

REPORT OF THE COUNCIL.

THE report of Nathaniel Paine, Esq., Treasurer of the Society, and that of Mr. Edmund M. Barton, Librarian, make a part of this semi-annual report of the Council. The clear and satisfactory statement of the Treasurer will show that the permanent funds of the Society have been faithfully administered and that they are safely invested. According to the Librarian's report, eleven hundred and forty-seven books, fifty-one hundred and seventy-three pamphlets and one hundred and ninety-five volumes of newspapers have been added to the library during the six months ending the fifteenth day of the current month. These accumulations have been carefully examined, classified and placed ready for use. Full and interesting details of all these new acquisitions will be found in the Librarian's report.

Our associate, Dr. George Chandler, has not been unmindful of the needs of the Society and, as appears by the following letter addressed to the Council, he has made a liberal contribution to the Treasury of the Society by the gift of both money and books. His letter reads as follows :

*To the President and Council of the
American Antiquarian Society;*

GENTLEMEN :

I hereby offer for your acceptance, in the interest of family history, five hundred (500) dollars to establish a "George Chandler Fund" for procuring works on genealogy and kindred subjects;—that sum to be kept entire—the income of it only to be expended in books, charts, etc.

And, for the same purpose, I give two hundred (200) copies of the second edition of "The Chandler Family; the Descendants of William and Annis Chandler, who settled in Roxbury, Mass., 1637," for sale or to be used in exchange.

I desire that all works thus procured should be credited to said Fund by having placed in them (whether they are to be kept on the shelves of your library or to be again used for exchange), an inscription as follows :

AMERICAN ANTIQUARIAN
SOCIETY.

FROM

GEORGE CHANDLER,
WORCESTER, MASS.

GEORGE CHANDLER.

Worcester, Mass., January 28, 1884.

This letter was gratefully acknowledged by the Council soon after its receipt. The sum of money mentioned therein has been paid over to the Treasurer, and the books deposited in the library—they will be disposed of in accordance with the directions of the donor, and by that means we shall be able to make large additions to our list of local and genealogical histories.

It becomes the painful duty of the Council to call the attention of the Society to the death of six of its members within the last six months.

Mr. Clarendon Harris, one of the oldest and most respected citizens of Worcester, died in that city on the 12th of January last, in the eighty-fourth year of his age. He had been a resident of the town and city of Worcester sixty-two years. He was born in Dorchester, September 8, 1800. His father, Rev. Thaddeus Mason Harris, was pastor of the First Church in Dorchester forty years. His mother, Mary Dix Harris, was a daughter of Dr. Elijah Dix, a prominent citizen of Worcester during the last half of the last century. Mr. Harris came to Worcester in

1822, wrote one year in the office of the Registry of Deeds, Artemas Ward, Esq., being at the time Register. In 1823 Mr. Harris began keeping a book-store and continued in the business till 1848. He was chosen Secretary of the State Mutual Life Assurance Company, upon its organization in 1844, and continued to hold that office, until a few months before his death, the duties of which he discharged with great and unvarying fidelity.

In 1854 he was chosen Treasurer of the Worcester Five Cents Savings Bank and acted as such till 1872. In 1879 he was elected President of the same bank, and held that office at the time of his death. Mr. Harris took a deep interest in horticulture and was a prominent member of the Worcester County Horticultural Society; for several years he was Secretary and Librarian of the society. He prepared and published the first directory of Worcester, and as early as 1829 he published a map of the central village of what was then the town of Worcester. This map has become very rare and is esteemed of great value as showing the estates and residences of well known families of former generations. Mr. Harris became a member of the American Antiquarian Society in 1878. He accepted membership and made his annual contribution to the treasury of the Society, but never attended any of its meetings. He was a man of cultivated literary tastes—he loved good books in elegant binding. He was a judicious purchaser and collector of books, as is evinced by the library he left at the time of his death, which though not large is quite valuable and unique in certain departments. His collection of fables is quite complete. He was a person of deep and decided religious principles and convictions, which regulated his daily life. He performed all his duties during a long life faithfully but unostentatiously, and by observing the rule of “not too much,”

he was in due time,

* * * with ease

Gathered, not harshly pluck'd, for death mature.

Rev. Edwin Martin Stone of Providence, R. I., was born in Framingham, Massachusetts, April 29, 1805, and died in Providence, December 15, 1883. He learned the printer's trade and worked at it several years in Boston. In early manhood he became acquainted with Rev. Paul Dean, a noted preacher of the "Restorationist" faith—a branch of Universalists. He was greatly impressed by Mr. Dean's preaching, and felt called upon to enter the ministry himself. He was pastor of the Congregational Church at North Beverly, Mass., thirteen years, and left there in 1847 to take charge of what was called the ministry at large in the north part of Providence, and continued in that ministry until May, 1877, a period of thirty years. At the close of his pastorate, Mr. Stone preached a notable farewell sermon of an historical character. Mr. Stone devoted himself to literary work with great assiduity for many years. His first publication, which was in 1836, was a biography of Elhanan Winchester. In 1837 his "Hymns for Sabbath Schools" was issued, and in 1844 he published a compilation entitled, "Hymns and Tunes for Vestry and Conference Meetings." In 1843 his "History of Beverly from 1630 to 1842," appeared. In 1857 he published the "Life and Recollections of John Howland, late President of the Rhode Island Historical Society." His "History of the Providence Association of Mechanics and Manufacturers," was published in 1860; and other works in the following order: "The Invasion of Canada in 1775," including the journal of Capt. Simeon Thayer, describing the perils and sufferings of the army under Col. Benedict Arnold, in its march through the wilderness to Quebec. (1867). "The Architect and Monnetarian," a brief memoir of Thomas Alexander Tefft, including his labors in Europe to establish a universal currency. Mr. Stone also published various Legislative Reports; Reports of the Ministry at Large; Historical Sketches of the Services of the Rhode Island Regiments in the War of the

Rebellion. One of his latest and best works, published only a short time before his death, is "Our French Allies in the Revolution." He left several works in manuscript incomplete, but upon which he had bestowed much time and labor. He also had considerable experience in journalism, chiefly in connection with religious publications. He was a prominent and active member of the school committee of the city of Providence from 1852 until his death, a period of thirty-one years.

For nearly or quite thirty years he was a member of the Rhode Island Historical Society, during the greater part of which time he was librarian and cabinet-keeper of its northern department. His contributions to the archives of that society will continue as a living monument to his value as a faithful servant and valued historian.

In the several annual reports of the Rhode Island Historical Society, from 1872 to the close of Mr. Stone's term of office, a variety of historical data, including a letter of Roger Williams never before printed, is there found as the result of his painstaking labors to preserve the record of the past. He also edited one or more volumes of the collections of that society, and published, in connection with one of its reports, a "History of the Rhode Island Institute of Instruction."

Mr. Stone was an honorary and corresponding member of several of the historical, genealogical and antiquarian societies, both in this country and in Europe.

He was elected a member of the American Antiquarian Society in April, 1869.

Professor John Thomas Short, A.M., Ph.D., died in Columbus, Ohio, November 11, 1883. He was born at Galena, in that State, May 1, 1850. His parents, John and Elizabeth, who were natives of England, removed to Columbus soon after the birth of their son John Thomas. His education began in the public schools when he was six years old. At eleven he entered the preparatory depart-

ment of the Capital University in Columbus, and at fourteen he became a member of the freshman class in the same institution, where he remained two years. At the end of his sophomore year, having the ministry of the Methodist Episcopal Church in view, he went to the Ohio Wesleyan University at Delaware, where he completed the classical course at the age of eighteen and received the degree of A.B. For a year after his graduation he was the representative in Columbus of the *Cleveland Herald* and the *Cincinnati Gazette*, for which papers he reported with conspicuous ability the proceedings of the Legislature for 1868-9. In the fall of 1869 he entered Drew Theological Seminary, at Madison, New Jersey, where he completed the three years course of studies in two years and graduated in 1871 with the degree of Bachelor of Divinity. While he was at the Seminary, and before he reached his majority, he wrote and published his first volume, entitled, "The Last Gladiatorial Show." It is described as a sketch imaginative in form but historical in substance, of life in Rome during the last days of the Empire, showing the horrors of the Roman games and shows, and the persecutions endured by the early christians. During his first year at the Seminary, he reported with much care the lectures of the President, Dr. McClintock, delivered extemporaneously, on the *Encyclopædia and Methodology of Theological Science*. So well was this work done by the young student, that after the death of Dr. McClintock, at the request of his executors, Prof. Short prepared the lectures for the press, and the volume was at once adopted into the course of study prescribed by the bishops of the Methodist church for young ministers. After graduating from the Seminary he devoted a year to the study of history and collected materials for a history of the church, which he meant to make at once complete and popular. The next three years he devoted to pastoral work in Methodist churches in Dayton and Cincinnati, Ohio. He at the same time

conducted the historical department of the Repository, published at Cincinnati, and contributed to several magazines—the *Galaxy*, *Appleton's Journal*, *Scribner's Monthly*, and the *Methodist Quarterly*. Most of his articles were upon historical and archaeological subjects. He gave considerable time to the examination and study of the remains of the Mound Builders in the valley of the Ohio. At the close of the third year of his ministry he went to Europe and spent a year at the University of Leipzig. While at the University, in addition to his historical work, he studied the Spanish and Italian languages and contributed several articles on various subjects to American magazines. Before leaving Leipzig, the Faculty of the University becoming acquainted with Mr. Short's archaeological labors, proposed to him to prepare a thesis on some historical subject and forward it to them, encouraging the hope that the doctorate would be given him, although this would not be in accordance with the rule of the University in regard to the residence of candidates for its honors. After his return to this country he spent several months in the Congressional Library in Washington, gathering materials for the work on which his reputation as an author now chiefly rests, viz.: "*The North Americans of Antiquity.*" This work was published at the close of 1879, and on forwarding it to Leipzig as his historical thesis, he received from that University the degree of Doctor of Philosophy. In the early part of this work, speaking of the North American Indian, he says: "An incapacity for progress is characteristic of his entire career, and a mental inertia which no known power in civilization can overcome, marks his history, with few exceptions, as far as we are familiar with it." The early attempts to permanently improve the condition of the Indian race in New England would seem to justify the opinion of his incapacity for such improvement. Whether the measures now in operation to educate and civilize the Indian from other parts of the continent will

succeed any better remains an unsettled problem. At the close of the volume, Prof. Short generalizes in the following manner: "The uniformity with which the human mind operates in all lands for the accomplishment of certain ends, has in many instances resulted in the independent development of institutions common to several peoples. This fact, together with the probability that occasionally foreigners were cast upon the American shores, will be sufficient to account for many features which have been discovered in Mexican and Central American architecture, art and religion presenting analogies with the old world. The fact that civilizations having such analogies are developed in isolated quarters of the globe, separated from each other by broad seas and lofty mountains, and thus indicating a uniformity of mental operation and a unity of mental inspiration, added to the fact that the evidence is of preponderating character that the American continent received its population from the old world leads us to the truth, that God 'hath made of one blood all nations of men.'" Whether these interesting speculations are consistent with the expressed opinion as to the incapacity of the Indian for permanent mental improvement and civilization, the writer of this report does not stop to inquire.

In June, 1879, after having held for a year the position of Professor of History in the Wesleyan University at Delaware, Ohio, Mr. Short was appointed Assistant-Professor of History and Intellectual Philosophy in the Ohio State University. Subsequently he was promoted to a full Professorship of History and English Literature in the same University. He discharged the duties of this professorship with signal success, until the spring of 1883, when by reason of failing health he was constrained to tender his resignation. Hon. Isaac Smucker, one of our members, who knew Prof. Short intimately, writes of him that "Few young men gave greater promise of future usefulness, few of his years possess more thorough scholarship, few so

young have given such profound investigation to as great a variety of important subjects, few have performed so much valuable literary labor in so short a lifetime, few have led more useful lives or had such an honorable career."

Prof. Short was elected a member of this Society in April, 1881. He took a great and intelligent interest in the objects of the Society, and his early death entails upon us, as well as upon the republic of letters, a very serious loss.

James B. Campbell, Esq., who for nearly fifty years was a leader of the South Carolina bar, died in the city of Washington in November, 1883. His native place was Oxford in Massachusetts, where he was born in the year 1808. He was a descendant of honorable Scottish ancestry. As early as 1730 the family settled at Oxford, where they have ever since maintained a homestead. Mr. Campbell was educated at Brown University; but for some cause, unknown to the writer, he left the University without graduating, and when some years later a diploma was offered to him, he declined it. In 1828 he went to South Carolina and was employed as a teacher there. While teaching, he commenced the study of law, which he subsequently continued in the office of that distinguished jurist and scholar, Hugh S. Legaré. He was admitted to the bar in Charleston in 1831 or '32. He took an active part in the great nullification contest on the side of the Union. During the late rebellion, as has been said since his death by a not wholly friendly critic of Mr. Campbell's public career, he was "a Union man from first to last. His sympathy with the South was ardent, but none loved the Union more sincerely than he, or held the constitution, as it was, in higher reverence." It is said that he predicted the failure of the rebellion from the first, and strenuously opposed the attack on Fort Sumter and all other aggressive military operations against the government. In 1866 under the provisional

government of South Carolina, he was elected to the United States Senate, but he with other senators and representatives from States "lately in rebellion," was not allowed to take his seat. While his love of the Union and attachment to the constitution separated him from the governing party of the South, his extreme southern views on other questions cut him off from all sympathy and support from the North. In an address published by him in 1868, he declared that "The white man *shall* and the colored man *shall not* participate in, and control, the government of this country. There is no middle ground in this matter. The government must be all white or all colored." He seemed like a man to double duty bound, and in the vain endeavor to serve two masters he in the end lost the favor and confidence of both. But as has been said of him since his death "such was his intellectual audacity he exposed himself to censure where more cautious men would have escaped unnoticed. There was a boldness in him which bordered on rashness, combined with a sagacity which rarely erred save when passion obscured his judgment. In him there was no equivocation or evasion. What he did, right or wrong, he frankly avowed."

He was elected a member of this Society in 1866 upon the nomination of his early friend, the late Judge Barton. He did not accept the compliment in the same generous spirit with which it was tendered; and this accounts in part, for the brevity of this notice. But we need not forget that his election was at a time when the minds of men had not become settled and accustomed to the new order of things, and something may be forgiven to a great and positive character, which cannot at once adjust itself to its new environments. Mr. Campbell at the time of his death held a place in the front rank of the southern bar, and as an equity lawyer he is said to have had no equal among his associates.

George Dexter, Esq., was born in Cincinnati, Ohio, July

18, 1838. He was the fourth child of Edmund and Mary Ann (Dellinger) Dexter. His father, of a respectable English family, was born in Leicester, England, in 1800, and while still a young man, in 1823, emigrated to Cincinnati, where he acquired considerable wealth in mercantile pursuits.

George attended the private schools of his native city — spent ten months at the academy of Mr. Joseph Herron then connected with the Cincinnati College, and thence was sent to the classical school of Mr. E. S. Brooks in that city, where he received his preparation for college. “To Mr. Brooks,” he writes in his college class book, “I owe much of the fondness for classical studies which has been the sole distinguishing mark of my college course. . . I have passed an uneventful course, meeting with no obstacles and taking no prizes, except a ‘detur’ in 1855, and the thirty-fifth commencement honor.” He entered Harvard College in 1854 and graduated in 1858. In August of that year he sailed for Europe, intending to remain there some years, but he changed his plans, and in three months returned home. In March, 1859, he entered the Harvard Law School, and remained there till July, 1860, when he received the degree of LL.B. The year 1860–1861, he remained in Cambridge as a resident graduate. In July, 1861, he sailed for Europe again with his parents, both of whom were in ill health. His father was taken seriously ill in December, and required constant care from that time. They all returned to New York in July, 1862. His father died a week after landing. In September, 1862, Mr. Dexter resumed his residence in Cambridge, reëntering his name as a resident graduate. In May, 1864, he went to garrison the batteries at Provincetown, Cape Cod, in the twelfth unattached company, M. V. M., and returned in August. In 1864 he was elected secretary of his college class. He sailed again for Europe in September, 1865, and spent the winter in Paris, travelled in England, and returned to this country in June, 1866. In September,

1868, he married Lucy Waterston, daughter of Mr. Charles Deane, of Cambridge, and with his wife again visited Europe. They returned in December and took up their residence in Cambridge. In September, 1869, he was appointed tutor of Modern Languages in Harvard College, which place he resigned in October, 1870, to take the office of Steward. He resigned this office in December, 1871.

Mr. Dexter was elected a member of the American Antiquarian Society at the April meeting in 1876. To the October Proceedings, in 1881, he contributed a paper on "The Testimony of Fabyan's Chronicle to Hakluyt's Account of the Cabots." He was elected a member of the Massachusetts Historical Society, in November, 1877, and Recording Secretary in the following April, and he held this office for six years, when ill health, and absence from the sphere of its duties, compelled him to resign it.

Mr. Dexter's constitution never seemed robust, yet he appeared to enjoy good health. Although a student, spending much time among his books, he was fond of physical exercise. The effects of a cold which he took in the spring of 1880, he never recovered from. In the autumn of that year he seemed to be rapidly sinking; but he so far rallied that he was able to sail for Europe in October, and he spent the winter in the south of France, returning in the following June much improved. Yet the fatal disease (pulmonary consumption) was but temporarily arrested, and he was compelled as the winters came round to seek a warmer climate; spending a part of the winter of 1882-83 in Santa Barbara, California. He was so much pleased with the climate that he made arrangements to remove his family thither. And in September last, this purpose was effected. But he was too far reduced for such an effort. The journey by rail across the country was too much for him. He never rallied, and died December 18, 1883:

A college associate of Mr. Dexter and fellow member of the learned society of which he was the accomplished

secretary, in a commemorative address of the life and character of Mr. Dexter, says: "His capacity and knowledge, his powers of patient investigation, combined with an enthusiastic and elevated spirit, would, had life been spared, have gained for him very high distinction in this society and in all the walks of life. His was a sterling character, equable, trustworthy and strong, and his unvarying cheerfulness made his presence always a delight." The distinguished president of the same society after enumerating the many contributions to its proceedings, from the ever busy pen of Mr. Dexter, proceeded to say that "His tastes, studies, and acquirements gave promise of rich fruit in years to come; and nothing seemed wanting but health to insure for him a distinguished place in historical pursuits and literature." We may well add our tribute of respect to a character so full of merit, and regret the great loss our own Society has suffered in the early termination of a life so full of promise.

Hon. Dwight Foster, LL.D., died at his home in Boston, April 18, 1884. He was born in Worcester, December 13, 1828; graduated at Yale College with its highest honors in 1848. In 1849 he was admitted to the bar in his native city at the early age of twenty-one. He was elected a member of this Society, October 24, 1853; was chosen to the Council in 1856. This last position he resigned in 1863, and was again elected October 21, 1880.

Mr. Foster early distinguished himself at the bar and in 1861 became by election Attorney-General of the Commonwealth, and was re-elected the three following years. The first year of his service in that office he won high reputation as a learned criminal lawyer and able advocate, by the manner in which he conducted the trial of a capital case of great difficulty, the evidence in support of the prosecution being entirely circumstantial.

During the four years of the war his services as the legal adviser of the State government were of signal value; clear

in perception, prompt in decision, no necessary action of the government was delayed by any hesitation or timidity on his part. He was appointed an associate justice of the supreme judicial court in 1866. This office he resigned in 1869, and returned to practice at the Suffolk bar. His term of service on the bench, though brief, was long enough to show that he possessed all the qualifications of a wise, just and efficient judge. He combined dignity with courtesy of manner. As a *nisi prius* judge he knew how to despatch business, and yet give every suitor a full and fair hearing upon the merits of his cause. His written opinions, as they appear in the published reports, are models of brevity and directness, with force and clearness of statement. They are not much encumbered with *obiter dicta*, which serve only to bewilder and mislead the incautious practitioner who places much confidence in them.

Mr. Foster was for several years one of the law lecturers in the Boston University—his subject was equity; and his long and varied practice in the courts, and his profound knowledge of the principles of this great branch of the law, eminently qualified him for the post of instructor, in both the principles and practice of equity. He was no mere theorist, but, combined with scholarly tastes and habits, he possessed practical talents of a very high order. He was accustomed to deal with the most important questions before the court, and whatever he undertook to do was well done. He was associated with Mr. Trescott of South Carolina, and the late Mr. Richard H. Dana, as counsel for the United States in its controversy with Great Britain relative to the treaty rights of our fishermen. His argument in that matter, before the commission, showed how easily he could pass from the consideration of local to more general and international questions. But this was no surprise to those who knew Mr. Foster, for from the earliest years of his student life, he was noted for the quickness of his apprehension and his great powers of

acquisition. He was conscious of his own ability and at all times self-reliant. But he was generous in his estimate of others and never from envy or jealousy withheld merited praise even from a rival. One who knew him well during his whole professional life has said of him, since his death, that "in intellectual gifts of the highest order, nature had been profuse and bountiful to him. With a mind strong, vigorous, comprehensive and massive, his utterances, whether oral or written, at the bar or elsewhere, partook of the character of his mind. In his addresses and arguments, much of the force and logic consisted of clearness of statement. He was not without faith in appeals to the sympathies and feelings of juries and others, but he seemed much more confidently to rely upon their reason and understanding. He was as a counsellor, wise and safe. His views were comprehensive, and he never failed, in looking at a subject, to see both sides. His mind was judicial in its character—he was a born judge. Conscientious and impartial, his judicial opinions are models of excellence." Another of his associates has said of him that, "In social life he was most attractive, genial in temperament, agreeable in conversation, generous, cordial and hospitable. These it may be are of the ornaments and graces of life. But he was more than these, he was a thoroughly high-minded and honorable man, true and just, despising fraud and wrong, no matter what garb it might assume." Mr. Foster descended from a long line of honorable ancestry. His great-grandfather, Jedediah Foster of Brookfield, was a member of the provincial congress of 1774; he was elected a counsellor, but had the honor of being rejected by General Gage; he was a judge of the superior court and a member of the convention which framed the State Constitution. His son, Dwight Foster, was a member of the federal House of Representatives from 1793 to 1799, and a United States Senator from 1800 to 1803. Alfred Dwight Foster, the father of the late Judge

Foster, was a man of marked ability and learning as a lawyer, but he did not engage in the practice of law. Judge Foster, as has been seen, was not contented with these ancestral distinctions, but by his own honorable, useful and distinguished career, added new honors to the name as he passed it on to the next in succession.

Judge Foster was a generous benefactor of this Society, and its Proceedings have been enriched by the productions of his graceful pen. Some years since he volunteered to prepare the note book of Lechford for the press and to pay the expense of its publication as one of the publications of this Society. It is understood that, with the assistance of his son, Alfred Dwight Foster, he had nearly completed the necessary editorial labor on this curious manuscript note book of the first (in time) of Massachusetts lawyers, and that it is now passing through the press under the supervision of another member of the Council.

It is doubtful whether this Society was ever called upon before this day, to record at the same time the loss by death of three such members as Foster, Short and Dexter — men whose lives have been so full of performance, and from whose mature intellects and ready hands it was reasonable to hope for so much of eminent and useful service in the future.

All archæological studies are in their essential character historical, whether they relate to memorials of the past as found in wood or stone, earth or metal, or in the more spiritual forms of laws and letters. It may not be unimportant, perhaps, to discover if possible, the cause of the perforation in a half-decayed humerus, or to solve the problem as to whether the tumulus of the mound builders was a place of sepulture, or an altar on which men ignorantly worshipped an unknown God. But it cannot, surely, be less important to study the history of early institutions and primitive laws. And during the last few years the attention of historians and archæologists has been

largely devoted to the last named subject. Among the questions of this class, the origin of towns, especially of New England towns, and other organizations of a somewhat similar character in other States, has been much discussed by historical and antiquarian writers. But these writers do not agree in their theories or conclusions. On the contrary their views, as to the origin of towns and their relations to the State, are widely divergent. One may, therefore, be pardoned for entering anew upon the investigation and venturing to suggest some modified or new solution of the interesting problem.

De Tocqueville in writing upon "The American System of Townships," says, "The village or township is the only association which is so perfectly natural, that, whenever a number of men are collected, it seems to constitute itself. The town or tithing exists in all nations, whatever their laws and customs may be; it is man who makes monarchies and establishes republics, but the township seems to come directly from the hand of God." This may be regarded as an ideal, or speculative, rather than a historical statement of the origin of towns, yet it contains the announcement of a fundamental truth connected with the subject, and that is, when men come to live together in society, they find it necessary to establish, within comparatively narrow territorial limits, some form of local self-government; and this they do, not because some more or less remote ancestors may have done the same thing, but rather in obedience to a necessary law of social existence. And each generation or community of men, when left free to act, will establish such local institutions as will best subserve the necessities and wants growing out of their environments, and that without any servile imitation of those who have gone before them.

The late Prof. Parker, of the Dane Law School, in a paper read by him before the Massachusetts Historical Society, in 1865, on "The Origin, Organization, and

Influence of the Towns of New England," says, "A careful examination of the history of the New England towns will show that they were not founded or modelled on precedent . . . they were not contrived in the closet, nor in the hall of a legislative assembly, and brought into existence, with the powers and duties which we find attached to them, by the enactment of a law for that purpose. They did not burst into mature life by any previous contrivance. But, like most other useful machinery, they had their origin in the wants of the time, and came into existence by a gradual progress from imperfect beginnings."

Mr. Baylies in his memoir of Plymouth Colony, declares that "the origin of town governments in New England is involved in some obscurity. The system does not prevail in England. Nothing analogous to it is known in the southern States; and, although the system of internal government in the middle States bears a partial resemblance to that of New England, it is in many respects dissimilar." In another part of the memoir, the author says, "to the independent churches we may trace the original notion of independent communities, which afterwards assumed the name of towns, and which after having passed through an ecclesiastical state, and after the proprietaries became extinct from the special appropriations of all the lands within the bounds of their charter, assumed the shape of political corporations, with municipal and in part legislative powers within their own limits."

Our late associate, Judge Chapin, in his report for the Council at the semi-annual meeting of this Society, in 1870, discussing "the subject of our small municipalities and their relation to the government of the country," said, "the *modern* system of municipal organizations has had much to do with the civilization and progress of mankind. It has been adopted with more success and in greater perfection in New England, and in some other States settled by natives of New England, than in any other part

of the world." And he apparently adopts the opinion of another writer whom he quotes, that the "New England towns are models after the plan of King Alfred's hundreds." To this theory of the origin of our towns, it may suffice to show that it is but a tradition that Alfred devised the arrangement into hundreds and tithings; and besides the tradition itself is irreconcilable with the facts of authentic history (see Stubbs's Constitutional History, b. 1, p. 99), and moreover the English hundred had very little in common with the New England townships or towns. (*Ib.*, pp. 96-108).

Mr. Frothingham, in his history of Charlestown, affirms that "the nearest precedent for New England towns were those little independent nations, the free cities of the twelfth century, or the towns of the Anglo-Saxons, where every officer was elective." The same writer, in the report of the Council of this Society, prepared by him for the annual meeting, 1870, says that "the German and Anglo-Saxon principle of local government was early asserted in all the colonies, and that whether the organization was called parish, borough, hundred, town or county, the principle was carried out, that the inhabitants should manage their local affairs through officers legally elected. The municipality in New England was the simplest of all municipal forms and the best adapted to develop the republican idea."

An inquiry respecting the origin and constitution of the free cities of mediæval Europe would show that they differ very widely from the towns of New England. Most of those cities had existed before the fall of the Roman Empire; they had suffered from invasions and civil wars, and "upon the fall of the Empire, had still been repressed by the feudal polity." Their inhabitants had been despoiled and their commerce and industry destroyed. "But the municipal traditions of Rome had survived, and were confirmed by the free customs of the Teutons. The towns

gradually obtained from the crown, and from other feudal superiors, charters of enfranchisement, which secured them the rights of maintaining fortified walls, of raising militia, of municipal self-government." In Italy and other parts of Europe some of the principal towns grew into sovereign or municipal republics and formed alliances more or less permanent; hence arose the Hanseatic League and that other great confederation of cities called the Rhenish League, and the confederation of towns and cantons in Switzerland. From this brief sketch, the great dissimilarity between the free cities of the twelfth century and New England towns is apparent. The former had existed as component parts of pre-existing nationalities and had been overrun by barbarians and destroyed by feudalism. And after centuries of struggle, they succeeded in throwing off the yoke of feudalism and became independent municipalities; whereas the New England towns were original creations, on a virgin soil, and instead of being separate and independent municipalities, they were parts of the State, forming together one body politic.

Green, in his history of the English people, speaking of the towns in England, says, "in their origin our boroughs were utterly unlike those of the rest of the western world. The cities of Italy and Provence had preserved the municipal institutions of the Roman past; the German towns had been founded by Henry the Fowler with the purpose of sheltering industry from the feudal oppressions around them; the communes of northern France sprang into existence in revolt against feudal outrages within their walls. But in England the tradition of Rome passed utterly away, while feudal oppression was held fairly in check by the crown. The English town therefore was in its beginning simply a piece of the general country, organized and governed precisely in the same manner as townships around it. Its existence witnessed, indeed, to the need which men felt in those early times of mutual

help and protection. The borough was probably a more defensible place than the common village. But in itself it was simply a township or group of townships where men clustered, whether for trade or defence, more thickly than elsewhere. The towns were different in the circumstances and date of their rise. Some grew up in the fortified camps of the English invaders. Some dated from a later occupation of sacked and desolate Roman towns. Towns like Bristol were the direct result of trade. There was the same variety in the mode in which the various town communities were formed." This passage has been quoted, partly for the purpose of showing the fallacy of those theories which attempt to trace New England towns to a definite Germanic or Anglo-Saxon origin. Neither English towns nor towns on the continent had a common origin, and they differ essentially in the elements of their organizations and powers. We find substantially the same account of the origin and functions of townships, boroughs and towns in the *Constitutional History of England* by Prof. Stubbs. That writer, who seems to have explored the beginnings of English institutions more thoroughly than any of his predecessors, says, "the historical township is the body of allodial owners, who have advanced beyond the stage of land community, retaining many vestiges of that organization; or the body of tenants of a lord who regulates them or allows them to regulate themselves on principles derived from the same. In a further stage, the township appears in its ecclesiastical form as the parish or portion of a parish, the district assigned to a parish." This writer also clearly shows that in different parts of England these primary divisions assumed different forms, and passed under different names. So that when a writer speaks of Anglo-Saxon or English townships, boroughs or towns, he uses terms quite too indefinite in meaning to impart any useful information to his readers, unless he makes known the stage of development of which

he is discoursing and the time and place to which his speculations refer. The term township, in English history, is used to designate "the unit of the constitutional machinery, the simplest form of social organization, and towns were originally only large townships or collections of townships." This difference in the signification of the two words, town or township, is no longer recognized in this country, each here embracing within its meaning the entire territorial extent of the municipality and its government.

The distinguished historian, Mr. Freeman, in his introduction to *American Institutional History*, says, "The institutions of Massachusetts and Maryland, such at least among them as have been handed down from the foundations of the colonies, are not simply the institutions of Massachusetts and Maryland. They are part of the general institutions of the English people, as they are again part of the general institutions of the Teutonic race, and these are again part of the general institutions of the whole Aryan family. There I must stop; some of my friends are able to go further; and if they can prove something which I am satisfied with showing to be English, Teutonic, Aryan, is really common to all mankind, they do me no wrong." So far as this is regarded only as a declaration, that similar institutions have been or may be found, among all branches of the English race, whether modern or ancient, it will probably meet with universal acceptance. But if it means that the institutions of Massachusetts and Maryland are merely developments of English, Teutonic or Aryan institutions, and that they have not arisen from a more comprehensive law of human need and action, then there will be those who cannot accept the statement as the final and satisfactory solution of this question touching the origin and organization of these institutions. The President of the American Association for the Advancement of Science, in his inaugural address, at the opening meeting of the association in 1880, spoke of New England as "the birth-

place of American institutions, and that here the fathers laid broad and deep the foundations of American freedom, and that here was developed the township with its local self-government, the basis and central element of our political system — upon the township was formed the county, composed of several towns similarly organized; the state composed of several counties, and finally, the United States composed of several States.” This is a most remarkable genesis of town, county, State and nation; but it is not less imaginary and unreal, than the theory of a modern class of writers, who borrowing certain popular phrases from the scientists, speak of towns as the primordial cells out of which the State and nation have been evolved. These different and discordant theories and speculations respecting the origin of New England towns, which have been briefly stated, demonstrate the necessity of further examination and discussion, before a full and accurate understanding of the subject can be attained.

A careful study of the primitive institutions of all times and countries, can hardly fail to convince the inquirer after historical truth, that there were no pre-existing models for New England towns. These towns were original creations, formed to meet the exact wants of the settlers of a new and uninhabited country, and the founders of a new State. The joint-family group, the house communities, and the village communities which were fuller developments of the two former, and traces of which are found in the remote East, in Russia and other parts of Europe and in Northern Africa, the free towns of Italy and Flanders, the cantons of Switzerland, and the communes of France, are all generically different in their origin and organization from our New England municipalities. It is undoubtedly true, as Sir Henry Maine says in his *Early History of Institutions*, that “when the first English emigrants settled in New England they distributed themselves in village communities”; but these communities here possessed very little in common with

those of the same name above referred to. And in any consideration of this subject an essential fact to be remembered is, that both the Plymouth and Massachusetts colonies were settled under charters which incorporated the grantees and empowered them "to make, ordain, and establish all manner of orders and laws, for and concerning the government of the colonies and plantations, which should be necessary and not contrary to the laws of England"; so that in both colonies, before the organization of any towns, a government in fact, though not in name, equivalent to a State government existed, with the amplest powers of legislation and administration in all matters both civil and criminal. And the right to establish towns, and the title to all lands within the territorial limits of the colony, were to be derived from and through the colonial government. It is therefore manifest, that so far from its being true that the State by some imaginary process of evolution is derived from the town, that towns are in every instance dependent on the State government for their very existence. And the origin, organization and functions of towns can be shown in no better way perhaps than by the following statement which has been condensed from judicial decisions and legislative acts. The towns of Massachusetts have been established by the Legislature for public purposes and the administration of local affairs, and embrace all persons residing within their respective limits. At the first settlement of the colony, towns consisted of clusters of inhabitants dwelling near each other which by means of legislative acts, designating them by name, and conferring upon them powers of managing their own prudential affairs, electing representatives and town officers, making by-laws, and disposing, subject to the paramount control of the legislature, of unoccupied lands within their territory, became in effect municipal or *quasi* corporations without any formal act of incorporation. It is not known that any formal act similar to modern acts of incorporation of towns, was passed until

near the close of the colonial government, and the establishment of a new government under the Province charter. In some cases the general court granted land to proprietors, who maintained an organization separate from that of the town having the same territorial limits, and divided the land among the settlers who participated in the grant, or sold them to others for the common profit of all the original grantees.

In other cases there was no grant of land to a separate body of proprietors, but the town by its establishment became the owner of the land within its assigned limits. Sometimes the land granted was called a district or outlying portion of an existing town; again in other cases the grant was called a plantation, which in process of time became a town as population and wealth increased.

Grants were sometimes made in severalty to a considerable number of settlers, who were afterwards recognized as a plantation, settlement or town by a proper name, vested by general laws with certain powers, and afterwards had their bounds declared; or at a much later period, grants of a tract of land were made to a company of individuals named, with the view of constituting a town afterwards. In either case, their rights and powers, both of soil and jurisdiction, were derived from the government. And in all cases and from the earliest period, the legislature of the colony exercised the unquestioned authority of deciding what public duties should be discharged by the towns.

As further evidence of the absolute dependence of the towns upon the colonial government, for their right of self-government in local affairs, we find that as early as 1630-35 the general court required towns to provide arms for their inhabitants, powder-houses, standard weights and measures; to cause to be made and recorded a survey of all lands improved or inclosed, or granted by special order of the general court; to mend corn fences which they should judge to be insufficient; and directions were given in relation to

other matters purely local and in great minuteness of detail. Familiar examples of subjects deemed clearly within the scope of legislative authority may be found in the records of early colonial legislation, of acts making it the duty of towns to furnish and build highways, to provide burial grounds, to maintain public worship and schools, with suitable meeting-houses and school-houses. The town of Groton, which dates its origin back to 1655, furnishes a good illustration of the manner in which many towns came into existence. A number of individuals who seemed to be in want "of fresh fields and pastures new," petitioned the general court for a grant of land, and the answer to the petition was, "The court judgeth it meet to grant the petitioners eight miles square in the place desired, to make a comfortable plantation which henceforth shall be called Groton." A certain number of persons named were at the same time appointed by the court to act as selectmen for two years; at the end of which time other selectmen were to be chosen in their places. The way in which other towns grew up may be learned from the earliest records of the Massachusetts colony; from which it appears that "before the arrival of Winthrop and a majority of the assistants, with the charter of 1630, a great number of private grants had been made by Governor Endicott and his special council, and as these grantees would naturally desire to take their grants in proximity with each other, for mutual defence, convenience and comfort, they thereby formed themselves into settlements or villages; and the first step toward forming these settlements into corporations was to give them a name. But as these settlements had no fixed limits or boundaries, and it became necessary to fix such limits, in order to ascertain what proprietors should be rated in any assessment, and who should be subjected to the duties and entitled to the immunities of such village or settlement, these settlements first named and then bounded, must have assessors to apportion and collect taxes; they were also, by

general acts of the legislature, vested with power to choose other necessary officers and manage their own prudential affairs. And thus they grew to be *quasi* corporations ;” and afterwards either with or without formal acts of incorporation these settlements or villages became towns. But it cannot be necessary to pursue this subject further, to prove that New England towns were the product of the peculiar circumstances and necessities attending the original settlement of this part of the country and that they were not established and organized upon any Anglo-Saxon, Teutonic or Aryan models ; that the colonial government, antedating all town governments, possessed and exercised general legislative and administrative control over all matters in which the whole colony was interested, and that the towns possessed and exercised only such local self-government as was granted to them by the legislature. And thus constituted, a town becomes a body corporate, with power to make contracts and to hold property for public uses. It is required to support public schools for the education of all children within its limits, to establish and maintain public roads and to support the poor. At first, towns were not required to support public schools, but were required to provide for public religious worship. But soon after the settlement at Plymouth, the support of schools became one of the duties of towns and has remained so to the present day ; and it is now many years since all constraint of law was removed and provision for public worship wisely left to the voluntary action of the people. Towns may grant such sums of money as they may deem necessary for the support of public schools authorized by law, for the support and employment of the poor, for public roads, for the writing and publishing of their town histories, for burial-grounds, for encouraging the destruction of noxious animals, for necessary aid to disabled soldiers and sailors and their families, and to the families of the slain, and for erecting monuments at the graves of persons who served in the military

or naval service of the United States in the war of the rebellion, and for keeping in repair such monuments and other memorials within their limits erected to the memory of soldiers and sailors who have died in the military service of the United States. Towns may also grant money for procuring the detection of persons committing felony therein, for maintaining a public library and public reading-room in connection with it, for the purpose of celebrating any centennial anniversary of its incorporation and publishing the proceedings of any such celebration; they may also grant a limited amount for encouraging the planting of shade-trees upon the public squares or highways by the owners of adjoining real estate, and they may, under certain specified conditions, establish public baths. Towns may make by-laws for managing the prudential affairs, preserving the peace and good order, and maintaining the internal police thereof, and for various other purposes; such by-laws must, however, before they can have any validity, be approved by a court of the Commonwealth. Towns may also make provisions for supplying the inhabitants thereof with water, and may construct lines of electric telegraph for their own use along their public ways. They are required to elect all necessary town officers and may participate also in the election of representatives to the State and federal legislatures. There are various other matters and things for which our towns are authorized to make provision and appropriate money, but no more need be said to show that these town organizations are radically different from any municipal or political organizations of an earlier date.

It is true that many of the powers now possessed by towns are the product of comparatively recent legislative grants, but in its essential character, as a self-governing body, in all its local affairs, the town has undergone no change from the first settlement of the colony to the present time. The towns, as has been said, grew out of the wants, the dangers and necessities pressing upon the early settlers of the Pilgrim and the Puritan colonies, and they

were clothed with such powers and privileges as were best adapted to meet these wants and ward off these dangers. And as advancing civilization has created new local wants, the legislature has, from time to time, granted corresponding municipal powers and privileges to provide for them. The Pilgrim and the Puritan came to these shores for certain definite purposes—purposes which could never have been accomplished except through and by means of just such institutions as they founded. They were not living among the ruins of ancient empires, nor were they surrounded by hostile feudal barons by whom they might at any moment be plundered. They were confronted only by the unbroken forest and the untamed savage; and they built their houses, organized their towns, adopted means of self-defence and common safety against the actual dangers by which they were surrounded; they cultivated their fields either in common or in severalty as they chose, erected the church and school-house, enacted laws and provided for the administration of justice, and in all things else acted with reference to the exact situation in which they found themselves. They built according to no archaic or mediæval patterns, but established institutions as original in their character as their own situation was novel.

To show that the early settlers of New England were governed more by their environments here than by any traditions they brought with them, it would only be necessary to call attention to the fact that while towns were universally established in the Eastern States, emigrants from the same parent country and accustomed to the same institutions and laws there, in settling Maryland, Virginia, North and South Carolina, organized Parishes, Districts or Counties instead of towns. The objects of colonization in the two sections of the country were radically different, and hence arises in great measure the diversity in their institutions.

For the Council.

P. EMORY ALDRICH.

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