

# RHODE ISLAND HISTORY

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THE SIGN OF THE BUNCH OF GRAPES

[see inside front cover]

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*ISSUED QUARTERLY AT PROVIDENCE, RHODE ISLAND*

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## RHODE ISLAND HISTORICAL SOCIETY

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### THE SIGN OF THE BUNCH OF GRAPES

*In eighteenth century Providence taverns, stores, and shops were known by emblems rather than by the name of the owner. Some of these emblems still live; i.e., Turks Head, Shakespeare's Head, and the Bunch of Grapes.*

*The Sign of the Bunch of Grapes was used in 1766 by Benjamin and Edward Thurber at their shop on North Main Street, near the junction of Benefit. The original sign, depicted on the front cover, has been for many years the property of the Rhode Island Historical Society.*

# RHODE ISLAND HISTORY

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## RHODE ISLAND IMPRINTS AND THE HISTORICAL SOCIETY

by BRADFORD F. SWAN\*

MEMBERS of the Rhode Island Historical Society can derive great satisfaction from the fact that their society has always collected examples of the early printing of the colony and state, and that the result of this collecting has been the preeminence of the society's library in the field. Our holdings of Rhode Island imprints represent one of the great collections of the early printing of any state.

To the uninitiated such preeminence might seem the natural thing. Where, if not in the state historical society, would one expect to find the best collection of a state's early printing? But sometimes the obvious answer isn't the right one. Consider, for instance, Oregon imprints. Although a goodly number of the earliest Oregon imprints are to be found in collections in that state, almost as many are to be found in New Haven, Connecticut, in the William Robertson Coe Collection of Western Americana at Yale University. On the other hand, the degree of completeness of the Rhode Island Historical Society's holdings in the field often exceeds the greatest expectations. For instance, if one wished to consult any issue of the *Providence Gazette* during the entire span of its publication, one could visit the Rhode Island Historical Society with the assurance that of all the thousands of issues of the *Gazette* only four are not on file here! (And, parenthetically, it may be observed that those four missing issues occupy the premier position on the society's list of desiderata. We keep hoping that they will be added to our holdings any day, and if our record of acquiring missing issues continues as good as it has been the chances are that we will have them in hand before too many years have passed.)

\*Dramatic critic of the *Providence Journal and Bulletin*.

The field of imprints divides into two parts: newspapers, and all other forms of printing. To understand the scope of these categories one must have at least a nodding acquaintance with two recent publications: Clarence S. Brigham's *History and Bibliography of American Newspapers 1690-1820*, (Worcester, the American Antiquarian Society, 1947) and John Eliot Alden's *Rhode Island Imprints 1727-1800*, (New York, the Bibliographical Society of America, 1949). These two works, especially the latter, should bring order to the collecting of early Rhode Island printing, and stimulate activity within the field.

Alden's work lists more than 1720 books, pamphlets, and broadsides. The Rhode Island Historical Society library contains almost ninety per cent of these. It lacks approximately 209 items which are unique and are owned by other libraries, but to balance this gap it alone owns more than 234 unique Rhode Island imprints, plus a few which have been acquired since Alden's book went to press. Furthermore, 119 of the 209 unique items outside the society's collections are held by other Rhode Island libraries, and only 44 of these 119 are not to be found in Providence.

Without dwelling further on this statistical survey, let it be said that probably nowhere else can one find materials to illustrate the early printing of a state so conveniently concentrated. The simple fact is that if anyone wishes to study printing in Rhode Island during the 18th Century, almost all the work can be done in one city, Providence.

While the publication of Alden's book has given us a broad perspective on the whole problem of Rhode Island imprints, it has also had its special effects on the society. First and foremost, of course, is the impetus which the book should give to the collecting of these examples of printing. The gaps which Alden's book points out, being so few, should be filled as soon as possible, for with completeness attainable the effort certainly would not be vain. The society's present collection was formed in two ways: by the consolidation of large collections privately formed, and by the slow addition of one or two titles at a time as they came to us through chance gifts or by purchase from dealers. The society should be in a position to acquire any piece of Rhode Island printing it now lacks, whenever and wherever it appears on the market. It should also be the first

place a donor thinks of when he or she wishes to give any early printing into the safe-keeping of a library.

The imprints have had their effect on the library itself. In the past, many of these imprints—especially broadsides and small ephemeral pieces—have been scattered through our various collections. Some were pasted in books devoted to early manuscripts; others were found among folded business papers; and still others were found bound in with the files of newspapers. At present a large-scale operation is under way at the society in an effort to bring all these scattered pieces together, in one place, where 18th Century Rhode Island imprints, and they alone, will be kept. It is not enough to know that a library owns a copy of a book or a broadside — at least, that the card catalogue or a printed bibliography says it does. The item in question must be readily available, and the whole collection should be kept together, so that it can be "worked" by scholars.

Our immediate goal in the imprints field, insofar as our present holdings are concerned, is to achieve this orderliness and workability. We hope that when this is accomplished scholars will realize what is available for their use.

Certainly much work can be done with these Rhode Island imprints. For instance, proxes, one of the classes of our state imprints, offer a splendid opportunity for scholarly research, both historical and bibliographical. Only the surface has been skimmed in the field of these little printed slips bearing the names of candidates for office, which were used at Rhode Island elections. A number of these proxes have been found since the Alden book was published, some of them among the Exeter town papers, where they had been kept because manuscript tax lists had been written on the blank backs of the sheets.

Rhode Island almanacs still offer numerous opportunities for the careful bibliographer to do some digging — and for the social historian they should be equally rewarding. The "Poor Robin" almanacs issued by the Franklins at Newport remain virtually undisturbed by students of the past, while whole books have been devoted to the Ames almanacs of Boston, the Old Farmer's almanacs, and, of course, Poor Richard.

Additions and corrections to Alden's book must be a continuing project for the society. It is still too soon after publication to issue

a supplement, and the errors in Alden's work are so trifling that there need be no rush to correct them. But meanwhile the record must be kept, and it must be kept in order. Every Rhode Island imprint which reaches the society's library must be checked to see if it is, by any possibility, a variant. We must also seek constantly to improve copies wherever possible. It is surprising how within little more than a year the society's collection has grown and improved; though there seems little room for improvement or growth, in almost a dozen instances we have made important additions or improvements to our imprint collection. All these signs serve only to point up the fact that rich as we are in Rhode Island imprints by no means can we permit our vigilance to relax or our collection to become static and neglected.

Any member of the society, or any friend, who comes across a piece of Rhode Island printing done before 1801 should bring it to the attention of the society's librarian, Clifford P. Monahan. He will be only too happy to examine it and see if it should be added to our collection.

And, lastly, the terminal date of 1800 is not, in fact, the end of our interest in Rhode Island printing. The printing done in this state from 1801 onward will some day take its place of importance alongside that of the 18th Century Rhode Island press. This latter period only awaits the services of some future bibliographer to focus upon it the attention which it truly deserves.

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#### NEWS NOTES

"The Early Arabian Necropolis of Ain Jawan . . ." by Richard LeBaron Bowen, Jr. was published in the *Bulletin of the American Schools of Oriental Research* this year. Mr. Bowen says in the introduction that work on the monograph "started while the author was working as a chemical engineer in Saudi Arabia for the Arabian American Oil Company from 1945 to 1947. While working at the Ain Jawan . . . quarry . . . the author started to collect data on the burial mounds and tombs that were being methodically destroyed as the quarrying activities of the oil company demanded more and

more rock for making concrete and surfacing roads." The article is well illustrated with maps, drawings, and photographs taken at the scene of excavations.

\* \* \*

The Society's collection of microfilm has been growing rapidly. During the summer months Mr. and Mrs. Lloyd S. Hughes of the Genealogical Society of Utah have been working at John Brown House photographing all of the manuscript genealogical material in the library. In all they produced more than two hundred rolls of film. The negatives, which may not be reprinted for distribution without the permission of the Historical Society, are kept in Salt Lake City, while our library receives a positive free of charge.

The microfilming of Rhode Island newspapers goes on constantly. Current issues of seven papers are being photographed, and the complete file of all newspapers published by the Providence Journal Company from its beginning in 1829 to the present day has been placed on film.

Though microfilming of the newspapers will eventually release space now occupied by bound volumes, it raised the problem of storage of the film itself. Therefore the Society has recently procured eight filing cabinets, five of them loaned by the Providence Journal Company to contain the film of its papers.

\* \* \*

Frank B. Fox has written and has had published *Two Huguenot Families, De Blois-Lucas*. The book concerns Stephen De Blois, who settled in Newport about 1767 and Augustus Lucas, a Huguenot who fled from France about 1700. The volume is of interest not only to historians but also to genealogists.

\* \* \*

Senator Theodore Francis Green writes, "In the current number of AMEPUKA, ("America Illustrated" No. 45) in Russian, on page 29, there is an article on Roger Williams and his foundation of the State of Rhode Island on the basis of absolute religious liberty."

THE  
ADVANTAGES  
AND  
DISADVANTAGES  
OF THE  
Marriage State ;

As enter'd into with religious or irreligious Perfons.

Represented under the Similitude of a DREAM.

THE SIXTH EDITION.



NEWPORT:

Printed and sold by S. HALL, on the Parade. 1765.

THE EARLY HISTORY OF RHODE ISLAND'S  
COURT SYSTEM

by JOHN T. FARRELL

[continued from July, 1950, v. 9, no. 3, p. 71]

Without a patent from any authority the settlers in and around Narragansett Bay inevitably felt insecure. Pressure was more severe upon the mainland settlements of Providence and Shawomet,<sup>21</sup> so much so that Roger Williams was persuaded to journey back to England in 1643 for some recognition and support from those sponsors of Puritan colonization who might put an end to the encroachments of Massachusetts. After a year of successful agitation in London, during which time he carried on a battle for his principles of toleration, he received from the Earl of Warwick and the Lords and Gentlemen Commissioners of Parliament "a free and absolute Charter of Incorporation" for the Providence Plantations in the Narragansett Bay in New England, including Portsmouth and Newport.<sup>22</sup> If left to themselves, the residents of Aquidneck<sup>23</sup> might have secured their own charter in time, or failing that, might have allowed Coddington to bring them into the jurisdiction of Massachusetts. Their Governor preferred independence, but rather than entertain any association with the mainland—in particular with the Gortonists—he would have sought protection from those who were in a position to reward him with support for his pretensions on the island or who could, if he showed any recalcitrance, punish him by taking steps to confiscate his remaining property near Boston. As it happened, a faction led by Dr. John Clarke of Newport had already determined to join with Williams and Gorton to resist all Massachusetts pretensions, and after three years of obscure intrigue these groups brought about the union

<sup>21</sup>This was the settlement of Samuel Gorton's which afterwards (1644) became known as Warwick. Gorton arrived there after successive evictions from Boston, Plymouth, Portsmouth, and Providence. His character is assessed in Andrews, *Colonial Period* II, 11-15.

<sup>22</sup>The Charter of 1644 is printed in R.I.C.R. I, 143-146. For the details of the Williams trip to England, and for the difficulties with Massachusetts, cf. Brockunier, *op. cit.*, 129-152.

<sup>23</sup>The island of Aquidneck became "the Isle of Rhodes or RHODE ISLAND" in March, 1644. R.I.C.R. I, 127.

of "Providence Plantations" in accordance with the Charter of 1644.<sup>24</sup>

The Charter authorized the establishment of "Laws, Constitutions, and Punishments," for the government of the colony "conformeable to the Lawes of England, so far as the Nature and Constitution of the Place will admit."<sup>25</sup> Since the law-making which had already taken place was predominantly the work of the Newport and Portsmouth settlers, it is not surprising to find that the Assembly of May 1647, made up of delegates from all of the plantations, began its constituent activities in unanimous agreement "that we do all owne and submit to the Lawes, as they are contracted in the Bulke with the Administration of Justice, according thereto, which are to stand in force till the nex Generall Courte of Election. . . ."<sup>26</sup> Not content with any general adoption of traditional common law, but rather ambitious to develop a substantial affirmation of English statutes, the Assembly then undertook the adoption of a lengthy code. More remarkable for detail than any similar effort made in the other seventeenth century colonies,<sup>27</sup> the "Code of 1647" has never been properly evaluated in the light of existing English precedents. There is room here for only a brief summary, with a general indication of the nature of its sources. First, it should be noted that the framework of the code was assumed to embrace a complete body of laws; subsequent modifications by the legislature would represent only a further effort to state, within the framework, the precise nature of laws adaptable to the colony.<sup>28</sup> "Touching Lawes," it was affirmed that "no person, in this Colonie, shall be taken or imprisoned, or be disseized of his Lands or Liberties, or be Exiled, or any other otherwise molested or destroyed, but by the Lawfull judgment of his Peeres, or by some known Law, and accord-

<sup>24</sup>Williams arrived with his charter at Providence in September, 1644. A letter of the preceding January from Dr. John Clarke had informed the men of Providence that his friends at Newport desired a General Assembly and a "Colony Court of Tryal." Chapin, *Documentary History* I, 164-165. For the development of the union of 1647 cf. Brockunier, *op. cit.*, 168-183, and C. M. Andrews, *op. cit.*, 23-26. Coddington's position is well set forth by Mrs. E. C. Williams in her biography, and his correspondence with the Massachusetts leaders is printed in Chapin, *op. cit.*, II, 166-185.

<sup>25</sup>R.I.C.R. I, 145.

<sup>26</sup>*Ibid.*, 148.

<sup>27</sup>For comparisons with the Massachusetts and Connecticut Codes of 1647 and 1650 respectively, cf. Brockunier, *op. cit.*, 173 *et seq.*

<sup>28</sup>Cf. C. M. Andrews, *op. cit.*, 29. Andrews declares that Williams believed any system of law should be a matter of continuous growth.

ing to the Letter of it, Ratified and confirmed by the major part of the Generall Assembly lawfully met and orderly managed." In brief the law of Providence Plantations was to be found hereafter in the body of its laws which, once adopted from English sources and shaped to meet the colony's situation, precluded any further invocation of laws made in England.<sup>29</sup> Of contemporary significance here as well was the implied refusal to countenance any exercise of "prerogative," whether assumed by magistrates or by anyone acting in the name of the king.

"Touching the Common Law," it was summarized under five heads to apply to the "Lawless and disobedient in the Generall," namely:<sup>30</sup> "for murderers of Fathers and Mothers; for Manslayers; for whoremongers, and those that defile themselves with mankind; for Menstealers; for Lyars and perjured persons." Under the first heading, that of murdering fathers and mothers, are comprehended those laws that concern "High Treason, Pettie Treason, Rebellion, Misbehaviour, and their accessaries." Under the second, the law for manslaughter, they include laws that concern "Self-murder, Murder, Homicide, Misadventure, casual death[,] cutting out the Tongue or Eyes, Witchcraft, Burglarie, Robberie, Burning of Houses, Forcible entries, Rescuos and Escape Riotts, Routs and Unlawfull Assemblies, Batteries, Assaults and Threats and their accessaries." Then, "under the Law for Whoremongers, and those that defile themselves with mankind, being the chief of that nature, are comprehended those Lawes that concerne Sodomie, Buggerie, Rape, Adulterie, Fornication, and their Accessaries"; while "under the Law for Menstealers, being the chief of that nature, are comprehended those Lawes that concern Theft of men, Larcenie, Trespasses by Men or beasts, Fraudulent dealing by deceitfull bargaine, Covenants, Conveyances by Barratrie, Conspiracie, Champertie and Maintenance, by forging or rasing Records, writs, Deeds, Leases, Bills, etc., and by using fallse weights and measures and their accessaries." Finally, "under the Law for Lyars and perjured persons, being the chiefe of that nature, are comprehended such as concerne perjurie itselfe, breach of covenant, Slander, False witness-bearing, and their accessaries."

<sup>29</sup>R.I.C.R. I, 157. This is in sharp contrast to the law of August 1700, "for the putting in execution the laws of England in this Collony, where no provision be made by the Acts of this Collony." R.I.C.R. III, 425.

<sup>30</sup>R.I.C.R. I, 158-159.

It was then possible to deal more extensively with each division.<sup>31</sup> The law was set forth in detail, and the language of English statutes was used by way of definition. For example:<sup>32</sup>

Misprison [sic] of Treason is declared to be when a man concealeth and keepeth close, Treason, but consenteth not therto: 5 Ed. 6, 11. In these there are no accessories; all are principalls: 5 Hen. 7: 10. The penaltie for misprison of Treason, a man is to forfeit to the King goods and chattells for ever; the profit of lands during life with perpetuall imprisonment. 3 Hen. 7: 2.

Except for high treason, where the convicted was to be sent to England ("unto our Noble Lords, further to be Tryed and to receive for his offense as the Law shall require"),<sup>32a</sup> the punishments were prescribed for application within the colony.<sup>33</sup> Not in all cases, however, were the pains and penalties left as in English law, but the modification was usually noted, as, in the case of robbery, reference to the "Statute of 27 Eliz. 13, touching the hundreds bearing the loss, if the Robbers be not taken within forty days," contained this *caveat*: "In case any should plead relief thereby, we do agree and by this ordinance declare, that this does not suit the Constitution of our place. . . ."<sup>34</sup> A history of Rhode Island legislation could well begin with this Code of 1647, but it would be less than the whole story of the administration of justice in the jurisdiction—which is better understood from the history of courts and their decisions.

<sup>31</sup>After listing the heads under which they proposed to enact specific prohibitions, the Assembly resolved to provide positive measures for the prevention of crime. Included in the program was, provision for the poor, regulations for "Ale-houses, Taverns, Drunkenness and unlawfull gaming therein," promotion of Archerie, and, "to prevent whoredom and those evils before mentioned," to "establish some ordinance touching Marriage, Probate of Wills, and Intestates." *Ibid.*, 159-160.

<sup>32</sup>*Ibid.*, 160.

<sup>32a</sup>*Ibid.*, 161. Here they might have had in mind 35 Hen. VIII c. 2, and 5 & 6 Edw. VI c. 11, relating to treason committed outside of the realm.

<sup>33</sup>Escheat to the "Lord of the Fee" was to be omitted after convictions for Petty Treason. It was declared that "the wives and children ought not to beare the iniquities of the Husbands and Parents," and since the Town was "of good right the Lord of the Fee," the "Lords being all here present," agree to forego any rights in the matter. *Ibid.*, 162. On the other hand, forfeitures to the king in Treason and Felony are prescribed. The towns were to "receive and keep safe" all fines, forfeitures, and ameracements, "untill they be called for by the authority from England." *Ibid.*, 197. But cf. *infra*, note 77.

<sup>34</sup>*Ibid.*, 167. Satisfaction could be demanded from the town or colony only if the officers were guilty of neglect in failing to pursue by "Hue and Cry."

It is less than likely that any full collection of statutes<sup>35</sup> was at hand for reference on the part of the authors<sup>36</sup> of the Code, but the regular mention of appropriate English legislation for each "Head" of the law could be derived from secondary works of the time. One may infer the direct sources for the Code from the citations to Coke, Dalton, *Doctor and Student*, and Stamford. For the first, second, and third of these it might be claimed that they refer to lasting and well-known influences in English and American law, and that they require no elaborate identifications. The last, on the other hand, is a quite unusual reference, unfamiliar except to legal bibliophiles; yet it gives a hint as to the way in which the Rhode Island Code of 1647 was put together. In 1642 there was published in England, *A Vade Mecum and Cornu Copia, An Epitome of Master Stamford's Pleas of the Crowne, With Other Notes Out of Approved And Good Authors Of The Same Argument*.<sup>37</sup> The first edition copy in the Library of Congress is bound with a publication of 1643, *A Vade Mecum Or Table Containing The Substance of Such Statutes Where-*

<sup>35</sup>The first mention of a "Book of Statutes of his Majesty's Realm" occurs in September 1673, when the Assembly ordered that a copy of the book be kept for the legislators, and one also in the Court of Trials, "for the nearer conformity . . . to the said lawes of his Majesty's realm of England." R.I.C.R. II, 504-505.

<sup>36</sup>C. M. Andrews (*op. cit.*, 30) gives the principal credit to Samuel Gorton's inspiration for so much specific reference to English law, but Brockunier points out (*op. cit.*, 182) that this could have been no more than a remote influence because Gorton was then absent overseas. It might also be observed that Gorton's previous denials of proper authority in the several jurisdictions which had been responsible for his frequent removals do not, by themselves, argue any familiarity in detail with those laws of England under which he claimed immunity from prosecution. His position as set forth in the Aquidneck Quarter Court records (Chapin, *Documentary History* II, 164-165) is impressive only as a piece of invective. Roger Williams had drafted the request of the Providence men for a "Modell" based upon the "Lawes of England," a request which was approved specifically by the Assembly in its opening stages. Cf. R.I.C.R. I, 147-148. Newport's earlier work is recognized in the statement that Providence would accept the body of laws "lately shown us" by "our worthy friends of the island" or any other agreed to by the towns. *Early Records of the Town of Providence* XV, 10. Some of the officers elected by the Assembly must have had a good deal to do with shaping the Code. They included John Coggeshall, President; Roger Williams, John Sanford, William Coddington (despite his refusal to cooperate at this juncture one must not overlook his work in building a government of laws at Newport), Randall Holden, Assistants; William Dyre, Recorder; and Jeremy Clarke, Treasurer. Dr. John Clarke's activities on behalf of the union make him a likely participant in the work; and for the tradition that he was the Code's author, "assisted by William Dyer," cf. Wilbur Nelson, *The Hero of Aquidneck, A Life of Dr. John Clarke* (New York, 1938), p. 50.

<sup>37</sup>By Wa. Young. London. Printed for Lawrence Blaiklock, and are to be sold at his Shop joyning to the Temple barre. MDCXLII./

in Any One Or More Justices Of The Peace Are Inabled To Deale In At The Sessions Of The Peace Together With An Epitome Of Master Stamfords Plea's Of The Crowne.<sup>38</sup> The spelling of Stamford is a variant of Stanford,<sup>39</sup> and the fact that the same variant appears in the Rhode Island Code as well as in an Epitome of 1642 is of some significance. Roger Williams was in a position, while in London on his own and the colony's business in 1643, to know what the book-sellers were offering in the way of useful guides to the law of England, and so to provide himself and the colony with this work "By Wa. Young."<sup>40</sup> It is all the more striking that both the Rhode Island Code and the Epitome summarize the law under "Heads" which, though more numerous in the latter, are furnished in both works with detailed citations to English statutes. A proper annotation may some day be undertaken which will show an obligation to other sources on the part of these early Rhode Island legislators, but the information presently available shows none more suggestive of the Code's framework than the almost forgotten work of Walter Young.<sup>41</sup>

Upon concluding with "the Lawes that concerne all" and "the Penalties for the transgression thereof,"<sup>42</sup> the Assembly of 1647 turned to the establishment of courts; first, a "Generall Court of Tryalls for

<sup>38</sup>/London. Printed by R. B. for L. Blaiklock and are to be sold at his Shop joyning to Temple barre. MDCXLIII./

<sup>39</sup>Sir William Stanford (1509-1558) was the author of *Les Plees del coron: divisees in plusiours titles & common lieux. Per quex home plus redement & plenairement, trouvera quelq chose que il quira touchant les ditz pleez composees lan du grace. 1557.* Londini in aedibus Richardi Totelli: 1557. Six editions followed to 1607 of this work which has also been attributed to William Rastell (1508-1565). Cf. Catalogue of the Library of Congress. The *Dictionary of National Biography* gives variants of the name Stanford, Stamford, or Staunford, and gives him credit for having produced a work "much used by later legal writers." (*D.N.B.* LIII, 479)

<sup>40</sup>Walter Yonge (1581-1649), diarist of the Long Parliament and publisher of "A Manual, or a Justice of the Peace his Vademecum." *D.N.B.* LXIII, 331.

<sup>41</sup>The only attempt at an annotation is that of Judge William R. Staples, *The Proceedings of the First General Assembly of the Incorporation of Providence Plantations and the Code of Laws Adopted by That Assembly in 1647 Providence:* (Charles R. Burnett Jr. 1847). The notes contain references to the colony records, some comments *ex cathedra* upon particular laws, and several comparisons with the less humane legislation of neighboring colonies.

<sup>42</sup>The Code ends with this curious sentence: "And lett the Saints of the Most High walk in this Colonie without Molestation in the name of Jehovah, their God for Ever and Ever, Etc., Etc." R.I.C.R. I, 190. Earlier portions set forth, according to the "Great Doctor of the Gentiles," that "the Law is made or brought to light, not for a righteous man, who is a Law unto himselfe, but for the Lawless and disobedient in the Generall." *Ibid.*, 158.

the whole Colonie, and General Officers for the Administration of Justice therein."<sup>43</sup> The general officers included, "One President, foure Assistants, in every Towne one, one General Recorder, one Publick Treasurer, and a General Sargent," all to be chosen annually in the General Assembly of the freemen. Supporting their capacities as members of the Court of Trial, the President and Assistants were to have their appropriate commissions, but they were also to be "conservators of the peace in the same Towne where they live and throw-out the whole Colony." As magistrates, acting individually, these general officers were to keep the peace by taking sureties, to summon inquests when necessary, and to commit to prison.<sup>44</sup> In case the breach of the peace amounted to felony they were to give warrant for arrest by the Sergeant or by the Town Constable, to examine, and then to commit until the next "Goale delivery,"<sup>45</sup> at that time certifying the information, recognizance, and bailment. That the annually elected magistrates telescoped the manifold functions of the English central courts, the crown circuit, and the multitudinous duties of local government which appertained to the office of a justice of the

<sup>43</sup>The plain meaning of this, borne out by all subsequent references to the General Court of Trials, is that the general officers, the Magistrates, constituted the court. It was a body distinct from the Assembly of the freemen or the later Assembly of Commissioners. R.I.C.R. I, 191-192. Cf. also the Assembly's instructions on the absences of any Assistant from the court. *Ibid.*, 212. An initial error of interpretation in this matter was that of Harold D. Hazeltine, *Appeals from Colonial Courts to the King in Council, with Especial Reference to Rhode Island* (American Historical Association, *Annual Report* for 1894. Washington: Government Printing Office, 1896) wherein it is said (p. 326) that "from the very first the assembly appears to have regarded itself a judicial tribunal . . . and during practically all of the colonial period exercised an appellate jurisdiction. . . ." The Assembly did not transform itself into the Court of Trials (C. M. Andrews, *Colonial Period* II, 28); and it is misleading to say that the Assembly constituted itself in the seventeenth century "a high court of justice, as in the early days of parliament" to dispense "law and equity." (Brockunier, *op. cit.*, 171.) Richman (*op. cit.*, I, 251) alone among the authorities cited seems to appreciate the independence of the Court of Trials as a judicial body. In 1649 it was ordered that the "Town Magistrates of the Town wheare the General Court of tryalls shall be" were to sit with and have equal authority with the general officers. R.I.C.R. I, 218.

<sup>44</sup>R.I.C.R. I, 192-193. The Assistants were also to act as coroners in their respective towns. *Ibid.*, 195.

<sup>45</sup>This "unless he be bailable, and then he shall baile him." Care was taken to provide for responsibility on the part of those initiating criminal process by "complaint or request," who were to be examined under "the perill of perjurie," or at least bound by recognizance to give in evidence against the offender. *Ibid.*, 194.



peace, is clear from the following descriptive summary of the functions allotted to the Recorder:<sup>46</sup>

Be it enacted . . . that the Genrall Recorder's Office shall be in the generall, to keep a Coppie of all the Records or Acts of the Generall Assemblie, Generall and particular Courts of Judicature, Rolles of the Freemen of the Colonie, Records, Evidences, Sales and Bargaines of Land, Wills and Testaments of the Testators, and orders of the Townsmen touching the Intestate, Records of the Limitts and Bounds of Townes, their Highways, Driftwayes, Commons and Fencings, Priviledges and Liberties.

. . . be it also enacted, that he that is Generall Recorder shall supply the roome of the Clerke of the peace or assizes, in the Generall Court of Tryall, as it is a Court of Assize or Goale delivery. And as Clark of assize, his office shall be to receive examinations, information, recognizances and bailments, presented by the Officer who committed the Felon to prison. He shall also receive the bill of indictments presented by him who was bound to prosecute the prisoner; he shall read the indictments and enroll the acts of the Court itself, the indictment, the process, the answer, the traverse itself, the verdict, the judgment thereupon, and the execution. And as this Court is a Court of Common Pleas, soe he shall supply the roome of the master of the office, and in that regard his office shall be, upon the request of the plaintiff or his Attorney, (in matters that clearly appertaine unto that Court,) to direct a Writ to the General Sargant to arrest the defendant, in such an action, of such a man, and to take baile for his appearance by such a day as the writ makes mention to be returnable; and in case the General Sargant returne the defendants Bond by the day appointed, then shall he enter into his appearance, and in case they proceed, his office shall be, to file such declarations and answers. But in case after a declaration is filed in expectation of an answer, or to make his defence, and he doth not, then the plaintiff taketh him by default, which is called confessing the action; and then the Recorders office shall be, to enter and record a *nihil dicit* (id est,) he saith nothing thereon, and so shall he send out a writ of enquiry of dammages unto the Towne where the defendant lives. And the head officer of the Towne, at the next Towne Court, shall enquire of damages, and by a writ of destringes to the Sargant, shall cause the defendant for that purpose to come to the Court, and incase he appeare not, he shall forfeit the distraint, and the head officer of the Towne may destraine again and again. The matter being issued in the Towne, it shall be returned into the office, and the Recorder shall then enter the *postia* returne, and give forth to the General Sargant a writ of Execution.

<sup>46</sup>*Ibid.*, 195-197. The Court of Trials met in the several towns by progression until 1664—excepting the interruption of the government of the union of Providence Plantations 1651-1653. After 1664 it met only at Newport.

By a special commission the President of the colony was to act as Chief Judge of the Colony Court of Trial; all of the Assistants, likewise to be commissioned specially for the purpose, were obliged to attend the Court if not otherwise detained on colony business. The Chief Judge was to see that "order and course of Law appointed thereto be duly observed, and the verdict being given in, he is to pronounce the sentence." It was also his responsibility to see that the General Sergeant performed execution in "matter of Felonie," while in "matter of Trespass, debt or any other difference betweene Man and Man," the President together with the Assistants were to tax the costs, and "send forth a writ of Execution unto the Generall Sarjent, who shall send forth a Warrant to the Sarjent of that Towne where the party judged do live to do execution."<sup>47</sup>

It was less than clear in the Code of 1647 where the "particular" or town courts were to fit into the general system. There was provision only that for "Road Island, and her two Townes, Sci. Portsmouth and Newport," the inhabitants were to have power and authority to constitute "such particular orders, penalties and officers, as may more nearly concerne ayther each Towne apart, or the Island joyntly." Left to them and to their officials were the execution of "such particular orders and penalties, and so many of the Common Lawes agreed on in the Generall, and their penalties not annexed already unto the Colonie Court of Tryall."<sup>48</sup> The distinction was one purely between general and particular, with no explicit definition of any degree of subordination. This indicates a respect for the sub-

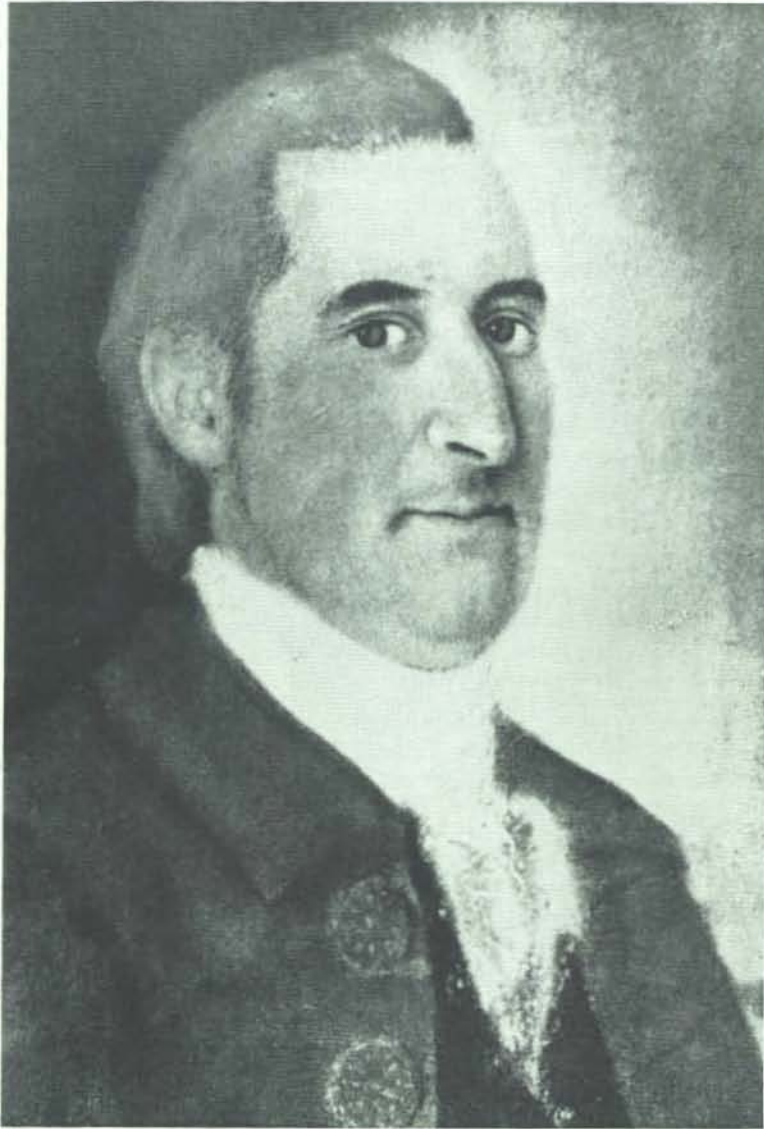
<sup>47</sup>*Ibid.*, 194-195. No examples of these judicial commissions have been found. As to the General Sergeant, it was ordered that he must be "an able man of Estate, for so ought a Sheriff to be, whose place he supplies; whose office shall be to attend all Colonye Courts of Tryall, and to serve eyther by himselfe or the Serjants of each Towne, all Writts originall or judiciall; who having arrested a man for that which he is bailable, he shall take baile by an obligation to himselfe, with sufficient sureties; the condition of which shall be, to make appearance in the place, and at the time, the bill, writt, or warrant specifies. He shall also gather up all the fines, forfeitures and amerements, that are made at the Colonie Courts of Tryall, and shall returne them faithfully unto the Treasurie to which they appertaine. When he is chosen, he shall be solemnly engaged to exact no more than his wages, and to take no more than is forfeited; for not serving writts and warrants, he shall lose to the party grieved, treble damages, and forfeit Forty Pounds; twentie whereof is the King's Custome, and twentie shall be to the party that sueth. And he that summons or doth arrest without warrant, shall be imprisoned till he pay to the party grieved ten pounds, his costs and damages, and twentie pounds to the King. See the 43 Eliz. 6. He shall also have the charge of the prison for the Colony, and the prisoners therein." *Ibid.*, 198.

<sup>48</sup>*Ibid.*, 206.

sidiary capacity of institutions already functioning upon the island, with the normal working of which it might have been very foolish to interfere. There is, by contrast, an implied recognition that no such orderly condition prevailed in Providence or in Warwick. Not until after the reception of a royal charter in 1663 did the Assembly manage to work out a rough pattern of local courts for the whole colony,<sup>49</sup> but in 1651 an event occurred which thrust upon the mainland towns the burden of upholding the 1647 constitution all by themselves, and they had then to devise their own scheme for town courts. This was occasioned by Coddington's trip to England and his return with a commission as sole Governor of Aquidneck, which had the immediate effect of undoing the work of unification, of limiting the operation of the 1647 constitution to the mainland, and almost extinguishing the promised independence of Providence Plantations.<sup>50</sup> It was

<sup>49</sup>Taking note of the powers awarded to them as Governor, Deputy Governor, and Assistants of Rhode Island by special designation of the Royal Commissioners, who visited America with the Duke of York's expedition in 1664, to govern the disputed Narragansett country—which was called the King's Province—the magistrates presumed to name "conservators of the peace" for that area in May, 1669. R.I.C.R. II, 256-263. Six conservators were named, any three of them to hold trial of civil actions up to forty shillings value, with a six man jury. Appeals were allowed to the General Court of Trials, i.e. to the same magistrates who named these "conservators." These were to act in every way comparable to Rhode Island magistrates in regard to civil and criminal process, and provision was made for constables to supplement in the King's Province the role of the General Sergeant of Rhode Island. In spite of the turbulence caused by Connecticut's refusal to recognize this thinly disguised extension of Rhode Island's jurisdiction, this system functioned inadequately until the settlement of the boundary which left the bulk of the territory to Rhode Island in 1727. Without reference to more than the Charter of 1663 it was possible to extend the jurisdiction of Rhode Island to Block Island, which was done in May 1664, with the establishment there of magistrates' courts of the forty shillings limitation. R.I.C.R. II, 55-56. In 1672, the inhabitants of Block Island received from the General Assembly "the liberty and privilege of a township." *Ibid.*, 466-471. They were to elect two wardens to be magistrates, and with three others elected as colleagues, to act as a town council. To save as much as possible the expenses of travel over the water to the Newport sessions of the General Court of Trials, the wardens were empowered to hear civil actions up to five pounds in value, ("nevertheless appeals to be allowed as the law is,") and to exercise the usual powers of justices of the peace. *Ibid.*, 470.

<sup>50</sup>Coddington had refused to take office as President in 1648, and his success in persuading the Council of State in England to make him governor for life over the islands of Aquidneck and Conanicut necessitated a second trip on the part of Roger Williams to London in order to save the colony. Cf. Andrews, *Colonial Period* II, 32-33. The anti-Coddington forces on Aquidneck sent Dr. John Clarke for the same purpose, thus demonstrating that the inhabitants there were not anxious to keep clear of union with Providence and Warwick, as Coddington had alleged in his petition to the Council. Thanks to Williams's friendship with Sir Harry Vane, and with Cromwell, the commission to Coddington was annulled in 1652. Williams then returned to America, but Clarke stayed on in London until the restoration of Charles II. He secured a royal charter for Rhode Island and Providence Plantations in 1663.



Artist unknown

Courtesy of Mrs. Hope Goddard Iselin

WILLIAM GODDARD, 1740-1817

First printer in Providence and founder of the *Providence Gazette*.

therefore a truncated Assembly which in 1651 at Providence ordered that all cases should first be brought to town courts, excepting only cases of murder, mayhem, rape, or buggery.<sup>51</sup>

But the interval of the Coddington *coup* would be less important for the history of Rhode Island judicial process if it had not been for still another modification introduced in the same year. Along with the order recognizing the mainland town courts, provision was made by this Providence Assembly for regular appeals to the General Court of Trials.<sup>52</sup> Thus the political accident of Coddington's venture in separatism occasioned the first mention of an appeals procedure in Rhode Island legal history. From this point much of that history can be written in terms of the controversies over appeals—to the Court of Trials, to the Assembly, to the Privy Council. It has been noted that no appeals procedure had been included in the otherwise elaborate arrangements of 1647. At that time the lawmakers even ignored one of the instructions which the towns of Providence and Warwick had sent along to the Assembly; namely, to secure "an exact and orderly way open for appeals unto General Courtes."<sup>53</sup> Instead, the Assembly did nothing about it until 1650, at which time, rather than recognize any right of appeal, they moved in quite a different direction when they ordered that judgments of any particular court of justice within the jurisdiction were to be final determinations. Only when one of the general officers, that is to say, Governor, Deputy Governor, or an Assistant, granted a *supersedeas*, could a dissatisfied litigant get a stay of execution and a "removal" of a case to the General Court of Trial. The writ was to be issued if allegation was made of "defect in some substantiall matter, error or attainte," and on payment of ten shillings to the court to defray charges. It was also permissible by the same Act to have a rehearing in the General Court of Trial on payment of charges (twenty shillings) with a bond to secure

<sup>51</sup>"Acts and orders made at the Generall Sessions of the Committee at Providence, the 4th of November, 1651." R.I.C.R. I, 237. This is the first appearance of a representative assembly since the delegates to the meeting in 1647 had drawn up the constitution of the whole colony. After 1651 the Assembly consists of Commissioners of the several towns, except for the meeting of freemen in the spring to elect officers. *Ibid.*, 267, 277.

<sup>52</sup>R.I.C.R. I, 237. On appeals to the General Court of Trials there was to be "no more plea made, nor evidence given" than what had been heard in the "particular Towne Courte where the matter was first heard." *Ibid.*, 242.

<sup>53</sup>*Ibid.*, 43.

prosecution at the next session of the high court.<sup>54</sup> Yet the mainland towns did succeed in getting their own courts recognized by their legislation of 1651, for on the resumption of the union of all the towns, at an Assembly of May, 1653, it was agreed "that Providence and Warwick shall act joyntly in their Townes as the Island doth in keeping Courts, both having their appeale [sic] to the General [Court of Trials]."<sup>55</sup> Still and all, when after the reception of the royal charter of 1663 the Assembly provided for the mainland two special courts of trial a year, one at Providence in September and one at Warwick in March, each to be held by three Assistants and to be served by six jurors from each town, "Appeals" to the General Court of Trials were to be granted by any of the Assistants "upon substantiall matter, error, or attaynt, the cost of Court being payd."<sup>56</sup> This, however, amounted to no more than the "removals" authorized in 1650. The battle for appeals was only beginning.

"Touching the Inquest or Tryars," the Assembly of 1647 had undertaken to have all "Traitors, Felons, and such as are suspected thereof," indicted by twelve or sixteen "honest and lawful men." Ten days before a meeting of the Court of Trials, each town was to select three of their "most sufficient and least suspicious persons" to attend; these were to be "returned and arrayed" by the General Sergeant, four days before the sessions of the Justices, so that the parties might have knowledge of them. As jurors they were available for the petit

<sup>54</sup>*Ibid.*, 222-223.

<sup>55</sup>*Ibid.*, 266-267. Bartlett is in apparent error in his emendation "Assembly" where I have placed "Court of Trials." No records of appeals to the Assembly are in existence for this period before the royal charter; the point at issue was one of appeals to the General Court of Trials. Providence and Warwick evidently preferred to keep that court mainly as an appeals tribunal, but were able to win only for their town courts what had been allowed to Newport and Portsmouth local courts in the beginning. That this disagreement, as well as the Coddington *coup*, had prevented much activity by the Court is suggested by the paucity of cases before 1655. Cf. *Records of the Court of Trials 1647-1670* I, 5, 8. Conciliation of the mainland settlers in this, as in the permission given them to choose their own Assistants, did not altogether eliminate friction. Cf. Brockunier, *op. cit.*, 218. As for Coddington, he at first refused to surrender his commission, then fled to Boston. He returned in 1656 and was allowed to represent Newport as a Commissioner in the Assembly, making public submission to the "authority of his Highness [Cromwell] in this Colonie as it is now united." R.I.C.R. I, 326-327.

<sup>56</sup>R.I.C.R. II, 30-31. Executions issued by the Providence and Warwick courts were to be served only in "any part of the mayne[land] within this Collony."

as well as the grand inquest, but subject to disqualification,<sup>57</sup> or to challenge,<sup>58</sup> and in every case their estate was supposed to be in proportion to the matter at stake. No juror was supposed to pass upon the life of a man, or to give a verdict in a plea, real or personal, on any issue joined where the damage was of forty marks value, unless he was himself worth forty pounds. The same estate was necessary for jurors hearing cases of riot or of forcible entry. Twenty pounds was the minimum estate for jurors in "smaller matters in the Towne."<sup>59</sup> As a final point, the jurors risked the loss of good portions of these estates if attainted for a false verdict.<sup>60</sup> It would be prudent, however, to take all this with reservations, even if we did not have the records of the General Court of Trials to show no more than a peremptory challenge now and then, never a challenge for cause based upon insufficient estate. Jurors proved to be in fact so scarce and fines for nonappearance were so frequent that one may safely conclude that these requirements represented no more than a legislative tribute to

<sup>57</sup>Those chosen were to be "neither old men above seventy yeares, nor mean men, nor such as have a charter of exemption, nor an indictor, nor interested in the deliverance of an inditce." Citations were made to 42 Ed. III, 11; 13 Ed. I, 37; 25 Ed. III, 3; 3 Hen. V, 3; 23 Hen. VIII, 13; 8 Hen. VI, 9. The Sergeant was to fill up the panel from *circumstantes* if necessary. R.I.C.R. I, 198-199. Separate panels for grand and petit juries had been available for the early courts on Aquidneck, but for the Court of Trials a majority of the jurors returned appear on both juries. Cf. Chapin, *Documentary History* II, 132, 134, and *Records of the Court of Trials 1647-1670, passim*.

<sup>58</sup>"And be it further enacted, that men have their peremptory and other challenge, to the full, as they have them in England, where for petty Treason, Murder and Felony, they may challenge to the number of twentic. See 32 Hen. VIII 3." R.I.C.R. I, 199.

<sup>59</sup>*Idem*.

<sup>60</sup>"And be it further enacted . . . if any false verdict be given in any action, suit, or demand [in any Colony Court] the party grieved shall have a writ of attaint out of this [General Court of Trials], putting in sufficient security against each partie giving in such an untrue verdict, whereby the parties shall be summoned by great distresses; and in case the thing in demand and the verdict surmounts forty pounds, to the three able men of each Towne shall be added twelve of the same Towne, where the Colonie Court of Tryall shall be, being worth three score pounds a piece, if such and so many are to be had, and in case these find they gave an untrue verdict, every one of the former inquest shall forfeit twenty pounds, ten whereof is the King's custome, and ten pounds shall go to the partie grieved, that sues for it; he shall be also not of credence, neither shall his solemn testimony be taken in any Court, untill the Colonie release him. But if, eyther the demand or verdict be under forty pounds, then shall the inquest be worth fifty pounds a man; and every one of the petty inquest being found guilty, shall forfeit five pounds, with the like punishment as is before specified. See 23 Hen. VIII 3; 37 Hen. VIII 5. And in case he that sues for the writ of attaint makes it not good, every party attainted may have his action against him, and recover sufficient dammages." R.I.C.R. I, 200.

a standard impossible to maintain in a wilderness society. It records as well the careful respect for property which Rhode Islanders maintained, along with extreme notions of political democracy.<sup>61</sup>

<sup>61</sup>An unusual challenge, not of a prospective juror but of a judge, was that by "Mr. Coddington's Atturrie," who in June, 1656, "challenged" one of the Assistants, William Baulston, "off the Bench." Baulston withdrew. *Records of the Court of Trials 1647-1670* I, 19-20. For the scarcity of jurors, a good example is afforded, Oct. 1668, by the court's difficulty in proceeding while the grand jury was deliberating, because "pleaders and others concerned in actions are upon the Grandjury." *Ibid.*, II, 68. Evidently the towns found that it simplified matters to select for jury duty people whose own affairs would require their presence at court. However, in the October 1669 court, Thomas Arnold was eliminated from the Grand Jury, and Thomas Fry put in his place, for saying, (1) that "on a bill that was presented to them hee Could not agree with his fellowes because that Mr. William Carpenter and Mr. William harris and Mr. Thomas olnyes father were Concerned in it[,] and we[,] sayes hee[,] are oppositts," and (2) that "the Grand Jury were the majour part of the Court and therefore nothings ought by Law to Come to the grand Jury but by ther Consent." *Ibid.*, 80.

[To be concluded]

## BOOK REVIEW

*Early Rehoboth. Documented Historical Studies of Families and Events in this Plymouth Colony Township*, by Richard LeBaron Bowen. Vol. iv. Rehoboth, privately printed, 1950. x, 189 pp. 15 illustrations, \$5.00.

It is unfortunate that more people do not realize that the surest way of attaining immortality is to write a good town history. Centuries after the best-sellers of this generation have been discarded and forgotten, after even the gravestones of the authors have eroded away, librarians and historians will cherish and use the old town histories. Nothing else that one can write will be uniquely useful to future generations, un superseded by better volumes on the same subject. In the fantastic centuries to come historians will know the authors familiarly as "Staples" or "Bowen," and will commune with them.

The local supplies of praise have been exhausted on the earlier volumes of this work. Moreover, more such would be superfluous, for all of the readers of this Quarterly know Mr. Bowen and his histories. Suffice to say for those who have unpardonably neglected to obtain their copies of Volume IV, that this is the kind of work which frustrated researchers enjoy in their best dreams, and rarely at any other time. Three chapters are devoted to early maps and surveys which are reproduced and described in detail. Chapter IV is on the village of Pawtucket and the origins of the cotton industry in this country. The last three chapters are given over to town, state, and federal tax lists and censuses which, thanks to the usual excellent index of persons, are now really available for the first time.

CLIFFORD K. SHIPTON

American Antiquarian Society

PRINTING-OFFICE, PROVIDENCE, August 31, 1762.

## TO THE PUBLICK.

THE Colony of Rhode-Island from its first Institution to this present Time, has been remarkable for maintaining the Spirit of true British Liberty, by which it has frequently prov'd a Refuge and Asylum for Strangers, who fond of enjoying all the Privileges and Advantages of their Mother-Country, prefer'd this Colony before many others for their friendly Indulgence to Strangers of every Denomination of Christians that chofe to settle among them; by which judicious Conduct, they are become a flourishing People, and in which the Town of Providence (being the first settled Place in the Colony) has no Inconsiderable Share; to the Inhabitants of which, I in a most particular Manner address myself, who, at the Request of many Gentlemen, have, at a very considerable Expence, procur'd a complete Assortment of Printing Materials, with which I purpose to carry on the Printing Business in this Town; provided I meet with Encouragement adequate to the Trouble and Expence of the Undertaking: And as it is universally acknowledged a Printer is much wanted in this Place, very considerable Sums being annually sent into other Governments for Printing, to the Impoverishment of this, where, if that useful Branch of Business was well establish'd here, it would be an Addition to its flourishing State, and keep its ready Cash circulating at Home, it is not doubted but every Well-wisher to the Town, will contribute towards so laudable an Undertaking, as far as the Execution of it shall merit the Approbation of the Publick: And I take this Method to solicit the Favour of the Inhabitants of this Colony; and from the same generous Disposition they have shewn to young Beginners of other Occupations, I flatter myself I shall find Encouragement answerable to my Expectations. And I beg Leave to assure the Publick, that (as far as I am engag'd in their Service) I shall use my utmost Endeavours to serve them with Fidelity and Integrity; and if by my Assiduity and Care, I shall be so happy as to obtain their Esteem, by an impartial Conduct, I shall think my Time well bestow'd, & am determin'd to avoid entering into the Schemes of any Party, tending either to religious or political Controversy, so far as it might prevent my acting with the strictest Justice.

As every Branch of useful Knowledge, both of a religious and civil Nature, is abundantly diffus'd by Means of the Freedom of the Press; I hope it will induce Gentlemen of Learning and Industry to employ a few of their leisure Hours in writing some public-spirited Essays, for the Cause of Virtue, displaying it in beautiful Colours, and painting Vice in all its odious Deformity, which will render their Efforts beneficial to the latest Posterity; by which Method they will soon perceive, the Utility of a Printing Press: For I verily believe there is not another Town in New-England, of its Extent in Trade and Commerce, that remains vacant of so necessary and useful a Calling. All these Considerations give me great Reason to hope, that not only the Gentlemen of Providence, but all the adjacent Towns, will, with a kind and good-natur'd Reception, assist

THE PRINTER.

Gentlemen and Ladies,

AS soon as possible after my Affairs are in some Measure settled, and I am establish'd in my Business, I purpose to print a Weekly News-Paper, under the Title of the PROVIDENCE GAZETTE, or COUNTRY JOURNAL, to be publish'd every *Wednesday* Morning, and to contain every Thing remarkable, both Foreign and Domestic; for which Purpose, I have establish'd an extensive Correspondence, and shall receive not only the London Magazines and Prints, but every News-Paper printed upon the Continent of America, which can't fail of rendering the Providence Gazette, as complete as any Performance of the Kind. The Price will be only SEVEN SHILLINGS Lawful Money, per Annum, or equivalent in Currency. — And altho' several judicious Men have done worthily towards so useful a Design, in a neighbouring Government, whose Performances have obtain'd a general Approbation, nevertheless it must be allowed that something of that Nature is very much wanted here, where so many and various Branches of Business are carried on, more especially that in a mercantile Way; I hope no one will imagine I mean to lessen the Esteem justly due to others, or be guilty of Vanity, in attempting to make a public Appearance in that Manner, so necessary at this Juncture, when His Majesty's Arms are engag'd in a just and glorious War against two of the most pernicious Nations in Europe; and I am persuad'd every worthy and public-spirited Gentleman will promote the Circulation of it, as the Design is calculated (in a peculiar Manner) for the Interest of this Town, and all its respective Neighbourhoods. It is intended the Paper shall make its first Appearance on *Wednesday* the Twentieth of *October*, in Case a sufficient Number of Subscribers shall offer. — Subscriptions are taken in by HENRY PAGET, Esq; SAMUEL CHACE, Esq; Postmaster, BENONI PEARCE, Esq; MR. BENJAMIN WEST, MR. KNIGHT DEXTER, MR. ESENYER THOMPSON, MR. JOSEPH LAWRENCE, and by the Publick's

Devoted Humble Servant,

William Goddard.

PROSPECTUS OF THE PROVIDENCE Gazette.  
One of the earliest examples of printing in Providence.

## THE PROVIDENCE FRANKLIN SOCIETY

by ROBERT J. TAYLOR

[concluded from July, 1950, v. 9, no. 3, p. 83]

Obviously in the second period of the society's existence (from 1826 to 1862), its scientific interests had gradually shifted almost entirely to natural history studies. This is revealed not only by the multiplicity of departments in the biological sciences but also by the titles of lectures given by members. Of the seventeen lectures offered during the year 1860 thirteen were on some branch of biology or botany, and the remaining four were on geology and mineralogy. In 1862 the departments of mechanics and chemistry were dropped altogether; in this year the last of the physical science apparatus was sold. The increased emphasis on natural history coincided with the great interest in taxonomy in the period before the Civil War. Students of the biological sciences everywhere in the United States expended most of their labor upon the classification of plants and animals. Moreover, the work of identification in this period did not depend upon complicated techniques and the amateur could tag along after the professional, bitten by the same desire to discover new species. In the physical sciences the growing complexity of theory must have acted as a deterrent to the amateur.

In addition to its various departments, the society relied upon specially created committees to report upon matters of current interest. Thus in January, 1837, one finds this entry in the minutes:

The subject of Animal Magnetism (so called) having recently attracted much attention in this community it is voted that a committee be appointed to take the subject into consideration, and—(if in their judgement it is deemed of sufficient importance) to give it a thorough investigation, and to report to this society the result of the same.<sup>41</sup>

The resolution is worded warily enough to satisfy any scientist; it is too bad that the committee's report was not preserved. In 1841 special committees on meteorology, tides and general statistics, and terrestrial magnetism were appointed, probably as a result of the donation of a meteorological diary kept by Samuel Greene for eighteen months. The report of the tides committee was considered thorough enough to warrant sending it to Silliman's journal.<sup>42</sup>

<sup>41</sup>*Ibid.*, I, 268.

<sup>42</sup>*Ibid.*, II, Jan., 1884.

As a final indication of the society's concern with scientific questions of the day, one may note that Darwin's *Origin of Species* was reviewed in February, 1860, very soon after it was published. One would give something to know what the reviewer said about one of the most controversial topics of the times, but the minutes are silent. The following year a copy of Asa Gray's review of Darwin was presented to the society. Gray was one of the foremost American supporters of the Darwinian thesis, but in 1861 opposition to Darwin had scarcely crystallized in the United States, for Americans were preoccupied with war. Early in 1872 the society sponsored a public lecture by Prof. George I. Chace, of Brown, who among other things criticized Darwin's hypothesis of development maintaining that the study of rock strata showed no gradually varying forms. That Chace's lecture represented the viewpoint of the society is suggested by the advance publicity. The day of the lecture Zachariah Allen, a member of the Franklin Society, published a long newspaper article attacking Darwinian evolution and nebular theories of the self-formation of worlds of matter in the heavens. Both in Chace's lecture and in Allen's article emphasis was put upon God as the immediate author of all things; scientific hypotheses to the contrary, if taken seriously, were regarded as a dangerous threat to religion.<sup>43</sup>

Growth in membership and the expanding collections necessitated various changes of location. In 1827 the society moved from the rooms hired from Truman Beckwith to Dr. Bowen's building on South Main Street. When the five-year lease expired, the members for the first time purchased their own building—one on Waterman Street owned by R. E. Smith. But again they remained settled only five years, for in 1838 they moved into the basement of the Athenaeum.<sup>44</sup> The original plans for the Athenaeum building were designed to provide space for both the Historical Society and the Franklin Society.<sup>45</sup> Moreover, since several leading members of the Franklin Society including Owen Mason, Zachariah Allen, and Joseph Balch, Jr. were among the founders of the second Athenaeum, it is not surprising that the Franklin Society was asked to raise money for the

<sup>43</sup>The Providence *Journal*, Feb. 16 and 17, 1872.

<sup>44</sup>Details on the location of the society are from Records of the P.F.S., *passim*.

<sup>45</sup>J. L. Harrison, "The Providence Athenaeum," *New England Magazine*, LI, 191.

building fund for the mutual benefit of both organizations. In February, 1837, the society agreed to subscribe \$3000 on condition that it be housed in the basement and on further condition that if the rooms turned out to be unsatisfactory, the Athenaeum would return \$1500 to the Society when it relinquished its quarters.<sup>46</sup> The society had not been housed in the Athenaeum long when it was discovered that dampness was injuring the apparatus and the collections; moreover, a proposed building to the south threatened to cut off the light and make conditions worse.<sup>47</sup> But the society stayed on, grumbling from time to time about the dampness and appointing committees to seek new quarters. Finally toward the end of 1848 the society moved to the Aborn Block on North Main Street. Here it stayed until 1879, when it moved into the Arnold Block. These last quarters the Franklin Society occupied the longest, giving them up only when the block had to be torn down to make way for the Waterman Street extension in 1913.<sup>48</sup>

Before completing the survey of the pre-Civil War period, one should take account of some of the public activities of the Franklin Society. The use of their facilities for public education was always a prime concern of the members. During the winter of 1831-32 the society presented a course of lectures given entirely by its membership. The course comprised sixteen lectures on subjects as diverse as "Chlorine and Bleaching," "Leading Principles of Government," and "Statuary."<sup>49</sup> The experiment turned out to be far more than a labor of love, for the society cleared about \$400 on the series. The next winter a second course was presented, and in 1834-35 a third course. Apparently all the ventures were profitable, and one winter additional money was obtained by repeating some of the lectures before the Mechanics Association.<sup>50</sup> Also under the heading of public activities may be included a resolution calling for a geological survey of the state and the publication of a catalogue of Rhode Island plants. The geology department was requested in January, 1837, to petition the General Assembly for the survey,<sup>51</sup> which was authorized in 1839.

<sup>46</sup>Records of the P.F.S., I, 270.

<sup>47</sup>*Ibid.*, II, Oct. 19, 1841.

<sup>48</sup>*Ibid.*, II, Dec. 12, 1848; II, April 1, 1879; IV, Feb. 18, 1913.

<sup>49</sup>*Ibid.*, I, 180.

<sup>50</sup>*Ibid.*, I, 203.

<sup>51</sup>*Ibid.*, I, 263.

Probably this was not a direct result of the society's efforts, but the petition must have helped to articulate public sentiment. The catalogue of plants was issued in 1845 and revised by Stephen T. Olney in 1847.<sup>52</sup> A communication received from Brown University about this time ought to be mentioned. In December, 1849, the university sought advice on "a proposed enlargement in the means of instruction."<sup>53</sup> The society appointed Owen Mason, George Baker, and George Thurber to make a report, and though one was subsequently given, no record of it remains. However, in March, 1850, President Francis Wayland presented to the corporation a report on "Changes in the System of Collegiate Education." Of the nine men who were on the committee with Wayland three were members of the Franklin Society: Samuel B. Tobey, John Kingsbury, and Samuel G. Arnold. The substance of the report was that the financial problems of the university could best be solved by broadening the curriculum to appeal to a wider group of students. Thus he recommended the inclusion of certain scientific studies, provided funds were made available, to appeal to people uninterested in narrow professional training.<sup>54</sup> At that time, of course, classical languages were the heart of the curriculum, and the main business of the university was to prepare men for the learned professions. The society gave more tangible aid to Brown in 1863 by granting permission to Professors Hill and Peirce to use specimens from the cabinet.<sup>55</sup>

Beginning in 1863, probably as a result of the war, the society suffered a sharp decline in interest among its members. For a period of six or seven years the minutes include little but the records of annual meetings. The society reached such a low state that at three successive annual meetings committees were appointed to consider the feasibility of offering the collections to either the Friends School or Brown University. Apparently a serious offer was made to the latter, for President Alexis Caswell noted in his report for 1869 that

<sup>52</sup>Providence Franklin Society *Proceedings*, I, no. 1 and 2. (Providence, 1847).

<sup>53</sup>Records of the P.F.S., II, Dec. 28, 1849. President Wayland communicated with other groups in Providence, too, before making public his recommended changes in the curriculum. See Wm. G. Roelker "Francis Wayland, A Neglected Pioneer of Higher Education," *American Antiquarian Society Proceedings*, LIII (April, 1943) 47.

<sup>54</sup>*Report of the Corporation of Brown University on Changes in the System of Collegiate Education* (Providence, 1850).

<sup>55</sup>Records of the P.F.S., II, March 17, 1863.

the university badly needed a new building for a natural history museum and that the Franklin Society collections had been offered provided appropriate quarters could be secured. In his report of the next year, however, he said nothing of the society's offer, although he still listed the new building as a pressing need.<sup>56</sup> The minutes of the society for December, 1869, show that the negotiations had been indefinitely postponed; in the meantime the society had taken on new life and entered upon the third phase of its existence. Perhaps one reason for its rejuvenation was a resolution inviting the public to the society's rooms; non-members had been admitted in the past but only as guests of the lecturer. Now the public had a standing invitation, and it took advantage of it. This practice remained unaltered throughout the rest of the society's history.

Several other factors also contributed to the increased activity about this time. The decade of the 1870's was marked by rapid industrial expansion—the Gilded Age, Mark Twain called it. After the Civil War bituminous coal was introduced into smelting, and the petroleum industry also began to take rapid strides ahead. This brought an enlivened interest in geology. All sorts of people began to dream of striking it rich by finding oil or by opening a rich seam of coal—or by handing money over to people who promised to do these things. The society made use of its collections to give informative lectures on mineralogy, rock strata, petroleum, and ores. Lecturers from outside the membership appeared more often than ever before. For example, Prof. L. S. Burbank of Boston lectured in 1874 on veins of minerals traversing other minerals and in 1878 upon the formation and distribution of drift materials. Other lecturers gave descriptions of mining operations. It was not that the society was nourishing mine speculation, but that geology and money-making had become linked in post-war enterprise, and the public came to hear about the science.

The society also revived its enthusiasm for other branches of science. The departmental organization of the members was reinstated, and besides a department of geology and mineralogy, departments in botany, chemistry, entomology, zoology, conchology, astronomy, and meteorology were set up. In 1874 a department of microscopy was added and was given power to select its own members, levy special

<sup>56</sup>*Annual Report of the President to the Corporation of Brown University* (Providence, 1869) p. 21; (1870) p. 19.

fees, and buy equipment.<sup>57</sup> In the same year it was resolved that special prizes be offered annually for the best collections in botany, mineralogy, and entomology.<sup>58</sup> Meeting time was frequently taken up with the presentation and discussion of specimens, and the reading of articles from journals like *Popular Science Monthly* and the *American Journal of Science*. Besides competent lectures given by its own members, the society often heard lectures by experts invited from neighboring institutions. Prof. Kingsby of the Peabody Institute talked on crustacea in 1877, and in 1878 Prof. Leonard Waldo of Harvard gave several lectures on astronomy, one of them on the transit of Mercury. During this period, too, the society arranged excursions into the field to study plant and animal life in a natural setting. Women were admitted as corresponding members in 1871, and these "ladies of due scientific qualifications" went along on the excursions. In 1882 women were given full membership.<sup>59</sup>

Perhaps the prestige of the Franklin Society was most enhanced by its sponsorship with the Mechanics Association of winter courses of scientific lectures. As early as 1849 the society had contemplated bringing to the city prominent lecturers on scientific subjects, but nothing had come of its plans.<sup>60</sup> However, in the winter of 1871-72 the first course was initiated, a series of six lectures. Prof. George F. Barker, head of the department of physiological chemistry at Yale and later an important worker on radio-activity, led off the series with a discussion of the chemistry of the sun. Other speakers included W. H. Niles of Massachusetts Institute of Technology, on "Revelations of the Microscope;" T. B. Maury, Chief Signal Officer, Washington, D. C., on oceanic circulation; and George I. Chace, of Brown University, on pre-Adamite species of plants and animals.<sup>61</sup> These winter lectures were continued for a number of years and brought scientists here from Harvard, Bowdoin, Dartmouth, and other colleges. Most notable speaker, perhaps, was Richard A. Proctor, an astronomer from London, well-known for his researches on Saturn and on the rotation period of Mars.

<sup>57</sup>Records of the P.F.S., II, May 5, 1874.

<sup>58</sup>*Ibid.*, II, Dec. 29, 1874.

<sup>59</sup>*Ibid.*, II, March 14, 1871; III, Feb. 14, 1882.

<sup>60</sup>*Ibid.*, II, Sept. 12, 1849.

<sup>61</sup>The Providence Journal, Jan.-Feb., 1872.

The most important public service performed by the Franklin Society in the 1870's was its initiation of a movement for a free library, a movement which culminated in the Providence Public Library that we know today. As originally planned, the library was to have been a kind of civic center, housing both an art gallery and a natural history museum. There was even some hope that a school of design might be associated with the gallery. Dr. Welcome O. Brown, president of the Franklin Society, probably did more than any other one person to get plans started. The society invited several other groups to send representatives to an organizational meeting. One representative each was sent from the Franklin Society, the Franklin Lyceum, the Mechanics Association, the Rhode Island Society for the Encouragement of Domestic Industry, and the Horticultural Society.<sup>62</sup> The committee thus formed prepared a draft for incorporation, which was granted by the General Assembly in January 1871.<sup>63</sup> The articles of incorporation provided that the trustees should number no more than twenty-five, including the mayor as ex-officio member, and that to become a trustee a man must contribute \$10,000 to the project. The five societies were each to be provided with rooms and a lecture hall, for which they would pay rent, the money to be applied toward book purchases. However, to be eligible for rooms, each society had to appoint a committee to solicit funds.<sup>64</sup> The Franklin Society, of course, was going to provide its collections as a nucleus for the museum, but in addition the society solicited thousands of dollars for the fund. One member, Joseph A. Barker, promised \$10,000 at the first fund raising meeting.<sup>65</sup> It was believed by Welcome O. Brown that Moses B. Lockwood was influenced to contribute one-fifth of his estate at his death largely through his interest in the Franklin Society.<sup>66</sup> Eventually enough trustees came forward to permit organization; but one of them, Frank E. Richmond, who with his family had contributed heavily, proposed an amendment to the charter to confine the project to a public library

<sup>62</sup>*Free Public Library, Art Gallery, and Museum in the City of Providence, R. I.* (Providence, 1871) p. 6.

<sup>63</sup>*Ibid.*, p. 7.

<sup>64</sup>*Ibid.*, pp. 7-10.

<sup>65</sup>*Ibid.*, p. 14.

<sup>66</sup>Welcome O. Brown, *The Providence Franklin Society: An Historical Address* (Providence, 1880) pp. 22-23.





AERIAL VIEW  
OF  
PROVIDENCE  
FROM THE BAY.

From a half-tone  
illustration used  
on the cover  
of the  
*Providence Magazine*,  
April, 1927.

only. This amendment was passed by the General Assembly in January, 1875, before the Franklin Society was fully aware of what had happened.<sup>67</sup> Naturally there was much disappointment and some indignation at first. The school of design was separately organized, and the Franklin Society kept its collections for another forty years. However, it held no grudge, for when its collections were broken up, it gave its hundreds of books and periodicals to the Providence Public Library.

The distribution of the collections came in 1913 and in 1916, but long before that time they had ceased to be of scientific value to the members. The change came about gradually. During the 1880's lectures were still held regularly and many of them were given by the members. Levi W. Russell, for example, could be counted upon for informative talks on botany, and David W. Hoyt, principal of the English High School, for lectures on geology. The practice of occupying meeting time with the discussion of specimens continued, but the donations to the collections grew fewer. One important addition was a collection of about four hundred specimens of United States trees in 1881.<sup>68</sup> Talks before the society upon non-scientific subjects recalled the period of the thirties when the society had decided to broaden its scope; thus there were lectures upon the past history of Providence, Isabella and Columbus, good roads for Rhode Island, manual training in the schools, colonial money, and socialism, the last two by Prof. Elisha B. Andrews of Brown. Other Brown professors appeared before the society. In 1887 Alpheus S. Packard lectured upon "Existing Cave Animals," his researches on the adaptations of such animals being an important contribution to science. Some attention was paid to systematic education of the members, and in 1882 there was a series of lectures upon the geologic ages. In 1883-84 Prof. W. Whitman Bailey gave a course of lectures in botany. In this decade the society published two books: *The Geology of Rhode Island* in 1887 and *The Plants of Rhode Island*, by James L. Bennett, in 1888. As a consequence of a talk on the healthful advantages of city parks, the society appointed a park committee in 1882, which recommended the purification of the Cove basin and the removal of the

<sup>67</sup>John H. Stiness, "Historical Sketch of the Early Years of the Library Movement," *The New Building of the Providence Public Library* (Providence, 1901) p. 46.

<sup>68</sup>Records of the P.F.S., III, Sept. 13, 1881.

railroad tracks and depot to the west of the Cove. Out of this committee's activity grew the Park Association. In 1890 the society petitioned the city council to order the labeling of trees with identification tags.

But by 1890 the members were commenting upon the dwindling membership and influence of the society;<sup>69</sup> the number of departments had shrunk to two: geology and botany. In 1903 the annual departmental reports described the only work of the past year as that of cleaning a heavy layer of dust from the specimens; and the cabinet keeper began monotonously to report that the collections remained about the same. In 1912 the membership had sunk to seventy-two and in 1914 to fifty-seven.<sup>70</sup> In 1913 the razing of the Arnold Block made imperative the disposal of part of the collections. The set of polished marbles was given to the School of Design; the case illustrating the mechanical powers, to the English High School; and the entire library, consisting of 880 volumes, 220 pamphlets, 1050 numbers of periodicals, and 17 maps, to the Providence Public Library. The shells, minerals, birds, and South Sea Island material were kept for three more years in smaller quarters, but in 1916 Brown received the Jackson collection of Rhode Island rocks and minerals; and the Roger Williams Park Museum, the South Sea Island collection.<sup>71</sup>

After the First World War the society had a brief spurt of renewed life; the membership rose again to seventy-two and free lectures were once more offered to the public, but never on the same scale. In 1919 eight lectures were given, some of them by prominent scientists, including Dr. Albert D. Mead of Brown University.<sup>72</sup> But interest fell off again, and at the annual meeting for January, 1922, the standing committee recommended disbanding. The work of the previous year amounted to no more than seeing through the press a revised edition of *The Plants of Rhode Island*. The members voted six to five to dissolve the society after its 101 years of existence.

The dissolution of the society was perhaps inevitable. The collections no longer drew the members together as they had in an earlier day. At one time the collections were tangible evidence of something

<sup>69</sup>*Ibid.*, III, Jan., 1890.

<sup>70</sup>See the annual reports for these years, Records of the P.F.S., IV.

<sup>71</sup>Records of the P.F.S., IV, 1913, *passim*; 1916, *passim*.

<sup>72</sup>*Ibid.*, V, Jan., 1920.

worthwhile. Members could take pride in their growth, and their care and arrangement must have produced a sense of good fellowship. But when a generation arose that learned its science in the public schools, the teaching value of the collections steadily diminished; gradually the cabinets of minerals and shells became so many what-nots that had to be dusted. With the distribution of the collections, members of the Franklin Society necessarily became spectators of science rather than enthusiastic amateurs—unless, of course, they were scientists in their own right apart from the society.

Providence benefited in many ways from the activities of the Franklin Society. The early lectures and demonstrations in science, the prominent speakers brought here to lecture, the Park Association are all testimonials to its value. Above all else, the Franklin Society's efforts in getting a free public library entitle it to be remembered by the citizens of this city.

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## LECTURES

- |             |  |            |
|-------------|--|------------|
| October 11  | Some Early American Cabinet Makers<br><i>(Illustrated with colored slides)</i><br>BARBARA WRISTON, Museum Instructor, Boston Museum of Fine Arts | 2:15 p. m. |
| * * *       |  |            |
| October 25  | Colonial Williamsburg<br><i>(Illustrated with colored slides)</i><br>MRS. DAVID HOLMES, Lecturer on Colonial Williamsburg                        | 8:15 p. m. |
| * * *       |  |            |
| November 15 | New England and the Capture of Louisburg<br>CLAUDE M. FUSS, Headmaster Emeritus<br>Phillips Academy, Andover, Massachusetts                      | 8:15 p. m. |

## EXHIBITION

- October — November — December  
Rhode Island Historical Society's  
Unique Rhode Island Imprints

# RHODE ISLAND HISTORICAL SOCIETY



## NEW MEMBERS

*June 1, 1950 — Sept. 30, 1950*

- |                                |                             |
|--------------------------------|-----------------------------|
| Mr. and Mrs. John Alford       | Miss Agnes M. Herreshoff    |
| Mr. and Mrs. Francis O. Allen  | Bristol, R. I.              |
| Rear Admiral Charles L.        | Mr. Kenneth N. Hill         |
| Andrews, Jr., USN (Ret)        | Mrs. Richard A. Jenks       |
| Newport, R. I.                 | Hunter Kellenberger, Ph.D.  |
| Mrs. Charles W. Blake, Jr.     | Mrs. William Larchar        |
| Miss Esther Blankenburg        | Mr. Bertram K. Little       |
| Carl Bridenbaugh, Ph.D.        | Boston, Mass.               |
| Berkeley, California           | Mr. Stewart Mitchell        |
| Miss Mary Carpenter            | Boston, Mass.               |
| Wollaston, Mass.               | Mr. S. Rowland Morgan, Jr.  |
| Mr. Robert J. Clarke           | Mrs. Clarence T. Murdock    |
| New York, N. Y.                | Clayville, R. I.            |
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| Mr. James D. Fleming           | Mr. Joseph W. Ress          |
| Mr. Douglas W. Franchot        | Mrs. John W. Richmond       |
| Mr. A. Clyde Freeman, Jr.      | Newport, R. I.              |
| Mrs. William B. Greenough, Jr. | Mrs. Jacob M. Salomon       |
| Mr. Gerald W. Harrington       | Mrs. George S. Squibb       |
| Barrington, R. I.              | Mr. R. Norris Williams, 2nd |
|                                | Philadelphia, Pa.           |

### OPEN TO THE PUBLIC

*Except holidays*

Monday through Friday 9:00 to 5:00

Sunday afternoon 3:00 to 5:00

*Library only*

Tuesday evening 7:00 to 9:00

*Closed Sundays and Tuesday evenings,  
June, July, and August*