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“[T]heir dear Idol ye Charter”: The Second Charter of Massachusetts Bay

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An abstract of
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Abstract

"[T]heir dear Idol ye Charter": The Second Charter of Massachusetts Bay
By Richard A. Cook, Jr.

This dissertation is a history of the Second Charter of Massachusetts Bay. It compares the Second Charter with previous colonial governments, and outlines the history of the institutions created by the Second Charter. The contests in the early eighteenth century (roughly 1690 to 1750) over the meaning of Second Charter clauses, and over the limits of royal and provincial authority, took on a constitutional character. Those debates tended to involve competing analyses of the text of the Second Charter, and challenges, both provincial and royal, to the language and intent of the document.

As a history of the second charter, it traces the Second Charter's origins, significance, and ultimate eclipse at the time of the Revolution. It argues that the Second Charter was a true provincial constitution, and that the colonists as well as the Crown viewed it as such. They behaved as though its strictures were, if not sacrosanct, then at least possessed of a veneer of inviolability. While the outlines of its language and intent could be negotiated, contested, and occasionally circumnavigated, the text of the Second Charter mapped the essential political geography of the imperial relationship. Intended by the Crown to be an outline of the limits of provincial power, it had become a document that circumscribed royal authority as well. Through creative interpretations of the text, both the Crown and the provincials had transformed the document from a concession of royal power to a constitution. When, in the Revolutionary crisis, England appeared to be trampling on the constitutional understanding, the provincials had reason to reconsider their position in the English empire.

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M.A., History, 2006

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“[T]heir dear Idol ye Charter”

Between 1629 and 1685, the English colony of Massachusetts Bay was governed under the charter granted by King Charles I to the Massachusetts Bay Company. As a corporate body, the Company was expected to oversee colonial affairs from Lon. Instead, the colonists decided to turn that corporate document into a form of government without royal sanction. The First Charter governed the colony for its first 55 years, developing its own unique organic structures and institutions, functional if without constitutional sanction. This regime lasted until the Crown revoked the First Charter in 1684. From 1685 to 1691 the area was consolidated, on the initiative of King James II, into one government, named the Dominion of New England. James appointed its first and only Governor, Sir Edmund Andros, who ruled over, at the Dominion’s height, the former colonies of Massachusetts Bay, Plymouth, New Hampshire, Maine, New York, and New Jersey as a chief executive with a royally-appointed Council, but no representative colonial legislature.

When James abdicated, William III and Mary II became monarchs; both of them Protestants. Massachusetts, after throwing off the Dominion in their paler shadow of the Glorious Revolution, was then able to negotiate a new charter, thanks largely to the work of Increase Mather. The Second Charter of Massachusetts Bay, passing the Great Seal in October of 1691, created a true colonial government, alloyed of both royal and provincial designs. The Second Charter was by far the most significant example of state creation in English North America during long eighteenth century. Its clauses provided fertile ground for constitutional and imperial debates throughout that century, and those debates

may account for some of the Revolutionary heat in Boston during its later decades.

This dissertation is a history of the second charter, its origins, significance, and ultimate eclipse at the time of the Revolution. By contrast with earlier historians, who have seen its significance largely as a matter of religious tolerance and enhanced royal control, I argue that the Second Charter was a true provincial constitution, and that the colonists as well as the Crown viewed it as such. They behaved as though its strictures were, if not sacrosanct, then at least possessed of a veneer of inviolability. While the outlines of its language and intent could be negotiated, contested, and occasionally circumnavigated, the text of the Second Charter mapped the essential political geography of the imperial relationship. When, in the Revolutionary crisis, England appeared to be unilaterally redrawing this map, the provincials had reason to reconsider their position in that geography.

I - Introduction

In 1711, Jonathan Bridger, Surveyor-General of Her Majesty's Woods in New England, wrote to London about the problems of his office. The Second Charter of Massachusetts Bay had declared all pines large enough to be masts for the royal navy were reserved for the sole use of the crown, and Bridger was the man responsible for maintaining this royal prerogative.[1] Yet the provincials not only evaded him – easily enough done in the vast New England wilderness – but avoided conviction when he had

1 I have chosen to capitalize the First Charter and Second Charter throughout. This is both because the Second Charter is the subject of this constitutional biography and because the provincial and royal treatment of especially the Second Charter was as 'constitutional' as our own debates over the text and intent of the Constitution of 1787.

Whenever possible, I have retained the original spelling from the source materials. I have, however, expanded abbreviations, so that, for example, "His Majty" has been rendered as "His Majesty." In rare occasions, particularly confusing spellings have been modernized.

managed to catch them in the act of poaching. Bridger, frustrated by both poachers and the uncooperative juries that abetted them, described the attitude of the provincials towards the Second Charter.

> They adore it, equal, if not preferable, to their schismatical doctrine. … Were this charter gone, her Majesty's prerogative would shine bright and influence the whole, so that they would be more obedient to her Majesty's commands, and civil to her interest and officers; and, were they more dependent, they would be much more serviceable.[2]

Bridger's frustration reflected the reality that already, within twenty years of its arrival, the Charter had become a double-edged sword. The reservation of the pines of New England was an ideal example: the Charter explicitly reserved mast pines for the crown, yet the provincials consistently claimed that other clauses of the same document authorized their harvesting of those pines.

Ten years later, John Jekyll, another of the men occupying the frontiers of royal authority in his office as Collector of Customs for the colonies, judged the Second Charter as harshly as Bridger.

> Now as for ye encouragment [of the colonists to woolen and linen manufacture] your Lordships well know this is a Charter Government, and except His Excellency our Governor everyman of the Councill (who are ellected by ye People) are New England men and as far as I can guess have their dear Idol ye Charter much at heart and a great love for independency in general.[3]

The power of the crown was limited, in Jekyll's view, by clever interpretations of the text of the Second Charter. To him, it had become a mere obstacle to royal authority, a strange destination for the document written to bind the Bay more closely to the metropolis.

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2 Bridger to "My Lord," 21 May 1711, quoted in John Gorham Palfrey, *History of New England,* Vol. 4 (Boston: Little, Brown, and Company, 1875), 400.

3 Jekyll to the Council of Trade and Plantations, 16 August 1721, C.S.P., Col., vol. 32, 1720-21, no. 190.

By the Revolutionary period, the provincials accepted this view – that the Second Charter was the constitution of Massachusetts Bay – widely enough that Parliamentary interventions were seen as illegitimate, in part, due to their incompatibility with the Second Charter. John Adams' "Novanglus" letters of the 1770s make this case. Through his many letters published in the *Boston Gazette* under that pen name, Adams pressed the argument that a Parliamentary right of taxation conflicted with the right granted the General Court in the text of the Second Charter. He attributed the successful resistance to those interventions to the Second Charter government.

> By attacking all the colonies together, by the stamp-act, and the paint and glass act, they [Parliament] had been defeated. The charter constitution of the Massachusetts-Bay, had contributed greatly to both these defeats. Their representatives were too numerous, and too frequently elected, to be corrupted: their people had been used to consider public affairs in their town-meetings: their councellors were not absolutely at the nod of a minister or governor, but were once a year equally dependent on the governor and the two houses. Their grand jurors were elective by the people, their petit jurors were returned merely by lot. [Governor Francis] Bernard and the junto rightly judged that by this constitution the people had a check, on every branch of power, and therefore as long as it lasted, parliamentary taxations, &c. could never be inforced.[4]

To Adams, the Second Charter had become so instrumental in defending the provincials from royal interference that it had to become the target of metropolitan designs. Whether this perspective was overwrought, or even conspiratorial, is less relevant than that Adams' felt it would be effective among the people of the province.[5]

Over the decades of the eighteenth century, on a number of issues, through creative provincial and royal interpretation and exploration, the Second Charter had

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4 Novanglus, "To the Inhabitants of the Massachusetts Bay," no. 6, 27 February 1775, *Boston Gazette*.

5 According to James Farrell, the "Novanglus" letters demonstrate Adams' immersion in Cicero's speeches against the Cataline conspiracy. Farrell compares Adams' rhetoric to Cicero's, and to the patriots' conspiratorial outlook. See Farrell, "New England's Cicero: John Adams and the Rhetoric of Conspiracy," *Proceedings of the Massachusetts Historical Society*, ser. 3, vol. 104, (1992), 55-72.

begun to serve an unintended purpose. Imagined as a tool to enforce provincial allegiance, it became a foundational document whose meaning was contested by both metropolitans and provincials. It could at once be constructed as a weapon of Anglicization and a shield protecting provincials from royal control. In other words, the Second Charter had become the constitution of Massachusetts. How did such a transformation take place? This dissertation seeks to answer that question.

II – The Second Charter's Creation

In the history of Massachusetts Bay, the revolutionary year of 1689 proved less significant than 1691, despite a wide disparity of colonial ink spilled in favor of the former. In April of 1689, the colony ousted its Stuart-imposed royal, executive government, the Dominion of New England, in a reflection of the Glorious Revolution, and reclaimed the government of its First Charter. In 1691, the Bay colonists' new, beloved, Protestant William and Mary reasserted royal control of Massachusetts through the vehicle of a new charter. This Second Charter represented the states of both English and New-English imperial thinking, as well as being the most significant English political innovation in the American colonies before the Revolutionary period.[6] The province thus formed was not a return to the functionally independent Puritan city-state, despite the wishes of many in the Puritan colony.[7] Rather, it was a unique mixture of Winthrop's city and the Dominion's state. The Second Charter was a harness woven from strands of

6 The Charter of Georgia was the only other royal charter written for a continental colony between the Second Charter and the Quebec Act, and represented an idiosyncratic philanthropic ideal.

7 Perhaps most famously expressed by Joshua Scottow in his jeremiad *Old Mens Tears for their own Declensions*, printed while the Second Charter was being drafted in 1691, wherein he declared that "our [First] Charter would be fully confirmed were we called a Faithful City and a Righteous People." Scottow, *Old Mens Tears For their own Declensions, Mixed with Fears Of their and Posterities further falling from New-England's Primitive Constitution* (Boston: Benjamin Harris and John Allan, 1691), 7.

royal and provincial control, a mixture of provincial desires and royal demands. Its construction, implementation, and interpretation on both sides of the Atlantic would be a long-lasting negotiation that would change the Second Charter from an instrument of royal authority to a shield of provincial control.

The drafting of the charter revealed the extent to which it was a construct of both provincial and metropolitan design. In November 1689, three representatives of the interim government of the colony were deputed to communicate the will of the colonists to the new monarchy.[8] By the end of the creation of the charter, only one remained, the Reverend Increase Mather. Mather's role in London – alongside an English agent for Massachusetts, Sir Henry Ashurst – was decisive in shaping the initial government of the province of Massachusetts-Bay. In other words, the Second Charter was far from an imperial yoke pressed onto a subjugated people; the provincials had a voice in the creation of the charter, and might have had a louder one had they better availed themselves of the opportunity. As it was, Mather had an outsized role in the drafting of the Second Charter. He seems to have made a virtue of necessity, requesting the construction of a new charter rather than a resumption of the First.

> And His Majesty upon Debate of this matter having been acquainted that the former Charter of the Massachusetts Bay stood legally Vacated, *And that the agents of that Colony had desired a new Charter from His Majesty with divers Variations from the former Charter*; His Majesty was thereupon pleased to Declare in Councill That He did Resolve to send a Governor of His own nomination and appointment for the administration of the Government of the Massachusetts Colony, as in Barbados and other Plantations [emphasis added].[9]

Increase Mather, more than any other New Englander, shaped the footprint of the crown

8 Michael G. Hall, *The Last American Puritan: The Life of Increase Mather* (Middletown, CT: Wesleyan University Press, 1988), 231-32. For details on Mather's original mission, see Hall, 207-11.

9 Entry for 30 April 1691 in Grant, W. L., and James Munro, eds. *Acts of the Privy Council, vol. 2, 1680-1720* (Edinburgh: Hereford Times Co., Ltd., 1910), 125-26.

under the terms of the Second Charter.

That is not to say he got all he, or the provincials, might have wanted. Working alongside Ashurst, appointed as agent with Elisha Cooke and Thomas Oakes, two representatives of the popular faction from within Massachusetts Bay, Mather was instructed to orchestrate a return of the colony's original "Charter-Liberties;" "[t]o wait upon the King, [and] obtain a full confirmation of the ancient Charter."[10] In the chaotic beginning of the reign of King William III, late Prince of Orange, between royal trips to and from Holland, overseeing military expeditions on the Continent, settling the affairs of England, and the myriad crises following the Glorious Revolution, the status of government in the recalcitrant paradise of New England was hardly William's foremost priority. When it became apparent that a return to the original charter was impossible, Cooke and Oakes left for the province, feeling that their instructions offered them no cover for further negotiating. Mather remained.

That the provincials were taking part in this negotiation at all said something for the shift in colonial perception after the experience of living under the Dominion.[11] Decisions made in far off England had serious consequences, and the Massachusetts colonists would have to be foolish to miss the opportunity to have a say in their fate. While pledging loyalty to the new monarchs, the provincials were engaging in the struggle to determine their fate at William's hands. Mather, Cooke, Oakes, and Ashurst's presence – and the fact that at least one provincial agent remained on the payroll of

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10 The instruction from the colony arrived in England in January 1690. See C.S.P. Col., 1689-1692, no. 739.

11 Alison Gilbert Olson argues that the provincials adopted this new approach to metropolitan decisions during the intercharter period. She states that by the turn of the eighteenth century, continental colonies more generally were "no longer…finding that the most effective reaction was often to pay no attention at all [to metropolitan decisions]." Olson, *Making the Empire Work: London and American Interest Groups, 1690-1790* (Cambridge, MA: Harvard University Press, 1992), 61.

Massachusetts until the Revolution – demonstrated the new understanding that the settlement granted while one was at the table was more palatable than that granted in one's absence. Letters from provincials to the councils of the metropolis also exerted some influence over the final form of the Second Charter.[12]

Getting to that final form took only a few months. The drafting process began on 22 April 1691, when the Board of Trade inquired of the agents of Massachusetts-Bay whether they would "accept a New Charter from the King," and presented them a brief draft.

> [A charter] with as large privileges as are enjoyed by any corporation within their Majesties' dominions, leaving to their Majesties the power of commissioning the Governor and Council from time to time; the representatives of people meeting once a year or oftener, as the Governor shall think fit, in the nature of a House of Commons for the making of laws relating to property and good government.[13]

Mather and Ashurst could not have rejected a charter matching such a description, nor could it be relied upon as an accurate précis of an as-yet unwritten constitution. As the process moved forward, imperial ambiguity would give way to a firmer outline of a provincial constitution.[14] The establishment of the foundation of the colony came by the end of April. William announced "the royal resolve, on the question of the new Charter of Massachusetts, to send a Governor of his own nomination, and ordering the preparation of a Charter on that foundation."[15] The drafting process began over the next few weeks, as members of the Board of Trade researched the antecedent documents

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12 A number of letters and petitions were sent to the Board of Trade during the negotiation period. For some examples, see C.S.P. Col., vol. 13, 1689-1692, no's 741, 742, 743, 899, and 1393.

13 Ibid., 1420. Though the Calendar version cannot always bear as much weight as the original sources, this entry is listed as only one page long, giving the summary a more representative character.

14 As I hope to show in subsequent chapters, the interpretation of the limits and boundaries of Second Charter powers would be a fertile ground for imperial ambiguity.

15 C.S.P. Col., vol. 13, 1689-1692, no. 1440.

related to Massachusetts.[16] By the middle of June, a draft was circulating within the imperial bureaucracy.[17]

Mather once again sought to shape the final form of the charter, and presented the Board of Trade a list of suggested alterations immediately after seeing the first draft that June. He requested fifteen changes to the draft, several of which were attempts to weaken the power of the royal governor.[18] As we have seen, at several turns Mather was frustrated.[19] Though most of his suggested alterations – "Proposals offered by the New England agents for perfecting the Charter of New England" – were not ultimately adopted, they may have had an effect on the outlines of the proposed charter. By September, the draft had made the rounds of the imperial *cursus bureaucraticum* and was prepared for a final redrafting. Mather and other representatives of the colony continued to give input as it moved through the system, until its final passage, on 7 October of 1691, under the Great Seal.[20]

Of course, the general outlines of the new document must have been known in the province by the time of the Second Charter's arrival there in 1692. Oakes and Cooke had disassociated themselves from the document, and had abandoned the negotiations and returned home. While the other provincial, Increase Mather, remained behind to shape its

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16 The fascinating list is located in ibid., no. 1443. R. C. Simmons argues that the driving force in the research, and the drafting of the Second Charter, was William Blathwayt. See Simmons, "The Massachusetts Charter of 1691," in H. C. Allen and Roger Thompson, eds., *Contrast and Connection: Bicentennial Essays in Anglo-American History* (Athens, OH: Ohio University Press, 1976), 77-78.

17 The draft was presented to the Board of Trade by the office of the Attorney-General on 8 June 1691. See C.S.P. Col., vol. 13, 1689-1692, no. 1571.

18 Mather suggested that there be an elected assembly, that the Deputy Governor by chosen by the Council, that the Governor possess a legislative veto, but not an elective veto on Council, and that the provincial Assembly be given a veto over militia activities outside the province. See ibid., no. 1574. The final passage of the Charter is recorded in ibid., no. 1806.

19 For more on Mather's attempt to recover the First Charter, see Hall, 223-30. For the power of naming officers and the attempt to take control of New Hampshire, see "Proposals of the Agents of Massachusetts concerning a new charter," C.S.P. Col., vol. 13, 1689-1692, no. 1276.

20 Sir William Phips, knighted New Englander and soon-to-be-appointed first Royal Governor of the province of Massachusetts-Bay gave his view of the charter as it stood in September. See ibid., no. 1731.

contents as best he and Ashurst could, the returning agents provided the provincials with a sense of their new position within the English empire, as well as a new political division within the province itself.[21] Mather, though teased by a momentary glimpse of success at restoring the original charter to the Bay Colony, was forced in the end to reconcile his province, by virtue of his narrative, to the existence of the new charter. He shared the details of the negotiation with his fellow provincials by publishing a narrative of the process, *A Brief Account concerning Several of the Agents of New-England, their Negotiation at the Court of England: with Some Remarks on the New Charter Granted to the Colony of Massachusetts*.[22] Mather presciently described the Second Charter as "the Magna Charta of New-England."[23] Whether he foresaw that it would become as fundamentally constitutional for the Bay as the Great Charter did for the English is debatable; that it did so is not.

Mather's intense salesmanship to his fellow provincials seemed to indicate a fear that it might not be viewed so positively in Boston. Accustomed to an organic government that seemed to grow from the soil of New England without tending from the mother country, many provincials feared an imposed settlement, even one imposed by their new, Protestant monarch. Mather reminded potentially recalcitrant provincials that

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21 Philip Haffenden uses the terms "Patriot or Country Party," while others use "popular" and similar constructions. See Haffenden, *New England in the English Nation, 1689 - I773* (Oxford: Clarendon Press, distributed by the Oxford University Press, New York, I974), 120. Michael G. Hall, refers to Cooke and Oakes' as residing on "the extreme, popular wing of the political spectrum in Boston," assuming a spectrum ranging from popular to aristocratic. See Hall, 232.

22 Mather, *Brief Account concerning Several of the Agents of New-England, their Negotiation at the Court of England: with Some Remarks on the New Charter Granted to the Colony of Massachusetts, shewing That all things duely Considered, Greater Priviledges than what are therein contained, could not at this Time rationally be expected by the People there* (London, 1691), Narratives of the Insurrections, 1675-1690, ed. Charles M. Andrews, Original Narratives of Early American History, ed. .J. Franklin Jameson (New York: Charles Scribner's Sons, 1915), 276-97. There is also a chronology of the negotiation process in Mather's diaries, which remain largely unpublished. See Increase Mather, *Diary*, Mather Family Papers, boxes 3 and 4, held at the American Antiquarian Society, Manuscript Collections.

23 Mather, *Brief Account*, 291.

their "Charter-Liberties" had been the product of a level of independence unlikely from the new metropolitan regime; the full title of his *Brief Account* ended with the caveat that "Greater Priviledges than what are therein contained, could not at this Time rationally be expected by the People there." As we will see, the provincials were sophisticated enough to realize the unlikelihood of a return to the First Charter; they had many reasons to accept the Second Charter on its own terms, not the least of these was the dire state of the colony's frontier defenses.

The beginnings of the war with France in 1689 coincided with the destabilization of New England government, and there was colonial concern that any new government be broad enough in its mandate to resolve outstanding problems of colonial defense. The French and Indian threat along the Canadian frontier was existential for Massachusetts, and the start of King William's War added significant pressure to the charter negotiations. In their letter of instruction from the colony, the agents had been instructed to "represent matters in relation to defence," in addition to regaining the original charter.[24] To that end, their initial brief for the Board of Trade about a new charter contained a request "that increased power be given for raising militia, pursuing enemies, and erecting fortifications."[25] Samuel Sewall wrote to Mather while the latter was in London, pressing for action that would create a defensible New England. Sewall argued that, because the French did not discriminate along colonial lines in their military

24 C.S.P. Col., vol. 13, 1689-1692, no. 739.

25 Ibid., no. 1276. There were limits to an argument from a position of the better defense of New England. In 1690 the agents, or some of them at least, argued that the appointment of a royal governor would weaken the defensive efforts of the colony by reducing provincial morale. "[I]f their former rights and privileges [including electing their own governors] be withheld from the, I will cause universal dissatisfaction and discouragement amongst the inhabitants. Nor can any thing be thought of that will more endanger their being ruined by the French or other enemies n=ear them, except taking from them their charter rights, as is manifest in that when they enjoyed their charter, they easily subdued their enemies, but since that it has been otherwise." See "Hutchinson Papers," in *Collections of the Massachusetts Historical Society*, ser. 3, vol. 1 (Boston: Charles C. Little and James Brown, reprinted 1896, orig. 1875), 121-22.

operations in the New World, "so if Albany, or Hartford provoke them, they hold it just to fall on Massachusetts, Plimouth, Rode Island or any other English Plantation," there ought to be military, if not a political, union of the New England colonies.

> In time of distress, the Massachusetts are chiefly depended on for help, and are under a necessity of doing their uttermost because whatever Port or Fronteer Town the enemy enters at, his design is to goe thorow the Land, and they are at their Liberty, whether they will doe any thing or no towards defraying the necessary charge we are at in defending the Common Interests of the crown. Upon which account it seems necessary that in the most convenient way as can be procured, these lesser Governments be firmly compacted together in one.[26]

Sewall spoke for the wishes of many provincials in his desire for a military union of the New England colonies. This had been a central justification for the formation of the Dominion, and it seemed to better fit the military exigencies along the New England frontier. The defense of the province was paramount; "Charter-Liberties" were important, but they were difficult to enjoy during a long conflict with the Jesuit enemy and his savage allies.

The need to defend New England from its religious, and mortal, enemies was, then, probably the greatest factor in the ready acceptance of the Second Charter within the colony. King William's War was on in earnest by 1692, and there had been several major attacks on colonists in New York, New Hampshire, and Massachusetts by the time of the Second Charter's arrival. It had been a concern for the agents during the drafting process; in June of 1691 they requested "[t]hat the power of the Militia and Martial Law lie with the Governor and Council, but that inhabitants be not moved outside the Colony

26 Sewall to I. Mather, Dec 29, 1690, in *Letter-Book of Samuel Sewall*, Collections of the Massachusetts Historical Society, Sixth Series, vol. 1 (Boston: Massachusetts Historical Society, 1886), 115.

without the consent of the Assembly."[27] Clearly, the provincials sought strong military leadership in both governor and Council that would nevertheless remain controlled by the will of the people, exercised through the Assembly.[28] Wartime pressures made the new government acceptable, indeed necessary. Connection with England was imperative for the war against France, and by extension the continued existence of the Bay colony. This necessity also helps explain the surprising lack of published contemporary commentary about the document. Outside a thin collection of references in diaries and letters, its arrival made almost no ripples in the record. Much more was published defending the provincials' behavior in arresting Andros and overturning the Dominion in 1689 than the arrival of a fundamentally new form of government in 1692.[29]

Mather's *Brief Account*, the only significant published discussion of the Second Charter, argued that "by this New Charter great Priviledges are granted to the People in New-England, and, in some Particulars, greater than they formerly enjoyed: For all English liberties are restored to them." Their liberties, now secured were their own to keep or to lose.

> As long as their Principal Magistrates, Judges, Justices of the Peace, are such as will encourage Vertue and Piety, and punish Vice, Religion will flourish: And if they have not such, the fault will not be in the New-Charter, but in them-selves; since no bad Councellor, Judge, or Justice of the Peace, can now be imposed on them.

In essence, the seeds of the province's liberties were entrusted to their own husbandry, within the garden walls erected by the crown. The fate of those liberties would remain in

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27 C.S.P. Col., vol. 13, 1689-1692, no. 1574.

28 It should be emphasized here that when this request was made, the agents imagined a Council whose members would have been elected by the people without royal interference. The requirement of Councilor oversight became moot once the Councilors' election was subject to veto of the governor.

29 Of course, defending themselves in these actions was imperative in a way that responding rhetorically to the Second Charter was not.

their own hands until the crown began to push the restrictions of the charter aside in order to pursue more direct methods of control in the second half of the eighteenth century.

In exchange for new royal controls, the province gained, according to Mather, an elective body with institutional authority equal to that of Parliament within England.

> The General Court (now that the Massachusets Colony is made a province) hath, with the King's Approbation, as much Power in New-England as the King and Parliament have in England; which is more than could be said in the time of the former Government there, which had only the Power of a Corporation.[30]

Mather's analysis was more than the defensive rhetoric of an outmaneuvered agent. He argued, rightly, that the Second Charter addressed the uncertain legality of institutional innovations that had arisen under the First Charter, such as the colonial legislature, the General Court. While the Massachusetts Bay Company had been allowed to hold meetings of its members to determine corporate policy, it had never been granted the authority to tax the colony's residents or create courts of law. Mather was right to be concerned. In 1690, Charles Lidget, a former Bostonian now resident in London, wrote homeward, describing the ongoing negotiations to his fellow Bostonians. "Cook & Oakes run hard for the old Charter, Mather & Ashurst for a new." The latter pair "[found] by the former no power for the very necessarys of government, and openly own that no man of Estate or brain will subject himselfe to ye injurys and perrils of giving judgment of any sort by that authority."[31] The legal status of all actions undertaken by a government based on the First Charter, or any judgments in the colonial courts erected by such a government, would have been uncertain and subject to considerable scrutiny from

30 Mather, *Brief Account*, 290.

31 Charles Lidget to Francis Foxcroft, 5 Nov 1690, in *New England Historical and Genealogical Register*, vol. 33 (Boston: David Clapp and Son, 1879), 407. Lidget had been a member of the Artillery Company, while Foxcroft would later become a member of the Council.

the metropolis. The Second Charter resolved those questions by constructing the powers of the General Court on a constitutional foundation.

The document's reception in Boston seems to have been discussed, though publications are few; Samuel Sewall wrote that when, in February of 1692, "a Copy of the New Charter [came] to Mr. Secretaries hand," it generated "much discourse."[32] It was published that year in Boston, and would be reproduced in the published Acts of the General Court from time to time, making its text available for debates over policies both royal and provincial.[33] This stood in contrast to the First Charter, which remained, if accessible to some, unpublished and thus unavailable. This availability was as big a factor in the "constitutionalization" of the Second Charter as any. Provincial legislators, intellectuals, clergymen, and commoners could equally debate its clauses, and through long use over time, those clauses became invested with constitutional authority.

III – Differences between the Charters

The Second Charter was not simply an updated form of the original, First Charter of the Massachusetts Bay Company; rather, it was an entirely different document fitted for entirely different circumstances. In 1629, Massachusetts Bay was nothing more than a joint-stock company in London made up of religious dissenters hoping to make a home in the New World. By 1691, the Bay colony was home to thousands of Englishmen and women, a outpost of empire with often violent frontiers, a maritime economy based on

32 Samuel Sewall, *The Diary of Samuel Sewall, 1674-1729: Volume I, 1674-1708*, M. Halsey Thomas, ed. (New York: Farrar, Straus and Giroux, 1973), 288. There are no published writings by either returning agent in the record. One suspects there was significant oral communication about the negotiating process and the resulting document; without hard sources it is impossible to know the content of such discussions.

33 "The charter granted by Their Majesties King William and Queen Mary, to the inhabitants of the province of the Massachusetts-Bay, in New-England" (Boston: Benjamin Harris, 1692). It was reprinted in published versions of the provincial legislatures Acts and Resolves in 1699, and again in 1714.

trade within and without the empire, a haven for a weakened, but not deceased, non-Anglican orthodoxy, and one of the most important English colonies in the Americas. The two charters reflected these dramatically different circumstances. In the words of George Chalmers,

> He who compares the charter granted in March, 1629, with that which was thus given in October, 1691, must perceive that the first was conferred on a corporation within the realm, for the direction of a distant factory, the last created a provincial system for the government of a subordinate territory.[34]

The First described a corporate structure governing the Bay Company, while the Second provided a constitution for a people notably reluctant to be governed by the crown. "The only charter to play an important part in the history of a royal province was that granted to Massachusetts Bay in 1691," argued Leonard Labaree. The Second Charter was "the nearest approach to the creation of a royal province by means of a single document that we have before the passage of the Quebec Act in 1774."[35] How was this government different from that of the First Charter?

First, and most significantly, the Second Charter created the office of royal governor: a crown-appointed executive officer for the province. The entire process of drafting the Second Charter began with the decision to create a crown-appointed executive at the center of the new government. "[T]he royal resolve," announced in the opening of the drafting of the Second Charter, "on the question of the new Charter of Massachusetts, [was] to send a Governor of his own nomination, and ordering the

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34 "He who compares the charter granted in March, 1629, with that which was thus given in October, 1691, must perceive that the first was conferred on a corporation within the realm, for the direction of a distant factory, the last created a provincial system for the government of a subordinate territory." George Chalmers, *An Introduction to the History of the Revolt of the American Colonies Being a Comprehensive View of Its Origin, Derived from the State Papers Contained in the Public Offices of Great Britain* (Boston: James Munroe and Company, 1845), 232.

35 Leonard Labaree, *Royal Government in America: A Study of the British Colonial System Before 1783* (New York: F. Ungar Publishing Co., 1958), 7-8.

preparation of a Charter on that foundation."[36] This governor was vested with military powers enabling him to protect the vulnerable frontiers of New England. Further, the Second Charter conferred on the governor political powers befitting a royal official. He possessed an electoral veto over membership on the Council, and a legislative veto over acts passed through the General Court. The Second Charter transformed the office of governor from one of administration to one of execution. Whereas, for example, the First Charter's governors, according to Thomas Hutchinson, one of Massachusetts' earliest historians, "gave commissions to civil and military officers" as "meerly a ministerial act, in which nothing was left to his discretion, all officers being elected by the general court," the newly chartered governor possessed real authority.

> [The Second Charter] governor calls an assembly at any other times he thinks proper, and adjourns, prorogues and dissolves at pleasure. He has no vote in the legislature, and does not, or regularly should not, interest himself in matters in debate, in council, or in the house; but no act of government is valid without his consent. He has the appointment of all military officers, solely, and of all officers belonging to the courts of justice, with the consent of the council; other civil officers are elected by the two houses, and he has his negative; no money can issue out of the treasury but by his warrant, with the advice and consent of the council.[37]

Hutchinson's vision of a transformed executive, strengthened by virtue of clear exposition of its powers, represented the royal view of the governor's role in the province. The office, in reality, grew to be controlled indirectly by restriction of his salary, which was, under the Second Charter, in the hands of the General Court. The executive would be less Colossus and more Gulliver, occasionally hamstrung by obstructive actions taken by the Assembly.

In addition to an invigorated executive, the Second Charter formalized the

36 C.S.P. Col., vol. 13, 1689-1692, no. 1440.
37 Ibid.

General Court, the legislative body of the province, empowered to pass laws as well as fund the operations of the provincial government. The General Court consisted of two houses. The Governor's Council, a body that actually occupied two roles in the government: one executive, as a board to advise the governor, and the other legislative, as the upper house of the General Court. The other house of the General Court was the Assembly, also called the House of Representatives, made up of representatives of the provincial towns. The Council was a focus of early consideration in the drafting process, for both the provincial agents and the crown. In June, Mather and Ashurst moved preemptively against giving the governor control over the membership of the Council. The agents requested that Councilor "be elected by the freeholders and freemen and that the Governor have no vote in such elections." "If in London," the agents argued, relating provincial circumstances to a more local perspective, "the Aldermen were chosen by a Common Council subject to the Lord Mayor's vote, their charter would be no charter; and we are sure that such provision would be very grievous to Massachussetts."[38] The Council was of no less import to the metropolis; four of the ten minutes of the Board of Trade on the first draft involved the Council.[39] Because the governor controlled access to the Council, it was expected to act as an extension of the royal will. As will be seen, it was eventually transformed into a tool to further the provincial will. The powers of the Council, like the rest of the Second Charter, could serve cross purposes.

The House of Representatives acted much like the body later created by the Constitution of 1787. While its members represented towns rather than citizens, its

38 Ibid., no. 1574.

39 "(3) That there be a General Court or Assembly chosen by the freeholders. (4) That the Assistants or Council be chosen by the General Court. (5) That the General Court meet once a year or oftener, as convened by the Governor. (6) That the Governor with the advice of the Council choose the judges, sheriffs and justices of the peace." Ibid., 1606.

functions were more alike those of the lower house of Congress than not. Money bills were expected to originate in the House of Representatives. Legislation passed through that house required the concurrence of the Council. The governor was given little control over the House of Representatives. He could veto the election of a Speaker of the House, though not without a fight, as will be demonstrated below. In reality, the Assembly had more control over the governor than he had over it. Because the salary of the governor was in the hands of the Assembly, any opposition to the House of Representatives' will could – and sometimes did – result in a tightening of the provincial purse strings.

In addition to changes in the colonial political structure, the Second Charter provided additional layers of royal control over provincial actions both legislative and judicial. The first was the reservation of a royal disallowance over provincial laws. The royal disallowance was a relatively new power, first asserted over other colonial legislatures in the middle of the seventeenth century. It now became an important layer of royal oversight for the Bay colony. The royal disallowance appeared in the draft charter by May of 1691, and, though its details would be negotiated between and along imperial and provincial chains of command, it would not be done away with. The crown would busily disallow a wide array of laws passed by the provincial legislature in a systematic attempt to make colonial administration less incompatible with metropolitan. The laws disallowed tended to fall into three broad categories, those dealing with rights and privileges (estate, court-creation laws, etc.), legal entities (townships and incorporations, for example), or matters of trade (tonnage duties and other levies of taxation on trade). As one might have expected, disallowances tended to cluster in the early years of the Second Charter government, as provincial law makers struggled to

negotiate the new, transatlantic connections between metropolis and periphery.

Of course, the Second Charter dealt also with legal issues. It gave the General Court the power to erect a court system, replacing a legal system that had evolved without explicit authority under the First Charter then been replaced with the innovations of Andros and the Dominion of New England. This had the benefit of legitimizing the legal system and its verdicts. The courts thus created were to decide all cases, while a court of the governor-in-Council would perform "Probate of wills and Grants of Administration."[40] Further, the crown "judge[d] it necessary that all our Subjects should have liberty to Appeale to us our heires and Successors in Cases that may deserve the same."

> Wee doe by these presents Ordaine that incase either party shall not rest satisfied with the Judgement or Sentence of any Judicatories or Courts within our said province or Territory, in any Personall Accon wherein the matter in difference doth exceed the value of three hundred Pounds Sterling, that then he or they may appeale to us, Our heires and Successors, in our or their Privy Councill.[41]

The right of appeal to the crown for provincial litigants theoretically provided the provincials and the English who engaged in dealings with them fair and predictable treatment under law, provided the sum at issue was in excess of £300. Appeals, in fact, were rarely sought in the provincial period, as a subsequent chapter illustrates.

The final clause in the Second Charter, a royal reservation of all pines of suitable diameter to become masts for the Royal Navy may have seemed like an afterthought. However, this clause became the source of much conflict in the New English woods

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40 The provincial courts were given jurisdiction over cases "whether the same be Criminall or Civill and whether the said Crimes be Capitall or not Capitall and whether the said Pleas be Reall personall or mixt and for the awarding and makeing out of Execution thereupon," covering all legal matters aside from probate. See Thorpe, vol. 3, 1881.

41 Ibid., 1881-82.

throughout the provincial period. Resistance to the reservation clause took many forms, both overt and covert. Poaching, destruction of royal pines already harvested, and a refusal to convict those accused of either crime were standard methods of provincial resistance to the control of mast pines.[42] Further, the colonists advanced an interpretation of the text of the Second Charter that claimed that the grants to their own titles included in the document invalidated royal claims to mast pines. Elisha Cooke, Jr. would eventually claim that because the private holdings of the Gorges claims – the vast majority of colonial Maine – had been privately granted to the Bay colony, were also exempt from the reservation clause. Even in this seemingly innocuous cause could the provincials "appreciate how to roll with their opponent's blow and thus turn its force to their own advantage."[43]

Issues that one might have expected to cause major controversy within the province turned out to be much less potent. For example, the Second Charter gave all with a "Freehold in Land…to the value of Forty Shillings" per year the right to vote, whereas the First Charter government had granted that right to members "in full communion" with the Puritan church.[44] In the Puritan commonwealth, one might expect this shift of power from saints to strangers to meet with rhetorical hostility if not outright resistance. Yet none of the major published broadsides about potential new governments written in the wake of the overthrow of the Dominion attempt to make a case for

42 New England buildings that survive from the early eighteenth century, especially in New Hampshire and southern Maine, featuring wide plank floors stand as testament to the silent rebellion of colonists against the reservation clause.

43 Johnson, 325.

44 Francis Newton Thorpe, ed., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, vol. 3 (Washington, D.C.: Government Printing Office, 1906), 1878.

retaining the restricted franchise of the First Charter.[45]

For Puritans and historians alike, a central focus of this period was the arrival of tolerance in the text of the Second Charter. Toleration has been an issue much studied, and little more needs to be said about it, except to state that this dissertation will not treat with this issue in any considerable manner. Not only has much ink been spilled on its account, the structural changes of the Second Charter remain, to my mind, the more significant. Religious and cultural distance from England had indeed granted the provincials their character as saints in the wilderness, and this character did much to affect later developments in those spheres. But the immediate effects of toleration in provincial politics and along imperial lines – mainly visible in the economic rise of the colony and its 'mercantilization' – seems to be traceable to a longer-term shift in religious thought than to the arrival of the Second Charter's toleration clause.[46] Of course, toleration, like the Second Charter itself, could pull more than one direction. New Englanders attempted quickly to assert that their own Congregationalism needed to be "tolerated" by the Anglican imperial administration as much as those few New English Baptists and Quakers needed to be shown the tolerance of the Puritan province.[47] Though this attempt failed, the position that the New England Way be tolerated within the empire remained a strain of New England religious thought.

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45 Richard C. Simmons, "The Massachusetts Revolution of 1689: Three Early American Political Broadsides," *Journal of American Studies*, Vol. 2, No. 1 (Apr., 1968), 5. Simmons argues that this electoral policy "reflected the opinions of the towns," and therefore won the Second Charter provincial acceptance.

46 There are many historians that can shed better light on the shifting religious developments in Massachusetts. One must naturally start with Perry Miller, though one might go as far back as Cotton Mather's *Magnalia*. The more modern contributions from men like Michael G. Hall, E. Brooks Holifield, Bernard Bailyn, or Kenneth Murdock have added much to a field that Miller's thesis advisor felt had been thoroughly plowed by the 1930s.

47 In the first General Court of the Second Charter period, the body passed a law that maintained the death penalty for those not suitably of the New England faith. The law was disallowed. See Perry Miller, *The New England Mind: From Colony to province* (Cambridge, Massachusetts: Harvard University Press, 1962, orig. 1953), 174.

The division between those opposed to the Second Charter government root and branch, and those willing to work within its structures, far from reifying, was transient. Within a handful of years, those initially opposed to the Charter government were using the text of the document as a shield in order to thwart the government it had created. While the prerogative powers of the governor, as well as the grant of a royal disallowance over provincial legislation, restricted some of the liberties that had grown up in the wilderness, the structures of the Second Charter could also be used to defend the colony from arbitrary treatment from the metropolis.

The Second Charter became a constitutional document. "Indeed," wrote Everett Kimball, "the colonial politicians, accepting the charter *as their constitution*, found in the frame of government which it established methods of thwarting the will of England which were nearly as effective and far safer than those which were tried under the old charter [emphasis added]."[48] In the words of Herbert Spencer, the Second Charter – "the fundamental law of the province" – became a tool of provincial defense.

> The charter in action was the fundamental law of the province, to which every statute must conform or suffer disallowance from home. But superiority was claimed for it not only over colonial acts of government, but over imperial as well. Even a governor's instruction, however late or peremptory in terms, was understood to have no power to compel the provincial governmental bodies, so long as they could base themselves on a charter provision to the contrary.[49]

For provincials, the realization that the charter could protect as well as oppress would come quickly. However, its use was not limited to provincials opposed to the crown.

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48 Everett Kimball, *The Public Life of Joseph Dudley: A Study of the Colonial Policy of the Stuarts in New England, 1660-1715,* Vol. XV Harvard Historical Studies (New York: Longmans, Green, and Co., 1911), 78-79.

49 Henry Russell Spencer, *Constitutional Conflict in Provincial Massachusetts: A Study of Some Phases of the Opposition Between the Massachusetts Governor and General Court in the Early Eighteenth Century* (Columbus, OH: Press of Fred J. Heer, 1905), 19.

Governors, too, could advance interpretations of the Second Charter to justify their actions. Thus, provincials both opposed and allied with the crown understood the Second Charter as being constitutional in nature, and therefore available for contesting authority.

IV – Historiography

If Mather's *Brief Account* represented the beginning of the historiography of the Second Charter, Thomas Hutchinson wrote the next volume in the 1750s. Hutchinson was himself a member of the Council at the time of writing, and would later be a governor of the province. His *History of Massachusetts Bay* addressed the change in constitution of the colony from his own perspective as a provincial official. His focus was mainly on the transformation of the colonial Council of Assistants to the provincial Governor's Council, but he also discussed the changes in the powers of the governor. That official's power had been merely that of one of the Assistants, albeit in possession of a double voice in that body. "[H]is share in the administration was little more than that of any one of the assistants. … He voted with the assistants, and if there was an equal vote, his vote was twice counted to make a casting vote." This was in essence no executive at all, and of course this system had grown from the Puritan emigrants' desire to remain independent of the fallen government of England. What Hutchinson saw as an office that merely "carried great porte"[50] was not a flaw, but rather precisely the design of the freemen of the Bay Colony.

Hutchinson and Mather, then, saw the central changes in the constitution as the foundation of the General Court upon a legal base, and the increase and centralization of

50 Thomas Hutchinson, *The History of the Colony and province of Massachusetts-Bay, from the Charter of King William and Queen Mary, in 1691, until the Year 1750.* vol. 2. ed. Lawrence Shaw Mayo (Cambridge, MA: Harvard University Press, 1936), 6.

executive power in the hands of the governor. Just as Hutchinson and Mather had specific, contemporary interests in controlling the narrative of the Second Charter, subsequent historians have presented their own images of the document. Each has necessarily placed the Second Charter into a context specific to their individual studies. Looking at each provides an opportunity to see the ways in which the Charter has been understood historiographically, though it has yet to be adequately studied in its own terms.

Of the nineteenth century historians, who put years of effort into producing large-scale histories of their then-young nation, I have chosen two representative examples. Writing from a Tory perspective was George Chalmers, whose *Introduction to the History of the Revolt of the American Colonies* was published in 1845. Chalmers was unable to hide his contempt for the process of drafting the Second Charter, judging that "[n]othing could be more degrading than the long struggle between William and the agents, the one to retain, the others to extort, the greatest possible power." For Chalmers, the imperial decision to administer the colonies through the vehicle of charter governments seemed inexplicable. "All preceding kings and ministers had disapproved of conferring charters," he wrote, "yet continued to grant them."[51] Granting the province a solid foundation of expressed rights and duties was counterproductive; assuring rights and privileges without a real extension of royal authority into the province assured only that "the same persons continued in power, pristine customs remained, and, what was of still greater influence, the ancient habits of an unmixt people still continued their pursuits."[52]

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51 Chalmers, *An Introduction, vol. 1*, 232.
52 Ibid., 235.

Writing from a more Whiggish perspective, George Bancroft focused on the effect of the frontier on the transformation of English colonists into Americans. Bancroft described the problem of the Second Charter as the inclusion of too much frontier: "the fatal gift of a wilderness – for whose conquest and defense Massachusetts expended more treasure and lost more of her sons, than all the English continental colonies beside."[53] It was an apt analysis, though this over-extension of colonial borders made New England more tightly grip England, accept the Second Charter without complaint, and therefore provide the conditions for the American Revolution to come later.

Charles M. Andrews, whose *Colonial Period* was a foundational text of the imperial school of the colonial era written from a perspective "not from within" the colonies, "but from without,"[54] remarked at the turn of the previous century that

> [n]o adequate study has yet been made of the origin and transmission of power within each colony, of the organization and authority of the executive, legislative, and judicial departments, or the character of administration and local institutions, during the colonial period.[55]

While he single-handedly opened much of this period to subsequent scholars – his work remains indispensable into the twenty-first century – Andrews' description remains in some senses apt at the beginning of a new century. The scholarship accumulated through the diligent work of Atlantic historians in recent decades has helped fulfill his hopes for a fuller understanding of the imperial system, but his desire for study of "the organization…of administration" remains unsatisfied.

Subsequent historians have come to address the organization and administration

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53 George Bancroft, *History of the United States of America, From the Discovery of the Continent, vol. 2* (New York: D. Appleton, and Company, 1895), 56.

54 Charles M. Andrews, *The Colonial Period of American History, I: The Settlements*, 4 vols., vol. 1 (New Haven, CT: Yale University Press, 1964), xiii.

55 Charles M. Andrews, *Some Neglected Aspects of Colonial History: An Address Delivered before the New Jersey Historical Society, May 12, 1900* (Paterson, NJ: The Press Printing and Publishing Company, 1906), 10.

of the colonies, and many have focused on Massachusetts. While this focus has sometimes reflected John M. Murrin's complaint that historians have looked to the early eighteenth century to find the origins of the American Revolution and ignore the rest, many historians have examined the period on its own merits. These include Everett Kimball, John Murrin, Jack Sosin, Michael G. Hall, Richard Johnson, Bernard Bailyn, Philip Haffenden, Bruce Tucker, and G. B. Warden.[56] Each contributes to our understanding of the ways that life – religious, political, family, or community – was lived in the New England of the early eighteenth century.

One division amongst these historians is centered on the question of whether Massachusetts Bay became more or less English as the century unfolded. Murrin's Anglicanization thesis, emerging in his dissertation, completed in 1966, argued that the colony became more English under the Second Charter rather than less. Johnson and Haffenden agree with Murrin in this analysis; though their foci are different, their judgments parallel Murrin's. On the other side are scholars like Sosin and Warden, who emphasize the differences, the New-Englishisms that developed, whether out of necessity, due to lax and contradictory imperial administration, or out of cultural differences. This division is hardly Manichean; nor is it particularly deep. All these historians find themselves more in agreement than disagreement. In my own analysis, I

56 Kimball, *Public Life of Joseph Dudley*; Murrin, *Anglicizing an American Colony*; Jack Sosin, *Imperial Inconstancy* (Hall, *The Last American Puritan*, and Hall, Lawrence H. Leder, and Michael G. Kammen, eds., *The Glorious Revolution in America*, Documentary Problems in Early American History (Chapel Hill, NC: The University of North Carolina Press, for the Institute of Early American History and Culture at Williamsburg, Virginia, 1964); Johnson, *Adjustment to Empire*; Bernard Bailyn, *The Ordeal of Thomas Hutchinson* (Cambridge, MA: The Belknap Press of Harvard University Press, 1974), and others; Philip S. Haffenden, "Colonial Appointments and Patronage under the Duke of Newcastle, 1724-1739," *The English Historical Review* 78, no. 308 (1963), and *New England in the English Nation, 1689-1713* (Oxford: Clarendon Press, 1974); Bruce Tucker, "The Reinvention of New England, 1691-1770," *The New England Quarterly* 59, no. 3 (1986); G. B. Warden, *Boston, 1689 - 1776* (Boston: Little, Brown and Company, 1970), and "The Caucus and Democracy in Colonial Boston," *The New England Quarterly* 43, no. 1 (1970).

do not believe the imposition of Second Charter Anglicized the colonists and their political systems, nor did resistance to it 'Americanize' them. Though the Council-and-Assembly structure bore outward resemblance to the Lords-and-Commons structure of Parliament, the General Court was in fact uniquely New-English. In Massachusetts its reflection of the House of Lords (Council) was elected by its shadow of the House of Commons (Assembly), while its royal executive (governor) had an absolute veto over legislation. That said, the Second Charter did bring the province into close proximity to the English political system, and the interaction of the two resulted in a real accommodation with the crown in a province previously removed from royal control. The dispatch of agents and the frequent petitions to the imperial bureaucracy demonstrated the provincials' newfound respect for English political workings.

Slung between the mountains of scholarship of the Puritan founding and the Revolutionary period, the alpine valley of the early eighteenth century remains the flyover country of early American history. While none of the English colonies in America has received the scholarly attention given Massachusetts, this particular period within that colony remains, relatively speaking, understudied. This dissertation attempts to occupy this territory, and to describe the ways the Second Charter was used as a tool by both royal and provincial hands to achieve their ends.

V – Structure of the Argument

This dissertation will attempt to demonstrate that the provincials and metropolitans viewed the Second Charter as a constitution, and contested its text to further their own ends within its parameters, until the volatile period following the Seven

Years' War. It begins with the most important element of the Second Charter to the provincials themselves: the role of the royal governor in defending the frontiers. The second chapter analyzes the office in more political terms, taking up the interactions between governor and General Court, by analyzing several major struggles of interpretation of the Second Charter: the salary question, the issue of succession when governors' commissions expire, and the extent of executive control over elections in the new administration. The third chapter deals with the crown's power over colonial legislation: the royal disallowance. There was considerable debate about the limits of such a power, and it was discussed both by provincials and those in the imperial bureaucracy. Next, we come to an analysis of the legal authority given the crown, namely, the hearing of legal appeals from the provincial courts. This power, seemingly strictly limited by the text of the Second Charter, generated controversy about the intent of the crown as compared with the text of the Charter itself. Finally, the last chapter illuminates one of the recurrent problems arising from the text of the Second Charter, the reservation of mast pines for the crown. This clause caused no end of problems, stymieing both colonial administrations and the royal will, as provincials attempted to use the text of the Charter as a shield, in spite of the reservation clause's presumed clarity. This chapter-by-chapter focus on specific chartered powers enables us to reveal the felicity with which the provincials could illustrate their sophisticated political and interpretative skills, as well as the changing interpretations of the document's clauses on both sides of the Atlantic.

1
COMMANDER IN CHIEF

> *And* Wee doe by these presents for us Our Heires and Successors Grant Establish and Ordaine that the Governor of our said province or Territory for the time being shall have full Power by himselfe or by any Cheif Comander or other Officer or Officers to be appointed by him from time to time to traine instruct Exercise and Governe the Militia there and for the speciall Defence and Safety of Our said province or Territory, and alsoe... to Erect Forts and to fortifie any... Places within Our said province or Territory.[57]

The office of the royal governor was tested in the fire of frontier warfare. Geography determined that the wrath of the natives – primarily the Wabanaki – as well as that of the French, must fall on New England, and mainly Massachusetts Bay. The nature of life on the frontier demanded security first and foremost; even if human suffering was not foremost in the metropolitan mind, economic activity could be crippled when the province was under attack or even threat of attack. Success on the frontier would generally bode well for a sitting governor; it could insulate him from criticism by both metropolitan and provincial interests. Failure would mean disfavor from both sides, and perhaps a shortened term. Royal governors often met their fates in the arena of activity circumscribed by the instructions of the metropolis, the actions of the French and Indians, and the will of the provincials. When the Second Charter arrived in Massachusetts Bay in 1692, the province was already several years into what after the Glorious Revolution became known as King William's War, which, fought during a period of revolving leadership, nearly drove the province to its knees. Within the first two decades of Second

57 Thorpe, vol. 3, 1877-78.

Charter governance, two major wars were fought along the considerable frontier of New England, the costs of which – both fiscal and human – were primarily born by the Bay colonists. King William's and Queen Anne's Wars demonstrated the necessity of a central military authority. The Second Charter governor served, first, and above all, as a frontier commander.

The Second Charter presented the royal governors a wider array of powers than their Puritan predecessors had controlled. The changes were somewhat less significant between the Dominion government and that of the Second Charter than those from First Charter to Dominion – that is, from one form of royal government to another – but they were nonetheless important. Under the First Charter, the military authority of the province was not lodged in the person of the governor, but was spread over offices both real and hypothetical.

> [I]t shall and maie be lawfull, to and for the Chiefe Comaunders, Governors, and officers of the said Company for the Time being, who shalbe resident in the said Parte of Newe England in America, by these Presents graunted, and others there inhabiting by their Appointment and Direccon, from Tyme to Tyme, and at all Tymes hereafter for their speciall Defence and Safety.[58]

The First Charter governor was not an office primarily focused on military affairs. If the commercial empire's creation came from a militarization of the colonial hierarchy, the government of Massachusetts Bay would have to be the exception rather than the rule.[59] These First Charter governors were elected annually, a reality which provided the office with a more limited military authority, but more tightly bound the freemen of the colony

58 Thorpe, vol 3, 1858.

59 For the militarization thesis, see Stephen Saunders Webb, *The Governors-General: The English Army and the Definition of the Empire, 1569-1681* (Chapel Hill, NC: University of North Carolina Press, 1979). Webb further developed his thesis in *Lord Churchill's Coup: The Anglo-American Empire and the Glorious Revolution Reconsidered* (Syracuse, NY: Syracuse University Press, 1998). Webb's thesis has been received skeptically, and with some reason; I cite it not to express agreement with his conclusions, but rather to compare the First Charter governors to other contemporary officials.

to their government, even, if not especially, in times of war. Operational control would tend to be exercised by the governors under the First Charter, but that was by tradition and necessity rather than by any grants of power in the text of the charter. The survival of the colony was threatened at several points earlier in the seventeenth century – the Pequot War, and King Philip's War, to name the two foremost examples – and governors played an important role in its successful defense.

It was the Dominion of New England, however, imposed on the region in 1686, that created, largely *ex nihilo*, the position of commander-in-chief. While the chronology of the Dominion's development was dictated by metropolitan factors, it could not have arrived at a better time for the king's subjects in the region. King William's War, started under Andros, but destined to be named for his king's successor, began in 1688, and the comparatively powerful Dominion Governor had the authority to govern New England as a military garrison. Andros' Commission, granted in 1686, provided him with a significant degree of power over military affairs.

> And We do Hereby give and grant unto you, the said Sir Edmund Andros, by yourself, your Captains and Commanders by you to be authorised, full power and authority to levy, arm, muster, command, or employ all persons whatsoever, residing within our said territory and dominion of New England, and as occasion shall serve them, to transfer from one place to another, for the resisting and withstanding all enemies, pirates and rebels, both at land and sea, and to transfer such forces to any of our plantations in America, as occasion shall require, for the defence of the same, against the invasion or attempts of any of our enemies, and them, if occasion shall require, to pursue and prosecute, in or out of the limits of our said territory and plantations, or any of them.[60]

This extensive grant of power made the Dominion Governor a figure of considerable authority in English America. The power to mobilize "all persons whatsoever" and send

60 Commission of Sir Edmund Andros, 3 June 1686, in *Records of the Colony of Rhode Island and Providence Plantations*, vol. 3 (Providence: Knowles, Anthony, & Co., State Printers, 1858), 215.

them wherever necessary within the English realm was far from insignificant. Andros would need such power to defend New England, once embroiled in war with the Wabanaki.[61]

The Second Charter in turn followed the precedent of the Dominion by putting military power in the hands of the governor only, expanding on the First Charter by defining that power in detail in the text of the charter. In addition, establishing a strong military office helped win the population over to the Second Charter government. The steep ascent from the loosely described powers of the First Charter to the clearly defined powers authorized by Andros' commission made the transition to the Second Charter system appear something of a realignment towards First Charter liberties.[62] The military authority of Massachusetts governors under the Second Charter was greater than that of governors under the First Charter, yet less than that of the Dominion. The Second Charter governors, in their role as commander-in-chief, would need to employ those military powers in defense of the province, in offensive operations against the Indians and French, and in a more passive role as one link in the imperial chain.

The military aspects of Massachusetts' government would have been uppermost in the new King William's mind as he considered New England's fate under his new

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61 There seems to be a long-evolving debate over the proper rendering of tribal names in New England. Most sources from before the 1980s used the spelling "Abenaki." Richard Johnson, in his 1981 work *Adjustment to Empire* used "Abnaki." Beginning in the 1980s, the terminology shifted towards referring to the collected natives of the northeast as "Wabanaki." For the outlines of this debate, see Bruce J. Bourque, "Ethnicity on the Maritime Peninsula, 1600-1759," *Ethnohistory* 36 (Summer 1989), 257-84. Herein I use "Wabanaki" to refer to the broader 'family' of Indians residing in the northeastern New England region, though particular 'branches' of that 'family,' when specified in the record, are given names based on the waterways along which they tend to inhabit, as in the sources, for example the Saco.

62 But never to quite *reach* those liberties, at least in the minds of some provincials. The long struggle – some of which is outlined in subsequent chapters – between the Second Charter governors and the group referred to by early historians as "the popular faction" was begun under the leadership of men like Elisha Cooke, Sr., and largely predicated on the latter's refusal to accept the legitimacy of the Second Charter. See especially the conflict over the governor's power over the General Court, in chapter 2, below. Once begun, the conflict, as constitutional debates often do, took on a life of its own.

administration. His reign brought England into his conflict with France, putting New England on the front line of that global struggle for power. Thus, the Second Charter centered the province's military power in the hand of the governor: "the Governor of our said province or Territory for the time being shall have full Power by himselfe or by any Cheif Comander or other Officer or Officers to be appointed by him."[63] It empowered him to take control of an existing institution, the colonial militia ("local trainbands," in Andrew's phrase) in order to use it for provincial defense.[64] In addition, he could "assemble in Martiall Array and put in Warlike posture the Inhabitants of Our said province or Territory and to lead and Conduct them" for the active defense of the province and pursuit of its enemies.[65] These "marching parties," in the quoted phrase, would become the mobile centerpiece of successful provincial defense policy in future administrations. The Second Charter did restrict the extensive power of Andros to order Massachusetts men anywhere he felt necessary, by allowing the marching of forces outside the province only with the consent of the General Court. Still, the new office of royal governor possessed real power on the English American frontier. William III, when he offered the Massachusetts agents the honor of nominating a candidate to be the first governor, required only that he be "a Military Man," reflecting the royal view of New England as bulwark against French encroachment in northern America.[66]

This aggrandizement of royal power in the province might have been met with

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63 Thorpe, vol. 3, 1884.

64 The naming of militia officers became a valuable piece of executive patronage as well, and one unhindered by financial realities, as militia officers occupied unpaid positions. See Murrin, 67.

65 Thorpe, vol. 3, 1884.

66 The phrase comes from Mather's unpublished diary, in the collections of the American Antiquarian Society, and is quoted in Richard Johnson's *Adjustment to Empire: The New England Colonies, 1675-1715* (Camden, NJ: Rutgers University Press, 1981), 228. This requirement is also mentioned in Michael G. Hall, *The Last American Puritan: The Life of Increase Mather* (Middletown, CT: Wesleyan University Press, 1988), 250.

considerable resistance, especially when coupled with the other portions of that document. However, the arrival of the Second Charter in the early months of 1692 in fact appears to have come as something of a relief. The new Second Charter government gave the appearance at least of a capability to deal with the nest of difficulties the province was facing. The military portfolio of the royal governor at least gave the provincials hope that they might survive on a frontier peopled by enemies both sectarian and ethnic, in the midst of an active war. The significance of the defensive crisis of the 1690s cannot be overstated. The province was on the brink of disaster, after the total collapse of the minimal frontier defenses and multiple attacks on frontier towns throughout the province. Because the provincials, like all people, valued their survival above other considerations, acceptance of the Second Charter was widespread, with little if any grumbling.[67]

Conflicts arose over the military powers it granted the royal governor, as with most of the clauses of the Second Charter. In some cases, that conflict ran in both directions relative to the royal governor. He faced pressure from above, as the crown pressed him either to impose the royal, or to resist the provincial, will. He also faced pressure from below, as the provincials pressed against the governor and the royal will. Between these two poles was the governor, who might at one moment be attempting to filter, dilute, or maneuver around the will of the crown (as delivered in commissions, instructions, letters, and the text of the Second Charter itself), and the next trying to slip the restrictions placed on him by the provincials (in the form of the power of the purse, and the unique authorities of the Massachusetts General Assembly). This negotiation

67 Although it must be said that there was remarkably little written publicly about the Second Charter.

sometimes appeared triangular. All three parties – governor, crown, and province – contested the limits of charter powers, as well as the wisdom of strategy and tactics, creating a negotiated provincial defense that was moderately successful, after initial trials, at limiting the destructive effects of frontier warfare. The results of this triangular negotiation might not have wholly satisfied any one of the three parties, but in general served the interests of all.

There was a parallel negotiation of authority on the frontier, running through the colonial period but which exerted especial force in the transitional period between the charters: the endemic struggle with the Indians of the New England wilderness, and the more episodic conflicts with the French of Canada. While the provincial governors were sometimes pinned between crown and colonist, the entire colonial enterprise was subject to the whims of the natives, as well as the proximity of the English imperial foe in the north, occasionally puppet master of the natives in the great imperial struggle.[68] Peace with provincial native neighbors was both more desirable and less expensive than military action. That sensitive issue was left to be sorted out through the negotiations between legislature and executive, province and crown. Therefore, the province's defensive strategy was the middle ground between these two machineries of interest. On one side was the multifaceted struggle within the province, with executive, provincial, and metropolitan interests leveraging Second Charter powers, provincial limitations, and

68 While the provincials themselves, and their counterparts in England, tended to see all Indian actions in New England as the pointed spear of the French, the reality was more complicated. The Wabanaki were perfectly content to fend for their own interests in New England, and their ties to the French, especially before 1690 or so, are generally exaggerated. While the French became Wabanaki allies during King William's War and into the eighteenth century, even then the Wabanaki tended to operate as free agents in their choice of targets and opportunity. French arms and assistance notwithstanding, King William's War was not merely the North American theater of the War of the League of Augsburg. See Jenny Hale Pulsipher, "'Dark Cloud Rising from the East': Indian Sovereignty and the Coming of King William's War," *New England Quarterly*, vol. 80, no., 4 (Dec. 2007), 588-613.

royal desires against one another. On the other, the tangle at the intersection of royal, provincial, and native will. Treaty-making and trade-negotiating – areas under the governor's purview – were the central methods for maintaining the occasional and fragile periods of peace on the New England frontier.

In the internal debate between English and New English, each side's pursuit of its best interests combined to delineate a compromise strategy, sketched on the provincial map as by an invisible hand. The outline of that strategy, which evolved under the tenure of Governor Joseph Dudley and was perfected under the term of Governor William Shirley, was simple, but by no means easy to implement. First, governors, through an on-paper-if-imperfect monopoly the authority to treat and trade with the Indians of New England, tried to avoid conflict whenever possible. The military strategy, in those periods of warfare that erupted, combined an active defense made up of mobile forces ("marching parties") that provided both a forward defensive line and limited reconnaissance by patrolling the invasion routes of the enemy, with a stable line of last-ditch militia ("local trainbands") making up a backstop in the event of the failure of marching forces.[69] Later, this two-layered military system would be supplemented by an additional wrinkle, under the leadership of Shirley: a line of western fortifications – semi-permanent, larger versions of the garrison houses of the northeastern towns – that provided a partial line of "walls," helping relieve the Connecticut Valley towns of their

69 An additional layer of defense, though one of dubious efficacy, was the promise to pay bounties to "to such as shall voluntarily go forth in greater or lesser parties, in the discovery and pursuit of the common enemy, that they be paid out of the publick treasury, for every Indian, great or small, which they shall kill, or take and bring in prisoner, the sum of fifty pounds per head; and shall likewise have and keep to their own use all plunder by them taken from the enemy." See "An Act for Encouraging the Prosecution of the Indian Enemy and Rebels, and Preserving such as are Friends," *Acts and Resolves of the province of Massachusetts Bay*, vol. 1, 1691-1714 (Boston: Wright and Potter, 1869), 175-76.

burdens of defending the vulnerable routes of Indian and French invasion.[70]

This chapter will deal with this interlocking series of negotiations, confronting each in turn. First is a discussion of the limitations on the chartered military authority of the royal governors over neighboring provinces, next, a look at the problem of fortifications, demanded by the crown but resisted by provincials, and sometimes their governors, and finally a glimpse into the debate over provincial defensive strategies. However, the negotiations between New English and native are no less significant, and they were contested as well. To ignore the struggle to treat and trade for peace with the Indians, or the meta-struggle over control over Indian relations, is to miss as important a part of the terrain of frontier New England as the military conflicts themselves. As with military strategy and fortifications, the governor's control over Indian relations was contested. Because it was unchartered territory, in a political sense, it gives an interesting contrast with conflicts over other, chartered powers. In order to explore more fully the frontier that in important ways governed the governors of Massachusetts Bay, the chapter will close with a study of that multi-layered contest over relations between natives and New Englanders.

I – Military Authority of the Governor

Early in the Second Charter period, the threat of Indian conflict was ever-present. From 1688 until 1715, the New England frontier was aflame with almost constant warfare. Although this long war bridged two Euro-centric conflicts – the Wars of the League of Augsburg and Spanish Succession, respectively – it was not so neatly

70 For information, especially archeological, relating to Shirley's western forts, see Michael D. Coe, *The Line of Forts: Historical Archeology on the Colonial Frontier of Massachusetts* (Hanover, NH: University Press of New England, 2006).

segmented within New England. Instead, the experience of this long war initially broke the province, until, under competent military leadership, she recovered her previous strength. During this conflict, the crown, the governor, and the provincials negotiated the defensive arrangements that sustained the province until the Seven Years' War.

Because there was insufficient manpower for the fielding of an army of any size, the colonists had become accustomed to using local militia companies for their ad hoc defensive needs. Since the early years of the Puritan experiment in Massachusetts Bay, most communities had local militia units, which trained occasionally during the year. These local militia units, however, could not be relied upon to serve on campaign, forming as they did the backbone of their local communities. The limits on the militia's ability to deal with the enemy were not related to expense, but rather to more human concerns. John Murrin noted that militia units that had successfully defended Haverhill and Andover from attack in 1698 stopped pursuit of the enemy in order not to leave their towns undefended. "Even the hardiest frontiersman resented an arrangement which assumed that he would defend the province with his family as a shield."[71] Instead, the frontier towns tended to empty in the face of the enemy advancement in the first decade of the Indian war. The sensible solution to the limits of manpower and willpower was to enlist temporary marching parties combined with a backstop defense of the local trainbands.[72]

The flaw with marching parties lay in the fact that they had to be supported by the provincial government, while militia units did not. This meant that one had to deploy

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71 Murrin, 72, 69.

72 For more on the distinctions between militia and marching forces, see ibid., especially pp. 60-64. In addition, Murrin notes that a 1695 law punished frontiersmen who fled their towns in the face of impending attack. Licenses were required to leave listed frontier towns. How well enforced the law was remains unknown. See ibid., 69.

those forces with some forbearance, relying heavily on intelligence, either from travelers through the frontier, or from neighboring governments, to determine when it was necessary to use them. Furthermore, the financial burden of marching forces meant that it served Massachusetts' interests to increase their economic efficiency by employing, as often as practicable, forces borrowed from other colonies. The Second Charter governors were named, upon their commissioning, "Captain General and commander in chief of the Militia and all Forces by Sea and land Within our colonies of Rhode Island and Providence Plantation and the Narraganset Country or King's province."[73] This nominal authority would remain largely ephemeral.

Similar powers were granted over Connecticut forces, though "this power rested upon the opinion of the law officers of the [C]rown that the king could appoint a commander-in-chief for the military forces of the colony."[74] The first royal governor, Sir William Phips had been commissioned as commander-in-chief of Rhode Island and Connecticut's forces, though his authority over the latter colony had been shifted to the governor of New York, in 1693, in order to provide for a more responsive defense for that province.

> Order is given in accordance with a recommendation [of the Committee] That a Commission may passe under the Great Seale Appointing the Governor of New Yorke to be Comander in Cheif of the Militia of the Colony of Connecticut in New England, with a Clause therein for Superseding so much of Sir Wm. Phips Commission, as gives him the Command of the Militia of that Colony.[75]

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73 The quote comes from Joseph Dudley's Commission, 1 April 1702, but is generally the same in others. See Everett Kimball, *The Public Life of Joseph Dudley: A Study of the Colonial Policy of the Stuarts in New England, 1660-1715*, Harvard Historical Studies, Vol. XV (New York: Longmans, Green, and Co., 1911), Appendix A, 218.

74 Kimball, 145.

75 See 16 February 1693, in J. W. Fortescue, ed., *Calendar of State Papers, Colonial Series, America and West Indies (C.S.P.CS)*, vol. 14 (London, 1903), 26-36, #495.

Under Bellomont, this power was returned to Massachusetts.[76] On paper, the Massachusetts governor tended to be in command of all of New England's forces; in reality, that power could never be fully executed. Connecticut and Rhode Island's unique relationships with the crown, as corporate colonies, left them immune, or at least highly resistant, to royal command. Local loyalties, religious affinities, and human sympathies might motivate the neighboring provinces to send aid when it was possible, but no amount of metropolitan suggestion or cajoling could compel the two to obey Massachusetts governors on command.

Perhaps the most vivid examples of the limitations of reliance upon neighboring forces are Governor Joseph Dudley's requests that Connecticut supply men to patrol the Connecticut River valley of western Massachusetts in the early years of Queen Anne's War. Acting on reliable intelligence from Albany, Dudley expected an attack on the exposed Connecticut valley throughout the first years of his administration.[77] The defensive system Dudley implemented along the frontier would ideally operate, in the absence of the very real limitations of distance, finance, and time on colonial actions, as follows. Marching forces in Massachusetts' westernmost Hampshire County, located along the Connecticut River and thus on the main axis of advance of French and Indian forces in the north, when confronted with evidence of an Indian force would send messengers with the relevant intelligence to Hartford. The Connecticut government

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76 See 28 June 1701, *C.S.P.CS*, vol. 19 (London: 1910), 318-30, #830, for another reference to the disposal of Connecticut's forces between New York and Massachusetts Bay.

77 For the warning from New York, see Hutchinson, vol. 3, 102. New York played an unfortunately ugly role in the problems of New England's defense. Because New York had achieved neutrality with the Iroquois, they felt compelled to turn a blind eye to the operations of the Wabanaki, allies of the Iroquois, and by extension, the French. This honorable position – strictly observing neutrality to maintain peace – meant *in practice* that New York looked the other way when they had good intelligence about pending attacks against New England. In the words of Thomas Hutchinson, "This was, in effect, a neutrality between the French and English governments to the southward of New England. Nothing could be more acceptable to the Canadians. The New England governments felt the terrible consequences." Ibid., 104-5.

would then dispatch their own forces to help defend the frontier. Of course, the limitations of time, money, and geography were always at play, and would have been enough by themselves to complicate the matter. Add to that mix the distinct desire on the part of Connecticut to contribute as little as possible to the cause, whether to save money or to limit future demands through noncompliance, and the situation became all but unmanageable.

Connecticut's rejection of Dudley's requests for aid in 1703 and 1704, coming just before the attack on Deerfield, make that disaster appear avoidable. In reality, no amount of foresight could surmount the flaws in the relationship between Massachusetts' governors and their southern counterparts.[78] First, while it was certainly true that the governors of the Bay had authority to command the forces of Connecticut and Rhode Island *in times of war*, the crown gave them no such power in times of peace, and, in fact, regularly reminded governors of the limits of that power.[79] These must have exercised some level of restraint on those governors. Second, Connecticut, like Massachusetts, was financially limited, not to mention significantly smaller in terms of population, and therefore understandably reluctant to embark on missions against the Indian enemies of Massachusetts at their own expense.

Governor Fitz-John Winthrop in Connecticut, son of the first Massachusetts governor, was sympathetic to Dudley's plight (the two governors were also relations through marriage), yet, while urging his own General Assembly to aid the Bay colony,

78 For a reflected view of Dudley's frustration with the lack of support from Connecticut and Rhode Island, see the letter of the Board of Trade to Dudley, dated 16 February 1704, just days before the Deerfield raid, in "Instructions to Massachusetts Governors," MS-2223, 652: "We have represented to her Majesty, the refusal of Conecticut and Rhode Island upon that Occasn of sending you 150 Men between them, as also your desire of Small Arms."

79 See, for example, instruction #61 given to Samuel Shute, dated 18 July 1716, ibid., 907, instruction #48 to William Burnet, 20 March 1728, ibid., 1122, or instruction #55 to Jonathan Belcher, 8 May 1730, ibid., 1216.

Winthrop understood the limits of fraternalism. After a misadventure resulting from a false alarm by the Hampshire County militia commander in 1703, Winthrop felt the need to observe to Dudley the dangers of crying wolf.

> The late alarm made by your scout (frightened with Jack in the Lanthorne) put us to a great deal of trouble and £400, and he deserved to be cashiered and punished. It has so much disobliged our soldiers that it will be difficult to get them into a good disposition to your service.[80]

In the wake of the Deerfield raid of February 1704, Connecticut grew somewhat more willing to join with Massachusetts in defense, though real concerns remained, especially with regard to funding expeditions along the Connecticut River. Later in 1704, Dudley would once again write to Winthrop in frustration about the perceived short shrift given to Massachusetts defense. Dudley's letter of December 1704 is worthy of quoting at length, as it so well reveals the outlines of the struggle between the provinces.

> Sr, what I justly expect is one third part of the charge of the present war, which I desire may be done in a just quota of men to be supported by your Government; and because the county of Hampshire is next you and properly your cover and frontier, I shall consent that, so far as is necessary there, your forces be there improved; but I must expect that they be as well subsisted as their wages paid them. I know not your establishment of pay and therefore shall desire your share in number onely; and at present for the winter quota I stand at eight hundred men for these two provinces, besides exigents which will often demand the march of five hundred more. It is so very difficult to march men to West-Hampshire [County], that I choose at present to imploy your quota there, where I justly expect a shock within a short month. I must also insist upon it that your officers, whom I shall entertain upon your own nomination, receive all directions and orders from my selfe during their being within these Governments; without which there can be no proper service done nor account be taken.[81]

One can reasonably entertain the arguments of both provinces; each was looking out for the best interests of its people. Massachusetts did in fact bear the brunt of the Indian

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80 Winthrop to Dudley, 4 April 1707, "Winthrop Papers," in Massachusetts Historical Society, *Collections*, Ser. 6, vol. 3, 376

81 Dudley to Winthrop, 4 December 1704, ibid., 273.

conflicts of the first half of the century. Connecticut was, for her part, sheltered from the worst damage of this style of warfare. Alternately, Connecticut could have reasonably felt that her northern neighbor ought to bear the majority of the cost for its own defense – after all, the people of Connecticut were not living along the northwestern frontier of Massachusetts Bay.

By the 1740s, bitterness was prevalent on both sides of the border. One of the foremost men of Hampshire County, Israel Williams of Hatfield, wrote to a correspondent in Connecticut, expressing his frustration.

> I don't know but some amongst you may be scared at the charge of War. I know its great and lies heavy upon us. But skin for skin and all that a man hath will he give for his life. This is our main concern at present to save our peoples lives; and to be denied help and relief from our neighbor at this time is extremely hard.[82]

Fortunately, with the exception of King George's War (1744-48), the war left Hampshire County for points northeast. During the latter conflict, Connecticut, with a considerably larger population than she had had in the earlier war, was better able to afford men and materials to help garrison the line of forts that were the basis of the defense of the western counties of Massachusetts (as well as Connecticut, by extension) under Governor Shirley. Even then, relations were not perfect; Governor Shirley, in 1745, was urging increased sacrifice on Governor Jonathan Law of Connecticut.

> And you will give me Leave to tell your Honour that if your Succours are to be raised & sent, after any Blow is struck, It will be of little Service in Comparison of a Force ready upon the Spot to receive & repel the Enemy, I must therefore repeat my Insistence that no Time may be lost but that your Succours may be sent into the County of Hampshire as soon as

82 Williams to [?], 1748, in *Collections of the Connecticut Historical Society,* vol. 16 (New Haven, CT: John W. Barber, 1911), 477.

possible.[83]

The lack of western warfare in later years of the century left Connecticut and Massachusetts' relationship to sour over other issues.[84]

Rhode Island was also recalcitrant in submitting their portion to New England's defense, leading to a running conflict between governors of the two provinces and the crown. Rhode Island's corporate charter, much like that of Connecticut, left the English unable to exert sufficient control over the colony. Powers granted over her militia in the Second Charter were misleading to say the least. During the intense period of Indian warfare in the first decades under the Second Charter, all three Massachusetts governors tried to order the Rhode Island militia into action, and were often met with empty hands. Bellomont and Dudley did their best to enlist the aid of the metropolis to leverage some power over their neighboring colonists, to little avail. In 1702, the Board of Trade responded to Dudley's requests to force Rhode Island into line with the following

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83 William Shirley to Jonathan Law, 27 April 1745, in Charles Henry Lincoln, ed., *Correspondence of William Shirley, Governor of Massachusetts and Military Commander in America, 1731-1760*, vol. 1 (New York: The MacMillan Company, 1912), 212.

84 Such as traditional border squabbles, or the case of *Mohegans v. Connecticut* – a long-standing suit that resisted repeated efforts at solution. In 1704 Dudley was named the head of a commission empowered to settle the outstanding issues between Connecticut and the Mohegan. It is possible that the crown's appointment of Dudley was a response to his complaints of Connecticut's unwillingness to aid her northern neighbor. (Dudley also had a close ally inside the imperial establishment in William Blathwayt, who may have arranged the appointment for more prosaic purposes of patronage and reward.) Dudley had no historical authority over the Mohegan, nor particular experience with that tribe. As a neighboring – and rival – governor, he did however have ample axes to grind in those proceedings. In addition, this had an impact on the frontier. Governor Winthrop used Dudley's interactions with the Mohegan to threaten the removal of Connecticut troops from Hampshire County. "I am surprised yor Excly should yet farther intermedle with our Indians, being informed you have entertayned 30 of the Moheags who, with others here about, were designed to assist us in this quarter, whilst wee spared to your [illegible] to garrison yor townes in Hampshire, and, upon the earnest sollicitation of Coll: Partridg & yor other officers, wee sent out 50 men more the last week, who are now in yor service. I desire therefore you will presently send home those Indians with what English are with them, but if I heare not from yor Excly of their returne by the next post, I will the same minute call home all our forces that are in the county of Hampshire, as of absolute necessety for the safety of her Majestye's intrest & her subjects in this Government." See Winthrop to Dudley, 15 August 1706, "Winthrop Papers," in Massachusetts Historical Society, *Collections*, ser. 6, vol. 3, 342. For Dudley's appointment to head the commission, see Board of Trade to Dudley, 25 July 1704, in "Instructions," 670. For more on the case of *Mohegan v. Connecticut* – an episode not yet fully explored – see Joseph Smith, *Appeals to the Privy Council from the American Plantations* (New York: Columbia University Press, 1950), 422-446.

remarks, comments that would become standard in the correspondence of the royal governors of the Bay.

> [The Lords of Trade are preparing a] Report to be laid before her Majesty upon the Several Matters that relate to the provinces und your Government, and in particular to the refractory Temper of the present Government of Rhode-Island.[85]

No report, nor cajoling from their successive majesties, would bring Rhode Island into a sensible understanding of her duties vis-à-vis New England's defense.[86] However, it should be added that Rhode Island was usually more forthcoming when there was an offensive operations aimed at French power. The colony provided men to aid in attacks against French settlements in the north. To a large degree, however, despite the words of Second Charter and royal instructions, Massachusetts Bay was left to defend her extensive frontier on her own. She would do so with the added handicap of constant orders from the crown to build, rebuild, and garrison fortifications, generally along the coast, of dubious worth to a mobile frontier defense.

II – Development of Provincial Defense Policy

By the early years of the eighteenth century, Massachusetts' defensive strategy of marching forces patrolling the valleys in the wilderness, providing a valuable distant early warning system that on occasion exerted a deterrent effect, combined with the backstop of local militia was working to minimize the damage done by Indian and French

85 Board of Trade to Dudley, 13 November 1702, in "Instructions," 629. See similar remarks in letters from the Board of Trade to Dudley, 16 February 1704, ibid., 652, and 26 May 1704, ibid., 659-61

86 The communications between crown and Massachusetts governors are replete with references to the struggles to get Rhode Island to commit her share to the regional burden. See "Instructions" *passim*. Intermixed with these were concurrent complaints about flights from justice by Massachusetts residents, Rhode Island's consistent attempts to assume powers to take prizes and condemn vessels, and the border disputes between the two provinces. For a general study of Rhode Island's troubled legal relationship with the crown, see Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA: Harvard University Press, 2004).

attacks along the frontier. Dudley once referred to the marching-forces policy in terms familiar to Americans of the 21st century: "I hope I shall keep the war at a good distance."[87] The desperate condition of the frontiers demanded a military solution; yet the limits, fiscal and otherwise, under which the province labored made few other options possible. The provincials, and often their governors, tended to regard stone fortifications designed to defend coastline and harbor towns as poor anchors for a defense against Indian infiltrations. Worse than useless, they represented a drain on time and resources so dearly needed elsewhere.

The Wabanaki conflict had arisen as a result of Andros' defense policy: a combination of establishing frontier fortifications, garrisoned by the few soldiers available, while embargoing trade with the Wabanaki to bring them to heel.[88] Andros' hands were tied in matters of defense, as in other matters, by the knotty combination of popular ill will and limited resources. "Thus on paper," wrote Charles Andrews

> Andros was Governor-General of a single territory running from the Delaware River and the northern boundary of Pennsylvania northward to the St. Lawrence, eastward to the St. Croix, and westward to the Pacific. To organize and defend his territory, Andros had two companies of British regulars, a half-dozen trained officers, the local train bands…and a meager supply of guns and ammunition.[89]

His was an unenviable position; fortified outposts were his only option for any sort of frontier defense. By 1688, a series of running confrontations erupted along the frontier. Andros enlisted men in Boston and the surrounding communities for service in the

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87 Dudley to Board of Trade, 1 Feb 1706, quoted in Morrison, 160. While the terms were not so blunt as "We're fighting them over there so we don't have to fight them over here," the policy was in effect the same.

88 For details on Andros' Wabanaki polices, see Kenneth Morrison, *The Embattled Northeast: The Elusive Idea of Alliance in Abenaki-Euramerican Relations* (Berkeley, CA: University of California Press, 1984), 113-17.

89 Charles M. Andrews, *The Fathers of New England: A Chronicle of the Puritan Commonwealths*, Allen Johnson, ed., The Chronicles of America Series, no. 6, (New Haven, CT: Yale University Press, 1921), 183-84.

northeast garrisons; in just two days in September sixty-four men were "press'd" into service from Boston.[90] Andros, visiting the northeast the following spring in an attempt to negotiate a treaty between the Wabanaki, the Saco, and the New Englanders, was forced back to a roiled Boston by the intelligence that James II had fled England. He of necessity left any plans unfinished along the frontier, and his subsequent arrest and dispatch to England left the defenses in the hands of the long-suffering soldiery. "Some of the souldiers took Advantage, from the Absence of the Governour, to desert their Stations in the Army," thus ending the Andros policy of *limites* along the northeastern frontier.[91]

This impulse – fleeing the frontier defenses, as dubiously valuable as they might have been – only served to exacerbate the defensive situation in the northeast. The provincials' experience had demonstrated that a defense oriented around a coastal array of fortifications – whether it is the best of a list of bad choices or not – was ill suited to the task of defending the province against a highly mobile native insurgency. Still, abandoning those fortifications in the face of that enemy was hardly a better strategy, and the collapse of Andros' frontier defenses resulted in an expanded and increasingly brutal campaign by the Wabanaki, to be joined by the French after William III's ascension to the throne the following year.

According to the Second Charter, the royal governor was the final authority over matters associated with frontier fortifications.

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90 See entries for 10 and 11 September 1688, in Sewall, vol. 1, 176. Judge Sewall himself was pressed into service later that fall. He hired a substitute to serve in his stead for £5. See entries for 3 and 5 November 1688, in ibid., 182.

91 Cotton Mather, *Decennium Luctuosum*: *An History of Remarkable Occurrences In the Long War Which New England Hath Had with the Indian Salvages, from the Year 1688 to the Year 1698, Faithfully Composed and Improved* (Boston: B. Green and J. Allen, 1699), 27.

> The Governor of our said province or Territory for the time being shall have full Power by himselfe or by any Cheif Comander or other Officer or Officers to be appointed by him from time to time…to Erect Forts and to fortifie any place or Places within Our said province or Territory, and the same to furnish with all necessary Ammunition Provisions and Stores of Warr for Offence or Defence; and to comitt from time to time the Custody and Government of the same to such Person or Persons as to him shall seem meet; And the said Forts and Fortifications to demolish at his Pleasure to erect any and all fortifications necessary.[92]

The crown desired, understandably, to take a more direct control over the construction of fortifications. Despite these words, the crown proved determined to command that Massachusetts' governors obtain funds from the General Court for the construction, repair, or upgrading of various fortified outposts in the province. Most frequently demanded, in the early decades of the provincial period, was the repair and reconstruction of the fortification originally constructed by Sir William Phips at Pemaquid, on the northeastern banks of the Kennebec River. Phips had constructed this fort – christened Fort William Henry, though rarely referred to by that name – in an attempt to secure the territory there against French intervention. It had fallen in 1696 to a joint French-Wabanaki attack, and had lain damaged and abandoned since the end of King William's War the following year. For the crown, this was both a "shameful" defeat as well as a potential target of opportunity for the French. In the words of the Privy Council, because the provincials "suffered the Fort of Pemaquid, (the main security of their Frontier Eastward) to be shamefully taken and demolished, by an inconsiderable number of French and Indians," Bellomont was instructed to see to its reconstruction.[93] The fall of Pemaquid paradoxically allowed the province to begin to adopt the mobile defenses

92 Thorpe, vol. 3, 1884.
93 Privy Council to Bellomont, 19 January 1701, in "Instructions to Massachusetts Governors," 541.

already described.[94] To the crown it remained a focal point of provincial defense for years.

For the provincials, however, fortifications, especially those along the northeastern coastline, seemed an unnecessary expense. In 1704, the Assembly complained to Dudley of the expense of the fortifications at both Pemaquid and Piscataqua. The expense of the former, it was asserted, "will be such that we cannot see how the province can possibly sustain it," while the latter structure cost New Hampshire "about five hundred pounds," for which "all the navigation and trade of this province [Massachusetts Bay], coming down the Piscataqua River have been charged with a considerable duty."[95] But it was the fort at Pemaquid that engendered the most hostile opposition.

Far from representing a recalcitrant colonial disregard for royal authority, the lack of support for defensive frontier fortifications, a hallmark of the provincials' debates with the metropolis, spoke not to traditional provincial reticence regarding finances, or resistance to impositions of royal authority, but rather to a local understanding of the reality of the frontier. With soldiers pinned to fortifications that at best defended territory against the wrong enemy – threats of French naval assaults on Massachusetts' seaports – and at worst bottled up valuable human resources away from the areas of likely infiltration by the enemy, there was little hope for the provincials' defense. The foremost example of this strategy was the fort at Pemaquid. The last royal governor of the province, Thomas Hutchinson, saw the fort's uselessness, noting in his *History of Massachusetts Bay* that "[i]t answered no other purpose than to keep possession of that

94 "This loss forced a change in military policy." Murrin, 71.
95 Assembly to Dudley, 1704[?], quoted in Hutchinson, vol. 3, 112-13.

particular harbor, and was not convenient for a post for any marching parties…nor for the settlers of the frontier to retreat to."[96] With that sort of endorsement from a Loyalist governor, one can imagine how reluctant the provincials would be to pay for the fort's reconstruction and upkeep.

A geographic factor also underlay the unpopularity of the fort at Pemaquid. Andros' defensive strategy, including the fort at Pemaquid, was initially successful, at least according to the Wabanaki themselves. Primarily their suffering resulted from a boycott on English-Indian trade imposed by Andros, though they also complained of the fort. Jenny Hale Pulsipher has argued that the opposition to paying for the fort's reconstruction had to do less with any corporate judgment of its effectiveness or lack thereof, and more to do with the geography of power in Massachusetts Bay itself. With Andros' removal from power, the revolutionaries released the garrisons of the northern fortifications, "defenses many southern New Englanders considered pointless and wasteful."[97] It is reasonable to assume that those populations farthest from danger would be least interested in using scarce provincial resources for elaborate immobile defensive structures in the northeast.

The conflict over the fort at Pemaquid pitted the will of the crown against the limitations of provincial finances as well as the provincial desire for a more mobile and

96 Hutchinson, vol. 3, 51. Hutchinson can hardly be considered an opponent of royal authority in the province. Further, he must be considered something of an expert in frontier defense; in addition to his own experience as Governor, his family had been involved in the colonial defenses in the later seventeenth and early eighteenth centuries. His justification for the royal focus on Pemaquid was the metropolitan belief that without a provincial presence there the French might be permitted to claim Acadia "as a derelict country." Ibid.

97 Pulsipher, "'Dark Cloud Rising,'" 609. I think Pulsipher slightly overstates the evidence of the fort's role in the starvation of the Wabanaki. She conflates the trade ban of Andros with the construction of the fort at Pemaquid, making an indirect – and perhaps unintended – case that the fort was effective but simply not desired by the southern population of the province. The source she cites for evidence does not reference the fort as part of the complains of the Indians, merely that Andros was "a great rogue and had nearly starved them last winter, but that he was now a prisoner, and they 'no care for the New England people; they have all their country by and by.'" See *C.S.P.CS*, vol. 13, 113-27, #316.

effective defense, and it pinned the governors between these millstones. Governors were instructed, both through their official instructions as well as through personal correspondence with the Privy Council and Board of Trade, through the first three decades of the eighteenth century, to secure the funds to rebuild the fort.[98] The crown ordered Dudley to proceed according to the plans agreed to under the stewardship of Bellomont and the royal engineer dispatched to the province in the 1690s, Colonel Wolfgang Römer.

> [T]hat you endeavour according to what has been proposed by Collenel Romer the Engineer: That a good Fort be built at Pemaquid about the same place where the last stood. And for its better defence in Case of an attack from the Sea, that a Battery be raised on the next point of Land, and a Redoubt or Round Tower in St John's Island, and a New Fort in Piscataway River where the present Fort now stands, to be such as the growing Trade of that River and Country requires according to the design thereof sent hither by Collenel Romer. As also a strong Tower on the Point of Fryers Island, a Battery on Wood Island, and another Clark's Island.[99]

This was a list that must have read, to the General Court, as a rather large bill of sale, with the province on the hook for the monetary support of three new batteries, two island towers, and two new forts of considerable size, at Pemaquid and Piscataway. The General Assembly rejected every request of this sort, either crying poverty or other priorities (such as the fortification at Castle William, in Boston harbor).[100]

The crown did not idly accept those pleas, and urged the provincials on with the best methods they had to hand: threats of further royalization of Massachusetts' affairs, and more subtle threats of a lack of future defensive support from the crown. The latter

98 See, for example, Board of Trade to Bellomont, 19 January 1701, in "Instructions," 541; Board to Dudley, 15 September 1702, ibid., 625; Privy Council to Dudley, 18 May 1703, ibid., 637-38; instruction #58 to Shute, 18 July 1716, ibid., 906.

99 Board of Trade to Dudley, 15 September 1702, in ibid., 625. "Piscataway," to the metropolis, was "Piscataqua" to the provincials.

100 Castle William's upkeep involved considerable outlays of money, both by England and the province, as well as the presence of the royal engineer, Römer. See Murrin, 75.

tack was taken the following year, after the complaints of the General Assembly were heard on the Pemaquid issue. The Board informed Dudley that the provincial request – made by Dudley himself – for cannons and ammunition for the fortifications of the region could be delayed still further by the withholding of provincial funds for the rebuilding of the fort at Pemaquid. It was suggested that Dudley make a connection to the Assembly of the two issues.

> [You have been directed to rebuild the fort at Pemaquid] with intimation that when the said Fortifications should be built We would be graciously pleased to Send thithter some great Guns and other Stores of Warr towards the Finishing and for the use of the Same. But whereas no advance has hitherto been made in that Service, and the Assembly, notwithstanding your insisting thereon in Our Name and the Concurrence of Our Said Councill, have declined to make any Provision for the carrying on of that important work at Pemaquid. … And you are hereupon further to acquaint [the Assembly] that their effectual Compliance with these directions will be the most proper inducement to incline us to be assisting to them by a further Supply of great Guns and Stores as we shall Judge necessary.[101]

The instructions could not have been clearer: the crown would hold the "great Guns and other Stores of Warr" hostage to the will of the General Court in authorizing expenditures for the rebuilding of Pemaquid.[102]

This tactic met with no more success than had earlier attempts. Governors were still being instructed to rebuild the fort at Pemaquid in the 1730s. Nothing could be done to move the provincials toward accepting this burden. And in some sense their reluctance was understandable. The previous exertions required to construct and defend the fort had brought the province to near bankruptcy, engendering the printing of a debased local currency that was to plague Massachusetts until the 1750s.[103] Costs were not limited to

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101 Board of Trade to Dudley, 18 May 1703, "Instructions," 637.

102 The letter also roped with the fort at Pemaquid the request for financial support for that at Piscataqua, mentioned above.

103 The story of Massachusetts' currency and all the problems it created has been detailed by several

construction. Garrisons for these fortifications could become cripplingly expensive, even without the tendency, probably observed in all armies and at all times, toward falsification of muster rolls in order to increase income or provisions. This was a recurring issue in the Bay province, even if limited only to Castle William.[104] It was, simply put, impossible for the province to foot the bill for such projects. Fortunately, most of the governors of the early eighteenth knew this, or learned it shortly after their arrival. This knowledge did not make the situation any easier for the governor caught between the competing interests of crown and province; it likely made their position more difficult. The fort at Pemaquid remained in its state of decrepitude regardless of imperial commands, injunctions, demands, and pleas.

The provincials, it should be made clear, were not opposed to fortifications in and of themselves. In the northeast, the construction of trading posts and garrison houses brought about conflict with the Wabanaki in the 1720s, as will be shown below. In

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historians, though its full implications have yet to be exhumed. See, for example, Charles F. Douglas, *Financial History of Massachusetts From the Organization of the Massachusetts Bay Company to the American Revolution*, Studies in History, Economics and Public Law, vol. 1 (New York: Columbia Press, 1891-92); Curtis Nettels, "British Policy and Colonial Money Supply," *The Economic History Review*, Vol. 3, No. 2 (Oct., 1931), 219-245; John C. Miller, "Religion, Finance, and Democracy in Massachusetts," *The New England Quarterly*, Vol. 6, No. 1 (March, 1933), 29-58; Mary and Oscar Handlin, "Revolutionary Economic Policy in Massachusetts," *The William and Mary Quarterly*, 3rd Ser., Vol. 4, No. 1 (Jan., 1947), 3-26; E. James Ferguson, "Currency Finance: An Interpretation of Colonial Monetary Practices," *The William and Mary Quarterly*, 3rd Ser., Vol. 10 (April, 1953), Theodore Thayer, "The Land-Bank System in the American Colonies," *The Journal of Economic History*, Vol. 13, No. 2 (Spring, 1953), 145-159; Malcolm Freiberg, "Thomas Hutchinson and the province Currency," *The New England Quarterly*, Vol. 30, No. 2 (June, 1957), 190-208; George Athan Billias, "The Massachusetts Land Bankers of 1740", *University of Maine Studies*, 2d Ser., No. 74 (Orono, ME: University of Maine Press, 1959); 153-180; J. M. Bumsted, "The Report of the Pembroke (Massachusetts) Town Committee on the Currency, March 24, 1740/41," *The New England Quarterly*, Vol. 40, No. 4 (Dec., 1967), 551-560; J.M. Bumsted, "Religion, Finance, and Democracy in Massachusetts: The Town of Norton as a Case Study," *The Journal of American History*, Vol. 57, No. 4 (March, 1971), 817-831; Richard Sylla, "Monetary Innovation in America," *Journal of Economic History*, Nol., 42, No. 1, The Tasks of Economic History (March, 1982), 21-30; Rosalind Remer, "Old Lights and New Money: A Notre on Religion, Economics, and the Social Order in 1740 Boston," *The William and Mary Quarterly*, 3rd Ser., Vol. 47, No. 4 (Oct., 1990), 566-573; and Elizabeth E. Dunn, "'Grasping at the Shadow': The Massachusetts Currency Debate, 1690-1751," *The New England Quarterly*, Vol. 71, No. 1 (March 1998), 54-76.

104 In the words of John Murrin, "Garrison commanders…easily mastered the delicate European art of padding their muster rolls." Murrin, 94.

addition, Governor William Shirley, an adept military leader and perhaps the most popular of the provincial governors, managed to attain provincial support for the construction of several fortifications along the Connecticut River valley in western Massachusetts during the hostilities between England and France in the 1740s. This "line of forts," that stood only for about five years, consisted of four major structures: Forts Shirley, Pelham, Massachusetts, and No. 4.[105] By the 1740s, the provincial population could better support the reduction in local manpower that such garrisons demanded, if it was in no better condition to handle the financial burdens of stable defenses. However, Shirley was financially aided in their construction by the help of prominent western Massachusetts "River Gods," the men that controlled, largely, the affairs of Hampshire County.[106] Shirley wisely appointed three of these men to head the construction of the line of western forts: John Stoddard, Oliver Partridge, and John Leonard. Stoddard's relationship – through marriage – with the Williams family, the true power in Hampshire, meant that he could call upon their array of connections to complete the necessary building tasks.

In addition, the location of these forts, along the boundary line drawn in 1741, was less contested than that at Pemaquid, for two reasons. First, these forts were less formidable and thus cheaper than Pemaquid, but had the distinct advantage of being located along the enemies' likely axis of advance. Several cheaper forts that occupied relevant territory were vastly preferable to one formidable position miles from the enemy. Second, the lands near the forts in the west became desirable, if only for as short time, in speculative terms to the men of power in Hampshire County. The Williams, owners of

105 For a description of these structures, see Coe, chapter 3.

106 For more on the River Gods of Western Massachusetts, see Robert Zemsky, *Merchants, Farmers, and River Gods: An Essay on Eighteenth-Century American Politics* (Boston: Gambit, 1971).

much of the lands along the Connecticut River, made sure to have the forts constructed on or near their own fields, in the hopes of future speculative advantage. In other words, the construction of Forts Shirley, Pelham, Massachusetts, and No. 4, occurred faster and more reliably because one of its intended purposes was enriching its builders.[107]

Shirley would advocate the construction of further fortifications along the western frontier in the later 1740s. The rebuilding was never completed, and, with the lull in military action in the region, lasting until the Seven Years' War, frontier fortifications became less important to provincials. When that later conflict arrived, it would play out primarily in northern New England, leaving the crises over fortifications and inter-colonial relations, geographically at least, behind them. Before them, however, remained lingering debates about control over military strategy.

III – Fortifications

The governors were, by both Second Charter and their commissions, empowered as commanders-in-chief of the province. Commissions often described the rough outlines of that authority as the power "to doe and execute all and every other thing Which a Captaine Generall doth or ought of Right to belong as fully and amply as any other our Captaine Generall doth or hath usually done according to the Powers hereby granted or to be granted to you."[108] This broad grant provided the authority to call out the militia, to send snowshoe men out into the wilderness, to request aid from neighboring provinces, to press men into service, to erect fortifications, and to command the royal frigate that

107 Ibid., 24.
108 This quote is drawn from Dudley's first Commission, in Kimball, Appendix A, 213.

patrolled the lengthy Massachusetts coastline.[109] The limits of his military authority were in some cases hazy. Individual governors often read the limits of their powers differently. Governor Dudley once sent his own coachman to man a frontier garrison for not serving to the Dudley's satisfaction.[110]

Several limitations on that broad grant of power have already been outlined, especially regarding fortifications. However, there were real, and chartered, restrictions upon the governor's power as commander-in-chief of the province. His military portfolio was granted him "Provided always"

> That the said Governour shall not at any time hereafter by vertue of any power hereby granted or hereafter to be granted to him Transport any of the Inhabitants of Our said province or Territory or oblige them to march out of the Limitts of the same without their Free and voluntary consent or the Consent of the Great and Generall Court or Assembly or Our said province or Territory[111]

Further fettering the actions of the governors was the General Court's control over the provincial purse strings. The Council of the province had control over expenditures under the terms of the Second Charter as well. Because the Council was elected by the General Assembly, this gave the freemen of the province some sway over provincial expenditures. The Second Charter gave to the General Court the power

> to impose and leavy proportionable and reasonable Assessments Rates and Taxes upon the Estates and Persons of all and every the Proprietors and Inhabitants of our said province or Territory to be Issued and disposed of

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109 For much of the early Second Charter period, that vessel was the *province Galley*, captained by Cyprian Southack. Dudley's correspondence contains many orders to Southack, demonstrating his authority over the vessel. In perhaps compensation for this power, however, Dudley was forced to decipher Southack's atrocious handwriting. For more on Southack's career, see Clara Egli LeGear, "The New England Coasting Pilot of Cyprian Southack," *Imago Mundi*, vol. 11 (1954), esp. 7-9. For handwriting samples, see "Letters of Cyprian Southack," Ms. N-949, in the Massachusetts Historical Society.

110 "Thomas, the Governour's Coachman, having offended him, He sends him aboard Capt Southacks in order to make him a Sentinel under Major March at Casco fort. I mov'd the Govr to Try him a little longer: but would not; said He might send any man a Souldier." See entry for 2 August 1703, in Sewall, *Diary*, vol. 1, 410.

111 Thorpe, vol. 3, 1884.

> by Warrant vnder the hand of the Governor of our said province for the time being with the advice and Consent of the Councill for Our service in the necessary defence and support of our Government of our said province or Territory and the Protection and Preservation of the Inhabitants there.[112]

These provincial chains were of iron, not velvet.

The question of whether the governor was free to establish offensive strategy for the province was significantly thornier. While he was commander-in-chief, he did not always exert a free hand in strategic terms. His office existed on a medium plane of the imperial hierarchy, rendering him something of a creature of his superiors in terms of grand strategy. Nor was he free of strategic restraints on the more local plane; the financial limitations of the province, and the limits on provincial willpower, held in check the wills of both governor and crown. The governor's position, pinioned between the millstones of metropolis and periphery, limited his freedom to make military decisions. One consequence of this limited strategic maneuverability was the struggle to find a successful defensive system outlined above. The limitations of manpower kept Andros chained to his fortifications, while Phips, Bellomont, and Dudley found financial and political limitations difficult to overcome. The policy of active marching forces, and some limited help from neighboring provinces, set in place under Dudley's administration put the province on safer ground.

On the offensive side of the military equation, though, no set policy emerged. The geography of the region tended to dictate naval campaigns against the French threat. Several governors embarked for the province with dramatic plans for invasions of New France and the reduction of Indian power. Few returned to England wearing laurels.[113]

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112 Ibid., 1882.

113 William Shirley was perhaps the only governor to have achieved real military success, presiding over the reduction of Louisburg during King George's War (1744-48). He was an experienced imperial

While natives and small bands of French troops were able to infiltrate New England through the river valleys of the northern frontier, an attack capable of doing real damage to the French required more men and materiel than the overland method allowed. Occasionally, land operations proceeded from Albany towards Canada overland, but the naval component of any invasion was the necessary, though usually not a sufficient, component of success. Because they were sea-borne, offensive operations tended to be slave to winds, the efficiencies of the Royal Navy, recurring outbreaks of disease, the supply of available rations, and the competence – or lack thereof – of local and imperial commanders.

In times of war, it could be easier to gain support for an offensive operation aimed at the French than provincial, for two reasons. First, the metropolis tended to be understandably hawkish, especially but not solely during times of active warfare, toward plans to use New England as a jumping-off point for operations against the French. Second, the provincials had real power to prevent operations, either though the power – or weakness – of the purse, or the veto over operations outside the borders of Massachusetts Bay, as well as having point-of-the-spear reservations about the dangers and costs of frontier warfare. These were real limitations on royal authority, and they frustrated offensive operations nearly as often as ill winds or imperial inconstancy. Two examples will illustrate the imperial and provincial attitudes towards war. To demonstrate the powerful restrictions operating against the governors' initiative within the province, the analysis will shift to Joseph Dudley's repeated attempts at the reduction

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hand who showed skill in dealing with both crown and province. See John A. Schutz, "Succession Politics in Massachusetts, 1730-1741," *The William and Mary Quarterly*, 3rd Ser., Vol. 15, No. 4 (Oct., 1958), 508-520, and *William Shirley: King's Governor of Massachusetts* (Chapel Hill: University of North Carolina Press, 1961).

of Port Royal, carried out in 1711. Rale's War, a conflict against a French Jesuit and his array of Wabanaki allies, declared by the province without imperial guidance or assistance will demonstrate metropolitan willingness to give the province relatively free reign over her own defensive matters, and the limits of Massachusetts control over the natives more broadly.

Port Royal, later to be named Annapolis Royal, was a fortified outpost constructed on the western coast of Acadia (what is now Nova Scotia), and was therefore a position of strategic value in New England waters. It had been the subject of New England fears and anxieties from the beginning of the provincial period. The first royal governor, Sir William Phips had come from England with plans for reducing the fort, and had achieved this goal in 1696. Phips' success was turned to bitter disappointment when, in the Treaty of Ryswick which ended King William's War, the place was returned to the French from whom it had been so dearly liberated. From then on, it was a primary strategic goal – if not bugaboo – of the New Englanders, who, in the words of Governor Dudley, viewed it as "a nest of Spoilers."[114] Its reduction was seen by New England as requisite for a successful peace along the frontier.

That reduction was by no means easy to achieve; though, in strictly military terms, it was not an imposing fortification, assembling the necessary financing and troops to embark on a mission to capture the fort was difficult in the best of times, and nearly impossible in the worst. Chartered limits on the authority of the governors rendered this task all the more difficult. Dudley, for his part, attempted to arrange attacks on Port Royal three times while in office. Only two of these missions even reached the shores of Acadia, and one of those was a crippling failure that nearly cost Dudley his position.

114 Kimball, 126.

Success was had, finally in 1711, but the cost of the attempts made it a Pyrrhic victory at best. The province groaned under the weight of expenditures, printed local currency, and diseased and dead troops.

Dudley's first attempt to reduce Port Royal came in 1707, and itself reveals the dependent nature of the governor's military powers. Dudley had word from England that the crown intended a joint operation aimed at the reduction of Acadia, and Dudley began the preparation for such a mission in Massachusetts. The General Court was asked for its due support for the attack, and resolved to provide 1000 men for the purpose, with additional assistance, if possible, from Connecticut and Rhode Island.[115] In the understated words of Hutchinson, "Connecticut declined," though, he states that there was "a very honorable assistance from Rhode Island."[116] Governor Fitz-John Winthrop was more explicit than Hutchinson. He wrote to Dudley that the people of Connecticut would "much resent" the assault, "tho' wee should succeed in the designe…if upon the conclusion of a peace (wch. one would not think far off) it should be restored to [the French], the honor of our success soone forgotten."[117] In what would remain a theme of the provincial period, the necessary troops and naval assistance from England were diverted, in this case to the Continent, as matters European took center stage for the English.

With the necessary expenditures having been drawn by the province, the men mustered, and supplies laid aside for the expedition, it seemed sensible to persist in the mission, even without metropolitan assistance. A convoy of transports and locally

115 Hutchinson, 123.
116 Hutchinson, vol. 2, 123.
117 Winthrop to Dudley, 10 February 1707, "Winthrop Papers," Massachusetts Historical Society, *Collections*, ser. 6, vol. 3, 367.

available naval vessels sailed for Port Royal in May of 1707, where, despite outnumbering the French garrison by as much as five to one, the Massachusetts forces met with setback upon setback. The French retreated into the fortification, while the English attempted to establish a camp on shore. Disease began to run rampant in the New England camp, and poor intelligence led to a disastrous assault against the fort.[118]

As Dudley was focused on the mission – he "thought of nothing short of the reduction of Port-Royal, from the beginning" – he concerned himself with making another attempt while the province had the funds allocated to do so.[119] He dispatched a party of Council members to represent him at the front. Three members were chosen by Dudley, men known to possess the trust of the provincials themselves. Two were men of military experience: Col. Elisha Hutchinson and Col. Penn Townsend. The third represented the populace more directly: John Leverett, who had been Speaker of the General Assembly before his ascension to the Council. Bringing with them reinforcements, perhaps as many as 100 men, the Councilors brought the news that Dudley would have them make another attempt at the position.[120] Col. Hutchinson received a petition, "signed by a great number," that the men refused to go to Port Royal. Once confronted with a show of executive vigor, the men retracted their resistance.[121] Failure attended every step of this second mission, and, after landing on the wrong side of the fort and failing utterly to strike fear into its inhabitants, the men were forced to return

118 According to Hutchinson, the commanders of the expedition "had received [intelligence] of the disposition of great part of the garrison to revolt." Sadly, no such revolt was in the offing. Ibid., 124.
119 Ibid., 125.
120 Hutchinson places the number at 100, and states that it included former deserters from the force. It seems best to assume that the number was lower than three digits. See ibid.
121 Thomas Hutchinson was Elisha's grandson, and thus had access to his personal papers, in which the younger Hutchinson claimed to have seen the petition, which he refers to as a "round robin." Ibid., 126.

ignominiously to Boston later in the year.[122] Dudley would be embroiled in a crisis about the true nature of that mission, which provincials had begun to believe was an attempt by the governor to secure illicit trade with the French there. This scandal was the focus of provincial affairs for the remainder of 1707 and much of the following year.[123]

Dudley prepared a second attempt in 1710, which met with no greater success than the first. This involved at least the patina of joint operations alongside England. A fleet was dispatched to the province, and a land force prepared to invade from Albany, marching north through the summer. The standard array of challenges reared up upon embarkation. The fleet was diverted yet again, and the information of its fate did not arrive in New England until October, much too late to stop the land forces, under the command of Francis Nicholson, Lieutenant Governor of New York. Nicholson's men stopped their advance, awaiting news of the fleet, and were victimized by the constant marching companion of soldiery, disease. Dudley attempted to draw on local English vessels and merchants to ferry the men he had mustered to Port Royal, with a view to making the best of a bad hand, but the plan was thwarted by lack of will among the captains in the region. The entire affair cost the province nearly £60,000, and placed her under a terrible burden of bills of credit that would precipitate future conflicts with England over the provincial currency.[124] It also revealed the problems, both external and internal, inherent in provincial offensive operations against French resistance.

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122 Dudley's son William, accompanying the mission, described the shape of the deployment thusly: "The ignorance, idleness and slothfulness of some of our officers, make things go on not as smooth as desired." William Dudley to Joseph Dudley, 31 May 1707, quoted in ibid.

123 See the discussion in chapter 2.

124 For more detailed account of the affair, see Kimball, 124-26. Dudley reported the figure of £60,000 to the Board of Trade.

IV – The Governor and the Indians

The party often left out of the story of provincial defense, at least in terms of independent agency, is the Indians. Most provincial defensive actions in the northeast were, at heart, *re*-actions to the initiative of the Wabanaki. What powers over the Indians, if any, were granted the governors under the Second Charter? What role did the governors play in Indian relations, outside of chartered authority? How were those powers challenged by the provincials or the crown? These questions must be settled in order to understand more fully the military office of Royal Governor under the Second Charter.

Under the First Charter, the governor and company of Massachusetts Bay received little instruction regarding the natives of New England. The local Indians were absent from the document save one reference to their eventual conversion to the "onlie true God."[125] The Second Charter merely updated the language and spelling of this section of the previous document, one of the many cut-and-paste elements of the Second Charter.[126] Aside from this generic injunction, the charters ignored the Indians, unless they be among those who, in the words of the Second Charter, "such Person and Persons as shall at any time hereafter Attempt or Enterprize the destruccon Invasion Detriment or

125 The company was expected to arrange "for the directing, ruling, and disposeing of all other Matters and Thinges, whereby our said People, Inhabitants there, may be soe religiously, peaceablie, and civilly governed, as their good Life and orderlie Conversacon, maie wynn and incite the Natives of Country, to the Knowledg and Obedience of the onlie true God and Sauior of Mankinde, and the Christian Fayth,, which is our Royall Intencon." Thorpe, vol. 3, 1857.

126 In the Second Charter, the governor on General Court were instructed "to dispose of matters and things whereby our Subjects, inhabitants of our said province, may be Religiously, peaceably, and Civilly Governed, Protected, and Defended, soe as their good life and orderly Conversation may win the Indians, Natives of the Country, to the knowledge and obedience of the onely true God and Saviour of Mankinde and the Christian Faith, which his Royall Majestie, our Royall Grandfather king Charles the first, in his said Letters Patents, declared was his Royall Intentions." Ibid., 1882-83.

Annoyance of Our said province or Territory"[127] Leaving the Indians out of the charters left the question of frontier defense somewhat open, at least insofar as the proactive measures that might be taken before the need for an active war. Treaties and trade agreements were negotiated nonetheless, under both documents, but the lines of power were not so easily discerned by participants newcomer or native, resulting in confusion and conflicts.[128]

By the time of the Second Charter's arrival, the Indians southward of Massachusetts had become less of a concern in the province. King Philip's War and earlier conflicts had removed the threat of these tribes through exceptional violence and destruction. The Pequots, Nipmucs, and Wampanoags were, if not eradicated, severely marginalized, by the end of the 1670s. The natives of the northeastern frontier, the Wabanaki, became of central importance with the rising of conflicts between residents of Maine, New Hampshire, and northern Massachusetts and their indigenous neighbors. The wars fought in the northeast were significantly more challenging than those fought against southern tribes, from a geographic perspective. In the south, tribes and colonists were often geographically comingled, resulting in high casualties when conflicts arose. While the low frontier population meant a lower toll on human life, the size of the wilderness and the presence of the imperial foe lurking in the extreme north made closing with and destroying the Wabanaki impossible even if desired. The size of the frontier made fortified borders equally impossible, as discussed above.

The presence of the French made abandonment of the northeastern frontier less

127 Ibid., 1884.

128 For more on the native and New English misunderstandings of the imperial structure and their consequences, see Jenny Hale Pulsipher, *Subjects Unto the Same King: Indians, English, and the Contest for Authority in Colonial New England* (Philadelphia: University of Pennsylvania Press, 2005).

desirable still; the French tradition of conquest meant that abandoned territory was open to all comers, and the French expansion into the New England wilderness was a thing to be feared both in Boston and London. As seen above, this was the probable cause for the crown to insist on the reconstruction of the fort at Pemaquid. Efforts to pin inhabitants to their homes along the frontiers largely failed; orders from the General Court were disregarded by the frontiersmen, and retreat from the fire of war became a natural and predictable action for those brave families inhabiting the northeast. To prevent wholesale abandonment of the frontier, it was best to avoid Wabanaki conflict as far as possible, so long English honor was maintained.[129]

While the Second Charter did not grant specific power to the governor regarding the Indians, the early governors of the provincial period – Phips, Bellomont, and Dudley – made every effort to secure an executive monopoly on trade and treaty negotiations with the tribes of New England. In 1693, the General Court passed "An Act for the Better Rule and Government of the Indians in Their Several Places and Plantations," which empowered the governor, with advice and consent of the Council, to appoint commissioners that could monitor the Indian plantations.[130] These commissioners had the power to appoint Indian constables, as well as to judge cases between parties within those plantations. In addition, they were

> to have the inspection and more particular care government of and government of the Indians in their respective plantations ; and to have, use

129 The treaty between the Wabanaki and Massachusetts Bay negotiated in 1678 violated this informal tenet of English policy. Under its terms, the colonists settled in Maine were expected to pay a tribute of corn to the local tribes as homage to the natives' original claim to the land. This bred subsequent problems, in that when payment did not appear it allowed the natives to violate the treaty (at least in their own minds). Furthermore, tribute traditionally operated in the other direction, with Indians paying Europeans for some privilege or right, and this reversal rubbed some New Englanders the wrong way. See Puslipher, "'Dark Cloud Rising from the East,'" 594-95.

130 See "An Act for the Better Rule and Government of the Indians in Their Several Places and Plantations," *A&R,* vol. 1, 150-51.

> and exercise the power of a justice of the peace over them in all matters civil and criminal, as well for the hearing and determining of pleas betwixt party and party, and to award execution thereon, as for the examining, hearing and punishing of criminal offences, according to the acts and laws of the province, so far as the power of a justice of peace does extend ; as also to nominate and appoint constables and other proper and necessary officers amongst them.[131]

It also forbade any private citizen from selling or trading alcohol with Indians in New England, under pain of a fine of 40 shillings per pint, unless they were either a physician or had permission of a justice of the peace.[132] This represented the first attempt to enforce a government monopoly on trade with the Indians under the Second Charter.

A government monopoly on the Indian trade implied government spending on the Indian trade. Given the extreme want of the province, this allocation of funds demonstrated the importance provincials placed on such trade. The province's main chance for peace with the Indians was to use English goods as a bargaining tool. In the tax laws passed under the Second Charter government, one of the stated purposes was to "hold a stock for trade with the Indians."[133] The control over that trade was finalized in the "Act for Regulating of Trade with the Indians," passed in 1694. It provided for provincial control over all trade with the northeastern tribes, to be paid for at public expense "and for the benefit and advantage of the same."[134] It authorized the expenditure of up to £500 per year; the province was willing to spend on peace, almost the precise amount they were usually unwilling to spend on a salary for their governor. The

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131 Ibid.

132 In its almost comical wording, this act is perhaps more memorable than many: "[T]his act shall not be intended or extend to restrain any act of charity for relieving any Indian, *bona fide*, in any sudden exigent of faintness or sickness, not to exceed one or two drams, or by prescription of some physician, in writing, or by the allowance of a justice of peace [emphasis in original]." It also empowered anyone to seize any alcohol found in the possession of Indians. See ibid., 150.

133 For example, Chapter 41, of the laws of 1692-93, or Chapter 2 of the laws of 1693-94, in ibid., 91, 165.

134 "An Act for Regulating Trade with the Indians," ibid., 172

preamble explained the logic of the act quite clearly.

> Whereas the Indians within the eastern parts of this province, under the obedience of the crown of England, have dependance upon the English for supplies of clothing and other necessaries, as formerly they have been accustomed, which that they may not want; and to the intent that the Christian religion be not scandalized, nor any injustice done to the Indians by extortion, in the taking of unreasonable and excessive prices for the goods and supplies sold unto them.[135]

The province would supply the tribes' needs, "that they may not want." This policy would be carried forward by subsequent governors to mixed effect.

The timing of the creation of the trading monopoly reveals the reactive nature of the province's relation with the Indians. In August of the previous year, Phips had managed to convince the Wabanaki, or at least a portion of the tribe, to sign a treaty of peace with Massachusetts Bay.[136] This treaty, according to Kenneth Morrison, "formed the foundation of every later treaty between the tribes and Massachusetts." It placed the blame for the hostilities on the Indians, and forced them to apply to the governor in the event of grievance. It also abridged Wabanaki sovereignty by commanding them to submit to the justice of English law.[137]

> If any controversie, or difference, at any time hereafter happen to arise between any of the English and Indians for any real or supposed wrong or injury done on one side or the other, no private Revenge shall be taken by the Indians for the same, but proper Application be made to Their Majesties Government, upon the place, for Remedy thereof ina due course of Justice, we hereby submitting our selves to be ruled and governed by Tehri Majesties Laws, and desire to have the benefit of the same.[138]

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135 Ibid., 172-73.

136 See Morrison, 128 for the outlines of the treaty, as well as the claim that it was merely a rump of the Wabanaki tribe that agreed to its terms.

137 Ibid.

138 Document 38, "Pemaquid Agreements, Wabanakis and Massachusetts Bay," Alden T. Vaughan, ed., *Early American Indian Documents: Treaties and Laws, 1607-1789*, vol. 20, New England Treaties, North and West, 1650-1776, Daniel R. Mandell, ed. (Bethesda, MD: University Publications of America, 2003), 64.

The French, for their part, knew that the chief New English advantage in these negotiations was the value of English goods. The governor of New France wrote "There is every reason to be apprehensive of these negotiations unless the Indians receive considerable presents from us."[139] The centrality of goods to maintaining peace is difficult to overstate. In 1703, Governor Dudley emphasized this connection in remarks made to the Council regarding his negotiations with the Wabanaki, undertaken at Piscataqua. "He acquainted the Council with the Discourse he had with four Indians that waited upon him there with a Message from the Eastern Sachems, [giving] him their Resolution to continue the Peace, And desiring a Supply of Provisions and Clothing for Trade."[140] One month later, the payoff for those goods was evident. Dudley read to the Council a letter from the northern frontier, in which the Wabanaki refused the entreaties of the French to attack the New Englanders. The French had "called a Council of the Indians, Demanding that they should rise upon the English, which they refused to do, Saying the French could not Supply them, and that they had their dependence upon the English."[141] Five hundred pounds worth of goods per year in exchange for peace, even of a temporary nature, was an acceptable trade for the provincials.

Additional efforts were made to maintain such purchased peaces, with the provincial government trying its best to control often violent frontiersmen and privateers to prevent or address quickly the occasional outrages committed along the frontier. In March of 1703, while English goods were helping to maintain Wabanaki loyalty, a privateer in the employ of the province, a Captain Chadwell, engaged in the attack and murder of Paul Munier, "a Frenchman and of kin to the Indians & under the protection of

139 Quoted in ibid., 129.
140 29 January 1703, in Minutes of the Council, 230.
141 25 February 1703, ibid., 238.

the Government." This outrage was a clear threat to the peace, and Dudley dealt with it accordingly, following the injunction of the recent treaty commanding the English to use their justice system to redress grievances of the Indians. Chadwell was brought before the Council to be interrogated by Dudley. Meanwhile, Dudley sent assurances to the Indians "that he had sent for Chadwell and would make a strict Inquiry into the same, and take Such Order therein as may be agreeable to Justice, And to give them Satisfaction, where of they should have an Acct."[142] Chadwell was punished, "deprived of his Commission, his Sword broken, and himself committed close prisoner at the Castle," and the goods of the Indians were to be restored.[143] By the end of April, the word from the frontier was that the Wabanaki were "well pleased" with the punishment of Chadwell, and the peace appeared to remain viable. They might have noticed that the Indians expected further punishment for Chadwell; in May the commander of Casco Bay wrote that the natives were satisfied that Dudley would make them whole, and that anyone involved with the murder of Munier would be killed.[144] This was not in the offing. Hostilities were quick in coming; just two weeks later an attack on a foraging party set out from Casco Bay resulted in one Englishman killed and the beginning of the next war with the Wabanaki.[145] The raid on Deerfield of the next year showed the new attitude of the Wabanaki.

Without chartered power over the local tribes, or even complete authority to conduct Indian relations through the governor, the executive and legislative branches of the provincial government worked together to control those relations. This meant that

142 31 March 1703, ibid., 248.
143 5 April 1703, ibid., 250.
144 1 May 1703, ibid., 260.
145 14 May 1703, ibid., 264.

conflict between the wills of the provincials and the will of their governors was possible, and in some cases, frequent. The General Court occasionally attempted to assume power over the Indians, or to forward strategies of their own against those of their governors. This was sometimes done by the passage of resolutions of the General Court, arguing for a more or less aggressive approach. For example, in the fall of 1698, the Assembly passed a resolution calling for the exchange of captives with the northern Indians, a resolution that died in the Council due to lack of attention, a common fate for provincial attempts to control the actions of the governors.[146] This would not be the last time that the provincials attempted to assert some control over Indian affairs.

The divided nature of the province's government was a cause of concern, not merely for the crown in terms of the governors' ability to implement the royal will, but also in contrast to the unified command structure of the French. The Governor of New France, Dudley's counterpart, the Marquis Philippe de Rigaud Vaudreuil, wrote to Dudley during the long negotiations over the exchange of captives between New England and New France, stressing the problem of negotiating with New England authorities.

> If you were the sole ruler of New England as I am here, I would not have hesitated to accept your word and it would also have been a pleasure to me to return all tour prisoners…but as you have a council, which is often divided in opinion, and where you have nothing more than your vote, you ought not to take it ill that I must have assurances for the return of the prisoners coming to me, the more so because on my side, being the sole master, I am always in a position to keep my word.[147]

This remarkable statement must have been a bitter draught for Dudley, in the midst of his

146 23 November 1698, ibid., 171-72.

147 Vaudreuil to Dudley, quoted in Kimball, 113. Vaudreuil was incorrect about the Second Charter governor's powers vis-à-vis the General Court. Under the First Charter, the governors possessed only a double vote in the Council; this had been changed under the Second Charter.

struggle with the General Court over the failed mission of Samuel Vetch to Port Royal.[148]

After the end of the Indian conflicts of the King William's War-Queen Anne's War period, the frontier to the northeast became relatively pacified. Treaties negotiated between the Wabanaki and the Bay colony in 1713 and 1717 maintained this peace, as did frequent conferences between Wabanaki representatives and their Bay counterparts.[149] With the return of safety to the wilderness, New England towns sprang up in the valleys of Maine, bringing the necessary components of a volatile frontier into proximity: expansionist New Englanders and Indian groups that fundamentally misunderstood the English conception of sovereignty contained in the treaties between them and the New English. Into this potent mix came a new catalyst, in the form a Jesuit priests: Father Sebastian Rale.[150] Rale exerted persuasive force and, with the implied assurance of material aid from the French in Canada, convinced components of the Wabanaki, including but not limited to the Kennebec and Norridgewock, into war with Massachusetts Bay. This conflict, called by the English Rale's War, commenced in 1722 and lasted three years, even beyond the death of Rale at New English hands in 1724. Declared and fought by the New English alone, it also illustrates the loose leash on which were kept the dogs of frontier war.

The treaties negotiated in 1713 and 1717 that ended the Wabanaki wars contained the inherent contradiction that characterized Indian-New English agreements: Indian submission to the English King, with its implied, federal equality to the New English

148 See Chapter 2.

149 Document 23, "Portsmouth-Casco Treaty," in Mandell, ed., 146-151, and Document 34, "Georgetown Conference and Treaty," ibid., 174-82. Mandell's introduction to the second chapter, "Conflicts Over Land, 1699-1727," is invaluable in summarizing the major issues between the Wabanaki and the New English in this period. Ibid., 94-103.

150 I have maintained the relatively consistent earlier spelling, rather than the transliteration rendered by Mandell, "Rasle," in ibid.

colonists, was coupled with an implicit Indian submission to the government of those colonists. The Indians in 1713 pledged themselves to be "the lawfull subjects of our Sovereign Lady, Queen Anne, and promising our hearty obedience unto the crown of Great Britain." It also implied a rather more federal view of the English empire than the provincials were prepared for, at least in this regard. The Wabanaki were not co-equal 'provinces' of the English empire, which might entail formal relations between they and the Bay colonists on an equal footing, much like the relations between Massachusetts and say, Connecticut, or Rhode Island. Despite the language of the treaties, such as that of 1717, in which the New English told the Indians "King George is their King as well as Ours, and that therefore we look upon them, and shall always Treat them as fellow Subjects," the New English clearly envisioned them as subordinate peoples.[151] The very presence of Governor Shute negotiating a treaty with the Indians negated this lofty sentiment. It is hard to imagine Shute dictating a treaty to Governors Winthrop of Connecticut, or Cranston in Rhode Island, to settle the chronic border disputes between those colonies. Those disputes were settled, generally, under commissions sent from the crown. This tension between implied, and even explicit, equality and the clear inferiority of the Indians made peace difficult to achieve and harder to maintain.

Sovereignty was the great issue of Rale's War. Because the Wabanaki refuted the New English land claims, arising from previous treaties and conferences, on the eastern shore of the Kennebec River, the Indians considered themselves sovereign over that territory. This implied that their toleration of Massachusetts settlers was conditional, and could be revoked at any time. At a conference on Georgetown Island in eastern Casco

151 Document 34, Mandell, ed., 175. For more on the sovereignty issue, see Pulsipher, *Subjects of the Same King*.

Bay in 1717, a Penobscot sagamore, Wiwurna, addressed this problem directly. "This place was formerly Settled and is now Settling *at our request*: And we now return Thanks that they English are come to Settle here, and will Embrace them in our Bosoms that come to Settle on our Lands [emphasis added]." Governor Shute recognized the mischief contained in such thinking and quickly interrupted Wiwurna's presentation. "They must not call it their Land," he told the interpreter, "for the English have bought it of them and their Ancestors."[152] He returned to the issue at the conclusion of the first day's meeting, stating that "they must be sensible and satisfied that the *English* own this Land, and have the Deeds that shew, and set forth their Purchase from their Ancestors [emphasis in original]." And," he continued, "we will not be molested in the improvement of the Land that belong to them."[153] The conference nearly broke over this question, when the Indians presented a letter from Father Ralé, who passed on the helpful intelligence that the King of France himself had told the Governor of New France that no treaty on record gave the English title over the lands in question. Though Shute treated this missive peremptorily, it divided the Indian delegation, which was only at the last moment willing to engage further with Shute.[154]

At several conferences, Indians expressed concern over the increase in New English population along the rivers of Maine. The sagamore Wiwurna addressed Governor Shute in 1717 to this point. "We Desire there may be no further Settlements made," he petitioned. "We shan't be able to hold them all in our Bosoms, and to care to Shelter them, if it be like to be bad Weather, and Mischief be Threatned."[155] By "bad

152 Document 34, Mandell, ed., 177.
153 Ibid., 178.
154 Ibid., 179.
155 Document 34, "Georgetown Conference and Treaty," 177.

Weather," Wiwurna did not mean precipitation, but warfare. Further aggravating the Wabanaki was the construction of forts in lands they thought to be their own. "It was said at the Casco Treaty," argued Wiwurna, "that no more forts would be made."[156] These northeastern fortifications were more garrison houses than stone fortifications, more akin to the wooden walls of Hampshire County in the 1740s than stone structures like those at Boston or even Pemaquid. Nevertheless, their presence exacerbated the sovereignty question, and contributed to the significant tensions in Indian-New English relations.

The treaties of 1713 and 1717 were founded on the one asset the government of Massachusetts had to offer: relatively cheap goods. For reasons of geography, demography, and metropolitan economics, the New English could provide access to more and cheaper goods for the Wabanaki than could the New French. Both treaties pledged the province to carry out trade through truck houses constructed and governed by the provincial government.[157] Thus the provincial government was in control of setting the price-point of peace in the New England wilderness. Fluctuations in official prices could lead directly to war along the frontier. Already by 1714, one year after the Portsmouth-Casco Treaty was signed, the Penobscot and Norridgewock were complaining of inflation in prices.

> We are very desirous that Friendship should be reposed for Ever betwixt us and the English as was in our Grand Fathers Days and much Better. And if it were possible the Traffick might be the same as to the Prices as formerly we should be very thankful that we should Rejoice that all the English that dwell in the Eastern Parts would return to their former

156 Ibid., 178. There does not appear to be a record including such a clause, or the proposal of same. It is not unreasonable to imagine a miscommunication from which the Indians considered such a thing agreed upon.

157 Documents 25 and 34, Mandell, ed., 147, 177

Settlements there.[158]

Prices Indians could afford, or at least accept, became therefore an important component to keeping the peace along the northeastern frontier. The declining English beaver market made this calculation difficult. Explaining the vicissitudes of that market to the Indians was still more so. At a conference held with the Saco at Portsmouth in 1714, Dudley manfully attempted an explanation for the changes in rates available at truck houses. When confronted with the fact that beaver furs had declined in value by a third, Dudley responded, "the price of Goods must be soe that as that those that are Merchants may live by heir Trading. The price of Beaver is not halfe so much in Great Britain and Europe as some years past."[159] Later he set an arbitrary price for skins – four skins to a yard of broadcloth as opposed to the then-current rate of five per yard – in order to finalize the agreement.[160]

Through the late 1710s and into the early months of the 1720s, tensions were simmering; the work of Father Rale put the kettle at full boil. English settlements and fortifications along the Kennebec were symbolic of the loss of Wabanaki sovereignty, but by themselves may not have provoked the Indians to war. Rale may have brought word to the Wabanaki that their French brethren would meet their material needs during any conflict with the English; certainly the New Englanders thought as much. Further, Rale argued with the Massachusetts government about the presence of a congregational minister among the Wabanaki along the lower rivers. Rale, writing to Governor Shute,

158 Document 23, "Boston Conference with Norridgewock and Penobscot Delegates," ibid., 153. See also Document 30, "Portsmouth Conference," 163.
159 Document 30, ibid., 165.
160 Ibid., 166.

focused much of his complaint on the presence of the minister, John Baxter.[161] Whether he promised French aid or addressed the grievances of the Wabanaki themselves in the terms of the ecclesiastical conflict between England and France, by 1722, the Indians had begun attacking frontier communities along the Kennebec River.

The provincial government proclaimed the beginning of hostilities on 25 July 1722, without prior approval of the metropolis, illustrating the relative independence of colonial governments in matters of frontier defense. Metropolitan English aid mainly took the form of diplomatic representations made to the French court through the English. Though appraised of the situation, there seemed to be little real discussion of military assistance for New England.[162] The declaration passed both houses of the General Court, and appeared to have met with little resistance. Samuel Sewall, then a member of the Council as well as Superior Court justice, published a memorial in Boston arguing against the conflict. His argument rests on a debate over the terms of the Second Charter, as so many political disputes would in the Second Charter period. Sewall believed that the war would violate the Second Charter clause relating to the New English duty of conversion of the natives. "The Royal Charter gives a good Account of the Errand of English Christians into this New World," he wrote before quoting the clause in question. "By this Momentous clause in our Charter, the Government is Obliged, and excited, to doe what in them lyes, to Recover the Aboriginal Natives from their Heathenisme, and Antichistianisme." Warfare would accomplish none of these ends. It would also be costly. "And if, at last, we should be provoked to goe against our Neighbors, the

161 Shute's response, Document 37, "Massachusetts Governor Shute to Father Rasle," Mandell, ed., 186, in which he notes "your long paragraph, referring to Mr. Baxter," tells us as much.
162 8 October 1725, Council of Trade and Plantations to Lords Justices, *C.S.P.CO*, vol. 34, 447-462, #755.

Kennebeck Indians; 'twould be convenient for this Government to first sit down, and count the Cost. Many Thousands of Pounds have been already expended on this Controversy."[163] Sewall's objections were well-thought ought, but overruled.

The war itself was similar to earlier forays against the Wabanaki, with furtive raids on both sides, eventually taking the life of Father Rale in a raid on his village in August of 1724. What brought the conflict to an end was not the end of Rale, but rather then threat of Iroquois involvement on behalf of the Bay colonists. Loudly proclaimed meetings between the Five Nations and the New English in Boston, as well as a face-to-face between Wabanaki and Iroquois during the conflict appear to have caused significant second thoughts. The Iroquois were powerful, and rightly feared; though the Five Nations delivered no actual military aid, the threat of such aid brought the Kennebec and the other groups to heel.[164] A treaty, signed in 1725, officially ended Rale's War, a conflict begun and fought solely by Massachusetts Bay without English approval or interference, and contested over the issue of sovereignty along the northeastern frontier.

The negotiations of frontier authority between Indians, province, and governor were as important and convoluted as those between province, governor, and crown. While the provincials sorted out issues of a constitutional nature, debates over powers and authorities both chartered and unchartered, the natives and New English debated issues of sovereignty and loyalty, using trade as a weapon as often as guns. As Jenny Pulsipher has argued, there were two major misunderstandings on the New English side of this debate: that the Wabanaki were tools of French power, and that the natives had

163 Document 53, "Memorial Relating to the Kennebec Indians," Mandell, ed., 217.
164 For the negotiations in question, see documents 57, 59, 61, 63, and 64, Mandell, ed., 221-22, 222-32, 244, 245-48, 248-50.

truly ceded their sovereignty to the English.[165] The French role was smaller than that imagined in the fearful minds of New Englanders, and the Indians would never admit to forfeiting their control over their own territories. Much of the violence on the northeastern frontier was born of this confusion.

V – Conclusion

The defense of Massachusetts Bay and the New England frontier fell to the governors of the province, by design of the Second Charter. Those men, as has been shown, often felt conflicting pressure, from above and below, as well as from within and without. Native machinations, imperial threats, provincial fears, and royal instructions all operated in conflict rather than in concert, making the defense of the province even more difficult to assure than might have otherwise been. Under Dudley, and later Shirley, the province developed a relatively successful defensive strategy, using marching forces and local militia. Furthermore, a gradual shift in stable fortifications from east to west, and the temporary reduction of the French at Port Royal provided valuable breathing space for the provincials to pursue their economic activities. Negotiations with provincials over strategy, and with the Indians over war, trade, and peace, eventually revealed the outlines of the New England frontiers, so often tinged in red.

165 Pulsipher, "'Dark Cloud Rising from the East.'"

2
THE ROYAL GOVERNOR AND THE GENERAL COURT

> And Wee doe further for Us Our Heires and Successors Will Establish and ordeyne that from henceforth for ever there shall be one Gover[n]our One Lieutenant or Deputy Governour and One Secretary of Our said province or Territory to be from time to time appointed and Commissionated by Us Our Heires and Successors. … Wee Will and by these presents for Us, Our Heires, and Successors, doe ordeyne and Grant that there shall and may be convened, held, and kept by the Governour for the time being upon every last Wednesday in the Moneth of May every yeare for ever, and at all such other times as the Governour of Our said province shall think fitt and appoint, a great and Generall Court of Assembly.[1]

The question of "whether the Governor of Massachusetts shall be appointed by the crown or elected" opened the negotiations for the Second Charter of Massachusetts Bay in April of 1691.[2] That question was quickly answered in favor of the former, as nearly everyone knew it would be. Henceforth English monarchs would appoint Massachusetts governors. The crown relied on those governors to forward the royal will in a region historically opposed to imperial control. Viewed from the perspective of their First Charter government, the institution of royal governors appeared to be an enormous aggrandizement of royal power. However, the Second Charter did not succeed the First, but rather the Dominion of New England government under supreme executive Sir Edmund Andros. Andros had the entirety of the political power in six colonies from 1686 until 1689. In contrast to the executive powers of Andros, a governor under the Second Charter could be seen as a reformed officer whose authority had been scaled back

1 Thorpe, vol. 3, 1877, 1878.
2 C.S.P. Col., vol. 13, 1689-1692, no. 1432.

to a reasonable and tolerable level.

After the removal of Andros and his Dominion government in April of 1689, the colony had reverted to its original First Charter form, with its elective governor. This maneuver served two purposes. First, it was the quickest solution to the question of how to govern a colony in revolt against the Stuart innovation of executive government. Second, it made it more difficult for William and Mary, presumed liberators from Stuart despotism, to adopt a structure of government for Massachusetts Bay very different from the one overturned by James II, that is, it set the First Charter as the New Englanders' opening bid in the coming negotiation over the future of the colony. To that end, the colonial government empowered the colony's agents in the wake of the Bay's revolution against the Dominion "[t]o wait upon the King, obtain a full confirmation of the ancient Charter."[3] The provincial resumption of the First Charter government seems to have been, at least at some level, a method of handing the crown a fait accompli.

The Royal Governor

Whatever their hopes of a restoration of their "ancient Charter," the provincials were to be disappointed when, by 1690, it became clear that such an outcome was no longer plausible. The elective governor of the First Charter, an office representing, in terms of chartered power, only a vote in the Council of Assistants, was to be no more. The governor would be, under the new regime, "of [the king's] own nomination." This decision marked the foundation of a new colonial government in Massachusetts Bay, one that would ultimately combine the powers of a strong executive with a strong legislature

3 Ibid., no. 739.

in a manner unique in English North America.[4] Under the terms of the Second Charter, the royal governor possessed a wide array of powers – less, certainly, than those held by Andros under the Dominion, but significantly greater than those held by any of the elective governors under the original charter. He was to be the king's representative in the province, and, as such, had a simulacrum of the king's powers. His military powers as commander in chief have been discussed. He, in coordination with the Council (over which membership he possessed a veto), was empowered to spend moneys from the public treasury. He could name judicial officials, with the advice and consent of the Council, and could veto nominations of other provincial officials by the General Court. Furthermore, the governor was responsible for calling, adjourning, proroguing, and dissolving the General Court, as well as appointing the time and place of those meetings. In addition, he possessed an absolute veto over the legislation of the General Court, in one scholar's words, "constituting himself a third house of the legislature."[5] He was, in other words, the center of the provincial government.[6] His powers were the loci of crown authority in the province; almost every one became the center of conflict in the Second Charter period.

Offsetting this portfolio were the peculiar institutions and traditions of Massachusetts Bay. The governor was the head of royal policy in the province, but could be financially supported only by the consent of the towns, as expressed by the passage of a salary bill through the General Court. Repeated requests from the Lords of Trade to

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4 See Leonard Woods Labaree, *Royal Government in America: A Study of the British Colonial System Before 1783*, Yale Historical Studies, vol. 6 (New Haven, Connecticut: Yale University Press, 1930), 7-8.

5 Spencer, *Constitutional Conflict in Provincial Massachusetts*, 26.

6 He was also appointed, until 1741, governor of both New Hampshire and Massachusetts Bay. Generally speaking, in New Hampshire he dealt with a different Assembly and Council, and often delegated executive responsibilities to the lieutenant governor of that colony.

secure a permanent salary from the General Court only served to heighten the tension felt by governors. Governors tended to arrive wealthier than they left the Bay, though there was limited money to be had in the administration of the province.[7] The limits of financial gain did not appear to interfere with the seeking of the office; Joseph Dudley's long campaign for the commission, and the £1000 Samuel Shute paid Elizeus Burgess for it in 1716 are two examples of the lengths to which men went to achieve the office.

In addition to financial limitations, governors found themselves often disrespected by the provincials, and having the difficulties of their position misunderstood and minimized by their patrons in the metropolis. It often seemed New Englanders honored governors in inverse proportion to the executives' nearness to Boston. Successful actions on the frontier, above all, could revive a flagging, or derail a growing, reputation. Moreover, death could make governors retroactively popular among the provincials, as Joseph Dudley's ostentatious funeral suggests.[8] At best, one could expect to face a certain amount of rhetorical opposition from the provincials. To take but one example of negative opinion, a 1708 pamphlet described governors as figures of suspicion, largely due to their ability to attain the office itself.

> They that are sent over as Governours thither, appear as Persons of Suitable Abilities, and approved Loyalty. They are in Favour with some Ministers of State, who Recommend them to the King or Queen for the Time being; and are in Fee with their Clerks, by whose Means their Business is done the more Effectually. When they arrive with their comissions, they express themselves in Obliging Terms; and the Ravish'd People, who are quite Giddy with Joy, if they have Governours, which they may hope, will not Cut their Throats, make them Noble Presents, and

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7 Though perhaps over-ambitiously titled, Beverly Mcanear's *The Income of the Colonial Governors of British North America* (New York: Pageant Press, Inc., 1967), does show a selective but instructive glimpse of the annual value of the office in Massachusetts. Times of war, according to Mcanear's limited sample, may have increased the profitability of the office. See ibid., Table III-1, p. 55, 82 note #13.

8 Sewall, *Diary*, vol. 2, 945.

send home an Address of Thanks for such Admirable Governours.[9]

At best, governors left Massachusetts Bay with their fortunes and reputations intact. At worst, the abuse came from both provincials and the governor's patrons in the metropolis. Governor Jonathan Belcher often felt the wrath of both the provincials and the Lords of Trade. In 1735, the Lords of Trade felt the need to rebuke him for forwarding the claims of loyalty of the General Assembly, as well as mistaking his own instructions.

> We have likewise considered…why you have not sent regular accounts of the receipts and payments of publick mony; but you misunderstand your instructions if you imagine those articles which require accounts of the Revenue relate only to such Colonies, where the King has a standing Revenue. You are one of the King's Governors, and as such, according to the powers given to us by our Commission, we do require them at your hands, and by virtue of special directions in your Instructions you are to send them to us.[10]

There were rarely chances for personal glory, nor many for financial gain. Still, demand for the job appears to have remained stable; from 1691 until 1750, seven men were commissioned as governors, along with four lieutenant governors, and none unwillingly.[11] As with many imperial stations, this office was sometimesviewed as an undesirable position that might, through skilled governance or adept political machinations, result in a better position higher up the imperial chain.

Once in power, governors faced the hard work of reconciling the royal will with the provincial. The metropolitan will was transmitted in many different forms. Most

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9 *The Deplorable State of New-England, by Reason of a Covetous and Treacherous Governour, and Pusillanimous Counsellors, etc.* (London: 1708), 1. There seems to be debate about the author of this anonymous writing, with both Cotton and Increase Mather as leading suspects. Both had written a letter to Dudley, presumably meant for the eyes of English decision makers, giving their support to his candidacy. That involvement was almost immediately regretted upon Dudley's return to the province. For the letter, see Kenneth Silverman, ed., *Selected Letters of Cotton Mather* (Baton Rouge: Louisiana State University Press, 1971), 64-66. For the regret, see Cotton Mather, "Diary of Cotton Mather, 1681-1708," *Massachusetts Historical Society Collections*, ser. 7, vol. 8 (Boston: Massachusetts Historical Society, 1911), 464.

10 C.S.P. COL., vol. 42, 1735-1736, 100.

11 See Appendix 3.

important, and most potent, were royal instructions, given to a governor upon his commission, as well as updates and amendments sent when necessary during his tenure. Up until a change in imperial policy in 1768, governors had the freedom to share specific instructions with the Council or, rarely, the Assembly, and indeed were occasionally instructed specifically to do so. In general, instructions were intended to remain the governor's intelligence only. Although a governor's tenure in office depended upon his adherence to these instructions, they were sometimes unclear or even contradictory. Further, even these muddled instructions came only infrequently; governors might at most receive two or three sets of royal instructions during their tenure, and several received only one, accompanying their commissions. The governors were left to shift for themselves in the face of events – a necessary autonomy considering the impossibility of the metropolis directing affairs in their many colonies too closely. Less significant in authority, but often no less important in reality, were letters from the Board (or Lords) of Trade, and those from the Privy Council. These, too, could sometimes run counter to one another, or against the grain of the charter or of instructions previously given. In short, the wise governor knew he could not rely on firm lines drawn on the imperial side of the map.

The General Court

The will of the province was expressed most clearly in the actions of the General Court, though it was also sometimes heard in pamphlets, sermons, and newspapers.[12]

12 My argument is not that the Assembly perfectly represented political opinion in the province, whether because it was or was not the expression of economic democracy, but rather that the actions of the Assembly seem more representative than any other. Much has been written about the level of democracy in Massachusetts Bay, to which I do not intend to add. The debate has centered around, though it neither began nor ended with, Robert E. Brown's *Middle-Class Democracy and the Revolution in Massachusetts, 1691-1780* (Ithaca, New York: Cornell University Press, 1955).

While the central structural change in Massachusetts' government under the Second Charter was the royal governor, the formalization of the General Court as a legislative body was only slightly less significant. Over the course of the Second Charter government, the General Court was transformed from a body of self-government into a focus of resistance to royal authority. However, the General Court of the 1760s was not the same body as that of the 1690s, the 1720s, or the 1740s. Its role shifted, gradually over the decades of Second Charter government, into one of opposition to the crown, especially against perceived constitutional threats. The text of the Second Charter bounded the field of political conflict within the province.

The new General Court, consisting of a Governor's Council, designed (though imperfectly, as this chapter will demonstrate) to reinforce the governor's authority, as well as an Assembly of representatives of the towns, was empowered to legislate for the province with the approbation of the governor. At first glance, this might appear to be more an act of concession to tradition than of outright creation, of royal acceptance of First Charter traditions of self-government. Upon study, however, it is clear that the Second Charter General Court was fundamentally different from the First. Like its First Charter predecessor, the new General Court was made up of two bodies: the Council and the Assembly, or House of Representatives. Each house played a role in creating legislation and the other responsibilities of governance in the province.[13] It was, however, something different from what had come before in the English colonies. With

13 Though there are similarities with the Congress of the United States – a bicameral legislature, advice and consent of the Council for particular executive actions and appointments – it should not be viewed as a proto-Congress. However, Michael G. Hall argues that in fact the Second Charter's advise and consent clauses were the model for those in the Constitution of 1788. Hall, "Origins in Massachusetts of the Constitutional Doctrine of Advice and Consent," *Proceedings of the Massachusetts Historical Society*, ser. 3, vol. 91 (1979), 3-15. (In the Conclusion, below, I will draw some other connections between the Second Charter and the American Constitution.)

the Second Charter, according to John Murrin, "William and Mary made concessions to Massachusetts that no other royal colony had ever received – town constituencies for the lower house, an indirectly elected upper house, and legislative control over land grants."[14] While the Bay colonists might focus more on what they lacked than what they had been given, the Second Charter General Court did represent a real advancement in imperial policy.

The First Charter General Court was, in contrast, largely an amalgamation of powers and authorities that had grown around the corporate body of the freemen of the Massachusetts Bay Company. The First Charter had dictated the formation a Council of Assistants, intended to advise the governor, but had not given it explicit powers. This body developed organically into an upper house of the General Court as well as the court of final appeal for most legal matters in the colony.[15] The governor himself possessed a vote in the Council – to count double if a tie-breaking vote – but little other explicit authority over the body. The purpose of the Council of Assistants as it evolved over the First Charter period was not to advise and assist the governor in the execution of the designs of the crown, but rather those of the Massachusetts Bay Company.

After its temporary abolition under the government of the Dominion of New England, representative government returned under the Second Charter. This, in and of itself, was a concession that the Bay colonists might have reckoned themselves fortunate to receive. Under the Second Charter, the Governor's Council replaced the Council of

14 Murrin, "Review Essay: *A Little Commonwealth: Family Life in Plymouth Colony* by John Demos; *Four Generations: Population, Land, and Family in Colonial Andover, Massachusetts* by Philip J. Greven; *A New England Town, the First Hundred Years: Dedham, Massachusetts, 1636-1736* by Kenneth A. Lockridge; *The Half-Way Covenant: Church Membership in Puritan New England* by Robert G. Pope; *Peaceable Kingdoms: New England Towns in the Eighteenth Century*," *History and Theory*, vol. 11, no. 2 (1972), 258.

15 Hutchinson, vol. 2, 6.

Assistants, and resembled an alloy of the House of Lords, and the Privy Council (minus the Privy Council's appellate power). The Council's assent was required for the passage of laws, and it was also to advise and consent to executive appointments. The Assembly, the lower house of the General Court, appeared in the First Charter only as the meeting of the freemen of the Bay Company. Under the Second Charter, it took the form of legislative body rather than corporate; its laws represented the desires of the people of the province, rather than the members of the Company. This formalization of the General Court was an important part of the transformation from colony to province.

The analysis of the interactions between executive and legislature focuses on the causes, course, and consequences of major controversies involving the chartered powers of the royal executive in his relations with the General Court, and the way these struggles forced the participants to examine the Second Charter for textual evidence to reinforce their arguments. The first section begins with consideration of executive interaction with the Council, through the lens of two crises: first, over the governor's electoral veto over the membership of that body, and second, the controversy surrounding the official end of a governor's commission and to whom his executive powers should fall. Both the controversies themselves and the chartered and unchartered powers used to settle them revealed the outlines of the governor's control over the Council. An analysis of the governors' interaction with the House of Representatives, a more volatile and less controllable body than the Council, follows, focusing first on the Speaker controversy of 1720 and then the long-running debate over a permanent governor's salary. The next portion describes the Vetch incident, a crisis that helps to illustrate the complexity of the royal governor's relationship with the General Court. Finally, the chapter will close with

a look at the unusual story of the royal governor's legislative veto: the most absolute power in his portfolio.

I – The Royal Governor and the Council

There was nothing particularly unique about the Council as created by the Second Charter. Most, if not all American and West Indian colonies had such a body. Their structures varied from outpost to outpost, but they were viewed from the metropolis as serving the same function. The instructions to the royal governors throughout the Atlantic colonies tended to agree on several fundamental rules for the councils.[16] They were to be manned by men of "good estate," "well affected" to royal government. The councils should be privy to the communications between governor and metropolis in specific and limited instances. Their deliberations should comport with basic principles of free debate.[17] These strictures were understood to place the councils in a position to be able, when necessary, to block the popular will when it opposed that of the crown.

Under the Second Charter of Massachusetts Bay, the Council's powers and purpose differed entirely from those of the earlier Council of Assistants. The Provincial Council was no longer the court of final appeal, as had been the Council of Assistants.[18] After 1691, legal appeals would be heard either in the Superior Court of Judicature or

16 The most comprehensive study of the uniformity of these instructions is Leonard Woods Labaree's *Royal Instructions to British Colonial Governors*, 2 vols. (New York: D. Appleton – Century Company, 1935). Labaree emphasizes the uniformity of such instructions; though their forms and details sometimes varied, there was a strong core of consistent rules and regulations for all colonial governors, pertaining to their councils as well as other affairs.

17 Instructions regarding councils can be found in Labaree, vol. 1, 45-68.

18 While the Council no longer had authority to act as a court, it did exercise, in conjunction with the House of Representatives, the power to support or reject petitions for appeals to be heard in the provincial courts. See, for example, the entry for 31 May 1698, in "Minutes of the Council," Massachusetts State Archives, vol. 81, 144-5. That day, the Council approved a petition requesting an appeal to the Superior Court of Judicature of a sentence handed down to Abraham Williams by the Middlesex Justice of the Peace.

before the Privy Council itself.[19] The new Council was to "advise and consent" in the Governor's nominations of court and provincial officers, and was, as a part of the General Assembly, authorized to create any and all courts within the province. Finally, it was granted the power to "execute or performe all that is necessary for the Probate of Wills and Granting of Administrations for touching or concerning any Interest or Estate which any person or persons shall have within our said province."[20]

Stripped of its First Charter authority as a court of appeal, the Council – or "the Board," as it was sometimes called – was re-purposed to focus on the governance of the province. The Second Charter increased the Council's membership from eighteen to twenty-eight, the increase presumably reflecting the enlargement of the colony through the annexation of Plymouth, though more poetic reasons remain a possibility.[21] Furthermore, the councilors were divided geographically among the component parts of the Bay province. According to the Second Charter, eighteen Councilors would come from the territories of the former colony of Massachusetts Bay, four from the former Plymouth Colony, three from the counties of Maine, one from Nova Scotia, and two at-large members.[22] However, even with a Council two-thirds again as large as its First Charter counterpart, the rules governing a quorum remained the same between the two charters: only the presence of the governor and seven Councilors was necessary to

19 This was not an early example of the doctrine of separation of powers; several of the councilors were judges in the Provincial court system, hardly disinterested third parties. Rather it seems to have been a royal attempt to clarify that the lines of judicial authority emanated not from the province House in Boston, but rather from the throne at London.

20 Thorpe, vol. 3, 1881. The result was not the direct control over probate by the Council, but rather the creation of the appropriate courts to control such issues. Governor Dudley nominated judges for the probate courts as some of his earliest appointments; see entries for 14 and 19 November 1702 in "Minutes of the Council," vol. 81, 219, 220.

21 "Its [sic] difficult to account for the number of 28. Lycurgus, as Plutarch tells us, pitched upon the same number for his Senators also, and made the even number 30 in all." Hutchinson, vol. 2, 53, note.

22 See Thorpe, vol. 3, 1879.

conduct the province's business.[23]

Historians have done much to reveal the conflict between insurgent lower houses of legislature and governors. The Massachusetts Assembly has a just reputation as an institutional leader of the Revolutionary movement; its "Suffolk Resolves" are duly celebrated. This interpretation of events, best expressed by Jack Greene, seems justifiable; there is little doubt the colonial assemblies gained in power and voice in the course of the eighteenth century.[24] It can easily be overstated, however. The real theater of battle in the political war between assembly and governor, at least in the case of Massachusetts Bay, was the Council. While the House of Representatives and the various governors often exchanged rhetorical blows with each other, there were few *institutional* connections between governor and House. With the notable exception of the electoral veto over the Speakership, contact took place in the Council. The Council controlled the flow of legislation, confirmed appointments to the judiciary, and exerted a co-equal authority over the provincial purse strings with the Assembly and governor. Until the House refused to elect royalist councilors in the 1760s, the Council dominated provincial politics.

Further complicating provincial government, the Council performed two separate functions, bridging both the legislative and executive branches. On the one hand, the Council was the upper house of the legislature, the body that had to give assent to bills that passed the House of Representatives, and provided advice and consent for executive

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23 This should be understood to exclude the Dominion period. The First Charter quorum clause is found in ibid., 1853 ; the Second Charter's is in ibid., 1878.

24 In particular Jack P. Greene, "The Role of the Lower Houses of Assembly in Eighteenth-Century Politics," *The Journal of Southern History*, vol. 27, no. 4 (Nov., 1961), 451-474. He expanded the argument, focusing on the southern colonies, in *The Quest For Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776* (New York: W.W. Norton and Company, Inc., 1972).

appointments. On the other, the Board was intended to advise the governor, an outgrowth of the executive branch. The Board attempted to maintain a sense of separation between the two functions, though they were at times occupying both sides of a given issue. For example, in the 1720s debate over paper money, the Council gave its assent to a House act calling for an emission of bills of credit. Only days later, sitting in its executive capacity, the Council, in the words of Governor Burnet, "gave it their opinion that the said Bill was inconsistent with [the governor's] Instructions, notwithstanding that they had before passed a concurrence on it (as they say) in another capacity."[25] Not all the Council's powers were rooted in the text of the Second Charter; the body also took on numerous unchartered powers, either *de novo* or through continuation of practices from the First Charter period. For example, the Council continued the longstanding tradition of moderating the shape and size of Boston by exercising an effective veto over the construction of new structures and changes to existing buildings: Council as colonial zoning commission. Wharves and warehouses were of particular concern, though other types of buildings were occasionally rejected, modified, or otherwise subjected to judgment by the Board.[26] Another unchartered space of power for the Council was created through its evolving procedures. Specific rules governing the proceedings of the Council were not included in the Second Charter

25 *A&R*, vol. 2, 486.

26 The limits of this power are unclear. Mercantile structures are the most common in the Council records, though there are also other structures approved. (Wharves and warehouses were of particular concern, and would naturally be subject to government control.) Further complicating the question is that these licenses only begin showing up in the Council minutes under Dudley in the November 1702 session. The Minutes before 1698 are very spotty, but no license issues appear in the minutes under Bellomont. Whether this change in the record demonstrates a new power claimed by the Council, a long-in-coming admission of the uncontrolled growth of the city, or something else entirely remains to be seen. For some examples of non-mercantile structures, see 18 November 1702, "Minutes of the Council," vol. 81, 220; 26 November 1702, 222. For some examples of wharves and warehouses, see 26 November 1702, 223; 25 Feb 1702/3, 240.

(beyond the quorum requirement), but evolved from an English base leavened by experience over the colonial period. Governors sometimes pressed their own stamp onto the body, influencing it if only temporarily. What emerged over the Second Charter period was a combination of innovations, English Parliamentary procedures, and inheritances from the Puritan colonial government.

One of the imperial inheritances was the Parliamentary practice of reading legislation thrice before voting. This appears to have been standard procedure, for both Council and Assembly. The record illustrates the former's commitment to the ideal, even in those instances when it fell short of the practice. There are examples of bills being "read thrice" all at once in order to render a vote more promptly, a clear attempt to meet the letter if not the spirit of the tradition. In addition there are occasional references to bills being read only twice before deliberation.[27] Whether the latter represent clerical errors – always a plausible justification – or shortenings of the three-reading rule, the consistent desire to achieve the ideal seems apparent.

Another similarity between metropolitan and colonial procedure was the Council's committee structure, less reified but not unlike that of the Privy Council.[28] Certainly, in a busy outpost of the empire with a limited legislative calendar, a division of labor like the committee system was necessary. The body regularly broke into temporary committees of two or more to deliberate on particular bills or issues. These ad hoc committees handled any and all matters before the body. Small committees audited the accounts of the provincial government. Others deliberated over the legislative questions

27 The Minutes of the Council are spotty both before and after the death of Isaac Addington, the first Secretary of the Second Charter period. Before and after Addington's tenure, the records are less informative, and considerably less legible.

28 On the permanence of the Privy committees, see Edward Raymond Turner, "Committees of the Privy Council, 1688-1760," *The English Historical Review*, vol. 31, no. 124 (Oct., 1916), 545-572.

of the moment. There were committees set up to arbitrate disputes between towns over boundaries, committees to draft messages to the crown, and joint committees of the Council and Assembly to work on legislation or investigations.[29] Because house procedures were unchartered territory, the Council and the Assembly were free to adopt those practices that best suited the interests of each, unless and until forced to change by a determined governor.

Council control over the legislative process was always tenuous. Because both Council and Assembly had to assent to any bill, the simplest and most direct method for the Council to control legislation was to refuse its assent to bills "sent up" by the lower house.[30] There was no requirement to record their dissent from the will of the Assembly in the minutes of the body; duly read thrice, rejected bills never made another appearance in the record. Unfortunately for the historian, this form of rejection was common. When either circumstance or political pressure forced the Board to record a vote on a House measure, passing bills "in the negative," and voting "non-concurrence" to resolutions were more explicit rejections. The Council exercised a similar control over the provincial purse strings, since, by the text of the Second Charter, expenditures required the consent of the Board. Emphasizing the role of fiduciary backstop were the governors' instructions on this point. "You are not to suffer any publick money whatsoever to be issued or disposed of otherwise than by Warrant under Your hand, by and with the

29 The most common use of committees in the Council was for accounting purposes. Usually two Councilors, called upon to audit accounts of individuals and branches of the government, these auditing committees sprung up and disbanded with regularity, clustered in the early spring, the closing session of the legislative year. In 1702, for example, Major John Walley and Penn Townsend seemed to draw the short straw, auditing nearly every individual account submitted to the provincial treasury. See 25 February 1702/3 in "Minutes of the Council," 237-8 for a particularly cruel day at the Board for the two.

30 There was no veto override available to the General Court, nor a pocket veto the governor. Also: The Assembly was a 'lower house,' in both the status and linguistic senses; the language of the Council as well as the Assembly records is always that of ascent, that is, bills are "sent up" to the Council, or "down" to the House of Representatives.

Advice and Consent of Our said Councill."[31] Through these two methods, the Council was able to stifle in some degree the popular will of the Assembly, though never completely.

It is tempting to imagine a stronger Council; one appointed by crown or governor and in possession of these two powers, it seems, could have better governed the province than the muddle of popular and royal sovereignty that was the Second Charter Council. It is true that the Council of the Second Charter period did not remove political or institutional conflict. Furthermore, the "transformation" of the Council that came in the late 1760s (effected by the House's refusal to fill vacancies created by Governor Francis Bernard's electoral vetoes), effective enough to have dethroned an elective Council, would have had a diminished effect on an appointed one.[32] This tactic kept the province in a state of political emergency, ratcheting up already elevated levels of tension, and eventually forced the remaining Council members to cleave more closely to the will of the electorate. However, there would have been nowhere for those members to go had they been executive or royal appointees. Still, events seem to exonerate the Second Charter Council of the charge of ineffectiveness, at least until the Revolutionary moment.

It appears, then, that the Council was generally effective in its role as a check on the Assembly. In fact, when led by able governors, the Council thwarted legislation that might have earned the ire of the Board of Trade or the Privy Council. Under the administrations of the Earl of Bellomont and Joseph Dudley, men with extensive

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31 Lords of Trade to Joseph Dudley, 11 December 1701 / 10 March 1702, "Instructions to Massachusetts Governors," MHS, 576. This can be seen as a check against a wavering or pressured governor as well as against the Assembly, since the Council's assent would have been required even for expenditures desired by the governor himself.

32 See Francis G. Walett, "The Massachusetts Council, 1766-1774: The Transformation of a Conservative Institution," *The William and Mary Quarterly*, ser. 3, vol. 6, no. 4 (Oct., 1949), 605-627.

metropolitan experience, the need for royal intervention seemed to dissipate entirely. The crown disallowed no law passed by the General Court from August of 1699 until 1717.[33] Salutary neglect from the crown, effective governance from two royal governors with extensive experience in England, and the accumulation of understanding in the General Court of what would and would not be acceptable to the Board of Trade were all factors in the light hand of royal interference in provincial affairs. Whatever the specific mixture of forces were at work, the province was clearly capable of governing itself well enough to be left alone.

One of the factors in this recipe for neglect was the ability of the royal governor to steer the General Court away from rough imperial waters. If the House of Representatives tended to be in opposition to the crown's desires, then the governor needed the Council to both thwart the popular will and force through the royal agenda.[34] The Council could aid in the implementation of royal government through its legislative powers, which could check the Assembly. Its electoral structure, which gave the governor partial control over its membership, and its organically developed procedures, which gave the executive control over its deliberations, allowed governors control, however occasional and imperfect, over the Council, at least through the majority of the Second Charter period.[35] That control was augmented by unchartered methods as well as chartered. It was exercised through the electoral veto, and through procedural means. By

33 For more on the royal disallowance, see Chapter 3.

34 It is important to note that the House was not consistently in opposition to the royal governors in the first half of the century, any more than achieving the goals of the crown was consistently the goal of the royal governors during this same period.

35 Applying the royal will in the province was hardly its only priority. It might be fighting, perhaps most often, an inter-branch struggle for dominance against the House of Representatives. As with politics everywhere, the issues immediately at hand were only a part of the equation; personalities, institutional inertia, imperial considerations, local conflicts, and bureaucratic infighting all played a role in provincial decision-making. The Council seemed to lose this struggle of status by the middle of the 1760s, becoming the handmaiden to the more popular lower house. See Walett, "Massachusetts Council."

the 1760s, however, even that level of imperfect control was lost, and the Council became an outpost of the popular faction, and a tool of the Revolutionary movement.

The Electoral Veto

If it was to be a tool for the imposition of royal authority, governors required a measure of control over the Council. They exercised both chartered and unchartered powers to obtain that control. His chartered powers were formidable; he was more powerful within Massachusetts Bay than his king was within England. The governor possessed an electoral veto over membership in the Council. His presence was required in order for the conduct of Council business. The electoral veto might be applied more or less aggressively, but it was a chartered tool. Unchartered controls took subtler forms, for example, Governor Dudley's forcing votes in Council to be made vocally rather than in writing. The outcomes of attempts at executive control over the Council were dependent to a large degree on the skills of the governor in question. What a metropolitan-trained, native-born administrator like Joseph Dudley or William Shirley could accomplish differed from what an emotional and impetuous pirate like Sir William Phips might achieve.

Whereas under the First Charter the governor had been something akin to *primus inter pares,* under the Second he was clearly superior to the Council, and the election veto is the strongest sign of that superiority. Note that while the Second Charter might have provided the governor with the power of appointment *to* the Council, it stopped short of doing so; clearly, then, the royal intent was to have some notes of the provincial voice in the Council's decisions. The governors were given the veto power, in the words of Lord Shelburne in 1769, "as an occasional check upon any indiscreet use of the right

of electing counselors, which was given by charter, to the Assembly, which might, at certain periods, by an improper exercise, have a tendency to disturb the deliberations of that part of the legislature." Because "the greatest gravity and moderation is more particularly expected" from that body, the governor had the responsibility "of excluding those from the Council whose mistaken zeal may have led them to improper excesses."[36]

While the governors' electoral veto was a clear aggrandizement of executive power in the province, what was unclear, upon reception of the Second Charter, was the precise nature of the Council's electorate. In the words of the Second Charter, the election was to "be by the Generall Court or Assembly newly chosen," a small collection of words which provided a large amount of confusion. The connection of the terms "Assembly," "or," and "General Court" muddied the waters for the first Provincial elections in 1693, as Thomas Hutchinson relates.

> [It] is handed down to us, by tradition, that after some time spent in messages and replies, the council of the former year gave up the point, and sent major Whalley, one of their number, to acquaint the house with it; but when he came to the door, he heard the Speaker putting the question to the house, and finding they had conceded to the council, he returned without delivering his message; and a committee coming soon after from the house to bring up the vote, the council, by this accident, retained a privilege which they have been in the exercise of ever since.[37]

Whatever the royal intent, the Council, after 1693, possessed a voice in its own election. This would not be decisive on its own; the Assembly outnumbered the Council by a

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36 Shelburne to Bernard, 17 September 1767, in *Speeches of the Governors of Massachusetts, from 1765 to 1775; and the Answers of the House of Representatives to the Same; with Their Resolutions and Addresses for that Period; and other Public Papers Relating to the Dispute Between the Country and Great Britain, which led to the Independence of the United States* (Boston: Russell and Gardner, 1818), 117. Shelburne also wisely advised Bernard "that it is His Majesty's resolution to extend to you his countenance and protection in every constitutional measure, that shall be found necessary for the support of his government in the Massachusetts Bay: And it will be your care and your duty, to avail yourself of such protection in *those cases only*, where the *honor* and *dignity* of *his Majesty's government* is *really*, either mediately, or immediately, concerned."

37 Hutchinson, vol. 2, 6-7.

factor of at least three. However, a unified Council would be in a position to do much in those elections.

Councilor elections were not winner-take-all campaigns, familiar to American voters of later centuries. The members of the General Court nominated a list of nominees, the candidates divided by geographic region, corresponding to the apportionment in the charter.[38] The gathered Representatives and Councilors cast their votes in three rounds; the highest vote getters in each were named to the Council, if not vetoed by the governor.[39] Since there were more Assemblymen than Council members, a popular faction could succeed in placing its favorites onto the Board. The governor's veto over these elections provided the crown with a necessary, if not always sufficient, backstop to royal authority. If used wisely, the veto power could help assure that individuals identifying too strongly with the desires of the province over the crown would be prevented from office.

In reality, the Council tended to be never entirely under the sway of either the "popular faction" or the crown.

> [T]his branch is dependent both upon the governor and people, and we have seen, at different times, the influence of the one or the other over this branch, according to the degree of spirit and resolution which has respectively prevailed. We have seen instances also of councellors, who have had fortitude enough to resist an undue influence from either, and

38 It does not appear that one had to reside in the region from which one was elected.

39 One can see the process at work in one example, this from 1707, in which John Leverett, soon-to-be President of Harvard College, never quite made the cut. Councilman Samuel Sewall kept fairly good records of elections in his Diary, usually putting the names of those who did not obtain the necessary votes in brackets. "In the morn, Mr. Secretary, major Walley and I gave the Deputies the Oaths, 66. and after, five more were sworn in the Council-Chamber, which made 71, and Councillors 24. (95 votes). 1 Wait Winthrop 88, 2 James Russell 90, 3 Jn Hathorn 60, 4 Elisha Hutchinson 91, 5 S. Sewall 92, 6 Isaac Addington 92, 7 Wm Brown 82, 8 Jn Phillips 75, 9 Jona Corwin 75, 10 Jn Foster 79, 11 Penn Townsend 90, 12 John Appleton 61, 13 John Higginson 78, 14 Andrew Belcher 78, 15 Edw. Bromfield 82, 16 Saml Appleton 53; 2d Stroak, 17 Saml Partridge 53; 3d Stroak, 18 Peter Sergeant 45; Plimouth, John Thacher 53, Isaac Winslow 84, Nathanl Pain 81, John Gushing 80; Main, Eliakim Hutchinson 69, Benja Brown 72, Ichabod Plaisted 59; Zagadahock, Joseph Lynde 54, [Leverett 30]; At Large, Simeon Stoddard 44; 3d Stroak, Ephraim Hunt 47, [Walley 18], [Leverett 12]" Sewall, *Diary*, vol. 2, 567.

who from year to year have had violent opposition to their election.

Thomas Hutchinson, having had served on the Council for years before being commissioned Lieutenant Governor (the office he occupied when that description was rendered), was forced to conclude that the Council was a failure. "But we have often seen, that the most likely way to secure a seat for many years is to be of no importance, and therefore *it must be pronounced defective* [emphasis added]."[40] The Second Charter constructed, in other words, an institution of royal control that appeared strong under the pens of the bureaucrats in England, but when planted in the Massachusetts soil, grew into the weakest of reeds.

For the astute observer, the results of the Assembly's elections could demonstrate potential problems for elections to the upper house. By 1703, the first full year of his term, Joseph Dudley foresaw the difficulties in achieving a permanent salary for his office. Dudley early understood that his Council would find it difficult to resist the Assembly, consistently hostile to such attempts. The tea leaves of the May elections to the Assembly told Dudley all he needed to know.

> The Annuall choice of her Majesty's Councill here is within a few daies, and the Assembly already chosen for that purpose, there has been apparent Methods taken in the choice of Assembly men, that no Such should be chosen, as had shewed their Obedience to her Majesties Command for the building of Pemaquid, or for the Settling a Salary for the Support of the Government, and I therefore reasonable Expect that such will be chosen into the Councill, and unless Her Majesty Please to Assign a Sum out of the publick Revenues here, to be first taken out for the Governour annually, I do not Expect that anything will be obtained at the Assembly, and while the Council have their Dependance upon the People for their Station at that Board.[41]

In Dudley's eyes, like Hutchison's, the Council was too dependent on the people to be

40 Hutchinson, vol. 2, 6.
41 Dudley to Board of Trade, 10 May and 30 June 1703, Colonial Records Office, C.O. 5/751, 94.

relied upon as a firm bulwark against the popular faction. Control over its membership through the veto was the best way for governors to control the Council, but it was imperfect at best, ineffective at worst.

Like so much of the chartered authority of the governor, the electoral veto was implemented inconsistently; wisely or not, each governor approached this power differently. First, there was considerable inertia against its use, accumulated by the reverence with which the First Charter was held, especially in the early Second Charter period, when the wake of the tyranny of the Dominion was still rippling. This inertia operated as a check against the expansion of crown authority, whatever the text of the Second Charter. Using the veto power was problematic for each new royal governor for other reasons as well. Indiscriminate or excessive use of his veto might arouse popular ire within the province, weakening his provincial authority. *Not* using it presented a similar problem, but in a different location. A governor was only as secure as his support from the metropolis, and avoiding confrontations with the provincials could weaken that support. Therefore, a governor, for all the provincial concerns over his power upon the reception of the Second Charter, was not in a particularly strong position when it came to using the electoral veto. He could go along with the provincial will by allowing men of the popular faction onto the Council in order to gain favor with the people and therefore lose a measure of royal support, or he could disallow such an election, and thus gain (potentially) metropolitan support while alienating him from the provincials and generating friction on future issues. Skilled governors could do both when necessary and maintain sufficient royal and provincial approval; far more common, however, were the unskilled executives who tried to do too much of one at the expense of the other, and lost

both poles of support.

The case of Elisha Cooke, Sr. demonstrated the double-edged nature of the electoral veto power, as well as the shifting geography of opposition to royal authority. Cooke had so opposed the new charter at its conception that he had abandoned his office as agent for the colony in order to disassociate himself from the document, and had been accompanied by the only other official agent of the colony, Thomas Oakes. Cooke's abandonment of the negotiation gave Increase Mather the preponderant colonial input regarding the appointment of the first Council in the text of the Second Charter. Unsurprisingly, the roll of that first Council featured few if any representatives of the popular faction. Cooke's election to the Council in the first election after the arrival of the Second Charter, must have represented a sense of the disappointment with the Second Charter.[42] Cooke, however, had been elected the next year, while ten men appointed in the text of the Second Charter were left out. This was perhaps a reflection of that faction's dissatisfaction with the initial makeup of the Board. Whatever the cause, Cooke's election presented a difficult choice to then-Governor Sir William Phips: reject Cooke's election, thus alienating the popular faction within the province for a not-altogether-clear gain in royal opinion at Whitehall, or accept his election and be forced to work hand-in-hand with a hostile faction within the Council. Phips wasted little time deciding, rejecting Cooke's election the same day, but not without consequence. Samuel Sewall noted in his diary that the veto of Cooke generated "great wrath," but that the populace tended to blame Increase Mather instead.[43] The "wrath," however directed, was

42 The Second Charter itself named the first Council and Cooke, as expected, was not on that list. The first election of a Council was held on 31 May of 1693. See Sewall, vol. 1, 309.

43 Sewall, vol. 1, 310. "Is great wrath about Mr. Cook's being refused, and 'tis supposed Mr. Mather is the cause." The impression that Mather was responsible stemmed from his quarrel with Cooke during

apparently sufficient to force Phips to reconsider the veto. The following year the General Court again elected Cooke to the Council; Phips allowed the election, and Cooke remained a member until 1703, when another governor was forced to re-address his election.

Joseph Dudley's term as royal governor began during the term of the General Court elected in 1702. Cooke was a part of that Council, as he had been for nine previous years. Dudley had taken great pains to assure both the crown and prominent provincials of his fitness for the office of governor, and intended to insure his security in that position once gained.[44] The surest way to enjoy such security was to maintain close relations with the crown and the Board of Trade: provincial opposition would wax and wane under any administration, but the loss of royal support meant the end of a career. Dudley's royal instructions, as those of the governors before and after him, articulated the Board's designs for administration of the colony. The Board demanded, among other things, that Dudley take care with elections to the Council.

> And in the Choice and appointments of the Members of Our said Councill, as also of the Principall Officers, Judges, Justices, Sherriffs and officers, You are always to take care that they be Men of good life and well affected to Our Government, and of good Estates and abilities, and not necessitous people or much in Debt.[45]

While Cooke was certainly a man "of good Estate and abilities," at least in terms of governing experience, it could not be argued that he was particularly "well affected to

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their joint agency for the province in London. Mather had judged the atmosphere unlikely to support the resuscitation of the original charter, while Cooke had abandoned his office in protest of the new charter. It seems the populace sided with Cooke, or at a minimum felt that Mather had advocated his dismissal.

44 The Mathers were especially important provincials for Dudley to win over. Ultimately, they were convinced of the appropriateness of Dudley for the office by a letter he wrote from England. See note #8, above.

45 Lords of Trade to Joseph Dudley, 11 December 1701 / 10 March 1702, "Instructions to Massachusetts Governors," 576. Dudley's commission as royal governor and his first instructions had been drawn up under King William in the fall of 1701, but were not sent to Dudley until spring of 1702, after Queen Anne had reviewed and approved the appointment.

[Royal] government" in the province. His re-election to the Council in May of 1703 – the first opportunity Dudley had to exert his authority over the body – resulted in an immediate veto. Dudley also vetoed four other Councilors. Thomas Oakes, who had been partnered with Cooke in the Agency of the colony at the creation of the Second Charter, and who had been equally dispirited by its creation, was rejected on the same grounds as Cooke. Dudley vetoed John Saffin's election due to his advanced age (Samuel Sewall, perhaps quoting Dudley, refers to Saffin in his Diary as "Superannuated").[46] Peter Sergeant, another long-serving Councilor was rejected without any expressed cause. In Sewall's telling, the Governor simply stated that "Some might have served the Queen better than they did."[47]

Dudley's veto of these four seemed to generate less "wrath" in the province than had Phips' negative of Cooke ten years earlier. In truth, Dudley was less concerned with his support among the provincials than he was about his support from the metropolis. His friendship with William Blathwayt, secretary of the Board of Trade, was the foundation upon which Dudley's good fortunes rested. Nevertheless, there was no sense in angering the crown through insufficient zeal. Vetoing Cooke, Oakes, Sargeant, and Saffin was the least he could do to demonstrate his understanding of royal intent. It also represented a strong opening play by a new governor – if not a new hand at the Massachusetts governing table. The veto may have been intended, in addition to remove the men in question, to establish Dudley's credibility as the face of the crown in the province. This

46 Sewall, vol. 1, 486. Sewall's entry seems to reflect the language used by Joseph Dudley in the Council meeting upon the election. However, Sewall himself, in his famous poem about Adam, a Negro reduced from freedom to slavery by Saffin's "lying Impudence," refers to Saffin as the "Superannuated Squire." The poem seems to have been written following the election and veto; the provenance of the adjective remains an open question.

47 Ibid.

demonstration did not completely preempt future conflict; the Assembly, not easily taking heed to Dudley's desires, elected Cooke again the next year. His election was again vetoed. Then, in 1706, Cooke had to be vetoed off of the Council rolls once again.[48] However, there could be little doubt that Dudley intended to live up to the expectations of his patrons in the metropolis.

By the end of the provincial period, under Governors Francis Bernard and Thomas Hutchinson, with the crisis of the Revolutionary era beginning to boil over, the popular faction overran the bastion of the governor's veto. In 1765, the Assembly refused to elect the Lieutenant Governor and the provincial Secretary to the Council, as well as several other incumbents well-disposed to Governor Bernard. In retaliation, Bernard vetoed six of the newly elected Council members, and in response, the Assembly refused to elect replacements.[49] This was not a severe threat to the conducting of provincial business, when one considers that a quorum consisted of only seven members plus the governor. In addition, the lack of replacements cut in both directions. The longer the Council was shorn of six popular members, the less influence the popular faction would have upon its deliberations. At the same time, the lack of replacements must have exerted a powerful influence on those Council members remaining, searing evidence of the control of the Assembly over their political fortunes. The latter consequence might result in a future Council still more likely to accommodate popular will. It certainly appears that the latter was the message received in the late 1760s.[50]

The situation worsened in 1768 when the Council barred entry to Thomas Hutchinson, the Lieutenant Governor. He was not a member of the Board, the governor

48 Sewall, vol. 2, 547.
49 Walett, "The Massachusetts Council," 607-8.
50 Ibid.

and Council having conceded that point in the earlier scuffle. That body's argument was that non-members were unwelcome except by invitation, a straightforward policy that was rather incredibly upheld by the metropolitan government upon Hutchinson's appeal.[51] By the following year, Bernard was thoroughly disabused of any notion of the effectiveness of the veto, it having proved itself worthless against a committed opposition. "It will be of no Use to make any more Negatives: for now the Delinquincy is become so general, that there is more exception to be taken to Persons within the Council then out of it."[52] The Council's electoral system, in a time of intense crisis, could not be relied upon to result in a Council of the best men to impose the royal will in the province. Without the use of an effective veto, the late provincial governors would be without the Council's musculature, and therefore less able to extend the royal will in the Bay.

The governor's electoral veto was the central chartered authority over the Council wielded by royal governors, but there were also unchartered tools in the arsenal of competent governors like Dudley. Vetoing the elections of particular members could reduce the power of opposition within the Council, but there were more subtle methods at his disposal as well. In addition to the electoral veto, Dudley's instructions from the metropolis contained other, less-direct methods to influence the Council.

> You are to communicate forthwith unto our said Councill such and so many of these our Instructions wherein their advice and consent are mentioned to be requisite as likewise all such others from time to time as you shall find convenient for our service to be imparted to them.[53]

Providing the Council with relevant portions of the royal instructions to the governor was

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51 Shelburne to Bernard, 17 September 1767, in *Speeches of the Governors of Massachusetts*, 118.
52 From Francis Bernard Papers, vol. 7, 285, Harvard College Library, quoted in Wallett, 608.
53 Lords of Trade to Joseph Dudley, 11 December 1701 / 10 March 1702, "Instructions to Massachusetts Governors," MHS, 576.

a subtle method of influence, allowing the governor to illustrate the importance of any particular issue to the crown. Of course, such a tactic could only be effective if the Council was willing to be led.

From early in the Second Charter period, governors took up the power of directing the calendar and setting the agenda of the Council, primarily under the leadership of the first metropolitan-trained governors: the Earl of Bellomont, and Joseph Dudley. Bellomont came with considerable experience in English government, having been a Treasurer for the Queen as well as a Member of Parliament. An early supporter of William of Orange in Ireland, Richard Coote, first Earl of Bellomont, was sent to govern the New England front against the French in 1698 as governor of New York, Massachusetts, and New Hampshire. Under his administration, the Council's work became dependent upon the presence of the governor.[54] While Council committees met and worked during Bellomont's illnesses, the Council itself conducted no business without him.[55] This was true so long as the governor was not abroad on provincial business, in which case the lieutenant governor would replace him in Council, and business would proceed. Under the first royal governor, Sir William Phips, there seems to have been no such formal policy, though the Council minutes are incomplete.

Dudley maintained this method of control over the calendar and agenda, while adding a new wrinkle of his own. The necessity of his attendance to proceed with

54 The Charter demanded the governor's – or his lieutenant's – presence to constitute a quorum, but it seems that Phips was less stringent about upholding this rule than subsequent governors.

55 Bellomont missed many sessions for an unspecified, but apparently well known, malady. See, for example, 24 and 27 June 1699. For 24 June the minutes read as follows: "His Excy being under Indisposition of body and unable to come to the Chamber Ordered that the Board Resolve itself into a Committee and proceed to the consideration of the Bills lying before them, And that the Council be Adjourned unto Munday the 26th at two P. Meridiem." This was a standard entry in the Council's Minutes throughout Bellomont's short term as governor. For examples of Council committees laboring in the absence of the executive, see "Minutes of the Council," vol, 81, 205, 206-7, 210, 213, 214, 216-17, 218.

business left the Council, if not stifled, then certainly more uncomfortable when opinions counter to the executive's desires were voiced. However, after 1702, the governor sought further influence over the deliberations by demanding voice rather than paper votes. This was a development of Dudley, who began the practice in his first meeting of the Council, on 28 June 1702. In the words of Sewall, Dudley "[r]efused to let us give our Yes and No in Papers."[56] This innovation, while not violating the letter of the royal instruction to the governors on this score, advising them "to permit … freedome of debates and vote in all affairs of publick concern that may be debated in Councill," ran somewhat counter to its spirit.[57] However, it probably helped achieve the ends that the crown wished that free debate to produce.

The Devolution Controversy

Another fissure in the relationship between governor and Council was exposed in 1714, upon the death of Queen Anne. This involved the proper process of the devolution of the executive authority in the absence of a commissioned governor. Naturally, in a frontier region, the governor was often away from Boston, nor was death a stranger to province or metropolis. Lieutenant governors were appointed for just such reasons, and exercised the powers of governors in latter's absence. However, even for a present, sitting governor, the expiration of a commission upon the death of the monarch meant he became a former official whose present commands need not be followed. In 1714, this, through a variety of unlikely circumstances, befell Joseph Dudley, and without his commission, he found himself superseded by the Council. This conflict again reveals the limits of Councilor power, and, more broadly, the limits of authority based in text of the

56 Sewall, vol. 1, 470.

57 Lords of Trade to Joseph Dudley, 11 December 1701 / 10 March 1702, "Instructions to Massachusetts Governors," MHS, 576

Second Charter itself.

In September of 1714, news arrived in Boston of the death of Queen Anne, who had passed the month before.[58] Because the information regarding the new king's will did not arrive in the colony until the following spring, a controversy ensued over the legitimacy of Governor Joseph Dudley's administration. The death of the Queen had rendered her commission of Dudley as governor of the province void. The text of the Second Charter required the governor's authority devolve to the Council.

> [A]nd that when, and as often as…there shall be no person within the said province Comissionated by Us, Our Heires, or Successors, to be Governour within the same, [t]hen and in every of the said cases the Councill or Assistants of Our said province shall have full power and Authority. And Wee doe hereby give and grant unto the said Councill or Assistants of Our said province, for the time being, or the Major parte of them, full power and Authority to doe and execute all and every such Acts, matters, and things which the said Governour or Leiutenant or Deputy Governour or Our said province or Territory for the time being might or could lawfully doe or exercise if they or either of them were personally present, untill the returne of the Governour, Leiutenant or Deputy Governour, soe absent, or Arrivall or Constitucon of such other Governour, or Leiutenant or Deputy Governour, as shall or may be appointed by Us, Our Heires, or Successors.[59]

True to form, however, other decisions by the metropolitan government called this seemingly clear text into question. The Council took control in February of 1715, then relinquished it to Dudley in March of that year, once presented with a proclamation of his continuation in office by the new king, George the First.[60] The controversy, brief but heated, illustrates the efforts to interpret the text of the Charter by the provincials in defense of the claims of the Council, and the disregard for that text shown by Dudley in his maintenance of power. Furthermore, Dudley himself used the Charter powers of the

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58 Sewall, *Diary,* vol. 2, 769.
59 Thorpe, vol. 3, 1885.
60 Sewall, *Diary*, vol. 2, 789.

governor to good effect in resisting the Council's efforts, showing that the document was a tool with multiple uses; it was a double-edged weapon, both sword and shield, depending on the objective and skill of its wielder.

The death of the monarch seemed to invalidate the commissions for her government's officials in the colonies, meaning that the Governor, Lieutenant Governor, and Secretary were technically no longer possessed of their respective offices.[61] Deaths of monarchs were generally unexpected in timing and manner, yet transitions tended to be smooth, from a provincial perspective. News of the monarch's death usually arrived along with a proclamation from the new monarch continuing royal appointees in their respective offices until further notice. For example, news of the death William arrived on 28 May 1702, 81 days after the fact, accompanied by "Queen [Anne]'s Proclamation for continuing Commissions."[62] However, Anne's death in August of 1714 presented a unique situation in the province, as no proclamation of the continuance of royal office-holders accompanied the news of the new King George's ascension. The circumstances were made more difficult still by the wreck of the first ship sent to New England with the news of the Queen's death – the ironically named *Hazard* – lost on rocks off the coast of Maine in November of that year.[63] A proclamation of continuance was on board, and

61 The question might have been taken still farther. There was apparently some debate in New York about whether the death of a particular governor meant the dissolution of the General Court called by him. See the arguments on both sides in 1858 George Chalmers, *Opinions of Eminent Lawyers on Various Points of English Jurisprudence, Chiefly Concerning the Colonies, Fisheries and Commerce of Great Britain* (Burlington, Vermont: C. Goodrich and Company, 1858), 249-61.

62 Sewall, vol. 1, 468. Perhaps a more interesting question is whether any decision of the courts or action of the government was ever challenged as illegitimate for occurring during the period between the monarch's death and the resumption of legitimate government.

63 Hutchinson, vol. 2, 157.

may have been recovered, though the sources seem to be in conflict.[64] Dudley issued his own proclamation in October, continuing all provincial officers "for the space of Six Months next."[65] This proclamation quoted an act of Parliament of 1695, in which crown appointees were mandated to remain in their posts for six months following the death of the monarch "Unless sooner Removed."[66] Were this the final word on the matter, then, Dudley's commission too would expire on 1 February 1715, and, according to the Charter, the government would fall to the Council.

The question was further confused by a royal instruction that had been sent to Dudley years earlier. According to this supplementary instruction, dated 3 May 1707, the government would devolve, not onto the entire Council, as previously arranged by Charter and previous instruction, but rather onto that body's "Eldest" member. The purpose of the change was, ironically, to alleviate confusion. "[W]e having observed that [the previous] instruction has given occasion of many controversies and disputes between the presidents and the councillors and the councillors themselves and otherwise in several of our plantations," the "Eldest Councillor…shall take upon him the administration of our

64 Hutchinson claims "No papers of any consequence saved." Ibid. However, the editors of Sewall's *Diary* – vol. 2, 781 – state that the packet was recovered. I side with the editors, not out of immediate knowledge, but out of respect for their diligence.

65 "By His Excellency Joseph Dudley…A Proclamation Requiring All Persons being in Office…," October 1714.

66 The relevant portion of the act is as follows. "That no Co[m]mission, either Civil or Military, shall cease, determine, or be void by reason of the Death or demise of His present Majesty or of any of His Heires or Successors, Kings or Queens of this Realme, but that every such Co[m]mission shall bee, continue and remaine in full force and virtue for the space of Six Months next after any such Death or Demise, unlesse in the meane Time superseded, determined, or made void by the next and i[m]mediate Successor to whom the Imperial crowne of this Realme, according to the Act of Settlement herein before mentioned, is limitted and appointed to go, remaine, or descend." See "An Act for the better Security of His Maj[es]ties Royal Person and Government," in John Rathby, ed., *Statutes of the Realm: vol. 7: 1695-1701* (1820), 114-118.

government."[67] In this way, differing policies put in place to govern the foreseeable event of the death of a monarch combined with a failure of communication with the colonies. Sorting out these conflicting directions would be the essence of the succession controversy.

Interestingly, according to Thomas Hutchinson, the royal instruction to devolve power to the eldest councilor was simply ignored by all parties, because it conflicted with the Charter, indicating that, to the provincials at least, the Charter stood atop instructions to the governor.[68] This communal decision removed one layer of the confusion over who ruled in the province. The provincial secretary, Isaac Addington, himself the eldest member of the Council and very ill, showed the instruction to Samuel Sewall on 1 January 1715. Nevertheless, Dudley was determined to keep the office, or at least to avoid giving it up without a fight.

In the period between the news of the Queen's death arriving and the expiration of the mandated six-month period, the Council members met several times to discuss their options.[69] Likewise, it appeared that Dudley himself harbored some questions about the propriety of ruling without official sanction. He exercised his power to prorogue the General Court on 6 December 1714, proroguing it upon its meeting until late January.[70] When the January meeting came, the Council was of the opinion that the proroguing of the previous session before it met, "which was not agreeable to Charter," was in fact a

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67 This instruction went out to many of the colonies in May of 1707. See Leonard Woods Labaree, ed., *Royal Instructions to British Colonial Governors, 1671-1776*, vol. 1 (New York: D. Appleton-Century Company, Inc., 1935), 77. Also printed in Sewall, *Diary*, vol. 2, 781.

68 Hutchinson, vol. 2, 157. The editor of Sewall's *Diary* confirm Hutchinson's view. The Council took control "on the presumption that the order in the text did not supersede the charter." Sewall, *Diary*, vol. 2, 781.

69 During this period there were several prorogations of the General Assembly while the provincials waited to hear of Dudley's confirmation.

70 Sewall, *Diary,* vol. 2, 776

dissolution of that body.[71] Dudley promptly announced the sitting General Court dissolved, and proceeded immediately to suggest that he renew commissions of provincial officeholders. The Council attempted to delay the matter by proposing a long adjournment that would take them past 1 February, the six-month deadline for the devolution of executive authority to that body. Dudley would not be so easily fooled, and scheduled their next session for the 26th of January. Officeholders were not the only concern during this interregnum. Dudley had warned the Council in December 1714 that the elections of 1715 might have to be postponed as well. "If the Governor falls he will fall on the Lieutenant Governor; and who shall grant writs to call a New Assembly; or if they doe, who will obey them?"[72] Though Sewall and the other Council members regarded this as an implied threat, in the event, the elections came after the issue was settled.

When 1 February arrived without news from the metropolis, several members of the Council attended Dudley in his Roxbury home to ask, in what must have been a pro forma manner, if he had received any communication from the crown. The meeting was inconclusive. When Sewall, speaking as a representative for the Council, began to rise and read the Council's address, Dudley asked him to sit down. He listened to their address, but refused to debate the issue, saying he "had received no Orders" telling him to step aside for the Council. Then he hustled them to the door, "[a]nd sent no body with us [to the gate]."[73] Moreover, the Council had not been significantly more polite than the

71 Ibid., 782.
72 Ibid., 777.
73 Ibid, 785. The social graces were important in matters such as this. Dudley was an expert in using the persuasive power of his personal presence, as he demonstrated it in this controversy. Sewall noted one more visit to the Governor's home, on 14 February, without an escort to the gate, though Dudley had given them "good Drink and Apples." Then, on 25 March, with the controversy settled in the Governor's favor, Sewall and another Councilor waited on Dudley to wish his new administration well. At

Governor. In their address, they had declared their intent to accept the authority that "is devolv'd upon His Majesty's Council, by the direction of our Charter." They had refused, however, Sewall's final draft paragraph, a fairly innocuous declaration of gracious thanks to Dudley for his favors "done this people, which are many."[74]

Upon Dudley's refusal to debate the issue, the Councilors returned to their chamber to decide their next course of action. They called an official meeting of the entire Council for the purpose of complete debate, and set the date for two days later. At that meeting, they signed a proclamation declaring their assumption of provincial authority, and dispatched a delegation to bring the news to Dudley.[75] When the men returned, the announced that Dudley had merely responded that he "was not dead, nor out of the province." The Council went ahead, proclaiming itself in authority the following morning.[76]

Dudley and his family, for their part, refused to accept the Devolution Government. The Governor's son William, offered a commission renewing the office he had held until 1 February as Sheriff of Suffolk County, responded that he "already had [a commission] from the Governor and Council." He added that while "his had a Seal, this had none."[77] Paul Dudley, another of the Governor's sons, and Attorney-General of the province under his father, drafted a pamphlet defending the Governor's maintaining power regardless of any act of Parliament.

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the end of their meeting, Dudley graciously "came out with us to the gate." Ibid., 786, 789. Such were the nuances of the Dudley style of leadership

74 Ibid.

75 "By the Honorable the Council … A Proclamation," 4 February 1714/15.

76 Sewall, *Diary*, vol. 2, 785. The weather poetically forecast the brief history of the new "Devolution Government," as Sewall had named it: the proclamation being read, the "Paper was sullied with the rain." See entry for 5 February 1715 for his first reference to the "Devolution Government," in ibid., 786.

77 Ibid, 786.

> And as the words, so the Meaning of the Charter, seems to be very Plain, That the Power and Authority of the Governor or Lieutenant-Governor, being once well granted, were never to cease, and Devolve on the Council, unless the Governor or Lieutenant Governor were Dead or out of the province, or Displaced.[78]

Paul Dudley's defense of his father's office was built upon a rigorous parsing of the phrases of the Charter. Countering the Council's claim that the governor lacked a commission from King George, Dudley noted that the Charter's devolution clause stated that the Council had authority only if "there shall be no Person within the said province Commissionated by Us, Our Heires, or Successors." Dudley himself had been commissioned by a successor to King William III; therefore, his commission was as valid as if it had come from King George. Paul Dudley ended the pamphlet with the claim that this dispute "concern[ed] the constitution of this Government by their Charter, the Peace and good Government of His Majesty's People, but most of all, the Prerogative of the crown."[79] Sewall drafted a response for the Devolution Government, proclaimed on March 18, recounting the reasons for the Council's assumption of power, and threatening prosecution for those "Calling their Authority into Question."[80]

Two days later, on 20 March, the long-delayed proclamation re-commissioning Dudley arrived.[81] While nothing of significance occurred in the province in the six weeks under the Devolution Government, the controversy between Dudley and the Council was

78 [Paul Dudley] *The Case of His Excellency the Governor and Council of the province of the Massachusetts Bay in New England truly stated* (Boston: Thomas Fleet, 1715), 2. According to Sewall, the Council asked the five Boston printers about the provenance of the pamphlet, and Thomas Fleet admitted he had printed it for Paul Dudley. See *Diary*, vol. 2, 787-88, note # 6.

79 [Dudley], 4.

80 "By the Honorable Council, a Proclamation…Whereas a Printed Sheet…Entituled *The Case of His Excellency the Governour,*" 18 March 1715.

81 Sewall, *Diary*, vol. 2, 788-89.

bitter and contentious.[82] It revolved around a close reading of the Charter, and an assessment of the place of the Charter in the hierarchy of royal commands. The general question of order of succession was never the central question. It was, like the question of the veto of Councilor elections, a constitutional debate about the meaning of the text of the Second Charter and the limits of that text on the power and authority of the royal governor.[83]

II – The Royal Governor and the House of Representatives

Relations between governor and House of Representatives were considerably more strained than those between the governor and Council. While the governor could appoint the time and place of the meetings of the General Court (within loose parameters established in the text of the Second Charter), and could adjourn, prorogue, or dissolve the body at will, he could only rarely control the behavior of the Assembly directly. The Assembly could express its approval or disapproval in ways different and even less easy to oppose than those available to the Council. Although the Second Charter did not contain rules and procedures for the Massachusetts Assembly, over the Second Charter period that body constructed an array of tools of resistance, some of which will be illustrated below. Most common, and perhaps least meaningful, were the various addresses to the governors, given either at the beginning of a legislative term or at odd times throughout the year. While these often read as rhetorical fire breathing, at least in the colonial context, they amounted in actuality to mere emotional appeals – venting –

82 Sewall's only reference to the operations of the Devolution Government was a note on 17 February that he had "Sign[ed] many Commissions." Not bureaucratic deed goes unpunished. *Diary*, vol. 2, 786.

83 The close textual analysis was not limited to the Charter, either. See the entry for 20 March 1715 for Sewall's close reading of Dudley's new commission. Ibid., 788-89.

without significant political or constitutional influence.[84] Another method of resistance was to engage in inter-branch conflicts with the executive. For example, in 1720 the Assembly passed a resolution calling for an expedition of 150 men to Maine to "Compel the Indians that shall be found there…to make full Satisfaction for the Damage they have done the English" of the region.[85] The powers of the governor as commander-in-chief have been outlined already; allowing the Assembly to assert itself in that sphere could have large and imperial consequences.

The Assembly was not limited to legislative methods of resistance. It could express its views in other ways too. In 1720, apparently a troubled year, the newly-elected Assembly chose Elisha Cooke, Jr., a long-time opponent of royal authority and personal foe of Governor Samuel Shute, its Speaker. This decision, though without force of law, represented a protest against the royal prerogative, at least as wielded by Shute. Shute's negative of the choice set off a conflict, described below, which was only resolved by the emission of an Explanatory Charter by the crown. Without question, the foremost weapon in the Assembly's arsenal was withholding a salary from the governor and lieutenant governor. A settled and permanent salary for the executive was a royal wish of long standing, re-emphasized to each governor upon his commission by instruction, and consistently refused by the provincials.

Some disputes were brief but of real significance, while other struggles lasted for decades, most especially the debate over extending the governor a permanent salary. This section will treat two of these conflicts: first, the question of whether the governor

84 These are perhaps best compared with Sense of the Congress resolutions, or the House's one-minute speeches, usually delivered in an empty House to the C-SPAN cameramen forced to record them.

85 "Journals of the House of Representatives, November 1720" (Boston: Bartholomew Green, 1720), 7.

possessed the power to veto the Assembly's choice of Speaker, and then, the salary debate. The first was a question of significance enough to warrant an extraordinary intervention by the crown: the proclamation of an Explanatory Charter. The second, like a dormant political volcano, became more or less active depending on the vigor with which the province's governor forwarded royal policy. Both controversies were based on close analyses of the text of the Second Charter, and reveal the respective perceptions of the role of that Charter in the Massachusetts Bay province.

The Veto of the Speaker

One of the most significant gubernatorial powers under the Second Charter was that of the veto on elections to the Council. The newly elected General Assembly as well as the outgoing Council annually elected the Council, giving the will of the people fair expression. The crown's check on that popular will, exercised through the governor's negative on Council elections, was an important bulwark against any real or potential countervailing desires of the provincials. When combined with the ability to name officials in the provincial government, it also gave him additional leverage in matters of patronage, not a small part of the authority any governor could hope to wield. The negative on Council elections was not a power often used, and it seems to have been, perhaps consequently, insufficient to keep the Council under the control of the governors.

Even this measure of control was unavailable to the governor over the elections to the Assembly. He had no sway over the makeup of that body. However, he might demonstrate a symbolic power over its leadership, in the form of the Assembly's choice of Speaker. In 1720, Governor Samuel Shute vetoed the election of a Speaker. There was no such power in the text of the Second Charter; Shute's action set off an intense

debate, both within and without the province. The contest was ultimately resolved in Shute's favor, with the issuance in 1725 of an Explanatory Charter granting the royal governors a veto over elections to the office of Speaker. This was a remarkable episode, both for fact that the powers of the royal governors were so directly and explicitly expanded, and for the rapid pace of imperial action. No other controversy during the provincial period generated this level of response from the metropolis, and as such, it makes for an ideal example of the constitutional significance of the Charter for both metropolis and periphery.

In May of 1720, the newly-elected Assembly, in the way it had under the Charter every year since 1692, chose its own officers. Their choice for Speaker this particular year was Dr. Elisha Cooke, Junior, son of the late Dr. Elisha Cooke, Senior. Cooke the Younger had gradually assumed his father's role as counterweight to the crown. By 1720, he was both a thorn in the side of imperial administration and an office-holder profiting from its operations. On the one hand, he was a member of the General Assembly, and his personal resistance to the Charter provision reserving mast pines for imperial needs had brought him and the crown to rhetorical blows. His selection as Speaker of the Assembly was partly in reward for such behavior, of course. On the other hand, he was Clerk of the Superior Court, having been appointed to that station in 1702, upon Governor Joseph Dudley's arrival.[86] He thus managed to have a foot in both worlds, as a member of the royal administration as well as occasional Assemblyman and voice of the popular faction.

By 1720, then, Cooke was involved in a multi-layered struggle with Shute and the crown. The first layer of this conflict focused on the reservation clause. By culling mast

86 Sewall, *Diary*, vol. 1, 473.

pines in Maine for profit, Cooke challenged the reservation clause and took the lead in Massachusetts opposition to a crown right claimed in the Second Charter. As the highest embodiment of that authority, Governor Shute became Cooke's personal foe. The debate over the crown's claim over the mast pines of New England helped to make Cooke an object of imperial focus in the early eighteenth century, a focus, which, of course, had the effect of raising his profile within the province itself.[87]

A second layer to the struggle between Dr. Cooke and Governor Shute was the former's role in an attempt to create a bank through which to circulate a medium of currency within the province. Massachusetts' chronic lack of currency, brought about by the mercantilist system of the English empire, had caused problems within the province for years. Cooke, along with others, proposed a provincial currency to be disseminated by a bank located in Massachusetts-Bay, giving the provincials the hope of a circulating currency that could meet their own needs while their hard specie continued to flow back to the metropolis. The crown refused to allow such an innovation, as it would, two decades later, refuse the creation of a Land Bank for the same purpose, leaving the problem untouched. Cooke's role as chairman of the proposed bank again put him in opposition to Shute's authority. In this case, it had been long the policy of the metropolis that no banks be allowed in the province unless under the control of the crown, and the chronic, and universal, difficulties of the colonial economy placed Cooke on the popular side of the issue.[88]

The final layer in the Cooke-Shute feud was a personal attack on Shute made by Cooke in a heated – and perhaps drunken – confrontation in Boston over the cause of the

87 For more on the reservation of mast pines to the crown, see Chapter 5, below.

88 I use "popular" here in terms of numbers, rather than in the sense of the provincial interest in opposition to the crown.

Shute's negative of Cooke's election to the Council in 1718. The incident took place in January of 1719, in the home where Cooke lodged during sessions of the General Court, when several prominent provincial officials visited for some food and drink. Though months had passed since the election, held in May, Cooke remained angry over his rejection. After "[t]hey drank severall Bowls of Punch," Cooke turned on the provincial Attorney-General, Robert Auchmuty, and demanded to know if it had been Auchmuty that had advised Shute to veto his election. Auchmuty's response was undiplomatic, to say the least. "No!" he answered, "I could not do it. But I endeavour'd it, I endeavour'd it!" Cooke responded with what might have been seen as backhanded compliment of Shute: "The Governor is not so great a Blockhead to hearken to you!"[89] Shute complained to Judge (and member of the Council) Samuel Sewall in an informal meeting about "Mr. Cooke's carriage," adding that if he "had not Justice done him here he must write home about it."[90]

Cooke, when called to face Auchmuty and the Council, attempted spinning the statement, but that failed almost at the moment he delivered it, and he was forced to admit that what had occurred matched the reports of the incident made by eyewitnesses. The following week, Shute informed the judges of the Superior Court that Cooke's insult rendered him unfit for the office of Clerk of the Superior Court; Cooke was "such a Enemy to his Master the King and to him, his Lieutenant, that he expected he should be remov'd from his Cl[e]rk's place." The judges did remove Cook from his station that February.[91] His personal affront to the governor set the stage for 1720, "the memorable year," in the words of Thomas Hutchinson, when "[t]he contests and dissention in the

89 Sewall, vol. 2, 915.
90 Ibid., 916.
91 Ibid., 917.

government rose to a greater height" than any time in the preceding 90 years.[92]

When the Assembly chose Cooke as Speaker of the body in 1720, largely because of his staunch opposition to the crown in these other spheres, Shute vetoed his election. Such an action was unprecedented (or at least had not been *successfully* accomplished before), regardless of how sensible it may have appeared to Shute. The Governor justified his maneuver by asserting that Governor Joseph Dudley had done so himself during his administration.[93] Shute might have been forgiven for thinking that a reference to Dudley would please the provincials. The late Governor had passed away the month before the elections of 1720, and had been given, "whether from pride or relief," one of the greatest funerals of the colony's history.[94] Shute himself had been first in the line of pall-bearers, and townspeople gathered to watch from "out of windows, on Fences and Trees, like Pigeons."[95] Perhaps he felt the enormous funeral was a reflection of Dudley's popularity, and therefore an appeal to his precedent would calm the agitated Assembly.

The fact that Dudley had attempted to veto such an election was largely irrelevant. Although the circumstances were remarkably similar to those in the Shute-Cooke controversy – the Speaker in question had been Thomas Oakes, like Cooke a long-standing opponent of royal authority in the province, and in fact a close associate of Cooke's father – Dudley's maneuver failed. Dudley was pressed by the military demands of Queen Anne's War, which in this instance provided the General Assembly the leverage necessary to carry the point. He might have pressed the issue but instead desisted, allowing the Assembly's choice in order "not [to] delay the Affairs necessary

92 Hutchinson, vol. 2, 174.
93 "Journals of the House of Representatives, May 1720," (Boston: Benjamin Green, 1720), 2.
94 The quote is from the editors of Sewall's *Diary*, vol. 2, 945, note #18.
95 Ibid., 945.

for the Security of the province."[96] The Lords of Trade praised Dudley for raising the matter, who applauded him for "Assert[ing] her Majesty's Prerogative in that particular." Further, the Lords authorized Dudley to "acquaint the Council that it will not be thought fitt that her Majesty's right of having a negative upon the Choice of Speaker and Counsellours be given up."[97] Here is evidence that the metropolis operated under the assumption that the power to negative the Speaker was implicit in the executive authority granted by the Charter. It was not, however, in any way explicit in that document, and hence the source of much contention later.

The General Assembly was, it appears, somewhat stunned by Shute peremptory action. First, the body asserted that Shute had already approved Cooke's selection. According to the journal of the Assembly, three members had gone to the Governor in the Council chambers, informed Shute of the body's choice, and "Return'd that his Excellency said 'It was very well.'"[98] Afterwards, however, Shute asked to be informed of the Assembly's choice "now [that] he is in the Chair." After being told that he had already approved their selection, Shute finally received word that they had chosen Cooke. He announced quickly, "the Gentleman chosen Speaker had formerly affronted him, as he was the King's Governor, and that therefore he did Negative the choice, according to the Power given him in the Royal Charter." The Assembly protested, but Shute would not concede the point, asserting that Cooke "was no Speaker," since the Governor "had Negativ'd the choice."[99] This was an impasse of constitutional dimensions, and had to be

96 Everett Kimball, *The Public Life of Joseph Dudley: A Study of the Colonial Policy of the Stuarts in New England, 1660-1715,* Harvard Historical Studies, vol. 15 (New York: Longmans, Green, and Co., 1911), 93.
97 Lords Commissioners for Trade and Plantations, *Colonial Entry Book, New England* (Ms.), 41, F. 115, quoted in ibid. It is unknown whether Dudley, in fact, did announce this to the Council.
98 "Journal of the House of Representatives, May 1720," 1.
99 Ibid., 2.

resolved in London, not Boston.

The General Assembly did its best to confound Shute's administration in protest of his presumed broadening of the powers of the executive, but to little avail. The Assembly voted unanimously not to chose a new Speaker (a preview of the tactics taken by that body in its struggle over the vetoed Councilors in the 1760s detailed above), and set about to conduct its regular business, electing the new Council and swearing in various provincial officials. While Shute initially declared that the Council elections could not proceed without a Speaker chosen, he and the Council relented, undoubtedly with a design to prevent any further confounding of the government. Three days after the Council elections, Shute adjourned the General Court, declaring he did "not think it for the honor of his majesty's government that this assembly should sit any longer."[100]

When the General Court met again in July, it elected a different Speaker, finally conceding the point, at least a tactical retreat, in order that provincial business be done. Nevertheless, the body was not content with moving on from the controversy, and used the session to vote for severely reduced allowances for both Governor Shute and Lieutenant Governor William Dummer. The usual allowance of £600 for the governor was reduced by £100, and the lieutenant governor's traditional £50 was cut to £35.[101] Dummer, for his part, refused the offer. In the margins of the Assembly's Journal is noted his refusal; Dummer "thinks it an affront & too Diminutive for the King's

100 Hutchinson, vol. 2, 18. Hutchinson has a record of this speech, and another by Shute, which does not appear in the records; he claims they were destroyed with the Council records in a fire in 1774. See his note, ibid., 177.

101 "Journals of the General Assembly, July 1720," (Boston: Benjamin Green, 1720), 25-26. As these amounts were paid in the provincial currency, their value was significantly lower than even those numbers indicate.

Commission."[102] Shute, of course, was even more dependent on the good graces of the Assembly, and could not refuse even so measly an offer. Shute adjourned the Assembly until September.

With the crisis not yet subsided, it was time to bring the matter to the attention of the imperial administration. Shute drafted a memorial, petitioning the Lords of Trade to clarify the matter of the governor's veto power, and to establish a firm salary for future royal governors of the province, independent of the wishes of the General Assembly.[103] The imperial administration handled the matter with relative speed, first, permitting Shute to return to England in 1723, and then holding hearings on the matter with both the Governor and the agent for the Assembly in August of 1723. From the time of that meeting until the final decision of the Privy Council was less than two years.

The Privy Council's verdict on the controversy was swift and sweeping. On 29 May 1725, the Privy Council reached its decision regarding the power to veto elections of the Speaker of the Assembly. The judicial arm of the crown, represented by the Attorney- and Solicitor-Generals, ruled that the Assembly had not "been guilty of any Contempt of [His] Majestys Authority or designed encroachment upon [His] Royal Prerogative." Rather, their actions were attributed to the fact that "no Instance had been laid before them of the rejecting of a Speaker besides that in Question, nor any Proof of the approbation of a Speaker in writing before the time of the present Governor."

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102 Ibid., 26. According to Hutchinson, the Assembly, while Shute was in England, granted Dummer half the normal allowance for the governor, though "it [was] expected that when the governor is absent, with leave, his salary should be continued, one half of which, by a royal instruction, is to be allowed to the lieutenant governor." From the diminished allowance, "any part of which [Dummer] could very ill afford to spare from his own support." Hutchinson, vol. 2, 244.

103 Though undated, Shute's memorial appears to have been written sometime between this incident, and before his departure for England to make the case in person in 1723. It is printed in *Proceedings of the Massachusetts Historical Society*, ser. 3, vol. 57 (Boston: Massachusetts Historical Society, Oct., 1923–Jun., 1924), 69-70.

Nevertheless, they ruled that Shute

> had fully justifyed his Conduct in this particular and that he had reasonable Grounds to Claim this authority of putting a Negative upon the Speaker, the rather, for that besides the words of the Charter, Such Claim seems to be Strengthened by that original Prerogative which the crown has always asserted and sometimes exercised in Cases of the like kind in England.[104]

The monarch had long held the power of approving or disapproving the Commons choice of Speaker, and that appears to have been the "original Prerogative" called upon here.[105] The best course of action to assure this power be recognized by future Assemblies was to enshrine it in constitutional text, in the form of an Explanatory Charter, a rare document elucidating, but not replacing, a colonial charter.

The Privy Council approved the draft of the Explanatory Charter on 17 July 1725. This document drew clear lines of imperial authority over a map that had heretofore shown mainly inchoate borders. The face of imperial authority had been hard to make out in detail; the closer one looked, the less defined the boundaries appeared. With the Explanatory Charter came clarity, at least in this specific region of executive authority. From 1725 forward, every selection of speaker would "be presented to the Governor…for his Approbation," just as the Speaker of the Commons was presented to the monarch in

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104 *Acts of the Privy Council*, vol. 2, 94-95.

105 For more on the office of Speaker of the House of Commons, see Arthur Irwin Dasent, *The Speakers of the House of Commons from the Earliest Times to the Present Day With a Topographical Description of Westminster at Various Epochs & a Brief Record of the Principal Constitutional Changes During Seven Centuries* (London: John Lane the Bodly Head, 1911). According to Dasent, the Speaker as a permanent fixture of the lower house of Parliament was a development only of the Hanoverian court, meaning that the provincial debate over the power to veto the Speaker might have touched a chord in the minds of the imperial administrators, coming concurrently with their own domestic appreciation of the power of the Speakership. See Dasent, 250-51. Interestingly, one description of the office of Speaker of the Commons was not unlike that of royal governor of Massachusetts Bay. "The speaker's dual role, as the mouthpiece of the Commons to the king, and as the channel of crown control of the House, could be played out satisfactorily only so long as reasonable harmony prevailed," a workable description of the position of the royal governors. See Sheila Lambert., "Procedure in the House of Commons in the Early Stuart Period," *The English Historical Review*, Vol. 95, No. 377 (Cambridge: Oxford University Press, Oct., 1980), 775.

England. Furthermore, the crown gave the governor "full power and Authority to approve or disapprove of the Person so Elected and presented," so long as his "approbation or disapprobation shall be Signifyed by him by Message in writing under his Hand to the said House of Representatives."[106]

The lieutenant governor of the province, William Dummer, in the absence of Shute, delivered the Explanatory Charter to the General Court on 15 January 1726. There it was voted on, as though for ratification, by the General Court, who approved it. This is one of the more interesting aspects of the entire controversy. The Privy Council ordered the General Court to vote its acceptance of the Explanatory Charter, and the Assembly took up the power to confirm an act of the crown, a peculiar arrangement of powers. The Privy Council announced clearly the consequences of refusal.

> [I]f such Explanatory Charter shall not be accepted, and a just regard Shewed to Your Majestys Royal Prerogative, by the House of Representatives for the future in all the particulars aforesaid, it may be proper for the Consideration of the Legislature what further Provision may be necessary to support and preserve Your Majestys Just authority in this province and prevent such presumptuous Invasion for the future.[107]

"The General Assembly have dutyfully accepted H.M. Royal Explanatory Charter," Dummer reported back.[108] The vote on 15 January 1736 was one of the few in the House journals with the yeas and nays recorded by name. The vote ended up being 48 yeas to 32 nays.[109] It was reported in the declaration of the General Court to the King as an expression of that body's "desire to Signalize Our Duty and Obedience, which we at all

106 Thorpe, vol. 3, 1887-88. The Explanatory Charter also clarified the rules for adjourning the General Court. The Assembly received the authority to adjourn itself "from day to day" for up to two days without prior approval of the governor.

107 *Acts of the Privy Council,* vol. 3, 104.

108 C.S.P. COL., Col., vol. 35, 1726-27, no. 11. The requirement that the province approve of the Explanatory Charter seems not unlike the requirement that a defendant acknowledge his understanding of his Miranda rights after arrest. The General Court's approval meant that the provincials understood their new responsibilities, and could not claim ignorance.

109 "Journals of the House of Representatives, 1725," (Boston: Benjamin Green, 1726), 110.

times Owe His Most Excellent Majesty, have and hereby do Accept of the said Explanatory Charter."[110] Considering the stakes, the votes of those opposed to acceptance of the Explanatory Charter take on some significance. Since most votes in the House were not recorded by name, it is hard to judge whether the 16-vote majority represented an average division of the body.[111] Nevertheless, the fact that 32 members were willing to risk imperial punishment to record their belief in the superiority of the Assembly in choosing its officers is telling.

Though the battle between royal and provincial wills had been resolved, as it must have been until the Revolution, in favor of the crown, the controversy over Cooke's election as Speaker had forced the metropolis into the open regarding the limits of executive power. The decision to emit an Explanatory Charter was a concession to the reality that the provincials viewed the Second Charter differently than did the crown. The imperial perspective of the Second Charter, that it was a document defining the *minimum* outlines of royal authority in the province, had given way to the provincial, that it was a document defining the *maximum* limits of that authority. Mirroring the later loose versus strict construction debate over the meaning of the American Constitution, this conflict of visions was at the center of the imperial relationship, and of the constitutional struggles over royal authority in the province. The federal empire required a broad vision of the powers of the Second Charter government, yet in the eyes of the provincials that document seemed to confine as much as codify those powers.

The Salary Debate

In contrast to the quick resolution (in imperial terms) of the debate over the

110 Ibid., 111.

111 It appears that the eastern merchants were the least approving of the Explanatory Charter, while the country representatives overwhelmingly accepted it. See Murrin, "Review Essay," 258.

governor's control over the Speaker's election, the salary debate was a recurring controversy of the eighteenth century and lay behind many of the other struggles of the period, from 1691 until its ultimate resolution in 1770. The crown had left the salary of the governor in the hands of the Assembly, from the emission of the Second Charter until the era of crisis preceding the Revolution. In 1735, it accepted an arrangement that preserved the appearance of popular control, whereby the General Court agreed to pass the temporary salary as the first bill of the yearly session.[112] Then, in 1770, the crown finally resolved the problem by extending a salary from the royal treasury to the newly-commissioned governor of the province, Thomas Hutchinson.[113] For the first four decades of the Second Charter period, however, the salary was the primary weapon for the Assembly to wield over the representative of the crown, resulting in a distorted power structure in the province. The royal governor, who in some aspects of his portfolio possessed powers in excess of those of the monarch in England, was forced to abase himself before the body of the freemen of the province in order to attain what was, at the best of times, a grant of allowances sufficient only to keep him from financial ruin. Furthermore, he could be fiscally punished for upholding the royal will if that ran counter to the provincial, as we saw in the case of Shute after the dismissal of Cooke as Speaker in 1720.

Leaving the salary in the hands of the Assembly may appear, to contemporaries as well as historians, as an unforced error on the part of the metropolis. This perspective is strengthened when one encounters the frequent complaints on this point sent thither

112 See Jack P. Greene, "The Role of the Lower Houses of Assembly in Eighteenth-Century Politics," *The Journal of Southern History*, vol. 27, no. 4 (Nov., 1961), 454, 462.
113 News of the decision arrived in the province on 23 December 1770. See *Boston Post-Boy,* 24 December 1770.

through instructions and letters to each and every governor. However, when one considers the opportunity to make the governor a paid placeman during the redrafting of the charter, as well as the infinite number of chances to change the policy in the intervening eight decades, one must credit the crown for achieving precisely what it intended: a government supported on the backs of provincials. That the provincials in question almost never granted sufficient moneys to support such an executive represented no expense for the crown, though it surely came at some political cost. While governors often complained of insufficient support while in, and sometimes after leaving, office, the crown never wanted for office-seekers to fill the post.

The imperial administration repeatedly issued an instruction that the governors induce the Assembly to pass a permanent salary for the provincial executive.[114] The salary was to be given, according to instruction, not to the governor directly, but to the crown, with the request that it be used for the purpose of the executive's salary. Instead of extending a permanent salary, the Assembly tended to grant "allowances" to support the governors. There was an implicit connection between these grants and the dependence of the governor upon the Assembly. If the governor required funding, he would be less likely to press imperial demands that might alienate him from the General Assembly. The Privy Council was aware of this connection, and made it clear that governors were not to be swayed by such grants. They wrote in their instructions to Governor Burnet in 1727 that the provincial assemblies "have from time to time made them such Allowances and in such Proportions as they themselves have thought Our Governour has deserved, in order thereby to make Our said Governour the more

114 "Instructions to Governor Dudley," *Proceedings of the Massachusetts Historical Society, Second Series, Vol. 8* (Boston: Feb, 1893), 97. This instruction was given to every governor from 1692 until Hutchinson's appointment in 1770.

dependant upon them."[115] The royal executive was sometimes forced, therefore, hat in hand, in both directions along the ladder of imperial power: downward, to the provincials for grants of funds, then upward, to the crown for the permission to accept them.

Royal instructions, until 1735, had forced the royal governors to petition the Lords of Trade for permission to accept such temporary and generally biennial grants. In that year, the crown allowed then-governor Jonathan Belcher – as well as all subsequent governors – to accept, without prior crown approval, any allowances granted by the Assembly, with the understanding that those grants would be made first in a given legislative session.[116] This shift in policy did not stop the crown's emission of royal instructions to governors ordering them to secure "fixed salaries upon yourself and others Our Governors and Commanders in Chief for the time being, suitable to the ability of the Inhabitants, and the dignity of your office."[117]

We have already seen one example of the Assembly using the salary to attempt control of the executive, with Shute's allowance cut dramatically after his refusal to accept Cooke as Speaker of the House. Another example will further illustrate the difficulties into which royal governors were placed concerning their salaries. Later in that same decade, another new governor, William Burnet, ran aground on the shoals where royal instructions met the Assembly's will.[118] Burnet's confrontation with the Assembly over the settling of a salary was tense and verbose, and both sides demonstrated competing interpretations of the text of the Second Charter. By the time

115 Burnet's instructions, quoted in "Journals of the House, 1728," second session, 2-3.
116 C.S.P. Col., vol. 42, 1735, no. 156.
117 Ibid.
118 The focus on the 1720s is not intended to be, in and of itself, significant. Though that was a particularly tense decade in terms of the imperial relationship between the Bay and the crown, the salary dispute was a more or less continuous thread throughout the period.

the issue was settled, the debate over the salary would reveal the dimensions of the conflicting visions of the Charter itself.

Burnet had been commissioned as Governor in 1727, though he did not arrive in the province until 1728, specifically because of his concern with "the insufficiency of the salary which had been granted for his support and the uncertainty whether the assembly would make an addition to it."[119] He had previously been governor of New York and New Jersey, and had been accustomed to a relatively comfortable existence there. In the words of Thomas Hutchinson, Burnet "was to part with very profitable posts for such as, at best, would afford him no more than a decent support, [and had switched] an easy administration for one which he foresaw would be extremely troublesome."[120] From the beginning of his administration, Burnet sought to assert the metropolitan wish for a permanent salary. He had been instructed, as all governors had been before him, to attain such goal, but for Burnet it was of particular import, as he was replacing Shute in the office.[121] Shute's failure to achieve a permanent salary had left him open to the sort of mistreatment discussed above; the Privy Council wanted to prevent that incident from being repeated.

In his first address to the General Assembly, on 24 July 1728, Burnet made plain his determination that this issue was a hill on which he would be willing to die.

> The Wisdom of Parliaments has now made it an established Custom to grant the Civil List to the King for Life: And as I am confident the representatives of the People here would be unwilling to own themselves

119 Hutchinson, vol. 2, 246. Hutchinson also presented two other reasons for the delay: the death of the king, and Burnet's desire to be ferried to the province no way "but in a man of war, for fear of meeting with a pirate." Letter of William Dummer, quoted in ibid.

120 Ibid., 247. Burnet had been removed from New York and New Jersey not for cause, but rather to free those posts for John Montgomery, a close associate of the new King George II. See ibid., 246, note #1.

121 In Burnet's case, it was his 23rd instruction, which he made known to the General Assembly almost upon his arrival. See "Journals of the House, 1728," second session (Boston: Green & Kneeland, 1728), 2-3.

> outdone in Duty to His Majesty by any of His subjects. I have Reason to hope that they will not think such an Example has anything in it which they are not ready to imitate. I shall lay before you His Majesty's Instruction to me upon this Subject, Which, as it should be an inviolable Rule for my Conduct, will without Question have its due weight with you.[122]

Burnet's reasoned speech, followed by his publication of the particular instruction, met with resistance from the House. It promptly pressed their traditional allowance upon Burnet, perhaps assuming that, like previous executives, he would be moved either to accept out of necessity such a grant, or to let this issue pass in favor of dealing with other problems in the province. The House was quickly disabused of any such notions when Burnet refused a resolution granting him £1700 in provincial currency. The Governor repeated to the House that such an arrangement was contrary to his instructions.[123]

On 6 August, the House took a new tack, passing two resolutions in an attempt at gaining Burnet's assent for grants of allowance. One was a grant of an allowance of £1400, while the second offered the Governor £300 for the expenses of his voyage. Burnet accepted the latter, but refused to consent to the former, for reasons already articulated. He also confronted the House with his knowledge of their past tendency to link grants to approval of executive behavior. Burnet "appealed to their own consciences, whether they had not formerly kept back their governor's allowance until other bills were passed, and whether they had not sometimes made the salary dependent upon the consent to such bills."[124]

His continued refusal to accept the allowances granted him brought legislative

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122 Ibid., 1-2.

123 See the House's resolve in ibid., 6-7, and the Council's concurrence, referenced in Burnet's address to the House, in ibid., 11. According to Hutchinson, Burnet "was always very quick in his replies" to the General Assembly. See Hutchinson, vol. 2, 253.

124 Quoted in Hutchinson, vol. 2, 254. The House Journals are incomplete for this year, leaving Hutchinson as the central source.

action to something of a standstill. The House resolved that fixing a permanent salary would be "dangerous to the inhabitants and contrary to the design of the charter in giving power to make wholesome and reasonable orders and laws for the welfare of the province." The Council refused their consent to such a resolution, but suggested that perhaps the Assembly might settle a salary on Burnet, but not subsequent governors, without undue harm, an idea that met with similar displeasure from the lower house.[125] With no solution in sight, the House asked Burnet's permission to adjourn, at which point it became clear that the Assembly did not hold all the cards in the game.

Burnet refused to adjourn the General Court until they had fulfilled the royal instruction in this respect, to which the Assembly responded with a lengthy address. This address, because it includes a summation of their understanding of the Second Charter, is worth excerpting at some length. The General Court could not grant a permanent salary, as it ran contrary to "the good design of the powers vested and reposed in us by the royal charter, to pass acts pursuant to the instructions laid before us."

> [F]or as much as passing such acts, as we apprehend, has a direct tendency to weaken our happy constitution; for that their late majesty's[sic] King William and Queen Mary, of glorious memory, were graciously pleased to gratify the inhabitants here and did grant to them certain powers priviledges and franchises to be used and employed for the benefit of the people and, in the same grant, reserved other powers to be used and exercised by the crown or the governors sent by them, agreeable to the directions and instructions contained in said grant and their commissions, having reference for their better guidance and directions to the several powers and authorities mentioned in the said charter; if therefore the general assembly should at any time come into any act that might tend to infringe the prerogative or dis-serve the crown, his majesty's governor's have a negative voice on all such acts; furthermore, should any governor incautiously give his consent to such acts, his majesty has reserved to himself power to disallow the same, by the use and exercise of other powers and exercise of the other powers and priviledges lodged in the general assembly, his majesty justly expects they will never make use of

125 Ibid., 254.

> them in prejudice of the rights and liberties of the people, but at all times exert themselves in defence thereof.[126]

In other words, the existence of a double negative on the General Court's activities implied the crown's assumption that that body would be acting in an essentially oppositional role in the province. In addition, the House denied that it had ever withheld allowance for reasons of executive behavior.

The Governor's response to the Assembly was equally profound, not to mention equally lengthy. Regarding its request for an adjournment, it was, in Burnet's words, "an undoubted Branch of the Power lodged with a Governour, which is to keep the General Court together as long as he thinks the Publick Affairs require."

> I am at a loss to know whether your Insinuation, that I keep you here in order to compel you to act contrary to your native Freedom and declared Judgment, be more injurious to me or to your Selves. You seem to allow the Governour's Powers only so far as he uses them according to your Pleasure: But in using your own Powers you take it very ill to be directed by any body.[127]

Burnet went on to demonstrate his understanding of the Assembly's earlier efforts by quoting its journal of the previous year, in which the House had refused to consent to an allowance for Lieutenant Governor Dummer that session after his own refusal to adjourn, but then resolved to consider such a grant at the next session. Furthermore, he pointed out that "so long a reply" contained nothing about "his majesty's instruction and the weight of his displeasure," "though [that was] the greatest part of my message." Finally, Burnet concluded that "your paper…seems much better adapted to amuse than to prove any thing."[128] Within two months of his arrival, Burnet's relationship with the General

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126 Both the House's address to Burnet, and his reply to the House are quoted in the *Boston News-Letter*, 5-12 September 1728. They can also be found in a long footnote in Hutchinson, vol. 2, 256-60.
127 *Boston News-Letter*, 5-12 September 1728.
128 Ibid.

Court had soured entirely.[129]

The controversy was not yet resolved, and the House shifted tactics once again, circulating a letter to the towns of the province to receive their judgment on the issue. The letter referred not to the text of the Second Charter, which contained no hook on which the House could hang such an argument, but rather to Magna Charta. That document, according to the House, granted all Englishmen the right "to raise and dispose of Moneys for the publick Service of their own free accord without any Compulsion." Further, the House argued, it "neither ought nor can [pass a permanent salary], for, as to act beyond, or without the Powers granted in the Charter, might justly incur the King's Displeasure." "Moreover, if we should now give up this Right, we shall open the Door to many other Inconveniencies."[130]

This letter prompted a swift response from Burnet, in which he countered the Assembly's somewhat implausible fears of royal displeasure with settling a salary in precise fulfillment of royal instruction. He quoted a letter written by Dummer in 1722, while he was agent for the General Assembly in England. Lord Carteret, "one of His Majesties Principal Secretaries of State," had warned Dummer that intransigence by the General Court would "Provoke the Government to bring the matter of their Charter before the Parliament." If that happened, Carteret continued, "it was his Opinion that it would be Dissolved without Opposition."[131] This threat moved the House not at all, and there the matter remained for several weeks. Finally, determining that the political climate in Boston was not an aid to his cause, on 24 October Burnet adjourned the

129 This after Hutchinson reported that Burnet had been "received with unusual pomp" upon his arrival to the province. Hutchinson, vol. 2, 253.
130 The letter is quoted in *Boston News-Letter*, 12-19 September 1728.
131 Ibid.

General Court to Salem, "where prejudice had not taken root and where of consequence his majesty's service would in all probability be better answered."[132] Here the Explanatory Charter was Burnet's ally, for when the House complained that such a move was contrary to law and custom, the Governor was able to refer directly to the text of that document, which gave the governor total control over adjournments, prorogations, and dissolutions of the General Court.[133]

Burnet further demonstrated that the House was not the only party in this dispute capable of parsing the Charter. His response of 14 November provides an interesting glimpse into the level of textual analysis of the Charter in this controversy. Burnet, after dispensing with the House's letter campaign to the towns of the province (in which they had proclaimed the judgment of Boston and Suffolk County as the will of the entire province), turned his attention to the text of the Second Charter.

> [S]ince you have so often alledged that fixing a Salary is what you cannot do 'in Faithfulness to the Interest of the province,' as being contrary to the Priviledges granted to you in your Charter, I think myself obliged to declare it to be my Opinion that your Charter requires you to fix a Salary on the Governour for the time being. Some of the Powers given to the Governour and the General Court are 'to establish wholesome & reasonable Orders Laws &c for the necessary Support & Defence of the Government.' Power to do a necessary thing lays an indispensible Obligation to do it; and to fail in doing it is a breach of Condition. The Charter mentions 'the Support & Defence' as two *necessary* Things, and therefore it is your Duty to provide for them in a wholesome and reasonable manner.[134]

This interpretation of the Second Charter took the House's position, that that document tied the Assembly's hands regarding a permanent salary, and turned it on its head.

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132 Hutchinson, vol. 2, 266.

133 *Boston Weekly Journal*, 18 November 1728. This debate would be replayed in the late 1760s, when then-Governor Hutchinson removed the General Court to Cambridge, and later Salem. See Donald C. Lord and Robert M. Calhoon, "The Removal of the Massachusetts General Court from Boston, 1769-1772," *The Journal of American History*, vol. 55, no. 4 (Mar., 1969), 735-755.

134 *Boston Weekly Journal*, 18 November 1728.

Burnet had seized on a few phrases of the Charter, which had become a shield for provincial ill behavior, and found in its words a clear command for provincial accession to his – and the crown's – demands.

The House, in response, determined its best policy was to appeal to the metropolis, and sent a petition to their agents in England.[135] The petition stated the House's position as baldly as was possible.

> That as the fixing a salary on the Governor would be making him independent of the people, so on the contrary they thought that paying him an annual sum to be raised by the Assembly, would, by joyning his interest to theirs, render him more careful of the good of the province, and that the charter nowhere directed the settling a fixed salary on him, giving them power only in general terms to raise money for the support and defence of the Government.[136]

Burnet's brother represented him in the Board of Trade's deliberations on this petition, and while he awaited a response, the Governor allowed the General Court to adjourn until the following April. He adjourned it repeatedly until August of that year, when he received the response from the crown. The upshot, a predictable dismissal of the petition by the Board of Trade and Privy Council, left the House no better off than it had been previously. Indeed, it was now faced with the knowledge that the metropolis was fully briefed about the crisis in Massachusetts Bay. The Privy Council praised Burnet's efforts, and again reiterated the royal demand for the settlement of a permanent salary.

Unfortunately for Governor Burnet, just a few weeks after his reception of this vindicating letter, on 7 September 1729, he died of fever. Lieutenant Governor Dummer took the reins of the executive, adjourned the General Court back to Boston, and was granted an allowance of £750 for his troubles. Dummer refused it, as per the standing

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135 See the entry for 22 March 1729, in Journals of the Board of Trade. The response by the Privy Council to the petition, dated 22 May 1729, is quoted in Hutchinson, vol. 2, 273-74.

136 22 March 1729, in Journals of the Board of Trade.

instructions regarding the salary. However, in 1730, when Governor Jonathan Belcher was commissioned, his Lieutenant Governor, William Tailer, present in the province before Belcher's arrival, assented to a grant of £900 for Dummer's services. Since Dummer was no longer an executive, the grant did not, technically, run counter to the royal instruction.[137] And, as mentioned above, Belcher would be granted, in 1735, permission to accept allowances granted by the General Court, provided they were the first bills passed in each session, rendering the salary controversy, finally, moot.

III – The Vetch Incident

Having dealt in turn with executive interactions with the Council and the Assembly, it is best to turn to a more complex example in order to see all the pieces in motion at once. The limits of the many chartered and unchartered tools of manipulation and control over the General Court were revealed by an event that took place under Dudley's administration. In 1706, a voyage to the French in Acadia by a colonial trader named Samuel Vetch, for the ostensible purpose of collecting outstanding debts, pulled Dudley into the biggest crisis of his administration. Vetch had sailed to Acadian ports, spending the majority of the trip selling "sundry goods and merchandise" to the French there.[138]

After the trip became public knowledge, Dudley's true role in the enterprise came under suspicion. He found himself under a variety of attacks by his opponents within and without the province, the most dangerous of which was the accusation that he had a

137 Hutchinson, vol. 2, 279.

138 G. M. Waller, *Samuel Vetch: Colonial Enterpriser* (Chapel Hill, NC: The University of North Carolina Press, 1960), 84. The goods traded were not military stores, but certainly would have enabled the French in Acadia to more comfortably remain there. Vetch's crew sold several items in quantity, but the most commonly mentioned in the sources were nails.

personal stake in the trading in Port Royal. His approval of Vetch's voyage appeared to be a dereliction of his duty; trading with the "barbarous infidels" that daily brought violence against the province was a recipe for popular opposition.[139] After the case was resolved within the province, pamphlets appeared in London, accusing Dudley of illicit profiteering during a time of war, as well as a host of other improprieties. He was forced to defend himself both publicly and privately against such charges, as they could have spelled the end of his career in office.[140] He used a variety of tools to derail the prosecution of Vetch, as well as to salvage his own reputation, by placing as much distance between himself and Vetch as possible. It is revealing that his first line of defense was to pass off a deliberate misreading of the Second Charter, asserting that it granted authority to the General Court to try such a crime. Dudley deployed the Charter much as any provincial elite might, manipulating the lower house into an unjust trial, and pretending to provide a veneer of constitutional legality for this illegitimate procedure. The fact that Dudley, the royal governor, interpreted the clauses of the Second Charter to his benefit demonstrates the constitutional nature that document. Contesting the meaning of the words of the Second Charter was not limited to provincials fending off royal impositions. The interaction of the Assembly, Council, and governor in this crisis wonderfully illuminate the complexities of royal governance in the Bay colony. This

139 John Winthrop to Fitz-John Winthrop [June 1706], *Collections of the Massachusetts Historical Society*, 6th ser., vol. 3 (Boston: Massachusetts Historical Society, 1889), 335. The precise date of the letter is unknown. John Winthrop was the nephew of Fitz-John Winthrop, Governor of Connecticut, and brother to Wait Winthrop, Massachusetts Councilor.

140 The pamphlet war involved three publications. The first salvo was Cotton Mather, *A Memorial Of the Present Deplorable State of New-England, With the many Disadvantages it lyes under, by the Male-Administration of their Present Governour, Joseph Dudley, Esq. And his Son Paul, etc*. (London: 1707). The rebuttal was Joseph Dudley, *A Modest Enquiry into the Grounds and Occasions of a Late Pamphlet, intituled, A Memorial of the Present Deplorable State of New-England* (London: 1707). A new set of accusations, summarizing the chicanery in the Council and Assembly regarding the Vetch incident the following year, was published anonymously as *The Deplorable State of New-England, By Reason of a Covetous and Treacherous Governour, and Pusillanimous Counsellors* (London: 1708). See note #8, above.

effort also illustrates the limits of executive control over the Council, even under a skilled governor.[141]

Vetch's voyage to Port Royal was not unique; he had been to the French several times in recent years, first at the behest of the colony of New York, and later negotiating on Massachusetts's behalf for a repatriation of prisoners with the Marquis de Vaudreuil, governor of New France.[142] However, on his 1706 voyage, the trade in weapons threatened to ensnare not merely Vetch and his immediate sponsors in a legal net, but also Dudley. Dudley, who had had ordered the publication of the Queen's order expressly forbidding trade with the French in any form during the period of declared hostilities, had also approved of Vetch's excursion.[143] Clearly, the trading ban had been violated, and Dudley's opponents seized on the opportunity with vigor. In his own defense, Dudley cleverly misappropriated the text of the Charter, demonstrating that the document could have more uses than those intended in the metropolis.

Suspicions were raised before Vetch's return, and he did no help to his case by landing away from prying eyes, south of the Cape, in Plymouth. Councilor John Winthrop described the immediate controversy to his brother, Fitz-John, Governor of Connecticut. "The deputies understood that Veatch had sent his vessel round ye Cape, to land his cargo at Mr. Murdow's, a Scotchman living at Plimouth."[144]

> [Vetch] returned the last Thursday, and as soone as he came, the Speaker of the House of Representatives, by order & consent of the whole House, sent a messenger for him to appear presently, to give an account where he

141 It is tempting to think that the effectiveness of Dudley's self-preservation perhaps indicates what might have been accomplished through more forceful methods towards crown priorities like the rebuilding of the forts and the settling of a governor's salary. As this work tries to demonstrate, that is a dubious assumption; not everything in the provincial period could be solved with the use of more force.

142 Waller, 81.

143 The posting of the law is found in *Massachusetts Broadsides*, Massachusetts Archives, vol. 20, 99.

144 John Winthrop to Fitz-John Winthrop, *Collections of the Massachusetts Historical Society*, 6th ser., vol. 3, 336.

> had been, &c. The master of the vessel tooke his oath before all the court that he went loaden from here with provition, guns, ammunition, &c. to trade with the French & Indians along the coast, and that he had bartered those commodities with the enemies for furs &c.[145]

Faced with such claim, Dudley had little choice but to get in front of the issue. He ordered the ship searched and its contents seized. When the nature of the trading became public knowledge in Boston, the General Court moved to act against Vetch and his sponsors, especially John Borland, a Boston merchant who had put forward two-thirds the expense of the voyage. The province expanded its efforts to capture other illegal traders as well; using both provincial and English naval power, four more men were arrested by July.[146]

Borland, for his part, experienced the wrath of the Assembly. He was forced to pay a security of £1000 "that Veatch [sic] should be forthcoming in a week, or else a prisoner."[147] It behooved Vetch to wait to appear as long as possible; the Assembly was in an uproar, looking to punish anyone associated with the voyage. According to John Winthrop,

> [t]he deputies are in a rage about it and say that it put knifes into the hands of those barbarous infidels to cut the throats of our wives and children. It was with much difficulty they were persuaded to take the bond; most of them were so furious as to have him confined in the stone cage, for fear he should get away.[148]

Coming as it did just two years after the massacre at Deerfield, and in the midst of a wide-ranging war across the frontier, Vetch's voyage could hardly have failed to enrage the people of the province. Winthrop's judgment was that the war against the Indians

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145 Ibid, 334-5. Winthrop's letter provides a glimpse of the small-town nature of provincial Boston. Everyone knew everyone else; secrets were difficult if not impossible to keep. Vetch was not nobody, but hardly a major player in Massachusetts circles. Yet he is unable to leave Boston surreptitiously, nor is he able to return to the port city without arousing further suspicions.

146 Waller, 84.

147 Winthrop to Winthrop, 335.

148 Ibid.

exacerbated Vetch's problems, because in the Assembly, "a parcell of resolute rusticks sit upon the bench, who have perhaps some of them friends or relations slain by those heathens."[149] Dudley would capitalize on this emotion, using it against the Assembly in an act of political jujitsu that derailed the case against Vetch and kept Dudley in office.

Asserting that the trial of Vetch, Borland, and the others ought to be held in the General Court, Dudley claimed that the Charter provided them such jurisdiction. There were two possible justifications for this move, either, or both of which, could have been in the forefront of Dudley's mind. On the one hand, an illegal trial in the General Court, which had no legal jurisdiction in the case, could only be overturned when news of it reached the crown, hopefully long after the heat had cooled in the province,. He could create the appearance that the guilty men had been judged and duly punished by the will of the governor, while the hands of the faraway metropolis would reverse the judgment, deflecting blame from Dudley himself. Knowing that the Board of Trade and Privy Council would refuse to uphold the verdict in such a politicized trial, Dudley could use the people's anger to arrange a satisfactory result for Vetch, Borland, and the other traders, and by extension, himself. The second possibility was that Dudley would have more control over the direction the investigation would take in the House than he would in a court of law, and could therefore better shape the judgment therein. This was the motivation seen as most likely by the Board of Trade in its review of the incident in 1707.[150] While the latter is the more nefarious reason, neither reflects particularly positively on Dudley. The Assembly, for its part, jumped at the chance to try the illicit

149 Ibid, 336. Further complicating matters for Winthrop, Vetch was an associate of his relations, making him a less than objective analyst. See editor's note in ibid., 337.

150 Memo of the Board of Trade, September 1707, Webster Papers (New Brunswick Museum), quoted in Waller, 89.

traders, whatever Dudley's motivation for the inviting misreading of the Charter.

Getting the case into the General Court was not as simple as it appeared. Of course, both houses had to agree to any such act, and while the Assembly seemed anxious to proceed, passing a bill indicting Borland, Vetch, and the others in July of 1706, the Council moved more cautiously. This is especially significant considering Dudley's control over the calendar and agenda of the Council. He might have moved with haste, using the anger of the people as a tool to force the Council to approve of the trial in General Court when the ire of the province was at its height, immediately following the seizure of Vetch's *Flying Horse*. The intervening weeks gave time for the legal minds that made up an important bloc of the Council to deliberate over the jurisdiction of the General Court, as well as the inevitable consequences of such an action.[151]

Jurisdiction was not the only facet of the Vetch trial that was of questionable legality. When the Assembly first deliberated on the crime, at the height of popular rage, it "committed them one after another as suspected to be guilty of Treason."[152] However, after Dudley informed the Assembly that the Charter authorized the lower house to hear the case only if it the crime were a misdemeanor, the indictments were changed accordingly. Sewall, a Justice of the Superior Court, questioned the legitimacy of the General Court's jurisdiction immediately. Sewall described the Vetch maneuvering in a few letters to Nathanial Higginson in England.

> During this Sessions I was startled to hear the Governour say in Council, that the Charter gave power to the Genl Court to Try Misdemeanours. I supposed his Excellency thought of Mr. Lilly's case of Money, wherein he complaind of the Judges to the Genl Court; and Mr. Paul Dudley was his

151 Four of the Council were Superior Court justices: Sewall, Leverett, Major Jonathon Walley, and John Hathorne. The Secretary, Isaac Addington, had been Chief Justice of the province until 1703.
152 Sewall to Nathaniel Higginson, 16 October 1706, "Letter Book," vol. 1, 333.

Attorney.[153]

The precedent Sewall cited as underlying Dudley's assertion that the General Court had jurisdiction was an appeal by a Samuel Lillie of a judgment against him for "making or publishing a Lie." Lillie had misfiled his appeal, to the Inferior rather than Superior Court, and was left with the conviction – "being only frivolous and no ways injurious to the prosecutor, but a great disrepute and scandal to him the said petitioner" – on his record.[154] The General Court had authorized him to redirect his appeal. The Lillie affair was outside the norm, but was more or less in line with other private legislation the General Court handled under the Second Charter.[155] Sewall was left to assume that Dudley's claim rested on Lillie as a precedent, but it was nothing like the prosecution of a potentially treasonous crime, an offense of the highest order in a province on the front lines of a theater of war.

When the Assembly bit, and passed an act on 7 July "[t]o have the Traders Tried before themselves for Misdemeanour," Sewall noted that "[t]he Council was surprised, but out of favour to the prisoners, were under a Temptation to … [and] did consent to it." However, for his own part, Sewall had "objected to one Reason, which was the asserting their Jurisdiction from the Charter."[156] In fact, the Charter gave the General Court no such authority. Dudley's misreading, intentional though it was, was based on the clause that granted the General Court the power to set fines, according to fellow Council member John Leverett. "Mr. Leverett said at the Board that he did not interpret that

153 Sewall to Higginson, ibid., 333-4. Sewall would be the central obstacle to Dudley's plans, and would experience Dudley's wrath by the end of the Vetch incident. And Higginson would use the information he got from Sewall and the Mathers to conduct the pamphlet war against Dudley's governorship in England in 1708.

154 *Acts and Resolves,* vol. 6, 40. The Lillie case appears in a different context in Chapter 4, below.

155 See the examples cited in *Acts and Resolves*, passim.

156 Sewall to Higginson, "Letter Book," vol 1, 334.

Clause in the Charter of imposing Fines &c. as if it did impour the Genl Court to Try delinquents."[157] The General Court setting standard fines for violations of law was significantly different from that body trying and punishing violators of the law.

There ought to have been no way for the governor to dupe any member of the General Court about the text of the Second Charter. The document was affixed to the front of the collection of Acts and Resolves of the General Court printed in 1699 (and periodically thereafter).[158] Dudley's politically astute appeal to the Assembly's emotions rather than reason had rolled over the maneuver's obvious illegality, as he must have known it would. The defendants themselves petitioned to be tried by the General Court, an act that might have been a sign of their complicity with, or at least confidence in, Dudley's chicanery.[159]

On 10 August, the question of a trial in the General Court made it onto the calendar of the upper house. The Council discussed the issue in conference with the Assembly, at the request of a suddenly dispirited lower house. Sewall recorded some of the debate in his diary.

> A Conference is held in the Council-Chamber, at the desire of the Deputies:
>
> Mr. Speaker: The House is doubtfull whether they have not proceeded too hastily in calling that a Misdemeanour, which the Law calls Treason; and are doubtfull whether this Court can proceed to Try the Prisoners.
>
> Mr. Jewet: [The] Committee that were appointed to prepare for the Trials were doubtfull and unsatisfied that they had called the crime of the Prisoners a Misdemeanour: If any wrong steps had been taken, 'tis fit they should be retriev'd.
>
> Mr. Blagrove: If that which the Prisoners are charg'd with, be made Treason by the Law of England; this Court must not make Laws

157 Sewall, *Diary*, vol. 1, 549.
158 *Acts and Resolves,* vol. 1, vii.
159 The defendants themselves petitioned to be tried by the General Court, and act that might have been a sign of their confidence in Dudley's judgment. See *Acts and Resolves*, vol. 6, 40.

> repugnant to the Law of England [and the judgments would have to be therefore overturned].
>
> The Governour answer'd: He had not seen the Papers, and could not say that what they had done was Treason.
>
> And about Augt 13. Govr put it to vote in the Council, whether the prisoners should be Tried by the General Court according to the order of last sessions: There were 17 at the Board, Nine Yeas, and Eight Nos. Secretary [of the Council, and former Chief Justice of the Superior Court, Isaac Addington] was in the Negative as well as I.[160]

Sewall and Addington were two of the five present or former Justices on the Council. Another, John Leverett, was reported by Sewall to have his own doubts about the legality of such a trial based on the power to set fines.[161] It is unknown on which side Justice Hathorne's vote fell, but a minimum of three of the five judicial figures on the Council, representing decades of colonial and provincial judicial experience, were against Dudley's assertion of chartered authority.[162] In addition, the Assembly, for its part, felt that it had been lured into accusing Vetch of a misdemeanor rather than the more serious charge of treason.

> When the Seventh of August came, many of the Deputies were sick of what they had done, and prayd a Conference upon that head; at which Conference, the Speaker and others expressed themselves doubtfull, whether they had not proceeded too hastily, in calling that a Misdemeandour, which the Law calls Treason; and were doubtfull whether the General Court could proceed and Try the Prisoners.[163]

Nevertheless, in the end, nine councilors voted their assent to the trial, and eight opposed it. Sewall refused to even attend Court for the duration of the trial.[164] It was a narrow victory for Dudley, and by extension, for Vetch.

A close victory is a victory nonetheless, and the trial for misdemeanor trading

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160 The tally was nine to eight In favor. See 13 August, appended to entry for 7 August, Sewall, vol. 1, 548-9.
161 Sewall, vol. 1, 549.
162 Dudley had at least one on his side, Judge Walley. See Sewall, vol. 1, 549.
163 Sewall to Higginson, "Letter Book," vol. 1, 334.
164 Ibid., 335. See also his *Diary*, vol. 1, 549.

violations went ahead in the General Court. As the case heated up, and allegations of the governor's role in the trading itself made their way back to England, Dudley appears to have begun spinning his patrons on the far side of the Atlantic. Vetch's violations of law were serious. Furthermore, how could Dudley absolve himself of the charge of having steered the trial to the General Court? Sewall felt Dudley could use a number of tricks to avoid his own culpability.

> One is, To qualify an Expression as to the Governour's saying, 'The Charter gave the General Court power to try Misdemeanours;' I am apt to think his Excellency might bring it in thus: 'Some think the Charter gives power to the General Court to Try Misdemeanours.' Whereas the Governor at other times used very zealously to Declame against the General Court's intermeddling with any Judicial matter.[165]

Whether Dudley could slither out of the noose with such a transparent ploy remained to be seen. Certainly, Dudley had some responsibility to bear for Vetch's crime. Though Sewall was sympathetic with Vetch's plight, he was more clear-eyed on the nature of the offense.

> I was glad the prisoners were not to be Tried for their Lives, and would be loth to do anything to hurt them. …It is certain, they were the more inexcusable in their illegal Trade, because the Act of Parliament entituled *An Act to prevent all Traiterous Correspondence with Her Majesty's Enemies* was solemnly published here the Summer before. And in September Her Majesty's proclamation relating to that Act was printed in the [*Boston*] *News-Letter*.

The law they violated, perhaps with the approval of the governor of the province, had been announced at beat of the drum and published the previous summer. Furthermore, he argued, there was no way to excuse the defendants even were they found to be innocent.

> And the Act for their Imprisonment being a Law of the province, it was impossible for any Judge or Court below, to go against it. … Neither did the Deponents lay the Act for the Commitment before me, as it behooved them to have done, in Order to my Consideration of it. And to be

165 Sewall to Higginson, 21 October 1706, in "Letter Book," 339.

> remembered, that the General Court made an Act of Habeas Corpus in the year 1692, which was repealed at home; and therefore the Penalty was Repealed with it.[166]

Dudley's maneuvering removed recourse for both the accused and the court. Innocence was no defense once the General Court became involved.

Dudley hoped to have the judges in the Council preside over the hearing – perhaps with an eye to making the judgment as much of a hash as possible under the circumstances. Sewall refused to go along with this maneuver.

> Governor would have had the Judges manage the Conference, I declined it because was against the procedure. And so declined joining with the Judges to prepare for it because I was against it. Col. Hathorne was at Salem with his sick Son; so that only Majr Walley, and Mr. Leverett were active in the matter.[167]

Either way, Dudley had succeeded in getting the case heard improperly in the General Court, through an appeal to chartered authority; he had rendered the results irrelevant. Vetch, in the end, was found guilty by the General Court, sentenced to pay a £200 fine as well as the costs of his prosecution, and to be imprisoned until he had done so.[168] By the fall, Vetch had come up with his fine and left Massachusetts Bay for England, in order to work on gaining justice on appeal to the crown based on the illegality of the proceedings against him.[169]

Dudley had to defend his conduct in England, beginning with a petition for his removal given to the Queen in 1707. Pamphlets attacking him appeared in London at the same time, pushing Dudley's allies at the Board of Trade to act. The Board proceeded to investigate the Vetch affair, and from the outset, it found fault with Dudley's role. He

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166 Ibid., 335.
167 Sewall, *Diary*, vol. 1, 549.
168 *Acts and Resolves*, vol. 6, 62.
169 The justification for the overturning of the decision was a separation of powers argument; that the General Court could only pass, not enforce, the laws of the province. See Waller, 99.

had "artfully complied with the Assembly's desire of trying these people" in directing the case to the General Court. Furthermore, in the words of the Board of Trade memo, he had done so only because "he had friends enough in the House to prevent the asking such questions as might touch him; which he could not have done had the prisoners been tried in the ordinary courts where he had not so much influence."[170] These judgments might have led to the removal of a lesser-connected or more incompetent officeholder. Dudley was secure on both fronts, being both deeply connected to the players in the colonial structure and a strong proponent of the royal will in general. Though the Board of Trade found his behavior irregular, it decided against recommending his ouster, largely due to the assistance of his supporters.[171]

Defending himself at the metropolis was the more important part of the struggle stirred up by the Vetch incident, but it was not the only front. The struggle to remove him in England washed back into the province. Dudley used his tools, mainly those unchartered, to give himself an official "blanching" of the charge that he had an interest in the trade of weapons and provisions with the French.[172] The control of the calendar, the use of public voting, and open debate in the presence of the governor were all used in the attempt.

Sewall's description of the hostile sessions of November 1707 reveals Dudley's frantic pumping of the levers of power over the upper house. His first move was to exert his power to set the calendar and agenda in the upper house in order to rush through a

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170 Memo of the Board of Trade, September 1707, Webster Papers (New Brunswick Museum), quoted in Waller, 89.

171 Letters from prominent patrons, including John Chamberlayne, head of the Society for the Promotion of the Gospel, William Blathwayt at the Board of Trade, and Lord Cutts, Dudley's former patron on the Isle of Wight were presented in Dudley's defense. These letters helped tip the scales in his favor. See Waller, 95-6.

172 Sewall, at the center of the struggle in Boston, though not by his own design, referred to it as a "blanching business." See vol. 1, 576.

vindication of his behavior.

> Upon Saturday, Novr 1, about Noon (a time very hurrying with us, [due to the pressing pile of legislation necessary to finish before the end of the session]) The Govr laid before the Council the Address to her Maj. for his Removal; that they might vote an Abhorrence. I prayd that it might be Considerd of till Monday; which was denyd, and the Secretary bidden to draw up a Vote. Some objected to [the phrase in the petition reading] "we are well assured" and that was laid aside. I objected to "firmly believe" alleging it could be only an opinion in us. And just as twas to be voted, a Gent[leman] seconded me; and so both were put in. Those luxuriant words, "The Govr delayed their prosecution till the Ammunition, with which he had furnished the Enemy, was used by them; to the destruction of your Majs good Subjects; and that Colony thereby put to Thirty three Thousand pounds charge," was that that carried the Council; the Vote being limited to that Article of the Trade.

Dudley used the pressure of the calendar to force the Council into a rushed decision, "about Noon, in a very short time," and further, ignored the Council's stated objections.[173] Days later, Sewall, blaming the lack of time to deliberate for forcing him to make a decision he could not support, recanted his vote in Council.

Dudley further fouled the works of the Council by asserting exculpatory evidence in the form of an affidavit from Borland, the merchant most heavily financially involved in the trade. By keeping the document literally under lock and key while the Council deliberated, the governor was able to buy additional time.

> A great adoe was made about an Affidavit Mr. Borland had given, that would confute them. But finally, it was in Mr. Davenport's office, and could not be produced for want of the Key. All this could not be produced for want of the Key. All this while Mr. Borland himself was never sent for; and nothing said of it next day. And I could never get a sight of it. By all that I can learn, the Affidavit only asserts that the Govr was not concerned as a partner in a proportionable charge of the Outset and Cargo. Which was not the thing in Question.

All of these maneuvers served to prevent the clear picture of Dudley's role in the affair

173 Samuel Sewall, "The Reasons of my withdrawing my Vote from what was Pass'd in Council, upon Saturday, November the First, relating to an Address offered to Her Majesty, Sign'd Nath. Higginson, &c.," broadside, printed in Boston, 10 December 1707, reprinted in Sewall, vol. 2, 580.

from emerging.

However, on November first, the abhorrence was presented to the Assembly for concurrence – correctly – as the unanimous will of the Council.

> When the Representatives had been long hammering our Vote, at last they passed it in the Negative; at which the Govr [was] much concerned; and a Conference between the Council and Deputies was moved for, and agreed to November 20, At which Conference the Govr was pleased to say, He heard it whispered, as if the Members of the Council were not all of a mind; or had altered their minds, some of them.

Dudley's next words prodded Sewall to begin reconsidering his vote.

> But, said he, They all of them steadily adhere to their Vote of November 1, and every word of it. This stung me; and put me upon endeavouring to extricat my self, a Copy whereof I sent by way of Lisbon. I writ it November 25, and carried it with me to Council in the morning; and before the Council rose at night, I craved leave of the Govr to Speak, and withdrew my Vote, praying that Mr. Secretary might be directed to enter it in the Minutes of the Council; and then delivered my Reasons under my hand, which were immediately read in Council, and filed.[174]

Sewall began to construct his retraction from that moment; Dudley's "Skrewing the Strings of [his] Lute to that height, ha[d] broken one of them." On 25 November, Sewall approached the governor at Council and announced his retraction. "I find my self under a Necessity of withdrawing my Vote; and I doe withdraw it, and desire the Secretary may be directed to enter it in the Minutes of the Council."[175] The next day, Sewall recorded that he drank a toast to the governor at dinner with the Council, perhaps in an effort to put the incident behind them. Dudley did not return the toast, but the men's families after all were related; Sewall's son Samuel had married Dudley's daughter Rebecca in September

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174 Sewall's letter is one of the most direct glimpses into the often-personal politics of the provincial period. Sewall himself remained a realist about Dudley's fortunes. "I think I am one of the backwardest in believing what is generally, and confidently Reported; that the Govr is, or will be speedily Removed." That judgment would prove correct; Dudley remained governor for eight more years. Sewall to Higginson, 10 March 1707, in "Letter-Book," vol. 1, 361.

175 Sewall, *Diary*, 578.

of 1702. Whatever the political weather, Sewall aimed for civility.

Two days after the toast, on Friday the 28th, Dudley attempted to publicly roll over Sewall's clear objections to the vote of November first. That day Dudley moved to publish all the decisions of the General Court to support his own case. That is to say, after Sewall's retraction before the Board of his vote, Dudley intended to publish the earlier, unanimous vote to quell rumors of any doubt within the General Court. Sewall was astonished. The rhetoric grew heated. "I said I could not be for it, because I have withdrawn my Vote, and I doe withdraw it; at which the Govr expressed great Wrath."[176]

> The Govr said, I pray God judge between me and you! Col. Townsend told me I was a Temporiser; I hop'd Mr. Higginson would be Govr, and endeavour'd to procure his favor. Prayer. Lord, do not depart from me, but pardon my sin; and fly to me in a way of favourable Protection! … Col. Townsend tells me that my purpose to withdraw my Vote was known a week ago; Mr. Oaks mention'd it in the House; He was my Counsellor. Whereas he really knew nothing of it; and now tells me, he never mention'd my Name.[177]

In the end, Sewall was forced to publish his retraction in broadside form, "though I have distributed few; being advised by some friends not to ad[d] Oyl to our flames."[178] Dudley won the day on the 28th; as earlier, an ill-gotten victory remained a victory. Whether plagued by Sewall's forthrightness or not, the Assembly resolved its abhorrence of the petition to remove the governor, and through his two-front defense, Dudley's career was saved. One of the lessons of the Vetch incident was that the unchartered powers of the governors were sometimes more powerful than those given official expression.

IV – The Legislative Veto

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176 Sewall to Higginson, 10 March 1708, in "Letter-Book," vol. 1, 362.
177 Sewall, *Diary*, vol. 1, 580-1.
178 Sewall to Higginson, 10 March 1708, in "Letter-Book," vol. 1, 362.

There is a final point to be addressed in the relationship between governor and General Court: the legislative veto possessed by the executive. This was one of the foremost innovations of the Second Charter, and it must have formed the foundation of metropolitan confidence that the royal governor could impress the will of the crown on the province. The legislative veto was absolute; there was no override power granted the General Court. As such, it apparently gave the executive final control over the General Court. It might be seen as the most powerful weapon in the chartered arsenal of the royal executive.

Increase Mather appears to have had some fears that its inclusion in the Second Charter would generate provincial resistance. He expended some effort to explain to his countrymen why this power ought not disturb them. True, he admitted, the veto "makes the Civil Government of New England more Monarchical, and less Democratical, than in former Times." However, Mather argued, when placed into the context of the remainder of the Second Charter, its significance was diminished. His preemptive defense is worth quoting at length.

> Suppose a Person as bad as Andross (and the New-Englanders think there can hardly be a worse) should come amongst them, What can he do? He cannot without the Consent of the Council, Chosen by the Representatives of the People, appoint a Sheriff to pack Juries to serve his turn; nor Judges that will act against their Consciences, rather than displease him. Nor can he now send Men out of the Conntrey, without their own consent. Nor can he and his Creatures make Laws, or Leavy Taxes; nor invade any Man's Property, under pretence that it is the King's; and that they must come to him for Patents, that so they may have a true Title to their Lands and Estates. Nor can he, without violating the Magna Charta of New-England, disturb any Man for his Religion. The King's Governor has a Negative Voice in all Acts of Government; which may be thought a great Infringement of the People's Liberty; and indeed, makes the Civil Government of New England more Monarchical, and less Democratical, than in former Times. Nevertheless, the People have a Negative on him. In which respect, New England is by this Charter more priviledged than

> Ireland, and than any English Plantation whatsoever, or they that live in England itself are.[179]

Mather's explanation places the legislative veto within the comforting cocoon of charter liberties, rendering it almost harmless. Would his fellow New Englanders find Mather's telling ameliorated their fears of a return to Dominion-level executive power?

In fact, there are few if any examples of provincial outrage over the deployment of a legislative veto in the period. Where one might expect to find complaints of overreaching executive power, or even governor's threats to veto pernicious legislation, there is mostly silence in the record. Further, it is surprising that governors did not resort to veto threats in order to gain a salary from the General Court. The legislative veto was used, but appears not to have been *over*used; Herbert Spencer described its use as "not sparing, but [it] was infrequent because unnecessary." Because the governor had to be present in sessions of the Council, he needed minimal recourse to his veto power. "Non-concurrence by council, under the governor's influence, of objectionable measures of the house, sifted legislation very thoroughly, and the resulting number of actual refusals of consent is surprisingly small, considering the frequent difference of opinion."[180] The passage of legislation opposed by the governor was pointless, as any Councilor, sitting in the executive's presence, would have seen. The governor's veto, without the amelioration of an override clause, was final; passing legislation that was only to die at his hand could serve little purpose.[181]

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179 Mather, *Brief Account*, 291.

180 Spencer, *Constitutional Conflict in Massachusetts*, 26.

181 Observers of modern American politics might see an alternate perspective of the legislative veto: it could be used to make the governor's position more difficult. The General Court might pass some piece of popular legislation, forcing a governor to use the veto in order to fulfill his royal instructions, and thus conflict with popular opinion. Of course, the governor's royal appointment made him immune to this sort of legislative chicanery. Forcing him to veto popular legislation probably would only serve to make him more rather than less popular with his royal patron.

One of the few recorded uses of the veto came in 1728, during the debate over the provincial medium of exchange. Shortage of currency was the chronic weakness of the provincial economy; without a staple product or available hard money, the province was reduced to emitting bills of credit – paper money – that exerted an inflationary force on the economy of the region. This economic drag also contributed to financial problems for English merchants, sometimes forcing them to accept such bills in lieu of payment. The long search for a solution to this problem pitted the imperial desire to prevent future emissions and retire existing bills against the provincial need for a medium exchange and their predilection for an inflationary currency that benefitted debtors.

Under Governor Shute, in the 1720s, the General Court had acquiesced to royal pressure and had passed the necessary laws to retire existing bills of credit. Shute had been given a specific instruction to prevent any future emissions.[182] After Shute's exodus from the Bay, Lieutenant Governor William Dummer was pressed by the Assembly to give his consent to a variety of acts that attempted to return to the days of cheap paper money. With the governor away, the General Court appears to have decided to test its growing power. Lt. Governor Dummer was forced to veto two variations on a bill emitting £60,000 in bills of credit, because they lacked a suspension clause, preventing them from going into effect before receiving royal approbation. In the second of these attempts, the two houses connected the mission to matters of defense, passing an act cleverly titled "An Act directing the repairing, rebuilding and erecting of fortifications within several maritime towns in this province." In addition to those elements, the bill

182 Shute had received an additional instruction in 1720, informing him of his duty to forbid passage of any act emitting bills of credit if it did not include a suspending clause. See Privy Council to Shute, 27 September 1720, "Instructions to Massachusetts Governors," 993.

called for an emission of £60,000.[183] Dummer, feeling himself in the insecure position of Lieutenant Governor, went for advice to his Council. Dummer carefully recorded the discussion, for the benefit of leaning upon their advice to defend him from metropolitan accusations that he violated Shute's instructions.[184]

> The Council having already as they are one Part of the General Court, pass'd a Concurrence with the Hon[ora]ble House of Representatives upon the said Bill, cannot think it proper for them to give Your Honour any further Advice thereupon, Nor do they apprehend the Oath of a Councellor obliges them thereto: At the same Time, they can not but think it will be for the Good and Welfare of the province & the necessary support of the Government thereof if the Bill be consented to by Your Honour.[185]

The Council, in other words, refused to advise that he assent, but could not advise against it. Dummer could not agree to an act that violated his instructions without even the weak reed of Council advice, and therefore he vetoed the bill. As a rule, governors could not exert authority on their own; they had to operate alongside the Council, or risked being swamped by the Assembly. Once the Council was fatally weakened by the concerted actions of the House of Representatives in the 1760s, the governors were on their own, and the worse for it.

One example of the preemptive power of the legislative veto can be found in the late 1730s, with the formation of the Land Bank.[186] An attempt to solve the same problem of a medium of exchange, the Land Bank was a corporation that dispensed a new paper currency based upon the value of lands "deposited" with the Directors of the Bank. While it was a rational attempt to deal with a pernicious problem that plagued the province for the entirety of the Second Charter period, it ran afoul of Parliament, which

183 *A&R*, vol. 2, 484.
184 Ibid.
185 Council to Dummer, 19 February 1727, in ibid., 485.
186 See Chapter 3, note #82 for more on the Land Bank controversy.

punished the Bank's Directors with the potential forfeiture of their estates. The Directors had chosen to form their corporation without the approval of the General Court. They reasonably expected that a bill forming such a corporation would have been subject to the executive veto. Since any new attempt to anchor future emissions upon a solid foundation was legislatively quixotic, they attempted to form their corporation without consent of the General Court. This became one of the main justifications of the Parliamentary extension of the Bubble Act, which dissolved the Land Bank and subjected its directors – including the elder Samuel Adams, whose loss of face and fortune at the hands of an expansionist Parliamentary authority must have contributed to the radicalization of his son – to personal responsibility for any emitted bills.

Furthermore, the Land Bankers found competition from another group, which sought to create a Silver Bank. This was in all ways the same concept, with silver rather than land deposits, backing a paper medium of exchange. The Silver Bankers believed their paper to be less inflationary than that of the Land Bank, and less by far than provincial bills. Many of the Directors were prominent provincials, including future governor Thomas Hutchinson, yet they also did not form their corporation through legislation in the General Court. This lends more credence to the sense that the governor's legislative veto was powerful enough – at least at times – to preempt troublesome legislation. It is worth noting here that a similar situation prevailed in England; while the English monarch possessed a veto over acts of Parliament, none had done so since 1707, when Queen Anne exerted that power over a bill to create a Scottish militia.

Yet it remains difficult to account for the absence of provincial reaction to its use

from the records. There is so little evidence of provincial anger at executive vetoes that historians would be forgiven for not knowing one was ever made. Perhaps the strongest evidence that the provincials supported rather than opposed the right of the executive to veto legislation in principle comes during the late Revolutionary period. In 1780, as Massachusetts took up the drafting of a state constitution, John Adams, its primary architect, transposed the absolute veto of the royal governors into his initial drsaft. After deliberation, the convention voted to allow for an override clause, but did not remove the veto. When his absolute veto was thus watered down, Adams defended his proposition thusly: "Without this weapon of defense he will be run down like a hare before the hounds."[187] A hated tool of royal oppression was unlikely to rear its head in the constitution of a free and independent Massachusetts.[188]

Further, when the time came for the United States to form a federal political body, the example of the Massachusetts veto arose once again. By 1787, an executive veto was a rare power in the United States. Only executives in New York and Massachusetts possessed such authority at the time of the Constitutional Convention. While some thought it preferable to grant this power to the judicial branch, the Massachusetts delegation strongly opposed such a suggestion, pushing the Convention to give it instead to the president. The final product modified the executive veto by including override clause from the Massachusetts Constitution.[189] It would be surprising to find that the Massachusetts delegation fought for the inclusion of a power they had struggled against

187 Adams to Elbridge Gerry, quoted in Richard J. Ellis, ed., *Founding the American Presidency* (New York: Bowman and Littlefield Publishers, Inc., 1999) 130, note #4.

188 I cannot totally discount the possibility that Adams felt the commonwealth able to reform an instrument of government that had been abused under the Second Charter. However, there seems to be no references to any such opinion in his writings.

189 New York also had such a clause. Ellis remarks that this innovation, the legislative override of an executive veto, was "relatively new," and yet the Convention built the presidential veto upon this "historical novelty." Ellis, 131.

for decades. The legislative veto appears to have been something akin to the dog that did not bark. Deployment of that power did not roil the populace in the way historians might have expected. Rather than being viewed as the heavy hand of executive oppression, it became, in a modified form, a prominent part of the Massachusetts state Constitution, as well as the federal Constitution.

V – Conclusion

Many of the challenges of governing the province of Massachusetts Bay came in the form of conflicts between the executive and legislative authorities created by the Second Charter. The text of the Charter had become the focus of controversy between governor, Council, and Assembly. Each of the controversies above were founded on competing interpretations of the text of the Second Charter, illustrating the constitutional importance of that document. All sides attempted to hang upon its words and phrases justifications for decisions and political positions, with varying degrees of success. The Second Charter had become the rope in a series of political tugs-of-war, resulting in surprisingly modern-sounding debates over the construction of the document. Was it an outline of the minimal powers of the crown in the province, or was it a delineation of the maximal extent of those powers? That debate would continue throughout the provincial period, on many fronts.

3
ROYAL DISALLOWANCE

> Orders, Laws, Statutes, and Ordinances be…Transmitted unto us…be appointed by us for Our or their approbation or Disallowance And that incase all or any of them shall at any time within the space of three years next after the same shall have [been] presented to us our Heires and Successors in Our or their Privy Council be disallowed and rejected [and] shall thenceforth cease and determine and become utterly void and of none effect. Provided always that incase Wee our Heires or Successors shall not within the Terme of Three Yeares after the presenting of such Orders Lawes Statutes or Ordinances as aforesaid signifie our or their Disallowance of the same.[1]

The inclusion of the power of disallowance of colonial laws by the crown in the Second Charter was a major thread in the tightening web of colonial control constructed by England in the later decades of the seventeenth century. Disallowance was the backstop of England's controls over the actions of colonial legislatures. Whatever laws adversely affecting English interests that survived the governor's veto, royal disallowance rejected.[2] It was one of the most reliable levers of imperial control, especially when combined with an active and effective royal governor. Though its implementation differed in each colonial circumstance, this power allowed the metropolis to set basic parameters for colonial government. In Massachusetts Bay, more than most

1 Thorpe, vol. 3, 1883.

2 Elmer Beecher Russell, *The Review of Colonial Legislation by the Privy Council*, Studies in History, Economics and Public Law, Edited by the faculty of political science of Columbia University, vol. 64, No. 2, (New York: Longman's Green & Co., 1915), 15-16. For more on the results, on the continental-colonial scale, of the govern ors' instructions, see Ibid., 213.

outposts of the English world, one would expect royal disallowance to be indispensible to molding a formerly separatist Bay colony into a contributing member of the evolving English empire.

Disallowance was one of the important planks in the imperial bridge across the Atlantic as constructed by the post-Restoration monarchies; it was not, however, one envisioned, or at least articulated, by the Stuarts presiding over the initial migration to the colonies. Indeed, it was a power unseen in the North American colonies until 1676, when the crown disallowed the laws passed by Bacon's Assembly in Virginia – hardly a standard circumstance.[3] The metropolis did not miss the opportunity to add it to its arsenal in the new constitutional regime created in 1691. Under the terms of the Second Charter, as it passed under the Great Seal in October, the king was given three years from the passage of a provincial law to disallow it. This was a wholly new limit on colonial autonomy in Massachusetts Bay. The Privy Council used this power to maintain a steady oversight of provincial affairs during the first decade of the Second Charter government, applying the will necessary to Anglicize provincial laws.[4] Though the rate of disallowances decreased as the eighteenth century progressed, the crown did continue to use disallowance to push the Bay towards a more standardized place in the imperial web in a number of instances.

While there was considerable variety in the acts disallowed in Massachusetts,

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3 Charles M. Andrews, "The Royal Disallowance," *Proceedings of the American Antiquarian Society*, new series, vol. 24 (Oct., 1914), 345. Andrews found the first use of royal disallowance in the English colonies in 1663, and its first use in the North American colonies was to disallow the laws passed by the Virginia Assembly under Nathaniel Bacon in 1676.

4 The concept of "Anglicization" is owed to John M. Murrin, who found in the early provincial period the fitting of the Bay Colony to the metropolitan model. The Puritans did not realize the city on a hill would be on the heights behind them. Richard Johnson's title, *Adjustment to Empire*, is equally fitting. Murrin, "Anglicizing an American Colony: The Transformation of Provincial Massachusetts," Ph.D. diss., Yale University, 1966. Richard Johnson, *Adjustment to Empire: The New England Colonies, 1675-1715* (New Brunswick, New Jersey: Rutgers University Press, 1981).

most fell into one of three broad categories: matters concerning criminal and estate law, imperial trade, and the creation of provincial legal entities. In analyzing the use of the royal disallowance, a pattern of metropolitan reluctance to use its ultimate authority emerges; the crown seemed to prefer instead provincial agency or self-regulation. Only in matters critical to the protection of the rights of English subjects, the privilege of England in its trading empire, or royal authority over legal entities in the province would the crown resort to disallowance. Furthermore, disallowances often came with instructions and recommendations for new acts achieving much of the original intent of the General Court.[5] The provincials had to grope and grasp for the limits of imperial authority, and the crown was often quite forgiving, providing its sometime recalcitrant province the assistance and instruction necessary to remain in imperial good graces.

In other words, royal disallowance, generally speaking, was not the act of a hostile imperial power taking control of a wayward or willful province, despite the imaginations of contemporaries of the Second Charter. Nor was it a return to the executive dominance of the Dominion of New England. It was, rather, a bilateral method of establishing the English empire, a system of negotiated frontiers separating and limiting provincial and metropolitan authorities and interests. The provincials were often reaching, through the political or constitutional means available, to find the edges of the imperial façade. The periphery and the center negotiated the *terra incognita* of the imperial map, feeling their way to an understanding of difficult-to-see topography. This was, especially in the early period, not brinksmanship; the relationship was not as adversarial as later events might suggest. It was a mutual negotiation of the rocky face of

5 That is, provided the intent of the General Court be accurately reflected in the text of the law, not always a reliable assumption. These instructions are much like those given by American presidents upon use of the veto power.

imperial policy. For in the metropolis too there was a process of discovery, of grappling with indefinite borders. Could the provincials be trusted to police themselves, or would the crown have to govern for them?

Arrived at over the course of decades, shaped by the hands of a changing cast of actors and governments, and explored by the two sides without resort to armed conflict or revolution, the negotiated settlement of the Second Charter lasted for more than half a century. This chapter will describe how disallowance fit into that settlement. After a brief introduction of the appearance of royal disallowance in the Second Charter, it will outline the patterns of the use of the power throughout the early Second Charter period, from 1691 to the eve of the Seven Years' War. Next will be an explanation of the three categories of laws that seemed most often to garner imperial attention. The goal is to demonstrate how the disallowance clause, like the rest of the Second Charter, became a contested text, helping shape both provincial behavior as well as the forms of provincial resistance.

I – Development of the Disallowance Clause

From 1688 until 1692, the representative best-placed in England to affect change in royal policy towards Massachusetts Bay, Increase Mather, worked to perfect the Bay colony's relationship with the mother country. He worked with the Lords of Trade, the Privy Council, prominent Dissenting figures, and both the Stuart law courts.[6] Mather, in

6 See Johnson, *Adjustment to Empire*, 136-44 for a short version of the connections Mather worked in the early period of his quasi-agency. The negotiations over the specific language of the Second Charter, occurring after the Glorious Revolution, forced him to work with new patrons.

London representing not the colony but rather private colonial interests,[7] finding that the original charter was not going to be restored to Massachusetts Bay, began trying to actively shape the political reality of a new charter to the benefit of the colony as he perceived it. By the winter of 1690-91, it had become clear that a return to the original charter was outside of the realm of the possible. If there was to be a new charter, the agents of the colony might have a preponderant role in shaping the new order, and Mather intended to maximize that role.

On 26 February 1689, the Lords of Trade denied Mather's appeal of the writ of *scire facias* that had invalidated the First Charter five years earlier, leaving Mather to play what few cards he held. In addition to denying the appeal, the Lords of Trade opened the debate over the shape of the new settlement of Massachusetts Bay. After a period in which New England took a backseat to more immediate imperial problems, Mather attempted to seize the initiative, returning in November of 1690 with a petition to have the new charter drafted.[8] Along with the later-arriving Massachusetts' agents Elisha Cooke and Thomas Oakes, Mather helpfully provided the Lords of Trade their ten-point outline of a new charter in early 1691. Included were many of the accretion of powers and authorities that had built up around the First Charter government over the 55 years of its existence.[9]

The construction of the Second Charter began in earnest in late April, when the Board of Trade referred to the King the question of "whether the Governor of

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7 He had been hired to represent the interests of "some of the prominent men of the colony." See Charles M. Andrews' Introduction to Increase Mather's *Brief Account*, 272.

8 As Mather, the imperial establishment, and other players began the complex negotiations over the terms of the Second Charter, Mather's prompt for action appeared less and less wise. Certainly, he gained few friends in Massachusetts Bay for his trouble. However, as of 1690, his options were severely curtailed.

9 C.S.P. Col., 1689-1692, no. 1276.

Massachusetts shall be appointed by the crown or elected."[10] This was, for the English side of the equation, the fundamental question: would the colony be royally governed, or returned to its own recognizance? The answer must not have been long in coming (nor seriously in question); by 12 May the Board of Trade had drawn up a draft charter, submitting it on that date to the Attorney-General for his judgment.[11]

In the following month, the power of disallowance was included as one of basic premises of the new government for the colony. The agents gave a brief of their suggestions for changes to the rapidly coalescing Second Charter, which, by the time they gave their specific input, had already reached 38 pages in length.[12] When his attempt to dissuade the Lords of Trade from inserting the clause into the document failed, Mather moved to render it ineffective.[13] The list of fifteen objections included the following: "That the time of the King's confirmation be determined by eighteen months."[14] As Mather, a well-travelled trans-Atlantic statesman, must have known, no colonial law, even one rushed off for metropolitan review, could make it to Whitehall, through the English colonial-legal *cursus bureaucraticum* to reach a final decision within eighteen months.[15] Such a limited temporal window would have generated one of two effects. The crown would be forced to conduct vigorous, constant, and immediate review of all

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10 Ibid., no. 1432.

11 Ibid., no. 1482.

12 Ibid., no. 1560. Of course, some of that length would have consisted of the standard official language of such documents; by the late seventeenth century, such bureaucratic documents could be assembled to a surprising degree with fill-in-the-blank templates.

13 One assumes that Mather himself, in more reflective moments, considered the possibility of Massachusetts Bay not being subject to royal oversight remote at best.

14 "Proposals offered by the New England Agents for perfecting the Charter of New England," in Ibid., 1574. The Pennsylvania charter gave the crown a five-year window, the longest of the continental colonies in which the period was specified. See Russell, 207. Pennsylvania however was not obligated to transmit its legislation to the crown for five years after passage. Ibid., 100.

15 According to Charles Andrews, the roughly standard circuit was for a provincial act to go from the Privy Council to its colonial committee, then to the Lords Commissioners of Trade, then to the Attorney- or Solicitor-General, then back to the Lords Commissioners of Trade and finally returning, with recommendations, to the Privy Council for its decision. Andrews, "The Royal Disallowance," 346-7.

provincial legislation, staying in constant contact with the Bay colony, in order to regulate its legislation within the 18-month period. Alternately, the crown would have to forfeit its oversight of provincial legislation altogether, since the institutions of disallowance as they actually existed could not run swiftly or efficiently enough to comport to the temporal limits.

It is tempting to see a measure of brinksmanship in Mather's negotiation tactic here. After all, he knew the systems of the colonial establishment, having worked closely with the crown both in the waning Jacobite era, and in the new reign of William III. He must have known the Board was unlikely to have agreed to such a proposal. Yet he was responding to an opening negotiating position of indefinite royal oversight – disallowance on no timetable.[16] Eighteen months was hopelessly optimistic, if intended seriously; as a bargaining chip, however, it may have helped shrink the window of royal oversight to its final 36-month period.[17]

The Board next considered the disallowance policy in late July of 1691, meeting with the Massachusetts agents to consider their objections to the shape of the charter as it then stood. The report of the agents contained several minor suggestions for changes, as well as a list of "unacceptable" clauses. One of these was that "the Agents do not accept the following proposition[], viz. that the time of the King's confirmation of laws be

16 See C.S.P. Col., 1689-1692, no. 1669.

17 According to a ruling by the Attorney- and Solicitor-General of the Lords Commissioners of Trade in 1722, "the three years allowed by [the] charter, either for the repeal or confirmation of such laws, are to be taken to commence from the time they are respectively presented to His Majesty in his privy council." See George Chalmers, *Opinions of Eminent Lawyers on Various Points of English Jurisprudence, Chiefly Concerning the Colonies, Fisheries and Commerce of Great Britain: Collected and Digested, From the Originals in the Board of Trade, and Other Depositories*, (Burlington, VT: C. Goodrich and Company, 1858), 338. The Lords Commissioners of Trade learned of the decision on 6 June, though Chalmers' version carries a date of 22 June. See entry for 6 June 1722, in *Board of Trade Journals, vol. 4: November 1718 - December 1722* (1925).

indefinite."[18] In this case, the Massachusetts agents were successful, convincing the Board of Trade (who may have been equally engaged in its own brinksmanship) to reduce the period for disallowance of laws to three years: "Agreed that it be provided that the King's disallowance of Acts be signified within three years of their presentation in [the Privy] Council."[19] Mather and the Massachusetts agents had won some concession on this point: the window of disallowance remained three years when the ink on the Second Charter was finally dry.[20]

With the Second Charter passed the seal in October of 1691, how exactly were the provisions on disallowance implemented? How often were laws disallowed? Which types of laws were disallowed? The next two sections of this chapter seek to answer these questions by analyzing the patterns of disallowances.

II – Timeline of Disallowance

The question of how often laws were disallowed itself reveals some of the surprising complexities of provincial politics. Massachusetts Bay experienced the fewest disallowances of any colony on the North American continent.[21] This is a surprising fact, considered against the traditional narrative of a colony struggling to free itself, or maintain its freedom, from a grasping metropolis. The relatively low number of disallowances seems to reveal – at least in comparison with other English colonies – a remarkably sophisticated political class in the province. Whether due to the quality of provincial leadership, longer experience, or some other factor, the provincial government

18 C.S.P. Col ., 1689-1692, no. 1669.
19 Ibid., no. 1665.
20 See ibid., no. 1806: "The King's disallowance of Acts must be signified within three years."
21 Andrews, "The Royal Disallowance," 345.

managed to avoid the level of royal oversight necessary to keep other colonies running. This chapter will reflect the reality that quantitative analysis of disallowance practice usefully places the Bay colony's experience into an imperial scale, but qualitative analysis mattered more to provincials.

Politics being a human affair, the numbers of disallowances are not spread evenly over the provincial period. The pattern of disallowance might be visualized as an inverted bell curve: disallowances clustered in the 1690s, minimal in the middle decades, and spiking again in the Revolutionary period. The evidence seems to indicate a sharp and steep learning curve for the provincial legislature, from 1692 through 1699, during which nearly thirty laws were disallowed. Then there is a period of either provincial adaptation to imperial paradigms, or simply laissez-faire oversight, with almost twenty years passing without a disallowance, and only occasional interference from the crown thereafter. An observer would expect to see just such a phenomenon, as a tightening net of imperial constraints was fitted over a new territory. Several factors seem likely to have contributed to this inverted ski-jump curve. The quality of the royal governor in a given period, an organic adjustment to royal control by the General Court, and the benign neglect of the crown over provincial issues in the middle third of the eighteenth century are all potential reasons for the shape of the use of disallowance.

Under the first appointed governor, Sir William Phips, not a magistrate noted for his wise stewardship of royal interests, and his Lieutenant, William Stoughton, the Privy Council disallowed thirty-four provincial acts.[22] However, during the tenure of the two most talented governors, men with metropolitan experience, the Earl of Bellomont and

22 Judgment of Phips and Stoughton's abilities should be moderated by the knowledge that their terms came in the period of orientation to the world of the Second Charter.

Joseph Dudley, collectively occupying the office from 1699 to 1715, there was not a single royal disallowance of a public act.[23] Clearly, the man assigned the task of governing the province had a considerable impact on the nature of legislation passed in the General Court. So, did the governor now have the decisive role in shaping Massachusetts legislation? If one follows the evidence of the work in the province over the first ten years of the Second Charter, it might appear that the governor was the indispensible man. Almost upon the arrival of Bellomont in 1698, the royal disallowances ceased. One reason Bellomont was so effective in limiting disallowances was that he better explained the purpose, duration, and intention of provincial laws to the crown. In a letter to the Lords Commissioners of Trade in 1700, Bellomont explained that sessions laws to the Board of Trade in detail.

> We sat but nine days and passed 12 Acts, which was such a dispatch as was never known in this province. I remembered your commands, Feb. 3, 1699, to avoid as much as possibly we could the passing of temporary laws, and renewing them from time to time, a fault you observe the Assembly of this province are much addicted to. Most of the laws we passed this last session being military ones, we were willing to follow the example of the Parliament of England in making them to cease after a year, and therein I believe you will not blame us. I confess I was in my judgment for those laws being made temporary for the same reasons I was so in the Parliament of England. Yet there is one of the military laws, against deserters, which we have made perpetual, because there is no hazard in it, for it cannot operate but in time of alarm or actual war, when forces are raised. The 8th, 9th and 10th Acts as they stand in the Book of Laws now sent are also made perpetual. The 11th and last of the public Acts is intended a probationary law, and is made to have continuance for three years only. The Assembly were not willing to make it perpetual till they should first make an experiment how well it would answer.[24]

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23 For complete information on the disallowance of provincial laws in this period, see *Acts and Resolves of the province of Massachusetts Bay*, vol. 1, 1692-1714. I draw the distinction between public and private acts deliberately; private acts – that is, legislation passed in the colony relating to individuals rather than general principles of law – included, as one example, the prosecution of Vetch, discussed in the previous chapter, used a private act, overturned by the crown in 1708. This was as much a disallowance as any other, in terms of process, but its scope was obviously narrower.

24 20 April, 1700 in C.S.P. Col., 1700, no. 345.

Dudley's tenure was a lengthier continuation of the success of his predecessor in controlling the behavior of the General Court, keeping the elective government of the province from colliding with the royal will. Subsequent governors – men like Samuel Shute, Jonathan Belcher, and William Shirley – were much less successful in maintaining the balance.

However, when one looks at the longer stream of provincial history, the water becomes somewhat muddier. Is it possible that governors generally viewed as superior in management of the General Court were simply beneficiaries of the province's coming to terms with its new position inside the imperial orbit? Had Massachusetts legislators internalized the new rules and accommodate themselves to them by the late 1690s? If the provincial assembly had simply ceased fighting battles that it consistently lost to the crown, that fits with the evidence as well as the governors thesis. Perhaps the "adjustment to empire" was more or less complete by the time of Bellomont's appointment to govern the Bay.[25] If one subscribed to the adjustment thesis, even less-competent governors like Shute and Belcher could have expected to see the same minimal crown interference in provincial legislation. Surely, both theses are valid, and both – the agency of the governor versus the agency of the General Court – as well as the possibility of salutary neglect, contributed to the pattern one sees in the use of the disallowance.

III – Categories of Disallowances

Once the policy was established in the charter, and given the scope of its usage,

25 The quote is the title of Richard Johnson's book. Though Johnson finds the period of their adjustment to extend to the Hanoverian succession, legislatively, from the perspective above, it might be argued to have ended in 1698.

were there types of laws more subject to disallowance than others? An analysis of the myriad laws disallowed over the provincial period reveals some patterns. There were essentially three categories of acts that warranted consistent royal scrutiny. Those in the first category, laws relating to rights and privileges, were those most often disallowed in the first half of the provincial period. These include, but are not limited to, laws creating the provincial courts under the new charter, those that defined punishments for particular crimes, and those that dealt with estates and titles.[26] The second category consists of those laws dealing with trade, naturally an area of concern for England.[27] The third category consists of those laws that created new legal entities without royal influence or approval, such as the twice-attempted incorporation of Harvard, the attempt to classify towns as "lawful ports," and the wave of laws creating new townships in the 1730s and 40s.[28] This section will take each category in turn.

A few caveats are necessary before proceeding. In some instances, particular laws could have been placed into multiple categories. For example, the attempts at an incorporation of Harvard might have qualified as an extension of illegitimate – in royal eyes – rights and privileges of the General Court, or as laws creating legal entities. Furthermore, the first category might have been more profitably broken down into sub-groups. Perhaps a legal historian could make more sensible divisions between laws regarding discrete legal issues. Finally, there were some acts disallowed that were difficult to classify in the three categories. With those caveats in mind, the study itself can remain illustrative.

A letter from the Privy Council to acting governor William Stoughton, received in

26 See Appendix IV, Table 1.
27 See Appendix IV, Table 2.
28 See Appendix IV, Table 3.

December of 1695, contained the announcements of the first disallowances in the province's history. In this case, fourteen provincial laws were overturned. Of these, eleven could be placed in the first category. Laws establishing penalties for counterfeiting coinage and witchcraft were done away with, as were laws enumerating the rights and privileges of provincial subjects.[29] Most significant, however, were the disallowances, in 1695 and later, of the laws creating the court system for the province.

Perhaps the most immediately important legal matter for the newly created government to handle was court creation. Crime waits for no settlement, nor do probates. In addition, of course, extending English common law over the colony was of importance to the metropolis.[30] The General Court got under way immediately upon its meeting under the new charter, in June of 1692, to begin the creation of provincial courts. No law ran into the teeth of the disallowance policy more consistently than those creating the provincial courts. The Privy Council disallowed seven court-creation laws in the first decade under the Second Charter. The method of the disallowances, coming years after

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29 "An Act Against the Counterfeiting, Clipping, Rounding, Filing, or Impairing of Coynes," "An Act Against Conjuration, Witchcraft and Dealing with Evil and Wicked Spirits," "An Act Setting Forth General Priviledges," and "An Act for the Better Securing the Liberty of the Subject, and for Prevention of Illegal Imprisonment," in *Acts and Resolves, vol. 1*, 70-71, 90-91, 40-41, 95-99. Of course the disallowance of the laws against witchcraft, disallowed because the definition of the crime was too vague, came several years too late for the victims of the Salem trials of 1692.

30 Historian Bill Offutt wrote that "Massachusetts' 1691 charter required conformity to the common law." See Offutt, "The Atlantic Rules," in Elizabeth Mancke and Carole Shammas, eds., *The Creation of the British Atlantic World* (Baltimore: The Johns Hopkins University Press, 2005), 172, note #39. In actuality, no such requirement is in the Charter. However, it was clearly the intention of the drafters of that document to grant English subjects that privilege wherever they happened to reside. "*The opinion of the Attorney and Solicitor-General, Pratt and Yorke, that the King's subjects carry 'with them the Common Law,' wherever they may form settlements.* In respect to such places as have been or shall be acquired by treaty or grant, from any of the Indian Princes or governments, your Majesty's letters patent are not necessary; the property of the soil vesting in the grantees by the Indian grants, subject only to your Majesty's right of sovereignty over the settlements, as English settlements, and over the inhabitants, as English subjects, who carry with them your Majesty's laws wherever they form colonies, and receive your Majesty's protection, by virtue of your royal Charters. (emphasis in original)" George Chalmers, *Opinions of Eminent Lawyers on Various Points of English Jurisprudence, Chiefly Concerning the Colonies, Fisheries and Commerce of Great Britain: Collected and Digested, From the Originals in the Board of Trade, and Other Depositories*, (Burlington, VT: C. Goodrich and Company, 1858), 206-7.

the passage of the offending acts, rendered the problem that much more acute. The firm establishment of the provincial court system, a process that might have taken one year from start to finish had the two sides been equally engaged and working in concert wound up taking nearly ten years.[31]

Laws creating courts were not the whole of disallowances of the first category. The Privy Council often disallowed provincial attempts to assert or redefine particular traditional New English liberties. For example, in the General Court session in the fall of 1692, a law was passed "Setting Forth General Priviledges" of the colonists. This was one of the first disallowances, reported to the province in that 1695 letter of the Privy Council. Several "priviledges proposed by ye said Act not having been as yet granted by His Majesty in any of the plantations," the Council wrote, the Act was disallowed.[32] Similarly treated was a law also passed in 1692 that extended the right of *habeas corpus* to the provincials. "[W]hereas by ye Act &c., the writ of *Habeas Corpus* is required to be granted…which priviledge has not as yet been granted in any of His Majesty's Plantations," the law was disallowed.[33]

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31 A closer analysis of this process appears in Chapter 4.

32 "An Act Setting Forth General Priviledges," Ibid., 40-41. Interestingly, the 1695 batch of disallowances contained many that seem not to have been approved by the King. With William away on the Continent, "[i]t was not thought fit in His Majesty's absence to allow ye same," was the frequent formulation of the Privy Council. See ibid.

33 "An Act for the Better Securing the Liberty of the Subject, and for Prevention of Illegal Imprisonment," Ibid., 95-99. One might have expected to see some evidence of the convulsion of if not revolutionary then at least resistant behavior from the provincials. How different was the argument in the 1690s from that articulated in the 1760s? In the former period, there are explicit denials of traditional English liberties, while in the 1760s imperial policies created effective-but-not-explicit denials of those rights (through, for example, the Writs of Assistance, the Vice-Admiralty Courts, or the Stamp Act). Yet no such convulsion occurred, for a host of reasons, not the least of which were the dangers of the enemies on the frontier, the recent experience of more direct oppressive royal control under the Dominion, and the willingness to assist the Protestant monarchy in its maintenance of the English throne. The constitutional argument became considerably easier to make when the French were conquered in Canada and their Indian allies weakened and scattered after 1763. In the 1690s the French and Indian threat was genuine and existential; debates about the specific location of the Bay in the imperial web and the rights enjoyed by the subjects of the king who resided there were academic in such an environment.

Laws of the second category – the province's attempts to legislate matters of imperial trade – also prompted regular disallowances. There were eight disallowed attempts made by the province to 'differently regulate' matters of trade, ranging from relatively minor issues, like the licensing system for culling fish, to more significant matters, like the authority to name official sea ports. To the crown, these were all serious, attempting as they might to undermine the imperial structure itself, shifting authority from metropolis to province.

The sense of a negotiated settlement is strengthened by the nature of the early disallowances in this category. The first restriction on trade rising to warrant a disallowance was "An Act for Regulating the Building of Ships," passed in 1693. This act obliged builders of ships greater than 30 tons to have their construction overseen by another shipwright if so ordered by the local justices of the peace. Each day that passed without the builder remedying any problems discovered by the observer cost five shillings, "to the use of the poor of that town where such vessel be in building."[34] Seeing this as "an unnecessary charge" and an "obstruction and restraint of the building of ships," a necessary part of the imperial economy, the Privy Council disallowed it.[35]

In 1693, the province attempted to permit coasting vessels, those smaller ships that worked the trade within colonies, and sometimes between colonies, along the Atlantic coast, to carry up to six hogsheads of enumerated commodities without penalty. The Privy Council, probably rightly, considered this an invitation to acts of bad faith on

34 *Acts and Resolves, vol. 1*, 114.

35 The Privy Council may have seen the province as a source of disposable ships. In reality, colonial ships tended to last about one-third as long as those constructed in England proper, but the colonies had something of an economy of scale in ship-building, with an essentially limitless supply of materials and a multitude of ports in which to construct vessels. See Marshall Smelser and William I. Davisson, "The Longevity of Colonial Ships," *American Neptune*, XXXIII (1933), 16-19.

the part of the provincials. Customs Commissioner Jahleel Brenton informed the Lords of Trade that there were over 100 such vessels at work in provincial waters, meaning that a considerable trade could be carried on in enumerated goods, even with the French enemy to the northeast. Brenton wrote that with so many vessels, and there being "about 300 leagues on ye Coast, in which space are contained some hundreds of Harbours, Creeks and Coves," it "[would] not be difficult in a very little time thereby to load and unload any foreign ships of how great Burthen soever."[36] There was no question but that this Act, "not only contrary to the usage and practice in other plantations, but the Acts of Navigation and Trade," was to be disallowed.[37]

Disallowances of this category were not exclusively at the behest of English trade interests, however. "An Act for the Better Regulating the Culling of Fish," passed in 1718, was disallowed three years later after a petition from provincial merchants and an investigation by the Lords Commissioners of Trade. In that case, the initiative came from the provincial side of the Atlantic. On 25 April 1721, three colonial merchants delivered a petition by themselves and others, requesting the disallowance of the Act to the Privy Council. They received a thorough hearing, after which the Privy Council did in fact recommend disallowance.

The fish-culling disallowance also reveals a more general sense of the metropolitan desire for provincial self-regulation. Of the questions asked of the merchants by the Lords Commissioners, one points to the reluctance to recommend the use of executive power of last resort.

> The Petitioners being further ask'd whether application was not made in the Country against the said Act and why they had not sooner complain'd

36 Jahleel Brenton to the Lords of Trade, quoted in *Acts and Resolves, vol. 1*, 122.
37 Ibid.

> of it here, the Act having been pass'd near three years and near excluding his Majesty's Repeal without the consent of the Assembly, according to the Massachusetts Charter.

It is significant that the Board regarded the three-year window for disallowances as something firm and unyielding. The clause had apparently attained constitutional weight, and thus the Board of Trade emphasized that as this period had nearly passed, and without compliant from the provincials, the debate had special significance. Upon questioning, the merchants felt "there would be no probability of redress in the Massachusets Bay," and ultimately, the Privy Council advised disallowance.[38] However, the question itself illuminates the negotiated nature of the constitutional settlement; all things being equal, England would prefer New England police itself, within the established parameters of the chartered arrangement of 1691, to direct imperial intervention.

Perhaps the most significant law passed by the province in the realm of trade came in 1718, when the General Court passed the annual "Act for Granting unto His Majesty Several Rates and Dutys of Impost and Tunnage of Shipping."[39] That year, for reasons that are not clear, the act was subtly changed, omitting language forbidding foreign trade, and also laying an impost duty of 1% on goods "imported" to the province from England. These were not small matters; they would have elevated the province's position within the imperial system to something like that of England herself.

The seriousness of the Act was illuminated by the rapidity of its disallowance. "Considering that it is of so very Extraordinary a Nature," within eleven months of news of the Act's passage arriving in England – by far the shortest timeline of any

38 Ibid., 124.
39 *Acts and Resolves, vol. 2*, 107-112.

disallowance – the Act was struck down.[40] This speed of action from a habitually sclerotic imperial bureaucracy demonstrates the importance this issue had in the halls of the metropolis. "This Act was but very lately transmitted to Us," the Privy Council wrote, "and Will have had its full Effect before Your Majestys Pleasure thereon can be known in that province, for it expires in May next."[41] Alacrity was foreign to the imperial administration, except when great matters were at stake.

The Privy Council went on to suggest a tough response to this trespass upon royal authority.

> We would further propose that your Majestys Governor of the Massachusets Bay, may have Orders to Represent to the Councill and Assembly of that province, that as the power of making Laws, which was granted to them by their Charter from their late Majestys King William and Queen Mary, is restrained to the Condition, that Such Laws shall not be repugnant to the Laws of this Kingdom, they will do well to Consider how farr the breaking this Condition, and the laying any Discouragements on the Shipping and Manufactures of this Kingdom, may endanger their Charter.[42]

This was the severest threat available to the crown to sway provincial opinion; the abrogation of their Second Charter would be the end of the New England dream, even in the diminished, multi-sectarian form it had taken in the early eighteenth century. It represented the overturning of their constitution; if England wanted to send a message to dissuade her plantation from interfering in matters of trade, this was the strongest form it could take.

The third category of disallowances, those directed at acts that created or changed legal entities seems of lesser importance. Furthermore, there is some overlapping of

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40 Grant, W. L., and James Munro, eds. *Acts of the Privy Council, vol. 2, 1680-1720* (Edinburgh: Hereford Times Co., Ltd., 1910), 759-60.
41 Ibid.
42 Ibid.

categories: some Acts can be classified into more than one. An excellent example of such overlap is "An Act Establishing of Seaports within this province, and for Ascertaining the Fees for Entring and Clearing of Vessels Inward and Outward Bound," passed in the summer of 1698. Regulating fees for shipping were clearly imposing provincial authority over matters of trade; naming seaports is the creation of a legal entity without proper royal permission or oversight. In the acts of the third category, the entities created or changed range from the mundane – two attempts to incorporate Harvard College – to the important – the naming of "lawful ports." In between these extremes were an increasing number of acts creating townships within the province in the 1730s and 40s that eventually brought metropolitan attention. In comparison to the incorporations of Harvard and the port act, that attention fell more inconsistently upon the acts of township creation.

Harvard's incorporation was disallowed twice, in 1695 and again in 1698.[43] The first disallowance came as a result of the act of incorporation omitting a clause permitting the King to "appoint visitors for the better regulating of the said Colledge," in other words, removing royal oversight of the corporation.[44] The act had been disallowed, wrote the Privy Council

> because no power was therein reserved to his Majestic to appoint Visitors for the better regulating of the said College, with further intimation to them that the General Court might renew the same Act with a power of visitation reserved to his Majestie and the Governor or Commander-in-Chief of that province. Yet, nevertheless, in the passing of this said Act, that direction has not been observed; But instead thereof the power of visitation is not placed in his Majestie nor singly in his Majtys Governor or Commander-in-Chief, but onely in his Majesty's said Governor or

43 Both acts are entitled "An Act for Incorporating Harvard Colledge, at Cambridge, in New England," *A&R,* vol. 1, 38-39, and 288-90.

44 Privy Council to Governor and Council of the province of Massachusetts Bay, 26 December 1695, quoted in *A&R,* vol. 1, 39.

> Commander-in-Chief together with the Council of that province for the time being; Which is very different from what was proposed to them to be observed.[45]

The second attempt to incorporate also brought disallowance. The General Court had attempted in the second iteration, to approach but not meet, the standard articulated by the metropolis in 1695. The negotiated nature of the imperial arrangement is on display here, as in earlier disallowances. The provincials stretch forward to find the edges of imperial policy, while the metropolis, perhaps without a firm sense of the boundaries of their own policies, resort to disallowance only when it seems to them absolutely necessary.

One example concerned an act of 1698 that aimed to add several seaports to the province. Designating "lawful ports" was a critical element in the long-running, though largely ineffective, policy to limit smuggling in the colonies; such ports were the only places that permitted ships of large berth to load and unload. The designation also carried with it a requirement to have Customs officials present to maintain obedience to the various trade laws of the empire. Increasing the number of ports would force a concomitant increase in Customs officials.[46] Expensed directly to the metropolis, these officials would raise the cost of imperialism in New England significantly.[47]

The Privy Council and the Board of Trade could be expected to react negatively towards this encroachment on both imperial authority and the imperial treasury. In the summer of 1700, when undertaking a review of provincial legislation, the Privy Council

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45 Board of Trade to Bellomont, 3 Feb 1699, quoted in *A&R,* vol. 1, 290.

46 The law made "lawful ports" of, from south to north, Swansea, Boston and Charlestown, Salem and Marblehead, Ipswich, Newbury and Salisbury, Plymouth, and Kittery) "An Act Establishing of Seaports within this province, and for Ascertaining the Fees for Entring and Clearing of Vessels Inward and Outward Bound," *A&R*, vol. 1, 335-36.

47 One imagines the increased frustration of the Massachusetts patriots of the 1760s had they been taxed to pay for the larger number of ports and officials.

noted their concern regarding the act by referring a question to the Commissioners of Customs as to its effects.[48] The solicitor-general advised that same summer "[a]gainst confirming the Act establishing Sea-ports within this province, and for ascertaining the fees for entering and clearing vessels inward and outward bound." Its analysis was influenced by reports from Jahleel Brenton, the Customs collector for the Bay, who held a distrustful view of his fellow countrymen: the province intended to use these new ports to off-load ill-gotten gain from outside the imperial trade regulations.

> Mr. Brenton hath appeared before me on behalf of the Commissioners of the Customs, who affirms that several of the ports thereby established have not one vessel belonging to them, nor have for several years past had any vessels unladen there, except such as came privately and imported prohibited goods; and that two or three ports are sufficient for that province.[49]

In October of 1700 the Board of Trade announced the decision to disallow this act in its letter to Bellomont. The Board gave two reasons for the disallowance. First, and presumably mimicking the predictable bureaucratic response to the query of the Privy Council, the power to name ports resided with the Commissioners of Customs, not in the provincial General Court. Second, the act meant an increased outlay of imperial revenue, and only promised in return an increase in provincial smuggling and flaunting of the laws regulating trade.[50]

Yet even here, the crown was not as stern as it might have been. Even with all available evidence indicating that the province was likely up to ill, there was little rebuke

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48 "[A]nd to this I am to desire your answer with what speed you can, because their Lordships do defer to lay before their Excellencies the Lords Justices a report, which they have already prepared upon several other Acts of the General Court of that province, until they can determine what opinion to give upon this." *C.S.P. Col., 1700*, no. 771.

49 Solicitor General to Board of Trade, 9 August 1700, *C.S.P. Col., 1700*, no. 709.

50 "[T]he establishing of so many ports in such inconsiderable places will not only occasion a greater charge in maintaining Officers to attend them but be also a great means to encourage and promote clandestine and illegal trade." Board of Trade to Earl of Bellomont, 9 October 1700, quoted in *A&R,* vol 1, 336.

in this disallowance. The crown was far more firm in 1718, when the province attempted to lay a duty on metropolitan shipping. Again and again, the crown seemed to regard disallowances as, not a punishment, but a necessary corrective. In a tradition of foggy boundaries between metropolis and colony, disallowance indicated the firm edge of imperial policy, to which the province had negotiated. Beyond that point there would be no vagaries or uncertainty.

IV – Proposed Innovations in the Disallowance Clause

This uncertainty, this sense of a *terra incognita* in the imperial relationship, invisible in the texts of empire, can give those records a false certitude. When looking through the records of the imperial structure, one sees only the hard lines of the empire, and little of its strategic ambiguity. If the firm ground under the imperial structure was in fact constantly shifting sand, it made little sense noting that fact in the minutes of meetings of the Lords Commissioners of Trade or the Privy Council, or the provincial journals. The usual levels of explanation and reaction demonstrate that both metropolis and colony generally expected the Second Charter to have constitutional firmness, if with outlines hard to trace.

The ambiguity of the records makes ascertaining the limits of imperial policy difficult. One example, as recorded in both the *Acts and Resolves* of Massachusetts Bay, as well as Elmer Beecher Russell, was a proposed shift in disallowance policy regarding Massachusetts in 1735.[51] That year, the Lords of Trade resolved that thenceforth, all provincial acts, upon transmission to the crown, would be probationary for two years,

51 See *A&R, vol. 2*, 790, and Elmer Beecher Russell, *The Review of Colonial Legislation by the Privy Council*, Studies in History, Economics and Public Law, Edited by the faculty of political science of Columbia University, vol. 64, No. 2 (New York: Longman's Green & Co., 1915), 82.

before a three-year disallowance window began. This would have effectively changed the period from three to five years for royal disallowance. Moreover, each provincial law would have to be confirmed, rather than the more passive system in which the Privy Council disallowed objectionable laws. This would have been a sudden change in the very constitution of the province, announced not with an Explanatory Charter, but rather with a mere verdict of the Privy Council on a resolution of the Board of Trade. What could account for the Board's desire to make such a change?

In July of 1735, the Lords Commissioners of Trade considered the latest batch of provincial laws. After rendering their verdict on the legality of those acts, they proposed a change in the disallowance policy.

> Resolved that for the future, all Acts of the Massachusets Bay shall lye two years (from the time of their being presented to the crown) probationary, (unless objected to in the meantime), and then to report on them. [52]

The precise meaning of "lye two years…probationary" is unclear from this record. It might have meant that for two years the laws were forbidden from taking effect. This would have provided the crown with additional time for consideration of provincial laws, undoubtedly helpful for a strained imperial administration dealing with issues from India to Maine. However, in 1731, the Privy Council had used the same phrase – "lye by probationary" – in reference to a Virginia law.

> [To a Committee is referred a representation from the Virginia. Board of Trade of 19 May upon a Virginia Act for amending the staple of tobacco and for preventing frauds in his Majesty's customs,] which Act the said Lords Commissioners humbly propose to lye by probationary untill the effects of it may be seen.[53]

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52 Entry for 10 July 1735, in *Journals of the Board of Trade and Plantations, Volume 44: July 1735.*

53 Entry for 12 June 1731, in Grant, W. W., and James Munro, eds., *Acts of the Privy Council of England, Colonial Series, vol. 3, 1720 – 1745* (Edinburgh: Hereford Times Co., Ltd., 1910), 326.

Clearly, the use of "probationary" here does not mean that the act in question would remain unenforced – quite the opposite: it would be untouched, in order to gauge its effectiveness. In the words of Russell, "[u]nless neglected *or laid by probationary* at the Board of Trade, laws progressed, together with the report or representation upon them, to the Privy Council [emphasis added]," who would then have an opportunity to disallow them.[54]

While the meaning here seems clear, the intent, however, was different from that applied to Virginia. The Earl of Westmoreland, First Lord of Trade in the 1730s, outlined the proposed policy change in a report to the Lords of Trade in 1733. His clear intent was that laws "ly[ing] probationary" did not have force of law until confirmed by the Lords of Trade.

> That no Law passed in any of the British colonies be, for the future in Force, or be allowed to have any Effect until the same shall have received His Majesty's Approbation in Council; Any Usage, Custom, Charter, Privilege, or Law to the contrary notwithstanding, Excepting such Laws only, as through any Emergency may become necessary in the respective Colonies for the immediate Defence of the Government, wherein no Matters of a distinct of different Nature shall be inserted, but such Clauses only as are usual and applicable to the said Emergency.[55]

Clearly, Westmoreland's intent was to delay the enforcement of colonial laws until they were confirmed by the crown. The Lords' report to the House of Lords in January of the following year more fully fleshed out the policy. In addition to requiring confirmation before becoming effective, any provincial act that affected trade or the prerogative was disallowable at any time whatsoever.

> That the crown be impowered to repeal an Law pass'd under any of the said Governments at any Time whatsoever, which hath not actually

54 Russell, 82.

55 Minutes of Lords Commissioners of Trade, 21 March 1721, *British Colonial Records, C.O. 5, Part 2: Board of Trade, 1660 – 1783, vol. 5*, 73.

> receiv'd the royal Approbation in Council if such Law be found detrimental to the Prerogative, or to the Trade or Navigation or Interest of Great Britain, any Privilege or Limitation by Charter otherwise for the Time or Manner of repealing such Laws notwithstanding. That no Law pass'd in any of the British Colonies be for the future in force, or be allow'd to have any Effect until the same shall have received his Majesty's Approbation in Council[56]

Had Westmoreland gotten his way, the provincial acts would not have any force of law unless and until approved by the crown. The Privy Council seems not to have agreed with Westmoreland's diagnosis. They did not ratify the suggested policy change.

The method of the Board of Trade in arriving at the new policy resolution was also relatively unusual, in that they did not consult with the agents for the province beforehand. In many instances in previous – and subsequent – years, the Board was careful in gathering local political intelligence, and sometimes even deferential in its treatment of local opinion.[57] This could indicate a specific attempt at secrecy by the Board, or imply a more authoritative, even disciplinary, justification for the change.[58] (One rarely seeks the advice of the errant child when punishment is necessary.) For whatever reason, or perhaps to no concerted end at all, the Lords of Trade acted in 1735 without input from the province. Like the confirmation of provincial acts, a power, judging from the language of the Lords' *Journal*, assumed before being made explicit,

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56 "Some Propositions relating to the Report from the Lords of Trade and Plantations to the House of Lords," January [?], 1734, ibid., 123.

57 See, for example, the debate over the Charter itself, cited at the outset of this chapter. In 1694 the Lords took testimony from the provincial agents regarding proposals to requisition naval stores from the Bay. See C.S.P. Col., 1694, no. 851. On 19 March 1697, Sir Henry Ashurst, agent for the province, presented a paper to request action on previously received petitions. "which the Council promised to give as soon as possible." See C.S.P. Col., 1697, no. 830. Another example of their deference, working the other direction, was that of the fish-culling legislation above, in which the Lords of Trade listened and acted on requests of the provincial merchants. The examples are numerous; these are chosen strictly as representative cases, rather than an exhaustive listing.

58 This was a period of heightened tension between governor and General Court over the salary question; the policy resolution may have been a way for the crown to show some of its weapons to the provincials.

individual laws had been made probationary before.[59] This became a more common practice in later years.[60]

Few historians and contemporaries have commented on this potential policy shift. Though Boston had eight newspapers in the year 1735, there was no mention of the change in the papers. This is more absence of evidence rather than evidence of absence, as the papers were not primarily local news fora. They did a fair job covering English and European news, and were only by the middle of the decade beginning to become news outlets for local happenings. Not mentioning the political news from London most relevant to the provincials is neither surprising nor particularly significant.

Thomas Hutchison, a provincial governor himself, as well as a sharp-eyed historian, writes nothing at all about this potential constitutional transformation in his three-volume *History of Massachusetts-Bay*, though he was politically active during the period.[61] Elmer Russell, in 1915, grasped that the Lords had suggested this change for the better understanding of the effect of the provincial laws.

> Thus the government was forced to a decision upon their laws within a comparatively short time and was prevented from allowing them to lay until the full effect of their operation could be observed. In 1735 the Board resolved that all Massachusetts acts should remain two years from the time of their being presented to the crown Probationary unless objected to in the meantime and then to report upon them.[62]

But Russell says little about the method of arriving at such a policy. Even Charles

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59 For example, in 1710, the Lords of Trade considered "An Act For the Better Preventing of a Spurious and Mixt Issue," passed in the province in October of 1705 but not received at the Board until April 1709, "and agreed to let the said Act remain as probationary for some time longer." Entry for 24 May 1710, *Journals of the Board of Trade and Plantations, vol. 2, February 1709 – May 1715*.

60 Russell, 57-58.

61 He was not of particular significance, though with his father on the Council and an important player in the Land / Silver banking controversy, surely was fairly well acquainted with the events of the period. Governor Belcher introduced the younger Hutchinson to the Duke of Newcastle in a letter written 30 October 1740. See Belcher to Newcastle, in *Belcher Papers*, vol. 2, 340-41.

62 Russell, 101.

Andrews, the foremost American historian of the colonial era, does not mention this resolution. How could such a potentially momentous change fall in this relatively populated acreage of the imperial forest without a sound?

The possible answers are manifold. First, imperial ambiguity meant that any change might be viewed as merely solidifying an outcropping on the imperial façade, another rocky face to negotiate, rather than transforming the relationship between metropolis and province. The Lords of Trade may have considered from the beginning of the Second Charter period laws not disallowed to be implicitly – and sometimes explicitly – confirmed. A second and related possibility is that the lack of vocal response from the province itself makes the policy shift difficult to notice. The period was marked by significant developments in the currency and salary crises, making something of a screen in front of other maneuvers from the provincial perspective as well. To further stretch the previous analogy, this was not merely one tree falling in an otherwise idyllic grove, but rather one of many loud and large crashes in the New England political and economic forest.

However, the most likely reason for this change making few waves in the province is simpler than any of these possibilities. While the Lords of Trade resolved that the disallowance policy be changed, the Privy Council never made any decision to that effect. In other words, the resolution was merely that, a sort of sense-of-the-Board resolution that had no legal effect. A search of the records of the Privy Council reveals no such decision, nor does the Council take up such a proposal in the period from 1735 to 1750. In other words, contrary to both Russell and the editors of the *Acts and Resolves of*

Massachusetts Bay, the change simply did not take place.[63]

Weighing against this possibility is the evidence that subsequent disallowances came generally within a five-year, not a three-year, window. We are left with a confusing puzzle. When the Lords of Trade recommended an Explanatory Charter to clarify the governor's power over provincial elections in 1725, the Privy Council agreed, ordering it done in July of 1726.[64] Here, in 1735, they are resolving on no less a constitutional change. While the Privy Council appears never to have ruled on the question, the Lords of Trade moved forward under the proposed new system.[65] The evidence seems to indicate that the Lords of Trade had some plenary power here to make such decisions without the consent or oversight of the Privy Council.[66]

Still more interesting is the question of the causes of the change. Why did the Lords of Trade want to transform this particular plank of imperial policy, at this particular moment? Essentially, they were forced to tighten the reins on the province by virtue of her own behavior. For many years, the Bay colony had found a way to avoid disallowance of those laws that ran counter to either assumed or stated imperial policy, especially regarding the emission of bills of credit, by either rendering them temporary or by attaching emissions to more important legislative purposes.[67]. The economic crisis of the early eighteenth century, more severe, at least for the Bay, than that of the 1760s, put the province between the rock of the imperial web, and the hard place of economic reality.

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63 Ibid., and *A&R, vol. 2*, 790.

64 See entry for 20 July 1726, in *Acts of the Privy Council, vol.* 2, 104.

65 The editors' entry in *A&R, vol. 2*, 790, lists several examples of five-year considerations of particular acts.

66 Russell sees the changing policies regarding Massachusetts Bay and Pennsylvania, happening roughly simultaneously, as a part of the general trend towards royalization in the Hanoverian period. This may be evidence of a desire to sacrifice protocol for effectiveness. See Russell, 101-102.

67 See for example the salary controversy detailed in Chapter 3.

In 1721, the General Assembly of the province initiated a policy of avoiding disallowances by avoiding passing "acts" that could be disallowed. A creative effort, in this case to emit a circulating medium – provincial bills of credit – in order to maintain the province's local economy. Under then-Governor Samuel Shute, the General Assembly passed, by resolve rather than act, the emission of £5000 in provincial bills.

> Resolved that the Treasurer be & hereby is Directed to Issue forth & Emit the Sum of Five Thousand Pounds of the Bills of publick Credit that are or shall be Recieved into the Treasury for Payment of the publick Debts of this province already contracted & for the Supplying the Charge of the Forts & Garrisons & Wages arising for the Service & for the Payment of Grants, Salaries & Allowances made or to be made by this Court & for no other End & Uses whatsoever ; All which are for the Defence & Support of the Government & necessary Protection & Preservation of the Inhabitants of this province According to such Draughts as from Time to Time shall be made upon him by Warrant or Order of the Governour or Commander in Chief for the Time being by & with the Advice & Consent of the Council.[68]

The extended justifications were perhaps a sign of the thin ice upon which the provincials had sallied forth. The straits in which the province found itself were indeed dire, as the consent given such an innovation by Shute indicates. The method, as legislative developments will, quickly became normative, and was used throughout most of the 1720s with executive consent.[69]

However, in 1729, the briefly-serving Governor William Burnet refused his approval for a new emission passed in that year by both houses of the General Court; by then the annual emission-by-resolve had swelled to £20,000.[70] Burnet appealed for

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68 *A&R, vol. 2*, 219-220. The similarity between this maneuver and the recently used deem-and-pass policy in Congress is more than superficial; both policies were carefully calibrated to prevent oversight of the crown or the people, respectively.

69 This is not to say that the resolve of 1721 passed without debate. The Council and Assembly had one of their more exciting exchanges of ideas, but the debate was over the limits on the expenditures quoted above: "& for no other End & Uses whatsoever," rather than the resolution-versus-act question. See the entire exchange between the houses in ibid., 219-222.

70 Ibid., 701.

assistance to the Lords of Trade himself, concerned, as he wrote, "that attempting to pass proclamations by the legislature seems to give such ordinances or proclamations the force of laws in the province." Burnet continued.

> [This] is an innovation of dangerous tendency, since they don't find that those ordinances are ever sent over for His Majesty's approbation: from hence the people may, in time, be taught to look upon acts or orders of the General Assembly as laws, tho they are known never to be transmitted for the Royal allowance; which is directly contrary to the charter and will tend to weaken the dependence upon the crown of Great Britain.[71]

Burnet expired in office, leaving the problem to his Lieutenant Governor, William Dummer.

After Burnet's death, Dummer wrote to the Lords of Trade, outlining the problem once again.

> I think it necessary to observe to your Lordships that ever since … the Resolve for the supply of the Treasury, which was first done in the year 1721, when Gov Shute was in the Chair, there has always been some opposition made to it by the Council… The necessity of a supply of the Treasury for the support of the Government has weighed with me in the passing of it, as it has bin done for eight years past, having no prospect of retrieving that article at present: But it seems to me, that the Clause in the Charter, upon which that matter depends, does require an explanation from the crown, or it will be every year an occasion of fruitless contention in the Legislature to the prejudice of His Majesty's service and the public good.[72]

While Dummer was focused on the extension of the authority of the General Court over the governor's power to appoint officers of the militia, the funding-by-resolve had clearly become a serious hurdle to effective imperial oversight.

The timing, as well as the content, is critical here. Though it arrived at in November of 1729, Dummer's complaint was not read at the Board until June of 1731. By that time, Jonathan Belcher had been appointed as the new governor of the province.

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71 Ibid.
72 Ibid., 222.

He in turn encountered the same difficulties Dummer had, and his situation was further complicated by the bitter battle over settling a permanent salary for the governor as well as the by-now exacerbated currency dilemma. The problem pre-dated Belcher's arrival, and he was accompanied to the province by the same royal instruction that Shute had been given in 1716. He, like Shute, was forbidden to assent to emissions of paper currency for purposes beyond "Acts for Raising and Setling a publick Revenue for defraying the necessary Charge of the Government."[73] Upon his sharing said instruction with the Assembly, that body sent several appeals to the crown for its repeal.[74] These appeals, addressed first to the King, and subsequently, in a somewhat desperate attempt, to the House of Commons, succeeded only in focusing the anger of the royal establishment against the Assembly. On 10 May 1733, the Lords of Trade passed word to the Bay that "His Majesty doth hereby Declare and Signify his high Displeasure at these repeated Applications upon points which have been already maturely Considered and Determined by His Majesty in Council."[75] The efforts of the Assembly against the governor's instructions produced only a hardening of the imperial position.[76]

Land Bank controversy of the 1730s and 1740s, one of the most important imperial conflicts of the period before the Revolutionary era was a contributing factor in

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73 Governor William Burnet in 1720 received the instruction given Belcher. Burnet quoted this instruction in an address to the Assembly in 1728, as well as quoting Shute's instruction of 1716 regarding the meaning of the phrase "Acts for Raising and Setling a publick Revenue for defraying the necessary Charge of the Government:" "for Setling and Establishing fixed Salarys upon [the Governor] … as likewise upon His Lieutenant Governor." Address of Governor Burnet to General Assembly, 1 October 1728, in *Boston News-Letter* (Boston), 19 October 1728.

74 Ibid., 702.

75 *Acts of the Privy Council, vol.* 2, 334.

76 In an interesting mirroring of the Declaratory Act 33 years later, the provincial assembly passed a protest in the wake of its acceptance of the acceptable act provisioning the treasury in 1733 asserting that though the body passed the bill of supply, it reserved the right to insist on a voice in the expenditure of provincial bills in the future. See Andrew M. Davis, *Currency and Banking in the Province of Massachusetts-Bay, Part 1: Currency* (New York: The Macmillan Company, for the American Economic Association, 1901), 120.

the proposed change to the disallowance policy. The provincials, desperate for a circulating medium, frustrated by limits on provincial bills, they were forced to solve their chronic currency shortage by any means possible. The two major ideas – banks that could create circulating media based on either land or silver – were different in scale, not kind. The more inflationary, all things being equal, was the more popular, in terms of participation: the Land Bank. One could leverage one's land in exchange for bills of credit in amounts based on the land 'banked' with the company. The alternative, the Silver Bank, was similar in every way except the basis of value, here being of course precious metal. While the scholarly interpretation of the controversy has largely focused on the debtors-versus-creditors aspect, both plans were attempts to address the fundamental currency crisis while limited by the umbrella of the disallowance policy.[77]

Conscious that they had no hope of passing an act chartering a land bank for the emission of paper bills of credit through either the legislative veto or the royal disallowance, the supporters of the Land Bank in the Assembly did not attempt to do so. Instead, the bank – or the Manufactory Scheme, as it was known – was formed as a private, unchartered corporation. This maneuver was to no avail; Parliament, in 1741, extended the Bubble Act of 1720 over the colonies, making the directors of the Land Bank personally financially responsible for each bill emitted by the corporation.[78] The

77 For examples of the agrarian-debtor thesis, see Hutchinson, vol. 2, 299-301, Curtis Nettels, "British Policy and Colonial Money Supply," *The Economic History Review*, Vol. 3, No. 2 (Oct., 1931), 219-245, John C. Miller, "Religion, Finance, and Democracy in Massachusetts," *The New England Quarterly*, Vol. 6, No. 1 (March, 1933), 29-58, and Theodore Thayer, "The Land-Bank System in the American Colonies," *The Journal of Economic History*, Vol. 13, No. 2 (Spring, 1953), 145-159. For counter argument, see J. M. Bumsted, "Religion, Finance, and Democracy in Massachusetts: The Town of Norton as a Case Study," *The Journal of American History*, Vol. 57, No. 4 (March, 1971), 817-831, and Elizabeth E. Dunn, "'Grasping at the Shadow': The Massachusetts Currency Debate, 1690-1751," *The New England Quarterly*, Vol. 71, No. 1 (March 1998), 54-76.

78 George Billias argues that the Land Bank was not subject to the Bubble Act. That Act prohibited joint-stock companies without permission of Parliament, but the Land Bank was not a joint-stock company.

design of this Parliamentary action was to minimize the emissions of the Land Bank, choking the scheme in the crib. While the intent of the act was carried into effect, several directors took financial damage from the extension of the Bubble Act.[79] This controversy was a major conflict in intra-imperial relations, perhaps the most significant before the 1760s for the Bay.

The recalcitrance of the Assembly seems to have been the proximate cause of the review of disallowance policy, undertaken by the Lords of Trade in the spring of 1733, at the behest of the Earl of Westmoreland. It is easy to read emotional content into the cold text of the minutes of the Lords of Trade in that March meeting. Westmoreland proposed to reformat a critical portion of "the Plantations as well as those under Proprietary or Charter Governments," "Any Usage, Custom, Charter, Privilege, or Law to the contrary notwithstanding." One cannot help but read this, coming as it did so quickly on the heels of the Assembly's final appeal against the instructions regarding emissions, as a rebuke of the Assembly's machinations. Their words seem to indicate the frustration of the Lords of Trade: "That no Law pass'd in any of the British Colonies be for the future in force, or be allow'd to have any Effect until the same shall have received his Majesty's Approbation in Council,"[80] "that the crown be impowered to Repeal any Law passed under and of the said Governments at and Time whatsoever, which hath not actually

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See Billias, "The Massachusetts Land Bankers of 1740," *University of Maine Studies*, 2nd Ser., No. 74 (Orono, ME: University of Maine Press, 1959), 8.

79 One of the directors whose accounts were diminished in the affair was the elder Samuel Adams. Though Deacon Adams lost money as a director of the bank, he was not rendered penniless. His more famous son was graduating from Harvard during the controversy, and it must have shaped his perspective on the Bay's position in the imperial web.

80 Minutes of Lords Commissioners of Trade, 21 March 1733, *British Colonial Records, C.O. 5, Part 2: Board of Trade, 1660 – 1783, vol. 5*, 73.

secured the Royal Approbation in Council."[81] While the question of whether the presentation was colored with such passions remains unknowable, it seems likely.

In a constitutional system, such a change would represent a seismic shift. In the ambiguous and negotiated imperial system, it might be more easily assimilated into the existing reality of provincial government. More interesting, especially in the light of later events, was the stated desire to assert such a power "Any Usage, Custom, Charter, Privilege, or Law to the contrary notwithstanding." Language of this nature, theoretically more inflammatory than that of the Declaratory Act thirty years later, might have been expected to move provincial opinion against such a tightening of imperial control. Yet the record holds no such opinion.

Certainly, from the metropolitan perspective, the proposed change in policy in 1735 would not have been viewed transformative. There had always been, as the official language demonstrates repeatedly, an implicit assumption at the Privy Council and the Board of Trade that the crown was confirming those laws it did not disallow. For example, on 4 June 1695, the Lords of Trade wrote in their minutes "On the Acts of Massachusetts passed in 1692, the Lords agree to recommend thirty-eight of them for confirmation; but that the remainder be repealed."[82] On 24 November 1698, in another example, the "Order of the Lords Justices of England in Council, Confirm[ed] thirty-one Acts of Massachusetts."[83] Disallowances were sometimes referred to as decisions "against confirming" provincial acts. For example, in 1700 the Solicitor-General

81 Minutes of Lords Commissioners of Trade, [?] January 1734, *British Colonial Records, C.O. 5, Part 2: Board of Trade, 1660 – 1783, vol. 5*, 123.

82 C.S.P. Col., 1695, no. 1874. See also C.S.P. Col., 1695, no. 2019: "Order of the Lords Justices in Council. Confirming thirty-five Acts of Massachusetts recommended by the Lords of Trade and Plantations in their Minute of 4th June." There are numerous other examples.

83 C.S.P. Col., 1697-1698, no. 1010.

expressed to the Board of Trade his judgment on the act naming lawful ports, argued "[a]gainst confirming the Act establishing Sea-ports within this province."[84] These incidents illustrate that, at least to the crown, there would have been no substantive change in policy had the Board's proposals of 1735 been adopted. It would have been merely an expression of an already-assumed power of the crown rather than an aggrandizement of that power. The lack of outcry on the other side of the Atlantic might cause one to think the provincials saw little evil in the proposed change. Without a Privy Council judgment on the resolution of the Lords of Trade, it is difficult to know if such a proposal was ever communicated to the province. It might have been merely an unusually open description of the territory of empire that would have otherwise been mutually negotiated by metropolis and periphery, but it raised no debate in the province. It would not redraw the edges of the imperial map, but rather would make explicit a frontier that had previously been inchoate.

V – Conclusion

The disallowance clause in the Second Charter provided a measure of control over provincial legislation necessary for the proper maintenance of the imperial system in New England. However, as this chapter has demonstrated, Massachusetts Bay experienced comparatively light oversight through disallowance, with the exception of those laws that fell into those three main categories. More often than not, even those disallowances arrived in Boston with instructions on how to better navigate the imperial gauntlet in the future. The use of royal disallowance illustrates the negotiated nature of the imperial relationship. The crown preferred provincial action to imperial regulation.

84 C.S.P. Col., 1700, no. 709.

Disallowances often established or revealed boundaries unclear at the beginning of the Second Charter period, and the province could use such disallowances as a way to map those boundaries politically. When faced with consistent, if creative disobedience, the crown considered adjustments of its policy. While not decried in the province, or viewed as particularly transformative in the metropolis, this potential ratcheting of imperial control would have had significant consequences in the province. Both sides were willing to press against the contours of the hazy land of the imperial relationship in order to discover its limits. It was more an exercise in mapping the imperial relationship than an exercise of imperial force. It was, in other words, a constitutional debate.

4
THE RIGHT OF APPEAL

> Wee doe by these presents Ordaine that incase either party shall not rest satisfied with the Judgement or Sentence of any Judicatories or Courts within our said province or Territory in any Personall Action wherein the matter in difference doth exceed the value of three hundred Pounds Sterling that then he or they may appeale to us Our heires and Successors in our or their Privy Councill[1]

The disallowance clause was not the only provision made in the Second Charter for royal oversight of provincial affairs. In judicial matters, too, the crown preserved for itself a measure of control, by inserting into the Second Charter a right of legal appeal to the King. The Second Charter provided that the General Court "shall for ever have full Power and Authority" to create courts of law within the province, provided the system assured the right of appeal and assuming that the laws creating it could navigate the waters of royal disallowance. It seems remarkable, considering the opportunity presented by the demise of the Dominion, that the crown did not seek to impose a legal system on the colony, whether like that of the metropolis or otherwise. Leaving this issue in the hands of the provincials might have been viewed as a rebirth of freedom in an important aspect of the lives of New Englanders.

While it appeared that the Second Charter had not laid a pre-formed legal system upon the province, in reality, the provincial efforts to create a court system were shaped by the crown through the deployment of the royal disallowance. Over the course of a

1 Thorpe, vol. 3, 1881-82.

decade of effort, overcoming imperial obstacles both rational and irrational, the General Court finally constructed a court system that attained royal approbation while remaining at arm's length from English norms, and which included, however grudgingly, the right of appeal. Surprisingly, Massachusetts Bay had the lowest number of appeals to the crown of all English colonies, with only 33 appeals occurring during the provincial period.[2] While this statistic runs counter to the image of Massachusetts as a recalcitrant colony straining at the metropolitan leash, the provincials themselves disliked even this minimal amount of legal interference. The experience of the appeals process in action further reveals the weakness of the appeals clause. What appeared to assure colonists their traditional English right of royal appeal, or a functional limit upon imperial authority, became instead contested ground in the constitutional debate over the limits of the text of the Second Charter.

This chapter begins with a description of the role that royal appeals played in the end of the First Charter system. Next, it will assess the struggle for Second Charter judicial legitimacy, a foundation without which the appeals clause could not be put into action. Third, it will discuss the nature of the appeals actually made to the crown in terms of process, as well as handling specific examples of cases appealed to the metropolis. Finally, it concludes with an analysis of efforts to resist the crown's right to hear appeals, emphasizing that there would be conflict even over the seemingly minor imposition of the right of appeal. The Bay colonists could pull a cloud out of almost any silver lining.

I – The First Charter Legal System

2 See Appendix V.

Over the First Charter period, the Puritans of Massachusetts Bay had devised a unique legal system into which their litigiousness could be channeled: the magistracy.[3] Magistrates – members of the Council of Assistants – possessed legal authority, both *en banc* when sitting as the Court of Assistants, which was empowered to hear military, civil, and major criminal cases as well as criminal and civil appeals, and individually, since any one of the magistrates could serve as judge in a county court. This system fit well in the frontier environment of the New England wilderness. Magistrates were readily available in their local communities and counties, and the flexibility of having two or more travel as the equivalent of a circuit court helped bring the justice of Boston to the countryside.

Over time, colonial growth demanded magistrates in excess of the colony's supply. There were only eighteen Assistants at any one time; by the middle of the seventeenth century, the General Court was investing "magisterial power" in lesser officials, deemed "Commissioners for Small Causes," to handle small cases, the rough equivalent of a justice of the peace. This lightened the load of the average magistrate, which, with the rapid growth of the colony, had become substantial. However, it did nothing to alienate the magistrate from the judicial system. In the words of John Murrin, the magistrate "could act as a single judge, he sat on the county court, and he belonged to the Court of Assistants, which was itself one branch of the General Court."[4] Despite the addition of the commissioners, therefore, the magistracy remained the heart of the Puritan judiciary.

Appeals to the crown of the rulings of the magistracy would have emphasized the

3 The claim to uniqueness is drawn from Murrin, chapter 4, "The Legal Transformation: the Courts," 149-94, especially 150-57.
4 Murrin, 154.

disparity between Puritan and English legal proceedings, and were therefore feared. This fear boiled over with the visit of the Royal Commission to New England in 1664. While the central purpose of the visiting Commission was to "be truely informed of the state & condition of our good subjects there, that so we may the better know how to contribute to the further improvement of happiness & prosperity," one of its secondary powers was to hear appeals against Puritan justice.

> [I]n our name to visit all & every the severall colonies aforesaid, & also full power & authoritie to heare, & receive, & examine, & determine all complaints & appeales in all causes & matters, as well military as criminall & civil.[5]

The king had further instructed the commissioners to "not receive any complaint of any thing done amiss by any Magistrate, except it appears to be against their Charter."

> [N]or shall you interrupt the proceedings in justice, by taking upon you the hearing and determining any particular right between party and party, but shall leave all matters of that nature to the usual proceedings in the several judicatories of the country.[6]

This might have made their tour of New England more hospitable, were it not for the Commissioners apparent desire to hew to the text of their official instructions, providing them with almost limitless legal authority. The arrival of the Commission provoked considerable fear, moving the Council to go so far as to order copies of the First Charter be hidden, and for the towns of the Bay colony to flood Boston with petitions supporting the existing order.[7] It represented an existential threat; the Council petitioned King Charles in existential terms. "At our request let our government live, our patent live, our

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5 Instructions to the Royal Commission, Nathaniel Shurtleff, ed., *Records of the Governor and Company of the Massachusetts Bay in New England*, vol. 4, no. 2, (Boston: W. White, printer to the Commonwealth, 1854), 162.

6 Instructions to the King's Commissioners to Massachusetts, 23 April 1664, in John Romeyn Brodhead, ed., *Documentary Relative to the Colonial History of the State of New York*, vol. 3 (Albany, NY: Weed, Parsons and Company, 1853), 53.

7 Jenny Hale Pulsipher, *Subjects Unto the Same King: Indians, English, and the Contest for Authority in New England* (Philadehlpia: University of Pennsylvania Press, 2005), 48.

magistrates live; our lawes & liberties live, our religious enjoyments live," wrote the Council. Then "shall wee all have yet further cause to say from our hearts, 'Let the king live forever.'"[8]

While the threat of the Royal Commission looming over the province exceeded the authority of the Commission to hear appeals, one case in particular became the proximate cause of the conflict between Commissioners and magistrates. This break between the colonial government and the Commission moved the crown to dispatch Edward Randolph to Massachusetts-Bay, an event in the train of which came the death of the Puritan colony and the arrival of Andros and the Dominion. The appeal of John Porter, Jr., divided the metropolitan and peripheral representatives, and brought the colony into an uncomfortably hostile conflict with the representatives of the crown.

John Porter, Jr., first-born son of a prominent Salem merchant, had been convicted, in Salem – a conviction later upheld by the Court of Assistants – for myriad offenses, including abusing his parents, damaging his father's estate, and insulting a magistrate. Porter's language lends considerable color to the official record. He called his father a "simple ape," as well as a "shittabed." For his mother he reserved several fragrant nicknames, "abusive names he used frequently" were "Rambeggur," "[Grandma] Pissehouse," and "[Grandma] Shithouse." The magistrate in question, Major Eleasar Hathorne, got off comparatively easy, being called only a "base, corrupt fellow," for whom Porter "cared not a turd."[9] After being convicted, Porter was sentenced "to stand upon the ladder at the gallowes, with a roape about his neck, for one hower, & afterwards to be severely whipt." In addition, he was to be "comitted to the house of correction, to

8 General Court to King, 3 August 1665, in Shurtleff, ed., *Records of the Governor and Company*, vol. 4, no. 2, 173.
9 Ibid., 216.

be kept closely to worke, with the diet of that house, & not thence to be releast without speciall order from the Court of Asistants or the Generall Court." Finally he was assessed a fine of £200. It was, according to the Council, a light sentence.

> If the mother of the said Porter had not beene overmooved by hir tender & motherly affections to forbeare, but had joyned with his father in complaining, the Court must necessarily have proceeded with him as a capitall offendor, according to our law, being grounded upon & expressed in the word of God, in Deut[eronomy] 22: 20, 21.[10]

Fixing the law in the Old Testament rather than common law could present a problem for the colonial justice system. Porter's unorthodox appeal illustrated the fragility of the legal framework of the saints under the First Charter.

The proximity of the Royal Commission must have been too compelling for Porter to resist, for he made his escape from the gaol and, on 8 April 1665 "presented himself before three of his majesties honorable commissioners then at Warwicke, [Rhode Island] with complaints of injustice." His appeal was granted by the commissioners, and Porter, "unto whom they granted a warrant, under their hands, for a hearing of his case at Boston, before themselves," was set at liberty and further protected by order of the commissioners. "[I]n the interim," they "granted him protection against all authority, officers, &. people, as by the copie of the said warrant may more fully appeare."[11] His appeal, granted while on the lam, presented the colonial government with an unbearable burden. Either, it must accept the complete submission of its legal authority to a Royal Commission and see its tenuous authority over a nation of strangers collapse, or resist the Commission's authority and risk the entire Puritan commonwealth and the First Charter system in a fight against metropolitan control. The tar baby of royal interference was

10 Ibid., 217. They also rooted their sentence in Massachusetts law: "See Capital Lawes, p. 9, sect 14." That this citation followed, rather than preceded, the citation to Deuteronomy says much.
11 Ibid.

unavoidable: the longer the colony engaged in conflict with the crown, it was ceding authority at home and position vis-à-vis the metropolis. That this crossroads arose not from a matter of toleration – neither the executions of Quakers nor the banishment of Baptists brought about such an impasse – but from a matter of public safety and criminal behavior, *de rigueur* for colonial governance, even given its singular crassness, must have seemed high irony to the colonists.

The Council and the commissioners debated and disputed the merits of the appeal, and in the process touched on the question of the position of the charter in the great chain of being of the English empire. When representatives of the bodies met, first on 11 May, their dialog revealed the untenable position into which the colony had been placed. It was "unsufferable" to the Court that their judicial verdicts would be subject to appeals outside the established legal system. The entire affair seemed designed to bring the colonial legal system into disrepute. The members of the Court

> pleaded that it would be an unsufferable burden in case particular persons, judicially prosecuted & sentenced for criminall offences, should have liberty to make their appeales, (not only from inferior to the highest authority heere established by our constitution, *according to his majesties royall charter*, which is allowed to all persons whatsoever, but also from the highest, as above is exprest,) & thereby cause the Court that passed sentence against them, or the whole colony to stand equall with them at the barr of another tribunall, divers from that established heere according to our charter [emphasis added].

The forecast with such a precedent in place was bleak: "in case such breach should be made in the wall of our government, it would be the inlett of much trouble to us."[12]

> And in case the whole colony, Governor & Company, be bound to respond, as is the case now in hand, & as now they were required by the commissioners, the burthen would be so unsupportable that those who are able to remove themselves must be necessitated to returne & live under his majesties wing, as nere him as they could, & under the secuirity of the

12 "Report of Debates Between the Court of Assistants and the Royal Commission," in ibid., 196.

> lawes & priviledges of their native country, rather then to be under the arbitrary determination of commissioners, whose rule is their discretion, as themselves plead.[13]

They further argued against any appeal in the specific case of Porter, "that horrid unnaturall malefactor," as that precedent would result in "incouraging thereby the like with confidence to expect the like favour with the same facility, to the utter overthrow of all justice & morality." Adding to the injury was the insult of the Commission "summoning some of this jurisdiction to answer before them in another colony, (vizt, at Warwicke,) without giving notice to the authority heere, or instancing the cause to be answered unto, contrary to all processe of justice."[14] With both the general precedent set by the appeal to the Commission, as well as the specific evil of allowing Porter to go at liberty until appeal, the Court was in profound disagreement.

The Commission, for its part, wanted to make matters clear to the Court as well. When asked explicitly about the limits, if any, on their power to hear appeals, the commissioners were forthcoming. When asked whether "they would have a jury to passe on such cases as they heard, they answered, 'No.'" Theirs "was a commission of oyer & terminer, & they would have no jury," and would furthermore operate "by the law of England." This was crucial: the differences between English and Massachusetts law would be sufficient enough warrant to overturn many, if not most, colonial verdicts if granted such an appeal. The representatives of the Court of Assistants then asked whether, in their appeals, the commissioners "would admitt any new evidences other then the former Court had presented to them at the first hearing thereof?" "They answered,

13 Ibid., 196-97.
14 "Letter from Court to Commissioners," 26 May 1665, in ibid., 234.

'Yea.'"[15] Therefore, it was to be English law superimposed atop Puritan, with the additional injustice of new evidence allowed upon appeal – following the English tradition. Few judgments would withstand this level of scrutiny, the more so now that the omission had demonstrated its willingness to overturn colonial justice while it was being imposed, as in the Porter case.

This intelligence brought from the representatives of the Court a stem-winding speech registering their protest, and pleading the supremacy of the charter over the law of England.

> [H]is majesties charter doth grant unto his subjects here the enjoyment of all the priviledges of any naturall subjects within any of his dominions, a cheife one whereof is, that no judgment shall passe on any mans person or estate but by the lawfull triall of his peeres, & that the rule of triall shall the lawes of the land.[16]

The Court's claim that English law had no jurisdiction in New England was representative of the mainstream of Puritan thought, and utterly ill-suited to the dispute at hand. It could only have raised the hackles of the Commission, and by extension, the crown, still further. The Court's subsequent claim, to have settled the New England wilderness with this as their foundational understanding of empire, could not have helped. It had only been, the Court argued, "on the assurance whereof, together with other the priviledges granted in his royall charter, they left theire deare relations, & parted with their inheritances in their native country." They had gone forth, "venturing the lives of themselves & families into this wildernesse, & here, without any expence to his majestie, have raised up a colony of people to his majestie, proceeding out of their own loines." Was it so that once there, they were to be threatened with "a great addition to

15 Ibid. 197.
16 Ibid.

their former sorrows?"

> [T]hat either they must be charged with deniall of his majesties authority over them, or else must yield to the prostrating of his majesties authority, orderly established heere according to the grant of his royall charter, under the broad seale of England, & submit themselves, their lives, & estates, & their liberties, farr dearer them than both, to another authority, whose rule is their owne discretion.[17]

The impasse could not be resolved, if both the Council and the Commission were appealing to previous decisions of the crown.

The Councilors summarized the Council's position regarding Porter's appeal in a memorandum. "Wee conceive," they wrote, "our charter under the great seale of England giveth full power unto the authority here established according thereto, to governe all the people of this place." It mattered not whether they be "inhabitants or straingers; & for all legall acts & administrations of government [the charter] gives us a sufficient royall warrant & discharge."

> This charter is confirmed by the kings most excellent majestie, now reigning, & appointed to be inviolably observed, as your instructions doe againe & againe assure us; the inviolable observation heereof seemes inconsistent with your hearing & determining complaints & appeales against us.[18]

The charter, in other words, was superior to any Commission granted by the king, for his royal command could not overturn prior royal commands.

The commissioners responded to the Court's argument on 18 May, addressing this creative assertion directly. "Wee are heartily sorry to finde, that, by some evill perswasions, yow have put a greater value upon your owne conceptions then upon the wisdome of his majesty & council," they wrote. This "argues either an unreasonable jealousy & distrust of his majesties so often repeated graces & favours intended towards

17 Ibid.
18 "Questions from Representatives of the Court to the Royal Commission," in ibid., 199.

his subjects heere, or that his majesty is not a competent interpreter of your charter." Either way, the colony must recognize the Commission or deal with the consequences.

> [W]ee have thought it necessary to reduce all the discourse hereof into one question, whereunto wee expect your possitive answer, which wee shall faithfully report to his majesty: Whither doe you acknowledge his majesties commission, wherein wee are nominated commissioners, to be of full force to all the intents & purposes therein conteyned?[19]

It was an ultimatum: either the Court admit the Commission's authority, or the crown would be forced to reassess the charter itself.

The short answer was "no." The Court promulgated a proclamation that repudiated the authority of the Commission to hear the appeal of Porter, and had it read, at trumpet sound, outside the home wherein the Commission was sitting. After recapitulating the arguments of the Court, it closed with the following peroration.

> This Court doth therefore, in his majesties name, & by the authority committed by his royall charter, declare to all the people of this colony, that just observance of their duty to God & to his majesty, & to the trust committed unto us by his majesties good subjects in this colony, wee cannot consent unto or give our approbation of the proceedings of the above said gentlemen, neither cann it consist with our allegiance that wee owe to his majesty to countenance any shall in so high a manner goe crosse unto his majesties direct charge, or shall be their abettors or consenters thereunto.

In an impious act of spite, the proclamation was closed with "God save the king."[20] This proclamation, and the Porter appeal process as a whole, confirmed for the Commissioners and by extension the crown that Puritan New England had drifted too far from the shore. The Commission's report to the crown produced the visit of Randolph, Andros, Dominion.

With the Second Charter, the Dominion judiciary was dismantled. In its place

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19 Ibid.
20 Ibid., 210.

was constructed a system of justice that took into account the frontier conditions of the colony, and which if not mirrored, at least more closely resembled the English judicial model. Creating that system required the successful navigation of the metropolitan controls imposed by the Second Charter, especially the power of royal disallowance, and turned out to be more difficult than expected. Only after a decade of attempts did the provincials successfully create a legal system amenable to the royal will.

II – The Second Charter Legal System

On the rocks of the Commission's appellate jurisdiction the magistracy was sunk, and the crown at its first opportunity remade Massachusetts' jurisprudence. The government of the Dominion of New England was imposed on the colony in 1686, and with it a restructured colonial judiciary. Under the Dominion, the General Court lost its legal jurisdiction, while the somewhat billowy outline of the colonial court system was replaced with a firm, hierarchical structure. In reality, changes were more superficial than substantive; the colonial judicial system was outwardly reformatted, so that the duties of the various layers of the magistracy were taken up by three different levels under the Dominion, but largely conformed to Puritan experience. And the appeals process was a significant factor in the struggle to establish a judicial system in the province.

At the top of the framework was the new "Superior Court of Grand Assize and Gaol Delivery," which combined the duties formerly held by the General Court, acting in its legal capacity, and the Court of Assistants. Below that, the new regime placed in each county a "Court of Pleas and of General Sessions of the Peace," the judges on which

would be locally-residing members of the newly-appointed Governor's Council and former Commissioners of Small Causes – in other words, magistrates. These magistrates-without-the-title were empowered in proportion to their number, so that wherever two or more were gathered could be considered a court for cases in which less than £40 was at issue.[21] The Dominion, then, represented an outward change that papered over but did not remove the unique aspects of the colonial judiciary. With the arrival of the Second Charter, and the limited freedom for the province to remake its judiciary, the system would undergo more transformations, especially in the decade of the 1690s, when recurrent attempts to create a court system met increasingly unpredictable fates in the metropolis. Royal disallowance, as outlined in the previous chapter, made court formation difficult. What caused such recurrent problems?

There were two obstacles, one structural, one ideological. The latter, the desire of Massachusetts to ensconce variations, however slight, from standard English legal procedures and structures into the provincial legal system in opposition to the metropolitan wish for imperial consistency, is the more exciting – and therefore more studied – of the two.[22] The structural difficulty, though less grand, exerted no less influence in the lost decade of provincial jurisprudence. Conflicting understandings of the spirit, and the letter, of the Second Charter could be the expressions of understandable differences of imperial position, or local tradition. They could also take on a momentum and logic of their own. the inherent and less-predictable structural difficulty led to more

21 Ibid., 158

22 For perhaps the best study of the imperial dialogue over the courts in the Bay, see Murrin, *Anglicizing an American Colony*, Chapter 4, esp. 164-180. Also see Emory Washburn, *Sketches of the Judicial History of Massachusetts from 1630 to the Revolution in 1775* (Boston: Charles C. Little and James Brown, 1840), Chapter 9, esp. 151-160. For a closer view of the workings of provincial courts under both charters, see Joseph H. Smith, *Colonial Justice in Western Massachusetts: The Pynchon Court Record, an Original Judges' Diary of the Administration of Justice in the Springfield Courts of Massachusetts Bay Colony* (Cambridge, MA: Harvard University Press, 1961).

confusion than the better-known and more predictable ideological disagreement.

The first court-creation law passed out of the General Court in June of 1692. In reality, it created no courts at all; rather, it authorized the continuance of the lower courts of the province as they then stood, to bridge the gap before the General Court could take up a new court system. The general sessions of the peace, and the inferior courts of common pleas, were to continue as before arrival of the Charter, with the exception that Suffolk County's justices would be newly chosen by the Governor-in-Council. This anomalous selection process for one county forced the disallowance of the law upon its review in 1695; the "distinction made by the said Act in the manner of appointing Justices for the County of Suffolk," the Privy Council wrote, "It hath been thought fit to repeal the said Act."[23] This disallowance seemed to be a specific message for the province. After all, with the passage of an act creating the Second Charter courts passed later in 1692, this stop-gap measure was no longer operative in 1695. Clearly, the consistency of the provincial system was of some import to the crown.[24]

This second act, the first real attempt to establish courts under the Second Charter, was made in the fall of 1692.[25] This one was also disallowed, its rejection also announced in the 1695 letter. In this case, however, it seems the Privy Council rejected the law in error. The clause that the Privy Council objected to is as follows.

> Provided, also, that either party not resting satisfied with the judgment or sentence of any of the said judicatories or courts in personal actions wherein the matter in difference doth exceed the value of three hundred

23 "An Act for the Holding of Courts of Justice," *Acts and Resolves, vol. 1*, 37.

24 Murrin argues that it was "astonishing" that in the second court-creation act of 1692, the province authorized the extension of common law to the province. Murrin, ibid., 166. But in reality, the earlier Act, of June 1692, did the same. "That the county courts, or inferior courts of common pleas, … for the hearing and determining of all civil actions arising or happening within the same, triable at the common law according to former usage." See *Acts & Resolves, vol. 1*, 37.

25 "An Act for the Establishing of Judicatories and Courts of Justice within this province," ibid., 72-76.

> pounds sterling (and no other), may appeal unto their majesties' in council, such appeal being made in time, and security given according to the directions in the charter in that behalf.[26]

The disallowance was justified based on the exclusion, according to the Privy Council, of real actions from the appeals process. In their letter, they explained that this clause ran counter to the charter's specification of both real and personal actions as appealable to the King-in-Council. However, the clause in the act was taken nearly verbatim from the Second Charter, in the form that arrived in the province.

> Wee doe by these presents Ordaine that incase either party shall not rest satisfied with the Judgement or Sentence of any Judicatories or Courts within our said province or Territory *in any Personall Action* wherein the matter in difference doth exceed the value of three hundred Pounds Sterling that then he or they may appeale to us Our heires and Successors in our or their Privy Councill. [Emphasis added.][27]

Thus the province's attempt to adhere to the letter of the charter they received resulted in a disallowance, presumably based on its spirit.[28]

On four occasions, in 1693, 1694, 1696, and 1697, the General Court attempted to construct a provincial court system. The Privy Council patiently disallowed each in turn. The first three were disallowed because they were either extensions of the act of 1692, or evolutions based upon it.[29] The fourth iteration, however, ran into a new snag. That act, passed in 1697, provided "[t]hat all matters and issues in fact arising or happening in any county or place within this province shall be tryed by twelve good and lawful men of the neighbourhood."[30] However, as the Privy Council pointed out, that would prevent the

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26 Ibid., 76.
27 Thorpe, vol. 3, 1881-82.
28 Of course, the charter sent have differed from the copy in the files at the Privy Council.
29 "An Addition to the Act for Establishing of Judicatories and Courts of Justice within this province," "An Act in Further Addition to the Act for Establishing of Judicatories and Courts of Justice within this province," and "An Act for the Reviving and Establishing of Judicatories and Courts of Justice, and the Forms of Writts and Processes," in *Acts and Resolves, vol. 1*, 143-44, 183-84, and 248-49.
30 "An Act for the Establishing of Courts," Ibid., 286.

admiralty courts, having no jury, from sitting in judgment of those accused of violating laws of trade, and therefore the act was disallowed.[31]

The court-creation problem was finally resolved with the appearance of the Earl of Bellomont as governor in 1699. Bellomont, an experienced colonial hand, advised the General Court to take up the creation of each level of the courts independently, assuring that any potential disallowance that were to come, would affect only one portion of the legal system. This enabled the province, after a decade of attempts, to establish its legal system on a firm footing by the early years of the eighteenth century. By that time, provincial justice began operating at more or less full capacity, and it is thus at that point that the question of the right of appeal can be taken up more directly.

After the lost judicial decade of the 1690s, the provincial court system remained on solid ground for the rest of the colonial period. The presence of the right of appeal provided for some royal oversight of judicial affairs in the province, but as we will see, the uncertainty of the limits present on that right remained, leading to significant conflicts in later years. Having established the court system on a solid foundation, this right remained the final chance for royal oversight of provincial jurisprudence. A closer look at cases appealed will illustrate both the appeals process as well as what sorts of cases were appealed.

III – The Appeals Clause

The judicial system under the Second Charter, once stabilized, was more similar in form to that of the Dominion than that of the Puritan commonwealth under the First Charter. The office of magistrate was no longer, and the structure became more

31 Board of Trade to Bellomont, 3 Feb 1699, quoted in Ibid., 287.

formalized. The best source describing the workings of the Second Charter system was a report on procedures generated by the Council in 1700 for the eyes of the metropolis, which described the day-to-day procedures of the provincial judiciary.[32] This report, combined with the records of the Pynchon Court in Springfield, represent the bulk of the sources of legal records for the province. Records are few and far between for the majority of colonial legal proceedings. In the words of legal historian William Stoebuck, colonial legal histories are generally uninformative, since "they speak largely of New England and largely of New England in the seventeenth century at that." Such a geographic imbalance is understandable, according to Stoebuck, "for the expectable sources of information scarcely exist."[33] A look at the limited record of appeals from Massachusetts will demonstrate that the metropolis, far from negating provincial legal practices and traditions, in fact upheld such laws and traditions, even when they ran counter to those of England.

The appeals clause of the Second Charter placed Massachusetts judgments in the stream of English judicature, flowing from the headwaters of the crown. The clause in the Second Charter was quite straightforward, and yet became fruitful ground for constitutional wrangling. If the case was a personal action resulting in a judgment for more than £300, either party could appeal to the crown. Like other Second Charter clauses, this would become a fertile text for close analysis and contested readings, and

32 J. C. Addington and William Smith, "Report on Court Procedures in the Colonies, 1700: Maryland, Massachusetts, New York," Erwin C. Surrency, ed., *The American Journal of Legal History*, vol. 9, no. 2 (Apr., 1965), 167-178. The Council cannot necessarily be taken as an unbiased source; for a variety of reasons, it might be in the best interest of the Council to represent things to the metropolis differently than they actually were. However, this remains the best source, since the Board was in the best position to know of the judicial procedure of the province.

33 Stoebuck, in *William and Mary Law Review*, vol. 10, no. 2 (Durham, NC: University of North Carolina Press for the Institute of Early American History and Culture, 1968), 395. Stoebuck's "Reception of English Common Law in the American Colonies" is an excellent survey of the records, such as they are.

would be imperfectly honored within the province, and imperfectly enforced from without. It would be subject to the same sort of constitutional analysis as given to the powers of the governors, the royal disallowance, and the reservation clause. Assessing the contestation of the appeals clause can be usefully done by dealing with the text of clause piece by piece.

Appeal from the province was available "incase either party shall not rest satisfied with the Judgment or Sentence of any Judicatories or Courts." Appeals were allowed "in any Personall Action wherein the matter in difference doth exceed the value of three hundred Pounds Sterling," according to the clause. This limitation likewise allowed considerable room to maneuver. It deserves mention here that while this language appeared to limit appeals from the province, the metropolis could initiate, in any case whatsoever, an appeal of its own volition. The likelihood of close scrutiny from the crown was small, but nevertheless, appeals could be and were ordered by the King-in-Council. Furthermore, the seemingly precise limitations on provincially originated appeals did in reality create a fairly parlous space in which appeals could be lodged. Royal intervention could be provoked either by metropolitan oversight, or, more often, by individual petition, which provided a sizable back-door through which appeals could be had.

In Massachusetts Bay, the records were more complete than in other colonies, owing largely to the provincial system governing appeals. The appeals process within the province demanded that appellants compile all the evidence of the case – from both parties – and include it with the petition for an appeal.[34] In addition to this evidence, both

34 This has resulted in a collection of documentary evidence, located in the *Massachusetts Superior Court of Judicature Judgment Books.* However, these do not contain information regarding appeals.

appellants and defendants were permitted to introduce new evidence on appeal. The intent of this additional evidence was to allow for "the relief of a defendant surprised at a former trial."[35] One additional wrinkle in Massachusetts practice was that appeals cases were heard by juries; the new evidence policy becomes a bit more understandable in light of this fact. In one case appealed to the crown, *Vassall v. Fletcher*, this additional evidence was the central issue. When Fletcher sued for defamation but entered no evidence, either in the lower court or in his initial provincial appeal, both courts found in favor of Vassall. However, applying for a re-hearing at the Superior Court, Fletcher suddenly introduced a great quantity of evidence, and got the appeals jury to award him £2000 in damages. This prompted an appeal to the crown from Vassall, upon the hearing of which, the Privy Council reversed the judgment.[36]

There was hardly a flood of cases heading eastward across the ocean to be reviewed by the King-in-Council. As mentioned above, there were just more than thirty appeals from Massachusetts during the seven decades of the Second Charter government.[37] The process of making an appeal limited all but the most committed and best-funded litigants. While there were variations, the process was fairly consistent throughout the period. An appellant, who may have already had to go through an appeal to either the Superior Court or the Council, would have to petition the Council for permission to appeal to the crown. Even when this petition was denied, appellants could petition the Privy Council directly. In addition to the delays of the appeals process, there were considerable costs involved. Judgments were not stayed while the appeals process unfolded; rather, appellants would have already rendered whatever fines, charges, or

35 Smith, *Appeals*, 375.
36 Ibid.
37 For an annotated list of those appeals, see Appendix III.

sentence the court had demanded.[38] This meant that an appellant had to have the resources to either pay the fines and court costs of the original ruling or serve a criminal sentence, as well as the time and money to work for the appeal(s) needed.[39] On top of all this, the reality was that the best way to succeed in an appeal to the crown was to have one's self or one's representatives before the crown when the appeal was finally attained. This meant still more expense. The resources required to navigate the appeals process necessarily limited the number. Still, it must have been similarly costly in time and money to appeal cases in the other colonies; the expense argument does not seem sufficient to explain the low number of appeals from Massachusetts.

At the metropolitan level, colonial appeals were referred from the Privy Council to the Committee for Appeals, one of the many committees in which the Privy Council did its work. The Committee would read or hear the evidence in the case, and render a recommendation to the Privy Council of one of three types: affirmation of the lower court decision, a reversal or variance of that decision, or dismissing the appeal outright. The process, as with all interactions imperial, would be time consuming and marked by often lengthy delays as paperwork shuffled back and forth across the Atlantic. It was not unusual for an appeal to take upwards of eight to ten years to trickle up through the layers of colonial administration and make its way back to the province. One case in particular, that of *Phillips v. Savage*, reveals much about the process of attaining an appeal, as well

38 "[B]efore such Appeale be allowed Security be given by the party or parties appealing in the value of the matter in Difference to pay or Answer the Debt or Damages for the which Judgement or Sentence is given With such Costs and Damages as shall be Awarded by us Our Heires or Successors incase the Judgement or Sentence be affirmed *And Provided* alsoe that no Execution shall be stayd or suspended by reason of such Appeale unto us our Heires and Successors in our or their Privy Councill." Thorpe, vol. 3, 1882. This was well enough enforced to be noted in the records of the Privy Council. In 1726 a circular letter asking sentences not to be unjustly enforced while appeals were pending was sent to all the colonies "except those of Barbados and the Massachusetts Bay for which there is not any occasion." Circular letter, Board of Trade to Royal Governors, 8 February 1727, in *PCR*, vol. 3, 126.

39 Every case heard on appeal, in any provincial court, resulted in court fees for one or both parties.

as the laxness of the limits on the right of appeal.

Phillips v. Savage was not strictly a personal but rather a mixed action, involving property both real and personal. This placed it in a middle, and therefore contestable, ground: it could be allowed an appeal on the basis that it was not a strictly real action, or denied in that it was not a strictly personal one. However, as described, the limitations were anything but solidly demarcated. Following the course of this case will reveal the grey terrain so poorly represented by the black and white borders of the Second Charter. The case involved a very sizable estate – that of Henry Phillips, who died intestate in 1729 – as well as some of the differences between English common law and that followed in Massachusetts regarding intestates. Phillips had obtained a sizeable estate in Massachusetts Bay, totaling up to a value of £3950. He had also something of a heated temperament, and, as a consequence, fought in a duel on Boston Common, on 3 July 1728. Having killed his opponent, one Benjamin Woodbridge, Phillips had little alternative than to flee.[40] He died the next year, having settled in France, leaving his estate without a clear inheritor. According to the relevant Massachusetts law, the estate would be divided equally among the children (sometimes with a double share given the eldest son), with deference to arrangements made before marriage regarding shares for any surviving widow.[41] In Phillips' case, the decision was to divide the estate into five equal parts, apportioning them to his mother, two sisters, brother Gillam, and the final portion was given to his two nephews by a late sister. This probating of Phillips' estate

40 Never remiss in using an anomaly to muster their spiritual forces, at least two ministers published sermons on the occasion of the duel. See Benjamin Colman, *Death and the Grave Without Any Order*, (Boston: John Phillips and Thomas Hancock, 1728), and Joseph Sewall, *He That Would Keep God's Commandments Must Renounce the Society of Evil Doers*, (Boston: Benjamin Green, 1728).

41 "An Act for the Setling and Distribution of the Estates of Intestate," 1693, in *Acts and Resolves*, vol. 1, 43-45.

was completed by the spring of 1733.[42]

Phillips' brother Gillam was unsatisfied with the division of the estate. His complaint was based upon English common law, which would have the inheritance descend to the nearest male relative; though preferably the first born, Henry's childless status would have made Gillam the inheritor. The entirety of the estate, under such a system would have fallen to Gillam Phillips. While Gillam was undoubtedly influenced by found money escaping his grasp, he had also been engaged in a legal wrangle with his brother-in-law, Arthur Savage, husband of Phillips' sister Faith, over past debts. Each man had sued the other for repayment of debts, and each won a settlement against the other, in the years just preceding Henry Phillips' death. One can imagine the feeling of seeing nearly £800 land in the lap of the man Gillam felt owed him several hundred pounds.[43]

Whatever the motivation, Phillips sought an appeal of the ruling from the provincial court system. He petitioned the Governor's Council for an appeals hearing, arguing that "the common law of England" dictated the estate be his. He was granted a hearing in November of 1733, where, before Governor Belcher and Council, the original ruling was affirmed. Phillips asked permission of the Governor and Council, by written petition, to appeal to King and Council, and was refused. The next year, a petition to the Privy Council directly earned Phillips an appeal hearing – despite the fact that the case was not a strictly personal action.[44]

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42 Ellis Ames and Joseph Willard, "The Case of Phillips v. Savage," *Proceedings of the Massachusetts Historical Society*, vol. 5 (Boston: Massachusetts Historical Society, 1862), 165-66.

43 Savage was ruled to owe Phillips just under £400, while Phillips was judged to owe Savage £169 as well as associated court costs. The details of the cases are located in the *Massachusetts Superior Court of Judicature Minute Books*, MS, Massachusetts State Archives, reel 4, 293-94.

44 Ames and Willard, "The Case of Phillips v. Savage," 166.

For his efforts, Phillips received two days of the Privy Council's time. He took his arguments before the body, "on Friday and Monday, the thirteenth and sixteenth days of January, 1738, when the respective orders or decrees appealed from were affirmed, and the appeal dismissed."[45] The justification for affirming the admittedly un-common law judgment was that the provincial statute governing intestates – however it might deviate from practice in England – had been duly passed by the General Court, and subsequently confirmed by the crown (in that it had not been victim of the royal disallowance). Phillips could not argue that the provincial laws had been improperly followed, and thus his appeal was dismissed, and the judgment affirmed.[46]

Phillips' case had involved enough property to warrant relatively close scrutiny from the metropolis – property enough that the royal affirmation of the provincial ruling comes as something of a surprise. It is worth repeating that this appeal involved a case that resided outside the strictly literal parameters of the appeals clause in the Second Charter. One might have expected that the Privy Council would have taken an appeal outside the parameters of the clause for *overturning* rather than confirming provincial justice. Historians that look to the 1730s to find the germinating seeds of the coming Revolution – recalcitrant province versus imperious metropolis – must explain the affirmation of provincial judgment in this case. Presented with an opportunity to force Massachusetts' law to be compatible with common law, the metropolis, from this perspective, failed.

A similar case in neighboring Connecticut was handled differently upon appeal, though the facts at issue were similar. It is interesting to contrast the ruling in *Phillips v.*

45 Ibid., 167.
46 Ibid., 169.

Savage with the appeal in the more famous and roughly contemporary case of *Winthrop v. Lechmere*. That case was similar to *Phillips v. Savage* in that the estate of the Winthrop family had been, after Wait Winthrop died intestate, divided between his surviving children. His daughter Anne's husband, Thomas Lechmere, believed he was due the estate by virtue of being the eldest male son (in-law). The Connecticut judiciary ruled against him, both in the initial case and upon an appeal, citing the colonial law of 1699 that divided intestate property as Massachusetts statute did. He appealed to the crown, which not only reversed the decision, but also overturned the original Connecticut law regarding intestate estates as well. This in 1728, nearly thirty years after the law had passed. Ten years later, the same metropolitan judiciary affirmed the Massachusetts intestate law. It appears that the process of disallowance through which Massachusetts' law had to pass made their laws something akin to local common law, due the respect of a sort of *stare decisis* that Connecticut's 'unconfirmed' laws did not warrant.[47]

Phillips v. Savage is the lone probate case appealed from Massachusetts to the crown. The size of the estate puts the case into a rarified category that makes it impossible to draw generally applicable conclusions. However, there were several more non-personal actions appealed to the crown, which shed some limited light on the phenomenon. According to Joseph Smith, there were, in the record, nine appeals in non-personal actions that made it to the Privy Council.[48] In all but one of the cases, these appeals resulted in affirmations of earlier verdicts, and, in the one anomalous case, a variation of the original ruling. None of these eight appeals succeeded in reversing the

47 See ibid., 170. It is worth mentioning that the order overturning the Connecticut statute was largely ignored by the colonists there. See Stoebuck, "Reception of English Common Law," 420.

48 In addition to *Phillips v. Savage*, the other eight are named in Smith, *Appeals*, 162, n. 184. One of these cases, Smith attests, was allowed an appeal "for no discernible reason" – even a petition for such an appeal from the parties to the judgment. See ibid., n. 183.

original verdicts.

Still, the phenomenon of real or mixed cases being appealed clearly alarmed the provincials. In 1743, five years after the *Phillips v. Savage* appeal was ruled upon, the General Court submitted a petition to the Privy Council asking that such appeals be rejected, and that there be a time limit to all appeals. The General Court prayed "that the Judgments given in the Courts of that province upon any real or Mixt Actions may be final and that no Appeale may be allowed to His Majesty in Council therefrom."[49] The petition was not acted upon by the Privy Council, but it demonstrates the concern of provincials for the sanctity of their judicial decisions. Their attempt to uphold the limitations on the right of appeal present in the text of the Second Charter came to naught, though in actuality, few appeals were taken after 1743, and only one regarding a real action.

IV – Resistance to Appeals

Having examined some examples of contested appeals, it is appropriate to briefly assess the record of appeals more broadly. The numbers have been mentioned earlier, but warrant a recapitulation. Between 1692 and 1770, only 33 cases were appealed to the crown. [50] Of these, only 23 have a record of a royal decision. In addition, there appears to have been a glut of appeals, chronologically clustered around the 1730s. The cause for such a pattern is not immediately apparent. Some possibilities that might seem to provide causation, on further investigation, do not hold up. For example, the 1720s were a period of excessive mortality in Boston, owing to the outbreak of small pox in the New England

49 Petition from General Court to Privy Council, 17 November 1743, *PCR*, vol. 2, 769.
50 See Appendix III.

region. One might expect a sudden increase in estate probates resulting in contestations and appeals. However, as outlined above, the only such case appealed in the provincial period was that of *Phillips v. Savage*, which was entirely unconnected to the small pox epidemic. There was, equally, no sudden reversal of provincial laws brought about by the royal disallowance, which might have indicated a need for appeals of prior judgments. The reason for the pattern must remain elusive.

One thing that has become clear, after looking into the appeals from the province, is that there were a few methods that provincial justice could rely upon to prevent appeals from being decided. The most common of these was to refuse to record the evidence in real cases. According to William Shirley, then Governor of Massachusetts, by the 1740s, courts in the province had ceased requiring evidence to be recorded in real cases. This ingenious method for abrogating royal interference, according to Smith, was not original to Massachusetts, but had been done early in the century on the Isle of Jersey. It seems doubtful that the provincials in the Bay were aware of the precedent, but nonetheless they had hit upon a fairly effective method for short-circuiting the appeals process: no evidence, no appeal.

What about those rare cases where an appeal had been attained, and an Order of the Privy Council received to reverse or vary the decision brought back to Massachusetts? By all accounts, these Orders were generally followed, with a few significant exceptions. Perhaps the most well-known is the case of *Leighton v. Frost*, which dealt with the reservation of mast pines in the New England wilderness.[51] In this case, William Leighton, an authorized harvester of mast pines, had been prosecuted for trespassing on the lands of John Frost, while Leighton was marking pines for harvest for

51 For more on the reservation clause, see Chapter 6.

the crown in the woods of York County (in what would later become Maine). Frost won judgment against Leighton for just over £120 plus fees – clearly less than the £300 threshold present in the appeals clause. As demonstrated earlier, these limits were anything but black and white, and Leighton's petition for appeal was granted by the Privy Council in 1735.[52]

The crown, seeing the danger of leaving the reservation of valuable mast pines up to the self-interested provincials, reversed the original ruling, and sent an Order of Council back to Massachusetts ordering a restitution of fines paid. Leighton was unable, after several attempts, to obtain any deference to the Order. The court in York County delayed its consideration for a term – leaving Leighton to hang fire for a year. Upon reconvening, the court then decided that, "because the powers of the court derived through the charter and the laws passed to carry the same into effect, were in the judgment of the court inadequate," the Order in Council could not be obeyed.[53] Petition to the Council and then-Governor Belcher did little more, as Belcher and his Councilors agreed that they could not interfere in the decisions of the court at York. Leighton was left with nowhere to go but back to the metropolis.

The Privy Council reiterated its instructions to the province in 1738, but to little avail, as the Superior Court refused to change its mind. The clause was self-explanatory, and "no agreement of the parties could confer jurisdiction contrary to the charter."[54] After several more years of conveying his Order in Council to various courts, Leighton was finally made whole by Frost sometime after 1743 – roughly ten years after the fact.

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52 The two best sources on this case are Smith, *Appeals*, 329-32, and Andrew MacFarlane Davis, "The Case of Frost vs. Leighton," *The American Historical Review*, vol. 2, no. 2 (Jan., 1897), 229-240.
53 Davis, "The Case of Frost vs. Leighton," 229..
54 Smith, *Appeals*, 332.

This method of active resistance to the orders of the Privy Council seems to have been used sparingly in the province. The only other example found in the record is that of the appeal in the case of *Vassall v. Fletcher*, in which the reversal of judgment, demanding that Fletcher return the £2000 fine. In that case, there appears to have been some collusion between Fletcher and his personal friend, Chief Justice Thomas Cushing. When the Superior Court was to address the Order in Council reversing judgment, Cushing refused to attend. Once a special justice – Thomas Hutchinson – was appointed to fill Cushing's seat, enforcement of the Order was finally forthcoming.[55]

What can be gleaned from these few examples is that the provincials, for differing reasons, sometimes found it advisable to refuse to follow the orders of the Privy Council in appeals. Appeals of this type – based on the very limited sample available – appear to have been real or mixed actions. This may have become a trend without the intervention of the Revolution; in 1770, Thomas Hutchinson, then serving as Governor of Massachusetts Bay, felt that the Order in Council of reversal in another appeal to the crown in a real action was unlikely to be obeyed.[56] The colonists had their own methods to enforce the limitations on the right of appeal, and those methods were not addressed before the break of the American Revolution. Still, clearly the provincials did not stand idly by while the Privy Council sat in judgment of their judicial procedures.

V – Conclusion

If one expected to find a dominating metropolis seeking to impose its legal will upon the province, the evidence must be located elsewhere. More of the appeals sent to

55 Ibid., 333-34.
56 See ibid., 334.

the crown from Massachusetts Bay resulted in affirmations of the verdicts of the lower courts, even when they ran counter to procedure and common law as practiced in the mother country, than did in reversals of those judgments. The numbers are not overwhelming: of the 23 appeals heard by the Privy Council (or at least located in the Privy Council records), 12 were affirmed and 11 reversed or varied in some way. While not a stunning disparity between reversals and affirmations, they nevertheless support the theory that the metropolis, far from interfering in the dispensation of provincial justice, sought to uphold the duly passed laws of the province. In addition to statutory support, it seems that in particular cases, like that of *Phillips v. Savage*, the Privy Council also gave due reverence to the traditions of the province, though they at times varied from metropolitan experience.

The appeals clause, while appearing to limit the appellate power of the metropolis, as we have seen, was far broader than the text of the clause reveals. Appeals could be attained by direct petition to the Privy Council, and, in at least one case, "for no discernible reason whatsoever."[57] While the text of the clause might limit appeals from the province, the metropolis reserved the right to instigate appeals on its own if it so chose. The fact that Massachusetts had the fewest appeals indicates that there was little desire to enforce compatibility with common law or English statutes. That the provincials were willing to short-circuit the right of appeals either through preemptive methods – refusing to record evidence in real cases – or reactive methods – by ignoring Orders in Council reversing decisions – demonstrates that they believed the Second Charter limited the crown to oversight strictly in personal actions in which judgments in excess of £300 were at stake. Once again, the Second Charter represented for the crown

57 Smith, *Appeals*, 162, n. 183.

the minimum extent of royal intervention in provincial affairs, and for the provincials the maximum extent of that interference.

5
THE RESERVATION CLAUSE

> And lastly, for the better providing and furnishing of Masts for Our Royall Navy, We do hereby reserve to Us, Our Heirs and Successors, all Trees of the Diameter of Twenty Four Inches and upwards of Twelve Inches from the ground growing upon any soil or Tract of Land within Our said province or Territory not heretofore granted to any private persons. And We do restrain and forbid all persons whatsoever from felling, cutting, or destroying, any such Trees without the Royall License of Us, Our Heirs and Successors first had and obtained upon penalty of Forfeiting One Hundred Pounds sterling unto Us, Our Heirs and Successors, for every such Tree so felled, cut, or destroyed without such License had and obtained in that behalf any thing in these presents contained to the contrary in any wise Notwithstanding. [1]

The reservation clause of the Second Charter, giving the crown full control over those trees large enough to be used as masts in the Royal Navy that grew on unclaimed lands in the New England forest, comes at the very end of the document. Though it may appear to have been added almost as an afterthought, this single clause generated much of the heat of resistance to the government erected by that document. It was of course anything but an afterthought. While few in the imperial bureaucracy had a firm grasp on the breadth of woods covered by such a short clause, they had a clear understanding of the potential value of its produce to the wooden walls of the empire. And they were not about to leave its tending in the hands of the provincials, entrusting their own long-term security to the uncertain will of recently recalcitrant colonists. For their part the provincials, possessed of a more accurate understanding of both the dimensions of the

1 Thorpe, ed., vol. 3, 1885-6.

King's Woods and the impossibility of enforcing such a sweeping reservation within them, had little intention of surrendering their most lucrative crop to the metropolitan interests. These competing forces would collide over the issue of mast pines and royal prerogative throughout the early decades of the eighteenth century. This battle was fought using provisions of the charter as the main weapon, and it reveals the complex and sophisticated nature of imperial and provincial politics.

I – The Woods of New England

The mind of the average Englishman would have had difficulty comprehending the potential wealth of the forests of New England, if any had been inclined to imagine it. Unlike England, which had been largely stripped of her woodland riches by the turn of the eighteenth century, the amount of ship-building material in northern New England was staggering. It might have been the Royal Navy's dream: wood enough to last to the thousandth vessel, including the pitch, tar, and turpentine necessary to outfit them all.[2] All that would have been necessary to manufacture an armada larger than any on Earth was hemp for ropes and canvas for sails.

Like most dreams, it was unattainable in its idealized form. The Board of Trade and the rest of the English colonial and naval bureaucracies held firm to two mutually reinforcing beliefs that limited their ability to profit from the wilderness. First, they had an understandably chauvinistic view of the quality of their own now-vanishing English

2 To have some idea of the amount of wood available in Maine, consider that in 1768 alone, the port of Falmouth was able to ship over four million feet of pine boards to England, along with over two million feet to the West Indies. Nearly seven and a half million feet of pine lumber exported from one port in one year. And none of these numbers reflect the internal trade of Maine's lumber within Massachusetts Bay. See Appendix E, in Joseph Malone, *Pine Trees and Politics: The Naval Stores and Forest Policy in Colonial New England, 1691-1775* (Seattle: University of Washington Press, 1964), 154-5.

oak, and second, they judged that the shipping costs of colonial lumber, pitch, and tar were too high for the Royal Navy. It must be stressed that these beliefs did not apply to the mast trees themselves; the New England white pine, or *pinus strobus* was very quickly seen by the English to be superior to the Scotch pine found in northern Europe, at least for the purpose of mast-making.[3] This was not enough to create a significant English market for New England timber products. Taken together, the prejudice against New England products and the expense of acquiring them proved strong enough both to limit the market for New England timber and stores to a level unprofitable for the colonists and to regulate it enough to aggravate the relationship between metropolis and colony. What might have been a dream would in reality develop into a nightmare of lost opportunity, lost revenue, over-regulation, and ill-feeling.

Long since harvested beyond recovery as a sustainable source for the wooden walls of the English empire, English oak retained pride of place as the material most suitable for the Royal Navy in the minds of her shipbuilders and naval authorities. There was a suspicion of the quality of colonial lumber, stores, ships, and seamen within the naval community of metropolitan England that made them discount their actual or potential value.[4] What this meant in practice is that the English tended think of colonial naval products as a source of last resort, in case the Baltic or Scandinavian regions ceased to provide for her needs. The metropolitan dependency on the produce of Denmark, Sweden, Finland and Russia was troubling in general, but all the more so when the states

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3 Ibid., 6.

4 In terms of the quality of colonial ships themselves, they were largely correct. Colonial ships tended to be knocked together quickly and left untreated for tropical waters. It was a reaction to the vast supply of wood in New England if nothing else; why build strong, long-lasting, and expensive ships when one could build three cheaper, short-lived ships for the same money? See Marshall Smelser and William I. Davisson, "The Longevity of Colonial Ships," *American Neptune*, XXXIII (1933), 16-19.

of that region began to be tempted to direct their supplies elsewhere. Further troubling was the distinct possibility that French or Spanish navies could blockade or harass the shipments from the Baltic in times of war. For example, in 1700 the Swedish were at war in the Baltic and began to look to the French for aid in that fight. Having received the addict's scare as they foresaw their supply being choked off, the English turned their attention for a time to the New World. The fear in the end amounted to little actual disruption: while it had awakened them to their need for diversified timber sources, it did not push them into the arms of the New England woodsmen. [5]

Yet the obstacles between the somewhat captive markets for New England lumber and stores and the mother country's ship-builders were not merely those of imagination. The cost of shipment of naval supplies across the Atlantic was prohibitive when a much closer source was available in the Baltics. For example, the lumber of New England was nearly twelve times the cost of that of the Baltic region, and nearly all of that charge was in shipping. Even if there were sensible considerations about the loss of currency to another state versus to the colonies, the quality of the New England product would need to be considerably better to make up for that sort of disparity. The tenets of mercantilism, in other words, were not worth a twelve-fold price increase.

Concerns over the source of the naval products were not solely fiduciary, for Swedish tar was contracted for by the Navy Board at a price 133% that of both Russian and New England sources.[6] But the quality of the New England products, at least according to the ship-builders themselves, was not greater than that of the Baltic, and surely not good enough to warrant the investment in shipping. The metropolitan

5 John Gorham Palfrey, *History of New England,* Vol. IV (Boston: Little, Brown, and Company, 1875), 398.
6 Malone, 31.

shipbuilders judged the colonial naval stores – again, not mast pines, but lumber, pitch, tar, and turpentine – as inferior to those of the Baltic, and given the long experience of that region in production of stores, this was understandable. Over time the perception of colonial inferiority became a more and more unshakeable reputation. In order to improve the products of the New England forest, the English government attempted to advise and enforce the production of stores along the Finnish methods, through the work of the crown's representative there, the Surveyor-General of the King's Woods.[7] Unfortunately for the Navy Board, labor was at a premium in New England throughout the colonial period, preventing the dedication of that resource to the production of high-quality stores. Eventually other colonies took the central role in the production of those stores. By the 1740s the Carolinas became the American colonial source of choice for pitch and tar, not merely because labor was more plentiful there, though it was, but also because the Carolina pines proved better fodder for the production of pitch and tar. While turpentine continued to come from New England in relatively large amounts, the northern colonies became a distant second to the South in the production of pitch and tar.

Over the course of the second Charter, then, the New England forests went from being a supposed trove of scarce naval materials – masts, pitch, tar, turpentine, hemp – to merely a supplier of mast pines. Of course to the Royal Navy, mast pines were not exactly small beer; they were the backbone of the fleet, and their uninterrupted supply was imperative if England was to remain the foremost naval power in the world. This meant that that supply had to remain a) reserved for the crown rather than available on the open European market, and b) untapped by the colonials for their own needs, be they

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7 John Bridger, "Information and Directions For the Making of Tar, and Choice of Trees for the Same, as in Findland, &c." (Boston: Thomas Green, 1707)

naval or otherwise. It was these requirements that would prove the most difficult to secure.

II – The Reservation Clause

The Charter of 1691 ended with a clause reserving all mast trees to the exclusive use of the crown. The Second Charter defined the trees in question specifically as those "of the Diameter of Twenty Four Inches and upwards of Twelve Inches from the ground."[8] This "reservation clause" did not affect those trees located on private property, but the portion of the forests that were privately owned in 1691 was exceedingly small.[9] It applied, then, to the overwhelming majority of trees, those that grew on lands unclaimed by private persons or towns and thus belonging to the crown. The protection of the trees fitting the description in the preservation clause relied on a respect for the authority of the crown in a remote land thousands of miles from the throne, and tens or hundreds of miles from even the weaker authority of the province itself. As one might imagine, this turned out to be quite a weak reed.

If the trees were to be reserved to the crown, there would need to be an office tasked with the authority to ensure their survival and integrity in the New England woods. Therefore, in 1705 the Board of Trade created the office of Surveyor-General of the King's Woods. As it would turn out, this was a position from which considerable mischief could be done, but was one scarcely potent enough to prevent the spoilage of the

8 Thorpe, vol. 3, 1885-86.
9 This would change, as we shall see.

forests that was widely reported to the metropolitan authorities.[10]

The powers and perks of the office were enough to entice men to it; there was a financial benefit – about £200 per annum – which rivaled the pay of the governor of the province himself. The Surveyor-General possessed a modicum of personal authority to go along with the exceptional rate. As Surveyor-General of the King's Woods, an enterprising provincial became an important cog in the machinery of royal government. One could arrest woodsmen for interfering with the mast trade, for unauthorized cutting of such trees, or for selling them to unlicensed merchants. It may have seemed to be akin to a county sheriff, but with a far greater expanse under surveillance. The legal powers of the surveyor meant that there might be an added fiduciary consideration in the form of bribes and payoffs from woodsmen eager to avoid capture. He might be induced to look the other way when approaching a known lumbering operation for a nominal fee. If that were not enough, he might create his own informal trading company, selling off mast pines and lumber to willing merchants for trade to other nations or within the colonial empire itself. *Quis custodiet ipsos custodes*?[11] All these considerations made the job seem quite attractive, and throughout the colonial period there was never a lack of men to fill the office.

Yet the task came with crippling difficulties, fully recognized only after taking up the office. The central structural problem with patrolling the King's woods was their sheer size. Even assuming the Surveyor intended to fulfill his responsibilities to the best of his ability, there was no way for one man to successfully cover the New England forest

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10 These reports began in earnest with the arrival of Edward Randolph in the 1670s. By the period of the Dominion the spoilage and waste of the New England forests would be an incontrovertible fact throughout the English colonial bureaucracy.

11 "Who will watch the watchmen?"

during the cutting season.[12] The Surveyor need not criss-cross the entirety of the woods; only those areas close to rivers deep enough to float a mast pine to the sea were likely to harbor poachers. Further, discounting the remaining lands nominally controlled by the Abenaki and other northern tribes, though cutters did not always do so, there were still hundreds of square miles of difficult terrain. It was more than enough job for one man. Solving this dilemma proved no difficulty for Bridger: he simply hired two deputies and billed the Board of Trade for their costs.

> My Lord There is still great spoyle made in her Majties: Woods by the Inhabitants and tis out of my power singly to restraine it having noe Deputies to Assist me. The Woods are large and of great extent. Nither can I be at two places together. I have set forth that affaire to the Lords Commrs: of Trade; and having Employed Deputies not Doubting of theire Lordsps. Concurrence, the Service so much requiring them, (and did pay them) and sent home the account vouched, but have no Answer, Nor am not able to support such Charges, or secure her Majesties intrest as It ought to be.[13]

The "Charges" in question would eventually be paid to Bridger.

If the size of the forest represented the central structural problem for the Surveyor-General to overcome, then the chief systemic difficulty of the office was that it possessed authority only over a seemingly hostile populace. On more than one occasion a Surveyor found himself arresting men protected by a provincial patron who outranked him, such as the governor. At other times, the men he detained were able to elude punishment by virtue of a sympathetic General Court. The Assembly might decide to disrupt the duties of the Surveyor by ignoring the offenses of the poachers, or a provincial jury might do the same. What is considered jury nullification in the twenty-first century

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12 The season was divided, falling in late autumn and early spring, when there was enough snow to provide a surface on which the massive trees could be moved, but not enough to prevent men and beasts from penetrating the forest. See Malone, 62.

13 Bridger to Earl of Sunderland, 29 March 1709. *Proceedings of the Massachusetts State Historical Society*, vol. 78 (Boston: Published for the Society, 1966), 136.

was a way of life in the eighteenth century as well. Finally, the legitimate work done by fully authorized and properly licensed cutters might be undone by suspicious means. For example, a cache of mast pines harvested under the auspices of Bridger were burnt; he considered it the work of disgruntled poachers, but no evidence was ever produced to determine the culprits.

John Bridger found himself rapidly apprised of the difficulty with the provincials themselves. The burnt mast pines were but one example – to Bridger's mind – of the recalcitrance of the people of the Bay. He wrote to the Earl of Sunderland in early 1709 regarding the hostility of the people to his work.

> The Law last year was very Chargable to me, for Proscuting the offenders which I proved by three Witnessses which had Cut many large masts yet when the Cause was Committed to the Jury, they accquited them for, all the People here are Equally guilty. I want assistance to Catch them or at least to Watch them; here everyone's hand is against any thing belonging to her Majestie or her Intrest.[14]

The provincials did not go to any great lengths to assist in the carrying out of the management of the King's Woods, which meant that Bridger faced thousands of acres of forest and no one to aid him in its protection.

With no aid from the populace, Bridger had to rely on the provincial establishment in Boston. But little help came from that quarter, as Bridger discovered after just one year of assuming the office. When he brought a case in 1707 against a poacher who did not have proper verification of his status as a royal procurer of mast trees to the attention of the General Court, Bridger found himself unsupported.

> The Governour calls a Council, Reads a Letter of Mr. Bridger complaining of Trees cut contrary to Charter and of a great Mast ship'd: Now it seems Mr. Collins deals for Masts by the Royal Authority, though his Powers are

14 Ibid., 137.

> not shewn here: The Governor press'd for a Proclamation as is emitted this day; I express'd my self unready to vote for it; because twas only Mr. Bridger's naked complaint, Without any Affidavit to justify it. He had been here above a 12 moneth; and to let forth a proclamation now, would be but to serve a Turn. Ichabod Plaisted esqr. is of the Council, and, dwelling in those parts, might inform the Board. I mov'd that Mr. Mico might be sent for, who transacts for Mr. Collins: but the Governor would not hear of it. I feared lest this proclamation should prejudice rather than forward the Queens Interest, and therefore was against setting it forth. The Governor was displeas'd, and said twas due to a Tinker, much more to Mr. Bridger.[15]

Sewall's argument was cautious but not revolutionary; affidavits supporting charges tended to be the standard base for legal prosecutions in the province. To Bridger, however, as well as Governor Dudley, it seemed like the Council itself was turned against the interest of the crown. This would be the theme of Bridger's tenure in office, and one he would address in letters to England more than once, including this from 1711.

> No such thing as Loyallty ever breed here. All that I ever saw or heard of, is in the Governer, and one, or two more, as will plainly Appear by the greiveances of the house of Representatives, last year seting forth to her Majestie that the Governer did Eluminate the Town house, on her Majesties Birth, and other such Days, and Did Drink her Majesties health, to the value of six pounds a year, by which your Lordshipp may Percieve what state her Majesties intrest is in, or how any belonging to her Majesty is Treated here.[16]

Unfortunately for Bridger, Dudley was the strongest force for the metropolitan interest in the province, and when the rights of the crown were challenged at their foundation in the late 1710s, he was no longer governor. Bridger's complaints of 1711 came, though he couldn't have known it, at the high-water period of provincial closeness with the crown.

In addition to the expense and disappointment of pursuing cases against poachers in the provincial courts, Bridger found himself under other burdens as well.

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15 15 December 1707, Sewall, vol. 1, 582-3.

16 Bridger to Earl of Sunderland, 29 March 1709. *Proceedings of the Massachusetts State Historical Society*, vol. 78 (Boston: Published for the Society, 1966) 136.

> My Lord My salary is but two hundred a year my Travailing Charges is but little less, for I cannott move from one place to another without a guard, and tho' I doe not pay the Daily Wages, I am at the Expence of Reffreshing them every day, or I must run the risque of my Life every moment by the Indians; who Daily Committ Murders, Ravages, (and take Captives, that is mercy in the high[es]t) nither have I any Incident Charges, noe Postage of Leters, noe papper, &ca:, no Clerke allowed.

By 1711 the danger from the Indians would decrease greatly, but Bridger's problems would not. While he found it onerous to pay for his protection, the end of the threat from the Abenaki meant an *increase* in the population of woodsmen and mast-pine poachers. His complaints to the Board of Trade were not falling on deaf ears; Bridger's reports of the spoiling of the woods led Parliament to pass the White Pine Act in 1711. To Bridger this was the only hope for recovery of the Reservation Clause. "Nothing can Doe it Else Effectually."[17]

What the White Pine Act codified in law and what it changed in the New England woods were quite different things. While Bridger had gotten precisely what he asked for, from the Board of Trade – in money and authority to hire deputies – and from Parliament – in the White Pine Act – he was left largely in the same position in the wake of his successes as he had been at the moment of his acceptance of the office five years earlier. In 1711 he wrote to England, again reduced to complaints about the refusal of provincial juries to produce obedience. "Her Majesty," Bridger wrote, "could never hope of any justice here, where judge and juries are offenders."[18] All the petty reversals and constant tensions between the people and the Surveyor-General created intense suspicions on both sides of the Atlantic, and would lead to a major maneuver from the provincials to defeat

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17 Ibid., 137. "I have Proposed an Act to be pass'd in Great Britain for the Preservation of her Majesties Woods in America." Rarely have such things gotten such a reaction; in terms of the English Empire, a two-year turnaround from provincial request to Parliamentary action was instantaneous.

18 Bridger to "My Lord," 21 May 1711, quoted in Palfrey, vol. 4, 400.

the Reservation Clause at its source: the charter itself.

III – Resisting the Reservation Clause

By far the largest part of the newly created province of Massachusetts Bay, the province of Maine stretched from the northern bank of the Piscataway River to well beyond the inhabited regions of New England at the end of the North American British Empire at Nova Scotia. The province alone was nearly as large as England herself, though contained fewer people than the town of Boston. While in 1691 it was little more than an untamed forest filled with Indian enemies and a rocky coast suitable only for drying cod, by the end of Queen Anne's War, Maine became a more-or-less pacified region fit for habitation.

With pacification came the penetration of the woods by the lumbering crews. Sawmills went up in greater and greater numbers throughout the early decades of the eighteenth century. It must be stressed that the mere presence of sawmills was not proof of mast-pine poaching. Most of the mills were in place to serve the province's need for wood for shipbuilding, structures, fuel and the myriad of other purposes wood served for the colonists. Equally important, not every lumberman who was felling trees marked with the broad arrow – the symbol of royal reservation – sought to sell masts to England's trading rivals or enemies; often as not they were simply larger game bound for the mills. There was certainly nothing about the white pine that prevented it from being used to make homes, ships, furniture, or firewood, and one massive tree could serve as well as two or more smaller varieties.[19]

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[19] The wide floorboard of colonial-era homes in New England are mute testimony to this phenomenon.

Poaching of the king's mast pines was a serious matter, whatever the reason for doing so. It was also a lucrative business of its own. It was often as important to defend one's interests against the other poachers as the king's surveyor; marking one's own targets with a fraudulent broad arrow usually helped, but the surveyor's authority was not all that respected in the woods, so your rival might just as easily take yours. Naturally, the woodsman had to fear the sudden arrival of the Surveyor-General or his deputies though it was far more likely to be the poached as the poacher. Several gambits might be used to protect the poacher from the *legitimate* authority of the surveyor, including buying him or his deputies off, or, more often, simply relying that the local jurors wouldn't see fit to convict. But a far better solution would be to put the entirety of the northern New England woods off-limits to crown authority, and that was precisely the policy that Elisha Cooke, Jr. set about to achieve.

Resistance to imperial control of the woods was certainly widespread among woodsman and landowners in northern New England, if not among the provincial population as a whole. It found its champion in Elisha Cooke, Jr., Boston doctor and son of the founder of the 'popular faction.' The elder Cooke had been such a firm supporter of the traditional colonial government that he had left England in 1691, abandoning his post as agent for the colony, rather than be a party to the Second Charter. Upon his return he had been closed out of the offices of the Second Charter government, achieving the honor of being the first man vetoed for a position on the newly formed Council. "He had opposed, when he was in England, the appointment of the governor," wrote Thomas Hutchinson, who continued, with typical understatement, that "[h]e was however in real

esteem with the people, and the negative was impolitic."[20] Cooke's popular faction credibility was impeccable, and his death left his son with large shoes to fill.

Cooke, Jr. picked up the mantle where his father had dropped it, and proceeded to advance the cause of the popular party as far as he thought possible. While he has gotten some attention from scholars, his work has not been sufficiently studied by historians, even those fond of the Whiggish interest in the colonial world.[21] The younger Cooke's opposition to the prerogative power in the province might be described, without exaggeration, as reflexive; Hutchinson, perhaps in contrast to the opposition of his own day, described Cooke as having "the character of a fair and open enemy."[22] Governor Samuel Shute in 1721 cast Cooke as the chief thorn in the royal side and the leader of a tribe of country rubes with no business determining the fate of an empire.

> I must also remark that the House of Representatives generally consists of persons (better adapted to their farming affairs than to be Representatives of the province) who are drawn into any measures by the craft and subtilty of a few designing persons who when they are indeavouring to invade the Royal Prerogative, make the unthinking part of the Assembly believe that they are only asserting the just priviledges of the people and by this false guise these men become the favourites of the populace who believe them to be the only Patriots of the Country.
>
> At the head of this party presides one Elisha Cooke Esq who was removed out of the Council for denying His Majesty's Title to the Woods in the province of Main, notwithstanding the Acts of the Parliament made in that case, and in the last Session of the Assembly continues to persue the same measures to the great prejudice of the crown of Great Britain…[23]

Moving from the Council to the Assembly was not sufficient to control Cooke, as Shute makes plain. The two men's struggle for control of the Speakership of the House became

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20 Thomas Hutchinson, *The History of the Colony and province of Massachusetts Bay*, Vol. 2, Lawrence Shaw Mayo, ed. (Cambridge, MA: Harvard University Press, 1936), 53.

21 The notable exception is G. B. Warden, who dedicates a portion of his excellent study of the politics of Boston in the early eighteenth century.. See Warden, *Boston, 1689-1776* (Boston: Little, Brown and Company, 1970), especially chapter XXX.

22 Hutchinson, op. cit.

23 *Acts and Resolves of the province of Massachusetts Bay*, vol. 1, 1692-1714, 196.

the grounds on which the crown would be forced to emit the Declaratory Charter, clarifying and strengthening the authority of the governor.

But he was never so clever in his attempt to foil imperial regulation as he was in the question of the pines of Maine. In 1718 Cooke sent a memorial to the Board of Trade and the General Court, making a constitutional argument that the King had no authority over the forests of Maine whatsoever, using as his legal foundation the charter itself.[24] As that document made clear, the reservation clause only applied to those trees "growing upon any soil or Tract of Land within Our said province or Territory *not heretofore granted to any private persons* [emphasis added]."[25] The province of Maine was not such a place, for in 1677 Charles II had granted it to Ferdinand Gorges and his heirs. In 1678 Gorges had sold his patent to that land to John Usher for £1250, and Usher had three days later sold his interest in Maine to the Bay colony for the same price.[26] Therefore the lands of Maine were the property of the colony of Massachusetts Bay, and ought to have remained so under the new charter. That document stated that all lands granted or purchased by the colony or its citizens would remain in the hands of their rightful owners. As of the arrival of the Second Charter, by Cooke's reasoning, Maine was itself a wholly owned subsidiary of the province of Massachusetts Bay, and therefore unaffected by the reservation clause. Cooke had struck upon a neatly packaged and easily understood argument. At another level, Cooke's point was subtle. He had found a way to challenge one use of royal prerogative in the 1691 charter by invoking an earlier exercise of royal

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24 Unfortunately the memorial is not extant. It is referred to by several sources, and responded to by several others, giving one a chance to glimpse its contents. Cooke himself summed it up as concisely as possible, as we will see, before the provincial Council.

25 Thorpe, 1886.

26 The indentures are printed in *Collections of the Maine Historical Society*, vol. 2 (Portland, ME: published for the Society, 1847) 257-64.

prerogative, the 1677 grant to Gorges.

It was simple, and had a certain veneer of legality: the mast-pines growing in Maine were not reserved to the crown, but rather were the private property of Massachusetts Bay herself. Simplicity was not the only appeal of this argument. It had been the perceived violation by the Bay colony of the Mason and Gorges patent in New Hampshire that had originally brought Edward Randolph across the Atlantic, and eventually the end of the colony's independence from the crown. Without Randolph's investigation into these violations in the 1660s and 70s, the original charter would not have been vacated, and the dream of the Puritan commonwealth might have remained inviolate. Now Cooke seized the opportunity to turn the tables. By arguing that the integrity of the Gorges patent was sacrosanct, and must remain so given its legal transmission to the province's possession, Cooke had reversed the roles of colony and metropolis from the end of the First Charter.[27] He was forwarding a constitutional interpretation of the Second Charter that would have a poetic resonance with the provincials themselves.

Needless to say, such an argument tended to the destruction of the rights of the crown in New England, and could not be left to stand uncontested by the provincial, or metropolitan, government. The response took several forms. First, a counter attack was mounted by Surveyor-General Bridger consisting of a petition to the General Court implicating Cooke in profiteering from the King's Woods. Cooke himself countered with affidavits submitted to the lower house accusing Bridger of peremptory behavior and

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27 One is tempted to characterize the revocation of that charter in 1684 a "battle," but the colony did not even bother to send a representative to England to challenge the suit. It was as anticlimactic an end as could be imagined. The upshot was that England went through such an extended legal effort to reign in the colony, a fact that demonstrates something of the uniqueness of English imperialism.

abuse of his office. These competing claims would have to be sorted out, and Governor Shute commanded the Council to perform the unenviable task. With their authority pinned as it was between the populace and the crown, in the form of the royal governor, the Council was in a particularly tough spot with this debate. The reservation clause was spectacularly unpopular in the colony. This meant that the lower house, which elected members of the Council, would be very attentive to the fate of this question. On the other side, the governor, as the appointee of the crown and holder of an elective veto power over the Council, would be equally attentive to the results of the debate. It was a serious moment.

In the early summer of 1718 the Council was called to discuss the allegations of Cooke and Bridger. On 14 June, Cooke was brought to the Council chamber to explain his memorial. Cooke, who was clerk of the Superior Court, the son of one of the foremost Boston politicians of the seventeenth century and had been involved in colonial and provincial politics for years, was unfazed by being called to the Council carpet. His summation was blunt. "The province of Main being Granted by the King to Sir Ferdinand Gorges, and the Title and Right of the said Gorges being derived to the Massachusetts Colony, the Timber therein belongs to them; and King George may not take it away."[28] It was a concise and direct assertion of his attack against royal prerogative in the woods of Maine, and one that confirmed Hutchinson's analysis of Cooke as a "fair and open enemy."

Cooke's argument, direct as it was, was not confined to the provincial arena; it arrived in the hands of the Board of Trade by the fall of 1718. In the timeless ballet of bureaucracy, the memorial reached the desk of the Board Counsel, Sir Richard West.

28 Sewall, *Diary*, vol. 2, 896.

West reviewed Cooke's argument and, while he had little sympathy for it, knew a good legal case when he saw one. It was true, for example, that the original charter granted the colony the power to purchase lands as it saw fit. West seemed almost ashamed to confirm the authority of the colony in this regard. "I must beg leave to observe to your lordships," West wrote, that the Bay colony was chartered with such authority.

> [T]he said king did grant unto the said corporation power to have, take, possess, acquire and purchase any lands, tenements or hereditaments, or any goods or chattels, and the same to lease, grant, demise, alien, bargain, sell, and dispose of, as other our liege people of this our realm of England, or other corporation, or body politic, of the same, may lawfully do.[29]

It was true that the colony could purchase or grant lands, but could they purchase another's patent? It seemed to West to be an open question.

> It may, my lords, be made a question in law, whether that corporation which was created by King Charles the First, could legally purchase the said province of Maine, inasmuch as the clause of license does go no further than that they might purchase lands, &c., as any other corporation or body politic in England might lawfully do; and I take it to be clear law, that no corporation whatsoever in England can purchase any lands which shall inure to themselves, unless an express license for that purpose be inserted in their charter of incorporation, or otherwise.

Did the Massachusetts Bay colony have such a license? This was a rather less open question.

> Your lordships will be pleased to observe, that this corporation is by the charter only subjected to the same laws as the corporations in England are; and that there is no license to purchase lands granted to them by express words. I need not observe to your lordships, that nothing but express words is in law sufficient to take away the king's prerogative.[30]

Therefore the colony had no right to take possession of such a land, granted by the king to another, since there was no such express clause in their charter. So the purchase of the

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29 Sir Richard West, "The Opinion of Richard West, Esq., To the Right Honorable the Lords Commissioners of Trade and Plantations Collections of the Maine Historical Society," *Collections of the Maine Historical* Society, vol. 2 (Portland, Maine: Published for the Society, 1847), 265-6.

30 Ibid., 276-7.

Gorges patent, via Usher, was in fact illegal from the start, and ought not to have been allowed.

West further argued that the Second Charter made plain the relation between Maine and the king. That charter had created, "one real province by the name of our province of the Massachusetts Bay, in New England." Because the Second Charter did not refer to Maine as a property of the Bay colony, West argued, "it is plain to demonstration, that King William did, at the time of granting this patent, consider all the countries therein named, and particularly the province of Maine, as vested in himself, in the right of his crown."[31] This somewhat circular argument – the king created the new province of Massachusetts Bay with Maine, therefore it must have been in his bailiwick from the outset – bore a slight resemblance to that made in the veto of the creation of the provincial courts in the 1690s. It relied on the theoretical infallibility of the king and the real infallibility of the colonial bureaucracy, a rather weak reed.

West's report makes it plain that Cooke skated quite close to the edge of a legally acceptable argument, and only West's grasp at a strict-constructionist understanding of the charter would disprove it. In other words, the crown had met a constitutional interpretation of the Second Charter with another, opposing, constitutional interpretation. Again, as with the Explanatory Charter, one sees the crown upholding the provincial view of the Second Charter as constitution. The stakes involved in the question pushed West to this effort at legalism in order to dispense of Cooke's memorial. "I should not have made use of any argument of this nature," West concluded, "did I not think the maintaining the royal prerogative, in relation to the naval stores in America, of the utmost consequence to the kingdom; and that, therefore, any advantage in point of law ought to

31 Ibid., 277.

be taken which does not injure any private persons."[32] Interference in the metropolitan collection of naval stores was a threat severe enough to merit using whatever argument was closest to hand.

Cooke must have expected his arguments to be cast out of the Board; at best he might have hoped for a delaying action, possibly gaining months of freedom in the woods while the memorial went hither and yon, across the sea and between bureaucratic stations. Still, it was in the provincial sphere that the consequences of Cooke's attempt to render void the crown's property in Maine were felt. First, he was removed from the sitting Council. While not a new innovation in English executive authority – members of the Privy Council could be dismissed at pleasure – it was a new use of executive authority in the province. It did not however raise the sorts of constitutional questions that the removal of Cooke as Speaker of the Assembly would only a few years later. He had made it to the Council in the previous year's election, in the moment of good will between royal governor and province that reigned at Shute's arrival.[33] Any lingering good feelings were quite gone by that spring, and he was vetoed from the newly-elected Council.[34] This was one of the few things Shute ever accomplished that won the express support of the Board of Trade. "We approve of what you have done in removing Dr. Cooke from the Council," wrote the Board in a letter otherwise entirely critical of Shute's neglect of his duties and instructions.[35]

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32 Ibid.

33 See Hutchinson, vol. 2, 166. "The beginning of an administration in the colonies is generally calm, and without ruffle. Several months passed, after Col. Shute's arrival, without open opposition to any measures. The town of Boston at the first election of their representatives, left out such as had been bank men, and chose such as were of the other party, but Mr. Cooke, who was at the head if the first party, had interest enough to obtain a place in council."

34 Sewall, vol. 2, 895.

35 Board of Trade to Samuel Shute, 11 June 1719. "Instructions to Governors of Massachusetts Bay," (transcripts), Ms. N-2223, p. 973, Massachusetts Historical Society, Boston, Massachusetts.

His removal from office did not, however, sit well with Cooke.[36] In early 1719 the ex-councilor shared punch with several prominent Bostonians and provincial officials at a "treat" at his lodging house in Boston. After several drinks, Cooke "exchanged harsh words" with Robert Auchmuty, a member of the Council known to be close to the governor.

> At last Mr. Cook looked Mr. Auchmuty in the face and ask'd him if he were the man that caus'd him to be put out of the Council?" Auchmuty answered, rather frankly, "No! I could not do it; but I endeavour'd it, I endeavoured it!" Cooke responded, saying that "The Governor is not so great a Blockhead to hearken to you."[37]

The governor was informed about the event within days; between the Maine memorial and the drunken remarks about his own removal, Cooke had gone several steps too far. On 3 February the governor went to Sewall's home to discuss the problem. "Now about the Govr visits me, and expresses his Resentment of Mr. Cook's Carriage, as to the Trees in the province of Main, and himself." His anger was unsurprising considering the circumstances, and it was paired with a threat to Cooke's political future. Cooke was, said Shute, "not fit to be in any place." Further, if the governor "had not Justice done him here he must write home about it."[38] This was an unsubtle hint to Sewall that it might be time for the Superior Court to consider removing Cooke form the office of Clerk of the Court that he had obtained years earlier.

Before the Judges were to decide Cooke's fate in the Clerkship, the Council was summoned to confront Cooke about his inappropriate remarks concerning his veto by the governor. Auchmuty and Vallentine were present at the Council chamber on 5 February

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36 To be fair, he could hardly have expected to have made the Council at all were it not for the change in government in the province the year before. His father had been the first Councilor vetoed under the new charter, and was repeatedly rejected for election to the board.

37 Sewall., 915.

38 Ibid., 916.

as Cooke was questioned about his behavior.

> He had offer'd to put it off as if he said, he himself was not such a Block-head: But now he own'd the Truth of the written Affadavits, and so they were not sworn. Capt. Fullam being sent to, writ a Letter to the same effect, which was produc'd, and read by Mr. Secretary. His Excellency left the Council. They voted, that Mr. Cook's words were rude injurious, and Reflecting on the Governor, which the Governor directed to be entred the next Council-day.[39]

It was a moment of humiliation for Cooke, with the provincial establishment engaged in a campaign of retribution for his political positions and personal exasperations, and the worst was still forthcoming.

Undoubtedly the most personally harmful result of Cooke's move against the prerogative in the king's woods was his removal from the office of Clerk of the Superior Court in early 1719. It was a position of some status, and a not insubstantial stipend, and had been his for several years. The decision to remove him was taken after some debate within the Council and the Court. Governor Shute, angered with Cooke's considerable disrespect and 'treasonous' behavior, advocated his removal from the office, but left the decision to the judges themselves. The Court took up the debate on the evening of 13 February 1719, in a meeting held, in case the Judges were in any doubt as to how they ought to decide the issue, in the Governor's home.

> His Excellency declar'd that Mr. Cooke was such an Enemy to his Master the King and to him his Lieutenant, that he expected he should be remov'd from his Clark's place. The Judges went to the Council-Chamber, and there agreed to leave the Consideration to be in Town agen at the Genl Council, and order'd me to acquaint the Governor, which I did.[40]

After a deliberation period of several days, the Judges met again on 25 February to finally determine Cooke's fate. "[A]fter some arguing, Sewall, Lynde, Dudley, Quincey, gave

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39 Ibid.
40 Sewall, vol. 2, 916.

their Opinion, that all things Considered, 'twas convenient to dismiss Mr. Cooke from being Clark of the Super. Court."[41] And just like that, with "all things Considered," Cooke was out of the Council, and out of the Clerkship.

While the provincial and the metropolitan establishments had swatted down his memorials, and punished him with removal from positions of honor and emoluments, Cooke was only raised to greater heights among an appreciative populace. In the next elections to the General Assembly he was elected as a member for Boston. In the following year, 1720, he was elevated to the office of Speaker for the Assembly. Shute tried to veto the selection, setting off a trans-cameral and transatlantic battle that would result in the metropolis releasing an Explanatory Charter in 1726. This document clarified the authority of the governor, explicitly granting him the power to remove the Speaker of the Assembly, though there was no such power granted to him in the charter of 1691. The battle over the Speaker was the end of Shute's administration; by the time the Explanatory Charter arrived in New England, Shute had returned to England, tired at last of the relentless fighting that seemed necessary to maintain the office of provincial governor.

IV – Conclusion

The case of the Reservation Clause was long and tangled. The period from the establishment of the office of Surveyor-General until the rejection of Cooke's Memorial to the Board of Trade lasted only twelve years, yet there were significant stresses put on the relationship between the crown, through its chosen representatives, and the province. The problems inherent in the policing of the King's Woods revealed the difficulty in

41 Ibid., 917

enforcing imperial regulations thousands of miles from their source. The hostility of the populace to imperial regulation – a problem that would not disappear with the passage of neither time nor Parliamentary acts – was made painfully clear to Bridger as well as the imperial bureaucracy in England. Cooke's memorial illuminated the sophistication of the provincial resistance to such regulation, as well as the creative uses to which previous actions of the metropolis could be put.

Above all, the question of ownership over the fruits of the province of Massachusetts Bay made plain that the Second Charter, a document designed to strengthen the control of the metropolis over its subjects abroad, was becoming a refuge for opponents of imperial regulation. It was becoming a constitution. In addition to Cooke's memorial and the efforts to nullify Bridger's prosecutions at the jury, Massachusetts Bay consistently used the private property exemption to protect trees in Maine by creating townships out of the wilderness. These regions would remain unpopulated for years, but their creation by the General Court meant that the woods became off-limits to Bridger and his deputies. All these actions confirmed to Bridger that the problem was not, in the final analysis, the lack of men to cover the vast expanses, or the shortage of protection, or a want of money, but rather the charter itself. He wrote that the provincials blocked him at every turn, "for they plead their charter."

> They adore it, equal, if not preferable, to their schismatical doctrine. … Were this charter gone, her Majesty's prerogative would shine bright and influence the whole, so that they would be more obedient to her Majesty's commands, and civil to her interest and officers; and, were they more dependent, they would be much more serviceable.[42]

Thus had the charter come full circle, from regulating device to shield of disobedience.

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42 Palfrey, vol. 4, 400.

"Our Happy Constitution"

The Second Charter of Massachusetts Bay created a new province of the English empire. The transformation from the First Charter system was profound, perhaps rendered palatable to provincials merely by having succeeded the perceived tyranny of the Dominion of New England. The First Charter had created a corporation, the Second a government. The First Charter provided no foundation for political institutions, the uses it was put to by the founders of the colony notwithstanding, and could not be considered a constitutional document. The well-known story of Governor Winthrop hiding the First Charter from the prying eyes of the freemen of the colony illustrates that it was not so. Winthrop kept the contents of the First Charter from his fellow colonists, governing the colony as he and his coterie saw fit, and only under duress did he share the documents contents. The compromise eventually brokered between Winthrop and the freemen of the colony in 1634, creating a colonial legislative assembly from representatives of the towns, did not arise from the text of the First Charter. It was, instead, an organically developed system negotiated amongst the colonists. During the first years of the colony, the people and leaders of Massachusetts Bay breathed life into this system until, golem-like, it came to function as a colonial government. However, the document had no such authority, and even if it had, the government developed bore little resemblance to its text. The First Charter's legal dissolution in 1684 was merely an official judgment that the creature masquerading as a government was merely a bag of bones.

The hiding of the First Charter was not the limit of its unavailability, only its physical representation. Winthrop and the Puritan fathers did not publicly proclaim the First Charter upon their arrival. It was conspicuously absent from the publication of the

laws of the colony, first printed in 1648.[1] The First Charter was, in other words, unavailable to become a contested text. In contrast, Governor Phips proclaimed the Second Charter at the beat of the drum upon its arrival in Boston. The provincial government published it in a stand-alone form, first in 1699, and included it thereafter in collections of published provincial laws.[2] Political and imperial debates did not become conflicts over the meaning of key clauses of the First Charter; those clauses were unpublished, and furthermore had no constitutional weight. Instead, such conflicts tended to revolve around traditions of prior usage. In contrast, there was no barrier to access of the Second Charter, meaning its contents, both textual and philosophical, were available to be contested in both provincial and imperial political debates.

The differences between the First and Second Charters make it inappropriate to think of the latter as an updated or overhauled version of the former. In reality, the two bear little resemblance to one another. The First Charter's corporate assembly, made up of freemen of the company, was fundamentally distinct from the Second Charter's General Court, created as a representative political institution. Under the First Charter, the corporation had no legal authority to establish courts, pass laws, or command troops. Those functions were, at various times, taken up by the de facto government, but only in an ad hoc manner, without constitutional basis. By contrast, those powers were explicitly delegated to the Second Charter government, divided between executive and legislative branches. It granted those branches control over the defense of the province and its purse strings, respectively. Where actions of the First Charter government might have been

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1 *The Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusets* (Cambridge, Massachusetts: Printed by Matthew Day. 1648).

2 *The Charter Granted by Their Majesties King William and Queen Mary, to the Inhabitants of the province of the Massachusetts-Bay in New-England* (Boston: Bartholemew Green and John Allen, 1699).

considered illegitimate by the metropolis, those of the Second Charter government – provided they cleared the hurdle of royal disallowance – had to be considered constitutional, and therefore unchallengeable.

The Second Charter meant, in addition, that judicial decisions rendered in Massachusetts Bay would be grounded in real legal authority. Courts created by the General Court, and acceptable to the crown, had no fear of having decisions overturned for reasons of legitimacy. While the Privy Council on appeal occasionally overturned provincial decisions, such events were rare. If the provincials had a strong sense of the immutability of their judicial system, there was ample justification for such belief. The Second Charter was, then, no mere consolation prize after the Glorious Revolution, but a real achievement. The constitutional foundation established by the Second Charter created in Massachusetts Bay a relatively stable government and political system, one that lasted until the American Revolution. Increase Mather had referred to the Second Charter as "the Magna Charta of New-England," and while he came to this view before the experience of Second Charter governance, this reflected the eventual outlook of the provincials themselves.

While the Second Charter granted to the provincials constitutional authority for powers they had assumed, if in different forms, under the First Charter, it also limited the province in important ways. First, the document made Massachusetts Bay into a tangible province of the English empire. Under the First Charter, the colony was possessed of a sense of separateness from England, often described by historians seeking to emphasize the proto-Revolutionary nature of New England. In contrast, the provincials under the Second Charter were more than rhetorically a province of the empire. Strong forms of

royal oversight over provincial affairs, in the form of the appeals clause and the royal disallowance made the Bay a clear dependency of the crown. Occasional acknowledgement of their obedience to King and crown, as had been emitted off and on for decades under the First Charter, would no longer be sufficient; obedience to imperial norms would be in order.

Another restriction placed on the provincials under the Second Charter was the acceptance of the general outlines of English law. The legal code First Charter government had, in some ways, leaned towards Mosaic precepts (though this tendency has been overstated). Under the Second Charter, with its right of appeal to the crown and royal disallowance, the law grew more metropolitan. In the opinion of John Murrin, the experiences and expectations of the bar grew in parallel with the legal Anglicization of the province.[3] Religious tolerance, of course, was another restriction applied by the Second Charter, which might have been a heavy blow to the Puritans of the earlier seventeenth century, but fell more gently upon the pressured 1690s.

If metropolitan intent was to delineate the limits of provincial power, the New Englanders took it to be a constitutional document. Therefore, it could be used as easily to limit the scope of royal action as provincial. Beginning after its arrival in 1692, the Second Charter was transformed from an instrument of royal control into an instrument of provincial defense. Provincial interests used the text of the Second Charter to defend against royal interference on many fronts over the first fifty years of its existence. They cleverly parsed the reservation clause, for example, to maintain control over mast pines in the forests of New England. They argued, in the controversy over the limits of the

3 Murrin, "Anglicizing an American Colony," chapter 4. I think Murrin correct in his analysis of the Anglicanization of legal matters and the bar.

governor's electoral veto, that the relevant clause did not include the Speaker of the House. Governors misrepresented clauses to their own advantage as well, pressing against the textual limits of their own powers, in the cases of the electoral veto and the Vetch incident. Both those opposed to the crown and those supporting it used the Second Charter in similar fashion.

Political conflicts, often of little significance when studied in isolation, had turned to constitutional arguments with predictable regularity, creating an accumulated inertia that resisted royal pressure. The struggle to control the Speakership of the House, for example, or the contest over mast pines, or the conflicts surrounding legal appeals might each appear of limited importance. The question, then, is to account for the heat so clearly generated by those controversies. It was not the profits available to poachers that caused tensions between crown and province over the fate of mast pines. Rather, it was the fact that the provincials saw a reservation clause expanding beyond the text of the Second Charter, an aggrandizement of royal authority which struck at the heart of the constitutional understanding of the Second Charter. Likewise, the debate over the power of governors to veto the election to the Speakership of the House demonstrates that the provincials saw the Second Charter as the outer limits of royal authority. Because the document did not expressly grant the executive such a power, none of its clauses could be construed in such a way as to do so. This strict constructionist view of the Second Charter clearly implied that it was seen as the ceiling of royal power rather than its floor.

When governors used the document in their cause, only reinforced the constitutionality argument. When Joseph Dudley deployed a deliberate misreading of the Second Charter, manipulating the lower house into an unjust trial, and pretending to

provide a veneer of constitutional legality for this illegitimate procedure, it strengthened the view of the Second Charter as constitution. Moreover, as minor victories piled up – alongside occasional setbacks – the Bay colonists became more and more secure in their understanding of the Second Charter. It grew into the wall around the New England garden for the eighteenth century, as Puritanism had been in the seventeenth. As that eighteenth century progressed, there was little reason for the provincials to reassess their vision of their Charter liberties. It should not be surprising, then, that when imperial innovations crossed the Atlantic in the wake of the Seven Years' War – such as Parliamentary taxation, the provincials immediately saw them in terms of their understanding of the Second Charter.

Any number of examples of this connection can be found in the Boston newspapers, beginning in 1764. Intelligence of the pending passage of the Stamp Act was met in Boston that year with loud complaints that any such legislation would be a violation of the Second Charter and, therefore, unconstitutional. A writer in the *Boston Gazette* in 1764 proclaimed the supremacy of the Second Charter over Parliament.

> And to those [colonies] that hold under charter, would [the Stamp Act] not be a direct breach of that compact and those conditions, on the faith whereof the adventurers embarked their lives and fortunes, and on the stability, security, and perpetuity whereof depends the prosperity and increased of our several colonies, as well as the settling of our late acquisitions?[4]

Later in that year, another writer, Novanglicus, articulated this same view of the Second Charter as shield against Parliamentary interference. He claimed unnamed sources, "*interested* men," had spoiled the name of Massachusetts Bay among the halls of power in England, leaving the province without recourse to rhetorical defenses in the

4 S.V.F., *Boston Gazette*, 30 April 1764.

metropolis.

> If our invaluable charter privileges are to be set aside, or what is equivalent, *broken in upon* – if our rights as *British* subjects are to be wrested from us, upon the depositions of *interested* men, taken in the *dark*, and before we *know not whom* – If our liberties stand upon so precarious a bottom, we have but the name of liberty – a m[ere] bauble – a play thing, which is not worth enjoying, much less contending for [emphases in original].[5]

It was as much the violation of chartered liberty as the suspicious characters and their methods that angered Novanglicus, and, one may assume, others within the Bay colony.

Upon the arrival of the Stamp Act, in 1765, the conflict between Parliamentary taxation and the Second Charter would become one of the central threads of the argument against royal authority in Massachusetts in the 1760s. Thus, the General Assembly responded to an October 1765 address by Governor Bernard in which he asserted Parliament's right to legislate for the colonies by advancing the charter-supremacy argument.

> [Y]our Excellency tells us that the right of the Parliament to make laws for the American colonies remains indisputable in Westminster: without contending this point we beg leave just to observe that the charter of this province invests the General Assembly with the power of making laws for its internal government and taxation; and this charter has never yet been forfeited.[6]

This claim of the supremacy of the Second Charter was sufficient to render the Stamp Act unconstitutional, or, indeed, any other such taxes.

Parliament, for its part, wholly disputed such an understanding of the Second Charter. The prevailing metropolitan understanding was explained in the late 1760s by Lord Mansfield, Chief Justice and member of the Privy Council, who wrote that the

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5 Novanglicus, *Boston Gazette*, 14 May 1764. This should not be confused with John Adams' pseudonym Novanlgus.

6 "Address of the House of Representatives," *Boston News-Letter*, 28 October 1765.

Second Charter – and all other colonial charters – were "all on the same footing as our great corporations in London," and thus under Parliamentary jurisdiction.[7] Moreover, the Parliamentary actions taken in the Revolutionary crisis amply demonstrate this. Two of the Intolerable or Coercive Acts, the Massachusetts Government Act and the Administration of Justice Act both abrogated portions of the Second Charter without dissolving the whole through due process. Parliament assumed authority over the Second Charter system, rendering the Second Charter a mere act of legislation. The implied loss of constitutionality made the Intolerable Acts intolerable.

In other words, the constitutional arguments of the Revolutionary period were not mere rhetorical conveniences, but rather the representations of provincial constitutional theory. The provincials who resisted Parliamentary taxation by claiming the supremacy of the Second Charter power of taxation granted the General Court did not do so because they used the nearest rhetorical club to hand. They deployed such argument because they believed them. The chapters above have attempted to illustrate precisely this point: the provincials *truly believed* their charter held the constitutional weight that Magna Charta possessed in England, and had solid grounds for this belief. The text could be stretched or shrunk, depending on circumstances, and contested by both those opposing as well as supporting the crown. Furthermore, its clauses could not be violated individually, unless it was abrogated *in toto* through due process, as the First Charter had been. And why should they not view it so? After all, the Second Charter was passed under the great seal with no approval of Parliament. As an author in the *Boston Evening Post* put it, the royal emission of charters only confirmed that Parliamentary actions could not supersede the

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7 Quoted in Charles Howard McIlwain, *The American Revolution: A Constitutional Interpretation* (Clark, New Jersey: The Lawbook Exchange, Ltd.; originally published 1924), 185.

text of the Second Charter. "Or should it be further objected," he scoffed, "they [the charters] were given without the consent of parliament and so are of no force?" Since it had no authority over their creation, Parliament could not revoke Second Charter privileges; the Second Charter must be supreme.

> But further we have had the concurrent approbation of the parliament, to our enjoyment of our charters, and of all the privileges we hold by them in full, for more than a century past. And is not this a full and sufficient approbation and acknowledgment of them?[8]

Parliament had no role in creating the Second Charter, and over long years played no role in its interpretation. The Second Charter had become the constitution of Massachusetts, and was viewed as such by provincials both loyal and oppositionist.

8 *Boston Evening Post*, 21 October 1765.

APPENDIX I

The First Charter of Massachusetts Bay, 1629[1]

CHARLES, BY THE, GRACE, OF GOD, Kinge of England, Scotland, Fraunce, and Ireland, Defendor of the Fayth, &c. To all to whome theis Presents shall come Greeting. WHEREAS, our most Deare and Royall Father, Kinge James, of blessed Memory, by his Highnes Letters-patents bearing Date at Westminster the third Day of November, in the eighteenth Yeare of His Raigne, HATH given and graunted vnto the Councell established at Plymouth, in the County of Devon, for the planting, ruling, ordering, and governing of Newe England in America, and to their Successors and Assignes for ever all that Parte of America, lyeing and being in Bredth, from Forty Degrees of Northerly Latitude from the Equinoctiall Lyne, to forty eight Degrees Of the saide Northerly Latitude inclusively, and in Length, of and within all the Breadth aforesaid, throughout the Maine Landes from Sea to Sea; together also with all the Firme Landes, Soyles, Groundes, Havens, Portes, Rivers, Waters, Fishing, Mynes, and Myneralls, as well Royall Mynes of Gould and Silver, as other Mynes ind Mvneralls, precious Stones, Quarries, and all and singular other Comodities, Jurisdiccons, Royalties, Priviledges, Franchesies, and Prehemynences, both within the said Tract of Land vpon the Mayne, and also within the Islandes and Seas adjoining: PROVIDED alwayes, That the saide Islandes, or any the Premisses by the said Letters-patents intended and meant to be graunted, were not then actuallie possessed or inhabited, by any other Christian Prince or State, nor within the Boundes, Lymitts, or Territories of the Southerne Colony, then before graunted by our saide Deare Father, to be planted by divers of his loveing Subjects in the South Partes. TO HAVE and to houlde, possess, and enjoy all and singular the aforesaid Continent, Landes Territories, Islandes, Hereditaments, and Precincts, Seas, Waters, Fishings, with all, and all manner their Comodities, Royalties, Liberties, Prehemynences, and Proffits that should from thenceforth arise from thence, with all and singuler their Appurtenances, and every Parte and Parcell thereof, vnto the saide Councell and their Successors and Assignes for ever, to the sole and proper Vse, Benefitt, and Behoofe of them the saide Councell, and their Successors and Asignes for ever: To be houlden of our saide most Deare and Royall Father, his Heires and Successors, as of his Mannor of East Greenewich in the County of Kent, in free and comon Soccage, and not in Capite nor by Knight's Service: YEILDINGE and paying therefore to the saide late Kinge, his heires and Successors, the fifte Parte of the Oare of Gould and Silver, which should from tyme to tyme, and at all Tymes then after happen to be found, gotten, had, and obteyned in, att, or within any of the saide Landes, Lymitts, Territories, and Precincts, or in or within any Parte or Parcell thereof, for or in Respect of all and all

1 Francis Newton Thorpe, ed., *The Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, vol. 3 (Washington, DC: Government Printing Office, 1909), 1846-60.

Manner of Duties, Demaunds and Services whatsoever, to be don, made, or paide to our saide Dear Father the late Kinge his Heires and Successors, as in and by the saide Letters-patents (amongst sundrie and other Clauses, Powers, Priviledges, and Grauntes therein conteyned), more at large appeareth:

AND WHEREAS, the saide Councell established at Plymouth, in the County of Devon, for the plantinge, ruling, ordering, and governing of Newe England in America, have by their Deede, indented vnder their Comon Seale, bearing Date the nyneteenth Day of March last past, in the third Yeare of our Raigne, given, graunted, bargained, soulde, enfeofled, aliened, and confirmed to Sir Henry Rosewell, Sir John Young, Knightes, Thomas Southcott, John Humphrey, John Endecott, and Symon Whetcombe, their Heires and Assignes, and their Associats for ever, all that Parte of Newe England in America aforesaid, which lyes and extendes betweene a greate River there comonlie called Monomack alias Merriemack, and a certen other River there, called Charles River, being in the Bottome of a certayne Bay there, comonlie called Massachusetts, alias Mattachusetts, alias Massatusetts Bay, and also all and singuler those Landes and Hereditaments whatsoever, lyeing within the Space of three English Myles on the South Parte of the said Charles River, or of any, or everie Parte thereof; and also, all and singuler the Landes and Hereditaments whatsoever, lyeing and being within the Space of three English Myles to the Southward of the Southermost Parte of the saide Bay called Massachusetts, alias Mattachusetts, alias Massatusets Bay; and also, all those Landes and Hereditaments whatsoever, which lye, and be within the space of three English Myles to the Northward of the said River called Monomack, alias Merrymack, or to the Northward of any and every Parte thereof, and all Landes and Hereditaments whatsoever, lyeing within the Lymitts aforesaide, North and South in Latitude and breath, and in Length and Longitude, of and within all the Bredth aforesaide, throughout the Mayne Landes there, from the Atlantick and Westerne Sea and Ocean on the East Parte, to the South Sea on the West Parte; and all Landes and Groundes, Place and Places, Soyles, Woodes and Wood Groundes, Havens, Portes, Rivers, Waters, Fishings, and Hereditaments whatsoever, lyeing within the said Boundes and Lymitts, and everie Parte and Parcell thereof; and also, all Islandes lyeing in America aforesaide, in the saide Seas or either of them on the Westerne or Eastern Coastes or Partes of the said Tractes of Lande, by the saide Indenture mencoed to be given, graunted, bargained, sould, enfeofled, aliened, and confirmed, or any of them; and also, all Mynes and Myneralls, as well Royall Mynes of Gould and Silver, as other Mynes and Myneralls whatsoeuer, in the saide Lands and Premisses, or any Parte thereof; and all Jurisdiccons, Rights, Royalties, Liberties, Freedomes, Ymmunities, Priviledges, Franchises, Preheminences, and Comodities whatsoever, which they, the said Councell established at Plymouth, in the County of Devon, for the planting, ruling, ordering, and governing of Newe England in America, then had, or might vse, exercise, or enjoy, in or within the saide Landes and Premisses by the saide Indenture mencoed to be given, graunted, bargained, sould, enfeoffed, and

confirmed, or in or within any Parte or Parcell thereof:

To HAVE and to hould, the saide Parte of Newe England in America, which lyes and extendes and is abutted as aforesaide, and every Parte and Parcell thereof; and all the saide Islandes, Rivers, Portes, Havens, Waters, Fishings, Mynes, and Myneralls, Jurisdiccons, Franchises, Royalties, Liberties, Priviledges, Comodities, Hereditaments, and Premisses whatsoever, with the Appurtenances vnto the saide Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, their Heires and Assignes, and their Associatts, to the onlie proper and absolute vse and Behoofe of the said Sir Henry Rosawell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whettcombe, their Heires and Assignes, and their Associatts forevermore; TO BE HOULDEN of Vs. our Heires and Successors, as of our Mannor of Eastgreenwich, in the County of Kent, in free and comon Soccage, and not in Capite, nor by Knightes Service; YEILDING and payeing therefore vnto Vs. our Heires and Successors, the fifte Parte of the Oare of Goulde and Silver, which shall from Tyme to Tyme, and at all Tymes hereafter, happen to be founde, gotten, had, and obteyned in any of the saide Landes, within the saide Lymitts, or in or witllin any Parte thereof, for, and in Satisfaccon of all manner Duties, Demaundes, and Services whatsoever to be done, made, or paid to Vs. our Heires or Successors, as in and by the said recited Indenture more at large maie appeare.

NOWE Knowe Yee, that Wee, at the humble Suite and Peticon of the saide Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, and of others whome they have associated vnto them, HAVE, for divers good Causes and consideracons, vs moveing, graunted and confirmed, and by theis Presents of our especiall Grace, certen Knowledge, and meere mocon, doe graunt and confirme vnto the saide Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, and to their Associatts hereafter named; (videlicet) Sir Richard Saltonstall, Knight, Isaack Johnson, Samuel Aldersey, John Ven, Mathew Cradock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniell Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, their Heires and Assignes, all the saide Parte of Newe England in America, lyeing and extending betweene the Boundes and Lvmytts in the said recited Indenture expressed, and all Landes and Groundes, Place and Places, Soyles, Woods and Wood Groundes, Havens, Portes, Rivers, Waters, Mynes, Mineralls, Jurisdiccons, Rightes, Royalties, Liberties, Freedomes, Immunities, Priviledges, Franchises, Preheminences, Hereditaments, and Comodities whatsoever, to them the saide Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, theire Heires and Assignes, and to their Associatts, by the saide recited Indenture, given, graunted, bargayned, solde, enfeoffed, aliened, and confirmed, or mencoed or intended thereby to be given, graunted, bargayned, sold,

enfeoffed, aliened, and confirmed: To HAVE, and to hould, the saide Parte of Newe England in America, and other the Premisses hereby mencoed to be graunted and confirmed, and every Parte and Parcell thereof with the Appurtenuces, to the saide Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaack Johnson, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Gode, Thomas Adams, John Browne, Samuel Bromine, Thomas Hutchins, Samuel Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Nowell, William Vassall, William Pinchion, and George Foxcrofte, their Heires and Assignes forever, to their onlie proper and absolute Vse and Behoofe for evermore; To be holden of Vs. our Heires and Successors, as of our Mannor of Eastgreenewich aforesaid, in free and comon Socage, and not in Capite, nor by Knights Service; AND ALSO YEILDING and paying therefore to Vs. our Heires and Successors, the fifte parte onlie of all Oare of Gould and Silver, which from tyme to tyme, and aft all tymes hereafter shalbe there gotten, had, or obteyned for all Services, Exaccons and Demaundes whatsoever, according to the Tenure and Reservacon in the said recited Indenture expressed.

AND FURTHER, knowe yee, that of our more especiall Grace, certen Knowledg, and meere mocon, Wee have given and graunted, and by theis Presents, doe for Vs. our Heires and Successors, give and graunte onto the saide Sir Henry Rosewell, Sir John Younge. Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Symon Whetcombe, Isaack Johnson, Samuell Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniel Wright, Samuell Vassall, Theophilus Eaton, Thomas Gode, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, their Heires and Assignes, all that Parte of Newe England in America, which lyes and extendes betweene a great River there, comonlie called Monomack River, alias Merrimack River, and a certen other River there, called Charles River, being in the Bottome of a certen Bay there, comonlie called Massachusetts, alias Mattachusetts, alias Massatusetts Bay; and also all and singuler those Landes and Hereditaments whatsoever, lying within the Space of Three Englishe Myles on the South Parte of the said River, called Charles River, or of any or every Parte thereof; and also all and singuler the Landes and Hereditaments whatsoever, lying and being within the Space of Three Englishe Miles to the southward of the southermost Parte of the said Baye, called Massachusetts, alias Mattachusetts, alias Massatusets Bay: And also all those Landes and Hereditaments whatsoever, which lye and be within the Space of Three English Myles to the Northward of the saide River, called Monomack, alias Merrymack, or to the Norward of any and every Parte thereof, and all Landes and Hereditaments whatsoever, lyeing within the Lymitts aforesaide, North and South, in Latitude and Bredth, and in Length and Longitude, of and within all the Bredth aforesaide, throughout the mayne Landes there, from the Atlantick and Westerne Sea and Ocean on the East Parte, to the South Sea

on the West Parte; and all Landes and Groundes, Place and Places, Soyles, Woodes, and Wood Groundes, Havens, Portes, Rivers, Waters, and Hereditaments whatsoever, lyeing within the said Boundes and Lymytts, and every Parte and Parcell thereof; and also all Islandes in America aforesaide, in the saide Seas, or either of them, on the Westerne or Easterne Coastes, or Partes of the saide Tracts of Landes hereby mencoed to be given and graunted, or any of them; and all Mynes and Mynerals as well Royal mynes of Gold and Silver and other mynes and mynerals, whatsoever, in the said Landes and Premisses, or any parte thereof, and free Libertie of fishing in or within any the Rivers or Waters within the Boundes and Lymytts aforesaid, and the Seas therevnto adjoining; and all Fishes, Royal Fishes, Whales, Balan, Sturgions, and other Fishes of what Kinde or Nature soever, that shall at any time hereafter be taken in or within the saide Seas or Waters, or any of them, by the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaack Johnson, Samuell Aldersey, John Ven, Mathewe Cradock, Greorge Harwood, Increase Noell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassell, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browner, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, their Heires and Assignes, or by any other person or persons whatsoever there inhabiting, by them, or any of them, to be appointed to fishe therein.

PROVIDED alwayes, That yf the said Landes, Islandes, or any other the Prernisses herein before menconed, and by theis presents, intended and meant to be graunted, were at the tyme of the graunting of the saide former Letters patents, dated the Third Day of November, in the Eighteenth Yeare of our said deare Fathers Raigne aforesaide, actuallie possessed or inhabited by any other Christian Prince or State, or were within the Boundes, Lymytts or Territories of that Southerne Colony, then before graunted by our said late Father, to be planted by divers of his loveing Subiects in the south partes of America, That then this present Graunt shall not extend to any such partes or parcells thereof, soe formerly inhabited, or lyeing within the Boundes of the Southerne Plantacon as aforesaide, but as to those partes or parcells soe possessed or inhabited by such Christian Prince or State, or being within the Bounders aforesaide shal be vtterlie voyd, theis presents or any Thinge therein conteyned to the contrarie notwithstanding. To HAVE and hould, possesse and enioye the saide partes of New England in America, which lye, extend, and are abutted as aforesaide,and every parse and parcell thereof; and all the Islandes, Rivers, Portes, Havens, Waters, Fishings, Fishes, Mynes, Myneralls, Jurisdiccons, Franchises, Royalties, Liberties, Priviledges, Comodities, and Premisses whatsoever, with the Appurtenances, vnto the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaack Johnson, Samuell Aldersey, John Yen, Mathewe Cradock, George Harwood, Increase Noweil, Richard Perry, Richard Bellingham, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Gofle, Thomas Adams, John Browne,

Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxeroft, their Heires and Assignes forever, to the onlie proper and absolute Vse and Behoufe of the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaac Johnson, Samuell Aldersey, John Ven, Mathewe Cradocke, George Harwood, Increase Noweil, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcroft, their Heires and Assignes forevermore: To BE HOLDEN of Vs. our Heires and Successors, as of our Manor of Eastgreenwich in our Countie of Kent, within our Realme of England, in free and comon Soccage, and not in Capite, nor by Knights Service; and also yeilding and paying therefore, to Vs. our Heires and Sucessors, the fifte Parte onlie of all Oare of Gould and Silver, which from tyme to tyme, and at all tymes hereafter, shal be there gotten, had, or obteyned, for all Services, Exaccons, and Demaundes whatsoever; PROVIDED alwaies, and our expresse Will and Meaninge is, that onlie one fifte Parte of the Gould and Silver Oare above mencoed, in the whole, and noe more be reserved or payeable vnto Vs. our Heires and Successors, by Collour or Vertue of theis Presents, the double Reservacons or rentals aforesaid or any Thing herein conteyned notwithstanding. AND FORASMUCH, as the good and prosperous Successe of the Plantacon of the saide Partes of Newe-England aforesaide intended by the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaack Johnson, Samuell Aldersey John Ven, Mathew Cradock, George Harwood, Increase Noell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, to be speedily sett vpon, cannot but cheifly depend, next vnder the Blessing of Almightie God, and the support of our Royall Authoritie vpon the good Government of the same, To the Ende that the Affaires and Buyssinesses which from tyme to tyme shall happen and arise concerning the saide Landes, and the Plantation of the same maie be the better mannaged and ordered, WEE HAVE FURTHER hereby of our especial Grace, certain Knowledge and mere Mocon, Given, graunted and confirmed, and for Vs. our Heires and Successors, doe give, graunt, and confirme vnto our said trustie and welbeloved subjects Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endicott, Simon Whetcombe, Isaack Johnson, Samuell Aldersey, John Yen, Mathewe Cradock, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte: AND for Vs. our Heires and Successors, Wee will and ordeyne, That the saide Sir Henry Rosewell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endicott,

Svmon Whetcombe, Isaack Johnson, Samuell Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Noell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, and all such others as shall hereafter be admitted and made free of the Company and Society hereafter mencoed, shall from tyme to tyme, and att all tymes forever hereafter be, by Vertue of theis presents, one Body corporate and politique in Fact and Name, by the Name of the Governor and Company of the Mattachusetts Bay in Newe-England, and them by the Name of the Governour and Company of the Mattachusetts Bay in Newe-England, one Bodie politique and corporate, in Deede, Fact, and Name; Wee doe for vs. our Heires and Successors, make, ordoyne, constitute, and confirme by theis Presents, and that by that name they shall have perpetuall Succession, and that by the same Name they and their Successors shall and maie be capeable and enabled aswell to implead, and to be impleaded, and to prosecute, demaund, and aunswere, and be aunsweared veto, in all and singuler Suites, Causes, Quarrells, and Accons, of what kinde or nature soever. And also to have, take, possesse, acquire, and purchase any Landes, Tenements, or Hereditaments, or any Goodes or Chattells, and the same to lease, graunte, demise, alien, bargaine, sell, and dispose of, as other our liege People of this our Realme of England, or any other corporacon or Body politique of the same may lawfully doe.

AND FURTHER, That the said Governour and Companye, and their Successors, maie have forever one comon Seale, to be vsed in all Causes and Occasions of the said Company, and the same Seale may alter, chaunge, breake, and newe make, from tyme to tyme, at their pleasures. And our Will and Pleasure is, and Wee doe hereby for Vs. our Heires and Successors, ordeyne and graunte, That from henceforth for ever, there shalbe one Governor, one Deputy Governor, and eighteene Assistants of the same Company, to be from tyme to tyme constituted, elected and chosen out of the Freemen of the saide Company, for the tyme being, in such Manner and Forme as hereafter in theis Presents is expressed, which said Officers shall applie themselves to take Care for the best disposeing and ordering of the generall buysines and Affaires of, for, and concerning the said Landes and Premisses hereby mencoed, to be graunted, and the Plantacion thereof, and the Government of the People there. AND FOR the better Execucon of our Royall Pleasure and Graunte in this Behalf, WEE doe, by theis presents, for Vs. our Heires and Successors, nominate, ordeyne, make, & constitute; our welbeloved the saide Mathewe Cradocke, to be the first and present Governor of the said Company, and the saide Thomas Goffe, to be Deputy Governor of the saide Company, and the saide Sir Richard Saltonstall, Isaack Johnson, Samuell Aldersey, John Ven, John Humfrey, John Endecott, Simon Whetcombe, Increase Nowell, Richard Pery, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Adams, Thomas Hutchins, John Browne, George Foxcrofte, William Vassall, and William Pinchion, to be the present Assistants of the saide

Company, to continue in the saide several Offices respectivelie for such tyme, and in such manner, as in and by theis Presents is hereafter declared and appointed.

AND FURTHER, Wee will, and by theis Presents, for Vs. our Heires and Successors, doe ordoyne and graunte, That the Governor of the saide Company for the tyme being, or in his Absence by Occasion of Sicknes or otherwise, the Deputie Governor for the tyme being, shall have Authoritie from tyme to tyme vpon all Occasions, to give order for the assembling of the saide Company, and calling them together to consult and advise of the Bussinesses and Affaires of the saide Company, and that the said Governor, Deputie Governor, and Assistants of the saide Company, for the tyme being, shall or maie once every Moneth, or oftener at their Pleasures, assemble and houlde and keepe a Courte or Assemblie of themselves, for the better ordering and directing of their Affaires, and that any seaven or more persons of the Assistants, togither with the Governor, or Deputie Governor soe assembled, shalbe saide, taken, held, and reputed to be, and shalbe a full and sufficient Courte or Assemblie of the said Company, for the handling, ordering, and dispatching of all such Buysinesses and Occurrents as shall from tyme to tyme happen, touching or concerning the said Company or Plantacon; and that there shall or maie be held and kept by the Governor, or Deputie Governor of the said Company, and seaven or more of the said Assistants for the tyme being, vpon every last Wednesday in Hillary, Easter, Trinity, and Michas Termes respectivelie forever, one grease generall and solempe assemblie, which foure generall assemblies shalbe stiled and called the foure grease and generall Courts of the saide Company; IN all and every, or any of which saide grease and generall Courts soe assembled, WEE DOE for Vs. our Heires and Successors, give and graunte to the said Governor and Company, and their Successors, That the Governor, or in his absence, the Deputie Governor of the saide Company for the tyme being, and such of the Assistants and Freeman of the saide Company as shalbe present, or the greater nomber of them so assembled, whereof the Governor or Deputie Governor and six of the Assistants at the least to be seaven shall have full Power and authoritie to choose, nominate, and appointe, such and soe many others as they shall thinke fitt, and that shall be willing to accept the same, to be free of the said Company and Body, and them into the same to admits; and to elect and constitute such Officers as they shall thinke fitt and requisite, for the ordering, mannaging, and dispatching of the Affaires of the saide Govenor and Company, and their Successors; And to make Lawes and Ordinnces for the Good and Welfare of the saide Company, and for the Government and ordering of the saide Landes and Plantacon, and the People inhabiting and to inhabite the same, as to them from tyme to tyme shalbe thought meete, soe as such Lawes and Ordinances be not contrarie or repugnant to the Lawes and Statuts of this our Reaime of England. AND, our Will and Pleasure is, and Wee doe hereby for Vs, our Heires and Successors, establish and ordeyne, That yearely once in the yeare, for ever hereafter, namely, the last Wednesdav in Easter Tearme, yearely, the Governor, Deputy-Governor, and Assistants of the saide Company and all

other officers of the saide Company shalbe in the Generall Court or Assembly to be held for that Day or Tyme, newly chosen for the Yeare ensueing by such greater parse of the said Company, for the Tyme being, then and there present, as is aforesaide. AND, yf it shall happen the present governor, Deputy Governor, and assistants, by theis presents appointed, or such as shall hereafter be newly chosen into their Roomes, or any of them, or any other of the officers to be appointed for the said Companv, to dye, or to be removed from his or their severall Offices or Places before the saide generall Day of Eleccon (whome Wee doe hereby declare for any Misdemeanor or Defect to be removeable by the Governor, Deputie Governor, Assistants, and Company, or such greater Parte of them in any of the publique Courts to be assembled as is aforesaid) That then, and in every such Case, it shall and maie be lawfull, to and for the Governor, Deputie Governor, Assistants, and Company aforesaide, or such greater Parte of them soe to be assembled as is aforesaide, in any of their Assemblies, to proceade to a new Eleccon of one or more others of their Company in the Roome or Place, Roomes or Places of such Officer or Officers soe dyeing or removed according to their Discrecons, And, Mediately vpon and after such Eleccon and Eleccons made of such Governor, Deputie Governor, Assistant or Assistants, or any other officer of the saide Company, in Manner and Forme aforesaid, the Authoritie, Office, and Power, before given to the former Governor, Deputie Governor, or other Officer and Officers soe removed, in whose Steade and Place newe shabe soe chosen, shall as to him and them, and everie of them, cease and determine

PROVIDED alsoe, and our Will and Pleasure is, That aswell such as are by theis Presents appointed to be the present Governor, Deputie Governor, and Assistants of the said Company, as those that shall Succeed them, and all other Officers to be appointed and chosen as aforesaid, shall, before they undertake the Execucon of their saide Offices and Places respectivelie, take their Corporal Oathes for the due and faithfull Performance of their Duties in their severall Offices and Places, before such Person or Persons as are by theis Presents hereunder appointed to take and receive the same; That is to saie, the saide Mathewe Cradock, whoe is hereby nominated and appointed the present Governor of the saide Company, shall take the saide Oathes before one or more of the Masters of our Courte of Chauncery for the Tyme being, vnto which Master or Masters of the Chauncery, Wee doe by theis Presents give full Power and Authoritie to take and administer the said Oathe to the said Governor accordinglie: And after the saide Governor shalbe soe sworne, then the said Deputy Governor and Assistants, before by theis Presents nominated and appointed, shall take the said severall Oathes to their Offices and Places respectivelie belonging, before the said Mathew Cradock, the present Governor, soe formerlie sworne as aforesaide. And every such person as shall be at the Tyme of the annuall Eleccon, or otherwise, vpon Death or Removeall, be appointed to be the newe Governor of the said Company, shall take the Oathes to that Place belonging, before the Deputy Governor, or two of the Assistants of the said Company at the least, for

the Tyme being: And the newe elected Deputie Governor and Assistants, and all other officers to be hereafter chosen as aforesaide from Tyme to Tyme, to take the Oathes to their places respectivelie belonging, before the Governor of the said Company for the Tyme being, vnto which said Governor, Deputie Governor, and assistants, Wee doe by theis Presents Give full Power and Authoritie to give and administer the said Oathes respectively, according to our true Meaning herein before declared, without any Comission or further Warrant to be had and obteyned of our Vs. our Heires or Successors, in that Behalf. AND, Wee doe further, of our especial Grace, certen Knowledge, and meere mocon, for Vs. our Heires and Successors, give and graunte to the said Governor and Company, and their Successors for ever by theis Presents, That it shalbe lawfull and free for them and their Assignes, at all and every Tyme and Tymes hereafter, out of any our Realmes or Domynions whatsoever, to take, leade, carry, and transport, for in and into their Voyages, and for and towardes the said Plantacon in Newe England, all such and soe many of our loving Subjects, or any other strangers that will become our loving Subjects, and live under our Allegiance, as shall willinglie accompany them in the same Voyages and Plantacon; and also Shippmg, Armour, Weapons, Ordinance, Municon, Powder, Shott, Come, Victualls, and all Manner of clothing, Implements, Furniture, Beastes, Cattle, Horses, Mares, Merchandizes, and all other Thinges necessarie for the saide Plantacon, and for their Vse and Defence, and for Trade with the People there, and in passing and returning to and fro, any Lawe or Statute to the contrarie hereof in any wise notwithstanding; and without payeing or yeilding any Custome or Subsidie, either inward or outward, to Vs. our Heires or Successors, for the same, by the Space of seaven Yeares from the Day of the Date of theis Presents. PROVIDED, that none of the saide Persons be such as shalbe hereafter by especiall Name restrayned by Vs. our Heires or Successors. AND, for their further Encouragement, of our especiall Grace and Favor, Wee doe by theis Presents, for Vs. our Heires and Successors, yeild and graunt to the saide Governor and Company, and their Successors, and every of them, their Factors and Assignes, That they and every of them shalbe free and quits from all Taxes, Subsidies, and Customes, in Newe England, for the like Space of seaven Yeares, and from all Taxes and Imposicons for the Space of twenty and one Yeares, vpon all Goodes and Merchandizes at any Tyme or Tymes hereafter, either vpon Importacon thither, or Exportacon from thence into our Realme of England, or into any other our Domynions by the said Governor and Company, and their Successors, their Deputies, Factors, and Assignes, or any of them; EXCEPT onlie the five Pounds per Centum due for Custome vpon all such Goodes and Merchandizes as after the saide seaven Yeares shalbe expired, shalbe brought or imported into our Realme of England, or any other of our Dominions, according to the auncient Trade of Merchants, which five Poundes per Centum onlie being paide, it shall be thenceforth lawfull and free for the said Adventurers, the same Goodes and Merchandizes to export and carry out of our said Domynions into forraine Partes, without any Custome, Tax or other Dutie to be paid to

Vs. our Heires or Successors, or to any other Officers or Ministers of Vs. our Heires and Successors. PROVIDED, that the said Goodes and Merchandizes be shipped out within thirteene Monethes, after their first Landing within any Parte of the saide Domynions.

AND, Wee doe for Vs. our Heires and Successors, give and graunte vnto the saide Governor and Company, and their Successors, That whensoever, or soe often as any Custome or Subsedie shall growe due or payeable vnto Vs our Heires, or Successors, according to the Lymittacon and Appointment aforesaide, by Reason of any Goodes, Wares, or Merchandizes to be shipped out, or any Retorne to be made of any Goodes, Wares, or Merchandize vnto or from the said Partes of Newe England hereby moncoed to be graunted as aforesaid, or any the Landes or Territories aforesaide, That then, and soe often, and in such Case, the Farmors, Customers, and Officers of our Customes of England and Ireland, and everie of them for the Tyme being, vpon Request made to them by the saide Governor and Company, or their Successors, Factors or Assignes, and vpon convenient Security to be given in that Behalf, shall give and allowe vnto the said Governor and Company, and their Successors, and to all and everie Person and Persons free of that Company, as aforesaide, six Monethes Tyme for the Payement of the one halfe of all such Custome and Subsidy as shalbe due and payeable unto Vs. our Heires and Successors, for the same; for which theis our Letters patent, or the Duplicate, or the inrollemt thereof, shalbe vnto our saide Officers a sufficient Warrant and Discharge. NEVERTHELESS, our Will and Pleasure is, That yf any of the saide Goodes, Wares, and Merchandize, which be, or shalbe at any Tyme hereafter landed or exported out of any of our Realmes aforesaide, and shalbe shipped with a Purpose not to be carried to the Partes of Newe England aforesaide, but to some other place, That then such Payment, Dutie, Custome, Imposicon, or Forfeyfure, shalbe paid, or belonge to Vs. our Heires and Successors, for the said Goodes, Wares, and Merchandize, soe fraudulently sought to be transported, as yf this our Graunte had not been made nor graunted. AND, Wee doe further will, and by theis Presents, for Vs. our Heires and Successors, firmlie enioine and comaunde, as well the Treasorer, Chauncellor and Barons of the Exchequer, of Vs. our Heires and Successors, as also all and singuler the Customers, Farmors, and Collectors of the Customes, Subsidies, and Imposts and other the Officers and Ministers of Vs our Heires and Successors whatsoever, for the Tyme Being, That they and every of them, vpon the strewing forth vnto them of theis Letters patents, or the Duplicate or exemplificacon of the same, without any other Writt or Warrant whatsoever from Vs. our Heires or Successors, to be obteyned or sued forth, doe and shall make full, whole, entire, and due Allowance, and cleare Discharge vnto the saide Governor and Company, and their Successors, of all Customes, Subsidies, Imposicons, Taxes and Duties whatsoever, that shall or maie be claymed by Vs. our Heires and Successors, of or from the said Governor and Company, and their Successors, for or by Reason of the said Goodes, Chattels, Wares, Merchandizes, and Premises to be exported out of our saide Domynions, or any of them, into any Parte of the saide Landes or Premises hereby mencoed, to be

given, graunted, and confirmed, or for, or by Reason of any of the saide Goodes, Chattells, Wares, or Merchandizes to be imported from the said Landes and Premises hereby mencoed, to be given, graunted, and confirmed into any of our saide Dominions, or any Parte thereof as aforesaide, excepting onlie the saide five Poundes per Centum hereby reserved and payeable after the Expiracon of the saide Terme of seaven Yeares as aforesaid, and not before: And theis our Letters-patents, or the Inrollment, Duplicate, or Exemplificacon of the same shalbe for ever hereafter, from time to tyme, as well to the Treasorer, Chauncellor and Barons of the Exchequer of Vs. our Heires and Successors, as to all and singuler the Customers, Farmors, and Collectors of the Customes, Subsidies, and Imposts of Vs. our Heires and Successors, and all Searchers, and other the Officers and Ministers whatsoever of Vs. our Heires and Successors, for the Time being, a sufficient Warrant and Discharge in this Behalf.

AND, further our Will and Pleasure is, and Wee doe hereby for Vs. our Heires and Successors, ordeyne and declare, and graunte to the saide Governor and Company, and their Successors, That all and every the Subiects of Vs. our Heires or Successors, which shall goe to and inhabite within the saide Landes and Premisses hereby mencoed to be graunted, and every of their Children which shall happen to be borne there, or on the Seas in goeing thither, or returning from thence, shall have and enjoy all liberties and Immunities of free and naturall Subiects within any of the Domynions of Vs. our Heires or Successors, to all Intents, Construccons, and Purposes whatsoever, as yf they and everie of them were borne within the Realme of England. And that the Governor and Deputie Governor of the said Company for the Tyme being, or either of them, and any two or more of such of the saide Assistants as shalbe therevnto appointed by the saide Governor and Companv at any of their Courts or Assemblies to be held as aforesaide, shall and maie at all Tymes, and from tyme to tyme hereafter, have full Power and Authoritie to minister and give the Oathe and Oathes of Supremacie and Allegiance, or either of them, to all and everie Person and Persons, which shall at any Tyme or Tymes hereafter goe or passe to the Landes and Premisses hereby mencoed to be graunted to inhabite in the same. AND, Wee doe of our further Grace, certen Knowledg and meere Mocon, give and graunte to the saide Governor and Companv, and their Successors, That it shall and male be lawfull, to and for the Governor or Deputie Governor, and such of the Assistants and Freemen of the said Company for the Tyme being as shalbe assembled in any of their generall Courts aforesaide, or in any other Courtes to be specially sumoned and assembled for that Purpose, or the greater Parte of them (whereof the Governor or Deputie Governor, and six of the Assistants to be alwaies seaven) from tyme to tyme, to make, ordeine, and establishe all Manner of wholesome and reasonable Orders, Lawes, Statutes, and Ordilmces, Direccons, and Instruccons, not contrairie to the Lawes of this our Realme of England, aswell for selling of the Formes and Ceremonies of Governmt and Magistracy fitt and necessary for the said Plantacon, and the Inhabitants there, and for nameing and setting of all sorts of Officers, both superior and inferior, which they

shall finde needefull for that Governement and Plantacon, and the distinguishing and setting forth of the severall duties, Powers, and Lymytts of every such Office and Place, and the Formes of such Oathes warrantable by the Lawes and Statutes of this our Realme of England, as shalbe respectivelie ministred vnto them for the Execucon of the said severall Offices and Places; as also, for the disposing and ordering of the Eleccons of such of the said Officers as shalbe annuall, and of such others as shalbe to succeede in Case of Death or Remove all and ministering the said Oathes to the newe elected Officers, and for Imposicons of lawfull Fynes, Mulcts, Imprisonment, or other lawfull Correccon, according to the Course of other Corporacons in this our Realme of England, and for the directing, ruling, and disposeing of all other Matters and Thinges, whereby our said People, Inhabitants there, may be soe religiously, peaceablie, and civilly governed, as their good Life and orderlie Conversacon, maie wynn and incite the Natives of Country, to the KnowIedg and Obedience of the onlie true God and Saulor of Mankinde, and the Christian Fayth, which in our Royall Intencon, and the Adventurers free Profession, is the principall Ende of this Plantacion. WILLING, comaunding, and requiring, and by theis Presents for Vs. our Heiress Successors, ordoyning and appointing, that all such Orders, Lawes, Statuts and Ordinnces, Instruccons and Direccons, as shalbe soe made by the Governor, or Deputie Governor of the said Company, and such of the Assistants and Freemen as aforesaide, and published in Writing, under their comon Seale, shalbe carefullie and duly observed, kept, performed, and putt in Execucon, according to the true Intent and Meaning of the same; and theis our Letters-patents, or the Duplicate or exemplificacon thereof, shalbe to all and everie such Officers,-superior and inferior, from Tyme to Tyme, for the putting of the same Orders, Lawes, Statutes, and Ordinuces, Instruccons, and Direccons, in due Execucon against Vs. our Heires and Successors, a sufficient Warrant and Discharge.

AND WEE DOE further, for Vs. our Heires and Successors, give and graunt to the said Governor and Company, and their Successors bv theis Presents, that all and everie such Chiefe Comaunders, Captaines, Governors, and other Officers and Ministers, as by the said Orders, Lawes, Statuts, Ordinnces, Instruccons, or Direccons of the said Governor and Company for the Tyme being, shalbe from Tyme to Tyme hereafter vmploied either in the Government of the saide Inhabitants and Plantacon, or in the Waye by Sea thither, or from thence, according to the Natures and Lymitts of their Offices and Places respectively, shall from Tyme to Tyme hereafter for ever, within the Precincts and Partes of Newe England hereby mencoed to be graunted and confirmed, or in the Waye by Sea thither, or from thence, have full and Absolute Power and Authoritie to correct, punishe, pardon, governe, and rule all such the Subiects of Vs. our Heires and Successors, as shall from Tyme to Tyme adventure themselves in any Voyadge thither or from thence, or that shall at any Tyme hereafter, inhabite within the Precincts and Partes of Newe England aforesaid, according to the Orders, Lawes, Ordinnces, Instruccons, and Direccons aforesaid, not being repugnant to the Lawes and Statutes of our Realme of

England as aforesaid. AND WEE DOE further, for Vs. our Heires and Successors, give and graunte to the said Governor and Company, and their Successors, by theis Presents, that it shall and maie be lawfull, to and for the Chiefe Comaunders, Governors, and officers of the said Company for the Time being, who shalbe resident in the said Parte of Newe England in America, by theis presents graunted, and others there inhabiting by their Appointment and Direccon, from Tyme to Tyme, and at all Tymes hereafter for their speciall Defence and Safety, to incounter, expulse, repell, and resist by Force of Armes, aswell by Sea as by Lande, and by all fitting Waies and Meanes whatsoever, all such Person and Persons, as shall at any Tyme hereafter, attempt or enterprise the Destruccon, Invasion, Detriment, or Annoyaunce to the said Plantation or Inhabitants, and to take and surprise by all Waies and Meanes whatsoever, all and every such Person and Persons, with their Shippes, Armour, Municons and other Goodes, as shall in hostile manner invade or attempt the defeating of the said Plantacon, or the Hurt of the said Company and Inhabitants: NEVERTHELESS, our Will and Pleasure is, and Wee doe hereby declare to all Christian Kinges, Princes and States, that yf any Person or Persons which shall hereafter be of the said Company or Plantacon or any other by Lycense or Appointment of the said Governor and Company for the Tyme being, shall at any Tyme or Tymes hereafter, robb or spoyle, by Sea or by Land, or doe any Hurt, Violence, or vnlawful Hostilitie to any of the Subjects of Vs. our Heires or Successors, or any of the Subjects of any Prince or State, being then in League and Amytie with Vs. our Heires and Successors, and that upon such injury don and vpon iust Complaint of such Prince or State or their Subjects, WEE, our Heires and Successors shall make open Proclamacon within any of the Partes within our Realme of England, comodious for that purpose, that the Person or Persons haveing comitted any such Roberie or Spoyle, shall within the Terme lymytted by such a Proclamacon, make full Restitucon or Satisfaccon of all such Iniureis don, soe as the said Princes or others so complayning, maie hould themselves fullie satisfied and contented; and that yf the said Person or Persons, haveing comitted such Robbery or Spoile, shall not make, or cause to be made Satisfaccon accordinglie, within such Tyme soe to be lymytted, that then it shalbe lawfull for Vs. our Heires and Successors, to putt the said Person or Persons out of our Allegiance and Proteccon, and that it shalbe lawfull and free for all Princes to prosecute with Hostilitie, the said Offendors, and every of them, their and every of their Procurers, Ayders, Abettors, and Comforters in that Behalf: PROVIDED also, and our expresse Will and Pleasure is, And Wee doe by theis Presents for Vs. our Heires and Successors ordeyne and appoint That theis Presents shall not in any manner envre, or be taken to abridge, barr, or hinder any of our loving subjects whatsoever, to vse and exercise the Trade of Fishing vpon that Coast of New England in America, by theis Presents mencoed to be graunted. But that they, and every, or any of them shall have full and free Power and Liberty to continue and vse their said Trade of Fishing vpon the said Coast, in any the Seas therevnto adioyning, or any Armes of the Seas or Saltwater Rivers where they have byn wont to fishe, and to build

and sett vp vpon the Landes by theis Presents graunted, such Wharfes, Stages, and Workehouses as shalbe necessarie for the salting, drying, keeping, and packing vp of their Fish, to be taken or gotten vpon that Coast; and to cutt down, and take such Trees and other Materialls there groweing, or being, or shalbe needefull for that Purpose, and for all other necessarie Easements, Helpes, and Advantage concerning their said Trade of Fishing there, in such Manner and Forme as they have byn heretofore at any tyme accustomed to doe, without making any wilfull Waste or Spoyle, any Thing in theis Presents conteyned to the contrarie notwithstanding. AND WEE DOE further, for Vs. our Heires and Successors, ordeyne and graunte to the said Governor and Company, and their Successors by theis Presents that theis our Letters-patents shalbe firme, good, effectuall, and availeable in all Thinges, and to all Intents and Construccons of Lawe, according to our true Meaning herein before declared, and shalbe construed, reputed, and adjudged in all Cases most favourablie on the Behalf, and for the Benefist and Behoofe of the saide Governor and Company and their Successors: ALTHOUGH expresse mencon of the true yearely Value or certenty of the Premisses or any of them; or of any other Guiftes or Grauntes, by Vs. or any of our Progenitors or Predecessors to the foresaid Governor or Company before this tyme made, in theis-Presents is not made; or any Statute, Acte, Ordinnce, Provision, Proclamacon, or Restrainte to the contrarie thereof, heretofore had, made, published, ordeyned, or provided, or any other Matter, Cause, or Thinge whatsoever to the contrarie thereof in any wise notwithstanding.

APPENDIX II

The Second Charter of Massachusetts Bay, 1691[1]

WILLIAM & MARY by the grace of God King and Queene of England Scotland France and Ireland Defenders of the Faith &c To all to whome these presents shall come Greeting Whereas his late Majesty King James the First Our Royall Predecessor by his Letters Patents vnder the Greate Seale of England bearing date at Westminster the Third Day of November in the Eighteenth yeare of his Reigne did Give and Grant vnto the Councill established at Plymouth in the County of Devon for the Planting Ruleing Ordering and Govcrning of New England in America and to their Successors and Assignes all that part of America lying and being in Breadth from Forty Degrees of Northerlv Latitude from the Equinoctiall Line to the Forty Eighth Degree of the said Northerly Latitude Inclusively, and in length of and within all the Breadth aforesaid throughout all the Main Lands from Sea to Sea together alsoe with all the firme Lands Soiles Grounds Havens Ports Rivers Waters Fishings Mines and Mineralls as well Royall Mines of Gold and Silver as other Mines and Mineralls Pretious Stones Quarries and all and singular other Comodities Jurisdiccons Rovalties Privileges Franchises and Prehen1inences both within the said Tract of Land vpon the Main and alsoe within the Islands and Seas adjoyning *Provided* alwayes that the said Lands Islands or any the premises by the said Letters Patents intended or meant to be Granted were not then actually possessed or Inhabited by any other Christian Prince or State or within the bounds Limitts or Territories of the Southern Collony then before granted by the said late King James the First [to be planted] by divers of his Subjects in the South parts *To Have* and to hold possesse and enjoy all and singular the aforesaid Continent Lands Territories Islands Hereditaments and Precincts Seas Waters Fishings with all.and all manner of their Comodities Royalties Liberties Preheminences and Profitts that should from thenceforth arise from thence with all and singular their appurtenances and every part and parcell thereof vnto the said Councill and their Successors and Assignes for ever to the sole and proper vse and benefist of the said Councill and their Successors and Assignes for ever *To* be holden of his said late Majestie King James the First his Heires and Successors as of his Mannor of East Greenwich in the County of Kent in free and Comon Soccage and not in Capite or by Knights Service *Yielding* and paying therefore to the said late King his Heires and Successors the Fifth part of the Oar of Gold and Silver which should from time to time and at all times then after happen to be found gotten had and obteyned in att or within any of the said Lands Limitts Territories or Precincts or in or within any part or parcell thereof for or in respect of all and all manner of duties demands and services whatsoever to be done made or paid to the said late King James the first his Heires and

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1 Francis Newton Thorpe, ed., *The Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, vol. 3 (Washington, DC: Government Printing Office, 1909), 1870-86.

Successors (as in and by the said Letters Patents amongst sundry other Clauses Powers Priviledges and Grants therein conteyned more at large appeareth And Whereas the said Councill established at Plymouth in the County of Devon for the Planting Ruleing Ordering and Governing of New England in America Did by their Deed Indented vnder their Comon Seale bearing Date the Nineteenth Day of March in the Third yeare of the Reigne of Our Royall Grandfather King Charles the First of ever Blessed Memory Give Grant Bargaine Sell Enffeoffe Alien and Confirme to Sir Henry Roswell Sir John Young Knights Thomas Southcott John Humphreys John Endicot and Simond Whetcomb their Heires and Assines and their Associats for ever All that part of New England in America aforesd which lyes and extends betweene a great River there comonly called Monomack ats Merrimack and a certaine other River there called Charles River being in a Bottom of a certaine Bay there comonly called Massachusetts ats Mattachuseetts ats Massatusetts Bay And alsoe all and singular those Lands and Hereditaments whatsoever lying within the space of Three English Miles on the South part of the said Charles River or of any and every part thereof And alsoe all and singular the Lands and Hereditaments whatsoever lying and being within the space of three English Miles to the Southward of the Southermost part of the said Bay called the Massachusetts ats Mattachusetts ats Massatusetts Bay And alsoe all those Lands and Hereditaments whatsoever which lye and be within the space of three English Miles to the Northward of the said River called Monomack ats Merrimack or to the Northward of any and every part thereof And all Lands and Hereditaments whatsoever lying within the Limitts aforesaid North and South in Latitude and in Breadth and in :length and longitude of and within all the Breadth aforesaid throughout the Main Lands there from the Atlantick and Western Sea and Ocean on the East parse to the South Sea on the West part and all Lands and Grounds Place and Places Soile Woods and Wood Grounds Havens Ports Rivers Waters Fishings and Hereditaments whatsoever lying within the said Bounds and Limitts and every parse and parcell thereof and alsoe all Islands lying in America aforesaid in the said Seas or either of them on the Western or Eastern Coasts or Parts of the said Tracts of Land by the said Indenture menconed to be Given and Granted Bargained Sold Enffeoffed Aliened and Confirmed or any of them And alsoe all Mines and Mineralls aswell Royall Mines of Gold and Silver as other Mines and Mineralls whatsoever in the said Lands and Premisses or any parse thereof and all Jurisdiccons Rights Royalties Liberties Freedoms Imunities Priviledges Franchises Preheminences and Comodities whatsoever which they the said Councill established at Plymouth in the County of Devon for the planting Ruleing Ordering and Governing of New England in America then had or might vse exercise or enjoy in or within the said Lands and Premises by the same Indenture menconed to be given granted bargained sold enffeoffed and confirmed in or within any part or parcell thereof To Have and to hold the said parse of New England in America which lyes and extends and is abutted as aforesaid and every parse and parcell thereof And all the *aid Islands Rivers Ports Havens Waters Fishings Mines Mineralls

Jurisdiccons Franchises Royalties Liberties Priviledges Comodities Hereditaments and premises whatsoever with the appurtenances vnto the said Sir Henry Roswell Sir John Young Thomas Southcott John Humphreys John Endicott and Simond Whetcomb their Heires and Assignes and their Associates for ever to the only proper and absolute vse and behoofe of the said Sir Henry Roswell Sir [John] Joung Thomas Southcott John Humphreys John Endicott and Simond Whetcomb their Heires and Assignes and their Associates for evermore To be holden of Our said Royall Grandfather Icing Charles the first his Heires and Successors as of his Mannor of East Greenwich in the County of Kent in free and Comon Soccage and not in Capite nor by Knights Service *Yielding and* paying therefore vnto Our said Royall Grandfather his Heires and Successors the fifth part of the Oar of Gold and Silver which should from time to time and at all times hereafter happen to be found gotten had & obteyned in any of the said Lands within the said Limitts or in or within any part thereof for and in satisfaccon of all manner of duties demands and services whatsoever to be done made or paid to Our said Royall Grandfather his Heires or Successors (as in and by the said recited Indenture may more at large appeare *And Whereas* Our said Royall Grandfather in and by his Letters Patents under the Greate Seale of England bearing date at Westminster the Fourth Day of March in the Fourth yeare of his Reigne for the consideracon therein menconed did grant and confirms vnto the said Sir Henry Roswell Sir John Young Thomas Southcott John Humphreys John Endicott and Simond Whetcomb and to their Associates after named (vizt) Sir Ralph Saltenstall Knt Isaac Johnson Samuell Aldersey John Ven Mathew Craddock George Harwood Increase Nowell Richard Berry Richard Bellingham Nathaniell Wright Samuell Vassall Theophilus Eaton Thomas Golfe Thomas Adams John Browne Samuell Browne Thomas Hutchins William Vassall William Pincheon and George Foxcroft their Heires and Assignes All the said part of New England in America lying and extending betweene the bounds and limitts in the said Indenture expressed and all Lands and Grounds Place and Places Soiles Woods and Wood Grounds Havens Ports Rivers Waters Mines Mineralls Jurisdiccons Rights Royalties Liberties Freedomes Imunities Priviledges Franchises Preheminences and Hereditaments whatsoever bargained sold enffeoffed and Confirmed or menconed or intended to be given granted bargained sold enfleoiled aliened and confirmed to the them the said Sir Henry Roswell Sir John Young Thomas Southcott John Humphreys John Endicott and Simond Whetcomb their Heires and Assignes and to their Associates for ever by the said recited Indentu[r]e *To Have* and to hold the said part of New England in America and other the Premisses thereby menconed to be granted and confirmed and every parse and parcell thereof with the appurtenances to the said Sir Henry Roswell Sir John Young Sir Richard Saltenstall Thomas Southcott John Humphreys John Endicott Simond Whetcomb Isaac Johnson Samuell Aldersey John Ven Mathew Craddock George Harwood Increase Nowell Richard Perry Richard Bellingham Nathaniel Wright Samuell Vassall Theophilus Eaton Thomas Golfe Thomas Adams John Browne Samuell Browne Thomas Hutchins William Vassall William Pincheon and

George Foxcroft their Heires and Assignes for ever to their own proper and absolute vse and behoofe for evermore *To* be holden of Our said Royall Grandfather his Heires and Successors as of his Mannor of East Greenwich aforesaid in free and comon Soccage and not in Capite nor by Knights Service and alsoe yielding and paying therefore to Our said Royall Grandfather his Heires and Successors the fifth part only of all the Oar of Gold and Silver which from time to time and at all times after should be there gotten had or obteyned for all Services Exaccons and Demands whatsoever according to the tenour and Reservacon in the said recited Indenture expressed *And further* Our said Royall Grandfather by the said Letters Patents did Give and Grant vnto the said Sir Henry Roswell Sir John Young Sir Richard Saltenstall Thomas Southcott John Humphreys John Endicott Simond Whetcomb Isaac Johnson Samuell Aldersey John Ven Mathew Craddock George Harwood Encrease Nowell Richard Perrey Richard Bellingham Nathaniel Wright Samuell Vassall Theophilus Eaton Thomas Golfe Thomas Adams John Browne SamueI1 Browne Thomas Hut[c]hins William Vassall William Pincheon and George Foxcroft their Heires and Assignes All that part of New England in America which lyes and extends betweene a Greate River called Monomack als Merrimack River and a certaine other River there called Charles River being in the Bottom of a certaine Bay there comonly called Massachusetts als Mattachusetts als Massatusetts Bay and alsoe all and singular those Lands and Hereditaments whatsoever lying within the space of Three English Miles on the South part of the said River called Charles River or of any or every part thereof and alsoe all and singuler the Lands and Hereditaments whatsoever lying and being within the space of Three English Miles to the Southward of the Southermost part of the said Bay called Massachusetts als Mattachusetts als Massatusetts Bay And alsoe all those Lands and Hereditaments whatsoever which lye and bee within the space of Three English Miles to the Northward of the said River called Monotnack ads Merrimack or to the Northward of any and every parse thereof And all Lands and Hereditaments whatsoever 1yeing within the limitts aforesaid North and South in Latitude and 1n Breadth and in length and Longitude of and within all the Breadth aforesaid throughout the Main Lands there from the Atlantick or Western Sea and Ocean on the East parse to the South Sea on the West parse And all Lands Grounds Place and Places Soils Wood and Wood Lands Havens Ports Rivers Waters and Hereditaments whatsoever lying within the said bounds and limitts and every part and parcell thereof And alsoe all Islands in America aforesaid in the said Seas or either of them on the Western or Eastern Coasts or parses of the said Tracts of Lands thereby menconed to be given and granted or any of them And all Mines and Mineralls as well Royall Mines of Gold and Silver as other Mines and Mineralls whatsoever in the said Lands and premisses or any parse thereof and free Libertie of Fishing in or within any of the Rivers and Waters within the bounds and 1imitts aforesaid and the Seas thereunto adjoyning and of all Fishes Royall Fishes Whales Balene Sturgeon and o.ther Fishes of what kind or nature soever that should at any time thereafter be taken in or within the said Seas or Waters or

any of them by the said Sir Henry Roswell Sir John Young Sir Richard Saltenstall Thomas Southcroft John Humphryes John Endicott Simond Whetcomb Isaac Johnson Samuell Aldersey John Ven Mathew Craddock George Harwood Increase Nowell Richard Perrey Richard Bellingham Nathaniel Wright Samuell Vassall Theophilus Eaton Thomas Golfe Thomas Adams John Browne Samuell Browne Thomas Hutchins William Vassall William Pincheon and George Foxcroft their Heires or Assignes or by any other person or persons whatsoever there Inhabiting by them or any of them to be appointed to Fish therein *Provided* alwayes that if the said Lands Islands or any the premisses before menconed and by the said Letters Patents last menconed intended and meant to be granted were at the time of granting of the said former Letters Patents dated the third day of November in the Eighteenth yeare of the Reigne of his late Majesty King James the First actually possessed or inhabited by any other Christian Prince or State or were within the bounds Limitts or Territories of the said Southern Colony then before granted by the said King to be planted by divers of his Loveing Subjects in the South parts of America That then the said Grant of Our said Royall Grandfather should not extend to any such parts or parcells thereof soe formerly inhabited or lying within the bounds of the Southern Plantacon as aforesaid but as to those parts or parcells soe possessed or inhabited by any such Christian Prince or State or being within the boundaries afororesaid should be utterly void *To Have* and to hold possasse and enjoy the said parts of New England in America which lye extend and are abutted as aforesaid and every part and parcell thereof and all the Islands Rivers Ports Havens Waters Fishings Fishes Mines Mineralls Jurisdicons Franchises Royalties Riverties Priviledges Comodities and premisses whatsoever with the Appurtenances vnto the said Sir Henry Roswell Sir John Young Sir Richard Saltenstall Thomas Southcott John Humphreys John Endicott Simond Whetcomb Isaac Johnson Samuell Aldersey John Ven Mathew Craddock George Harwood Increase Nowell Richard Perrey Richard Bellingham Nathaniell Wright Samuell Vassall Theophilus Eaton Thomas Golfe Thomas Adams John Browne Samuell Browne Thomas Hutchins William Vassall William Pincheon and George Foxcroft their Heires and Assignes for ever To the only proper and absolute vse and behoofe of the said Sir Henry Rosw.ell Sir John Young Sir Richard Saltenstall Thomas Southcott John Humphryes John Endicott Simond Whetcomb Isaac Johnson Samuell Aldersey John Ven Mathew Haddock George Harwood Increase Nowell Richard Perry Richard Bellingham Nathaniell Wright SamuelI Vassall Theophilus Eaton Thomas Golfe Thomas Adams John Browne Samuell Browne Thomas Hutchins William Vassall William Pincheon and George Foxcroft their Heires and Assignes for evermore To be holden of Our said Royall Grandfather his Heires and Successors as of his Mannor of East Greenwich in the County of Kent within the Realme of England in free and Comon Soccage and not in Capite nor by Knights Service And alsoe yeilding and paying therefore to Our said Royall Grandfather his Heires and Successors the Fifth part only of all the Oar of Gold and Silver which from time to time and at all times thereafter should be gotten had and

obteyned for all services Exacons and demands whatsoever *Provided*, alwayes and his Majesties expresse Will and meaning was that only one Fifth parse of all the Gold and Silver Oar above menconed in the whole and no more should be answered reserved and payable vnto Our said Royall Grandfather his Heires and Successors by colour or vertue of the said last menconed Letters Patents the double reservacons or recitalls aforesaid or any thing therein conteyned notwithstanding And to the end that the affaires and buisnesse which from time to time should happen and arise concerning the said Lands and the Plantacons of the same might be the better mannaged and ordered and for the good Government thereof Our said Royall Grandfather King Charles the First did by his said Letters Patents Create and make the said Sir Henry Roswell Sir John Young Sir Richard Saltenstall Thomas Southcott John Humphreys John Endicott Symond Whetcomb Isaac Johnson Samuell Aldersey John Ven Mathew Caddock George Harwood Increase Newell Richard Perry Richard Bellingham Nathaniell Wright Samuell Vassall and Theophilus Eaton Thomas Golfe Thomas Adams John Browne Samuell Browne Thomas Hutchins William Vassal William Pincheon and George Foxcroft and all such others as should thereafter be admitted and made free of the Company and Society therein after menconed one Body Politique and Corporate in fact and name by the Name of the Governour and Company of the Massachusetts Bay in New England and did grant onto them and their Successors divers powers Liberties and triviledges as in and by the said Letters Patents may more fully and at large appears *And whereas* the said Governour and Company of the Massachusetts Bay in New England by vertue of the said Letters Patents did settle a Collony of the English in the said parts of America and divers good Subjects of this Kingdome incouraged and invited by the said Letters Patents did Transport themselves and their Edects into the same whereby the said Plantacon did become very populous and divers Counties Townes and Places were created erected made setforth or designed within the said parts of America by the said Governour and Company for the time being *And Whereas* in the Terme of the holy Trinity in the Thirty Sixth yeare of the Reigne of Our dearest Vncle King Charles the Second a Judgment was given in Our Court of Chancery then sitting at Westminster vpon a Writt of Scire Facias brought and prosecuted in the said Court against the Governour and Company of the Massachusetts Bay in New England that the said Letters Patents of Our said Royall Grandfather King Charles the First bearing date at Westminster the Fourth day of March in the Fourth yeare of his Reigne made and granted to the said Governour and Company of the Massachusetts Bay in New F,ngland and the Enrollment of the same should be cancelled vacated and annihilated and should be brought into the said Court to be cancelled (as in and by the said Judgment remaining vpon Record in the said Court doth more at large appease) *And whereas* severall persons employed as Agents in behalfe of Our said Collony of the Massachusetts Bay in New England have made their humble application vnto Vs that Wee would be graciously pleased by Our Royall Charter to Incorporate Our Subjects in Our said Collony and to grant and confirms Into them such

powers priviledges and Franchises as [in] Our Royall Wisdome should be thought most conduceing to Our Interest and Service and to the Welfare and happy State of Our Subjects in New England and Wee being graciously pleased to gratifie Our said Subjects And alsoe to the end.Our good Subjects within Our Collony of New Plymouth in New England aforesaid may be brought under such a forme of Government as may put them in a better Condicon of defence and considering aswell the granting vnto them as onto Our Subejcts in the said Collony of the Massachusetts Bay Our Royall Charter with reasonable Powers and Priviledges will much tend not only to the safety but to the Flourishing estate of Our Subjects in the said parts of New England and alsoe to the advanceing of the ends for which the said Plantancons were at first encouraged of Our especiall Grace certaine knowledge and meer Mocon have willed and ordeyned and Wee doe by these presents for Vs Our Heires and Successors Will and Ordeyne Chat the Territories and Collnyes camonly called or known by the Names of the Collony of the Massachusetts Bay and Collony of New Plymouth the province of Main the Territorie called Accadia or Nova Scotia and all that Tract of Land lying betweene the said Territoritories of Nova Scotia and the said province of Main be Erected ignited and Incorporated And Wee doe by these presents Vnite Erect and Incorporate the same into one reall province by the Name of Our province of the Massachusetts Bay in New England And of Our especial Grace certaine knowledge and meer Mocon Wee have given and granted and by these presents for Vs Our Heires and Successors doe give and grant onto Our good Subjects the Inhabitants of Our said province or Territory of the Massachusetts Bay and their Successors all that parse of New England in America lying and extending from the greate River comonly called Monomack als Merrimack on the Northpart and from three Miles Northward of the said River to the Atlantick or Western Sea or Ocean on the South part And all the Lands and Hereditaments whatsoever lying within the limits aforesaid and extending as fare as the Outermost Points or Promontories of Land called Cape Cod and Cape Mallabar North and South and in Latitude Breadth and in Length and Longitude of and within all the Breadth and Compass aforesaid throughout the Main Land there from the said Atlantick or Western Sea and Ocean on the East parse towards the South Sea or Westward as far as Our Collonyes of Rhode Island Connecticutt and the Marragansett Countrey all alsoe all that part or porcon of Main Land beginning at the Entrance of Pescata way Harbour and see to pass vpp the same into the River of Newickewannock and through the same into the furthest head thereof and from thence Northwestward till One Hundred and Twenty Miles be finished and from Piscata way Harbour mouth aforesaid NorthEastward along the Sea Coast to Sagadehock and from the Period of One Hundred and Twenty Miles aforesaid to crosse over Land to the One Hundred and Twenty Miles before reckoned vp into the Land from Piscataway Harbour through Newickawannock River and alsoe the North halfe of the Isles and Shoales together with the Isles of Cappawock and Nantukett near Cape Cod aforesaid and also [all (7)] Lands and Hereditaments lying and being in the Countrey and Territory

comonly called Accadia or Nova Scotia And all those Lands and Hereditaments lying and extending betweene the said Countrey or Territory of Nova Scotia and the said River of Sagadahock or any port thereof And all Lands Grounds Places Soiles Woods and Wood grounds Havens Ports Rivers Waters and other Hereditaments and premisses whatsoever lying within the said bounds and limitts aforesaid and every part and.parcell thereof and alsoe all Islands and Isletts lying within tenn Leagues directly opposite to the Main Land within the said bounds and all Mines and Mineralls aswell Royall Mines of Gold and Silver as other Mines and Mineralls whatsoever in the said Lands and premisses or any parse thereof *To Have* and to hold the said Territories Tracts Countreys Lands Hereditaments and all and singular other the premisses with their and every of their Appurtences to Our said Subjects the Inhabitants of Our said province of the Massachusetts Bay in New England and their Successors to their only proper vse and behoofe for evermore *To* be holden of Vs Our Heires and Successors as of Our Mannor of East Greenwich in the County of Kent by Fealty only in free and Comon Soccage *yielding* and paying therefore yearly to Vs Our Heires and Successors the Fifth part of all Gold and Silver Oar and pretious Stones which shall from time to time and at all times hereafter happen to be found gotten had and obtevned in any of the said Lands and premisses or within any part thereof *Provided* neverthelesse and Wee doe for Vs Our Heires and Successors Grant and ordeyne that all and every such Lands Tenements and Hereditaments and all other estates which any person or persons or Bodyes-Politique or Corporate Townes Villages Colledges or Schooles doe hold and enjoy or ought to hold and enjoy within the bounds aforesaid by or vnder any Grant or estate duely made or granted by any Generall Court formerly held or by vertue of the Letters Patents herein before recited or by any other lawfull Right or Title whatsoever shall be by such person and persons Bodyes Politique and Corporate Townes Villages Colledges or Schoolss their respective Heires Successors and Assignes for ever hereafter held and enjoyed according to the purport and Intent of such respective Grant vnder and Subject neverthelesse to the Rents and Services thereby reserved or made payable any matter or thing whatsoever to the contrary notwithstanding And *Provided* alsoe that nothing herein conteyned shall extend or be vnderstood or taken to impeach or prejudice any right title Interest or demand which Samuell Allen of London Merchant claiming from and vnder John Mason Esqr deceased or any other person or persons hath or have or claimeth to have hold or enjoy of in to or out of any part or parts of the premisses scituate within the limitts above menconed But that the said Samuel Allen and all and every such person and persons may and shall have hold and enjoy the same in such manner (and no other then) as if these presents had not been had or made It being Our further Will and Pleasure that no Grants or Conveyances of any Lands Tenements or Hereditaments to any Townes Colledges Schooles of Learning or to any private person or persons shall be judged or taken to be avoided or prejudiced for or by reason of any want or defect of Form but that the same stand and remaine in force and be mainteyned adjudged and have effect in the

same manner as the same should or ought before the time of the said recited Judgment according to the Laws and Rules then and there vsually practiced and allowed And Wee doe further for Vs Our Heires and Successors Will Establish and ordeyne that from henceforth for ever there shall be one Goverour One Leivtent or Deputy Governour and One Secretary of Our said province or Territory to be from time to time appointed and Commissionated by Vs Our Heires and Successors and Eight and Twenty Assistants or Councillors to be advising and assisting to the Governour of Our said province or Territory for the time being as by these presents is hereafter directed and appointed which said Councillors or Assistants are to be Constituted Elected and Chosen in such forme and manner as hereafter in these presents is expressed And for the better Execucon of Our Royall Pleasure and Grant in this behalfe Wee doe by these presents for Vs Our Heires and Successors Nominate Ordeyne make and Constitute Our Trusty and Welbeloved Simon Broadstreet John Richards Nathaniel Saltenstall Wait Winthrop John Phillipps James Russell Samuell Sewall Samuel Appleton Barthilomew Gedney John Hawthorn Elisha Hutchinson Robert Pike Jonathan Curwin John Jolliffe Adam Winthrop Richard Middlecot John Foster Peter Serjeant Joseph Lynd Samuell Hayman Stephen Mason Thomas Hinckley William Bradford John Walley Barnabas Lothrop Job Alcott Samuell Daniell and Silvanus Davis Esquires the first and present Councillors or Assistants of Our said province to continue in their said respective Offices or Trusts of Councillors or Assistants vntill the last Wednesday in May which shall be in the yeare of Our Lord One Thousand Six Hundred Ninety and Three and vntill other Councillors or Ass~stants shall be chosen and appointed in their stead in such manner as in these presents is expressed And Wee doe further by these presents Constitute and appoint Our Trusty and welbeloved Isaac Addington Esquier to be Our first and present Secretary of Our said province during Our Pleasure *And 0ur* Will and Pleasure is that the Governour of Our said province from the time being shall have Authority from time to time at his discretion to assemble and call together the Councillors or Assistants of Our said province for the time being and that the said Governour with the said Assistants or Councillors or Seaven of them at the least shall and may from time to time hold and keep a Councill for the ordering and directing the AfEaires of Our said province *And further* Wee Will and by these presents for Vs Our Heires and Successors doe ordeyne and Grant that there shall and may be convened held and kept by the Governour for the time being vpon every last Wednesday in the Moneth of May every yeare for ever and at all such other times as the Governour of Our said province shall think fitt and appoint a great and Generall Court of Assembly Which said Great and Generall Court of Assembly shall consist of the Governour and Councill or Assistants for the time being and of such-Freeholders of Our said province or Territory as shall be from time to time elected or deputed by the Major parse of the Freeholders and other Inhabitants of the respective Townes or Places who shall be present at such Eleccons Each of the said Townes and Places being hereby impowered to Elect and Depute Two Persons and noe more to serve

for and represent them respectively in the said Great and Generall Court or Assembly To which Great and Generall Court or Assembly to be held as aforesaid Wee doe hereby for Vs Our Heires and Successors give and grant full power and authority from time to time to direct appoint and declare what Number each County Towne and Place shall Elect and Depute to serve for and represent them respectively in the said Great and Generall Court or Assembly *Provided* alwayes that noe Freeholder or other Person shall have a Vote in the Eleccon of Members to serve in any Greate and Generall Court or Assembly to be held as aforesaid who at the time of such Eleccon shall not have an estate of Freehold in Land within Our said province or Territory to the value of Forty Shillings per Annu at the least or other estate to the value of Forty pounds Sterl' And that every Person who shall be soe elected shall before he silt or Act in the said Great and Generall Court or Assembly take the Oaths menconed in an Act of Parliament made in the first yeare of Our Reigne Entituled an Act for abrogateing of the Oaths of Allegiance and Supremacy and appointing other Oaths and thereby appointed to be taken instead of the Oaths of Allegiance and Supremacy and shall make Repeat and Subscribe the Declaracon menconed in the said Act before the Governour and Lievtent or Deputy Governour or any two of the Assistants for the time being who shall be therevnto authorized and Appointed by Our said Governour and that the Governour for the time being shall have full power and Authority from time to time as he shall Judge necessary to adjourns Prorogue and dissolve all Great and Generall Courts or Assemblyes met and convened as aforesaid And Our Will and Pleasure is and Wee doe hereby for Vs Our Heires and Successors Grant Establish and Ordeyne that yearly once in every yeare for ever hereafter the aforesaid Number of Eight and Twenty Councillors or Assistants shall be by the Generall Court or Assembly newly chosen that is to say Eighteen at least of the Inhabitants of or Proprietors of Lands within the Territory formerly called the Collony of the Massachusetts Bay and four at the least of the Inhabitants of or Proprietors of Lands within the Territory formerly called New Plymouth and three at the least of the Inhabitants of or Proprietors of Land within the Territory formerly called the province of Main and one at the least of the Inhabitants of or Proprietors of Land within the Territory lying between the River of Sagadahoc and Nova Scotia And that the said Councillors or Assistants or any of them shall or may at any time hereafter be removed or displaced from their respective Places or Trust of Councillors or Assistants by any Great or Generall Court or Assembly And that if any of the said Councillors or Assistants shall happen to dye or be removed as aforesaid before the Generall day of Eleccon That then and in every such Case the Great and Generall Court or Assembly at their first sitting may proceed to a New Eleccon of one or more Councillors or Assistants in the roome or place of such Councillors or Assistants soe dying or removed And Thee doe further Grant and Ordeyne that it shall and may be lawfull for the said Governour with the advice and consent of the Councill or Assistants from time to time to nominate and appoint Judges Commissioners of Oyer and Terminer Sheriffs Provosts Marshalls Justices of the Peace and other Officers to Our

Councill and Courts of Justice belonging *Provided* alwayes that noe such Nominacon or Appointment of Officers be made without notice first given or sumons Issued out seaven dayes before such Nominacon or Appointment onto such of the said Councillors or Assistants as shall be at that time resideing within Our said province *And Our* Will and Pleasure is that the Governour and Leivtent or Deputy Governour and Councillors or Assistants for the time being and all other Officers to be appointed or Chosen as aforesaid shall before the Vndertaking the Execucon of their Offices and Places respectively take their severall and respectiveOaths for the due and faithfull performance of their duties in their severall and respective Offices and Places and alsoe the Oaths appointed by the said Act of Parliament made in the first yeare of Our Reigne to be taken instead of the Oaths of Allegiance and Supremacy and shall make repeate and subscribe the Declaracon menconed in the said Act before such Person or Persons as are by these presents herein after appointed (that is to say) The Governour of Our said province or Territory for the time being shall take the said Oaths and make repeate and subscribe the said Decleracon before the Leivtent or Deputy Governour or in his absence before any two or more of the said Persons hereby Nominated and appointed the present Councillors or Assistants of Our said province or Territory to whom Wee doe by these presents give full power and Authority to give and administer the same to Our said Governour accordingly and after Our said Governour shall be sworn and shall have subscribed the said Declaracon that then Our Leivtent or Deputy Governour for the time being and the Councillors or Assistants before by these presents Nominated and appointed shall take the said Oaths and make repeat and subscribe the said Declaracon before Our said Governour and that every such person or persons as shall (at any time of the Annuall Eleccons or otherwise vpon death or removeall) be appointed to be the New Councillors or Assistants and all other Officers to bee hereafter chosen from time to time shall take the Oaths to their respective Offices and places belonging and alsoe the said Oaths appointed by the said Act of Parliament to be taken instead of the Oaths of Allegiance and Supremacy and shall make repeate and subscribe the declaracon menconed in the said Act before the Governour or Leivtent or Deputy Governour or any two or more Councillors or Assistants or such other Person or Persons as shall be appointed thereunto by the Governour for the time being to whom Wee doe therefore by these presents give full power and authority from time to time to give and administer the same respectively according to Our true meaning herein before declared without any Comission or further Warrant to bee had and obteyned from vs Our Heires and Successors in that behalfe And Our Will and Pleasure is and Wee doe hereby require and Comand that all and every person and persons hereafter by Vs Our Heires and Successors nominated and appointed to the respective Offices of Governour or I,eivt or Deputy Governour and Secretary of Our said province or Territory (which said Governour or Leivt or Deputy Governour and Secretary of Our said province or Territory for the time being Wee doe hereby reserve full power and Authority to Vs Our Heires and Successors to Nominate and appoint

accordingly, shall before he or they be admitted to the Execucon of their respective Offices take as well the Oath for the due and faithfull performance of the said Offices respectively as alsoe the Oaths appointed by the said Act of Parliament made in the said First yeare of Our Reigne to be taken instead of the said Oaths of Allegiance and Supremacy and shall alsoe make repeate and subscribe the Declaracon appointed by the said Act in such manner and before such persons as aforesaid *And further* Our Will and Pleasure is and Wee doe hereby for Vs Our Heires and Successors Grant Establish and Ordaine That all and every of the Subjects of Vs Our Heires and Successors which shall goe to and Inhabit within Our said province and Territory and every of their Children which shall happen to be born there or on the Seas in goeing thither or returning from thence shall have and enjoy all Libertyes and Immunities of Free and naturall Subjects within any of the Dominions of Vs Our Heires and Successors to all Intents Construccons and purposes whatsoever as if they and every of them were borne within this *Our Realme* of England and for the greater Ease and Encouragement of Our Loveing Subjects Inhabiting our said province or Territory of the Massachusetts Bay and of such as shall come to Inhabit there Wee doe by these presents for vs Our heires and Successors Grant Establish and Ordaine that for ever hereafter there shall be a liberty of Conscience allowed in the Worshipp of God to all Christians (Except Papists) Inhabiting or which shall Inhabit or be Resident within our said province or Territory And Wee doe hereby Grant and Ordaine that the Gouernor or leivtent or Deputy Gouernor of our said province or Territory for the time being or either of them or any two or more of the Councill or Assistants for the time being as shall be "hereunto appointed by the said Gouernor shall and may at all times and from time to time hereafter have full Power and Authority to Administer and give the Oathes appointed by the said Act of Parliament made in the first yeare of Our Reigne to be taken instead of the Oathes of Allegiance and Supremacy to all and every person and persons which are now Inhabiting or resideing within our said province or Territory or which shall at any time or times hereafter goe or passe thither And wee doe of our further Grace certaine knowledge and meer mocon Grant Establish and Ordaine for Vs our heires and Successors that the great and Generall Court or Assembly of our said province or Territory for the time being Convened as aforesaid shall for ever have full Power and Authority to Erect and, Constitute Judicatories and Courts of Record or other Courts to be held in the name of Vs Our heires and successors for the Hearing Trying and Determining of all manner of Crimes Odences Pleas Processes Plaints Accons Matters Causes and things whatsoever ariseing or happening within Our said province or Territory or between persons Inhabiting or resideing there whether the same be Criminall or Civill and whether the said Crimes be Capitall or not Capitall and whether the said Pleas be Reall personall or mixt and for the awarding and makeing out of Execution thereupon To which Courts and Judicatories wee doe hereby for vs our heirs and Successors Give and Grant full power and Authority from time to time to Administer oathes for the better Discovery of Truth in any matter in Controversy

or depending before them *And* wee doe for vs Our Heires and Successors Grant Establish and Ordaine that the Gouernor of our said province or Territory for the time being with the Councill or Assistants may doe execute or performe all that is necessary for the Probate of Wills and Granting of Administracons for touching or concerning any Interest or Estate which any person or persons shall have within our said province or Territory *And whereas* Wee judge it necessary that all our Subjects shouId have liberty to Appeale to vs our heires and Successors in Cases that may deserve the same Wee doe by these presents Ordaine that incase either party shall not rest satisfied with the Judgement or Sentence of any Judicatories or Courts within our said province or Territory in any Personall Accon wherein the matter in difference doth exceed the value of three hundred Pounds Sterling that then he or they may appeale to vs Our heires and Successors in our or their Privy Councill Provided such Appeale be made within Fourteen dayes after ye Sentence or Judgement given and that before such Appeale be allowed Security be given by the party or parties appealing in the value of the matter in Difference to pay or Answer the Debt or Damages for the which Judgement or Sentence is given With such Costs and Damages as shall be Awarded by vs Our Heires or Successors incase the Judgement or Sentence be affirmed *And Provided* alsoe that no Execution shall be stayd or suspended by reason of such Appeale vnto vs our Heires and Successors in our or their Privy Councill soe as the party Sueing or takeing out Execution doe in the like manner give Security to the value of the matter in difference to make Restitucion in Case the said Judgement or Sentence be reversed or annul'd upon the said Appeale *And* we doe further for vs our Heires and Successors Give and Grant to the said Governor and the great and Generall Court or Assembly of our said province or Territory for the time being full power and Authority from time to time to make ordaine and establish all manner of wholsome and reasonable Orders Laws Statutes and Ordinances Directions and Instructions either with penalties or without (soe as the same be not repugnant or contrary to the Lawes of this our Realme of England) as they shall Judge to be for the-good and welfare of our said province or Territory And for the Gouernment and Ordering thereof and of the People Inhabiting or who shall Inhabit the same and for the necessary support and Defence of the Government thereof *And* wee doe for vs our Heires and Successors Giue and grant that the said Generall Court or Assembly shall have full power and Authority to name and settle annually all Civill Officers within the said province such Officers Excepted the Election and Constitution of whome wee have by these presents reserved to vs Our Heires and Successors or to the Governor of our said province for the time being and to Sett forth the severall Duties Powers and Lymitts of every such Officer to be appointed by the said Generall Court or Assembly and the formes of such Oathes not repugnant to the Lawes and Statutes of this, our Realme of England as shall be respectiuely Administered vnto them for the Execution of their severall Offices and places And alsoe to impose Fines mulcts Imprisonments and other Punishments And to impose and leavy proportionable and reasonable Assessments Rates and Taxes vpon the

Estates and Persons of all and every the Proprietors and Inhabitants of our said province or Territory to be Issued and disposed of by Warrant vnder the hand of the Governor of our said province for the time being with the advice and Consent of the Councill for Our service in the necessary defence and support of our Government of our said province or Territory and the Protection and Preservation of the Inhabitants there according to such Acts as are or shall be in force within our said province and to dispose of matters and things whereby our Subjects inhabitants of our said province may be Religiously peaceably and Civilly Governed Protected and Defended soe as their good life and orderly Conversation may win the Indians Natives of the Country to the knowledge and obedience of the onely true God and Saviour of Mankinde and the Christian Faith which his Royall Majestie our Royall Grandfather king Charles the first in his said Letters Patents declared was his Royall Intentions And the Adventurers free Possession to be the Princepall end of the said Plantation And for the better secureing and maintaining Liberty of Conscience hereby granted to all persons at any time being and resideing within our said province or Territory as aforesaid *Willing* Comanding and Requireing and by these presents for vs Our heires and Successors Ordaining and appointing that all such Orders Lawes Statutes and Ordinances Instructions and Directions as shall be soe made and published vnder our Seale of our said province or Territory shall be Carefully and duely observed kept and performed and put in Execution according to the true intent and meaning of these presents *Provided* alwaies and Wee doe by these presents for vs Our Heires and Successors Establish and Ordaine that in the frameing and passing of all such Orders Laws Statutes and Ordinances and in all Elections and Acts of Government whatsoever to be passed made or done by the said Generall Court or Assembly or in Councill the Governor of our said province or Territory of the Massachusetts Bay in New England for the time being shall have the Negative voice and that without his consent or Approbation signified and declared in Writeing no such Orders Laws Statutes Ordinances Elections or other Acts of Government whatsoever soe to be made passed or done by the said Generall Assembly or in Councill shall be of any Force effect or validity anything herein contained to the contrary in anywise notwithstanding *And* wee doe for vs Our Heires and Successors Establish and Ordaine that the said Orders Laws Statutes and Ordinances be by the first opportunity after the makeing thereof sent or Transmitted vnto vs Our Heires and Successors under the Publique Seale to be appointed by vs for Our or their approbation or Disallowance And that incase all or any of them shall at any time within the space of three years next after the same shall have presented to vs our Heires and Successors in Our or their Privy Councill be disallowed and rejected and soe signified by vs Our Heires and Successors under our or their Signe Manuall and Signett or by or in our or their Privy Councill vnto the Governor for the time being then such and soe many of them as shall be soe disallowed and riected shall thenceforth cease and determine and become vtterly void and of none effect *Provided* alwais that incase Wee our Heires or Successors shall not within the Terme of Three Yeares after the presenting

of such Orders Lawes Statutes or Ordinances as aforesaid signifie our or their Disallowance of the same Then the said orders Lawes Statutes or Ordinances shall be and continue in full force and effect according to the true Intent and meaneing of the same vntill the Expiracon thereof or that the same shall be Repealed by the Generall Assembly of our said province for the time being *Provided* alsoe that it shall and may be Lawfull for the said Governor and Generall Assembly to make or passe any Grant of Lands lying within the Bounds of the Colonys formerly called the Collonys of the Massachusetts Bay and New Plymouth and province of Main in such manner as heretofore they might have done by vertue of any former Charter or Letters Patents which grants of lands within the Bounds aforesaid Wee doe hereby Will and ordaine to be and continue for ever of full force and effect without our further Approbation or Consent And soe as Neverthelesse and it is Our Royall Will and Pleasure That noe Grant or Grants of any Lands lying or extending from the River of Sagadehock to the Gulph of St: Lawrence and Canada Rivers and to the Main Sea Northward and Eastward to be made or past by the Governor and Generall Assembly of our said province be of any force validity or Effect vntill Wee Our Heires and Successors shall have Signified Our or their Approbacon of the same *And* Wee doe by these presents for vs Our Heires and Successors Grant Establish and Ordaine that the Governor of our said province or Territory for the time being shall have full Power by himselfe or by any Cheif Comander or other Officer or Officers to be appointed by him from time to time to traine instruct Exercise and Governe the Militia there and for the speciall Denfence and Safety of Our said province or Territory to assemble in Martiall Array and put in Warlike posture the Inhabitants of Our said province or Territory and to lead and Conduct them and with them to Encounter Expulse Repell Resist and pursue by force of Armes aswell by Sea as by Land within or without the limitts of Our said province or Territory and alsoe to kill slay destroy and Conquer by all fitting wayes Enterprises and meanes whatsoever all and every such Person and Persons as shall at any time hereafter Attempt or Enterprize the destruccon Invasion Detriment or Annoyance of Our said province or Territory and to vse and exercise the Law Martiall in time of actuall Warr Invasion or Rebellion as occasion shall necessarily require and alsoe from time to time to Erect Forts and to fortifie any place or Places within Our said province or Territory and the same to furnish with all necessary Amunicon Provisions and Stores of Warr for Odence or Defence and to comitt from time to time the Custody and Government of the same to such Person or Persons as to him shall seem meet And the said Forts and Fortificacons to demolish at his Pleasure and to take and surprise by all waies and meanes whatsoever all and every such Person or Persons with their Shipps Arms Ammuncon and other goods as shall in a hostile manner Invade or attempt the Invading Conquering or Annoying of Our said province or Territory *Provided* alwayes and Wee doe by these presents for Vs Our Heires and Successors Grant Establish and Ordeyne That the said Governour shall not at any time hereafter by vertue of any power hereby granted or hereafter to be granted to him Transport any of the Inhabitants of Our

said province or Territory or oblige them to march out of the Limitts of the same without their Free and voluntary consent or the Consent of the Great and Generall Court or Assembly or Our said province or Territory nor grant Comissions for exerciseing the Law Martiall vpon any the Inhabitants of Our said province or Territory without the Advice and Consent of the Councill or Assistants of the same *Provided* in like manner and Wee doe by these presents for Vs Our Heires and Successors Constitute and Ordeyne that when and as often as the Governour of Our said province for the time being shall happen to dye or be displaced by Vs Our Heires or Successors or be absent from his Government That then and in any of the said Cases the Leivtenant or Deputy Governour of Our said province for the time being shall have full power and authority to doe and excoute all and every such Acts Matters and things which Our Governour of Our said province for the time being might or could by vertue of these Our Letter Patents lawfully doe or execute if he were personally present vntill the returne of the Governour soe absent or Arrivall or Constitucon of such other Governour as shall or may be appointed by Vs Our Heires or Sueeessors in his stead and that when and as often as the Governour and Leivtenant or Deputy Governour of Our said province or Territory for the time being shall happen to dye or be displaced by Vs Our Heires or Successors or be absent from Our said province and that there shall be no person within the said province Comissionated by Vs Our Heires or Successors to be Governour within the same Then and in every of the said cases the Councill or Assistants of Our said province shall have full power and Authority and Wee doe hereby give and grant vnto the said Councill or Assistants of Our said province for the time being or the Major parse of them full power and Authority to doe and execute all and every such Acts matters and things which the said Governour or Leivtenant of Deputy Governour of Our said province or Territory for the time being might or could lawfully doe or exercise if they or either of them were personally present vntill the returne of the Governour Leivtenant or Deputy Governour soe absent or Arrivall or Constitucon of such other Governour or Leivtenant or Deputy Governour as shall or mav be appointed by Vs Our Heires or Successors from time to time *Provided* alwaies and it is hereby declared that nothing herein shall extend or be taken to Erect or grant or allow the Exercise of any Admirall Court Jurisdicon Power or Authority but that the same shall be and is hereby reserved to Vs and Our Successors and shall from time to time be Erected Granted and exercised by vertue of Commissions to be yssued vnder the Great Seale of England or vnder the Seale of the High Admirall or the Comissioners for executing the Office of High Admirall of England *And further* Our expresse Will and Pleasure is And Wee doe by these present for Vs Our Heires and Successors Ordaine and appoint that these Our Letters Patents shall not in any manner Enure or be taken to abridge bar or hinder any of Our loveing Subjects whatsoever to vse and exercise the Trade of Fishing vpon the Coasts of New England but that they and every of them shall have full and free power and Libertie to continue and vse their said Trade of Fishing vpon the said Coasts in any of the seas therevnto adjoyning or any Arms of the said Seas or

Salt Water Rivers where they have been wont to fish and to build and set vpon the Lands within Our said province or Collony lying west and not then possesst by perticuler Proprietors such Wharfes Stages and Workhouses as shall be necessary for the salting drying keeping and packing of their Fish to be taken or gotten vpon that Coast And to Cutt down and take such Trees and other Materialls there growing or being or growing vpon any parts or places lying west and not then in possession Of particular proprietors as shall be needfull for that purpose and for all other necessary easments helps and advantages concerning the Trade of Fishing there in such manner and forme as they have been heretofore at any time accustomed to doe without maketng any Wilfull Wast or Spoile any thing in these presents conteyned to the contrary notwithstanding *And lastly* for the better provideing and furnishing of Masts for Our Royall Navy Wee doe hereby reserve to Vs Our Heires and Successors all Trees of the Diameter of Twenty Four Inches and upwards of Twelve Inches from the ground growing vpon any soyle or Tract of Land within Our said province or Territory not heretofore granted to any private persons And Wee doe restrains and forbid all persons whatsoever from felling cutting or destroying any such Trees without the Royall Lycence of Vs Our Heires and Successors first had and obteyned vpon penalty of Forfeiting One Hundred Pounds sterling vnto Ous Our Heires and Successors for every such Tree soe felled cult or destroyed without such Lycence had and obteyned in that behalfe any thing in. these presents contevned to the contrary in any wise Notwithstanding *In Witnesse* whereof Wee-have caused these our Letters to be made Patents *Witnesse* Ourselves att Westminster the Seaventh Day of October in the Third yeare of Our Reigne

By Writt of Privy Seale

PIGOTT

Pro Fine in Hanaperio quadragint Marcas

J. TREVOR C. S.

K. W. RAWLINSON C. S.

L. G. HUTCHNS C. S.

APPENDIX III

Royal Governors of the province of Massachusetts Bay

PROVINCIAL PERIOD, 1692 – 1774

1692 – 1694	Sir William Phips
1694 – 1699	William Stoughton (acting)
1699 – 1700	Richard Coote
1700 – 1701	William Stoughton (acting)
1701 – 1702	The Council
1702 – 1715	Joseph Dudley
1715	The Council
1715	Joseph Dudley
1715 – 1716	William Tailer (acting)
1716 – 1723	Samuel Shute
1723 – 1728	William Dummer (acting)
1728 – 1729	William Burnet
1729 – 1730	William Dummer (acting)
1730	William Tailer (acting)
1730 – 1741	Jonathan Belcher
1741 – 1749	William Shirley
1749 – 1753	Spencer Phips (acting)
1753 – 1756	William Shirley
1756 – 1757	Spencer Phips (acting)
1757 – 1757	The Council
1757 – 1760	Thomas Pownell
1760	Thomas Hutchinson (acting)
1760 – 1769	Francis Bernard
1769 – 1771	Thomas Hutchinson (acting)
1771 – 1774	Thomas Hutchinson
1774	Thomas Gage

APPENDIX IV

Disallowed Laws

TABLE 1: Category One: Acts related to criminal or estate law

ACT	DATE		*A&R* VOL., PAGE(S)
	PASSED	DISALLOWED	
"An Act for the Erecting of a Naval Office"	6/27/92	8/22/95	1, 34-5
"An Act for the Holding of Courts of Justice"	6/28/92	8/22/95	1, 37
"An Act Setting Forth General Priviledges"	10/13/92	8/22/95	1, 40-41
"An Act for the Quieting of Possessions and Setling of Titles"	10/14/92	8/22/95	1, 41-42
"An Act for the Equal Distribution of Insolvent Estates"	10/22/92	8/22/95	1, 48-49
"An Act for the Punishing of Capital Offenders"	10/29/92	8/22/95	1, 55-56
"An Act for Making of Lands and Tenements Liable to the Payment of Debts"	10/18/92	8/22/95	1, 68-69
"An Act Against the Counterfeiting, Clipping, Rounding, Filing, or Impairing of Coynes"	11/24/92	8/22/95	1, 70-71
"An Act for the Establishing of Judicatories and Courts of Justice within this province"	11/25/92	8/22/95	1, 72-76
"An Act for Establishing of Presidents and Forms of Writts and Processes"	11/30/92	8/22/95	1, 79-84
"An Act Against Conjuration, Witchcraft and Dealing with Evil and Wicked Spirits"	12/14/92	8/22/95	1, 90-91
"An Act for the Better Securing the Liberty of the Subject and for Prevention of Illegal Imprisonment"	12/14/92	8/22/95	1, 95-99
"An Act for the Reviving of an Act for Continuing of the Local Laws; and One Other Act for Sending of Souldiers to the Relief of the Neighbouring provinces and Colonies"	11/9/92	8/22/95	1, 99-100
"An Addition to the Act for Establishing of Judicatories and Courts of Justice within this province"	12/11/93	12/10/96	1, 143-44
"An Act for a New Establishment and Regulation of the Chancery"	12/11/93	12/10/96	1, 144-46
"An Act of Supplement and Addition to Several Acts and Laws of this province"	3/2/94	12/10/96	1, 154-57
"An Addition to the act Entituled 'An Act for the Setting Forth of General Priviledges'"	6/7/94	12/10/96	1, 170
"An Act in Further Addition to the Act for Establishing of Judicatories and Courts of Justice within this province"	10/22/94	12/10/96	1, 184-85
"An Act that All Persons not being Freeholders or Settled Inhabitants Commencing Suit Shall Give Security before Process be Granted"	11/27/ 95	11/24/98	1, 222-23
"An Act for the Reviving and Establishing of Judicatories and Courts of Justice and the Forms of Writts and Processes"	10/3/96	11/24/98	1, 248-49
"An Act for the Establishing of Courts"	7/9/97	11/24/98	1, 283-87
"An Act for Establishing of Precedents and Formes of Writts and Processes in Civil Causes"	6/8/98	10/22/00	1, 316-22

"An Act for the Regulating and Directing the Proceedings in the Courts of Justice Established within this province."	6/18/99	10/22/00	1, 372-75.
"An Act for the Better Preventing of the Spreading of Infectious Sicknesses"	6/18/99	10/22/00	1, 376-77

TABLE 2: Category Two: Acts regarding imperial trade

ACT	DATE		*A&R* VOL., PAGE(S)
	PASSED	DISALLOWED	
"An Act for the Erecting of a Naval Office"	6/27/92	8/22/95	1, 34-5
"An Act for Regulating the Building of Ships"	6/8/93	12/10/96	1, 114
An Act for the Coasting Vessels within the province"	6/14/93	12/10/96	1, 121-22
"An Act to Restrain the Exportation of Raw Hides and Skins out of the province of the Massachusetts Bay, and for the Better Preservation and Increase of Deer in the said province"	2/28/94	12/26/95	1, 152-53
"An Act Establishing of Seaports within this province, and for Ascertaining the Fees for Entring and Clearing of Vessels Inward and Outward Bound"	6/27/98	10/22/00	1, 335-36
"An Act for Regulating and Inspecting the Building of Ships"	12/7/98	10/22/00	1, 352-53
"An Act for Granting unto His Majesty Several Rates and Dutys of Impost and Tunnage of Shipping"	6/28/18	5/26/19	2, 107-112
"An Act for the Better Regulating the Culling of Fish"	6/25/18	5/21/21	2, 101
"An Act for Granting unto His Majesty an Excise upon Sundry Articles Hereafter Enumerated, for and Towards the Support of His Majesty's Government of this province"	4/20/50	6/30/52	3, 495

TABLE 3: Category Three: Acts creating or modifying provincial entities

ACT	DATE		*A&R* VOL., PAGE(S)
	PASSED	DISALLOWED	
"An Act for Incorporating Harvard Colledge, at Cambridge, in New England" 288-90.	6/27/92	8/22/95	1, 38-39
"An Act Encouraging a Post-Office"	6/9/93	12/10/96	1, 115-17
"An Act for Continuing of Several Acts Thereafter Mentioned, that are Near Expiring"	6/9/96	11/24/98	1, 235-37
"An Act for Incorporating Harvard Colledge, at Cambridge, in New England"	6/4/97	11/24/98	1, 288-90
"An Act Establishing of Seaports within this province, and for Ascertaining the Fees for Entring and Clearing of Vessels Inward and Outward Bound"	6/27/98	10/22/00	1, 335-36
"An act in Addition to an Act Intitled 'An Act for Ascertaining the Number, and Regulating the House of Representatives'"	4/24/31	12/10/31	2, 592-93

APPENDIX V

Appeals from Massachusetts[1]

T = total appeals; **A** = affirmances; **R** = reversals (or variances); **D** = dismissed.

Years / Type	T	A	R	D
Common Law: Civil				
1690-1710	6[2]	1	3	1
1710-20	2[3]		1	
1720-30	1[4]			1
1730-40	16[5]	5	5	2
1740-50	1[6]	1		
1750-60	3[7]		1	
1760-70	3[8]		1	1
1770-83				
Total	**32**[9]	**7**	**11**	**5**

1 This chart is drawn from Joseph Smith's *Appeals*, Appendix A, 667-71. numbers are somewhat difficult to verify, as the record is incomplete. I have used them as they represent the best available intelligence. In some decades, more appeals were requested than entered the Registry. In such entries, the case names in bold face are those in which an appeal was taken. Those in italics are real actions.

2 **Brenton v. Lawson** (Reversed; *PCR*, vol. 2, 237-41); Shrimpton v. Brenton (*PCR*, vol. 2, 324-35); Usher v. Winthrop (*PCR*, vol. 2, 358); Gookin v. Smith (*PCR*, vol. 2, 497); Lason v. Sarjeant (*PCR*, vol. 2, 499-500)

3 **Lillie v. Bromfield** (*PCR*, vol. 2, 655); **Lillie v. Adams** (*PCR*, vol. 2, 655); **Bannister v. Bowe** (Reversed; *PCR*, vol. 2, 697-98); Oulton v. Savage (PCR, vol. 2, 721); Tunley v. Maccarty (*PCR*, vol. 2, 744). The Lillie cases were authorized appeals simultaneously, which may account for Smith's miscounting. No results of those appeals appear in the record.

4 **Branfield v. Gilbert** (Appeal dismissed; PCR, vol. 3, 32); Robinson v. Bury (*PCR*, vol. 3, 127)

5 **Leighton v. Frost** (Reversed; *PCR*, vol. 3, 461-70); ***Bennett v. Gray*** (*PCR*, vol. 3, 315-16); ***Waldo v. Waldo*** (Judgment varied [R]; *PCR*, vol. 3, 376-79, 405-07); **Stoddard v. Barrell** (Reversed; *PCR*, vol. 3, 384); **Byfield v. Swasey** (*PCR*, vol. 3, 404); **Dummer v. Gooch** (*PCR*, vol. 3, 407,); **Tidmarsh v. Brandon** (Reversed; *PCR*, vol. 3, 428-30); **Waldo v. Waldo** (Appeal dismissed [D]; *PCR*, vol. 3, 430-32); **Waldo v. Waldo** (Appeal dismissed [D]; *PCR*, vol. 3, 450-52); **Ellis v. Sprague** (*PCR*, vol. 3, 46); Stoddard v. Jones (*PCR*, vol. 3, 568); ***Pelham v. Stone*** (Affirmed; *PCR*, vol. 3, 473-74); ***Pelham v. Bannister*** (Affirmed; *PCR*, vol. 3, 590); ***Francis v. Jeffries*** (Affirmed; *PCR*, vol. 3, 718-19)

6 **Vassall v. Fletcher** (Reversed; *PCR*, vol. 4, 226); Shirley v. Waldo (*PCR*, vol. 4, 99); Knowles v. Douglas (*PCR*, vol. 4, 107)

7 **Bannister v. Cunningham** (*PCR*, Vol. 4, 285); **Dudley v. Richards** (*PCR*, vol. 4, 688)

8 ***Jeffries v. Donnell*** (Reversed; Smith, *Appeals*, 162, note #184); Apthorpe v. Pateshall; Hancock v. Bowes; Apthorpe v. Deblois; Cutler v. Pierpont (Smith, *Appeals*, 162, note #184).

Probate	T	A	R	D
1690-1710				
1710-20				
1720-30				
1730-40	1[10]			1
1740-50				
1750-60				
1760-70				
1770-83				
Total	**1**	**0**	**0**	**1**

9 Smith's sum is 33, but that is an error of either arithmetic or notation, as no explanation of the disparity is offered. Smith, 667.

10 **Savage v. Philips** (Affirmed; *PCR*, vol. 2, 432-36). The text of the Privy Council Records seems to indicate that the result of this appeal was the affirmation of the original verdict. "Their Lordships Do therefore Agree humbly to Report as their opinion to Your Majesty that the said three Orders and the Division made under the same now Appealed from be Affirmed and that the said Appeal be Dismist." Smith counts this as a "Dismissal for nonprosecution," which does not appear to be fully accurate.

BIBLIOGRAPHY

MANUSCRIPT SOURCES

Charles Hobby Papers, N-1412, Massachusetts Historical Society.

Joseph Dudley Correspondence, S-522, Massachusetts Historical Society.

Instructions to Massachusetts Governors, N-2223, Massachusetts Historical Society.

Cyprian Southack Letters, N-949, Massachusetts Historical Society.

King's Chapel Records, N-1867, Massachusetts Historical Society.

Dudley Family Papers, S-523, Massachusetts Historical Society.

Joseph Dudley Letters, S-521, Massachusetts Historical Society.

Minutes of Massachusetts Council, Massachusetts Archives Collection, vol. 81-82, Massachusetts State Archives.

Mather, Increase. Diary, Mather Family Papers, American Antiquarian Society.

PUBLISHED SOURCES

PRIMARY SOURCES

"Deed from Ferdinando Gorges, Esq., to John Usher." In *Collections of the Maine Historical Society*, 2. Portland, Maine: Maine Historical Society, 1847.

"Decree of the King in Phillips Vs. Savage." In *Proceedings of the Massachusetts Historical Society*, 13. Boston: Massachusetts Historical Society, 1873-1875.

"Further Quaeries Upon the Present State of the New-English Affairs." Boston, 1690.

"The Present State of the New-English Affairs." Boston: Samuel Green, 1689.

"Winthrop Papers." *Collections of the Massachusetts Historical Society, Ser. 6* 3.

Acts and Resolves, Public and Private, of the Province of Massachusetts Bay, Vol. 1, 1692-1714. Vol. 1. Boston: Wright & Potter, 1869.

Acts and Resolves, Public and Private, of the Province of Massachusetts Bay, Vol. 2, 1715-1741. Vol. 2. Boston: Wright & Potter, 1874.

Acts and Resolves, Public and Private, of the Province of Massachusetts Bay, Vol. 3, 1741-1756. Vol. 3. Boston: Wright & Potter, 1878.

Addington, Isaac. "Proclamation to Prevent the Destruction and Spoil of Her Majesties Woods." Boston: B. Green, 1707.

Addington, Isaac. "Proclamation of Settlement of York County Townships." Boston: B. Green, 1713.

Ashurst, Sir Henry. *A Memorial of the Present Deplorable State of New-England.* London, 1708.

Barlow, Joel. *The Prospect of Peace, a Poetical Composition, Delivered in Yale-College, at the Public Examination, of the Candidates for the Degree of Bachelor of Arts; July 23, 1778*. New Haven, Connecticut: Thomas and Samuel Green, 1788.

Baxter, James Phinney, ed. *The Baxter Manuscripts*. Vol. 9, Documentary History of the State of Maine. Portland, Maine: Lefavor-Tower Company, 1907.

Belknap, Jeremy. *The History of New Hampshire, Volume 1: Comprehending the Events of One Complete Century from the Discovery of the River Piscataqua*. Philadelphia: Robert Aitken, 1784.

Bridge, Thomas. *Jethro's Advice Recommended to the Inhabitants of Boston, in New-England, Viz. To Chuse Well-Qualified Men, and Haters of Covetousness for Town Officers. In a Lecture on Exodus 18:21, 9th 1st Month 1709*. Boston: John Allen, 1709.

Brodhead, John Romeyn, ed. *Documents Relating to the History of the Early Colonial Settlements Principally on Long Island*, Documents Relative to the Colonial History of the State of New-York. Albany, New York: Weed, Parsons Publishers, 1883.

Church, Thomas. *The Entertaining History of King Philip's War, Which Began in the Month of June 1675. As Also of Expeditions Made More Lately against the Common Enemy of, and Indian Rebels, in the Eastern Parts of New-England: With Some Account of the Divine Providence Towards Col. Benjamin Church*. Boston, 1716.

Cooke, Elisha. “Letter to Mr. Speaker Burrill.” Boston, 1719.

Court, Massachusetts General. “The Several Votes, Orders, & Messages Pass'd in Council and in the House, March 15th, 1720.” Boston: B. Green, 1721.

Dummer, William. “A Proclamation for Apprehending Henry Phillips.” Boston: B. Green, 1728.

Dunbar, David. “Proclamation of White Pine Act.” Boston, 1729.

Dunbar, David. “License for Paul Gerrish, Esq. to Cut Whit Pine Trees for Masts, Yards, and Bowsprits.” Boston: B. Green, 1733.

Fortescue, J. W., ed. *Calendar of State Papers Colonial, America and West Indies*. Vol. 13-50. London: Longman, Green, Longman & Roberts.

Hutchinson Papers. Vol. 2. Reprint ed. Publications of the Prince Society. New York: Burt Franklin, 1967.

Hutchinson, Thomas. *The History of the Colony and Province of Massachusetts-Bay, from the Charter of King William and Queen Mary, in 1691, until the Year 1750.* Vol. 2. 3 vols. The History of the Colony and Province of Massachusetts-Bay. Edited from the Author's Own Copies of Volumes I and II and His Manuscript of Volume III, with a Memoir and Additional Notes, Edited by Lawrence Shaw Mayo. Cambridge, Massachusetts: Harvard University Press, 1936.

Lincoln, Charles Henry, ed. *Correspondence of William Shirley, Governor of Massachusetts and Military Commander in America, 1731-1760*. Vol. 1. New York: The Macmillan Company, 1912.

Mandell, Daniel R., ed. *New England Treaties, North and West, 1650-1776*. Edited by Alden T. Vaughan. Vol. 20, Early American Indian Documents: Treaties and Laws, 1607-1789. Bethesda, Maryland: University Publications of America, 2003.

Mather, Cotton. *Decennium Luctuosum: An History of Remarkable Occurrences in the Long War Which New England Hath Had with the Indian Salvages, from the Year 1688 to the Year 1698, Faithfully Composed and Improved*. Boston: B. Green and J. Allen, 1699.

Mather, Cotton. *Diary of Cotton Mather, 1681-1708*. Vol. 7 Massachusetts Historical Society Collections. Boston: Massachusetts Historical Society, 1911.

Mather, Cotton. *Diary of Cotton Mather, 1709-1724*. Vol. 8 Massachusetts

Historical Society Collections. Boston: Massachusetts Historical Society, 1912.

Mather, Cotton. *Selected Letters of Cotton Mather*. Baton Rouge, Louisiana: Louisiana State University Press, 1971.

Mather, Cotton. *The Pourtraiture of a Good Man, Drawn with the Pencils of the Sanctuary in Such Colours as the Oracles of the Sacred Scriptures Have Given Him. A Lecture in the Audience of the General Assembly at Boston, June 25, 1702.* Boston: Benjamin Eliot, 1702.

Mather, Cotton. *Frontiers Well Defended. An Essay to Direct the Frontiers of a Countrey Exposed Unto the Incursions of a Barbarous Enemy, How to Behave Themselves in Their Uneasy Station*. Boston: T Green, 1707.

Mather, Cotton. *The Deplorable State of New-England, by Reason of a Covetous and Treacherous Governour, and Pusillanimous Counsellors, with a Vindication of the Honourable Mr. Higginson, Mr. Mason and Several Other Gentlemen, for Then Scandalous and Wicked Accusation of the Votes Ordered by Them to Be Published in Their Boston News-Letter.* London, 1708.

Mather, Cotton. *The Deplorable State of New-England : By Reason of a Covetous and Treacherous Governour, and Pusillanimous Counsellors : With a Vindication of the Honourable Mr. Higginson, Mr. Mason, and Several Other Gentlemen, from the Scandalous and Wicked Accusation of the Votes, Ordered by Them to Be Published in Their Botson [Sic] News-Letter. : To Which Is Added, an Account of the Shameful Miscarriage of the Late Expedition against Port-Royal.* Boston: Samuel Kneeland[?], 1721.

Mather, Increase. *A Narrative of the Miseries of New-England by Reason of an Arbitrary Government Erected There under Sir Edmond Andros*. Boston, 1688.

Mather, Increase. *A Brief Account Concerning Several of the Agents of New-England, Their Negotiation at the Court of England: With Some Remarks on the New Charter Granted to the Colony of Massachusetts, Shewing That All Things Duely Considered, Greater Priviledges That What Are Therein Contained, Could Not at This Time Rationally Be Expected by the People There.* In Narratives of the Insurrections, 1675-1690, edited by Charles M. Andrews. New York: Charles Scribner's Sons, 1915.

Mauduit, Israel. *A Short View of the History of the Colony of Massachusetts Bay, with Respect to Their Charters and Constitution*. London: J. Wilkie, 1774.

Michael G. Hall, Lawrence H. Leder, and Michael G. Kammen, ed. *The Glorious Revolution in America: Documents on the Colonial Crisis of 1689*. Edited by James Morton Smith. Vol. 3, Documentary Problems in Early American History. Chapel Hill, North Carolina: Published for the Institute of Early American History and Culture at Williamsburg, Virginia by The University of North Carolina Press, 1964.

Munro, W. W. Grant and James, ed. *Acts of the Privy Council, Vol. 2, 1680-1720*. Edinburgh: Hereford Times Co., Ltd., 1910.

Munro, W. W. Grant and James, ed. *Acts of the Privy Council, Vol. 3, 1721-1745*. Edinburgh: Hereford Times Co., Ltd., 1910.

Novanglus. "To the Inhabitants of Massachusetts Bay, No. 6." *Boston Gazette*, 27 February 1775.

O'Callaghan, E. B., ed. *Documents Relative to the Colonial History of the State of New York: London Documents: Xvii-Xxiv, 1707-1733.* Vol. 5, Documents Relative to the Colonial History of the State of New York; Procured in Holland, England and France, by John Romeyn Brodhead, Esq., Agent. Albany, NY: Weed, Parsons and Company, Printers, 1855.

Scottow, Joshua. *Old Mens Tears for Their Own Declensions, Mixed with Fears of Their and Posterities Further Falling from New-England's Primitive Constitution.* Boston: Benjamin Harris and John Allan, 1691.

Sewall, Samuel. *Letter-Book of Samuel Sewall, I: 1686-1712*. Vol. 1 Massachusetts Historical Society Collections. Boston: Massachusetts Historical Society, 1886.

Sewall, Samuel. *The Diary of Samuel Sewall, 1674-1729*. Vol. 1. 2 vols. New York: Farrar, Straus and Giroux, 1973.

Sewall, Samuel. *The Diary of Samuel Sewall, 1674-1729*. Vol. 2. 2 vols. New York: Farrar, Straus and Giroux, 1973.

Surrency, Erwin, J.C. Addington, William Smith. "Report on Court Procedures in the Colonies, 1700: Maryland, Massachusetts, New York." *The American Journal of Legal History* 9, no. 2 (1965): 167-178.

Thorpe, Francis Newton, ed. *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*. Vol. 3. Washington, D.C.: Government Printing Office, 1906.

SECONDARY SOURCES: BOOKS

Amacher, Richard E. *American Political Writers: 1588-1800* Twayne's United States Authors Series, Edited by Jr. Mason I. Lowance. Boston: Twayne Publishers, 1979.

Andrews, Charles M. *Some Neglected Aspects of Colonial History: An Address Delivered before the New Jersey Historical Society, May 12, 1900*. Paterson, New Jersey: The Press Printing and Publishing Company, 1906.

Andrews, Charles M. *British Committees, Commissions, and Councils of Trade and Plantations, 1622-1675*. Vol. 1-3 Johns Hopkins University Studies in Historical and Political Sciences. Baltimore: The Johns Hopkins Press, 1908.

Andrews, Charles M., ed. *Narratives of the Insurrections, 1675-1690*. Edited by J. Franklin Jameson, Original Narratives of Early American History. New York: Charles Scribner's Sons, 1915.

Andrews, Charles M. *The Fathers of New England: A Chronicle of the Puritan Commonwealths*. Vol. 6 The Chronicles of America Series, Edited by Allen Johnson. New Haven, Connecticut: Yale University Press, 1921.

Andrews, Charles M. *The Colonial Period of American History*. Vols. 1-4. New Haven, Connecticut: Yale University Press, 1964.

Bailyn, Bernard. *The Ordeal of Thomas Hutchinson*. Cambridge, MA: The Belknap Press of Harvard University Press, 1974.

Bancroft, George. *History of the United States of America, from the Discovery of the Continent*. Vol. 2. New York: D. Appleton, and Company, 1895.

Barrow, Thomas C. *Trade and Empire: The British Customs Service in Colonial America*. Cambridge, Massachusetts: Harvard University Press, 1967.

Bilder, Mary Sarah. *The Transatlantic Constitution: Colonial Legal Culture and the Empire*. Cambridge, Massachusetts: Harvard University Press, 2004.

Billias, George Athan. *The Massachusetts Land Bankers of 1740*. Vol. 74 University of Maine Studies, 2d Ser. Orono, Maine: University of Maine Press, 1959.

Brewer, John. *The Sinews of Power: War, Money and the English State, 1688-1783*. Cambridge, MA: Harvard University Press, 1990.

Bridenbaugh, Carl. *Mitre and Sceptre: Transatlantic Faiths, Ideas, Personalities,*

and Politics, 1689-1775. New York: Oxford University Press, 1962.

Burns, James J. *The Colonial Agents of New England*. Washington, D.C.: The Catholic University of America, 1935.

Burns, Rev. John F. *Controversies between Royal Governors and Their Assemblies in the Northern American Colonies*. Boston, Massachusetts: Wright and Potter Printing Company, 1923.

Chalmers, George. *An Introduction to the History of the Revolt of the American Colonies, Being a Comprehensive View of Its Origin, Derived from the State Papers Contained in the Public Offices of Great Britain*. Vol. 2. Boston: James Munroe and Company, 1845.

Chalmers, George. *Opinions of Eminent Lawyers on Various Points of English Jurisprudence, Chiefly Concerning the Colonies, Fisheries, and Commerce of Great Britain: Collected and Digested, from the Originals in the Board of Trade, and Other Depositories*. Burlington, Vermont: C. Goodrich and Company, 1858.

Coe, Michael D. *The Line of Forts: Historical Archaeology on the Colonial Frontier of Massachusetts*. Hanover, New Hampshire: University Press of New England, 2006.

Damerall, David Odell. "The Modernization of Massachusetts: The Transformation of Public Attitudes and Institutions, 1689-1715." Dissertation, University of Texas, Austin, 1981.

Daniell, Jere R. *Colonial New Hampshire* A History of the American Colonies in Thirteen Volumes, Edited by Milton M. Klein and Jacob E. Cooke. Millwood, New York: KTO Press, 1981.

Dasent, Arthur Irwin. *The Speakers of the House of Commons, from the Earliest Times to the Present Day with a Topographical Description of Westminster at Various Epochs & a Brief Record of the Principal Constitutional Changes During Seven Centuries*. London: John Lane, The Bodley Head, 1911.

Davis, Andrew McFarland. *Currency and Banking in the Province of the Massachusetts-Bay*. New York: The Macmillan Company, 1901.

Dickerson, Oliver Morton. *American Colonial Government, 1696-1765: A Study of the British Board of Trade in Its Relation to the American Colonies, Political, Industrial, Administrative*. Cleveland, Ohio: The Arthur H. Clark Company, 1912.

Foote, Henry Wilder. *Annals of King's Chapel, from the Puritan Age of New England to the Present Day*. Vol. 1. 2 vols. Boston: Little, Brown, and Company, 1881.

Greene, Evarts Boutell. *The Provincial Governor in the English Colonies of North America*. Vol. 7, Harvard Historical Studies. Cambridge, Massachusetts: Harvard University Press, 1898.

Greene, Jack P. *Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and the United States, 1607-1788*. Athens, Georgia: The University of Georgia Press, 1986.

Haefeli, Evan and Kevin Sweeney. *Captors and Captives: The 1704 French and Indian Raid on Deerfield*. Amherst, Massachusetts: University of Massachusetts Press, 2003.

Haffenden, Philip S. *New England in the English Nation, 1689-1713*. Oxford: Clarendon Press, 1974.

Hall, Michael G. *Edward Randolph and the American Colonies, 1676-1703*. Chapel Hill, North Carolina: Published for the Institute of Early American History and Culture at Williamsburg, Virginia by The University of North Carolina Press, 1960.

Hall, Michael G. *The Last American Puritan: The Life of Increase Mather, 1639-1723*. Middletown, Connecticut: Wesleyan University Press, 1988.

Heimert, Alan. *Religion and the American Mind from the Great Awakening to the Revolution*. Cambridge, Massachusetts: Harvard University Press, 1966.

Henretta, James A. *"Salutary Neglect:" Colonial Administration under the Duke of Newcastle*. Princeton, New Jersey: Princeton University Press, 1972.

Johnson, Richard R. *Adjustment to Empire: The New England Colonies, 1675-1715*: New Jersey: Rutgers University Press, 1981.

Kammen, Michael G. *A Rope of Sand: The Colonial Agents, British Politics, and the American Revolution*. Ithaca, New York: Cornell University Press, 1968.

Kettering, Sharon. *Patrons, Brokers, and Clients in Seventeenth-Century France*. New York: Oxford University Press, 1986.

Kershaw, Gordon E. *"Gentlemen of Large Property & Judicious Men:" The Kennebeck Proprietors, 1749-1775*. Somersworth, New Hampshire: New Hampshire Publishing Company, 1975.

Kimball, Everett. *The Public Life of Joseph Dudley: A Study of the Colonial Policy of the Stuarts in New England, 1660-1715*. Vol. 15, Harvard Historical Studies. New York: Longmans, Green, and Co., 1911.

Labaree, Leonard Woods. *Royal Government in America: A Study of the British Colonial System before 1788*. Vol. 7, Studies, Yale Historical Publications. New Haven, Connecticut: Yale University Press, 1930.

Leach, Douglas Edward. *The Northern Colonial Frontier, 1607-1763* Histories of the American Frontier, Edited by Ray Allen Billington. New York: Holt, Rinehart and Winston, 1966.

Lovejoy, David. *The Glorious Revolution in America*. New York: Harper & Row, 1972.

Malone, Patrick M. *The Skulking Way of War: Technology and Tactics among the New England Indians*. First Paperback edition ed. Lanham, Maryland: Madison Books, 1991.

McAnear, Beverly. *The Income of the Colonial Governors of British North America*. New York: Pageant Press, Inc., 1967.

Miller, Perry. *The New England Mind: From Colony to Province*. Cambridge, Massachusetts: Harvard University Press, 1962.

Morrison, Kenneth M. *The Embattled Northeast*. Berkeley, California: University of California Press, 1984.

Murdock, Kenneth Ballard. *Increase Mather: The Foremost American Puritan*. Cambridge, Massachusetts: Harvard University Press, 1925.

Murrin, John M. "Anglicizing an American Colony: The Transformation of Provincial Massachusetts." Dissertation, Yale University, 1966.

Namier, Lewis. *The Structure of Politics at the Accession of George III*. Second edition. London: Macmillan & Co Ltd., 1957.

Olson, Alison Gilbert. *Making the Empire Work: London and American Interest Groups, 1690-1790*. Cambridge, Massachusetts: Harvard University Press, 1992.

Palfrey, John Gorham. *History of New England from the Revolution of the Seventeenth Century.* Boston: Little, Brown, and Company, 1875.

Plank, Geoffrey. *An Unsettled Conquest: The British Campaign against the*

Peoples of Acadia. Early American Studies, Edited by Daniel K. Richter. Philadelphia: University of Pennsylvania Press, 2001.

Pownall, Thomas. *The Administration of the Colonies.* Maritime History Series, Edited by John B. Hattendorf. Delmar, New York: Scholars' Facsimiles and Reprints, 1768.

Pulsipher, Jenny Hale. *Subjects Unto the Same King: Indians, English, and the Contest for Authority in Colonial New England.* Early American Studies, Edited by Daniel K. Richter and Kathleen M. Brown. Philadelphia: University of Pennsylvania Press, 2005.

Ranlet, Philip. *Enemies of the Bay Colony: Puritan Massachusetts and Its Foes*. Second ed. Lanham, Maryland: University Press of America, Inc., 2006.

Russell, Elmer Beecher. *The Review of Colonial Legislation by the Privy Council*. Vol. 64, no. 2 Studies in History, Economics and Public Law, Edited by The faculty of political science of Columbia University. New York: Longman's Green & Co., 1915.

Sainty, J. C. *Officials of the Boards of Trade, 1660-1870*. Vol. 3 Office-Holders in Modern Britain. London: The Athlone Press, 1974.

Seybolt, Robert Francis. *The Town Officials of Colonial Boston*. Cambridge, Massachusetts: Harvard University Press, 1939.

Smith, Sir Hubert Llewellyn G.C.B. *The Board of Trade* The Whitehall Series, Edited by K.B.E. Sir James Marchant, LL.D. London: G. P. Putnam's Sons, Ltd., 1928.

Smith, Joseph Henry. *Appeals to the Privy Council from the American Plantations*. New York: Columbia University Press, 1950.

Sosin, Jack M. *English America and Imperial Inconstancy: The Rise of Provincial Autonomy, 1696-1715*. Lincoln, Nebraska: University of Nebraska Press, 1985.

Spencer, Henry Russell. *Constitutional Conflict in Provincial Massachusetts*. Columbus, Ohio: Press of Fred J. Heer, 1905.

Steele, Ian K. *Politics of Colonial Policy: The Board of Trade in Colonial Administration, 1696-1720*. Oxford: Clarendon Press, 1968.

Waller, G. M. *Samuel Vetch: Colonial Enterpriser*. Chapel Hill, North Carolina: Published for the Institute of Early American History and Culture at Williamsburg, Virginia by The University of North Carolina Press, 1960.

Warden, G. B. *Boston, 1689-1776*. Boston: Little, Brown and Company, 1970.

Webb, Stephen Saunders. *The Governors-General: The English Army and the Definition of the Empire, 1569-1681*. Chapel Hill, North Carolina: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 1979.

Webb, Stephen Saunders. *Lord Churchill's Coup: The Anglo-American Empire and the Glorious Revolution Reconsidered*. Syracuse, New York: Syracuse University Press, 1998.

Whitmore, William H. *The Massachusetts Civil List for the Colonial and Provincial Periods, 1630-1774. Being a List of the Names and Dates of Appointment of All the Civil Officers Constituted by the Authority of the Charters, or the Local Government*. Albany, New York: J. Munsell, 1870.

Zemsky, Robert. *Merchants, Farmers, and River Gods: An Essay on Eighteenth-Century American Politics*. Boston: Gambit, 1971.

SECONDARY SOURCES: JOURNAL ARTICLES

Andrews, Charles M. "Colonial Commerce." *The American Historical Review* 20, no. 1 (1914): 43-63.

Andrews, Charles M. "The Royal Disallowance." *Proceedings of the American Antiquarian Society, New Series* 24, (1914): 342-362.

Andrews, Charles M. "The American Revolution: An Interpretation." *The American Historical Review* 31, no. 2 (1926): 219-232.

Beeman, Richard R. "Deference, Republicanism, and the Emergence of Popular Politics in Eighteenth-Century America." *The William and Mary Quarterly, Third Series* 49, no. 3 (1992): 401-430.

Beth, Loren P. "The Judicial Committee of the Privy Council and the Development of Judicial Review." *The American Journal of Comparative Law* 24, no. 1 (1976): 22-42.

Bourque, Bruce J. "Ethnicity on the Maritime Peninsula, 1600-1759." *Ethnohistory* 36, (1989): 257-84.

Boyer, Paul S. "Borrowed Rhetoric: The Massachusetts Excise Controversy of 1754." *The William and Mary Quarterly, Third Series* 21, no. 3 (1964): 328-351.

Brown, B. Katherine. "The Controversy over the Franchise in Puritan Massachusetts, 1954 to 1974." *The William and Mary Quarterly, Third Series* 33, no. 2 (1976): 212-241.

Brown, Robert E. "The Restriction of Representation in Colonial Massachusetts." *The Mississippi Valley Historical Review* 40, no. 3 (1953): 463-476.

Buffington, A. H. "The Isolationist Policy of Colonial Massachusetts." *The New England Quarterly* 1, no. 2 (1928): 158-179.

Bumsted, J. M. "The Report of the Pembroke (Massachusetts) Town Committee on the Currency, March 24, 1740/41." *The New England Quarterly* 40, no. 4 (1967): 551-560.

Calhoon, Donald C. Lord and Robert M. "The Removal of the Massachusetts General Court from Boston, 1769-1772." *The Journal of American History* 55, no. 4 (1696): 735-755.

Clark, Charles E. "Boston and the Nurturing of Newspapers: Dimensions of the Cradle, 1691-1741." *The New England Quarterly* 64, no. 2 (1991): 243-271.

Davis, Andrew McFarland. "The Case of Frost Vs. Leighton." *The American Historical Review* 2, no. 2 (1897): 229-240.

Douglas, Charles H. J. "The Financial History of Massachusetts from the Organization of the Massachusetts Bay Company to the American Revolution." In *Studies in History, Economics and Public Law*, edited by The University Faculty of Political Science of Columbia College, 1. New York, 1891-92.

Farrell, James. "New England's Cicero: John Adams and the Rhetoric of Conspiracy." *Proceedings of the Massachusetts Historical Society, Series 3* 104, (1992): 55-72.

Ferguson, E. James. "Currency Finance: An Interpretation of Colonial Monetary Practices." *The William and Mary Quarterly, 3rd Ser.* 10, no. 2 (1953): 153-180.

Ferling, John. "The New England Soldier: A Study in Changing Perceptions." *American Quarterly* 33, no. 1 (1981): 26-45.

Fogg, John S. H. "Letters of Charles Lidget to Francis Foxcroft, 1690-91." *New England Historical and Genealogical Register* 33, (1879): 406.

Ford, Worthington C. “The Governor and Council of the Province of Massachusetts Bay, August 1714 - March, 1715.” In *Proceedings of the Massachusetts Historical Society, Second Series*, 15, 327-364. Boston: Massachusetts Historical Society, 1901.

Ford, Worthington C. “Sewall and Noyes on Wigs.” In *Publications of the Colonial Society of Massachusetts, Transactions, 1917-1919*, 20. Boston: Colonial Society of Massachusetts, 1920.

Foster, Stephen. “Another Legend of the Province House: Jonathan Belcher, William Shirley, and the Misconstruction of the Imperial Relationship.” *The New England Quarterly* 77, no. 2 (2004): 179-233.

Freiberg, Malcolm. “Thomas Hutchinson and the Province Currency.” *The New England Quarterly* 30, no. 2 (1957): 190-208.

Greene, Jack P. “Martin Bladen's Blueprint for a Colonial Union.” *The William and Mary Quarterly, Third Series* 17, no. 4 (1960): 516-530.

Greene, Jack P. “The Role of the Lower Houses of Assembly in Eighteenth-Century Politics.” *The Journal of Southern History* 27, no. 4 (1961): 451-474.

Haffenden, Philip S. “The Crown and the Colonial Charters, 1675-1688: Part I.” *The William and Mary Quarterly, Third Series* 15, no. 3 (1958): 297-311.

Haffenden, Philip S. “Colonial Appointments and Patronage under the Duke of Newcastle, 1724-1739.” *The English Historical Review* 78, no. 308 (1963): 417-435.

Hall, Michael G. “Origins in Massachusetts of the Constitutional Doctrine of Advice and Consent.” *Proceedings of the Massachusetts Historical Society, Third Series* 91, (1979): 3-15.

Handlin, Mary and Oscar. “Revolutionary Economic Policy in Massachusetts.” *The William and Mary Quarterly, Third Series* 4, no. 1 (1947): 3-26.

Holifield, E. Brooks. “On Toleration in Massachusetts.” *Church History* 38, no. 2 (1969): 188-200.

Homans, George C. “John Adams and the Constitution of Massachusetts.” *Proceedings of the American Philosophical Society* 125, no. 4 (1981): 286-291.

Hulsebosch, Daniel J. “The Ancient Constitution and the Expanding Empire: Sir

Edward Coke's British Jurisprudence." *Law and History Review* 21, no. 3 (2003): 439-482.

Johnson, Richard R. "The Search for a Usable Indian: An Aspect of the Defense of Colonial New England." *The Journal of American History* 64, no. 3 (1977): 623-651.

Karr, Ronald Dale. "The Missing Clause: Myth and the Massachusetts Bay Charter of 1629." *The New England Quarterly* 77, no. 1 (2004): 89-107.

Kreider, Kenneth A Lockridge and Alan. "The Evolution of Town Government, 1640 to 1740." *The William and Mary Quarterly, Third Series* 23, no. 4 (1966): 549-574.

Lambert, Sheila. "Procedure in the House of Commons in the Early Stuart Period." *The English Historical Review* 95, no. 377 (1980): 753-781.

LeGear, Clara Egli. "The New England Coasting Pilot of Cyprian Southack." *Imago Mundi* 11, (1954): 1-9.

Lovejoy, David. "Equality and Empire: The New York Charter of Libertyes, 1683." *The William and Mary Quarterly, Third Series* 21, no. 4 (1964): 493-515.

Marcus, Richard H. "The Connecticut Valley: A Problem in Intercolonial Defense." *Military Affairs* 33, no. 1 (1969): 230-242.

Mark DeWolfe Howe and Louis F. Eaton, Jr. "The Supreme Judicial Power in the Colony of Massachusetts Bay." *The New England Quarterly* 20, no. 3 (1947): 291-316.

Marsden, R. G. "Early Prize Jurisdiction and Prize Law in England." *The English Historical Review* 24, no. 96 (1909): 675-697.

Marsden, R. G. "Early Prize Jurisdiction and Prize Law in England." *The English Historical Review* 25, no. 98 (1910): 243-263.

Mead, Edwin D. "The Meaning of Massachusetts." *The New England Quarterly* 3, no. 1 (1930): 25-54.

Miller, John C. "Religion, Finance, and Democracy in Massachusetts." *The New England Quarterly* 6, no. 1 (1933): 29-58.

Moody, Robert Earle. "A Re-Examination of the Antecedents of the Massachusetts Bay Company's Charter of 1629." *Proceedings of the Massachusetts Historical Society, Third Series* 69, (1947): 56-80.

Morris, Richard B. "Massachusetts and the Common Law: The Declaration of 1646." *The American Historical Review* 31, no. 3 (1926): 443-453.

Murrin, John M. "Review Essay: A Little Commonwealth: Family Life in Plymouth Colony, by John Demos; Four Generations: Population, Land, and Family in Colonial Andover, Massachusetts, by Philip J. Greven; a New England Town, the First Hundred Years: Dedham, Massachusetts, 1636-1736, by Kenneth A. Lockridge; the Half-Way Covenant: Church Membership in Puritan New England, by Robert G. Pope; Peaceable Kingdoms: New England Towns in the Eighteenth Century, by Michael Zuckerman." *History and Theory* 11, no. 2 (1972): 226-275.

Nettels, Curtis. "British Policy and Colonial Money Supply." *The Economic History Review* 3, no. 2 (1931): 219-245.

Nicolson, Colin. "Governor Francis Bernard, the Massachusetts Friends of Government, and the Advent of the Revolution." *Proceedings of the Massachusetts Historical Society, Series 3* 103, (1991): 24-107, 109-113.

Pulsipher, Jenny Hale. ""Dark Cloud Rising from the East": Indian Sovereignty and the Coming of King William's War in New England." *The New England Quarterly* 80, no. 4 (2007): 588-613.

Reid, Emerson W. Baker and John G. "Amerindian Power in the Early Modern Northeast: A Reappraisal." *The William and Mary Quarterly, Third Series* 61, no. 1 (2004): 77-106.

Remer, Rosalind. "Old Lights and New Money: A Notre on Religion, Economics, and the Social Order in 1740 Boston." *The William and Mary Quarterly, Third Series* 47, no. 4 (1990): 566-573.

Schlesinger, Arthur Meier. "Colonial Appeals to the Privy Council, I." *Political Science Quarterly* 28, no. 2 (1913): 279-297.

Schlesinger, Arthur Meier. "Colonial Appeals to the Privy Council, Ii." *Political Science Quarterly* 28, no. 3 (1913): 433-450.

Schutz, John A. "Succession Politics in Massachusetts, 1730-1741." *The William and Mary Quarterly, Third Series* 15, no. 4 (1958): 508-520.

Schutz, John A. "Imperialism in Massachusetts During the Governorship of William Shirley, 1741-1756." *Huntington Library Quarterly* 23, no. 3 (1960): 217-236.

Schuyler, H. C. "The Apostle of the Abnakis: Father Sebastian Rale, S. J. (1657-1724)." *The Catholic Historical Review* 1, no. 2 (1915): 164-174.

Shapiro, Morton Owen and Lee J. Alston. "Inheritance Laws across Colonies: Causes and Consequences." *The Journal of Economic History* 44, no. 2 (1984): 277-287.

Shipton, Clifford K. "The Shaping of Revolutionary New England, 1680-1740." *Political Science Quarterly* 50, no. 4 (1935): 584-597.

Shipton, Clifford K. "The New England Frontier." *The New England Quarterly* 10, no. 1 (1937): 25-36.

Simmons, Richard C. "The Massachusetts Revolution of 1689: Three Early American Political Broadsides." *Journal of American Studies* 2, no. 1 (1968).

Simmons, R. C. "The Massachusetts Charter of 1691." In *Contrast and Connection: Bicentennial Essays in Anglo-American History*, edited by H. C. Allen and Roger Thompson. Athens, Ohio: Ohio University Press, 1976.

Sims, Catherine Strateman. ""Policies in Parliaments": And Early Seventeenth-Century Tractate on House of Commons Procedure." *Huntington Library Quarterly* 15, no. 1 (1951): 45-58.

Smith, Joseph Henry. "Administrative Control of the Courts of the American Revolution." *Columbia Law Review* 61, no. 7 (1961): 1210-1253.

Surrency, Erwin C. "The Courts in the American Colonies." *The American Journal of Legal History* 11, no. 4 (1967): 347-376.

Thayer, Theodore. "The Land-Bank System in the American Colonies." *The Journal of Economic History* 13, no. 2 (1953): 145-159.

Tucker, Bruce. "The Reinvention of New England, 1691-1770." *The New England Quarterly* 59, no. 3 (1986): 315-340.

Walett, Francis G. "The Massachusetts Council, 1766-1774: The Transformation of a Conservative Institution." *The William and Mary Quarterly, Third Series* 6, no. 4 (1949): 605-627.

Wallis, J. P. "Early Colonial Constitutions." *Transactions of the Royal Historical Society* 10, (1896): 59-83.

Warden, G. B. "The Caucus and Democracy in Colonial Boston." *The New England Quarterly* 43, no. 1 (1970): 19-45.

Winthrop, Robert C. "The Case of Phillips vs. Savage." *Proceedings of the Massachusetts Historical Society* 5, (1860): 64-80.

York, Neil L. "The First Continental Congress and the Problem of American Rights." *The Pennsylvania Magazine of History and Biography* 122, no. 4 (1998): 353-383.

Zobel, Hiller B. "The Joys and Uses of Legal History." *Proceedings of the Massachusetts Historical Society, Third Series* 84, (1972): 53-70.