776. [4] *Ibid.*, Aug. 16, 1776.

[5] It consisted of Matthew Tilghman, Charles Carroll, Barrister, William Paca, Charles Carroll of Carrollton, George Plater, Samuel Chase, Robert Goldsborough. Thomas Johnson and R. T. Hooe were added on August 30.

of rights, and a plan of government agreeable to such rights as will best maintain peace and good order, and most effectually secure happiness and liberty to the people of this State." Ten days later, the committee reported a Declaration and Charter of Rights, and on September 10 presented a Constitution and Form of Government. These were read and laid on the table without discussion or consideration, owing to the necessary attendance of their delegates in Congress. On September 17, they ordered these documents to be printed for the consideration of the people at large, and twelve copies were directed to be sent to each county.[1] The Convention then adjourned for two weeks, to give the people time to acquaint themselves with the proposed instruments of the new State Government, and to give their delegates in Congress an opportunity to attend the Convention. After reassembling they took up the discussion of these documents, discussing them first in committee of the whole, then reporting them to the house, rediscussing them, paragraph by paragraph, and finally they were adopted, the Declaration of Rights on November 3, and the Constitution on November 8.

The time spent in deliberating on them was very short, in comparison with their importance. The committee which drew them up produced the Declaration in ten days, and the Constitution in about ten days more. Then they were laid on the table for a whole month, and after being taken up again, a month was given to discussing and agreeing to them, but of this time much was given to other business. Yet they both were able and epoch-making documents.[2]

The Declaration of Rights[3] asserted, first of all, the true origin and end of government as coming from the people and

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[1] Proceedings of the Convention, Sept. 17, 1776.

[2] It is interesting to note that no provision was made for a ratification of them by the people. The people were apparently regarded as sufficiently present in the Convention, and when adopted by it, these instruments were binding upon all.

[3] See Proceedings of the Convention, Nov. 3, 1776.

existing solely for their good. It next demanded for the people of Maryland the sole and exclusive right of regulating their internal government and police. For the freedom and protection of the citizen, it claimed the benefits of the Common Law of England, and repeated some of the provisions of the Great Charter providing for free, speedy and just trials by jury, and declaiming against *ex post facto* and attainder laws. The now somewhat famous aphorism that "public office is a public trust," was clearly enunciated in it, and the violation of it was made a justification for the overthrow of the old government. The principle of the three-fold division of the powers of government, then so enthusiastically believed in, was strongly emphasized, and made a corner-stone of the Constitution. Freedom of worship, freedom of the press, the evils of monopolies, of hereditary honors and titles of nobility, the elevation of the judiciary above the clamor of frequent and popular elections, the subjection of the military to the civil power, were some of the remaining assertions of this Declaration.

The Constitution[1] introduced several interesting innovations. Under the Proprietary Government, the Governor and his Council had acted as a second and Upper House of the Legislature; but it had never been elected by the people nor had it ever represented them. In its place, the new body of the Senate was put, with the peculiar condition that the Senators were to be elected not directly by the people, as in the other Colonies, but by electors who were chosen by the people. They could be taken all from one county, or from several, as the electors should see fit, except that nine must be taken from the Western and six from the Eastern Shore. This method of election produced in the Senate a different kind of authority from that of the Lower House, elected directly by the people. It produced a body of the best mature and able men, less

[1] See Proceedings of the Convention, Nov. 8, 1776.

affected by the hasty movements of popular opinion than the Delegates, and formed not another House of Delegates but a real check to the latter. So effective was it, that this plan was more or less followed in the formation of the United States Senate, and in the election of the President. The House of Delegates was but the continuation of the previous Lower House of the Assembly, unchanged, with the same equal representation of the counties as before. The property, age, and residence qualifications for suffrage were retained, with the reduction from £40 to £30 sterling, as the least amount of visible property giving one the right to vote. The military were carefully excluded from such privileges. Another important change was the taking away of the veto power on legislation hitherto held by the Governor. This was done probably, as McMahon points out,[1] because the Governor was not elected directly by the people as now, but by the joint ballot of both Houses of the Legislature, and to have given him the power to check legislation would not have been to introduce a new authority against theirs, but simply to provide for a further revision of their acts by a power of their own creation. To introduce the new Government, the Constitution provided for elections soon to be held for senatorial electors, who were to meet in the early part of December and elect fifteen senators. About the middle of December other elections were to be held for sheriffs and delegates, and the new General Assembly was directed to meet February 10 next, and organize and choose a Governor and his Council and the minor officers, and set the wheels of the new machinery in motion.

The time of the Convention was by no means wholly occupied in the drawing up of a Declaration of Rights and the adoption of the Constitution. Many other matters of importance came up for consideration and were attended to. It was necessary that the civil administration should continue in

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[1] McMahon's *Hist. of Md.*, p. 439 ff.

power until the inauguration of the new government, and the Convention therefore authorized the continuance in office of all the civil officers then in commission until others should be appointed and commissioned by the legislative and executive power of the State.[1] Certain other legislative and regulative measures were determined upon. The county courts were ordered to assess the county charges as usual. The justices of Baltimore county were directed to forbear to levy any further sum of money on the inhabitants for the purpose of repaying the money loaned the county for repairing roads.[2] The inhabitants of Talbot county, finding it difficult to pay, in the distress of the times, the annual installment of tobacco levied under the act of 1773 for the building of a county poor-house, the Convention absolved them from its payment and ordered the money already paid in to the county trustees to be expended on the poor.[3] It passed a resolution making inspected tobacco a legal tender, as before June 10, for all public dues.[4] Another resolution made all wills valid which had been made by young men, over sixteen years old, in the military service in case they should die in the service.[5] It ordered the repeal of the act of Assembly of December, 1773, for preserving the breed of wild deer, and the cessation of all prosecution for breaches of the act. Money being needed for the carrying on of defensive operations, it ordered the emission of bills of credit to the amount of 531,111⅓ dollars, to be redeemed on or before January 1, 1786. There was also the usual amount of executive and judicial business, and the election of a new Council of Safety which should see to the carrying out of its instructions. Delegates to Congress were also elected with powers "to concur with the other United States, or a majority of them, in forming a confederation, and in making foreign alliances, providing that such confederation, when formed, be not bind-

[1] Proceedings of the Conventions, November 4, 1776.
[2] Proceedings of the Conventions, September 13, 1776.
[3] Proceedings of the Conventions, September 14, 1776.
[4] *Ibid.*, October 4, 1776. [5] *Ibid.*, October 26, 1776.

ing upon this State without the assent of the General Assembly . . . reserving always to this State the sole and exclusive right of regulating the internal police thereof." Moreover, even at that late day, the peace party gained such prominence as to cause the delegates to be further "authorized and empowered, notwithstanding any measures heretofore taken, to concur with the Congress, or a majority of them, in accommodating our unhappy differences with Great Britain, on such terms as the Congress, or a majority of them, shall think proper."[1] These extensive powers caused considerable uneasiness among the patriots in Congress as being likely to hinder the common cause and a foreign alliance; so much so that Samuel Chase, in a letter to the Council of Safety, expressed his hope that they might be kept unpublished.[2]

The Convention took upon itself the authority to erect two new counties. Frederick county being very large, both in extent and population, it was decided to form of its Upper and Lower Districts the two new counties of Washington and Montgomery, respectively, naming them after the General who had fallen before Quebec and the Commander-in-chief. Arrangements were accordingly made for the determining of a county-seat in each by a popular election, and for the separation of the courts, and commissioners were appointed to superintend the building of a court-house and jail in each.[3]

Another matter of very great importance demanded a great deal of attention. The first purpose in calling the Convention was to meet the demands of Congress to have troops sent northwards, and one of its first acts was to accede to that request and direct the troops accordingly. Maryland had always responded cheerfully and speedily to the call for troops and now sent forward about four thousand.[4] On September

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[1] Proceedings of the Conventions, November 10, 1776.
[2] Correspondence of the Council of Safety, November 23, 1776.
[3] Proceedings of the Convention, September 6, 1776.
[4] Correspondence of the Council of Safety, August 16, 1776.

16, Congress made another call for eight battalions from Maryland to be enlisted to serve during the war, and, as an inducement to enlist for this term, it resolved to give each non-commissioned officer and soldier a bounty of twenty dollars and a hundred acres of land to be furnished at the expense of the United States.[1] This requisition was by no means agreeable to the people of Maryland. The Convention considered the matter on October 19, after reassembling, and came to the conclusion that the call of Congress for eight battalions from Maryland exceeded its proper proportion. It presumed that, in calling for so large a number, the requisition had been made on the basis of all the inhabitants of the Colony, white and black, whereas it judged that it ought to be made on the basis of the white population only. But yet, being "desirous of exerting the most strenuous efforts to support the liberties and independence of the United States," it concluded to "use its utmost endeavours to raise the eight battalions required (including the troops already raised and in the service of the United States) as soon as possible." To the bounty of twenty dollars proposed to be given to each non-commissioned officer and soldier, it had nothing to say, but it was not willing to accede to the proposition of Congress to give them an additional bounty of a hundred acres of land, in the first place because the State had no lands belonging solely and exclusively to it which it might use for this purpose, and, further, because it feared that the purchase of such lands, especially on the basis of its whole population, on which the levies had been made, would involve it in ruin.[2] In lieu, therefore, of the hundred acres of land, it offered to give the further bounty of ten dollars,[3] a generous offer, since it was

[1] Journals of Congress, September 16, 1776.

[2] Proceedings of the Convention, October 9, 1776.

[3] The people felt that the back-lands which Congress proposed to use for the purpose of furnishing the land bounty ought to be the joint property of all the States, since they had been conquered by the joint expense and treasure of all. Fearing the claims of some of the States to these lands,

something more than the price of the land proposed to be given by Congress. On this basis, then, it agreed to carry out the request of Congress; it appointed four commisssioners to go to the camps of the troops in New Jersey and re-enlist all they could get to serve for the term of the war on this double bounty, and it made provision for enlisting the remainder in in the Colony on the same terms and for thus filling up the desired quota.[1]

It hoped and presumed that these arrangements would prove satisfactory but they really stirred up a hornet's nest. The Commissioners, on their arrival in Philadelphia, laid the Resolves of the Convention before Congress, and soon after were informed that the proposed substitution of ten dollars instead of the 100 acres of land would prove extremely prejudicial and detrimental to the United States, as all the soldiers and officers would demand the same bounty and compel the Congress to the payment of an additional bounty greater than could be borne. They were told that land could be bought at three dollars per hundred acres, and that the soldiery had already extorted greater wages than could be endured, and they were asked whether they would re-enlist the troops simply on the twenty dollar bounty without promising the additional ten dollars. Similar sentiments were embodied in the resolutions of Congress of October 30 addressed to the Convention of Maryland. The Convention was asked to reconsider its resolutions and direct the commissioners to proceed to execute the views of Congress. The members of Congress were extremely annoyed at the refusal of the Maryland Convention to accede to their proposal granting a bounty in lands,

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they thought the plan of Congress would cause them to obligate themselves to purchase their share of them of a few venders who might ask what they pleased and thus ruin the State. They, therefore, preferred to obviate all this difficulty by the generous offer of a cash-down bounty of ten dollars. Correspondence of the Council of Safety, Letter of B. Rumsey to J. Tilghman, October 24, 1776, and to Jenifer, November 24, 1776.

[1] Proceedings of the Convention, October 9, 1776.

and they intimated to the commissioners that a disposition to separate from the United States was apparent in the Convention's resolves. In their resolution of October 30, Congress said that, "being satisfied with the propriety of offering land to the soldiery, as an inducement to enlist in the service, they cannot rescind the said resolution; and are of opinion, that the faith, which this House, by virtue of the power with which they were vested, has plighted, must be obligatory on their constituents; that no one State can, by its own act, be released therefrom, and that the interest of the United States would be deeply and injuriously affected, should the Congress, at this time, consent to a compromise between any State and the forces to be by them raised."[1]

To this, the Convention on November 9 made a firm but respectful reply, that they were very sorry that the least difference of opinion should have arisen between them and Congress, that they had, as requested, reconsidered their former resolutions and now offered three conditions, as follows, that Congress should specify any lands, belonging to the United States, which would be used as a common stock to be divided among the soldiery in their service, in which case the commissioners were to endeavor to re-enlist the troops to serve on that basis during the war, or, if it will not specify such lands, and will permit the enlistment of the Maryland troops on the basis of the former resolutions, that is, of ten dollars bounty instead of 100 acres of land, that, then, the commissioners proceed with their duty, or, if it will do neither of these two things, that, in that case, the commissioners endeavor to enlist the men on the bounty of twenty dollars allowed by Congress, but not to engage the faith of the State to give or make good any bounty of lands. They again stated clearly the reasons for their action, namely, that, as they had no lands of their own, they would be obliged to purchase their portion from the other States at exorbitant prices. They clearly enunciated

[1] Journals of Congress, October 30, 1776.

their views as to the ownership of the back lands, a question upon which[1] they had already spoken in connection with the consideration of the Virginia constitution, and which now assumed especial importance in connection with this question of land bounty, and which was to become of still greater importance in future years and form the chief obstacle to formally entering the Confederation. They maintained that what had been "secured by the blood and treasure of all, ought in reason, justice, and policy, to be considered as a common stock, to be parcelled out by Congress into free, convenient, and independent governments, as the wisdom of that body shall direct; but, if those (the only lands as this Convention apprehend that can) should be provided by Congress at the expense of the United States to make good the proffered bounties, every idea of their being a common stock must be given up."[2] In reply to the charge of showing a disposition to disunion, they expressed "a strong disinclination to go into any discussion of the powers with which Congress is invested, being fully sensible that the general interest will not be promoted by either the Congress affirming, on this Convention denying the existence of a fullness of power in that honourable body; the best and only proper exercise of which can be in adopting the wisest measures for equally securing the rights and liberties of each of the United States, which was the principle of their union."[3] Congress replied, by a resolution on November 12, that troops might be enlisted for three years on the twenty dollars bounty, or for the term of the war on the additional bounty of the 100 acres of land, and that, for this purpose, two sets of enlisting rolls be kept. The Council of Safety, after the adjournment of the Convention, directed the commissioners to enlist the troops on the three-year basis, with the understanding that, at the expiration of that term,

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[1] Proceedings of the Convention, October 30, 1776.
[2] Proceedings of the Convention, November 9, 1776.
[3] *Ibid.*, November 9, 1776.

they would be in the service of the State; and they took occasion to pronounce against the implication that Maryland would have "to contribute her proportion of the expense attending the procuring of lands for the officers and soldiers furnished by the other States for the war."[1] Samuel Chase and the other delegates to Congress did all they could to get that body to give the State "some satisfaction as to the back lands, and the mode by which the proportion of the expenses of the war was to be paid by each State," with the result of securing a resolution from Congress on November 23, declaring that nothing hitherto done was to prejudice or strengthen the right or claim of the United States, or of any of them, to any lands in America, nor to determine in what proportion or manner the expenses of the war shall be raised or adjusted," with certain exceptions.

Thus ended the controversy over the giving of lands as bounty to soldiers serving for the war. It gave rise to the greater controversy over the ownership of the back lands, and the present ending of it simply relegated it unsettled to the consideration of a future Congress. The position taken by Maryland was admirable in the calm assertion of its individual rights, and in its insistence on a larger-minded treatment of a question that some of the States wished to dispose of in the light of selfish interests. Maryland's battle over this cause was only begun, but the justice and persistence of her contention bore in them the presage of victory.

Complete and final arrangements had now been made for the formation of the new government, and the last of the Conventions handed over the execution of its resolves to the newly reëlected Council of Safety. The people were, however, in some places "very backward in carrying the new government into execution,"[2] and it was some time before the new committees of observation and the senatorial electors were chosen.

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[1] Correspondence of the Council of Safety, November 21, 1776.

[2] Correspondence of the Council of Safety, Nov. 29, 1776.

In several counties of the Eastern Shore, mobs created considerable disturbance, owing to the great scarcity of salt.[1] In Baltimore, certain over-zealous patriots, known as the Whig Club, caused much trouble by assuming the authority of government and issuing threats to certain less zealous citizens, urging their departure from the Colony. They even drove the Sheriff out of the Town, and prevented him from collecting the county levies.[2] Their example was followed in Annapolis by sundry persons ordering others to depart the city by the next morning.[3] The Council of Safety did its best to quell all this and to maintain order. Meanwhile the elections took place, and, in response to the call of the Council of Safety, the Delegates and Senators assembled at Annapolis as the new General Assembly on February 5, five days before the time set by the Convention, owing to the riotous and extra-judicial proceedings of some and the disaffection of others.[4] On February 13, Thomas Johnson was chosen Governor, and on the next day his Council was elected. On March 21, his inauguration took place with proper solemnity and festivity. The new government was now fairly started, and soon the civil officers of the old régime were superseded by those commissioned by the new Authority.[5] The Council of Safety disbanded on the Governor's inauguration.

The history of the Provisional Government has now been traced, in its general outlines, from its germ in the non-importation agreements of 1773 and 1774 through its gradual exercise and assertion of sovereign authority until it found itself the only power in the Colony. It has been seen to pass through three more or less distinct stages, beginning, in the first, in the commercial resistance of the people to the aggressions on their rights and liberties, and rising to the power of

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[1] Journal and Correspondence of the Council of Safety, Nov. 18, 21, Dec. 30, 1776.

[2] *Ibid.*, Dec. 10, 13, and 17, 1776.

[3] Journal of Council of Safety, Dec. 23, 1776.

[4] *Ibid.*, Jan. 18, 1777.

[5] Eddis' *Letters*, April 2, 1777.

armed opposition, taking the sword out of the Governor's hands and asserting itself as a second Power in the Province. In the second stage, it organized itself more fully, and gradually grew until it completely overshadowed the Proprietary Authority, and, in the third, it cut the Gordian-knot, declared the Colony's independence, broke all connection with the Proprietary, and ended in the setting up of a new State Government. In all this time—a period of nearly three years—it had pursued no other policy than the calm, consistent defense of the people's rights. It did not want to do anything more than maintain these rights, and the forcing upon it of the ultimate consequences was only the result of circumstances. But, under the pressure of those circumstances, it nobly showed itself equal to its task and started forward the Government which, with some alterations, has worked smoothly for more than a century. During its continuance, its actions were marked by calm good sense and sober judgment.[1] Drawing its authority directly from the people, it ever kept close to the source of its power, and, though the spirit of the age was far less democratic than that of ours, it was always true to the voice of its constituents. In comparison with the character and development of other such transitional periods in the history of Government, its history may well be a matter of pride to every loyal Marylander.

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[1] "Such an administration, the immediate offspring of necessity, might have been reasonably expected to be subversive of that liberty which it was intended to secure. But in the course of more than two years, during which it was cheerfully submitted to by all, except the advocates for British usurpation, although many occasions occurred in which an intemperate zeal transported men beyond the just bounds of moderation, not a single person fell a victim to the oppression of this irregular government. The truth is that, during the whole memorable interval, between the fall of the old, and the institution of the new, form of government, there appeared to exist amongst us such a fund of public virtue as has scarcely a parallel in the annals of the world." Chancellor Hanson's introduction to the proceedings and resolves of the Convention which framed the Constitution.

LIFE.

John Archer Silver was born August 4, 1863, near Churchville, Harford County, Maryland. His parents were James and Anna Pannell Silver.

His early education was pursued at the public school of his native place, at a grammar school in St. Louis, Mo., at a grammar school and the Central High School in Philadelphia, and at the Maryland State Normal School in Baltimore, of which last he is a graduate. He prepared for college at the Collegiate Institute of York, Pa., and entered the Sophomore Class of Princeton College in 1883.

After graduating in 1886, he spent two years in teaching the elements of English, of mental, moral, and physical science in Jaffna College, Ceylon,—an institution founded largely by American enterprise and money for the education of Hindu youth. Returning to America, he spent two years in study at the Episcopal Theological School at Cambridge, Mass. Another two years were spent in the study of Philosophy and History at the Universities of Berlin and Heidelberg, and in Paris. Since his return to America in 1892, he has been pursuing the study of History and Philosophy in the Graduate Department of the Johns Hopkins University.

XI-XII

GOVERNMENT AND RELIGION OF THE VIRGINIA INDIANS

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics are present History—*Freeman*

THIRTEENTH SERIES

XI-XII

GOVERNMENT AND RELIGION OF THE VIRGINIA INDIANS

By SAMUEL RIVERS HENDREN, Ph. D.

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GOVERNMENT AND RELIGION OF THE VIRGINIA INDIANS.

I.

Government of the Virginia Indians.

Captain John Smith[1] tells us that although the Virginia Indians were very barbarous, yet their government was of such a character, both with respect to the authority of magistrate and obedience of people, that it excelled the government of many countries that would be counted "very civill." The form of this government was monarchical and imperial; for, says Strachey,[2] "one Emperour ruleth over many kings or werowances," who represented his "Imperial Highness" throughout the country.

This Emperor, a ruler corresponding in many respects to the "great War Soldier" of the Iroquois, was known to the early settlers of Virginia by the name of Powhatan. His ordinary name, however, among his own subjects was Wahunsonacock.[3] The extent of his dominion was wide and the number of his subjects large, considering the sparse population of aboriginal North America. On the south,[4] it extended to the bounds of the Chowanocks and Mangoags (*i. e.* the present North Carolina line); on the north, its furthest limit was the "pallisadoed" town

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[1] *Gen. Hist.*, bk. 2, p. 375; Stith, p. 54.
[2] Strachey, p. 47.
[3] See Smith, *Gen. Hist.*, bk. 2, p. 375.
[4] Strachey, p. 48.

Tockwough, at the bend of the Chesapeake bay, in latitude forty degrees; southwest, a ten days journey was necessary to get beyond its limits at Anoeg, "whose houses," says Strachey,[1] "are built as ours;" to the west, the "empire" extended to the mountains; northwest, its limits were the bounds of the Massawomeekes and Bocootawwanoughs who were unfriendly nations; in the northeast, the greater part of the Eastern Shore Indians acknowledged his sway.

The Emperor Powhatan's chief places of residence were three. Werowocomoco,[2] his favorite one when the English first came to Virginia, was situated on the north side of the Pamunkey river some ten miles from Jamestown in the present county of Gloucester.[3] Tired and disgusted at the encroachments of the English, the old Emperor afterwards left Werowocomoco and went to live at Orapakes, situated "in the deserts at the top of the river Chickahamania betweene Youghtamund and Powhatan." Another favorite residence of his was Powhatan, about a mile below where the city of Richmond now stands.

With reference to appearance and character, Powhatan is described by Strachey[4] as "a goodly old man and not yet shrincking, though well beaten with many cold and stronge winters . . . . supposed to be little lesse than eighty years old[5] . . . . , with graie haires, but plaine and thin, hanging upon his broad shoulders, some fewe haires upon his chin, and so on his upper lippe; he hath been a strong and able salvadge, synowye, and of a daring spirit, vigilant, ambitious, subtle to enlarge his dominions; for, but the countryes Powhatan, Arrohateck, Appamatuck, Pamunkey, Youghtamund

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[1] Strachey, p. 47, following Smith, bk. 2, p. 375.
[2] *Ibid.*, p. 47.
[3] Stith, p. 53; *Newes from Virginia*, p. 11.
[4] *Ibid.*, p. 47.
[5] Powhatan's age was such that in 1609 he informed Smith "that he was very old and had seen the death of all his people thrice," surpassing in this respect old Nestor of the Homeric Epic, of whom it is said that,

> "Two generations now had passed away,
> Wise by his rules and happy by his sway."

and Mattapanient which are said to come unto him by inheritance, all the rest of his territoryes before named and expressed in the mappe,[1] and which are adjoining to that river whereon we are seated, they report to have been eyther by force subdued unto him or through fear yielded; cruell hath he been and quarrellous."

Powhatan thus appears to have been remarkable as well for the strength and vigor of his body as for his energetic and ambitious mind. He was a savage type of conqueror, and, like Roman emperors, had his provinces and provincial governors. He maintained an absolute rule over his subjects, and, like his royal brother James I. of England, held to the principles of the *jus divinum*. His subjects esteemed him "not only as a king, but as almost a divinity." In his person he united the supreme executive, legislative and judicial powers. He maintained a savage pomp[2] and had certain of the privileges of royalty. A guard of fifty or sixty men[3] watched over his personal safety day and night. Regular days were appointed in which all his subjects planted and harvested his corn for him,[4] laying it up in "howses apoynted for that purpose." The principal one of these treasure houses was situated about a mile from Orapakes in a wood. It was fifty to sixty yards long and frequented only by priests and in it was stored not only corn but all the "imperial" treasure, such as skins, copper, paint, beads and arms of all kinds.[5] His wives were many; he had, says Strachey,[6] "a multiplicitie of women," two or more of whom accompanied him on all occasions; his children likewise were many. Strachey,

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[1] See Smith's Map, in Arber's Edition of Smith's Works.

[2] See description of his royal magnificence in Smith, *Gen. Hist.*, bk. 3, pp. 405 and 399-400.

[3] *Ibid.*, bk. 2, p. 376; Strachey, p. 51.

[4] Spelman, *Relation of Va.*, p. CXI.

[5] Smith, *Gen. Hist.*, bk. 2, p. 376; Strachey, p. 55.

[6] See picture of "Powhatan surrounded by his Wives," on Smith's Map. For names of wives, see Strachey, p. 54.

writing about the year 1612, states that Powhatan had "then lyving twenty sons and twelve daughters, including Winganuske and Pocahontas." Such of his wives as he "got tyred of he bestowed upon his friends as doth the Turk."

Succession to the office of "Emperour" among the Virginia tribes was through the female line.[1] The dignity descended from uncle to nephew or from brother to brother, *e. g.*, Powhatan's dominions would have descended not to any of his numerous sons or daughters, but to his brothers Opitchapan, Opechancanough and Kekataugh and their sisters.[2]

The empire of Powhatan for governmental purposes was made up of many subdivisions or shires,[3] some corresponding to tribal or in some cases gentile divisions, and some resulting from other causes. The character of the authority exercised by the Emperor and his sub-officials does not present very marked differences from that existing among other tribes of Southern Indians. Every town or village with its surrounding territory constituted a shire, and these shires, of which there were about thirty-four, were comparatively independent save with regard to the "Emperour," who maintained his authority in them through his "petty werowances" or vicegerents. There was a werowance or "sub-regulus" appointed for each shire, and in it he maintained supreme authority, exercising the power of life and death over his subjects, but paying, at the same time, an exorbitant tribute in kind, amounting we are told, to eight-tenths of all their rude wealth.[4] The territory was thus held, it would seem, by a sort of feudal tenure of the sovereign lord Powhatan. No such gov-

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[1] See Strachey, p. 43; Smith, *Gen. Hist.*, bk. 2, p. 376; Beverley, *Hist. of Va.*, p. 170; Morgan's *Anc. Soc.*, pp. 153-183.

[2] Thomas Jefferson thought the offices were held in rotation (*Notes on Va.*, p. 346), but everything goes to prove that he was wrong. See Lawson, *Hist. of Carolina*, p. 195; Strachey, pp. 55-63.

[3] Strachey, pp. 55-63.

[4] The names of these Werowances and the extent of their domains are given by Strachey, pp. 56-63, Beverley, p. 131, and Stith, p. 54.

ernmental institution as a "confederacy," at least in the general acceptation of the word, existed among the Virginia tribes; for, in every instance, we find the principle of cohesion among the elements of the so-called "confederacies" to have been fear, nor were there voluntary unions of independent equals.

Land among the Virginia Indians was held in common, each inhabitant of the different petty kingdoms having equal rights and hunting privileges. Private property, however, in dwellings and gardens was conceded and respected by all.[1] In each of the shires the governmental machinery consisted of four functionaries, viz.: (*a*) the cockarouse or sachem, (*b*) the werowance or war-leader, (*c*) the tribal council and (*d*) the priests; these must be described in order.

The "cockarouse"[2] was the first man in dignity and influence in his shire or kingdom; he had also "the honor to be of the king or queen's council." One rendered worthy by experience and wisdom was invariably chosen to this high office by his fellow-tribesmen.[3] He was the highest civil magistrate and had a "great share in administration," presiding as he did over the council, which frequently convened in the public square of the town. Next in governmental authority to the "cockarouse" was the werowance[4] or war-chief and leader in hunting and fishing expeditions, who was also a member of the grand council of Powhatan. It was he that led in war, though in peace his authority was subordinate to that of the "cockarouse;" still his authority was an offset to the power of the sachem and he saw that the Emperor's supremacy was maintained. His appointment was of course made by the Emperor, not by his tribesmen.

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[1] Beverley, *Hist. of Va.*, p. 178; *Archæologia Americana*, IV, p. 61.

[2] Beverley, *Hist. of Va.*, p. 131; Smith's *Gen. Hist.*, bk. 2, p. 377. Cf. the "Mico" of the Southern tribes. See Lawson, p. 195, and Jones' *Antiquities*, p. 11.

[3] This office was sometimes hereditary. See Morgan's *Ancient Society*, pp. 170–175.

[4] Beverley, p. 179.

There was always a place of council in every town, which debated and regulated its individual affairs. In the general council-house at Werowocomoco were regulated matters of general concern to the whole empire. In its deliberations the most profound respect was shown to the Emperor. Bows and genuflexions occurred with great frequency. A decoction of cassine or the ilex yupon was always drunk as a preliminary to solemn deliberations; this mixture was supposed to remove all hinderances to clear and exhaustive thought. From De Bry[1] we have a spirited sketch of the "cockarouse" and warriors in consultation at such a council.

Outside the council the relation existing between the "cockarouse" and "werowance" on the one hand, and the commons on the other, was free and unrestrained. These chief men were distinguished from the common herd only by a scalp-lock. They made their own tools and weapons and frequently worked in the fields with the rest. It was rarely that tyranny was exercised by them over their subjects; freedom, even license, was the rule.[2] The germs of the institution of slavery, however, if not the institution itself, existed among the Virginia Indians; for Beverley[3] speaks of "people of a rank inferior to the commons, a sort of servants . . . . called black boyes, attendant upon the gentry to do their servile offices." In the hands of the chief men was also the common store of the tribe; and to them was committed the reception of brother "werowances,"[4] but they could enter into no measure of a public nature without the concurrence of the tribal council and the favorable opinion of the people at large.[5] When any matter was proposed, it was the usual thing for a long consultation to take place between the chiefs

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[1] Brevis Narratio, pl. xxix. [2] Stith, p. 95.

[3] Beverley, p. 179; see also Smith, *Gen. Hist.*, bk. 4, p. 570. Master Jno. Pory's Acc't.

[4] De Bry, pls. xxxvii, xxxviii, xxxix.

[5] Burke, *Hist. of Va.*, 3, pp. 52, 53.

and the conjurors, "their allies and nearest friends." When a unanimous decision was reached, it was delivered to the people.

The sole-controlling influence that governed the councils in the making of their "laws" was their innate sense of what was right, proper or expedient; consequently, the morality of their rulings was not high. We say "rulings," for the Virginia Indians had no laws in the proper sense of that term as administered by a supreme authority and enforced by a police. Their only controlling influences were their "manners,"[1] their moral sense of right and wrong, and that potent lever of society known as custom, fashion, public opinion or sense of honor. Offences were punished by contempt, exclusion from society, and, in some instances, by severe penalties, which, however, did not always "fit the crime," for the Virginia Indians had no written laws, but like the Spartans obeyed the sanction of unwritten custom, handed down by their old men; that is to say, from a legal stand-point they were in the first of the stages of advance described by Sir Henry Maine.

By way of recapitulation, then, we may make the following brief and definite statements as to the organization of the Indian shire:

1. Each had a well-defined territory and a name.[2]

2. A few shires had a peculiar dialect.[3]

3. Probably the "cockarouse" was elected, and the "werowance" appointed by the emperor.[4]

4. Each shire had its religious rites, temples and attendant priests.[5]

5. In each there was a council of old men[6] presided over by the "cockarouse."

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[1] Jefferson, *Notes*, p. 138; Stith, p. 54; Force, 1, pp. 11.

[2] Strachey, ch. IV; Smith, *Gen. Hist.*, bk. 2, p. 377.

[3] Smith, *Gen. Hist.*, bk. 2, p. 351.

[4] Strachey, p. 57, et seq.; Morgan, pp. 112-121; Jones, *Ant. of So. Indians*, pp. 12–16.

[5] Strachey, p. 82.

[6] Beverley, pp. 178, 179; Jones, *Present State of Va.*, p. 8; Strachey, p. 100.

In order to give a better conception of the duties of these "werowances" and "cockarouses," I have gathered from a study of the original authorities and of the customs of kindred tribes the duties of each office.

The "cockarouse" of the Virginia tribes, corresponding to the Ha-gar-na-gó-war[1] of the Iroquois, had the following specific duties and privileges: (1) The first fruits were assigned him;[2] (2) He had charge of all public and private concerns;[3] (3) He presided at the tribal council and was a delegate to the Imperial Council;[4] (4) His office was for life or during good behavior;[5] (5) His office was elective, though sometimes hereditary;[6] (6) Females were eligible to the office of "cockarouse;"[7] (7) Succession to this office was always in the female line;[8] (8) There might be several "cockarouses" to each tribe.[9]

The duties and privileges of the "werowance," corresponding as he did in most respects to the Ha-sa-no-wá-no of the Iroquois, were about as follows: (1) He led the warriors in war, having charge of all military affairs;[10] (2) He had the power of life and death;[11] (3) He was appointed by the emperor;[12] (4) He was the vice-gerent of the emperor and as imperial legate (cf. Roman proconsul) kept the people in subjection;[13] (5) He collected and paid tribute (eight-tenths of all their possessions) to the emperor;[14] (6) He presided over the council of the shire in the absence of the "cockarouse,"[15]

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[1] Cf. Morgan, *Anc. Society*, pp. 62–150; Strachey, p. 51; Jones' *Antiquities*, p. 12.

[2] Strachey, p. 51.

[3] Cf. Jones, *Antiq.* p. 12.

[4] Beverley, p. 179.

[5] Strachey, pp. 57-63; Bev.

[6] See Morgan, *Anc. Soc.*, p. 170; Strachey, pp. 57-63.

[7] Smith mentions various queens.

[8] Hariot, Smith, Strachey.

[9] Strachey, p. 62.

[10] Beverley, p. 179; Strachey, p. 100.

[11] Smith, *Gen. Hist.* bk. 2, p. 377.

[12] Implied by Strachey, p. 57.

[13] Strachey's account, c. IV.

[14] Strachey, p. 81.

[15] A power implied in the conception of the office.

to whom as a general rule he was subordinate; (7) He declared war;[1] (8) He maintained a rude ceremonial state.[2]

The priests also played a large part in Indian affairs. Before every expedition and in all deliberations the priest was consulted,[3] and never did the "werowance" determine upon a hostile expedition without his sanction. It was the priest who, like the augur at Rome, looked into the future and foretold the prosperous or unfortunate issue of a campaign. His chief functions are stated in another connection.[4]

Of the general council or Matchacomico of Powhatan, which may be designated the congress or legislature of the Indian "Confederacy," we can make the following concise statements: (1) It was composed of the "cockarouses" and priests of the subject or allied tribes;[5] (2) It had the chief authority over the "Confederacy" in conjunction with the Emperor;[6] (3) It was open to popular influence,[7] for it was (*a*) called together by the people, (*b*) called under circumstances known to all, and (*c*) was open to every one; (4) It was presided over by Powhatan;[8] (5) It was, for the most part, an advisory body;[9] (6) It declared war and made peace according to the Emperor's will; (7) It conducted all foreign relations;[10] (8) Its actions had always to be unanimous;[11] (9) It managed general domestic affairs.[12]

The councils of the "shires" or petty kingdoms corresponded as a general rule to that of the "Empire." Whatever may have been the good government exercised by such petty

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[1] A power implied by his authority over military affairs.
[2] See accounts of such "state" in Smith, Percy, Strachey, etc.
[3] Strachey, p. 81. [4] See *infra.*
[5] See Hugh Jones' *Present State of Va.*, p. 8.
[6] Implied in Smith's *Gen. Hist.*, bk. 3, p. 400.
[7] Beverley, *Hist. of Va.*, p. 150. [8] Smith's *Gen. Hist.*, bk. 3, p. 400.
[9] Hugh Jones' *Present State of Va.*, p. 18.
[10] Powers exercised by every general Indian council.
[11] Morgan, *Anct. Soc.*, pp. 67–130; Jones; Schoolcraft.
[12] Smith, Beverley and Strachey.

chiefs over their territories,[1] the Emperor certainly governed in an exceedingly tyrannical manner, if we may trust our authorities. What Powhatan commanded, we are told, they dared not disobey; "for at his feate they will present whatever he commandeth, and at the least froune of his brow, their greatest spirits will tremble with fear."

From what has been already said, and from a careful study and examination both of the structure and character of the so-called Powhatan "Confederacy," as described by original authorities and as compared with kindred tribes such as the Cherokees on the south and the Iroquois on the north, we shall be justified in stating the main characteristics of the "Confederacy" as follows:—

1. It was a union of thirty or more tribes or gentes; and this union was the result of conquest in the true Roman style of trickery and stratagem.[2]

2. There was a general council of the "Confederacy," meeting at one of the three favorite residences of Powhatan.[3]

3. There were also councils meeting in each "shire" or tribe.[4]

4. The tribes, "shires" or kingdoms, did not occupy positions of entire equality among themselves; *e. g.*, Mattapamient, Arrohatock, Youghtamund and Appamatuck, Pumunkey and Powhatan were the governing tribes, while the other "tribes" occupied relations subordinate to them, just as in old Rome the tribes of Latium lorded it over the rest of the world, governing therein by proconsuls.[5]

5. The individual government of every "province" or tribe was carried on by the "werowances" save in the case of the Chickahominy tribes, which were governed by Elders.[6]

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[1] "The werowances," says Archer, "have their subjects at so quick command, as a beck brings obedience, even to the restitution of stolen goods;" *Arch. Amer.*, IV. 40–56.

[2] Strachey, pp. 55–63; Cf. Smith, *Gen. Hist.*, bk. 2, pp. 346–351.

[3] Smith, *Gen. Hist.*, bk. 3, p. 400.

[4] Jones, *Present State of Va.*, p. 8.

[5] Strachey, p. 47, also pp. 55–63.

[6] Strachey, pp. 61, 62.

6. The cohesive principle of the "Confederacy" was the common fear of the absolute despot, Powhatan, their conqueror.[1]

7. The "werowances" were, in most instances, the deputies or vicegerents of Powhatan, his children or friends whom he would substitute for rebellious or conquered chiefs.[2]

8. All these tribes paid an exorbitant tribute of eight-tenths of their wealth for the privilege of retaining, to some degree at least, their separate governments and native sachems.[3]

9. There was no "Salic Law" in Ancient Virginia. Women were frequently advanced to the office of "cockarouse" and attended the grand councils.[4]

10. The grand council met upon occasions of war or public necessity in the council-house at Werowocomoco or Pamunkey. It was called together by certain prescribed forms, and had its own system of parliamentary rules.[5]

11. There was a council-fire of the whole "Confederacy," and two divisions formed in line on each side of the fire, while the Emperor sat at one end and presided.[6] On such occasions unanimity was always requisite for the passage of any measure. Freedom of speech under certain rules was allowed, and frequently great eloquence was displayed.

12. The influence of the priests was very great in the government of the "Confederacy" and its constituents. Everyone followed implicitly whatever the priest advised.[7]

These twelve propositions embody almost all that can be learned concerning the nature of the "Confederacy" of Powhatan; and much the same remarks will apply to the Manakin and Mannahoack "Confederacy,"[8] whose form of gov-

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[1] Smith, *Gen. Hist.*, bk. 2, p. 377; cf. Strachey, c. IV.

[2] Strachey, pp. 56, 57, 60, 62. [3] Strachey, p. 81.

[4] *Ibid.*, pp. 56; "Oholasc, queene of Coiaco hanauke" and "Opussoquionuske . . . a werowanqua of . . . Appamatuck."

[5] For the manner of summons, see Strachey, pp. 100, 101; *infra*, p. 112.

[6] See plate in Smith's Map, also opp. p. 53 of Strachey.

[7] Smith's *Gen. Hist.*, bk. 2, p. 372; Strachey, p. 100.

[8] Smith's Map of Virginia, pp. 71, 72.

ernment was possibly similar, if not identical, with that of their kinsmen the Iroquois, with whom they a century or so later united.[1]

"In Indian Ethnography," says Mr. L. H. Morgan, "the subjects of primary importance are the gens, phratry, tribe and confederacy." The gens, from certain hints thrown out by Hariot[2] and other writers, we are assured existed in Virginia, and our assumption is put beyond a shadow of doubt by the fact that a study of the closely related Algonkin tribes reveals in every case a division into gentes, usually those of (1) the Wolf, (2) the Turkey and (3) the Turtle. Our knowledge, however, in this regard is very meagre. Nor can we assert anything more definite with respect to the phratry[3] as an organization of the Virginia tribes, though it must certainly have existed. As to the nature of Virginia "tribes," which are constantly spoken of by old writers, it should be noted that while real tribes existed in Virginia, there were not nearly so many as might be inferred. There is a marked looseness in the way the term tribe has been applied; for in many cases it has been confused with what should more properly be termed gens or phratry.[4]

In conclusion, then, we should say that the theory of the existence of any such thing as a "Confederacy" of tribes (in any true sense of the term) is not warranted by the facts of the case, and is certainly erroneous. Even the misapplied term "empire" is preferable and indeed more accurate as characterizing Powhatan's power, though such a use of the term is certainly a travesty upon imperialism generally.

When, to our knowledge of the internal structure of society, we add a description of the tenure and functions of the sachem and chief, the functions of the council of chief-men and the

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[1] Under the name of Tuscaroras ("shirt-wearing people").

[2] Hariot, in *Pubs. of Amer. Bureau of Ethnology* for 1889, p. 393 et seq.; Smith's *Gen. Hist.*, bk. 4, p. 570.

[3] Phratry, see Morgan's *Anc. Soc.*, pp. 84-102. [4] *Anc. Soc.*, p. 148.

duties of the war-chief (which has been attempted above), the structure and principles of the governmental system of the Virginia Indians will be fairly well known.[1]

There were few fixed penalties for crime. The will of the "petty kings" was law in most cases. Certain forms of punishment were, however, employed. We are informed that sometimes culprits were bound hand and foot and cast into a great bed of live coals, and there left to burn to death; again, at another time, the head of the criminal being placed upon a stone or altar was crushed by clubs, wielded by stout savages. In the case of a heinous crime, the offender was bound to a tree, while the executioner would cut off his joints one by one, casting them into the fire; then the same functionary would tear off the skin from the victim's face and head, after which he was disembowelled and burnt to ashes.[2]

Capital punishment was meted out in the presence of the chief and his councillors seated in a semicircle, "the victim kneeling in the centre, and the executioner, his left hand upon the back of the criminal, with a stout, paddle-shaped club made of hard wood, striking him upon the top of the head with such violence as to split the skull."[3]

The most cruel and common punishment, however, was to beat with "cudgells" as the "Turkes doe."[4] "We have seene," says Smith,[5] "a man kneeling on his knees, and at Powhatan's command, two men have beat him on the bare skin, till he hath fallen senseless in a swound, and yet never cry or complained."[6] For the crime of adultery, Powhatan, we are told, "made one of his wives set upon a stone . . . nine days and allowed her food during that time only three times though he

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[1] *Anc. Soc.*, p. 148.
[2] Smith's *Gen. Hist.*, bk. 2, p. 377; Map of Va., pp. 81, 82.
[3] *Cf.* Jones' *Antiquities of the So. Inds.*, p. 13.
[4] Strachey, p. 52; Smith's *Gen. Hist.*, bk. 2, pp. 377, 378.
[5] Smith's *Gen. Hist.*, bk. 2, p. 378. [6] *Ibid.*

loved her dearly."[1] The Rev. Hugh Jones[2] in this connection says: "They punish adultery in a woman by cutting off her Hair which they fix upon a long pole without the Toun; which is such a Disgrace that the Party is obliged to fly and become a Victim to some Enemy, a Slave to some Rover or perishes in the Woods. . . . I have been told they have some capital Punishments." The same authority informs us that the "lex talionis" was recognized to its fullest extent in Virginia, and gives a concrete case illustrating its force.[3]

Henry Spelman[4] gives us several points on the punishment of crime among the Virginia Indians. He says: "When I saw some put to death I asked the cause of their offence, for at the time that I was with ye Patowecke I saw 5 executed; 4 for the murther of a child (id est) ye mother and two other that did the fact with her, and a 4 for consealing it as he passed by beinge bribed to hold his peace. And one for robbinge a traveler of coper and beades, for to steale ther neybors corne or copper is death, or to lye with another's wife is death if he be taken in the maner."

As a punishment for murder we are informed by Spelman[5] that they "wear beaten with Staves till their bones weare broken, and beinge alive wear flunge into the fier;" and for robbery the manner of punishment was to be "knowckt on the heade, and beinge deade" to have "their bodye burnt."

Before a war was undertaken, the king always summoned[6] his great men or werowances to attend the council. At these assemblies, whenever a war was expected, it was the custom of the young braves to paint themselves black, red or parti-

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[1] Smith's *Gen. Hist.*, bk. 2, p. 337. [2] *Present State of Va.*, p. 16.

[3] *Present State of Va.*, p. 12, et seq.

[4] Spelman's *Relation of Va.*, pp. cx., cxi. [5] *Ibid.*, p. cxi.

[6] Strachey (p. 100) thus describes the manner of summons: "An officer is dispatcht away, who, cominge into the tounes or other wise meetinge such whom he hath to order to warr, striketh them over the back a sound blow with a bastinado and bidds them be ready to serve the great kinge . . . ."

colored (*e. g.* half the face red, half black or white with great circles of different hues around the eyes), to don monstrous moustaches and to decorate the body as fantastically as possible. While this paint was yet damp upon their bodies, they would dip themselves in piles of variously colored feathers: these feathers would, of course, adhere and give them a peculiarly savage appearance. Thus arrayed they would rush furiously into the council-house and begin the war-dance. Accompanying their steps with fierce gestures expressive of their insatiate love of vengeance, they would describe the mode in which they intended to surprise, kill and scalp their enemies, and finally, they would conclude the performance by recounting the past exploits and ancient glories of their families. After decision by the council, war was declared by different ceremonies.[1]

Indian notions of warfare may be briefly illustrated by the following theses:—

(1). They had officers, "Capitaine," "Lieutenant," "Serient."[2]

(2). They employed various tactical orders in battle, "square order," quincuncial order, "halfe-moone order," etc.[3]

(3). They knew the advantages of reserve forces.[4]

(4). The warriors painted and made "hideous noyse" in battle.[5]

(5). Their weapons were bows, arrows, clubs, battle-axes, swords, shields, etc.

(6). They made a sort of military music, with the aid of drums, pipes, rattles, and their own "discordant voyces."

(7). War was carried on, as among the other North American Indian tribes, by cunning, ruse, deception, and "Ambuscadoes." The Virginia Indian presents no marked peculiarity in this regard.[6] We are told,[7] that their custom was never to

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[1] "Brevis Narratio," pl. xxxiii.

[2, 3, 4, 5] See Smith, *Gen. Hist.*, bk. 2, p. 368; Map of Va., pp. 72, 73.

[6] Spelman's *Relation of Va.*, pp. CXIII, CXIV.

[7] Archer, in *Archæologia Americana*, IV, pp. 40-65 · Smith, bk. 2, p. 368, etc.

fight in the open fields, but among reeds or from behind trees, slipping out for an instant to discharge arrows, and as rapidly disappearing under cover to fix their arrows upon the string.

(8). In war they were merciless and bloodthirsty. Prisoners were saved alive only for death by slow torture, for the captors feared, should they allow any of their vanquished enemies to live, these would take vengeance upon them. Consequently, captive men, women and children were killed without mercy. The treatment of the vanquished in war is well described by Captain Smith in his account of Powhatan's expedition to Pyanketank in the year 1608. Having previously sent some of his men to lodge with the Pyanketanks for the night, Powhatan sent other warriors to surround their wigwams; and, at a given time, these fell simultaneously upon the enemy, sacking and destroying their habitations. Most of the victims were slain, and "the long hair of the one side of the heads with the skin cased off with shells and reeds they brought away."[1] The men, women and children who were saved alive were presented to Powhatan and became his slaves; and, as trophies, the scalps of the slain warriors were hung upon a line between two trees.

(9). Besides assemblies for consultation at the beginning of hostilities, the Virginia Indians also employed formal embassies and ceremonious methods of concluding peace (*e. g.* burying the tomahawk, raising stone-heaps, etc).[2]

10). Triumphs and triumphal processions were also popular among the Virginia Indians. As the victorious Consul in ancient Rome, so the successful Indian chief was welcomed on his return from battle with processions and rejoicings.[3]

The wars of these Indians were by no means few, and were waged, as a general thing, not for lands and goods but for women and revenge. They were carried on, for the most part, against the nations inhabiting the "westerly country" beyond

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[1] Smith, *Gen. Hist.*, bk. 2, pp. 377, 378.

[2] Beverley, *Hist. of Va.*, p. 151. [3] *Ibid.*, p. 150.

the mountains or at the head of the ravines, *e. g.* the Massawomeckes,[1] and in a lesser degree the Manakins and the Mannahoackes. These Massawomeckes, according to Strachey,[2] dwelt beyond the mountains "from whence is the head of the river Potowomeck . . . upon a great salt-water which may be some part of Canada, some great lake or some inlet of the sea, and may fall into the western ocean. . . . These Massawomeckes are a great nation and very populous, for the inhabitants of the head of all the rivers especially the Patowomecks, the Pawtuxents, the Susquehanoughs,[3] the Tockwoughs . . . are constantly harassed and frightened by them, of whom the said people greatly complained." So greatly, indeed, did these Massawomeckes harass and destroy the tribes nearest them that we are told they offered "food, conduct, assistance and continuall subjection" to the English if they would protect them from their dreaded foes.[4]

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[1] Smith's *Gen. Hist.*, bk. 2, p. 367; Stith supposed this nation to be the Iroquois, p. 67.

[2] Strachey, p. 104.

[3] "Such great and well-proportioned men are seldom seene, for they seemed like Giants to the English, yea and to the neighbors, yet seemed of a simple and honest disposition [and they were] with much adoe restrained from worshipping us as Gods. These are the strangest people of all those Countries both in language and attire; for their voyce it may well beseeme their proportions, sounding from them as a voyce in a vault. Their attire is the skinnes of Bears and Wolves, some have Cossacks made of Bears heads and skinnes, that a man's head goes through the skinnes neck, and the eares of the Bear fastened to the shoulders, the nose and teeth hanging doune his breast, another Bear's face split behind him, and at the end of the nose hung a Pawe, the halfe sleeves coming to the elbows were the neckes of beares, and the armes through the mouth; with pawes hanging at their noses. One had the head of a Wolfe hanging on a chaine for a Jewell, his tobacco pipe three-quarters of a yard long, prettily carved with a bird, a Deere or some such device at the git. end, sufficient to beat out ones braines: with Bows, Arrows, and Clubs, suitable to their greatnesse. They are scarce known to Powhatan. They can make neare 600 able men, and are pallisadoed in their Townes to defend them from the Massawomecks, their noted enemies." [Smith's *G. H.*, bk. 2, p. 350 of Arber's edition.]

[4] Smith's *Gen. Hist.*, bk. 2, p. 377.

In the ordinary relations of one "werowance" with another much ceremonious formality and scrupulous politeness was exhibited—their hospitality was in more than one sense truly "Old Virginian." On the news of the approach of a famous guest,[1] the king or queen with a large retinue would march out of the town to meet him, carrying with them everything they could think of for his accommodation. The first thing that occurred upon the meeting of such friends was the smoking of the peace-pipe,[2] a sacred custom common to all North American Indians. After this preliminary, taking their seats opposite one another, each in turn, hosts and guests, would make speeches, accompanied with such gestures and contortions of the whole body that all would break into a violent perspiration, and become so breathless as not to be able to speak above a whisper. Indeed such was the extravagance of their actions that one ignorant of their customs would have inferred that they were utterly crazed. A dance of welcome was the next thing in order; then refreshments were brought forth and feasting was indulged in till bed-time came, when the happy guests would be led to their quarters, and there welcomed in barbarous fashion.

In the great council of the nation, a gravity and dignity was observed such as would not have disgraced the Roman Senate in its palmiest days. Nor was the impressiveness or solemnity of such assemblages due to any influence of environment, for the council house was generally the ordinary "long house" and the councillors but dirty savages, wrapped in equally dirty skins and blankets. The effect was produced solely and exclusively by the order, decorum and eloquence displayed.[3] One instance of the strict maintenance of "order

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[1] Beverley, *Hist. of Va.*, pp. 143–148.

[2] The peace-pipe was a safe-conduct, a passport, and a badge of the legistive office. See Beverley, pp. 140–145; Cf. Longfellow's *Hiawatha.*

[3] See Speeches of Okaning, Powhatan, Tomocomco and others in Smith, Stith, Strachey, *et al.*

in the court" is well illustrated by an instance recorded in the pages of Beverley.[1] It occurred during Bacon's Rebellion, when a deputation of Indians was sent to treat with the English in New Kent county. While a speaker was addressing the assembly, one of his companions interrupted him, whereupon the Indian who was speaking snatched his tomahawk from his belt, and split the head of his daring friend. "This Indian," says Beverley, "dying immediately upon the spot, he commanded some of his men to carry him out and went on again as unconcernedly as if nothing had happened."

By way of summary, then, it may be said that primarily the political organization and governmental machinery of the Virginia Indians was both crude and imperfect. The different so-called kingdoms or shires, though theoretically governed by the "cockarouse" in time of peace, and the "werowance" in time of war, were in reality little democracies, over which the rulers had little authority. The principal power was in the hands of the old men of the tribe, yet even the jurisdiction they possessed was but slight, for any one who pleased could refuse to obey their rulings.

But when the Emperor Powhatan arose and conquered all his neighbors, forming them into subject "provinces," a different state of affairs presented itself. Absolute power now fell into his hands; by fear of him and his deputies the werowances, the whole "empire" was held together. Such fear too must have been a strong and compelling principle, for during some forty years (circa 1607–1647) the Virginia Indians under the sway of the Powhatan dynasty[2] presented an unbroken and united front against the encroachments of their English neighbors, and on two occasions (1622 and 1644) brought them to the brink of destruction. The influence

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[1] Beverley, pp. 178, 179.

[2] The Powhatan dynasty consisted of the following rulers: Powhatan (circa 1595–1618); Otiatan (1618–1622); Opechancanough (1622–1645); Necottowance (1645–1650 ?).

exerted by the Indians upon the early colonists of Virginia was considerable, and is, to say the least, comparable to that exercised upon their white neighbors by the Iroquois of New York or the Muscoculgees of the South. It should be distinctly recognized, however, that the power attained and influence exerted by the Virginia Indians was due to the energetic ability of their rulers, rather than to their form of government. On the other hand, the government of the Iroquois and the Muscoculgees was a well developed organization, and to this fact, not to the special prominence of any men of talent, are their successes against their white neighbors to be attributed.

II.

Religious Institutions and Beliefs.

In religion, the Virginia Indians were extremely superstitious and idolatrous. "There is yet in Virginia," says Smith,[1] "no place discovered to be so savage in which they have not a Religion. . . ." Every one of the territories governed by a "werowance" possessed its temple or temples and priests or "Quiyoughcosucks,"[2] who we are told, were "no lesse honoured than were Danae's priests at Ephesus." These private temples, in most cases large (sometimes twenty yards broad by a hundred long), had their entrances always towards the east, while at the west end was a sort of chancel "with hollow wyndings and pillars whereon stand divers blacke imagies, fashioned to the shoulders, with their faces looking downe the church and where within the werowances lye buried . . . and under them in a vault low in the ground, vailed in a matte sitts their Okee, an image illfavouredly carved, all black dressed, with chaynes of perle, the presentment and figure of that God."[3]

According to best accounts, the belief of the Virginia Indians was a species of dualism, in which, however, the evil principle received all the worship to the exclusion of the good god, Ahone,[4] who, in the Indian logic, did not require to be

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[1] Smith, *Gen. Hist.*, bk. 2, p. 570; Map of Va., p. 74.

[2] Strachey, pp. 82, 83; Quiyoughcosucks—"witches," says Whitaker.

[3] Neill's *Virginia Company of London*, pp. 278, 279.

[4] Strachey, p. 83, and Father White's *Relatio*, p. 41.

placated, "because from his goodness he would do no harm." It was, then, only this Okee, Quioccos, or Kiwasa, the "Devill,"[1] who was really feared, for he, says Strachey, punishes "them (as they thinke) with sicknesse, stirs up the river, and makes their women false to them"[2] and, says the credulous Cooke,[3] "was a god that sucked the blood of children—sufficient description!" The dualistic belief of the Virginia Indians is succinctly described by the historian Beverley[4] in a conversation held with an Indian whom, on one occasion, he "made much of" and plied with "plenty of strong cider" to bring to the point of confidential discourse.

From this Indian Beverley first gained some valuable information concerning the idea of God among the Virginia Indians: (1) that he was universally beneficent; (2) that his dwelling was in the heavens, though his good influences pervaded and ruled the whole earth; (3) that he was incomprehensible in excellence, enjoying supreme felicity; and (4) that he was eternal, boundless in perfection, and in possession of everlasting indolence and ease.

After learning so much, Beverley made the pertinent inquiry why, having such a god as this, the Indians should worship the Devil. The Indian answered that it was true that God is the giver of all good things, but they flow naturally from him and are showered upon all men without distinction; he does not care about the affairs of men nor is he

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[1] Smith's *Gen. Hist.*, bk. 3, p. 370. Neill's *Va. Co. of London*, p. 278; Picart, *Cérémonies et Coutumes* 1, 1st partie, p. 112. Picart says: "Les Virginieus donnent divers noms à cette Idole. Les uns l'appellent Okée, d'autre Quioccos ou Kiwasa. Peut-être faut-il regarder ces noms comme des épithètes qui changent selon les fonctions qu'ils attribuent à cette Divinité, ou selon les différentes idées qu'ils s'en forment dans leurs exercices de dévotion et dans leurs discours ordinaires. . . . Ils donnent à tous ces Etres ou Génies le nom général de Quioccos. Ainsi nous désignerons particulièrement sous le nom de Kiwasa l'Idole dont nous parlons."

[2] Strachey, p. 82.

[3] Cooke, p. 30.

[4] Beverley, *Hist. of Va.*, p. 156, 157.

concerned with what they do, but lives apart; consequently there is no necessity to fear or worship him. On the contrary, if they did not propitiate the evil spirit, the Indian went on to state, he would "in a certain and inevitable way ruin them, for the evil spirit was ever active in thunder and storms."

The temples of this god of evil, Okee, were called Quioccosan, and were surrounded by circles of posts, on which were carved human faces. These posts were regarded as highly sacred by the Virginia Indians. In architecture "temples" were similar to other Indian cabins; that is to say, were "fashioned arbourwise after their buylding" and had no chimney to serve as a vent for smoke. In interior arrangements they were very dismal and dark; about ten feet of their extent was cut off by a partition of close mats; and this was a place of extreme sanctity. Beverley[1] describes the results of a surreptitious visit made by himself and some of his friends to one of these buildings to gain information concerning them. He found in one of them certain shelves upon which were various mats. Each was rolled up and sewed fast. In one he found some great bones; in another some Indian tomahawks. There was also found "something which we took to be their idoll. It wanted piecing together." When set up, these pieces formed an idol of wood, evil-favoured, the Okee, Quioccos or Kiwasa of Smith, who gives it as his opinion that this god was none other than the "Devill" himself.[2]

The historian Burke,[3] however, does not believe that Smith, Beverley and Strachey are implicitly to be relied on in the above description of Okee. His opinion is that, had there been any foundation in fact, some traces of this idolatry must assuredly have been found among the neighboring or

[1] Beverley, *Hist. of Va.*, p. 152, 153, 154, 155.
[2] See pl. xxi. of De Bry in *Brevis Narratio.*
[3] Burke, *Hist. of Va.*, III., pp. 57, 58.

kindred tribes who later migrated west. Beverley,[1] however, with regard to the ideas held concerning the Okee, says the Indians "do not look upon it as one being; but reckon there are many of the same nature;" and goes on to state that, like the Greeks, they believed there were "tutelary deities in every town."[2] By such statements as these Beverley unconsciously proves his report to be correct; for we find upon examination of the kindred tongues, that "oki" among the Algonkins and Iroquois just as "superi" among the Latins signifies "those who are above," *i. e.*, the gods;[3] so that the religion of Virginia Indians must have been a polytheistic development of sky-worship. The term "oki," it should be noticed, was introduced among the Iroquois by the Hurons, who applied it to that demoniac power "who rules the seasons of the year, who holds the wind and waves in leash, who can give fortune to their undertakings and relieve all their wants."[4] Among the Nottoways (of the Iroquois stock) this term reappears under the curious form "quaker," doubtless a corruption of the Powhatan qui-oki (lesser gods), Quioccos of Smith; so that the term okee or oki and so Quioccos which the early colonists took to mean the name of one individual god was really a general term implying all supernal deities; hence the above deduction. It may very easily have been the case, however, that the ancient Virginians had personified the term oki in the shape of an "idol of wood evil-favouredly carved," inasmuch as the specialization of peculiar features and shapes to concrete individual gods is a stage in all religious developments, and hence the origin of the individual god Okee of whom we read so much.

Strachey[5] gives an account of the tenets of the Indians dwelling near the Potomac river. He says that in the year

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[1] Beverley, *Hist. of Va.*, p. 155.

[2] Byrd's *Hist. of the Dividing Line.* See Westover MSS:, vol. 1, p. 105.

[3] See Brinton's *Myths*, etc., pp. 47, 48; Müller, pp. 103 and 119.

[4] Charlevoix, *Rel. de la Nouvelle France*, p. 107.

[5] Strachey, pp. 97-101; cf. Spelman, p. cv.

1610, about Christmas, Captain Argall was trading with Japasaws, "King of Potowomecke," and one day, when the vessel was lying at anchor before one of the Indian towns of those parts, "King Japasaws" came on board. While he was sitting before the fire on board the ship, the conversation happened to turn upon religion and the creation of the world; and the "King" through Spelman as interpreter gave Argall and his companions an account of such customs of the Indians as follows:

"We have five gods in all: our chief god appears often unto us in the likeness of a mighty great hare; the other four have no visible shape, but are indeed the four wyndes[1] which keepe the foure quarters of the earthe. Our god, who takes upon himself the shape of a hare, conceived with himself how to people this great world and with what kind of creatures, and yt is true that at length he devised and made divers men and women and made provision for them, to be kept up awhile in a great bag. Now there were certayne spirits, which he described to be like great geants which came to the hare's dwelling place (being toward the rising of the sun) and had perseverance of the men and women which he had putt into that great bagge, and they would have had to eat, but the godlike hare reproved those canyball spirits and drove them awaye."

This is a rather vague statement, but Strachey goes on to say that the boy-interpreter was afraid to ask the old chief too many questions, so the old man went on telling how the godlike hare made the water and the fish therein, and the land and a great deer which should feed upon the land. The four other gods, being envious at this, assembled together from the north, south, east and west, killed the deer with hunting-poles, dressed him and, after they had feasted upon him,

[1] The names of these "foure Wyndes" (*i. e.* four brother gods) were Wabun, Kabun, Kabibonokka and Shawano; these express both the cardinal points and the winds themselves.

departed again to the north, south, east and west. At this juncture, the other god, "in despite for this, their mallice to him," took the hairs of the slain deer and opened them on the earth with many powerful word charms whereby every hair became a deer. Then he opened the great bag in which the men and women were, and placed them upon the earth, a man and a woman in each country, and thus the world took its beginning.

When questioned as to what became of his people after death, the old chief answered "how that after they are dead here they goe to the top of a high tree, and then they spie a faire plaine brood path-waye, on both sides whereof doth grow all manner of pleasant fruits and mulberries, strawberries, plombes, etc. In this pleasant path they rune toward the rising of the sunne, where the godly hare's house is, and in the mid-way they come to a house where a woman-goddesse doth dwell, who hath alwaies her doores open for hospitality, and hath at all tymes ready-drest green us-kata-homen and pocohiccora, together with all manner of pleasant fruicts, and a readynesse to entertayne all such as doe travell to the great hare's house; and when they are well refreshed, they run in their pleasant path to the rising of the sun, where they fynd their fore-fathers lyving in great pleasure in a goodly field where they doe nothing but daunce and sing, and feed on delitious fruicts with that great hare who is their great god; and when they have lyved there till they be starke old men, they saye they dye likewise by turnes and come into the world againe."

From the above account, then, it is evident that the Virginia Indians, like many other tribes the world over, had their own peculiar theories of cosmogony and the origin of man. The "Great Hare" of whom Japasaws speaks was, we find from comparative study, no other than the great culture-hero of the Algonkins generally. He it was who taught them the tillage of the soil, the properties of roots and herbs, the art of picture writing, the secrets of magic, the

founder, in fine, of all their political and religious institutions. After ruling long upon the earth as their governor and king, he finally vanished mysteriously to return again, however, when especially needed.[1] For, just as the Germans had as their legendary hero, Frederick Barbarossa; the French, Charlemagne; and the Britons, King Arthur; so all the Algonkin tribes had their Manibozho[2] or Michabo, the "Great Hare;" and Strachey's account evidently indicates that the Virginia Indians held such a belief also. In other words, the "Great Hare" of his account is none other than this Manboznu, Michabo or Shawondase.

This Algonkin divinity appears under different aspects in their different legends. Now he is a malicious mischief-maker, full of wiles and tricks, cunning and crafty, a sort of Robin Good fellow.[3] Now, as in the above legend, he comes before us as a culture-hero, mighty and beneficent, whose character it is a pleasure to delineate; for he appears as the patron and founder of the occult arts, the great hunter, the inventor of picture-writing, the ruler of the winds, and even as the creator of the world, including the sun and the other heavenly bodies.[4]

In the autumn, in the "moon of falling leaves," it was he, who, before composing himself for his winter's nap, filled his great pipe and took a "god-like smoke," of which balmy, fragrant clouds float away over the vales, hills and woods, filling the air with the soft dreamy haze of Indian summer. Longfellow makes "Shawondase fat and lazy:"

> "Had his dwelling far to Southward
> In the drowsy, dreamy sunshine,
> In the never-ending Summer."

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[1] D. G. Brinton: *Myths of the New World*, p. 160.

[2] See Schoolcraft, V., p. 420; Charlevoix, *Relation de la Nouvelle France* vol. 1, p. 93.

[3] Probably in this character he was confused with Okee.

[4] Cf. Strachey's account given above, pp. 121, 122.

From his pipe

> " . . . . the smoke ascending
> Filled the sky with haze and vapor,
> Filled the air with dreamy softness
> Gave a twinkle to the water.
>
> " Touched the rugged hills with sunshine
> Brought the tender Indian-Summer
> To the melancholy North-land,
> In the dreary Moon of Snow-shoes."

It may seem strange that such an insignificant creature as the hare should have received such honor and reverence. This curious fact, however, may be due to a natural error in etymology; that is to say, the name Manibozho and its dialectic varieties, apparently signifying " Great Hare " may very probably mean also " Great Light," equivalent to " Spirit of the Dawn " or the East. The Great Hare of Strachey's account is, then, the " great white one," an impersonation of the Dawn or Light, identical with the Ioskeha of the Iroquois, the Virococha of the Peruvians and the Quetzalcohuatl of the Aztecs.[1]

Other equally interesting bits of information concerning the religious status and beliefs of the Virginia Indians are given by Hariot. According to this authority, the Virginia tribes believed in many gods, called Mantoac, of different sorts or degrees yet having a chief god among them, to whom the rest were subject; having helped him in the creation of the world. Afterwards, the gods fashioned the sun, moon and stars, and out of the water as a primordial element " all diversitie of creatures that are visible and invisible." In regard to the origin of man the Indian belief was that woman was first made, and she by one of the gods brought forth

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[1] See D. S. Brinton's *Myths of the New World*, p. 167. The words " hare " and " light " are identical. Both are rendered by the Indian root " wab; " and so the name Manibozho is compounded of Mischi (great) and Wabos (hare or light).

children, but at what period or epoch of the genesis of things this occurred the Indians professed ignorance. The representations of these gods were little images called Kewasawok.[1]

All the Virginia Indians were firm believers in the immortality of the soul.[2] When life departed from the body, "according to the good or bad workes it hath done, it is carried up to the Tabernacles of the Gods to perpetual happiness, or to Popogusso, a great pit: which they think to be at the furthest points of the world where the Sunne sets, and there burne continually."[2] Strachey informs us that it was one of their tenets that "the common people shall not live after death;[3] they thinke that their werowances and priests when their bodyes are laid in the earth, that which is within shall goe beyond the mountaynes, and travell to where the sunne setts into most pleasant fields, grounds and pastures when yt shall doe no labour; but stuck finely with feathers and painted with oyle and puccoons, rest on in quiet and peace, and eat delicious fruits, and have store of copper, beades and hatchets; sing, daunce and have all variety of delights and enjoyments till that they waxe olde there as the body did on earth, and then yt shall dissolve and die, and come into a woman's wombe againe, and so be new borne into the world."[4]

Metempsychosis, or the transmigration of souls was one of the firmly rooted beliefs of the Virginia Indians.[5] This is

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[1] See Smith's *Gen. Hist.*, bk. 2, p. 374; Strachey, p. 96; Beverley, pp. 157, 158, etc.

[2] Hariot, in Hakluyt, iii, p. 336.

[3] Smith says in this connection (*Generall Historie*, bk. 2, p. 374): "They thinke that their Werowance and Priests which they also esteeme quiyougheosoughes, when they are dead, doe goe beyond the mountaines towards the setting of the sunne, and ever remaine there in forme of their Okee, with their heads painted with oyle and Pocones, finely trimmed with feathers, and shall have beads, hatchets, copper and tobacco, doing nothing but daunce and sing, with all their Predecessors. But the common people they suppose shall not live after death, but rot in their graves like dead dogs."

[4] Strachey, p. 28.

[5] *Ibid.*, p. 98.

indicated by the extreme care paid by them, as by the Ancient Egyptians, to embalming; moreover, it is still further evidenced by a curious belief, wide-spread among them and alluded to by Beverley. This historian tells us that the Virginia Indians reverenced greatly a little, solitary bird which, singing only at nightfall in the woods, uttered the note Pawcorance continually, for, these "Virginians" believed that to this little bird the souls of their princes passed, and consequently would not do it the least injury. A story was current among them which greatly increased their awe of this little creature. It was to the effect that, when upon one occasion a daring Indian killed one of these birds, the sacrilegious act cost him dear, for he disappeared a little while after and was never heard of again.[1]

Colonel William Byrd[2] gives a very quaint and interesting account of the religious beliefs of the Virginia Indians. When he was engaged in surveying the dividing line between North Carolina and Virginia, he obtained the following information from an Indian guide. The Indians believed that there was one supreme God and several "subaltern" deities under him. This master-god made the world a long time ago. He told the moon and the stars their business in the beginning, which they have faithfully performed ever since. This same power keeps all things in the right place. God created many worlds previous to the present one but had destroyed them on account of "the Dishonesty of the Inhabitants." This God is very just and very good, and takes the good into his protection, "makes them rich, fills their Bellies plentifully, preserves them from sickness." But the wicked he never fails to punish with sickness, poverty and hunger; and "after all that suffers them to be knockt on the Head and scalpt by them that fight against them."

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[1] Beverley, *Hist. of Va.*, pp. 168, 169, 170.

[2] *Hist. of Div. Line*, in Westover MSS., 1, pp. 105, 110.

[3] Beverley, p. 157.

After death both good and bad men are conducted by a strong guard into a great wood. They travel together for some time; at length their roads part, one of them is level, the other stony and mountainous. At this point the good are separated from the bad by a flash of lightning; the good go to the right, the bad to the left. The right hand road leads to a "charming warm country" where "Spring is everlasting" and "every month is May." The people there are always in their youth; the women are as bright as stars and "never scold." In this happy place are deer, turkeys, elks and buffaloes innumerable, all fat and gentle. The trees are loaded with fruit throughout the four seasons. The soil there brings forth spontaneously; and the food is so wholesome that those who eat of it are never sick, never grow old nor die. At the entrance to this blessed land sits a venerable old man on a mat who examines strictly all men that are brought before him. If they have behaved well the guards are advised to open the crystal gate, and let them enter the "Land of Delights."

On the other hand, the path to the left leads to a dark and dismal country by a rugged and uneven path. Here it is always winter. The ground is covered with snow all the year and nothing is to be "seen upon the trees but icicles." The people are always hungry, yet have not a morsel to eat except a kind of patch that "gives them the Dog-gripes." Here all the women are old and ugly, having claws like a panther, with which they "fly upon the men that slight their passion . . . . they talk much and exceeding shrill, giving exquisite pain to the Drum of the ear, which in that Place of Torment is so tender that every Sharp Note sends it to the quick." At the end of this path sits a dreadful old woman on a monstrous toad-stool, her head is covered with rattlesnakes, she has gloomy white eyes that strike a terror unspeakable in all that behold her. This old hag pronounces sentence of woe upon all the miserable wretches that hold up their hands at her tribunal. After that they are delivered over to

large turkey-buzzards, like harpies, that fly with them to the dismal place already mentioned. Here they are tormented for awhile according to their deserts. Then they are brought back into the world to see if they will "mend their manners" and merit a place the "next time in the Region of Bliss."

The Indian religion[1] thus contained the three great articles of natural religion: (1) a belief in God; (2) a moral distinction between good and evil; and (3) an expectation of rewards and punishments in the future world. Van Laet,[2] following Smith, gives us a few interesting points on the religion of the Virginia Indians. "The religion of the people," he says, "is to worship and adore all things which can do them harm without their being able to prevent it, as fire, water, lightning, thunder; even guns, cannon and horses, etc., yet their chief god is the Devil whom they call Oke, and serve him more from fear than from love: having ugly images of him in their Temples and their Priests dressed fearfully as becomes such a service; they observe formal feasts; have their penances, their altars of stone, which are called Pawcorances, standing scattered near their Temples and others by their houses, others in wood or wilderness when they have experienced great good fortune or evil mishap; upon them they offer blood, deer-suet and Tobacco; when they return from war or the chase. We abbreviate these things because they would be too tedious to recount at length."

In his account of the Religion of the Indians, Father White[3] tells us that not much can be learned of it, both because of a lack of knowledge on part of the interpreters and also for the reason that the language is but very imperfectly known. "We have [only] hastily," says he, "learned these few things. They acknowledge one God of Heaven, yet they pay him no outward worship. But they strive in

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[1] Byrd's *Summary*, pp. 108, 109; *History of the Dividing Line.*

[2] Van Laet, *West Indien*, p. 120.

[3] *Relatio Itineris*, etc., p. 41.

every way to appease a certain unreal spirit, whom they call Ochre, that he may not injure them; they worship, as I hear, corn and fire as Gods especially beneficent to the human race . . . . "

Near the temples of their gods were the sepulchres of their "kings," where the remains of the royal family were kept and embalmed. In fact, enbalming the dead was in vogue among the Virginia Indians as among the ancient Egyptians and Chaldeans. Quite elaborate accounts of the process are preserved in Hariot,[1] Beverley,[2] Smith,[3] and Pinkerton.[4] According to Smith, the bodies when embalmed were first "bowelled," then dried, and then their "inwards were stuffed with copper beads, hatchets and such trash;" then, being wrapped in white skins and covered with mats, they were laid in an orderly manner with their rude wealth at their feet,[5] upon a large shelf raised above the floor of the rude building which constituted their sacred mausoleum. Here the mummies were watched over by a priest, who kept the fire burning before them. Near them also was always a quioccos or idol to keep watch and ward.

The historian Beverley[6] gives a very minute account of the Virginian Indians' method of embalming. "First," says he, "they neatly flay off the skin as entire as they can, slitting it up the back; then, they pick off the flesh from the bones as clean as possible, leaving the sinews fastened to the bones, that they may preserve the joints together; then they dry the bones in the sun, and put them into the skin again which, in the meantime, has been kept from drying or shrinking; when the bones are placed right in the skin, they merely fill up the

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[1] In Hakluyt, III; also plate xxii. of De Bry.

[2] Smith, *Gen. Hist.*, bk. 2, pp. 370, 371.

[3] Beverley's *Hist. of Va.*, pp. 169, 170.

[4] Pinkerton's *Voyages*, XIII, p. 39, *et seq.*

[5] Brown, *Genesis of the United States*, I, 347.

[6] Beverley, *Hist. of Va.*, pp. 169, 170. *Cf.* Spelman's (p. cx.) description of "ye fation of ther buriall if they dye."

vacuities with a very fine white sand. After this, they sew up the skin again and the body looks as if the flesh had not been removed. They take care to keep the flesh from shrinking by the help of a little oil or gum, which will save it from corruption. The skin being thus prepared they lay it in an apartment for that purpose, upon a large shelf raised above the floor . . . . the flesh they lay upon hurdles in the sun to dry, and when it is thoroughly dryed, it is sewed up in a basket and set at the feet of the corpse to which it belongs." In the burial of the commonalty, a deep hole was dug in the earth with sharp stakes; the bodies were wrapped in skins and mats; then placed upon sticks and covered with earth.[1] After the interment the women painted themselves all over with black coal and oil and sat twenty-four hours moaning and lamenting.

The Virginia Indians had also another form of burial besides the two mentioned above: that is to say, scaffold-burial like that of the South-African tribes. Henry Spelman thus describes it: "If [an Indian] dies his buriall is thus ther is a scaffould built about 3 or 4 yards hye from the ground and the dead bodye wraped in a matt is brought to the place, wher when he is layd theron, the Kinsfolke falls a weapinge and make great sorrow, and instead of a dole for him (the poorer people beinge gott togither) sum of his Kinsfolke flinges Beades amonge them makinge them to scramble for them, so that many divers doe brake ther armes and legges beinge pressed by the cumpany, this finished they goe to ye parties house wher they have meat given them which beinge aeten all ye rest of the day they spend in singing and dauncinge using then as much mirth as before sorrow: moreover if any of ye Kindreds bodies which have bin layd on ye scaffould should be consumed as nothing is leaft but bouns they take thos bouns from ye scaffould and

[1] See also Jones' *Present State of Va.*, p. 16; Smith's *Generall Historie*, bk. 2, p. 391; Strachey, pp. 89, 90.

puttinge them in a new matt hange them in ther houses wher they continew whille ther house falleth and then they are buried in the ruinges of ye house."[1]

The most sacred place in Virginia was Uttammussac at Pamunkey near the palace of the "Emperour" Powhatan.[2] Here, upon the top of "certaine redde sandy hills in the woods" rose their great temple, their "chief holie house." Near it were two other temples sixty feet in length. All of them were fitted with "images of their kings and Divells and Tombes of their Predecessors." Such sanctity was ascribed to this locality that no one but the priests and kings could enter it. Here the priests held conferences with their gods and delivered oracles;[3] and such was the extreme veneration in which such oracles were held that the "simple laytie would doe anything how despotic soever that was commanded them,"[4] and furthermore, "they durst not go up the river near by unless they previously cast some peece of copper, white beads or Pocones" into the water "for feare that Okee should be offended and revenged of them." At this place, also, seven priests officiated of whom the chief one alone was distinguished by ornaments, while it was only in a very slight

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[1] Spelman's *Relation of Virginia*, p. cx.

[2] Smith's *Gen. Hist.*, bk. 2, p. 371.

[3] "I learned," says Purchas (V, 843), "that their Okee doth often appear to them in this House or Temple; the manner of which apparition is thus: First, four of their Priests or Sacred Persons goe into the House, and by certaine words of a strange Language, call or coniure their Okee, who appeareth to them out of the air, thence coming into the House and walking up and down with strange words and gestures, causeth eight more of the principal persons to be called in all which twelve standing around him, he pronounces to them what he would have done. Of him they deposed in all their proceedings, if it bee but on a hunting journey who by words and other awful tokens of his presence holds them in a superstitious both fear and confidence. This apparition is in form of a personable Virginian, with a long black lock on the left side hanging downe neare to the foot. . . . After he hath stayed with his twelve so long as he thinks fit he departeth up into the ayre whence he came."

[4] Smith's *Gen. Hist.*, bk. 2, p. 371; Map of Virginia, p. 78.

degree that the inferior priesthood differed at all from the commonalty.[1]

The chief-priest wore upon his shoulders a middle sized cloak of feathers, "much like" we are told, "the old sacrificing garment which Isidorus calls cassiola;" and his head-gear was especially conspicuous and unique. It was made as follows: Some twelve or sixteen or even more snake's skins were stuffed with moss, and also as many weasel and other skins. All these were tied by the tails, so that they met at the top of the head like a "large tassel," around which was a coronet of feathers, while the skins hung down round the face, neck, and shoulders in such a way as to hide it almost entirely. The priest's countenance was always painted in a grim fashion; his chief emblem of office was the rattle; and the chief devotional exercise consisted of weird songs or "hellish cries," in the rendition of which some one acted the part of precentor. His program was, on occasion, varied by an invocation "with broken sentences; by starts and strange passion, and at every pause the rest of the priests gave a short groane."[2]

The most usual costume of the Indian priest in Virginia was as follows: A cloak made in the form of a petticoat, fastened, not about the waist, but about the neck and tied over the left shoulder, leaving one arm always free for use. This cloak hung even at the bottom, reaching in no case further than the middle of the thigh. This robe was made of skin dressed soft with the fur on the outside and reversed; consequently, when the robe had been worn but a little while, the fur would fall out in flakes. The Indian priests' hair was dressed in an extraordinary manner. It was shaven close except for a thin crest, which stood bristling up like the comb of a cock, and running in a semi-circle from the crown of the head backward to the nape of the neck. A border of hair over the forehead was also worn, and this, by its own natural

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[1] Smith's *Gen. Hist.*, bk. 2, p. 372. [2] *Ibid.*

strength and stiffness, stood out like a bonnet and was usually greased and painted.[1]

Hariot,[2] in speaking of the priests, says, "whatever subtilitie be ever in the werowances and Priests; this opinion worketh so much in the common sort, that they have great respect unto their governors." He, moreover, goes on to say that in their religion these priests "were not so sure grounded, nor gave such credit, but through conversing with us, they were brought into a great doubt of their owne and no small admiration of ours." In their "great simplicitie" also, they considered the "Mathematicall instruments" of the English to be the work of God rather than men.[3]

The Indian mode of treating the sick does not give us a favorable impression of priestly knowledge or skill.[4] "When any be sicke among them their priest cums into the party, whom he layeth upon a mat. A bowl of water is then set upon the ground between the physician and the sick person with a rattle by it. The priest kneelinge by the sick mans side dipps his hand into the bowle, which taking up full of water, he supps it into his mouth spowting it out againe, uppon his owne arms and breast, then takes he the rattle and with one hand takes that and with the other he beates his breast, making a great noyes, which having dunn he easelye Riseth (as loth to wake the sicke) bendinge first with one legge, then with the other, and beinge now got up easelye goeth about the sicke man, shaking his Rattle very softly over all his bodye; and with his hand he striketh the grieved parts of the sicke, then doth besprinkle his with water, mumblinge certaine words over him, and so for that time leave him." This method of

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[1] Howes' *Hist. Collections of Va.*, p. 137.

[2] Hariot, in Hukluyt, v. III, p. 338 *et seq.*

[3] Spelman, *Relation of Va.*, pp. cix, cx; Cf. Lawson's *Hist. of Carolina*, pp. 211, 214.

[4] Spelman, *Relation of Va.*, pp. cix, cx; Cf. Lawson's *Hist. of Carolina*, pp. 211, 214.

treatment reminds us of the practices of medicine men among other savage peoples.

The functions of the priest[1] among the Virginia Indians may be summed up as follows: (1) he presided in spiritual matters; (2) he had a "great share in government" and in "all public and private affairs;"[2] (3) he was supposed to have personal converse with invisible spirits; (4) he attempted to propitiate the elements by charms and incantations; (5) he foretold events, pretending to have the power of second sight; (6) he possessed all existing knowledge of his people, whether religious, physical or moral; (7) he spoke an esoteric language[3] and was the physician of his tribe.

Indian priests, too, were of different grades. The chief priest had very great influence, and, on his death,[4] the whole community or tribe united in paying him reverence and veneration.[5]

When any notable accident or encounter had taken place, "certain altar-stones" called by the natives "Pawcorances" were set up, somewhat after Hebrew fashion. Each of these stones had its history, which was recited to any one desiring information. These Pawcorances thus furnished the best records of antiquity to the Virginia Indians, and upon them it was the custom to offer "bloud, deer-suet and Tobacco" on any notable occasion, or when the Indians returned victorious from war or successful from the chase.[6] The most remarkable of the Pawcorances was at Uttamassack. It was of solid crystal of great size, and upon it sacrifices were offered at the most solemn festivals.

There seem to have been no set holy days[7] appointed by the Indians for religious festivals, of which, however, there were a large number, *e. g.*, the coming of wild fowl, geese, ducks,

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[1] See C. C. Jones' *Antiq. of So. Indians*, pp. 20, 21.

[2] "Brevis Narratio," pl. xii; also Bertram's *Travels*, p. 495.

[3] Beverley, *Hist. of Va.*, p. 148.

[4] "Brevis Narratio," pl. xi.

[5] C. C. Jones' *Antiq. of So. Ind.*, pp. 19, 20.

[6] Beverley, *Hist. of Va.*, p. 168; Strachey, p. 98.

[7] Purchas, v. 843.

teel, etc.; the return of the hunting season; and the ripening of certain fruits. The greatest annual festival was that of the corn-gathering, the Indian harvest home, at which the revelling occupied several days. To these festivals all contributed as they did to the gathering of the corn. On these occasions there was the greatest variety of pastimes, war dances, and boastful songs.[1]

A second annual festival began with a strict fast. Then came a feast. The old fire was put out. By the friction of two pieces of wood, a new fire was kindled. Sand was then sprinkled on the earth and, to make the lustration complete, an emetic and purgative of cassina was taken by the whole nation. All crimes save murder were pardoned at this festival, and the solemnities were concluded by a funeral procession, symbolic of the fact that henceforth the past was to be buried in oblivion. In evidence of this, criminals who had taken a decoction of cassina sat down in perfect security by the side of the persons they had injured.[2]

The manner of worship employed at such festivals varied. Sometimes, the Indians made a large fire in the house, or in the fields, and danced around it. Sometimes a man or some of "the fayrest Virgins of the companie" were set in the midst and the whole company would dance and sing around them, then feasting was in order. Solemn dances were performed in remembrance of the dead,[3] for deliverance from some great danger, or on the occasion of a safe return from war.

Among the Virginia Indians there were various kinds of conjurations, one of which Captain Smith[4] observed when a captive at Pamunkey. Of this he gives the following account:—"Early in the morning a great fire was made in a

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[1] Howe's *Hist. Collections of Va.*, p. 139; Cf. Jones' *Antiq. of the So. Indians*, pp. 99, 100.

[2] Purchas, *His Pilgrimes*, v. 839.

[3] Purchas, *His Pilgrimes*, v. 838; see also pl. xvii of Hariot, by De Bry.

[4] Smith, *Gen. Hist.*, bk. 3, p. 398; in Beverley, p. 158.

long house and a mat spread on the one side, as on the other; on the one they caused him to sit, and all the guard went out of the house, and presently came skipping in a great grim fellow, all painted over with coal mingled with oyle, ... and in a manner covered his face; with a hellish voyce and a rattle in his hand. With most strange gestures and passions he began the invocation, and environed the fire with a circle of meale; which done, three more much like devills came rushing in with the like antique tricks, painted halfe blacke, halfe red, but all their eyes were painted white and some red stroakes like mutchato's along their cheekes; round about him these fiends daunced a pretty while and then came in three more as ugly as the rest; with red eyes; and white stroakes over their blacke faces, three of them on the one hande of the chief Priest, three on the other. Then all with their rattles began a song, which ended, the chiefe Priest layd down five wheate cornes; then strayning his arms and hands with such violence that he sweate, and his veynes swelled, he began a short Oration; at the conclusion they all gave a short groane; and then layd down three graines more. After that, began their song againe, and then another Oration, ever laying downe as many cornes as before till they had twice incirculed the fire; that done they took a bunch of little sticks prepared for that purpose, continuing still their devotion and at the end of every song and oration, they layd down a stick between the divisions of corne. Till night, neither he nor they did eat or drink; and then they feasted merrily with the best provision they could make. Three days they used this Ceremony." The meaning of it all, they told him, was to find out if he intended them well or ill. The circle of meal signified their country; the circles of corn, the bounds of the sea; and the shells Smith's country. They imagined, we are told, that the earth was flat and round, and that they occupied the centre.

The conjurer was the friend and ally of the priest, or frequently conjurer and priest were identical. When in the

act of conjuration, the conjurer usually wore fastened to his ear a blackbird with extended wings. When seized with divine madness he made quick movements and assumed convulsive postures. All his faculties seemed to be in the highest state of tension.[1] Hariot[2] says of these Virginia conjurors: "They be verye familiar with devils, of whom they enquire what their euemyes doe, or other suche thinges. They shave all their heads savinge their creste which they weare as others doe, and fasten a small blacke birde above one of their eares as a badge of their office. They weare nothinge but a skinne . . . . They weare a bagg by their side. The inhabitants give great credit unto their speeche, which oftentimes they finde to bee true." Such, indeed, was the esteem and veneration in which the conjuror was held that no enterprise was undertaken without consulting him; and such a practice was not without reason, for by his superior opportunities he monopolized almost all the knowledge[3] of his tribe and was the repository of their traditions, one of which runs as follows:—

Near the falls of the river James, below where Richmond now stands, about a mile distant from the river, may be seen a rock upon which several marks are imprinted, apparently the foot-prints of some gigantic man. These were reputed by the conjurors to be the foot-prints of their god Kiwasa as he walked through the land of Powhatan.[4] This tale resembles that told by the Ancient Romans of the hoof marks left in stone near Lake Regillus, by the horses of the Dioscuri.[5]

The conjurer united in himself the offices of priest, physician and fortune-teller, and proceeded by incantations, charms,

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[1] Beverley, *Hist. of Va.*, p. 139; Cf. account of François Coreal, *Voyages*, pp. 39–41.

[2] Plate x of Hariot, by De Bry; Jones' *Antiq. of So. Indians*, pp. 30, 31.

[3] Hariot, in Hakluyt, iii, 339.

[4] Cooke's *Hist. of Va.*, p. 30; Campbell, *Hist. of Va.*, p. 89.

[5] Livy, II, 19.

and contortions. He professed to make the most wonderful cures[1] of disease by his knowledge of medicinal herbs and simples. He treated disease by (1) scarifying the patient's forehead and sucking therefrom, as it were, the "seeds of disease;" (2) making the patient while lying on his stomach inhale the fumes of tobacco or other medicinal plants; (3) causing the patient to smoke tobacco; and (4) mumbling incantations over him.[2] The Indians also conjured for stolen goods, for toothache, and for rain and favorable seasons.

Objects of sacred import among the Virginia Indians were various. Carved posts representing the human face and arranged in rows around the Quioccosan were especially venerated. Pyramidal stones and pillars were also adored, not as having any efficacy in themselves to help votaries, but as symbols of the eternal deity. Baskets of stones and running streams were worshipped for the same reason;[3] though it is highly probable that in the running streams, the Virginia Indians worshipped Manibozho, the Spirit of the Waters; or, they may have adored the Moon-goddess who was believed by Algonkin tribes to preside over water, death, cold, and sleep.[4]

The conception of holy-water was not unknown to the Virginia Indians, as is evident from the use of it by the conjuror and priests as described by Smith and Spelman. Fire was kept always burning in Indian dwellings. If at any time the fire went out, it was taken to be an evil omen. If it went out by accident, it was immediately rekindled by friction. To prevent any such catastrophe, however, the Indians took great pains to have always in their possession splinters of pine or of the fir-tree, which catch fire quickly and burn with a bright light. This curious fact, with others

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[1] See plate xx of "Brevis Narratio," De Bry.

[2] See C. C. Jones' *Antiq. of the So. Ind.*, pp. 31, 32, 33, 34.

[3] Beverley, *Hist. of Va.*, p. 168.

[4] Schoolcraft, iii, 165.

like it,[1] leads us to the belief that the Virginia Indians worshipped fire; probably not as a divinity, but as an emblem of divinity.

The Indians of Virginia, then, did not limit their worship to images and effigies, they worshipped also the powers and energies of the material world. When, upon the river or the seas, the waters became rough by reason of wind or storm, the conjurer, after many "hellish cries and invocations," would cast such things as copper and "Pocones" into the water to pacify the angry god,[2] for the Indians believed tobacco to be especially acceptable to him, and this was invariably sacrificed or burnt in his honor.[3] Like the Aztecs and Peruvians, the Indians of Virginia[4] sacrificed to the Sun and accounted this heavenly body a god. George Percy[5] tells us "It is a generall rule of these people, when they swear by their God which is the Sunne, no Christian will keepe their oath better upon their promise. These people have a great reverence for the Sunne above all things; at the rising and setting of the same, they sit down lifting up their hands and eyes to the Sunne, making a round circle on the ground with dried tobacco; then, they begin to pray, making many Devillish gestures, with Hellish noise, foaming at the mouth, staring with the eyes, wagging their heads and hands a fashion and deformitie as it was monstrous to behold." Furthermore, in his narration, Percy states that William

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[1] Such facts as: (*a*) in the contemporary pictures of De Bry, representing Indian life, fire always appears; (*b*) the practice of casting morsels of food into the fire before eating; (*c*) fire-worship was prevalent among all the kindred Algonkin tribes and Iroquois Septs; (*d*) Father White says the Indians worshipped corn and fire, pp. 41 and 42; and (*e*) Picart's plate (opp. p. 118) is entitled "Les Virginiens adorent le Feu, et se réjonissent après avoir été délivrés de quelque danger considérable."

[2] Smith, *Gen. Hist.*, bk. 2, p. 371; Strachey, p. 90.

[3] See Hariot, in Hakluyt, III, p. 330, and Jones, *Antiq. of the So. Indians*, p. 396, on Religious Significance of Tobacco.

[4] Especially the "Susquesahanoughs," Smith, 118.

[5] Percy, in Purchas, V, 1685–1690.

White, who had lived with the natives, told him something of their customs. He affirmed that "In the morning, by breake of day, before they eate or drinke, both men, women, and children (that be above tenne years of age) runnes into the water, then washes themselves a good while till the Sunne riseth: then offer Sacrifices to it, strewing tobacco on the water or land, honoring the Sunne as their god. Likewise, they do at the settinge of the Sunne."[1]

From various scattered allusions and notices, it is evident that the Virginia Indians adored the cardinal points[2] and these are to be identified with the four winds, and for this reason the number "four" was held sacred. Its use was universal among all the North American Indian tribes; indeed such a belief is a necessary consequence of the hunter's life. Conclusive evidence of the existence of such a belief among the Virginia Indians, is given by Strachey[3] who tells how the Indians worshipped the "four wynds," and who mentions four images as being at the corners of Powhatan's treasure-house. Purchas[4] also informs us on good authority that the Virginia Indians "worshipped towards a certaine Hoope or sphere doubled in a crosse, which they set upon a heape of stones in this house." The latter, however, may be identified with the worship of the great Spirit, a symbol of whom is described by Purchas. We are told by Longfellow that "Gitche Manito the Mighty" was painted,—

> "As an egg with points projecting
> To the four winds of the heavens.
> Everywhere is the Great Spirit
> Was the meaning of this symbol."

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[1] Percy, in Purchas, V, 1686.

[2] The Virginians also worshipped a God of the Winds. Picart gives a plate representing this divinity entitled "Le Dieu des Vents, autre Idole des Virginiens," p. 112.

[3] Strachey, pp. 98, 99; Smith also.

[4] Purchas, V, 848.

Besides worshipping the cardinal points, fire, the Sun and other natural objects, the Virginia Indians worshipped the god of life as personified in the growing Indian corn[1]—the Mondamin of Longfellow, by whom he is described as meeting Hiawatha in the person of

> " . . . . . A youth . . . .
> Dressed in garments green and yellow,
> Coming through the purple twilight.
> Through the splendor of the sunset;
> Plumes of green bent o'er his forehead,
> And his hair was soft and golden,
> Tall and beautiful he stood there
> In his garments green and yellow;
> To and fro his plumes above him
> Waved and nodded with his breathing."

Such a beautiful and natural belief was entertained by all the tribes of the Algonkin stock; and is a perfectly logical outgrowth of nature-worship as simple as it is beautiful.

Human sacrifice was frequently practiced by the Virginia Indians. Spelman[2] tells us in this regard: "but uppon necessetye yet once in the year, their priest makes a great cirkell of fier in ye which after many observances in the conventions they make offer of 2 or 3 children to their god if he will apeare unto them and show upon whom he will have desire. Upon which offringe they heare a noyse out of ye Cirkell nominatinge such as he will have, whome presently they take bindinge them hand and foote and cast them into ye cirkell of the fier, for be it the king's sonne he must be given if once named by their god. After the ceremonees performed the men depart merily, the women weepinge."

The Virginia Indians affirmed that they withdrew their children not because of a desire to sacrifice them but to conse-

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[1] See Father White's "Relatio."

[2] *Relation of Virginia*, pp. cv, cvi; Cf. Jones' *Antiq. of the So. Indians*, pp. 23, 24.

crate them to the service of their god. It is, however, a fact, only too well established, that but few were reserved to the service of the god, while the rest were slaughtered. Smith[1] gives the following account of the annual sacrifice of children among these Indians as narrated to him by an eye-witness: "Fifteene of the properest young boyes, betweene ten and fifteene years of age they painted white. Having brought them forth the people spent the fore-noon in dancing and singing about them with Rattles. In the afternoone they put the children to the roote of a tree. By them all the men stood in guard every one having a bastinado in his hand made of reeds bound together. These made a lane betweene them all along, through which there were appointed five young men to fetch the children; so every one of the five went through the guard to fetch a child, each after the other by turns. The guard fiercely beating them with bastinadoes, and they patiently enduring and receiving all, defending the children with their naked bodies from the unmerciful blows that pay them soundly, though the children escape. All the while the women weep and cry out very passionately, providing mats, skins, mosse and dry wood as things fitting their children's funerals. After the children were thus passed the guard, the guard tore down the trees, branches and boughs, with such violence that they rent the body [of the trees] and made matts for their heads, or bedecked their hayre with the leaves. What els was done with the children, was not seene, but they made a great heape in a valley as dead, where they made a great feast for all the companye."

When asked the meaning of this ceremony, Smith's informant told him that not all the children died, but only such a part of them as fell to Okee by lot, whose left breast Okee sucked till they died, while the rest were kept in the desert with nobody with them but the priests and conjurers. So necessary was deemed this sacrifice, that were it omitted, the

[1] Smith, *Gen. Hist.*, bk. 2, pp. 373, 374.

Indians thought that their Okee or devil and all the other "quiyoughcosoughs" would give them no deer, turkeys, corn or fish, while other tribes would make great slaughter of them.

The practice of Huskanawing[1] was a curious ceremonial usage observed periodically by the Virginia Indians. By it priests were installed and warriors first recognized as such. Like ceremonies were in vogue among all North American tribes. The usage is described by Longfellow as Hiawatha's fasting. This solemnity of the "Huskanawing" took place every thirteen or fourteen years or even more frequently, as the young boys happened to come to maturity. Its aim was without doubt, to prepare the youth for admission into the rank of warriors or counsellers. The candidates for this "degree" were taken into the thickest part of the forest and there kept in close and solitary confinement for seven months with hardly any sustenance but the extract of some half poisonous roots, or a decoction of the leaves and twigs of the cassina or ilex. As a result of this unnatural fare, madness came on. The fit was prolonged eighteen days, during which time they were closely confined. The place of confinement was called a Huskanawpen, "one of which," says Beverley,[2] "I saw belonging to the Pamunkee Indians in the year 1694. It was in shape like a sugar loafe, and every way open like a lattice for the air to pass through." When a sufficient portion of this intoxicating drink had been taken the "medicine man" gradually diminished the dose; so that in due time the candidates recovered their senses and were brought back to the town.

This process Beverley supposed to act like the waters of Lethe upon the memory.[3] "To release the youth from all

[1] Beverley, *Hist. of Va.*, pp. 162, 163. [2] Beverley, *Hist. of Va.*, p. 179.

[3] An allusion to this effect of the ceremony is made by Colonel Byrd (West. MSS, ii, 36), when he says, . . . "The joy of meeting my family in health made me for a moment forget all the fatigues of the journey, as much as if I had been Husquenawed."

their childish impressions, and from that strong partiality to persons and things which is contracted before reason becomes a guiding principle in life. So that when these young men came to themselves again, their senses may act freely without being biased by the checks of custom and education. Thus they become discharged from any ties of blood, and are established in a state of equality and perfect freedom, to order their actions and dispose of their persons as they think proper, without any other control than the law of nature."[1]

Such then is the existing evidence as to the religious institutions and beliefs of the Virginia Indians. The accounts of the old historians are incomplete and unsatisfactory,[2] but they are all we have. There is enough, perhaps, to warrant the statement that the Virginia Indians had a well developed cult and absolute belief in the efficacy of religious ceremonies. Our Indians were extremely superstitious. They saw gods in the elements of nature, in every animal, and in every plant.

[1] Beverley, *Hist. of Va.*, p. 180.

[2] Strachey, p. 100.

III.

Indian Survivals in Virginia.

It will not be amiss to notice, in conclusion, some of the Indian survivals in our day:

1. Such common words as "pone," "hominy," "hiccory," "tuckahoe," "chinquapin," "persimmons," and "barbecue" are all derived from the Virginia Indians.

2. The burial places of these Indians, their shell-heaps, rock-carvings, and pictographs still remain scattered here and there over Virginia's soil; and their implements, arrow-heads and beads are constantly being dug up.

3. Indians still live in Virginia. With reference to them, however, we should say that there is not, from Delaware Bay to Pimlico Sound, a single full-blooded Indian speaking his native language. There are, however, two small bands of so-called Indians living on two small reservations in King William County, northeast of Richmond. These people are of mixed blood. For the most part the admixture is with the negro. It is still their boast that they are the descendants of Powhatan's warriors. A good evidence of their present laudable ambition is an application recently made by them for a share in the privileges of the Hampton Schools. These bands of Indians are known by two names: the larger band is called the Pamunkeys (120 souls); the smaller goes by the name of the Mattaponies (50). They are both governed by chiefs and councillors, together with a board of white trustees chosen by themselves.

Mooney[1] gives the following interesting account of the present condition of the tribe. It was written for him by Bradly, chief of the Pamunkeys. As given by Mr. Mooney, with errors of spelling and grammar corrected, the account reads as follows: "There is an Indian Reservation in King William County, Virginia, by the name of Indian town, with about 120 souls. They subsist chiefly by hunting and fishing for a living. They do not vote or pay taxes. We have a chief, councilmen and trustees, and make and enforce our own laws. I am chief of the tribe, W. A. Bradly. There is a small reservation on Mattapony river, J. M. Allmand is chief."

4. As descendants of Pocohontas, the historian Stith[2] notices Thomas Rolfe, son of Pocohontas (Matoax) and John Rolfe, and his descendants. "He (*sc.* Thomas Rolfe) left behind him an only daughter, who was married to Colonel Robert Bolling; by whom she left an only son, the late Major John Bolling, who was father to the present (1747) Colonel John Bolling, and several daughters married to Colonel Richard Randolph, Colonel John Fleming, Dr. William Gay, Mr. Thomas Eldridge and Mr. James Murray. So that this remnant of the Imperial Family of Virginia which long ran in a single person is now increased and branched out into a very numerous progeny." This increase can be seen in Wyndham Robertson's "Descendants of Pocohontas," a record not entirely accurate and not including all her descendants whose name is "legion."

5. Indian place-names in Virginia. The following principal ones are given in alphabetical order, with their meanings:

Accohanoc (Algonkin) = "as far as the river;" name of a river.

Accomac (Alg.) = "a broad bay" or "the other side-land."

Accotinck.

Acquia (Alg. equiwi) = "in between something" or "muddy creek."

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[1] In *American Anthropologist*, Vol. III, p. 132. [2] *Hist. of Va.*, p. 146.

Alleghany (from Allegheni) = the name of an extinct Indian tribe.

Aquasco (Alg. Achowesquit) = "grassy."

Chickahominy = "turkey-lick."

Chowan = "the South" or the Southern Country.

Conecocheague (from Konekocheeg) = "indeed a long way."

Cowanesque = "briery, thorny, bushy."

Chesapeake = "a superior, or greater, salt-bay."

Kanawha = "river of the woods."

Kettalon (= "the great town"), creek in Virginia.

Mattapony = "no bread to be had at all" (river).

Meherrin = "on the island" (river).

Monocacy = "stream containing large bends" (river).

Mononghela = "high banks breaking off in some places and tumbling down" (river).

Nansemond = "from whence we fled" (county and river).

Nanticoke = "tide-water people."

Onancock = "foggy-place" (town on Eastern Shore).

Occohanock = "crooked, winding stream."

Opequon = "a stream of whitish color" (river).

Ossining = "stony place."

Osso = "white water."

Pamunkey = "in the sweat house where we sweated" (river).

Patapsco = "back-water" (river).

Patuxent = "little falls" (river).

Powhatan = "falls in a stream" (county).

Pocohontas = "bright stream between two hills" (?) or "little wanton" (county, town, personal name in Virginia).

Pocataligo = "plenty of fat ducks."

Pocomoke = "knobby" (river, bay on Eastern Shore).

Pocoson = "a place where balls, bullets or lead are to be found."

Port Tobacco, (Indian Portuppog) = "a bay or cove," (town in Southern Maryland).

Potomac = "they are coming by water" or "place of burning pine."

Pungoteague = "the place of dust" (or powder).

Quantico = "dancing."

Rappahanock = "where the tide ebbs and flows."

Roanoke = "place of shells" (wampum).

Shawnees = "Southern people."

Shenandoah = "the Sprucy Stream" or the stream passing by spruce pines, or Iroquois "ononda" and "goa" = "great mountains."

Tuckahoe = "deer are shy."

Tuscarora = "shirt wearing people."

Werowocomoco = "house of the chief."

Wheeling = "place of the head." From Alg. "weeling" = "well" + "ing").

Wicomico = "where the houses are building" (Alg. Wikomekee).

Wyanoke = "the going around place."

Wyoming = "large fields" or plains.

Wallawhatoola = "the river that bends."

Youghioheny = "the stream flowing in a circuitous course."

Numerous Indian names are still in use in Virginia, and singularly applicable to all Southern States are the poetic words of Mrs. L. H. Sigourney:

> ". . . . their name is in your waters—
> Ye may not wash it out.
> . . . . their memory lieth on your hills,
> Their baptism on your shore.
> Your everlasting rivers speak
> Their dialect of yore."

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