Phases of Royal Government in New York 1691-1719

A DISSERTATION

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE
DEGREE OF DOCTOR OF PHILOSOPHY
IN
COLUMBIA UNIVERSITY

By

CHARLES WORTHEN SPENCER

SOMETIME UNIVERSITY FELLOW IN AMERICAN HISTORY,
IN COLUMBIA UNIVERSITY,
PROFESSOR OF HISTORY, COLGATE UNIVERSITY

COLUMBUS, OHIO
PRESS OF FRED. J. HEER
1905

TABLE OF CONTENTS.

CHAPTER I. INTRODUCTION.

As a royal province in the British empire in the eighteenth century, New York well illustrates the duality of political existence characteristic of such a community. It was, on the one hand, a province with its own local interests to be respected and developed, its peculiar history, and its own local consciousness of these as features of identity. It was, equally, on the other hand, a part of the British empire, with its share of the benefits and burdens attaching to that relation. The ideal of empire, probably only vaguely before the mind of the British government at that time, provided for co-operation and interaction between these two aspects of provincial existence, which, while always emphasizing imperial welfare, yet sought to achieve that welfare by development of the peculiar situation of the province. For example, provincial policy in the matter of Indian relations illustrates with peculiar felicity this duality of existence. Upon maintenance of the friendly relations with the Iroquois, inherited from the Dutch, depended, not alone the fur-trade, but the very existence of the province. Experience developed the fact that, owing to the peculiar position of the Five Nations among the native races of the continent, this Iroquois alliance was the key to the Indian policy of all the continental English communities taken together. Successful administration of this problem required recognition of both local and general aspects and the elaboration of a line of conduct which should make the two aspects serve each other.

It was the unique task of the governor of such a province to blend, in his actual conduct of public affairs, these two aspects of provincial existence. In theory, he was the governmental head of the community, and, at the same time, the crown's agent in this particular unit of the administrative system of a general imperial policy. In theory, also, the organization of the legislature provided simply for assistance to the governor in the execution of his dual function by representatives of the community at large. Actually, however, as described in Chapter II., the organization and relations of the executive official system

made it far more easily and characteristically the exponent of the policy of the imperial government than of the local interests of the province. Similarly, the legislature became, in practice, the exponent of local-provincial feeling and policy, rather than of any attempt to embody this with general imperial interest in the conduct of public affairs.

It is obvious that the realization of the ideal of co-operation and supplementation of these two aspects of provincial existence would be difficult. As in the case of the Holy Roman Empire successful working required mutual confidence on the part of the two elements, which was seldom realized; so, in this case, the relation between executive and legislature was seldom for any long period one of mutual understanding and intelligent co-operation. There were certain circumstances in particular, acting as obstructions in the path of the realization of the ideal, which may be mentioned. The imperial administration, on the one hand, awkward and lumbering under the best of circumstances, failed to exercise the requisite care in the delicate matter of appointment to the governorship. Court influences resulted in the appointment of adventurers like Fletcher and Cornbury. Even when pains were taken to select a man on the basis of the particular needs of the situation from the government point of view, the result might not be the choice of a man with the right sort of skill. This was true in the case of the Bellomont appointment. Even in the case of what was, in its results, the nearest to an ideal appointment — that of Hunter — efficient support from home could not be relied upon by the appointee. Circumstances of local character in the province, on the other hand, were equally an obstruction to the attainment of the ideal. In the first place, the heat of factious passion, coming over from the Leisler affair, caused popular attention and interest to center more on measures bringing triumph to one or other of the local factions than on issues of truly public policy. Then, too, outside the realm of Leislerian or Anti-Leislerian politics, the men of leading calibre were, as a class, characterized more by selfish ambition for the interests of a group of local magnates and their dependents, than by intelligent appreciation of the true relations of local-provincial and general-imperial interests.

The actual interworking of all these features, during the first twenty years after 1691, was such that we may say that

during all this time there was no effective opportunity for the realization of the possibilities contained in the theory of the Royal Province. Not until experience had brought the province through a period of developing education, and fortune had brought to the governorship a man having both an intelligent conception of the ideal, and—what was equally important—the personal temperament and political skill capable of making an impression on the actual conduct of affairs, was a sound basis of political development reached.

The four months of Sloughter's administration served merely to commit the newly established government to the policy of persecuting the leaders of the Leislerian regime. Whatever may be the degree of truth in Smith's violently hostile characterization of Sloughter, he certainly was not a person of the strength of character required to settle the government in a community torn with faction as was New York. Ingoldsby's administration of fourteen months was, in main outline, a continuation of the regime inaugurated under Sloughter's auspices by those who had played the part of victims during Leisler's rule. Ingoldsby's administration illustrated the characteristics of periods happening with unfortunate frequency during New York's early existence as a royal province, viz., the intervals between the death, removal or long absence of a governor, and his return or the arrival of the next incumbent. Under such circumstances, there was likely to be either a suspension of the more active and aggressive features of provincial development, with surreptitious exploitation of opportunities for private gain, such as corrupt dealings in land grants, or a violent use of governmental machinery, made unscrupulous by a consciousness of desperation such as is illustrated in the last weeks of Nanfan's power. Ingoldsby's term, in 1691-1692, illustrates the former group of activities, which served almost as well as the other type of proceedings to hinder the normal development of the possibilities of interaction between the two aspects of provincial existence.

The administration of Fletcher, from 1692 to 1698, did little to improve the situation. Important elements of the imperial system were perverted for corrupt purposes. The system of connivance at violations of the imperial trade system enriched a few New Yorkers at the expense of the ideal of the empire. Extravagant grants of land to a few favorites endangered Indian

relations and retarded the development and peopling of the province for many years to come. The circumstances of war on the frontiers necessitated activity in those departments of the imperial and provincial systems which bore on military matters, but the actual conduct of these affairs did little to promote the spirit of co-operation. Fletcher's conduct of hostilities was energetic, but unskilful and wasteful. The heavy burdens of taxation and detachments of militia for frontier service were not rendered lighter by the conviction on the part of many that the governor's arrogance and lack of tact were responsible for the disobedience of the neighboring provinces to the direction from England that they should be aiding and assisting to New York. The home government itself was hard pressed and could render little effective aid. Then, Fletcher's attitude in matters of local partisanship was practically a continuation of the Anti-Leislerian course pursued by the government since Sloughter's arrival. This complicated the relations between governor and assembly in the matter of raising supplies for military purposes. Altogether, these were not favorable circumstances for the development of the ideal of co-operation between the local and imperial aspects of provincial life.

Bellomont's arrival inaugurated a veritable revolution in the course of affairs. He threw himself vigorously into the task of the suppression of piracy, in so far as New York was concerned therewith. He put into practice as it was intended to be used, the system of penalties for violations of the acts of trade and navigation. In other words, the imperial trade system, with all the machinery that that involved, began to have effective operation in New York for the first time. Bellomont was very active in attempts at development of the positive aspect of the imperial trade system, and expended much energy in devising ways and means for inaugurating the naval stores policy in New York. It was impossible for him to develop the crown's landed estate on account of Fletcher's misconduct, but all his efforts went towards correcting and undoing as far as possible that official's mischief. But in all this, as in other matters, the complication of local partisan politics exercised a baleful influence. Fletcher and Cornbury went through the motions of a zeal for the empire, which practically, as events worked out, meant a zeal for the personal welfare of themselves and a

favored group of magnates whose provincial interests made political influence with the government necessary to them. In the case of Bellomont we have a genuine zeal for imperial interests, intelligently conceived and impartially administered, as far as "graft" is concerned. But the circumstances of his accession and the circumstances of the province combined to make the spirit of partisanship in the assembly and in the subordinate executive service too much for him to control. Long before he came to the province it was known that he was enthusiastically of the opinion that the Leislerian cause and party had been shamefully treated. So much of his activity on arriving in the province was of the negative kind — undoing mischief and punishing wrong-doers — and he made it such a personal affair with Fletcher that, with a people of provincial character, he could hardly avoid presenting the appearance of being chief of the Leislerian faction. This, of course, awakened into well-nigh ungovernable activity the revengeful zeal of the friends of Leisler. Bellomont had his hands full, even when he was in the province, in keeping a decent peace. When, then, death removed the only member of the government whose authority and personality was sufficient to hold passions in leash, the violence of the long-repressed Leislerians knew no bounds. The debauch of vindictive passion under the administration of Nanfan, of which the Bayard and Hutchins trial and the confiscation of Robert Livingston's estate are the most conspicuous manifestations, is a measure for us of Bellomont's real service. From some points of view it seems as if Bellomont's administration was too short to amount to anything as an object-lesson of what royal provincial government might be. But the odds against success in this attempt were heavy. The division of his attention between three governments, lack of the most efficient support from home, the excessive rage of passions, for a part of which he was, for personal reasons, unwittingly and inevitably responsible, militated strongly against the success of his administration. Hard-won progress was made towards giving the theory of the empire a chance. But the province needed more experience to make this beginning fruitful.

Up to the time of Bellomont's death, it may be said that the exponents of the general-imperial aspect of provincial life had been more conspicuous, had been more bold in grasp and initia-

tive. This was natural. The assembly was new to its work. The circumstances of war complicated development. Nanfan's administration from 1701 to 1702, taken as the outspoken and unrestrained expression of what was present but suppressed under Bellomont, is the time when local provincial forces get the upper hand. This period, discouraging in its revelation of possibilities, is not to be taken as fairly representing what was truly characteristic of provincial life, any more than Fletcher's administration is to be taken as an exemplification of the imperial theory. In fact, the features of excessive violence may be regarded as the consequences of the exasperation resulting from the Sloughter and Fletcher regimes, and the escape from utter wrecking of the imperial machinery, which even the most violent Leislerians recognized as out of the question as a matter of expediency, may be regarded as due to Bellomont.

The promise of better things, vaguely felt as expressed in the appointment of Cornbury, came to nothing. His relationship to the queen and his "interest" at court flattered the New Yorkers' sense of importance. But experience soon developed to the eyes of the knot of magnates, who were the real springs of power in the province, that for their purposes he was worse than Fletcher and Bellomont. We may indeed suppose that this group of leading individuals, standing, really, midway between popular feeling in general and the particular designs of the empire for the province, had themselves grown into slightly larger-minded conceptions of the interest of the province. Still they looked upon public policy with a view in which their personal interests bulked most conspicuously. For their purpose, a governor must manage to keep just enough in favor with the home government to keep his place, and must equally escape alienating popular provincial favor so as to avoid frittering away his energy in fruitless quarrels with the popular element — fruitless, that is, to their schemes. The great service rendered by Cornbury's administration to the development of New York as a royal province was the fact that he lost estimation both with the people of the province and with the local magnates, and thus compelled a measure of union among all elements for a common public end. This union against Cornbury's aim to make both imperial and provincial interests serve his personal ends was finally successful. But another short term of office — that of Lovelace for six

months — and another interval of government by a figure-head — Ingoldsby, again, for thirteen months — intervened before the arrival of a governor adequate to the task before him.

In Hunter we have the first governor whose administration displayed not only intelligent zeal for the empire and sympathetic appreciation of the situation of the provincials, but also the ability to relate these two features in the actual conduct of affairs.

Full description of these successive administrations and of Hunter's career in New York would be an extensive task, requiring for its satisfactory achievement materials not at present accessible. It would practically constitute a political history of the province during its first stage of royal provincial existence. It is one of the purposes of this sketch rather to describe as carefully as may be the two elements of the governmental system, representing respectively the general-imperial and the local-provincial aspects of New York, as they actually developed during the period from 1691 to the close of Hunter's administration. Chapters II. and III. are concerned with this description. These chronological limits are chosen because this was the period during which were elaborated the main outlines of the system and the more or less permanent methods of control, of that which has always been fundamental in English political development, viz., the power of the purse. Throughout all the manifestations of social and public life in the province, there was, to an extent, a general contest between provincial and imperial ideals. The essentially fundamental relation of financial, to all other questions, gives particular importance to the development of the contest between these ideals in the matter of control over raising and spending public money. In chapters IV. and V. an endeavor is made to trace the story of this development. The elaboration of this financial system and the application of the results of the controversy over the matter to the general conduct of provincial affairs, in a way, make up the first stage of the existence of New York as a royal province.

CHAPTER II. THE EXECUTIVE OFFICIAL SYSTEM.

In the original constitution of government in the province of New York, after its organization by the government of William and Mary, the executive held a position of especial advantage and, at first, at any rate, of power. The newly established assembly took some time in learning its position and possible power, and a struggle for vantage ground preceded its engagement in the struggle for the dominating position in the provincial government which it afterward attained. And in the executive department the governor was easily the dominating figure. There were other executive officials, holding office by patent from the crown and having functions important in provincial and imperial life. The executive aspect of the functions of the council was also of great importance. Nevertheless the relations between the governor and these officials and the council were such that, in the last analysis, it was the character and aims of the individual who held the office of governor that determined the complexion of the administration of public affairs in the province.

With this view of the importance of the governor, the circumstances surrounding appointment to an office of so great possibilities come to be of interest. The appointment was made by the King in Council, the name of the appointee was then signified by the Principal Secretary of State, who was at the time in charge of colonial affairs, to the Board of Trade, and at the same time the latter were desired to prepare a commission and a set of instructions. The influences actually having weight in the selection of individuals for this important office are not easy to determine. Authoritative information on the subject is scanty and fragmentary and yields only negative results to the search for light on the workings of the imperial system at this period.

It would appear that, whether solicited or not, the crown did not lack for intimations from interested parties, at any rate as to the qualities desired in an appointee. Thus, in 1689 we find a petition to the king from twenty-one merchants trading to and in New York, expressing to the king satisfaction in the appointment of Sloughter, calling attention to the strategic position of

New York and desiring that some military force and equipment be sent out with the new governor.[1] In 1701, after the death of Bellomont, we find Robert Livingston in a long communication to the Board of Trade mentioning as among the things necessary at that time for the preservation of the province, "that a governor be appointed who is a soldier, a man fearing God and hating covetousness and who will administer impartially without siding with any faction."[2] Again, in 1708, we find Lewis Morris writing to the Secretary of State in terms of the greatest freedom as to the "impudent conduct of the Governors, to call it no worse, that has been the great prejudice of her Majesty's service in America;" adding, "We are told Sir Gilbert Heathcote has made some interest for his brother, Coll. Caleb Heathcote; he will be a man to the general satisfaction of ye people, and at this juncture to obteine a resetlement of her Maj-ties revenue no man fitter. I know no man understands the Province or People better, or is more capable of doing her Majestie reall service. He is an honest man and the reverse of my Lord Cornbury."[3] Whether either of these latter communications, or their substance, ever came to the knowledge of the sovereign is of course impossible to determine. Certainly Cornbury was as far as it is possible to conceive from the ideal figure sketched by Livingston and the appointment of Lovelace would at best indicate that military qualities at that juncture were considered more important than thorough understanding of the province and people.

The appointment of Bellomont, an appointment as to which we have more than the usual amount of evidence concerning the crown's specific purpose, and upon which, apparently, unusual care was expended in consideration of the qualities of the appointee, reflected the disposition to consider more the interests of the trading empire at large than the exceedingly peculiar local situation in New York. At that time the quality of impartiality mentioned in Livingston's requirements was quite as necessary as in 1701, and in this particular Bellomont was deficient, at any rate in any effective degree, and his predilection for the cause of one

[1] Col. Doc. III. 651.
[2] Ibid. IV. 878.
[3] Ibid. V. 37-8.

of the factions in the province had been matter of public knowledge before his appointment..[1]

In the case of Fletcher, (1692-1698), we have his own assertion in his defence against charges of corruption, that "in the Irish Warr" and in his thirty years of service preceding he was "so far from making gaine by the misfortunes of our friends that I never did it from the ruine of our enemies and it was I presume the report of this behaviour that sent me into New York for I had never thought of the place till the moment it was proposed to me and my answer required."[2] We have no more than his own assertion for these points, however, and in the reply made to this defence of Fletcher's, we have a hint as to forces that were reputed to have great weight in the making of all these appointments. It was asserted that, so far as misfortunes in Ireland were concerned, Bellomont had suffered more in this particular "from that power that preferred and advanced Col. Fletcher," and that, too, at a time when Fletcher was not disturbed in his patrimony.[3] As to Fletcher's need for the exercise of favor from some quarter, we have the testimony of William Penn to the fact of his being "a necessitous man," of whom it was to be feared that he would "more consider the advancement of his own private fortunes than the public benefit of the Province."[4]

The disposition to explain the influences determining appointments in terms of other things than personal fitness is reflected all through William Smith's "History of New York." Thus in the case of Sloughter's appointment he remarks that a governor never was more necessary for reconciling a divided people as well as for defending them; "But either through the hurry of the King's affairs or the powerful interest of a favorite a man was sent over utterly destitute of every qualification for government."[5] In like manner, Smith describes Cornbury's early

[1] "The King did him the honor to say that he thought him a man of resolution and integrity, and with these qualities more likely than any other he could think of, to put a stop to the growth of piracy." Smith, History of New York, p. 150.

[2] Col. Doc. IV. 445.

[3] Ibid. IV. 458.

[4] Ibid. IV. 221.

[5] Smith, p. 122. Colden's estimate of the reliability of Smith's characterizations of governors was very low, Smith's defects in this regard being ascribed to "force of early prejudice — a narrow education, a weak

desertion of James II. for William, and adds, "King William in gratitude for his services gave him a commission for this government."[1]

The appointment of Hunter is the most interesting of all, for, though he proved to be the best governor New York ever had, there seems to be no evidence that there was anything more in this case than the bestowal of a place on a favorite, this time happening to be a man well qualified for his post. Smith mentions his acquaintance with Addison and others and hazards the suggestion that it was "by their interest that he was advanced to this profitable place."[2] Colden in his Letters on Smith's "History" mentions Hunter's membership in the guard of honor of the Princess Anne when she retired from her father's court, his service in William's and Anne's army till after Ramillies, his commission as governor of Virginia, obtained through "friends in Queen Anne's Court," and, further, names Dr. Arbuthnot, the queen's favorite physician, as the court influence behind Hunter. "The Duke of Marlborough's influence over the Queen began about this time to lessen, and Dr. Arbuthnot prevailed with the Queen to name Mr. Hunter for the government of Jamaica which happened to be vacant without consulting her Ministry who had designed that government for another, but Mr. Hunter being apprehensive that if he went to Jamaica against the inclinations of the ministry he would be made uneasy in his government and the government of New York becoming vacant at this time by the death of Lord Lovelace, the Ministers were willing that he should have the Government of New York, therefor Mr. Hunter desired his friends to inform the Queen that he would rather have the government of New York than Jamaica, and it was accordingly granted him."[3] An undoubted instance in eighteenth century English politics of "something equally as good"!

---

judgement and a stubborn temper of mind" (N. Y. Hist. Soc. Colls., 1869, p. 207). It is not necessary to agree with Colden in this opinion of Smith, but, apart from the general question, it is to be observed that upon the point of reasons leading to the appointment Smith would probably be simply recording what was matter of general impression in N. Y. at the time and, so far as this goes, his serviceability is hardly to be impeached.

[1] Smith, p. 169.

[2] Ibid. 199.

[3] N. Y. Hist. Soc. Colls. 1868, p. 196.

During the period under consideration, three of the governors were members of the nobility — Richard, Earl of Bellomont, Edward, Viscount Cornbury, and John, Lord Lovelace, Baron of Hurley; three were soldiers — Colonels Sloughter and Fletcher, and Brigadier Hunter. None were natives of New York or persons with previous experience in any practical way with the affairs of the dependencies. All but one, Sloughter, were governors of other provinces at the same time with their incumbency in New York; Fletcher, of Pennsylvania, from 26 October, 1692, to 20 August, 1694; Bellomont, throughout his incumbency, of Massachusetts and New Hampshire; Cornbury, Lovelace and Hunter, of New Jersey. It does not appear that this circumstance of a double government was regarded in New York as of very serious importance except in the case of Bellomont, who was absent from New York for nearly a year out of his three years of residence in America. At this time a petition of thirty-three New York merchants was preferred to the king, alleging that the strictness of Bellomont's instructions to the lieutenant governor during his (Bellomont's) absence acted as a great hindrance to justice, trade and industry without any advantage to other subjects or to the king, and praying that the province be restored to "its former manner of administration unconcerned with the Governor of any other place."[1] This should probably be interpreted, however, as a part of the general mercantile hostility to Bellomont rather than as a serious complaint on this point as a specific grievance. As to the connection with New Jersey, no complaint appears from any quarter in New York, and there would seem to be little reason for any, for the governor's absences in that province were only for the purpose of meeting the assembly there and the sessions rarely consumed more than seven or eight weeks out of the year. In 1709 the point was raised, whether orders concerning New York given by the governor when he himself was in New Jersey were not void. The Board of Trade gave opinion that this was "groundless and unreasonable the contrary being practised every Day here by the Lords Lieutenants of Counties and particularly by the Lords Lieutenants of Ireland who frequently send orders into Ireland whilst they are Resident in the Kingdom."[2]

[1] Col. Doc. IV. 624.

[2] Col. Doc. V. 155.

The tenure of office by the governor was during the pleasure of the crown and the powers granted by the commission were to be exercised immediately upon arrival within the province, which arrival, followed immediately by the publication of the commission, worked the determination of the effectiveness of the commission of the preceding incumbent.[1] It might, and frequently did, happen that some time elapsed between the appointment of a governor and the exercise by him of the powers conveyed by his commission. Thus:

Sloughter — Commission dated 14 November, 1689; arrived in New York 19 March, 1691.

Fletcher — Commission dated 17 March, 1692; arrived in New York 28 August, 1692.

Bellomont[2] — Appointed 16 March, 1697; arrived 2 April, 1698.

Cornbury — Appointed 13 June, 1701; arrived 3 May, 1702.

Lovelace — Appointed 28 March, 1708; arrived 18 December, 1708.

Hunter — Appointed 9 September, 1709; arrived 14 June, 1710.

During the period from 1691 to 1720 the frequency with which the office of governor changed hands undoubtedly constituted a feature of weakness in the imperial system of colonial administration.[3] Eleven different persons administered the powers of the governor's commission during the above-mentioned period, of whom six held commissions as governor and six acted ad interim; one, Ingoldsby, as commander-in-chief, from 27 July, 1691, to 30 August, 1692, and as lieutenant governor from 6 May, 1709, to 10 April, 1710; one, Nanfan, as lieutenant governor from 20 May, 1701, to 3 May, 1702; and two, as president of the council, Beekman, from 10 April, 1710, to 16 June, 1710, and Schuyler, from July, 1719, to September, 1720. There was one period of interregnum, as it were. On the death of Bellomont, 5 March, 1701, the lieutenant governor, Nanfan, was

[1] Col. Doc. IV. 272.

[2] Smith (p. 149) says that Bellomont was appointed in 1695 but the appointment was signified to the Board of Trade on the above date. Col. Doc. IV. 261.

[3] Egerton: A Short History of British Colonial Policy, pp. 156-8.

on leave of absence in Barbadoes. Dispute immediately arose as to whether powers of administration devolved upon the president of the council or upon the council acting by a majority of votes under the presidency of the eldest councilor. The violence of the spirit of faction then raging in the province caused the eldest councilor, William Smith, to proceed with so great caution that no precedent could be said to have been created by the case, the details of which will be related in another connection. Fortunately no outbreak occurred, and the arrival of Nanfan, 20 May, 1701, put an end to an extremely awkward situation. Making no distinction between governors holding office by commission and persons administering the powers of the commission ad interim, the office changed hands ten times between 1691 and 1720, and the average term was, approximately, two years and a half. It is to be noted with respect to this average, that it does not by any means tell the story. The terms of two governors, Sloughter and Lovelace, were cut very short by death, in the case of Sloughter, after four months, and in the case of Lovelace, after six months, of office. As we shall see, the powers of a lieutenant governor or a president of the council, particularly the latter, were of a somewhat curtailed character, compared with those of a governor; so that as material for the study of the working of the imperial system under normal circumstances, we have during this period only the administrations of Fletcher, of five years and a half, Bellomont, nearly three years, Cornbury, five years and a half, and Hunter, a little over nine years.

During the period considered two governors were displaced, Fletcher and Cornbury. It is difficult to find any very reliable material for judgment upon the standard of efficiency required of governors in their tenure of office, in the circumstances of these displacements. Fletcher made a great deal of Shrewsbury's letter recalling him, in which Fletcher was informed that "it was not for any dissatisfaction but in favor of the Earl of Bellomont," and that the king would take care of him and employ him otherwise for the future.[1] It does not appear that Fletcher ever was given another post, and his administration was certainly subjected to very close and suspicious examination, and, in several items, described as "not for your Majesty's service," by the

[1] Cal. Treas. Papers, vol. 1697-1701-2, p. 542; Col. Doc. IV. 443.

Board of Trade.[1] This was after a series of hearings by the Board upon charges against Fletcher covering a variety of subjects. Complaints had been made against him to the Board in August and September, 1695, by Robert Livingston, charging him with refusal to account to the assembly for disposal of public money and with undue influence over elections.[2] Further complaints were entered in September, 1696, by Leisler and Gouverneur, for partisanship in the internal factions in the province, undue influence over elections, misapplications of money raised by the assembly and of money sent by other colonies for defence, defrauding of the soldiers of the independent companies.[3] Later in the year, in December, Penn submitted a letter from New York, dated 13 June, 1695, which he said he had kept by him for eight months, "being unwilling to concern himself in the matters — chiefly complaints against Colonel Fletcher. But however he thought fit in the end to discharge his hands of it." This letter, the signature of which was cancelled, was from Peter de la Noy, a prominent Leislerian, and covered the same subjects mentioned above and, in addition, mentioned the matter of Fletcher's complicity in the operations of New York pirates.[4] These complaints, with Bellomont's voluminous correspondence upon the subject of Fletcher's misdeeds, formed the basis of the formal charges, which covered a great variety of subjects — protection of pirates, exorbitant grants of land, connivance at illegal trade, neglect of the military forces and of fortifications, illegal grant of letters of denization, discourtesy to the governor of Canada.[5] Whether these evidences of inefficiency or improper procedure would of themselves have been sufficient to secure his dismissal, it is hard to say. Both Fletcher and Livingston seem each to have thought himself in favor with the Duke of Shrewsbury, and the letter from de la Noy before referred to speaks of the people's "apprehension of his (Fletcher's) great power at court." That skilful use of complaints from the province, coupled with manipulation of court influences, was considered to be a possible method of getting rid of an obnoxious governor, we have ample

[1] Col. Doc. IV. 481.
[2] Ibid. IV. 127-30, 143-5.
[3] Ibid. IV. 212-16.
[4] Ibid. IV. 221-4.
[5] Ibid. IV. 443.

evidence. Perhaps the best example is the case of Bellomont himself, whose activity in enforcing the acts of trade and in discountenancing piracy so angered the merchants of New York that within a year of his arrival they "raised a sum of money by contribution, which they have sent for England, therewith to apply privately at Court to get the Earl removed."[1] Apparently an equally important part of the scheme was to influence elections to the assembly, so that the latter would refuse to renew the revenue, which would be a "sure means to ruin the Earl's interest at Court and get him quickly called home."[2] This plot was fomented from England by Fletcher after his return, who wrote to his New York friends just before these elections that "his affairs were in a very prosperous condition at the Court of England and that he made no manner of question to baffle all the accusations sent home against him."[3] And later, in 1700, we find London merchants who traded to New York representing to the Board that Bellomont was discouraging lawful trade by his mismanagement, and in February, 1701, petitioning parliament for redress in the same matter.[4] The question whether Fletcher should be recalled actually for the misconduct indicated in the charges was probably never squarely faced by the imperial administration. The materials for the charges had been coming to the knowledge of the "Lords of the Committee" for nearly a year before the establishment of the "Board of Trade," in May, 1696. This Board, composed for the most part of men without official experience, was made acquainted in a still more comprehensive way with the complaints against Fletcher in August and September, 1696, and in their representation on the northern colonies to the Lord Justices, 30 September, 1696, suggested for military reasons,[5] the appointment of a captain-general for the war, to command all regular forces and the militia of all the colonies on the continent, this captain-general to have the power

[1] Col. Doc. IV. 462.

[2] Ibid. IV. 508.

[3] Ibid.

[4] Ibid. IV. 604.

[5] Possibly on the basis of the suggestion of Nelson, a Bostonian who had been taken prisoner by the French and who was at that time in England on parole. Brooke and Nicolls recommended him to the Board as able to inform them very particularly on the strength of the French in Canada. Col. Doc. IV. 186.

of governor of any of the plantations immediately depending on the crown while present in it.[1] It was after this, 11 December, 1696, that the information concerning Fletcher's complicity with pirates seems to have been brought to the attention of the Board, who notified Fletcher in a letter of 1 February, 1697, that information had reached them from recent trials of pirates that his government was reputed to offer protections to pirates.[2] In their representation to the king, 27 February, 1697, the Board presented the matured results of their consideration of their suggestion to the Lords Justices for the military union of all the colonies. Their proposition now took the form of a governor for Massachusetts, New York and New Hampshire, with chief residence at New York and with power of captain-general in those provinces and in Connecticut, Rhode Island and the Jersies.[3] This was followed in less than a month by the appointment of Bellomont to the position whose powers had thus been indicated. It seems probable that this appointment was made for the reasons which had had weight in the determination to carry out the above-mentioned recommendation of the Board, the importance of the position requiring a man of greater consequence than Fletcher could possibly be, and perhaps in view also of the king's high opinion of Bellomont, which was expressed at the time of his appointment.

There are some circumstances about the recall of Fletcher and the appointment of Bellomont which suggest that it was an early case of securing the recall of an obnoxious governor through the medium of an agency, in this case informally constituted. It was noted above that complaints against Fletcher were brought to the Board in August and September, 1696, by Leisler and Gouverneur at just about the time that Brooke and Nicolls as agents of the province were making representations on the condition of the province with reference to the question of defence. Leisler and Gouverneur were the natural leaders of the Leislerian party in New York, which outnumbered their opponents three to one,[4] and which had undoubtedly been discriminated against ever since Sloughter's arrival. They found no

[1] Col. Doc. IV. 228-9.
[2] Ibid. IV. 255.
[3] Ibid. IV. 259.
[4] Ibid. IV. 524.

opportunity of expressing themselves in the governmental organization of the province, and the visit of Leisler and Gouverneur to England was naturally used by the party to improve its general situation in every possible way. Their success with parliament in getting the attainder of the elder Leisler reversed naturally gave them the greatest encouragement and they bitterly resented the appointment of Brooke and Nicolls as agents, asserting that it was a packed assembly that voted the money for the agency, that the agents were inveterate Anti-Leislerians sent over ostensibly to represent the state of the province, but actually to secure the "interest" of Fletcher and the Anti-Leislerians at court, etc. Peter de la Noy's letter to Penn, already referred to, shows plainly one object which the Anti-Leislerians hoped for, viz., "the removall of this man and we are not sollicitous whether he is gently recalled or falls into disgrace, so we are rid of him."[1] But in view of all the circumstances — Fletcher's well-known "interest" at court, the equally obvious fact of the success of the Leislerian campaign in other high official quarters, the inaction of the administration in reference to the serious matters proved at the hearings of the charges against Fletcher, the opportunity to ascribe the supersession of Fletcher by Bellomont to military exigencies of undoubtedly pressing character — in view of all these circumstances — it seems probable that the expressions used in Shrewsbury's letter to Fletcher —"not for dissatisfaction with him but in favor of the Earl of Bellomont" — were a very fair description of the situation.[2]

In the case of Cornbury, we find complaints previous to his recall, from the collector and receiver-general in the province as to obstruction from the governor in the performance of his duties;[3] from the lieutenant governor, that the governor gave him no instructions and prevented him from exercising any power either in New York or New Jersey;[4] and from Lewis Morris of New Jersey, giving a detailed account of partisanship

[1] Col. Doc. IV. 224.

[2] Chalmers says, "he was soon after recalled partly owing to complaints made against him, but more with design to make room for a new plan of union of the Northern Colonies, on which the safety of the whole was supposed to depend." N. Y. Hist. Soc. Colls. 1868, p. 149.

[3] Col. Doc. V. 28.

[4] Ibid. IV. 1162-3.

and corruption in New Jersey and plainly stating Cornbury's conduct in New York to be as bad or worse.[1] These complaints came by way of incident after a considerable number of experiences by the Board of his neglect and inefficiency in attending to their requirements. It seems likely, too, that the administration was moved partly by a negative aspect of the news communicated by Morris, viz., that it was useless to expect the province under present conditions to renew the revenue which was shortly to expire; and partly by the possibility of a use for extraordinary military qualities in a governor of New York in view of the intended expedition to Canada. At all events, Lovelace's appointment would seem to tally with these conditions. Smith bluntly says, "We never had a governor so universally detested, nor any who so richly deserved the publick abhorrence. . . . Her Majesty graciously listened to the cries of her injured subjects, divested him of his power and appointed Lord Lovelace in his stead; declaring that she would not countenance her nearest relations in oppressing her people."[2] He mentions Cornbury's impotency with the assembly, particularly in the matter of the revenue, and ascribes it to his partisanship against the Leislerians, his persecution of the Presbyterians, the fear of his bigotry entertained by the Dutch, his avarice, embezzlement of the public money and his sordid refusal to pay his private debts.[3] It would seem to be a plain case of personal unfitness, finally exhausting the long-suffering patience of all concerned. Of the actual forces efficient with the home government in bringing about his removal we have, however, in the material at present accessible no reliable evidence.

From the circumstances thus brought out concerning the displacement of these two governors it appears that inefficiency and even corruption in the office could run rather a long course before meeting with decided action by the authorities at home. It also appears that, among the influences practically determining the duration and security of a governor's lease of power, faithful and efficient discharge of the office did not play the leading part.

The governor was supported by the salary or allowance, and perquisites. The former was allotted by the crown from the

[1] Col. Doc. V. 33.
[2] Smith, p. 188.
[3] Smith, p. 185.

revenue granted by the assembly for the support of government, and the amount was specified in the instructions. This allotted salary tended to increase during the period under consideration. His instructions directed Sloughter to take £600 sterling, and the same amount was allotted to Fletcher. In the case of Bellomont, who was governor of three colonies at once, the £600 was divided, and £400 allotted to Bellomont as governor of New York, and £200 to the lieutenant governor resident at New York.[1] The theory was that Bellomont could afford to lose a portion of the customary New York salary because of his receipt of salaries in his other governments. And, on the other hand, considering the likelihood of frequent and prolonged absences of the governor from New York, the lieutenant governor here would require more than the usual compensation for that office, viz., one half the salary and perquisites of the governor during the time of the latter's absence.

In the case of these first three governors, the allotted salary had been supplemented by the "presents," i. e., sums of money granted by the assembly "for the use of" the governor, generally immediately after his arrival.[2] These presents seem to have been officially recognized by the crown as a part of the system of recompense for the governor, for a clause in the instructions particularly required that no money or value thereof be granted "by any Act or Order of Assembly to any Governor or Lieutenant Governor or Commander-in-Chief . . . which shall not according to the Stile of Acts of Parliament in England be mentioned to be given and granted to us with the humble desire of such Assembly that the same be applyed to the use and behoof of such Governor . . . if we shall think fit or if we shall not approve of such gift or application" the money should be appropriated to other uses mentioned in the Act and to remain in the hands of the Collector till the royal pleasure be known.[3] Nevertheless Sloughter's first assembly granted the money that came in to the receiver-general on account of duties, etc., "accustomed to be taken but not Warrantable by the Law" between

[1] Col. Doc. IV. 290. The reverse of the arrangement in the case of Andros in 1688.

[2] Peter de la Noy, referring to the present to Fletcher, calls it "the usual compliment made to a new Governor." Col. Doc. IV. 221.

[3] Ibid III. 686.

29 January, 1691, the date of Ingoldsby's arrival, and 18 May, 1691, the date of publication of the act granting a revenue for the support of government, to "his said Excellency to enable (him) to defray his extraordinary expence."[1]

The first assembly called by Fletcher made him a present, partially complying with the requirements of the instructions. By this act "the Rate of one Penny in the Pound upon all the Reall and Personal Estates within the Province" was granted to their Majesties "to be allowed unto his Excellency the Governor for his care of the Province;" but no provision was made for complying with the other requirements of the instructions for such a case.[2] This rate, according to his own account, brought in to Fletcher actually about £600. His enemies asserted that it should have amounted to £2000, but that Fletcher, by his greediness, mismanaged the collection so that he lost the greater part, that he accused the assessors of partiality and threatened to commit them to jail for not assessing the inhabitants heavily enough. Fletcher himself ascribed his misfortune to a merchant of the city to whom he entrusted the collection and by whom he

[1] Colonial Laws of N. Y., 253-4. It is to be observed that this was the first assembly legally held in the province, since it came under the direct government of the crown. This assembly evidently took the ground that the new plan of government contained in the commission and instructions to Sloughter went into operation with the arrival of a royal officer commissioned to obey the king's "Governor of N. Y. now and for the time being." In that case, taxes of any sort could only be collected on the authority of the assembly which was directed to be summoned by the governor. A collector, then, who had continued to receive taxes dependent for their authority on the former regime, would need to be indemnified for such proceeding for the period between the determination of the old regime and actual granting of taxes by the proper authority of the new government. This indemnification was another feature of the act, which granted the proceeds of such collection to the governor. It is further to be observed that according to that which later became the custom of the province, the administration of a new governor did not begin till he had actually arrived and published his commission. From this technical point of view, then, the new Constitution could not be regarded as actually in operation till the arrival of Sloughter, 19 March, nearly two months after the arrival of Ingoldsby, and in this act the assembly was granting what did not belong to it, and that to the amount of the proceeds of these two months. It does not appear, however, that this view of the matter was ever publicly mentioned.

[2] Col. Laws I. 308.

was deceived — this according to Bellomont's report.[1] Fletcher was also accused of trying to enforce the "present" device upon the smaller units of government, procuring, through his tools, an Address and a golden cup of the value of £20 from the city of New York, and, by the use of blackmailing methods upon the Indian fur-trade at Albany, a present of fifty or sixty of the best skins.[2]

The first assembly of Bellomont's administration did no public business. But at the first session of his second assembly, elected after changes in the lists of the returning officers and under circumstances of great excitement, an act was passed, granting to the king £2000, "£1500 whereof to be allowed to his Excellency. . . . and £500 to . . . the Lieutenant Governor." The provisions of this act seem even more at variance with the letter of the requirements of the instructions, for, though the language of the introductory sentences conveys unequivocally the meaning of a direct gift to the crown in the most humble terms, the enacting clause provides that the said sum be "raised to the uses aforesaid and to no other use . . . whatever."[3] It is uncertain whether the governor and lieutenant governor ever had any benefit from this act. As late as 29 July, 1700, Bellomont complained of ill usage from the home government in "not allowing me to make use of the £1500 given by this province in almost a year and a half's time."[4] And in October, 1700, he complained most bitterly that the long suspension of this act was being used by his opponents in New York as an undeniable token of his disgrace at home.[5] It would seem that the delay was occasioned by the solicitor general's office in London and that the whole matter of salaries was under consideration by the crown as late as 21 June, 1700. But the terms used in the letter of the Board, 19 September, 1700, make it entirely uncertain whether this act is or is not one of those which they mention as having declined to give an opinion upon.[6] A part, at any rate, of the £2000 was collected, but no full account

[1] Col. Doc. IV. 221, 611-2.
[2] Ibid. IV. 222-3.
[3] Col. Laws I. 397.
[4] Col. Doc. IV. 698.
[5] Ibid. 714.
[6] Ibid. 667, 699, 840.

was ever obtained. Apparently what accounts there ever were on the subject disappeared when Weaver, collector and receiver general under Bellomont, was suspended by Cornbury.[1]

Apparently the home government had not reached any conclusion in the matter of an increase of the allotted salary of the governor, when, in the summer of 1701, a commission and a set of instructions were drawn up for Cornbury; for none of the few alterations made in the instructions of Bellomont concerned the matter of the governor's salary.[2] Cornbury's first assembly passed an act for a present of £2000 to the governor, which act conformed fully to the letter of the requirements, appropriating the sum so raised to the defense of the country in the absence of the king's permission for its original application.[3] This act was confirmed by the queen.[4] But in April, 1703, a letter from the queen, alleging the inconveniency arising from the custom, forbade a governor to give his consent to any law or act for a gift or present from the assembly to any governor or lieutenant governor or commander-in-chief, and also forbade such persons to accept any present from the assembly or any one else in any manner under penalty of highest displeasure and recall from office. By the same letter, which, incidentally, was incorporated in all succeeding instructions, the governor was directed to take from the revenue £1200 instead of £600 as his salary, and the assembly, in consideration of lightening the "customary burthen of presents," was to be informed of the queen's expectation "that they would contribute in a more ample and effectuall manner to their own safety and preservation."[5] No further change was made by the crown in the amount of the governor's allotted salary during the period under consideration.

No resistance seems to have been actually put forth against this allotment by the crown out of the revenue raised by the assembly till 1710, when, at the beginning of Hunter's administration, the assembly entered upon a long contest with the gov-

[1] Minutes of the Executive Council, VIII. 144, 152, 183-4, 259, 270, 328. Colonial Mss. XLIV. 51, XLVII. 110.

[2] Col. Doc. IV. 885.

[3] Col. Laws I. 508.

[4] Col. Doc. IV. 1038.

[5] Ibid. IV. 1040-1.

ernor and council upon the whole issue of support of government, a contest which, as its development showed, was waged upon the abstract question of the political consequences of the previous method of support, unconnected with complications of personal animosity against the governor. This contest was of signal importance for the constitutional development of the province, and the story of it will be related in another connection. On this particular point of the amount of the governor's salary and the crown's allotment of it from the revenue, it is to be observed that one feature of the contest was the proposition of the assembly in 1710 to vote 2500 ounces of silver — about one half the value of the appointed salary — "towards defraying the Governor's necessary expense for one year." Hunter reported that in doing this the assembly was acting definitely on the notion that the crown had no right to appoint a governor's salary out of the revenue raised by them. He exhibited to the assembly the clause of his instructions fixing his salary, but all to no purpose. The matter went so far that the Board of Trade prepared bills for parliament enacting "a Revenue of what has usually been allowed . . . for the support of the Governor and the necessary expenses of government."[1] In the final settlement, by compromise, of the whole dispute, in 1715, the assembly by resolve fixed the governor's salary at the figure named in the instructions.[2]

The perquisites were described by Bellomont at the beginning of his administration as consisting of fees — for passes for ships, marriage licenses, probate business and other things requiring the province seal, — fines and forfeitures, one third of the proceeds from seizures of vessels and goods for unlawful trade, and presents from the Indians.[3] The governor's share in the proceeds from seizures was secured to him by act of parliament.[4] His income from fees became increasingly liable to attack on the part of the assembly as time went on, but during the period under consideration no act regulating fees escaped disallowance in England. Besides, the dispute over fees, which was a feature of the great struggle between the governor and

[1] Col. Doc. V. 191-3, 197, 285, 287, 330, 333, 359-60, 367, 452.
[2] Journal of the Assembly I. 375.
[3] Col. Doc. IV. 316, 522-3.
[4] Ibid. IV. 316.

council and assembly, 1709-1715, seems to have been rather over fees of court officers and attorneys than those taken by the governor and secretary.[1] In the Table of Fees proposed by the assembly in 1709 there appear in addition to the fees for purposes already mentioned, fees taken at different stages in the process of getting a patent for land.[2]

From Bellomont, more than any one else, we get information concerning both the amount of salary and perquisites together, and the amount of different items of perquisites. He complains early in his residence in New York that he does not see how he can make above £800 salary and perquisites, and somewhat later reports that in thirteen months, outside of salary and proceeds of seizures, he has received only £83:6, New York money, for passes for ships, marriage licenses, probate business and all things requiring the province seal,[3] and £88:9:10 from the sale of skins received as presents from the Indians. According to the accounts of Weaver, collector and receiver general under Bellomont, the seizures for the period from 8 June, 1698, to 25 November, 1700, amounted to £375:13:7½.[4] So that Bellomont's fears, expressed above, as to his yearly income from his New York government not reaching £800 seem entirely justified. Bellomont was not at all backward in representing the matter to the Board of Trade, asserting that he was worse off in fortune than when he came, though if he were willing to use the corruption of Fletcher he could make the government more valuable than that of Ireland, "reckoned the best government in His Majestie's gift;" calling their attention to the fact that the intendant of Canada gets as much as he himself gets from all three of his governments, while the emoluments of the governor of Canada are reckoned anywhere from six to ten thousand pistoles. He admits that Virginia and Maryland, whose governorships are worth respectively £4000 and £2500, yield a great revenue to the crown, but contends that that very revenue in those provinces depends upon his own right management of the Indians in

[1] Col. Doc. IV. 157, 170, 177, 184, 947. Col. Laws I. 639.

[2] Ibid. 638.

[3] The governor received twelve shillings for every use of the Province seal. Col. Doc. IV. 378, 522-3, 687.

[4] Col. Mss. XLVIII. 110.

New York.[1] We have seen that early in Cornbury's term the allotted salary was doubled, but whether this was in direct response to Bellomont's representations, we have no means of knowing. Fletcher was accused of having, by the use of all possible devices, cleared from £30,000 to £40,000 in his six years of residence. He himself said that if he should get all that was due to him his net gains would not amount to more than £3000.[2] Fletcher certainly must have cleared more than that, by all accounts but his own, but whatever the figure, his is not a typical case, for no subsequent governor was allowed the opportunities which he so richly exploited.

A travelling allowance seems to have been made in some cases out of the revenue in England. Bellomont accused Fletcher of having obtained the consent of the council in New York to the issue of a warrant to himself for £130, to reimburse him for his expenses on the voyage from England ("notwithstanding his Majesty's Allowance of £600 on that account in England.")[3] The minutes of the council show the passage of such a warrant, but as yet no indications have been found of the payment of such sum in England. In the case of Cornbury, we have his request to the Board of Trade for "such allowance of tunnage as is usual" for transporting his servants and goods to New York.[4] And on a date suspiciously close to that of his request we have the following: "His Majesty directs that in order to avoid making precedents there be paid to Lord Cornbury Governor of New York £1000 out of the secret service money as of His Majesty's bounty to enable him to proceed on his voyage."[5] From this it is natural to infer that such an allowance at any rate was not usual. And it is of interest to note that Cornbury succeeded in the first few days of his residence in New York in persuading the council to give him a warrant for one half his salary for the period between the date of his commission and his arrival in the province, a period of eight months.[6] No evidence of a travelling allowance appears in the cases of the other governors, and as both of those

[1] Col. Doc. IV. 378, 676, 724.
[2] Ibid. IV. 451.
[3] Ibid. IV. 422.
[4] Ibid. IV. 913.
[5] Cal. Treas. Papers Vol. 1701-1707, 2/13 Sept. 1701.
[6] Minutes of Exec. Council IX. 27.

who succeeded in obtaining it had an unsavory reputation for greed, we must consider that it was not a regular feature of the governor's support.

The powers to be exercised by the governor were conveyed through, and described by, the commission and instructions. The relation between these two documents has been well indicated by Greene, who describes the commission as containing the grant of power and the instructions as containing directions for the use of that power, frequently limiting its scope.[1]

Here it will be convenient to consider the commission and instructions together, and inquire to what degree they partook of that comparative fixity of character and publicity which we associate with the idea of a written constitution and note some particulars of the form in which this quasi constitution appears.

The changes in the commission were made gradually and in the period under consideration were, though rather numerous in the aggregate, not very extensive in character. Sloughter's commission, which was modelled on Dongan's rather than on Andros', was expressed in forty clauses and covered twelve different subjects. Hunter's commission, which was shorter and covered fewer general subjects, showed twenty-two changes in all from that of Sloughter, of which some were purely formal, two consisted of slight and insignificant changes in verbal expression, some were omissions because of changes in the imperial system, such as the power to "erect, nominate and appoint Custom houses and officers pertaining," and some were the result of local development within the province, such as the direction in Hunter's commission for summoning assemblies according to the usage of the province of New York instead of according to the usage of other plantations in America.[2] Of these changes more than one-half were made between the issue of a commission to Bellomont and that to Hunter. The commission was published immediately upon a governor's arrival, that is to say, it was publicly read under conditions of some ceremony. Sometimes it was read twice, once at the fort in the presence of the council, after which the governor and council took the oaths and then proceeded to the City Hall, where the commission was read again.[3]

[1] Greene: Provincial Governor, p. 94.
[2] Col. Doc. III. 623; V. 62-8.
[3] Minutes of Exec. Council IX. 16-18.

In form the commission consisted chiefly of conveyances of power from the king, the terms used being "we do hereby give and grant full power and authority;" of requirements or directions, the terms used being, "our Will and Pleasure is," "we will and require you," and of appointment or declaration, using such phrase as "we do ordain, constitute and appoint." The form of direct grant of power is used in two-thirds of the instances and though there seems to be a slight preponderance of the use of the phrases of requirement and direction in the case of restrictions on popular power, this is not at all certain.

The instructions showed a very much greater tendency to increase in length and to go into more and more specific detail and complexity. Sloughter's instructions contained sixty-two clauses, which number had increased by Hunter's time to one hundred and twelve, and three-fourths of the increase was made in the latter's instructions. Sloughter's instructions, like his commission, were based on Dongan's, the chief differences being due to the presence of an assembly, the encouragement of the ecclesiastical jurisdiction of the Bishop of London instead of the Archbishop of Canterbury and the exclusion of Papists from the privileges of toleration, the limitation of the appointing powers of the governor and the specific inclusion of the matter of appeals to the privy council. Of the sixty-two clauses in Sloughter's instructions, nine concerned the governor and his relation to other officials, six concerned legislation, seven administration of justice, twelve guardianship of morals and ecclesiastical administration, six administration of military affairs, eight fiscal administration, three diplomatic affairs, meaning by that relations with other colonies, with the Indians and with European powers in treaty relation with Great Britain, and two concerned the transmission of statistical matter by the governor. Of the forty-five changes between Sloughter and Hunter, twenty-two concerned the conduct of the machinery of government by the executive, twelve the legislative part of the work of government, and eleven were of a temporary or emergent character.[1] The form ordinarily used in the clauses of the instructions was that of direction — "you are to" or "you are not to," "you are to take care that," etc. In certain cases, "particular" care was enjoined; in the case of

[1] Col. Doc. III. 685; V. 124.

Sloughter's instructions, in six matters — the form of grant of money as a present, the prohibition of a law or act lessening the revenue, regulation of salaries and fees, the frequency of musters of the militia, the settling of military storehouses, and the equipping of orthodox churches with the Table of Marriages. This particular care was enjoined in addition on Fletcher in the matter of worship according to the Anglican rite and on Hunter in the matter of forms of law-making, transmission of accounts, keeping of entries of imports and exports and shipping and the account of the province's supply of negroes. The phrase "Our Will and Pleasure is" seems in the instructions to be used for much the same purpose as the enjoining of particular care. For example, it was used in Sloughter's instructions in reference to six matters — the quorum in council, the salary of the lieutenant governor, the requirement of a certificate from the Bishop of London in preferring to benefice, admission of ministers to vestries, salary of the governor and the clause conferring general powers in matters not covered in the instructions. In succeeding instructions it is used in reference to fourteen other matters, which, like those already adduced, seem to have reference to points in the conduct of government by the executive which experience had shown to be important for efficiency. Special stress was laid by means of threats of loss of salary, or loss of place, or of highest displeasure on the transmission of accounts and laws and vigilance in execution of the acts of trade and navigation. The instructions became increasingly minute in directions as to conduct of the legislative work of government, the chief objects being the prohibition of the passage of certain kinds of acts, requirement of certain conditions in certain kinds of acts, prohibition of insertion of certain kinds of clauses, recommendation of certain acts to the assembly, etc. It is worthy of note that in respect to all these matters — number of articles or clauses, number of those clauses on which special stress is laid, and minuteness of direction with respect to the conduct of government in those matters shown by imperial experience to be important, there is marked development during the period between Bellomont and Hunter, and that the commission and instructions in Hunter's time seem, more than in the case of any of his predecessors, to

embody the results of experience as well as the ideals of the empire.

As to publicity, we observe that by their own tenor the instructions were required to be exhibited only in certain parts and to certain parties — the clauses in which the advice and consent of the council were required for the validity of some action were to be communicated to the council, — and such other instructions as should be found convenient for the service to be imparted unto them. The former were not very numerous, being four in Sloughter's and seven in Hunter's instructions. Practically, the instructions seem to have been accessible at times of exceptional emergency. On Bellomont's death, his commission and instructions were produced at the following council meeting and read.[1] And in the dispute following, Smith, the eldest councilor, argued in objection to the procedure proposed by the Leislerian leaders that business men would be slow to risk on the credit of a government "which they are not satisfied pursues the powers of His Majestie's letters patent."[2] On Lovelace's death, his instructions were entered in full in the council book.[3] When Bellomont was in doubt as to the meaning of the clause giving half his salary and perquisites to the lieutenant governor, he showed the clause to a "friend or two that are lawyers."[4] Of course instructions respecting legislation, both as to form and effect, became common property when use of them became necessary to a governor in defense of his course. But, to whatever degree non-official people, who were nevertheless interested in the contents of the instructions, succeeded in getting knowledge of them here and there, the fact remains that the instructions were nothing like the publicly known document that a modern constitution is, though they constituted the most important part of what was actually the public law of the province.

Hunter was the first of the New York governors to receive a separate set of instructions relating to his duty in the enforcement of the acts of trade and navigation. In the instructions to Bellomont and to Cornbury a clause appeared, reciting that notwithstanding the act of 1696-97 great abuses were still prac-

[1] Minutes of the Exec. Council VIII. 211-12.
[2] Col. Mss. XLIV. 90.
[3] Minutes of Exec. Council 10:303.
[4] Col. Doc. IV. 317.

ticed, arising either from the insolvency of the persons accepted as securities or from the remissness or connivance of the governors in the plantations, and declaring that failure in due observance of these laws in New York through wilful fault or neglect on the part of the governor would be looked upon as a breach of trust and would be punished with loss of place and further marks of royal displeasure.[1] The same clause appeared in Hunter's instructions,[2] and, in addition, he was given a set of "Orders and Instructions . . . in pursuance of several Laws relating to the Trade and Navigation of . . . Great Britain and our Colonies and Plantations in America." By these he was required to inform himself of the principal laws on this subject, specifying the Acts of 12, 14, 15, 22 and 23, and 25, Car. II, and of 7 and 8, William III. He was to take care that his Naval Officer give security to and be approved by the commissioners of the customs in England. He was to transmit every three months or oftener lists of the vessels trading in the province and copies of the returns made by masters concerning the contents and quality of cargoes, according to enclosed forms. He was not to make or allow any by-law, usage or custom in the province repugnant to such laws of parliament as mention the plantations, but was to declare such usages null and void. He was to assist in all ways the collector and other officers appointed by the commissioners of the customs. He was to take care that in any actions at law in the matter of forfeitures for unlawful trade "there be not any Jury but such as are natives of this kingdom or Ireland or are Born in any of our said Plantations." He was to take care that offices in courts, "or in what relates to the Treasury of our . . . province of New York," be in the hands of native born subjects. He was to correspond with the commissioners of the customs as to the conduct of the customs officers in the province and as to all occurrences that were necessary for their information. The rest of the twenty-four clauses consist of explanations and interpretations of the laws already mentioned and such other laws relating to the same subject as had been passed since that time.[3]

[1] Col. Doc. IV. 291-2.
[2] Col. Doc. V. 143.
[3] Col. Doc. V. 144-53.

Attempt was made to insure due performance of his functions from a governor by the exaction of a series of oaths. Sloughter was required in his commission to take an oath for the due execution of his office and trust, and this oath might be administered to him by any five of the council. Presumably he himself took at the same time the oaths "appointed by Act of Parliament to be taken instead of the oaths of Allegiance and Supremacy and the Test," for he was required to administer these oaths to the members of the council, and in Bellomont's commission and instructions it was definitely specified that he should himself take and then administer to the council the abovementioned oaths. In addition, he and the members of the council were required to subscribe the Association.[1] In addition to these engagements, Cornbury "took a solemn oath to observe punctually and bona fide the Act of 7 and 8, William III, and all other Acts of Trade."[2] The council minutes describe Lovelace as taking all the oaths and subscribing the Declaration, by which is probably meant the Declaration "mentioned in an Act of Parliament made in the 25th year of the reign of King Charles the Second, Entitled 'An Act for preventing dangers which may happen from Popish Recusants,' " for we find the requirement of this Declaration mentioned in Hunter's commission. Hunter was further required to take the oath mentioned in the Act of Succession.[3]

Arrangements for the administration of the powers of the governor's commission and instructions in case of the death, removal, or departure from the province of the regular incumbent were a long time in reaching a practical settlement. Till Bellomont's time, the commission provided for the succession of "such Person as shall be appointed by us to be Commander in Chief" and in case there should be "no Person upon the Place commissionated or appointed by us to be Commander in Chief Our Will and Pleasure is that . . . Council . . . do take upon them the Administration of the Government."[4] The instructions, however, provided for the enjoyment of one-half of the salary and perquisites during the absence of the governor by

[1] Col. Doc. III. 623, 685, 818, 827. Ibid. IV. 266, 284.
[2] Minutes of Exec. Council IX. 16-18.
[3] Minutes of Exec. Council X. 266, 513. Col. Doc. V. 92.
[4] Col. Doc. III. 623.

"such Lieutenant Governor or Commander in Chief who shall be resident upon the place for the time being."[1] And in general throughout the period the terms Lieutenant Governor and Commander in Chief seem to be used practically without distinction. When Bellomont was appointed governor of New York, Massachusetts and New Hampshire, his kinsman, Nanfan, was commissioned as lieutenant governor of New York, and empowered to execute the powers and directions of the commission and instructions in the case of the death or absence of the governor and to follow the directions of the governor of New York for the time being during the latter's residence in the province.[2] Bellomont died at New York in March, 1701, and after an interval of confusion, Nanfan administered the government till the arrival of Cornbury in May, 1702.

On the appointment of Cornbury as governor of New Jersey as well as of New York, Major Richard Ingoldsby received two commissions, one as lieutenant governor of New York, and one for the same office in New Jersey. That for New York was dated 25 November, 1702, and it is to be presumed that, as in the case of a governor's commission, the arrival of Ingoldsby terminated the effectiveness of the commission to Nanfan, of the formal revocation of which there appears no record.[3] Experience under this arrangement proving unsatisfactory, Ingoldsby's commission as lieutenant governor of New York was, in 1706, ordered to be revoked, and he was directed to reside in New Jersey.[4] But for some reason no notice of the revocation of his commission was sent to him at the time, and on the death of Lovelace in 1709, he succeeded to the governorship. The Board of Trade on learning of his accession looked the matter up and thereupon revocation of his commission was formally notified to him. This brought the administration of the powers of the government into the hands of the council, of which Gerardus Beekman was president, and, shortly after, an order in council was despatched, recognizing him as the head of the government in the province and restricting him in the exercise of this power

[1] Col. Doc. III. 686.
[2] Ibid. IV. 277.
[3] Ibid. 1002, 1162.
[4] Ibid. 1174-6.

in certain matters.[1] These are the only instances during this period of the succession of the lieutenant governor.

The only case of the administration of the government by a commander-in-chief is an entirely anomalous one, occurring at the beginning of the period. As a matter of fact, though the terms Lieutenant Governor and Commander-in-Chief are used apparently without practical distinction, we have no instance of a commander-in-chief acting by regular commission. On the death of Sloughter in 1691, four months after his arrival, there was no one in the province commissioned as commander-in-chief or lieutenant governor. The governor's commission directed that in such circumstances the "Council . . . do take upon them the Administration of the Government and execute this Commission . . . and that the first Councilor . . . Preside in our said Council with such Powers and Preheminences as any former President hath used or enjoyed within our said Province or any other our Plantations in America until our further Pleasure be known." This arrangement had been incorporated in the act of the first assembly "declaring what are the Rights and Privileges of their Majesties Subjects inhabiting within their Province of New York."[2] Interpreting this arrangement in the sense afterwards explicitly given to it by the Lords of Trade, Frederick Phillipse was entitled to preside in the council. His name appeared first in the list of the council which Sloughter was instructed to call together on his arrival, and in this list as given in the "Documents relating to the Colonial History of New York" the name of Dudley does not appear at all. Yet Sloughter, on his arrival, describes Joseph Dudley as "the first of their Majesties' Council here," and it is known that Dudley's appointment as "Chief of the Council in New York" was desired by the king. Smith says plainly that Dudley had the right to preside in the council, and we know from the journals of the council that he was sworn on the day after Sloughter's arrival.[3] Whatever the facts in this matter, the council put their own interpretation on the direction to take the care of the government on themselves, and, as they afterwards reported, "pursuant to

[1] Col. Doc. V. 80-2, 89-91, 110.

[2] Col. Doc. III. 623. Col. Laws I. 244.

[3] Council J. I. 1-15. Exec. Council Min. VI. 1. Smith, 130. Col. Doc. III. 685. Cal. Brit. State Papers Domestic Vol. 1690-91, 128.

their Majesties' Lres Patent (?) did unanimously declare Major R. Ingoldsby to be Commander-in-Chief until their Majesties' pleasure shall be further known and on the 27th instant (July, 1691) he was sworn to execute the Powers and Authorities contained in their Majesties' said Lres."[1] By what color of authority they took this step does not appear. Dudley's absence from the province at the time of Sloughter's death of course accounts for his not acting as president of the council, but the directions in that case called for the presidency of Phillipse, whose name stood next on the list.[2] It may be that they made a distinction, such as was afterwards raised on the death of Bellomont, between the right to preside in the council and the right to execute the powers of the commission and instructions as commander-in-chief. Throughout this period the governor presided at the meetings of the council in both its legislative and executive capacity, but during the first session of the assembly there are indications that the governor and the president of the council were considered as having distinct parts to play.[3] But this would not justify the bestowal upon a person of the council's choice of both the power to preside in the council and the power to execute the commission. This latter was, in the absence of the commander-in-chief, who was plainly referred to as a commissioned officer, to be exercised by the council itself. From a technical point of view the "declaration" of Ingoldsby as commander-in-chief would seem to be a coup d'etat quite as much as the assumption of power by Leisler. The nearest thing we have to a contemporaneous view of the matter is Smith's account, which, after mentioning Dudley's right to preside, goes on: "but they committed the chief command to R. Ingoldsby . . . Dudley did not think proper to dispute Ingoldsby's authority, though the latter had no title. . . . To the late troubles and the agreement subsisting between the Council and Assembly we must ascribe it that the former tacitly acknowledged Ingoldsby's right to the president's chair, for they concurred with him in passing several laws the validity of which have never yet been disputed." The fact that Ingoldsby was in command of the "Independent Companies,"

[1] Col. Doc. III. 791.

[2] Lamb. Hist. of N. Y. City I. 396. Col. Doc. III. 576, 586, 608, 793, 836.

[3] Ass. J. I. 2-3.

would furnish the party controlling the "agreement between the Council and the Assembly" with just the power they needed over a community exhausted but factious. And their proceeding at this time was merely a repetition of their action at the time of Ingoldsby's arrival before the coming of Sloughter. But the circumstances of that time were plainly anomalous and necessitated a certain irregularity in procedure, whereas, the circumstances at Sloughter's death, though unfortunate, were those of a government pacified and settled on a regular basis, whose documents, the commission and instructions, were now of record in the province. The irregularity was apparently winked at by the home government, and Ingoldsby held office for over a year, till the arrival of Fletcher. But, though the council and Ingoldsby sent a number of letters to Secretary Blaithwait and the Duke of Bolton, there are no letters in the "New York Colonial Documents" from the Board or any Secretary to Ingoldsby.[1] This curious episode was the only instance of the succession of a commander-in-chief to the powers of the governor and its anomalous character has been sufficiently indicated.

This experience did not lead to any change in the wording of those parts of the commission and instructions which provided for succession to a vacancy in the governor's office. The province was to pass through another extraordinary experience in matters connected with this subject before the whole was put in intelligible order. On the 5th of March, 1701, the governor, the Earl of Bellomont, died, and, as the lieutenant governor, Nanfan, was on leave of absence at Barbadoes and there was no one on the spot commissioned as commander-in-chief, the opportunity arose for the interpretation of what was meant by the "powers and pre-heminences" belonging to a president of the council. The first councilor resident in the province was William Smith, recently suspended from the office of chief justice of the province. The council at that time numbered seven, of whom four, all Leislerians, were in the city at the time, and three, Smith, Schuyler and Livingston, were at their homes in distant parts of the province. Bellomont's whole administration had been a time of violent faction and it was alleged that Smith, Schuyler and Livingston were to have been suspended on the very night that

[1] Smith, p. 105. Exec. Council Min. VI. 40.

Bellomont died. Whether Bellomont, if he had lived, would have been able, in that case, to restrain the fury of the Leislerian passion for revenge, it is impossible to say. He certainly had not been crowned with success so far in his difficult task of holding a steady course between the "angry party," characterized by disregard for the imperial trade system, and the "black party," concerned with a passion for revenge upon their oppressors during the Fletcher regime. He certainly could not have kept them from a certain measure of their desires. The control of the execution of the powers of the commission and instructions was absolutely essential to the realization of these Leislerian ambitions and when, on the arrival of Smith, it appeared that he interpreted the powers of a president of the council to mean that he alone had power to call the council and that without him the rest of the council could not sit and act as a government, the four Leislerians presented views categorically opposed to this interpretation. They resolved that, while the eldest councilor should preside at meetings, all acts relating to the administration of the government "should be signed, acted and done by the greater part of his Majesties' said Council met in Council and the Government be administered in the name of his Majesties' Council," and that "when a majority of them should agree that it was for the King's service that they should meet and act, they will meet and act, giving notice to Col. Smith to meet with them and to preside and act as President, which if he refuses they will proceed without him."[1]

In the vigorous controversy which followed, Smith seems to have conducted himself with much the greater dignity and moderation. His report of the dispute to the Lords of Trade was fair. He made concessions, though with explicit reservation of what should turn out to be his rights, which showed a disposition to do everything, short of surrendering his entire position, which might tend to keep the peace till the arrival of Nanfan. And he carefully refrained from the attempted exercise of any more power than was absolutely necessary for that purpose. The conduct of Weaver, however, who was practically the Leislerian leader, was violent, his use of the majority vote, as shown by the proceedings with regard to the journal, was governed wholly

[1] Col. Doc. IV. 849. Exec. Council Min. VIII. 213

by partisan considerations; and his desperation is indicated by his attempt to bribe and then to intimidate Smith himself. The particular power in the actual exercise of which the Leislerians were chiefly insistent that Smith should be "concluded by" the majority vote, and over which the two parties came to a deadlock, was with reference to a summons of a session of the assembly. As to this Smith was inclined to think that the assembly had been dissolved by the death of the governor, and, in any case, he was anxious to prevent a session of the assembly at this time, being confident that the Leislerians intended mischief, and having no notion that they would be at all scrupulous in their use of power. Nevertheless, though taking the ground that there was no occasion for a session, he did, under protest, sign proclamations for a session at the time which had been set by Bellomont, knowing that, unless some proclamation were issued, the assembly would meet anyway, and hoping that time might bring a fairer disposition or some authoritative interpretation of the meaning of the commission. The assembly met, but Smith refused to sit with the rest of the council as the upper house, though sitting with them for administrative business, and after all, the assembly passed no acts. It may be that the Leislerians lacked nerve in the face of the opinion of "a great number of the inhabitants and those of the best sort, too," against the Leislerian constitutional theory. The application of this theory met with another important check in the domain of administration, for the business men of the city would not maintain the credit of the government unless the method of the latter were made to conform to the practice of the other plantations. Fortunately, no outbreaks of violence occurred before the arrival of Nanfan, ten weeks after the governor's death, and for this the credit must belong largely to Smith. Strangely enough, the only comment made by the Lords of Trade upon this affair was to the effect that they did not find "that any distinct power is conferred on a President separate from the rest of the Council." In his report Smith suggested the importance of making the terms of the commission explicit upon this point — "is informed that the practice is different in different plantations and have not been determined without some straine and struggle in all such Plantations who had never been under the like circumstances of administration." Nevertheless it was not until 1707 that in an addi-

tional instruction to Cornbury direction was given that under such circumstances as have been described, the councilor whose name is placed first in the instructions is to take upon him the administration of the government and "execute the powers of the Commission in the same manner as a Governor or Commander-in-Chief." This was certainly an effective, though tardy, endorsement of the correctness of Smith's reasoning and thereafter the course of procedure was plain. The council nevertheless clung to its own interpretation whenever possible, but the matter never again became an issue of importance.[1]

As a provincial office the lieutenant-governorship was as merely occasional and transitory in importance as the vice-presidency of the United States, and less useful, actually, under ordinary circumstances. He did not even act as presiding officer in the council when the governor was in the province and in the case of both Nanfan and Ingoldsby, the instructions given by the governor left the lieutenant governor in a position of almost quaint impotence.[2] It happened that the only two lieutenant governors who held office during this period were officers who commanded the "Independent Companies"; so that there was at least something for them to do. Under Bellomont, Nanfan was allowed by instructions from home a salary of £200, one-half the amount of the salary of the governor at that time, and it was a standing instruction that during the absence of the governor from the province, one-half of the salary and perquisites should go to the lieutenant governor or commander-in-chief. The exact meaning of this arrangement was brought into question by Bellomont whose duties as governor in three provinces and captain-general of militia in five or six made frequent and prolonged absences a necessity. He complained that if he were considered as absent from New York while still present in one of his governments, "every Journey will be very expensive to me," and, "at that rate my Lieutenant Governor will have a better time of it than I shall." The Lords of Trade ruled accord-

[1] Col. Doc. IV. 859. E. C. M. VII. 213-220. Col. Mss. XLIV. 90, 98. Col. Doc. IV. 857-9, 887, 867, V. 5. E. C. M. X. 465, 528.

[2] For example, Nanfan was forbidden to lodge in the new apartment in the King's house in the fort, or to permit any one else to do so. Cornbury absolutely disdained to give Ingoldsby any instructions at all! E. C. M. VIII. 111-13. Col. Doc. IV. 1162-4.

ingly that the lieutenant governor should receive one-half of the salary and perquisites, only when the governor should be absent from all his governments. When Nanfan succeeded to the governorship he was informed that he was entitled to his salary of lieutenant governor and to one-half of the governor's salary and perquisites, and that therefore he was not to pass any act of assembly which granted any present to himself.[1]

The situation of the province under the rule of a lieutenant governor was fruitful of mischief. It was during Nanfan's administration that the Leislerian fury was allowed to run to the lengths typified by the outrageous proceedings of the Bayard and Hutchins trial, though apparently Nanfan did not prove a wholly pliant tool in the hands of the Leislerians. Ingoldsby, in his term as lieutenant governor, was accused of being wholly under the influence of the lately disgraced Cornbury. These possibilities of mischief seem to have been at least vaguely before the minds of the Lords of Trade, for as early as 1698 we find them instructing Bellomont that he is empowered, if necessary, to suspend a lieutenant governor and to appoint ad interim to that office, as in the case of councilors. And on the accession of Nanfan the Board applied to him as lieutenant governor the limitation imposed on a president of council, viz., not to pass any acts but such as were immediately necessary. And, finally, in 1706, the Board represented to the privy council that, "as the Governor of New York does most reside at New York, and that upon the occasions of his being absent from thence to visit the Jersies there is a president and Council in New York for the despatch of business there they are of opinion . . . your Majesty's service does no ways require that there be a Lieutenant Governor of New York." And in 1709 the president of the council was shut off from the two ways of doing mischief which experience had shown to offer the greatest temptations, by a prohibition upon passing any grants of land as well as any acts but those that were immediately necessary.[2]

Next in dignity and importance to the governor as a part of the executive official system stands "His Majesty's Council for the Province of New York." This body had been an important branch of the government of the province from the very

[1] Col. Doc. IV. 284, III. 686, IV. 316-17, 415, 864.

[2] Col. Doc. IV. 361, 864, 1174, V. 110.

beginning and had, throughout its existence, the influence naturally pertaining to a body which had assistant-executive, appellate-judicial and assistant-legislative powers. During the period under consideration it was popularly considered to play, in the miniature copy of the English constitution, the parts of the Privy Council and House of Lords combined; and in its executive capacity the council showed its view of its position by a reference in the minutes to the oath of office as that of a "privy Councillor of the province." The privileged position of a member of the council is also indicated by an order issued in 1710, "on complaints of some members that upon a notion of the lawyers that they are equally liable to arrest with other people, and some of them have been arrested on vexatious actions to the hindrance of their attending on public business." The order directed that in case of demand or cause of action against any member of the council, before arrest should take place a declaration should be filed against him and if he refused to appear and plead according to the ordinary rules of the court that then the plaintiff might take out a writ against him.[1] In all three of the capacities mentioned above the purpose of the constitution of the council was apparently to provide the representative of the crown with the assistance and advice, and, in some points, the restraint, in the exercise of the powers committed to him for the management of the province, which could be afforded by a group of men acquainted with its capacities and personally interested in its welfare. The admission of the representatives of the people to a share in the legislative work of provincial government in 1691 operated of course as a narrowing of the sphere of opportunity which might be directly and unrestrainedly exploited by the representative of the crown and in this process it was the council that lost most. The career of the council throughout this period must be estimated in the perspective of the extensive range and thorough-going character of its powers prior to 1691, with the brief interruption of the years 1683-4. In the Charter of Liberties in 1683 an attempt was made to limit the powers of the governor, assisted by the council, to the task of ruling and governing the province *according to the laws thereof*. But by the failure of this attempted legislation, the

[1] E. C. M. IX. 16-18. X. 575. Col. Mss. XLVII. 12. L. 30. Smith, 364-5.

council's work of assistance was left to be described by the commission and instructions and the laws of the province were not by any means the sole measure of direction of the exercise of these powers. The sphere of powers and activities assigned to the Council of the Dominion of New England by Andros' commission and instructions in 1688 was exactly the same as that of the Council of New York under Dongan. But the brief exercise of power by this organization and the fragmentary character of our knowledge of its proceedings with regard to New York render this period unavailable as a source of information on this subject.

In theory the composition of the council was determined by the crown; practically during this period the governor had the weightiest share in the determination of its membership. The instructions to a new governor contained a list of names of those whom he was to call together as a council and to whom he was authorized to administer the oath of office. He was empowered by the commission to suspend a councilor for just cause from sitting, voting and assisting therein, and the exercise of this power was checked by a clause in the instructions requiring the transmission to the home government of the reasons for suspension, together with the charges and proofs and the answer of the suspended individual thereto. Vacancy, by reason of death, removal from the province, or suspension, was to be signified to the crown in order that the latter might appoint to the vacancy; while for the crown's assistance in this matter, the governor was required to transmit a list of six names of persons best qualified for the trust. In case, however, that the number of vacancies brought the membership below seven, the governor was empowered to choose enough to make up seven, these to be to all intents and purposes councilors till confirmed from home or till the constructive vacancy was filled by the appointment of some one else. As to the individuals sought, they were to be of the principal freeholders, men of estate and ability and not necessitous or much in debt, and were to be "well affected to our government." In the latter part of this period the quality of "good life" was added to the requirements.[1] The program thus outlined for composition of the council was

[1] Col. Doc. III. 623, 685. V. 124.

early departed from and for reasons which the home government seemed to recognize as practically urgent. The council might be said to be continually in session; rarely was there more than a week or ten days between sessions. A quorum of five was required by the instructions and, except at certain seasons of the year, it was the members resident in New York or the immediate vicinity who had to be relied on to supply this number. So that, for example, a governor was likely, as in Fletcher's case, to waive the requirement that he should make appointments ad interim only when the number fell below seven, and appoint enough to furnish him with a working quorum, at a time when the list of councilors in the province was still clearly above the required minimum. Naturally, such appointments were likely to be of men resident in New York or the immediate vicinity. In the case of the appointment of Heathcote by Fletcher, it is probable that the ability "to advance his private fortune for his Majesty's service to answer an emergency when money was not in the Treasury," and the inability of a number of the then titular councilors to be similarly serviceable were the urgent reasons for the appointment. The home government seems to have taken no notice of the irregularity; but when Cornbury took the same measures he was cautioned to keep more closely to his instructions, though his appointments were immediately confirmed.[1]

The total membership of the council at first varied. Sloughter's instructions named twelve; Fletcher's, fifteen; Bellomont's, thirteen; but by Cornbury's time the limit was settled at twelve.[2]

As to the representation of the different localities, no principle seems to have been explicitly adopted, but there were always one or two from the Albany region, and most of the time one from the eastern end of Long Island; but the bulk of the membership was always from the district easily accessible to New York City. But even so, the governor experienced much difficulty in living up to the requirement of five for a quorum, and Cornbury urged that attention be particularly directed to that feature of the situation in appointments to the council. In 1698 a clause was inserted in the instructions providing for suspension of any member of the council who wilfully absented himself

[1] Col. Doc. IV. 1136-7, 1156.

[2] Ibid. V. 470.

without just excuse when duly summoned and who persisted therein after admonition. And in the instructions to Hunter it was provided that if a councilor were absent from the province without leave from the crown for more than a year his place should become vacant. Hunter suggested the appointment of "supernumerary Councilors," but it did not meet with favor.[1] There was always a certain element of ex officio membership. The collector and receiver general was always a member, but the Lords of Trade took pains, in confirming the appointment in one case, to disclaim any necessary connection between the offices. Though the commission of the Lords of the Treasury to Byerley, as collector, in 1703, recommended his admission, Cornbury refused to nominate him, and he was not appointed till 1711. Bellomont regarded it as highly desirable that the secretary of the province should be a member, but this was not the case till 1716, when Clarke, who had been secretary for thirteen years, was appointed. During the whole of the period, the chief justice and, during the administrations of Bellomont and of Cornbury, the attorney-general, were usually members. During Cornbury's administration we find Römer, the royal engineer, a member; but he was so seldom in the province that his membership hardly counted. Colonel Quary, surveyor-general of the customs, was empowered to be a councilor during his stay in each province where his business called him; but it does not appear that he was regularly sworn in in New York.[2] Under the circumstances of difficulty in getting a quorum which have already been referred to, it is not surprising that the governor should come to depend on the official portion of the council membership for attendance; though it is to be observed that this official element did not become formidable till the latter part of the period.

This brings us to the dependence of the composition of the council on the governor's use of his power of suspension. In the ordinary course of affairs, when a councilor died or removed from the province, the governor nominated a successor, admitted him to the council till the pleasure of the crown should be known, and sent the name home for confirmation. It is impos-

[1] Col. Doc. V. 56, 470, 124, IV. 856. E. C. M. X. 186.
[2] Col. Doc. IV. 536, 1136-7, V. 470. E. C. M. XI. 352.

sible to say how strictly the governor kept to the lists of eligibles which the instructions required him to furnish to the home government; but it is to be presumed that they were pretty closely adhered to, for there appear only three cases of refusal to confirm. One was so entirely exceptional as to lack significance. The two others were rejected because they had no estate in the province, though they were prominent citizens of New Jersey.[1]

As has been indicated, after the province had come down to settled ways of living, the usual reason for changes in membership was death or departure from the province. But in the period prior to the close of Lovelace's administration in 1709, there were two occasions when the governor's power of removal was used with much freedom, and both of the resulting upheavals occurred at the beginning of a new governor's term. Bellomont's instructions named thirteen councilors. Of these, one had died before Bellomont's arrival, one was "superannuated," one, being non-resident, refused to accept; and when for different reasons the governor had, within six months, suspended eight, his nomination of five new members, which practically re-constituted the body, was entirely within the limits of the narrowest interpretation of his powers. As for three of the eight persons suspended, he gave as reasons, their complicity in dealings with pirates, and as for the other five, he described the act as "absolutely necessary for his Majesty's service," — they were "always resty and perverse in everything I propose . . . always caballing and contriving to make the government uneasy to me." The truth is, that, as is well known, the Earl had come full of zeal for the suppression of piracy and evasion of the acts of trade and had early discovered that the council, as well as his predecessor, were all pretty equally involved in the scandal. It is hardly to be doubted that all of the eight suspended councilors had been involved in the "system"; but Bellomont's frank avowal of the partisan-political character of his reasons for suspension could easily lend color to the accusations of his enemies that these removals were upon frivolous pretences, "in order to procure Sheriffs and consequently an Assembly to his liking." It was unfortunate, too, that three out of five of those

[1] Col. Doc. IV. 965.

who were appointed to the vacancies were prominent Leislerians, accused of lacking the estate and financial ability, which was considered an important requisite. Nevertheless we find all but one of those appointed by Bellomont during his term in the list of councilors brought over by Cornbury.[1]

This list was, however, soon disturbed by the second great shaking-up in membership. The nearly complete capture of the organization of government and the revengeful use of the power thus gained by the Leislerians during the interval between Bellomont and Cornbury had led them into a variety of excesses, the whole temper and personal passion of which was nucleated in the affair of Bayard and Hutchins. Cornbury promptly espoused the cause of the Anti-Leislerians, and with entire disregard of his instructions, formal and otherwise, lent himself to the designs, equally vengeful, of the party which had lately been the sufferers. He immediately suspended from the council, not only those who had been actively identified with the irregularities of the trial, but also those known to be of Leislerian tendencies. He frankly assigned complicity with the Bayard-Hutchins trial as his reason for the suspension, and it was approved by the crown. As this reduced the number of the council to just seven, there was technically no vacancy to which to nominate, nevertheless two were admitted and were apparently confirmed, as their names appeared in the list of the council in the new instructions to Cornbury in 1703. Cornbury's procedure in the case of these suspensions was so neglectful of the program laid down by the instructions, as to defeat his own ends in the long run. One of the surviving councilors suspended by him was included in the list in Lovelace's instructions, whereupon two of the other survivors made vigorous representations as to the injustice of leaving them out of such a vindication, and were able apparently to satisfy the council that the requirement laid upon the governor to furnish a suspended councilor with a copy of the reasons had not been complied with and that the facts should be represented to the home government. They professed that they were neither "envious nor soliciting to be restored to that Honourable Post," but only anxious that they "may no longer be looked upon as scandalous persons by the Home Gov-

[1] Col. Doc. IV. 399, 620. E. C. M. IX. 226.

ernment." Nevertheless in the list of the council in Hunter's instructions their names appeared "in their places according to their precedency they . . . had" formerly, "as has usually been done in like cases."[1]

It is perhaps because of the wholesale changes for partisan political reasons, as carried on by Bellomont and Cornbury, that we find the instructions, as drawn up in Hunter's time, altered to provide for a better enforcement of the requirement of the list of six eligibles, for strict conformity to the established number of formal membership, and for transmission to the Lords of Trade or to the Secretary of State of justification for not entering the reasons for suspension of a councilor on the council books, "in case you do not so enter them." Whether for this reason or because of the abler and more straightforward character of the governors who succeeded Cornbury, there were no more changes of membership by the wholesale.[2]

The requirement of the commission and instructions, that persons nominated to the council should be of the principal freeholders, men of estate and ability, and the practical requirement for quorum purposes, brought it to pass that the mercantile interest of New York City had a preponderating influence in the body. At times this was of serious consequence for the province. Bellomont reports himself puzzled "who to recommend for a supply of Counsellors unless I should send the names of merchants," and the Lords of Trade, probably on his representation, report great difficulty in "getting men for the Council free from the practices that ought to be reformed." Appreciation of the situation does not seem, however, to have made much difference with the practice of the Lords of Trade in following the recommendations of the governor pretty closely. The council continued to contain representatives of the great landed interest, like the Van Rensselaers and the Smiths of Long Island; of the wild land and fur-trading interest, like the Schuylers and Livingstons; of the mercantile interest reaching out into land-holding, like the Phillipses and Van Cortlandts; and of the strictly city and mercantile interest, like Van Dam.[3]

---

[1] E. C. M. IX. 226, 296, X. 267, 286-7. Col. Mss. LIII. 14. Col. Doc. V. 123.

[2] Col. Doc. V. 124.

[3] Col. Doc. IV. 396, 719.

The executive duties of the council were in the nature of general assistance and advice to the governor but the commission and instructions specified certain activities of the governor as requiring the participation of the council in some way or other. The consent of the council was required for a declaration of war against the Indians on emergent occasions, and that of the council and of the assembly for the making of laws. The *advice and consent* of the council was required for the calling of assemblies, the erection of courts, the issue of warrants for the payment of public money, for regulation of fees, for appointing markets, fairs and ports, and, in the latter part of the period, for commissioning judges and justices of the peace and for executing "Articles of War or other Law Martial" on the inhabitants. The *advice* of the council was required for action in reference to fortifications and in regulations concerning "that freedom which commerce ought to have," and for the granting of lands, though in this last matter change was afterwards made so as to require consent as well as advice. Finally the *assistance* of the council was required to "find out the best means to facilitate and encourage the Conversion of Negroes and Indians" and "to provide for the raising and building of Publique Work Houses."[1]

For the execution of these powers the council seems, during this period, to have had no organization separate or distinguishable from its organization as the upper house of the legislature. Items of legislative business occur in its minutes intermingled with executive items; so that, for example, we have in the "Journal of the Legislative Council" a record of the approval of an answer of the governor to an address from the assembly on the subject of amendments proposed by the governor and council to a bill from the assembly; also of advice given by the council to the governor to pass a certain bill in the form in which they in their legislative capacity have amended it. The governor presided at their sessions. Only occasionally, and this not until the latter part of Cornbury's term, does the journal give us any information concerning the votes of members.[2]

The frequency of sessions and the volume of business fall off very sharply in the latter part of the period. During the administrations of Fletcher and Bellomont we find weekly ses-

[1] Col. Doc. III. 623, 685, 818, 827, IV. 266, 284, V. 92, 124.

[2] Journal of Leg. Council. I. 91, 107.

sions in the very dullest times, which were from the middle of July to the middle of September, and from December to March. In the spring and autumn, sessions averaged two or three weekly, and often there were daily sessions for weeks at a time. There was a tendency for sessions to be numerous at the beginning of a new governor's administration. The first part of Cornbury's administration shows an increase in number of sessions and volume of business over the preceding year and a half, but there is a decided falling off in the latter part; while in Hunter's administration a lower level is reached than was the case in any part of Cornbury's term. And in Hunter's time the business is less miscellaneous in character — is easily classified under the heads of judicial affairs, land, accounts and warrant-issue.

As to compensation by way of salary, we have the testimony of Hunter, before the Lords of Trade in 1720, that the council "always claimed an allowance as well as the Assembly in proportion to the Number of days they attended the Publick Service in a Legislative Capacity, though that Allowance was never paid them before the passing the two late Acts for paying the Publick Debts of the Province." (1714 and 1717).[1]

As to relations between the governor and council in the ordinary discharge of business, the commission and instructions required that the council should be allowed freedom of debate and vote in all things. Cornbury was accused, in letters of complaint sent home, of browbeating the councilors and not allowing them freedom of debate. He informed them of this and, being left to themselves, they unanimously declared their ignorance of any such denial of freedom and caused their declaration to be entered on the records. The general circumstances of the administration, however, rob this formal vindication of convincing power. Fletcher was believed by Bellomont to have been guilty of undue influence of another kind — "so managed the Council here by gratifications of grants of land, connivance at their unlawful trade, etc., . . . that on perusal of the Council books, I do not find that they would contradict him but joined with him in almost everything that was proposed to them altho' never so extra judicial."[2] Naturally, anything like adequate proof of

[1] Col. Doc. V. 552.

[2] E. C. M. X. 250. Col. Doc. IV. 320.

this condition it is impossible to obtain from merely formal records and from the indignant letters of Fletcher's successor. But examination of the council minutes bears out Bellomont's charges of a complete agreement, or — what was for practical purposes just as effective — acquiescence in Fletcher's proceedings; and of pernicious activity in land grants in which members of the council unblushingly participated on a great scale. As to the general position of the council in the government, consideration may be fitly postponed till after a survey in the following chapter of the position and powers of this same body in its legislative capacity.

The other executive officials in the province were at first wholly under the power of the governor, though the commission and instructions, after lodging the appointing power generally in the governor's hands, required that removal from office should be for cause signified home, and, particularly that commissions to judges and justices of the peace should not contain limitations of time. The commission and instructions further reserved the appointment to offices under the Great Seal of England — "patent places" — to the crown, but allowed to the governor power of suspension and ad interim appointment, as in the case of other officers. In Hunter's instructions the consent of the council was required in making appointments to offices connected with the administration of justice. All officers were to be aiding and assisting to the governor in the execution of the powers of the commission, and the governor was forbidden to allow any person to execute more than one office by deputy.[1]

With respect to the "patent places," which were, besides the councilorships, the offices of secretary of the province, the collector and receiver general, and for most of the period the Admiralty Court, it is sufficient to observe that the control over the filling of these offices was not practically in the hands of the governor as was the case with the councilorships. The collector and receiver general was subject to instructions from the commissioners of the customs in England and was more than once at cross purposes with the governor. The experience of the province ran through the combinations of a lax governor and a corrupt collector, Fletcher and Brooke; a zealous governor, Bello-

[1] Col. Doc. III. 623, 685, V. 124.

mont, and this same corrupt collector; a corrupt governor, Cornbury, and a strict and active collector, Byerley; with the result of frequent suspensions of the collector and consequent disputes over accounts, restorations with new disputes over the new transfer of accounts, and, in general, an intolerable confusion in all financial and accounting relations, which made an important element in the development of the assembly's financial powers. It was not until Hunter's time that harmonious and efficient relations between the governor and collector became a regular feature of provincial life. Bellomont complained loudly of the inefficiency of the person whom he found holding office as secretary and had evidently made arrangements, in England before coming over, to have the office filled to his liking; but his man had disappointed him. He had high ideals for the office — "should be the Governor's right hand man," able to canvass accounts, etc. — but he was unable to get these ideals realized.[1] Till Bellomont's time it had been customary for the secretary to hold also the office of clerk of council, executing its duties by deputy; and also the offices of register and examiner of the court of chancery. But Bellomont was very clear in his mind as to the iniquity of holding office by deputation, and suspended the secretary's deputy. But after the appointment by the crown of George Clarke as secretary, in 1703, the offices of secretary of the province and clerk of the council were by order of the governor in 1705 reunited.[2]

There was comparatively little office-holding by deputy. The governors, however, experienced much annoyance from persons who were appointed in England to office in New York, but who delayed their sailing for an unreasonable time after appointment. More than once such individuals succeeded, against the efforts of the governor, in obtaining payment of salary for the period between their appointment and their arrival in the province.[3]

The other executive officials of the province were appointed and commissioned by the governor, and the salaries, as well as

[1] Col. Doc. IV. 536.

[2] Col. Mss. XLV. 116. E. C. M. IX. 78, 300, 502. Col. Doc. IV. 925.

[3] E. C. M. VIII. 286-8. Col. Doc. IV. 855.

those of the patent officers, were established on the provincial revenue, the governor being instructed to regulate all salaries and fees. The most important of these officials were the Justices of the Supreme Court, the Attorney General, Naval Officer, Clerk and Messenger of the Council, Surveyor General, "The Gentlemen at Albany appointed to manage the Indian Affairs," the Custom-house officers, Public Printer, Justices of the Peace, and Sheriffs in the Counties, and the Mayors of the Cities of New York and Albany. In the early part of the period there are a number of instances of the creation of special offices, usually for doubtful or partisan purposes and filled by creatures of the governor or of a triumphant faction. Examples of this are to be found in the office of Accountant General and of Secretary at War, created by Fletcher and filled by the disreputable Honan.[1] Another example is the office of Solicitor General, created by Nanfan at the time of the Bayard and Hutchins trial, when the attorney general blocked the plans of the Leislerians by an opinion hostile to their course. It was filled, significantly, by Weaver, the active leader of the Leislerians at this time. At this period, also, the office of "Corrector of the Presse" was set up and filled by Gouverneur, a personage of partisan significance equal almost to Weaver. The office of Escheator General also appears in these last desperate hours of Leislerian opportunity. It was created apparently for the purpose of facilitating the confiscation of Robert Livingston's estate, and at the same time providing for one Cosens, another professional Leislerian office holder. For all salaried offices the governor found no opposition from the council in ordering a salary paid out of the provincial revenue; but in none of these cases did the offices remain established long enough to make a permanent impression on the official system of the province during the period.[2]

Bellomont's program as general overseer of the official system was sufficiently ambitious. "I take a great deal of pains to serve the King myself and I will oblige all other officers in the Government to take the same pains in their respective employments or I will turn them out and apply home for new ones in their places." He did apply home a good deal for office-holding material, his

[1] Col. Doc. IV. 421.

[2] Col. Doc. IV. 974. E. C. M. VIII. 344, 308.

opinion of the abilities and honesty of New Yorkers being rather low. He made particularly strong representations as to the low state of the legal profession, and succeeded in getting a judge and an attorney general appointed from home. The chief justice received at first an allowance from the Treasury but during the disputes in Cornbury's time arising from the Bayard and Hutchins affair, the payment seems to have been discontinued. In the case of the attorney general a custom grew up of requiring a certificate of ability from the Justices of the Courts at Westminster; but this was not absolutely essential, if the crown chose to forego the requirement. The payment of an allowance from England seems in like manner to have depended on the favor of the crown.[1]

There are no instances of the control of executive officers by the assembly until the struggle over the right to appoint a "Country Treasurer," for the custody of funds raised for extraordinary uses, outside the support of government. From this time, i. e., 1706, on, we find the assembly increasing the number of officers immediately dependent on it; as, for example, the commissioners of the excise, the tonnage officer, officials charged with the custody of funds arising in the manner indicated by their titles. As for control of the whole executive official system, the assembly's attempts in this direction, through its struggles for control of fees and for annually renewed grants of revenue, with appropriations of salaries, form a separate story and will be described in a subsequent chapter.

From the foregoing survey it becomes apparent how completely the executive system of the province and the office of the governor as crown agent were merged. It was true, as a matter of abstract theory, that the governor acted in a dual capacity. Actually, his powers and his relations with the strictly provincial executive officers were such as to be in exercise very difficult to distinguish. As the constitutional development of the province was inextricably involved with the contests between the governors and assemblies, this circumstance is of profound significance.

[1] Col. Doc. IV. 287, 442, 514-6, 1142, V. 599, V. 49, 70, 161.

CHAPTER III. THE LEGISLATURE.

The legislature of the province, as constituted in 1691, had one body of precedents as a basis — the representative assembly of the last two years of Charles II. In 1683 the Duke of York, as proprietor, had, contrary to his inclinations but counselled by considerations of expediency, instructed Governor Dongan to call an assembly composed of representatives from every part of his government, to consult with himself and the council as to what laws were fit and necessary to be made. The instructions were detailed in character and in accordance with them two assemblies were summoned; the first holding two sessions, one in October, 1683, at which fifteen acts were passed, and one in October, 1684, at which thirty-one acts were passed. The second assembly met in October, 1685, and passed six acts and considered four more. The output of these sessions was comprehensive in character, ranging from a Charter of Liberties to a Bill concerning Swine.[1] It is probable that the fundamental character of the Charter of Liberties helped to confirm the duke in his previously expressed distrust of such assemblies and made all the more grateful to him the opportunity to remodel the constitution of the province afforded by his accession to the throne. At all events, the Charter of Liberties, though formally confirmed by him as proprietor, and this confirmed instrument all but dispatched to his governor, was disallowed by the same individual as king. By the new commission in 1686, Dongan was given "full power and authority with the advice and consent of the Council . . . to make . . . laws for the . . . peace, welfare and good government of the Province and of the people and inhabitants thereof," and was instructed to "observe in the passing of Laws that the Stile of Enacting the same — By the Governor and Council — bee henceforth used and noe other." The legislative activity of the council under Dongan, till July, 1688, was comparatively slight but it included measures for continuing the revenue, raising taxes, and regulating fees, as well as proceedings having to do with more general interests, such as naturalization, the christianization of negroes and the

[1] J. of L. C. pp. xii-xv. Col. Laws I. 111-177.

adoption of the English language for legal instruments. Of the proceedings having reference to New York which emanated from Andros' Council for the Dominion of New England, we know practically nothing. The assembly called by Leisler, though from the fact of its summoning highly significant of the ideals of that movement, contributed very little, if anything, to the development of representative institutions. The Leislerians professed to be guided by the Charter of Liberties but felt themselves practically forced to a procedure very far removed in spirit from the provisions of that document. Our sources for this assembly are very slight, but the titles of the bills passed in the brief time it was allowed to sit reveal a partisan and oppressive character.[1]

The settlement of the government of New York made by the government of William and Mary provided once more — and this time permanently — for participation in the work of legislation by the representatives of the people. The passages of the commission and instructions to Sloughter which bear on this point set up again practically the legislative system that was authorized by the Dongan instructions in 1683, and show no trace of influence from the Charter of Liberties. The only difference lay in the requirement of the Test from the assembly of 1691 and in the omission of the clauses requiring that all laws, unless temporary in purpose, be made indefinite and without limitation of time, and, finally that laws be agreeable to those of England. According to this system the governor was empowered to summon general assemblies in accordance with the usage of other plantations, and, with the consent of the council and this assembly, to make laws which were to be sent home within three months for approval or disallowance. The governor was to enjoy a "negative voice" in the passing of laws and was empowered to adjourn, prorogue and dissolve the assembly. He was further instructed not to pass acts of a certain character and to use all efforts for the passage of certain other acts, and the tendency was for instructions from home with regard to legislation to increase. The whole legislative system may be said to have consisted of four parts, (a) the privy council in England, with powers of confirmation or repeal over the product of the colonial legislative activity; (b) the governor in the province, with a

[1] J. of L. C. pp. viii-xxv. Col. Doc. III. 369. Brodhead, II. 416.

"negative voice" upon the measures agreed upon by the two houses; (c) the council in its legislative aspect, performing the work of an upper house; and (d) the house of representatives of the "assembly," that of a lower house. The title "assembly" became a matter of dispute between the council and the lower house in the course of the struggle for the right to appoint a CountryTreasurer, in the years 1703-6. In the particular matter under dispute, viz., the style to be used in the enacting clause of a bill, the lower house won its point. The contention of the council was for a continuation of the form followed up to that time, which contained an enumeration of the participating bodies in the phrase "the Governor, Council of this Province and Representatives in General Assembly convened." On this the council insisted for the reason, that the general assembly was a body composed of these several members, which were jointly the legislative power in the province. The council also adduced the practice of the parliament of England. The lower house in reply was able to make the point that in the letters patent from the crown "which the House are humbly of opinion is the Measure of the Powers of this Government and the Rules of the People's Obedience," all reference to assemblies meant plainly the representatives of the people. This particular bill was therefore declared to be enacted by "The Governor by and with the consent of his Majesty's Council and this General Assembly." Thereafter the style usually employed was, "Be it enacted by the Governor, Council and Assembly (or General Assembly) and by the authority of the same." [1]

The legislative system in the province, as thus constituted, performed the usual functions of representative bodies in that branch of the government, affording constitutional means for the expression of public opinion on emergent occasions as well as for criticism of the general course of the government. The most conspicuous occasion when the opinion of the legislature was expressed at a crisis of public excitement occurred in connection with events just prior to the execution of Leisler. Within the first ten days of the first session of the first assembly a series of resolves was passed, condemning proceedings under the Leisler regime and pledging loyalty and support to the government

[1] Ass. J. I. 179-80, 185. Col. Laws I. 575-6.

as established. These resolves had the concurrence of the governor and council and were published. The question of the reprieve of Leisler and Milborn was referred by the governor to the lower house, which refrained from any expression of opinion on the ground that the matter of reprieve was a prerogative belonging solely to the governor. Three weeks later, however, on being consulted on the same subject as a means of quieting and securing the government, the house appointed a committee to confer with the council on the question. At this conference, presumably, the advice of the council in favor of immediate execution for the sake of satisfying the Indians, asserting the authority of the government and preventing insurrections in the future was elaborated. The assembly, at any rate, gave formal approval, "according to their opinion given," of the action of the governor and council.[1] Criticism of the conduct of the government was also expressed on various occasions in the form of resolves, usually elaborated under the direction of the grievance committee.

The exercise of the power of final scrutiny of the legislative output of the general assembly was formally in the hands of the privy council. Practically, the council depended on the representations of the Board of Trade and Plantations or its predecessors, as the basis of its action. The length of time required for communication between the home government and the province enhanced the practical importance of legislation which had passed through all but this final stage. The instructions to Dongan, in 1683, required that laws assented to by the governor should be held good and binding till the duke's disapproval should be signified, and that all laws should be made "indefinite and without limitation of time except the same be for a temporary end and which shall expire and have its full effect within a certain time." The Charter of Liberties provided that laws should remain in force till repealed by the general assembly "by and with the approbation of his Royal Highness."[2] The exact meaning of this provision, if carried out into detailed application, is not clear. As the Charter of Liberties was never confirmed, the matter is significant only as revealing provincial ideals. It may be that it was desired that the presumption should be in

[1] Ass. J. I. 6-7, 13-14. Doc. Hist. II. 374.

[2] Col. Doc. III. 332. Col. Laws I. 113.

favor of the bill which had passed and that special action by the enacting body itself, directed, it is true, by the proprietor, should be necessary to change. That this would be no merely formal advantage is shown by the difficulty that governors repeatedly experienced in persuading assemblies to carry out precise directions of the crown regarding legislation. The instructions to Sloughter in 1691, as has been indicated, omit the requirement that laws be made indefinite, etc. Whether this omission was deliberate and the result of experience, sources which are at present accessible do not inform us. It had been omitted from the instructions of 1686, which abolished the assembly, and was not re-inserted till the instructions to Hunter in 1709. As a matter of actual practice the Board of Trade and the privy council seem to have been content to allow the presumption to be in favor of the enacted law, relying on the governor to inform the English authorities of the desirability of prompt action either in confirmation or disallowance. Under ordinary circumstances, action of any kind by the home authorities on provincial legislation was very slow in coming and was resorted to only spasmodically. The government of William and Mary apparently took no action on any provincial legislation from New York till 1697, when out of sixty-three acts passed since 1691, eleven were confirmed and one repealed. There was another burst of activity in 1700, and another more notable one in 1708, when seventeen acts were confirmed, three of which had passed the provincial legislature prior to 1700. There was another wholesale confirmation in 1709, after which action one way or the other seems to have depended wholly on the question of urgency, as represented by the governor in specific cases.[1]

It would seem that the assembly deliberately traded on the government's indisposition to take action relating to laws of limited duration and cast as many as possible of their acts in a temporary form accordingly. Of sixty-three acts, passed between 1691 and 1697, we have record of action by the imperial authorities on twelve; of fifty-three acts, passed between 1697 and the arrival of Cornbury, fourteen received attention and three of these were not acted on till 1708; of seventy-two acts, passed in

[1] Information relating to confirmation or repeal of acts is taken from Colonial Laws, which follows Col. Docs. or ancient editions of the laws or Fowler's Bradford.

Cornbury's administration we have twenty-four confirmations and four repeals. Of twenty-eight acts passed in the administration of Ingoldsby between the death of Lovelace and the arrival of Hunter we know of only one action — a repeal. But this was the period of the first Canada expedition, which demanded of the legislature much activity of a nature not subject to cavil. The same is true of the early part of Hunter's administration, within whose term of nearly ten years a total of more than one hundred and fifty acts was passed, followed by decisive imperial action on only six. Throughout the whole period acts not of a duration manifestly limited by their wording and at the same time not acted on by the home authorities, are very few indeed. And the number of acts formally disallowed during the whole period was, according to present sources of information, hardly more than a dozen, of which six were the product of a legislature about whose truly representative character there was so much reasonable doubt as to justify the governor's recommendation that its whole output be annulled.[1]

The crown veto was exercised in anticipatory fashion, as it were, by the increasing strictness with which the exercise of the legislative power was circumscribed in the successive sets of instructions to the governors. In addition to the requirements that (1) laws made be agreeable (as near as may be) to the laws of England; (2) that acts levying money and inflicting fines should reserve the same to public uses indicated in the act; (3) that acts granting money to the governor should follow the style of acts of parliament for an analogous purpose in England; (4) that no act lessening or impairing the revenue should be passed without leave from home, all of which are found in the instructions to Sloughter, many others appeared in those to Hunter in 1709. "Riders" and "jokers" were apparently provided against by the requirement that, "whatever may be requisite upon each different matter be accordingly provided for by a different law, without intermixing in one and the same act such things as have no proper relation to each other," going on to forbid particularly the insertion in an act of any clause foreign to what the title should import, or of a perpetual clause into a temporary act, and the suspending, confirming or repealing of any act by general

[1] Col. Doc. IV. 999.

words. It was further required that all private acts should contain a clause saving the rights of the crown and of all bodies, politic or corporate, and of all persons except such as are mentioned in the act. "And whereas great mischief may arise by passing bills of an unusual and extraordinary nature and importance in the plantations which Bills remain in force there from the time of enacting until our Pleasure be signified to the Contrary We do hereby will and require you not to pass or give your consent hereafter to any Bill . . . of unusual and extraordinary importance wherein our prerogative or Property of our subjects may be prejudiced without either having first transmitted unto us the Draught of such Bill . . . and our having signified our Royal Pleasure thereupon or that you take care that in the passing of (any) Act . . . that there be a clause inserted therein suspending and deferring the execution thereof until our Pleasure be known concerning the said Act." No law for raising any imposition on wines or strong liquors should be made to continue for less than one whole year. The governor was not to re-enact any law once enacted, except on very urgent occasion, and in no case more than once without express consent from home. It is evident that these instructions, if carried out, would prevent the appearance before the privy council of laws bearing certain objectionable characteristics. Laws passed after the receipt of these instructions still, however, display many of the features prohibited. The threatened use of the crown's veto as a weapon wherewith to compel the assembly to pass legislation in the required form is another reason for the small number of actual instances of the exercise itself. This is illustrated by the experience in the case of the act for suppressing and punishing the conspiracy and insurrection of negroes, passed in 1712, concerning which Hunter reported that it had been found in practice to work several abuses. In 1715 the Board of Trade gave Hunter permission to recommend to the assembly the passing of a new act for the purpose, not liable to the inconveniences complained of, saying that otherwise they would be obliged to lay the act before his Majesty for disallowance. The act was accordingly revised in 1717[1] The elastic possibilities of the governor's power to use his influence, in one way for an immediate and temporary end,

[1] Col. Doc. V. 181, 480, 503.

and in another for distant objects is illustrated by the case of the act for the better settlement and assuring of lands, passed in 1710. On this, Hunter observed that he passed it reluctantly, because "there was no saving the Queen's right in it," that he was induced to pass it by the fact that the assembly was very fond of it and he wished to leave them no excuse for not settling the revenue; that since the persons who hoped to profit by it were to remain in peaceable possession till 1713, "Her Majesty will have so long time to disallow it without receiving any prejudice by it, if any encroachments have been made on any of her lands." In 1716 he again urged that the act be disallowed, saying that that would pave the way for a second resumption of lands, which otherwise would be very difficult; also that the want of a clause saving the rights of the crown was sufficient reason for disallowance, though he could give others. In 1718 the Attorney General gave opinion that, though he had objections to it, yet he thought its disallowance would tend to some ill consequences. The Board of Trade suggested that if the assembly would "pass a new act for repealing this whereby the persons who purchased under the security of the act of 1710 may be safe and the new law not liable to any other objections, Hunter might give his assent, provided there was a clause in it declaring that it should not be in force till His Majesty's pleasure be known." It does not appear that, during this period at any rate, either the assembly or the crown took any further steps in the matter, so that whatever harm the Prerogative received, though it had been the design of the governor to purchase a permanent advantage by a temporary risk, became in this case a permanent loss — a process which had in the history of the province more than one illustrative demonstration.[1]

In the comparatively few cases of an actual exercise of direct veto by the crown the reasons seem to have been, (1) contravention of the instructions, (2) uncertain and dangerously loose form of wording; (3) inconsistency with the trade system of the empire; (4) grounds of general public policy. Of the last the disallowance of the assembly's act, which repealed the law for vacating the extravagant grants of land made by Fletcher, is the most important example. It is curious to note that this

[1] Col. Doc. V. 181, 480, 503.

disallowance of the assembly's repealing act was the form under which the merits of the original question appeared for final settlement by the Lords of Trade, nine years after the passage of the vacating act.[1]

We have already seen, in the case of the act for a present to Bellomont and Nanfan, how the slow, lumbering process of examination of provincial legislation by the crown might annoy a governor and even mar the effectiveness of his administration, by the implication thereby thrown upon the matter of his standing at court. An even more serious consequence for the welfare of the province, at one point, at any rate, in this period is described by Cornbury in 1704. He suggests that it would be proper for him "to have an account what acts of this province have been confirmed and what not . . . because there is now no footsteps in the Secretary's office . . . nor in the Council books which acts have been confirmed or repealed or neither till the list your lordships were pleased to send me and very often in hearings before me in Council, the lawyers in their quotation of acts, on one side affirm certain acts to be repealed when those on the other side affirm the same acts to be confirmed." When, however, an act deemed by the governor of critical importance, had passed the provincial legislature, every effort was made to obtain a speedy verdict from the crown. In Cornbury's time an act granting him a present was confirmed in four months. In Hunter's administration the act settling the revenue contest was confirmed, after considerable opposition, which involved taking the opinion of the attorney general, in three years.[2]

The governor's "negative voice" had been given him by the crown for the express "end that nothing may be passed or done by our said Council or Assembly to the prejudice of us, our heirs and Successours."[3] This power of the "negative voice" was used under quite different forms in the first two administrations from those which prevailed later, but throughout the period the lack of any effective distinction between the executive and legislative aspects of the council's organization reduced the occasion for direct use of the governor's veto. Under these conditions it becomes necessary to speak of the governor's use of the veto, and

[1] Col. Doc. V. 65-67, 71, 82, 143, 157.

[2] Col. Doc. IV. 1112, V. 501. Col. Laws I. 508.

[3] Col. Doc. V. 94.

of the relations between the governor and council in the whole process of law-making, in connection with each other. In the first session of the assembly in 1691, the question of the form of signifying the assent of the governor and council to bills sent up by the representatives arose, by reason of the assembly's discovery that in the case of certain bills returned with amendments, some contained an assent of the governor and council, and others only of the council. On investigating the precedents of "the former General Assembly," it was discovered that the earlier custom of signifying assent of the governor and council was for the governor to put his sign manual to the bills; and direction was given that the governor be desired to continue this method, "being most consonant to the Customs of England and their Majesties' other plantations."[1] This would seem to indicate that it was the assembly's theory that, in form as well as in fact, the governor should have two separate opportunities to take part in the same act of legislation, viz., the giving the assent of the governor and council to a bill, indicated by the affixing the governor's signature; and the enactment, enrolling and publication of the bill as an act. This certainly was the procedure in some cases.[2] On the other hand, we have an instance of a vote of the council in favor of an assembly bill; the record of the governor's signing it on another day, and, on the last day of the session also referring to it as one of the acts which he has assented to and has passed, and inviting the representatives to remain and attend him at the publication of these acts.[3]

The confusion in Fletcher's mind on this point and the actual relation between himself and the council are well illustrated by the following incident. The assembly had, in July, 1695, sent up a bill providing for a present to Fletcher. The council voted to "lay it aside," and no further action was taken. When, however, at the end of the session, the governor announced the results of the assembly's labors, he referred to this bill in these words,—"as that Bill was framed he doth reject it,"—as inconsistent with his honor, thus giving no opportunity for the council as the upper house to bring the question regularly before him for decision on the matter of assent and enactment; on which

[1] Ass. J. I. 10.
[2] Ibid. 64. J. of L. C. I. 86.
[3] J. of L. C. I. 52, 55-6.

question, indeed, he might require their advice as an executive council![1]

By Bellomont's time the matter was straightened out so that the procedure included the agreement by both houses to the bill by separate vote, which, in the case of the council, was recorded as "an assent of this House," and not of "His Excellency and Council," as formerly, and then the signing of the bill by the governor, in the presence of the council, followed by his order for enrollment. This signing was described as "giving the assent," and was always followed by enactment and order for enrollment. This was described as the "usual form of passing Bills into Acts in this province" in 1699.[2]

It would appear, then, that under Fletcher the governor's "negative voice" was used, in connection with his dominating personal influence in the council on legislative projects, in something like the anticipatory fashion in which the crown's veto was used towards provincial legislation in general. Instead of preserving the appearance of leaving the two houses to arrive at some practical agreement on the issue, and then using his veto according to his estimate of the necessity of the situation, he made a practice of interfering by special message at any stage of the assembly's procedure, and lecturing them on their duty and on their interest in view of the intention of the governor and council to use their power of assent in one way or another. Much dependence was apparently placed on the effect, as a last resort, of personal interviews between the assembly en masse, and the governor and council. This method was successful upon one occasion, but upon being repeated at the next session of the same assembly, it failed utterly.[3] When, under Bellomont and successors, a procedure was followed, which separated the assent of the council as the upper house from the assent of the governor as a third house, this device of the message of the governor to the assembly during the course of a session was, in the main, used only for emergent occasions. And the governor's influence as holding the power of a third house was made effective in shaping legislation indirectly, through the medium of the council as the upper house and its close connection in this and in its

[1] J. of L. C. I. 79-80.
[2] Ibid. 137-40, 143, 171.
[3] Ibid. 62-66, 71-77.

executive capacity with the governor. But the governor still continued — and did so throughout the period, — to sit with the council when acting as the upper house, and, in case of a tie, to give the casting vote.[1] The withholding of assent, the actual form of the veto, was still sometimes confounded with the lack of action by the upper house, in the governor's remarks to the assembly at the close of a session.[2] As experience with the work of legislation developed, the instances became more frequent of the use of the veto, by the governor in an independent manner, but they were never very numerous.[3]

The governor's "negative voice" was only one, and that the most direct, of a number of ways of influencing legislation. He had unrestrained powers in the matter of summoning, proroguing and dissolving assemblies. He recommended legislation, and action on the governor's speech, as a whole, and item by item, often constituted the program of the assembly's activity. We have seen what was his actual influence and power in the composition of the council. He had numerous indirect means of influence over the membership and organization of the lower house. We will consider these later in connection with the description of the house of representatives itself, and at present inquire into the governor's use of his power over the frequency and duration of sessions of the assembly.

Provincial ideals in the matter of control over the sessions of the assembly were unmistakably indicated in the Charter of Liberties in 1683, and in the act of 1691, "Declaring what are the Rights, and Privileges of Subjects within the Province." The former provided for a session of the assembly once in three years, "according to the usage Custome and practice of the Realme of England"; and the latter for annual sessions; and both, for control by the representatives,[4] over times of meeting during sessions and over adjournment. As we have seen, neither of these acts was allowed permanently to have the force of law; but, in practice, throughout the whole period, there was but one year in which there was not at least one session of the assembly, and generally there were two. For the most part the governors

[1] J. of L. C. I. 273.
[2] Ibid. 155, 234.
[3] Col. Doc. V. 357.
[4] Col. Laws I. 113, 245.

seem to have exercised their prerogative in the matter of fixing the time of sessions in an accommodating spirit, frequently consulting with the house through the speaker as to what would be a convenient date to which to adjourn. The sessions thus arranged were usually held in March or April, and in September and October, of each year. Conditions of travel seem to have had an important effect on the dates of opening the spring, and closing the fall sessions, and "occasions of husbandry," on the closing of the spring, and opening of the fall sessions. But in time of war, or of unusually critical political interest the sessions might prolong themselves into the middle of harvest, or almost to Christmas. The usual length of a session was about six weeks.

It seems to have depended on the idiosyncrasies of the several governors whether the house should adjourn itself to the agreed date, or be adjourned by the governor. Cornbury always adjourned the house himself, but his predecessors and successors seem to have allowed either form indifferently, with a tendency, if anything, in favor of allowing the house to conform to the program agreed upon.

Custom as officially interpreted did not at first require that a newly arrived governor should dissolve the existing, and summon a new, assembly. There were at least two occasions, however, when an opinion to the contrary was in evidence, it probably being due to a desire on the part of the popular party to find an excuse for a new election. On one of these occasions this opinion was explicitly frowned upon by the governor.[1] Nevertheless, as things actually happened, it did come about that, till Burnet's time, a new governor was always persuaded to call a new assembly shortly after his arrival. The death of the sovereign was regarded as working a dissolution as of course.[2] The arrival of a new commission and set of instructions for the governor from the newly crowned king was, in 1715, made the excuse for a dissolution by Hunter, though such a proceeding had apparently not been thought necessary under analogous circumstances in Cornbury's time.[3] Smith evidently regards this proceeding of Hunter's as a pretext and describes him in this action as "determined to subdue those (of his opponents) whom he

[1] Ass. J. I. 122.
[2] Smith, p. 224.
[3] J. of L. C. I. 396.

could not allure," and was plainly impressed with the success of the device.[1] The governor was able to secure an opinion from the provincial attorney general to the effect that "the Assembly being called by Virtue of the Letters patent from her late Majestie and those being determined by those from his Majestie" was dissolved.[2] This precedent, however, was studiously ignored by Burnet.

The change of assembly obtained by Hunter through the device just referred to, and one case in Fletcher's administration, are the only instances out of at least six different attempts in that direction of the successful use of the power of dissolution for the purpose of obtaining a more compliant body. It was usually resorted to when either the governor, council, and assembly, or the council and assembly, had, in the course of some contest, come to an impasse.[3] In one case the governor found it necessary to use this power to save his dignity. In the course of the revenue controversy, 1709-1715, the assembly attempted to disguise its backwardness in supporting the government, by pretending a scruple at the fact that the proclamation for its prorogation had been dated at Burlington, in New Jersey. The governor decided that the "assembly are Resolved not to act Notwithstanding the opinions of the Lords of Trade," and followed the advice of the council, "to send for the house and dissolve, which they would otherwise doe themselves."

There was one instance of the refusal of the governor to use his power of dissolution over such an extended period that the province generally came to regard it as a grievance. The assembly already referred to as procured by Hunter for the purpose of serving his interest was kept in existence from 5 June, 1716, to 10 August, 1726. The continuance of this assembly, described by Hunter, as "the most dutiful to their Sovereign and the most attentive to the true interests of the Colony that the Province could ever boast of," was deemed by him so essential to the preservation of the "measures that he had with much labor settled for the peace of that country," that he made the matter the feature of a letter of advice, which was approved by the council, and delivered to Schuyler, who was president of the

[1] Smith, 224.
[2] J. of L. C. I. 396.
[3] Ibid. 311.

council at Hunter's departure. Further, on his arrival at London, he succeeded in having Schuyler particularly directed by the Lords of Trade "not to presume to dissolve the present Assembly or suffer the same to be dissolved for want of due prorogations till his Majesty's pleasure be further known." The close personal relations between Hunter and Burnet made possible the continuance of all the fundamental features of the former's policy, including the relations with the assembly, and, though "the continuance of an Assembly after the accession of a new Governor was represented as an anti-constitutional project," it was not until "frequent deaths of members," aided by the "intrigues of his adversaries" and the clamors of the people for a new election obliged him to that course, that Burnet dissolved the house.[1] It is not surprising under the circumstances that we find this assembly rebuking suggestions of the illegality of their continuance, and quoting the practice of Ireland in the matter, and that we hear nothing in the proceedings of the body, of triennial or septennial acts.[2] Previous to this "Long Assembly," provincial experience had developed no necessity for anything of the sort. During the period from 1691 to 1716, there were no more than three examples of an interval of more than two years between successive elections of new assemblies. The average interval was about eighteen months.

There is but one instance of a dissolution and the ordering of a new election by a lieutenant governor or commander-in-chief. This was in 1701, when Nanfan, as lieutenant governor was induced, probably practically compelled, to this step. The excesses indulged in by this assembly, and the discredit put upon its work by the crown, deprived this precedent of any effectiveness. And the spirit of the direction to a lieutenant governor or commander-in-chief to forbear to pass any act but such as should be absolutely necessary certainly forbade the use of such an important power by a locum-tenens in any but the most undoubtedly emergent occasions.

In using the power of prorogation, the governors, in the early part of the period, seem to have made little distinction between it and adjournment. But from the beginning of the eighteenth century the practice seemed to be, that a prorogation

[1] Col. Doc. V. 534-5, 765-9, 783. Smith, pp. 240, 245, 267.

[2] Ass. J. I. 442-3, 451.

put an end to the life of bills, and an adjournment to that of committees. There was at least one occasion when the governor prorogued the assembly for the conventional reason — that "second thoughts and better Acquaintance may perhaps create a better Disposition."[1]

We have thus far been describing the crown and the governor in their relation to the work of the legislature, taking the fact and the mode of existence of the latter for granted. It is now in order to describe the process of constituting the legislature, its membership, the organization of the two houses respectively and their relation to each other in the actual work of legislation.

The constitution of the upper house of the legislature has already been described in speaking of the executive council. Its membership in one capacity was identical with that in the other, and, as has already been indicated, the connection between them was confusingly close.

Taking up then, the constitution of the lower house, we find that, in form, the governor's discretion in summoning representatives in the matter of the number of delegates, their apportionment and qualifications, was only vaguely restrained by the commission and instructions. In 1691, these required that the assemblies should be of the "Inhabitants being freeholders within your government," that persons elected should take the modified oaths of allegiance and supremacy and the Test, and that the summoning should be "according to the usage," at first of "our other Plantations in America," and from 1692 on, "of our colony of New York." In general, in the evolution of "usage" in this matter, as in so many other directions, the action of the assembly was the more prominent feature; but the cooperation of the governor and council was by no means lacking.

In the matter of apportionment, experience prior to 1691 furnished useful precedents. The instructions to Dongan for calling the first assembly directed him to "issue out soe many writs or summons and to such officers in every part not exceeding eighteene soe that the . . . inhabitants of every part of the said government may have convenient notice thereof and attend at such ellection."[2] In accordance with these

[1] Ass. J. I. 10, 321, 352, 287.

[2] Col. Laws I. 112, 121-2.

instructions writs were issued to the sheriffs, in some cases prescribing a method of choice within a particular jurisdiction. For example, the sheriff of Long Island was ordered to "warne the Freeholders to name two deputies for each Rideing"; this as a general direction, supplemented by specific commands that Staten Island should nominate one representative, that the towns on Long Island should each send a committee of four to the Session-house of each riding to nominate two representatives for the riding, and that the inhabitants of Fisher's, Silvester's and Gardiner's Island vote with the East Riding. By thus using the existing organization of the localities as a basis, and adapting it by the most practically convenient methods, the sense of the directions in the instructions seems to have been carried out. At the first session of this first assembly an act was passed dividing the province into twelve counties, including Martha's Vineyard and adjacent islands, and the Pemaquid region, each, as counties. The Charter of Liberties apportioned the representatives among ten counties, on the basis of two representatives to each county named, except that New York had four, and the township of Schenectady, within Albany County, was given a representative separate from the county delegation. To the general description of apportionment in the act was appended these words; "and as many more as his Royal Highness shall think fitt to Establish."[1] This division of the territory of the province into counties and apportionment of the representatives among them is practically identical with the plan of the assembly as originally called, organized on a systematic basis and providing for the expansion of the representative system under the auspices of the proprietor. In summoning the second assembly, under Dongan, we have record of the issue of writs only to New York, Kings, Queens, Duke's, Suffolk, Albany and Ulster Counties; and, in the case of the assembly summoned by Leisler, of the issue of writs to the same list with the exception of Suffolk and Duke's, and the addition of Westchester.[2] Nothing in the sources which are at present accessible throws any light on the omission, in 1685, to send writs to the other counties. Those in the list are certainly the most important counties in point of population and wealth; and it may be that the others were

[1] J. of L. C. I. Introd. p. xi.

[2] Col. Doc. III. 624. J. of L. C. I. Introd. pp. xiv-xxiv.

linked in with those to which writs were sent, as was the case with Orange County, prior to its attaining a respectable position in numbers and property.

The commission and instructions to Sloughter in 1691, which outlined the organization of the provincial government for the next sixty years, required the summoning of assemblies according to the usage of the plantations. The persons elected by the major part of the "freeholders of the respective Counties and places" were also required to take the oaths and the Test before being qualified to sit.[1] Accordingly, within a few days of Sloughter's arrival, we find the governor and council appointing sheriffs and issuing writs of election to New York, Kings, Queens, Suffolk, Westchester, Richmond, Albany, and Ulster and Dutchess Counties, the last two being mentioned together as under one sheriff, and, presumably, receiving but one writ. The first assembly of William and Mary, then, as at first constituted, consisted of two representatives from each of the above county constituencies except New York, which sent four. On the first day of the session, the council ordered the sheriff of Albany County to cause an election to be held, of a Burgess from the Manor of Rensselaerwyck, so that the total membership of the assembly stood at nineteen.[2] The act passed in this first session, declaring the rights of subjects in New York — for most purposes a re-enactment of the Charter of Liberties — provided for the scheme of apportionment that prevailed in the assembly which enacted it, except that Duke's County appears in the list as entitled to two representatives, and that Dutchess is not mentioned in connection with Ulster. As in the Charter of Liberties, provision was made for expansion of the representative system by the phrase, "and as many more as their Majesties, heirs and successours may think fit to establish."[3] It is to be observed that both by the governor and council and by the terms of the act declaring the rights of subjects in New York, the limitation of the number of delegates to eighteen, as prescribed in the instructions to Dongan, was disregarded. But it is to be presumed that the action of the governor and council in summoning a representative from Rensselaerwyck was taken to be

[1] Col. Doc. III. 624.
[2] J. of L. C. I. 1. Ass. J. I. 1.
[3] Col. Laws I. 245.

the act of the crown, till distinctly reversed from home — which was never done. The action of the crown in transferring Duke's County to Massachusetts settled the question, so far as it concerned that region. The first four assemblies mention the names of two representatives as coming from "Ulster and Dutchess Counties"; after which, Dutchess does not appear as represented, even jointly with Ulster, till 1713, when the council ordered that it have one representative, and, in 1714, that it have two. There appears to be no reason for mention of Dutchess County in the roll of members in the first four assemblies, and it is probable that the lists of the counties which are printed with the names of the representatives, at the beginning of each assembly, are not official. In 1701, Dutchess County was declared by act of assembly to be annexed to Ulster County for purposes of representation, for seven years after publication of the act.[1] This act was repealed by the assembly in 1702, and though the repealing act was itself disallowed by the crown, this was not until 1708, when the benefit which came to Dutchess County under the terms of the original act was expiring. The same assembly of 1701, at a later session, passed an act augmenting the number of representatives, bringing the total to twenty-five, giving New York six, Albany five, and all other counties but Dutchess, two each. This involved less expansion of the representative system than Bellomont had proposed to the council, viz., an increase from nineteen to thirty, in order "to put it further from the power of any Governor to make a party for the future to carry on any private end." But even the assembly's scheme of expansion was disallowed within a year.[2] The right to send a representative was usually conferred upon a locality by the governor and council. In 1698, on memorial from the inhabitants of Orange County, the council ordered that a sheriff be appointed and a representative chosen, as for the other counties. This proceeding, without direct authorization from home, was complained of by Bellomont's opponents, as a stretch of the governor's power, and an evidence of his design to pack the assembly, Orange County being at that time sparsely populated.[3] In the same year, Albany County was empowered to

[1] Col. Laws I. 453.
[2] Ibid. 478-9. E. C. M. VIII. 39.
[3] Col. Doc. IV. 621. E. C. M. VIII. 74.

send three, instead of two, representatives, and the Borough of Westchester, incorporated in 1696, was empowered to choose a representative, thus bringing the total membership of the assembly to twenty-two.[1] Here the number remained till 1713, when Dutchess County was empowered to elect a representative; while, in 1714, Dutchess and Orange Counties were authorized to elect two each, and, in 1717, a member was admitted from Livingston Manor.[2] This brought the total up to twenty-six, where it remained for nearly twenty years. It is curious to note that this increase in membership under Hunter was apparently made for the very purpose which Bellomont's plan of expansion was designed to avoid, viz., to make it possible for the governor to found a party in the assembly. Hunter, however, used this "interest," when acquired, never for private ends, but for the welfare of the province. This will be referred to in connection with the revenue controversy in a subsequent chapter. Nothing could better illustrate the growth of the power of the assembly in the interval between the administrations of Bellomont and Hunter.

There was a peculiar feature in connection with the representation of manors, which may be mentioned here. In 1701 Bellomont reported with indignation that, among other bad features of Fletcher's extravagant grants of land, the privilege of sending, after twenty years, a representative to the assembly, had been included in three of the grants, and that they had been erected into manors. Cortlandt's was one of these, and, presumably also, Livingston's, for promptly after the expiration of the twenty years, i. e., in 1717, we find a representative from Livingston Manor admitted to the assembly without action by the council in either its legislative, or its executive capacity. Immediately thereafter a bill was ordered, providing that every manor in the colony, together with the village of Islip, be allowed a member; that Suffolk and Queens Counties be divided into three counties and represented accordingly, and that no other member be hereafter admitted without the consent of the governor, council and assembly. Later in the session, a bill providing for the union of Kings and Queens Counties, and the creation of a new county, to be called King George County, and its rep-

[1] E. C. M. VII. 179, VIII. 76, IX. 69.

[2] E. C. M. XI. 167. J. of C. L. I. 381. Ass. J. I. 395.

resentatation by six members, was introduced; but even under the circumstances of a close understanding between the governor and assembly at this time, 1717, it did not escape rejection on the second reading.[1]

With respect to the general characteristics of the apportionment, it is to be observed that the influence of ideas derived from the English House of Commons was strong. The house was practically composed of county and borough members, the manors which sent representatives being, so far as crown influence was concerned, rural parliamentary boroughs. The members were "not the peculiar or separate agents" of the localities, "but their quota in the provincial representation."[2] There was no attempt to arrange the representation of the counties according to population. Richmond, Westchester and Orange Counties were, throughout the period, very much over-represented as compared with the Long Island population, Richmond and Westchester never having more than one-third to one-half of the population of either Queens or Suffolk, yet sending the same number of representatives. Of the Long Island counties themselves, Kings seldom numbered more than one-half the population of Queens or Suffolk, but it had an equal number of representatives. For at least one-half of the period, Albany County had three representatives to the two from Queens or Suffolk, while her population would not quite equal one-half of either of them.[3] That the Long Island people felt this situation to be a grievance is evidenced by the attempt in 1717, which has just been referred to.

In examining the process by which a general assembly was brought into existence, we inquire next into the election of representatives. Taking up, first, the right of suffrage, we find the commission and instructions vague in their expressions on this point. The assemblies were to be "of the Inhabitants being freeholders within your Government." The Charter of Liberties declared that "Every freeholder within this province and freeman in any Corporation Shall have free Choise and Vote in the Electing the Representatives without any manner of constraint or Imposicon . . . and by freeholder is understood

[1] Ass. J. I. 395, 409, 428. Col. Doc. IV. 823.
[2] Douglass, Summary, II. p. 264.
[3] Doc. Hist. I. 687-699.

every one who is Soe understood according to the Lawes of England." The act of 1691, declaring the rights of subjects in New York, contained the same provisions except that "by freeholder is to be understood every one who shall have fourty shillings P Annum in freehold."[1]

By 1699, an experience of seven elections, at least one-half of which had been "carried with great heat," and all but the last two of which had been held under the auspices of returning officers appointed by one administration, led to an attempt by the assembly to remedy certain abuses in the conduct of elections.[2] This assembly itself was a partisan body; and impartial wisdom in selection of points for, and methods of, remedy, is not to be expected from it. But its features show at least some of the opportunities for undue influence in elections. The act, which was based on the English statutes (8 Henry VI. c. 7, and 8 Will. III.), recited "great outrage, tumult and Deceit" in the management of late elections, for remedy whereof provision was made that the suffrage should be the right of persons over twenty-one years of age, resident within a city, county or manor, having land or tenements improved to the value of £40 in freehold, free from all incumbrances, and possessed for three months before the test of the writ, and that the sheriff should have power to examine every "chooser" upon oath as to his estate. Freemen in New York and Albany were to have liberty to vote in their respective corporations, provided that they had been freemen and residents for three months before the issue of the last writ of election, any usage to the contrary notwithstanding. The act further provided that on the summoning of a new assembly, forty days should elapse between the test and the return of the writ; that the secretary of the province should issue the writs, sealed, to the sheriffs, who on receipt of the same were to endorse the date on the back of the writ, and, within six days of that date, give public notice of the time and place of the election, giving at least six days' notice to the constable of each town. No sheriff or undersheriff was to receive a gratuity for any act with reference to the writ or notice. The sheriff was required to hold his court for election at the most usual and public place for that purpose; and in case the election be not determined

[1] Col. Doc. III. 686. Col. Laws I. 112, 245.

[2] Col. Doc. IV. 322-3.

"upon the view" with the consent of the electors present, but that a poll be required, the sheriff, or deputy thereto appointed by the sheriff, was to take the poll in some open or public place. This was to be done in the following manner: the sheriff was to appoint clerks to take the poll, who should be sworn "truly and Indifferently to take . . . the poll and to sett Down the name of each Elector and the place of his freehold and for whom he shall poll And to poll no Elector who is not sworn if so required by the Candidates or any of them." Further, the sheriff was to appoint "for each Candidate such one person . . . nominated to him by such candidate . . . to be inspector of the poll," and poll clerks. The oath, which might be required of each elector before giving his poll, covered the following points; the location and value of the freehold by which he claimed the right to elect, that he had not before been polled at that election, and that he had not procured the freehold in order to gain a vote in the election. The sheriff was forbidden to adjourn the poll to any other place in the city or county without the consent of the candidates, or by unnecessary adjournment to protract or delay the election. The taking of the poll was to proceed from day to day, without adjournment without consent of the candidates, till all the electors present should be polled. Copies of the poll were to be furnished to those desiring them at a charge only sufficient to cover the cost of writing. Return of the writ was to be in the form of an indenture between the sheriff and the choosers. For every wilful violation of this act, the sheriff was to forfeit to every person aggrieved the sum of £30.[1]

Two years later, an assembly under the same party influence, passed an act for the regulation of elections, which recited a continuation of many and great abuses. It provided that no papist, popish recusant or person refusing to take the oaths of allegiance and supremacy, as modified by parliament, or the Test and the Association, on the tender of the sheriff or either of the candidates, should be allowed to vote for representatives or any other officer; that any person, otherwise qualified as required, having freehold in possession during his life or that of his wife, of the required value, should be regarded as qualified to vote; and that a mortgage on a man's freehold, provided the freeholder

[1] Col. Laws I. 405-408. Wilson, Memorial Hist. II. 577.

were in possession and receiving the income, should not debar the freeholder from voting.[1] Both of these acts were repealed by the assembly in 1702, but the former had already been confirmed by the king and the assembly's repealing act was itself disallowed by the queen, the latter of the two acts being expressly confirmed in 1708-9. So that, though after long delay, both of the acts may be regarded as contributing to the election law of the province during the period. No other laws on the subject were passed prior to 1719. The numerous and detailed directions and prohibitions indicate with sufficient fullness what were the opportunities for fraud in the conduct of elections. The estimate commonly prevailing concerning the relation of the governor and council to the election of representatives is well represented by Douglass: "As the king and his ministry in Great Britain, though they do not chuse the parliament yet have a very great influence in the choice; so it is with respect to the governors and assemblymen in our colonies.[2] Plans to use the official influence of the governor and council in elections became matter of record more than once. For example, in 1695, the Governor, Fletcher, "did recommend to the Council to consider of honest men for the next Assembly advising them to use their endeavours that way." And, in 1692, the same governor asked the advice of the council "if it might not be Conducive to the peace of the Government for him to be personally present in the field"; whereupon the council unanimously agreed that "it is very necessary and humbly desire it." There was loud complaint against Fletcher on account of this "presence in the field," his accusers relating the circumstances of his packing the poll with soldiers from the fort, and seamen from the station ship, these men being endowed with the freedom of the Corporation of the City of New York for the purpose; also of false arrests at the polling place, of threats to imprison opponents of the government's candidates and of undue returns from elections in the rural counties.[3] The election act of 1699 by no means put an end to influence over elections exerted from above; but it seems to have been

[1] Col. Laws I. 453, 523.

[2] Douglass: Summary II. p. 264.

[3] E. C. M. VI. 137, VII. 133. Col. Doc. IV. 127, 129, 143, 213, 218, 223. Smith, 155.

exercised thereafter with less of gross and open violence, and in at least a superficially legal manner. Bellomont made very numerous changes in the appointments of sheriffs, and his enemies reported that the "Sheriffs performed their business they were appointed for by admitting some for freeholders who were not so, and rejecting others who really were so, as they voted for or against their party and by nominating and appointing inspectors of the poll who upon any complaint of unfair dealing gave this general answer: 'If you are aggrieved complain to Mylord Bellomont'." Complaint was also made that the sheriffs appointed the same day for the election in all places except the two most remote counties, "whereby the best freeholders who had estates in several Counties were deprived of giving their votes at several elections." Both of these elections Bellomont himself describes as "very fairly carried," and refers to the trick of simultaneous elections in all the counties as "a thing purely in the Sheriffs' power to do and cannot be reckoned unfair."[1] Hunter's influence seems to have been exerted not only in manipulation of the polls but also in dealing with the assemblymen after election. But nothing like the gross and violent interference with the freedom of elections carried on by Fletcher appears at this time.[2]

There seems to have been great interest and much violent partisanship displayed at the elections. Smith's frequent characterization of elections as "carried with great heat," and Bellomont's amusement at certain Long Island politicians, who for reasons of political convenience had assumed the mark of Quakerism but in the excitement of the occasion had dropped their disguise and had become involved in bloody frays, are suggestive indications.[3] The contests were closer and hotter in the early part of the period than they were at a later time. At first a change in membership amounting to one-third of the whole number of assemblymen was not unusual; in one case — the revolution after Bellomont's arrival — the change amounted to nearly one-half. Whereas, in the latter part of the period, a change of one-fourth or one-fifth of the total was remarkable,

[1] Col. Doc. IV. 507, 621, 821.

[2] Ibid. 419, 429, 515, 534, 537, 769-70. Smith, pp. 107, 224, 240, 241, 245.

[3] Col. Doc. IV. 507, 509. Smith, pp. 156, 158, 162, 173, 223.

and the return of all but two or three of the members of the former assembly happened more than once. There were a number of instances of long, continuous periods of service in the assembly, extending over fifteen or sixteen years. One Colonel Jackson, of Queens County, was a member of every assembly but one, from 1692 to 1715.

Control of membership in the assembly was shared between the governor and the assembly itself. In the hands of the former, according to the commission and instructions, lay the power to administer the oaths, without which the elected members could not sit in the assembly; while the latter, by legislative action determined the qualifications required of persons to be elected, scrutinized cases of contested election and expelled members when it saw fit. The requirement of the oaths appointed by parliament to be taken instead of the oaths of allegiance and supremacy, and of the taking of the Test, by persons elected as representatives, before being allowed to sit and act in the assembly, were precise and unmistakable.[1] The matter came up at the first session of the first assembly in 1691, when the representatives from Queens County, being Quakers, refused the oaths, though indicating their willingness to sign the Test, and to engage to perform the tenor of the oaths under the penalty of perjury. On consultation of the commission and instructions, this was deemed insufficient, and they were therefore dismissed by the house, and new writs were ordered for election of members to take their places.[2] There is no instance of the governor's withholding the oath from any person who appeared to have been returned by the sheriff. All examination of anything but the face of the returns was made by the assembly itself. In swearing in the members, the usual procedure was for commissioners, appointed for the purpose by the governor, to meet the members at the usual place of assembly and tender them the oaths, after which the ceremonies of organization went on. When a member arrived late, it was a frequent practice for two members to accompany him to the governor, and on their return and report to the assembly that they had seen him swear and sign the Test, the member was admitted and took his seat. The com-

[1] Col. Doc. III. 686.

[2] Ass. J. I. 2, 3-5.

mission and instructions gave explicit authority over the membership of the assembly neither to the house itself nor to the governor, except what was involved in offering them the oaths. Nevertheless the assembly exercised the authority fully and without dispute. The provincial ideal in this, as in so many other matters, was expressed in the Charter of Liberties, and in the act declaring the rights of subjects in New York, in both of which it was provided that the assembly was to be "judge of the qualifications of the members, as well as of undue elections and to have power to purge the house as they see occasion."[1]

The practice of the province throughout the period was based upon these provisions, in spite of the fact that the acts containing them never received confirmation. By the act of 16 May, 1696, the assembly described the qualifications of members of the house so as to require the age of twenty-one years, residence in the district for which the person was chosen, and possession of freehold, free from incumbrance, improved to the value of £40. But the assembly's greatest activity in control of its membership appears in the direct examination of the circumstances of the election, and of the qualifications of its members, as the cases were brought before it by the petitions of those aggrieved. The heat of factious strife within the province for the first twelve years of this period gave the assembly frequent opportunity for the use of its powers; and, throughout the period, it had little scruple in purging its membership for reasons based on its partisan notions of dignity and propriety. Most of such expulsions were made, ostensibly, because of some contempt of the privilege of the assembly which had been committed by the offending member. In general, this whole matter of control over its own membership was treated as a privilege belonging to itself, though not in the list of those mentioned by the speaker at the organization of each new assembly. In 1710, Lewis Morris gave utterance to some "warm expressions" in debate, on consideration of which next day, Morris having been ordered to withdraw, the assembly resolved that he "has falsely and scandalously vilified the Integrity and Honesty of this house," and he was forthwith expelled.[2] In 1715, Samuel Mulford was ex-

[1] Col. Laws I. 112, 246.

[2] Ass. J. I. 283.

pelled, "for printing a Speech formerly made to the General Assembly without Leave of the House in which are many false and scandalous Reflections upon the Governor of this Province."[1] These are cases in which the personal characteristics of the individuals concerned have great importance. The assembly, in 1701, expelled one Matthew Howell, for writing a paper and delivering it in to the house, expressing the views of five members on the pending dispute as to the powers of a president of the council. This paper was characterized by the committee charged with its examination as "tending to the subversion of government."[2] By the notorious assembly of 1701 three members were expelled for challenging the authority of the speaker and of the house by refusing to sit and act with them till the question of the speaker's citizenship had been resolved, thus, as the assembly expressed it, presuming "to take upon them the Judgment of the Qualifications of members and to take notice of the Proceedings of the House before they had been in the House to observe any Transactions there,"—"a manifest breach of its Privileges and of dangerous Example."[3] On abstract principles the assembly was probably in the right, but the grossly partisan proceedings of this assembly in other ways gave it, and all precedents connected with it, a bad name. For example, it was the custom, in cases of contested election, where the person returned was decided by the house itself to fail of the required qualifications, for the house to dismiss the person and order a new election. Nevertheless we find this assembly, in one of two similar cases, ordering a new election, and in the other, examining the sheriff's poll and ordering the next on the list to take the place of the dismissed person! And, in another case, on complaint of an undue election, the committee found that the person returned was not duly elected, but that the petitioner duly was, and the assembly ordered the clerk of the crown to alter the indenture of the county accordingly! Election cases were heard and determined, at first, by the whole house, with the occasional assistance of special and temporary committees. In 1699 we first hear of a standing "committee on undue elections," and by

[1] Ass. J. I. 372.
[2] Ibid. 110.
[3] Ibid. 130.

1709, we find the assembly endowing this committee with power to send for persons and papers, etc.[1] The questions ordinarily brought before the house were such as the validity of a given return, the fact of the qualification of a certain individual, and the like.

As has been indicated, the assembly usually proceeded upon its organization immediately on assembling, and without waiting for the formal decision as to disputed cases of membership. This organization was attended with considerable ceremony, in which the influence of House of Commons usage is plainly apparent. A typical procedure — that of 1693 — is as follows: the governor sent for the members to come to him at the fort (the assembly's place of sitting was at first in a tavern, after 1704, at the City Hall). He then desired them, if they were in sufficient number to form a house, to return to their house and choose a speaker, to be presented to the governor at their next meeting. The house returned, and "after some debates," and "many urgent Arguments to be excused," chose James Graham as Speaker; "the House being unanimous all rose up and conducted him to the Chair." The house then requested that, on his being approved, he would demand confirmation of their "Rights, Privileges and Customs." The house then proceeded to the governor and presented the speaker, and "desired his Excellency's approbation," which was accordingly granted — it was never withheld. It was apparently good form for the speaker, on his presentation, to "make a modest apology." On his presentation, likewise, the speaker made his demand for the confirmation of the privileges of the house, which was always granted as of course, together with the request that they be entered on the council book. The governor then delivered his speech, upon which the "representatives made a bow and withdrew." At first the speaker used to repeat to the house the heads of the governor's speech, after their return from this interview, but finally the usage crystallized into the form of reading a copy of it.[2]

The first assembly ordered that, in all debates, determination should be reached by a majority of votes of the members present, and that when a majority of the representatives were present it should be esteemed a house. No formal enactment

[1] Ass. J. I. 116-118, 36, 87, 95-6, 241, 92-97, 49-50.

[2] Ass. J. I. 1-2, 32, 36, 58. J. of L. C. I. 47, 49. Col. Doc. IV. 1115.

of any other rule appears, and it would seem that even these rules were not formally adopted by succeeding assemblies. Thus informally was custom allowed to develop. No reports of divisions on proceedings are given on any regular plan. The numbers of each side were occasionally mentioned, but no principle appears in the reasons for such mention. Various systems of fines for absence from roll-call were tried by the assembly for the purpose of obtaining a quorum, but, apparently, with indifferent success.

The committee system of the assembly was in process of gradual evolution throughout the period, and could hardly be described as having attained systematic form at any time. The committee which sat most often was the "Committee of the Whole House," or "Grand Committee," — usually "to consider of His Excellency's Speech," always in consideration of supply bills, and, in general, for matters of large importance and interest. The "Committee on Undue Elections," or "Committee on Privileges and Elections" has already been mentioned. The "Grievance Committee" was the one which came the nearest to the present notion of a standing committee. In some form or other, we find such a committee in use from the very beginning of the period. Sometimes a committee was appointed, "to inquire into the grievances of this Province," and to make a report within a limited time. Sometimes it was ordered, that all members be a committee of grievances, "to receive and report oppressions of the people and make report as Grievance may appear." In a period when public opinion was excited, such a committee was likely to consist of the most active leaders of the majority, and its activities might extend to any subject agitating the public mind.[1] It was such a committee that conducted a kind of trial of the persons concerned in the extravagant grants of land by Fletcher. We find the assembly exhibiting an accusation against the parties concerned, who in time present an answer, to which the committee of grievances prepare a replication. The act vacating these grants was passed at this session.[2]

The assembly sometimes chose to embody its sense of grievance in an "Address to the Governor," which would be likely to include the subjects with which, at other sessions, the griev-

[1] Ass. J. I. 20, 33, 96-101.
[2] Ibid. 96-104.

ance committee concerned itself. In 1713, at the height of the revenue controversy, the assembly ordered, that they "resolve every Thursday P. M. into a Committee for Redress of Grievances, and every Friday P. M. into a Committee for Reformation of Abuses in the Courts of Justice"; and after a report, three weeks later, bills were ordered in accordance with the report, and the committee ordered to be adjourned.[1] The reports of the grievance committee covered every variety of subject, from that of the wrongs of the boatmen of New York in having to pay dockage for use of the Queen's wharf, to the grievance of the province in the erection of a Court of Chancery, without consent of the general assembly, and in the appointment of coroners.[2] The appointment of special committees on particular bills was common throughout the period. The first assembly ordered, that for the recess, the New York members and others, when they should be in town, be a committee "to examine . . . and prepare to report to this House at the next session all such Matters and Things whatsoever as may conduce to the good and welfare of this government." But we find no repetition of this proceeding.[3]

Beyond the habit of referring bills to special committees, or to "the Council or any two of them," or "the Council or any three of them," it does not appear that the council had any committee organization.

The officers of the assembly were, besides the speaker, a clerk, a sergeant at arms, a doorkeeper and a printer. These were at first appointed by the governor, though they were dependent for their compensation on warrants upon the revenue, issued by the governor and council, on address of the assembly. Under the circumstances of the failure of the revenue, and the disputes over payments of salaries in the times of Cornbury and Hunter, the officers suffered considerably; and we find acts for the payment of their salaries, and for empowering the clerk to receive a reasonable fee for "passing a private bill." The "long bills" of 1714 and 1717 provided for payment of arrears to the officers; and in the resolves, in accordance with which the governor, after 1715, issued salary warrants on the revenue estab-

[1] Ass. J. I. 170, 334, 336, 377.
[2] Ibid. 150-1, 224, 226-30.
[3] Ibid. 13.

lished by the assembly, provision was made for these officials.[1] The sergeant at arms seems not to have been a permanent official, but to have been appointed by the governor, on motion of the assembly, whenever necessity for his services developed.[2] After failing, at the first session of the first assembly, to establish the drawing of bills for the assembly as one of the duties of the attorney general, the house seems to have made use of the services of the speaker for that purpose — with what means for rewarding him, is not clear.[3]

The council's officers were a clerk, a doorkeeper and messenger, and a sergeant at arms, and their salaries, as established, were drawn from the revenue.[4]

Coming to the matter of privilege, we find one curious case, which seems to raise the question of a peculiar privilege of the council in its legislative capacity. Without going into its details it may be sufficient to remark that the council's contention was founded upon the notion, that "this house dureing the sessions of Assembly was Invested with a greater power as being part of that Constitution, than at other times in the Quality of Governor and Council": that, "in such cases the Governor and Council have dureing the Session a judiciall power like that of the House of Lords in England and can hear and determine civil causes (not appealable to the King) and imprison the parties offending." Objection was brought against this proceeding in England, and the attempt was not repeated.[5]

The privileges of the assembly, as demanded at the beginning of every session by the speaker, and confirmed by the governor, were as follows: freedom of members and their servants from arrest and molestation during the sessions, freedom of speech and of debate in the house, a favorable and candid construction upon all words, freedom of access to the governor and council in relation to the present service, "for the Removal of all Misunderstandings between the Governor and Council and this House;

[1] Ass. J. I. 193, 199, 202, 310. Col. Laws I. 815-26, 938-991.
[2] Ass. J. I. 4, 147.
[3] Ass. J. I. 512. J. of L. C. I. 34.
[4] Col. Mss. XLV. 170.
[5] Col. Doc. IV. 821. Col. Laws I. 392. J. of L. C. I. 128-131. N. Y. Hist. Soc. Colls. 1869, 179-183.

that a Committee of the Council may join with a Committee of this House to confer on such Matters as occurs," and that these privileges be entered on the council book. They were frequently stated in a more abridged form, and summed up in the expression — "and all other their ancient privileges and customs." The spirit in which the whole matter of privilege was developed is indicated in the reply of confirmation made by Cornbury — "that he knew them to be the Rights of the House of Commons of the Kingdom of England and of this Assembly and therefore he did entirely confirm them as large as ever they were granted."[1] The assembly defended itself against "contemners" of its privileges, both members and others, within and outside the precincts of the house, generally by commitment to the custody of the sergeant at arms, to whom fees had to be paid on discharge. On one occasion, three persons, apparently for insolent behaviour before a committee of the assembly, were kept in the custody of the sergeant at arms from 18 November, 1702, till 17 April, 1703, their imprisonment covering a period between sessions.[2] One Christopher Den, for insolent conduct to a member outside the precincts of the house, was punished by a month's imprisonment.[3] The assembly seems to have been somewhat capricious in its treatment of the matter of privilege. David Provoost, a member, petitioned the assembly for his enlargement from arrest for not having paid certain orphans' portions, pleading the privilege of the assembly, but seems not to have been successful.[4] An attempt by the governor to hold up bills which the assembly had passed and sent up to the governor and council for assent, till the desire of the government had been attained by the passage of a supply bill by the assembly, seems to have been regarded by that body as an invasion of their privileges — "it being the Privilege of this House to send up their Bills when they please." On this occasion the assembly seems to have won its point, though the imperfection of the journal obscures the matter. Ever after, the assembly was strict about the requirement of some action by the council on measures sent up by them, and return of such

[1] Ass. J. I. 145.
[2] Ass. J. I. 153, 156-9.
[3] Ibid. 233-4, 236-8.
[4] Ibid. 290, 293, 300, 301, 303, 309.

action to the assembly before proceeding, itself, to do anything further in the matter.[1]

In general, the assembly seems to have made free use, for its own purposes, of the whole range of parliamentary privilege, adapting it liberally to local and peculiar requirements. Hunter's opinion was that "the warmest Assembly of Men in the most tumultuous times never strained the word Privilege to that bent that they dayly doe."[2]

The pay of the representatives was fixed by an act of the first assembly, at ten shillings per day of attendance, beginning with the day of leaving home, not more than eight days before the meeting, till their return, not more than eight days after adjournment. The expense was to be borne by the county or city sending the representative.[3] This act was repealed by an act of assembly in 1701, which fixed the rate of compensation at six shillings per day; but as this was itself repealed by a general repealing act, which was not disallowed till 1708, the rate of ten shillings prevailed for nearly twenty years. Both rates were considered by Hunter as too high, constituting an inducement to the representatives to prolong their sessions and protract controversies in the legislature, for the sake of the per diem allowance.[4] On the other hand, the counties were lax or neglectful in the payment of the allowance; and acts for its payment, and for the payment of arrears, in the case of particular individuals, were frequently resorted to.[5] The revenue act of 1715 provided for the payment of an allowance of ten shillings per diem, out of the revenue for the year 1715. This arrangement, Hunter hoped would be "a considerable ease to the County's," and would cause the return of members with instructions to continue this plan by an act, and to repeal the former law, "which hath been of so pernicious Consequence to the Government and people." This method was continued in slightly different and varying forms during the remainder of the period.[6]

---

[1] Ass. J. I. 16, 18, 82, 155, 214.
[2] Wilson, Mem. Hist. II. 595. Col. Doc. V. 179.
[3] Col. Laws I. 239.
[4] Col. Doc. V. 179, 192, 416.
[5] Col. Laws I. 586, 702, 791, 921, 929, 989.
[6] Col. Doc. V. 416, 417. Col. Laws I. 916, 921, 989-91. Ass. J. I. 375.

The evolution of procedure in the conduct of business within each house, and in the relations of the houses to each other was a gradual process. The council seems to have gone through with its share of legislative business without any elaborate forms of procedure. Each bill coming from the assembly received three readings, after the first of which, usually, it was referred to "the members of this Board," or any three or five of them, as a special committee on that bill. If amendments reported by such a committee were agreed to by the council, the clerk was then ordered to make the amendments in the bill, which was then sent down, with the amendments, to the assembly for concurrence. This latter feature of procedure, and the notification to the assembly upon occasion, that such and such a bill had passed without amendment, were reached only after the better separation of powers of those concerned in legislation had been attained in the times of Bellomont and Cornbury.

In the assembly, the governor's speech was normally the starting-point of activity. Though satisfied at first with the speaker's repetition of the heads of the discourse, the assembly before long, fearful lest "some may have been omitted in the recital," began to require a copy, even insisting that the copy be attested by the clerk of the council.[1] With the speech thus officially before it, the assembly proceeded to consider it in committee of the whole, item by item, reporting resolves upon each item from time to time. Sometimes certain items were referred to special committees, on whose report, as upon reports of the committee of the whole, bills would be ordered to be brought in. Sometimes also the assembly voted as to which of the items in the speech should be taken up first.[2] Whether a subject was brought before the assembly by mention in the speech, or by petition to the assembly, or on a motion by a member, it was usual for the body to consider it, or vote as to when they would consider it; then, either to resolve upon it and order a bill to be brought in accordingly, or consider it in committee of the whole, and, upon agreement of the assembly to the report of the committee, order a bill. A bill was always read three times before passage and sending up for assent, but at first these three readings might all occur at the same day's session. Later, however, it was more

[1] Ass. J. I. 36, 55.
[2] Ass. J. I. 93, 160-1.

customary for a bill to be referred to a special committee after the first or second reading, and for the amendments reported by this committee to be acted upon, before the bill was ordered to be engrossed. This engrossed bill was then given a third reading, and ordered to be sent up to the council "for their concurrence." It sometimes happened that a bill was referred to three different committees, before a report satisfactory to the assembly could be obtained. And there might be several committees at work upon different aspects of the same subject, the reports of all being made use of, when the committee of the whole reported resolves, upon which the bill was constructed.[1] In the early part of the period a case arose of a committee feeling itself in difficulty and calling in the speaker to its assistance.[2] This feeling of inexperience, at first at any rate, made it necessary that the speaker should be either a lawyer, as was the case with Graham and Nicolls, who, with two very brief exceptions, were the only persons holding the office of speaker for the first thirty years; or a person in the position of an unquestioned party leader, as was Gouverneur, during his speakership in 1700-1701. The assembly, at its first session in 1691, tried to make use of the attorney general's services in drawing bills, and the governor at first acquiesced. But on his later decision that, according to the instructions, this was no part of the attorney general's duties, the assembly laid the services of the speaker under contribution, addressing the governor and council for special compensation for him. Later, however, that is, in Cornbury's time, the attorney general drew bills for the assembly, and in the "long bill" of 1714 for payment of the public debts, we find an item in favor of Lewis Morris for services in this matter.[3]

In its relations with the council, the assembly was inclined to be strict in requiring decisive action by the council on an assembly bill, before proceeding in response to suggestions by the governor upon new or different legislation on the same subject.[4]

The sessions of both houses were private, but they kept track of each other's proceedings to an extent, the governor and council receiving the printed proceedings of the assembly each day, and

[1] Ass. J. I. 314-17, 137, 140, 142, 148-9, 261.
[2] Ibid. 29.
[3] Ass. J. I. 5-12, 41-46, 166. J. of L. C. I. 34. Col. Laws I. 962.
[4] Ass. J. I. 82, 155.

occasionally sending messages urging action; while the assembly might appoint a committee to inspect the council journal and report what action had been taken on bills sent up, and, as a result, address the council on the subject of favorite measures.[1] Occasionally the governor wrote to the speaker, asking him to urge certain measures on the assembly. Agreement or disagreement with bills or amendments was signified by messages which were sent back and forth between the houses, and differences were adjusted at conferences, both formal and free. The assembly occasionally developed great scruple about keeping to the subject-matter for which a conference was appointed, and on one of the occasions when it was opposing the council's right to amend money bills, refused to go into conference on such a bill.[2] There seems to have been no attempt on the part of the assembly to deny the right of the council to initiate legislation, nevertheless the right was not exercised very vigorously. For some purposes, even, a conference between committees from each house constituted the initial step in legislation. This was frequently the case with bills for supply for military purposes; and, at the time of the Canada expeditions of 1709 and 1711, such a joint committee was kept almost continuously in existence to facilitate the work of preparation.[3] The council's right to amend money bills was, however, denied by the assembly, beginning with 1703 during the struggle for the appointment of a Colony Treasurer. This was an unprecedented stand for the assembly to take, and was resented by the council, which was able to cite many instances of a contrary practice in the previous history of the province. It was also formally condemned by the Lords of Trade. The assembly, however, had its way in the matter, and did not hesitate at the inconsistency of resolving, upon occasion, that such and such a bill, amendments to which by the council it was willing to consider, was not to be considered a money bill. In one case a bill raising and authorizing the payment of public money was so treated.[4]

This brings us to the comparative position of the council and assembly in the government. Contemporary estimates on this

[1] Ass. J. I. 72-3, 237, 254, 319. Smith, p. 365.
[2] Ass. J. I. 72-3, 327.
[3] Ibid. 48, 247.
[4] Ass. J. I. 157-215. J. of L. C. I. 189-245.

point are conflicting. The local magnate character of the council has been referred to. The membership, as a whole, was fairly representative of the leading classes in the political life of the province. Opinion as to the general character of the membership of the assembly seems to have been unfavorable. Colden and Smith agree in emphasizing the features of ignorance, even illiteracy, and the predominance of a narrowly local point of view on public questions. Colden's views as to their integrity were equally pessimistic. "When Mr. Hunter came to his government," says Colden, "he thought that an American Assembly might be governed by reason, but experience taught him that it was a vain imagination. It may be a question whether mankind in general can be governed otherwise than by their affections. For that reason wise legislators found means to raise artificial affections to control the natural." Hunter's system of relations with the members of the Assembly, by means of which he brought the revenue question and questions allied with it in his time to a settlement, would seem to have been in Colden's mind when he wrote as above, for he relates with great gusto Hunter's indignation at being obliged "to rake in the dunghill of these people's vile affections."[1]

Opinions as to the position and influence of the council in the government vary with the circumstances of the province, and with the point of view of the observer. Colonel Quary expresses the opinion in 1709, that "the Generality of the Councils being Gentlemen of the Country are wholly in the interest of the assembly and as ready to lessen the Prerogative in all things as they are."[2] This was from a zealous imperial official, at a time when the governor, Cornbury, had succeeded in alienating all elements in turn, and had practically compelled them to unite against him and crowd him out, by displaying to the home government the impossibility of co-operating with him. Hunter, on the other hand, a governor who was personally popular, and who had an ambition to make local-provincial and general-imperial interests serve each other, found ready support in the council against the assembly's attempt to settle the revenue in a manner contrary to the instructions. He testifies in behalf of the council that he must "do them the justice to declare that I think that it

[1] Smith, 371. N. Y. H. S. Colls. 1868, 205-6.

[2] Col. Doc. V. 116.

is not possible for men in their station to behave with more virtue and resolution with regard to H. M. Right and Prerogative" — with the exception of one member.[1] On the whole, Greene's summary statement for the colonies in general would seem to describe the situation in New York during this period—"although it would be a mistake to suppose that the Council was always or necessarily under the control of the Governor yet . . . it was usually on the Governor's side in his contests with the Assembly, exercising on the whole a conservative influence."[2]

The marked development of the powers of the assembly, as manifested in the struggle for control of expenditure, which is described in a later chapter, wrought great change in the comparative position of the two houses. The imperious necessity for a working relation between the governor and the revenue-granting body, coming out with particular clearness in Hunter's time, directed to the proceedings of the assembly much of the attention and manipulation, of which, till then, the council had had the greater share. The activity in the assembly, which was kept up by such men as Morris and Livingston — both of them men of council calibre — together with their relation with the governor in the capacity of leaders in the assembly affords eloquent testimony to the increased significance of the lower house. The mediocre character of its average membership would render that body peculiarly susceptible to the "management" of men of leading capacity, who chose to develop the possibilities of a relation between the governor and the representatives of the community at large, as against the class interests so effectively intrenched in the council. This development seems to have been going on during that portion of Hunter's administration which succeeded the passage of the revenue act in 1715. We have unmistakable testimony from such competent observers as George Clarke and Lewis Morris, Jr., of the decline of the council's power during this time. And it was not until the separation of the council's executive, from its legislative functions, was accomplished by the removal in 1736 of the governor from the presidency of the legislative council, that anything like a restoration of the council to its former position was achieved.

[1] Col. Doc. V. 185.

[2] Greene: Provincial Governor p. 90.

CHAPTER IV. FINANCIAL AFFAIRS BEFORE 1709.

It was peculiarly true of New York that the conduct of finance in its dynamic aspect was intimately associated with the constitutional history of the province. Contest over its management was perennial, and it was in terms of this struggle that many other contests in the first stage of full-fledged provincial existence finally came to be settled. It was the contest through which the province groped to political self-consciousness and to an activity in which the issues were of a higher order than those of factional hatred or personal intrigue. It was constant, progressive development of this department of activity which finally brought the power of the crown, wielded by a governor personally popular and estimable, face to face with the local provincial power in such a way as to force a compromise.

The ideal of the prerogative party, as contained in the commission and instructions and in the governor's addresses to the assembly, was that the assembly should raise money for public purposes and that this should be expended under the direction of the governor and council. The ideal of the "country party," like the party itself, was only gradually conceived and developed. Till the disposition to use the public policy of the province as an opportunity to give vent to manifestations of extreme partisan violence was outgrown or relegated to the background, there could be no political force possessed of the steadiness of aim and constancy of composition which were required to constitute a patriotic opposition. As thus gradually conceived and developed, the program of resistance to the government ideal was centred on the acquisition of increasing power over expenditure by the assembly. In the course of this struggle the assembly freely used its recognized power of the purse as a weapon for gaining further advantage. The struggle over control of expenditure was long in shaping itself. When it had finally attained recognizable form, the prerogative party made no attempt to deny the taxing power in all its fullness as possessed by the assembly. But by keeping control of the regulation of the fee system and by attempting to develop the crown's territorial revenue as a source

of supply beyond the assembly's reach, they tried to neutralize the revenue-raising power of the assembly in reference to the support of government, while resisting all attempts by the latter body to reserve control of expenditure to itself. The final result of the struggle was practically a victory for the assembly, inasmuch as, whatever the forms traversed, substantial control of expenditure of all important items of income for the usual public purposes was achieved. This process, when finally completed, involved a balance of constitutional forces actually effective within the province, which constituted a compromise that was to an extent inconsistent with the imperial idea of a royal province.

The process, as has been hinted, was long. Not until nearly thirty years after the settlement of 1691 was an equilibrium of any stability reached. Two stages may be recognized in the process. The period from 1691 to 1709 was one in which the attempt of the lower house to attain greater control over expenditure was carried on against heavy odds. With blind absorption in the partisan aspects of politics, the grants by the assembly of revenue for the constant charges of government were made for periods far in advance of the time of passage of the acts, in order to gain the governor's complaisance in party legislation. Hence, till the expiration of these grants in 1709, there was no opportunity to realize the potentialities of the assembly in enforcing its program. This semi-paralysis was improved to advance the personal interests of a small group of unscrupulous characters surrounding the inefficient Cornbury — to the consequent ruin of the credit of the government. The second stage is occupied with a direct controversy between a governor who was personally esteemed in the province, an "Empire-builder" of sagacious views, and the assembly. That body was moved by resentment at the destruction of public credit already accomplished, by the conviction that the disaster was chargeable to the system as well as to its perversion by individuals and by a resolution against any arrangement for the future which could possibly permit of a repetition of the catastrophe. The controversy was settled by an exceedingly complex compromise, one of the important features of which was the removal, to a hopeful degree, of the most harmful phases of Leislerian faction from the domain of politics. It was in the course of the evolution of

arrangements which were designed to protect this settlement that a new balanced system of provincial forces acquired momentum.

In reviewing the financial system of the province during the period from 1691 to 1709, — the stage of preparation and education as it were,— it will be convenient to consider the sources and method of provision of revenue of various kinds, and then the method of expenditure, giving particular attention to attempts by the assembly to secure increasing control of the latter. The passages in the commission and instructions bearing on public income are concerned chiefly with the forms to be used in granting money, and apparently take for granted the control of the taxing and money-granting power by the assembly. Those who were animated by provincial ideals would have had the matter more explicitly stated, and in the so-called Charter of Liberties of 1683 and in the "Act declaring . . . the Rights and Privileges of . . . Subjects in New York," passed in 1691, the phraseology of Magna Carta and of the Petition and Bill of Rights is employed to confine the taxing power in the hands of the legislature.[1] These acts were disallowed, it is true, but in practice the principle thus explicitly stated was not violated except in the most indirect manner. The chief sources of income, as familiarly considered, were "The Revenue" and "Taxes." The distinction was based on practical grounds rather than abstractly scientific principles. The phrase, "The Revenue," came early to be applied with special meaning to public monies of a certain character, those that under settled conditions of provincial life were likely to be fairly constant in yield and thus well adapted to meet the permanent and standing part of the public expenses — the "ordinary support of government." In some ways, "The Revenue" may fairly be compared with the "Consolidated Fund," later established in the English financial system. The larger number of the items, and those the most productive, which came from this source, were dependent on votes of grant by the assembly. The component parts of the revenue were: duties on trade — generally referred to as the "customs,"— the excise, quit-rents, fines and forfeitures, the weigh-house duties and certain relics of the regalian rights of the crown, such as the license to take royal fish.

[1] Col. Doc. III. 819. Col. Laws I. 113, 246.

The customs, for the first twelve years after 1691 averaged about two-thirds of the revenue.[1] The system continued till 1709 to be practically that established in 1683 by the Dongan assembly. It consisted of duties on imports of distilled liquors, wines, and merchandise and duties on exports of fur. The export duties were specific, and were accompanied by schedules of valuation; and duties and valuations remained practically unchanged until 1709. In connection with the duty on exported furs the act of 1683 provided for what amounted to a license of ten per cent. on transaction in furs within the province. This appears in the revenue act of 1691, but after that was dropped. The duties on imported liquors were specific and remained fixed, except for a reduction of the duty on rum sent up the river for the Indian trade. There was more development in the system of duties on imported merchandise. The act of 1683 and the explanatory act of 1684 imposed a duty of two per cent. on merchandise, with a list of exemptions which included farm products of the neighboring colonies on the mainland and a number of semi-tropical products from the island colonies, as well as certain building materials. An additional duty of ten per cent. was laid on "Indian goods," and specific duties on arms and ammunition and rum, when sent up the river. A schedule of valuations for each variety of Indian goods was provided. This system was continued by the act of 1691. But in 1692 the duty of ten per cent. on Indian goods sent up the river, in addition to the two per cent. on general merchandise on importation, was changed to a system which laid a five per cent. duty on all Indian goods on importation, in addition to the two per cent. duty which the same goods had already paid as general merchandise. The ten per cent. tax on transactions in furs also disappeared at this time. The specific duties on arms and ammunition and rum sent up the river remained till 1700, when the four pence per gallon on rum, thus designed for the Indian trade, was dropped.[2]

The productiveness of this item of the revenue would evidently be dependent not only on the character of the collector, but also upon the character of the mercantile population and the opportunities for smuggling afforded by the topography of the

[1] Doc. Hist. I. 701-2. Col. Mss. XLVII. 110.

[2] Col. Laws I. 116, 170, 248, 287, 325, 419.

region. Bellomont considered that he had found a combination of unfavorable tendencies in all these directions at once — "the Acts of Trade being no otherwise put in execution than in the voice of the people." Even at the close of an administration full of an active, and, on the whole, successful, crusade against violations of all acts of trade, imperial and colonial, Bellomont was obliged to report that probably one-third of the trade of the province was against law. Imperfection in the machinery of collection was evidently a contributing feature, and even parliamentary interference for its improvement was suggested and threatened. There seems, further, to have been an actual decay in the volume of trade, beginning with the opening of the eighteenth century. Its causes were at the time, variously ascribed to losses by war, shifting in the habits of the commercial community occasioned by Bellomont's attack on the New York system of illegal and piratical trade, and the dissolution of the New York City monopoly of bolting flour, an important export item. It may not unreasonably be assumed that all of the features, the separate existence of which is fully attested, combined to account for the decay in the volume of trade, which seems to have been unquestioned.[1]

The excise, levied on liquors sold at retail within the province, was throughout the period, granted in the same act with the customs. In proportionate amount of the whole revenue for the period for which figures are accessible, it averaged a little under one-fifth. The act of 1691 abolished the distinction between New York City and the rest of the province, previously existing in this matter, and provided for an excise on the sale of distilled liquors in quantity under fifteen gallons; the same rate, viz., twelve pence per gallon, on the sale of wine in quantity under five gallons, and continued the former rate of six shillings per barrel on the sale of beer or cider. The act of 1692 abolished the distinction between distilled liquors and wines in the matter of the quantity constituting retail sale, making it five gallons for both. These were all the changes in the rates of excise during this period.[2]

The management of this item of the revenue, like that of the customs, seems to have been in the hands of the collector

[1] Col. Doc. IV. 324-5, 417, 590-1, 515-6, 634, 603, 721, 778, 1012, 1083-4, 1150, V. 57-9.

[2] Col. Laws I. 116, 248, 287.

and receiver general under the more or less active superintendence of the governor and council. It was usually farmed by counties, and the resulting opportunities for "graft" were apparently improved. Thus Bellomont reports the corrupt dealing of Fletcher's collector, Brooke, in the awarding of the contract for Long Island for £52 to his friend, the sheriff of New York, whose company was reported to be making £500. Accusations of the same nature, however, were made against Weaver, Bellomont's own collector, and on the arrival of Cornbury all Weaver's arrangements on this matter were annulled. Bellomont thought that the excise on the province should amount to £12,000, and was informed by those who had experience that it ought to yield at least £2,000; but he found difficulty in bringing it to £1,200, though he estimated the population as four times and the number of public houses as ten times as great as before the Leisler episode. Apparently the only alternatives to the award of the farming contracts to friends of the collector were, award by the council itself, selling the contracts at auction to the highest bidder, the process of "agreeing with" the public house keepers for at least the highest sum they had ever before paid, and a combination of all these methods, varying the arrangement to suit the peculiarities of the counties. The last method seems to have been that which prevailed, for the most part, with what results on the productiveness of the excise as an item of revenue, figures are lacking to show.[1]

As these two items together constituted the largest part of the revenue and were always, till 1709, granted in one act, the circumstances connected with the passage of these acts are of some importance. The passage of the act of 1691 presents no features of special interest beyond the fact that the desire of the New York City merchants that the importation of European goods from neighboring colonies be restrained by a ten per cent. duty was denied, such restraint being resolved by the assembly to be "at this juncture a grievance to the inhabitants."[2] This assembly granted the revenue for a period of two years from publication, viz., 18 May, 1691. In the autumn preceding the expiration of this revenue, the newly arrived governor, Fletcher, en-

[1] Exec. Council Minutes 8:39, 105-6, 183-4, 194, 9:49-50, 235. Col. Doc. IV. 418, 617.

[2] Ass. Journal I. 16-7.

deavored to make the point of having the revenue granted for the life of the sovereign. The records of this assembly are incomplete, and those which are accessible reveal the council demanding a grant for five years instead of two. In the conferences on the subject the assembly defended itself against the charge of disrespect or ingratitude to the crown by pleading the heavy burdens on the province, particularly in consideration of the freedom from such burdens enjoyed by their neighbors. They further announced that they were considering a new method of supporting the government, with the hope of making it more easy for the merchant; but, till the wished-for annexation of the neighboring colonies, they thought it best not to discourage the merchants by grants of the present revenue for too long a period. How seriously this announcement is to be taken we have no information to show. At all events, the governor and council did not push the matter any further and the grant was made again for two years.[1]

At the next session in the spring of 1693, the revenue for life was again proposed in the governor's speech but the house took no action. The same subject was warmly urged on the newly elected assembly in the fall of 1693, and an animated debate took place in the conference. The council urged the example of Virginia and Maryland and the previous grant in New York to James II., represented that giving it for life was no more than for a succession of periods and suggested that the compliment to the sovereign would enable the governor with greater boldness to ask for aid from home, and would lighten the burden of the militia detachments and taxes to support them. The assembly in reply repeated the announcement made by the previous assembly, of a design to support the government on a new basis, the present method being but a makeshift till conditions of war should be ended and their neighbours annexed. They protested that they did not intend to settle any less sum, but to settle it for life would be "presidentall," and "would be expected by the next Successour." And despite the council's enthusiastic laudation of the customs and excise as the "easiest" method of supporting the government, the assembly remained firm, and the governor and council, though with exceeding bad grace, were compelled to

[1] Ass. J. I. 26-28. Council J. I. 30-32, 35.

submit. It may be significant that it was at this session that the act for settling a ministry in certain parts of the province, an act on which the governor had set his heart, was passed.[1]

The next grant, in 1699, for a period of six years from 1700, was made by an assembly elected on this issue of granting a revenue, as it stood related to the whole question of the policy of Bellomont, the new governor. The opponents of his policy of enforcement of the imperial trade system had not scrupled to use their whole endeavor to arouse popular prejudice against him. On account of his vigorous attack on the "system" countenanced by Fletcher, he had not been able to avoid the appearance of patronizing the Leislerian faction. The scheme of his opponents was to get an assembly elected which would refuse to continue the revenue and thus involve the governor in such disgrace at home as would inevitably lead to his recall. On his part the governor did not scruple to use executive patronage to procure a "tractable" assembly, one which would continue the revenue for five years, "which is what I Chieftly stickle for." In this he was entirely successful and the revenue was continued for six years, this time without effort on the governor's part to secure a grant for life. But the governor's "management" of the assembly for this purpose also involved his co-operation in acts of legislation which had a decided bearing an partisan interests. Here is a plain case of barter between governor and assembly, with continuation of revenue legislation on the one side and complaisance in partisan legislation on the other.[2]

The same is true to even greater degree of the next grant of revenue, which occurred under peculiar circumstances, four years before the expiration of the current revenue, i. e., in 1702. Bellomont had experienced the greatest difficulty in restraining the vengeful passions of the Leislerians, who, as we have seen, were willing to buy legislative measures of redress with a longer grant of revenue than had been usual. Nanfan, the lieutenant governor, who succeeded on the death of Bellomont, was quite unable to restrain this fury; and among the acts rushed through the assembly just before the arrival of Cornbury was one continuing the revenue for two years after 1706, and at the same time requiring immediate payment of salaries to certain favorites

[1] Ass. J. I. 32-3. Council J. I. 43-8.

[2] Ass. J. 92-105. Col. Doc. IV. 327, 379, 507-8, 524, 821.

of the Leislerian party. This latter feature was an innovation in an act granting the revenue, and was probably, as Cornbury reported, the reason for passing the act. The whole legislative output of this session was subsequently annulled, but Cornbury, in the first session of the assembly elected after his arrival, exacted a real continuation of the revenue for three years after 1706, in return for legislation repealing certain important statutes of Bellomont's time which had frustrated schemes of the Anti-Leislerian leaders.[1] The point of importance to be noted in connection with all these grants of revenue is, that in the reckless excitement of factional conflict both parties for the sake of corrupt advantage put it beyond the power of an opposition to bring the pressure of a denial of supply for the ordinary support of government to bear upon the administration till after 1709.

As the customs and the excise together constituted about eighty-five per cent. of the revenue, the remaining items were comparatively unimportant in point of productiveness. The only one that was dependent on the vote of the assembly was that derived from the "Weigh house Duties," which averaged about two and one half per cent. of the total revenue. This was granted by the assembly in 1692, having been collected prior to that time by virtue of the prerogative. The assembly attempted to make the grant for two years only, but were told by the council that, since it was only out of the condescension of the governor that they were allowed to ascertain the rates, nothing less than an unlimited grant could be considered. A subsequent request from the assembly, that the proceeds from the "King's Beam" be appropriated to the fortifications of New York City, "that the imposition may be the more willingly paid by the inhabitants," was ignored.[2]

The income derived from seizures and forfeitures was from the nature of the case variable — "casual and accidental" was the term contemporaneously employed in description. During the first eleven years after 1691 it averaged about two and one-half per cent. of the total revenue. During Cornbury's administration the collector would not make any payments from this source of income without special orders from home.

---

[1] Col. Laws I. 487, 517. Col. Doc. IV. 999, 1004.

[2] Col. Laws I. 322. Ass. J. I. 30. Council J. I. 38-9.

The quit rents constituted an item which, from its nature, might have been supposed to be an important feature of the revenue. The territorial revenue of the crown being beyond the direct influence of the assembly might have been the nucleus of an independent resource. That it was not thus available in any important degree was due to the negligence of some, and the corrupt activity of other governors. In 1710 the attorney general reported that by reason of the small reservations of quit-rents, the non-enrollment of patents or their loss if made, the presence of illegal features in many of the grants and the non-fulfillment of conditions, the income from "the greatest part of the continent" would not average £100 a year. Whatever the fault of the early governors (and the proceedings of Fletcher in granting three-fourths of the province to less than a dozen people for quit rents amounting to less than £5 per annum shows that this was not inconsiderable), a wide-spread spirit of lawlessness concerning these matters in the rural regions is equally an element of the situation. Bellomont's opponents, in the election on the revenue issue already referred to, placed great reliance on their trick in getting him to essay the collection of the quit rents on a wholesale plan during the progress of the campaign. He himself suggested the necessity of an act of parliament for the regulation of land-granting in the province, being sure that no dependence could be placed on the assembly. He estimated that at a proper rate the income from this source should amount to £3000. Nothing in the line of improvement of the situation was achieved, however, during the currency of the revenue, though effort was made in this direction by the council in Cornbury's time, and though it was the government's only available resource in unavoidable exigencies.[1]

The subject of fees was one upon which there was strong popular feeling and much determined effort on the part of the assembly. The commission and instructions of the early part of the period seemed to commit the regulation of them to the governor and council, although in terms which did not entirely exclude the possibility of participation by the assembly. The subject had importance for the question of control of the finances by the popular body, because to the degree that the support of

[1] Col. Doc. IV. 419, 519-20, 514, 555, V. 161-2. Council J. I. 212, 218-9.

such officers was withdrawn from dependence on the legislature was control of them by that body rendered difficult. In their official expressions, however, it was always the burden on the ordinary conduct of affairs which was entailed by the extravagant charges, that was emphasized. In connection with the grants of revenue prior to Cornbury, tables or catalogues of fees were sent up to the council by the assembly. A regulation seems to have been provided by the council, after the receipt of a table from the assembly in 1693; but it seems never to have passed in regular form as an ordinance. Bellomont was of opinion that power in this matter was in the hands of the governor and council whose action must be especially approved by the home government; and he so informed the assembly, who thereupon withdrew their table which they had intended to form part of the revenue act in 1699. It does not appear that any action from home was secured, and the regulation of 1693 continued in form. The general movement for reform of financial method by the assembly under Cornbury included repeated attacks on the fee system, which was represented as a form of taking away the property of the subject without consent in general assembly. These attempts culminated in 1709 in an act establishing fees, passed by both houses, and assented to by the lieutenant governor in the fear of stirring up trouble with the assembly at a time when so much was expected of it in the way of military supplies for the Canada expedition. In his correspondence with the home government Ingoldsby hinted that reform in some particulars would be entirely in order; but that the assembly had gone much too far in the other direction, reducing the fees so low that officers could not live. The act was disallowed and the continuance of this contest formed a part of the general revenue controversy under Hunter.[1]

Levies of direct taxes comprised an item of public income which at any rate, for the first twenty years, after 1691, considerably exceeded the revenue in productiveness. The purposes for which these levies were made were, in theory, the "extraordinary uses" of the province, as distinguished from the "ordinary support of government." Naturally then, they were not necessarily mat-

[1] Col. Laws I. 638. Ass. J. I. 12-13, 17, 28, 30, 223-4. Council J. I. 32, 132-4. Col. Doc. IV. 287, V. 82, 603.

ters of annual or regular grant, but in fact, as the acts levying them were chiefly for purposes of defense, and as there were only four years of formal peace during this period, such acts came to be quite regular in their recurrence till the movement for the creation of the office of the country treasurer began in 1703. During this period there were only two years in which an act for the levy of direct taxes was not passed by the legislature. By governors' administrations, the levies of direct taxes ran as follows:

Sloughter and Ingoldsby	£5000 Defense
Fletcher	£20,477:6:8 Defense
	£1,000 Agency
	£750 Present to governor
Bellomont and Nanfan	£1,000 Defense
	£2,000 Present to governor and lieutenant-governor.
	£1,000 Payment of debts
Cornbury	£8,483:10 Defense
	£2,000 Present to governor
	£143:10:10 Room for assembly
	£1,010 Payment of debts

Practically all these levies were of the nature of a general property tax; that is, a lump sum was granted, which was variously called a "sum," "supply," "levy," "fund," quotas of which were by the terms of the act assigned among the several counties, to be "levied, assessed and raised upon the inhabitants, residents and freeholders." There was only one instance of the use of the "penny in the pound rate," viz. in 1692, for a present to Fletcher. There was one instance of the use of a poll-tax, in 1703, by which nine pence was imposed on freemen of sixteen years and over, three shillings on bachelors of twenty-five years, five shillings and six pence on persons wearing a periwig, twenty shillings on practising lawyers, twenty shillings on members of the assembly, and forty shillings on members of the council. With these exceptions the levies were of the nature indicated. For assessment and collection of these taxes, the machinery used by the counties for their local rates was employed, and penalties were provided for failure by the justices of the peace of the

counties or the mayors or aldermen of the cities to enforce the powers of the act. Considerable difficulty was experienced in keeping the county officers to their duty, and for the first ten or fifteen years the records of the executive council contain many instances of pressure from that body on the justices. Most of the development in the system was concerned with strengthening here and there the penalties for the non-enforcement of the acts. At first, payment in produce was allowed, and schedules of rates at which it was to be received formed part of the acts. By 1695, this practice seems to have been discontinued. A number of the early tax acts provide for taking up a proportional part of the sum to be raised at interest, on the credit of the act, with special appropriation clauses for the repayment of the persons who should thus advance ready money. Attempt was made early in the period to arrange for a system of commissioners in each county, to be appointed by the assembly and commissioned by the governor, for estimating estates; and an establishment for such estimation "to prevent uncertainties in the Proportioning of all Subsidies;" was included in the plan. But the device was rejected in council. Unfortunately the records of the assembly give no information concerning any debates over the assignment of quotas to the counties. The quotas bear a proportionate relation, not strictly maintained, to the population of the counties.[1]

It was matter of complaint by the Anti-Leislerians that what was praised as public spirit in their adversaries in reality cost them little, for their whole number paid scarcely one-fifth of the public assessments and scarcely one-fiftieth of the customs revenue. During Fletcher's administration, the taxes for defense,— and most of them were for that purpose, — omitted Albany from the quotas, in consideration of that county furnishing quarters,

[1] Col. Laws I. 239, 258, 272, 282, 315, 344, 352, 354, 358, 364, 369, 381. Ass-y J. I. 36-8.

In the period 1691-1711, the quota of the City and County of N. Y. averaged roughly from 20% to 30% of the total levy, beginning at the lower figure during the first two acts after Sloughter's arrival, and holding at nearly 30% during Fletcher's and Bellomont's administrations and falling to 21% during the period from 1702 to 1711. The higher proportion corresponds pretty closely with New York's population if reckoned by totals, the lower, if reckoned on the basis of the number of white males.

fire and candle for the detachments there stationed. This practice was abandoned in the second intercolonial war. No convincing explanation appears at present for several departures from the principle of population as a basis for reckoning quotas.[1]

In comparing the reliance placed upon the productiveness of the revenue and upon the levies, as sources of income, we are embarrassed by the absence of figures for receipts of revenue during the first twenty years of the eighteenth century. For the period, 1691-1695, the average revenue amounted to £3,550, while the taxes voted for the corresponding period averaged £4,892 per annum. The figures for the administration of Bellomont and Nanfan seem to show a disposition on the part of the Leislerians, during their brief day of power, to take advantage of the greater accessibility of their enemies' mercantile investments for public purposes. Both the periods 1698-1702 and 1721-1728 were times of formal peace upon the frontiers; yet in the former period direct taxes are in a ratio to the revenue of one to five, while in the latter the ratio is one to two. This feature appears particularly in connection with their use of the additional duty, which, as a nearly constant feature of the finance of the early period, may properly be described here.[2]

Partly as a result of loosenesss in the system of expenditure, partly as the result of the severe and long continued frontier struggles of the first intercolonial war, the province was continually running in debt. Aside from all attempts to saddle upon the government, as constituted in 1691, the responsibilities incurred by the government of the Leisler interregnum, the actual expenses of the government continually exceeded its income. To meet these "anticipations of the revenue,"— for so they were regarded — the practice was begun as early as 1692, of laying a duty upon the importation of certain goods, over and above the duties laid by all other acts. The act of November, 1692, imposed an additional specific duty on distilled liquors, wine and molasses, an additional duty of two per cent. on European goods, and of six per cent. in addition to this, upon such goods when imported from anywhere but England, Wales and Berwick. It was

[1] Council J. I. 53. Col. Doc. IV. 621. Col. Mss. XLVII. 110. Doc. Hist. I. 687-702.

[2] Ibid.

granted for two years and continued till 1698, by successive acts, mainly for the same purpose, viz., payment of public debts. In 1699, a schedule of additional duties, in which the principle of discriminating between imports from England or place of manufacture and elsewhere is still further carried out, was enacted for two years. It was during the period of this act that the assembly grudgingly co-operated with the governor in the project of erecting a fort in the Onondaga country. To provide £1,000 for this purpose, for which they had no real enthusiasm, they granted what might be called an additional additional duty. If, for the sake of keeping in touch with the governor, they must at least appear to assist him in this object, it should be in the manner least burdensome to their special following. Bellomont called it a "foolish money bill," and commented on the injurious effect it would have upon the regular revenue by putting an excessive clog upon trade. But for the sake of appearances before the Indians, he thought best to consent to it. It was, shortly afterwards, repealed, and a property tax was levied to meet the cost of the fort. The disposition of the Leislerian leaders to bear with special weight on the trading interest as a source of public income is also displayed in an act that was passed on the expiration of the additional duty voted in 1699. The varieties of imports newly taxed by this schedule had a wide range, and some at a later period became a permanent element in provincial finance. But the speedy annullment of most of the legislation of this assembly deprives this of permanent significance.[1]

New York did not begin the practice of issuing bills of credit till 1709, when, owing to the urgent necessity of military supplies for the Canada Expedition of that year, such bills were authorized to issue, under elaborate directions as to currency, redemption and retirement. They were regarded as anticipations of the proceeds of the taxes, provision for whose levy in at least equal amount was coincidently made. The issue was provided for by act, not by resolve, and, during the period now considered seems not to have been questioned at home.[2]

[1] Col. Laws 312, 325, 331, 342, 403, 444, 467. Col. Doc. IV. 713. Ass. J. I.

[2] Col. Laws I. 666, 669, 689, 693, 695.

In all these different methods of raising money for public purposes, the assembly, as a matter of fact, took the initiative; but the claim of an exclusive power of framing such legislation, leaving to the council only the right to accept or reject entire, does not appear until the general revolt against prerogative control of expenditure was undertaken. Prior to 1703, when the assembly resolved, "that it is inconvenient to admit of amendments by the Council to a money bill," such amendments had repeatedly been made by the council, both in the case of grants of the revenue and of tax levies. The council was not slow to resent this assumption, and was entirely supported in its claim to the right of making such amendments, by the Lords of Trade. Nevertheless, the struggle for the right to appoint its treasurer for funds raised for extraordinary uses, which was the struggle in which it found this claim a useful weapon, resulted in a victory for the assembly; and the council, as a matter of fact, did not offend again till the occasion of the controversy over the granting the revenue in Hunter's time. Undeterred by the previous rebuke of the Lords of Trade, the assembly persisted in its refusal to consider council amendments to money bills. And even in the settlement of the controversy, which involved the practical necessity of admitting council amendments to the bill for paying the debts of the colony, the assembly saved its face by formally resolving that this was not a money bill! The same course of action, in practical consequence, was taken with regard to conferences concerning money bills.[1]

As has been indicated, the chief struggle was that over control of expenditure. The commission required that "all public moneys . . . raised by an act . . . be issued out by Warrant from you by and with the advice and consent of the Council and Disposed of by you for the support of the government and not otherwise." The instructions required the governor not to "suffer any public money to be issued or disposed of other than by Warrant" from himself by and with advice and consent of the council, and also required that, in all acts or orders for levying money express mention should be made that the same was granted to the crown for the public uses of the province and the support of the government, "as by the said Act or Order shall be directed." The

[1] Ass. J. I. 189, 202.

governor was further required to take care that books of accounts of receipts and payments of public money in which the particular sums raised and disposed of should be mentioned, be kept and transmitted to theTreasury at home and to the Board of Trade, "to the end we may be satisfied of the right and due application of the Revenue." The practical result is plain. It was evidently the intention that the money should be disposed of as directed in general terms by the money-granting power; provision was made for satisfying the crown that this had been done; but it is to be observed that in case of deviation from the ideal working of the machinery of expenditure, only remedial action, and that after the injury had been accomplished, could be taken by the dissatisfied home government; that, considering the means of communication and the imperfections of the system of imperial control generally, great harm might be wrought to the provincial finances before any remedy could be applied; and finally, that there was no provision for the effective satisfaction of the body which had made the grant, that its purposes had been regarded. The experience of the first three administrations immediately demonstrated these possibilities, and they seem to be partially recognized in the new feature in Cornbury's instructions of 1702, in which it was stated that "the assembly may nevertheless be permitted from time to time to view and examine the accounts of money . . . disposed of by virtue of laws made by them."[1]

Control of expenditure of money granted for purposes outside the range of the usual necessary and constant charges of government was the first thing aimed at by the assembly. As we have seen, the raising of money for these purposes was accomplished by levies of direct taxes; and from the very first we find the acts stating the object of the grant in general terms, sometimes in the title alone, sometimes more fully in the preamble. Usually both features were present, and were generally followed by some such phrase as this, "and for no other use whatsoever," or, "and not otherwise," or a provision that the money granted be "only appropriated or applied to," etc. The preamble was likely to contain, besides a recital of the facts setting forth the reasons for the grant, a more detailed statement of its object than

[1] Ass. J. I. 188. Col. Doc. IV. 266, 284, 884-5.

was contained in the title. In the case of acts providing for paying and maintaining detachments of militia, or for bounty money for enlistments to increase the force of the "Independent Companies," the practice came to be to state with much minuteness the number of men, the days they were to serve, the places where they were to be posted, etc., and a pay establishment was included in the act. By 1696, the differentiation of objects for which the money was granted and the allotment of definite sums to each purpose had gone so far, as practically to deprive the expending power of all discretion.[1]

For the assembly thus to manifest its intention was one thing; to enforce action in conformity with this intention upon a power beyond its direct control was quite another. In the absence of a positive requirement of accountability of the expending power to the tax-granting power, the latter could only work indirectly upon the situation, by exacting what satisfaction the former could be persuaded to grant, as a condition precedent to further supply. This, in time of public danger, would be an awkward thing to do, and in any case would be pretty certain to be associated with a complete breach with the governor and council. If the governor and council did not choose, or were unable, to compel the collector and receiver-general to give complete satisfaction to the assembly, it would depend upon the flagrancy of the proved departure from the assembly's wishes, or upon the degree of urgency of military supply, whether the assembly would go so far as actually to deny further supplies till satisfaction were obtained. One device was made use of at an early stage of proceedings, viz., through the agency of a committee of accounts, frequently much hindered by the dilatoriness of the collector, to ascertain a balance from funds previously raised, by means of objections to items in the collector's accounts, and to include this balance in a new bill for supply, thus diminishing, by the amount of the balance found, the sum to be raised by the new bill. During Fletcher's administration, obstructions of many kinds were placed in the path of this process, the assembly never being given satisfactory access to muster-rolls or accounts of expenditure of taxes for military purposes. In enforcing its program the assembly

[1] Col. Laws I. 239, 258, 272, 282, 315, 344-52, 354, 358, 364, 369, 381.

was pressed to its weapon of last resort — a denial of supply — and, on dissolution and the election of a new assembly, provision for defence was made on a different basis.[1]

Apparently in recognition of the futility of attempts to control expenditure of taxes by any such indirect process as the foregoing, a further step in advance was taken, when, in 1700, the additional additional duty was granted for the erection of a fort in the Onondaga country. Apparently with the encouragement of Bellomont, managers named in the act, were appointed on whose advice the governor was to issue warrants for the payment of bills connected with the fort, the collector and receiver-general being by the act required to transmit every three months to the managers, accounts of his receipts from the additonal duty.[2] Other acts passed by this assembly, while still under Leislerian influence but without the restraining hand of Bellomont, acts providing for even more rigid control of expenditure by representatives of the tax-granting power, are deprived of permanent significance by the fact that Weaver, the collector for the time, was a prominent leader of the Leislerian faction, for whose benefit these acts were passed. According to these acts, the collector was to pay the proceeds of the tax thus raised to persons to be named by commissioners appointed for each county by the assembly. The acts were repealed by the Cornbury government with all speed, but the significance of the system provided for the enforcement of the assembly's intention is important and apparent. In previous acts for the payment of the debts, the assembly had ascertained the debts for itself, then had granted the additional duty for their payment, and finally had provided for the progressive division of the proceeds of the duty among the claimants, whose names and acknowledged accounts were stated in the act. The loose method of ascertainment which was provided in the act of 1701 bears witness to the suspicious atmosphere clinging to the whole output of this assembly. The same taint of extreme and offensive partisanship vitiates the significance of the revenue act passed at this same session, which provided for immediate payment of allotted salaries out of the proceeds of the duties imposed

[1] Ass. J. I. 47-53. Council J. I. 67-77.
[2] Col. Laws I. 367. Council J. I. 146.

— a step beyond the boldest dreams of the past, and only to be resorted to again after the province had been through the fiery trials of the Cornbury administration.[1]

It was through the developing activity of the committees of accounts that the suggestion of the next important step was made. These committees were chiefly active in the attempt to ascertain the amount of the public debt, and in the rightful location of claims of accounts to be parts of this debt. Nearly every session of the assembly saw a committee of its own membership appointed to inspect the accounts of the taxes and revenue, and to arrive at a statement of the debts of the government. Both Fletcher and Bellomont appear to have had but slight regard for the abilities of these committees to make use of accounts when they got hold of them. It was by joint committee of council and assembly that the information was obtained, which resulted in the passage of both acts for granting the additional duty for payment of debts in 1692 and 1696. By 1698, the assembly committee found that the original lists of debts for which the additional duty had been granted had been paid; but, according to Bellomont, the indebtedness of the province was still great and its credit very low.[2] The activity of the assembly committee on accounts, whose members were shortly made commissioners of accounts together with one outsider, the merchant Van Dam, and whose powers of investigation were at the same time made effective, was apparently colored by the ambition to find their late antagonists sufficiently in debt to the government to make restitution by them answer for many claims and for the expenses of fortifications which the governor was pressing on the assembly. The commissioners found the accounts in a scandalous state of confusion, the claims of Livingston and Schuyler, against whom their wrath seemed to be especially kindled, filled with objectionable items which were not according to the acts or according to any principle of good management. But the excessive rigor and severity pursued in relation to these accounts, and the recklessness with which claims of their fellow partisans at the time of the Leisler episode were allowed and the leaders in their recent

[1] Col. Laws I. 467-79, 479-88.

[2] Col. Doc. IV. 522, 721. Ass. J. I. 69, 90. Council J. I. 27, 76.

time of prosperity were rewarded, enveloped the whole subject of provincial debt-paying in an atmosphere of corruption which clung to it throughout the whole period.[1] The commissioners of accounts appointed by the assembly called by Cornbury were, with the exception of Van Dam, now a member of council, Anti-Leislerians; and they were directed to inquire only into the accounts from the time of Bellomont's arrival. This is significant of the spirit of their principals; but their inquiry within these limits seems to have been conducted with greater efficiency than has been observable before. Their findings included discovery of negligence equal to that of Brooke, on the part of Weaver, Bellomont's collector, while many objections to items of discharge in which partisan animus is evident, appear. Their objections, however, display a continuity in principle with objections made by the Leislerian commissioners in the matter of the use of the ordinary revenue for the support of the "Independent Companies." The commissioners also severely criticised the deputy of the Auditor-General of the Plantations for passing accounts so full of errors. Particularly important is their final observation: "This Board are of Opinion, That it will be very difficult to come to the satisfactory knowledge of the Uses and distributions of the Revenue and public Subsidies and of the Debts of the Gov't (forasmuch as the Charges do take their arise from the Council Board) not knowing that there is any Accountant Established or Books kept wherein the Accounts are fairly entered by way of Journal, as they are past in Council; and the Collectors or Commissioners of the Customs take up no more warrants than what they pay, which for the most part bear only some General Hint of the Use. Neither can we know where the Arrears of Taxes are standing out, nor have any distinct account of the distribution of them, some of the Collectors having Charged themselves in Gross with all the monies they receive and the Deputy Auditor having allowed the Discharge promiscuously: We are therefore of opinion it would be very necessary the Country would appoint a Receiver for all Subsidies and Taxes Except the Revenue, who should be

[1] Col. Laws I. 441, 459, 469, 479. Col. Doc. IV. Ass. J. I. 112-14, 119-38. Exec. Council Min. VIII. 204–10, 225, 276, 339, 340. Col. Mss. XLIV. 81, 156, 276, XLV. 85.

accountable to the Assembly for the Same and the disposition thereof, to the uses for which they are Granted."[1]

This report was presented at the spring session of 1703, and the suggestion was immediately acted upon. In a bill for raising £1,500 towards the construction of batteries to guard the Narrows, provision was made for a treasurer for receiving and paying the money which was now intended to be raised. Being informed in the series of conferences which ensued upon the council's attempt to amend the bill, that such proceeding was contrary to the instructions, the assembly presented an address to the governor, desiring him to represent to the queen its purpose, viz., the prevention of misapplications in the future, and to desire an instruction to himself to commissionate some fit person to be treasurer, the same to give sufficient security by freeholders and inhabitants, for the due execution of his office.[2] In the meantime, the assembly incorporated in the £1,500 bill a clause reciting the abuse and misapplication of the public money as a matter of notoriety, and requiring the collector to keep a separate account of the money received by virtue of this act and exhibit the same to the assembly when required.[3]

This was the beginning of a struggle in which, for the first time, the assembly used its whole power for the attainment of a truly political end uncomplicated, or comparatively so, by any partisan aspects. In the course of this struggle, an account of which in detail is forbidden by space limitations, the assembly attempted to force the council into a subordinate position in the matter of legislation involving money-raising, by denying the council's right to amend such bills, and did not hesitate to enforce its demand, by refusing a supply even at the risk of danger to the province in time of war. On retreating from its original demand for a treasurer who should be accountable to itself, it revived the practice of former times, by inserting minute directions as to appropriations and ascertainments of of balances from former supplies, which had not been expended in accordance with the directions of the acts. In opposition to Cornbury's interpretation of the instruction which permitted

[1] Col. Mss. XLVII. 110.
[2] Ass. J. I. 170.
[3] Col. Laws I. 550.

them to view the accounts as not extending to their "meddling with them," they held that the whole intent of that instruction was that the assembly might be satisfied that the money raised by them was applied to the uses appointed. In reply to the council's objection to their device of making a certificate from the commanding officer a discharge to the treasurer, that it was in violation of the instruction forbidding the issue of public money in any other way than by warrant from the governor and council, they held that their desire in this connection was no more than the requirement of the approval of the council to the governor's warrants for the ordinary support of government. This they described as equally a kind of voucher for the due disposition of that money according to the necessities of the colony. Throughout the controversy, they based their policy on the report of the commissioners of accounts, already referred to, which recited the impossibility of a certain knowledge of the state of the revenue under the existing system, and on the fact of misapplications in the past and at the time, which were being progressively brought to light through the agency of the commissioners. Dissolution only brought upon the scene an assembly more determined upon the original project. The governor represented the matter to the Lords of Trade as another evidence of the spirit of independency everywhere rife — "as the country increases they grow more sawcy." Nevertheless, in 1706, the Lords of Trade directed the governor to permit the assembly "to name their own Treasurer when they raise extraordinary Supplies for particular Uses," to be accountable to governor, council and assembly. Warrants might be issued by the colonels, captains or other persons according to the direction of the act, but the governor must always be informed of the occasion of issuing such warrants, and all persons concerned in issuing and disposing of such money must be made accountable to the governor, council and assembly. The course of the assembly in pretending to the privileges of the House of Commons was definitely rebuked. The money must be granted expressly to the crown "which need not hinder the Assembly of New York from appropriating the money so granted to such particular uses as are found requisite." This last point was a valuable feature of the message for the assembly's purpose, practically confirming its previous use of the power of

appropriation and forming a basis for the extension of the usage at a later period.[1]

One dangerous feature of the situation had thus been remedied for the future, and thereafter all acts levying taxes contained clauses providing for the custody of the funds thus raised by the treasurer appointed by the act. The payment of such money was to be performed by the treasurer, either upon warrants addressed to him by commissioners or managers named in the act, which also carefully limited the purposes for which the warrants were to be drawn; or directly to persons named in the act, whose receipts were pronounced a sufficient discharge to the treasurer. One part at least of the public income was now under the effective control of the power that had raised and granted it. Expenditure of money raised for the ordinary support of government was still beyond control, and the methods and consequences of prerogative control of this portion of the public income must now be examined.

There was one circumstance peculiar to the expenditure of this portion of provincial income, viz., the fact that certain items were assigned or allotted by forces entirely outside the province. The governor's salary, for example, was fixed by a clause in the instructions empowering him to take to himself such and such a sum as his salary. The collector and receiver-general was assigned his salary by the Lords of the Treasury out of the quit-rents. Such manifestations of control over resources it was entirely out of the power of the province to prevent during the continuance of a revenue already granted. Only when the assembly had gotten a leverage by reason of the expiration of the revenue of 1709, do we hear anything of an opinion that her Majesty might not allot salaries out of the revenue. The power given to the governor by the commission and instructions to regulate all salaries and fees might be influenced in its effectual working in the long run by the size of the funds established by the money-granting power at intervals for the support of government, and by the unwillingness of the assembly to regard anticipations of the revenue, in so far as they were caused by such salary-regulation by the governor, as truly public debts. But only

[1] J. I. 157-215 esp. 203, 205-7. Council J. I. 189-245. Col. Doc. IV. 1121-2, 1145-47, 1156, 1165-66, 1171-2, 1181-5.

thus indirectly could the assembly do its work. Ordinary support of government would naturally include, in addition to salaries of officers, incidental expenses of government, and the meeting of unexpected emergencies. The latter in time of war would be likely to be heavy, as would the former during the periods in which the government was especially active in enforcing its program upon an unwilling people. Both of these conditions were present during the administrations of the first four governors till 1709, but particularly so during the period from 1691 to 1702.

The salary list varied considerably during the period, but exhibited a general tendency to increase. In 1693 it amounted to £1,738, in 1702 to £2,855, in 1704 to £3,097, in 1708 to £3,542. The governor and council had from the first established the rule that warrants should be paid in course following the dates of issue, with the exception that salary warrants should be paid quarterly.[1] "Contingent charges of government," which it is impossible to estimate or report in even approximate figures, including such items as expresses on Indian diplomatic service, the cost of maintaining good relations with the Indians in general, expenses of legislative sessions, and the like, constituted an important item in the support of the government. The presence of troops in the king's pay also involved a burden on the revenue, for, owing to the high prices prevailing in America, their pay, even when transmitted at sterling value, was not sufficient to defray their "incidents" in addition to their subsistence. These "incidents," together with support of staff officers, and maintenance of barracks and fortifications were supposed to be provided for by the stoppage of ten per cent. from the pay; but for the reasons indicated, the provision was utterly inadequate even for one of the objects. It is to be observed that these items are of comparatively regular recurrence, even though difficult to calculate in amount. Add to these items those connected with sudden and unavoidable emergencies, to be expected in time of war; and the necessity for an intelligent system, and scrupulous adherence to at least the outline of such system becomes apparent. The commission and instructions placed in the hands of the governor and council exclusively, the issuing of war-

[1] Doc. Hist. I. 313. Ass. J. I. 243. Col. Mss. XLIX. 142. Exec. Council Min. VI. 139.

rants upon the collector and receiver-general for payment of all monies raised for the ordinary support of government. The actual conduct of the matter is perhaps best portrayed by George Clarke, secretary of the province, deputy to, and kinsman of, Blaithwaite, the auditor-general, in a letter written in 1706, after three years of residence in the province had familiarized him with the conditions. "The Governor being judge of whatever is necessary to be done for Her Majesty's service in the province whenever he thinks it convenient directs the performance thereof accordingly. The service completed, the persons employed or furnishing materials bring in accounts to the Governor and Council. Whereupon a committee of three at least is appointed to examine the accounts and they report according to the nature and circumstance of the affair, 'though Generally and indeed almost always the Substance of their Report is that they have Examined the account and believe it to be true and are of opinion that his Excellency may safely Issue Warrants for payment of the same out of the Revenue.' The preparatory steps being taken the Governor in Council Issues his Warrant (under) his hand and Seale to the Receiver-Generall . . . In obedience to these warrants the Receiver-General pays the sums for which they are drawn so farr as the Revenue will Extend (after the Sallarys of the Governor and other officers are paid these being by order of the Governor and Council made preferrable to all payments) yett sometimes and indeed frequently Sallary warrants are not paid when others are, and at other times The Receiver-General makes distinctions of persons when their warrants make none. . . . Hereupon arise this Generall observation That there seems to be Little or no hopes of having the Revenue applied to the necessary uses only for which it was Intended For the 10 per cent. falling Short (as I am informed) of what is Sufficient to pay the Staff officers, consequently the Incidents of fire Candles, Nursing Sick Soldiers etc. being unavoidable and what the Garrisons cannot Subsist without these Expenses must be paid out of another fund and there being no other but the Revenue and the Governor having the disposall thereof in the manner aforesaid he orders the payments thereout of those and all other expences by Warrants as aforesaid to the Receiver General."[1]

[1] Col. Mss. LI. 170.

The partiality in the recognition of claims upon the government, thus indicated, is one of the many features of the system of exclusive control of expenditure for support of government by governor and council which, in the first eleven years of the period, had excited a deep-rooted distrust on the part of the people, and which went under the general label of "mismanagement" or "misapplications." This "mismanagement" is exceedingly difficult to analyze and to account for in any systematic way. Only a few features, samples as it were, can be given. Perhaps its most serious feature was the heavy accumulation of indebtedness actually incurred under the operation of the system, which, with the partiality in the treatment of creditors above indicated, would be enough to ruin the government's credit. That the latter result was accomplished, there is abundant evidence to show. Estimates of the amount of indebtedness at different times are necessarily vague, and the reasons assigned for its existence conflicting. Colonel Quary reported, in 1703, that at the end of Fletcher's administration, the debt of the provice was no more than could be discharged by the arrears of revenue and taxes. Bellomont reported, in 1699, that the debt amounted to £5,000; while, in 1702, at the beginning of Cornbury's administration it was reported at £10,000, and ascribed to mismanagement in Bellomont's time. Livingston reported, in 1707, that ten years' revenue, if settled, would not clear the debts. The two acts in Hunter's time for payment of debts recognized an indebtedness amounting to over £42,000, but a respectable fraction of this was for debts incurred subsequent to the expiration of the revenue in 1709. In any case the seriousness of the burden is manifest.[1]

The objections of the deputy auditor general to the collector's accounts in Cornbury's administration shows that another feature of mismanagement was profuse extravagance in providing for certain objects, which were entirely legitimate in themselves. One of the most notorious of these instances of extravagance was Cornbury's first journey to Albany to meet the Indians. The trip cost more than twice as much as any previous one, and the excess can not be charged to unusual liberality in regard to the presents to the Indians. Another illustration is to be found in the extravagant expenditure for candles, and for many

[1] Col. Doc. IV. 513, 829. Cal. Treas-y Papers Vol. 1702-7, 511-12.

other items which should have gone to the governor's household account. From the same source we learn of the greatest carelessness in using the revenue for purposes for which the pay of the "Independent Companies" was established. Laxness in control of subordinate officers by the governor was another feature of mismanagemnt. The charging to the revenue of a double salary, one to the commissioner for executing the office of collector during the time of Byerley's suspension, and one to Byerley himself for the same period, a result which was made necessary by the disapproval at home of Byerley's suspension, still further swelled the burden of debt. Another feature which contributed to mismanagement was the uncertainty in regard to the state of the revenue at any given time. The frequent changes in personnel in the office of collector, with the disputes and obstructions concerning the settlement of accounts on each transfer, and animosity existing between Cornbury and Byerley and extending through nearly the whole of the former's administration made it practically impossible that the authentic information should be attained, had there been any determined official disposition to make such information accessible.[1] The same uncertainty, it will be observed, had already been noted by the commissioner of accounts in the matter of the state of the taxes.

The letters of the executive council during the latter part of Cornbury's administration are full of quarrelsome charges and recriminations on the part of all officers who had to do with expenditure as well as complaints of the various claimants on the public purse. Out of all the tangled swirl a few chief currents or eddies seem to be distinguishable — the dissipation of public funds by profuse expenditure for the governor's personal ends; the activity of Fauconnier, who was naval officer and commissioner for executing the office of collector whenever Byerley was under suspension, as chief manager of Cornbury's schemes; the opposition of Byerley to these schemes, many of which were for the purpose of assisting those to whom Cornbury was under corrupt obligation; the helplessness or indifference of the council in making its function of advice to the governor in the matter of warrant-issue effective in checking such practices; the con-

[1] Col. Mss. LII. 24, 26, 81. Exec. Council Min. X. 120. Cal. Treas-y Papers vol. 1702-7:535. Col. Doc. V. 405, 408.

sequently difficult position of Clarke, the deputy auditor general, who objected to the proceedings of both parties; and the attitude of the assembly, which was becoming more and more disgusted with the working of the system as developed by Cornbury.[1]

The excessively bad reputation of the Cornbury administration, as that of a plundering pro-consul, seems partly to be accounted for by the man's low personal character, partly by the impudently open use of certain public monies for ends of purely personal gratification, and partly by the unusual opportunities presented to a governor of such a character. For the first time in the history of the province we have the combination of a governor using his power with a faction largely for personal ends, and a collector at odds with the governor in the latter's devices for exploiting provincial resources and for saving his subordinates and accomplices, and using the due execution of his office as his protection against compliance with the governor's irregular courses. Under these circumstances, whatever injury was inflicted on the provincial finances would be peculiarly exasperating; and the fact that after at least eighteen months' confinement in New York, Cornbury was only able to get away from his creditors by the good nature of Hunter, would seem to indicate that, however great his "pickings," they had not permanently bettered his fortune very much. Complaints of the bad possibilities of the system of prerogative expenditure and of the partial exploitation of these possibilities had been made with reference to Bellomont's administration, but without slur on Bellomont's personal reputation. It was Cornbury's peculiarly sordid use of the opportunity that earned for his administration the especial degree of obloquy which is associated with it. The fact that Byerley, though not himself entirely free from irregularities, was able to work harmoniously with Hunter inclines one to the view that in his controversies with Cornbury, it was Byerley's that was, comparatively speaking, official righteousness. Specific instances of Cornbury's embezzlements of public money given for public uses are, in the present state of the records, well-nigh impossible to prove. Colden refers to his applying the proceeds of the £1,500 tax designed for

[1] Col. Mss. LII. 87. Cal. Treas-y Papers vol. 1702-7:557. Ass. J. I. 224, 236-8.

the fortification of the Narrows, to the erection of a pleasure-house on Nutten's, now Governor's, Island, as though it were matter of common knowledge. Cornbury himself referred to these rumors in his speech to the assembly in its session of 1706, and, declaring that the tax had not been collected, asked for an investigation. He complained at the end of the session of their lack of thoroughness in this investigation, the results of which seemed to be the finding that only £356:6:5¼ had been collected. In connection with the £1,800 voted for defense in the same year with the £1,500, the assembly found that £793:6: of the £1,800 were in the hands of the commissioners for executing the office of collector, not applied to the uses intended by the act.[1]

The inadequacy for such a situation, of the check upon governmental expenditure supposed to be exerted by the presence of a deputy of the auditor-general and the transmission of the collector's accounts to the Lords of the Treasury, is plainly pointed out by Clarke in the letter from which quotation has already been made. The respective duties of the governor and council and of the deputy auditor in relation to the collector's accounts seem to have been practically undetermined at this time. The collector's accounts were supposed to be examined and approved by the council after having been sworn to by the collector. Byerley, however, held that if the deputy auditor allowed his accounts, that was sufficient, and examination by the governor and council was not necessary. This was, however, only when it was the governor and council that he was disputing with. Clarke thus represents the practical difficulties of the situation to his principal, the auditor-general. "And allowing that the Receiver-General (as he alledges it to be) is by his Instructions Sufficiently discharged by Warrants past by the Governor in the manner above said he may notwithstanding your observations or objections pay what warrants he pleases because they are his discharge; and indeed he does accordingly for he pays warants of the like nature with those you have objected to and gives what I have just said for his Reason though nobody will persuade me he does it without a Consideration. . . . To prevent future misapplications 'twould be very proper I should think to send hither orders in Relation to the applying and Issuing the Revenue, or Else the money must be

[1] N. Y. Hist. Soc. Colls. 1868, 204. Ass. J. I. 208-212, 227.

appropriated from home (vizt.) so much for firewood and so on with all the particular Expenses: But if the latter be not thought proper 'twill be very necessary that a way be found to Submitt all accounts (before the Governor's Warrant Issues for payment of the Sume) to the Auditor Generall or his Deputy and that no more nor other Expences should be allowed than what he thinks reasonable and herein the Deputy Auditor should be fully and particularly instructed, that he may not be in the Dark nor do what may not be approved of at home afterwards. For as it is now he can only allow or disallow of Warrants after they are paid and that the Receiver Generall does not in the least regard but says the very warrants he pays are Sufficient discharges to him for so much. Though this (is) proposed as the properest method I can think of at present yett I hope a better way may be found: for by this there is vast trouble like to attend the Deputy Auditor in the Examination and allowance of all accounts which before was done by a Committee of Council (who 'tis true favor their friends and are themselves often concerned) and besides this Great trouble the Deputy Auditor will be continually Subjected to the frowns and resentment of the Governor to whom there will be constant applications and thereupon Commands or orders which may bring the Deputy-Auditor under this Dilemma either that he must disobey the Governor or betray the Trust reposed in him."[1] Comment on the foregoing as a revelation of conditions prevailing in Cornbury's time is hardly necessary. The difficulties, thus described, disappeared with a change of personnel in the governor's office.

The net result of this whole period would appear to be about as follows: during the first eleven years, the assembly was finding itself, as it were, and acquiring experience. The conditions of the financial problem were in the mean time accumulating, and that, at a time when public attention was occupied with a partisan conflict under Sloughter, Fletcher and Bellomont, and with the results which might follow the enforcement of the imperial trade system under Bellomont. From the beginning of Cornbury's administration, after experience had been gained under the domination of each of the local factions in turn, a movement begins to be visible amid the dust of partisan strife, working

[1] Col. Mss. LI. 170.

in the direction of practical control over the expenditure of at least one element of provincial income. After success had been attained in this direction, however, by the winning of the right to appoint a Country Treasurer, the expenditure of money raised for support of government was still beyond the control of any element which effectively represented popular interest. Effective action on this point could only become possible when the expiration of the revenue act in 1709 should once more give the assembly leverage. The exhibition, to greater and more exasperating degree, of the working of the prerogative system of expenditure, together with the decreasing volume of trade already noted, was establishing more firmly every day the well grounded objection to the whole system by which the government was supported. This opposition found adequate, but under the circumstances alarming, expression, in the resolve of the assembly of the eleventh of September, 1708 — "That the raising of any Monies, for the Support of Government or other necessary Charge, by any Tax, Impost or Burthen on Goods imported or exported, or any clog or Hindrance on Traffick or Commerce, is found by sad Experience, to be the Expulsion of many and the Impoverishing of the rest of the Planters, Freeholders and Inhabitants of this Colony, of most pernicious consequence, which if continued will unavoidably prove the Destruction of the Colony."

CHAPTER V. THE REVENUE CONTROVERSY, 1709-1717.

The dispute over the method of supporting the government constituted the main action of the period, 1709-1717. The controversy itself is only to be understood in the long perspective of the period described in the preceding chapter, as well as in the light of the period between the administrations of Cornbury and Hunter.

The resolve quoted at the close of the last chapter indicates the general character of the assembly's sentiments concerning the working of the revenue system in the past. The general condition of the province and the plans of the opponents of a continuation of the former system are set forth in the communications of prominent residents and officials. Livingston and Morris agreed in reviling the Cornbury administration, the latter likening it to that of Gessius Florus in Judæa. Livingston described the province as appearing to be "under a visible judgment . . . since this gent. came among us . . . trade decayed, house rent fell . . . everything behindhand,"—"a poor dispirited people, a mixture of English French and Dutch . . . if never so much oppressed dared not complain because they were not unanimous and did not stick to one another. So that if a governor were not a man of honor and probity he could oppress the people when he pleased. He had but to strike in with one party and they assisted him to destroy the other." The province was evidently not prosperous and many of its inhabitants were in bad temper. As to the intentions of the assembly in regard to the revenue, Colonel Quary describes the intention never to renew it as "the discourse in every man's mouth, but some of the most considering men say that perhaps they will give money for the support of government but it shall be only from year to year and disposed of as they think fit, so that the governor and all the officers shall depend on them for bread."[1]

The conduct of the assembly itself, as soon as, under ordinary circumstances, action for a continuance of the revenue would

[1] Col. Doc. V. 19, 37. Cal. Treas-y Papers, Vol. 1708-14, pp. 511-13.

have been in order, certainly bears out much of this description. Since the assembly had received permission to name their own treasurer, they had raised no funds except for extraordinary uses, and these acts had contained extremely detailed appropriations.[1] When action in the direction of continuing the excise, which seems to have been taken as a matter of course, became necessary, the disposition of the assembly toward innovation upon former methods became evident. The same rates were continued but they were granted only for one year. Practically the same system of management was employed, but now the system was established by law, and the mayors and aldermen and the justices of the peace were made the assembly's agents in the matter; and the country treasurer was designated as the receiver of the proceeds, instead of the collector and receiver-general. In the same act, notice was taken of the fact that, though the weighhouse duties had been granted to King William and Queen Mary, nevertheless, since the demise of the crown these duties had been collected without grant. It was now formally provided that the duties should be paid to the treasurer instead of to the collector and receiver general, and the latter official was furthermore required to account with the treasurer for what he had received on that account. It was provided also that the treasurer should pay out the money raised by this act, "in Such Manner and to Such uses only as by Act of General Assembly hereafter to be made for that purpose, shall be Limitted appointed and Expressed and not otherwise."[1]

The necessity of supporting the government in the manner usual in the past, as well as the restoration of the government's credit by the ascertainment and settlement of the numerous public debts, had been urged on this assembly by Lovelace, the new governor. The assembly replied with chill politeness that it was their desire that people should be attracted hither and then kept here, and that the contrast between the "wrong Methods too long taken and the Severities practiced here" and the conditions in the neighboring colonies had kept people away. They then called for the accounts of the revenue, the salary list and the claims upon the government; and on the day of Lovelace's death, 5 May, 1709,[1] had resolved to raise £2,500, of which £1,600 was to be paid to

[1] Col. Laws I. 593, 598, 628, 662.

the governor and the rest for "incidents" of the garrisons and small salaries for a few of the officers.[1] Almost immediately after Lovelace's death came the news of the intended expedition against Canada, and in the rush of preparation for this enterprise, the assembly got no further in support of government than the passage of the excise act already referred to; and this as was observed, made no provision for payment of any of the expenses of government. Resolves, however, were passed, looking to the provision of a tonnage duty, a duty on importation of slaves, a chimney tax and a poll tax on slaves in the colony, and to payments to Lady Lovelace, the lieutenant governor and the chief justice. At the autumn session in 1709, these resolves found expression in legislation, the payment of the "allowances" referred to, except that for Lady Lovelace, being provided for in a separate "Act for the Treasurer's paying certain sums of money." Items relating to the maintenance of the "Independent Companies," such as had previously formed part of the ordinary expenses of government, together with a few small salaries, principally those of legislative officers, were also provided for in another separate appropriation bill. At the spring session they had taken the opportunity to embody their long-cherished ideas concerning fees in a bill, which, for reasons of the moment, was allowed to be passed into an act.[2] Thus they were showing themselves true to the intentions ascribed to them at the close of the Cornbury administration, though as yet on a small scale and under peculiar circumstances. The Canada expedition, now on foot, though it was made as attractive as possible by the imperial authorities, and though it met with enthusiastically responsive sentiments in the province, required very considerable exertions in the way of financial and military support. Even in reference to matters that were not deemed important for the expedition by the council, that body showed itself anxious to avoid exasperating the assembly; and objections which under other circumstances would undoubtedly have been insisted on, were yielded, among them, these innovations in the matter of the ordinary support of government.[3]

[1] Ass. Journal I. 240, 242, 246.

[2] Ass. J. I. 253-6. Col. Laws I. 675, 682, 684, 698, 638.

[3] Ass. J. I. 252-3, 267. Col. Laws I. 654, 669, 693, 698, 675, 682, 684. Col. Doc. V. 82-3. Smith, 194-5.

The acts which provided money by direct taxation for the expenses of the expedition included precautions expressed with even greater detail than in previous acts, for the management of the expedition by the commissioners appointed by the assembly. Altogether some £14,000 was raised; and for accounting for it and for management of its expenditure, the assembly laid down strict rules which appear to have been followed, to its own satisfaction, at least. It was probably due to a combination of circumstances, that the assembly in New York was enabled at this critical moment to make such a hopeful beginning in the realization of its designs. These circumstances were the fear of stirring up the opposition of the body from which much was expected in the way of financial assistance; the wielding, even though for a brief time, of the powers of the governor's commission by a locum-tenens under the influence of Cornbury; and the existence of a determined spirit in the assembly to make use of the precedent set, perhaps inadvertently, by Lovelace in the Jersies. The assembly had succeeded in making the officers of government entirely dependent on its votes by granting a continuation of the most certain item of revenue for but one year, and then had made them feel that dependence by doling out to but few of the officers what it chose by way of salary. It had even succeeded in its favorite aim of participating in the regulation of fees, upon which some officers were entirely dependent and others dependent in an uncomfortable degree for their support. In this last feature the assembly was, however, immediately checked by the disallowance of the Fee Act and by the instruction specifically committing that matter to the governor and council.[1] In the nature of the case, however, the real struggle was bound to come when the assembly should attempt to continue its program, with a newly-apponted governor in the possession of the executive power. Enough has been said about the designs of the assembly to show that what it was really aiming at, and what was resisted, later, so vigorously by governor and council, was a shifting of the balance of the political forces of the province. Should the assembly succeed in its aim of controlling the expenditure for the ordinary support of government in what seemed to it the only effective manner of preventing "misman-

[1] Col. Doc. V. 116, 157.

agement," it would inevitably mean a greater dependence of the executive officers on the legislature which provided their remuneration, than on the governor, whose policy they were supposed to assist in executing. If successful, the assembly, would, in other words, make its position in the working constitution of the province at least co-ordinate with that of the governor. The policy actually pursued by the government would then be a real compromise between the aims of the assembly on the one hand, and the governor in his double capacity on the other, rather than, as heretofore, when things had not been colored by partisan faction, the policy of the executive, tempered and checked by the obstruction of the assembly. It is impossible to say how fully the assembly realized what was essentially at stake. There was undoubtedly much of simply stubborn and unintelligent obstruction. Our sources are meagre, and only the outline of policy and hints at what the leaders were actually doing are possible. Light on the inner working of forces and on the real aims that were concealed beneath the formal actions taken is at present wanting.

We have no hint as to any prepossessions or as to any information in regard to the situation, which may have been brought by Hunter the new governor, in 1710. The assembly, which was apparently elected after his arrival, contained a majority of members who had served in the previous assembly, and, of the new members, the larger part were persons who had been prominent in the affairs of the assembly during the Cornbury administration. A very important place among the new members was held by Lewis Morris, who represented the borough of Westchester. Smith represents him as "always busy in matters of a political nature, and no man in the colony equalled him in the knowledge of the law and the arts of intrigue." He had till recently been a resident of New Jersey, where he had had a most active career in opposition to the Cornbury system of exploiting the governor's office; and Smith apparently applauds Hunter's shrewdness in making a confidant of him, "his talents and advantages rendering him either a useful friend or formidable foe."[1] The two were a congenial pair in more than one relation, but Morris' chief function was to act as Hunter's legislative "manager;" and his services in bringing the revenue controversy to a settlement were after-

[1] Smith, p. 203. Col. Doc. V. 429.

wards rewarded by appointment to the chief justiceship and the appointment was cordially approved from home on this very ground.

The first meeting of the governor with the assembly partook of the nature of a preliminary skirmish. In his opening speech, 1 September, 1710, Hunter communicated the "very particular" recommendation of her Majesty that the assembly settle such a revenue and for such a term as they themselves, "the most competent judges, should think sufficient to answer the End." Payment of the public debts was also recommended. In the course of considering ways and means for support of government, the assembly passed bills continuing the excise and the tonnage and slave duties, the former for one, the latter for three years; both of which bills unamended by the council, became laws.[1] They had then resolved to allow certain sums for military "incidents," and 2,500 ounces of plate, "towards defraying His Excellency's necessary expense for one year." At this point the governor, hearing of this proceeding, sent a communication to be entered on the journal, containing the instruction allowing his salary of £1,200 sterling. He afterwards reported to the Lords of Trade that the only effect this had was, that they struck out some items that had been usually allowed and reduced others, and that finally, because of "warm expressions" which he used in urging the assembly to take the governor's message into consideration, Lewis Morris had been expelled.[2]

In order to raise a revenue in addition to the excise and the tonnage and slave duties, the assembly now began upon a series of bills which were intended to provide a duty on chimneys and hearths, and upon goods sold at auction, and also entered upon a bill for payment of certain accounts by the treasurer. The council attempted to amend all of these. Its objection to the chimney tax had reference to the accountability of the treasurer. By the assembly bill he was made accountable only to the assembly, whereas the council insisted that, according to the practice of the province since 1706, and also according to the practice of England, the treasurer in such a case should account with the legislature as a whole. The assembly, however,

[1] Col. Laws I. 708-714.

[2] Ass. J. I. 280-3. Col. Doc. V. 177.

remained constant in its announced determination not to agree to amendments by the council to a money bill. The same was the case with the act for laying a duty on goods sold at auction, though we are not informed as to the reasons for its objection or for the insistence of both sides on their original propositions. In the case of the bill for the treasurer's paying sundry sums of money, the council's amendment was in the line of having the treasurer pay a sum not exceeding that mentioned in the assembly bill, to such persons and uses as the governor by regular warrant should direct. As reasons for insisting on its amendments, it invoked the instruction not to suffer public money to issue otherwise than by such warrant, the former practice of the province, the practice of other provinces, and of the English parliament, which did not appropriate what was given for support of government, but gave what was thought necessary in such manner as left it entirely in the power of the crown "to Dispose of as they thought most proper for the support of government and for rewarding their servants as they judged they deserved." The assembly replied, that what were called amendments would destroy the very essence and intent of the bill, which was to be regarded as consonant with the instructions, since an act of governor, council and assembly was a good warrant; that appropriating acts were no novelty; that if the council intended that the money mentioned in the bill be disposed of according to the direction of the bill, there would be no difficulty in consenting to it,—"if they do not, plain dealing is best." And finally, the object of the bill was declared to be to prevent misapplications, "such as have been too apparent in the past." This object they deemed "much preferable to any posterior remedy." To this the council replied, that the amendments were not destructive of the intent of the bill if the intent were to support the government; denied the equivalency of an act of assembly to a warrant of governor and council, and emphasized the distinction previously made between acts appropriating money which was voted for extraordinary uses and for the ordinary support of government. No acts of the latter description had ever passed the parliament of England, and only once in the province; that was in Ingoldsby's administration, when the council were not acquainted with the governor's instructions. They affirmed their intention of having the money expended for the purposes

mentioned in the bill; "but they think the Queen has the sole right of applying money given for the support of the government, and the only judge of the merits of her officers, and therefore they made those amendments, for plain dealing is best." Finally, they deprecated the idea of misapplications under present circumstances, and pointed out that the bill, as amended, sufficiently provided against drawing out any more money, than that expressed in the bill.[1] The thoroughgoing character of the difference between the two houses and the spirit in which the discussion was carried on are sufficiently indicated by these rather full extracts. As the season was far advanced, and the hope of reaching a settlement on these measures was slight, the assembly was prorogued without the passage of these acts into laws. By the failure of the bills for the chimney and auction duties, the expected revenue was reduced far below even what the act for the treasurer's paying sundry sums, had appropriated, viz., £2,307; and by the failure of the last-named act the public officers were left without support. From now till 1713, they were maintained largely on the personal credit of the governor.[2]

Hunter's correspondence with the home government shows that he had not been idle during the session. He asserts that he had privately suggested to several members that the receiver general might be made accountable to the assembly as well as to the crown, and that he had worked out a somewhat elaborate system designed to prevent any governor and council from again loading the country with debt through warrants. This was intended to meet one of the reasons given by assembly members themselves in explanation of their backwardness in supporting the government. The othe "pretended" reason was the burden on the country which was involved in the taxes for the ill-starred Canada expedition. The true reasons, so far as he could make them out "from private discourse with the most considerable amongst them," were the exemption of the neighboring governments from such heavy expense in supporting the government, and an opinion which was opposed to the right of the crown to allot salaries, on the ground that if £1,200 were appointed, £12,000 might be. The third reason he held to be, the fact, that, by reason of the per diem allowance to each assemblyman, a

[1] Ass. J. I. 284-7. Col. Mss. LIV. 121, 124.

[2] Col. Doc. V. 178.

number of them practically supported themselves, by acquiring a reputation among their constituents of saving the country's money, and thus getting an almost permanent hold on office. As a remedy for the situation he could only suggest the passage of an act of parliament providing for payment by all lands granted or to be granted, of a quit rent of two shillings six pence per one hundred acres, which he believed would go a long ways towards supporting the government; or the passage of another act of parliament levying duties on imports and exports, and laying an excise — but he supposed that in that case it would be made of general application throughout the colonies. The only communication from the Lords of Trade in reply to these representations that could have reached the governor before meeting the assembly again in April, 1711, was to the effect that the information had been communicated to the queen; so that the governor's vigorous speech at the opening of the session could hardly be described as made only after he had learned the sentiments of the ministry, as Smith intimates. The sting of this speech consisted principally in the suggestion that rumors might gain credit at last, "that however your Resentment has fallen upon Governors, it is the Government that you dislike;" and in the assertion that "giving Money for Support of Government and disposing of it at your Pleasure is the same with giving none at all." Because of its resentment at this speech, in which the governor plainly took up the cause of the council in the recent disputes, the assembly chose to find a scruple in the fact that the proclamation proroguing them from the original date of summons had been dated at Burlington, New Jersey. The governor found himself obliged to follow the advice of the council, that, since the assembly was resolved not to act, in spite of the opinion of the Lords of Trade quieting their pretended scruple, it would be necessary to dissolve them, "which they would otherwise doe themselves."[1] Hunter now represented himself to the home government as at a loss what to do till action might be taken from home. He had no expectations that a new assembly would be any more tractable, "the Resolutions of putting themselves on the same foote with the Charter Governments being too general to be allayed by any measures that can be taken on this

[1] Col. Doc. V. 179-80, 186. Ass. J. I. 287-8. Council J. I. 311. Smith, p. 204.

side." His desires with regard to action by the home government seem to have been justified by the proceedings of the Lords of Trade, who with unusual celerity had recommended that the governor be directed to intimate to the assembly the queen's displeasure, and the likelihood of the passage of an act of parliament granting a revenue for them. And within a month they had, as ordered by the privy council, prepared a draft of a bill for that purpose, which, however, was not perfected before the adjournment of parliament.[1]

In the meantime a new assembly had been elected, and proved indeed to be practically the same in membership as the preceding body. Its first session, in July, 1711, was taken up wholly with action relative to the Canada expedition of that year. Bills of credit to the amount of £10,000 were ordered to be issued and provision was made for their redemption by a direct tax, due to be paid in five annual installments, beginning in 1714. Six hundred men were raised and commissioners were appointed for purchasing, transporting and caring for provisions for the troops, having the same relation to the treasurer as in the case of the preceding expedition. In all these proceedings, as in the act for continuing the excise for two years, no difficulty in the relations between the assembly and council developed — that is, on the surface. The pains taken to avoid the slightest opportunity for trouble of that sort is indicated by the governor's procedure on finding certain mistakes in the bills as they came from the assembly. He returned the bills privately, after their first reading in council, as though they had not been read at all, and with the request that the mistakes be amended in their own house. "This conduct . . . I was obliged to follow or baulk the Expedition."[2]

In a most interesting disquisition to the Lords of Trade upon the design of the assemblies on the continent, by claiming all the privileges of a House of Commons and stretching them even beyond what they were ever imagined to be there, to attain a condition which would result in a federative empire, Hunter suggests as a temporary measure, that a royal letter from the queen be dispatched, reminding the assembly that "all such privileges as they clayme as bodyes politick they hold of her

[1] Col. Doc. V. 192, 197, 209, 285.

[2] Col. Laws I. 723, 727, 735, 737. Col. Doc. V. 263.

especiall grace and noe longer than they shall use them for her interest and for the support of her government." This he suggested not with the expectation that it would contribute to the settling of a revenue, but in the hope that it would help to keep them in bounds in other matters.[1]

It was apparently, then, not without official inspiration that the dispute between the council and assembly at the fall session of 1711 turned largely on the discussion of the status of the two houses in the matter of financial legislation. The occasion of the dispute was furnished by two bills sent up by the assembly, one providing for an increase of the tonnage duty, and the other for a duty on chimnies and for a poll-tax. The council's objection to both bills was that the duties were to be paid to the colony treasurer instead of to the receiver general. By the latter bill, the treasurer was made accountable to no one, and by the former to the governor and assembly. The amendments were directed toward making the monies payable to the receiver general, who, as a concession, was made accountable to governor, council and assembly, as well as to the queen. The proceeds of the tonnage duty were further directed to be issued in a manner pursuant to the instructions. To all of this the assembly replied by merely returning the bills, with notification of its resolve not to admit such amendments. The same old issue was thus joined again. In the exchange of reasons in support of their respective positions, the council upbraided the assembly by citation of previous instances of their allowing such amendments. It then went on to justify its right by asserting the equality of the position of the two houses in the legislature, both being constituted by the same power, viz., "the mere grace of the Crown signified in the Governor's Commission," and by the opinion of the Lords of Trade obtained in the course of the struggle for the treasurer. The bulk of the assembly's reply is sufficiently remarkable to justify quotation entire: "'Tis true the Share the Council have (if any) in the Legislation does not flow from any Title they have, from the Nature of that Board, which is only to advise, or from their being another distinct State or Rank of People, in the Constitution which they are not, being all Commons, but only from the meer Pleasure of the Prince signified in the Commission.

[1] Col. Doc. V. 255-6.

"On the contrary, the inherent Right the Assembly have to dispose of the Money of the Freemen of this Colony, does not proceed from any Commission, Letters Patent, or other Grant from the Crown, but from the free Choice and Election of the People; who ought not to be divested of their Property (nor justly can) without their Consent.

"Any former Condescensions of other Assemblies, will not prescribe to the Council, a Privilege to make any of those Amendments and therefore they have it not.

"If the Lords Commissioners for Trade and Plantations, did conceive no Reason, why the Council should not have Right to amend Money Bills, is far from concluding there are none; the Assembly understand them very well, and are sufficiently convinced of the Necessity they are in, not to admit of any Incroachment so much to their Prejudice."[1]

Bills directing the treasurer to pay certain sums of money for some of the usual purposes of government and for certain salaries, appropriating a definite sum for each purpose and for each salary, were also sent up, and on the repeated attempt of the council to amend them, met with the same fate. The temper of the assembly towards the governor personally is indicated by its passage of acts for repair of fortifications and for support of troops on winter service on the frontier, by which the sums were directed to be paid to the governor with only general directions as to their use. The general temper of the assembly on the issue under discussion was, however, alarmingly indicated, in the opinion expressed by the council in its representation to the crown, by the resolves into which they entered at the close of the session, to the effect that establishing fees without consent in general assembly was contrary to law; and that erecting a court of chancery without consent in general assembly was contrary to law, without precedent and of dangerous consequence to the liberty and property of the subject. The opinion of both governor and council on these proceedings is well reflected in Hunter's words: — "now the mask is thrown off; they have called in question the Council's share in legislation, trumpt up an inherent right, declared powers granted by her Majesty's letters patent to be against law and have but one short step to make

[1] Ass. J. I. 307. Col. Doc. V. 293.

towards what I am unwilling to name. The Connecticut scheme is what they have in their heads."[1]

The ambitions of the assembly were further displayed in their attempted acts of legislation. After the disallowance of the fee act of 1709, Hunter had been instructed specifically to regulate and establish fees with the assistance of the council, and of this the assembly had been informed. In making a Table of Fees the council's opinion, that they had been too high, prevailed against the governor's judgment, and the resulting ordinance was a grievance to some of the officers. The assembly had nevertheless persisted in the attempt to attain a share in control of this matter by establishing the precedent of enacting the ordinance as established by the council in the form of a statute; but as the Lords of Trade had manifested a certain hesitation in regard to certain items as just established, the council let the assembly bill lie on the table. The assembly's resolve on the subject was later declared by the Lords of Trade to be "very presumptuous," though in the same sentence they disclaimed objection to the enactment of the ordinance into law.[2]

The ambition of the assembly to venture upon regions of power hitherto untrodden is further indicated by the act for the assigning of sheriffs, an attempted invasion of the governor's prerogative of appointment, according to Hunter; and by the act for an agency, which, by the same person, was described as an attempt to make the agent a representative exclusively of the assembly, by making his appointment, instruction and support a matter in that body's entire control. According to Hunter's information, the assembly's choice, in case of success, would have fallen on Colonel Lodwick, of London, whose letters to DePeyster had been extensively used to obstruct the settlement of a revenue. The assembly had also used its legislative powers in obstructing the attempt of the governor and council to develop the crown's territorial revenue, by pigeon-holing a bill for the more effectual discovery and payment of quit-rents.[3]

The situation of the governor was now becoming more and more difficult. The retirement from office in England of the min-

[1] Col. Laws I. 746, 750. Col. Doc. V. 296. Ass. J. 3, 309.
[2] Ass. J. I. 274. Col. Doc. V. 184, 216, 230-1, 238, 298, 333, 359.
[3] Col. Doc. V. 299, 300.

istry which was responsible for the Palatine enterprise suspended the payment of bills which had been contracted by Hunter for their subsistence. Probably from the same cause, his bills incurred in connection with his duties in provisioning the Canada expedition met with obstruction. These, and the like circumstances connected with the refusal of the assembly to proceed in the required manner in the support of the provincial government, put him in the greatest financial embarrassment. His situation also gave opportunity to his enemies to play the familiar game of discrediting him in the province by tales of his lack of "interest" at court; at the same time that, by obstructive tactics, they prevented a settlement of the revenue in the hope of getting him actually recalled on that score. The most active force in this lobby at court seems to have been Cornbury, now Earl of Clarendon; while in the province the Anglican clergy, led by Vesey, of New York, by the most ingenious attempts to get themselves persecuted, labored hard to raise the cry of "The Church in danger," with the purpose of getting Nicholson, the zealous Churchman, appointed to Hunter's place. We have the testimony of Colden to the effect that the clouds of disfavor surrounding Hunter on all these accounts were gradually but very effectively dispelled by a real personal popularity, which before long became a definite force in the political situation.[1]

Under these circumstances, the two sessions of 1712 did little to advance the controversy. At the autumn session the governor in his speech proposed the scheme which he had mentioned privately to members of the previous assembly. The scheme provided elaborately and, it would seem, effectively, against the issue at any given time of warrants for more money than was in the hands of the collector, chiefly by precautions for keeping the governor and council informed, and against partiality on the part of the collector in making payments of warrants. The assembly could not be brought to pay any attention to this scheme, and in general continued their policy of "bantering the government by proposing bills they know cannot pass, or, if passed, would raise no money;" though bills for the payment of a few items of government support were grudgingly allowed to slip through without

[1] Col. Doc. V. 400, 402-3, 420, 447-453, 310-329, 336-8, 356-7. N. Y. Hist. Soc. Colls. 1868, pp. 200-202.

the objectionable features, and every hint was given to the governor of a willingness to make him, personally, "easy." The climax of the assembly's "undutiful conduct" was reached, when after being informed of the council's representation to the crown concerning their proceedings the year before, they composed an address to the queen, complaining of being misrepresented and desiring permission to maintain an agent. For this "disrespectful behaviour" the governor thought it necessary to dissolve them, though he had no hope of a new assembly.[1]

The home government in the meantime supported the position taken by the council, specifically rebuked the assembly for its claims and revived the plan of proceeding by act of parliament. The sincerity of their maneuvering with the weapon of parliamentary interference is, however, seriously impugned by a passage in one of Hunter's letters, which strongly intimates that the bill prepared and introduced was never intended to be passed; as well as by the opinion of some of Hunter's friends that the settling of a revenue, even by act of parliament, would mean his removal, to make way for a ministerial favorite, now that the place had been made "easy."[2] More efficacious in the improvement of the position of the executive officers was the activity of the Lords of Trade and of the attorney-general in support of Hunter's efforts, through the issue of chancery writs, to collect quit rents and their arrears. After several years during which payments of this kind had wholly ceased, this practice had the effect of soon bringing the total produce of this item to some £300 or £400, and finally even to £600. An effort was also begun at this time to realize effectually on such regalian rights as the licensing of the whale-fishery, and the escheat of real property. These efforts could not, however, be expected to bear fruit for some time yet, and in the meantime the issue between the governor and council and the assembly was as pressing and significant as ever.[3]

In the elections for a new assembly, held in the spring of 1713, the governor seems to have made every effort short of interference with the personnel of county officers having to do

[1] Ass. J. I. 321. Col. Doc. V. 339-40, 348, 350, 356.
[2] Col. Doc. V. 330, 333, 356, 359, 367, 389, 543.
[3] Col. Doc. V. 357, 362-3, 368-70, 378, 555-61, 498-9.

with elections. Smith describes the elections as "very hot." Six changes in membership appeared, and one constituency was added — Dutchess County being separated from Ulster and given one member. With a possible change of seven votes, the majority was, however, still "in the interest of the late Assembly." The governor himself was exceedingly skeptical, and expected a speedy dissolution, after which he warned the Lords of Trade to "expect to hear of alterations in the commissions of peace and of the militia, that ill men may no longer use her Majesty's authority against her."[1] Nevertheless he met this assembly with a stout front, and in his speech at the opening of the session informed them that they were called to settle a revenue for the support of the government and not to settle the government itself; re-affirmed his course of conduct with reference to method of support; intimated his intention not to pass any important act of legislation without efficient procedure in providing for a support of government; and hinted again at the threat of parliamentary interference. He suggested more frequent consultation with the council in framing bills, to avoid the necessity of amendments and the disputes over the right of making them.[2]

With this session began the slow, hesitating process, at all stages uncertain of ultimate success, which actually served to remove the political confusion of the province. It is impossible to know to what extent the settlement was conceived of as a systematic affair. In its actual achievement the piecemeal method appears, and at no time did Hunter appear in any degree confident of its efficacy. It seems likely, from the tone of his references at all stages of the affair, that the enterprise grew on the hands of all concerned, till a point was reached when the possible significance of what had already been attained became evident, and then the governor bent all his energies to the preservation of a system which was designed to protect what had already been reached. The first line of policy looking towards anything permanent in its nature into which the assembly entered, was that of the payment of the public debts. Rehabilitation of the public credit in some way had been made at first a matter of equal importance, in the governor's recommendations, with the support of government; but the contest seems almost immedi-

[1] Col. Doc. V. 364. Smith, 223.
[2] Ass. J. I. 333.

ately to have centered on the latter feature. This assembly seemed ready to begin at the other end of the problem, and spent much time during its first session in May and June of 1713, in considering the report of its committee on claims, the appointment of which had been one of the few achievements of the previous assembly. As the fruit of these deliberations, a bill was presented to the governor at the close of the session granting the excise as then managed for twenty years, and appropriating the proceeds to the payment of the public debts in such manner as future legislation should determine. The governor was evidently unwilling to commit himself to a measure which put such great sums into the hands of the treasurer, without assurance that the proposal to pay the debts was made in good faith; and did not give his assent till the reassembling of the legislature in the fall of the same year.[1]

In the meantime a duty on goods sold at auction had been granted without specific application, and, for the first time since 1709, a "Supply towards supporting the government." It was only for one year, and was inadequate, viz. £2,800, to be raised by duties on imported rum and wines and European goods from the plantations, with discriminations in the rates in favor of local shipping. But the objectionable features of previous acts were omitted, and the act provided that, if these duties should not amount to £2,800, the treasurer, on certificate to that effect by the receiver general, should make up the deficiency out of any public money in his hands. The receiver general was made accountable for the proceeds of the duties to the governor, council and assembly.[2]

The governor was not satisfied with this as a support of government, but the fact that both sides should have cooperated at all in an arrangement involving so many departures from the ideals for which they had striven seems to argue that this was only a part of a more complex affair. That this was so, seems to be borne out in part by the character of the act for the payment of the debts, which was only passed after a long session in 1714 which was exclusively devoted to that subject. The act provided for the payment of accounts amounting to £27,684, the payment

[1] Ass. J. I. 342-5. Col. Doc. V. 365-7. Col. Laws I. 785.

[2] Col. Laws I. 779.

including what the governor had expended on his personal credit in the course of maintaining the government during the years of controversy; accounts presented by a number of prominent Anti-Leislerians for disbursements in connection with the conduct of government for a number of years past; an account of over £2,000 due to the Leisler family; payments to military and civil officers covering nearly the whole period since Leisler; and the per diem allowance to members of the assembly for the time of the long session which was occupied with this subject. Colden charged the assembly in this proceeding with partiality for the Leislerians, and asserted that the misapplications of previous governors were not to be compared with the profuseness of this body. But a dispassionate view of the matter will credit the preamble of the act with more sincerity than Colden would allow to it. This preamble recited the great misapplications, the resulting destruction of public credit, the suffering that would ensue upon repudiation of the claims involved in the unpaid warrants, which were circulating in a way like bills of credit; and stated the object of their proceedings to be the restoration of credit by the discharge of these claims and the fixing it on such a foundation as would conduce to the good of the queen's service and to the settling the minds of the inhabitants and burying strifes and animosities. For such a purpose it is not surprising that some of the claims discharged should have a bearing upon matters erstwhile of partisan significance. But if the analysis of the payments authorized by the act be correct, the proportion of such payments cannot be called excessive, while, in its effects, the act, according to Hunter, made a fundamental contribution towards the object mentioned in the preamble. The act further provided for the issue of bills of credit for the amount which was ordered to be paid as the province's indebtedness, and for the redemption of the bills at periodic intervals as the proceeds of the excise came into the hands of the treasurer. The act included a form of oath to be taken by the treasurer and by the auditors appointed for the purposes of the act; made the treasurer accountable to governor, council and assembly; and provided in set terms for the disposition of all the money to be raised in the future by act of assembly and lodged in the treasurer's hands, only in accordance with acts of assembly; and for the disposition of all money raised by act of assembly for support of government and lodged in the hands of

the receiver general, by warrant from the governor and council with the consent of the majority of the council present.[1]

In defense of the bill against the attacks made upon it by the obstructive lobby at court, Hunter described it as practically a bill for the support of government, since it provided for expenses incurred in past support. He pointed with pride to the reviving prosperity of the province, resulting from the superior credit of the bills issued by the act, and intimated that a formidable part of the opposition to this and associated measures was carried on by those who, in the previously distressful condition of public credit, had had what amounted to a monopoly of the control of available capital. The council and assembly joined in an address to the Lords of Trade in further defence of the act, commenting with fine scorn on the spectacle of Cornbury's complaint of unjust treatment, "seeing the money given for the Support of this government Dureing the hole Course of his administration was Sufficient with any tolerable good Management to have Defrayed the proper necessary Expences of it." Whether due to the vigorous character of these representations or to the precaution taken by the assembly to appropriate by resolve £310 out of the next year's excise towards getting the royal assent to the act, it was promptly confirmed at home and a long step was thereby taken toward the removal of the previous confusion.

Not the least important feature of the act was the clause making declaration of the future policy of the assembly in providing for the custody of public money. On careful inspection of this clause it will be observed that only in case money granted for support of government was directed by the terms of the act to be lodged in the hands of the receiver general, was it to be issued out by warrant from the governor and council. How much deliberate guile there was in the careful wording of this clause we have no means of knowing. It was afterwards described by the auditor general of the plantations as a "quirk" by means of which the assembly "gott the entire Receipt and disposition of His Majesty's Revenue into their own power." And as a matter of fact practically no money thereafter granted for the support of government was directed to be lodged in the hands of the receiver general, and his duties were thus reduced almost

[1] Col. Laws I. 815. N. Y. Hist. Soc. Colls. 1868, p. 202.

solely to the receipt of the quit rents and administration of the imperial trade system.[1]

During the process of adjusting the matter of public debts, a certain provision already referred to, had been made for the support of government for one year; and at the expiration of this period the same arrangement, with some slight modification, was made for another year. At the same time a tonnage duty and an import duty on slaves, to be collected by an officer appointed by the assembly and to be paid to the treasurer, was granted for two years. No object was mentioned to which this duty was to be applied, the disposition being referred to future legislation. But the absence of clauses making specific appropriation of money given for support of government, which had been a feature of this bill in previous sessions, brought it within the limits of the governor's competency of assent. Once the money was actually available for public purposes, it would depend on the effectiveness of the governor's "interest" in the assembly how much of it could be directed by legislative act to the support of government. At this session also, the proceeds from peddlers' licenses were granted for four years towards the support of government without any appropriating clauses, and were to be paid to the receiver general — one of a very few such instances. The management of the excise was also changed, by taking it from the hands of the justices of the peace in the counties and the mayors and aldermen of the cities, and giving it to commissioners appointed in the body of the act, who were required to give security and were allowed an assigned per cent. of the proceeds.[2]

We have no means of knowing how well justified was Hunter's stubborn skepticism, even after the passage of the debt bill — the "first long bill," as it was called — as to the assembly's intentions concerning the support of government; for the demise of the crown worked the dissolution of this body. The body which came together in May, 1715, contained a majority of members of the previous assembly. There were six changes in membership, the delegation of three from Albany County and of two from Westchester County and the representative from Rensselaerwick being entirely new. There was also an enlargement of

[1] Ass. J. I. 366. Col. Doc. V. 380, 494, 405-6, 412.
[2] Col. Laws I. 801, 805, 812. Col. Doc. V. 377-80.

membership due to the return of two representatives from Dutchess County, instead of one. Nevertheless, according to Hunter's "plain and true history" of the affair, related to the Lords of Trade, it was only after the expulsion of Mulford, a turbulent member from Suffolk County, that "that part of the house that was in earnest" about the revenue "got the majority." Apparently, then, even under the circumstances about to be related, it was only by a *tour de force* that effective action in the matter of a relatively permanent support of government could be attained. Hunter frankly sets forth in his letter to the Lords of Trade, which is our only source of information, that an act for settling a revenue for the support of government during five years, and an act for a general naturalization were deliberately exchanged the one for the other by the parties to the controversy. Throughout his whole communication there runs a flavor of semi-defiant apology. His experience on the spot convinces him that the price paid for a settlement is not too high, but he is evidently not so sure that the Lords of Trade will view it in that light.[1]

The "Revenue Act" granted, for five years, "for the better defraying the publick and necessary charges . . . of this government," duties on imported wines and distilled liquors, cocoa, European goods, and slaves; and also tonnage duties, making distinctions in the rates between goods imported from the place of growth or manufacture and from other places, and excepting from the tonnage duty coasting sloops from the neighboring colonies, ships directly from Great Britain and vessels colony-owned or built. Provision was made for weighing at the King's beam all exports of bread and flour, as well as both exports and imports of the goods on which duties were granted by the act. Practically the same machinery for collection was provided as had previously existed, but in addition importers were required to give to the treasurer copies of entries of goods with the collector and receiver general, and on payment of the duties, the treasurer was to issue a certificate of such payment, upon which the collector was to permit the landing of the goods. This extra elaboration of procedure, necessitated by the obtrusion of the treasurer into a realm formerly monopolized by the collector, was later made subject of complaint. The proceeds of the duties were

[1] Col. Doc. V. 378-80, 416. Ass. J. I. 332. Council J. I. 381.

required to be paid to the treasurer. Bills of credit to the value of £6,000 were authorized to be issued, with the usual arrangements for redemption. The treasurer was required to pay out the bills of credit, and all sums accruing from the act over and above the bills of credit, to such persons and in such manner as should be directed by warrants passed in council by the governor. The warrants were to be numbered and paid in course according to number, and the clerk of the council was to signify, immediately after passing the same, the warrants, their numbers and the persons to whom they were payable.[1]

Without going into a description of the naturalization act, for which this revenue act was exchanged, it may be sufficient to remark, in Hunter's words, that, if approved, it would have the effect of uniting the minds of the majority of the considerable people of the province, and that, if not approved, it would do no harm if it lay for some time without action. It was one of those measures which, during the stormy years of controversy, the assembly had shown itself "fond" of; and it had passed through all the stages of legislation except the assent of the governor. Thus, as the act for payment of public debts had prepared the way for the revenue by rehabilitating credit, so this act, by contributing to the quieting of apprehensions concerning the possibility of the strict enforcement of all the legal consequences of the anomalous mixture of national elements in the population, accomplished its share in "a lasting settlement on this hitherto unsettled and ungovernable Province." Hunter was evidently doubtful about the reception of this act at home and tried to obtain the insertion of a suspending clause, but he had to yield on this point. The opinion of the attorney general in reference to the act was decidedly dubious, and there is at present no evidence that it was either confirmed or disallowed.[2]

There are several noteworthy features about this revenue act which bear testimony to its character as a compromise settlement. In the first place, it is to be observed that the treasurer, not the receiver general, was made the custodian of the funds arising from the act. This was evidently regarded as an objection by the governor, but he observed that, as the bills of credit authorized by the act were perforce lodged in the treasurer's hands,

[1] Col. Laws I. 847.

[2] Col. Laws I. 858. Col. Doc. V. 416, 495.

it was necessary that the funds for sinking them should be in the same custody. Further, he asserted that it was done with the consent of the receiver general himself, who gave the casting vote in the council against amendments designed to defeat the bill. Thus one feature of the assembly's policy had been gained. In the method of disposition of the funds compromise is equally conspicuous. It will be remembered that a cardinal feature of objection to the assembly's bills for the support of government had been the clauses making appropriations for the payment of salaries, thus depriving the crown of its power of rewarding its servants according to its own judgment. The terms of the act provided merely for the issue of the money by the treasurer, in accordance with warrants from the governor and council. On the surface, then, the directions of the instructions were technically complied with. But in connection with this act, (and here Hunter's candor deserts him, for he fails to mention this circumstance in his official correspondence) resolves were passed, appropriating salaries and regularly recurring incidental expenses for support of government. And we have Hunter's own testimony before the Lords of Trade at a later time, to the fact that he gave his word that he would issue the warrants in accordance with these resolves, and that he regularly did so during the rest of his administration. This was a compromise in which, as to essentials of financial management, the assembly had certainly the weight of advantage. They had, it is true, yielded the point of annual grant; but the feature just described, together with the precautionary processes suggested by the governor and finally adopted, would certainly overbalance the five year term and the preservation of the form of disposition by warrant.[1]

There is another compromise feature in the act, which has not yet been mentioned. It was from the first a theory with Hunter that the system of compensation of assemblymen by the counties which they represented contributed to their obstructive attitude. So long as the per diem allowance was regularly forthcoming from their counties, an attitude on legislative propositions which enabled them to pose before their constituents as careful husbands of the colony resources, and at the same time multiplied the necessity for sessions of many days, enabled the assembly-

[1] Ass. J. I. 375. Col. Doc. V. 559.

man to make his office more profitable than his regular occupation. Hunter had from the first endeavored to get the system changed, and had succeeded in having the allowance for the session which passed the debt bill charged to the funds appropriated for the payment of the debts. This was defended at the time on the ground that the long session had been devoted almost exclusively to that subject, and that it was equitable that the funds from which those who benefited by the act were to be paid should bear the expense of the session. He labored to have this allowance also changed to the revenue for the whole period for which it was granted, believing that the saving in the local levies of the constituencies would be approved there and that the arrangement might be made permanent. He failed in this; but succeeded in having the arrangement tried for one year, and as a matter of fact, this was the method followed thereafter in the compensation of members of the assembly.[1]

Still another compromise feature appears in the settlement of the dispute over the matter of an agency, which had been running for nearly as long as the revenue controversy. It will be remembered that the assembly's bills had provided for an exclusive control by that body of the appointment, instruction and support of an agent. At the session which granted the revenue, an act was passed, appointing John Champante, a person much approved by the governor, as agent, providing for his instruction *either* by the governor and council *or* by the assembly, and directing the treasurer to pay the agent five hundred ounces of plate on the order of the assembly, signed by the speaker.[2]

Enough has been said to show how extensive were the ramifications of the settlement of the dispute between the prerogative and popular bodies, of which the matter of the revenue was the nucleus. As a method of support of government, this settlement proved to be comparatively permanent in its nature. After a grant for one year, in 1720, the revenue was continued with certain modifications, for successive periods of three or five years till 1737, when a new contest over annual appropriating acts arose under a different set of conditions.

In a review of the financial methods of the province the progress and development of the power of the assembly over ex-

[1] Col. Doc. V. 180, 404, 416.

[2] Col. Laws I. 881. Col. Doc. V. 420.

penditure, as well as provision, of public income, is marked. Beginning with a condition of affairs in which even a knowledge of the disposition of funds voted for extraordinary uses was practically unattainable, the assembly used its power of the purse as a weapon to induce the avoidance by the expending body of a just suspicion of misuse. Then, on the findings of its committee of accounts, it proceeded to establish control over funds for extraordinary uses by providing for the separate custody and disposition of such funds by its own agent, the colony treasurer. As we have seen, this was not attained without a struggle. Becoming further convinced of the inadequacy of the system of expenditure of funds for the support of government by the experience under Cornbury, at the earliest practicable moment it attempted reform by a project far too radical in its form to be practicable under any conscientious royal governor. By aiming so high, and by stubborn persistence in denial of supply in the face of threats of parliamentary interference, it was enabled, in the resulting compromise to attain an arrangement which secured to it substantial control of the main items of governmental support which it recognized as regular and necessary. In view of the original circumstances of New York as a conquered province, proceeding under the Revolution settlement on the theory that "England, having granted . . . a representative Assembly was bound to abide by the logic of that grant as . . . illustrated and enforced in the history of her own Commons," this constitutes certainly a remarkable achievement.[1]

The controversy over the method of support of government and the character of its settlement as just related, constitute from the purely financial aspect an important feature of provincial development. Any account of this development, however, would be incomplete without at least a hint as to the general effect of the struggle upon the balance of political forces in the constitution of the province. Reference has already been made to the share in the settlement of the revenue matter contributed by Hunter's personal popularity, aided by the skill of Morris as legislative manager in working up a "Governor's interest" in the assembly. The passage of the revenue act, even under the hard conditions referred to, is the best evidence as to the substantial

[1] S. N. D. North in Mag. Am. Hist. III. 161.

character of this "interest." We have also noticed how widely extended were the elements of compromise associated with the passage of this act. From that time Hunter's chief policy seems to have been directed to the task of defending at home the measures already accomplished, and equally to the perfection of the working relation between himself and the assembly, already so fruitful, for the purpose of preserving what had been gained. In the former purpose he was finally successful against the efforts of a determined opposition, in having all the main features of the settlement either actually confirmed or laid on the table. This opposition drew strength both from provincial and from English sources, was so formidable as to give the governor great anxiety, and finally formed one of the strong reasons for his return to England in 1719.[1] In order to the continuation of the work begun by the revenue act, a number of things remained to be done. There were still outstanding many claims against the government, of equal justice with those already satisfied, and the quieting and settling work must be completed by attention to them. The revenue act left unprovided for, a number of items not likely to appear regularly in the provincial budget, such as repairs made necessary by the long denial of supply, expenses of running a boundary line, compensation for slaves executed at the time of the negro plot. For these, as well as other purposes, a more numerous, as well as more reliable, majority in the assembly was required, if the governor was to be able to carry out his policy. Accordingly we find Hunter availing himself of the arrival of his new commission as an excuse for a dissolution and the summons of a new assembly. In the elections, his "interest" must have been perniciously active, for he later took pride in his success in having had "the luck or art to get the better" of his opponents, particularly in New York City, which returned an entirely new delegation. Several changes occurred in the rural delegations, and the number of the house was increased by the addition of one new constituency — the Manor of Livingston, — and by an additional member from Orange County. This brought the total number to twenty-six, and established an equality of representation from the counties, except in the case of New York and Albany. It is not without significance that this very rapid increase

[1] Col. Doc. V. 493-4, 512, 514-5, 521-6.

of total membership from twenty-two to twenty-six was made entirely in the time of Hunter's administration.[1]. It is presumably at this time, too, that the custom developed of making the governor's use of his patronage in the counties a matter of bargain with the assemblymen representing the counties, which Burnet, Clarke, and Morris later refer to as fully established.[2]

In this reciprocal relation as to county patronage and good behavior during the sessions, as well as in the mutual benefits derivable from the barter of grants of revenue for favorite measures of doubtful reception at home, is to be found the basis of the "System" of political relations which obtained for the next twenty years. Its immediate fruit is to be found in a second bill for the payment of debts, which, including many items of necessity for the welfare of the government as well as for payment of purely Leislerian claims, was deemed by Hunter to be an essential part of the settlement already partially realized. But the main purpose of the "System" was the assurance thereby afforded to the governor of a continued support of government, a question, which, if unsettled, made orderly development of any policy impossible. The price paid for this assurance was seriously formidable. The "System" not only involved the "undue" influence of the governor over the composition of the assembly, and the elections to it, as well as the patronage relations already referred to. It involved also the placation of important family "interests," like those of Livingston and Morris, by gifts of office. It involved the continuation of the assembly elected in 1716 over a period of more than ten years; this circumstance, though mitigated by numerous bye-elections, finally attaining serious proportions as a popular grievance. The preservation of the life of this assembly was considered so important for government purposes that the alienation of the Schuyler "interest" was not considered too high a price to pay for its attainment. All this concentration upon the relation between the governor and the assembly had the inevitable effect of reducing the council to a position of comparative insignificance; and it is not until the practice of the governor's presiding over, and sometimes voting in, the council is broken

[1] Council J. I. 396. Ass. J. I. 381, 395. Col. Doc. V. 514-5.
[2] Col. Doc. V. 764, 768-771.

up, that anything like the old balance of elements in the Constitution was restored.[1]

Enough has perhaps been said to indicate how important were the possibilities for provincial development contained in the system of relations between the executive and legislature to which the revenue controversy actually led up. The workings of the "System" were complex and elaborate and make up a story by themselves. These operations are significant not merely as making up a structure of political relations in the province, based on a self-conscious movement for something more than a partisan or factional end. They constitute as well the perspective of the struggle for the general advance in provincial autonomy carried on under Clarke.

BIBLIOGRAPHICAL NOTE.

In preparing the foregoing, the original sources have throughout been exclusively consulted. Of these sources the following is a list.

Colonial Manuscripts. In the State Library, Albany, N. Y. Referred to as Col. Mss.

Council Minutes (Executive). State Library. Referred to as E. C. M.

Journal of the Legislative Council. O'Callaghan, Editor. Published Albany, 1861. Referred to as J. of L. C.

Journal of the General Assembly. Abraham Lott, Jr., Editor. Published New York, 1764. Referred to as Ass. J.

Colonial Laws. Commissioners of Statutory Revision. Published Albany, 1896.

Documents relating to the Colonial History of the State of New York. O'Callaghan, Editor. Published Albany, 1854. Referred to as Col. Doc.

Documentary History of the State of New York. O'Callaghan, Editor. Published Albany, 1849. Referred to as Doc. Hist.

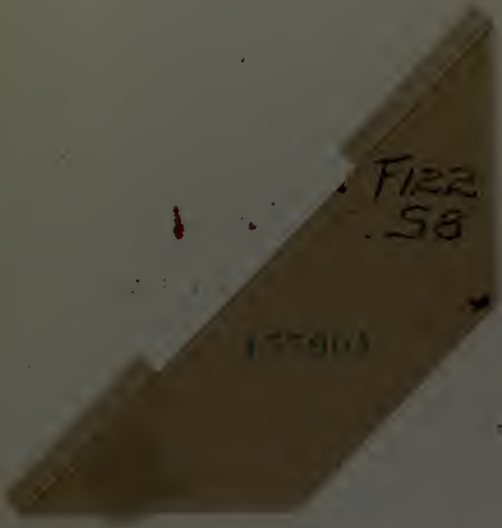
Calendar of Treasury Papers. London.

The New York State Library has produced an excellent bibliography of New York Colonial History, under that title, as Bulletin 56, February, 1901, by Charles A. Flagg and Judson T. Jennings.

[1] Col. Doc. V. 577-9, 580, 585, 805, 882-8.

VITA.

The author was prepared for college at the Coburn Classical Institute, Waterville, Maine; received the degree of Bachelor of Arts from Colby College in 1890; from 1892 to 1894 was Honorary Fellow in Social Science at the University of Chicago; and was a student in the School of Political Science, Columbia University, during the academic year, 1894-1895. At the end of that year he received an appointment to a Townshend Scholarship at Harvard University, which he resigned in order to take the chair of History at Colgate University. While on leave of absence from that institution in the academic year, 1900-1901, he was University Fellow in American History at Columbia University. He is at present Professor of History at Colgate University.


FIRE
56