

**THE REVIEW OF  
AMERICAN COLONIAL  
LEGISLATION BY THE KING  
IN COUNCIL, PP. 423-645**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649391301

The review of American colonial legislation by the King in council, pp. 423-645 by Elmer Beecher Russell

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.  
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

[www.triestepublishing.com](http://www.triestepublishing.com)

**ELMER BEECHER RUSSELL**

**THE REVIEW OF  
AMERICAN COLONIAL  
LEGISLATION BY THE KING  
IN COUNCIL, PP. 423-645**



THE REVIEW OF AMERICAN  
COLONIAL LEGISLATION BY THE  
KING IN COUNCIL

BY  
ELMER BEECHER RUSSELL, A.M.

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

NEW YORK  
1915

JK 54  
.79

COPYRIGHT, 1915  
BY  
ELMER BEECHER RUSSELL

EXCHANGE

## PREFACE

THE power exercised by the English Privy Council, of annulling the enactments of the royal colonies, afforded the home government an important instrument of administrative control. It constituted a necessary check upon the only branch of the colonial governments which was responsive to popular sentiment, and gave the English executive a final word in regard to the minutest details of local administration in the dominions. Its importance both to the mother country and to the colonies, together with the fact that no detailed study of its operation has heretofore appeared, constitute the justification for this work.

The author realizes keenly the limitations of this monograph. It is primarily a study of the action taken upon colonial legislation by the English government; and only incidentally does it consider the purpose and contents of the enactments which met with favor at the Privy Council, or which provoked the royal veto. In its preparation the writer has confined himself very largely to the use of materials which present the English point of view in regard to colonial administration. A careful and systematic examination of the colonial laws, together with a study of the legislative journals and other sources which reflect the aims of the assemblies, and reveal some of the forces at work therein, would shed additional light upon the whole subject, and might modify to a considerable degree the conclusions reached as to the effectiveness of the Council's work of review. This study, as its title indicates, is also confined largely to the continental colonies which afterward became part of the American union. A well-rounded treatment of

the government's attitude toward all the colonial assemblies and its action upon their legislation would necessitate an examination of extensive manuscript material relating to the island colonies which the author lacked the time to undertake. A study thus broadened in scope would probably afford little additional light upon either the procedure or the policy of the government in legislative review. But it is essential to any just and definitive conclusion as to the results and effectiveness with which that policy was pursued.

This work is based primarily upon manuscript material in the Public Record Office, London. Some eighty-odd volumes of the *Board of Trade Journal* give a fairly detailed account of the Board's participation in colonial administration prior to 1776. This has been supplemented by the *Original Papers* and the *Entry Books* which are listed at the Record Office and referred to in this volume under the call number "CO/5". The former include papers addressed to the Board by governors and other colonial officials, law reports and copies of orders in council. The latter comprise letters from the Board to the governors, commissions and instructions, Board "Representations" and other papers which were copied for convenient reference by the clerks of the Board into large folios. Extensive use has also been made of the printed material in the *Acts of the Privy Council, Colonial Series*, and the volumes of the *Calendar of State Papers, Colonial Series*, which relate to America and the West Indies.

The kindness and courtesy of the officials and attendants at the Record Office is gratefully acknowledged. This work was undertaken at the suggestion of Professor Herbert L. Osgood, of Columbia University, and has been carried to completion under his guidance and helpful criticism. To him the author's most sincere thanks are due.

ELMER B. RUSSELL.

NEW YORK CITY, FEBRUARY 19, 1915.



# TABLE OF CONTENTS

## CHAPTER I

### INTRODUCTORY—THE REVIEW OF COLONIAL LEGISLATION PRIOR TO 1696

	PAGE
Introductory statement . . . . .	15-16
—Absence of legislative review prior to 1660 . . . . .	16
Charter provisions regarding colonial enactments . . . . .	16-17
A precedent for review in the proprietary governments . . . . .	18
The gradual realization of the necessity for review . . . . .	18
Why assumed by the Privy Council . . . . .	19
Appointment of the committee of the Council, July 4, 1660 . . . . .	19
Appointment of subordinate councils of trade and plantations . . . . .	19-21
Composition and activity, 1660-1674 . . . . .	19
Activity of the committee in 1665 . . . . .	21
Review by the committee of the Council after 1675 . . . . .	21-38
Importance and composition . . . . .	21
Review largely confined to acts from the Island Colonies . . . . .	22
Action upon laws from Barbadoes . . . . .	22-23
Laws to be of indefinite duration . . . . .	23
Questions concerning the royal power in legislative review . . . . .	23
Action upon laws of Jamaica . . . . .	23-29
Attempt to deprive the assembly of initiative . . . . .	24
A body of laws prepared by the attorney general . . . . .	24
The assembly refuses to accept laws drafted in England . . . . .	25
A compromise effected . . . . .	27
A permanent revenue act secured . . . . .	28
Action upon laws of Virginia . . . . .	29-31
Disallowance of three laws . . . . .	29
Revision of Virginia laws in England abandoned . . . . .	30
The assembly accepts three laws prepared in England . . . . .	31
The permanent revenue act disallowed in part . . . . .	31
Action upon laws of New Hampshire . . . . .	31
Action upon laws of New York . . . . .	32
A "charter of liberties" annulled . . . . .	33
Action upon laws of Maryland . . . . .	33

	PAGE
Action upon laws of Massachusetts . . . . .	33-36
Provisions of the new charter regarding legislative review . . . . .	34
Review of laws passed under the charter of 1692 . . . . .	35
Laws of Maryland and the Carolinas exempt from review . . . . .	36
Action upon laws of Pennsylvania . . . . .	37-38
Provisions of the charter regarding review . . . . .	37
Governor Fletcher abrogates the early laws . . . . .	37
Review of laws passed in 1693 . . . . .	38
Work of the attorney and solicitor generals in legislative review . . . . .	38
Other officials consulted . . . . .	40
The government's occasional disregard for its own concessions . . . . .	40-43
Repeal by proclamation of the governor, in Virginia . . . . .	41
Laws, the operation of which was "suspended" . . . . .	42
Laws remaining in force pending repeal or amendment . . . . .	43
Tolerance of the assemblies after 1660 . . . . .	43

## CHAPTER II

## THE PROCEDURE OF THE ENGLISH GOVERNMENT IN LEGISLATIVE REVIEW

The work of the Board of Trade in legislative review . . . . .	44-81
Importance of the Board of Trade . . . . .	44
Formation of the Board of Trade . . . . .	45
Composition of the Board of Trade . . . . .	46
Important periods in the history of the Board of Trade . . . . .	46-48
The Board prior to 1714 . . . . .	46
The Board under Whig domination . . . . .	47
A revival of prestige in 1752 . . . . .	47
Loss of power in 1766 . . . . .	47
Powers delegated to the Board . . . . .	48
Consideration of Massachusetts laws in 1696 . . . . .	49
Procedure observed at the Board in legislative review . . . . .	49-58
Receipt of laws and reference to the law office . . . . .	49
Consideration of laws at the Board . . . . .	50
Petitions regarding legislation . . . . .	50
Hearings upon petitions . . . . .	51
Board reports and representations . . . . .	52
Changes in the procedure of review after 1718 . . . . .	53
Receipt of orders in council . . . . .	54
The practice of allowing acts to "lie by probationary" . . . . .	54-58
A means of securing amendment or repeal from the assembly . . . . .	55
A delay pending the receipt of information . . . . .	55
A precautionary measure . . . . .	56
The proportion of acts left probationary . . . . .	57

	PAGE
Reports upon legislation rendered to Parliament . . . . .	58
Sources of counsel and information available to the Board . . . . .	59-81
The law officers of the crown . . . . .	59-69
The attorney and solicitor generals . . . . .	59
Lack of promptness in rendering reports . . . . .	60
Proportion of laws referred to the attorney and solicitor . . . . .	62
Questions propounded to the attorney and solicitor . . . . .	63, 64
Attendance at the Board . . . . .	65
The King's counsel . . . . .	65
Attendance at the Board . . . . .	66
Nature and importance of the law reports . . . . .	67-69
The lords of the treasury and commissioners of the customs . . . . .	69-73
The auditor general . . . . .	72
References by the treasury to the Board . . . . .	72
Importance of reports from the treasury . . . . .	73
The Bishop of London . . . . .	73
The post master general . . . . .	75
The admiralty . . . . .	75
The English merchants . . . . .	75
Attendance at the Board . . . . .	76
Influence at the Board . . . . .	76
The colonial agents . . . . .	78
Their duties and influence . . . . .	79
Letters from the colonial governors . . . . .	80
Conclusion . . . . .	81
The work of the Committee of the Council in legislative review . . . . .	82-86
The part taken by the Privy Council prior to 1710 . . . . .	82
The increasing activity of the committee after 1710 . . . . .	83
Effect upon the prestige and influence of the Board . . . . .	84
Hearings before the committee . . . . .	85

## CHAPTER III

## THE PROCEDURE OF THE GOVERNMENT IN LEGISLATIVE REVIEW (CONTINUED)

Anticipatory control of legislation by instructions to governors . . . . .	87
Instructions regarding enactment and transmission . . . . .	87
Instructions forbidding assent to legislation . . . . .	88
Prohibitions conditioned upon the omission of a suspending clause . . . . .	89
Effectiveness of instructions forbidding assent . . . . .	89
Mandatory instructions . . . . .	90
Laws drafted at the Board for enactment by the assemblies . . . . .	91
Tentative drafts submitted to the Board by assemblies . . . . .	92
The codification of colonial laws . . . . .	93