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THE COLONIAL EXECUTIVE

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LOUISE MCCOY.

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Prof. Wm.

Approved for the purpose named—

*W. W. West
J. G. Moore
C. F. M. Plummer*

The Colonial Executive.

I. Introductory.

General subdivision of colonies into

- (1) Charter, (2) Provincial, (3) Proprietary.

II. The Executive in the Colonies.

A. Plymouth Colony.

1620. Governor appointed. 1621-30 Governor and Assistants elected.

B. Connecticut.

- (1) Executive, direct from the people.
- (2) Governor and 6 Assistants.
- (3) Powers. Executive and partially judicial.

C. Rhode Island.

- (1) 1647-63. President and 4 Assistants
- (2) 1663- a, Governor, Deputy Governor and 10 Assistants. b, Powers;
 - (1) Called and sat in Assembly
 - (2) Had charge of military affairs.
 - (3) Held General Courts.

D. Massachusetts.

1629. Governor. Deputy Governor and 18 Assistants elected by freemen. - annually; almost supreme authority.

1630. Governor elected by Assistants.

1632-4. Restrictions on power.

1684. Provincial government under President and Council.

1686. Royal Governor.

1689. (1) Provincial - President.

(2) Charter. Governor appointed.

E. Virginia. Provincial.

1606. President elected, Council appointed; executive, legislative and judicial

1609. Captain - general and Governor-in-Chief appointed - arbitrary powers.

1619. Powers restricted.

F. South Carolina. New York and New Hampshire.

G. Maryland - (Proprietary)

Executive. Governor and Council.

1637. Functions defined - government mild.

H. Pennsylvania.

Governor had treble voice in Council.

III. Conclusion

IV. References. Original. Mass. Conn. Va.

Colonial Records of Penn R. I. S. C. Md.
Va. & Mass. Historical Collections, Winthrop's "History
of New England", Beverly's History of Virginia, Hening's
"Statutes", Hazard's "Annals," "Acts & Resolves" of
Mass. , Bradford's History of Plymouth.

The Colonial Executive.

A natural predisposition for self-government is one of the chief characteristics of the English Colonies. The first thing the settlers did upon entering their new home was to betake themselves to the task of governing themselves. To quote Scott, in his "Development of Constitutional Liberty"* "Before the dwellings were built the governments were erected and perhaps like the dwellings they were but temporary shelters to last until better structures could be builded."

Sometimes the governments were decided in the London office of the Company before the colonists started. Sometimes merely outlined in their charter by the king and yet others were the result of the favor of a proprietary and a few the work of the people. Broadly, we may divide the colonies in regard to their government into three classes; charter, provincial and proprietary. In charter colonies the charters

*Scott, p. 54, 55.

were substantially written constitutions binding on both king and colonists and so unalterable except by mutual consent.

Rhode Island and Connecticut were practically charter colonies throughout the period and Massachusetts was governed by charters a considerable part of her colonial existence.

In the proprietary governments some subject acting under the royal charter which he secured from the King, appointed the executive and granted the land to colonists and thus acted as a medium between King and colonists. Maryland, Pennsylvania and Delaware fell under this division, Maryland finally becoming royal.

The provincial or royal governments received their power directly from the crown and their only constitution was in the instructions sent to the governor. Virginia gives us an example of this class.

In order to understand the executive in the colonies we must study carefully the position of the department in each representative colony and note the fluctuation of power coincident with the changes in the colony. Let us take up the more democratic governments first and under this class we may place Plymouth Colony for she maintained the simple

forms of democratic government for eighteen years. Although a charter was granted the Plymouth Company in 1620, the government was left entirely to the council* and after reaching Cape Cod the whole body of emigrants signed a solemn covenant** in which they acknowledged the authority of the whole community over each individual. In the same year*** the settlers elected John Carver to be their governor or executive but did not define his duties and position. His successor was given one assistant**** and in 1624 the number of assistants was increased to seven and the governor was given a double voice in their meetings.***** Office seeking had not yet become an evil for in 1633 a law was passed fining any one who refused the office of governor after he had been elected.*****

The growth of new townships gave an impulse to political life and in 1637 for the first time the powers of the court or executive and judicial body, were finally declared. This court consisted of the governor and his seven assistants***** elected by the Assembly. This court had the power of ad-

*Charter of 1620, Poore, 96L

**Bradford's Hist. of Plymouth, p. 54.

***1620

****Mass. Hist. Col. Vol. VIII (4th Series) p. 10L; Bradford's Hist. of Plymouth, p. 68; Doyle I, 49 ("English Colonies in Am").

*****Bradford, p. 156. Hutchinson's Hist. of Mass. II, 65.

*****Doyle, p. 71.

*****Plymouth Col. Rec. Vol. XI, p. II 1636.

mitting freemen, granting land and in conjunction with a jury trying civil and criminal cases. * Among the earliest laws was one providing that no person should be admitted to live and inhabit New Plymouth without the leave and likening of the governor and at least two of his assistants** and none were allowed to build without the consent of governor or assistant.*** It was a community of Independents acting without a charter, practically free from a royal supervision or veto and with an elective governor and council chosen annually. Three times the colony endeavored, as a measure of self-defence, to obtain a charter, but failed each time and in 1691 Plymouth was incorporated with Massachusetts and lost its identity.

In Connecticut and Rhode Island the power of the executive was also direct from the people and they maintained the principles of popular sovereignty and separation of powers. In Connecticut the form of government was purely democratic and wholly independent, all power being vested in the freemen who chose the general court, the governor and the assistants ****

In 1639 a constitution was adopted by the three Connec-

*Plymouth Col. Rec. Vol. XI, p. 17.

**Ibid, p. 26.

***Ibid, p. 17.

****Lodge's "Colonies".

ticut towns in a voluntary compact. This was the first constitution to embody the democratic principles, the first conscious and deliberate attempt to found a commonwealth democracy, a system of complete popular control, of frequent elections by the people and minute local government.

In Connecticut we have the first practical assertion of the right of the people not only to choose, but to limit the powers of their leaders, an assertion which lies at the foundation of the American system. It remained throughout confiscations, modifications and refusals of charters in other colonies, the exemplar of the rights of self government which all the English colonies gradually came to aim at more or less consciously. * The government of Connecticut was on the whole more liberal than that of Massachusetts and was the model upon which many of the American states were afterwards built. The executive was vested in a governor and six assistants who were elected by the freemen,** the governor by the greatest number of votes, the assistants by a majority.*** The gov-

*Johnston's "Conn", 81.

**Constitution of Connecticut in Trumbull's Hist. of Conn. Vol. I, 445-502.

***Constitution of Connecticut.

ernor alone was required to be a church member and he was not to serve for two years in succession. We find the names Haynes and Hopkins alternating on the list of Connecticut governors. *

The practical administration was in the hands of the governor and his assistants who were also members of the general court. The executive had the authority to call the assembly but any person might demand its convocation and if refused, a petition signed by the freemen made its session compulsory. Thus the final action was left in the hands of the people. The governor and assistants also constituted the courts for the trial of capital offences and for the hearing of appeals. In 1662 a very liberal charter was obtained giving all the power originally into the hands of the freemen who were to choose a governor, deputy governor and assistants and Winthrop was elected from year to year to the office of governor.

In 1686 when Andros was sent over by England to take control of the colonies as governor general, Connecticut did not give up her charter but maintained a peaceful and conciliatory attitude and in 1690 when Andros was overthrown they returned to their old form of government. **

*Trumbull's Hist. of Conn., Vol. I, 103 verified in Conn. Cd. Rec. Vol. I.

**Trumbull, Hist. of Conn., Vol. I, p. 382.

With the exception of Rhode Island, Connecticut was the only one of the colonies which was free from the contests over salaries, fees, prerogatives and rights and privileges of her executive. *

Rhode Island has many points of resemblance in her executive to that of Connecticut. In 1647 a general assembly of the people was held at Portsmouth to formally adopt a charter which Roger Williams had obtained four years earlier and then proceeded to organize their government under it. **

The executive was composed of a President, of the Province with four assistants, one from each town, elected annually by the freemen. The governor and assistants besides executive duties, also had judicial authority and sat as a court of trial, the President presiding as chief judge. ***

In 1663 Charles II gave a new charter to Rhode Island confirming the old one and conferring more power upon the people. The executive was now formed of the governor, deputy governor and ten assistants chosen by the freemen. **** The governor had power to call the assembly and also with the assistants had a seat in the general assembly and thus assist-

*Arnold's Hist. of R. I., Vol. I, p. 201.

**R. I. Col. Rec. Vol. I, p. 148.

***R. I. Col. Rec. Vol. I, p. 194.

**** Ibid, Vol. II, p. 29.

ed in the making of laws, the governor generally being elected moderator * and when the assembly was not in session the governor and his assistants had charge of the military affairs and the appointment of officers. **

The governor, deputy governor, with six assistants, held two general courts a year and were a court of appeal from the special courts which were called by the governor. ***

In considering the history of the executive in Rhode Island we may not stop to enter into the detail of royal government for Rhode Island escaped with only four years of despotic rule and her colonial page has a peaceful constitutional record. ****

Massachusetts may be regarded as a connecting link between the charter and provincial colonies as her government fell under both classes. The government of Massachusetts was must more restrictive and the circumstances of the colony compelled more frequent changes in its forms than was the case with Plymouth. According to the directions of the charter of 1629, the Massachusetts Bay Company were to have an executive consisting of a governor, deputy governor, and

**Elected until 1700 R. I. Col. Rec. Vol. II.

**Charter in R. I. Col. Rec. Vol. II, (1664-77).

***Arnold's "Hist. of R. I."; R. I. Col. Rec. Vol. III, pp. 25-6.

****R. I. Col. Rec. Vol. III, pp. 262-3.

eighteen assistants to be elected annually by all the freemen* The powers delegated to the governor by the charter were not extraordinary. He was to be the presiding officer of the band of assistants who were to meet once a month or oftener if necessary and hold a court for the better order and direction of their officers." The direct powers conferred upon the governor consisted only in administering the oath of office to the deputy governor and the assistants, and calling the assembly in cases of special emergency.** For the first few years after the transfer of the charter, the magistrates were in possession of almost supreme authority. To borrow Oliver's thought, "the Commonwealth of Massachusetts was ushered into existence as a pure oligarchy. Taking advantage of the feebleness of the freemen and also of their enthusiasm, the governor and council gained control" and in an act passed in 1629 an "absolute government," to use the words of the act itself, was established. The number of councillors was reduced to 12, of these 7 to be named by the Company and 3 chosen by these 7 and the remaining 3 appointed by the "old planters" or those independent settlers whom Endicott had found established in the territory.

*Charter in Poore, p. 961.

**Mass. Col. Rec. Vol. I, p. 10-11; Doyle Vol. I, p. 90.

***Oliver's "Puritan Commonwealth."

The governor, deputy governor and council were empowered to appoint minor officers and to ordain, establish and enact such laws and ordinances as they might deem needful if they were not contrary to the laws of the realm of England. *and to administer justice upon malefactors, inflict punishment upon all offenders. ** After the first year the assistants obtained the unanimous vote of the freemen authorizing them to chose the governor and deputy governor out of their own number and leaving to the freemen only the election of the assistants. *** The unrestricted power of the governor and his assistants was soon challenged when the people of Watertown objected to the levying of a tax by the governor and his assistants on the ground that "they took the governor to be no other than as of a mayor and aldermen who have no power to make laws or raise taxation without the people. **** Their objection was justified, for the charter had not given the executive power to raise money by levy. ***** The protest bore fruit, for Winthrop tells us that an act was passed in 1631, restricting the powers of the governor but this act is not now extant *****

*Doyle Vol. I, p. 91; Young's Chronicles, Act establishing Gov't. of Mass.

**Ibid, 196, 67.

***Mass. Col. Rec. Vol. I, PP. 62,79,72; Winthrop Vol. I, p.85 (Hist. of New Eng.); Hutchinson, Vol. I, p. 25, (Winthrop elected).

****Winthrop, "Hist. of N. E.", Vol. I, p. 84.

*****Charter of Mass. Col. Rec. Vol. I.

*****Winthrop, Vol. I, p. 84; Doyle, Vol. I, p. 104.

The following year the constitutional origin and extent of the governor's power was questioned by Dudley, the deputy governor, who declared the governor had no power beyond an assistant, except the right to preside and to summon the court. * Winthrop replied with the weak plea that he was constituted governor by the court with all the power belonging by common law and statute. ** This movement resulted in a victory for the people in 1632 when the election of the governor and deputy governor was again given to the people. *** And in 1634 restrictions of the power of the governor were made at general court; the deputies asserted their right to a share in the government. The general court was now to be summoned four times a year by the governor but not to be dissolved without the consent of the majority of the court. **** The former powers of the governor to select and admit freemen, make laws, and appoint officers was placed in the jurisdiction of the court. *****

The governor and deputy governor and ten others appoint-

*Winthrop p. 99.

**Ibid pp. 98-99-100.

***Mass. Col. Rec. Vol. I, p. 95; Winthrop Vol. I, p. 90.

****Mass. Col. Rec. Vol. I, p. 118.

*****Ibid Vol. I, p. 117; Winthrop Vol. I, p. 157;

Huskinson Vol. I, p. 36.

ed by the general court constituted a commission of military affairs with full authority over military men and munition and with power to remove officers, dispose of companies and make offensive and defensive war.*

One of the greatest conflicts between the executive and the general court was begun in 1643 when the general court committed the affairs of the colony during its recess to the magistrates and the deputies of Boston, Charleston, Cambridge, Roxbury and Dorchester.** The executive, of course, claimed this as an infringement of their rights*** and the matter was appealed to the elders who decided in favor of the governor and council and the "standing council" was given power to act in the vacancy of the general court, in all cases pertaining to the government:**** From 1640-60 Massachusetts approached very near to an independent Commonwealth and completed a system of laws and government grounded on the laws of Moses.* **** The government was a mixed democracy and aristocracy***** for though the governor and assistants were chosen by the body of the freemen they were confined to the provincial gentle-

*Col. Rec. (Mass.) Vol. I, pp. 139-187; Mass. Hist. Col. Abstract of Laws, 1641, pp. 173-174.

**Mass. Col. Rec. Vol. II, p. 46; J. I. U. S. (Series 14) April 1896.

***Winthrop Vol. II, pp. 204-6.

****Mass. Col. Rec. Vol. II, pp. 93, 94.

*****Hutchinson Vol. II, p. 34.

*****Mass. Col. Rec. Vol. II, p. 95.

men of "family estate and integrity", as Hutchinson expresses it,* while certain of the magistrates were chosen for life,** and Endicott was governor for ten years.*** In 1684 the charter of Massachusetts was annulled and the executive government was placed in the hands of a president, deputy president, and council of sixteen.**** The powers of the council were few, they might neither make laws nor impose taxes, they were to have authority over Massachusetts, Maine, New Hampshire and the King's province.*****

In 1686, however, Governor Andros was commissioned as governor over Massachusetts.***** His instruction was to act in conjunction with the council which already existed, but vacancies were to be filled by the governor. The governor and council were given authority to levy taxes, to make laws, administer finances.***** Arbitrary taxes were imposed, the press was restricted, encroachments were made upon common lands and town meetings were restricted.***** Influenced by the rumors of a revolution in England the people deposed Andros (1689) and set up a provincial government, electing

*Hutchinson Vol. II, p. 3.

**Winthrop Vol. I, p. 258.

***Mass. Col. Rec. Vol. III, p. 45; Mass. Hist. Col. Vol. III, p. 194, 1st series.

****Hutchinson Vol. I, p. 350.

*****Mass. Hist. Col. Vol. V, p. 244, 1st series; R. I. Col. Rec. Vol. III, p. 195.

*****Ibid Vol. III, p. 212.

*****Doyte Vol. II, pp. 234-35; Hutchinson Vol. I, p. 355-361.

*****Conn. Rec. Vol. III, Appendix p. 429.

Bradstreet president. * Before taking up the new charter which was soon granted to Massachusetts, let us sum up the powers of the executive under the 1st one.

The governor had power to call the general court upon urgent occasion as also the deputy and assistants. The governor could not prorogue or dissolve the court. He voted with the assistants and if there was an equal voice his vote was counted twice; he gave commissions to civil and military officers, but this was merely a ministerial act. **

Under the 2nd charter the governor was appointed by the crown and with a legislative elected by the people. We have a dismal record of strife between the legislative and executive departments. A council assisted the governor, consisting of twenty-eight members chosen by the assembly and subject to the approval of the governor (when the governor rejected any names the place was left vacant by the assembly).*** The governor had power to call the assembly any time, to adjourn, prorogue or dissolve at pleasure; it must meet once a year. No act was valid without his assent. He appointed all military officers, justices, and court officials with the consent

*Hutchinson Vol. I, p. 413.

**Hutchinson Vol. II, p. 7.

***Ibid Vol. III, p. 152.

of the council. * No money was to be raised out of the treasury without the warrant of the governor and the consent of the council. ** Out of this clause grew a long and interesting struggle between the executive and legislative powers which was never settled until 1780. In 1625 an act was passed taking away from the governor and council the disposal of public money except by direction of the assembly;*** this act was promptly repealed by the king. But by degrees the assembly acquired the Keys of the Treasury and no money could be issued without vote of the assembly**** and thus in a degree they gained the popular sovereignty.**In time of settlement Virginia should have received earlier consideration but as a provincial colony the discussion more logically follows that of the charter governments. The charter of 1606 established a resident council in Virginia consisting of thirteen powers appointed by the Council in London, the resident council to appoint its own president. The president and council were to make laws and ordinances, to remain in force conditionally until ratified by the Colonial Council in England. *****

*Hutchinson Vol. II, p. 8; Acts & Resolves Mass. Bay. Vol. I p 17.

**Ibid Vol. I, pp. 16, 218.

***Ibid Vol. I, p. 170.

****Hutchinson Vol. II, p. 266.

*****J. H. U. S. Studies 14 series, 1896.

*****Doyle pp. 110, 111; Charter of Va., Poore.

The President and Council had power to pronounce judgment and also to give reprieve. They had jurisdiction over civil cases and power to punish excesses and drunkenness.* The President held a position more as general supervisor and director than as an administrative officer, the apportioning of allowances of corn and oil being one of the duties mentioned by Mayfield.** John Smith during his presidency set the colonists to work and from a little incident related in Stith*** it is evident that he not only acted as judge, but executed his own judgments. When the colonists, unaccustomed to the severe labor grew profane, Smith took note of each oath and for each offence poured a can of water down the sleeve of the offender and the "water cure" proved effective.*** The dissensions among the people were common**** and in 1609 the whole constitution was remodeled. The Council in England were to appoint and remove all "governors, officers and ministers".*****

The governor and other officers had full power to govern and to punish by military force all those not conforming to the laws of England.***** The "Code of Netherlands" was

*Hening Statutes of Va. Vol. I, pp. 71-2, 74; Doyle p. 109.

**Letter of Mayfield in Campbell's Hist. of Va. p. 44.

***Seth's "Va.", p. 86.

***Campbell, p. 64.

****Beverly, p. 171.

*****Charter in Hening Vol. I, p. 91; Beverly pp. 24, 27.

*****Charter in Hening and Poore (1898-1901)

introduced in 1611 and though the strong discipline exercised by Governor Dale may have been beneficial, the strict ^{vi} supervision over personal affairs appears barbarous and also amusing to us. It was a capital crime to kill cattle without the permission of the governor.*

The charter of 1611 made a new distribution of power. The council was to meet once a week; a general court to legislate was to meet four times a year.** Each year the governor ~~was~~ was invested with more power; the price of goods was fixed by the governor and a penalty of slavery for violation of the rate;*** special permission to hunt deer or hogs must be granted by the governor; no man was even allowed to fire a gun, unless in self defense, without paying a heavy fine unless he had the governor's permission**** In 1619, the people began to assist in the government and the instructions to the governor* restricted the powers of the governor by a council or annual assembly.*****

The governor and council sat in the assembly, were judges of the supreme court of the colony, appointed the inferior courts, gave licenses for trading, settled new plantations

*Doyle p. 129; Hening Vol. I.
**Charter, Poore (1904-5).
*** (Argall) Steth p. 147 *Yearly.
****Campbell p. 127.
*****Winsor Vol. III, p. 142.
*****Beverly p. 34.

and looked after the spiritual welfare of the people censuring those who were not "up" on the catechism * To these other powers were added: a casting voice in the council and a negative voice in the assembly.* In 1623 the assembly limited the powers of the governor. He was not to levy taxes, without their assent.*** But this act is the last we hear of their sessions until 1629 for in '23 the charter was annulled and no mention was made of an assembly; so in effect a royal government was enforced. Hitherto Virginia had been subject to a complex threefold government of the company, the crown and her own president or governor and council.****

During this period the governor enforced laws already passed**** but appointed their own council during their pleasure. In 1634 Sir John Harvey was very tyrannical; assessing, levying and disbursing the colonial revenue without check or responsibility, multiplied penalties and exactions and appropriated fines.***** The governor and council also gained the right to grant land and veto bills.***** From 1649-60 the House of Burgesses gained power and left the governor and council quite powerless,***** when they declared their power

*Doyle p. 158; Va. Col. Rec. Vol. 1, pp. 26-28; Beverly Vol. I, p. 34; Hening Vol. I, pp. 114-15.
 **Hening Vol. I, pp. 112, 113.
 ***Hening Vol. I, pp. 124.
 ****Beverly p. 43; Campbell p. 180.
 *****Hening Vol. I, p. 125.
 *****Campbell "Va." p. 1194; Hening Vol. I, pp. 222-4.
 *****Commission of Berkeley in Calendar of Col. Papers, p. 164 l. Doyle p. 259-266; Doyle p. 216.
 *****Hening Vol. I, pp. 527-499.

to elect officers and declined to be dissolved by the governor.*

After the Restoration the directions sent to the governor were more minute, and the relation of the governor to the colony less united. Laws were drafted by the governor and council and then transmitted to the crown and when returned were to be passed by the assembly.** In 1677 Berkely was instructed not to call an assembly but once in two years and then only to sit fourteen days.***

The governor had negative power and also could dissolve the assembly. The question of salary was settled by the payment of an annual allowance.**** The House of Burgesses, however, settled the disputed question of the payment of public money, by gaining the right to elect the treasurer and they then refused to vote money for public defence unless their claims of prerogation and land title fees were granted*****

It is interesting to note the executive in South Carolina, also a provincial colony. Before 1690 the governor was named by the Palatine and after that date he was appointed by a majority of the proprietors.***** When South Carolina

*Hening Vol. I, p. 509

**Hening Vol. III, p. 133

***Hening Vol. I, pp. 570-576; Vol. II, p. 425.

****Mass. Hist. Col. (1st Series) Vol. V, pp. 135-138.

***** Colonies, p. 273 (3) N. C. Col. Rec. Vol. I, p. 530.

became a royal province the right to appoint governors was placed in the crown. This power was usually exercised by a board of trade. The extent of the governor's power is shown in his title of "Capt-general and General-in-chief and Chancellor, Vice Admiral and Ordinary of the Province." His powers were executive, judicial and ecclesiastical and military. He alone could call, prorogue or dissolve the assembly, grant pardons and reprieves and acted as chief justice in the court of errors.*

In New York while the Dutch were in possession the executive was called the Director and governed without aid of council or assembly.** Later, when a governor was appointed, he was assisted by a council of eighteen, appointed half by himself, the other half elected.*** After the conquest of New York ^{by} the English, the executive was in the hands of a governor and his council, who had supreme authority until 1673, when an assembly was held; but in 1786 this was abolished and all the legislative and executive power was in the hands of the governor and council, the council being appointed by the governor**** Under William, ^{and Mary} when the assembly

*J. H. U. Studies, 13th Series.

**N. Y. Col. Doc. Vol. I.

***N. Y. Col. Doc. Vol. I, p. 127.

****Ibid, Vol. III, pp. 369, 375.

appears again, with it, came the strife between the two forces. for the separation of power and control by the people. **

In New Hampshire the executive was held by the governor and council as in other provinces. The council having no executive powers; independent of the council. The governor and council could convene the assembly, advise as to the issuing of warrants for the disposal of public money, and the building of forts and cities; they supervised the trade and commerce of the colony, ordered fairs, markets and posts, granted land and tenures and established courts of justice.***

Doyle thinks the colonization of Maryland "was a step backward as the position of Lord Baltimore was a return to the idea of the dependence of colonization upon individuals.**** The first proprietary charter of 1632 made Lord Baltimore almost independent of the crown, except that he was to establish the church of England.***** Very different from the constant necessity of submitting all legislation to the approval of the crown as in Virginia.***** The position of the proprietor as regards his subjects was vaguely defined; he was instructed to make laws with the advice, assent and approba-

**Ibid p. 343.

***J. H. U. Studies 14th Series, April, 1896.

****Doyle p. 280

*****Charter, Poore, -(811-17).

*****Doyle p. 282.

tion of the freemen. * The proprietor worked out a constitution; the executive to consist of a governor and council. Two councillors only were nominated at first and the functions of the governor and his council were not defined until 1637 and then in the governor's commission the powers were explicitly stated and three more councillors added to the council. The governor had the authority to call the assembly and to give assent to laws. He was judge in all civil and criminal cases, presided over the admiralty court as admiral, over the chancery court as chancellor and over the praetoral court as tribunal. ** The problem of who should take the initiative in legislation was long contested by the assembly and proprietor through the governor, the people finally winning. ***

When Maryland lost her charter in 1691 she fell into the routine of a colony under immediate control of the crown **** In 1714, Lord Baltimore, being converted to Protestantism, received the old proprietary rights. A general political indifference marks this period, followed by petty quarrels between the governor and the assembly. The first conflict was over the introduction of English laws proposed by the

*Charter in Scharf's Hist. of Md., Vol. I, pp. 53-60.

**Assembly Proceedings of Md. 1 (631-64). pp. 83-5)-52.

*** Scharf Vol. I, pp. 124-130; Bozman Vol. II, p. 34.

****Proceedings of Assembly (1637-64) pp. 41-42.

*****Doyle Vol. I, p. 323.

assembly and finally gained by them * In 1739, the assembly restricted the governor's power of fixing official fees by proclamation, and of creating new offices. ** The proprietary government of Maryland was unusually mild and well administered, even though it involved the incongruity of a third person between subject and sovereign. No government was, on the whole, so free from oppression and turbulence.

The same order, system and independence characterized the settlement and government of Pennsylvania. In 1681, Pennsylvania appointed a deputy governor in his place with instructions, to call a council of nine, to settle boundaries, to erect courts, make sheriffs, justices of peace and other officers, to make or ordain any ordinances, but not to call an assembly for the making of laws. *** A year later other powers were added, when the power of summoning and dissolving the general assembly was given to the governor and also a negative voice and power of appointment and suspension of the deputy and twelve councillors**** and the governor presided over the council and had a treble voice in their proceedings*****

*Proceedings of Assembly, 1732.

**Lodge p. 109.

***Proceedings of Assembly, 1739.

****Hazard's Annals (1609-82) p. 504; Instructions to Markham

*****N. Y. Col. Manuscripts Vol. III, pp. 856-59.

*****Hazard's Annals of Penn. p. 563.

The council prepared bills for the assembly. * After the short period, as a royal province, a second charter, granted to Pennsylvania, took away part of the executive's power. The assembly now initiated legislation and in conjunction with the governor regulated the judiciary instead of leaving it to the governor alone making the separation of powers quite marked. **

The history of the English colonies during the first half of the 17th century, was largely made up of petty bickerings between the popular assemblies and the royal governor. The salary question was one of the most important of these disputes. Acting under the orders of the crown the governor in each colony insisted on being paid a regular salary at stated intervals but the assembly as persistently refused; desiring to keep the governor dependent they voted sums as they chose*** for a fixed salary grant would have been in the nature of a royal tax. As the governor and council had a veto if the assembly had quietly acquiesced, the executive would have had all control over the legislation.

The question of control of public money was never sat-

*Ibid, p. 569.

**Fisher's Colonial Era, p. 263; Penn. Col. Rec. Vol. II, p. 5660.

***Thorarles Colonies.

isfactory settled until the new constitutions gave this power to the people. The question of prerogative and anti-prerogative was undoubtedly one of the indirect, political causes of the war. The colonists looked upon the governors as strangers and said they were neither governors of the people, nor for the people whom they were sent to govern.*

The colonists were all accustomed to sharp division between the legislative and executive departments. Governors shifted rapidly and colonial assemblies, eventually, took over much of the executive business from the governors or gave it to officers whom they elected. As a check upon the sweeping laws, which the assembly desired to pass, strong clauses were put in the governor's instructions. Though the tendency was toward broad legislation on all subjects, the instructions to the governor became more and more restrictive, and the people recognized that in many respects the executive was beyond their reach.** The division of the powers of government was one of the most notable things in colonial government and it made easier the formation of the later state and national governments.

*J. H. U. Studies 10th Series, p. 28.

**Hart's Formation of the Union, pp. 8-10.

The governor of the independent state succeeded the governor of the dependent colony, whether elected or nominated. The governor of the state retained the position of the governor of the colony with such changes as a republican system necessarily required. *

The government of the United States, to-day, is in line^c descent more nearly related to that of Connecticut than to that of any of the other thirteen colonies. In both Connecticut and Rhode Island, the charters were so democratic that with a few slight changes of phraseology, they were suited for the new condition of things and the omission of the King's name was the only mark of the Revolution. **

In New York, when their independence was declared, it was only natural that the framers of the new constitution should incorporate the principles, for whose recognition they had for so long a time been struggling with the colonial governors, that is popular sovereignty and the separation of powers. Thus the finances for whose control the people had been contending were put in the hands of the legislature.*** Taxes could be levied and money appropriated, only by the

*Freeman Hist. of Federal Gov't. Vol. I, p. 314, Note L.
Goodnow "Comparative Administrative Law," Vol. I, p. 52.

**Fiske's Beginnings of New Eng. "

***Const'n of 1777, art. XXII, Poore 1336; Ibid Art. IX.

legislature.

The principle of the separation of powers made itself felt in the defining of the so-called different powers of the government; the governor being allowed almost no control over legislation. And popular sovereignty declared that the people should elect the governor and reduce his position to that of an officer, who was to execute the laws.

In Massachusetts, the substitution of the doctrine of popular sovereignty for royal sovereignty, and the adoption of the principle of the separation of powers, made some changes in the government; the governor lost his judicial power, his veto was limited, he lost his control over the legislature, and derived his office from the people.

All the states adopted the principles of popular sovereignty and the separation of powers and the powers of the governor have been more and more restricted until he has become almost entirely a political officer, principally, on account of his limited veto power. But because the governor has been thus confined to the exercise of political powers, his influence upon the welfare of the commonwealth must not be under-

*Const. c. XVII, Poore 1336.

estimated, He is still a very important officer. His veto power giving him a vast power over legislation.*

[Faint, illegible text, likely bleed-through from the reverse side of the page]

*Goodnow's Administrative Law.

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Louise McCoy.