

**VIII. - THE AMERICAN COLONIAL
CHARTER. A STUDY OF ENGLISH
ADMINISTRATION IN RELATION
THERETO, CHIEFLY AFTER 1688**

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VIII. - The American Colonial Charter. A Study of English Administration in Relation Thereto, Chiefly After 1688 by Louise Phelps Kellogg

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LOUISE PHELPS KELLOGG

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VIII.—THE AMERICAN COLONIAL CHARTER. A STUDY OF ENGLISH
ADMINISTRATION IN RELATION THERETO.
CHIEFLY AFTER 1688.

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[The Justin Winsor Prize of the American Historical Association was awarded to the
author for this monograph.]

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2023

THE AMERICAN COLONIAL CHARTER.

By LOUISE PHELPS KELLOGG, Ph. D.

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INTRODUCTION.

In the study of the American Revolution, and the causes that led to the breaking away of so large a body of colonists from the mother country, attention has chiefly been centered since the heat of the controversy has died away upon the economic aspects of the problem. To the navigation laws and the mercantile system has been traced the underlying irritation that blazed forth into the American revolt. Some

recent studies, however, have tended to show that the damage inflicted upon the American colonies by the policy of trade was not so great as has been assumed, and that the causes for dissatisfaction thereat are scarcely adequate to account for so great a breach. Attention has, therefore, reverted to the governmental and administrative system to discover if the growing democracy of the American colonies found itself hampered and out of relation to the government under which it was developing. The results of these studies have been fruitful in showing, at least, that the colonial dissatisfaction and alienation was not a sudden matter consequent upon the Stamp Act and the increased activity of the English administrators following the French and Indian war; but that its roots lie deeper, and can be traced for the life of at least three generations; and that the administrative system had been felt during that entire period as an irritating factor at enmity with the natural development of colonial life. This study is a contribution to that line of investigation. It takes up the class of colonies not under the direct administration of the English officials—colonies removed from their immediate supervision by the previous grant of charter rights and privileges—and attempts to show, in a somewhat detailed manner and for a limited period, how the English administration pressed upon these granted privileges, asserted the prerogative within their limits, and endeavored entirely to abrogate them by acts of Parliament.⁴

The paper deals with a period in which the activity of the Board of Trade and Plantations proved itself a real factor in American colonial government. This period opens with the creation of the Board of Trade and Plantations, and the navigation act of 1696 that accompanied it—an act imposing new restrictions on governors, and providing for a colonial admiralty court. It closes practically with the reversion of the Carolina governments to the Crown (1719). The method of treatment is not chronological, but, instead, several lines of investigation are separately pursued throughout the period,

⁴Since this monograph was written the able work of Prof. Herbert L. Osgood, *The American Colonies in the Seventeenth Century* (New York, 1904), has appeared, showing that the proprietary type was the more primitive and rudimentary form of colonial organization, which was being superseded at the close of the seventeenth and beginning of the eighteenth century by the more closely administered royal province. The importance of the transition period, with which this paper deals, is thus thrown into clearer relief.

in order to render more clear the policy of the board, as evinced by its specific acts. After the introductory data furnished by the first chapter, chapter 2 deals with the action of the administration in regard to specific colonies, the attempt to take advantage of every situation, a flaw in the title, disorder in the colonies, an opportunity to purchase, in order to dispose of the charter privileges, and bring the colony in question under the direct control of the Crown. Chapter 3 takes up a different series of actions. It attempts to show that the English administrators took every opportunity to assert the royal prerogative within the limits of the colonies under proprietary or corporation government; that in the matter of the executive, they endeavored to secure control over the governors not appointed by the Crown; that they established courts within colonies, where the right of erecting judicial tribunals had been granted away, and drew over appeals from colonial courts in all the colonies, however administered; finally, that in the matter of legislation, the board of trade tried to establish supervision over the acts of all the legislatures and to assert the right of royal veto. The third line of policy was more direct, and relied upon the newly developed theory of Parliamentary omnipotency. The attempt was several times made to pass an act in Parliament vacating all colonial charters at once. These various bills are discussed in chapter 4—the causes for their introduction and the reasons for their failure set forth in some detail.

Incidentally, the paper attempts to give an idea of the divided responsibility and imperfect workings of the system of English colonial administration. Its methods were cumbersome; there was lack of a direct connection with the colonies, and complete or satisfactory knowledge of their conditions, needs, and desires. A ready ear was lent to complaints against them, and a spirit of general suspicion rather than of cordial cooperation was evinced. The organs of the home government charged with the control of colonial affairs grew less and less efficient. Vexatious delays and disappointments ensued for those who sought redress. The hindrances due to the physical separation, especially the time required to exchange communications, put the entire system out of relation to the needs of colonial life. The feelings of the colonists toward this system are also in a measure revealed. The

conditions of pioneer life in America had begun to transform the character of the colonists and to free them from the domination of English ideas. The vast stretch of new lands, the economic opportunities, the influx of foreign elements had begun by the close of the seventeenth century to produce a democratic spirit in the colonies that asserted itself through the colonial legislature in opposition to the royal agents, and in resistance to English methods of administration. The colonies which were sheltered behind charters showed the most independent spirit. Those under proprietors felt less restrained by their relation to subjects than if they had been directly controlled by the Crown; so that with the progress of the century the position of proprietor grew more difficult, and his relation to the colonists more constantly strained. In the corporation colonies an almost complete system of local independence and self-government grew up, inasmuch that Connecticut and Rhode Island maintained their constitutions unchanged after the Revolution, and lived under their charters well into the nineteenth century. The resistance in these colonies, therefore, to interference with their chartered privileges was sturdy, and their opposition to the policy of the Board of Trade was firm. Moreover, the latter body was influenced by the pronounced enemies of the corporations, and if the English administrators regarded these colonies with especial suspicion, the feeling of resentment and opposition toward the board on the part of the colonists verged at times on open hostility. Thus were the seeds sown that ripened into revolution. The English administrative system had proved not only inadequate and ill-adjusted, but even instrumental in alienating from the Crown of England its richest and most valued possessions.

In the preparation of this monograph assistance in the form of encouragement and suggestion has been liberally given. Especial thanks are due to Mr. Hubert Hall, of His Majesty's Public Record Office, London, whose kindness and courtesy are indicative of his interest in American historical research. Acknowledgment is also offered to Professors Frederick J. Turner and Paul S. Reinsch of the University of Wisconsin, to Professor Charles M. Andrews of Bryn Mawr College, and to Professor Charles H. Hull, of Cornell University, for timely criticism and interest.

MILWAUKEE, Wis., March, 1904.

CHAPTER I.

THE INCEPTION AND CONTROL OF ENGLISH COLONIES.

INDIRECT COLONIZATION BY INDIVIDUALS AND CORPORATIONS—CHARTERS AS AUTHORIZATION—CHARTERS BEFORE THE RESTORATION—ROYAL COLONIES BY FORFEITURE AND CONQUEST—POST-RESTORATION GRANTS—SUBINFEUDATION—STUART FORFEITURES—EFFECT OF REVOLUTION OF 1688—PRIVY COUNCIL—BOARD OF TRADE—EXPERIMENTS IN FOUNDING—REESTABLISHMENT—PERSONNEL—POLICY—SECRETARY OF STATE—ADMIRALTY—COMMISSIONERS OF CUSTOMS—COLONIAL AGENTS.

The English Crown has never been a colonizing agency. Its vast colonial empire has been built up partly by private initiative, authorized or unauthorized, and partly by conquest. Of the colonies founded in the New World during the seventeenth century the larger ones were all authorized in some manner. The unauthorized colonies were small and insignificant, either offshoots from the larger or established upon lands previously granted to others. Such were the fishing colonies of Newfoundland and Maine, the trading colonies of New Hampshire and North Carolina, and the agricultural colonies with a religious basis—Plymouth, Rhode Island, Connecticut, and New Haven. Sooner or later all of these unauthorized colonies either lost their separate existence—as Plymouth and the settlements in Maine subjected to Massachusetts Bay, New Haven merged into Connecticut—or else were erected into authorized colonies, as New Hampshire, North Carolina, and Barbados granted to proprietors, Rhode Island and Connecticut given a charter of incorporation. If, therefore, we disregard as temporary the colonies that grew up unauthorized by the English Government—interesting though the type of compact government is which they developed, and persistent though its influence has been upon American local institutions^a—we may say that English colonization in America was undertaken by two classes of agencies: one, familiar to the merchant class, the corporation for trade and settlement; the other, equally familiar to the landed gentry, the fief or proprietorship. In both cases the means of governmental authorization was a charter.

^a See Turner, "Western State making in the Revolutionary era," in *American Historical Review*, 1906, pp. 256-268.