

Chapter 3

Land Systems of the Colonial Era

In tracing the land history of the American colonies, it should be borne in mind that the first settlements were made by chartered trading companies; i.e., organizations for the purpose of gain rather than political or territorial dominion. Accordingly, to understand properly the background of these settlements, a knowledge of the nature, character, and purposes of these so-called "chartered companies" or corporations is essential.

The Classes of Chartered Companies

There were, in general, two classes of chartered organizations in Great Britain for conducting foreign trade, the so-called regulated companies and the joint stock companies, or, as they are known today, the corporations. Out of the latter developed the colonial companies which comprised the organizations concerned with the American continent. In point of time the "regulated companies" antedate the "chartered companies." The former were organizations of individual merchants banded together in a way that resembled the old craft and mercantile guilds which then prevailed in the cities and towns of England. As stated by John P. Davis, "They were the result of the application to the foreign trade of England of the form of organization evolved from the experience of England in its domestic trade and industry."¹

In the fourteenth and fifteenth centuries, as British merchants gradually displaced foreigners in the foreign trade of the country, they fol-

¹*Corporations*, Vol. II, p. 66.

lowed, in organization, the structure of the older European groups, which constituted trading oligarchies, such as the Hanseatic League. The earliest associations of English merchants of this nature were known as "merchants of the staple." A staple was the town or place, at home or abroad, to which merchants who were engaged in foreign trade brought their goods to be sold or exported to foreigners. Usually they were grouped together on the basis of a single export or import commodity, such as wool or cloth. In this way they were closely identified with the local merchant guilds dealing in the same products, as, for instance, the Mercers Company of London. There were thus no questions regarding territorial matters or land acquisitions in their rights, privileges, or obligations.

The Merchant Adventurers

The actual forerunners of the later colonial companies were chartered organizations known as "merchant adventurers," organizations of national scope, which joined together the foreign traders into a sort of partnership. These traders, though still conducting their transactions as individuals, maintained a common code and submitted to a common jurisdiction, much in the manner of organized exchanges of modern times. The charters of such organizations originated in 1407, and the first was granted by Henry IV.

An oft-quoted description of such a company is given by John Wheeler, a writer of the Elizabethan era, in his *Treatise on Commerce*:

The Company of Merchant Adventurers consisteth of a great number of wealthy and well experimented merchants, dwelling in divers cities, great maritime towns, and other parts of the realm. . . . These men of old time linked and bound themselves together in company for the exercise of merchandise and sea-fare trading in cloth, kersey, and all other, as well English as foreign commodities vendible abroad, by the which they brought into the places where they traded, much wealth, benefit, and commodity, and for that cause have obtained many very excellent and singular privileges, rights, jurisdictions, exemptions, and immunities, all which those of the aforesaid fellowship equally enjoy after a well ordered manner and form, and according to the ordinances, laws, and customs devised and agreed upon by common consent of all the

merchants. . . . The said company hath a governor, or in his absence a deputy, and four and twenty assistants in the mart towns, who have . . . full authority as well from her Majesty as from the princes, states and rulers of the Low Countries, and beyond the seas. . . .²

The Development of the Joint Stock Company

In course of time, particularly when British commercial enterprise was carried into lands and countries largely unknown, the joint stock or "colonial company" was developed. The distinction between these organizations and that represented by the merchant adventurers was a pooling of a common purse and the sharing proportionately of the gains and losses. Moreover, it represented the furtherance of the principle of self-government by organizations trading beyond the seas and was fortified by the grant of a trade monopoly. Along with these privileges came the implied powers of land settlement and territorial exploitation.

The outstanding example of a concern of this character was the East India Company. This appears to be an offshoot of an older "regulated company" of Levant merchants. It was given an original charter by Queen Elizabeth I on December 31, 1600. It should be noted that this antedates by six years the granting of the charters to the two earliest companies organized to settle and exploit the North American continent. Though the East India Company was, to all intents and purposes, a trading monopoly, history reveals that it became a governing body with jurisdictional powers that also comprised the ownership, control, and distribution of land.³

The Plymouth and Virginia Companies

The first colonial charters for the settlement of the continent of North America, as is well known, were granted to the Plymouth Company and to the (London) Virginia Company. These were "twin charters," granted on the same day, on April 10, 1606, by James I. Both

²*Treatise on Commerce*, quoted in Davis, *op. cit.*, pp. 77-78.

³Another company having the broad powers and privileges of the East India Company was the Hudson's Bay Company, which has continued its existence for several centuries, but with alterations in its rights and powers.

were joint stock companies having self-governing provisions, to be composed of stockholders consisting of "knights, gentlemen, merchants and other adventurers." Though they were ostensibly trading corporations, similar to the East India Company, they were in effect colonizing companies, and the ownership of or profit from the sale of land was undoubtedly one of the purposes of their organization. This certainly was in the minds of the stockholders.

It was provided in the charters of both companies that the King was to grant land to any person recommended by the council of each colony on its petition, and, as shall be shown later, grants of land became so common, at least in the early period, that the King or his councilors were given little choice or consent in the transactions. The only reservation as to land use was the usual provision, in those days, that 5 per cent of the gold and silver recovered from the lands be reserved for the King.

A noteworthy feature of the charters was the almost entire absence of provisions as to the means, methods, and procedures for land distribution. All that was said in the Plymouth Company charter relating to this matter was, "We [the King] authorize the said Council [of the company] from time to time to distribute and convey such portions of lands hereby granted, respect being had to the proportions [investments of each] of the adventurers [stockholders]." No mention was made in the charters regarding the acquisition of land from the aborigines, and it seems that their title to the territory was ignored. However, it became a quite common practice to make so-called "purchases" from the Indians, both by the companies and the individuals. Such practices continued to provide fraudulent claims to land titles, until finally forbidden by the British Government in 1763.

As a matter of historical fact, in the very early period of settlement, a system of community landownership was followed both in the Plymouth and the Virginia settlements. It was not until after the danger of Indian attacks was lessened and the colonists had increased in numbers sufficiently to warrant a wider area of dispersion that systems of land grants and land allotments were adopted. Thenceforth, "land-grabbing" became the general practice in the colonies and persisted throughout the whole colonial area and long thereafter.

The Early New England and New York Land Systems

The Pilgrim Fathers who came on the *Mayflower* were a tightly knit group, not only because of their strong religious beliefs and their "separatism" from the Church of England, but also because of their sojourn to Holland, where, as foreigners, they naturally formed an isolated colony. But the fact that after their arrival on the New England coast they congregated in single settlements and lived for a while in what has been called "Yankee communism" was a matter of necessity more than of choice. They were confronted by a savage population whose land they appropriated and whose customary ways of life they disturbed. They accordingly deemed it safest to live in "forts," as was done elsewhere in unsettled regions. After a more peaceful environment developed with increase in their number, they were forced to spread out in order to obtain the necessities of survival. That they followed a system of "town settlements" was to be expected, not only because of the nature of the environment and terrain, but also because they, largely "landless" town dwellers in their homeland, set up town organizations such as long existed in England.

Regarding this type of village or community settlement in Britain, Thorold Rogers wrote:

The houses of the villagers, built of wattles, smeared inside and out with mud or clay, were crowded near the church, in the street of the settlement, though there were in large parishes, outlying homesteads. In all cases the church was the common hall of the parish, and a fortress in time of danger, occupying the site of the stockade which had been built when the first settlers occupied the ground. In the body of the church were frequently stored produce, corn and wool. Here too, I believe, the common feasts of the parish were held, till such time as the proceeds from the local guild enabled the people to erect their own guild-house. The only houses of any pretension in the village were the lord's, the parson's, and the miller's, who by prescription took toll of all the inhabitants, who were bound to grind at his mill, who is a busy, and according to current report, not an over-scrupulous personage in his dealings with his fellow villagers.⁴

⁴James E. Thorold Rogers, *The Economic Interpretation of History*, p. 14.

The New England town, on the basis of historical records, was almost an exact replica of this early English village. The difference was not in the structure of the village but in the system of land tenure. Because the heritage of the feudal system still left its marks, most of the English villagers held their lands either as freeholders or copyholders under fixed rents or services, or both. The most arable lands were still the property of the lord. These conditions, of course, were absent during the era of New England's settlement.

A feature of English feudalism was the allotment of strips of lands to families of the village to be individually cultivated. This we shall see was a basis for land distribution in early New England, but as feudalism was on the decline in Britain, the character of land tenure underwent a legal change. The fee-ownership system instead of the tenant system of ownership became prevalent in New England.

As previously stated, the *Mayflower* colonists, the first to make a permanent settlement in New England, were a group more interested in religious freedom for themselves than in profiting from landownership. Also, as has been already stated, they originally formed a compact association, which was at first intensified by the need of protection against the Indians. Seven years after they arrived, however, in order to substantiate their right to settlement, they bought from the London merchants seven hundred shares of the Plymouth Company stock for £1,800—an amount said to be subscribed by the merchants to send the Pilgrims to America. Through this purchase they were enabled to claim ownership of land, and thus it was possible to free themselves from their early communist organization, which had failed to work satisfactorily. However, they clung to their village type of organization. In the earliest distribution each able-bodied person was allotted a garden plot of one acre, and subsequently an additional twenty acres for each was distributed, while a "commons" of meadow land, as in Britain, was set aside for the general use. Here, again, no respect was paid to the actual ownership title to the lands held by the Indians. Their claim to the land was based entirely on a "juridical" right granted by the King of England, who granted away that which he did not own or have title to.

As the colonists increased in numbers and became self-supporting, they spread out by establishing new and similar village organizations, centered about a church. Thus a "township system" was established in New England, and the town became the basic unit of political organization. However, the methods of distributing land were not uniform, and a number of large grants, most of them originating in England, were made in the early period of New England colonization. These grants were made when the Massachusetts Bay Company, the company which absorbed the early Plymouth Colony, was created. In fact, grants of land were so numerous in the New England territory that their boundaries overlapped and there were constant disputes among the grantees. The charter of the original Plymouth Company was annulled in 1635. It was the practice of the Council of New England (the Plymouth Company) to distribute dividends to shareholders by parceling out territory among them by means of drawings as well as making positive grants.

The first of these drawings was made in 1623 (according to Justin Winsor, *Narrative and Critical History*) to the remaining twenty members of the Council. The region comprised land between Cape Cod and the Bay of Fundy. It appears, however, that few, if any, of those participating in the drawing ever claimed or benefited from their allotment. Five years thereafter (March 19, 1628) a grant of land in the same region, along with a charter, was issued to a new company to be known as the Governor and Company of the Massachusetts Bay in New England. The charter was similar to that of the original London Company, but the bounds of the territory were better defined and form the basis for territory comprised in the present state of Massachusetts. This company, as already has been stated, absorbed the early Plymouth Colony and removed the headquarters to Massachusetts, under the governorship of John Winthrop.

One of the earliest acts of the Massachusetts Bay Company was to appoint a committee to draw up a plan of land distribution. This committee, after a short period of deliberation, recommended that the land be distributed to the adventurers (members) and to others who were willing to settle in the colony. During the same year a number of "set-

tlers," with their families and indentured servants, mostly Puritans, arrived in New England and founded the town of Salem. A plan was soon adopted for allotting land "so as to avoid all contentions among the adventurers." By vote at town meetings or by appointed committees, the surrounding land was distributed on the basis of need or ability to cultivate the soil. Allotments usually ranged under a hundred acres.

Following the example of the earlier Plymouth Colony, a town plan was drawn up and, in addition to outlying allotments, a site within the town of not more than a half acre was given to each settler. Thus the town or unit system of land allotment became the common practice in the Massachusetts Colony. In this way the New England communities, such as Boston, Charleston, Springfield, and a number of others, had their origin. It may be said, therefore, that, unlike the earlier London Company, the Massachusetts Bay Company was not a "land company" or an instrument of speculation in real estate. No profit was sought by the shareholders by obtaining land to rent or to resell. Indeed, much of the success of the Massachusetts Colony, as well as its rapid settlement, may be ascribed to this situation.

Absentee Ownership in New England

It will be noted that, during the early phase of New England settlement, landownership was a form of "absenteeism." This, we have seen, gradually gave way to a policy of settler ownership. Absenteeism was well established in Britain before the era of colonization and became common not only in England but notably in Ireland. The first proprietors of the Plymouth Company had, with very few exceptions, no intention of removing to the territory which they acquired or expected to acquire. The motive of their land hunger was profit and not land settlement. With the growing scarcity of land about them, landlordism became as lucrative and as attractive as commerce and industry. No other investment offered a more certain and steady yield of income than real estate. After the fall of feudalism, large estates, peopled with crowded tenants, each bidding against the other for the use of the soil, gave some assurance of income accretion from ownership of land. "Rack renting" became a general practice in Great Britain and Ireland.

There was reason to believe that it could and would be extended to America.

As already indicated, large land areas were granted or obtained "by purchase" from the Indians in the early period of New England settlement. In many cases these "purchases" were made by individuals or groups and not by the governing authorities. Many of these lapsed or were rendered invalid in the confusion of conflicting land claims. Only a few of the grantees emigrated or sent agents to the country to promote settlements or to divide up the ownership of the region. As time went on, however, pressure of population led to actual settlements and, in many cases, the titles of the original grantees or their heirs and assigns neglected or were unable to assert or enforce their claims.

According to Alfred N. Chandler, a tract printed in Boston in 1716 stated: "Though this country be large, and much good land in it, which for want of people cannot be improved in many generations; yet a shame it is to say, this colony cannot provide themselves necessary food. In the first settling of this country, land was easy to be attained, and at a low price, which was an inducement to multitudes to come over as indented servants; but now the land being so generally taken up, few come over that can live elsewhere. . . . If the country should put a tax upon such tracts of land as lie convenient to settle upon, in order to make the holders willing to throw them up to the country, such yearly tax would be more justifiable, and more equal, than to tax a poor man ten shillings, that has much ado to live; those estates being valued worth hundreds of pounds by the owners thereof, who keep only in hopes that as other places hereafter shall be settled, they may advance upon the price. And in the meantime their poor neighbors must pay perhaps a greater tax than would be put upon him in the most arbitrary kingdom in Europe."⁵

In this we have an early statement of Henry George's philosophy. It is an indication that a "land question" developed early in America; that land engrossment, as in Europe, became a general practice and inequitable taxation in America dates back to early colonial times.

⁵*Land Title Origins, A Tale of Force and Fraud*, pp. 112-13.

The Town Proprietors of New England

The New England practice of creating towns, as a method of land settlement, was by no means a plan to give every inhabitant an allotment of land. Though the Massachusetts Bay colonists were in the main family groups closely connected socially and attached to a church organization, they were controlled and governed by a selected group comprised of shareholders in the company, who, as such, claimed pre-emption of the land. It was this governing body which distributed areas as town or settlement sites to quasi-corporations known as "town proprietors." These proprietors, as shareholders, upon moving to the areas allotted to them, proceeded to divide up the bounds of the town among themselves. The allotment of each was made by several methods, among which, as already indicated, was the drawing of lots. The allottees became the town fathers, the original landlords, whose heirs continued to enjoy this distinction for generations. Their followers or retainers, such as indentured servants, received no land and were deprived of the privilege of a voice in the local government. The ownership of land as a badge of suffrage continued in the New England colonies for many years after the Revolution. Moreover, in the early years of land settlement in New England, it was a policy of the "proprietors" to maintain their land monopoly, since, in some cases, the consent of the governing body was required to a transfer of an "in-lot" and "out-lot" by the owner.

Even in democratic Rhode Island, a "proprietary" was composed of two classes of inhabitants. According to Bicknell, in his *History of Rhode Island*, Roger Williams, after receiving a twenty-mile grant of land from the Indians, formed a proprietary of purchasers and created two classes of citizens, one consisting of landholders and the other of "young men, single persons, who were a landless gentry, with no voice in the affairs of the community."

This restraint on land alienation was probably the most distinctive feature of the New England town-proprietorship land system. The underlying cause of it was obviously the desire to preserve the homogeneity and the religious and political unity of the community. It was feared that the admission of strangers as freeholders would disrupt the

social and religious harmony which prevailed among the original settlers and proprietors. So well grounded was this restrictive provision that in 1660 the colonial legislature of Connecticut enacted a law which stated that "no inhabitant shall have power to make sale of his accommodation of house and lands until he has first propounded the sale thereof to the town where it is situated, and they may refuse to accept of the sale tendered."⁶ Other New England colonies, however, passed no general law in regard to this matter, but left it to be determined by the proprietors of the individual towns.

Another force which undoubtedly impelled the early New England town settlers to restrict land alienation was opposition to engrossment of real estate by wealthy or absentee owners. Thus the Springfield, Massachusetts, proprietors in 1636 would permit only one allotment of a town lot to an individual. Other early town settlements had similar restrictions. As time went on, however, dissensions arose because of the influx of newcomers, and the restrictions were gradually abandoned.⁷

The New England Plantation Allotments

Though it was a common practice to establish towns by proprietary groups in the early settlement of New England, there were also grants made of outlying areas. These were known as "plantations." For the most part they comprised land along rivers and in the fertile valleys. There is very little history regarding these grants, but in time they became important, since, with the forced withdrawal of the Indian inhabitants and the press of population growth in the face of limited tillable and accessible soil, the lands rose greatly in value. As a consequence, from almost the very earliest period, private land speculation became a feature of New England economy. Speaking of this, Akagi, in his book, *The Town Proprietors of the New England Colonies*, remarks:

Next to the migratory tendency of the New Englanders, the influence of the speculative proprietors was no less striking. The land speculation opened up a new avenue of activities to the shrewd land jobbers and of investment to capitalists of all sorts. It en-

⁶See *Connecticut Public Records*, Vol. I, p. 351.

⁷For more details regarding this topic, see Marshall Harris, *Origin of the Land Tenure System in the United States*, pp. 282-84.

riched many of the political leaders through their shares in the commercialized land grants. The speculative proprietors or their agents . . . created imaginary wealth and penetrated not only the New England colonies, but also New York and New Jersey, and even England, in their effort to harvest profits from their lands. As against the radical pioneer on the frontiers, the well-to-do and more or less prosperous class on the seaboard and in the old interior towns, disinclined to move away from their homes, became the breeding ground of speculators. But the good lands in the New England colonies were being rapidly occupied and exhausted and, by the close of the colonial period, these speculative proprietors had already fixed their eyes upon the more fertile and expansive western lands.⁸

The New Hampshire Grants

Space does not permit in this study a review of the land policies of methods of land distribution in the separate New England colonies. On the whole, the methods of land distribution were very similar to that already described. In some outlying areas, such as New Hampshire and Maine, some large grants of unsettled areas were made. New Hampshire became a royal province in 1741, with Benning Wentworth as the first governor. This section of New England had been originally granted to John Mason, but the grant was not confirmed by the King. However, Mason's heirs claimed the land and brought suits to confirm it. Much of the land was already taken up through titles granted by the Massachusetts Bay Company. In 1664, the Lord Chief Justices of England decided that the Massachusetts Bay Company had no right to grant these titles, and upheld the "vested rights" of John Mason in the land. This naturally created confusion and local resentment and resistance. Mason was finally bought off by the province.

The largest unsettled area of New Hampshire Province comprised what is now the state of Vermont. When New Hampshire became a separate province, Governor Wentworth, to forestall New York's claim to the area, lavishly granted large tracts to a number of individuals. These became known as the "New Hampshire Grants."⁹

⁸P. 295.

⁹See New York Historical Society Collections, 1869, 1870, Vol. 18, for a list of these grants.

Whole townships were wafted away. The governor, however, reserved for himself a fee, together with 500 acres in each township. In all, about 129 township grants were made of Vermont lands. The grantees proceeded to divide the townships into sections and offer them for sale in a manner similar to that followed later in the distribution of the public domain. At the end of ten years it was required that every landholder should pay an annual rental of one shilling per hundred acres, but there is no evidence that this rental was actually paid or ever claimed. At this period of New England settlement, when wasteland was becoming scarce, the holdings of most of the original grantees were disposed of to actual settlers and others.¹⁰ Thus another era of "absentee ownership" was ended.

However, New York still maintained its claim to the Vermont area, under the grant to the Duke of York, and, declaring the New Hampshire Grants illegal, proceeded to distribute the land on its own account. The dispute was not settled finally until after the admittance of Vermont as a state of the Union.

The Dutch Land System in New York

The Dutch settled New York under the auspices of a chartered colonial company similar to the British chartered colonial companies. As early as 1613, several Dutch merchants petitioned for and received the privilege of forming a company to trade in the region of the Hudson River. This was further amplified into a colonization corporation, the (Dutch) West India Company, in which the States-General of Holland had a financial interest. As is well known, this company made its first settlement on Manhattan Island, which was reputedly purchased from the Indians by trading merchandise valued at twenty-four dollars. The charter granted the right to distribute land to settlers, but large stockholders could be allotted areas under feudal or manorial rights, provided they furnished a retinue of actual settlers. These feudal lords were called "patroons."

Each patroon was to receive as his absolute proprietary a tract of eight miles along both sides of any navigable river as an "eternal

¹⁰See F. M. Woodard, *The Town Proprietors in Vermont*.

heritage," with additional lateral territory "so far as the situation of the occupier permitted." Settlers on the land were bound to it in a sort of serfdom and could hold land only under a system of quitrents or services. There was no requirement that the patroon reside on the land, and thus there was created a system of absentee ownership. Several such patroonships were established before the British occupation, the most famous of which was that of Killian van Rensselaer, a merchant of Amsterdam, whose landholdings in the neighborhood of Albany were held intact for several generations of his heirs.

In addition to vast areas granted to patroons, small allotments of land were made to independent settlers, particularly in the area around Manhattan. It should be noted, however, that the Dutch, unlike the English, Spanish, French, and Swedes, were not so much interested in land acquisitions as in trade with the Indians, especially in peltries. Instead of tobacco, their currency was beaver skins.

During much of the Dutch period of settlement, Holland was the leading trading nation of Europe. The difficulty experienced by the Dutch patroons in obtaining actual settlers on their domains and the limited areas opened up to settlement are evidence that landownership was not the prime motive of the Dutch adventurers. Landownership appears to have been only incidental, as a means of defense against the Indians and against competing colonizing powers.

The Rensselaerwick Manor

The largest and best known of the Dutch manors was Rensselaerwick. This was located on both sides of the Hudson River in the area around the present site of Albany, and thus included within its limits Fort Orange, set up by the Dutch West India Company as an outpost against the Indians and French. The manor embraced hundreds of thousands of acres. The original "patroon," as already stated, was Killian van Rensselaer, an Amsterdam merchant. He did not come to his domain, and the manor was presided over by an agent. Killian's heirs did come to New York and for generations presided over the vast estate. The patroonship was finally dissolved under the New York laws against primogeniture and the forceful commutation of land rents.

During the period of the Rensselaer patroonship, the domain was only gradually filled up with settlers. A map made in 1767 shows only 148 families on the west side of the Hudson and 133 families on the east side. However, by 1800, when Stephen van Rensselaer, the renowned politician and statesman, presided over the manor, the tenants had increased to 3,000. This was due in large part to Stephen van Rensselaer's activities and his liberal terms offered to new tenants. Nevertheless, in time, opposition to rents developed on the part of the tenants and there was trouble for the Rensselaers! The story of this "antirent war" will be taken up in a later chapter.¹¹

Among other manors in New York State which deserve mention, but which space prevents description of, were the Livingston Manor (160,000 acres), now in Columbia County; the Philipse Manor along the Hudson above New York (Yonkers); the Pelham Manor; the Manor of Morrisania (of which Gouverneur Morris became the owner); the Fordham Manor; and the Scarsdale, Cortlandt, and Philipsburg manors.

¹¹Daniel D. Bainard, *A Discourse of the Life, Services and Character of Stephen Van Rensselaer . . . with an Historical Sketch of the Colony and Manor of Rensselaerwyck* (Albany, 1839). See also S. G. Nissenson, *The Patroon's Domain* (New York, 1937).