

**LOCAL LAW IN  
MASSACHUSETTS AND  
CONNECTICUT,  
HISTORICALLY CONSIDERED**

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Local Law in Massachusetts and Connecticut, Historically Considered by William Chauncey Fowler

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WILLIAM CHAUNCEY FOWLER, LL.D.

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PREPARED FROM THE NEW ENGLAND HISTORICAL AND GENEALOGICAL  
REGISTER, WITH ADDITIONS.

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ALBANY:  
JOEL MUNSELL.  
1872.

## P R E F A C E .

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The annals of Massachusetts and of Connecticut show that each of these commonwealths have been ever ready to maintain the right of local self-government. The rights granted in charters by the British Crown, in one era, and the rights reserved to the states in the Federal Constitution, in another era, were dearly prized by each commonwealth, as the basis of its local laws.

This love of local law, and the struggles to maintain it, are, in the following pages, set forth in a series of historical facts, in the hope that they would furnish lessons of wisdom for political students of this and future times. A like induction of facts from the annals of other states, of the *Old Thirteen*, would show that they too were animated by the same spirit to struggle for the same object.

Nor is there now any reason for the decay of that spirit, or the cessation of those struggles. After the states had ceased to be colonies, and had formed their own separate Constitutions, they proceeded in due time unitedly to form the present Federal Constitution, as supplementary to the State Constitutions. They so adjusted the Federal Constitution to the State Constitutions, that under a two-fold government the internal concerns of each state could be taken care of by local laws enacted by itself, while the external concerns of the whole could be taken care of by federal laws enacted by the states in congress assembled. Thus the states are separated as to one class of interests, and united as to another class. Thus too, as sepa-

rated, the states, each of them, can pass such local laws as it sees fit, within the limits of its reserved rights; and the states, as united, can pass such federal laws as they see fit, within the limits of their delegated powers. Under this two-fold government, with two sets of laws, with two sets of agents, the problem is to keep each state government on its own domain within the limits of its reserved rights, and to keep the federal government on its own domain within the limits of its delegated powers. If this problem shall not be worked out, our two-fold government may become the worst government on earth. If it shall be worked out, according to the original idea of the founders of the smaller republics, the separate states, and of the larger federal republic, the United States, it may become the best government on earth.

W. C. F.

DURHAM, CONN., 1872.

## LOCAL LAW IN MASSACHUSETTS.

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Local law is a relative term. It stands contrasted with imperial law. As used in this paper, it means the laws of the town as distinguished from the laws of the colony or state. Moreover, it means the laws of the colony or state as distinguished from the laws of Great Britain or of the United States.

### PLYMOUTH COLONY.—THE RESIDENCE IN HOLLAND.

In 1608 a company of English separatists left their native country by stealth, to dwell in Amsterdam. Why did they leave the fruitful fields which they had cultivated, to dwell in a commercial city, inhabited by a strange people, speaking a strange language, and engaged in business foreign to their own? Because, as separatists from the Church of England they had felt or feared the pains and penalties of the imperial laws enacted by the British parliament. After residing in that city, where their religious opinions were tolerated for perhaps a year, why did they with their pastor, John Robinson, and their teaching elder, William Brewster, remove to Leyden? Because there were violent feuds between two other congregations of separatists, which threatened to embarrass them in their self-government as a church. After staying in Leyden about eleven years, why did they leave that "pleasant city," to brave the dangers of the ocean and to dwell in the wilderness exposed to savages? Because they could not practically carry out their principles of self-government as a church, and transmit them to their posterity, among a people to whom they were in danger of becoming assimilated, so that their children, instead of being English, would become Dutch. To preserve their nationality, their lan-



guage, and their cherished form of church government, they must leave Leyden.

After they had come to this resolution, "the world was all before them where to choose." Guiana, described in the glowing language of Sir Walter Raleigh, as an earthly paradise, was proposed to them. This locality they rejected, because it would expose them to the interference of the jealous and fiery Roman Catholic Spaniard, from whom Leyden had lately suffered so much. Zeeland in Holland was proposed to them. But Holland was no longer acceptable as a place of residence. They cast their eyes across the broad Atlantic upon the new world. Here was the soil, here was "ample room and verge enough," where the germs of their civil and religious institutions could take root and expand fully without repression. They were "well inclined" to cross the ocean and take up their home in the colony of New Netherland, on the island of Manhattan, under the protection of the Prince of Orange and the High and Mighty Lords the States General. But this inclination on their part, though encouraged by the directors of the New Netherland company, was not destined to be gratified.

EXTRACT FROM THE PETITION OF THE DIRECTORS OF THE  
NEW NETHERLAND COMPANY.

[From the original in the Royal Archives at the Hague; File entitled  
Admiraliteit.]

Dated February 12, 1620.

"To the Prince of Orange, etc.

"Now it happens, that there is residing at Leyden a certain English Preacher, versed in the Dutch language, who is well inclined to proceed thither to live, assuring the petitioners that he has the means of inducing over four hundred families to accompany him thither, both out of this country and England, provided they would be guarded and preserved from all violence on the part of other potentates, by the authority and under the protection of your Princely Excellency and the High and Mighty Lords States General, in the propagation of the true, pure Christian religion, in the instruction of the Indians in that country in true learning, and in converting them to the Christian Faith, and thus through the mercy of the Lord, to the greater glory of this country's government, to plant there a new Commonwealth, all under the order and command of your Princely Excellency and the High and Mighty Lords States General."

RESOLUTION OF THE STATES GENERAL ON THE PETITION OF  
THE NEW NETHERLAND COMPANY.

[From the Register of Resolutions of the States General, in the  
Royal Archives at the Hague.]

"The petition of the Directors of the New Netherland Company, that they, for the peopling of said Island, may be assisted with two ships of war, is rejected."

In the Petition from which the above is taken application is made for two ships. In the refusal to grant the petition for the two ships no notice is taken of the four hundred English families whom the Preacher at Leyden, John Robinson, offered to conduct to America under patronage of the States General. The inference is that the States General did not wish to take them under their patronage.— *New York Colonial History*, vol. 1, pp. 24, 25.

A portion of them were in favor of settling with the English planters in Virginia. But it was replied by the others,

"If they should live with the English (Episcopalians) there planted, and under their government, they would be in as great danger to be persecuted for the cause of religion, as if they lived in England, and it might be worse."

Thus there seems to have been some repulsion between themselves and others. They were Aryan in race, but they were Semitic of the Hebrew type, in their proclivity to isolation. On the whole it was, in the language of Bradford, decided "to live in a distinct body by themselves," under the patent of the Virginia company in London; and by their agents to sue his majesty to grant them "free liberty and freedom of religion." From these facts we learn what was the ruling desire in their hearts. It was that they might be in a place where they might have full power to make their own laws. They did not want English laws, or Dutch laws, or Virginia laws, but their own laws.

So intent were they upon obtaining this "free liberty, and freedom in religion," or, in other words, the power to make and enjoy their local laws as separatists in religion, and as separatists in civil polity, that they sent to the great council of England, by their agents, Robert Cushman and John Carver, seven articles adopted by the Leyden church, in which they make large concessions to the church of England, and to the king.

## ARTICLES FROM THE CHURCH OF LEYDEN.—1617.

Seven Artikes which y<sup>e</sup> Church of Leyden sent to y<sup>e</sup> Counsell of England to bee considered of in respeckt of their judgments occasioned about their going to Virginia Anno 1618.

1. To y<sup>e</sup> confession of fayth published in y<sup>e</sup> name of y<sup>e</sup> Church of England & to every artikell thereof wee do w<sup>th</sup> y<sup>e</sup> reformed churches wheer wee live & also els where assent wholly.

2. As wee do acknolidg y<sup>e</sup> docktrine of fayth their tawgth so do wee y<sup>e</sup> fruite and effectks of y<sup>e</sup> same docktryne to y<sup>e</sup> begetting of saving fayth in thousands in y<sup>e</sup> land (conformistes & reformistes) as y<sup>e</sup> ar called w<sup>th</sup> whom also as w<sup>th</sup> our bretheren wee do desyer to keepe sperituall communion in peace and will practis in our parts all lawfull thinges.

3. The King's Majesty wee acknolidg for Supream Governor in his Dominion in all causes and over all parsons, and y<sup>t</sup> none maye decklyne or apeale from his authority or judgment in any cause whatsoever, but y<sup>t</sup> in all thinges obedience is dewe unto him, either active, if y<sup>e</sup> thing commanded be not agaynst God's woord, or passive yf itt bee, except pardon can bee obtayned.

4. Wee judg itt lawfull for his Majesty to apoynt bishops, civill overseers, or officers in awthority onder hime, in y<sup>e</sup> severall provinces, dioses, congregations or parrishes to oversee y<sup>e</sup> Churches and governe them civilly according to y<sup>e</sup> Lawes of y<sup>e</sup> Land, unto whom y<sup>e</sup> ar in all thinges to geve an account & by them to bee ordered according to Godlynes.

5. The authority of y<sup>e</sup> present bishops in y<sup>e</sup> Land wee do acknolidg so far forth as y<sup>e</sup> same is indeed derived from his Majesty unto them and as y<sup>e</sup> proceed in his name, whom wee will also therein honor in all things and hime in them.

6. Wee beleeve y<sup>e</sup> no sinod, classes, convocation or assembly of Ecclesiasticall Officers hath any power or awthority att all but as y<sup>e</sup> same by y<sup>e</sup> Majestraet given unto them.

7. Lastly, wee desyer to geve unto all Superiors dew honnor to preserve y<sup>e</sup> unity of y<sup>e</sup> speritt w<sup>ch</sup> all y<sup>e</sup> feare God, to have peace w<sup>th</sup> all men what in us lyeth and wherein wee err to bee instructed by any. Subscribed by

JOHN ROBINSON,  
and  
WILLYAM BRUSTER.

## THE CONCESSIONS ACCOUNTED FOR.

These concessions are remarkable, coming as they do from men who some twelve years before had fled from England with a deep sense of injury in their souls, and, it may be, with male-