

## Lawful Occasions: Imperial Control in the 1680s

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### Résumé de l'article

A la lumière des documents de William Blathwayt, l'auteur traite des méthodes utilisées pour établir solidement l'autorité de l'état dans l'empire britannique des années 1680. Trois méthodes s'offraient aux gouvernants : la force militaire, le développement de l'administration conçu en fonction de la centralisation des divers ministères et, enfin, les procédures légales.

La première méthode s'avéra presque inutilisable; les forces armées britanniques de l'époque étant négligeables aux niveaux de la quantité et de la qualité, il semblait difficile d'y avoir recours pour maintenir l'ordre tant dans la métropole que dans les colonies. Restaient donc l'amélioration et la centralisation de la machine administrative et le recours aux procédures légales. On s'y appliqua activement en instituant plusieurs réformes et en prenant des mesures pour se débarrasser des inutiles et des indésirables. A cet effet, des procédés légaux tels le *quo warranto* et le *scire facias* furent utilisés à bon escient. Enfin, on prit également des mesures pour uniformiser les lois dans la métropole et pour rendre celles des colonies conformes à celles de la mère-patrie. Si ces réformes n'eurent pas tout le succès désiré, il n'en demeure pas moins que certaines ont vite acquis un caractère de permanence comme l'ont si bien démontré les événements des décennies qui suivirent.

## *Lawful Occasions: Imperial Control in the 1680s\**

**BARBARA C. MURISON**

According to Roger North in his account of his brother's legal career, Lord Keeper Guilford once said to the king that "his majesty's defensive weapons were his guards [the army] and his offensive weapons the laws. . . ." A man could not be a good lawyer, and honest, went on the Lord Keeper, "but he must be a prerogative man."<sup>1</sup> This was in the 1680s. Twenty years earlier the same monarch, Charles II, had been assured by his generals "that in the last resort it is with an army, not with the lawyers, that the sovereign controls multitudes."<sup>2</sup> Lawyers and soldiers each stressed their own significance: with whom did the truth lie, and were these the only options for a centralising monarchy? To what extent did the monarchy wish to "control multitudes" and how was such control to be achieved? This paper will consider these questions, in England and her colonies, for the decade preceding the Glorious Revolution.

As early as 1673, the Whig polemicist, Gilbert Burnet, purported to see an attempt on the part of the crown to govern on the French model. While Clayton Roberts refers to the permanent erosion of the prerogative between the rise of Danby and the fall of Shaftesbury, the thesis seems questionable when one considers the eighties: certainly, what remained was adequate for the task at hand.<sup>3</sup> No Parliament met in Charles II's reign after the Oxford Parliament of 1681, and the climate of public opinion created by the Popish Plot and the Exclusion Crisis was probably even more favourable to the Crown than was the Restoration itself.<sup>4</sup> The Rye House Plot strengthened this effect and the disgrace and death of Shaftesbury appeared to have completed the ruin of at least the more extreme section of the Whig party. The domination of the Hyde brothers in the early

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1. Roger North, *Lives of the Norths* (London, 1826), II, pp. 80, 81.
2. Quoted in Stephen S. Webb, *The Governors-General: The English Army and the Definition of the Empire, 1569-1681* (Chapel Hill, 1979), p. 59. Webb's revisionist theories suggest an overwhelmingly militarist emphasis to English policy.
3. G. Burnet, *The History of My Own Time* (Oxford, 1833), II, p. 2. Clayton Roberts, *The Growth of Responsible Government in Stuart England* (Cambridge, 1966), p. 243. In Whig thinking the French model meant an absolutist one.
4. R.J. Sinner, "Charles II and Local Government: the 'Quo Warranto' Proceedings, 1681-1685", (unpublished Ph.D. thesis, Rutgers University, 1976), p. 123.

eighties helped ensure a Tory stranglehold on the administration, and politicians such as Sunderland (who returned to office in 1682) and Godolphin led the way in pressing for an efficient, centralised system using the French bureaucratic example.<sup>5</sup> As a Whig satirist put it, it seemed not impossible that “slimy Portsmouth’s creatures” would “bring French slavery in fashion”.<sup>6</sup> Even the not-very-astute Lord Conway could see the writing on the wall for the moderates. As he confided in 1683 to his former undersecretary, William Blathwayt, the fact that he heard nothing of Halifax “makes me think the Whiggs decline.”<sup>7</sup> The eclipse of Halifax, on the verge of dismissal by the time of Charles’ death in 1685 and finally ousted a few months later, indicated the direction in which policy was proceeding, in the colonies as well as at home. The extension of state power in the early eighties, the attempt to bring the City of London, towns in general, and the countryside, under tighter royal control, had their counterpart imperially. “The King”, wrote Blathwayt to Governor Lynch of Jamaica in 1682, “being in authority at home as he is at present, cannot faile of respect abroad.”<sup>8</sup> The accession of James, who had opposed the creation of an assembly in his own proprietary of New York in the mid seventies, simply served to add fuel to the royal drive for power. James had opposed Halifax in Council in 1679, when Halifax argued in favour of the Jamaican Assembly, and quarrelled violently with him in 1684 when the terms of the new Massachusetts charter were under discussion.<sup>9</sup> The 1685 Parliament, which if not subservient was favourable to the royal interests, voted the new king the customs revenue for life and thus unwittingly freed him from the necessity of calling another.<sup>10</sup>

The main theme of the eighties was thus the extension of state power, and imperial policy reflected this theme. What methods could be used in this extension? Three will be discussed: armed force, extension of the bureaucracy together with centralisation of the administrative departments, and judicial process. To

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5. J. Miller, *James II* (Hove, 1978), p. 112; J.P. Kenyon, *Sunderland* (London, 1958), pp. 90-1. Kenyon suggests that Sunderland with his visions of transplanted French autocracy was going far beyond the “patriarchal concept of the promoted squierarchs” such as the Osbornes and the Hydes.
  6. “Satire on Old Rowley”, 1680, printed in Elias F. Mengel, Jr., ed., *Poems on Affairs of State*, II, 1678-1681 (New Haven, 1965), p. 185. On the Duchess’ favour to Sunderland see, for example, the comment of Plantations Secretary William Blathwayt to Governor Dutton, 6 August 1682, Blathwayt Papers XXX, Colonial Williamsburg (consulted on microfilm).
  7. Conway to Blathwayt, 3 April 1683, Add. MSS. 37990, 34, British Library.
  8. Blathwayt to Lynch, 1 November 1682, Blathwayt Papers XXIII.
  9. Kenyon, *Sunderland*, p. 108. For an illuminating discussion of the problems of the Jamaican polity see A.P. Thornton, *West India Policy under the Restoration* (Oxford, 1956); also Webb, *Governors-General*, Part II.
  10. The trade boom of the eighties raised customs levels enormously: C.D. Chandaman, *The English Public Revenue, 1660-1688* (Oxford, 1975), p. 34. It was for pressing political, rather than fiscal, reasons that James contemplated a Parliament in the autumn of 1688: see J.R. Jones, *The Revolution of 1688 in England* (New York, 1972), chap. 6.

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some extent the three methods overlapped, especially the last two, and underlying all three were the economic realities of the period.<sup>11</sup>

Armed force was never a practicable method of enforcing the royal will and its use was rarely regarded as desirable by the monarchs. Since the Civil War public opinion had of course been extremely sensitive over the existence of a standing army. As Colonel Titus put it to the Commons, "In peace there is nothing for an army to subdue but Magna Carta."<sup>12</sup> On two occasions in the seventies, after the Dutch War in 1673 and the French war scare in 1678, Charles II showed signs of wanting to keep in pay the forces that had been raised, but in both instances contrary advice prevailed. In 1679, with the bulk of the Flanders army disbanded, Charles tried to keep a company of guards, but the Earl of Essex dissuaded him, pointing out the popular apprehension of some design of "governing by an army."<sup>13</sup> In fact the fears of militarism, assiduously cultivated by the opposition, were far greater than the reality could justify. Neither in quantity nor in quality were the armed forces of 1678-88 impressive. Charles II's army was tiny; though swollen somewhat by the return of the Tangier garrison in 1684, even then it was barely six thousand men.<sup>14</sup> Some expansion occurred under James; troops had to be raised against Monmouth at the beginning of the reign. However, many of these were disbanded immediately after the rebellion and the argument that James considered his army in a primarily defensive light is strengthened when one considers that it was not expanded between July 1685 and March 1688. Not until late 1688 did James' army exceed twenty thousand men. If these numbers are compared with the approximately eighty thousand troops in pay in the 1690s, it is not surprising that one biographer of William III makes reference to the "toy army" which James possessed in 1688. Moreover, the reliability of this army was suspect for some time before the revolution. The Florentine envoy cast doubts on it in 1686, while the Imperial envoy informed his

11. It should be noted that the emphasis throughout this paper is on the extension of power over one's own subjects rather than over new populations and territories. The threat to popular assemblies, an obvious part of the centralisation story, has been dealt with extensively elsewhere and will only be touched on here. For references to the literature see P. Haffenden, "The Crown and the Colonial Charters, 1675-1688: Part I", *William and Mary Quarterly*, (hereafter *WMQ*), third series, XV (1958), p. 298. Political manipulation was of course the background to all three methods. The emergence of faction at home and in the colonies has been thoroughly discussed: see, for example, J.R. Jones, *The First Whigs* (London, 1961), and *Revolution of 1688*; J.R. Western, *Monarchy and Revolution: the English State in the 1680s* (London, 1972); B. Bailyn, *The New England Merchants in the Seventeenth Century* (Boston, 1955); and A.G. Olson, *Anglo-American Politics, 1660-1775* (Oxford, 1973).
12. Quoted in J. Miller, "Catholic Officers in the Later Stuart Army", *English Historical Review*, LXXXVIII (1973), p. 35.
13. R.W. Blencowe, ed., *Diary of the Times of Charles the Second by the Honourable Henry Sidney* (London, 1843), pp. 36-9. J.C.R. Childs, *The Army and Society in Restoration England, 1660-85* (Toronto, 1975), p. 215.
14. Childs, *Army and Society*, p. 13. This compared with a French army of sixteen thousand in 1678; *Ibid.* p. 20.

master on observing the universal rejoicing at the freeing of the seven bishops that “was diese Leute so insolent undt kühn machet, ist, dass sie nichts von der Soldatesca . . . zu förchten haben.”<sup>15</sup>

Given that the number of troops available to Charles and James, especially the former, was small, was this compensated for by efficiency in distribution, training, and administration? The evidence hardly suggests it. The distribution of regular troops made their use for the maintenance of internal order difficult. Quartering problems were one reason for regimental dispersal and, since a single regiment might be spread over a county or even the whole country, regimental staffs can have been of little use.<sup>16</sup> The garrisons were of even less use than the dispersed regiments as instruments of military absolutism. That experienced soldier, the Prince of Orange, considered England in 1688 open and unprovided with forts. The only troops in garrison were invalid or unregimented companies, holding their appointments as retiring allowances.<sup>17</sup> “Very littl or ould men” of uncertain health were the typical garrison troops, and such energies as they did possess were allowed to dissipate, since privates in garrisons were permitted to work at their trades. The work of garrison officers was strictly part time and governors were local gentlemen such as the Shakerleys at Chester who regarded their commands as family perquisites.<sup>18</sup> The reliability of such local gentlemen and their independent companies as agents of a central government is questionable. Officers who were MPs could get unlimited leave of absence while Parliament met and absenteeism in general was widespread. In 1679 Henry Sidney found only “a corporal and three files of musketeers” at a Tilbury fort.<sup>19</sup>

The experiences of the loyal Sir John Resesby at York show how little was the interest taken by the central government in the inland garrisons in the eighties. When he was appointed to the government of York in 1682, he found only one company of foot in residence, though York was “at that time one of the most factious towns of the kingdom.” In December he heard the unwelcome news that

15. J. Miller, “Catholic Officers”, pp. 40, 45; S.B. Baxter, *William III* (London, 1966), p. 284; Marquise Campana di Cavelli, *Les Derniers Stuarts à Saint Germain en Laye* (Paris, 1871), II, p. 235. For a comment on the slowness of royal troop actions against the rebels, see E.M. Thompson, ed., *Correspondence of the family of Hatton* (London, 1878), I, p. 57.
16. M. Beloff, *Public Order and Popular Disturbances 1660-1714* (Oxford, 1938), p. 143; Childs, *Army and Society*, p. 91. For the problems of running a dispersed regiment, see Lt. Col. Lauriston to Blathwayt, 16 September 1688, Add. MSS. 34152, 21.
17. Sir John Dalrymple, *The Memoirs of Great Britain* (London, 1790), II, p. 13; C.M. Clode, *The Military Forces of the Crown: Their Administration and Government* (London, 1869), I, p. 9; G. Davies, ed., “Letters on the Administration of James II’s Army”, *Journal of the Society for Army Historical Research*, XXIX (Summer 1951), p. 70.
18. Description by the Governor of Chester, 1687, Add. MSS. 38694, 87. For more complaints on the state of Chester, see Add. MSS. 38695, 86.
19. Childs, *Army and Society*, p. 41, 42. For a similar problem at Berwick, see Blathwayt to Lieutenant Governor of Berwick, 29 August 1686, W.O. 4/1, 33, Public Record Office. For attempts to deal with this problem at the colonial level, see note 43.

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the king was considering reducing "such garrisons as were thought least necessary", including York, and using the money saved to fortify the coastal ones. Three months later Lord Dartmouth said that it was simply not worth spending the £30,000 that would be needed to put York in proper defensive shape. In 1686 James told Reresby that it was only for his sake that York was kept up as a garrison at all. In the event it proved the work of only a few minutes to take York for the Orange faction in 1688. As Reresby had written to Blathwayt in October of that year, the garrison had neither powder nor ammunition and in any case the gunner was refusing to work any longer without wages.<sup>20</sup> Only the seaport garrisons such as Hull and Portsmouth received close military attention and the major impetus was external, not internal, threats. Fear of invasion by the French or Dutch, and the necessity of having easy access to the sea if flight should ever prove imperative, weighed heavily on the royal mind.

In sum, England in the decade before the Glorious Revolution was far from militarised. From 1670 on, the army was commanded and run by civilians and politicians, and every effort was made to propitiate civilian sensibilities when military/civil disputes arose. Before 1689 there was no legally established military as distinct from civil law.<sup>21</sup> The Judge Advocate of the Forces, George Clarke, found that there were few occasions for Courts Martial in the early eighties, "there being hardly any land forces in England but the Horse and Foot Guards."<sup>22</sup> When problems of military discipline did arise, the Secretary at War urged that common law should be used in their settlement: for example, in response to some queries from Colonel Kirke in 1685, Blathwayt informed the Tangier veteran, recently active against Monmouth in the west, that the Articles of War had applied only to the rebellion, which was now over, and common law should be reintroduced.<sup>23</sup>

In recent years Stephen S. Webb has argued forcefully for the existence of what he terms "garrison government", a system backed by the Duke of York, extended largely through the military officers who were his clients, and choreographed by the Secretary of War and Plantations, William Blathwayt.<sup>24</sup> How-

20. A. Browning, ed., *Memoirs of Sir John Reresby* (Glasgow, 1936), pp. 269, 286, 290, 421, 517; A. Browning, *Thomas Osborne, Earl of Danby and Duke of Leeds, 1632-1712* (Glasgow, 1944-51), I, p. 401.

21. Moreover, the general practice in desertion cases was to classify desertion as a felony and use a common law court. Childs, *Army and Society*, pp. 83, 93; Clifford Walton, *History of the British Standing Army 1660-1700* (London, 1894), p. 531; David Ogg, *England in the Reign of Charles II*, revised edition, (Oxford, 1956), II, p. 506. The best discussion is in C.M. Clode, *The Administration of Justice under Military and Martial Law*, second edition, (London, 1874).

22. *Historical Manuscripts Commission*, (hereafter cited as *HMC*), Leybourne-Popham, 262.

23. Blathwayt to Kirke, 21 July 1685, W.O. 4/1, 12. For other examples see W.O. 4/1, 15, 45, 47, 54, 57, 72.

24. In addition to Webb's book, *The Governors-General*, see, for example, "William Blathwayt, Imperial Fixer", *WMQ*, XXV (1968), pp. 3-21; and XXVI (1969), pp. 373-415.

ever, it is clear that, except perhaps for Hull with its two regiments, the garrisons of England, individually and collectively, lacked the powerful, even terrifying aspect ascribed to them by Webb. English society could not be so effectively militarised: one Cromwell had been enough. But it may be argued that this did not preclude the existence of a military empire. The small core of professional officers usually served abroad: in Tangier, until its evacuation; in the Anglo-Dutch brigade; in French units — and in the colonies. However, the presence of troops in the colonies was highly sporadic. They tended to be raised for a specific purpose and disbanded when that purpose was achieved or no longer relevant. Thus the two companies of foot raised for Jamaica in 1677 were disbanded in 1682.<sup>25</sup> The Earl of Carlisle's request in 1679 for an additional fifty men, some powder, cannon, and small arms, and a fourth rate frigate was flatly refused; the Plantations Committee would not urge the king to an outlay of over £500, especially since the French fleet which had been "hovering over the island" had now returned to Europe.<sup>26</sup> When the Lords of Trade were considering in 1686 the Duke of Albemarle's request, as designate governor of Jamaica, that there be two foot companies stationed in the island, as in the Earl of Carlisle's time, the report stated that they could not possibly advise putting the king to such expense but, "a sufficient Fund being first settled within the Island for their Raising, Transportation and Maintenance", something might be arranged. The chances of a "sufficient Fund" being raised by the Jamaican Assembly, well known for its fractious behaviour in tax affairs, were negligible.<sup>27</sup> The only standing forces in the West Indies between 1682 and 1688 were the two St. Kitts companies, since Sir Tobias Bridge's Barbados regiment had been disbanded in 1671, having only been kept in existence after the Treaty of Breda because the Treasury was having trouble raising the cash to pay for its disbandment and shipment home. Without the troops the command structure was useless; Governor Dutton in 1681 declared the post of Major General of Barbados "altogether unnecessary and useless" and abrogated the incumbent's commission.<sup>28</sup>

These colonial units lasted far longer as administrative concerns than as effective military forces; troop payment in the colonies was even slower than at home and some of Bridge's veterans were still petitioning for their arrears of pay

25. Sir H. Morgan to the Committee, 8 March 1682, C.O. 138/4, 68, Public Record Office. See also George L. Beer, *The Old Colonial System, 1660-1754* (New York, 1933), pp. 114-9.

26. An Order-in-Council of June 1679 ordered the paring of American expenses, and Pepys at the Admiralty was busy preparing a scheme whereby the country's naval expenditure would not exceed £30,000 per annum. Blathwayt to Carlisle (1679), Blathwayt Papers XXII; Thornton, *West India Policy*, pp. 242-4. Though Carlisle's troops may have worried some Jamaicans, there was never any attempt made to use them against the colonists during the struggle with the assembly. For a very different view of the significance of the troops, see Webb, *Governors-General*, chap. 6.

27. C.O. 138/5, 257.

28. This was Christopher Codrington, Senior; see Stede to Blathwayt, 20 September 1681, Blathwayt Papers XXXIV.

in 1679.<sup>29</sup> In October 1680 Governor Stapleton of the Leeward Islands complained to the Treasury that royal orders for the payment of the Bridge remnants (his two companies on St. Kitts) had been totally ineffectual; "Please to consider", wrote the harrassed Governor, "that we are daily in sight of the French soldiers upon that island who are well paid and accounted. . . ." The situation was not improved by 1685, when Stapleton was forced to admit that he was paying what had been owed to soldiers who had since died to their starving widows and children.<sup>30</sup> False musters, whether motivated by philanthropy or the greed of the officers, make it difficult to assess the real strength of units which even on paper were not very impressive. The theoretical size of a company was one hundred; this was reduced to eighty, sixty, or even forty at various stages in the 1680s, as economic exigency dictated. The appalling mortality rates for troops in the West Indies reduced these numbers still further, as did desertion. Moreover, the troops sent to the colonies were, when possible, what the historian of Charles' army calls "expendable Scotsmen and Irishmen." This can only have detracted from their military effectiveness since the inefficiency of the Irish units of the English army was notorious.<sup>31</sup>

If disease did not strike the troops, the local environment might claim them in a different way, as they melted into the local population to take advantage of high colonial pay rates. A garrison of three hundred men occupied New York after its capture from the Dutch in the sixties. By the time Edmund Andros arrived as governor in 1674, only one company remained, and there were no soldiers left in 1679. New York was then costing £1000 per annum, to be expended on the maintenance of forts and military buildings for a non-existent military. Whether such maintenance really took place is in doubt; Colonel Dongan's correspondence is full of complaints about the state of the colony whose government he took over in 1683.<sup>32</sup> Colonists themselves, frustrated at the inadequacy of defence provided against Spaniards, French, and Indians, sometimes petitioned

29. *Acts of the Privy Council Colonial*, I, nos. 993, 995, 1001. For an account of the system of army pay see John W. Fortescue, *A History of the British Army* (London, 1899), I, pp. 316-20.

30. T 64/88, 35, Public Record Office; *Calendar of Treasury Books*, (hereafter *CTB*), VII, 1681-1685, 64, 1316. The French soldiers were getting 9<sup>d</sup> a day and "without defalcations or fees" except for a small contribution to l'hostel des Invalides, reported Blathwayt to the Treasury in his memorandum on Stapleton's petition. T 64/88, 87.

31. Childs, *Army and Society*, p. 21. In 1676 the Lord Lieutenant, the Earl of Essex, thought the troops in Ireland in worse condition than they had been since the Restoration. There was little improvement over the next ten years, as the Earl of Clarendon found. C.E. Pike, ed., *Essex Papers* (London, 1913), II, pp. 56, 83; S.W. Singer, ed., *The Correspondence of Henry Hyde, Earl of Clarendon and of his brother Laurence Hyde, Earl of Rochester* (London, 1828), I, p. 333.

32. See, for example, Dongan to Blathwayt, 22 August 1687, Blathwayt Papers XI. Of course, complaining about the misdemeanours (real or imagined) of one's predecessors was a stock-in-trade of colonial governors. For a similar case in St. Kitts, see *Calendar of State Papers Colonial*, (hereafter *CSPC*), 1685-1688, xxix.

for troops, being conscious too of the substantial impact garrisons could have on a local economy. This hardly suggests an overpowering fear of the military.<sup>33</sup>

In Virginia, the crisis of Bacon's rebellion in 1676, endangering annual tobacco revenues of approximately £100,000, occasioned the only substantial shipment of troops to the colonies in the latter part of Charles' reign, a battalion of a thousand men. By June 1677, news had arrived from the colony that half these soldiers were already dead of disease; no tents had been sent with the expedition and, after the burning of James City, the men had been forced to live on ship-board, with predictable results. Once the rebellion was over, most of the regimental remnants were shipped home, two hundred men being left as a permanent garrison for Virginia. Between the departure of the regiment for England and May 1679, these two companies were unpaid. By early 1680 the numbers remaining would sustain only one company; eighteen months later the governor, Lord Culpeper, who had taken out an additional company himself, was being asked to give reasons why the two Virginia companies should not be disbanded. Despite the report of the Lords of Trade recommending continuance, when it was read in Council in the king's presence, the verdict was for disbandment — unless, of course, Virginia itself was prepared to pay the unkeep. Only with difficulty did the Lords of Trade save the men from having to sell themselves as indentured servants in the colony.<sup>34</sup> Culpeper's successor, Lord Howard of Effingham, attempting to cope with the disturbances caused by the plant cutters, went so far as to raise twenty men on his own initiative so that there should be at least "the face of a fforce"; it was a disgrace, he wrote to Blathwayt, that there should "not be one Person in his Ma<sup>ty</sup>s Pay for the Defence of ye Government." But the king ordered this little force discontinued.<sup>35</sup>

After James' accession, a few troops were sent to the northern colonies; two companies were sent out with Andros, now appointed governor of the newly created Dominion of New England. It is questionable whether this was enough to subdue the local population, if indeed this was the object.<sup>36</sup> A document entitled "The present state of New England" suggested in 1686 that a whole regiment of

33. See, for example, the Barbados petition of 1693 for a regiment, with its stress on the need for manpower in the island; *CSPC*, 1693-1696, 759. For an interesting Scottish parallel see Webb, *Governors-General*, p. 52 on the impact of Cromwellian troops on the Scottish economy in the 1650s. Note too the comments of Richard S. Dunn, "Imperial Pressures on Massachusetts and Jamaica", in A.G. Olson and R.M. Brown, eds., *Anglo-American Political Relations, 1675-1775* (New Brunswick, 1970), p. 64.
34. *CSPC*, 1681-1685, 259, 268, 300, 335, 336, 341. The suggestion by the secretary of Virginia that a standing guard of one hundred was needed to ensure stable government was also disregarded: Nicholas Spencer to Blathwayt, 12 August 1682, Blathwayt Papers XVI.
35. C.O. 5/1357, 41; Effingham to Blathwayt, 21 June 1685; T 64/88, 93.
36. Add. MSS. 9755, 6. My conclusions differ from Webb's: see "William Blathwayt, Imperial Fixer", I, pp. 15-6. It is clear from the correspondence of Blathwayt's clerk, Povey, that the government had initially intended to send Andros without any troops, but that he had refused to leave under these conditions. Povey to Southwell, 12 June, 3 July 1686, Pw V 60, Portland Papers, Nottingham University Library.

soldiers would be needed to discipline and "encourage" the local militia. Three years later Edward Randolph, writing from the Boston gaol from which the two companies had been unable to save either him or his governor in the revolutionary disturbances, insisted that, on the basis of his fourteen years experience with New Englanders, fifteen hundred or, at the least, one thousand good soldiers should be sent to reduce the people.<sup>37</sup>

Polite amusement can have been the only reaction to such demands in Whitehall. It is obvious from the foregoing that problems of expense and organisation severely limited military operations. Even governors who were not professional soldiers (such as Culpeper and Effingham) were trying to push the home government further than it was prepared to go in supplying troops to the colonies. Those who were soldiers, such as Andros and Dongan, were likely to be even less pleased with the situation. The professional soldiers themselves were brought to the realisation that the views of local inhabitants had to be taken into account, if only as a means of tapping their pocket books; it was Andros who urged on a reluctant Duke of York the establishment of an assembly for New York. The colonies were not readily to be militarised, even in times of internal crisis; Colonel Hender Molesworth, lieutenant governor of Jamaica (whose military rank should not conceal the fact that he was essentially a merchant), could not persuade his Council of the necessity for martial law even at a time of severe slave unrest. Instead, the island was forced to rely on a couple of volunteer parties, with results which Molesworth had gloomily predicted: one party marched to the place of rendezvous and then marched home again, and the other stirred up "a wasps' nest".<sup>38</sup> But Jamaica, Massachusetts, and the rest were not Tangier, and the home government, even at the height of the power drive of the eighties, perceived that the colonies could not be handled in the same way. The appointment of Colonel Percy Kirke (late of the Tangier garrison) to the government of New England by James II was countermanded when Kirke and his "Lambs" committed a series of atrocities in the aftermath of the Monmouth rebellion.<sup>39</sup>

The military option of control was heavily circumscribed. But there existed others. Administrative capacity, one historian has reminded her readers, sets limits on the activity of any government. If the royal will was to be effectively enforced, it was vital to expand the bureaucracy and to create the fiscal and administrative machinery lacking in the localities. Administrative areas had to be made

37. "The present state of New England by R. Daniel gent.," Blathwayt Papers VI (undated, but internal evidence suggests 1686). Randolph to the Committee, 5 September 1689, in R.N. Toppan, *Edward Randolph* (Boston, 1898-1909), III, p. 296. Twelve years previously Randolph had urged the use of Sir John Berry's forces in Virginia to reduce New England: Thomas C. Barrow, *Trade and Empire: The British Customs Service in Colonial America, 1660-1775* (Cambridge, 1967), p. 34.

38. For the Duke's reaction see *CSPC*, 1675-1676, 795. Molesworth to Blathwayt, 2 November 1686, Blathwayt Papers XXV.

39. Kirke's disregard for civilians and civil law have already been alluded to: see above, note 23 and corresponding text.

more uniform and more dependent on the central government.<sup>40</sup> Such a programme was never so clearly articulated as this suggests. The Restoration of 1660 had been a victory for oligarchy; the administrative reforms of the Long Parliament (such as fewer life grants, fees and sinecures, higher salaries, and no reversions) disappeared and the gentry recaptured the middle ranks of the administration. It was obvious that any schemes for greater government control, whether of counties or colonies, would necessitate a revival of the methods of the 1650s. Though the programme was beset by difficulties and limited in execution, the attempt was made and formed the basis of the much more striking changes of the 1690s.<sup>41</sup>

Lord Culpeper's view of colonial administration was a little dated for the eighties. "No doubt", he wrote sarcastically, "another Governor of greater ability will outdo my poor endeavours; but what the wit of man can expect from a Governor beyond peace and quiet, and large crop of tobacco, I know not."<sup>42</sup> As Culpeper's own case clearly revealed, it was certainly expected that one be resident at one's command. Culpeper's departure from Virginia, confided Blathway to his deputy auditor in the colony, had not only been without leave but "contrary to His Ma<sup>ties</sup> express commands in Councill. . . ."<sup>43</sup>

The administrative initiatives of the new Plantations Committee of 1675 were strengthened in other ways at the end of the decade.<sup>44</sup> The membership of the committee was such, Blathway warned the governor of Barbados, who was proving annoyingly recalcitrant in sending home information on the island, that "nothing is neglected by them nor do they want continuall opportunities to lay before His Ma<sup>ty</sup> the State of all things. . . ." In the same year that this warning was issued, the Lords of Trade began to demand that governors send over the journals of their provincial assemblies to supplement the papers and reports of debates which had been requested since 1675.<sup>45</sup>

40. J.J. Carter, "The Administrative Work of the English Privy Council", (unpublished Ph.D. thesis, University of London, 1958), p. 240; Kenyon, *Sunderland*, p. 169.

41. The arguments here are based on G.E. Aylmer, *The King's Servants 1625-1642*, revised edition, (London, 1974), esp. p. 437 ff.; and Aylmer, *The State's Servants: the Civil Service of the English Republic 1649-1660* (London, 1973), esp. p. 278, and p. 329 ff.

42. *CSPC*, 1681-1685, 1258.

43. Blathway to Bacon, 8 September 1683, Blathway Papers XIII. The Order-in-Council of 3 November 1681 forbidding governors to absent themselves from their governments without leave had been renewed less than a year later directly because of Culpeper's earlier actions when he had left Virginia on a previous occasion and then proved tardy in his return. C.O. 5/1357, 211-12; C.O. 138/4, 74; Blathway to Lynch, 21 September 1682, Blathway Papers XXIII. The Order-in-Council was repeated in April 1688.

44. On the 1675 committee, see I.K. Steele, *Politics of Colonial Policy* (Oxford, 1968), p. 9; R.P. Bieber, *The Lords of Trade and Plantations, 1675-1696* (Allentown, 1919), chap. 2.

45. Blathway to Atkins, 20 March 1678/9, Blathway Papers XXIX; Olson, *Anglo-American Politics*, p. 70. On judicial initiatives of the committee, see p. 14.

## IMPERIAL CONTROL IN THE 1680'S

Financial administration was also undergoing reform at this time, in part a response to the new debts incurred at the end of Danby's period of power for a war which had never taken place. Expenditure had increased, too, because of the Virginia rebellion and hostilities against Algiers.<sup>46</sup> The king, wrote, Blathwayt to an official in St. Kitts, "could never less spare money than at present."<sup>47</sup> Colonial officials were always being assured that their schemes were too costly; nonetheless, it was obviously crucial to conserve resources, especially while the embargo on trade with France was in operation. Five-sixths of crown revenues came from customs and excise; the customs had been returned to direct collection in 1671 and were never farmed again, while farming was abandoned in the excise in 1683. Increased wages and the introduction of promotion by merit to all vacancies in the customs in 1685 helped improve the efficiency of the department. Closer central supervision of finance also extended to the colonies, to which customs officers had been sent since 1673 to ensure the enforcement of the Navigation Act of that year.<sup>48</sup> Now further measures were taken. Blathwayt's report to the Treasury on the state of all revenues and profits arising or due to the king in the plantations led directly to the creation of a new post, Surveyor and Auditor General of Plantation Revenues, to which Blathwayt was promptly appointed in the summer of 1680. As investigations proceeded of the farming of the 4½ per cent revenue in the Leewards and Barbados, and the alienation of the Virginia quit rents to Lord Culpeper, the necessity of direct revenue control became increasingly obvious.<sup>49</sup> Meanwhile Blathwayt's deputies were taking up their appointments in the colonies and some governors were attempting to cooperate with the policy they embodied; Sir Thomas Lynch in Jamaica suggested the creation of a system of collectors for each parish so that an accurate rent roll could be made up.<sup>50</sup> In England, the Treasury Office was in the process of acquiring an adequate, permanent establishment of clerical staff, part of that new body of salaried servants which was springing up behind the old institutions.<sup>51</sup>

46. See A. Browning, *Thomas Osborne*, I, p. 324.

47. Blathwayt to Crisp, 23 October 1680, Blathwayt Papers XXII.

48. Chandaman, *English Public Revenue*, pp. 28, 34, 70; *CTB*, VI, 1679-1680, 420; VII, 1681-1685, 49, 62-4. For a brief but perceptive discussion of the significance of the customs inspectors in colonial politics, see Olson, *Anglo-American Politics*, pp. 54-5. The establishment of the customs service is described in detail in Barrow, *Trade and Empire*, chap. 1.

49. Culpeper gave up his revenue rights in the settlement reached when he surrendered his government: see *CTB*, VII, 1681-1685, 1067. The Customs Commissioners took over the management of the 4½ per cent in Barbados and the Leewards in 1684; Thornton, *West India Policy*, p. 206. For a discussion of Blathwayt's rôle as auditor general and his assertion of royal control of colonial revenues, see Beverley W. Bond, Jr., *The Quit Rent System in the American Colonies* (Gloucester, Mass., 1965, reprint of 1919 edition), p. 339 ff.; and R.A. Preston, "The Life and Career of William Blathwayt", (unpublished M.A. thesis, University of Leeds, 1932), pp 33-43.

50. Lynch to Blathwayt, 9 June 1683, Blathwayt Papers XXIV.

51. Chandaman, *English Public Revenue*, p. 252; Western, *Monarchy and Revolution*, p. 47. Note too the increased interest in the acquisition of statistical information about the colonies in this period: see Robert V. Wells, *The Population of the British Colonies in America before 1776* (Princeton, 1976).

This programme did not, of course, proceed unhindered. Mere multiplication of offices did not of itself ensure administrative improvement. A cardinal tenet of seventeenth-century administration was that different officers should act as checks and balances on each other; in practical terms this frequently meant constant bickering over responsibilities. Royal appointees interfered with the governors' patronage powers and were correspondingly resented: "being noe pfitt to the Govern<sup>ts</sup> but may tell tales and truth", they were likely to be sacrificed if not countenanced from home, the lieutenant governor of Barbados informed Blathwayt.<sup>52</sup> Moreover, it was often difficult to erect new offices because of fears that fees and other income for existing ones would be lower.<sup>53</sup> Edward Randolph's commission as Blathwayt's deputy in New England was delayed by the opposition of the Customs commissioners; as Blathwayt explained, "matters of Power & Governmt by new ways & forms" were "not rashly to be proposed nor easily brought to pass."<sup>54</sup> Then there was the problem of getting rid of the administrative dead wood. Dismissal was never easy in this period. In letter after letter Lynch complained that the Jamaican revenues were in total disorder and he could not send the accounts because of the incompetence of the receiver, Mr. Martyn, who was also making the life of Blathwayt's deputy a misery by his "refractoryness & impertynence." But Blathwayt's laconic comment on the contents of one of Lynch's lengthy letters summarized the problem. "Martin [sic] a Coxcomb", wrote the plantations secretary, "— but a Patentee."<sup>55</sup> Only death or legal process could remove the Martyns from the bureaucracy.<sup>56</sup> However, efforts could be made to cut down on problems for the future; after 1679, there was a decline in the number of posts granted on life tenure, and in the number of reversions.<sup>57</sup>

Despite the caveats noted above, then, substantial administrative changes were effected in the decade after the fall of Danby. The ethic of a reformed civil service was well expressed by Blathwayt when he warned a colonial governor that he expected no opposition to his patent as auditor general since it was not "a benefitt intended originally for me but a constitution found necessary for the

52. Stede to Blathwayt, 15 May 1684, Blathwayt Papers XXXIII.

53. Aylmer, *King's Servants*, pp. 134, 446. For example, Blathwayt was very dubious about Lynch's proposal that the chief collector of the royal revenue in Jamaica should have 8 per cent of the total and his own deputy 2 per cent because he did not want an arrangement whereby he benefitted by someone else's misfortune (traditionally, the collector got the full 10 per cent). Blathwayt to Lynch, 18 July 1683, Blathwayt Papers XXIV.

54. Blathwayt to Randolph, 20 August 1680, Blathwayt Papers I.

55. Lynch to Blathwayt, 12 June 1682, 8 October 1682; Blathwayt Papers XXIII. Lynch to Blathwayt, 28 July 1683, 23 February 1683/4, Blathwayt Papers XXIV.

56. On the application of the latter, see pp. 70 ff.

57. For a detailed discussion of the point, see J.C. Sainty, "A Reform in the Tenure of Offices during the reign of Charles II", *Bulletin of the Institute of Historical Research*, XLI (1968), pp. 150-71.

king's service. . . ." On the multiplication of conscientious officials such as Blathwayt depended the growth of royal administrative capacity.<sup>58</sup>

It has become a truism that the seventeenth century was a period obsessed with legal process, and that constitutional and other problems were seen in legal terms. England, one historian has remarked, was a legal rather than a geographical expression, its history only to be written through interpreting its law. The very fact that lawyers constituted the largest group who obtained their offices because of their professional qualifications was bound to give a legal slant to administration.<sup>59</sup>

This said, however, most historians have then turned to what they consider the "realities" underlying the legal terms.<sup>60</sup> No one would deny the existence — and the utility — of legal fictions. But the events of the 1680s show that the use of the law to strengthen the power of the crown was not just a subsidiary affair, a footnote to military or administrative techniques. The law was a major, probably the major, weapon in the hands of the monarchs. ". . . as the King resolves to Govern by Law", Blathwayt informed one West Indian governor, "so he will loose no part of His Royall Prerogative."<sup>61</sup> The remarks of the Lord Keeper quoted at the beginning of this paper were not just the sycophantic outpourings of some time-serving lackey. Francis North, Lord Guilford, was a highly respected lawyer. The law was itself authoritarian; once this was recognised it was logical to exploit it.<sup>62</sup> After 1668, the professional judiciary was brought under stricter control; judges were appointed at pleasure and not on good behaviour. The triumph of Toryism in the last years of Charles was reflected in the composition of the bench. But though Landon, the historian of the Whig lawyers of the eighties, quite rightly emphasises the completeness of the judicial defeat of the Whigs between 1681 and 1685, he is wrong to assume that his chosen group of Whigs must represent the bulk of the legal profession. There was widespread

58. Blathwayt to Witham, 29 January 1680/1, Blathwayt Papers XXXV.

59. J.G.A. Pocock, "Robert Brady, 1627-1700", *Cambridge Historical Journal*, XC (1951), p. 186. Aylmer, *The King's Servants*, p. 93.

60. Two book-length studies have tried to redress the balance somewhat: Michael Landon, *The Triumph of the Lawyers. Their Role in English Politics, 1678-1689* (Alabama, 1970); and Howard Nenner, *By Colour of Law. Legal Culture and Constitutional Politics in England, 1660-1689* (Chicago, 1977). See also A.F. Havighurst, "The Judiciary in the Reign of Charles II", *Law Quarterly Review*, LXVI (1950), pp. 62-78, and pp. 229-52; and "James II and the Twelve Men in Scarlet", *Law Quarterly Review*, LXIX (1953), pp. 522-46; also G.W. Keeton, "The Judiciary and the Constitutional Struggle", *Journal of the Society of Public Teachers of Law*, VII (1963), pp. 56-68.

61. Blathwayt to Dutton, 24 August 1681, Blathwayt Papers XXX.

62. Western, *Monarchy and Revolution*, pp. 44, 61. For example, note the use of assize judges on circuit as instruments of the royal will: J.S. Cockburn, *A History of English Assizes, 1558-1714* (Cambridge, 1972), esp. chap. 9. See also L.K.J. Glassey, *Politics and the Appointment of Justices of the Peace, 1675-1720* (Oxford, 1979), p. 67. For a very different view of Guilford, see G.W. Keeton, *Lord Chancellor Jeffreys and the Stuart Cause* (London, 1965), p. 21.

support for Charles' actions, from lawyers and from country gentlemen too.<sup>63</sup> Furthermore, even some of the leading Whig lawyers were not averse, at least initially, to the crown's legal offensive. One of the first suggestions of Crown action against the charter of a corporate borough came from Henry Pollexfen, future champion of London's charter. In the aftermath of Monmouth's rebellion, Pollexfen, as senior member of the western circuit, was perfectly willing to function as the Crown's chief prosecutor. Until 1686 the Stuart use of law was sophisticated and successful. Only when James, hardly the most subtle of men, pushed it to extreme limits was the weapon blunted.<sup>64</sup>

What could be achieved by legal process? *Scire facias* and *quo warranto* proceedings could be used to nullify the patents of individual office holders and the charters of any incorporated body. More care, too, could be taken to ensure uniformity of law, and to bring the laws of colonies into conformity with those of England. Thus the governors of the four royal colonies were instructed to provide copies of all laws for the consideration of the Lords of Trade, and the process of judicial review of colonial laws was much increased after 1680. The king's legal powers were pushed to their utmost limits or even slightly beyond; Blathwayt informed Governor Dutton of Barbados that the penal laws Dutton had sent to England in the hope of having them repealed had been made by virtue of the Earl of Carlisle's charter "whereby the King did not reserve to himself any such power but yet if they shall appear unfit to be continued the King's Prerogative may as well extend to abrogate them. . . ." Any threats to royal jurisdiction by colonial courts were speedily dealt with; the lieutenant governor of Barbados, Sir John Witham, was assured that all proceedings against him by Governor Dutton were "Extrajudicial and Imcompetent" since the king expected to have the "Cognizance of them alone without having them examined or punished by Inferior Courts. . . ."<sup>65</sup>

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63. Reresby was happy to take an active rôle in the remodelling of the York charter and Roger North claimed that the first overtures for the regulation of the corporations came not from the court but from the country gentlemen. North, *Examen* (London, 1740), p. 624.
64. Landon, *Triumph of the Lawyers*, pp. 179, 107, 183, 191. For example, the request by James to Attorney General Sawyer to draw up warrants authorizing Catholic clerics to hold benefices in the Church of England met with the stinging rebuke it deserved. Heneage Finch, solicitor general and up to this point a supporter of the crown's legal schemes, was dismissed in the same month. Sawyer was forced out of office in the following year. See also Sinner, "Charles II and Local Government", p. 20.
65. On judicial review see Bieber, *The Lords of Trade and Plantations*, chap. 5. A detailed account can be found in Elmer B. Russell, *The Review of American Colonial Legislation by the King in Council* (New York, 1976, reprint of 1915 edition), especially chap. 1. For the tardiness of Barbados in providing its laws, see Blathwayt to Atkins, 25 November 1678, Blathwayt Papers XXIV. The complexity of the problems for all the West Indian colonies is discussed in Thornton, *West India Policy*, chap. 5; the discussion of Jamaica is particularly illuminating. Blathwayt to Dutton, 29 April 1682, Blathwayt Papers XXX. On the Witham case see Blathwayt to Witham, 20 January 1684/5, Blathwayt Papers XXXV.

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It is difficult to be sure whether actions against individuals were stepped up in the eighties. Royal and Treasury displeasure with Slingsby at the Mint, because of the revenue shortages when he made up his 1670-77 accounts, led to a *scire facias* action by the attorney general; he was replaced by commissioners.<sup>66</sup> The problem of Martyn, receiver of Jamaica, alluded to earlier, was also attacked by legal means, a *scire facias* being brought against his patent. The court case outlasted the life of the receiver, but Governor Lynch emphasised to the Treasury that the action was continuing and that it was important to grant no new patent except during pleasure.<sup>67</sup> If *scire facias* were judged too slow a process, faster action could be instituted. In the case of Culpeper, wrote Blathwayt to Lynch, there was "a more compendious way found out to vacate his Patent for life than by a Scire facias. An Inquisition is to be immediately found and My L<sup>d</sup>. Howard of Effingham is designed to succeed him immediately."<sup>68</sup> But here the circumstances were exceptional.

There can be no doubt that actions against corporate bodies greatly increased in numbers in the period under consideration.<sup>69</sup> The challenge posed by such bodies to an expanding central authority is obvious. Corporations, as Thomas Hobbes reminded his readers, were "many lesser commonwealths in the bowels of a greater, like worms in the entrails of a natural man." Governor Lynch echoed the thought when he complained to the plantations secretary about the arrogant behaviour of the monopolistic Africa company. The company was sure, reported Lynch, that Blathwayt was against their charter, and seemed to want to "set up a Commonwealth in a Monarchy, or shewe us, That as soon as one comes into a Comp<sup>a</sup>, ones out of Engl<sup>d</sup>."<sup>70</sup>

*A quo warranto* challenged the corporate body to show by what right it exercised particular privileges. Proceedings were channelled through the offices of the secretary of state or attorney general; Secretaries Jenkins and Conway directed the onslaught in the early stages. By mid 1682 Luttrell could note that the mayors of several corporations had surrendered their charters to the crown; a combination of local landed influence and judicial threats achieved mass surrenders through the work of the Earl of Bath, the Duke of Beaufort, George Jeffreys,

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66. Blathwayt to Carlisle, 9 July 1680, Blathwayt Papers XXII; *Calendar of State Papers Domestic*, (hereafter *CSPD*), 1679-1680, 531; *CSPD*, 1680-1681, 429.

67. The suggestion for legal action against Martyn's patent came from Lynch: see Lynch to Blathwayt, 9 June 1683, Blathwayt Papers XXIV. See also same to same, 23 July 1683, 8 August 1684, Blathwayt Papers XXIV.

68. Blathwayt to Lynch, 18 July 1683, Blathwayt Papers XXIV.

69. Sinner, "Charles II and Local Government", pp. 139, 141-2. The method proved speedy, effective, and cheap — for the government. For the threatened bodies the process was dispiritingly expensive. The Whig lawyers charged the corporation of London over £3,500 for their unsuccessful plea on its behalf, and when a case was lost there were fines to be paid and then crushing expenses in securing a new charter.

70. Hobbes' remark is quoted in Landon, *Triumph of the Lawyers*, p. 100; Lynch to Blathwayt, 23 July 1683, Blathwayt Papers XXIV.

and the Duke of Newcastle.<sup>71</sup> The chief corporation which chose to fight for its charter was London, and it is impossible to exaggerate the interest shown by the Crown in every detail of London affairs in the early eighties. As Blathwayt informed one colonial governor, the election of the London sheriffs had caused the king to come to town “on purpose to be near at hand upon the occasion”; the election result, Blathwayt told another of his correspondents, showed that “the king knows how to assert his authority” [sic].<sup>72</sup> In June 1683 King’s Bench gave judgement against London in the *quo warranto* proceedings and the common council agreed to submit.<sup>73</sup>

With the surrender of London, the campaign against corporations turned into a rout. Between December 1681 and October 1688, approximately two hundred and forty corporations of varying types were regulated. The livery companies were dealt with, and by 1686 Luttrell was reporting that there was “hott discourse” of *quo warranto* proceedings against bishoprics and deaneries, and of regulation of the law societies. In all cases, the new charters were most carefully drafted in order to give the Crown the right of nomination, or at least approval of nominees, to the important posts in the company or corporation. Thus, it was hoped, political management of any future elections and control of local juries would be easier.<sup>74</sup>

The extension of this policy to the colonies was both logical and inevitable, particularly in view of the overlap of personnel: Francis North, Lord Guilford, was a member of the Plantations Committee after 1680 and very active in colonial administration, while Blathwayt’s stint as undersecretary to Conway meant that he had to handle much of the initial paperwork in the early *quo warranto* proceedings. Blathwayt’s father had been a lawyer and the son too had trained at the Middle Temple before embarking on a career in administration. It was his legal training, allied to his natural circumspection, which led him to ensure that his own patent as auditor general was “drawn up by the best hands in

71. Sinner, “Charles II and Local Government”, pp. 137, 143-4; N. Luttrell, *A Brief Relation of State Affairs* (Oxford, 1857), I, p. 181.

72. Blathwayt to Carlisle, 9 July 1680, Blathwayt Papers XXII; Blathwayt to Lynch, 26 June 1682, Blathwayt Papers XXX. Roger North insisted these city squabbles were not just “low history” but a “battail rangée” between king and city authorities: see H.H. Schless, ed., *Poems on Affairs of State, III, 1682-1685* (New Haven, 1968), p. 216. The vast number of poems in this volume on the London shrieval elections, the London charter proceedings, and writs of *quo warranto* in general, indicates the impact of crown actions in these fields: see, for example, pp. 207, 380, 423, 444.

73. Luttrell, *Brief Relation*, I, p. 261; Sinner, “Charles II and Local Government”, pp. 165-6.

74. Sinner, p. 17; Luttrell, I, pp. 368, 378. See also North’s reference to “the trade of procuring charters”: North, *Lives of the Norths*, II, p. 67. On political management as a technique of royal control, see Jones, *Revolution of 1688*, esp. chaps. 3 and 6. For the significance of new charters to local trials, see Keeton, “The Judiciary and the Constitutional Struggle”, p. 60.

Eng[land].''<sup>75</sup> The attack on the Bermuda charter in 1679, and those which followed, may also have owed something to the increasing influence of the Duke of York, who had been active in the much more minor English corporation remodeling schemes of the sixties.<sup>76</sup> If the *scire facias* against the Bermuda company proceeded somewhat slowly in contrast to the cases against the corporations in England, it was not so much because of a lack of will, (though Bermuda was not, certainly, regarded as a colony of major significance), but because of a commendable caution: Blathwayt stressed to the Treasury that the attorney general should delay his decision until the inhabitants of the island promised to vote a sizeable revenue in the assembly. Not until November 1684 was judgement brought down against the Bermuda company on a writ of *quo warranto*.<sup>77</sup>

Meanwhile, the efficacy of legal proceedings seemed obvious to colonial governors and other officials as well as to the authorities at Whitehall. The news that the king had overcome the London charter led Governor Cranfield to suggest a *quo warranto* against Rhode Island; two years later, Edward Randolph was convinced that with charters "at so low an ebb", Mason's rights in New Hampshire could never hold out on a trial at the Council Board. Randolph had already been instrumental in beginning *quo warranto* proceedings against the Massachusetts Bay company.<sup>78</sup> Though Richard Wharton told Blathwayt that some malcontents were explaining to the people that a writ was a "poor toothless creature", those same opponents of the Crown's policy certainly spared no trouble or expense in defending their charter in England.<sup>79</sup> But Massachusetts could hardly achieve what London had not, and the charter was duly annulled. No wonder Blathwayt was surprised that Lord Baltimore, proprietor of Maryland, was pressing boundary claims against other colonies so forcefully. At a time when writs of *quo warranto* were "of such force against Charters" his actions were most unwise. Three months later, the attorney and solicitor generals had given their opinion that the Maryland charter was on many counts forfeit to the Crown and the governor of Virginia was being asked to furnish evidence with which to

75. Bieber, *Lords of Trade*, p. 34; North, *Lives of the Norths*, II, p. 102; Gertrude Jacobsen, *William Blathwayt* (New Haven, 1932), pp. 39-40, 49; Blathwayt to Powell, 12 March 1680/1, Blathwayt Papers XXVII.

76. Carter, "English Privy Council", p. 183; Sinner, "Charles II and Local Government", p. 119.

77. T 64/88, 32-3; *CSPC*, 1681-1685, 1967. For a Bermudan comment on the proceedings, see Turfrey to Blathwayt, 6 April 1683, Blathwayt Papers V. A detailed account can be found in Haffenden, "The Crown and the Colonial Charters", I, pp. 302-5. See also the suggestions of Richard S. Dunn regarding the delays in the Bermuda case: "The Downfall of the Bermuda Company: A Restoration Farce", *WMQ*, XX (1963), pp. 487-512.

78. Cranfield to Blathwayt, 5 October 1683, Blathwayt Papers I. Randolph to Southwell, 3 October 1685, in Toppan, *Edward Randolph*, IV, p. 59. For the report of Randolph's instructions, see Luttrell, *Brief Relation*, I, p. 274 (14 August 1683).

79. Wharton to Blathwayt, 15 September 1684, Blathwayt Papers VI. For an account of the Massachusetts proceedings, see Haffenden, "Colonial Charters", I, pp. 299-302, 305-7.

start proceedings. "Prince Penn", claimed Blathwayt, was ready to resign his principality, the Duke was willing to surrender New York to the king, and the proprietors of Carolina would soon follow. The charters of Connecticut and Rhode Island were also being investigated.<sup>80</sup>

After the death of Charles II and the brief hiatus of the Monmouth rebellion, the Crown could resume its legal campaign.<sup>81</sup> But the situation had altered. James' religious policies and personal predilections made Baltimore and Penn secure in their proprietaries. To the north, proceedings were begun against the charters of Rhode Island and Connecticut, though they were impeded when Randolph found that, because of delays in England and the length of his voyage, the writs were out of date.<sup>82</sup> James may have had a greater interest in colonial administration than his brother; but the weakening of the Plantations Committee which was implicit in James' decision to take a more personal rôle in policy direction, and the change of personnel in that body when room was made for some Catholic members inexperienced in colonial affairs, had serious effects. The king's increasing pre-occupation with his religious objectives and the changes in the chief legal officers served to erode the grand colonial design.<sup>83</sup> Nonetheless, Rhode Island and Connecticut submitted, and the proprietors of East New Jersey offered to surrender their right to the government, if not to the soil, in a petition on which the Treasury asked Blathwayt's opinion in 1688. Proceedings against the Bahamas and the Carolinas were still pending in the summer of that year.<sup>84</sup> But the attention of the monarch was by now directed more across the Channel than the Atlantic; and James' policy of circumventing rather than utilizing the traditional machinery of government, a contrast to his brother's methods, meant that local interests and parties would not support him.<sup>85</sup> The increased necessity for "good" judges was obvious and received continual emphasis in the letters of the little band of truly loyal colonial officials. Matters could not proceed "regularly", wrote Randolph, until men from England could be sent as judges,

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80. Blathwayt to Effingham, 6 September 1684, 9 December 1684, Blathwayt Papers XIV; Haffenden, "Colonial Charters", I, p. 307.

81. A definite statement was made condemning the principle of charter governments: see Haffenden, "Colonial Charters", II, p. 454.

82. See Webb, "Imperial Fixer", I, pp. 14-5. Randolph to Blathwayt, 29 May 1686, Blathwayt Papers I.

83. See Haffenden, "Colonial Charters", II, esp. p. 457 ff.; and also Jones, *Revolution of 1688*, pp. 253-4. On James' problems with the bench from 1686 on, see Havighurst, "James II and the Twelve Men in Scarlet", p. 534 ff.

84. *CTB*, VIII, 1685-1689, 1995. An Order-in-Council in May 1686 had directed the attorney general to proceed against the Carolinas, the Bahamas, and Pennsylvania: see Haffenden, "Colonial Charters", II, p. 457. But Penn was safe when James tried to enlist the support of the nonconformists.

85. Sinner, "Charles II and Local Government", pp. 168, 290-1. Sinner argues the case only for England, but the application to the colonial situation is obvious.

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who would not be drawn to "neglect or expose his Ma<sup>ties</sup> inter's and Rights." Such appointments would also increase the number of officials directly dependent on London.<sup>86</sup>

There did not seem, however, to be the leisure or the leadership at Whitehall in the last two years of the reign to consider how vital it was to combine careful choice and expansion of judicial and administrative personnel with legal process. The political reorganisation which resulted from the annulment of the various charters was the Dominion of New England, ultimately extended to include New York and the Jerseys. It was grandiose in conception but feeble in execution; though military motives had been paramount in its formation, one wonders how "terrible to the French" it really was.<sup>87</sup> It was certainly not terrible to the inhabitants; within three years of assuming his enormous responsibilities, Governor Andros was viewing life from a "low damp Room" in Boston gaol. The extent to which James' colonial schemes had parted company with reality had been made brutally clear.<sup>88</sup>

Although in some respects the end results of colonial policy in the eighties had been disappointing, there had also been some striking successes in the Stuart design of extending central power over the localities. Controlling the multitude with an army had been shown to be impractical for reasons of finance and organisation and because of the almost hysterical political outbursts aroused by the mere threat of army action. Although in the next reign the sheer size of the forces kept in pay combined with the forceful military leadership of William III suggested a more potent breeding ground for military absolutism, the reality proved otherwise. The same Mutiny Act which gave proper legal status to martial law simultaneously ensured parliamentary control over the army and the Declaration of Right made parliamentary consent necessary for the exercise of martial law. Even more significant, the financial settlement of 1690, described by Roberts as temporary, inadequate and encumbered, set practical limits on the exercise of the royal military prerogative.<sup>89</sup>

The weapon of the law, so subtly used by Charles in the early eighties and so crassly by his brother, was also blunted in the Revolution Settlement. It was significant that, in a revolution more noted for its continuity of personnel than for

86. Randolph to Blathwayt, 31 March 1687, Blathwayt Papers I. For similar requests see Andros to Blathwayt, 25 May 1687, Blathwayt Papers III; Governor Robinson of Bermuda to Blathwayt, 30 December 1687, Blathwayt Papers XXXVI.

87. The phrase is Blathwayt's: to Randolph, 10 March 1687/8, in Toppan, *Edward Randolph*, IV, p. 216.

88. Randolph to Blathwayt, 25 October 1689, Blathwayt Papers I. Haffenden rightly emphasises that the internal strength of the structure was farcical.

89. Clayton Roberts, "The Constitutional Significance of the Financial Settlement of 1690", *The Historical Journal*, XX (1977), p. 62. For a suggestion that the Mutiny Act was less significant than the financial settlement in curbing royal power, see Jennifer Carter, "The Revolution and the Constitution", in G. Holmes, ed., *Britain after the Glorious Revolution* (London, 1969), p. 44. But see Clode, *Military and Martial Law*, esp. pp. 22, 97.

its purges, not one of the ten judges in office at the close of James' reign retained his post or ever held office again.<sup>90</sup> Particular clauses in the Bill of Rights dealt with specific grievances such as the dispensing power. The London charter was restored and no further *quo warranto* actions were planned. Though colonial charters were not restored and the Crown was still anxious to pursue policies of imperial centralization and colonial uniformity, any further resumption proceedings would have to be channelled, not through the royal judges, but through Parliament.<sup>91</sup>

It was the policy of administrative expansion and reform which proved to have the greatest staying power at the revolution. William was both willing to continue the bureaucrats of Charles and James in office and to protect them from the witch hunts of the Whigs. The wars of the nineties provided a huge impetus to administrative growth, even as they deprived the government of the requisite leisure to exploit it. It was ironic that, by the time the government acquired the personnel to enforce its will, the control of that personnel was beginning to pass to the party leaders. It was questionable, too, whether the worthies of the localities, in England or her colonies, would countenance the interference that the burgeoning bureaucracy seemed to portend. A world made safe for gentlemen<sup>92</sup> had little use for the agents of the royal authority.

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90. See Havighurst, "James II and the Twelve Men in Scarlet", p. 523. Moreover, seven of the judges were excluded from the Act of Indemnity while many judicial decisions of 1681-1688 were nullified or reversed; Cockburn, *A History of English Assizes*, p. 259.

91. Legal weapons were not entirely laid aside, however; cf. the setting up of admiralty courts in the colonies in the late nineties.

92. The phrase is Carter's.