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HISTORICAL DEVELOPMENT OF THE LAW OF BUSINESS COMPETITION

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The settlement of America was in large measure due to the initiative and to the capital supplied by the business men of England. Profit then as now was the lure. The early voyages of great adventurers, such as Sir Humphrey Gilbert and Sir Walter Raleigh, were essentially business enterprises. Prior to the founding of the first American colony, trading and fishing expeditions had been made to the New England coast, financed by London merchants. Most of the original thirteen colonies were founded by commercial companies, which secured trade monopolies and concessions as to taxes in their charters from the king. But such monopolies were not suited to the rigorous conditions which demanded the utmost in individual initiative and resourcefulness, and within a few years most of these charters were revoked or purchased for the common good. While the “Christianization of the Indian,” the desire to checkmate Spain and the need of finding an outlet for surplus population were all grounds for colonization, it was the hope of discovery of gold and silver, the belief that a short route to the lucrative trade of the South Seas might thus be found, the need for certain raw materials for which England was largely dependent upon other countries and the desirability of developing colonies to consume the surplus production of England and furnish employment to her shipping that led men to invest their funds in such speculative enterprises as these trading companies with their monopolistic rights in great sections of the new continent.¹ The success of great foreign trade companies, such as the East India Company, had captured the imagination of the English business man.

The Virginia Company of London was almost wholly commercial in its origin. The principal men interested in its success were prominent in the affairs of the Russian and East India Companies, the governor of the East India Company being treasurer of the Virginia Company.² Nobles, lawyers, soldiers, merchants and other citizens to the number of 659 subscribed for “bills of adventure” in the company. The Lord Mayor of London urged the London gilds to aid in financing the enterprises so successfully that 56 gilds, including fishmongers, sta-

¹ BRUCE, ECONOMIC HISTORY OF VIRGINIA IN THE SEVENTEENTH CENTURY (1896) c. I.
² Ibid. 69.
tioners, merchant tailors, clockworkers and many others responded, and the lure of "the visible hope of a great and rich trade" held out by the company to prospective investors resulted in a total subscription of 200,000 pounds. The charter of the company gave it large monopolistic trade privileges. Power was given to seize the goods of interlopers trafficking within the limits of the colonies unless they paid 21/2 per cent. of the purchase or sale to the treasurer of the company. The company, however, was a complete failure financially and upon the revocation of its charter in 1624, when the king made the settlement a crown colony, the subscribers had nothing but their aptly named "bills of adventure."

Within a few years after the founding of Jamestown in 1607 the colonies began to have difficulty with forestallers. An early document addressed to the treasurer of the company on "The Colonizing of Virginia" urged that one class of people to be excluded are the "Monopolists, the very wrack of merchandizing" who "interfere with general interests in order to use them for the advantage of the few." The distance separating the struggling colony from the mother country and the uncertainties of transportation made it easy to corner the supply of imports to the great injury of the colonists. Within a few years the company was compelled to direct the authorities to suppress every attempt to buy up the bulk of commodities to secure high prices. Vessels were prohibited from making sales before they came to anchor at Jamestown in order to prevent buyers from meeting the ships as they came up the river to forestall the supply before it reached the market. In 1622 a forestaller was defined as a man who had obtained under the terms of a contract actual possession of merchandise or the right to its possession before it reached Jamestown and who used any subterfuge whatsoever for the purpose of enhancing the price of goods when offered for sale in the market or who prevented their transportation to the market. In 1626 it was ordered that the master of a vessel should hold the goods ten days before sale in order to enable the colonists to make the journey to Jamestown and to have equal opportunity to make their needed purchases. In 1631 the House of Burgesses ordered that the statutes of England against forestalling and engrossing should

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3 1 Brown, The Genesis of the United States (1890) 51; Cf. ibid. 252.
4 1 Bruce, op. cit. supra note 1, at 261.
5 1 Brown, op. cit. supra note 3, at 270.
6 2 Bruce, op. cit. supra note 1, at 358, citing The Works of Captain John Smith (Arber's ed. 1884) 561.
7 2 Bruce, op. cit. supra note 1, at 353.
8 2 ibid. 360, citing 1 Hening, Virginia Statutes (1812) 194.
9 2 Bruce, op. cit. supra note 1, at 359 citing General Court Order October 13, 1626; General Assembly October 16, 1629.
be proclaimed and enforced in Virginia.\textsuperscript{10} About this time the governor and council in reporting to the company, while denying the existence of such practices in the colony, condemned “engrossing as horrible Treasone against God Himselfe.”\textsuperscript{11} By 1644, however, the increasing supply of goods from the mother country as well as the powerful opposition of the English merchants to restrictions on their trade resulted in a repeal of all the acts against forestalling and engrossing.\textsuperscript{12} But again after the insurrection in 1677 one of the charges made in a statement of grievances presented to the commissioners sent from England to investigate conditions in the colonies was that engrossing of commodities was carried on to such extent as to prejudice the welfare of the whole community.\textsuperscript{13}

The Pilgrim Fathers when seeking a home where they would be free to worship “according to the simplicitie of the gospell & to be ruled by the laws of Gods word”\textsuperscript{14} were compelled to procure the aid of business men in financing their plans for a colony in the new world. They secured from the Virginia Company of London a charter for the establishment of their colony and finally succeeded in entering into an agreement with a group of merchant adventurers for a “joint stock and partnership the space of seven years, except some unexpected impediments do cause the whole Company to agree otherwise; during which time all profits and benefits that are gotten by trade” were to remain in the common stock until divided at the end of the seven year period. Each share was valued at ten pounds and every colonist over sixteen years of age was entitled to one share free and to purchase as many more as he desired.\textsuperscript{15} This company, too, was a commercial failure and at the end of the seven year agreement the colonists purchased the interests of the London stockholders for eighteen hundred pounds. The charter of the Massachusetts Bay Company was also secured in 1629 by Puritan merchants ostensibly at least for commercial purposes. Its stock, however, was quickly purchased by Puritans who were grievously oppressed in England and who intended to emigrate.\textsuperscript{16} Through acquiring the charter of this commercial company, which did not require that the meetings of the governor and council be held in England as did previous charters and which in accordance with the foreign trade charters of the times granted large powers of self-government, the

\textsuperscript{10} 2 BRUCE, \textit{op. cit. supra} note 1, at 362, citing 1 HENING, \textit{op. cit. supra} note 8, at 172.
\textsuperscript{11} 2 BRUCE, \textit{op. cit. supra} note 1, at 359.
\textsuperscript{12} Ibid. 360, citing 1 HENING, \textit{op. cit. supra} note 8, at 296.
\textsuperscript{13} 2 BRUCE, \textit{op. cit. supra} note 1, at 361.
\textsuperscript{14} BRADFORD, \textit{HISTORY OF PLYMOUTH PLANTATION} (Davis’ ed. 1908) 26.
\textsuperscript{15} YOUNG, \textit{CHRONICLES OF THE PILGRIM FATHERS} (2d ed. 1844) 82.
\textsuperscript{16} PAULKNER, \textit{AMERICAN ECONOMIC HISTORY} (1924) 50.
Puritans were able to secure a large control over their own affairs in America even though their government was unfriendly.

The Plymouth colonists quickly ran afoul of monopoly. One Gorges had obtained from the king a patent of monopoly on the fishing rights in New England. This monopoly he attempted to enforce in New England arousing the bitter antagonism not only of the colonists but of the fishing interests in England who carried their complaints to Parliament. Probably this early experience was partly responsible for the fact that in the Massachusetts Bay Company charter, a monopoly of the fishing trade was expressly excluded. This trade, under the pressure of free and open competition, quickly expanded into the basic industry of the New England colonies.

In the first several years of life of the Massachusetts Bay colony it was compelled, just as the Virginia colony had been, to enact statutes restraining buyers from boarding ships in order to corner incoming supplies. In 1631 a regulation was enacted prohibiting anyone from purchasing commodities from ships without a license from the governor. Prices of corn were fixed in times of scarcity. In 1634 the General Court “lest the honest and conscionable workemen should be wronged or discouraged by excessive prizes of those commodityes which are necessary for their life and comfort” enacted a law limiting profits to four pence in the shilling of the cash cost in England on the importation of commodities “on paine of forfeiting the valewe of the thinge solde.” Cheese, wine, oil, vinegar and liquors were not regulated because of the extra risk of their transportation. The law contained the further exception that “for lynyen and other commodityes, which in regard of their close stowage and small hazard, may be afforded at a cheape rate, wee doe advise all men to be a rule to themselves in keeping a good conscience, assureing them, that if any man shall exceede the bounds of moderacion, we shall punish them severely.” The colony having fixed the wages of labor was thus forced to endeavor to control the prices of necessities. By 1634 weekly markets were being established in the different towns and trade was beginning to have real substance.

In 1635 the laws limiting profits and restraining buyers from boarding ships were all repealed. But while the statutes were repealed, the court warned that anyone offending against the

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27 1 Weedon, Economic and Social History of New England (1890) 91.
28 Ibid. 118.
29 Felt, Massachusetts Currency (1839) 16.
30 Ibid. 18.
31 1 Records of the Governor and Company of Massachusetts Bay (Shurtleff, ed. 1853) 169, 160.
"true intent" of the law by charging "unreasonable prices" would be prosecuted, and parties were subsequently indicted and fined for committing such wrongs. In this same year it was provided that no provisions could be bought to sell again or to export without leave of the magistrates. In 1638 the Plymouth Colony prohibited engrossing, reciting that such acts resulted in the "disapoynting of the necessyties of many and oppressing them in the price when their necessyties do constraine them to buy them at any price." At the time of the grant of the charter to William Penn for the colony of Pennsylvania he was offered £6000 for a monopoly of trade, but he refused to sell the privilege because he wanted "to do things equally between all parties.

While the colonies were thus endeavoring to protect their incoming supplies from corners and other artificial restraints, and while they brought with them the hostility toward monopoly so widespread among the English people who were struggling to free themselves from its many forms in the old country, yet in the hope of encouraging local industries they felt it necessary at times to grant exclusive trade rights for short periods. Free land, exemption from taxes, loans, bounties, freedom of factory workmen from military service and other inducements were also employed to develop industry, but the grant of monopolistic rights seemed at times essential in order to assure a production of necessities. Coal and iron were badly needed and in 1637 a monopoly was granted to Abraham Shaw for "one half the coles or yronstone on any common ground." A monopoly of smelting was granted for two years in 1641. A monopoly for making bar iron was granted by the General Court on the condition that the product should be sold under £20

22 Ibid. 160; Felt, op. cit. supra note 19, at 21.
23 1 Weedon, op. cit. supra note 17, at 119.
24 Records of the Colony of New Plymouth (Pulsifer's ed. 1861) *50.
26 Macdonald, Select Charters Illustrative of American History (1899) 75.
29 1 Weedon, op. cit. supra note 17, at 173; 1 op. cit. supra note 21, at 206.
30 1 Weedon, op. cit. supra note 17, at 173; 1 op. cit. supra note 21, at 327; 2 ibid. 61.
per ton. In 1643 a company of adventurers was authorized in Massachusetts and given a monopoly of the Indian trade. Not only a monopoly but also a bounty was granted by Massachusetts in 1726 to a manufacturer of canvas. In 1750 an exclusive right to manufacture sperm candles for fourteen years was granted by the same colony. The town of Haverhill in 1651 granted the exclusive privilege to operate a sawmill and it seems to have been a frequent practice among the towns to grant exclusive rights to operate gristmills and sawmills. These grants were not prompted by any desire to destroy competition. Rather they were an inducement to bring about the creation of domestic industries in these pioneer communities which would furnish an essential supply of necessities and assure the benefits of competition against the closely controlled products of England.

Some of the medieval practices employed in England were brought to the colonies and artificial restraints on competition were imposed for selfish reasons under the mistaken idea that the restraint of trade would benefit the community. Thus we find Connecticut enacting an order that "No foreigners can retaile any goods, nor shall any Inhabitant retaile any goods belonging to a foreigner." The retail tradesmen following the practice of their gild brethren in England were trying to stifle foreign competition, but with independent colonists such a law was unenforceable. Similarly, just as the gild organizations of the towns in England had fought for generations to protect their monopoly of the town trade, so the early colonial towns endeavored to exclude outsiders. New Haven would not permit a stranger to buy or hire without permission of the court. Local ferries were required to charge lower fares to their own townspeople than to outsiders. In 1657 Boston prescribed that no one should keep shop or set up any manufacture unless he was an admitted inhabitant. And as late as 1714 no settler was permitted to open a shop or exercise his trade without a certificate from the town clerk. The larger towns soon developed the old gild form of organization and naturally endeavored to establish monopolies of their particular trades. In 1648 a Shoemakers' Guild and a Coopers' Guild were au-

31 1 WEDEN, op. cit. supra note 17, at 178; 2 op. cit. supra note 21, at 61.
32 2 op. cit. supra note 21, at 60.
33 2 WEDEN, op. cit. supra note 17, at 495.
34 Ibid. 654, 655.
35 1 ibid. 63.
36 Ibid. 189.
37 1 WEDEN, op. cit. supra note 17, at 56.
38 Ibid. 80.
39 2 ibid. 519.
The shoemakers were granted power to make orders for the regulation of their trade, to prescribe reasonable penalties and fines for the breach of such regulations and to suppress incompetent workmen on complaint to the court, but the colony was careful to provide that no combination to enhance prices should be entered into and that no shoemaker should refuse to make shoes for any inhabitant out of his own leather at a reasonable price. In the same year the vintners of Boston and Charleston were granted a monopoly for five years.\textsuperscript{41} In Boston attempts were made to separate the crafts and no one was permitted to practice more than one craft.\textsuperscript{42} In 1660 this city, following the old custom of the craft gilds of England, forbade anyone to “open shop or occupy any manufacture or science” until he was twenty-one years of age and had served a seven year apprenticeship.\textsuperscript{43}

Gild regulations were at least partly enforced.\textsuperscript{44} Local hat-ters in 1672 asked for additional privileges, but the court refused until they could make hats as good and as cheap as those imported.\textsuperscript{45} The monopolistic organization of trade and industry was already beginning to break down in England, and the wary colonists were very careful to limit gild monopolies to short periods, to deny them the right to fix prices and to retain close regulatory powers over them so that they were very different organizations from the craft gilds in the home country from whose exactions they had suffered. The craft gilds in the colonies, moreover, could not hope to secure the monopolistic privileges possessed by the crafts in England, for it was a dominant purpose of the English government to make the colonies markets for English manufactures, and no attempt by colonial craft gilds to restrict the market would be permitted. The colonists did not hesitate to encroach upon the privileges of such great foreign trade monopolies as the East India Company. Indeed piracy was common in the 17th century and one famous pirate, Captain Thomas Tew, was very much in the good graces of the colonial officials and merchants of New York. This doughty pirate was on the blacklist of the East India Company but Governor Fletcher entertained him, and in reply to the objections of the Board of Trade of England stated that he wanted to make the captain a sober man and “reclame him from a vile habit of swearing.”\textsuperscript{46}

\textsuperscript{40} 2 op. cit. supra note 21, at 249, 250.
\textsuperscript{41} 1 WEEDEN, op. cit. supra note 17, at 175; 2 op. cit. supra note 21, at 18, 31.
\textsuperscript{42} 1 WEEDEN, op. cit. supra note 17, at 86.
\textsuperscript{43} Ibid. 274.
\textsuperscript{44} Ibid. 309; 2 FELT, ANNALS OF SALEM (2d ed. 1849) 170.
\textsuperscript{45} 4 DOCUMENTS RELATIVE TO THE COLONIAL HISTORY OF THE STATE OF NEW YORK (O'Callahan's ed. 1854) 307.
By the middle of the seventeenth century, the colonies began to feel the heavy pressure of the mercantilist policy of England. Up to this time the colonies had enjoyed practical freedom of trade. This policy was based on the theory that a favorable balance of trade assuring the possession of the largest possible amount of gold and silver measured the economic strength and wealth of a nation. England for several centuries had been adopting numerous regulations designed, first, to encourage her shipping so as to be freed from the necessity of depending upon any foreign country for the transport of her commodities, and to build a powerful navy manned by able seamen; second, to protect agriculture so as to assure an adequate supply of food for her people and of raw materials for her factories; third, to foster and protect her industries so as to be industrially independent; and, finally, to maintain a favorable balance of trade so that she would build up a huge supply of gold and silver.\textsuperscript{47} A half century after the founding of the colonies the royal government began to apply this policy to the American colonies. Between 1651 and 1663 several laws were enacted which in practical effect required the colonies to procure their merchandise from Europe in English ships navigated by Englishmen, and compelled them to produce only such commodities as the mother country could not produce and to ship such goods to English ports. Various commodities which were desired in England either for consumption or trading purposes could be shipped only to ports controlled by the English government under penalty of forfeiture. As years passed, more and more commodities were added to this list. Other commodities, which would compete with English products, could not be exported to England; their exportation was limited to certain other countries where competition would not be seriously felt. When such shipments were made the colonial traders could not load their ships with the products of such foreign countries and make a direct return voyage, but were compelled to go to England for their return cargo. The purpose of this legislation was to give to English shipowners, both of the home country and of the colonies, a monopoly of the carrying trade, and to secure for the merchants of England a practical monopoly of colonial exports and imports. The intent of the legislation was to exclude the colonists from the great competitive markets of the world in making their purchases and sales, and to subordinate the welfare of the colonies to the selfish interest of the merchants and tradesmen of the mother country. And to compel the colonists to rely solely on England for the importation of the manufactured commodities, thus stimulating and protect-\textsuperscript{47} \textit{Faulkner, op. cit. supra} note 16, at 141.
ing English industry, the royal government directed the colonial governors to discourage all manufacture in the colonies, and to report any instances in which it was attempted.

The royal governor of New York, in reporting to the home government the attempts to manufacture woolen goods, said:

"All of these Colloneys, which are but twigs belonging to the main Tree, ought to be kept entirely dependent upon and subservient to England, and that can never be if they are suffered to goe on in the notions they have, that as they are Englishmen, soe they may set up the same Manufactures here, as people may doe in England; for the consequence will be that if once they see they can cloath themselves not only comfortably but handsomely too, without the help of England, they who are already not very fond of submitting to Government, would soon think of putting in execution designs they have long harboured in their breasts." 48

In line with this policy and to assure to English merchants a monopoly of the inter-colonial trade, an act was passed in 1672 requiring all ships loaded with specified commodities in the colonies to be bonded to assure the delivery of the cargo in England, under penalty of heavy duties, so as to prevent shipments between the colonies. In 1699 the English woolen manufacturers procured the passages of a law prohibiting the exportation of woolen goods from the colonies, or their shipment from one colony to another. 49 In 1732, on the petition of the London gild of hatters, a law was passed making similar prohibitions as to hats and, in order to restrict colonial competition further, provided that no one should make felt hats until he had served an apprenticeship of seven years, and that no master should have more than two apprentices. 50 Thus the mercantile and industrial interests of England worked successfully to procure legislation which would not only give them a monopoly of the supply of manufactured articles going to the colonies, but would also make England the sole market for the raw materials of the colonies, in this way depriving the colonists of the benefit of the competition of buyers and sellers throughout the world. The attitude of England toward the colonies was well expressed in the statement of Lord Sheffield that "the only use and advantage of American colonies or West India Islands is the monopoly of their consumption and the carriage of their produce." 51 This policy of the British government excited bitter hostility in the colonies and was one of the important causes leading to the American Revolution. 52 The economic injury wrought by such
legislation was probably not very great, for in a pioneer country
the first great development of trade would naturally be in raw
materials, and the activities of the colonists were so directed
that there was a rapid development of extractive industries,
and of ship building to furnish the means of transportation of
commodities between England and the colonies. Moreover the
laws were flagrantly violated. Smuggling was practiced by lead-
ing citizens with the open approval of their communities. The
royal officers were corrupted. For years a large trade was con-
ducted in violation of the law despite every effort of the home
government. In 1733 a deceased Collector of Customs was
praised in the local press because he "with much humanity took
pleasure in directing Masters of Vessels how they ought to avoid
the Breach of the Acts of Trade." Yet the elimination of the
competition of foreign ships, the partial exclusion of foreign
buyers and sellers from the market and the exaction of profits
by the English middlemen through whose warehouses many of
the goods of the colonies had to pass, inevitably laid a heavy
toll on colonial trade.

Beginning in 1763 the British government began a strict en-
forcement of these various laws. The expanding production in
England resulting from the revolution in factory methods made
her manufacturers and merchants more eager to retain their
monopoly of colonial markets and to stifle competition. New
measures providing for taxation and compelling the colonists to
provide for the costs of garrisons of troops to enforce the law
were enacted within a few years. The great drama was reach-
ing its climax and the American Revolution in reality had begun.
Espionage and force were met with boycotts which produced
heavy losses to English industries. Wealthy men wore homespun
in preference to buying English textiles. Boycotts drifted into
acts of violence and the efforts to enforce the laws became more
harsh and irritating. The colonists who had built up an enorm-
ous illicit trade in tea, a monopoly of which had been granted to
the East India Company in 1607, were embittered by the placing
of a colonial tax on all tea brought directly into the colonies and
the remission of the tax that company had always before paid
in England, enabling it to compete on an equal basis with the
tea brought in by the interlopers on its monopoly. The threatened
injury to this great but unlawful trade of the colonists, and the
intense feeling against taxation culminated in the famous
"Boston Tea Party" at which the goods of the East India Com-
pany were dumped into the sea. For this rebellious act the port
of Boston was closed and her economic life imperilled. The Con-
tinental Congress strongly urged the colonies to boycott English

53 2 Weeden, op. cit. supra note 17, at 557.
goods in retaliation. This last boycott of 1774-75 reduced imports from England over ninety per cent. and worked havoc in English factory towns and seaports, with the result that Parliament was flooded with petitions for a change in policy. While the commercial interests of England were frightened by the results of their action and urged moderation, the power of the crown had been questioned and the dispute shifted into a momentous political struggle. While concessions were made upon the insistence of the English merchants and manufacturers, they came too late. An unyielding pioneer people faced an obdurate king and the great conflict was inevitable. Thus the efforts of the English government, backed by English merchants and manufacturers, to deny to the Americans the right to compete in foreign markets and to secure the benefits of foreign competition was one of the most potent causes of the American Revolution. The spirit of monopoly which had permeated English business life for centuries and worked injury in so many ways now wrought irreparable harm to the British Empire by bringing about the loss of invaluable dominions and the irrevocable division of the English people.

MONOPOLY DURING THE REVOLUTION

The Revolution shattered the structure of trade and quickly produced the abnormal conditions which always characterize protracted periods of warfare. The Continental Congress and the state governments issued paper money in huge amounts which further demoralized trade and caused rapidly increasing as well as violently fluctuating prices. Widespread distress among the people and hostility toward tradesmen resulted. In response to popular demand a convention of representatives of New England states, called by Governor Trumbull of Connecticut for the purpose, among others, of suppressing monopoly, was held in December, 1776, at which these states agreed upon schedules of fixed prices for a number of commodities. Six weeks later Congress urged similar action by the other states. Again on November 22, 1777, Congress addressed the state authorities urging them to send delegates to a meeting for the purpose of agreeing on prices and suppressing monopolies and extortion. It was soon found impossible to enforce the prices prescribed, but stocks of goods were seized and sold at prices fixed by local committees. There was intense popular feeling against specu-

54 FAULKNER, op. cit. supra note 16, at 151.
55 FELT, op. cit. supra note 19, at 169, 170. For a history of price fixing during the Revolution, see BOLLES, FINANCIAL HISTORY OF THE UNITED STATES 1774-1789 (2d ed. 1884) c. XII.
56 FELT, op. cit. supra note 19, at 177.
lators and those who attempted to corner stocks of necessary commodities.

In March, 1776, there were numerous complaints in Pennsylvania against forestallers and engrossers who it was claimed cornered the supply of salt, sugar, spice, coffee and other foods. As a result the Committee of Safety fixed prices and provided that anyone failing to observe them should be "exposed by name to public view as sordid vultures, who were preying on the vitals of their country in time of common distress." In November, 1778, a Committee of Congress addressed the Supreme Executive Council of Pennsylvania, stating that "the dangerous practices of Engrossers have increased so rapidly with the Public Distresses" that price fixing of commodities with forfeiture of twenty per cent. of the amount of such commodities in the hands of such engrossers was advisable, and urged the passage of criminal laws providing imprisonment for such offense. "This seething of the Kid in its Mother's milk," said the Committee, "calls for the most exemplary punishment." A month later the Council, on the recommendation of the General Assembly, ordered an investigation particularly into the forestalling of flour. Several days later an Army officer in reporting to the president of the Council urged the necessity of finding some means to protect the poor "as Grain is so dear and the Monopolizers and Forestallers is to blame, for I look upon them to be worse than the Savages or any Enemy thats against us." Again in 1779 the Supreme Executive Council of the state issued the following proclamation against such practices:

"Whereas, The forestalling the Markets & engrossing great quantities of Articles of usual Consumption, have a manifest tendency to enhance the prices, odious & punishable by Law; But when such practices are extended to Bread & the other necessities of life, they become distressing and ruinous to the industrious poor, & most heinously criminal. In order therefore, to prevent as much as possible the inhabitants of this State from unwarily falling into such dangerous & illegal practices, We do hereby make it known that we have caused prosecutions to be commenced against some persons Charged with the above offenses and we do strictly charge the Justices of the Peace, Constables, & other civil Officers to make due enquiry into the above offenses; & we do require the faithful inhabitants & Subjects of the State to whose knowledge the same may come, to make discovery thereof to the Officers of Justice, in order that the perpetrators may be brought to speedy & condign punishment."
But while prosecutions were instituted they were unsuccessful and the president of the Council in reporting to the Assembly stated that while he wished a more effectual remedy might be provided to prevent such practices "a more general detestation and abhorence of them we apprehend must take place before such remedy can be had." Even a great patriot such as Morris did not escape suspicion for on the arrival of a ship with goods consigned to him, but intended for the French fleet, the people "chose to believe they were for the use of the monopolizers and forestallers." 63

New Jersey in December, 1777, acting on the recommendation of Congress, enacted a law to fix prices in order "to prevent forestalling, regrating and engrossing." Maximum prices were fixed on iron, leather, shoes, wheat, corn, flour, butter and other commodities, while on imported articles a fixed percentage of profit was permitted, with an additional percentage allowed for cost of transportation from the chief port of delivery. Evidently this law was not effectively enforced, for about a month later a proclamation was issued by the president of the Council of Safety, stating that "evil minded persons, enemies to the liberties of America, or preferring private lucre to the important interest of their country, endeavor to persuade the ignorant or unwary" that the act would not be enforced, and strictly enjoined the Justices of the Peace and other offenders to enforce the law under pain of prosecution and to transmit the names of offenders "in order that they may be treated as persons dangerous and disaffected to the present government." 65

In Massachusetts the monopolist was equally unpopular. In January, 1777, this colony passed an act "to prevent monopoly and oppression" fixing the prices of many necessities. In June, 1779, a handbill signed "Vengeance" was circulated throughout the city of Boston, calling a meeting of the citizens and urging them to "rid the community of those monopolizers and extortionators, who, like canker worms, are gnawing upon your vitals" and stating "We have borne such wretches, but will bear no longer. Public examples at this time would be public benefits." The worried merchants called a meeting the same day, and agreed not to advance prices; moreover they agreed to reduce them one month later, and adopted a resolution to bring to justice all persons engaged in monopolizing and forestalling. In other colonies severe measures were taken against those who

62 3 PENNSYLVANIA ARCHIVES, 4TH SERIES (Reed's ed. 1900) 713.
63 PHILLIPS, CONTINENTAL PAPER MONEY (1886) 124.
64 1 NEW JERSEY ARCHIVES, 2D SERIES (Stryker's ed. 1901) 535.
65 2 ibid. 25.
66 FELT, op. cit. supra note 19, at 170.
67 BOLLES, op. cit. supra note 55, at 163.
violated price regulations. Yet the rapidly depreciating currency and other economic causes were making the enforcement of many regulations impossible. Farmers and tradesmen alike evaded them. But the government clung to the idea of price fixing. Delegates from the New England states and New York met in October, 1799, to regulate prices and recommended that other states join in a general convention for this purpose. This plan was approved by Congress, and the states were strongly urged to enact stringent laws against engrossing and withholding goods from the market.

Thus it is obvious from a study of revolutionary records that there was a deep seated hostility among the American colonists to monopoly, and all devices to enhance prices. So strong was this sentiment that we find it crystallized in some of the declarations of rights in the first state constitutions. Maryland proclaimed "That monopolies are odious, contrary to the spirit of a free government, and the principles of commerce, and ought not to be suffered." North Carolina in similar language declared "That perpetuities and monopolies are contrary to the genius of a free state and ought not be allowed." Massachusetts in its constitution provided that "No man, or corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public." Thus our forefathers, while struggling for independence, embodied in their declarations of the rights they deemed essential to a democratic form of government and in an integral part of their fundamental law, prohibitions against monopoly—a policy followed by many of our state governments since that time.

(To be continued)

68 Ibid. 167, 168.
69 Md. Const: Declaration of Rights (1776) §39.
70 N. C. Declaration of Rights (1776) § 23.
71 Mass. Const: Declaration of Rights (1780) Art. VI.