

Corporations in the American Colonies

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Chapter One

The Legal Basis of Corporate Powers

The modern corporation is of ancient lineage. A thoroughly adequate account of its ancestry and early development has yet to be written. This, however, is not peculiarly a task for an American student. For by the time this continent was discovered the corporation had attained a definite status in the social constitution of England. During the first century of European contact with the New World the number of uses to which the corporate form was put was considerably enlarged. Before the English had made their first permanent settlements in America their ingenious merchant adventurers had combined with this developed institution their well-tested device of a joint stock or common capital contributed in shares, and so paved the way for its most extensive application, in the domain of business.^(1*) From the founding of Jamestown to the days of the Revolution, successive shiploads of British subjects brought with them larger and larger familiarity with the corporation, -- for plantation and town organization, for charitable, religious, or literary foundations, for trading and local business purposes. The institution was well matured in England during the American colonial period.

It is therefore not surprising that from a very early date the corporation should have played a prominent rôle in American life. "In fact," says a keen student of English and American history, "the whole advance of English discovery, commerce, and colonization in the sixteenth and early seventeenth centuries was due not to individuals, but to the efforts of corporate bodies."^(2*) It was a corporation to which Sir Walter Raleigh, in 1587, entrusted the colonization of Virginia. The first permanent English settlements, both in Virginia and in New England, were made on the initiative and at the expense of corporations modelled after the contemporary joint stock companies for foreign trade. For over a century before the Revolution the colonies of Connecticut and Rhode Island were each governed by a "Governor and Company," incorporated by charter from the English crown. The colony of Georgia was founded, and for twenty years had its destinies directed, by a group of charitable English gentlemen who constituted a typical English eleemosynary corporation. The London and Edinburgh missionary societies, incorporated, were important factors in promoting the religious development in several colonies.

Furthermore, as fast as the plantations grew into communities their inhabitants naturally reproduced the corporate institutions with which they and their fathers had been familiar in the mother country. The earliest of these to spring up in America were of the type which we should now designate as public corporations, such as towns, boroughs, and cities; but before the end of the colonial period a considerable number of truly private corporations had been established, for ecclesiastical,

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educational, charitable, and even business purposes.

It is the purpose of this essay to set forth the naturalization of the corporation in the New World; in other words, to summarize briefly the available evidence regarding these American colonial corporations, especially in so far as it concerns their number, classification, method of incorporation, and distribution among the several colonies. As an almost indispensable preliminary to this summary the legal basis upon which their powers rested will be first considered.

A corporation was then, as now, a group of individuals authorized by law to act as a unit, though the term was extended to include corporations sole (as well as corporations aggregate), in which the corporation consisted of an individual and his successors. Much was said about its being a person, -- a "fictitious person" indeed, intangible, but no less real; and of its perpetuity, even "immortality," -- despite the mortality which overtook many, especially those for business purposes. Certain attributes, at all events, this person or unified group was recognized as possessing. It had a name distinct from the names of its members, in which it could sue and be sued. It had a "common seal," peculiar to itself, which was required to evidence its acts. It had "perpetual succession," that is, members might come and members might go, but it went on forever -- provided of course no internal or external forces terminated its existence: the death, insanity, withdrawal of old members and the entrance of new ones in no way affected its legal existence or constituted more than incidents in its legal life. It had the right of holding property as its own -- which was not the property of any of its members or of all of them together -- and to dispose of such estate. Normally this property was not liable for obligations of members, and their private property was likewise not subject to be taken to pay debts of the corporation -- so distinct were the "persons" kept. Moreover, this body had a well-defined constitution, with power to regulate minor matters by by-laws not inconsistent with its basic act or the laws of the land. Such were the common characteristics of corporations, for whatever purpose they came into existence. Features peculiar to particular corporations were set forth in the document which normally evidenced its right to enjoy these high powers and privileges. All this was equally true in England and in America.

Now the English law of this period laid great stress upon the necessity for a proper legal foundation for the exercise of corporate rights.(3*) To be a corporation was a special privilege, not an inherent right, of a group of individuals. And unless a would-be corporation had been "created" or "erected" in due form and by a competent authority, its position was at all times subject to attack, and it was liable to be suddenly and ruthlessly shorn of the powers and privileges it was enjoying.

In England the normal mode of conferring corporate rights was by an issue of "letters patent" or charter from the crown, formally designating the body of individuals a corporation and specifying appropriate privileges.(4*) It was admitted that corporations might be created by act of Parliament, to which the king's assent was given, but Parliament seldom exercised this right directly and generally confined its acts relating to corporations to confirming royal charters, prescribing certain features of charters to be granted, and setting limits on the privileges which the crown might confer.(5*) Some bodies which had long exercised corporate powers, moreover, were recognized as corporations "by prescription" in view of their long existence as such, even though they could show no specific grant.(6*) There

were also certain groups which were deemed corporations by the common law without express grant of corporate powers; such were the "Parishioners or Neighbors in a Parish, Village or Town, & the Church Wardens of every Parish."(7*) Even in the case of corporations "by prescription" or "at the common law" the assent of the king was held to be implied. Neither class, however, formed an important one among seventeenth and eighteenth century corporations; and the dictum of Lord Coke pronounced in 1612, that "none but the King alone can create or make a corporation,"(8*) was quoted as substantially accurate throughout this period.

These principles of law applied to the English colonies in America, as part of the realm of England. The earliest colonial corporations, and occasional later ones, therefore possessed charters granted directly by the crown, which were issued in the same form, by the same process, and under the same conditions as charters for corporations to operate in the British Isles.(9*) But as soon as the colonial governments had attained a slight degree of development the great majority of American corporations were erected by grants from colonial proprietors, governors, or assemblies, and not by letters patent issuing from the English crown or by act of Parliament.(10*) Such methods of incorporation were not specifically provided for in the common law. It is necessary, therefore, to inquire with some care into the nature, extent, and limitations of the right to incorporate as it was enjoyed by these various colonial authorities.

In legal theory such rights of incorporation as were possessed by colonial authorities were presumed to be delegated, explicitly or by implication, from the ultimate source of that right, -- the sovereign. Such a delegation of the prerogative, though once prohibited, was by this time sanctioned by the common law, and was occasionally illustrated in English practice. Thus by special grant the chancellor of the University of Oxford was employed to erect corporations within his jurisdiction.(11*) Likewise by special authorization, in particular cases, the final act of erecting a charitable corporation was sometimes left to the founder.(12*) And by ancient custom the power to incorporate was counted among the "jura regalia" enjoyed by the Bishop of Durham within his "county palatine."(13*) In England proper such incorporation by delegated authority was of relatively minor importance. In the colonies, on the other hand, practically all the corporations that were strictly American in origin and control were thus created.

The delegation of the right to incorporate was seldom explicit and practically never comprehensive in terms.(14*) As a rule it had to be inferred from more or less general grants or relationships, It was perhaps least inadequately expressed in the grants to the proprietaries, In the first place, most of the proprietary patents contained an authorization, in more or less definite terms, to incorporate municipalities. Thus William Alexander, upon whom James I bestowed the province of New Scotland (1621), is invested "cum potestate civitates, liberos burgos, liberos portus, villas et burgos Baroniae, erigendi..."(15*) The charter of Maryland (1632) confers the right

"Villas item in Burgos et Burgos in Civitates ad Inhabitantium Merita et Locorum Opportunitates cum Privilegiis et Immunitatibus congruis erigendi et incorporandi...."(16*)

Substantially the same clause is to be found in the charters of

Carolana (1629), New Albion (1634), and Pennsylvania (1681),(17*)
In Maine, Sir Ferdinando Gorges is given

"power to erect, rayse, and builte, from time to tyme, in the province, teretory, and coasts aforesaide.... soe many forts, fortresses, platforms, castells, citties, townes, and viladges, and all fortificacons whatsoever, and the same and every of them to fortifie...; And to the said citties, boroughs, and townes, to graunt Letters or Charters of incorporacon, with all the liberties and things belonging to the same;..."(18*)

Practically the same provision appears in the Carolina grants of 1663 and 1665, though here it is expressed with slightly greater definiteness, in part:

"... and to the said cities, burroughs, towns, villages, or any other place or places within the said province, to grant 'letters of charters of incorporation,' with all liberties, franchises, and priviledges requisite and usefull, or to or within any corporations, within this our kingdom of England, granted or belonging."(19*)

The Carolana (1629), Maryland,(20*) and Pennsylvania grants, moreover, contain a further clause which seems broad enough to include the entire power in question: the proprietary is authorized

"to doe all and every other thing and things touching the premises which to him or them [his assigns] shall seeme requisite and meete albeit they be such as of their owne nature might otherwise require a more especial commandment and warrant, then in these presents is expressed."(21*)

Furthermore, it is not unreasonable to infer that the power to erect corporations was included among the prerogatives granted by the "Bishop of Durham clause" which most of the proprietary charters contain. This confers (to quote the grant of Maine)

"all and singuler, and as large and ample rights, jurisdicons, priviledges, prerogatives, royalties, liberties, imunities, fraunchisses and hereditaments, as well by sea as by land, within the said Province and premisses..., as the Bishop of Durham within the Bishopricke and Countie Palatine of Duressme in our Kingdome of England, now hath, vseth, or inioyeth, or of right ought to have, vse, and inioy within the said Countie Palatine, as if the same were herin perticularly menconed and expressed..."(22*)

Inasmuch as none of the charters contains any specific restriction upon the exercise of this power, the courts would almost certainly have upheld the proprietaries in a general exercise of it; and at least negative testimony to the truth of this view is given by the fact that no proprietary charter of incorporation seems to have been contested.

The power of incorporation was even less definitely conferred upon the colonial governors. The nearest approach to an express delegation of this prerogative appears in a section which was inserted in substantially the same form in most of the commissions issued to royal governors after 1680. In the commission appointing Sir Edmund Andros governor of New England, Connecticut, Rhode Island, New York, and New Jersey (1688), this

section reads:

"And Wee do hereby give and grant unto you full power and authority to erect raise and build within our Territory and Dominion aforesaid, such and so many forts platformes, Castles, cities, boroughs, towns, and fortifications, as you shall judge necessary; and the same or any of them to fortify... for the security & defence of our said territory; and the same again or any of them to demolish and dismantle as may be most convenient."(23*)

And at least one royal governor, Seymour of Maryland (1708), relied definitely upon this section in upholding his right to erect a municipal corporation.(24*)

In general it is not evident that the governors had this or any other particular clause distinctly in mind, or indeed that they thought any specific authorization needful. For such a feeling there was ample basis. The royal governor was the direct representative, the general agent, of the crown in the colonies. By virtue of this office he was capable of exercising the royal prerogative within his jurisdiction, subject only to the limitations imposed by his commission and instructions;(25*) and this part of the prerogative was among those upon which no limitations were placed. The general practice, therefore, among the royal governors was a somewhat free exercise of this power.

To this statement a few exceptions must be made. In at least one instance a royal governor questioned his competency to charter corporations. Lord Cornbury, governor of New York and New Jersey, refused in 1704 to issue a new charter to the rector and vestry of Trinity Church, New York City. "I told them," he wrote to the Lords of Trade, "I did not perceive that by my Commission I have any power to grant Charters of incorporation, and that I would not venture to do it without such a power."(26*) In the same year a charter prepared for St. Mary's Church in Burlington, New Jersey, failed to receive his consent, presumably for the same reason.(27*) In each of these cases, it will be observed, the proposed charter was for a private corporation. It does not appear that Cornbury was confronted with a request to charter a municipal corporation.(28*) Inasmuch, however, as his New Jersey commission, and probably the New York one as well, contained the usual clause relating to "castles, cities, boroughs,"(29*) he might have felt justified in granting charters for public corporations of this sort, despite the general terms in which he couched his refusal to the church "managers." Cornbury's caution, however, won him no particular commendation from the Lords of Trade;(30*) and neither his predecessors nor his successors scrupled to erect either public or private corporations,(31*) without encountering interference from the crown on this account.

Another royal governor, Sir Francis Nicholson, may have been haunted by a similar uncertainty as to his right to incorporate. While governor of Virginia after the Revolution of 1688, he was active in the movement to establish a college in that colony. But he seems to have had no thought of issuing its charter of incorporation, and to have entered cordially into the plan to have "Commissary" Blair go to England to solicit a charter direct from the crown.(32*) A little later, (1696), as governor of Maryland (then temporarily under royal control), he looked to the assembly to incorporate "the Commissioners and Trustees for the Porte and Town of Annapolis;"(33*) and in the same year he approved a "Petitionary Act" by which the assembly prayed the

crown to erect into a corporation, with powers humbly suggested in the act, "the Rectors, Governors Trustees and Visitors of the ffreeschools of Maryland."(34*) Again, when in 1722 he was governor of South Carolina, Nicholson had the colony agents in England instructed to obtain leave from the crown for the incorporation of Charles Town into a city; and, when impatient of delay in securing this authorization, he procured from the assembly the passage of an act granting corporate privileges.(35*) There seems to be no direct evidence in Nicholson's case, however, that these actions were due to his uncertainty as to his power to grant charters; and it is not at all improbable that considerations of practical policy were responsible for them.(36*)

Finally, Thomas Hutchinson, who was governor of Massachusetts just prior to the Revolution, inquired of the Lords of Trade in 1771 and 1772 whether he was not entirely competent to grant charters of incorporation without the intervention of the assembly, by virtue of his position as the crown representative. The question there at issue was merely whether the existing "Province Charter" abridged the prerogative in this particular. And on this point the solicitor of the Lords of Trade, Richard Jackson, remarked that in that colony

"the Governor though appointed by His Majesty nevertheless derives his power immediately from the Charter, which in many respects qualifies the power usually intrusted to his Majesty's Governors in other Colonies."(37*)

Besides these instances of skepticism on the part of the royal governors themselves in regard to this power, the colonists in a few instances contested the right of the governor to exercise it. The first of these, apparently, was in Maryland, in 1708. Seymour, the royal governor, had issued a new charter erecting Annapolis into a city. The assembly, which met not long after, unanimously resolved that the governor had no power "to grant the charter in Manner and fform as it is granted;" and the Annapolis delegates elected under the charter were excluded from the house. The governor indignantly denounced such "an Extrajudicial Way" of presuming "to construe her most Sacred Majesty's Royal Commission to me...", and stated that he looked "on this Aukward Step as Derogatory to her Sacred Majesty's Royal Prerogative." The assembly protested that they intended no "disrespect to your Excellency or any desire to lessen the prerogative of the Crown or the power that her Majesty has invested your Excellency with;" but, observing that the power was not clearly expressed in the governor's commission, they prayed that he would "leave the Granting of Charters undetermined till Her Majestys pleasure therein be further known."

The governor forthwith dissolved this assembly. When another had been convened, it took up the question and inquired if the governor had received any special instructions in the matter. Seymour responded with heat that he was already well satisfied that he had ample authority from the crown "to erect cities and boroughs as well as castles and forts, and that the first are to be erected by privileges and grants from the crown, neither are boroughs seldom or ever walled and fortified."(38*) Thereupon, after a conference between committees representing council and lower house, it was decided that with some modifications the charter would be acceptable. An act was accordingly passed which coded the charter with certain explanations and alterations which were desired by the assembly. Thus the incident was closed, the

assembly virtually admitting the governor's legal right to grant the charter.(39*)

About half a century after this Maryland dispute a similar objection was raised in Massachusetts. The General Court had refused the petition of certain gentlemen in the western part of the province for a charter for a new college in that section. When Governor Bernard was appealed to for a charter in the name of the crown without any act on the part of the assembly, he was about to accede to the request when the cry was raised that he had not the requisite power. The governor (according to his own account) insisted that he possessed the right to grant charters of incorporation, as the representative of the crown, but he did not choose to force the matter to an issue.(40*) Hutchinson, Bernard's successor, did a few years later take the trouble to refer the question to the Lords of Trade, as we have seen, and in this case their solicitor upheld the objection raised by the colonists in view of the existence of the charter.(41*)

In the royal colonies in general, however, where there were no colony charters to complicate matters, no such objection arose. For the most part the royal governors were troubled by no doubts as to their competency to charter corporations; in the main the colonists acquiesced in this as the normal procedure; and the official correspondence of the English authorities affords no indication that they took exception to this view.(42*) It was by charters thus granted, usually with the consent of the provincial councils, running in the name of the crown,(43*) and sealed with the provincial seals, that most of the colonial corporations were erected.

The right of proprietary governors to incorporate was presumably similar to that of the royal governors, except as the proprietary patents from the crown may have contained limitations on the proprietary's power at this point. In the cases of North Carolina and New Jersey, as will be mentioned below,(44*) some limitation on the right of the governor to incorporate was placed by grants to the colonists and their assemblies. In New Jersey, however, this limitation, if indeed it was ever effective,(45*) was soon removed at least as far as East Jersey was concerned; for in 1674 Sir George Carteret sent out an order that henceforth "the Granting & confirming of Corporations shall bee in the power of the Governor & his Councill."(46*) Elsewhere there seems to have been neither specific authorization nor express limitation.

In the charter colonies, finally, the governor possessed no independent powers. In Rhode Island there appear a few instances in which, as in England, the executive issued the actual charters of incorporation at the bidding of the legislature. In general, however, in these colonies the incorporating agency was the "Governor and Company," which acted simply by the regular passage of an act. And in any case the authority was to be traced through the charter granted by the crown.

The right of colonial legislatures to grant corporate privileges was expressly bestowed, apparently, only in the "Concessions" which the proprietors of Carolina and New Jersey issued to prospective settlers in 1665. In these cases the assembly was specifically empowered

"to erect raise and build within the said Province or any part thereof such and soe many forts fortresses Castles Citties, Corporat'ons Burroughs, Towns, Villages, and other places of Strength and defence, and them or any of them to incorporate with such Charters and Priviledges as to them shall seem good and the Grant made unto us will permitt...."(47*)

Like other acts of the assemblies, such action was of course subject to approval by the governor and council and to review by the proprietary. A slight limitation on this power appears in the "Fundamental Constitutions" which were promulgated for the Carolina colony in 1669, wherein an article stipulates:

"All towns incorporate shall be governed by a Mayor, twelve Aldermen, and twenty-four of the common Council. The said common council shall be chosen by the present householders of the said town; the Aldermen shall be chosen out of the common council, and the mayor out of the aldermen, by the palatine's court."(48*)

Obviously the section quoted has reference only to municipal corporations. Even this limited power was soon curtailed, and then withdrawn, in New Jersey. In 1672 the Lords Proprietors sent out a "Declaration of the True Intent and Meaning" of the Concessions, -- a document which was in part interpretative and in part amendatory. Here the order is given that "no more Corporations be confirm'd but by or with the special order of us the LORDS PROPRIETORS."(49*) And two years later, after the temporary reoccupation by the Dutch had ended and Lord Berkeley had sold his share in the province to Fenwick and Byllvng, Carteret issued a new "Declaration" which, as we have seen, withdrew from the assembly all powers relative to incorporation so far as his jurisdiction extended.(50*) The various "fundamental constitutions" which were issued by the later proprietaries contain no mention of this power. In fact it is of interest to observe that those issued in 1683 by the successors to Carteret's title to East Jersey(51*) contain almost verbatim the section in the Concessions from which the statement above (p. 16) has been quoted, minus the part specifically relating to corporations.(52*)

Except in these cases, therefore, the colonial assemblies which undertook to create corporations were forced to rely upon an implied power so to act; and the question whether this implication was justified remained somewhat unsettled throughout nearly the entire colonial period.

The power, even though unexpressed, was least dubious in the proprietary and royal colonies. Here the acts of the assemblies could not become laws until approved by the representatives of the proprietary or the crown, and they were further subject to annulment by these ultimate authorities. Hence it might well be argued that the essential consent of the final authority was as truly obtained to charters originally granted on the initiative of the popular representatives as to those issued directly by the governors.

Certainly the passage of acts of incorporation was sometimes looked upon with favor in such colonies by governors, colonists, and even crown ministers. Thus, for example, Cornbury in New York and Nicholson in Maryland and South Carolina two governors who were chary of exercising directly this part of the royal prerogative -- both recommended and sanctioned acts of incorporation passed by the assemblies.(53*) In Pennsylvania this was the common method, at least after 1740, and when in 1751 the proprietary offered to grant a charter to the new hospital for which subscriptions were being obtained, his proffer was declined on the ground that the assembly charter was preferred.(54*) And when Increase Mather was in England after the Revolution of 1688, the "great ministers of state" with whom he spoke countered his suggestion that a "particular charter" be granted to Harvard

College by the crown: as he reported,

"Answer was made that it should be so if I desired it, but that a better way would be for the General Court of the Massachusetts Colony by a law to incorporate their College, and to make it an University, with as ample privileges as they should think necessary."(55*)

The expediency of this method of incorporation was occasionally, indeed, called in question. Governor Hutchinson of Massachusetts thus wrote to the Lords of Trade in 1772 concerning the erection of corporations:

"If there is nothing in the Constitution [i.e., the Province charter] to abridge or restrain the Prerogative which is in the Crown of creating Corporations it may be more eligible to make them in that way than by a Legislative Act. The frequent passing such Legislative Acts will strengthen the exception that is taken to this part of the Prerogative."

And Solicitor Jackson, to whom the Lords of Trade referred the question submitted by Hutchinson, admitted that the Massachusetts acts directly under consideration were

"similar to some that Your Lordships and Your Predecessors have objected to in other Colonies because they were passed for a purpose which the power of the Crown was by itself competent to effect..."(56*)

The Board of Trade had earlier once declared that "Incorporation should arise from the bounty of the Crown by letters patent, rather than by act of Assembly."(57*) Yet they repeatedly allowed acts of incorporation. Indeed, of the many that must have been passed upon, only five seem to have been disallowed. Three of these -- two would-be charters for Harvard College, of 1692 and 1697, and a Maryland law relating to free schools were rejected because "no power is reserved to his Maty to appoint visitors for the better regulating the said Colledge" or schools.(58*) The others, for Charles City, South Carolina (1722), and an Indian missionary society in New England (1762), were disallowed on grounds of the expediency of the incorporation.(59*)

Precautions were sometimes taken in the colonies to avoid the accusation of lack of deference to the royal prerogative. Thus in South Carolina, after 1730, most of the acts of incorporation are cast in the form of memorials to the crown, "praying his most sacred Majesty that it may be enacted," and so forth; commonly with the addition of a clause postponing the operation of the act until the royal approval shall have been communicated to the governor.(60*) The Maryland "petitionary act" of 1696, relative to the establishment of a corporate board of visitors for the proposed free schools in that colony, is couched in similar language.(61*) It is not unlikely that this form was adopted because the governors considered applicable to incorporations a certain section frequently embodied in the governor's instructions, which provided that no bills of an unusual or extraordinary character by which the royal prerogative might be prejudiced should be permitted to go into effect unless a draft of the bill had previously received the royal approval, or unless the operation of at least the extraordinary provisions was suspended till the act had passed the royal scrutiny.(62*) This practice, however, was by no means general in the royal colonies,

and it was not uniformly followed in South Carolina.(63*)

On the whole, therefore, it may be concluded that in the royal and proprietary colonies the legal right of the assemblies to incorporate "under the negative of the governor" and subject to disallowance by the higher powers was recognized. This method of incorporation was the common one in Massachusetts (under the province charter), Pennsylvania, Maryland, and South Carolina; and in a few instances it was resorted to in other colonies of these types.

In the "charter colonies" -- Massachusetts till 1684, Connecticut, and Rhode Island -- the situation was somewhat different. These colonies were themselves corporations existing by virtue of crown charters.(64*) Their powers of legislation were technically based, at bottom, upon their right and power as corporations to pass by-laws for their better government. Now it was an established principle of English law that "one corporation cannot make another corporation." This is the unqualified declaration that appears in the first English book devoted to the law of corporations, which was published in 1659;(65*) and it was repeated in two decisions concerning the City of London, rendered about 1700, which were probably known or cited in the colonies.(66*) In presuming to pass acts of incorporation, therefore, these colonies were acting in direct contravention of this principle.

In view of this fact, and the eagerness with which unwarranted acts by the governing bodies of these colonies were seized upon by their enemies to justify the cancellation of their charters, it is not surprising that they acted cautiously in the matter of incorporation. It is worthy of note that the only corporations chartered in Massachusetts under the colony charter were incorporated during the English Civil War.(67*) It may also be significant that the act of 1650, by which Harvard College was incorporated, was not included in the Book of the General Laws and Liberties of the colony, published in 1660, nor in the revised edition of 1672; while the original act of 1642, which contained no incorporating clauses and which was in fact superseded by the act of 1650, was included in each collection.(68*) It is in Connecticut, however, that the necessity for caution was most expressly recognized, notably in the case of Yale College and again in the case of a trading company.

Yale College was founded at a time when the charter of Harvard College was in an extremely uncertain position. It was generally assumed that this charter had become void when the colony charter, by the authority of which it had been granted, was annulled, even assuming that authority to have been originally adequate.(69*) Its officers were therefore seeking for a new charter, and had not yet succeeded in drafting one to meet the approval of the General Court, the governor, and the English authorities; nor had the suggestion that a charter be obtained in England met with favor.(70*) The promoters of the new institution thought it wiser, therefore, not to seek an act of incorporation. Their dilemma is well expressed in a letter of Oct. 6, 1701, from Judge Samuel Sewall and Isaac Addington of Boston, who had been appointed to draft the authorizing act. Thus they wrote to the trustees, when enclosing a few "Hints" for the act:(71*)

"There is another cause which makes us slow and feeble in our Progress; Not knowing what to do for fear of overdoing.... We on purpose, gave the Academie as low a Name as we could that it might better stand in wind and wether; nor daring to incorporate

it, lest it should be served with a Writ of Quo-Warranto."

Nor would it have been only the college which might have been served with such a writ, if the act had purported to create a corporation, but the colony as well. Accordingly the so-called first charter of Yale College merely authorized certain "trustees, partners, or undertakers" to take the necessary steps to establish and manage "a collegiate school."^(72*) Later acts relating to the affairs of the "school" were frequent, but nearly half a century elapsed before it was formally incorporated.^(73*)

The case of the trading company is of special interest in that it concerns a business enterprise. In October, 1729, the assembly convened at New Haven was memorialized by "the New London Company for Trade," asking for a "patent" allowing the petitioners "to be a company" according to the tenor of certain articles and covenants recently agreed upon. They asked besides for power to issue bills of credit, "as we may see occasion at any time for promoting or maintaining our trade," and that forgeries of these should be punished as the law had prescribed for those of the colony itself. But the "patent" was not granted.^(74*)

In 1732 a more conservative petition was presented by the same group. This represented that

"for the promoting and carrying on Trade and Commerce to Great Britain and His Majesties Islands and Plantations in America, and other of His Majesties Dominions, and for encouraging the Fishery, &c, as well for the common good as their own private interests,... they have agreed and united themselves together to be a society, and have one common stock; also observing that, for want of authority to act and proceed in the business aforesaid, by votes, &c., as societies do, they labor under great disadvantages in carrying on and promoting the business and ends aforesaid."

They therefore prayed for the "countenance" of the assembly, "in putting them into a politick capacity as a society."^(75*) This petition was favorably received. An act was passed which constituted the petitioners "one society in fact and in name, by the name of the New London Society united for Trade and Commerce," and gave to them "and their successors" power to have continual succession and to be "persons capable by law to sue or be sued, by their name aforesaid, as other societies are by the laws of this government."^(76*) The officers, to be chosen annually, were to consist of a moderator, a clerk, and a treasurer. The moderator was to be "endowed and vested with authority as other moderators in other societies by law are." And a committee of three was to be appointed "for ordering the prudentials of the society, and for the putting in execution the orders, agreements and rules of the society, and carrying on and promoting the affairs and interests thereof."^(77*)

It would seem that the society thus authorized was to all intents and purposes a corporation, unless the assembly positively lacked the right to grant corporate privileges. But the elaborate precautions taken to disguise it appear in the obvious endeavor to make it conform to the structure and follow the principles of the contemporary ecclesiastical societies, and in the utter absence of all such terms as "incorporate," "corporation," "body corporate and politic," "charter," "patent," and even "company."

The later history of this "Society" throws still further

light on the attitude of the Connecticut government. Trading operations may have been begun,(78*) but funds were raised in a way not endorsed by the act. The members paid in their subscriptions in mortgages,(79*) and upon these as security an issue of £30,000 of bills of credit was provided for, about half this amount actually printed, and a large number put in circulation.(80*) Thus the company soon virtually established itself as a "land bank," -- a favorite scheme of the period.(81*) The governor, however, regarded this action as an abuse of the privileges granted and summoned the company to appear before the assembly at a special session which he called for February, 1733.(82*) There the society were desired

"to shew by what authority they had emitted some thousands of pounds, in like manner with the bills of publick credit on this and the neighboring Provinces, and to shew cause why they should not refund to the possessors of them according to the face of the said bills in a proper currency, and why they should not be amerced for their mismanagement, and cease to be a society."

The society pleaded that the assembly had no jurisdiction; that the bills emitted were merely in the nature of bills of exchange, which they had a right to issue;(83*) and further claimed "that they were a fraternity and not dissolvable."(84*) Nevertheless the assembly resolved that the society had forfeited its privileges and repealed the act which had granted them.(85*)

At the regular session of the assembly the following May (1733) the members of the now legally defunct society endeavored to obtain an act which should constitute them a company with explicit power to issue bills of credit. The assembly thereupon took into consideration the question whether it possessed the power "to make a company or society of merchants," and after due deliberation resolved,(86*)

"That although a corporation [such as the Governor and Company of Connecticut] may make a fraternity for the management of trades, arts, mysteries, endowed with authority to regulate themselves in the management thereof:(87*) yet (inasmuch as all companies of merchants are made at home by letters patents from the King, and we know not of one single instance of any government in the plantations doing such a thing,) that it is, at least, very doubtful, whether we have authority to make such a society; and hazardous, therefore, for this government to presume upon it."

And the new charter was refused, not least, however, as it was then resolved, because such acts as it contemplated would be contrary to the "peace and health of the colony."

Connecticut did not again authorize such a company or society of merchants until long after the Revolution. It was not many years, however, before her assembly became bold enough to pass an undisguised act of incorporation in behalf of Yale College (1745). Yet in May, 1758, the governor and council negatived the bill passed by the lower house on petition of Eleazar Wheelock, for incorporating the Indian School so dear to his heart, "upon the ground that their action would not be valid if ratified in England, beyond this Colony, and that a corporation within a corporation might be troublesome as Yale College had sometimes been." Six years later a like appeal to the same colony again proved unavailing.(88*) There were, however, a number of other corporations similarly created both in Connecticut and in the other charter colony -- Rhode Island.(89*) Nor was there any

effort, apparently, to attack the validity of such charters or to undermine the colony charters because of the action. In the latter part of the colonial period, therefore, the power of the colonial assemblies to incorporate was at least acquiesced in not only in the royal colonies, but in the charter colonies as well.(90*)

This acquiescence by the royal authorities is especially significant in view of an act of 1741 by which Parliament extended to the colonies the operation of the principal provisions of the "Bubble Act" of 1720.(91*) This act forbade

"particularly the acting, or presuming to act, as a Corporate Body or Bodies, the raising or pretending to raise transferrable Stock or Stocks, the transferring or pretending to transfer or assign any Share or Shares in such Stock or Stocks without legal authority, either by Act of Parliament or by any Charter from the Crown, to warrant such acting as a Body Corporate, or to raise such transferrable Stock or Stocks, or to transfer Shares therein...."

The particular occasion for the passage of this extending act was the floating in 1740 of the famous "Land Bank or Manufactory Scheme" in Massachusetts;(92*) and the act was manifestly aimed primarily to suppress or to prevent the formation of joint stock enterprises of this general character which did not have the sanction of crown or Parliament. The wording of the act, however, is far more comprehensive. "Acting... as a corporate body... without legal authority... by act of Parliament or by... charter from the crown" was to be penalized. Now in the colonies there were hardly any corporations which had been authorized by Parliament;(93*) only a very few enjoyed charters direct from the crown;(94*) and of the other colonial corporations only those chartered by royal governors, in the name of the crown (including perhaps the majority of the whole number, but by no means all), could, strictly speaking, be said to be authorized by "charter from the crown." Especially in the charter colonies, therefore, where acts of the assemblies were not subject to approval by a royal agent or to review by royal authorities, and where no clear grant of power to incorporate could be shown in the colony charter, it would seem to have been potentially a simple matter to subject to the penalties of this act the soCieties or companies whose only authorization or incorporation had been secured from these legislatures. However, the act was never invoked against any corporation formally created by any colonial assembly. It is probable that there was no thought of affecting colonial methods of incorporation when the act was extended to America; the clause, "either by Act of Parliament or by any charter from the Crown," is copied verbatim from the act of 1720, in which its limiting significance was practically nil, inasmuch as these were the only two methods by which corporate powers were regularly bestowed in England. Moreover, the act was not utilized to attack unincorporated joint stock companies, several of which appeared in America before the close of the colonial period.(95*) The act may possibly have hindered the development of colonial joint stock companies, corporate or unincorporate. Certainly resort might have been had to it if companies distinctly objectionable to the royal authorities had been formed. But its actual significance may easily be exaggerated. Virtually it seems to have become a dead letter in the colonies, as the act of 1720 became a dead letter in England. There is no evidence that it was of any consequence in the colonies after 1750.

A few more words may well be said concerning the opinions of Solicitor Richard Jackson rendered to the Lords of Trade on the questions submitted by Governor Hutchinson, to which brief reference has already been made.(96*) These opinions are significant as being perhaps the only instances in which the right of a colonial legislature to incorporate, and the corresponding powers of a royal governor, were definitely passed upon by a crown official.

The Massachusetts General Court, in 1771, passed an act to incorporate a marine society at Salem, similar to one established at Boston and incorporated in 1754.(97*) After the manner of Parliament the legislature prescribed the terms of incorporation and empowered the governor to issue the formal charter. Hutchinson refused assent to the act, because he believed probably erroneously(98*) that the disallowance of an act of 1762 incorporating a missionary society in New England had been due in part to

"the tendency of such an act to call in question the power of the Crown by the Governor to grant Charters of Incorporation, without the aid of the General Assembly."

He therefore inquired of the Lords of Trade his rights in the matter.(99*) No answer being forthcoming, Hutchinson gave his assent to this act when it was repassed in May, 1772, and likewise to a similar act incorporating the Overseers of the Poor of Boston; but he did not issue the formal charters and wrote again to the Lords of Trade that he would withhold them till he knew "the King's Pleasure" on the question of incorporating in this fashion.(100*)

On July 14, 1772, Mr. Jackson reported his opinion that both acts were "certainly proper legislative Acts," and strongly intimated that the charter limitations in Massachusetts were in that colony a legal bar to incorporation by the governor without the support of an act of assembly.(101*)

Nine months later, apparently not wholly satisfied with this opinion, the Lords of Trade requested Jackson's opinion on the question

"whether by the Principles and provisions of the Charter of the Province of Massachusetts Bay, the power of granting Patents of Incorporation is or is not thereby vested in the General Court."(102*)

To this Jackson answered:

"I have reconsidered the said Acts and have perused the said Charter and am of opinion that the power to incorporate, not by Patent but by Act of Legislature is vested in the General Court, under the negative of the Governor by the Principles and Provisions of the said Charter, inasmuch as the said Charter does not only grant full powers of Legislature to the General Court, of which the power to incorporate is a part, but has obviously in view the old Charter which it recites and under which this power was exercised frequently, for the constituting of Townships as it was evident it must still continue to be by somebody under the new one."(103*)

Whether this opinion would have been upheld in an English court may be doubted: for, in the first place, as will be pointed out below, the erection of townships could hardly be regarded as

a precedent for the creation of true corporations;(104*) and, in the second place, it is by no means clear that the power to incorporate would have been included among general powers of legislation, -- for even in England Parliament exercised the right

only infrequently and the crown lawyers repeatedly pointed out that the exercise of certain powers by Parliament implied nothing as to colonial powers of legislation.(105*) Jackson's opinion may possibly have been the more favorable to the colonists because he had lately served (1760-71) very acceptably as the English agent of Connecticut, one of whose corporations -- Yale College -- had, in the interim between the two opinions, conferred on him the degree of LL.D.(106*) But whether or not this pronouncement, or the grounds upon which it was expressly based, is to be regarded as legally correct, its existence without a counter-opinion is indicative of the liberal way in which the right of incorporation was regarded as belonging to the colonial legislatures.

It would appear, then, that not only Parliament and the crown, but colonial proprietors, governors, and legislatures as well, possessed, within limits which were not always clear but which were for the most part wide, the right to erect corporations for operation in America. To what extent was this right exercised?

NOTES:

1. The first joint stock corporation was chartered in 1555. W. R. Scott, *The Constitution and Finance of English, Scottish and Irish Joint Stock Companies to 1720* (Cambridge, Eng., 1910-12), ii, 37.
2. Edward P. Cheyney, "Some English Conditions Surrounding the Settlement in Virginia," in *Amer. Hist. Rev.*, xii, 512 (1907).
3. The English law of corporations during this period is presented in Lord Justice Coke's decision in the Case of Sutton's Hospital (1612), 10 Coke; William Shephard's *Of Corporations, Fraternities and Guilds...* (London, 1659); Anon., *The Law of Corporations...* (London, 1702); and William Blackstone, *Commentaries on the Law of England* (1st ed., Oxford, 1768), i, 467-485.
4. Blackstone, *Commentaries*, i, 472-473.
5. *Ibid.* Note the wording of the preamble of the act of 6 Geo. I, c. 18 (1720), which authorized the crown to grant charters, on specified conditions, to two insurance companies: "... whereas the sole Right and Prerogative of granting Charters of Incorporation (not being such as are repugnant to any Law or Statute of this Realm) doth belong to your Majesty." After the Revolution of 1688, however, it was recognized that the crown could grant no exclusive or monopoly privileges without authority from Parliament.
6. Blackstone, *Commentaries*, i, 473.
7. Shephard, *Corporations*, 3; Blackstone, *Commentaries*, i, 472; E. H. Warren, in *Harvard Law Review*, xxi, 308 (1908).

8. Case of Sutton's Hospital, 10 Coke 33 b (1612). Cf. Blackstone, Commentaries, i, 472-474.
9. See Charles Deane, "The Forms in Issuing Letters Patent by the Crown of England," in Mass. Hist. Soc. Proc., 1st Series, xi, 166-174 (1869).
10. It is not clear that there were in the colonies any corporations existing "by prescription" or "at the common law." In 1833, however, a judge of the federal Circuit Court stated (in the Case of Sarah Zane, reported in Hazard, Register of Pa., xiv, esp. 308-309): "The view which we feel constrained to take of the Constitutions of 1701, 1776, and 1790, all of which remain in force, so far as respects the rights of property, conscience, and religious worship, is this: that all bodies united for religious, charitable, or literary purposes -- though without a written charter or law -- are to be considered as corporations by prescription, or the usage of the common law of the State, with all the attributes and incidents of such corporations, and entitled to all rights which are conformable to the customs of the Province." It is to be doubted whether this was "good law." Cf. Dillingham v Snow et al., 5 Mass. 547, 568, where it was held that a corporation might be proved to be such without showing the act of incorporation.
11. Blackstone, Commentaries, i, 474,
12. Case of Sutton's Hospital, 10 Coke 33 (1612),
13. G. T. Lapsley, The County Palatine of Durham... (New York, 1900), 35-36.
14. A. M. Davis, "Corporations in the Days of the Colony," in Col. Soc. of Mass. Pubs., i, 185-190 (1895).
15. Ebenezer Hazard, Historical Collections: Consisting of State Papers and Other Authentic Documents... (Philadelphia, 1792-94), i, 136.
16. Ibid., i, 333,
17. The Colonial Records of North Carolina.... Ed. by W. L. Saunders (Raleigh, 1886-90), i, II; Hazard, State Papers, i, 166; Pa. Colonial Records (Minutes of the Provincial Council of Pennsylvania.... Harrisburg, 1838-52), i, 22.
18. Hazard, State Papers, i, 448.
19. N. C. Col. Recs., i, 30, III.
20. Edward McCrady, The History of South Carolina under the Proprietary Government (New York, 1897), 54-58, points out that both the Maryland and Carolina charters were based on the Heath patent for Carolana.
21. Quoted from the Pennsylvania charter, in Pa. Col. Recs., i, 22 (ed. 1858). For corresponding clauses in the other patents, see N. C. Col. Recs., i, 11; J. L. Bozman, History of Maryland... (Baltimore, 1837), ii, 17.

22. Hazard, *State Papers*, i, 444. For corresponding clauses in other charters, see *ibid.*, i, 162 (New Albion), 329 (Maryland), and *N. C. Col. Recs.*, i, 22, 103. Cf. also E. B. Greene, *The Provincial Governor in the English Colonies of North America* (New York, 1898), 8-9, and H. L. Osgood, *The American Colonies in the Seventeenth Century* (New York, 1904-07), ii, 4-7.

23. *N. Y. Col. Recs. (Documents Relative to the Colonial History of the State of New York....* Ed. by E. B. O'Callaghan, Albany, 1856-61), iii, 540. For similar clauses in other commissions, see *N. H. Province Papers (Documents relating to the Province of New Hampshire....* Ed. by Nathaniel Bouton, Concord, etc., 1867-71), i, 439, ii, 6-7, 60, 309, 370-371; *N. Y. Col. Recs.*, iii, 377, 827; *N. J. Archives (Documents relating to the Colonial History of the State of New Jersey, 1st Series.* Ed. by W. A. Whitehead, F. W. Ricord, and W. Nelson, Newark, 1880-92), ii, 497, iii, 298, iv, 1, vi, 9, vii, 2-4, ix, 30, 194-195, 272, 368-372; *N. C. Col. Recs.*, vi, 529. Commonly the advice and consent of the council is stipulated. Note the resemblance to the clause in proprietary charters; see *supra*, 8-9.

24. See *infra*, 13-14.

25. See Greene, *Provincial Governor*, 92-93; Edward Channing, *History of the United States*, ii, 245-248.

26. Letter of June 30, 1704, in *N. Y. Col. Recs.*, iv, 1114-1115.

27. *N. J. Arch.*, xiii, 396n; W. S. Perry, ed., *The History of the American Episcopal Church...* (Boston, 1885), i, 601.

28. The instrument which is sometimes referred to as the "Cornbury charter" of New York City was merely a "patent" for some land on Nassau Island: *Documentary History of the State of New York*, ed. by E. B. O'Callaghan (Albany, 1849-51), iii, 425; *N. Y. Council Minutes*, x, 148 (Calendar, 217).

29. *N. J. Arch.*, ii, 497. The New York commission is not accessible.

30. See letter in reply from Lords of Trade, Aug. 24, 1704: *N. Y. Col. Recs.*, iv, 1117-1118. The action does not appear to have been mentioned again.

31. Numerous instances of New York corporations are given below, and all of them were chartered by royal governors, except Trinity Church, whose second charter, at Cornbury's recommendation, was procured from the assembly. Bellomont, Cornbury's immediate predecessor, protested against two particular charters, one of a public and the other of a private corporation, which his immediate predecessor had granted; but his action can hardly be interpreted as questioning the governor's right to incorporate; see *infra*, 53, 76. Cornbury's doubt was repeated in much the same form about 1766 in connection with a request for a charter for a Presbyterian church, but here the legal question was outweighed by the ecclesiastical one; see *infra*, 77.

32. See *infra*, 45-46.

33. *Archives of Maryland*, (Baltimore, 1893-1912), xix, 452, 498 f.

34. *Ibid.*, 420-426. See *infra*, 72.
35. See *infra*, 58-59.
36. On Nicholson, see the sketch in the *Va. Mag. of Hist. and Biog.*, vii, 154 (1900).
37. *Acts... of the Province of Massachusetts Bay... 1692-1780* (Boston, 1892-96), v, 190-191; and see further *infra*, 27-29.
38. Obviously he has reference to the clause quoted *supra*, 8.
39. *Md. Arch.*, xxvii, 213, 216, 191-193, 229-230, 232-234, 272-273, 275-276.
40. Letter of Bernard to Lords of Trade, April 12, 1762: *Mass. Prov. Acts*, iv, 562-563; Josiah Quincy, *History of Harvard University* (Boston, 1860), ii, 105-112, 464-479.
41. See *Supra*, 13, and *infra*, 27-29.
42. No exhaustive study of the records has been made as a basis of this assertion, but it seems highly probable that evidence to the contrary would be prominent if it existed at all.
43. For this reason the charters thus granted are frequently termed "royal charters." They should be distinguished, however, from those which were granted in England, directly by the crown; for the crown authorities in England had even less supervision over the charters granted by the colonial governors than they had over colonial acts of incorporation, which at least were subject to review in England.
44. See *infra*, 16.
45. See *infra*, 67.
46. *N. J. Arch.*, i, 174.
47. *N. J. Arch.*, i, 33; *N. C. Col. Recs.*, i, 83. The Duke of York's leases and releases to the New Jersey proprietors do not mention this right: *N. J. Arch.*, i, 8-14. Compare proprietary charters and commissions to royal governors, quoted *supra*, 9, 10.
48. *N. C. Col. Recs.*, i, 202. These were formally abrogated in 1693, and were never fully in force.
49. *N. J. Arch.*, i, 100. Cf. Penn to the Provincial Council, Jan. 2, 1691-92: "And for all New Towns or Charters or Counties &c Nothing to be done but by my Knowledge and Consent...." *Pa. Mag. of Hist. and Biog.*, xxxiii, 425.
50. *N. J. Arch.*, i, 174. See *supra*, 15.
51. These were never in force: E. P. Tanner, *The Province of New Jersey, 1664-1738* (New York, 1908), 88-90.
52. *N. J. Arch.*, i, 399-400.
53. See *infra*, 58-59, 70, 72, 76-77.

54. See *infra*, 83.

55. Quoted by A. M. Davis (*Corps. in Col.*, 206) from "Brief Account concerning Several of the Agents of New England, their Negotiation at the Court of England, with some Remarks, etc. [Increase Mather.] London, 1691, p. 21."

56. *Mass. Prov. Acts*, v, 190-191.

57. Quoted, apparently from a letter of Aug. 2, 1750, in E. B. Russell, *The Review of American Colonial Legislation by the King in Council* (New York, 1915), 178.

58. Russell, *Review of Amer. Col. Legis.*, 177. *Mass. Prov. Acts*, i, 38-39, 288-290; and *infra*, 77, 84-85.

59. See *infra*, 58-59, 80-81; and Russell, *Review of Amer. Col. Legis.*, 178.

60. See, e. g., *S. C. Stats. at Large*, iii, 431-436, viii, 106-114. Cf. *N. C. Col. Recs.*, ix, 818, for Governor Martin's postponement of granting a new charter requested by the Wilmington freeholders, in 1774, till the previous sanction of the crown officials could be received.

61. See *supra*, 12.

62. The South Carolina instructions are not available for the time of the passage of these acts. The clause appears at least as early as 1708 and was probably generally included thereafter. See, e. g. the commission of Lovelace in New Jersey: *N. J. Arch.*, iii, 320.

63. Cf. *N. Y. Col. Laws*, i, 564-569 (Trinity Church), and Edward McCrady, *The History of South Carolina under the Royal Government* (New York, 1899), 42-43 (Charles City).

64. See *infra*, 39-41.

65. Shepherd, *Of Corporations, Fraternities and Guilds*, 9, 112.

66. *Robinson v. Groscolt*, Comberbach 372 (1696), and *Cuddon v. Eastwick*, 1 Salkeld 192 (1704).

67. In addition to Harvard College there was authorized in 1652 a corporation for providing a water supply on Conduit Street, Boston, which because of the lack of a corporate name may not have been a legal corporation: cf. *infra*, 89. At various times, beginning as early as this, efforts were made to secure a municipal charter for Boston, without success; but the records do not indicate that the doubt of power to grant the charter prevented the passage of the act desired. Josiah Quincy, *Municipal History of Boston* (Boston, 1852), 16-18.

68. A. M. Davis, *Corps. in Col.*, 199. Judge S. E. Baldwin states (*Private Corporations*, 266-267 and elsewhere) that the grant of the Harvard College charter was a ground for attack upon the colony charter; but I have been unable to find evidence to support his statement.

69. Quincy, *Hist. of Harvard Univ.*, i, 58, 276, and *passim*; A. M. Davis, *Corps. in Col.*, 203-210. See also the letter of Governor Cranfield of New Hampshire to the English authorities, June 19, 1683, quoted in Palfrey's *History of New England* (Boston, 1859-75), iii, 412 n. Acting on a similar assumption, many of the colonial corporations which had been chartered by royal governors sought, after the Revolution, for acts confirming old charters or granting new ones.

70. Quincy, *Harvard Univ.*, i, 81-109, 151, 158-159; and *cf. Supra*, 18.

71. *Letter Book of Samuel Sewall* (*Mass. Hist. Soc. Colls.*, 6th Series, Boston, 1886-88), i, 263 264; Forrest Morgan, *Connecticut as a Colony and as a State...* (Hartford, 1904), i, 427-429.

72. *The Public Records of the Colony of Connecticut...* Ed. by J. H. Trumbull and C. J. Hoadley (Hartford, 1850-90), iv, 363-365: October, 1701.

73. In 1745. See *infra*, 85.

74. *Connecticut MSS. Archives* (Trade and Maritime Affairs), i, No. 161: quoted in A. M. Davis, *Currency and Banking in the Province of Massachusetts Bay*, part ii, *Banking* (New York, 1901), 105. This company is best discussed in this chapter by Davis.

75. Quoted from the preamble of the act: *Conn. Col. Recs.*, vii, 390-391.

76. *Cf.* act of May, 1705: *ibid.*, iv, 500-501.

77. *Ibid.*, vii, 390-392.

78. F. M. Caulkins, *History of New London*. (New London, 1852), 243.

79. See proceedings for dissolution: *Conn. Col. Recs.*, vii, 421-422.

80. *Talcott Papers* (Hartford, 1892, 1896), i, 269-270; A. M. Davis, *Mass. Bay Banking*, 112, 118.

81. *Cf.* A. M. Davis, *Mass. Bay Banking*, *passim*, and *infra*, 90-91 (New Jersey scheme, 1740).

82. *Talcott Papers*, i, 268-270.

83. *Conn. Col. Recs.*, vii, 420-421. Note the judicial character of the proceedings.

84. *Conn. MSS. Arch.* (Trade and Maritime Affairs), i, No. 168: quoted by A. M. Davis (*Mass. Bay Banking*, 108 n).

85. *Conn. Col. Recs.*, vii, 421-422.

86. *Ibid.*, vii, 449.

87. See *Robinson v. Groscolt, Comberbach* 372 (1696); *Cuddon v. Eastwick*, 1 *Salkeld* 192 (1704). Massachusetts had already done this: *Mass. Col. Recs.* (*Records of the Governor and Company of*

the Massachusetts Bay.... Ed. by N. B. Shurtleff, Boston, 1853-54), iii, 132-133, 135 (1648).

88. John M. Shirley, *The Dartmouth College Causes, and the Supreme Court of the United States* (Chicago, 1895), 22-23. In the latter instance the petitioners desired permission to locate anywhere. For trouble with Yale College, see Benjamin Trumbull, *A Complete History of Connecticut...* (New Haven, 1818), ii, chap. 12.

89. See *infra*, 78-79, 83, 85, 88-90, 100.

90. The growing strength of the colonies and the growing complexity of England's own problems probably help to account for this acquiescence.

91. *Statutes at Large*, 14 Geo. II, c. 37. Cf. act of 1720: *ibid.*, 6 Geo. I, c. 18, esp. sects. xviii-xxviii. Cf. also A. M. Davis, "Provincial Banks, Land and Silver," in *Col. Soc. of Mass. Pubs.*, iii (Boston, 1900), 27-28, and *ibid.*, *Mass. Bay Banking*, 152, 160-163.

92. A. M. Davis, *Mass. Bay Banking*, chap. 7.

93. See *infra*, 38.

94. See *infra*, 32, 34, 35, 38, 39-41, 46.

95. See *infra*, 91-98.

96. See *supra*, 13, 18.

97. See *infra*, 101.

98. See *Supra*, 18, and *infra*, 80-81.

99. Letter of May, 1771: *Mass. Prov. Acts*, v, 190.

100. Letter of May, 1772: *Mass. Prov. Acts*, v, 190-191.

101. *Ibid.*, v, 191: quoted *supra*, 13.

102. *Mass. Prov. Acts*, v, 191.

103. Opinion dated April 13, 1774: *ibid.*, v, 191.

104. See *infra*, 61-63.

105. George Chalmers, *Opinions of Eminent Lawyers on Various Points of English Jurisprudence*. (London, 1814), i, 263-264, 296.

106. *Conn. Col. Recs.*, xi, 357, xiii, 518; S. E. Baldwin, "American Business Corporations before 1789," in *Amer. Hist. Assoc. Report*, 1902, i, 261.

Chapter 2

Colonial Corporations Chartered in England

The corporations chartered for activity in the American colonies were created, for the most part, by charters from

authorities in the colonies. On the other hand there were several corporations whose primary concern was with this section of the New World that were chartered in England, nearly all by the crown. About half of these maintained the seat of the corporation in England and remained distinctly English in complexion and control; among these are to be counted the earliest colonization companies and several famous missionary societies. The other half were from the outset or quickly became distinctly American in control and in the location of their governing bodies; of these the most noteworthy were the "companies" whose destinies were linked with those of the colonies of Massachusetts, Rhode Island, and Connecticut. Inasmuch as both of these classes of corporations were English at least in charter, and especially since many of them were concerned with the founding of colonies, they may well be considered before those which developed entirely in the colonies and which were throughout definitely American in origin, charter, control, and location.

The first of these English corporations to be formed primarily for an American enterprise was erected in January, 1587, by an "indenture of graunt" given by Sir Walter Raleigh, now by royal patent "chiefe gouvernour of... Virginia," to John White and twelve others, "of London, Gentlemen."(1*) These were constituted a body corporate with the title of the Gouvernour and Assistants of the Citie of Raleigh in Virginia;(2*) and to them was granted "free libertie to carrie with them into the late discovered barbarous lande, and countrie, called... Virginia... such, and so many of her Maiesties Subjects, as shall willingly accompany them,... and also diuers and sundrie other prerogatiues, iurisdictions, royalties and preheminencies...."(3*) These were then the leaders of the expedition which set out for Virginia in May, 1587.(4*)

Two years later Raleigh made a new indenture with certain of the original associates (most of whom were still "lying in Virginia") and nineteen "merchants of London" "aduenturers... purposing and intending to be made free of the corporation, companie and societie lately made by the sayd Sir Walter Raleigh, in the Citie of Raleigh, intended to be erected and builded in... Virginia...." These agreed to "adventure divers and sundry sums of money, merchandises, and shiping, munition, victual, and other commodities into the said forraine and remote country of... Virginia...." In consideration whereof Raleigh assigned to the combined company privileges for seven years of freedom of trade to and from the colony and freedom from rents and taxes; and as further evidence of his "zeale of planting the christian Religion, in... the sayde barbarous and heathen countries, and for... the common vtilitie and profite of the inhabitants therein, as also for the incouragement of the sayde" adventurers, he liberally gave the company the sum of £100 to use as they should see fit. Furthermore, Raleigh covenanted for himself,

"his heyres and assignes vpon sufficient and reasonable request made to him by the persons aforesayd, or any of them, their heires or assignes,... at any time, or times hereafter, to ratifie, affirme, and approue by his deede, or deedes, or by any other conueiance, or conueiances in lawe, the corporation heretofore made, by him the sayd Sir Walter Raleigh, consisting of the Gouvernour, and twelve assistance as by his sayd indenture made to John White and others, more plainely doth appeare, for the more perfect, and better assurance, and sure making of the sayd corporation, if any imperfection, and want in law thereof bee. And further that hee the sayde Sir Walter Raleigh, his

heyres, and assignes, shall, and will, as much as in him or them lieth, procure, and indeuor to obtaine, the Queene's maiesties letters patents, for ratification, approbation, and more sure confirmation, of the sayde corporation, and societie, with al prerogatiues, commodities, iurisdiccions, royalties, priuiledges, and preheminences, whatsoeuer graunted and conueied by her maiestie to the saide Sir Walter Raleigh...."(5*)

It would appear from this document that the corporation was a joint stock company or business corporation rather than the municipal corporation which the name suggests.(6*) But what its development might have been cannot be surmised, for it probably did not survive Governor White's return from Virginia in 1591 with the news that the colonists had disappeared.

The Raleigh corporation had better known successors. The first of these was known as the Virginia or London Company, which, though twice reorganized on a new basis and with somewhat different membership, may be regarded as a single company.(7*) This was first constituted by a grant from James I in 1606, but by its first "charter" no corporate privileges seem to have been given.(8*) Charters of 1609 and 1612, however, formally confer upon the grantees the privileges of a corporation, with the title of The Treasurer and Company of Adventurers and Planters of the City of London, for the first Colony in Virginia.(9*) This company was frankly a business corporation. It was organized on the model of the East India Company. It attracted over a hundred of the same shareholders, and prominent business men were leaders in both.(10*) Business motives were dominant; as Crashaw lamented in a sermon to the company in 1610: "Tell them of getting XX. in the C. [20 per cent]. Oh how they bite at it, oh how it stirres them? But tell them of planting a Church, of converting 10,000 souls to God, they are senseless as stones, they stirre no more then if men spoke of toies and trifles."(11*) The business motives were indeed necessary to raise the capital requisite to plant the colonies, though religious motives were also appealed to in raising funds: "the number of investors large and small rose to thousands; general collections were taken up and lotteries carried on for its expenses."(12*)

The company was active for a time. It sent out numerous expeditions and considerable supplies and made strenuous efforts to develop the country agriculturally, industrially, and commercially. Especially energetic were the efforts to develop the tobacco cultivation and on this basis to secure a monopoly of the tobacco trade in England. Incidentally efforts were made to keep the colonists in good spirits, and subsidiary joint stock companies were formed, not alone for setting on foot a glass furnace to make glass and beads, and fishing and trading ventures, but also "for Transporting 100 Maids to Virginia to be made Wives."(13*)

But the company, like its predecessor, was short-lived. Its problems of management were much larger and more complicated than even its capable business men were prepared to solve. Many of its enthusiastic subscribers got lukewarm or colder and failed to pay up their subscriptions. The colonists were poorly selected and were unsuccessful both from their own standpoint and from that of the company. The expected trade did not materialize. The company therefore was not financially successful. Furthermore -- in part doubtless because of this it was racked with internal dissensions, and it got into the bad graces of the sovereign and some of his powerful ministers. Such a combination of adverse influences it could not withstand. In 1624 it became insolvent

and did not survive the steps taken in that year by the attorney general to have its charter annulled, though judgment was not finally entered until 1632.

The next company affecting the territory of the future United States was like its predecessors essentially a business undertaking, incorporated in 1620 by a crown charter naming it the Councill established at Plymouth, in the County of Devon, for the planting, ruling, and governing of New-England, in America.(14*) Here the corporate body did not consist, as in the cases of the Virginia Company and the East India Company (1600), of the body of stockholders, but of a "Councill" of forty persons. This corporation maintained its existence for fifteen years. It promoted the fishing industry and established some temporary fishing settlements; and it was the source of numerous grants for colonizing ventures in New England, including notably those of the Plymouth colony and of the more famous Massachusetts Bay Company.(15*) But its efforts were not long successful; in 1623 it was well-nigh moribund, and in 1635 it surrendered its charter.(16*)

Mention may be made, in passing, of some other English business corporations which were concerned in the New World, though not with that part of it which separated from the mother country at the Revolution.(17*) Thus in 1610 a charter, probably similar to that of the Virginia Company, was granted to the Treasurer and Company of Adventures and Planters of the Cities of London and Bristol for the Colony or Plantation in Newfoundland.(18*) In 1612 a group of "undertakers" purchased the rights of the Virginia Company to the Bermuda Islands, and succeeded so well in the exploitation of the islands that in 1615 they applied for and secured a charter as the Governor and Company of the City of London for the Plantation of the Somers Islands, with Sir Thomas Smythe, treasurer of the Virginia company, as first governor.(19*) In 1627 a crown charter was obtained for the Governor and Company of Noblemen and Gentlemen for the Plantation of Guiana.(20*) In 1630 there was erected a corporation for printing what are now known as the Mosquito Islands, off the coast of Nicaragua, which constituted "in several respects the most important and progressive English settlement, in the islands off the coast of America during the reign of Charles I."(21*) Probably the most famous of all was chartered in 1670 as The Governor and Company of Adventurers of England trading into Hudson's Bay, which has yet not ended its long and generally prosperous career.(22*) Finally in 1692 a group of London merchants obtained from Parliament a fourteen-year charter, with exclusive privileges in the fisheries of the North Atlantic waters, for what is known as the "Greenland Company." This enterprise was poorly managed, unsuccessful, and soon fell through.(23*)

None of these corporations, however, had any great significance for that part of America which became the United States, and most of them were short-lived and ineffective.

One other of the "original thirteen" colonies was founded and, for a time, governed by a completely English corporation. This was the one in which James Oglethorpe was the moving spirit and for which he obtained, in 1732, a charter from George II incorporating himself and nineteen others as the Trustees for establishing the Colony of Georgia.(24*) This corporation, however, belongs to a distinctly different type from the ones which have just been mentioned. Here the dominant motive was not profit-making, but charity'. and in consequence the charter bears close resemblance to those of the eleemosynary corporations of

its day. But it was no more successful than its predecessors of a business nature; and in 1752, a year before its charter was to expire by limitation, the trustees voluntarily gave over their rights to the crown.(25*)

Besides these English companies a few of other nationalities must be mentioned. Henry Hudson was sailing in the service of the Dutch East India Company (formed 1602) when in 1609, searching for a westward passage to India and Cathay, he discovered New York.(26*) But this company took no interest in America and did not follow up this discovery.

A Dutch West India Company had been a favorite project since 1592 with Willem Usselinx, Antwerp born, and bred a merchant in Antwerp, Siam, and the Azores.(27*) The States-General issued a charter early in 1607, but owing to rivalries of cities and parties and capitalist backwardness, no use was made of it.(28*) Under the stimulus of an offer (1614) of exclusive privileges to discoverers of new places who should make four voyages thereto, a group of Dutch merchants formed in 1614 The United New Netherland Company and secured a special grant for four years for the purposes of trade, apparently without corporate powers. A renewal of its grant was refused.(29*) After repeated failures the promoters of the West India Company procured a new charter in 1621, authorizing a capital of six million florins (£500,000).(30*) Its fundamental purpose was to injure the Spaniards and rob their treasure fleets, but in 1623 it began trading operations in New Netherland. The early years were markedly successful from the pecuniary viewpoint, chiefly because of its conquests. But the basis for permanent prosperity was not laid; the directors allowed their private interests to take precedence over the company's interest; politics, domestic and international, proved an opposing factor; and in 1638 the company's monopoly was abolished.(31*) Opposition to the Portuguese and jealousy of the English supplemented its internal troubles, and for many years the company had been in sore financial straits and accomplishing little in the New World, when in 1664 the English seized New Netherland. Thereafter the company did not appreciably affect the province, Despite the brief reoccupation by the Dutch a few years later.

Dissatisfied with the charter of the Dutch West India Company, Usselinx went to Sweden and obtained from Gustavus Adolphus in 1626 a twelve-year charter for the General Commercial Company of the kingdom of Sweden, known as the South Company.(32*) Delays, reorganizations, amplification of the charter, but slight activity and none at all relative to America, characterized the next few years. By 1646 the company was practically dead. In 1636 a small "New Sweden" company was formed and chartered, led by Peter Minuit and Peter Spiring, and in 1638 its first expedition landed in the Delaware. Other expeditions followed, colonists were planted, and a modest trade developed. Reorganized in 1642, it continued to enjoy privileges from the crown and sent out more colonists and trading expeditions. In 1652, however, its privileges were materially curtailed by throwing open the tobacco trade, and the definite establishment of Dutch supremacy soon after reduced its importance. In reorganized form it continued connection with the colony for many years, despite political changes, but it was no longer of particular significance.

These companies belong in the same category with the English companies for trade and colonization, although they are not precisely analogous to the English corporations in essential powers and privileges.

Another important group of corporations active in America secured charters in England and had both their origin and their seat in the British Isles. These were the missionary societies, which aimed at the evangelization of the Indians.

The first was the President and Society for the propagation of the Gospel in NEW ENGLAND, frequently known as "the New England Company." This was incorporated by act of Parliament in 1649, during the suspension of the royal power.(33*) After the Restoration (1662), however, despite its distinctly Puritan complexion, the society secured from Charles II a new charter, which confirmed it in the possession of corporate powers.(34*)

Near the end of the seventeenth century a Presbyterian society was founded in Edinburgh with a similar purpose, and two years after the Parliamentary union with England (1709) this was incorporated as The Society in Scotland for Propagating Christian Knowledge.(35*)

Most important of all, perhaps, was the missionary organ of the Established Church, known as The Society for the Propagation of the Gospel in Foreign Parts, which was incorporated in 1701, with its seat in London.(36*)

All three of these, while retaining their bases in the mother country, carried on active operations in America down to the Revolution; and although their efforts were expended elsewhere thereafter, the war and its consequences did not end their corporate existence.

Besides these incorporated bodies there were several similar missionary and charitable organizations which operated without charters. Such, for example, were "a society of noblemen and gentlemen in London, for the relief and instruction of poor Germans, and their descendants, settled in Pennsylvania, and the adjacent British Colonies..."(37*) and certain associates for the conversion of adult negroes and the education of their children.(38*)

In contrast with these corporations, which are to be called American only in the sense that in America lay the primary sphere of their operations, there were a few which in spite of their European charters were more thoroughly American corporations. Foremost among these were the three which were identified with the more important New England colonies.

The first obtained in 1628 a grant from the Council for New England, and a year later secured from the crown not only a confirmation of this grant, but also an independent charter of incorporation with the title of the Governour and Company of the Massachusetts Bay in New-England. This company, while in the form of a business corporation like the East India and Virginia companies, was not actuated to any great extent by the hope of pecuniary profit, and it soon lost what little financial character it originally possessed. It was rather dominated by the desire to establish in the New World a colony in which certain ways of thinking and living might find an unhampered expression. As such it was more successful than its contemporaries and predecessors of a business nature. Soon after its organization its leaders took the bold step of transferring its seat to America. There established it gradually lost its private character, and out of its corporate organization it evolved the political system of the chief New England colony.(39*) In 1684, indeed, the Massachusetts Bay Company was deprived of its corporate charter, by scire facias proceedings, and the "province charter" granted in 1691 did not reestablish the corporate form of organization. But in the struggle of half a century to maintain the first charter the corporate organization had made an

indelible impression on the governmental machinery; and the province charter, while it did not rebuild the corporate structure, contained many of the important features which the corporation under its earlier charter had developed.(40*)

Soon after the opening of the English Civil War three towns to the south of the Massachusetts Bay colony petitioned Parliament for a charter granting them powers of self-government. Accordingly the Commissioners of American Plantations, acting by authority of an act of Parliament, granted in 1643

"to the aforesaid Inhabitants of the Towns of Providence, Portsmouth, and Newport, a free and absolute Charter of Incorporation, to be known by the Name of the Incorporation of Providence Plantations, in the Narragansett Bay, in New-England."(41*)

This "charter," which the towns accepted in 1647 and to which they conformed until the Restoration, may not technically have created a corporation. It is not in the usual form and it does not specifically grant any of the general powers customarily belonging to corporations, except "to make and use a public seal."(42*) Uncertainty on this point might well have existed at the time, for there was no recognized sovereign to give assent to the grant and no substitute for the crown had yet been evolved.

After the Restoration, however, Charles II was prevailed upon to replace this charter, whose validity was no longer to be relied upon, with another. The new charter, granted in 1663, was quite definite in its terms and, besides specifying the usual general powers which appertained to corporations, it provided that the petitioners

"shall be... forever hereafter, a body corporate and politick, in fact and name, by the name of the Governor and Company of the English Colony of Rhode-Island and Providence Plantations, in New-England, in America."(43*)

A year before (1662) Charles II had granted a like charter making the towns of Connecticut a corporate province.(44*)

Both of these charters, in general form not dissimilar to that of the Massachusetts Bay Company, were the fundamental law in these two colonies down to the Revolution; and indeed it was not until 1842 that Rhode Island's charter was definitely replaced by a new state constitution.(45*) Here, then, were two important public corporations in the colonies which long maintained a corporate existence by virtue of charters from the English crown.

In addition to these "charter colonies" at least two other corporations, of a somewhat less public character, were organized under English charters for establishment in America -- a Pennsylvania trading company and the college in Virginia.

The Free Society of Traders in Pennsylvania (46*) was chartered by William Penn early in March, 1682, a few months before his departure for his province.(47*) Penn had earlier refused an offer of

"six thousand pounds, and pay the Indians for six shares, and make the purchasers a company, to have wholly to itself the Indian trade from south to north, between the Susquahanagh and Delaware Rivers, paying me two and a half per cent. acknowledgment or rent."(48*)

In contrast to this the preface to the articles of settlement of the Free Society remarks:

"It is a very unusual Society, for it is an Absolute Free One, and in a free Country: A Society without oppression; wherein all may be concerned that will; and yet have the same Liberty of private Traffique, as though there were no Society at all."(49*)

In May of the same year, by one of the "laws" agreed upon in England by the "governor and freemen" of the province to be founded, the charter was in some sense ratified.(50*) In England its articles of association were drawn up (March 25), most of its stock subscribed, and the first "General Court" or organization meeting held (May 29).(51*)

In spite of this distinctly English origin, however, the society was intended from the outset to be a thoroughly American institution in activity and control, and it was designed to play an important part in the province. Its base of operations was to be promptly removed to America; and its articles provided that after that event each stockholder not resident in Pennsylvania was restricted to a maximum of a single vote unless he should own at least one thousand acres of inhabited land in the province, while those who had this much of a stake in the success of the province or who had gone thither to settle were allowed two votes for two shares and three votes for six shares or more (Arts. I, II).

In addition to its charter Penn granted the society a city lot running from river to river and containing one hundred acres, and twenty thousand acres of land in the country, including four hundred in the "City Liberties," with the privileges of a manor, including the right to representation in the provincial legislature.(52*) Plans were made for a variety of operations besides ordinary trade and commerce: during the first year, for example, the society was to send over two hundred servants, "of such Trades and Capacities as may be most for the benefit of the Society;" mines were to be operated; and the society was to assist the Indians in making settlements (!) (Arts. VIII, XIX, XXII). It was required that the officers and servants of the society should dispose of their private purchases of furs through the society, and others were permitted to do similarly, the society's English factors attending to the entire business. The advantages of this phase of its activities were especially stressed in the roseate preface to the articles.(53*)

The early days of the society were bright. On April 26, 1682, the subscription book showed subscriptions of £5400, made by over two hundred persons, in sums ranging from £25 (a half share) to £400. Within the next few weeks these may have been materially increased.(54*) It may perhaps be presumed that the original deposit of five per cent of the subscriptions was paid in at this time as required. At the meeting in May it was directed that the first instalment of one quarter should be completed within one month,(55*) and this constituted the original capital. Before Penn left London letters to the "Emperor of Canada" were prepared, with a view to establishing friendly relations for trade.(56*) Its first president, Nicholas More, was honored with provincial offices: in May, 1683, he became secretary of the council; a year later speaker of the assembly; and in August, 1684, one of the five provincial judges.(57*) A number of artisans were imported as "servants to ve Society."(58*) A tannery and a grist mill were erected in 1683, a saw mill and a "glass house" in 1684. At first the English cargoes in which

considerable sums were invested were profitably disposed of.(59*)

Penn continued his favor and interest. He wrote a committee of the society in London in August, 1783:

"I am sure, I have not turned my back upon any offer, that tended to its prosperity; and though I am ill at projects, I have sometimes put in for a share with her officers, to countenance or advance her interest:... I... assure you, that I am heartily inclined to advance your just interest, and that you will always find me Your kind cordial friend."

And he seconded the urging of the officers in Pennsylvania that some thousands of grapevines, "with some able Vinerons," be sent out from France, and Frenchmen for establishing the linen manufacture.(60*)

Genuine prosperity, however, never was realized. The Pennsylvania assembly failed to ratify the charter, to the disappointment of the London members. Claypoole, the treasurer, wrote Penn April 1, 1683:(61*)

"we are likely to suffer both in our stock and reputation when it comes among the people. I am afraid they will say they are all cheated, for the charter or Patent which thou signed was a great inducement to many to subscribe and to others to pay in their money... get all things done in relation to the company to answer our engagements, and the people's expectations, if the charter be uneasy let it be mended if it cannot be mended lay it aside, and make another for a charter there must be, or the company cannot subsist."

The proprietary charter seems not to have been regarded as sufficient, for later suits were brought against officers of the company rather than against the company itself, and its lands were held by trustees.

The president, More, proved impossible to get along with, was replaced in 1684 by Benjamin Chambers, and in his capacity as judge fell into disgrace, without yet being clear of the society's business.(62*) The Indian trade failed to develop as had been expected. Goods were sold on trust, and the society found itself unable to collect on them. As early as May, 1684, the condition of its affairs was such that the secretary wrote that the society had neither money nor credit, and added: "I am so weary of the Society's business that I will get clear as soon as I can."(63*) Penn wrote earnestly to the council, from England, in 1686:

"The society is a great Reproach to ys Province, & in nothing more then not sending an account of the debts & credr which I stayd there so long & lett so often for, & saw effected. That itself was mislay'd or lost or designedly kept back after all yt pains, so yt my own credit, yt I saw it & ys total of debt 6000 lbs. odd hundred & ye credt 9000 lb. odd hundred pounds, was all they had to rest upon, & certainly merchands & traders yt trust in themselves, but their books, had little reason to give me that respect pray call the President or chief officer before you on my complaint, order him to transmitt a faithful account. I writt to them to transmitt ye govermt of it hether, wch would serve the Province, content the present rich members here, & encourage others to come in for fresh stock can only save it with fresh and other methods."(64*)

The society in the province became involved in acrimonious disputes and exhausting litigation. Early in 1687 Penn felt impelled to write Thomas Lloyd:

"This quarrel about the society has made your great guns heard hither: I blame nothing, nor the society here, to be sure; but I could wish Dr. Moore and P.[atrick] R.[obinson] could have been softened, and that J. Cl.[aypoole] had been more composed...."(65*)

Active operations were soon suspended. Efforts, seconded by Penn, continued to be made by stockholders in England to have an accounting made by the officers, and the affairs of the society were several times before the provincial council.(66*) The efforts were long in vain. By 1704 the society was referred to as "ye old Pensilvania Compa."(67*) In 1721, however, the assembly passed a bill providing for its dissolution and the distribution of its assets; and in 1723, when Governor Keith had satisfied himself that such measures would operate with justice, an act appointing trustees for this purpose was approved.(68*) Thus, after an existence extending over a period of forty years, the company came to an end.

Finally must be mentioned the College of William and Mary, which enjoys the distinction of being the only colonial college to be incorporated directly by royal charter. The agitation for a college in Virginia had begun almost with the founding of the colony and had continued sporadically throughout the seventeenth century. It was not until the last decade of the century, however, that the movement became effective, then largely through the energetic efforts of Rev. James Blair. This gentleman, commonly known as "commissary Blair" because of his office in the Established Church, was sent to England in 1691, to seek a charter from the crown, with the warm support of Governor Nicholson and the House of Burgesses.(69*) In England he encountered some opposition, chiefly on financial grounds, and a great deal of inertia. However, after spending nearly three years and some £360 he left for Virginia in 1693 with a charter from William and Mary and financial support to boot.(70*)

The college did not fulfil all the high expectations which had been aroused, but it succeeded in maintaining its corporate existence and serving to some extent the educational needs of Virginia to the end of the colonial period.

Numerous other colonial requests from the colonies for crown charters failed. Increase Mather sought one for Harvard, by vigorous exertions extended over several years. Similarly Samuel Davies exerted himself on behalf of the New Jersey College at Princeton, Eleazar Wheelock for his Indian school (later Dartmouth College), and George Whitefield for the orphan school which he wished erected into Bethesda College.(71*) Petitions for charters for companies to deal in naval stores, particularly by the Byfield and Dudley groups, met with a like fate early in the eighteenth century.(72*)

Charters direct from the crown were sought partly to attract financial support from England, partly to secure a standing which would better bear attacks in the colonies and in England, partly to secure the counsel of more experienced and wiser English heads. William Smith, a New York lawyer, writing to Eleazar Wheelock's agent there, March 30, 1767, remarked:

"An incorporated body will not only acquire rights maintainable by law in the courts of justice, but command the favor of the

government, who without that sanction, may at such distance from the crown oppress the undertaking a thousand ways and utterly destroy it."(73*)

The reasons for failure to secure such charters were various. Opposition from the colonies was sometimes a factor, as in the case of the naval stores companies. Unwillingness to move unless the wheels were oiled with more liberality than colonial petitioners were in a position to do played a part. Eleazar Wheelock wrote, April 7, 1769, telling of his failure to get a charter for his school, that the board of trust told him that

"Experience... has fully taught them that by means of an incorporation, such designs became jobs, and are soon ruined thereby. They choose to hold the monies collected there in their own hands for this purpose...."(74*)

In the main, however, it was probably the pressure of other business, the caution against taking unnecessary steps, and mere inertia that prevented the granting of more charters for local American corporations.

In some cases not a charter but an order for a charter was all that was requested. William Smith, for instance, advised in 1767 with reference to Wheelock's Indian school:

"A petition should be proffered to his majesty, for a mandamus to the governor and council and all subordinate persons, to pass a charter according to a form annexed in hoc verba, under the great seal of the province; and at the same time a standing instruction should be procured to the governor and secretary for Indian Affairs, to aid countenance and protect the corporation in the execution of the powers and privileges granted to them by the charter, as they will answer to the x x x x x at their peril."(75*)

It is not clear that any request of this nature was granted.

In all, then, there seem to have been active in the territory of the thirteen colonies prior to the Revolution more than a dozen corporations, each of which possessed one or more charters granted in England, most of them by the crown, and several more with charters from other European states. Most of them were concerned with trade, colonization, and government, three, however, with evangelistic effort, one primarily with trade, and one with higher education. The large majority were dominated by business motives. These were perhaps least successful, though the lack of a common basis of comparison makes such an assertion of little weight. At all events none of the business corporations had a continuous active existence of more than a score of years and all ended in discouragement; while six of the other eight survived as corporations to the Revolution. Three of these survivors had from the beginning maintained the seat of the corporation in America, while the other three -- the missionary societies -- conducted their operations from a British base. As a class these corporations were among the most important of those active in the American colonies.

NOTES:

1. Hazard, State Papers, i, 42-43.

2. Richard Hakluyt, *The Principal Navigations, Voyages, Traffiques, and Discoveries of the English Nation*, ed. by Edmund Goldsmid (Edinburgh, 1885-90), xiii, 358.
3. Hazard, *State Papers*, i, 42-43.
4. See list of members of this expedition in *ibid.*, i, 40-41.
5. Hazard, *State Papers*, i, 42-45. Apparently the only evidence of this corporation now extant is the paragraph in Hakluyt's *Voyages and the indenture of 1589*, printed by Hakluyt (ed. 1589, p. 815) and reprinted by Hazard.
6. Cf. W. R. Scott, *The Constitution and Finance of English, Scottish and Irish Joint Stock Companies to 1720* (Cambridge, Eng., 1910-12), ii, 244-245, *contra*. Different writers have had various interpretations of these documents.
7. See esp. the account in Scott, *Joint Stock Cos.*, ii, 246-258, 266-289; Alexander Brown, *The First Republic in America* (New York, 1898), and documents in Alexander Brown, *The Genesis of the United States* (Boston, 1890); Channing, *Hist. of the U. S.*, i, 157-226; Osgood, *Amer. Cols. in the Seventeenth Century*, i, 23-97; *Mag. of Amer. Hist.*, xxix, 371; "Discourse of the Old Company," 1625, urging a new charter, in *Va. Mag. of Hist. and Biog.*, i, 155-167, 287-309 (1893-94); and L. D. Scisco, "The Plantation Type of Colony," in *Amer. Hist. Rev.*, viii, 260-270 (1903).
8. Hazard, *State Papers*, i, 50-58.
9. *Ibid.*, i, 58-81, esp. 64.
10. Thomas Smythe, Richard Hakluyt, and others of Raleigh's corporation were members. Smythe was at the same time governor of the Muscovy and East India companies, treasurer of the Virginia Company, and a member of the Levant Company. Cheyney, *English Conditions Surrounding the Settlement in Va.*, 514.
11. Brown, *Genesis of the U. S.*, i, 362.
12. Cheyney, *English Conditions Surrounding the Settlement in Va.*, 511-512, 527; G. L. Beer, *Origins of the British Colonial System* (New York, 1908), 29.
13. Scott, *Joint Stock Cos.*, iii, 466-467.
14. Charter in Hazard, *State PaPers*, i, 103-1 18, esp. 107.
15. See *ibid.*, i, 298-304, ii, 597-605; Scott, *Joint Stock Cos.*, ii, 303-304; Miller Christy, in *Amer. Hist. Rev.*, iv, 685-702 (July, 1899).
16. For its history, see Scott, *Joint Stock Cos.*, ii, 301-306; Osgood, *Amer. Cols.*, i, 98-103, 239-255; *Amer. Antiq. Soc. Proc.*, 1867, pp. 97-131.
17. Cf. also C. M. Andrews and F. G. Davenport, *Guide to the Manuscript Materials for the History of the United States to 1783*, in the British Museum, in *Minor London Archives and in the*

Libraries of Oxford and Cambridge (Washington, 1908), 21, 32, 33, 283, 395, for various proposals which bore no fruit.

18. Scott, *Joint Stock Cos.*, ii, 317-318.

19. Scott, *Joint Stock Cos.*, ii, 261-262. Cf. *ibid.*, 263-297, *passim*.

20. *Ibid.*, ii, 325.

21. *Ibid.*, ii, 328-330.

22. *Ibid.*, ii, 228-237; George Bryce, *The Remarkable History of the Hudson's Bay Company* (London, 1900).

23. Scott, *Joint Stock Cos.*, ii, 379. The fact that monopoly privileges were granted explains the presence of an act of Parliament. Henry Elking, *A View of the Greenland Trade and Whale-fishery* (London, 1722).

24. Charter in Poore, *Charters and Consts.*, i, 369-377.

25. For its history, see Jones, *Hist. of Ga.*, vol. i, esp. chaps. 4, 5, 27; and "A Brief Account of the Establishment of the Colony of Georgia under Gen. James Oglethorpe, Feb. 1, 1733," reprinted in Peter Force, *Tracts...* (Washington, 1835), i, No. II.

26. H. C. Murphy, *Henry Hudson in Holland...* (reprint, The Hague, 1909), treats briefly of the origin of the company and more fully of Hudson's connection with it.

27. J. F. Jameson, *Willem Usselinx, Founder of the Dutch and Swedish West India Companies* (New York, 1887), deals in detail with its projection and promotion, though but slightly with its American activities.

28. *Ibid.*, esp. 31-35.

29. E. B. O'Callaghan, *History of New Netherland...* (New York, 1848), i, 70-85.

30. Cf. Jameson, *Willem Usselinx*, esp. 34-47, 54-76; O'Callaghan, *New Netherland*, i, 71, 86-93, and Appendix A (the charter). G. M. Asher, in his *Bibliographical and Historical Essay...* (Amsterdam, 1854-67), pp. xviii-xix, compares it with the East India Company, O'Callaghan with English colonizing companies.

31. O'Callaghan, *New Netherland*, bk. I, chaps. 2-6; J. R. Brodhead, *History of New York* (New York, 1853), chaps. 5-20.

32. Jameson, *Willem Usselinx*, 93-100; Amandus Johnson, *The Swedish Settlement on the Delaware...* (Philadelphia, 1901), i, 52-58. For the Swedish companies I rely largely on Johnson's lengthy account. Cf. also Hazard, *Register of Pa.*, iv, 373-374.

33. Charter in Hazard, *State Papers*, i, 635-636. See esp. account in Vening, *New England Company*. This is probably the organization referred to by Edward Randolph in a letter of March 26, 1684, to the Archbishop of Canterbury, in which he says it was chartered by letters patent about 1643 as "The Governor and Company for Evangelizing the Indians in New England": Toppan, Edward

Randolph, iii, 287-291. See also Briggs, *Amer. Presbyterianism*, 97-99, xxxvi-xxxix; Hazard, *State Papers*, ii, 438, 453; John W. Ford, ... *Correspondence... of the New England Company...* (London, 1898); *Pa. Mag. of Hist. and Biog.*, xxv, 134, 286; Andrews and Davenport, *Guide*, 66, 70, 299, 330.

34. Vening (New England Company, 294) states that Sir Robert Boyle was largely influential in securing this charter.

35. Briggs, *Amer. Presbyterianism*, 297-303; Chase, *Dartmouth College*, i, 8; *A Summary Account of the Rise and Progress of the Society*. (Edinburgh, 1783). Cf. *Conn. Col. Recs.*, x, 97-98; Andrews and Davenport, *Guide*, 66, 67.

36. Perry, *Amer. Epis. Church*, i, 197-205; C. F. Pascoe, *Two Hundred Years of the S. P. G.*, 1701-1900 (London, 1901).

37. Cf. William Smith, *A Brief History...* (1755), mentioned in Andrews and Davenport, *Guide*, 292-293; Charles Evans, *American Bibliography...* (Chicago, 1903-), iii, 124, No. 7569.

38. Hazard, *Register of Pa.*, i, 428-429 (1828).

39. Charter in Hazard, *State Papers*, i, 239-255. Cf. Scott, *Joint Stock Cos.*, ii, 312-315; Osgood, *Amer. Cols.*, i, 128-223; Channing, *Hist. of U. S.*, i, 322-323. Cf. Emory Washburn, "Transfer of the Colony Charter of 1628 from England to Massachusetts," in *Mass. Hist. Soc. Proc.*, 1st Series, iv, 154-167 (1859); Mellen Chamberlain, in *Mass. Hist. Soc. Proc.*, 2d Series, vii, 109-112 (1893); articles by Joel Parker and Charles Deane, in *ibid.*, 1869.

40. Charles Deane, "The Struggle to Maintain the Charter of King Charles the First, and its Final Loss in 1684," in Winsor, *Memorial History of Boston* (Boston, 1980), i, 329-382. The 1691 charter is in Poore, *Charters and Consts.*, i, 942-954.

41. Hazard, *State Papers*, i, 539-540; *R. I. Col. Recs.*, i, 143-144. The petition seems to have called for "a free Charter of Civil Incorporation and Government."

42. Cf. A. M. Eaton, "The Right to Local Self-Government," in *Harvard Law Rev.*, 1900, esp. xiii, 570-573.

43. Hazard, *State Papers*, ii, 612-623.

44. *Ibid.*, ii, 597-605. Cf. N. P. Mead, *Connecticut as a Corporate Colony* (Lancaster, Pa., 1906).

45. Poore, *Charters and Consts.*, vol. ii, "Rhode Island."

46. A good account of the history of this company is given in Judge S. E. Baldwin's *Amer. Bus. Corps. before 1789*, pp. 257-262. Its articles, published in London, 1692, are reprinted in the *Pa. Mag. of Hist. and Biog.*, v, 37-50 (1881).

47. An abstract of the charter is in Scharf and Westcott, *Hist. of Phila.*, i, 89.

48. Penn to Robert Turner, 25th 6th mo., 1681, in Armstrong, *Hist. Soc. of Pa.*, *Memoirs*, i, 212-213.

49. Pa. Mag. of Hist. and Biog., v, 39. The comment is highly significant as to the typical trading corporations of the day. Penn is said to have aided in drafting the charter and constitution: Scharf and Westcott, Hist. of Phila., i, 85.
50. Pa. Col. Recs., i, 40 (No. 31).
51. Hazard, Register of Pa., i, 394-397; letters of James Claypoole, treasurer, in R. B. Graff, Genealogy of the Claypoole Family of Philadelphia (Philadelphia, 1893), 23, 26-32.
52. Pa. Arch., i, 44; Baldwin, Bus. Corps., 260-262; Penn to the committee, Aug. 16, 1683, in Robert Proud, The History of Pennsylvania... (Philadelphia, 1797), i, 264.
53. Pa. Mag. of Hist. and Biog., v, 39, 47.
54. Ibid., xi, 175-180. Cf. Art. IV. £25 was the minimum subscription permitted, but five men might subscribe together in one man's name. James Claypoole, the treasurer, wrote his brother in this month: "wee have about £8000 subscribed, and do expect it will bee made up £10000 the 1/2 of wch we take in at present: and ye other 1/2 as wee shall have occasion next year or afterwards...": Graff, Claypoole Family, 31.
55. Hazard, Register of Pa., i, 394.
56. Ibid., i, 397, ix, 112.
57. Pa. Col. Recs., i, 73, 105, 119, 121.
58. Cf. Pa. Mag. of Hist. and Biog., viii, 328, 339, 439.
59. Baldwin, Bus. Corps., 262.
60. Proud, Hist. of Pa., i, 264.
61. Graff, Claypoole Family, 38.
62. Claypoole to Penn, April 1, 1683; Proud, Hist. of Pa., i, 295-298; Proprietor v. Moore, in Pennypacker, Pa. Colonial Cases, 39-48; Pa. Col. Recs., i, 135-137, 139-141, 145-146, 153.
63. Baldwin, Bus. Corps., 262, quoting Claypoole's MSS. Letter book.
64. Pa. Mag. of Hist. and Biog., xxxiii, 308-309.
65. Proud, Hist. of Pa., i, 298-299, quoting also letter of June 6, 1687, along the same line; Pa. Col. Recs., i, 112, 146-147, 149, 189; Pennypacker, Pa. Colonial Cases, 86-88.
66. Pa. Col. Recs., ii, 136-137, 160; Penn-Logan Correspondence, ii, 108.
67. See letter of Penn to governor and council, Dec. 15, 1703: Pa. Col. Recs., ii, 136-137.
68. Ibid., iii, 138-139; Pa. Charters and Acts, i, 91-95.

69. P. A. Bruce, *Institutional History of Virginia in the Seventeenth Century* (New York, 1910). esp. i, 380-401. Bruce says Nicholson was the "chief promoter and chief supporter." The house of Burgesses voted £200 for expenses and drew up an address to the king and queen.

70. Bruce, loc. cit.; Doyle, *Eng. Cols.*, i, 270-272; Tiffany, *Prot. Epis. Church*, 33-35; Perry, *Amer. Epis. Church*, i, 115 122; *Va. Mag. of Hist. and Biog.*, esp. vii, 165, 391 (1899-1900); L. G. Tyler, *Williamsburg* (Richmond, 1907), 110-124; and for both history and charter, *Hist. of the College, 1693-1870*.

71. *Diary of Samuel Davies* (MSS.); Shirley, *Dartmouth College Causes*, 21-27; *infra*, 82.

72. E. L. Lord, *Industrial Experiments in the British Colonies of North America* (Baltimore, 1898). 6-7, 15-39; *Hist. Soc. of Pa. Memoirs*, iv, 255, 347, 352, 382 (1850); Ashurst to Winthrop, Sept. 9, 1704, in Hinman, *Letters...*, 318-319; Andrews and Davenport, *Guide*, 399, 402.

73. Shirley, *Dartmouth College Causes*, 24.

74. *Ibid.*, 27.

75. *Ibid.*, 24.

Chapter 3

Public Corporations with American Charters

With the exception of the few which have just been discussed, all of the corporations which were active in the territory which was to become the United States may be said to have been American in origin and charter as well as in other important respects. In considering these distinctly American corporations, numerous as they are, some classification is desirable. Such a classification, however, is difficult to make. The law of the period, even as presented by Blackstone on the eve of the Revolution, did not differentiate the various types; and the charters do not admit of ready grouping in all cases, even when they are accessible. For convenience, nevertheless, we may somewhat arbitrarily set off the public corporations from the private ones, applying a distinction then unrecognized. Within the group of public corporations we may attempt to distinguish the corporate boroughs and cities from the "corporate towns" of lesser dignity, and to notice separately such miscellaneous public corporations as those charged with administering poor relief or public education. And among the private corporations it is possible to distinguish particularly those which were organized for religious, charitable, educational, and business purposes.

Of the public corporations the chartered municipalities which were known as "boroughs" and "cities" belong first in order of prominence.(1*) As we have seen, most of the proprietary grants and the commissions to royal governors, not to mention other colonial documents, bear indications that the growth of these institutions and lesser corporate towns in America was looked upon as a matter of course.(2*) In treating of these corporations the difficulty of terminology is serious. In Virginia, for

example, the boroughs were merely election districts from which burgesses were sent to the colonial assembly. they do not seem to have been corporate entities.(3*) In the same colony some of the first settlements were named "James City," "Charles City," "Henrico City," and so forth;(4*) but there seems to be no evidence that they were ever accorded corporate privileges. In Pennsylvania, furthermore, where the corporate borough has since become an important unit of local government, the borough charter of Chester (1701), while it grants certain powers of self-government, seems to lack entirely the "words sufficient in law" which were necessary to create a corporation; and the charter of Bristol (1720) is only slightly more definite.(5*) So far as the distinction between corporate boroughs and corporate cities is concerned, indeed, the difficulty of classification may be neglected. Even in England, where a city was generally a borough which served as the seat of a bishop, the line was not sharply drawn;(6*) and in America, where this mark of distinction was not available, no more can be truly said than that the city was, or was expected to be, of greater importance than the borough.

The first of the score or more incorporated boroughs and cities was chartered in Maine by the proprietor, Sir Ferdinando Gorges, in 1641. "The Planters and Inhabitants of Acomenticus" were ordained into "one bodie politique and corporate... by the name of the Maior Aldermen and ---- (7*) of the Towne of Acomenticus within the Province of Maine...." To the mayor and aldermen was given power not only to hold courts, build fortifications, etc., but to make and execute "such by lawes orders and ordinances as are accustomed to be made in Townes Corporate in England," as should be "wholesome and necessary" and "consonant vnto the Lawes orders and ordinances vsed in England;" and further "to make as many free Burgesses of the said towne as they shall think fitt, and to disfranchise any of them for iust and reasonable Cause...."(8*)

A year later (March 1, 1641-42), specifically reciting the "Citties Burroughes and Townes" section of his charter, Gorges made a new grant for the erection of a "Cittie or Towne," "Corporacon," or "Incorporacon," by the name of Gorgeana,(9*) whose mayor, twelve aldermen, and twenty-four common councilmen should constitute a body corporate. It appears that, whether or not their limits were precisely coextensive, the new "Citty" supplanted the older "corporate Towne," and thus the first American city was formally established.

Unfortunately the city hardly justified the dignity which was thus thrust upon it, though it seems to have operated under its charter for a time. In 1652 it was one of the settlements rudely annexed to the Massachusetts Bay by the commissioners sent from Boston, and it was at that time reduced in form to the level of the ordinary (unincorporate) Massachusetts town, with the simple name of York.(10*)

The second American municipality was New York.(11*) In 1650, while the province was under Dutch control, a committee of the States-General recommended a municipal government for New Amsterdam;(12*) and in 1652 it was accorded privileges similar to those enjoyed by the "free cities" of Holland.(13*) When the English came into possession, Governor Nichols revoked (1665) the earlier form of government and proclaimed that the officials henceforth "shall be knowne and call'd by the name & Style of Mayor Aldermen & Sherriffe, according to the Custome of England in other his Maties Corporacons;" and by a supplementary commission ordered that the inhabitants of Manhattan Island

should "bee for ever accounted, nominated and Established, as one Body Politique and Corporate."(14*) Except for the period of the Dutch reoccupation, 1673-74,(15*) this proclamation remained the basis of the city's privileges until 1686. In 1683 the mayor and aldermen petitioned the governor, Dongan, for a confirmation of their "ancient privileges," with certain additional ones, and he communicated the request to the Duke of York.(16*) It is to be presumed that at least he received no unfavorable response, despite James's jealousy of municipal corporations, for three years later (1686) he issued a formal charter of incorporation which elaborately expressed the details of the municipal government.(17*) The validity of this charter was brought in question, inasmuch as James, though he had been a year on the throne when the charter was issued, had neglected to provide his governor with a new seal appropriate to his more exalted position, and Dongan accordingly had to use the out-of-date instrument.(18*) Finally, in 1730, Governor Montgomery issued a charter which quieted all these uncertainties, established the validity of acts under the Dongan charter, and continued the government in much the same form.(19*)

The province of New York boasted two other municipalities with seventeenth century charters. The Dutch burghers of Albany received a charter from Governor Dongan in 1686, a few months after he had issued the one for New York; and despite the same danger because of the inadequate seal, the charter remained the foundation of the government there down to the Revolution.(20*) Ten years later (1696) the inhabitants of the little village of Westchester secured from Governor Fletcher a charter which constituted them a borough or city.(21*) Fletcher's successor, Bellomont, protested vigorously against the extravagant nature of this charter, saying that although the "city" consisted of only about twenty houses, it enjoyed greater privileges than any other town in America.(22*) The Lords of Trade admitted that the charter looked extravagant in some particulars;(23*) but it seems to have survived the agitation against it.(24*)

The third city in America, in order of chronological sequence, was the seat of government in the province of Maryland, which Lord Baltimore incorporated as St. Mary's City in 1667.(25*) The town was never large. In 1678 Lord Baltimore himself described it as containing no more than thirty houses, and those far apart.(26*) In 1694, when the "capital" was removed to embryonic Annapolis, the importance of St. Marys was practically wiped out. It continued to be represented in the assembly, however, until 1708, when the sheriff of the county reported that he could find no inhabitants upon whom to serve the writ of election.(27*) It is hardly hazardous to assume that the corporation, whatever it had become, had been virtually extinct for some time.

The two remaining municipal charters of the seventeenth century were granted by William Penn to Philadelphia and Germantown. Shortly before Penn returned to England in 1684, to defend his rights against Lord Baltimore, a committee of the council was appointed to draw up a borough charter for Philadelphia;(28*) and if the preambles of the later charters are to be trusted, some sort of a borough government was then established. In 1691 Penn issued a formal city charter, which apparently went into effect, but lost its force when, in 1692, Penn was temporarily ousted from the control of his province by reason of the turn in English politics.(29*) In 1701, however, he issued a new one, similar in the main to the charter of 1691, and this continued in force till the Revolution.(30*)

The proprietor also granted a borough charter to the settlers of Germantown, dated in London, 1689, which formally "passed the seals"(31*) in the province in 1691. This charter survived the change in government which disturbed the Philadelphia government, but it aroused little enthusiasm among the German inhabitants of the borough, and in 1707, when it was found impossible to fill the offices provided for by its terms, it was formally surrendered.(32*)

During the seventeenth century, therefore, seven different incorporated boroughs and cities were chartered in America. In the eighteenth, prior to the Revolution, more than twice that number were added. All of these were south of New England, whose lone representative in the earlier period had been ill-fated Gorgeana; but each of the other colonies, except Georgia, counted at least one of the number.

Of these eighteenth century municipal corporations, New York contributed only one. This was the "Borough town of Schenectady," whose charter passed the seals on Oct. 23, 1765, in the face of strenuous opposition by the Albany authorities.(33*) It is not certain that the charter ever went into effect.(34*) During the succeeding years there was some agitation for a new charter, and the council, in 1767 and 1770, took some steps, though apparently inconclusive ones, in this direction.(35*) At all events, there seem to be no satisfactory records of corporate activity there until the legislature newly incorporated the town in 1798.(36*)

In Pennsylvania three new boroughs were established, though the corporate character of two of them is not beyond question. Lancaster was clearly incorporated a borough, in 1742, by charter from the governor: there is a clause specifically creating the grantees a body corporate and politic; the customary general powers of a corporation are specifically conferred; and a section is added providing for construing the charter "most favorably and beneficially for the said corporation."(37*)

The grant erecting "The Borough of Bristol" is less definite, but is probably to be regarded as creating a true corporation. This grant was sought in 1718, when the minutes of the provincial council record a petition of the inhabitants

"requesting that for Relating their Streets and Preserving the better Order among the Inhabitants, The sd. town might be Erected into a Borough by Charter of Incorporation, which Request being considered of by the Board, It is their unanimous opinion that the sd Town be Erected into a Burrough accordingly, and the Persons Petitioning are Directed to apply to the Attorney General for suitable Draught for that Purpose."(38*)

The draft was next read, apparently, only after the lapse of more than a year, and was not agreed to in council till July 19, 1720.(39*) On Nov. 14, 1720, the governor issued the formal patent, in the name of the crown.(40*) The preamble recites the petition to

"William Keith, Esq., with our royal approbation governor of said province of Pennsylvania, for our letters patents under the great seal of our said province of Pennsylvania, to erect the said town into a borough, and to incorporate the freeholders and inhabitants of the same with perpetual succession... as also to grant such immunities and privileges as may be thought necessary for the well ordering and ruling thereof."

There is no question, therefore, as to whether incorporation was

requested. The charter does not in so many words confer corporate powers, though it does provide at some length for the government of the borough. The concluding section, however, may perhaps be broad enough to support a claim of corporate powers:

"And further we have, and by these presents do, for us and our successors. give, grant, ratify and confirm, unto the said Burgesses, Constables and Inhabitants of the said town of Bristol, and to their successors, from henceforth, all lawful privileges, immunities, franchises, powers and jurisdictions, hereinbefore granted, or that are hereby intended to be given or granted unto the said Burgesses, Constables, and Inhabitants of the town of Bristol aforesaid, as if the said powers, authorities, liberties, immunities, privileges and franchises were herein or hereby more fully expressed, according to the intent and meaning of these presents."

Finally it should be remarked that after the Revolution the state legislature passed "An Act to establish the ancient Corporation of the Borough of Bristol in the County of Bucks," in which the town seems clearly to be regarded as a corporation.(41*)

The charter granted to Chester was given by Penn himself, under date of Oct. 31, 1701, -- the day before his final departure from the province.(42*) This document apparently served as the model for the Bristol "draught," and it likewise lacks unmistakable incorporating clauses or sections, although the charter given by Penn to the Philadelphians in the same year contains such clauses in much the customary form.(43*) There is no such concluding section in the Chester document, moreover, to correspond to the one quoted from the Bristol charter. In the post-Revolutionary act erecting Chester into a borough there is no mention of the earlier incorporation.(44*) Nevertheless, Chester was almost certainly regarded as a truly corporate borough, and its title might have been maintained.

Governor Keith granted at least one other charter besides that of Bristol, as appears from a three-page leaflet published in Philadelphia in 1724. Its introduction runs thus:

"Newcastle upon Delaware, May 28. 1724. This being the anniversary of his Majesty's birthday, Sir William Keith... came to the Court-House,... and after having caused the King's Charter to be publish'd for erecting the same into a body corporate and politick, wvith many valuable privileges, by the name of the City of Newcastle, he made the following speech to the Corporation."(45*)

The town was small, and the corporation probably died a natural death before many years and was forgotten.

Five of these eighteenth century municipalities were chartered by the royal governors of New Jersey.(46*) The first three, termed "cities," included the respective capitals of East and West Jersey, -- Perth Amboy (1718)(47*) and Burlington (1732) -- and the town of New Brunswick (1730). The later ones, Elizabeth (1740) and Trenton (1746), were called "boroughs." But as usual the variation in "style and title" was of no significance.(48*) With one exception all of these charters outlived the colonial period. That of Trenton aroused opposition almost immediately, apparently from inhabitants of the district which had been erected into the borough. This opposition promptly crystallized into a bill to "vacate" the charter, which passed the lower house of the assembly. The council, however, refused to

countenance such a method of procedure, pronouncing it "Extraordinary & unprecedented" and liable to "Subvert the Laws of the Land;"(49*) but four years later (1750), when Belcher had succeeded Morris in the governorship, the citizens of Trenton quietly surrendered the charter, having found it "not to answer the good and salutary purposes of his late Excellency."(50*)

South of Pennsylvania and New Jersey the only incorporated cities and boroughs of the type we are now discussing were, with a single exception, provincial "capitals."(51*) Annapolis, which had been made the seat of the Maryland government in 1694 and provided with a commission government (incorporated) in 1696,(52*) was erected into a city by the much disputed charter of Governor Seymour in 1708.(53*) In June, 1722, the South Carolina assembly passed an act incorporating "Charles City and Port," the chief town of that colony.(54*) A month later Governor Spotswood of Virginia granted a charter to the newly built capital of Williamsburg;(55*) and fourteen years later one of his successors, Governor Gooch, incorporated similarly the borough of Norfolk.(56*) In 1739 the borough of Wilmington, Delaware, received a governor's charter;(57*) and in 1760 the North Carolina town of the same name was likewise accorded similar privileges.(58*) The Charles City charter, alone of this number, was shortlived. Here, as in the case of the Trenton charter, the primary reason for the fall of the charter was the opposition of inhabitants themselves. It is true, as we have already noted,(59*) that the agents of the colony had been instructed to secure leave from the crown to incorporate the town, and that the legislature did not wait until this permission had been obtained. But this lack of authorization received apparently little attention. The Lords of Trade were informed, by divers petitions and affidavits, that the majority of the townspeople were "against the act."(60*) And accordingly the Lords Justices in Council, on June 27, 1723, annulled the act and forced the dissolution of the corporate government that had been in operation for more than a year.(61*)

In passing it may also be mentioned that at several different times during the colonial period there was a movement to establish a corporate government for the town of Boston, but local opposition was so strong that advantage was not taken of the apparent willingness of the General Court to give the requisite authority.(62*) Charles City was therefore the only municipality of importance to be incorporated by act of assembly during the colonial period.

Despite their comparative insignificance as the source of corporate privileges for this type of corporations, the colonial legislatures were not entirely silent on the subject. In 1705 the Virginia House of Burgesses imitated parliamentary practice to the extent of passing an act directing the governor to grant a charter to Williamsburg,(63*) -- which he eventually did, in 1722. At least three charters -- those of Annapolis,(64*) New York (Montgomery charter),(65*) and Norfolk(66*) -- were confirmed by legislative act, with greater or less modification; and efforts were made through several years, in vain, to obtain similar action on the Wilmington, N. C., charter.(67*) Such acts presumably were desired as additional guaranties of the charters, but it may be doubted whether they affected the legal status of the corporations concerned.

There were thus some twenty-four municipal corporations of the more pretentious type created in the American colonies. Nearly three-fourths of this number were located in the middle colonies, chiefly in New York, New Jersey, and Pennsylvania.

Except the short-lived Acomenticus or Gorgeana, none were to be found in New England. Almost all were incorporated by royal governors in the name of the crown, the few exceptions being mostly chartered by colonial proprietaries. Of the whole number sixteen or seventeen survived until the Revolution, the cause of dissolution of the others being chiefly, apparently in every instance, internal opposition to the charter.

In Maine, Pennsylvania, Delaware,(68*) South Carolina, and Georgia no municipal corporations of any kind except those mentioned seem to have been erected during the colonial period. In the case of the other colonies, on the other hand, certain evidence points to the existence of towns which may have been corporations in the true sense -- that is, legal persons, capable of maintaining a continuous existence despite changes in membership, capable of holding property separate from the property of their members, of suing and being sued and otherwise acting (by the aid of a "common seal") as a unit distinct from the personalities of their members, and empowered to make regulations, through their members or through persons chosen by them, for their government(69*) -- and yet which hardly deserve to be ranked with those already discussed. The line between the true corporations and those which are improperly so designated is exceedingly difficult to draw. Suffice it to say at the outset that the terms "incorporate," "corporation," "body politic," and "charter" are used in this connection both by contemporaries and by later writers with the greatest looseness; and that it is not always safe to infer that a town in connection with which such terms have been used actually possessed the characteristics of a legal corporation.(70*)

We may pass over quickly the "bodies politic" which were created by solemn compact by the early settlers of Plymouth and several towns of Rhode Island and New Hampshire.(71*) Whatever may have been the verbal usage or the expectations of the founders, such towns are clearly not to be classed as corporations in the accepted sense: for according to the law of the period, no corporation could come into existence without "lawful authority of incorporation;"(72*) and no mere voluntary agreement, however solemn, could suffice to make a "lawful incorporation."(73*)

The case of the towns of the Massachusetts Bay colony is somewhat more difficult. As we have seen, the solicitor of the Lords of Trade in 1774 put on record his opinion that the acts of the General Court, even under the colony charter, "for the constituting of townships," were an example of the exercise of the right to incorporate.(74*) Yet with all due respect to Mr Jackson's opinion, its accuracy is decidedly questionable.

In the first place, while the word "incorporate" or a derivative (though seldom "corporation") is occasionally to be found in the language of these acts, they do not specifically purport to create a "corporation" or "body corporate and politic," or to confer the privileges customarily accorded a corporation. The acts commonly do no more than describe the limits of the new town, specify the name by which it shall be known, and authorize the owners or inhabitants to manage their local concerns in a certain specified manner, and in some cases to send delegates to the General Court.(75*) If this is incorporation, it would seem to be such only in the generic sense of the term, such as is well illustrated in the royal patent of 1629 to Sir Robert Heath:

"Know that we of our free grace... doe thinke fit to erect the

said Region Territory & Isles into a Province & by the fulnes of our power & Kingly Authority..., we doe erect & incorporate them into a province & name the same Carolina."(76*)

It seems that contemporaries did not regard these towns as full corporations.(77*) It is true indeed that the province charter of 1691 confirms all grants

"which any person or persons or bodies politique or Corporate towns villages colleges or schools doe hold and enjoy or ought to hold and enjoy within the bounds aforesaid by or under any grant or estate duly made or granted by any general court formerly held"

in accordance with the earlier charter.(78*) On the other hand, in 1694 the General Court passed an act "to enable Towns Villages and Proprietors in Common and Undivided lands, etc., to sue and be sued,"(79*) -- an action which, so far as the towns were concerned, would seem to have been unnecessary if the towns were corporations. Governor Bernard, writing to the Lords of Trade in 1762, said that up to that time only two corporations had been established by the General Court,(80*) -- a statement absurd if the towns were incorporated. And there is no unmistakable conferring of corporate powers upon these towns until 1785.(81*)

The towns are perhaps best designated not as corporations, but as quasi-corporations, bodies which

"although recognized by various statutes and by immemorial usage, as persons or aggregate corporations, with precise duties which may be enforced, and privileges which may be maintained by suits at law, are yet deficient in many of the powers incident to the general character of corporations."(82*)

Thus Governor Hutchinson, who approved acts relating to towns, but doubted the expedience of permitting corporations to be created by act of the General Court,(83*) wrote in his History of Massachusetts:

"Not only the town of Boston, but every town in the old colony, were to many purposes a corporate body: they could sue and be sued, might choose their own officers for managing what they called the prudential affairs of the town, and the selectmen were judges of the breach of the bylaws of the town...."(84*)

Such bodies closely resembled, if they were not identical with, those known to the English law as "corporations of common right," or "corporations at the common law."(85*) As the trustees of Yale College said in a petition to the assembly in 1717, referring to "Towns, Proprietors, Owners of Ships," etc.:

"... these are not bodies corporate yet as ye common law allows are as it were incorporate to do some things without which they could not well manage."(86*)

And it is in this category rather than in the category of complete corporations that the Massachusetts towns seem to belong; the emphasis should be placed on the qualifying clauses, "to many purposes," "as it were," and the like, rather than on the terms "incorporate" or "corporate body." In this conclusion the judicial authorities are in general, if not entire, accord.(87*)

What was thus true of Massachusetts was true also of Maine, which was incorporated with the larger colony in 1652, and likewise of Connecticut.(88*)

In Rhode Island and New Hampshire slightly different conditions prevailed. In the former colony the first "charter" had been granted on petition of the towns, and in 1647 it was formally accepted by representatives of four of them.(89*) One of the earliest general assemblies convened under the charter (1649) received a petition from the "freemen of the Towne of Providence" requesting "libertie to incorporate themselves into a body politicke."(90*) After due deliberation the assembly voted to grant them (following the terminology of the colony charter)

"a free and absolute charter of civill incorporation and government to be knowne by the [name of the] Incorporation of Providence Plantation in the Narragansett Bay, in New-England."(91*)

Like the colony charter which it resembles, this document does not clearly purport to create a corporation. The terms "corporation," "body corporate and politic," and most of the usual formal phrases are lacking; and beyond the power to make the necessary local relations to govern their town affairs -- corresponding to the by-laws of a corporation -- the only power commonly distinctive of a corporation which was specifically granted was the right to have a common seal. It is clear that the assembly intended to confer or confirm to the Providence settlers certain powers of local government, but it is by no means certain that they intended to create a municipal corporation; and it seems not improbable that the Providence charter was so phrased that this intention might be left uncertain -- especially since, in the absence of any specific grant of authority to incorporate, the assembly's power to create a corporation was open to doubt. An act of May 3, 1682, confirmed these earlier grants, but did not more distinctly constitute the towns bodies corporate.(92*)

It is said that Warwick, Portsmouth, and Newport - the other three original Rhode Island towns - were given by the assembly privileges similar to those of Providence, about the same time.(93*) In 1669, after the new colony charter had been secured from Charles II (1663), Westerly was constituted the fifth town, with "all the rights, immunities, privileges and powers as other towns of this State generally have and enjoy."(94*) Later towns were, in general, simply accorded privileges like those of their predecessors, without further ado.(95*) In a few cases, however, especially in the next decade after Westerly was "incorporated," charters which may have been more definite seem to have been issued to new towns by the governor at the direction of the assembly.(96*)

In New Hampshire, moreover, as early as 1693, the township of Newcastle was created a "town corporate" by a formal document given by the governor in name of the crown and under the seal of the province, which has some of the distinctive earmarks of a charter of incorporation.(97*) This appears to have been a common method of establishing townships in that colony.(98*) Some instances, however, of acts of incorporation appear; such, for example, as those for Rumford (1733) and Concord (1765).(99*)

In New York the colonial records contain occasional mention of town corporations.(100*) In the early days of New Netherland the Dutch governor, Kieft, granted a number of town charters. The earliest of these were issued to companies of English individuals

who had made a settlement and formed an agreement. Such were Mespath (Newtown) (1642), Hempstead (1644), Flushing (1645), and Gravesend (1645). "The... charters gave the settlers power to form a 'bodye politique and ciuill combination' to which they, and their associates, heirs and successors were to belong," very much on the model of the New England town. Within a few years several charters were granted to Dutch towns, notably Brooklyn in 1646, and Flatbush, Beverwyck, Amersfoort, and New Utrecht before 1660. These established close corporations "modelled after the seventeenth century town-corporations of Holland."(101*) The language of an act of 1691, which was passed to settle the uncertainties about privileges formerly granted, implies that there were other corporations besides the two cities of New York and Albany.(102*) Here as elsewhere, however, it is unsafe to place too much reliance on such expressions. In New York, as in Massachusetts and Connecticut, the trend of judicial opinion has been to the effect that the colonial towns were quasi-corporations and no more.(103*)

To this statement there is at least one possible exception. In 1672, while the province still extended to the borders of Maryland, the governor and council convened at Fort James "erected into a Corporacion by the name of a Balywick" the settlement at the head of Delaware Bay known as Newcastle, and established there a governing body composed of a bailie and six assistants.(104*) Whether or not this was a true corporation, it apparently did not long survive.

In New Jersey, almost at the beginning of its history as a separate colony, the proprietary governor granted "charters" to the settlers at Bergen (1668)(105*) and Woodbridge (1669),(106*) which charters the Lords Proprietors later (1672) confirmed.(107*) These documents refer to the settlements as the "Towne and Corporation of Bergen," the "Towne and Corporation of Woodbridge;" throughout the colonial period they are customary spoken of as "the Corporation of Bergen," etc.,(108*) and as such they were represented in the assembly.(109*) On the other hand the charters contain none of the incorporation clauses which appear in the ordinary charters of incorporation of this period, and none of the general powers of corporations is specifically given.

The historian of East Jersey says that Middletown, Shrewsbury, and Piscataway enjoyed similar "charters,"(110*) and a draft of an agreement of Berkeley and Carteret with the Duke of York in 1669, contemplating an exchange of territory, mentions "the Corporations of Bergen, New Barbadoes, Newark, Elizabethtown, Woodbridge, Shrewsbury, Middletown and New Piscata. way."(111*) It has been asserted, though without good authority, that Perth Amboy was chartered under the proprietary government.(112*) Burlington and Salem, in West Jersey, are not infrequently referred to as corporations. Provision was early made by the assembly for holding fairs and markets there.(113*) In 1682 it was enacted

"that the town of Burlington, have liberty, and are hereby impowered, to chuse amongst themselves, some persons who have power to regulate the affairs of the town, in such matters as relate to fences, cattle, highways, and all such things, as usually fall within the compass of ourselves, in corporations in England."(114*)

In 1693 power was given to the freeholders of the same town to elect annually a burgess or chief magistrate who, with the

consent of a majority of the freeholders, should make orders and laws for the benefit of the town and appoint such subordinate officers as appeared necessary.(115*) And a supplementary act of 1695 refers (apparently) to this and a corresponding act relative to Salem as "the late acts for incorporating the towns of Burlington and Salem."(116*) Again, however, the phraseology of the act leaves room for doubt as to its precise intent and effect.

An item in the minutes of the provincial council of East Jersey implies that all the towns were regarded as corporations. The council argued, in objecting to a bill of the lower house giving towns certain powers "to make local and prudential orders," (1683) that

"the Deputies calling those Agreemts Orders as they Doe in their Bill is imp'per, the word orders being not p'perly appropriable to agreemts of any Towne or Incorporated body of people, but only to the Councill Board and Courts of Justice - all other Determinac'ons in Townships are called By Lawes and so are agreemts this Day of all the Corporac'ons in England, so much as the great City of London."(117*)

That this view did not prevail in West Jersey is indicated by the West Jersey assembly's act of 1697 erecting Fairfield into a township, which guaranteed it only "the same priviledges as any other townships in this Province..., that are not towns incorporate."(118*)

It is clear, then, that the term "corporation" was applied to a number of New Jersey towns, which had received "charters" from the proprietary or proprietary governor or acts of privilege from the legislature. Perhaps they were thereby erected into full and complete corporations. I think it more probable that the term was used loosely, that the dignity of the privileges was exaggerated, and that the "corporations" in fact were no more than quasi-corporations.

Under the royal government in New Jersey two charters were panted to towns other than the five boroughs and cities mentioned among the more pretentious municipal corporations. The first of these was apparently no more than a new charter for Bergen. We learn of it through "An Act for Confirmeing a Pattennt granted by his Excellency Robert Hunter for the incorporation of the town of Bergen," which passed the legislature in March, 1713.(119*) The second was granted by the same governor a month later to the inhabitants of Newark, who, after vain efforts beginning as early as 1677, had lately renewed their petition for a "Charter or Pattennt of Privilidges."(120*) Both of these apparently constituted genuine corporations, but neither set up the elaborate municipal government provided for the cities and boroughs, And no others of this type seem to have been granted.

In Virginia the term "corporation" was not infrequently applied to many of the earliest settlements, after the ill-fated city of Raleigh,(121*) but it is not clear that the term had any special significance. Both in Maryland and Virginia there were repeated efforts, through a good part of the colonial period, encouraged or commanded by the royal authorities in England, which were directed toward the building of towns.(122*) In only one instance, however, does incorporation seem to have been a feature of this policy. This was in the case of the last of the series of Virginia acts by which efforts had been made to create towns in wholesale fashion. Here provision was made that the elective officers, so-called "director and benchers" of the guild

hall, who should be chosen in the sixteen towns for whose establishment the act provided, should be a "body corporate and politic," and the act specified the powers customarily enjoyed by corporations. Here at least was an attempt to create genuine municipal corporations. But this act, like the others of similar purpose, had no significant influence. Indeed it seems unlikely that any corporations traced their origin to it, since by its terms its operation was suspended for three years after its passage in 1705, and in 1710 a royal proclamation repealing it was published in the province.(123*)

The common method, in these colonies, by which towns were actually laid out, established, and managed during their early years, was through the agency of a board of justices, commissioners, or trustees who acted by virtue of an act of the assembly; and in both colonies there were a number of special acts constituting such boards.(124*) These boards were not as a rule incorporated. In fact apparently the only instance of such an incorporation appears in the case of Annapolis. The seat of government had been moved there from St. Marys, in 1694, and in 1696 the Maryland assembly passed an act incorporating certain influential men of the colony, including the governor and other officials, as the Commissioners of the Port and Town of Annapolis; and to them it entrusted the control of the affairs of the new capital.(125*) The town was thus managed until its establishment under Seymour's city charter in 1708.(126*)

In North Carolina towns were first established either by order of the governor and council or by legislative act.(127*) But while some of these, if not all, were given representatives in the assembly after the manner of the English boroughs, it is not clear that they were made corporations any more than were the Virginia "boroughs."(128*) About 1754, however, most of the acts establishing both towns and counties were repealed by order of the crown authorities, and the governor was instructed "to confirm by Charters of Incorporation, all the Rights and Privileges derived to certain Towns and Counties" by the acts repealed. In 1755 this instruction was revoked, "at the humble request of the Assembly." Nevertheless in 1760 Governor Dobbs reported to the Lords of Trade that nearly all had applied for charters of incorporation, which he had granted; and that he had disallowed the writs of election for representatives in the assembly for those which had not sought charters, until he should receive instructions.(129*) The letter in reply, dated June 13, 1760, took the governor to task for this action, saying:

"As to granting Charters of Incorporation to those Towns, the acts for establishing of which had been repealed, it was meant only as a more regular mode of re-establishing in them those powers and offices of Corporations which had been taken away by the Repeal of the Laws..."

It further intimates that charters are not essential in view of the revocation of the former instructions.(130*) Meantime in May, 1760, the two recalcitrant towns -- Edenton and Newbern -- and Halifax, a new one, applied to the governor and council for incorporation, with success.(131*) Possibly others may have received similar charters. The incompleteness of the records available makes it impossible to ascertain accurately the significance of these "corporations," and whether they belong with the more pretentious or the less pretentious municipalities.

Such, then, from our narrow viewpoint, were the towns of the colonies: a few formally erected corporate municipalities with

the titles of borough or city, as in the England known to the settlers; a considerable number of lesser units of local government, which in some cases clearly possessed corporate powers, but in the great majority of cases were doubtfully possessed of those powers, or were at the most properly to be regarded merely as quasi-corporations. It was not until after the Revolution that the practice became general to confer corporate privileges upon counties(132*) and townships or upon their highest officials as such, and it is safe to say that in the colonies as a whole the true municipal corporation was decidedly an exception.

Besides the municipalities there appeared in certain of the colonies a few other public corporations which were concerned either with education or with charity.

The first of these was provided for in an act of the Maryland assembly passed in 1696, which was in the form of a memorial to the crown urging that there should be established in the province, with powers and duties set forth in the act, a body corporate to be known as the Rectors, Governors Trustees and Visitors of the ffreeschools of Maryland. The act was disallowed because it did not reserve to the crown the right of visitation. None the less, the board came into existence and went so far as to establish the "King William School" in Annapolis in 1701, and in 1704, when the laws of the province were revised, this act was among those declared to be in force.(133*)

In 1723 this policy was extended in Maryland by the creation, by simple act of assembly, of similar boards of visitors for each county, each board constituting a corporation;(134*) and these continued throughout the colonial period.(135*)

In 1718 the Pennsylvania assembly made provision for the building of workhouses and houses of correction in each county and "corporate town," and declared that the boards of administration, which were to be selected by and accountable to the justices of the peace, should be bodies corporate.(136*) Apparently this act was not entirely effective,(137*) and it is possible that none of these corporations was actually created. In 1749, however, new provisions of a similar nature were made for all of the townships, boroughs, and cities of the province, the administrative boards being known as the "Overseers of the Poor."(138*)

In 1768 the Maryland assembly incorporated "The Trustees of the Poor" in four of its counties, by an act resembling in general the act creating county school boards above mentioned;(139*) and five years later the same provision was extended to two other counties of that province.(140*)

Besides these there were several public corporations charged with administering public charity or correction which were established singly. In Bristol, Pennsylvania, the officers in charge of this function were in 1746 incorporated by the assembly as The President, Treasurer and Assistants, of the Borough of Bristol.(141*) By an act of 1754 the New Jersey assembly incorporated a similar body with the title of The Managers of the Poor-House of the Free Borough and Town of Elizabeth.(142*) In 1772 the Massachusetts General Court incorporated the Overseers of the Poor in the Town of Boston....(143*) And in 1773 a somewhat similar body was chartered by the Pennsylvania assembly as the Commissioners for the County of Philadelphia.(144*)

In 1773, furthermore, the Trustees of the General Loan Office of the Province of Pennsylvania, first appointed by an act of March 2, 1722-23, were first incorporated.(145*) As early as 1723 New Jersey, in her first act to emit bills of credit, provided

for the incorporation, in each county, of "Commissioners of the Loan Office" to administer the business. The later frequent acts on the subject often refer to the commissioners, but not to their corporate capacities, until 1774, when the statute repeats the provisions of the act of 1723.(146*) There may have been similar bodies corporate in some other provinces.

If each of these bodies be counted, the number of public corporations of this type would be greater than that of the higher type of municipalities. Throughout the colonies as a whole, however, the officers performing such functions were generally unincorporated, and those which have just been mentioned are to be regarded as exceptions to the rule.

The public corporations of colonial origin and charter comprise, then, a group of fairly pretentious municipal corporations, most in evidence in the middle colonies; a larger but much less distinct group of "corporate towns" (and, in the case of North Carolina, corporate counties), whose title to the term "corporation" is perfectly clear in but few instances; and a relatively small group of administrative boards charged with the oversight of public education, public charity, and the like, on behalf of local units of government, which were apparently confined largely to Pennsylvania and Maryland. The corporations of the first of these three groups were almost exclusively erected by royal governors or proprietaries; those of the second and third, for the most part by the colonial assemblies.

NOTES:

1. J. A. Fairlie, "Municipal Corporations in the Colonies." in *Municipal Affairs*, ii, 341-381 (1898), gives a list of these (not entirely accurate) and discusses them from the standpoint of municipal government.
2. See *supra*, esp. 8-10, 16.
3. Fairlie, *Munic. Corps. in Cols.*, 343.
4. See Brown, *First Republic*, 194, 205, 254, and *passim*.
5. *Charters in Hazard, Register of Pa.*, iii, 264-265, iv, 312-314. Cf. *infra*, 55-56.
6. Pollock and Maitland, *Hist. of Eng. Law*, i, 625.
7. The blank is left in the charter as printed in Hazard.
8. Charter in Hazard, *State Papers*, i, 470-474. The town is not specifically called a borough or a city.
9. *Ibid.*, i, 480-486.
10. *Ibid.*, i, 575. Cf. G. A. Emery, *Ancient City of Georgeana and Modern Town of York* (York Comer, 1904); Williamson, *Hist. of Me.*, i, 287-290, 346; Palfrey, *Hist. of New Eng.*, i, 222. Kittery has likewise been said to have received a borough charter; but this upon doubtful authority.
11. See esp. J. F. James, "The Origin and Development of the Municipal Government of New York City," in *Mag. of Amer. Hist.*, viii, 315-329, 598-611 (1882).

12. N. Y. Col. Recs., i, 391.
13. Doc. Hist. of N. Y., i, 387.
14. Doc. Hist. of N. Y., i, 602-604.
15. *Ibid.*, i, 604-610. Cf. A. E. McKinley, "The Transition from Dutch to English Rule in New York," in *Amer. Hist. Rev.*, vi, 692-724 (1901).
16. Council Min., v, 16, 27, 32, 58, 148, 155, 206 (see Calendar); N. Y. Col. Recs., iii, 337-339, 412.
17. N. Y. Col. Laws, i, 181-216; James W. Gerard, "The Dongan charter of the City of New York," in *Mag. of Amer. Hist.*, xvi, 30-49 (1886).
18. See letters of Governors Bellomont and Hunter: N. Y. Col. Recs., iv, 812, v, 369. As to the colony seals, cf. *ibid.*, iii, 365, 427, 546, 567.
19. N. Y. Col. Laws, ii, 575-639. As mentioned supra, II n, the "patent" for some land on Nassau Island, given in 1708, is sometimes confusingly referred to as "the Cornbury charter." Cf. Doc. Hist. of N. Y., iii, 425; Council Min., x, 158 (Calendar, 217).
20. Charter in Munsell, *Annals of Albany*, ii, 62-87. Cf. also *ibid.*, ii, 37, 88, 90.
21. Council Min., vii, 180 (Calendar, 113); N. Y. Col. MSS., xl, 143 (Calendar, 250).
22. Letters to Lords of Trade of Nov. 12, 1698, and Oct. 17, 1700: N. Y. Col. Recs., iv, 427, 719.
23. Letter of Aug. 21, 1699: *ibid.*, iv, 548.
24. See incidental references in N. Y. Col. MSS., xlvii, 178-181, I, 118, 123, 124 (Calendar, 313, 337-338); N. Y. Col. Laws, i, 586-587, iv, 683-684, v, 304-314.
25. Charter quoted in part in *McKim v. Odon* (1829), 3 Bland Ch. Rep. (Md.) 416 n.
26. *Md. Arch.*, v, 265-266.
27. *Ibid.*, xxvii, 62, 197, 202, 209-210.
28. Pa. Col. Recs., i, 117.
29. Charter in Pa. *Mag. of Hist. and Biog.*, xviii, 504-509. See note by Pennypacker. *ibid.*, xv, 344-345.
30. Charter in Hazard, *Register of Pa.*, i, 440-443. There was a lapse after the Revolution till 1789. These early charters are discussed in E. P. Allinson and B. Penrose, *Philadelphia, 1681-1887: A History of Municipal Development* (Philadelphia, 1887), chaps. 1, 2.
31. I. e., had the seal of the province affixed, with the consent

of the governor and council.

32. Charter in Pa. Arch., i, 111-115. See also Pennypacker, Settlement of Germantown, for discussion of the early history of the town, with reprints of early records including the charter. Cf. also Pa. Stats. at Large, vii, 262-263 (1769).

33. Jonathan Pearson and others, The History of the Schenectady Patent (Albany, 1883), 426-432; N. Y. Col. MSS., xcii, 104-105 (Calendar, 747); Council Min., xxiii, 469, xxix, 8, 17, 95 (Calendar, 412, 509, 515, 532).

34. Pearson, Schenectady Patent, 431.

35. N. Y. Col. MSS., xciv, 115, xcvi, 69 (Calendar, 769, 783); Council Min., xxix, 246 (Calendar, 532).

36. Session Laws, 1798, pp. 359-379; Pearson, Schenectady Patent, 432.

37. Charter in Hazard, Register of Pa., iv, 397-398.

38. Pa. Col. Recs., iii, 57: Oct. 17, 1718.

39. Ibid., iii, 102.

40. Hazard, Register of Pa., iv, 312-314.

41. Session Laws, 1785, p. 642.

42. Hazard, Register of Pa., iii, 264-265.

43. Ibid., i, 440-443.

44. Session Laws, 1795, p. 667. Cf., however, James Logan to John Penn, Nov. 17, 1729, in Pa. Mag. of Hist. and Biog., xxxiv, 252-253, and Pa. Stats. at Large, ix, 41-45 (Feb. 5, 1777).

45. Evans, Amer. Bibliography, i, 382, No. 2542.

46. A careful account of these is given in Austin Scott's "The Early Cities of New Jersey," in N. J. Hist. Soc. Proc., 2d Series, ix, 151-173 (1887). The only one of the charters in print, that of Elizabeth, is given almost in full in Nicholas Murray's Notes, Historical and Biographical, concerning Elizabeth-Town... (Elizabethtown, 1844), 28-44. Curiously enough, the published records of the provincial council contain no evidence of action by that body upon these charters, -- a fact perhaps to be explained by the incompleteness of the records.

47. The incorporation of this town had been recommended before New Jersey became a royal colony, but apparently without result: Aaron Leaming and Jacob Spicer, The Grants, Concessions, and Original Constitutions of the Province of New Jersey, the Acts passed during the Proprietary Governments, and Other Material Transactions... [1664-1702] (Philadelphia, 1758), 185.

48. With some revisions: cf. Scott, Early Cities of N. J., 170.

49. N. J. Arch., xv, 619-620, 634.

50. Quoted by Scott (Early Cities of N. J., 158). Liber AAA, Commissions, 266-280, 306, in N. J. State Library., N. J. Arch., 1st Series, xii, Oct. 3, 1745, April 3, 1746, April 17, 1748, Oct. 13, 1748, April 10, 1750.
51. There is a legend that Camden, S. C., was incorporated in 1750 or after, but supporting evidence is not to be had: T. J. Kirkland and R. M. Kennedy, *Historic Camden* (Columbia, S. C., 1905).
52. See *infra*, 70.
53. See *supra*, 13-14.
54. The act has not been preserved. See McCrady, S. C. under Royal Govt., 40-41; S. C. Stats. at Large, iii, 179.
55. Referred to in the act of May, 1723: Stats. at Large (Hening), iv, 138-139. Cf. L. G. Tyler, *Williamsburg, The Old Colonial Capital* (Richmond, 1907), 26.
56. Charter in Ingle, *Local Insts. of Va.*, 121-126. Cf. Stats. at Large (Hening), iv, 541-542; W. S. Forrest, *Historical and Descriptive Sketches of Norfolk*,... (Philadelphia, 1853), 50-54.
57. Scharf, *Hist. of Del.*, ii, 635-637. Conrad, *Hist. of Del.*, 300-301. Cf. also act of June 13, 1772.
58. N. C. Col. Recs., vi, 331. Cf. *ibid.*, ix, 818, for the attempt of the freeholders, in 1774, to surrender it and get a new charter.
59. See *supra*, 12.
60. McCrady, S. C. under Royal Govt., 42-43; S. C. Hist. Soc. Colls., ii, 264-267, 274-275; Chalmers, *Opinions*, 395-397.
61. McCrady, S. C. under Royal Govt., 43.
62. Josiah Quincy, *A Municipal History of the Town and City of Boston*. (Boston, 1852), 16-17; Thomas Hutchinson, *History of... Mass. Bay* (ed. 1765), i, 175; A. M. Davis, *Corps. in Col.*, 194, 202, 219, and references cited.
63. Stats. at Large (Hening), iii, 419, 427.
64. Dec. 17, 1708: Md. Arch., xxvii, 232-234.
65. Oct. 14, 1732: N. Y. Col. Laws, ii, 752-753.
66. August, 1736: Stats. at Large (Hening), iv, 541-542.
67. N. C. Col. Recs., vi, 180, 194-196, 400, 443, 454, 486, 487, 495, 850, 913, 916, 1096, 1106, 1107, 1159, 1161, 1170, 1173, 1175, 1176, 1179, 1182.
68. Cf., however, *infra*, 66.
69. Blackstone, *Commentaries*, i, 47 5-476.
70. Among the papers presented before the Society for Political

inquiries, of Philadelphia, in 1787, was " An Essay on the incorporations of Towns," by Mr [Thomas?] Paine: Hist. Soc. of Pa. Memoirs. ii, 48 (1830). This might throw light on the question here presented, but I have been unable to find the essay.

71. See Plymouth compact in Hazard, State Papers, i, 1 19. For other examples, see *ibid.*, i, 486; R. I. Col. Recs., i, 14 (Providence, 1636). i, 52 (Portsmouth, 1639), i, 93 (Newport, 1639); N. H. Prov. Papers, i, 126 (Dover, 1640).

72. Case of Sutton's Hospital (1612), 10 Coke 29 b.

73. A. M. Eaton maintains a view of corporations which enables him to say that " in Rhode island... towns have always been corporations." He is obliged, however, to take issue with the theory of incorporation which prevailed throughout the entire colonial period. See his Local Self-govt. and Origin of Munic. Incorp. Cf. also Osgood, Amer. Cols., i, 290-300, esp. 291.

74. See *supra*, 28.

75. For random examples of such acts, see Mass. Col. Recs., i, 259, 291, iv, pt. i, 237, iv, pt. ii, 408-409; and Mass. Prov. Acts, v, 327, 329.

76. N. C. Col. Recs., i, 7.

77. cf., however, Wrentham Proprietors v. Metcalf, Quincy's Reports, 36-37 (1763).

78. Poore, Charters and Consts., i, 948.

79. Mass. Prov. Acts, i, 182-183.

80. The Boston Marine Society (1754) and the Society for Propagating Christian Knowledge among the Indians of North America (1762): *ibid.*, iii, 708, iv, 520. Bernard evidently overlooked, for the moment, Harvard College, whose charter (1650) was not of recent origin.

81. Session Laws, 1785, p. 611.

82. Rumford v. Wood, 13 Mass. 193 (1816).

83. See *supra*, 13.

84. 2d ed., i, 175 n.

85. E. H. Warren, in Harv. Law Rev., xxi, 308; Anon., Law of Corps. (1702), 213.

86. Conn. MSS. Archives, Colleges and Schools, i, 192: quoted by S. E. Baldwin, in "The Ecclesiastical Constitution of Yale College," New Haven Hist. Soc. Papers, iii, 412 (New Haven, 1882).

87. Rumford v. Wood, 13 Mass. 193 (1816); Hill v. Boston, 122 Mass. 349-351 (1877) (Gray, C. J.); Commonwealth v. Roxbury, 75 Mass. 496 500 (1857) (Shaw, C. J.); Bloomfield v. Charter Oak Bank, 121 U. S. 129 (1887) (Gray, J.); Goodnow, Comp. Admin. Law,

i, 172. Cf., however, Eaton, *Local Self govt.*, passim, esp. 27, 122; *Boston v. Sears*, 39 Mass. 130 (1839) (Shaw, C. J.); and also Joel Parker. "The Origin, Organization, and Influence of the Towns of New England." in *Mass. Hist. Soc. Proc.*, ix, 14-63 (1866); Baldwin, *Priv. Corps.*, 266, and *Mod. Pol. Insts.*, 184; H. W Rogers, "Municipal Corporations, 1701-1901," in *Two Centuries' Growth of American Law* (Yale Bicentennial Series, New York, 1901), 219.

88. *Bloomfield v. Charter Oak Bank*, 121 U. S. 129 (1887) (Gray, J.). Cf. also *Supra*, 62, and note 5. In 1705 Connecticut passed an act corresponding to the Massachusetts act of 1694: *Conn. Col. Recs.*, iv, 500-501. Rogers (*Munic. Corps.*, 227) seems to me to be in error in calling an act of 1639 (*Conn. Col. Recs.*, i, 36-39) a "general incorporation act."

89. See *supra*, 40, and Eaton, *Local Self-govt.*, 570-573.

90. This implies a desire to have some higher authority to validate the voluntary agreement formerly entered into, as mentioned *supra*, 60-61.

91. *R. I. Col. Recs.*, i, 214-216.

92. *R. I. Acts and Laws* (ed. 1730), 30-32; H. C. Dorr, *The Proprietors of Providence and their Controversies with the Freeholders* (Providence, 1897).

93. Eaton, *Local Self-govt.*, 576-577.

94. *R. I. Pub. Laws* (ed. 1798), 89. The preamble of this act adverts to "the power of his Majesty given to this assembly to order and settle towns, cities, and corporations, within this said jurisdiction, as shall seem meet," but the words of the charter do not literally warrant the inclusion of the "corporations."

95. *Ibid.*, 92-100. Cf. 1730 acts relating to Smithfield, Scituate, and Gloucester: "erected" and incorporated a Town, to be called and known by the name of -----

96. *Ibid.*, 89-92.

97. *N. H. Prov. Papers*, ii, 107-108. Cf. *ibid.*, ii, 92-98.

98. *Ibid.*, ii, 620, 672; *Pawlet v. Clark*, 9 Cranch (U. S.) 292 (1815). Cf. also George Hodges, *Holderness*. (Boston, 1907), 26; J. Q. Bittenger, *History of Haverhill, N. H.* (Haverhill, 1888), 36-39.

99. Nathaniel Bouton, *The History of Concord...* (Concord, 1856), 141-143, 747-749; *N. H. Town Papers*. vols. xxiv-xxix.

100. See, e.g., *N. Y. Col. MSS.*, xc, 72, xci, 85 (Calendar, 728, 737); *Council Min.*, xxv, 176, 461 (Calendar, 425, 459).

101. Cf. esp. A. E. McKinley, "The English and Dutch Towns of New Netherland," in *Amer. Hist. Rev.*, vi, 1-18 (October, 1900).

102. "That all the Charters, Patents, Grants, made... and... executed under the seal of this Province,... authorized by their

late Majesties the Kings of England,. unto the several and respective Corporations of bodys politic of the Citys Towns and Manors..... shall forever be deemed.... authentic in the Law against their majesties..." N. Y. Col. Laws, i. 224-225.

103. Chancellor Kent, in *Jackson v. Schoonmaker*, 2 Johnson (N. Y.) 231 (1807); followed in *Jackson v. Cory*, 8 Johnson (N.Y.) 388 (1811); Goodnow, *Comp. Admin. Law*, i, 113. Cf., however, N. *Hempstead v. Hempstead*, 2 Wendell (N. Y.) 109, 134.

104. N. Y. Col. Recs., xii, 496-497; Scharf, *Hist. of Del.*, ii, 862. Cf. the city charter granted to Newcastle in 1724: *supra*, 56 57.

105. E. J. Records (MSS.), Deeds, Liber I, 37-41: reprinted in *Charters and Acts Relating to Jersey City* (1844), 8-14.

106. E. J. Records (MSS.), Deeds, Liber I, 51-56. The two charters are very much alike.

107. *Ibid.*, 144. Despite the provisions in the "Concessions" (see *Supra*, 16) the assembly seems to have had no part in this incorporation.

108. Cf. N. J. Arch., xxi, 8, 9, 18, 44, 46, 80, 87, 108; Leaming and Spicer, 328.

109. *Ibid.*, *passim*.

110. Whitehead, *East Jersey under the Proprietary Government* (ed. 1875), 48-49, 124.

111. *Pa. Mag. of Hist. and Biog.*, v, 231-233 (1881).

112. Gordon, *Gazetteer of N. J.*, 214. The twenty-four proprietors, who in 1680 succeeded to Carteret's title in East Jersey, suggested the village to Governor Lawrie as a fit subject for incorporation, in the hope of building it into a rival of New York; but he seems not to have followed the suggestion: Leaming and Spicer, 185; W. A. Whitehead, *Contributions to the Early History of Perth Amboy...* (New York, 1836), 50-53.

113. Leaming and Spicer, 433-434, 446, 453-454.

114. Leaming and Spicer, 454.

115. *Ibid.*, 523-527.

116. *Ibid.*, 542-543.

117. *Journal of Gov. and Council of E. J.*, 1682-1703, p. 53.

118. Leaming and Spicer, 556-557.

119. N. J. Arch., xiii, 491, 504-505, 508, 541, 552; B. C. Taylor, *Annals of the Classis of Bergen...* (New York, 1857), 57, 61-62.

120. Newark Town Recs., esp. 123-124, 159, 283-286.

121. See esp. Brown, *First Republic*, Index, title "Corporations."

122. See instructions of Charles II to Governor Berkeley: Hazard, *State Papers*, ii, 607-608; and discussion in Bruce, *Econ. Hist. of Va.*, ii, 547-561; Blodgett, *Free Burghs*, 305-308; Wilhelm, *Local Insts. of Md.*, 102-108.

123. *Stats. at Large (Hening)*, iii, 404-419, esp. 411; Ingle, *Local Insts. of Va.*, 105-108.

124. See *Md. Laws (Kilty)*, 1724, c. 16; 1732, c. 6, c. 14, c. 15, c. 18, c. 21; *Stats. at Large (Hening)*, iii, 56-59 (1691), iv, 234-239 (1727).

125. *Md. Arch.*, xix, 498-504.

126. See *supra*, 13-14, 58.

127. See *N. C. Col. Recs.*, iv, 43, v, 61, 63, 65.

128. Bath is said to have been incorporated in March, 1705: L. T. Rodman, *Panpticoe and Bath...* (Raleigh, 1907), 177. The published minutes of the council contain no reference to this, however, and an act of December, 1705, by which Bath County was divided into three precincts for election purposes, contains no suggestion of it: *N. C. Col. Recs.*, i, 629. Cf. *ibid.*, v, 302, indicating that no incorporation was effected.

129. Letter of Feb. 28, 1760: *N. C. Col. Recs.*, vi, 226-229. Cf. also *ibid.*, 245, 288-289, 411, 559-560, v, 1111.

130. *Ibid.*, vi, 262-263.

131. *Ibid.*, vi, 333-334.

132. In 1759-60 Governor Dobbs of North Carolina issued to the counties, at £10 each, some sort of "charters" which he considered requisite to enable them to be represented in the assembly; but it is not clear that they effected a legal incorporation: *N. C. Col. Recs.*, vi, 5-6, 226-229, 301-302. Cf. *ibid.*, viii, 215, for a "charter" to the town of Hillsborough (1770) which clearly did not create a true corporation.

133. *Md. Arch.*, xix, 420-426, xxvi, 361-362; H. D. Richardson, *Side-Lights on Maryland History...* (Baltimore, 1913), 170-176; Scharf, *Hist. of Md.*, i, 352-354.

134. *Md. Laws (Kilty)*, 1723, c. 19; suppl. 1728, c. 8.

135. Cf. esp. Edwin H. Brown, "First Free School in Queen Anne County," in *Md. Hist. Mag.*, vi, 1-15 (1911). This continued to 1791.

136. *Stats. at Large*, iii, 167-171.

137. See act of March 1, 1745-46: *ibid.*, vi, 31-38, 280-282.

138. *Stats. at Large*, v, 79-86; altered March 9, 1771: *ibid.*, vii, 75-96.

139. *Md. Laws (Kilty)*, 1768, c. 29.

140. Ibid., 1773, c. 18, c. 30.

141. Session Laws, 1746, pp. 44-53. This act apparently modifies the act of 1718 slightly with respect to this town.

142. N. J. Laws (Allinson), 198.

143. Mass. Prov. Acts, v, 177, 187.

144. Stats. at Large, viii, 300-304.

145. Ibid., viii, 284-300, iii, 324-338.

146. Acts of N. J. (Nevill), i, 103, 109; *ibid.* (Allinson), 419, 428.

Chapter 4

Private Corporations with American Charters

The private corporations of the colonies are to be distinguished from the public corporations chiefly by the prominent, if not exclusive, measure of private support and control. In law the two were not sharply differentiated; no broad distinctions appear in the form of the charters; and the advantages to the community in general were urged in requests for private grants as well as for public charters. Between different classes of private corporations, moreover, no lines were drawn, and it is only by an arbitrary division that we can single out groups of ecclesiastical, educational, charitable, and business corporations. But for the sake of clearness such an arbitrary classification may be justifiable.

The most numerous group of private corporations in the colonies comprises those which were concerned with religious worship. Of these there were, as in England, two distinct types, -- the "corporation sole," consisting of a single person and his successors, and the "corporation aggregate," consisting of several persons and their successors; the latter of course being the type which to-day has almost the entire claim to the term "corporation."

In a few colonies, if not in all, the common law principle that the "parson" of the Established Church was a "corporation sole"^(1*) was in force. In South Carolina this was explicitly provided by general acts of 1704 and 1706.^(2*) A Georgia act of 1758 is equally explicit, although it relates only to a few specified parishes.^(3*) In Massachusetts substantially similar powers were conferred by an act of 1755 upon all the Protestant masters of that province;^(4*) and although the term "corporation sole" is not mentioned in the act, the Massachusetts courts have held that it operated to create or confirm such corporations.^(5*) There is also judicial authority for the assertion that the same principle was clearly the law of New Hampshire,^(6*) and it may have been recognized generally in the colonies at least so far as the Established Church was concerned.

Furthermore, religious corporations aggregate were erected in several of the colonies. The first instance of this appears in New York. Under date of May 11, 1696, Governor Fletcher and his council granted a charter to the Minister Elders and Deacons of the Dutch Protestant Congregation in the City of New York.^(7*) A year later a like favor was extended by the same governor to Trinity Church (Episcopal) of the same city.^(8*) Bellomont,

Fletcher's successor, thought the Dutch church charter, like that of Westchester,(9*) "very extraordinary," and complained to the Lords of Trade that it amounted to "setting up a petty jurisdiction to fly in the face of government."(10*) Nevertheless it survived his complaints and remained in force till supplanted by legislative charter after the close of the Revolution.(11*) To the other charter Bellomont appears to have raised no objection, probably because it was given to a body within the Established Church. There was, however, some doubt as to its validity, and application was made to Governor Cornbury, in 1704, for a new charter. Acting with extreme caution, as we have seen, he refused to accede to the request on the score of lack of authority. Instead he recommended an act from the assembly confirming the rights originally granted, and such an act was duly passed and approved.(12*)

In the course of the eighteenth century, churches of the Established faith were freely chartered by the royal governors of New York, apparently finding no difficulty in securing corporate privileges there.(13*) By the end of the colonial period probably all, or nearly all, of this faith were incorporated.(14*) A few of the Dutch Reformed denomination were also chartered, perhaps out of respect to a clause in the treaty of 1664 by which New Netherland had been surrendered to the English.(15*) Other sects, on the other hand, -- notably the Presbyterians, the French Protestants, and the Lutherans, -- sought frequently but in vain for like advantages. The council was not especially opposed to the issue of such charters, but the English authorities, upon being consulted, sent back word (till near the close of the colonial period) that such encouragement to dissenters was unnecessary and inexpedient.(16*) In 1775 this restriction by the home government was removed,(17*) and the council minutes seem to indicate that at least one of these churches, the French Protestant at New Rochelle, somehow secured a charter even as early as 1762.(18*)

In New Jersey the first ecclesiastical corporation was St. Mary's Church in Burlington (Episcopal), which almost succeeded in obtaining a charter from Lord Cornbury in 1704, and was at length chartered by Governor Ingoldesby in 1709-10.(19*) St. Peter's in Perth Amboy was chartered in 1718,(20*) and at least one dissenting church, a Presbyterian in Monmouth County, received a charter (1734) before, in 1738, New Jersey was separated from New York.(21*) The first royal governor of New Jersey, Lewis Morris, seems to have granted no charters, partly, it appears, for ecclesiastical reasons. Governor Belcher, however, who was the chief executive from 1747 to 1757, pursued a more liberal policy, perhaps because he himself was a Presbyterian. In his administration three Presbyterian and three Dutch Reformed churches were chartered;(22*) and at least seven other similar charters, in these and other denominations, were issued by his successors.(23*)

In Pennsylvania several church charters were granted by the proprietaries or their governors at least after 1760. Record remains of Swedish and German Lutheran churches of Philadelphia (1764, 1765), Presbyterian churches of Philadelphia and Carlisle (1772 and ?), a German Reformed church in Lancaster (1771),(24*) and an Episcopal church in Philadelphia (1765).(25*)

In the last few years before the Revolution a number of these corporations were erected in Rhode Island. Between 1769 and 1774 the "governor and company" incorporated the "Ministers, Churchwardens, Vestry, and Congregations" of Episcopal churches in Newport (1769) and Providence (1772);(26*) three

Congregational churches;(27*) two "societies," -- the Benevolent Congregational Society (1770) and the Charitable Baptist Society (1774), -- which were organized for the support of public worship in certain churches of Providence,(28*) and a similar Catholic Congregational Society in the Town of East Greenwich (1774).(29*)

There were doubtless a few other incorporated churches in these colonies. Elsewhere, however, either south of Pennsylvania or in New England outside of Rhode Island, clear instances of incorporation for religious societies do not appear.(30*) Certain substitutes for incorporation do, indeed, exist. In Maryland and Virginia, for example, there are numerous acts enabling church officials to hold property for certain uses.(31*) In Pennsylvania general acts for this purpose were passed in 1712, 1730-31, and 1760, but these are said to have been as often repealed by the council.(32*)

In Connecticut the religious "societies" were definitely authorized by acts of the assembly and enjoyed certain privileges of unified action, including the power to sue; but the acts providing for them bear none of the earmarks of acts of incorporation and it is not clear that the societies were so considered.(33*)

In Massachusetts an act of the General Court passed in 1755 provided that the deacons, churchwardens, and other governing bodies of the several protestant churches should be

"deemed so far bodies corporate, as to take in succession all grants and donations, whether real or personal, made either to their several churches, the poor of their churches, or to them and their successors, and to sue and defend in all actions touching the same."(34*)

A few years later (1761, 1762) two special acts were passed by which, in the two parishes of Rehoboth, the "Committee of the precinct" was constituted a board of trustees for the parish and declared a body corporate for the special purpose of investing the funds of the parish and paying the income thereof to the parish minister.(35*) It is, however, very much to be doubted whether these were true corporations. Neither Governor Bernard nor Governor Hutchinson seems to have regarded the acts as precedents for acts of incorporation. The bodies to which they gave new dignity should probably be regarded as quasi-corporations, or as common law corporations whose rights the General Court wished to define and confirm.(36*)

It would appear, therefore, that with the possible exception of Massachusetts, most of the colonial churches were not incorporated, at least as corporations aggregate; and that only in New York, New Jersey, and Rhode Island was the number of such corporations at all considerable in proportion to the whole number of churches.(37*)

Besides the local churches two other types of ecclesiastical corporations are represented in the colonies. Mention has already been made of the missionary societies with English or Scotch charters and bases, which had their chief field in America.(38*) A similar organization with colonial membership and control was projected by some enterprising New Englanders, including the president of Harvard College and the promoter of Dartmouth. They succeeded in 1762 in securing an act incorporating them as the Society for Propagating Christian Knowledge among the Indians of North America.(39*) In the following year, however, this charter was disallowed by the Privy Council on the recommendation of the Lords of Trade, chiefly on the ground that the corporation would

carry on its operations beyond the limits of the province, and might interfere with the general policy of the crown toward the Indian tribes (!); and because, despite its extensive powers, it was subject to no public audit or control.(40*)

The remaining ecclesiastical corporations might from one standpoint be classed rather as charitable corporations, or, from another, as insurance companies. Their most prominent representative was The Corporation for the Relief of Widows and Children of Clergymen in the Communion of the Church of England in America, on behalf of which charters were obtained, in 1769, from the royal governors of New York and New Jersey and from the proprietary governor of Pennsylvania.(41*) Ten years before, the Presbyterians of Pennsylvania had secured a similar charter,(42*) and in 1773, after considerable opposition on ecclesiastical grounds, their brethren in New Jersey were favored in the same way by Governor Franklin.(43*) The next year Franklin incorporated a similar society in the Dutch Reformed church.(44*) The second of these is still doing business in its narrow sphere, though in 1875 its title was changed to The Presbyterian Annuity and Life Insurance Company. The Episcopal corporation lost its New Jersey funds in the Revolution through the malfeasance of a loyalist treasurer. The New York and Pennsylvania funds were separated in 1797, and the Pennsylvania corporation still exists.(45*) Elsewhere there were similar funds, but in no other instance, apparently, were corporate privileges secured.(46*)

Next in numerical importance to the ecclesiastical corporations stand those which were formed for charitable or educational purposes. In the formation and control of these institutions the influence of religion and the church was indeed frequently present. The church was interested in having an educated ministry; hence it was natural that schools and colleges should be founded with a view to providing educational facilities, and that the clergy should have a prominent, or even a dominant, voice in their management. The church organization was commonly charged with the administration of charity as well as the inculcation of its importance; hence it was to be expected that in some communities the parish vestry should be the body incorporated to administer bequests for founding schools for the poor.(47*) Considering, however, the purpose in view as the basis of classification, it is permissible to designate as educational or charitable corporations those which were entirely composed of ministers or ecclesiastical officials.

The line between the charitable and the educational corporations is even more difficult to draw. There were orphan schools, for example, like the pet project of George Whitefield in Georgia, which he wished to have erected into "Bethesda College;"(48*) The South Carolina Society, formed in 1738, which was incorporated by the assembly in 1751 for "erecting, endowing, and supporting proper schools and almshouses, for the maintenance of poor and helpless orphans;"(49*) and the Win-yaw Indico Society, incorporated for a similar purpose in the same province in 1757.(50*) Alongside of these distinctly charitable enterprises there were also a number of "free schools" or "charity schools," established largely on private foundations, which were certainly not wholly "charitable" in nature. One of the earliest of these,(51*) since known as the William Penn Charter School, was established in Philadelphia in 1689, given a corporate charter. in 1697 or 1698 by the governor and council, as The Overseers of the publick schoole founded in Philadelphia, at ye request, costs & charges of the people of God called Quakers, and in 1701, 1708, and 1711 charters by William

Penn.(52*) The Massachusetts General Court, in 1756, incorporated The Feoffees of the Grammar School of the Town of Ipswich, to administer a private bequest in the interest of public education there.(53*) Somewhat similar were The Trustees of the Free Schools of the Town of Woodbridge, incorporated by the governor of New Jersey in 1769;(54*) and the "Trustees and Governors" of Peasley's Free School (1756) and of Eaton's Charity School (1759), which were incorporated by the Virginia assembly;(55*) as well as the "academy and charitable school" chartered in 1753 in Philadelphia, out of which the University developed.(56*) The Union School in New London, incorporated by the Connecticut assembly in 1774, was probably another of the same general nature.(57*)

There were some private charitable institutions with corporate charters, however, which were not concerned with education. Perhaps the first of these, as well as one of the most important, was incorporated by the Pennsylvania assembly in 1750 as The Contributors to the Pennsylvania Hospital, "for the relief of the sick poor of this province."(58*) Similar societies were to be found in other provinces. Thus in 1769 the South Carolina assembly chartered for the same purpose The Fellowship Society, which had been in existence as a voluntary association since 1762;(59*) and in 1771 the governor of New York granted a charter to The Society of the Hospital of the City of New York in America.(60*) In 1766, moreover, the Pennsylvania legislature entrusted the bulk of the municipal charity of Philadelphia to a somewhat pretentious private corporation entitled The Contributors to the Relief and Employment of the Poor in the City of Philadelphia. With considerable public "encouragement;" this body remained the responsible agency for this work till near the close of the Revolution.(61*)

The most important of the colonial educational institutions were the colleges, of which no less than nine with corporate charters were in existence at the outbreak of the Revolution.

The first of these, founded in 1636, was incorporated as the President and Fellows of Harvard College in 1650, by act of the Massachusetts General Court. When the validity of this charter was brought in question by the annulment, in 1684, of the colony charter under which it had been granted, persistent efforts were made to secure a new charter. It was found impossible, however, to obtain, either in England or in Massachusetts, a charter which would satisfy the college, the provincial, and the English authorities; and the uncertainty was finally quieted by a resolve of the General Court in 1707 which declared that the act of 1650, not having been "repealed or nulled," should remain the basis of the rights of the college.(62*) Even then some influential members of the community who had the college interests at heart regarded its status very insecure "for want of an Incontestible Charter;"(63*) but it was never disturbed.

The College of William and Mary, with its royal charter of 1693, has already been discussed.(64*) The third in the New World, eventually known as Yale College, was established in 1701 with the modest title of "collegiate school," and provided with a governing board of "undertakers" simulating the form of a business partnership. Later acts increased its powers, and in 1745, when the danger of the loss of the colony charter had diminished and the confidence in the practical power of the assembly to incorporate had increased, the first corporate charter of the college -- which was also the first corporate charter granted by the Connecticut assembly -- was issued.(65*)

In this same year (1745) a body of Presbyterians in New

Jersey sought to obtain from Governor Lewis Morris a charter for a college in that province. He refused, probably on ecclesiastical grounds.(66*) After his death in 1746, however, a charter was obtained from the acting governor, Hamilton, and steps were taken to establish the college.(67*) The validity of this charter was called in question and it may not have been entirely satisfactory to the grantees.(68*) In 1748, accordingly, Governor Belcher, late of Massachusetts and a zealous Presbyterian, issued a new charter which remained the legal basis of the "College of New Jersey" as it developed into Princeton University.(69*)

The other five colleges of the colonial period were all chartered in the two decades between 1750 and 1770. The University of Pennsylvania traces its origin to the "academy and charitable school" incorporated in 1753, by the governor and council, with the special approval of the proprietors; to which school, by a new charter issued two years later, power was given to grant degrees and the right to be called a "college" was extended.(70*) Columbia University grew out of the institution commonly called "King's College," to which the governor's charter of 1754 had given the corporate title of The Governors of the College of the Province of New York in the City of New York.(71*) Brown University was the outgrowth of a college incorporated by the "Governor and Company" of Rhode Island, in 1764, with the name of Trustees and Fellows of the College, or University, in the English Colony of Rhode Island, and Providence Plantations, in New England, in America.(72*) In 1766 a second college in New Jersey was established, under Dutch Reformed auspices, and chartered by Governor Franklin with the title of "Queen's College," now Rutgers.(73*) Finally, in 1769, the earnest endeavors of Eleazar Wheelock on behalf of an Indian school -- endeavors which had extended over a decade in time and in space from New York through New England to old England -- were rewarded by the incorporation, by authority of the royal governor of New Hampshire, of Dartmouth College.(74*)

In nearly every colony, therefore, is to be found at least one corporate educational institution, operating under charter from the crown direct, from royal governor, or from assembly. Delaware, North Carolina, and Georgia alone are exceptions to the rule.

Business corporations which were colonial both in origin and in activity were few, and on the whole of no great importance. Only as the colonial period drew to a close did several come into existence, and even these were hardly typical of present-day business corporations.

If the "Free Society of Traders in Pennsylvania" be excluded because of its English origin and charter,(75*) The New London Society United for Trade and Commerce in Connecticut (1732-33) probably deserves to be called the first American business corporation.(76*) Even in this case the title is not entirely clear. The company was indeed a distinctly Connecticut institution, both in its origin and in its act of authorization; and whether its purposes actually included the carrying on of trade as well as the issue of bills of credit, its business nature is obvious. The only doubt arises on the question whether it was really made a corporation. As we have seen, when the question of overtly incorporating it was presented to the assembly, particularly in 1733, that body decided that it had not the authority requisite to incorporate such a "society;" and when the company pleaded that it was a "fraternity" and not dissolvable, the assembly denied the plea. The act of

authorization certainly bestowed many of the attributes of a corporation, but its terminology is not absolutely convincing. And the early demise of the company makes a final statement as to its "corporateness" impossible.

The second business corporation of Connecticut was concerned with a New Haven enterprise -- like the first educational corporation of the state. For a commercial seaport adequate wharfage was as essential as good roads for inland towns. Numerous wharves were early built, but one, known usually as "Union Wharf" or "Long Wharf," stood out preeminent and encouraged local capitalists to "a constant succession of failures" in getting it put into and kept in serviceable shape. Late in 1731 the assembly

"Voted, that so many of the proprietors of the town as incline to do so, shall have free liberty to give what money they please, so far as shall be needed towards the building of the wharf, to the extent of three, four, or five hundred pounds."

In 1736 a new set of proprietors commenced work energetically, and by Nov. 11, 1738, "the Wharf extended into the harbor almost twenty-six rods," and an undivided twentieth share in it was sold at the rate of £530 for the whole. The earliest regular record of the company, dated February, 1745, indicates that it was still necessary to "carry on said wharf with the utmost expedition." In 1748 it yielded a revenue of £181 14s. 1d., but this and later income was invested in its extension. Despite all this investment, in 1752 half a right, or one-twentieth, would not sell for £20. At last, after a period of discouragement and inactivity, during which the owners had increased in number but not in strength, a few of the more hopeful proprietors secured a charter from the assembly, May 22, 1760, as The Union Wharf Company of New Haven. As a corporate body the company continued its career of feverish industry alternating with discouraged inactivity. The historian of the wharf cannot find that up to 1799 "any dividends had ever been paid to the owners of the wharf. Every dollar of its earnings had been expended toward repairing the wharf and in its extension."(77*)

A similar company, The Proprietors of Boston Pier, or the Long Wharf in the Town of Boston in New England, was chartered by the Massachusetts General Court in 1772.(78*) Its history, prior to and after incorporation, was not greatly different from that of the New Haven company.

The business corporation with colonial charter which was of the greatest lasting significance was a mutual insurance company, formed in 1752, which was incorporated by the Pennsylvania assembly Feb. 20, 1768, as The Philadelphia Contributionship for the insuring of Houses from Loss by Fire.(79*) There seems to have been no expectation of direct pecuniary gain on the part of the "contributors," but the present custom of counting mutual insurance companies among business corporations may justify its inclusion here. The company prospered, and until the year 1786 was without a rival in Philadelphia. Alone of the colonial business corporations it has had a continuous existence to the present day.(80*)

Apparently the only other business corporations of the colonies were companies for supplying water. As early as 1652 the Massachusetts General Court voted that certain specified inhabitants of Conduit Street, Boston, "shall be a corporation, and incorporated into one body or company," to provide water for daily use in their families and to secure their properties from

danger by fire. The proprietors were to elect annually two of their number to be "wardens or masters of the said waterworks for the ensuing year;" and these wardens were virtually managers of the whole business on behalf of the company. Other proprietors of lands on the same street or elsewhere were to be permitted to enter the corporation, with the consent of the wardens and company, and on condition of paying their reasonable share of the expense. This body, like the preceding one in being a mutual company, has not been mentioned earlier because, in spite of the phraseology quoted above, it lacked a corporate name, which was one of the formal requisites for adequate incorporation. It never accomplished the objects intended.(81*)

In 1772 and 1773 three such water supply companies were chartered by the Rhode Island assembly. These were called "fountain societies," -- respectively, "Field's" and "Rawson's" in Providence and "Cooke's" at East Greenwich.(82*) The first of these had built by contract, in the summer of 1772, a wooden aqueduct three-fourths of a mile long, conveying fresh water to "that Part of Providence called the Point;" and despite the expense the proprietors felt well repaid at being the "first in English America who ever attempted and effected an Affair of this Nature...."(83*) The other companies doubtless sprang up in imitation. The first two, at least, survived the Revolution;(84*) they cannot, however, have been notably successful.

The charters definitely convey all the customary general powers of corporations. Provision is made for the annual election of necessary officers, always including a committee charged with "the whole ordering and management of every matter and thing respecting said works." Power is given to dig in the highways to lay aqueducts and pipes. The necessary funds for general expenses are to be met by assessments, and the individual members were permitted to convey the water from the main aqueducts to their houses or manufactories at their own expense. It is not clear that the original intention was to furnish water to other persons than the members themselves, or that direct pecuniary profit was anticipated; but these were certainly within the powers of the proprietors.

It is possible that an exhaustive search of the colonial records would reveal other examples of business corporations,(85*) but the number would still be small. Even the demand for such charters seems to have been relatively slight. Perhaps the following examples from New Jersey history may be regarded as typical suggested or solicited grants of corporate privileges which did not materialize.

In May, 1740, Benjamin Smith, representative from Hunterdon County, prayed the assembly for leave

"to bring in a Bill to establish two Trading Companies, to make them Bodies Politick and Corporate, in Succession, the one to be held at Burlington, and the other at Amboy, and enable them to carry on a Foreign Trade, by making current Twenty Thousand Pounds of Paper Money for their Use, to continue the full Term of Ten Years."(86*)

The plan was to secure subscriptions payable in the course of ten years, taking mortgages on lands and buildings as security, and to have the province issue to each company the £20,000 in bills of credit redeemable within the ten years. The bill was deliberated upon and even printed, "for the consideration of the Members and their Constituents, until some future Assembly of this Province;"(87*) but it never was further considered. In

1759, again, when Governor Bernard was urging upon the New Jersey assembly the expediency of cementing the friendly relations lately established with the Indians by making provision for a well-regulated trade with them, he wrote:

"This trade... may be either managed by commissioners on account of the province,(88*) or by an incorporate company on a joint stock with an exclusion of private traders."(89*)

But the danger of Indian hostilities soon passed, and the recommendation was not acted upon.

Alongside of these corporations, and indeed preceding them, were a large number of unincorporated associations, partnerships, societies, groups of "undertakers," "companies," formed for a great variety of business purposes. Certain of these have been spoken of as corporations. Many were popularly or even formally designated "companies;" several of them sewed from the assemblies more or less substantial privileges; and, especially in the case of the drainage associations of Pennsylvania and New Jersey, elaborate acts were passed defining their mode of organization and activity. But in the eye of the law all of them were probably mere partnerships or tenancies in common. Corporate privileges for business purposes were so uncommon in the colonies that without fairly definite and reliable data the presumption must be against their existence. Mention may be made of some of these to reveal the forerunners of the business corporation. Fishing and whaling companies were numerous. Usually they were not joint stock companies in the ordinary sense, but such as Crèvecoeur described in his Letters from an American Farmer: "They have no wages; each draws a certain established share in partnership with the proprietor of the vessel; by which economy they are all proportionately concerned in the success of the enterprise, and all equally alert and vigilant."(90*) Of this nature, in all probability, were two whale-fishing ventures centering early in Elizabethtown, New Jersey, which in 1668 and 1678, respectively, secured certain monopoly privileges by grant of the governor for a term of three years;(91*) and several companies established at Philadelphia as early as 1687.(92*) It was a typical joint stock company, with £10 shares, however, that was set on foot in New York in January, 1675, and given recognition by the council.(93*)

There were a number of mining companies, chiefly for producing iron or copper. One of the earliest was the Undertakers of the Iron Works, near Lynn, Massachusetts, formed in 1642 by John Winthrop, Jr., and Robert Bridges, with the aid of British capital.(94*) In 1660 another "company," was at work similarly at Concord.(95*) A company was formed in 1679, largely by Bostonians, to work a lead mine near Northampton, Massachusetts. In a few years work was abandoned, to be resumed by a New York company in 1765, succeeded in 1768 by a Boston company headed by William Bowdoin.(96*) The Principio Company, composed chiefly of British merchants, iron masters, and other capitalists, erected iron works near Port Deposit, Maryland, about 1715 and was active and, with interruptions, fairly prosperous up to the Revolution.(97*) The Patapsco Iron Works near Baltimore, founded 1731, with a capital in 1764 of some £50,000 and an output of £400 sterling, continued even after the war.(98*) New Jersey iron mines near Trenton attracted attention in the 1720's and were worked with English capital. About 1760 the Andover mines were in use. In 1764 Peter Hasenclever, a German merchant, formed a Company in London, imported some five hundred German miners, and opened iron mines at Charlottenberg, Ringwood, and Long Pond, New

Jersey.(99*)

What has been called "the first incorporated mining company... in the United States" was formed in 1707 to work copper ores discovered at Simsbury (East Granby), Connecticut, about 1700. An act for its encouragement was passed by the colony in 1709, considerable capital secured from London and Holland, and work was carried on intermittently for some sixty years.(100*) As early as 1730 Robert Carter and sons, with Mann Page, were endeavoring to work a copper mine in Virginia.(101*) About 1748-50 a copper mining company leased lands and began work near New Brunswick, New Jersey; and about 1768 the Schuyler mine near Belleville, where the first steam engine in America was soon set up, was opened.(102*) A royal charter was drafted, but probably not secured, for a Lake Superior Mining Company concerned chiefly with copper, in 1771-72.(103*)

Joint stock companies for manufacturing were less common, but still existed in several instances. By almost invisible gradations they merge into a group of societies to promote useful economic ends and, perhaps incidentally, serve charitable purposes. Examples of the earlier type are the Undertakers of the Glass Works, formed in Massachusetts about 1642,(104*) a paper mill company in Pennsylvania, about 1706,(105*) and a saw mill company in Centerdale, Rhode Island, about 1750.(106*) Toward the end of the colonial period, if not earlier, flour milling companies appear, at least in Rhode Island.(107*)

Several of the wider sort may be mentioned briefly. In 1748 some £2300 was subscribed by Boston citizens, in £50 and £100 shares, to promote the linen manufacture. No results were immediately achieved. In 1750, however, the United Society for Manufactures and Importation was formed for the same purpose and began manufacturing linen. The next year the Society for Encouraging Industry and Employing the Poor was organized. To it, in 1753, the General Court voted £1500 "to encourage the Manufacture of linnen," and for its use erected a "Manufactory House."(108*) In New York a Society for the Promotion of Arts, Agriculture, and Economy was formed late in 1764, "To advance husbandry, promote manufactures, and suppress luxury," and especially to establish the linen manufacture. Several hundred pounds were subscribed and paid in. The minimum subscription was 20s., the minimum for a vote £5. The society planned holding "monthly conventions" and the bestowal of premiums.(109*) About 1764 a joint stock company, apparently of a purely business nature, with £100 shares, was formed "for erecting and carrying on a LINEN MANUFACTORY, in or near the city of Philadelphia," with a view "to import the brown linens of Europe to be bleached here for the supply of our markets." Its members announced themselves, however, as "desirous of encouraging the poor."(110*) In 1770 the American Philosophical Society set on foot a subscription for promoting the culture of silk in America, considerable sums were raised ("near a thousand pound.... in a few days"), and a society formed, and a grant of £1000 secured from the assembly. Something was done before the war interrupted.(111*) In 1775 the United Company of Philadelphia for Promoting American Manufactures was formed, with shares of £10, planning to invite manufacturers from Europe, give employment to the poor, and erect additional barriers to the encroachments of tyranny, by establishing manufactories of woollen, cotton, and linen. This continued bravely, despite the outbreak of hostilities, manufacturing chiefly linens. In April, 1777, a manager reported some £5000 capital employed, and each share having a book value of £17 6s. 6d.(112*)

Banking institutions were represented notably by the "Bank of Credit Lumbard" promoted in Boston by John Blackwell and authorized by the General Court in 1686,(113*) and by the "Land Bank or Manufactory Scheme" in the same colony in 1739-41.(14*) There were a few insurance companies. Thus in October, 1757, Thomas Willing (later president of the Banks of North America and the United States) and five other merchants formed the partnership of Thomas Willing & Co. to underwrite policies of marine insurance, their preamble reciting that "the Insurance of Vessels and Merchandize has proved a great Encouragement to Trades, and that by Companies is most secure to the Insurer...." A year later Robert Morris took the place of a retiring partner. No capital was contributed, and policies were issued on the joint credit of the members. Hence incorporation was unnecessary.(115*) Fire fighting companies were numerous at least in Pennsylvania,(116*) and existed in several other colonies;(117*) but these cannot be considered business associations.

For the Indian trade a number of companies were formed and others projected. Among the active ones were two "free companies of adventurers" in Massachusetts, 1644 and 1645,(118*) and a Virginia company which early in the eighteenth century "by opening a Trade Settled a good correspondence with the Southern Indians."(119*) Among those merely proposed were ones in Pennsylvania (1707)(120*) and New Jersey (1759).(121*) Most important among these was the Ohio Company, which also was a land company. It has frequently been called a corporation, with a crown charter; but I have been unable to verify these statements. It was a joint stock company with twenty shares and originally as many members, formed by Thomas Lee of Stratford, Virginia, and John Hanbury of London, and composed of Virginians and Londoners. A grant of five hundred thousand acres of land between the Monongahela and Kanawha was secured from the crown March 16, 1749. Cargoes of goods were sent out, a fort built, and a few families settled. It was not prosperous, and the outbreak of the French and Indian War killed its prospects, all persons concerned being heavy losers. George Mercer went to London in 1763 and remained six years vainly endeavoring to wind up its affairs, which were not finally settled till after the war.(122*)

There were numerous other land companies, large and small.(123*) This was the nature of the West Jersey Society,(124*) the Cape Fear Company and the Corporation of Barbados Adventurers of early Carolina,(125*) and the Frankfort Company of early Pennsylvania.(126*) A Pennsylvania Land Company was involved in litigation in 1706.(127*) There were The Proprietors of the Kennebec Purchase from the Late Colony of New Plymouth (1753) and several other Maine land companies.(128*) The Susquehanna Company was a Connecticut organization formed in 1753, which made a large purchase from the Indians and sought in vain a crown charter confirming the grant and incorporating them.(129*) The Mississippi Company, of which Washington was a member, petitioned in 1768 for a 2,500,000 acre grant between 38° and 42°.(130*) Not long before the Revolution an Indiana Land Company secured a large tract of land in what is now West Virginia.(131*)

In the nature of a development company was the twenty-one share Great Dismal Swamp Company, which in 1762 took up forty thousand acres in the richest part of the swamp and worked, albeit not very effectively, at the task of reclaiming the land, till the burning of Norfolk by the British.(132*)

There were also a number of associations for erecting bridges, building or repairing roads, and improving navigation of

small streams or rivers. These are often hardly to be regarded as business associations, but rather as groups of subscribers for a local public benefit which they were given some power to manage and control. An early instance of this is a company authorized in 1700 to build a toll bridge in Pennsylvania.(133*) More typical are two Pennsylvania acts of March, 1771, appointing commissioners to receive voluntary subscriptions and apply them to the improvement of navigation of the Delaware and Lehigh rivers, and other commissioners to apply similar subscriptions to opening a road from Reading to the Susquehanna.(134*) Such acts were numerous toward the end of the colonial period, from Pennsylvania to South Carolina, and constitutes important forerunners of the most numerous class of business corporations in the period after the Revolution.(135*)

Lotteries were frequently authorized to supplement voluntary subscriptions. In some instances, also, associations were formed to receive subscriptions and apply them to such purposes, and received authority from the legislatures to collect on promises made. In some cases tolls were even permitted. But a search of the colonial statutes has revealed no instance of a highway company incorporated for the pecuniary benefit of the proprietors;(136*) and the attitude of the promoters of such companies after the Revolution indicates that the idea of business corporations in this field was a novel one.

A semi-public corporation for such purposes was, however, constituted by act of the New Jersey assembly June 20, 1765, by the name of The Trustees of the Road and Ferries from Newark to the Road leading from Bergen Point to Paulus Hook (later Jersey City).(137*) The corporation consisted of a self-perpetuating body of nine trustees. To them was entrusted the duty of putting and keeping in good condition this difficult part of the highway between Philadelphia and New York; and to this end they were empowered to receive donations and to take tolls and rentals, subject to regular accountability to a county board of review.(138*) In 1776 they were invested with the perpetual title to the ferries over the Passaic and Hackensack rivers along this route.(139*) The corporation remained in existence at least until 1815, but after the completion of the bridges over these rivers in 1795 the ferries became of no importance and the corporation, though under protest, virtually became a nonentity.(140*)

In the same category with the highway companies there were, at least in New Jersey and Pennsylvania, a number of associations of neighboring landowners, which were organized in accordance with legislative act to undertake at common expense the draining, diking, or otherwise improving of the lands owned by the members in severalty. After the Revolution several of these were incorporated, but no instance of this sort appears prior to the war.(141*)

A few other colonial corporations, hardly to be classed as ecclesiastical, charitable, educational, or business corporations, remain to be mentioned.

In several colonies incorporated libraries antedated the Revolution. One of the earliest of these was the Library Company of Philadelphia, formed in 1731 and incorporated by proprietary charter in the spring of 1742.(142*) The Union Library Company of Philadelphia was chartered in 1759, after an existence of several years. Ten years later it was merged into the earlier company.(143*) Another early one, The Company of the Redwood Library, was chartered in Rhode Island in August, 1747.(144*) In South Carolina, in 1754, The Charlestown Library Society, which had been organized six years before, was the subject of an act of

incorporation.(145*) In 1757 and 1765 two "library companies", were chartered by the royal governors in New Jersey, for Burlington and Bridgetown (Mt. Holly).(146*) The Juliana Library Company in Lancaster was chartered in Pennsylvania in 1763 by the proprietaries or their governor.(147*) And in 1772 The Trustees of the New York Society Library were chartered, probably by the governor of New York, after having been active for at least fourteen years.(148*)

There were also a few "marine societies," which had been formed for the purpose of bringing together the "mariners" of a particular port with a view to increasing the common stock of knowledge in matters of navigation and serving as an organization for mutual aid. Three such societies were incorporated by the Massachusetts General Court, at Boston (1754),(149*) Salem (1772),(150*) and Marblehead (1773);(151*) and one in New York City was chartered by the governor and council of that province (1770).(152*) The Fellowship Club, of Rhode Island, formed in 1752 and chartered in 1754, was of the same nature.(153*) A similar society was formed in Newburyport, Massachusetts, in 1772, but not incorporated till 1777.(154*) Similar, but slightly more specialized, was The Society for the Relief of Poor and Distressed Masters of Ships, their Widows and Children, organized in 1765 and incorporated by the Pennsylvania assembly in 1770.(155*)

A number of similar organizations did not secure corporate powers, at least in colonial days. Such were The Carpenters Company of Philadelphia, formed in 1724

"for the purposes of obtaining instruction in the science of architecture and assisting such of their members as should by accident be in need of support or the widows and minor children of members...,"(156*)

which was incorporated in 1790; and a musical St. Cecilia Society, of Charleston, S. C., formed in the fifties but first incorporated in 1784.(157*) In 1766 or 1767 Dr Morgan applied to the proprietor for a charter incorporating a medical society he had organized in Philadelphia, but none was issued, probably because of personal dissensions among the physicians of the city.(158*)

Somewhat more important, especially in view of its later development, was a "society of merchants" which was formed in New York City in 1768, with the name of The New York Chamber of Commerce and with the purpose of

"promoting and encouraging commerce, supporting industry, adjusting disputes relative to trade and navigation, and procuring such laws and regulations as may be found necessary for the benefit of trade in general."

In 1770 the society found no difficulty in persuading the governor to grant a charter of incorporation,(159*) and it thus became probably the first incorporated Chamber of Commerce in the world.(160*) Three years later the assembly showed its confidence by making the Chamber a grant of £200 per annum to be administered in premiums "for the encouragement of a fishery on this coast, for the better supplying the markets of this city with fish."(161*) The published records of its early years show that even before the Revolution it led an active existence, and, like but few of its contemporary corporations, it has maintained that existence uninterruptedly to the present day. There was at

least one other colonial Chamber of Commerce in Charleston as early as 1774,(162*) but no other seems to have been incorporated.

Finally it may be remarked that the military companies organized in Rhode Island, in especially large numbers on the eve of the Revolution, have some of the earmarks of corporations. They petitioned for "charters of incorporation." They were given perpetual succession; they were empowered to make rules and orders for their government; they were given a formal "company" name; and they were authorized by a "charter" issued by the governor in accordance with an act of the assembly, which charter was properly signed and sealed. The question of their legal status does not appear to have been passed upon, but it would seem that a strong argument might have been made to prove them genuine corporations, despite the fact that the acts do not specifically so call them.(163*)

There were, then, in the colonies private corporations representing a considerable number of different types, alongside of unincorporated associations more numerous and varied. Most of the incorporated bodies, it will be noted, were engaged in promoting ends which appeared to be of general public utility. This is true whether we consider the churches, which were so important elements in the social fabric of the day, the schools and hospitals, mutual benefit societies like the marine societies or the insurance and water supply companies, or even the most business-like of the business corporations. There are hardly any to be found which were so thoroughly "private" as probably the majority of corporations in the present day. Yet it is not without significance that so many, of so many different aims, should have arisen in the colonies as private undertakings and been carried on under private control.

NOTES:

1. Blackstone, Commentaries, i, 469.
2. S. C. Stats. at Large, ii, 239, 286.
3. The Colonial Records of... Georgia. Ed. by Allen D. Candler (Atlanta, 1904-10), xviii, 258-272.
4. Mass. Prov. Acts, iii, 778.
5. *Weston v. Hunt*, 2 Mass. 500 (1807); *Brunswick v. Dunning*, 7 Mass. 447 (1811); cf. *Boston v. Sears*, 125 Mass. 125-126 (1839) (Shaw, C. J.).
6. *Pawlet v. Clark*, 9 Cranch (U. S.) 334 (1815).
7. Cited in ratifying act of Dec. 12, 1753: N. Y. Col. Laws, iii, 983-992.
8. Cited in confirmatory act of April 17, 1784: Session Laws, 1784, pp. 42-44. Cf. Minutes of Vestry, 1697-1717, reprinted in part in *The Historical Magazine*, 3d series, i, 10-14 (1872).
9. See *supra*, 52-53.

10. Letter to Lords of Trade, Nov. 12, 1698: N. Y. Col. Recs., iv, 426-427.
11. Session Laws, 1784, p. II.
12. See petition in Doc. Hist. of N. Y., iii, 409-410, and confirming act in N. Y. Col. Laws, i, 564-569. Cf. also N. Y. Col. Recs., iii, 1114-1115, and *supra*, 11.
13. Letter of Governor Colden to Lords of Trade, Dec. 7, 1763: N. Y. Col. Recs., vii, 585-586; N. Y. Council Min. (Calendar, index: "Churches").
14. An estimate made in 1789 of the New York churches in 1773 shows 21 Episcopal, 23 Dutch Calvinist, and 48 Presbyterian active: Amer. Museum, vi, 302 (October, 1789).
15. See references in note 2, above; also Munsell, *Annals of Albany*, ii, 105-113, vi, 64; Doc. Hist. of N. Y., iv, 362, 371.
16. N. Y. Col. Recs., vii, 585-586, 642; Doc. Hist. of N. Y., iii, 460-465, 489-508, Cf. C. W. Baird, in *Mag. of Amer. Hist.*, iii, 593-628 (1879); Andrews and Davenport, *Guide*, 181, 182, 405.
17. N. Y. Col. Recs., viii, 573-574.
18. Council Min., xxiii, 403, xxv, 448 (Calendar, 407, 458).
19. N. J. Arch., xiii, 396; charter quoted in part in G. M. Hills, *History of the Church in Burlington...* (Trenton, 1885), 97-100. Confirmatory act of Nov. 17, 1784, in *Session Laws*, 126.
20. Whitehead, *Perth Amboy*, 217-219.
21. MSS. copy of charter among John Rutherford Papers, listed in *N. J. Hist. Soc. Proc.*, 2d series, iii, 171 (1874).
22. N. J. Arch., xvi, 221, 429; Nicholas Murray, *Notes... concerning Elizabethtown...* (Elizabethtown, 1844), 62-69; John Hall, *... Presbyterian Church in Trenton...* (New York, 1859), 154-155.
23. N. J. Arch., xvii, 380-381, xviii, 13, 25, 30, 520-521; Murray, *Eliz. Notes*, 129; *Session Laws*, 1783, pp. 6, 25; *Pa. Mag. of Hist. and Biog.*, xxiv, 521-522 (1901). S. A. Clark, *The History of St. John's Church, Elizabeth Town, New Jersey...* (Philadelphia, 1857), 88-96.
24. Confirmatory acts in *Pa. Stats. at Large*, x, 82-90, xii, 244-250, 272-275, 496-499. The Lancaster church, at least, did not act under its charter.
25. Perry, *Amer. Episcopal Church*, i, 660; G. H. Fisher, in *Pa. Mag. of Hist. and Biog.*, xxvii, 279 (1903).
26. *Session Laws*, 1769, pp. 74-76; *ibid.*, 1772, pp. 71-73.
27. *Ibid.*, 1771, pp. 31-35; *ibid.*, 1774, pp. 27-30, 73-78.
28. *Session Laws*, 1770, pp. 64-68; *ibid.*, 1774, pp. 7-12.

29. *Ibid.*, October, 1792, pp. 11-13, referring to the charter as granted August, 1774.
30. The Maryland chancellor stated in 1829 (*McKim v. Odom*, 3 Bland Ch. 418) that there were no such corporations in that province. Cf. *Md. Hist. Mag.*, iv, 228-235 (1909), for petition (1774) not granted.
31. *Md. Laws (Kilty)*, 1727, c. 10, 1730, c. 9; *Va. Stats. at Large (Hening)*, v, 76-77, 251, 390.
32. *Pa. Stats. at Large*, ii, 424, iv 208-211; *Session Laws*, 1760, pp. 90-93. Cf. *Case of Sarah Zane* (U. S. Circuit Court, Pa.), in *Hazard, Register of Pa.*, xiv, 322, 324 (1833).
33. Cf. *Conn. Col. Recs.*, v, 552, vi, 33-34, 380-381, 427, vii, 74, 211.
34. *Mass. Prov. Acts*, iii, 778, 818. The same act conferred corporate powers upon the ministers: *Supra*, 75-76.
35. *Mass. Prov. Acts*, iv, 463, 518-519, 542-543, 560.
36. *Letters to Lords of Trade: ibid.*, iv, 562-563, v, 190. Cf., however, *A. M. Davis, Corps. in Col.*, 211.
37. Baldwin's statement (*Priv. Corps.*, 273, 266) that these "were freely incorporated both by the royal governors and the colonial assemblies" seems too sweeping a generalization, although in all probability there were others besides those mentioned.
38. *Supra*, 38.
39. *Mass. Prov. Acts*, iv, 520-523, 560-564. Cf. *Chase, Dartmouth College*, i, 30-31.
40. *Mass. Prov. Acts*, iv, 562-564. There seems to have been some uncomfortable experience, perhaps with the Presbyterian corporation next mentioned, which was at the moment in the minds of the Lords of Trade. Cf. also *The Society of the United Brethren for Propagating the Gospel among the Heathen*, formed 1740, incorporated Feb. 27, 1788: *Pa. Stats. at Large*, xiii, 12-15.
41. *N. Y. Council Min.*, xxix, 312-334 (*Calendar*, 541-543); *N. J. Arch.*, ix, 341-342, xviii, 2-3; *Perry, Amer. Epis. Church*, i, 647-653; *William Smith, Some Account of the Charitable Corporation...* (2d ed., Philadelphia, 1770); *J. W. Wallace, A Century of Beneficence...* (Philadelphia, 1870); *Pa. Stats. at Large*, xi, 419-421 (1785).
42. Baldwin, *Bus. Corps.*, 268; *Briggs, Amer. Presbyterianism*, cxii-cxviii; *N. J. Arch.*, x, 342, xviii, 277. Charter in *Address of the Corp. (1827)*, 14-16.
43. *N. J. Arch.*, xviii, 269, 276-278, 283-284, x, 339-360, 404, 407, 409.
44. *Ibid.*, xviii, 520.
45. *Zartman and Price, Readings in Personal Insurance -- Life*

Insurance, 77-80.

46. See Evans, *Amer Bibliog.*, v, 33, No. 13327, for mention of "trustees and subscribers to a fund for the relief of the poor widows and orphans of clergymen in Virginia," 1774; *ibid.*, iv, 317, No. 12406, "The Plan of a Society for making provision for widows, by annuities for the remainder of life; and for granting annuities to persons after certain ages," published in Boston, 1772; and *ibid.*, v, 27, No. 13283, "Rules and orders for establishing a fund of charity, for the more effectual relief of such members of the most ancient and honorable society of Free and Accepted Masons, their widows and orphans....," published in Boston, 1774. (For this society, see title in Evans, *Amer. Bibliog.*, iv, 310, No. 12345.)

47. See, e.g., the case of the vestry of St. Thomas' Parish, Berkeley County, South Carolina, incorporated in 1736 by the South Carolina assembly. *S. C. Stats. at Large*. iii, 431-436.

48. Perry, *Amer. Epis. Church*, i, 662-665; Whitefield to B. Franklin, Jan. 21, 1768, in *Franklin Papers (Univ. of Pa.)*, 1, 12 (Calendar, 400); A Letter to His Excellency Governor Wright, Giving an Account of the Steps taken Relative to the Converting the Georgia Orphan-House into a College. Together with the Literary Correspondence That Passed upon That Subject, between His Grace the Archbishop of Canterbury and the Reverend Mr George Whitefield (Charles-Town, 1767). The last two I have not consulted.

49. *S. C. Stats. at Large*, viii, 106-107.

50. *Ibid.*, viii, 110-112.

51. The historian of the Roxbury Latin School (J. E. Greene, in *Amer. Antiq. Soc. Proc.*, New Series, iv, 348-366), established 1645, says that the General Court incorporated its "feoffees" in 1670; but the records hardly warrant such a construction: *Mass. Col. Recs.*, iv, pt. ii, 431, 444, 455-457.

52. *Pa. Col. Recs.*, i, 531-533; Proud, *Hist. of Pa.* i, 343-345.

53. *Mass. Prov. Acts*, iii, 891 893, 951-953, iv, 806.

54. *N. J. Arch.*, xviii, I, 6.

55. *Stats. at Large (Hening)*, vii, 41-43, 317 320; Bruce, *Institutional Hist. of Va.*, i, chap. 7.

56. See *infra*, 86.

57. *Conn. Col. Recs.*, xiv, 382.

58. *Stats. at Large*, v, 128-131; Hazard, *Register of Pa.*, ii, 90-100 (1828); F. R. Packard, in *Founders' Week Memorial Volume* (F. P. Henry, ed., Philadelphia, 1909), 593-612. It is worthy of remark that the proprietors, besides subscribing to this undertaking, proffered a charter in their own names, "which the managers," says Hazard, "declined accepting, on account of some objectionable clauses and considering the incorporation of the assembly as the best that they could have."

59. S. C. Stats. at Large, viii, 112-114. Cf. Evans, Amer. Bibliog., for three colonial editions of its rules.
60. N. Y. Council Min., xxix, 370, 403 (Calendar, 548, 550); N. Y. Col. Laws, v, 367-368; Anon., An Account of the New-York Hospital (New York, 1811).
61. Stats. at Large, vii, 9-17, ix, 357-359, x, 401-406; Roland G. Curtin, in Founders' Week Memorial Volume (F. P. Henry, ed., Philadelphia, 1909), 422, 427, 429.
62. Quincy, Hist. of Harvard Univ., chaps. 4-6, 8; Catalogue of Harvard Univ.: "History and Government," reprinting relevant documents; Andrews and Davenport, Guide, 117.
63. Cotton Mather to Benjamin Colman, March 6, 1724-25, in Diary of Cotton Mather, 1681-1724 (Boston, 1911-12), ii, 810.
64. See Supra, 45-46.
65. Conn. Col. Recs., iv, 363-365, ix, 113-118; Baldwin, Yale College; Trumbull, Hist. of Conn., ii, chap. 12; and see Supra, 21-22.
66. J. Maclean, History of the College of N. J... (Philadelphia, 1877), i, 31, 34, J. DeWitt, Historical Sketch of Princeton University (New York, 1898), 334-335, 42; Morris was a zealous Episcopalian, and had been chief justice in New York when the governor and council there refused a charter to the Presbyterian church of New York City, in accordance with the orthodox policy which was there in vogue. Cf. Supra, 77.
67. N. J. Arch., xii, 331, 386, xvi, 81.
68. Maclean, Coll. of N. J., i, 49-51; N. J. Hist. Soc. Proc., 2d Series, xiii, 1-74 (1895).
69. N. J. Arch., xvi, 81; Fisher, N. J. as Royal Prov., 384-391; DeWitt, Princeton Univ., 218-220; Session Laws, March 13, 1780, Nov. 20, 1786, May 27, 1799.
70. T. H. Montgomery, A History of the University of Pa... (Philadelphia, 1000), esp. 177-170, 209-211; Pa. Laws (Dallas), i, 814-821.
71. Anon., Historical Sketch of Columbia College, 205-224; and Cf. C. H. Levermore, "The Whigs of Colonial New York," in Amer. Hist. Rev., i, 240-244 (1896).
72. R. A. Guild, Early History of Brown University... (Providence, 1897), 510-549.
73. N. J. Arch., xviii, 24; Fisher, N. J. as Royal Prov., 384-391; D. D. Demarest, in Murray's Hist. of Educ. in N. J., 287-293; Session Laws, May 31, 1799, p. 518 (confirmatory act).
74. Chase, Dartmouth College, esp. i, 1-114, 639-648; McClure and Parish, Memoirs of Rev. Eleazar Wheelock, 25; John M. Shirley, The Dartmouth College Causes... (Chicago, 1905), 21-23, 27.
75. Supra, 41-45.

76. *Supra*, 22-25.

77. Conn. Col. Recs., xi, 400-401; Thomas R. Trowbridge, "History of Long Wharf in New Haven," in *New Haven Colony Hist. Soc. Papers* (New Haven, 1865), i, 83-103. The charter is cautiously worded, like that of the New London Society.

78. Mass. Prov. Acts, v, 200-202, 262-263; *Mass. Centinel*, March 18, 1789.

79. Pa. Stats. at Large, vii, 178-181; Pa. Col. Recs., ix, 566. Confirmed by the king in council, March 6, 1769.

80. Baldwin, *Bus. Corps.*, 264, 267; Scharf and Westcott, *Hist. of Phila.*, iii, 2114-2115; and *Essay IV*, chap. 5.

81. Mass. Col. Recs., iv, pt. i, 99-100; A. M. Davis, *Corps. in Col.*, 202; N. B. Shurtleff, *Topographical and Historical Description of Boston* (3d ed., Boston, 1891), 399-403.

82. *Session Laws*, May, 1772, pp. 8-11, October, 1772, pp. 55-57, October, 1773, pp. 76-78.

83. See statement and resolutions, signed by Nathanael Greene, Secretary, in *Providence Gazette*, Aug. 29, 1772.

84. Cf. act of Sept. 10, 1787, declaring the charter of Field's Fountain Society fully operative, despite omission of the meeting of May, 1785 : R. I. Recs., x, 252-253. Staples, *Annals of Providence*, 620-622; *Providence Gazette*, Sept. 7, 1793.

85. Hood, *Index of Corps. (N. J.)*, 161, 164, refers to two concerned with ferries, at Egg Harbor and Gloucester; but a glance at the acts of assembly cited makes it obvious that in neither case did a corporation exist.

86. N. J. Votes of Assembly, 1740, p. 31.

87. N. J. Votes of Assembly, 1740, pp. 41, 47, 58-59; Whitehead, *Perth Amboy*, 301302.

88. This method seems to have been pursued in Virginia: see *Stats. at Large (Hening)*, viii, 114-118, for an act of October, 1765, establishing The Trustees of the Indian Factory of Virginia. Cf. also Mass. Prov. Acts, iii, 6, 642, for method used in that colony. Cf. *infra*, p. 96.

89. N. J. Arch., xvii, 219-223.

90. Letter VI.

91. *East Jersey Recs. (MSS.)*, Deeds, Liber III, 22, 152; Whitehead, *East Jersey* (ed. 1875), 255; Hatfield, *Elizabethtown*, 128-129.

92. *Letters to Penn*, 1685, 1687, in *Pa. Mag. of Hist. and Biog.*, ix, 75 (1885), iv, 453 (1878).

93. This is cited as the first American business corporation in editor's note, N. Y. Col. Recs., iii, 234, and Baldwin, *Bus.*

Corps., 259; but the fact of incorporation is not clear. Apparently the only record of it in the Council Minutes, which would regularly include mention of the wanting of a charter, is the following entry under date of Jan. 10, 1674 (i.e., 1675):

"Upon proposall of Settling a Fishery in these Parts; It is resolved, That ye best way will be, to be by a Company, and ten pound to be a share: And Subscriptions made between this present tim... ye 2d day of february next to be admitted. Up... which day a generall Meeting is to bee, of... ubscribers, to choose Officers and Sett... e all things relateing to the said. Fishery a..." N. Y. Council Min., iii, pt. 11, 10. (The MS. was mutilated in the Albany capitol fire. 1911.) Cf. also the articles of association in N Y. Col. MSS., xxiv, 67 (Calendar. 34); and Van Rensselaer, Hist. of the City of N. Y., ii, 219.

94. Mass. Col. Recs., ii, 61-62, 81 82, 103, 125-129, 185-186, and index to later volumes; Mass. Hist. Soc. Proc., 2d series, vii, 12-17 (1892); Mass. Hist. Soc. Colls., viii, 36-37; Nathan M. Hawkes, in Mag. of Amer. Hist., xxii, 404-410 (1889); E. P. Robinson, in Essex Inst. Hist. Colls., xviii, 241-254 (1881). The colony act of 1645 has been called, erroneously, a "charter."

95. Mass. Col. Recs., iv, pt. i, 429.

96. J. R. Trumbull, History of Northampton... (Northampton, 1898), i, 359-369.

97. W. G. Whitely, in Pa. Mag. of Hist. and Biog., xi, 63, 190, 288 (1887); Andrews and Davenport, Guide, 118-119; Md. Laws (Kilty), April, 1782, c. 44.

98. Rowland, Charles Carroll of Carrollton, i, 23, 64, 92, 143, 203, ii, 73-75, 100, 171.

99. William Nelson, in Pa. Mag. of Hist. and Biog., xxxv, 228-243 (1911); J. W. Miller, "The Iron State," in N. J. Hist. Soc. Proc., 1st series, vii, 75-78 (1853). Cf. also J. F. Tuttle, in N. J. Hist. Soc. Proc., 2d series, vi, 148-173 (1880); E. J. Halsey, History of Morris County, chaps. 7-9; and Acrflius, New Sweden, 164-170.

100. McMaster, History, i, 99; Trumbull, Hist. of Conn., ii, chap. 2; N. H. Eglfston, in Mag. of Amer. Hist., xv, 321-334 (1886); Conn. Col. Recs., v, 104-105, 154, 455-458, vii, 339; Talcott Papers, i, 357, ii, 185.

101. Va. Mag. of Hist. and Biog., vi, 13-18 (1898).

102. Nelson, "Josiah Hornblower," in N. J. Hist. Soc. Proc., 2d Series, vii, 175-247 (1883); Acrelius, New Sweden, 170-171; Gordon, Gazetteer of N. J., 10-11; Stephen Wickes, History of the Oranges, 60; N. J. Arch., ix, 318-321; Session Laws, 1782, p. 77.

103. Andrews and Davenport, Guide, 184.

104. Mass. Col. Recs., ii, 137, iii, 48.

105. H. G. Jones, "Rittenhouse Paper Mill," in Pa. Mag. of Hist. and Biog., xx, 315-333 (1896).

106. F. C. Angell, Annals of Centerdale. (Centerfalls, R. I.,

1909), 21.

107. Session Laws, 1773, pp. 76-78.

108. Bagnall, Textile Industries, 28-38.

109. Ibid., 52-54; Doc. Hist. of N. Y., iv, 344-345; Rutherford, Family Records and Events, 117. Cf. Evans, Amer. Bibliog., iv, 145, No. 11008; John Adams, Life and Works, ii, 235 n, 252.

110. Bagnall, Textile Industries, 51; stock certificate dated Feb. 19, 1766, printed in Pa. Mag. of Hist. and Biog., xii, 500 (1889). Cf. Coxe, View of the U. S., 18-19, and Evans, Amer. Bibliog., iv, 31, No. 10134.

111. A. Mackraby to Sir Philip Francis, May 4, 1770, in Pa. Mag. of Hist. and Biog., xi, 493-494 (1888); Pa. Stats. at Large, x, 474-475 (April 15, 1782).

112. Bagnall, Textile Industries, 63-72; Amer. Museum, v, 175-177, 265-267, 581-584 (1789); White, Samuel Slater, 48 n.

113. Eliason, Rise of Banking in U. S., 10-11. The statement here made that this was "the first chartered bank in the colonies: is misleading.

114. A. M. Davis, Mass. Bay Banking, chap. 7.

115. Thomas H. Montgomery, History of the Insurance Company of North America... (Philadelphia, 1885), 23 24.

116. Table of those in Philadelphia, showing twelve established before the Revolution (the Union first, in 1736), in Hazard, Register of Pa., viii, 110. See J. W. Jordan, "The Fellowship Fire Company of Philadelphia, organized 1738," in Pa. Mag. of Hist. and Biog., xxvii, 472-481. For others in Lancaster and Germantown, see *ibid.*, iii, 469 (1879), xviii, 429-448 (1895).

117. For mention of two in Newport, see R. I. Imprints... 1727-1800 (Providence, 1915), 12-13. Evans (Amer. Bibliog., ii, 165, No. 3749) mentions as printed in 1734 the laws of the society first incorporated, Sept. 30, 1717, "for mutual aid in case it should please almighty God to permit the breaking out of fire in Boston (where we live)." The word "incorporation" is here loosely used.

118. Mass. Col. Recs., ii, 60, 138; A. M. Davis, Corps. in the Colony, 195-197. Hazard, State Papers, ii, 19-20; Winthrop, Journal, i, 231, 322-323.

119. Council Proc., 1717-18, in Va. Mag. of Hist. and Biog., iv, 364-376 (1897); Andrews and Davenport, Guide, 327.

120. Proud, Hist. of Pa., i, 432 433.

121. See *supra*, 91.

122. Washington, Works (Sparks), ii, App. VI, 478-483; Franklin, Works (Sparks), iv, 302-373, esp. 336; Kate Mason Rowland, "The Ohio Company," in William and Mary College Quarterly, i, 160-168 (1893). Mag. of Amer. Hist., vi, 298 (1881); Va. Mag. of Hist.

and Biog., xii, 1 59-163 (1904); Mrs Corra Bacon-Foster, Patomac Route, 9, 12, 16.

123. For local companies, see Mead, Conn. as a Corporate Colony, 72-73, and Edward Channing, "The Narragansett Planters," in Johns Hopkins Univ. Studies in Hist. and Pol. Sci., 4th series. ii, 109 127 (Baltimore, 1886).

124. See Tanner, Province of N. J., passim, and J. R. Stevenson, in N. J. Hist. Soc. Proc., 3d series, vi, 129-136 (1909).

125. N. C. Col. Recs., i, 36-42, 57-59.

126. Pennypacker, Settlement of Germantown, chap. 2; Pa. Mag. of Hist. and Biog., xv, 205-211 (1891), reprinting the articles of agreement.

127. Andrews and Davenport, Guide, 167. Evans, Amer. Bibliog., i, 328, No. 2502 (arbitration proceedings, July 31, 1723); Council Minutes, in Pa. Col. Recs., ii, 160.

128. Robert H. Gardiner, in Maine Hist. Soc. Colls., ii, 276, 287, 293.

129. Pa. Arch., 2d Series, xviii, esp. 13, 22, 32-33, 36-37, 45; Conn. Col. Recs., x, 378; Trumbull, Hist. of Conn., ii, chap. 24.

130. Andrews and Davenport, Guide, 183.

131. W. F. Lewis, in Pa. Mag. of Hist. and Biog., xiv, 218-219 (1890). Shares were £1 each.

132. See Essay IV, chap. 3. Washington owned two of its twenty-one shares and valued them in 1793 at about £5000. Washington, Works (Ford), xiv, 300.

133. Pa. Stats. at Large, ii, 124-126, iv, 35-37.

134. Ibid., viii, 32-36, 56-58.

135. Essay IV, chaps. 3, 4. Cf. also Thomas Jefferson, Notes on Virginia, Query XV: "The inhabitants of the county are... laid off into precincts, to each of which they [the county courts] allot a convenient portion of the public roads to be kept in repair. Such bridges as may be built without the assistance of artificers, they are to build. If the stream be such as to require a bridge of regular workmanship, the court employs workmen to build it, at the expense of the whole county. If it be too great for the county, application is made to the general assembly, who authorize individuals to build it, and to take a fixed toll from all passengers, or give sanction to such other proposition as to them appears reasonable."

136. L. B. Parsons, in his History of the Town of Rye, N. H. (Concord, 1905), 73-74, tells of a toll bridge constructed by a corporation in that town, in 1759. I have been unable to verify the statement and doubt whether the builders were incorporated.

137. N. J. Arch., xvii, 396, 403-404, 409; N. J. Laws (Allinson), 276.

138. For the organization of this board, see N. J. Laws (Allinson), 24; *ibid.* (Nevill), 32. It was utilized for a variety of purposes, notably to hold to account officials or commissions charged with building courthouses and gaols.

139. N. J. Laws (Allinson), June 28, 1776, p. 14.

140. N. J. Assembly Minutes, May 31, 1790, p. 29, Oct. 31, Nov. 5, 1805, pp. 392, 400, 1814-15, p. 196; N. J. Session Laws, Nov 24, 1790, pp. 685-692; Atkinson, *History of Newark*, 153. Some of the trustees became stockholders in the Passaic and Hackensack bridges near Newark. See Essay IV chap. 4.

141. See references in Baldwin, *Priv. Corps.*, 271, and John Hood, *Index of Laws (N.J.)*, 1702-76; Crèvecoeur *Letters from an American Farmer*, XI. The last writer speaks of them as incorporated, and they are so indexed in the *Pa. Stats. at Large*; but the acts show that they cannot be regarded as corporations. Defoe describes the English forerunners of these organizations in his *Essay on Projects* (1694), under the head of "Friendly Societies."

Baldwin remarks: "These were really public agencies, created on account of the interest of the state in regulating the use of the land and water shared in by many under separate titles." This statement seems to me to convey an erroneous impression. The "companies" were essentially private, voluntary associations; they dealt only with their own members and with those with whom they contracted to make or maintain the improvements agreed upon; and they were accountable to no outside or public authority. They differed in essentials from an irrigation or reclamation commission appointed by the state to carry out comprehensive plans for such improvements and cannot properly, it seems to me, be regarded as more than private associations possessing certain privileges of common action conferred by the legislature.

142. See esp. S., "Notes for a History of the Library Company of Philadelphia," in Hazard, *Register of Pa.*, xvi, 201-208 (1835).

143. *Pa. Mag. of Hist. and Biog.*, xxiv, 488-489 (1910). Evans, *Amer. Bibliography*, iii, 89, No. 7295. The Association Library and the Amicable of the same city seem not to have been incorporated, and both were likewise merged with the Library Company of Philadelphia before 1775. Evans, *Amer. Bibliography*, iv, 32, No. 10137; Hazard, *Register of Pa.*, xvi, 204.

144. *Session Laws*, 63-67. A new charter of October, 1790, was granted at the request of the corporation: *R. I. Recs.*, x, 399-401. Cf. Mason, *Reminiscences of Newport*, 260-264.

145. *S. C. Stats. at Large*, viii, 107-110. Like most of the South Carolina acts of incorporation, this was subject to royal approval before going into effect.

146. *N. J. Arch.*, xvii, 140-141, 379, 381; Evans *Amer. Bibliography*, iii, 189, No. 8096.

147. Confirmatory act of 1782 in *Stats. at Large*, xi, 107. Cf. Evans, *Amer. Bibliography*, iv, 59, No. 10350.

148. Charter confirmed by act of Feb. 18, 1789, in *Laws* (ed. 1887), iii, 59-60. Cf. Evans, *Amer. Bibliog.*, iii, 205, No. 8217.

149. Mass. Prov. Acts, iii, 708-709, 744.
150. *Ibid.*, v 179-180, 190-191; *Laws of the Marine Society*, at Salem as..list of amended, and agreed upon, July 29, 1784 (Salem, 1784), giving complete members, 1766-83.
151. *Ibid.*, v, 295-296.
152. N. Y Council Min., xxix, 365, 379 (Calendar, 547-548); *Mag. of Amer. Hist.*, vi, 231 (1881), referring to recent anniversary.
153. R. I. Records, x, 113, giving a renewal of the charter (1785).
154. W. H. Bagley and O. O. Jones, *History of the Marine Society of Newburyport...* (Newburyport, 1906), 1, 5, 18-19.
155. Pa. Stats. at Large, vii, 341-346; cf. *ibid.*, x, 91-97. A similar society "for the Relief of Distressed and Decayed Pilots, their Widows and Children" was formed in 1788 and incorporated in 1789: *ibid.*, 387-392.
156. Pa. Stats. at Large, xiii, 501-504.
157. S. C. Stats. at Large, viii, 124-125.
158. William Smith to Thomas Penn, May 14, 1767, in *Pa. Mag. of Hist. and Biog.*, xxxi, 453-455 (1907).
159. J. A. Stevens, *Colonial Records of the New York Chamber of Commerce, 1768-1784...* (New York, 1867).
160. Baldwin, *Bus. Corps.*, 265, counts this a business corporation. It was of course an association of business men, but in no other sense could it be called a business corporation. Baldwin's doubts as to its American origin seem to be groundless, and his question as to the validity of its charter, because it was waled with the provincial seal, is answered by the fact that all the charters granted by royal governors were sealed with the provincial seal.
161. N. Y. Col. Recs., viii, 453.
162. Evans, *Amer. Bibliog.*, v, 16, No. 13194, lists its "Rules," published MDCCLXXIV.
163. The first appears to have been chartered Feb. 1, 1741 -- a Newport artillery company. See act of August, 1792 (*Session Laws*, 6-7), reviving; and Mason, *Reminiscences of Newport*, 283-288. D. H. Greene, *History of the Town of East Greenwich... 1677 to 1877* (Providence, 1877), chap. 14, gives the charter and narrates the activities of the Kentish Guards (1774). See also *Session Laws*, 1744, p. 39, 1755, p. 63, 1756, p. 66, 1774, pp. 36-39, 94-107, 121-148. Cf. J. S. Popkin, in *Mass. Hist. Soc. Proc.*, 2d Series, i, 250-251 (1884), for mention of Massachusetts companies. The so-called Ancient and Honourable Artillery Company of Boston, formed 1637, applied for a charter of incorporation and is sometimes called a corporation, but the legislative grant is not equivalent to an act of incorporation. Cf. O. A. Roberts, *History of the Military Company...* (Boston, 1895), esp. i, 9-11.

Chapter V

Conclusion

The foregoing review of corporations in the American colonies is not exhaustive. The opinions arrived at, particularly on such matter as the status of the lesser corporate towns and the power of incorporation in the charter colonies, are confessedly subject to revision. Further investigation will bring to light other corporations, probably even other types of corporations, than those to which reference has been made. Nevertheless a few general facts are clear from the study.

The right to incorporate, though seldom explicitly delegated to colonial proprietaries, governors, or assemblies, was exercised by all of these without significant interference from the crown, often with its sanction and encouragement; and even where there is no express delegation of this power, a possible legal sanction for the possession of it by all of these colonial authorities is not difficult to argue except in the case of the "charter colonies," where it was actually exercised with caution till near the close of the colonial period.

Most of the corporations active in America during the colonial period originated and were chartered in America by the authorities here. There were indeed a dozen or more which acted here under charter obtained in England. One of these, incorporated by proprietary charter on the eve of the departure of the proprietor's expedition for the province, and thenceforth almost wholly American, is hardly an exception to the general rule. Three -- the missionary societies -- drew their chief resources of funds and laborers from the British Isles and were accordingly almost under the necessity of keeping their bases there rather than in America. The majority of this dozen were either the original colonizing undertakings or had to do with the government of an established colony, and for such it was obviously inevitable that the corporate privileges should be obtained from the supreme fountain of authority. The only significant exception to the rule of colonial incorporation for colonial corporations is that of the College of William and Mary. There seems to be no particular reason why it should have been granted a royal charter when similar endeavors on behalf of Harvard, Princeton, Bethesda, and Dartmouth failed; the outcome must be attributed to an unusual concurrence of generally favoring circumstances.

Charters were almost invariably granted on petition of the parties interested. In North Carolina, however, Governor Dobbs forced charters upon towns and counties which were more than willing to get along without them; and in the case of certain other towns, notably Charles City (Charleston, S. C.) and Trenton, the charters were not desired by the majority of the inhabitants.(1*)

The corporations chartered, while few when judged by twentieth century standards, were by no means negligible in number; and they were, moreover, fairly representative. Public and private corporations of various types are included in the list. The business corporations, indeed, were for the most part of a decidedly elementary type; but the others, whether public (cities and towns, school and poor boards) or private (ecclesiastical, educational, charitable, social), represent classes of corporations as familiar and important in our day as

in colonial days; and while differences appear in details of organization and administration, the purposes served and the general way of serving them are not dissimilar.

A few further observations are warranted by the facts which the survey has disclosed.

First as to the distribution of the corporations. Here we sacrifice little in disregarding the corporations sole and the corporations aggregate with English charters. The rest, by all odds of chief importance, were scattered widely through the colonies; Georgia alone seems to have had none. But the distribution was far from uniform. Apparently no private corporations were chartered in Maine, Delaware, Maryland, and North Carolina, although each of these colonies contained at least one municipal corporation, and Maryland led in the creation of non-municipal public corporations. On the other hand (leaving out of account the uncertain lesser towns), no public corporations seem to have been erected in New England except the short-lived city of Acomenticus, alias Gorgeana, alias York, and the Boston Overseers of the Poor. Altogether the most prolific in corporate charters were the middle colonies -- New York, New Jersey, Pennsylvania, and perhaps Maryland; though toward the end of the period Rhode Island and South Carolina issued numerous charters for private undertakings.

Secondly, the lack of uniformity in the distribution of the corporations is paralleled by a marked diversity in methods of incorporation. Every possible method was used in one or more instances. The commonest method was by charter from the governor with the approval of the council, in the royal colonies, and by act of assembly elsewhere. Yet in Massachusetts and South Carolina, after they became royal provinces, the method of incorporation by act of assembly seems to have been universally practised, while in Rhode Island it was not uncommon for corporations to receive their formal charters directly from the hands of the governor. There were certainly a few exceptions to the rule in the royal colonies of New Jersey and Virginia, and in Maryland while it was under royal control. In Pennsylvania charters by the proprietary, by the governor, and by the assembly seem to have been of roughly equal prominence. Furthermore, there is one instance of the incorporation of a single corporation by charters from three jurisdictions, and there are several cases of the incorporation of several corporations by a single legislative act. But no "general incorporation act" permitting "freedom of incorporation" in accordance with its provisions was known in America in the colonial days.

Finally it will be noted that the colonial corporations, while their history is virtually coextensive with the history of the colonies themselves, increased rapidly in number in the last two or three decades before the Revolution. This was true most notably of the private corporations. Before 1745 only two colleges had received charters of incorporation; between 1745 and 1776 seven charters were granted. Before 1745 there seem to have been only five or six incorporated churches in New York and but two in New Jersey. In the next three decades at least fifteen more were chartered in each colony. All but one or two of the colonial business corporations were chartered after 1760. The various hospitals, library companies, marine societies, etc., which have been mentioned were all, apparently, incorporated after 1750. The several charters of ecclesiastical corporations for the relief of widows and children of the clergy were all granted after 1759. It was the last ten years of this period, moreover, in which the largest total of any decade was added.

It would seem, therefore, that the development of corporations in the colonies was a fairly normal one, not appreciably hampered by crown interference or parliamentary restrictions, and checked chiefly by the simplicity of social and economic conditions and by stations of social and economic traditions. The very diversity in practice regarding corporations affords mute testimony to the truth of this conclusion, since it reflects the diversity in intellectual and industrial conditions, as well as in political organization, among the several colonies. And the growth of corporations toward the end of the colonial era is prophetic of the larger growth which was to take place in the more mature post-Revolutionary days.

NOTES:

1. N. C. Col. Recs. v, 301-303, vi, 5-6, 57, 77, 226-229, 288-289, and *supra*, 70-71.

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