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 Monster having 13 heads without a head, over the  
 divided States of America

2. That John the Monarchian, ruled over  
 the Rhodians and the

3. And behold great  
 of the Rhodians, ever  
 good in his Own eye  
 Lord & disquieted the

4. And moreover it  
 evil prevailed in  
 Zion's hill, in  
 which

5. And  
 Theol  
 with  
 tofore

6. And it  
 into a far  
 and left Ashur & his

7. And whilst James was yet in the Land of  
 his Fathers, David a man mighty in the Law  
 and a leader of the people, said unto the Agurians

8. Come  
 the Jerite as we heretofore did Samuel his pre-  
 decessor, that we may have a priest to go in your  
 continually before us.

9. And Ashur said unto Abi let us  
 with certain of our own Sect to do a thing which  
 we have not done among our Brethren

# RHODE ISLAND HISTORY

VOL. 27, NO. 3

JUNE, 1968



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COVER

Hon. Samuel Eddy, portrait superimposed on  
original manuscript of *History founded on Facts*.

# RHODE ISLAND HISTORY

VOL. 27

JUNE, 1968

NO. 3

## THE COLLEGE SCENE IN PROVIDENCE, 1786-1787

transcribed and annotated by NOEL P. CONLON

### INTRODUCTION AND INTERPOLATION

by CLARKSON A. COLLINS 3RD

POLITICAL EFFUSIONS in pseudo-biblical form and language were not uncommon in the eighteenth century. Few, however, were as enigmatic in content as the following example from the Carter-Danforth Papers in the Society's library, perhaps intended for publication in the *Providence Gazette*, of which John Carter was publisher.

Local historians have not, apparently, dealt with the events referred to in the manuscript, and it is hoped, therefore, that a brief explanation may supply a scanty framework of clues helpful to an understanding of the document.

The first four stanzas refer to the dissension then prevalent in nation, state and Rhode Island College over the form of national government to be adopted, public credit and paper money, and religious differences.

#### History founded on Facts — Chap. 2nd<sup>1</sup>

1. And it came to pass in the 10th & 11th Years of the Monster having 13 heads without a head, over the divided States of America —
2. That John the Mariner a Newportian,<sup>2</sup> ruled over the Rhodians and the regions round about. —
3. And behold great wickedness prevailed in the Land of the Rhodians, every one did whatsoever seemed good in his Own eyes, which highly displeased the Lord & disquieted the good people of the Land. —
4. And moreover it came to pass that discord & much evil prevailed in the Seminary, that was built on

Zion's hill, in the Land of the Providentians, of  
which James the Jersite<sup>3</sup> was Chieftain —

James Manning, president of the College and pastor of the First Baptist Church, was chosen delegate to the Continental Congress in March 1786, and although a Congregationalist minister, Perez Fobes, was made vice-president of the College to perform his duties during his absence, the author of the manuscript evidently felt that the tutors, Robbins and Flint, were in actual control of the institution (stanzas 5 and 6).

Stanzas 6 and 7 seem to imply that David Howell, influential in College and state, whom Manning had succeeded in Congress, led a movement to replace Manning as pastor of the Baptist Church. No record of such an activity on the part of Howell has come to light, but a letter from Nicholas Brown to Rev. Hezekiah Smith quoted by R. A. Guild states that Manning felt that he could not "possibly attend to the duties of both President and Pastor."

Apparently there is but slight connection between the preceding stanzas and the remainder, which deals with the production of a play at the College, by Congregationalists under the leadership of Robbins and Flint, and the consequences.

5. And under him ruled Ashur<sup>4</sup> and Abel,<sup>5</sup> a Journeyman Theologist; — true Oliverians,<sup>6</sup> who wished to govern with all the *blue* rigour of their Fathers, which heretofore caused our blood to run down like a river. —
6. And it came to pass that James took a journey into a far Country, even to the Land of his Fathers, and left Ashur & Abel to rule in his Stead —
7. And whilst James was yet in the Land of his Fathers, David<sup>7</sup> a man mighty in the Law and a leader of the people, said unto the Aquarians<sup>8</sup>—
8. Come — let us conspire together to root out James the Jersite as we heretofore did Samuel<sup>9</sup> his predecessor, that we may have a priest to go in & out continually before us —
9. And Ashur said unto Abel let us combine with certain of our own Sect to do a thing which will make us great among our Brethren —

10. And they covenanted with them to act a Drama,  
in open defiance of the Laws of the Rhodians, and  
of the Lord their God, and which greatly displeased James —

Although play-acting had been forbidden by Rhode Island law in 1762, certain students at the College flouted the prohibition and produced Young's *Revenge* and Otway's *Cheats of Scapin* in 1785. Nicholas Brown was one of the actors and other members of the cast were still undergraduates in 1787, when the "Drama" mentioned in the manuscript appears to have been produced. (See Harold K. Alpert, "Early College Performances of Otway in Providence," *Rhode Island Historical Society Collections*, v. 23, no. 2, April 1930.)

No definite record of this performance has yet been found but the fact that it took place is to a large extent established by a series of controversial letters published in the *Gazette*.

11. And certain of the Rhodians & of the Providentians  
spake freely of the accursed thing that was done under  
the rule of Ashur & Abel and Wrote Letters thereof  
abroad —

In the issue of April 7, 1787, *A Friend of the Town* complained of the "growing evil of exhibiting stage plays in this town . . ." and mentioned "the exertions of the Governors of the College . . . which it is hoped may prevent any further exhibitions of the kind. — Can it be wisdom that our youth should be brought up or taught to be stage-players, or have the bent of their minds drawn to so useless a purpose either for life or death? . . ."

On April 21 *Liberality* replied: ". . . But the late entertainments bear no analogy to the prescription in this act [of 1762]. It was not by stage-players, or with a view to gain, but on the principle of improvement in oratory; and the subject chosen was calculated to impress the best morals on the mind . . . especially as the performance met with universal applause for its morality and precepts."

A third correspondent signing himself *A* again expressed disapproval in the issue of May 5, stating: ". . . I am well satisfied that the public acting of plays is disagreeable to the President and Corporation of the College in this town, and I may inform those who have promoted them, that a gentleman from the University of Edinburgh assured me that plays are not suffered to be acted by the students there, and he believed not in any other University in Europe . . ."

12. And Ashur & [blank] were exceeding wroth & said  
Samuel the son of Richard the Aquarian<sup>10</sup> hath  
done this abominable thing against us —
13. And they vowed vengeance against Samuel who  
was a comely Youth, and heretofore honoured by  
their Chieftain —

Evidently Robbins and Flint believing that Samuel Eddy, a member of the senior class, had led the public protest against their dramatic production, determined to seek revenge (stanzas 12-13). What the exact accusations against Eddy and his colleague were has not come to light and Enos Hitchcock, who according to the author took part in the action against them (stanza 15) in his diary, now in the Society's collection, merely noted on July 11, 1787, "Examination at College Eddy & Abbot expelled." However, in the Enos Hitchcock Papers in the Society's library there is a letter dated August 6, 1787, written by Rev. Ephraim Ward, pastor of the Congregational Church in Brookfield, Mass., appealing for leniency in the case of J. Abbot, apparently Jonathan Abbot of the class of 1791, concerning whom there is no further information. It reads in part:

"... he particularly declares his Innocency of the crime laid to his charge. The President in his letter to Abbot's Father intimates that he was obstinate when under examination, to which Abbot says, he is not sensible of being obstinate in any other sense, than of not confessing a crime, of which, he was conscious he was not guilty; & his intimating he would stand or fall with Eddy, was in consequence of his belief that Eddy was innocent."

14. And it came to pass in the 12th year of the same  
that Ashur & [blank] brought false witness against  
Samuel & accused him before James who in his anger  
against him called Ashur and Abel his under rulers  
together to execute immediate vengeance on Samuel —
15. And Jabez the son of Ephraim,<sup>11</sup> a man full of zeal  
for the *true blue cause*, took with him Enos<sup>12</sup> a priest  
of his own order, and went unto Jame[s] & said —
16. Samuel the Son of Richard hath surely done this  
great wickedness, and therefore he is no more worthy  
to be numbered with the Sons of Zion —

17. And in the bitterness of their angry zeal, they condemned  
Samuel & set a mark on him, that whosoever saw  
him might curse him also —
18. which thing greatly displeased the Lord & sorely  
grieved his people; And the Lord said — I will recompence  
to them and to their children the doings of their hands —

Evidently the College authorities were finally convinced of the innocence of the two students, or decided that a pardon was in order, as Eddy, and Abbot also it appears, were granted their degrees, while their accusers, according to the anonymous author, "repented of the evil that they had done."

19. And they repented of the evil that they had done  
and put on sack cloth and humbled themselves  
before the Lord and said —
20. O Lord cast us not off forever, but restore us again  
to thy loving kindness —

Copy —

*The Original of the foregoing  
was found in Providence July  
23, 1787 —*

One consequence of Eddy's expulsion and the events leading up to it may well have been a lifelong enmity toward Robbins on Eddy's part. Among the Private Papers of Samuel Eddy in the library is a campaign speech written in 1826 in which Eddy, in terms unusually violent even in a period when political calumny was in good standing, accuses Robbins of trading with the enemy during the War of 1812, charges him with corruption, and terms him "cold hearted; insensible to moral feeling." Robbins won re-election to the United States Senate.

\* \* \*

Information which will diffuse the obscurity surrounding the episodes mentioned, particularly as to the nature of the charges against Eddy and the apparent struggle between Congregationalists and Baptists, will be welcome.

FOOTNOTES

<sup>1</sup>Ms. (1 leaf, 2 sides, 12x7½ in.) under above title in Carter-Danforth Papers (box 1, folder 2). The Rhode Island Historical Society Library.

<sup>2</sup>John Collins (1717-1795), third governor (1786-1790) of the State of Rhode Island. *Dictionary of American Biography*, Vol. IV, p. 307 (hereafter cited *DAB*).

Ralph S. Mohr, *Governors for Three Hundred Years, 1638-1954, Rhode Island and Providence Plantations* (Providence, State of Rhode Island, 1954), p. 120.

<sup>3</sup>Manning, James, a delegate from Rhode Island; born in Elizabethtown (now Elizabeth), N.J., October 22, 1738; attended Hopewell Academy, and was graduated from the College of New Jersey (now Princeton University) in 1762; studied theology and entered the Baptist ministry in 1763; moved to Warren, R.I., in 1764, and was one of the founders and first president of Rhode Island College (now Brown University); moved to Providence with the college in May 1770; served as pastor of the First Baptist Church of Providence from July 1771, until his resignation in April 1791; also resigned the college presidency the same year; member of the Continental Congress in 1785 and 1786; died in Providence, R.I., July 29, 1791; interment in North Burial Ground. *Biographical Directory of the American Congress 1774-1949* (Washington, United States Government Printing Office, 1950), p. 1499 (hereafter cited *BDAC*).

<sup>4</sup>Robbins, Asher, LL.D. [1835]; A.B., Yale College 1782. Tutor Brown University 1782-90; librarian 1782-85; lawyer Providence, Newport, R.I.; U.S. district attorney 1812; member R.I. General Assembly 1818-25; U.S. Senate 1825-39; b. Wethersfield, Conn., Oct. 26, 1757; d. Newport, R.I., Feb. 25, 1845. *Historical Catalogue of Brown University 1764-1914* (Providence, Published by the University, 1914), p. 641 (hereafter cited *HCBU*). Also *BDAC*, p. 1743.

<sup>5</sup>Flint, Abel, A.M. [1788]; A.B., Yale College 1785; A.M. 1788; D.D. Union College 1818. Tutor Brown University 1786-90; Congregational minister; pastor Second Church, Hartford, Conn., 1791-1824; b. Windham, Conn., Aug. 6, 1765; d. Hartford, Conn., March 7, 1825. *HCBU*, p. 621.

<sup>6</sup>Oliverian, n. *Eng. Hist.* An adherent or partisan of Oliver Cromwell; a Cromwellian. *Webster's New International Dictionary*, second edition, unabridged (Springfield, Mass., G. & C. Merriam, 1942), p. 1698 (hereafter cited *Webster Second*).

<sup>7</sup>Howell, David, A.M. [1769]; LL.D. 1793; A.B. College of N.J. 1766; A.M. 1769; Yale College 1772; tutor Brown University 1766-69; professor natural philosophy 1769-79; jurisprudence 1790-1824; acting president 1791-92; fellow Brown University 1773-1824; secretary of the corporation 1780-1806; lawyer Providence, R.I.; member Continental Congress 1782-85; associate justice R.I. supreme court 1786-87; attorney general 1789; commissioner for settling the boundaries of the U.S.; district attorney R.I.; U.S. justice R.I. district 1812-24; b. N.J., Jan. 1, 1747; d. Providence, R.I., July 21, 1824. *HCBU*, p. 616. Also *DAB*, Vol. IX, p. 301; *BDAC*, pp. 1338-39.

<sup>8</sup>Aquarian, n. *Eccl. Hist.* One of several sects in the early Church, as the Encratites, who used water in the Eucharist because they regarded wine as evil. *Webster Second*, p. 135.

<sup>9</sup>Deacon Samuel Winsor was ordained a pastor of this church [First Church in Providence] in 1733, and continued in that office until he died, November 17, 1758, aged seventy-one. His son Samuel Winsor was ordained his successor, and continued with this church until after President Manning came to Providence, and then, in 1771, he, with a number more of the church, went and formed another church in Johnston. Isaac Backus, *A History of New England with Particular Reference to the Denomination of Christians Called Baptists*, 2v., second edition (Newton, Mass., Backus Historical Society, 1871), Vol. II, p. 491 (also pp. 23, 287). Also Reuben Aldridge Guild, *Early History of Brown University, including the Life, Times, and Correspondence of President Manning, 1756-1791* (Providence, 1897), pp. 215-217.

<sup>10</sup>Eddy, Hon. Samuel, jurist and statesman, was born March 31, 1769, in Johnston, R.I. He was the son of Deacon Richard Eddy, who was a descendant, in the fourth generation, of Samuel Eddy, the first settler of that name in this country, who came to Plymouth in 1630. Judge Eddy's mother was Martha, daughter of Samuel and Anna (Brown) Comstock. *Biographical Cyclopaedia of Representative Men of Rhode Island* (Providence, National Biographical Publishing Co., 1881), pp. 86-87 (hereafter cited *Biographical Cyclopaedia*). Eddy, Samuel, A.B. [1787]; A.M.; LL.D. 1801; trustee Brown University 1797-1805; fellow 1805-39; secretary 1806-29; delegate R.I. convention on U.S. constitution 1790; admitted to bar 1790; lawyer Providence, R.I.; clerk R.I. superior court 1790-94; clerk R.I. general assembly 1793; member committee to collect and revise R.I. laws 1794; secretary of state, R.I., 1797-1819; member U.S. house of representatives 1819-25; associate justice R.I. supreme court 1826-27; chief justice 1827-35; corresponding member Mass. Historical Society; b. Johnston, R.I., March 31, 1769; d. Feb. 3, 1839. *HCBU*, p. 58. Also *BDAC*, p. 1117.

<sup>11</sup>Bowen, Jabez. . . son of Ephraim and Mary (Fenner) Bowen. *Biographical Cyclopaedia*, pp. 120-121. Bowen, Jabez, A.M. [1769]; A.B. Yale College 1757; A.M. 1760; LL.D. Dartmouth College 1800; fellow Brown University 1768-85; trustee 1785-1815; chancellor 1785-1815; deputy governor R.I., 1778-86; associate justice R.I. supreme court 1776-78; chief justice 1780-81; member R.I. convention on the adoption of the U.S. constitution 1790; loan commissioner R.I. under Washington; b. Providence, R.I., June 2, 1739; d. Providence, May 7, 1815. *HCBU*, p. 616.

<sup>12</sup>Hitchcock, Enos, D.D. [1788]; A.B. Harvard University 1767; A.M. 1770; Yale College 1781; fellow Brown University 1785-1803; Congregational minister; pastor Beverly, Mass.; chaplain Continental army 1780-83; pastor Benevolent Church, Providence, R.I., 1783-1803; b. Springfield, Mass., March 7, 1744; d. Providence, R.I., Feb. 27, 1803. *HCBU*, p. 621. Also *Biographical Cyclopaedia*, p. 141.

## DIRECTOR'S NEWSLETTER

SINCE THE PREVIOUS Director's *Newsletter* two important meetings have been held. The first was called since many members feel a need to be able to involve the Society in the teaching of American and Rhode Island history. Representatives from educational television, state educational systems, various private and public schools, and several colleges joined together in a fine, free exchange of ideas. The object was to discover in what ways we could supplement programs already in progress and what new programs might dovetail into already existing schemes.

Ideas were developed along two general lines: first, programs within the Society's buildings and then programs within the schools.

For programs in the Society it was suggested that Saturday seminars on particularly important historic ideas or events might be held for advanced students, perhaps in the Library where primary material is available; also various demonstrations of early crafts and practices, and several types of tours of the House were proposed. For programs in the schools, there might be traveling showcases with interesting artifacts from the past; and ideas for film strips and slide talks were suggested.

During the discussion it developed that we were really talking about two things: one the education of students and one the education of teachers who might better inform their students about Rhode Island's historic and aesthetic past. It developed that the place where the Society could best become involved in educational television is at the elementary school level where the students are less restricted in just when they must study a particular subject, and a program under the direction of Eleanore B. Monahan is being developed.

The second important meeting was the "Idea Session" where members felt free to advance new ideas for the Society and to suggest curtailment of, or changes in, some previous programs. The Society has always benefited from its volunteers since they make it possible to accomplish many things that the staff itself has not the time to follow through. Various projects need volunteer assistance and we hope that even more members would like to become involved in important projects, for example, working on various collections of papers in the Library such as the Carrington material and the Moses Brown letters. Mr. Klyberg spoke about the need to create and eventually publish a list of the Library holdings, and volunteers are needed for this work. At John Brown House cataloging help is also needed. The Society is ready to help members learn basic skills, and other simpler but essential projects involve rather routine typing such as copying acquisition cards, etc. A Social Committee was formed which will plan a lawn party and perhaps other social events for the Society.

The Rhode Island Foundation has given a grant to the Society to pay for the cataloging of the paintings, prints, and drawings. A suitable cataloger is being sought who will organize and catalog the some 200-300 paintings, the various prints, and the many drawings. The latter include the important Edward L. Peckham watercolor

drawings: about 200 paintings of Rhode Island flowers and many scenes of early nineteenth-century Providence and Rhode Island life. The material will be cataloged in five cross-reference files: by donor, sitter or subject, date, artist, and medium. Mildred C. Tilley returns to the Society's Library on a part-time basis in September to catalog the extensive photography collection.

The firm of Israel Sack, Inc., furniture dealers in New York, from whom came the important labeled John Townsend table and the Rhode Island daybed described in the January, 1968, issue of *Rhode Island History*, has given to the Society for use in John Brown House a superb eighteenth-century brass chandelier. The gift is to acknowledge the new interest and excitement among Society members in the aesthetic objects of the past.

Last Fall the meeting of the League of New England Historical Societies was held in Providence with the Society as one of its sponsors. It is hoped that members will continue to be involved in this organization by venturing to Burlington, Vermont, where the League will hold its next three-day meeting, from October 4 to 6, 1968.

The Fall lecture course which will meet on Thursday mornings at 10:15 from October 3 through November 21 will be "The History of Rhode Island" and the eight lectures will be given by Doctor Marguerite Appleton, well known to all of you as a leading thinker and educator in the area of American history. Those of you who have heard her know that she is a lively and exciting speaker. The Society is honored that Dr. Appleton will give this course and I suggest that those of you who are interested in the course contact the Historical Society now so that information can be sent to you. The number of participants in the course is necessarily limited. The Fall bus trip will be to Newport to see historic areas, buildings, and fine arts, including furniture. This trip will be led by Eleanore B. Monahan, our director of education and assistant curator, who has for many years led a similar trip for Moses Brown students. Those who wish to take this trip should contact the Society now so that they will be sure of a notification in the Fall.

When the bills for membership dues were sent out in November, about one quarter of the membership failed to receive a bill and expressed surprise at a "second notice." We are truly sorry about this.

## RHODE ISLAND CONSTITUTIONAL DEVELOPMENT, 1636-1775: A SURVEY

by PATRICK T. CONLEY

Assistant Professor of History, Providence College

[concluded from April, 1968, p. 63]

### PART II: FROM THE CHARTER TO THE REVOLUTION

To the anxiety and chagrin of the colonists, their royal patent was neither safe nor secure, for Rhode Island's individualistic and sometimes defiant attitude prompted a number of attempts by English officials to have its charter repealed or at least made subject to more effective royal control. The first major onslaught came from Edward Randolph in 1685 during the formative stages of that abortive attempt at colonial consolidation — the Dominion of New England. Surprisingly, Rhode Island in 1686 submitted quite passively to Governor Edmund Andros of the Dominion with one typical exception. She concealed her charter, thus making it possible for her to claim, once the Dominion was overthrown, that she had never actually surrendered her precious basic law.<sup>37</sup> This incident furnishes a good example of Rhode Island's standing policy toward the Mother Country — concession in words and resistance in deeds.

Despite the failure of the Dominion of New England, Randolph's

<sup>37</sup>*Calendar of State Papers: Colonial Series, America and West Indies* (London, 1896-1939), 1685-1688, #279, #304, #632, #645, #750, #844, #857, #902, #925; hereafter cited *CSP*; Robert A. Lindemann, "Important Factors in the Colonial History of Rhode Island Influencing Her Participation in the Revolutionary Movement," (Unpublished doctoral dissertation, Indiana University, 1952), pp. 5-9. Edward Randolph was a commercial and political agent of the Crown who made repeated suggestions for the reorganization of colonial administration from the time of his first arrival in Boston in 1676 until his death in 1703. The best works on this controversial figure are Michael G. Hall, *Edward Randolph and the American Colonies, 1676-1703* (Chapel Hill, North Carolina, 1960), and Robert N. Toppan and Alfred T. S. Goodrick, eds., *Edward Randolph: Including His Letters and Official Papers . . . 1676-1703*, 7 vols. (Boston, 1898-1909). The standard account of the Dominion of New England is Viola F. Barnes, *The Dominion of New England* (New Haven, 1923). For the reaction of Rhode Island's General Assembly to the Dominion (including an account of the hiding of the charter), and the reproduction of a number of documents relating to Rhode Island's role within the Dominion, see *RICR*, III, 175-269. Also useful is Philip Haffenden, "The Crown and Colonial Charters, 1675-1688," *William and Mary Quarterly*, 3rd. Ser., XV (July, 1958), 297-311; XV (October, 1958), 452-66.

suggested program of combining Rhode Island and Connecticut with other colonies to form one royal colony persisted until well into the eighteenth century. Such a plan was advanced during King William's War as part of the Mother Country's general attempt to "tighten-up" her military and mercantile policy, and it was again suggested in 1723 by a home government impatient with Rhode Island and Connecticut because of their long unsettled boundary dispute.<sup>38</sup>

Another method of attacking the privileges and powers granted by the nearly autonomous corporate charter of Rhode Island consisted in disregarding or overriding certain of its provisions. These invasions of privilege were stubbornly resisted. For example, Massachusetts' royal governors William Phips during King William's War and Joseph Dudley during Queen Anne's War were unsuccessful in their attempts to assume active control over the colony's militia, despite official authorization. In 1704-05 Dudley endeavored to implement an opinion of the royal attorney general that governors might be appointed by the Crown in a charter colony in case of pressing danger, but this bold maneuver also failed.<sup>39</sup>

During the imperial reorganization of the 1690's, reports of Rhode Island's lack of participation in the first phase of the great Anglo-French confrontation for empire, rumors that the colony was countenancing piratical activities, and repeated refusals by the colony to recognize the commissions of some admiralty court officials prompted the strict and circumspect Board of Trade to authorize an investigation of Rhode Island's activities and government. The inquiry was conducted in 1699 by Richard Coote, Earl of Bellomont and governor of New York, Massachusetts, and New Hampshire (1699-1701). Bellomont was instructed to obtain copies of all the colony's laws and other public records "relating to the administration of that govern-

<sup>38</sup>Lindemann, *loc. cit.*, pp. 11-13; *CSP* 1695, #1964; 1697, #764; *RICR*, IV, 275.

<sup>39</sup>Lindemann, *loc. cit.*, pp. 14-18; *CSP*, 1691, #1916; 1693, #591; 1694, #999; 1701, #1066, #1067; 1704, #23; Louise Phelps Kellogg, "The American Colonial Charter. A Study of English Administration in Relation Thereto, Chiefly After 1688," *Annual Report of the American Historical Association for the Year 1903* (Washington, 1904), I, 252-59. The decision of the Attorney and Solicitor General concerning Crown appointment of the governor is alluded to in *Acts of the Privy Council of England, Colonial Series . . . 1613-1783*, eds. William L. Grant and James Munro (Hereford, 1908-1912), VI, 87, hereafter cited *Acts of the Privy Council*.

ment." To this end the English investigator visited Rhode Island and then issued a scathing summary of conditions there. The people, he said, had a disdain for learning and were "shamefully ignorant." His report also disclosed an unjustified exercise of the judicial function by the General Assembly, violations of the Acts of Trade, usurpation of admiralty jurisdiction,<sup>40</sup> and the harboring of pirates. Bellomont concluded his twenty-five-point indictment, which listed many deviations from the directives of the charter, by asserting that "his Majesty is neither honored nor served by that government, as at present it is managed."<sup>41</sup>

Surprisingly, Bellomont's report did not lead to a rescinding of the Rhode Island charter, but it did furnish some ammunition for a more general attack on all corporate or proprietary charters in the period 1701-07. It was during these years that the Board of Trade strenuously attempted to secure legislation which would nullify all corporate and proprietary charters and replace them with royal patents. Among the leaders of the campaign against the five remaining non-royal mainland colonies, of which Rhode Island was avowedly the most recalcitrant, were Edward Randolph, Lord Cornbury, and Joseph Dudley.

After several unsuccessful efforts, the movement to vacate the charters temporarily collapsed in 1707 because of the European military disruptions, the pleadings of William Penn and Sir Henry Ashurst, the decline in influence of Cornbury and Dudley, and Whig opposition to the expansion of royal power. A similar though isolated

<sup>40</sup>Bellomont's complaint about Rhode Island's usurpation of admiralty jurisdiction stemmed from the colony's creation of its own admiralty court in 1694. This law establishing a colonial admiralty jurisdiction was notable in that it was invalidated by the Privy Council in 1704, because the Council ruled that Rhode Island had exceeded her powers under the charter. I believe that this is the only Rhode Island statute ever disallowed by the Privy Council. *Records of the Vice-Admiralty Court of Rhode Island, 1716-1752*, ed., Dorothy S. Towle. (Washington, 1936), pp. 81-98; Oliver M. Dickerson, *American Colonial Government, 1696-1765* (New York, 1962), pp. 235-36. The disallowance is printed in *Acts of the Privy Council*, II, 457.

<sup>41</sup>"Report of the Earl of Bellomont, on the Irregularities of Rhode Island," November 27, 1699, *RICR*, III, 385-88. This report, Bellomont's "Journal," and his correspondence with Rhode Island officials were copied from the records of the State Paper Office by John Carter Brown and published by Bartlett in the *RICR*, III, 385-400. Brown's handwritten "Transcripts Relating to Rhode Island taken from Papers the British Paper Office in England" and his copies of "Letters from Rhode Island Agents" are in the John Carter Brown Library.

attempt to reduce all the non-royal colonies was made in 1715, but it was unavailing principally because of the reluctance of the Whigs to accept an enlargement of royal prerogative, and their solicitude for vested interests.<sup>42</sup>

Thus, did Rhode Island's charter survive the recurring crises of 1685-1723. Though the colony's basic law was threatened thereafter, by the Newport Tory Junto in 1764 and by the Crown on several occasions, principally because of controversial paper money emissions and the *Gaspee* incident of 1772, the charter remained intact, its liberality undiminished.<sup>43</sup>

Tenacious Rhode Island's struggle to retain her charter brought some compliance by the colony with the directives of the Mother Country. One such act of obedience was the codification of Rhode Island's laws. In 1698 Bellomont had been instructed to obtain a complete set of the colony's general statutes in the course of his investigation. At first Rhode Island compiled mere "leaves of paper stitched indeed together," according to the Board of Trade.<sup>44</sup> Bellomont himself reported:

<sup>42</sup>Lindemann, *loc. cit.*, pp. 20-36; Kellogg, *loc. cit.*, pp. 252-341. Edward Hyde, Viscount Cornbury, was governor of New York and New Jersey, 1702-08; Joseph Dudley was royal governor of Massachusetts, 1702-15. An adequate account of Dudley's career is Everett Kimball, *The Public Life of Joseph Dudley* (New York, 1911).

<sup>43</sup>John Blanchard MacInnes, "Rhode Island Bills of Public Credit, 1710-1755," (Unpublished doctoral dissertation, Brown University, 1952), pp. 321-381, 475-541, analyzes the English response to Rhode Island's paper money policy. Gertrude Kimball, ed., *The Correspondence of the Colonial Governors of Rhode Island, 1723-1775* (Boston and New York, 1902-03), II, 438, reprints a letter from John Sherwood to Governor Wanton (1774) which alludes to the North ministry's intention to introduce a bill in Parliament which would vacate the colony's charter. Presumably this action was recommended because of the *Gaspee* affair. Lord Horsmanden, during his investigation of the *Gaspee* affair, made a recommendation to the Earl of Dartmouth that Rhode Island and Connecticut be consolidated under a royal governor, *RICR*, VII, 185. The Newport Junto posed a very serious threat to the charter because it launched an attack from within the colony itself. The Junto objected to Rhode Island's factional politics and her resistance to the Sugar and Stamp Acts. See Walter F. Mullen, "Rhode Island and the Imperial Reorganization of 1763-1766," (Unpublished doctoral dissertation, Fordham University, 1965), pp. 175-85; and David S. Lovejoy, *Rhode Island Politics and The American Revolution, 1760-1776* (Providence, 1958), pp. 48-51.

<sup>44</sup>"The Board of Trade to the Governor and Company of Rhode Island," August 11, 1699, *RICR*, III, 376.



Divers of their Acts and laws passed in the General Assembly, are not made and digested into any proper form or method, only framed by way of vote, and kept in loose scripts of paper not entered into any rolls or books; and oft times not to be found when inquiring is made for them at the office, that the people are at a loss to know what is law among them.<sup>45</sup>

This deplorable condition was remedied by the colony, however, for in 1705 a satisfactory manuscript digest was prepared. Then, in 1719, Rhode Island's first published compilation of her general laws appeared.<sup>46</sup>

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The Digest of 1719 figures prominently in any discussion of the implementation of the famed guarantee of religious liberty contained in the Charter of 1663. Although the royal charter had specifically stated that no person "shall be in any wise molested, punished, disquieted, or called in question, for any differences of opinion in matters of religion," the 1719 code contained the following provision:

All Men *Professing Christianity*, and of Competent Estates, and of Civil Conversation, who acknowledge, and are Obedient to the Civil Magistrate, though of different Judgments in Religious Affairs (*Roman Catholicks only excepted*) shall be admitted Free-men, And shall have Liberty to Chuse and be Chosen Officers in the Colony both Military and Civil.<sup>47</sup> (Italics mine)

<sup>45</sup>"Report of the Earl of Bellomont on the Irregularities of Rhode Island," November 27, 1699, *RICR*, III, 388.

<sup>46</sup>"Laws and Acts, Made From the First Settlement of Her Majesties Colony of Rhode Island and Providence Plantations" (1705), Rhode Island State Archives. A facsimile of this codification was published in 1896 by Sidney S. Rider, the noted Rhode Island historian and antiquarian. In 1895 Rider printed a facsimile of the 1719 published compilation which contains an excellent bibliographical and historical examination of all the folio digests (*viz.*, 1730, 1744, 1767, and the partial or supplementary digests of 1752 and 1772) of Rhode Island's colonial laws. These compilations of Rhode Island's laws will hereafter be cited as *Digest* with the appropriate year of publication.

<sup>47</sup>*Digest of 1719*, p. 3; *RICR*, II, 36-37. The best study of this disputed law is Sidney S. Rider, *An Inquiry Concerning the Origin of the Clause in the Laws of Rhode Island (1719-1783) Disfranchising Roman Catholics* (Providence, 1889). This work is No. 1, 2nd Series, of the *Rhode Island Historical Tracts*. Rider's findings were accepted and summarized in John Richard Meade, "The Truth Concerning the Disfranchisement of Catholics in Rhode Island," *The American Catholic Quarterly Review*, XIX (Jan., 1894), 169-177.

This act was allegedly passed in the March 1663 session of the General Assembly. Its enactment then or at any time prior to 1719 is possible but highly improbable. In the original proceedings of the General Assembly for 1663 no such statute appears, nor is it found in the preserved proceedings of any subsequent session. Further, it is not contained in the manuscript "Laws and Acts" of 1705.<sup>48</sup>

The passage of this restrictive "law" during 1663 is particularly implausible in view of the colonists' statutory enactment in May, 1664, of the religious guarantees of the charter. The fact that Roger Williams was a member of the first Assemblies renders the act's passage at that time even more doubtful.<sup>49</sup>

It can also be inferred that the controversial "law" was not enacted at any time during the seventeenth century, because Bellomont reported in his "Journal" on September 22, 1699, that the Test Act was not enforced in the colony. If Rhode Island had passed the alleged law of 1663 in defiance of her charter, it seems likely that she would have employed such a ready-made excuse as the Test Act to justify this violation.<sup>50</sup>

Probably the discriminatory statute was inserted into the Digest of 1719 by the compilers of that volume to cater to the whims of the recent defenders of their charter, the English Whigs, whose anti-Catholic sentiments had been aroused by the Jacobite efforts in 1715-16 to restore the Catholic Pretender to the English throne. In fact the Jacobite uprisings had prompted the passage by Parliament of proscriptive legislation against "Papists" in June, 1716.<sup>51</sup>

<sup>48</sup>The most detailed study of colonial Rhode Island, Samuel G. Arnold, *History of the State of Rhode Island and Providence Plantations [1636-1790]*, 4th ed. (Providence, 1899), II, 492, erroneously claims that the discriminatory statute was included in the 1705 manuscript digest.

<sup>49</sup>*RICR*, II, 57. The Royal Commissioners, in 1665, observed of Rhode Islanders that "they allow liberty of conscience and worship to all who live civilly." *Ibid.*, II, 127.

<sup>50</sup>Lord Bellomont's "Journal," *RICR*, III, 390.

<sup>51</sup>The vigorous anti-Catholic nature of early eighteenth-century English Whiggism is evident in such writings as *Cato's Letters* and *The Independent Whig*. Cf. David L. Jacobson, ed., *The English Libertarian Heritage* (Indianapolis, 1965), pp. xvii-xxvii. See also Basil Williams, *The Whig Supremacy: 1714-1760*, 2nd ed. (Oxford, 1962), pp. 70-81, 150-51. Charles Butler, *Historical Memoirs of the English, Irish, and Scottish Catholics, Since the Reformation*, 3rd ed. (London, 1822), III, 165-178, contains a convenient summary and compilation

To Rhode Island's discredit the alleged statute of 1663 was reprinted in the Digests of 1730, 1744, and 1767 with the approval of the General Assembly. Not until 1783 was the arbitrary disqualification of Catholics removed. The act which accomplished this, however, not only failed to recognize the spurious nature of the disabling "statute," it also neglected to define the civil status of those professing the Jewish faith.<sup>52</sup>

Other significant blemishes on the charter's guarantee of religious equality were the *de facto* freemanship restriction imposed against Jews and the colony's refusal to naturalize adherents of the Jewish faith. Although Jews enjoyed freedom of worship, none, however qualified or competent, was ever made a freeman of the colony of Rhode Island. On the issue of naturalization, both the Superior Court and the General Assembly in 1761-1762 denied the naturalization petitions of Aaron Lopez and Isaac Elizer because they were non-Christians. The Lower House of the Assembly further admonished them that adherents of their religion were "not Liable to be chosen into any Office in this Colony Nor allowed to give a Vote as a Freeman in Choosing others."<sup>53</sup> The most careful student of Rhode Island Jewish history asserts that no evidence exists that anyone professing the Jewish religion was ever naturalized in the colony of Rhode Island. But the rejection in the Lopez case, it should be noted, stemmed from the petitioner's political as well as his religious affiliations. Lopez was closely associated with Nicholas Brown, an ally of Governor Stephen Hopkins. This fact possibly prompted the bitterly anti-Hopkins followers of ex-governor Samuel Ward in the Assembly

of the acts against Roman Catholics passed during the reign of George I (1714-27).

<sup>52</sup>It should be noted that the Catholic population of colonial Rhode Island was negligible. See Robert H. Lord, John E. Sexton, and Edward T. Harrington, *History of the Archdiocese of Boston* (Boston, 1945), I, 618, 667-68; Thomas F. Cullen, *The Catholic Church in Rhode Island* (North Providence, 1936), pp. 35-43. There were no Catholic churches in Rhode Island colony. For an account of the small Jewish community in Newport see Max J. Kohler, "The Jews in Newport," *Publications of the American Jewish Historical Society*, No. 6 (1897), 61-80. The act of 1783 is printed in *RICR*, IX, 674-75.

<sup>53</sup>David C. Adelman, "Strangers: Civil Rights of Jews in the Colony of Rhode Island," *Rhode Island History*, XIII (July, 1954), 65-77. The quote is from the General Assembly's decision on the petition of Lopez and Elizer which is reproduced in *Ibid.*, p. 73. The original is in the Rhode Island State Archives.

and on the Bench to frown upon his citizenship application.<sup>54</sup> Although Jews suffered exclusion, no formal barriers were erected by the colony against the naturalization of Catholics. On the other hand, there is no definite record of the naturalization of an avowed member of that religion.<sup>55</sup>

Despite the aforementioned diversions from the charter, the religious liberty enjoyed by colonial Rhode Islanders seems to have been broader than that possessed by any of His Majesty's subjects including those within the realm of England itself. Though civil restrictions were imposed on some because of their religious affiliations, freedom of worship was never impaired in the Rhode Island colony.

A final invasion by Rhode Islanders of the civil liberties of a minority consisted in the colony's espousal of Negro slavery. Rhode Island in colonial times not only condoned slavery as did the other northern colonies, it eagerly embraced it. The slave trade played a major role in Rhode Island's commercial development, and the institution of involuntary Negro servitude was firmly entrenched in the "Narragansett Country" of southern Rhode Island where a combination of the bylaws of South Kingstown and the general laws of the colony produced a slave code closely resembling that of eighteenth-century Virginia. On the eve of the Revolution the proportion of Negroes in Rhode Island was greater than that of any other New England colony.<sup>56</sup>

<sup>54</sup>Adelman, *loc. cit.*, pp. 74-76; Arnold, *op. cit.*, II, 494-96; James B. Hedges, *The Browns of Providence Plantations: Colonial Years* (Cambridge, Mass., 1952), 94-99, 151-52; Lovejoy, *op. cit.*, pp. 76, 204. Lovejoy's study contains an excellent, detailed account of the famous Ward-Hopkins controversy.

<sup>55</sup>Arnold, *op. cit.*, II, 185, 494-96, gives as an undocumented example of Catholic naturalization, Stephen Decatur, grandfather of the famous commodore, who was naturalized in 1753, *RICR*, V, 367. Lawrence Leland Lowther, "Rhode Island Colonial Government, 1732," (unpublished doctoral dissertation, University of Washington, 1964), pp. 22-23, after consulting an early biography of the commodore, suggests that Decatur may not have been a Genoese Catholic as Arnold states, but was probably a Huguenot. It is possible, however, that Francis Ferrari, a former subject of Genoa, naturalized in 1751, and James Lucena, who claimed to be a former "Christian" subject of the King of Portugal, naturalized in 1761, were Catholics. *RICR*, V, 340, VI, 262, 267; Adelman, *loc. cit.*, p. 72.

<sup>56</sup>On the colonial slave trade see Milton Longhorn, "The Rise of the Merchant Class in Rhode Island," (unpublished doctoral dissertation, University of Wisconsin, 1936), pp. 41-73; Hedges, *op. cit.*, pp. 70-85. On Rhode Island domestic

It must be admitted that the royal charter was understandably mute on the subject of slavery, but the slave system which prevailed in eighteenth-century Rhode Island was at sharp variance with the liberal spirit of that document.

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A summary of several developments in the implementation of the royal charter's administrative provisions is necessary for a proper understanding of the state's constitutional history. The most important of these developments relate to legislative, judicial, and executive affairs, freemanship and suffrage.<sup>57</sup>

The most significant feature of Rhode Island's colonial government was the supremacy of the Legislature. The General Assembly implemented and expanded the many aforementioned prerogatives conferred upon it by the charter until its activities extended into every facet of Rhode Island life. The Legislature was the focal point of governmental power — the executive, the judiciary, and even the towns<sup>58</sup> were subservient to it.

Although the authority of the Assembly was substantial, it was by no means unlimited. The King, his Privy Council, and Parliament

slavery see William Davis Miller, "The Narragansett Planters," *Proceedings of the American Antiquarian Society*, n.s., XLIII (1934), 49-115; W. D. Johnston, "Slavery in Rhode Island, 1755-1776," *Rhode Island Historical Society Publications*, n.s. II, (1894), 109-164; Edward Channing, "The Narragansett Planters; A Study of Causes," in *The Johns Hopkins University Studies in Political and Social Science* (Baltimore, 1886), IV, 105-127.

<sup>57</sup>In the following discussion the recurrent question of defining the boundaries established by the charter and the amorphous problem of local government have not been analyzed. The former plays a role in Rhode Island's constitutional history when persistent boundary disputes cause the exasperated Mother Country to recommend the absorption of Rhode Island by a larger colony *e.g.*, the dispute with Connecticut in 1723, *RICR*, IV, 275, 303-08; see also John Hutchins Cady, *Rhode Island Boundaries 1636-1936* (Providence, 1936).

<sup>58</sup>The Charter of 1663 effected far-reaching and important changes in the character and scope of local government and brought about a substantial diminution of local autonomy, especially in the judicial and administrative areas. One of the earliest acts of the new colonial government annulled the local referendum statute (*RICR*, II, 27). Under the royal charter the general government became "legally, and very soon *de facto*, the supreme legislative assembly and the rights to local government which the towns exercised were derived wholly from it. No further charters were issued to the towns during the colonial period. All of the governmental rights were granted to them in the form of separate statutes.

were external if seldom used checks, and the charter's proviso that colonial statutes be not "repugnant" to the laws of England was another legal curb. The most powerful barriers to legislative omnipotence, however, were the freemen themselves. The frequency of elections, at least semiannually for deputies and annually for the governor, deputy governor, and assistants, kept the Assembly, and especially the lower house, close to the thinking and desires of the electorate.

In a constitutional survey such as this, the manifold functions of the Legislature cannot be enumerated, but certain procedural and structural innovations must be mentioned. Among these were the establishment of a General Council and the adoption of a bicameral system.

Soon after the reception of the charter, the governor, deputy governor, and assistants combined to form an executive body known as the General Council. The only reference in the charter to such an agency was the authorization for the governor, or deputy governor, and a majority of assistants to provide for the defense of the colony when the Assembly was not in session. The charter does not employ the term "council" in referring to these officials. The council device may have come into use because the charter modeled the government of Rhode Island after that of a trading company or corporation, whose executive body was a council. Massachusetts practice may also have served as a precedent. For whatever reason, the General Council was created to supervise colony affairs when the Assembly was not sitting. Its decisions were usually of an interim nature and they were

Most of such statutes were permissive and seem to have been enacted at the request of the town, but a sufficiently large number were mandatory and evidenced the full sovereignty of a central government." Stokes, *op. cit.*, pp. 62-63. The question of home rule is not treated in this study; it does not become a major reform issue until the late nineteenth century. Cf. Amasa M. Eaton, *Constitution-Making in Rhode Island* (Providence, 1899), pp. 34-67. Eaton was a pioneer in the home rule movement. His statement that the Charter of 1663 "made no change in the relation of the towns to the colony" (*Ibid.*, p. 64) does not accord with law nor experience, but neither did the charter make the towns mere "creatures" of the state and deny them any inherent right of local self government as the Rhode Island Supreme Court questionably asserted in *City of Newport v. Horton*, 22 R. I. 196 (1900) and *City of Providence v. Moulton*, 52 R. I. 236 (1932). The best studies of town government in colonial Rhode Island are Lowther, *loc. cit.*, pp. 45-127; Stokes, *op. cit.*, pp. 1-130, and William E. Foster, "Town Government in Rhode Island," in *The Johns Hopkins University Studies in Political and Social Science* (Baltimore, 1886), IV, 69-104.

often labeled temporary and subject to confirmation or rejection at the next session of the full Assembly.<sup>59</sup>

The second major structural change in the legislative branch occurred in 1696. In that year the seeds of bicameralism implanted in the colony's basic law reached maturity with the formal statutory division of the General Assembly into an upper house composed of the ten assistants elected on an at-large basis and a lower house consisting of deputies elected from the towns according to the rigid six, four, two ratio established by the charter.<sup>60</sup>

Another important aspect of the colony's governmental machinery was her judicial system. The charter by its general charge to the Legislature "to appoint, order and direct, erect and settle, such places and courts of jurisdiction, for the hearing and determining of all actions, cases, matters and things . . . as they shall think fit" did not fundamentally alter the judicial structure of 1647. The General Court of Trial was retained, and in 1664 the Assembly ordered that its sessions be held semiannually with the governor or deputy governor, and at least six assistants presiding. Several inferior courts were from time to time created.

Because the legislative and judicial functions were combined in the same body of men, namely, the governor, deputy governor, and assistants, the General Assembly often exercised functions which are now considered the exclusive domain of the judicial branch of government. For example, it heard and often reversed appeals and petitions

<sup>59</sup>Lowther, *loc. cit.*, p. 7.

<sup>60</sup>*RICR*, III, 313. For early attempts at bicameralism see *RICR*, II, 124, 157, 181. During the eighteenth century there were two significant irregularities in the designation or selection of assistants. In 1722 when Kingstown was divided into North Kingstown and South Kingstown, raising the number of municipalities to ten, the two new towns were guaranteed by statute that they should have one assistant each, *RICR*, IV, 316. This privilege became increasingly unfair as more towns were created. Also, when an assistant's position was unfilled, the General Assembly occasionally elected a man to fill the vacancy. This practice was authorized by a 1664 statute (*RICR*, II, 83-84). However, the charter stipulated that vacancies in the ranks of the assistants be filled by the governor, deputy governor, assistants and company (*RICR*, II, 11) and this provision renders at least questionable the election of assistants exclusively by the Assembly such as occurred on numerous occasions, e.g., *RICR*, III, 523-24, V, 65. In 1738 the Legislature elected a deputy governor to fill a vacancy caused by the death of an incumbent. *RICR*, IV, 545.

from the judgment of the General Court of Trials, and almost any part of the judicial process was open to its inspection and possible correction. The nature of its involvement in judicial affairs appeared to Lord Bellomont (and many observers since) to have been a usurpation of power not justified by the charter.<sup>61</sup>

To trace in detail the complex and sometimes inscrutable evolution of Rhode Island's colonial court system would require a lengthy volume. Perhaps it was this complexity which prompted John Russell Bartlett to exclude most of the court proceedings from his published *Records of the Colony of Rhode Island*.<sup>62</sup> In the compass of this study only the structural landmarks of that development can be mentioned. Of primary importance in this respect was the rearrangement of the court system in 1729, through the use of three counties (Newport, Providence, and King's) as units of judicial administration.<sup>63</sup> The lowest tribunal in this county-based structure was the local court of the justice of the peace. This agency, which was in continuous session, had original jurisdiction in minor matters and bound over more serious offenders to the higher court having jurisdiction. On the next level were the Courts of General Sessions of the Peace and the Courts of Common Pleas. The former, established in each county, were conducted by all the local justices of the peace or any five of them, and were empowered to try all criminal cases, capital crimes excepted. Their sessions were semiannual and their decisions could be appealed to the highest court. They in turn exercised appellate jurisdiction over all petty offenses originally triable by a justice of the peace.

The Courts of Common Pleas were civil courts conducted by "judicious" persons chosen by the Assembly from their respective counties. These appointees, upon their selection, were elevated to a justiceship of the peace. The jurisdiction of these courts, which was both original and appellate, extended to the trial of nearly all civil

<sup>61</sup>Bellomont's "Report," *RICR*, III, 386.

<sup>62</sup>A comparison of Bartlett's ten published volumes with the manuscript records in the Rhode Island State Archives reveals numerous omissions of court proceedings, especially those of the eighteenth century. A number of these records have been subsequently published, however. Cf. Farrell, *loc. cit.*, IX, 65-66, for a convenient listing.

<sup>63</sup>*RICR*, IV, 427-28. The original counties, Providence and Newport, were created in 1703 and had judicial functions within the old system. *RICR*, III, 477.

actions arising in the county. Their business was conducted semi-annually together with the Courts of General Sessions.<sup>64</sup>

At the apex of the county system was the Superior Court. Held at Newport, it consisted of the governor, deputy governor, and assistants. The Superior Court possessed original jurisdiction in certain major cases, but its primary function consisted in reviewing appeals from the decisions of the Courts of General Sessions and the Courts of Common Pleas. Petitions from the decisions of the Superior Court, however, were often entertained and acted upon by the ubiquitous General Assembly and occasionally appeals from the court's verdict were accepted by the King in Council.<sup>65</sup>

In 1741, a so-called Court of Equity was erected to hear and determine all appeals in personal actions from the judgments of the Superior Court. The act constituting this tribunal declared that "the judgement and determination of said court shall be final, saving an appeal to His Majesty in council in those cases wherein the law hath already provided." This court was short-lived, however, for in 1743 it was abolished.<sup>66</sup>

Another noteworthy development in colonial judicial administration came in February, 1746, when the governor and assistants were removed from the bench of the Superior Court and replaced by one chief justice and four associates. Legislative influence was not significantly diminished by this alteration, however, for the Superior Court justices were to be appointed annually by the Assembly.<sup>67</sup>

A final important aspect of colonial Rhode Island's legal system was the process of appeal to the Privy Council. The absence in the

<sup>64</sup>There was considerable overlapping of personnel in the lower courts. For example, the judges of the Courts of Common Pleas presided in Justice of the Peace Courts for criminal cases and in General Sessions of the Peace Courts as well as in the Courts of Common Pleas. See the diagrams of Rhode Island's county-based court system in Lowther, *loc. cit.*, pp. 181, 192.

<sup>65</sup>*RICR*, IV, 427-28; *Digest of 1730*, pp. 188-205; Lowther, *loc. cit.*, pp. 174-192; Stiness, *loc. cit.*, pp. 103-05. The full title of the Superior Court was the Superior Court of Judicature, Court of Assize and General Gaol Delivery. This name was changed in 1798 to the Supreme Judicial Court.

<sup>66</sup>*RICR*, V, 22, 76; *Acts of the Privy Council*, IV, 10; Hazeltine, *loc. cit.*, p. 327.

<sup>67</sup>*Digest of 1752*, pp. 27-30. Stiness, *loc. cit.*, pp. 104-05, errs in placing the date of this change at 1767. In 1747 the fourth Rhode Island county, Bristol, was created and it was enacted that the Superior Court should be held twice a year in every county. *RICR*, V, 208. Rhode Island's fifth and final county, Kent, was incorporated in 1750. *RICR*, V, 301-03.

royal charter of a provision for private appeal from the decision of the colony's courts was remedied by the Mother Country in 1699 when an Order in Council commanded that such appeals be allowed. Thereafter, Rhode Island became the most prolific source of appeals to the Privy Council not only because of the low minimum appealable amount established by the General Assembly for civil actions, but also because of the "litigiousness of the inhabitants," and the apparent deficiencies in the quality and capacity of the colony's courts.<sup>68</sup>

Although Rhode Island was a fruitful source of appeals,<sup>69</sup> its attitude toward the Orders in Council issued pursuant to those appeals was often defiant. In fact, the action of Rhode Island's Superior Court in the drawn-out appeal (1756-1774) of *Freebody v. Brenton* was "probably the most notable example of colonial judicial recalcitrance." During this long controversy arising out of a mortgage cause, the colonial court evaded the directives of a 1769 Order in Council for nearly five years before reluctantly capitulating.<sup>70</sup>

The development of executive power under the Charter of 1663 was comparable to the growth of judicial autonomy — both were repressed by the powerful legislative branch. Apart from making the governor the presiding officer of the General Assembly and granting him the right to convene special sessions of that body, the charter conferred no exclusive powers of significance upon the governor. He was little more than the executive agent of the Assembly.

The most important effort by a colonial governor of Rhode Island to establish an executive prerogative at the Assembly's expense met with rejection. This rebuff came in 1732 when Governor Joseph Jenckes endeavored to assert the power to veto acts of the legislature. A paper money emission enacted by the General Assembly in 1731 met with Jenckes's attempted veto thereby precipitating a major

<sup>68</sup>Smith, *op. cit.*, pp. 140-42, 246-48, 270-71, 659; Harold D. Hazeltine, "Appeals from Colonial Courts to the King in Council, With Especial Reference to Rhode Island," *Annual Report of the American Historical Association for the Year 1894*, pp. 299-350.

<sup>69</sup>Two close students of the appellate process have uncovered nearly 70 appeals from Rhode Island to the King in Council. There may have been some appeals that were not recorded. Hazeltine, *loc. cit.*, p. 337; Lowther, *loc. cit.*, p. 186. Lowther discovered nine appeals to the Privy Council during the period 1725-35 of which Hazeltine was unaware. However, Lowther erroneously states that the total number of appeals from Rhode Island courts to the King in Council was small when actually it was higher than in any other colony.

<sup>70</sup>Smith, *op. cit.*, pp. 335-41, contains a detailed discussion of the case.

quarrel over the colony's monetary policy in general and over the veto power of the governor in particular. When the Assembly rejected the veto, Jenckes, together with the Royal Collector of Customs and seventeen merchants, appealed to the King and the Board of Trade. The petitions were referred to the Attorney General and Solicitor General who delivered this unusual decision:

In this charter, no negative voice is given to the Governor, nor any power reserved to the Crown of approving or disapproving the laws to be made in this colony. . . . The presence of the Governor, or in his absence, of the Deputy Governor, is necessary to the legal holding of the General Assembly; yet, when he is there, he is a part of the Assembly, and included by the majority; and consequently, that acts passed by the majority of such Assembly, are valid in law, notwithstanding the Governor's entering his dissent at the time of passing thereof. . . . The Crown hath no discretionary power of repealing laws made in this province; but the validity thereof, depends upon their not being contrary, but as near as may be, agreeable to the laws of England, regard being had to the nature and constitution of the place, and the people.<sup>71</sup>

This opinion acknowledged not only the quasi-parliamentary nature of the colony's government, it also recognized that the Rhode Island General Assembly was among the most nearly autonomous legislative bodies in the British Empire.<sup>72</sup>

A final significant implementation of the charter, and the one which exerted the greatest impact on the nineteenth-century movement for constitutional reform, concerned the creation of freemen and their consequent power to vote. Contrary to widely held opinion the basic law of 1663 did not establish a specific suffrage requirement. It simply empowered the General Assembly to "choose, nominate and appoint" the freemen of the colony. However, both the framers and

<sup>71</sup>*RICR*, IV, 456-61; *CSP*, 1732, #191; Kellogg, *loc. cit.*, p. 275; Lowther, *loc. cit.*, rather questionably makes this decision the focal point for his excellent study of Rhode Island government. The paper money controversy which forms the background for this decision is best covered in MacInnes, *loc. cit.*, pp. 194-200. Rhode Island's liberal charter gave her great freedom to emit paper money, thus securing for her economic advantages over neighboring colonies. *Ibid.*, pp. 547-70.

<sup>72</sup>In 1775 the Assembly stripped Governor Joseph Wanton of his power and refused to give him the oath of office (thus violating the charter) because of the governor's Loyalist leanings. Then they declared the office vacant and named the deputy governor to succeed him. Lovejoy, *op. cit.*, pp. 179-83.

recipients of the charter apparently considered the franchise a privilege to be exercised only by those who had been elevated to the status of freeman, and indeed, such was the practice in both the towns and in the colony prior to 1663.<sup>73</sup> Thus, under the royal charter freeman-ship remained a prerequisite for voting,<sup>74</sup> and the colonial legislature in 1664 declared "that none presume to vote . . . but such whome this Generall Assembly expressly by their writing shall admitt as freemen."<sup>75</sup>

In 1665 the visiting Royal Commissioners informed Rhode Islanders that it was "his Majestyes will and pleasure" that an oath of allegiance be taken by every householder in the colony and that "all men of competante estates and of civill conversation, who acknowledge and are obediant to the civill magistrate, though of differing judgements, may be admitted to be freemen, and have liberty to choose and to be chosen officers both civill and military."<sup>76</sup> The Assembly promptly responded to the Commissioners' suggestions by enacting a statute which enabled those of "competent estates" to become freemen of the colony after taking a prescribed oath. Those not admitted to colony freemanship could not vote for "publicke officers" (i.e., the governor, deputy governor, and assistants) or deputies, nor could they hold colonial office themselves.<sup>77</sup>

Many historians have failed to realize that a distinction existed between freemen of the towns and freemen of the colony, because

<sup>73</sup>*RICR*, I, 125, 217; Edwin Maxcy, "Suffrage Extension in Rhode Island Down to 1842," *American Law Review*, (1908), 541-48; Stokes, *op. cit.*, pp. 26-9.

<sup>74</sup>Initially there was some doubt as to whether the "royall intention . . . concerning the persons in whom the power emediately to elect doth rest, or remayne: whether in the whole body of freemen, or in their representatives, the General Assembly." The doubt was, of course, resolved in favor of the former. *RICR*, II, 28.

<sup>75</sup>*RICR*, II, 58. The most important acts relating to freemanship and the franchise in the period 1663-1775 are either reproduced or referred to in the *RICR* as follows: II, 28-29 (1664), 58 (1664), 113 (1665), 190 (1667); IV, 338 (1723), 550 (1738); V, 57 (1742), 73 (1743), 213 (1746); VI, 256-57 (1760), 270 (1761), 323 (1762), 343 (1762); VII, 24, (1770).

<sup>76</sup>*RICR*, II, 110.

<sup>77</sup>*RICR*, II, 8, 113. There is at least one instance of the election of a man to town office who was not a freeman. Robert Curry, a non-freeman, was chosen town sergeant in 1718. *Providence Early Records*, XIII, 14.

most freemen had dual status.<sup>78</sup> The town freeman was empowered to vote for local officials such as the town council, sergeant, constable, and treasurer. The suffrage statute of 1665 withheld from him the right to select the deputies from his town to the colonial Assembly. This restriction was not permanently removed until 1723.<sup>79</sup> In addition, a man who was merely a town freeman could not vote for general officers of the colony. An act of 1760 clearly stated that such votes were invalid and "shall be rejected and thrown out."<sup>80</sup>

According to the statute of 1665 a person became a freeman of the colony either by direct application to the Assembly or through being proposed by the chief officer of the town in which he lived. Often those who petitioned the Assembly directly were not town freemen. Some were inhabitants of unincorporated territory such as the Block Island petitioners of 1665, while some held their land elsewhere in the colony than the town in which they resided. A person who was only a freeman of the colony was prohibited by statute from voting for local officials.<sup>81</sup>

In the normal course of events, however, Rhode Islanders secured dual freemanship. They gained the right of inhabitancy and acquired a "competent estate" in the town where they had chosen to reside; then they applied and were admitted to town freemanship by their fellow townsmen of that status, and finally their names were proposed or "propounded" to the General Assembly for admittance as freemen of the colony by the town's chief officer or the town clerk. When a town freeman was proposed to the Assembly in this manner, his acceptance as a freeman of the colony was usually assured. Once approved, his name was entered into the records of the colony.<sup>82</sup>

In 1723 a statute was passed by the colonial Assembly which set the first specific landed requirement for town freemanship and, since that status was the usual and nearly automatic prelude to colonial

<sup>78</sup>The notable exceptions are Lowther, *loc. cit.*, pp. 12-44; Albert E. McKinley, *The Suffrage Franchise in the Thirteen English Colonies in America* (Philadelphia, 1905), Chapter XIV; and Howard K. Stokes, *op. cit.*, pp. 26-33.

<sup>79</sup>*RICR*, II, 113; IV, 338.

<sup>80</sup>*RICR*, VI, 257.

<sup>81</sup>*RICR*, II, 55, 58, 113, 147; *Digest of 1730*, p. 2. This digest was printed in Newport by James Franklin.

<sup>82</sup>Stokes, *op. cit.*, pp. 25-26 and Lowther, *loc. cit.*, pp. 12-44, contain an intelligent description of the freemanship process.

freemanship, the act is worthy of citation. This law stipulated that to attain freemanship a person must be a "freeholder of lands, tenements, or hereditaments in such town where he shall be admitted free, of the value of one hundred pounds, or to the [rental] value of forty shillings per annum, or the eldest son of such a freeholder."<sup>83</sup>

In 1729 the real estate requirement was increased to £200, in 1746 the valuation was raised to £400, but by 1760 it had been reduced to £40 (*ca.* \$134.00). These drastic and erratic changes were more the result of inflationary and deflationary trends than the stringency or fickleness of the General Assembly.<sup>84</sup>

The changes in land valuation requirements were often accompanied by provisions designed to eliminate fraud and election abuses. Since many people continued to vote after they had disposed of the property upon which they had been admitted, legislation of the 1740's was enacted to specifically ban this practice.<sup>85</sup>

The final reform and revision of the colonial franchise laws in 1762 attacked other irregularities by denying the vote to those who owned only houses or tenements, but not the title in fee simple to the land upon which the structures stood. It also denied the franchise in the right of a wife's dower.<sup>86</sup>

<sup>83</sup>*Digest of 1730*, p. 131. Because the act of 1723 was the first colonial statute to connect specifically land and freemanship, many Rhode Island historians have inferred that town freemen were not required to hold land before that time. This is a false impression. Howard Stokes after a thorough search through the Providence town papers asserts that "The records of Providence contain many instances of the names of large landholders who were not freemen: they contain many references to the admission of freemen who were freeholders, but so far as I know not an instance of the admission of a landless man to the rights of franchise." Stokes, *op. cit.*, p. 33.

<sup>84</sup>*Digest of 1730*, p. 209; *Digest of 1752*, pp. 12-16; *RICR*, VI, 257. See MacInnes, *loc. cit.*, pp. 542-70, for the financial fluctuations. The £200 requirement imposed in 1729 was slightly restrictive in its intent and effect because the inflation of the late 1720's warranted an increase but not a doubling of the freehold requirement. Lowther, *loc. cit.*, pp. 29-33; Howard K. Stokes, "Public and Private Finance," in Field, *op. cit.*, III, 201-209.

<sup>85</sup>*Digest of 1744*, pp. 252-53 (Act of 1742), *Digest of 1752*, pp. 12-16 (Act of 1746).

<sup>86</sup>*Schedules [Acts and Resolves] of the General Assembly for the Year 1762*, p. 192; *Digest of 1767*, pp. 78-89. Although the charter required that the general officers be "newly chosen for the year ensuing, by such greater part of the sayd Company . . . as shall bee then and there present [at Newport]" (*RICR*, II, 11), the General Assembly ignored this provision because of the difficulties involved in traveling to Newport and passed an act in 1664 allowing proxy voting for

The freehold requirements and suffrage stipulations which were enacted by the legislature of colonial Rhode Island could cause the uncritical reader to assume that the franchise was a privilege enjoyed by a select minority. Such an inference would be erroneous. The real estate requirement for freemanship was not a measure of oppression or restriction in a rural, agrarian society like colonial Rhode Island where land tenure was widely dispersed. The suffrage statute of 1746 declared that the manner of admitting freemen was "lax," and the real estate qualification was "very low."<sup>87</sup> Authoritative students of Rhode Island's colonial history estimate that 75 per cent of the colony's white adult male population were able to meet the specific freehold requirements from the time of their imposition in 1723 to the outbreak of the War for Independence.<sup>88</sup>

Clearly there was no propertyless and disfranchised majority in eighteenth-century Rhode Island. Nor did legislative apportionment favor the areas along the seacoast at the expense of the more recently settled inland agricultural areas. In 1774, the five land-locked western towns of Glocester, Scituate, Coventry, Exeter, and Hopkinton with a combined population of 14,005, together sent ten deputies to the

general officers. *RICR*, II, 39-40, 62. Such a procedure had been in existence under the Union of 1647, *Ibid.*, II, 149, 217. In 1760 proxy voting, then quite common, was made mandatory for all non-Newporters who were not members of the General Assembly because of the revelling which occurred in Newport at election time owing to the influx of freemen from elsewhere in the state. Such travel it was said also resulted "in a very great loss of peoples' time" during the planting season. *Ibid.*, VI, 256. In the political jargon of Rhode Islanders a prox or proxy was a party ticket on which candidates for general office were listed. The freemen of the colony used these slips as ballots and, after signing the reverse side, turned them in to the moderator at their town meetings on the third Wednesday in April. After being registered by the town clerk the proxies were forwarded to Newport where they were checked and counted. The candidates with the highest vote for their respective offices were declared elected at the beginning of the May session of the General Assembly. See Howard M. Chapin, "Eighteenth Century Rhode Island Printed Proxies," *The American Collector*, I (1925), 54-59.

<sup>87</sup>*Digest of 1752*, p. 12.

<sup>88</sup>Lovejoy, *op. cit.*, pp. 13-18, makes his estimate for the period 1760-1776; Lowther, *loc. cit.*, pp. 24-40, for the period up to 1754. In commercial Newport the percentage of freeman to white adult males was closer to 50 per cent during the entire eighteenth century, and as Providence turned increasingly to commerce at mid-century its ratio gradually declined. In the other towns, all rural and agricultural, the ratio ranged from 80 to 95 per cent. Lowther, *loc. cit.*, pp. 37-40.

lower house of the General Assembly as did the bay towns of Newport and Providence which possessed a combined population of 13,529.<sup>89</sup> The long prevalent class-conflict interpretation of the American Revolution is sharply contradicted by the Rhode Island experience.<sup>90</sup>

In the eyes of the colony's conservative critics, the land of Roger Williams, even on the eve of revolt, was "dangerously democratic." Chief Justice Daniel Horsmanden of New York, in a 1773 report to the Earl of Dartmouth during the *Gaspee* investigation, disdainfully described Rhode Island as a "downright democracy" whose governmental officials were "entirely controlled by the populace."<sup>91</sup>

Because of such "democratic" conditions no protests were made nor reform measures attempted, in the generation prior to the War for Independence, indicating dissatisfaction with the suffrage requirements or with the charter-imposed system of legislative apportionment.<sup>92</sup>

Rhode Islanders of the Revolutionary generation and their individualistic forebears were ever-mindful that they enjoyed near-autonomy within the Empire and broad powers of self-government within their colony. They were also keenly aware that their self-determination flowed in large measure from the munificent charter of Charles II. Thus, they harbored a passionate attachment for the document and defended it against all comers. They allowed it to weather the Revolutionary upheaval, and retained it as the basic law of the state until

<sup>89</sup>*Census of the Inhabitants of the Colony of Rhode Island and Providence Plantations . . . 1774*, Arranged by John R. Bartlett (Providence, 1858), p. 239. An important factor which militated against malapportionment was the periodic creation of new towns by subdividing the existing ones. This "political cell-division" forestalled discontent over the fixed system of apportionment.

<sup>90</sup>The basic premises of the socio-economic interpretation of the Revolution, viz., an undemocratic colonial society and malapportionment favoring the "aristocratic" seaboard towns, is summarized in Robert E. Brown, *Middle-Class Democracy and the Revolution in Massachusetts, 1691-1780* (Ithaca, New York, 1955), pp. v-vii.

<sup>91</sup>*RICR*, VII, 182-83. Peter Orlando Hutchinson, comp., *The Diary and Letters of His Excellency Thomas Hutchinson, Esq.* (Boston, 1884), I, 172. Leonard Woods Labaree, *Conservatism in Early American History* (New York, 1948), pp. 26-27, contends that "the political equalitarianism of Rhode Island serves to emphasize the aristocratic and conservative tendencies of all the other colonies." On the *Gaspee* incident see William R. Leslie, "The Gaspee Affair: A Study of Its Constitutional Significance," *Mississippi Valley Historical Review*, XXXIX (September, 1952), 233-256.

<sup>92</sup>Lovejoy, *op. cit.*, pp. 14-15.



1843 — a point far beyond its useful life.

The very excellence of the seventeenth-century colonial charter prompted Rhode Islanders to preserve and enshrine, or should we say embalm it, until the patent became, in the eyes of Thomas Wilson Dorr and other political reformers, a despised and reactionary relic of a bygone age. This is the cruel irony and the great tragedy of Rhode Island constitutional history.

#### LIBRARY HOURS

OCTOBER Monday . . . 1 p.m. to 5 p.m.  
 through Tuesday-Friday 9 a.m. to 5 p.m.  
 MAY Saturday . . . 9 a.m. to 12 noon

JUNE thru Monday-Friday 9 a.m. to 5 p.m.  
 SEPT. Closed Saturday

Closed on Sunday and the following holidays:  
 Jan. 1, Feb. 22, May 30, July 4, Aug. 14, Labor  
 Day, Oct. 12, Nov. 11, Thanksgiving, Christmas



#### BITS AND PIECES FROM THE SOCIETY'S COLLECTIONS

##### PART I

by JOSEPH K. OTT  
 Member, Museum Committee

SOME OF THE MOST INTRIGUING OBJECTS owned by The Rhode Island Historical Society have never been seen by the current generation of members, primarily because of insufficient exhibition space.

A project has been under way for some time now to exhume from storage all the Society's belongings and to re-catalog them according to current museum practices. In this way an index of the Society's objects will be assembled that will make them more available to scholars in various fields of research. So far it has been a fascinating job for the writer and will continue to be so, as the work goes on in the future.

As you might expect, the important furniture, china, silver, glass, and so on, owned by the Society is on view to visitors. The objects in storage are not necessarily of great monetary value, but they remind us of other days and serve a very real need for an organization such as ours. And so, while it is wonderful to be given a superb eighteenth-century Rhode Island chair, for instance, it is also rewarding to be given the more prosaic items of the past. Members have been generous in the past century as well as in the present one and it is hoped that even more material will be forthcoming.

Who would think the Society owns:

- 1) Some rather sensible walking splints used by Solomon Drown, a surgeon in the Revolutionary War, and a tourniquet of the same period.
- 2) The harpoon that struck the first whale captured in the "Ochotsk Sea," from the ship *South Boston* of Fairhaven, Massachusetts. It was donated in 1889 by the steerer of the whaleboat.
- 3) A pair of marked pewter sash weights from the Daniel Manton House, built in 1785.
- 4) A finely turned wooden cup made from part of Commander Oliver Hazard Perry's *Lawrence*, sunk in the battle of Lake

Erie in 1813; part of the stern post of the boat that conveyed Perry from the *Lawrence* to the *Niagara* during the battle (and a poignant letter returning a small piece to the Society from some one who had "borrowed" a chip from it many years before); and, finally, a letter opener made from a spike of the *Niagara*. Other marine relics are from the *Gaspee*, *Congress*, *Hartford*, *Constitution*, *Merrimac*, *Maine*, and other famous ships of the past.

- 5) Two of the first wooden clothespins made in Providence in 1800 by Cleveland Brothers.
- 6) An eighteenth-century applewood darning ball.
- 7) A "posture board" used in the 1800's to practice standing erect, as any proper lady should.
- 8) A wonderfully small pocket sundial.
- 9) Some wood and hinges from Andersonville Prison.
- 10) Ice creepers used in 1780 to strap on the shoes on slippery days.
- 11) "A dagger brought from China by an active member of the Society," given in 1897, and certainly an item to excite one's imagination.
- 12) Two vials of Jencks Yellow Fever Medicine.
- 13) Two chamois bags used to carry gold dust in California in 1849. The writer examined the contents and found, much to our Treasurer's chagrin, that they were filled with sand.
- 14) Tooth-pullers used in the nineteenth century.
- 15) A wooden trencher, or plate, used before pewter or china tableware were household objects in some families.
- 16) A castor and a sander used by Betsy Williams.

Most of these things, and many more, are documented with their original owners' names and odd bits of history. At the time they were given, they were probably not considered too important, but now we can begin to appreciate their presence and their significance. Also in storage are other rare items which will be described in later articles.

## NEW MEMBERS (continued)

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	Mrs. Clement W. Williamson
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*Wm. E. Sweet*

# THE RHODE ISLAND HISTORICAL SOCIETY



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*August 30, 1967 to April 15, 1968*

- |  |  |
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(continued on inside back cover)