On June 1, 1680, William Penn petitioned Charles II for "a grant of a tract of land in America lying north of Maryland, on the east bounded with Delaware River, on the west limited as Maryland is, and northward to extend as far as plantable, which is altogether Indian."1 Within two weeks the petition was considered by the Lords of Trade and Plantations, before whom Penn agreed that his projected grant should extend northward three degrees from Maryland, the other bounds to remain as he had named them. Copies of the petition were then sent on to James, Duke of York, and to Lord Baltimore.2 Before the end of the month, the agents of both men had replied to the petition. Sir John Werden, the Duke's agent, objected:

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1 Calendar of State Papers, Colonial, America and the West Indies, 1677-1680 (London, 1896), 1373. The process of granting the charter for Pennsylvania can be followed in a number of books. The best source is Pennsylvania Archives, Second Series, XVI, 345-358; this volume contains full reports of the meetings of the Lords of Trade and the names of all attendants. See also ibid., Eighth Series, I, iv-xix. The Archives of Maryland, V, 271-274, also reports the meetings in full when they concern the question of boundaries. Samuel Hazard, Annals of Pennsylvania, from the Discovery of the Delaware, 1609-1682 (Philadelphia, 1850), 474-488, is a narrative account of the process. While the Calendar of State Papers is apt to abbreviate reports of the meetings, it is cited most often in this paper because it is the most generally accessible printed source (citations are to documents, not pages).

2 Ibid., 1390.
By all that I can observe of the boundaries mentioned in Mr. Penn's petition they agree well enough with that Colony which has hitherto (since the conquest of New York ...) been held as an appendix and part of the Government of New York by the name of Delaware Colony, or more particularly Newcastle Colony. But what are its proper boundaries (those of latitude and longitude being so very little known ...) I am unable to say. If this be what Mr. Penn would have, I presume the Lords of Trade and Plantations will not encourage his pretensions to it. . . .

The principal concern of Baltimore's agents, on the other hand, was that the southern boundary of any grant to Penn be specifically set at the latitude passing through Susquehanna Fort, and "that Lord Baltimore's Council [sic] be allowed a sight of the grant before it be passed." Officially, the project now lay fallow until October, 1680.

In the interim, Penn and the Duke of York had dealings which were ostensibly unrelated to the projected charter for Pennsylvania. The Quaker had become involved in the affairs of West New Jersey in 1675, but there was some reason to doubt whether West and East New Jersey were independent of New York. Thus, upon his appointment as lieutenant governor of New York, Sir Edmund Andros demanded that customs duties on all goods imported into either of the Jerseys be paid to his own province. The Quakers of West New Jersey resented this, and Penn sought to influence the Duke of York to reverse Andros' orders. The question was finally submitted to the former Attorney General, Sir William Jones, for arbitration in July, 1680. Jones decided that the government of New York could not legally demand customs duties of the inhabitants of New Jersey. In compliance with this decision, the Duke of York issued deeds of release to East and West New Jersey, the lack of which had made the independence of the two governments questionable. 

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3 Ibid., 1403.
4 Ibid., 1404.
6 While the Duke resided in Scotland, Penn worked through Robert Barclay, the famous Quaker apologist. Barclay had little success. See Barclay to Penn, Jan. 31, 1679/80, Penn-Forbes Collection, II, 15, The Historical Society of Pennsylvania (HSP).
When the Lords of Trade directed Penn to apply to the Duke for clearance from Sir John Werden's objection to the land grant, they were thus making a superfluous request; it was quite logical that the Quaker would confer with his royal friend. And, as in the case with West New Jersey, the conference had favorable results. Five days before James departed for Scotland, Werden informed the Lords of Trade:

Since our previous correspondence respecting Mr. William Penn's petition he has represented to the Duke his case and circumstances (in relation to the reasons he has to expect the King's favour therein) to be such that the Duke commands me to acquaint you . . . that he is very willing that Mr. Penn's request may meet with success, that is, that he may have a grant of the land that lies on the north of Newcastle Colony and on the west side of Delaware River, beginning at the 40th degree of latitude, and extending as far as the King pleaseth, under such regulations as their Lordships may think fit.9

It may well be asked why the Duke of York acceded to Penn's desire. Several reasons might be given. The background of friendship between the Stuarts and the Penns, beginning with Sir William Penn's early adherence to the cause of a restoration and culminating in a promise made by Charles and James Stuart that they would continue to bestow their favor upon young William after the admiral's death, is, of course, important.10 Indeed, the hoariest explanation of the grant to Penn is simply that the Crown owed a debt of £16,000 to Sir William and gave his son a tract of land in America in lieu of this debt.11 This explanation is given credence by the wording of Penn's petition to the King, as well as the urgent financial situation of the Crown at that moment, a situation which would certainly have precluded payment of the debt in cash.12 Yet, the very enormity of the royal debt leads one to doubt that the £16,000 owed

8 Board of Trade Journal, II (1679-1682), 178-179, transcribed copy in HSP.
11 See, for example, John Oldmixon, The British Empire in America (London, 1708), I, 296-297.
12 Edward Hughes, Studies in Administration and Finance, 1558-1825 (Manchester, 1934), 153.
to Penn was of grave concern to Charles II. If the King felt at all
beholden to the Quaker, it was because of a personal attachment to
his father.

It has also been argued that Charles II, and presumably James as
well, favored the grant to Penn on the grounds that it would get
him, the Quakers, and other Whiggish Dissenters who might be
expected to oppose the Court party out of England. This inter-
pretation has been challenged on two counts: there is no written
evidence to support it, and it is doubtful whether many Dissenters
had the franchise. It is difficult to reject this theory completely,
however, in view of the fact that in the general elections of 1679
Penn worked unflaggingly in behalf of the candidacy of Algernon
Sidney and, therefore, in opposition to the Court. The pamphlet
Penn wrote that year, England's Great Interest in the Choice of This
New Parliament, has been called "one of the first clear statements of
party doctrine put before the English electorate." If both Stuarts
were agreed on domestic reasons for giving a grant in the New World, James had his own motive for disposing of the
land west of the Delaware and north of Maryland. This motive was
American in origin. James's main interest in New York had been
material and financial, but he was failing to obtain any revenue
from his property. On the contrary, the cost of defense was a great
and continuous burden to him. The decision that New York could
not levy duties on New Jersey increased this burden and probably
increased the Duke's willingness to dispose of the unsettled portion

Historical Society, XXXII (1934), 1-19.
1934-1938), III, 279 (note).
15 After Sidney's first defeat, in which the methods used against him were of doubtful
legality, Penn wrote to him: "I offer to wait presently upon the Duke of Buckingham, Earl of
Shaftesbury, Lord Essex, Lord Halifax, Lord Hollis, Lord Gray and others, to use their utmost
to reverse this business." Janney, 154-155. Only Buckingham, and possibly Halifax, could not
be considered members of the opposition to the Court.
ambassador, Barillon, informed Louis XIV that Penn was one of the leaders of a political
party which had its strength in London. The letter, written on Dec. 5, 1680, appears in John
Consequently, the proposition that Penn be granted a tract of land in America was probably considered a *fait accompli* by the Lords of Trade as early as October, 1680, that is, after they received Werden’s letter which explained the Duke’s readiness to part with the region Penn wanted, but before the patent was given official consideration.

If the grant of land was preordained by royal favor, the governmental aspects of the charter for Pennsylvania remain to be explained, for in the last decade of the reign of Charles II, 1675-1685, it was an undeniable fact that royal control was steadily increasing over the plantations. The Lords of Trade themselves were witness to this fact, the creation of this board having stemmed from the desire to administer colonial affairs more closely. In 1680, New Hampshire was constituted as a royal province, while soon thereafter the charter of Massachusetts was negated as a prelude to the establishment of the Dominion of New England under James II. It was thus an anomaly that on March 4, 1680/1, William Penn was made absolute proprietor of a large area of land in America.

In contradiction to this statement, one might say that the grant to Penn was, in reality, less in the form of an outright gift than a transfer from one proprietor to another. It has also been argued that Penn’s charter was “couchè in the only form known to the lawyers and officials of the day, that of a proprietary possession.” Surely, this is the type of charter Penn himself wanted. If the granting of a proprietary charter in 1681 still appears anomalous, another rationalization of it may be made. Relative to the contemporaneous exclusion controversy, the processing of the Pennsylvania patent was insignificant business and unworthy of lengthy consideration; a charter of Penn’s desire might travel through official channels without serious scrutiny and consequent alteration. This final expla-

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18 In fact, James had almost granted land along the west bank of the Delaware to Berkeley and Carteret as early as 1669. *The Pennsylvania Magazine of History and Biography (PMHB)*, V (1881), 231-233.
20 In a more comprehensive study of this particular possibility, the following conclusion was reached: “More was attempted in these years [1675-1688] than at any other period until the 1760’s, but the absorbing constitutional struggle which was raging in England exacted a telling tribute in the time and attention that could be devoted to the colonies. In addition, events
nation is predicated on the assumptions that the patent for Pennsylvania did not receive serious attention, and that as a result of this oversight Penn was granted liberal terms which important government officials would have opposed had they not been absorbed in other matters. It is these assumptions which must be examined.

Compared to the four days required to process the grant of New York to the Duke of York, the nine months' gestation of the Penn patent has seemed long indeed to some historians. It should be remembered, however, that the Connecticut charter of 1662 was reviewed for four months, the Rhode Island charter of 1663 for six. Action on the Carolina charter of 1663 is thought to have been initiated as early as 1660. In fact, the patent for Pennsylvania was under official consideration for only four months, from October, 1680, to February, 1680/1.

In this short span of time, however, the patent which Penn had submitted was studied not only by the Lords of Trade, but also by Sir Francis North, Chief Justice of the Court of Common Pleas; Creswell Levinz, Attorney General; and Henry Compton, Bishop of London. All these observers had remarks and recommendations to make concerning the patent, thus introducing many of the so-called restrictive features into the Pennsylvania charter. The draft that Penn submitted was given serious attention; an assumption to the contrary must be discarded.

What, then, can be said about the terms of the charter? Some historians have attempted to justify the proprietary nature of the grant to Penn by emphasizing the restrictive features of his char-

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22 See Calendar of State Papers, 1677-1680, 1565-1566, 1574, 1580, 1583-1584, 1592-1595, 1599, 1603, 1609, 1618-1619; ibid., 1682-1685 (London, 1898), 6, 8, 29, 30, 32. See also Board of Trade Journal, II (1679-1682), 224, 228-229, 233, 243, 248-249, 253.
23 The agents of Lord Baltimore also saw a draft of the patent, and the Duke of York's secretary was allowed to make recommendations concerning the boundary provisions.
ter; they claim that if the hand of the home government was not strengthened by the grant, neither was it weakened. At least five of the seven clauses of the charter considered to be restrictive were introduced by government officials examining the patent. While it may be thought that their intent was to restrain Penn, it might be concluded that they were not successful. An inquiry into the nature of the charter for Pennsylvania must be made to settle this point.

Three of the restrictive features in Penn’s charter dealt directly with the enforcement of the Acts of Trade and Navigation. The first explicitly demanded obedience to “the Acts of Navigation, and other laws in that behalf made.” No previous charter contained this stipulation. The second stated that all royal officials must be admitted to those areas of the province where they might be needed for enforcement purposes. The third called for the presence of an agent representing Pennsylvania in London, to be responsible for violations of the Acts.

When the first Act of Trade and Navigation was passed in 1660, there immediately followed measures intended to ensure its execution. Governors of all colonies were to see that foreign trade regulations were strictly observed; neglect or connivance was to result in heavy penalties. The Act of 1660 required that the governor take a solemn oath to guarantee such action. This policy was reinforced in 1663, when the governor was put under the additional obligation of giving bond on ships and furnishing security at the Exchequer before leaving England. At this time, therefore, the


26 The Act of 1660 was essentially a restatement and amplification of the nullified Act of 1651. The history of the Acts of Trade and Navigation from their inception until 1695 can best be followed in Andrews, IV, Chaps. 3–6.
governors were the only agents responsible for executing the Acts of Trade and Navigation.

But the first twelve years of this system demonstrated that efficient administration of the Acts would be difficult and slow. Two steps were then taken. In 1673, a third Act was passed to plug the loopholes in the previous two. A by-product of this was the installation in colonial ports of a large number of customs officials, hitherto unnecessary, who were to serve under the auspices of the Treasury. The second step was taken because it was realized that the colonial governors were not living up to the obligations imposed by their oaths and bonds, and, until 1675, the Acts were inadequately enforced despite the efforts of the Treasury and the commissioners of customs. In that year, the newly organized Lords of Trade, in conjunction with the Treasury, drafted a more rigid oath and commission to be applied to governors of all colonies—royal, proprietary, and corporate.

In view of these developments, it is not surprising that the Penn charter should call for obedience to the Acts of Trade and Navigation. It was, of course, expected that all colonies would obey, but the Lords of Trade decided that such obedience should be explicitly called for in the Penn charter. The fact that this was a novel feature does not in itself make the clause restrictive, since the Acts were to be universally applied.

Nevertheless, much has been made of the fact that violation of the Acts of Trade and Navigation was specifically prohibited in the Pennsylvania charter, and it has been observed that within three years, in 1684, Penn was called to book and fined £53 by the Treasury for allowing a Scottish-built ship to trade illegally in his province. However, Lord Baltimore was also penalized in 1684 for infraction of the rules, having to pay a fine of £2,500; and Edward Randolph was able to secure convictions for violation of the Acts in

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27 Calendar of State Papers, 1681-1685, 8. Attorney General Levinz had earlier made some observations on this feature. Ibid., 1677-1680, 1584.
28 Andrews, III, 283. The record of this is in William A. Shaw, ed., Calendar of Treasury Books (London, 1904-1957), VII, 1455; VIII, 212-213, 1009. These records do not reveal any conviction but Penn’s for the decade 1680-1690; however, these are not the sole records of such action, as can be seen below.
29 Andrews himself notes this in his Colonial Period in American History, II, 357-358.
colonies whose charters made no explicit mention of this possibility. It should be remembered, furthermore, that during the 1680's the illegal trading activities of the Scots were one of England's greatest colonial problems, and Pennsylvania was the worst offender in this trade. It is therefore hardly surprising that the home government took action against Penn. Such action certainly needs not be attributed to a clause in his charter.

The provision in Penn's patent which required that all royal officials be admitted to the colony does not merit lengthy discussion. Before the Act of 1673, there had been no need for any large number of these officials in the colonies. Since Penn's was the only nonroyal charter issued after 1673, with the qualified exception of Georgia, the appearance of this stipulation seems logical. The rude reception Edward Randolph received in Massachusetts in 1676 and again in early 1680 probably was a factor causing the inclusion of this requirement in the charter, but it may be doubted whether the admittance of royal officials was a serious colonial problem before or after 1680.

The third restrictive factor in the charter was the requirement that Pennsylvania must keep an agent in London to answer for violations of the Acts of Trade and Navigation. Should infraction be proved, the agent was to pay damage within a year or the government of the colony would revert to the Crown. Between 1624 and 1663, Virginia, Massachusetts, Rhode Island and Connecticut had occasionally sponsored agencies at Court. However, in 1666, Massachusetts ignored a demand from the King that an agent be sent to England, and when William Stoughton and Peter Bulkley were finally sent in 1676, they went without sufficient powers to conduct the business at hand. This situation had not been resolved in 1680, and may account for Chief Justice North's addition of a clause requiring Penn not only to have an agent, but also to charge him with responsibility.

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31 Andrews, IV, 151.
As to the effectiveness of this charter provision, it has been the judgment of one historian that only the four above-mentioned colonies—Virginia, Massachusetts, Rhode Island and Connecticut—were represented at Court at all regularly a decade after Penn's patent was issued. This judgment may overlook the fact that for more than thirty years Penn himself transacted the province's business in London, and certainly during the reign of James II the Quaker was quite active at Windsor. Earlier in the 1680's, Penn had an agent at Court on at least one occasion other than the special mission of his kinsman William Markham. In a letter to Charles II written to introduce Markham, however, it is obvious that Penn looked on the placement of an agent at Court as an act of deference and loyalty to the King, not as a duty dictated by his charter.

A fourth restrictive clause in the charter stipulated that a transcript of every law passed in the colony must be sent to the Privy Council for confirmation or annulment. Insofar as no other proprietary or corporate colony had such a charter provision, this requirement marked a point of departure from earlier specifications. (However, the assembly of a proprietary colony might be required to submit its law to the proprietor; similarly, the assembly of a corporate colony to its company.) No laws of any colony had been suspended by the Privy Council before 1660, nor had many laws even been submitted to it. But there apparently was little doubt on the part of the home government that colonial laws should conform to those in England, and that the legislation of royal colonies was subject to review.

35 At a meeting of the Lords of Trade, June 12, 1683. See Pennsylvania Archives, Second Series, XVI, 394-395.
Of the proprietary colonies, neither Carolina nor the Jerseys sent laws to England until they were transformed into royal provinces. Maryland often sent laws to the Privy Council, but no action was taken on them until the colony's royalization in 1692. In both Carolina and Maryland, however, the proprietors controlled the governor, and therefore his veto, in order to check legislation. When the first popular assembly met in New York in 1683, it was specified that all laws passed would be subject to negation by the Duke of York; two years later he was King, and the legislature was abandoned.

Of the corporate colonies in New England, Connecticut and Rhode Island were not required to transmit their laws, but did so infrequently. New Hampshire was obliged to send its laws in 1680, having been constituted as a royal colony. Massachusetts refused to convey her laws until reduced in 1684, although in 1681 the General Court had made several amendments in response to prodding by the Attorney General.

Of the royal colonies, Virginia had begun to transmit laws as early as 1629. The requirements laid down for Barbados (1663) and Jamaica (1664) were that acts should be in force one and two years, respectively, until confirmed in England. In 1676, the Lords of Trade contended that no laws should be enacted in Jamaica that were not drafted by the home government. The Lords had to recede from this position in April, 1680, when Attorney General Levinz decided that the island should be governed "by such laws only as are made there and established by the King's authority." In October, 1680, Chief Justice North stepped in between the disputants in order to effect a compromise over what had been an extremely irritating point of controversy between Jamaica and the Lords—a permanent revenue bill. Then, in November, 1680, both Levinz and North were consulted for an opinion on the patent to be granted to Penn, and it was on North's suggestion that the clause requiring the transmission of laws was included.

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38 Calendar of State Papers, 1677-1680, 1347.
39 Ibid., 1540, 1546, 1550-1552, 1559-1563, 1567-1572.
40 Ibid., 1574, 1584, 1593.
The effectiveness of this provision was seriously hindered by its very nature. Pennsylvania was allowed five years to transmit a law after its passage. Thus, many acts of a temporary character had expired before the Privy Council could pass a verdict. As to permanent laws, the Council had to take action on a law within six months after it reached England or the law would be automatically confirmed, although in practice, as it turned out, the Council's six months began after the laws had been considered by the lesser administrative agencies.

The effort Pennsylvania made to transmit its acts was less than vigorous. When Benjamin Fletcher assumed the governorship by royal appointment in 1693, he found that some two hundred acts passed by the colony since 1681 had never been sent to England. And, in fact, little effort was made to enforce obedience to this provision prior to 1696. Even if a law were transmitted, the Council might not disallow it, but only return it for reconsideration. Such was the case when six acts were returned to Pennsylvania in August, 1694. Thus, in the decades immediately following 1680, the clause in the charter was crippled not only by the looseness of its statement, but also by the laxity of its enforcement.

In the Pennsylvania charter the right of receiving, hearing, and determining all appeals from the colony's courts was also reserved to the King, who could reverse any judgment of the provincial courts. During the seventeenth century, a charter provision concerning appeals to the King in Council was of prime importance, for there were frequent instances in which a colony successfully refused to admit an appeal, basing its action on the lack of charter provision for appellate jurisdiction of the Crown.

41 Leonard W. Labaree, *Royal Government in America* (New Haven, Conn., 1930), 248-249, points out the Board of Trade's complaints about this in 1709 and 1714.
42 This is evident from extensive reading in the *Calendar of State Papers*.
43 Russell, 37.
44 Root, *Relations of Pennsylvania* . . . , 129.
45 Russell, 43.
46 Arthur M. Schlesinger, "Colonial Appeals to the Privy Council," *Political Science Quarterly*, XXVIII (1913), 286-287. Schlesinger maintains that as the eighteenth century approached, the home government took the position that whether or not an appeals provision was in the charter was of no consequence. Thus, the closing years of the seventeenth century
In the earlier colonial settlements, the administration of justice as a whole was covered by a general statement in the charter. Gradually, however, the wording became more definite, until, in 1664, the patent to the Duke of York specifically mentioned appeal to the King in Council. Since this patent has been judged to have been the least restrictive upon "the powers which the grantee might exercise," it is interesting that the particular clause concerning appeals was copied into Penn's charter almost verbatim. Although the charter issued to the Bahamas in 1670 contained no appeals provision, the New Hampshire commission of 1680 is explicit in its demand that appellate jurisdiction should be the Crown's privilege. The charter of Pennsylvania was part of the New York-New Hampshire tradition.

As with the charter provisions calling for a colonial agent and for royal disallowance, Penn seemed to have serious reservations about the Crown's right to appellate jurisdiction. In a letter of instructions to five newly appointed provincial commissioners (the form of the executive had just been changed in Pennsylvania), the proprietor stated: "You shall shortly have a limitation from the King (regarding the administration of justice), though you have power, with the [Provincial] Council and Assembly, to fix the matter and manner of appeals, as much as to do justice, or prevent any disorder in the province at all."

witnessed a real struggle over appeals between England and her colonies, especially the corporate colonies. Ibid., 288-293. Joseph H. Smith, Appeals to the Privy Council from the American Plantations (New York, 1950), has information for the corporate and proprietary (138-151), as well as royal (77-78, 151-160), colonies in the late seventeenth and early eighteenth centuries.


Andrews, III, 97.

Compare Thorpe, III, 1638-1639 and V, 3038.

William Penn to Thomas Lloyd, et al., Feb. 1, 1686/7, in Janney, 288
Between 1680 and 1696 some sixty colonial cases were appealed to the Privy Council. Pennsylvania was involved in none of these.\textsuperscript{51} Since, after this time, charter provisions proved no deterrent to the Council if it wanted to hear appeals,\textsuperscript{52} it can be concluded that Pennsylvania was never really restricted by the clause which required appellate jurisdiction of the King in Council.

Another clause in Penn's charter, one which stated that the King would impose no taxes on the colony "unless the same be with the consent of the proprietary, or chief governor, or assembly, or by act of Parliament," has been a cause of debate among historians. Was Parliament, or was it not, given the power of taxation?\textsuperscript{53} The clause was apparently in the draft of a patent submitted by Penn to the Lords of Trade, though probably lacking the phrase "or by act of Parliament," and was brought to the Lords' attention by the Attorney General.\textsuperscript{54} But the official records do not disclose the intent of the framers.\textsuperscript{55} Suffice it to say that until 1763 Parliament did not exercise what may have been its taxing prerogative.

The final restrictive clause in the Pennsylvania charter called upon the colony to accept clergymen of the Church of England if its inhabitants desired them. The requirement was not a new one. A letter from the King to the government of Massachusetts in 1662 directed that colony to guarantee religious freedom to Anglicans residing there.\textsuperscript{56} The Carolina charter of 1663 allowed the proprietors to give "indulgencies and dispensations" to those inhabitants who could not conform to the liturgy and ceremonies of the Church.

\textsuperscript{51} Smith, 73. The appeals came from New Hampshire, Massachusetts, New York, Virginia, and the islands of the British West Indies. Prior to 1680, there had been "petitions in the nature of an appeal." \textit{Ibid.}, 65–70.
\textsuperscript{52} See Note 46.
\textsuperscript{54} \textit{Calendar of State Papers, 1677–1680}, 1584.
\textsuperscript{55} It has been suggested that the clause came as a direct result of the recent West New Jersey decision, and that it was meant to protect Penn, not subject him to further external pressure. Catherine Owens Peare, \textit{William Penn, A Biography} (Philadelphia, 1957), 214.
\textsuperscript{56} Osgood, III, 166–167.
of England or subscribe oaths to it. The implication was that the majority of settlers was expected to conform. The commission to New Hampshire in 1680 called for “liberty of conscience . . . unto all protestants; & that especially as shall be conformable to the rites of the Church of England, shall be particularly countenanced and encouraged.” The clause in Penn’s charter calling for free admittance of Anglican clergy was indeed a step beyond the stipulations of previous charters, but to construe it as part of the home government’s policy against Dissent is too extreme a view. If such were the case, it would have been foolish to make the grant to Penn in the first place. And surely Penn’s well-publicized ideas on religious freedom made this restriction superfluous in his own time.

The absence of a clause guaranteeing Penn the rights enjoyed by the bishops of Durham has been interpreted as restrictive, since the proprietary charters of Maryland, Maine, and Carolina contain such a clause. But the patent to New York, which among the colonial charters probably confers on its grantee the widest of powers, is also devoid of such a clause. Nor is it likely that Penn included such a provision in the draft he submitted, for no one who examined the patent remarked on its presence.

With the exception of the Durham clause and the limitations already discussed, the provisions of Penn’s charter were the same as those of the proprietary charters of Maine, Maryland, and Carolina. Yet a number of these so-called limitations were already established practice, now set down explicitly. And the clause which might have been most restrictive of all—that which demanded that all laws be transmitted to England for possible disallowance by the King in Council—was crippled by the disparity between the five years the law was allowed to remain in Pennsylvania after passage and the six months which the King in Council had to consider it. The blame for this cannot be laid to Chief Justice North. In his recommendation that such a clause be included, he left blank the time to be allowed between passage and confirmation or nullification. The official records do not reveal who made the “five years—six

57 Thorpe, V, 2752.
58 Ibid., IV, 2448.
months” decision, but a letter of William Penn’s in 1686 suggests how it was accomplished. Fearing that the Lords of Trade were about to take action against the laws of Pennsylvania, Penn wrote to Thomas Lloyd, president of the Provincial Council: “We may use ye advantages ye Pening of my charter give us (& by Sr. Wm. Jones, was intended to me & ye colony) with what success we are able, Know, yt if once in five years, ours are presented to the said Committ [Lords of Trade], or ye King rather, it is as much as we are obliged to.” Penn advised that all laws be vacated, then repassed. Thus, the colony would be safe until 1691.59

Sir William Jones was formerly Solicitor General and Attorney General of England. He has been described as entering the House of Commons in 1680 with “the fame of being the greatest lawyer in England and a very wise man.”60 With the legal counsel of such an able adviser, it is no wonder that Penn’s draft could survive official scrutiny without being seriously restrictive. This fact, thus far overlooked by historians who have treated the subject, is of major significance.

But Penn was by no means solely dependent on devious methods to obtain a charter favorable to his interests. He could, as a matter of fact, withstand the scrutiny of important government men. Although major historians have argued that Charles II’s advisers opposed their monarch’s desire to grant Penn a charter, this undocumented assertion needs to be examined.61 It has been noted that Penn applied for his patent in June, 1680, but that no official consideration was given to it until October. In this same month, the parliament originally elected to meet in October, 1679, was finally allowed to convene. Charles, in the interim, had dismissed certain

59 Penn to Thomas Lloyd, Sept. 21, 1686, Society Miscellaneous Collection, HSP.
60 Auchitell Grey, Debates of the House of Commons (London, 1763), VII, 451, quoted in Dictionary of National Biography (London, 1908-1909), X, 1060, hereinafter cited as DNB. It will be remembered that Jones made the decision against New York concerning the collection of customs from New Jersey.
61 Haffenden, 308; Andrews, IV, 371. No footnotes support these statements. Neither the Calendar of State Papers nor the Board of Trade Journal betray any signs of opposition to Charles II, although the Lords of Trade’s message to the King when the charter had been prepared—“In obedience to your commands . . .”—might carry this implication. Calendar of State Papers, 1681-1685, 29.
parliamentarians from his council and had taken as his chief advisers three courtiers: Robert Spencer, Earl of Sunderland; Lawrence Hyde, soon to be Earl of Rochester; and Sidney Godolphin, late Earl of Godolphin. Temporarily below these men, but perennially powerful in the King’s Council, was George Savile, Marquis of Halifax. How would Penn fare with these men?  

Robert Spencer and William Penn first met at Oxford, where they struck up a close friendship. In 1661, the two went to France, and were together again on the Continent in 1664. Spencer’s other early companions included his uncle, Henry Sidney; his brother-in-law, Harry (Henry) Savile; Sidney Godolphin; William Trumbull, later a Secretary of State; and Henry Compton, later Bishop of London. Penn was in correspondence with all these men at one time or another.  

In 1643, Spencer had succeeded to the family title of Earl of Sunderland. He was appointed a Secretary of State in 1679; in May, 1680, he moved into the Southern Department. Bigger things than Penn’s patent were on Sunderland’s mind in the autumn of 1680. He became secretly, but inextricably, involved in the exclusion controversy. In November, he had to vote for exclusion in the House of Lords or be impeached. His dismissal from the Privy Council was thereby inevitable, but he was kept on until January, 1680/1, because he favored William of Orange rather than Monmouth. In these circumstances, it may be hard to believe that Sunderland would, or could, do a great deal for Penn. Yet, a few years later, the Quaker proprietor wrote to the agile statesman, recently returned to power: “... my noble Benefactors, of which the Ld. Sunderland was one of the first in the business of my American country...”

62 H. C. Foxcroft’s *A Character of the Trimmer* (Cambridge, 1946) is a first-rate account of the life and times of Halifax.  
64 At this time there were two secretaries, and until 1706 the senior secretary held the Southern Department, the junior, the Northern Department, with few exceptions. The American colonies lay in the Southern Department, but it was not unusual for a secretary to transact business which, according to the rule, should have been his colleague’s duty. M. A. Thomson, *The Secretaries of State, 1681–1782* (Oxford, 1932), 2–3.  
Although Penn's relationship with Sunderland had roots extending to their days at Oxford, there is no record of friendship, or even acquaintanceship, between Penn and either Lawrence Hyde or Sidney Godolphin before 1680. The absence of record, of course, may not tell the true story. As far as Godolphin is concerned, this is of little import; he, like Sunderland, went into the exclusionist camp, leaving Hyde as the King's only close adviser in late 1680 and early 1681.\(^6\) If Hyde had had no earlier contact with Penn, he was at least helpful to him in this period. Less than half a year after the charter for Pennsylvania was issued, Robert Barclay wrote to Penn, "... my advice to thee as to that is to deal with the L. Hide who is thy friend...." Soon thereafter, Penn thanked Hyde for "... the many favours I am indebted to thee," and found occasion to ask for more of the same.\(^6\) To Halifax, whom Penn had known before he applied for his grant, he later wrote, "The country I enjoy by the Kings goodness and bounty, came not to my hands without the marks and prints of thy singular favour."\(^6\)

It is doubtful, then, that the important Privy Councilors who attended the meetings of the Lords of Trade, which was but a committee of the Privy Council, opposed the grant to Penn. Indeed, if we are to believe Penn, the Lord President of the Council, the Earl of Radnor, opposed the Bishop of London's attempt to put more stringent requirements regarding the Church of England in the charter.\(^6\) Of the remaining seventeen Councilors who attended meetings of the Lords of Trade concerning Penn's patent, only three (Fauconberg, Essex, and Bridgewater) had a history of prolonged opposition to the Court, not a very large number to oppose the King's

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\(^6\) Godfrey Davies, "Council and Cabinet, 1679-1688," *English Historical Review*, XXXVII (1922), 49.

\(^6\) Barclay to Penn, Sept. 23, 1681, Society Miscellaneous Collection, HSP; Penn to Lord Hyde, Feb. 5, 1682/3, in Janney, 226; Penn to the Earl of Rochester, June 14, 1683, Penn Manuscripts (32), Friends House Library, London (photostat in private hands); Penn to the Earl of Rochester, July 24, 1683, *ibid.* (photostat in HSP).

\(^6\) Penn to the Marquis of Halifax, July 24, 1683, photostat in private hands.

wishes in this case. Yet opposition might be expected from another quarter. The conscientious civil servant, though of lesser status than the Privy Councilor, was in a position to influence the judgment of his superiors. Such a man was William Blathwayt, secretary to the Lords of Trade. Blathwayt stood squarely behind the policy of attack upon proprietary and corporate colonies in the 1680's. A powerful Secretary of State with views opposed to Blathwayt's would have considerably diminished his power. But Sir Leoline Jenkins, though interested and well-versed in maritime affairs, did not interfere in matters relating to the colonies. The other Secretary of State, Sunderland, completely overawed Blathwayt. Though preoccupied at the time with greater stakes, he no doubt had time to inform Blathwayt of his views on the grant to Penn. It was Blathwayt who, in his official capacity, drew the final draft of the charter for Pennsylvania. As his biographer has said, "he was only the docile tool of agents more powerful than himself." There is good reason to believe this assertion, and to believe that the "powerful agents" included more men than the King and his brother. The theory that the King's advisers opposed the grant to Penn is no longer tenable.

Nor was there good reason for these men to oppose the grant to Penn, except for its proprietary nature. Pennsylvania had great potential as a trade depot. (That the colony was specifically called upon to obey the Acts of Trade and Navigation may be an indi-

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70 A list of the Privy Councilors from October, 1680, to March, 1680/1, appears at the end of this paper. There is also information on this in R. P. Bieber, The Lords of Trade, 1675-1696 (Allentown, 1919).

71 See Hall, Edward Randolph ..., for an illustration of this.

72 In September, 1675, Blathwayt became assistant to Sir Robert Southwell, secretary to the Lords of Trade. Southwell was very interested in colonial affairs, but in late 1679 sold his office to one Francis Gwyn, a move which "... left Blathwayt virtually in sole charge of the plantation office." Gertrude A. Jacobsen, William Blathwayt (New Haven, Conn., 1932), 85-95. This biography must be used with care, in her anxiety to make her subject seem more important and wise than he was, Miss Jacobsen is sometimes unreliable.

73 Ibid., 105-106, 118-119. Miss Jacobsen maintains that Penn paid special tribute to Secretary of State Jenkins for securing the grant, but the letter she cites as evidence does not support her argument. On the other hand, she is unaware of Sunderland's aid to Penn. She also claims, hoping to clear her subject of any complicity in Penn's charter, that Blathwayt never received any mark of gratitude from Penn. Unfortunately, she overlooked a letter Penn wrote to Gwyn and Blathwayt on Nov. 21, 1682: "I ware your favours about me which will not let me forgett you." Friends House Library (photostat in HSP).
cation that this potential was noticed.) There can be no doubt but that part of the impetus behind England's increasingly active colonial policy was commercial. In fact, in 1680, Penn published a tract entitled *The Benefit of Plantations or Colonies*, in which he listed four reasons to show that colonists "inriched and strengthened" England, and six reasons why England's apparent loss of population was due to causes other than emigration to America.\(^4\) If mercantilist and royalist were in accord as to the desirability of planting a colony, and a third party, such as Penn, was willing to finance it, the result seems evident.

What could appeal to the royalist in this venture? The area which became Pennsylvania was a sparsely populated gap in the complex of colonies on the Atlantic seaboard, possibly open to French or Dutch attack. As in the establishment of Georgia half a century later, strategic motives may, ironically enough, have played a major part in the founding of the Quaker refuge.

In summary, this much may be said about the grant to Penn. Charles II was willing that Penn get the land, more for personal than economic reasons. The Duke of York's motives in giving up a portion of his own territory were probably less altruistic, for the area was a financial drag on him. Commercial and strategic considerations gave the proposed colony a more universal appeal. Not surprisingly, efforts were made to include a number of restrictions in the charter, although the severity of these restraints has been overrated. Probably Penn's success in this whole matter can be largely attributed to the fact that he was a vigorous man with important connections who made his bid for favors at an advantageous moment. Although the King's close advisers apparently had not opposed him, there were others less charitable, judging by the letter which Penn wrote soon after receiving his charter. This letter serves as an excellent example of the way in which his faith and worldliness combined:

> And as to my Country it is ye Effect of much patience & faith as well as cost & Charges: for in no outward thing have I known a greater exercise, & my minde more inwardly resigned, to feele ye Lds hand to bring it to pass,

& truly I owne it their & so it came to me through great opposition of
envious grt men, & since I have been maid to Look to ye Ld. & believe in
him, as to ye obtaining of it, more than than ever as to any outward Substance,
it comforts me, & I am firme in my faith that ye Ld. will prosper it, if I &
they yt are & may be ingaged, do no greeve him by an unworthy use of it. 76

Lafayette College

JOSEPH E. ILLICK

75 Penn to Thomas Janney, Aug. 21, 1681, PMHB, XXXII (1908), 501-502.

Privy Council
October, 1680-March, 1680/1

4 Arthur Annesley, Earl of Anglesey (Lord Privy Seal)
2 Thomas Belaysyse, Viscount Fauconberg, later Earl of Fauconberg
2 Henry Bennett, Earl of Arlington (Lord Chamberlain)
James Butler, Duke of Ormonde (Lord Lieutenant of Ireland)
2 *Arthur Capel, Earl of Essex
Sir Robert Carr
Henry Cavendish, Duke of Newcastle
*James Cecil, Earl of Salisbury
Sir Thomas Chicheley
Henry Compton, Bishop of London
Henry Coventry
3 John Egerton, Earl of Bridgewater
2 Sir John Ernie (Chancellor of the Exchequer)
1 Daniel Finch, later 2nd Earl of Nottingham (First Commissioner of
the Admiralty)
Heneage Finch, later 1st Earl of Nottingham (Lord Chancellor)
1 Sidney Godolphin, later Earl of Godolphin
John Grenville, Earl of Bath
6 Henry Hyde, Earl of Clarendon
3 Lawrence Hyde, later Earl of Rochester (First Lord of the Treasury)
4 Sir Leoline Jenkins (Secretary of State, South)
Christopher Monck, Duke of Albemarle
3 Sir Francis North, Baron Guilford (Lord Chief Justice)
Charles Paulet, Marquis of Winchester, later Duke of Bolton
1 John Robartes, Earl of Radnor (Lord President)
3 Prince Rupert, Count Palatine of the Rhine and Duke of Bavaria
William Sancroft, Archbishop of Canterbury
3 George Savile, Viscount Halifax
James Scott, Duke of Monmouth and Buccleuch
2 Sir Edward Seymour
3 Henry Somerset, Marquis of Worcester, later Duke of Beaufort
2 *Robert Spencer, Earl of Sunderland (Secretary of State, North)
   *Sir William Temple

   * Removed from Council, January 24, 1680/1, and replaced by:

   Robert Bruce, Earl of Ailesbury
   Edward Conway, Earl of Conway (Secretary of State)
   Philip Stanhope, Earl of Chesterfield
   Aubrey deVere, Earl of Oxford

Numbers preceding names indicate times attending Lords of Trade when Penn’s prospective
charter was being discussed. There were six meetings.

The above information was derived from:
Godfrey Davies, “Cabinet and Council, 1679–88,” *English Historical Review*, XXXVI (1922),
1784* (Baltimore, Md., 1927), I, 428 f.; II, 1–16.
*Dictionary of National Biography.*