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THE TENANTRY ON THE NEW YORK MANORS

A CHAPTER OF LEGAL HISTORY†

*Arthur E. Sutherland**

I

A New York lawyer who looked at his state Constitution twenty years ago was probably puzzled by part of the Bill of Rights.¹ Among the protections of the citizen there listed he found:

Sec. 11 [Feudal tenures] All feudal tenures of every description, with all their incidents, are declared to be abolished, saving however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

Sec. 12 [Allodial tenures] All lands within this State are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

Sec. 13 [Leases of agricultural lands] No lease or grant of agricultural land for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service, of any kind, shall be valid.

Sec. 14 [Restraints on alienation] All fines, quarter sales, or other like restraints upon alienation, reserved in any grant of land hereafter to be made shall be void.

All these provisions were dropped from the Constitution in 1938. But the debates in the Convention of that year show consciousness of a passing tradition, not abandoned without objection. One delegate asked in protest at the elimination of the clause on feudal tenures,

We are a people in a hurry. . . . Have we no space for four lines on one page reminding us that we are a people with a history?²

This paper proposes that same reminder.

In the ending of great landed estates in New York appears a premise of all political theory, of all legislation. It is the lesson that all government depends on the consent of the governed, not only in majoritarian theory but in hard political necessity. Real compulsion can only be exercised on a very few by an overwhelming majority. When any substantial part of a people reach the point of refusal to conform, government in some part changes or ceases to function. Our law remains

† In the preparation of this paper I have had the advantage of the intelligent and energetic help of Lawrence M. Stone, Harvard Law School, Class of 1956. Without his talent for research the paper could never have been completed.

* See Contributors' Section, Masthead, p. 656, for biographical data.

¹ N.Y. Const. art. I, text in force January 1, 1938.

² N.Y. State Const. Convention, Revised Record 1161 (1938).

customary in the truest sense. Self government should be the privilege of a people, but it functions only when the individual governs himself.

II

New England early came to be peopled by villagers or farmers living on their own lands, owned in fee.³ But New York, on both sides of the Hudson, along the east and west branches of the Delaware, and in the valley of the Schoharie, was originally populated by farm tenants of great landowners holding under colonial grants. Some of these patents were immense. The Patroonship, later the Manor, of Rensselaerwyck, originally obtained from the Indians⁴ by Killian Van Rensselaer between 1630 and 1637, fronted twenty-four miles on the Hudson, and extended twenty-four miles back on each side of the river.⁵ The Livingston Manor in Columbia County was ten miles wide on the Hud-

³ Long Island and part of Westchester were originally settled by people from New England who brought with them their town organization and customs. See Report of Cadwallader Colden, Surveyor General, to Governor Cosby, (1732) in 1 Documentary History of the State of New York, 377 et seq. (1849), arranged under the direction of Christopher Morgan, Secretary of State, by Dr. E. B. O'Callaghan. Cadwallader Colden was a remarkable public servant whose contribution to the state of New York was unparalleled. His biography by Dr. Alice M. Keyes was published in 1906 by Columbia University Press. His 1732 report will hereafter be cited as the Colden Report.

See also Julius Goebel, Jr., *Some Legal and Political Aspects of the Manors in New York* (1928). Accounts of titles in western New York appear in the opinion in *Massachusetts v. New York*, 271 U.S. 65 (1926); Evans, *The Holland Land Company* (1924); and Osgood, *The Title of the Phelps and Gorham Purchase* (1891). A useful bibliography concerning many of the States appears in A. N. Chandler, *Land Title Origins* (1945).

⁴ II Lincoln, *Constitutional History of New York* 11. Killian Van Rensselaer was a Director of the Dutch West India Co. and obtained a deed or patent from that body on August 13, 1630. See note 5 infra. Whether the Van Rensselaer Dutch title derived from that deed, from the Indians, or from seizure is not now very important. The Charter of Freedoms and Exemptions of 1629, issued by the Netherlands Government, encouraged the proprietors of large lands to plant colonies by the offer of special privileges. See for a copy of the Charter, I *New York Historical Society, Collections* 370 (2d Ser. 1841).

See also Assembly Document No. 156, 2 et seq. (March 28, 1846), being the report of a select committee of the New York legislature, written by its chairman, Samuel J. Tilden. For a loan of a copy of this valuable document I am indebted to Columbia University Library. A reprint, lacking, however, certain exhibits including copies of early leases which are appended to the printed original, appears in 1 Tilden, *Public Writings and Speeches*, Ed. John Bigelow, 188 et seq. (1885). Hereafter, this document will be cited as Tilden Report, the page references referring to the original Assembly Document 156 of 1846.

⁵ Tilden Report 2. An account of the Van Rensselaer family and manor, with a photograph of a deed or patent from the Directors of the New Netherlands to Killian Van Rensselaer, dated August 13, 1630, can be found in Van Rensselaer, *The Van Rensselaer Manor* (1929). The name "Kiliaen" often appears "Killian."

son and ran back over twenty miles to the Massachusetts border. There were other grants of almost equal size.⁶

Cadwallader Colden, then Provincial Surveyor-General, reporting in 1732 on the lands in the Province of New York⁷ to Colonel Cosby, newly appointed Governor, wrote that at the time of the English conquest in 1664 the King's Commissioners promised that persons holding under the Dutch would continue to hold their lands. This was the case with Rensselaerwyck; Governor Dongan regranted it to the Rensselaer Patroon in 1685 and Lord Cornbury again regranted it in 1704.⁸ Colden speaks highly of the administration of Crown lands by Sir Edmund Andros (1674-1681) and the careful survey before he made grants; but Governor Dongan (1683-1688) fell away somewhat from Sir Edmund's good stewardship. Under Governor Fletcher (1692-1698), however, the land policy of the Province was shocking to the honest and orderly Surveyor-General. Colden says of Fletcher:

. . . The most extraordinary favors of former Govrs. were but petty Grants in comparison of his. He was a generous man, and gave the Kings lands by parcels of upwards of One hundred thousand Acres to a man, and to some particular favourites four or five times that quantity, but the King was not pleased with him, as I am told, and he was recalled in disgrace.⁹

Lord Cornbury (1703-1708) made grants upon trifling quit-rents that at least equalled those of all his predecessors put together.¹⁰ Some of these conveyances seem to have been elastic. Colden mentions one instance of which he had heard where the patent granted three hundred acres and the patentee in 1732 was claiming upwards of sixty thousand acres within the bounds of his grant. Boundaries were often expressed by the Indian names of brooks, rivulets, hills, ponds, or waterfalls.

. . . I can give some particular instances where the claims of some have increased many miles, in a few years, and this they commonly do, by taking some Indians, in a Publick manner, to shew such places as they name to them, and it is too well known that an Indian will shew any place by any name you please, for the small reward of a Blanket or Bottle of Rum; and the names as I observed, being common names in the Indian language, and not proper ones as they are understood to be in English, gives more room to these Frauds.

. . . It is evident that in many of these the Governor who granted them was deceived as to the quantity; but that the King was deceived in all of them. The Govr. who granted these large tracts, if they knew their extent, were guilty of a notorious breach of trust, as it cannot be supposed, that they did this merely in the gayety of their heart, they must have

⁶ Tilden Report 2-6.

⁷ Colden Report, *supra* note 3 at 377 et seq.

⁸ The history of this title appears in *People v. Van Rensselaer*, 9 N.Y. 291 (1853).

⁹ Colden Report, *supra* note 3 at 380.

¹⁰ *Id.* at 381.

had some temptation, and this must be supposed to proceed from those that received the Benefit of it. That therefore the Grantees are equally guilty with the Govr. in deceiving the King, and likewise of defrauding all the adventurers or settlers in the Colony. . . .¹¹

Colden, more than a century before the "rent wars" of 1846 saw trouble arising from the large grants. He mentions the loss of quit-rents to the King, but finds a much worse disadvantage in the retarded development of the country. Although some of the best lands in the colony lay in these great tracts:

. . . every year the Young people go from this Province and Purchase Land in the Neighbouring Colonies, while much better and every way more convenient Lands lie useless to the King and Country. The reason of this is that the Grantees themselves are not, nor never were in a Capacity to improve such large Tracts and other People will not become their Vassals or Tenants for one great reason as peoples (the better sort especially) leaving their native Country, was to avoid the dependence on landlords, and to enjoy lands in fee to descend to their posterity that their children may reap the benefit of their labour and Industry. There is the more reason for this because the first purchase of unimproved Land is but a trifle to the charge of improving them.¹²

The tenantry on the manors early showed a lack of docility. Lieutenant Montresor of the Royal Engineers, stationed in the City of New York wrote in his journal—

April 29, [1766] The City alarmed from the approach of the Country levellers called the West Chester men. The Militia ordered to hold themselves in readiness. Letters Received from them in town declaring that if Mr. Courtlandt does not give them a grant forever of his Lands, they will march with their Body now collected and pull down his house in town . . .

May 1st 1766 Six men (a Committee from West Chester people being 500 men now lying at King's Bridge) came into town to explain matters. . . . The Military applied to on account of the Levellers on which they dispersed. Sons of Liberty great Opposors of these Rioters as they are of opinion no one is entitled to Riot but themselves.

June 28 . . . Advices from the Manor of Livingston that the Levellers have rose there to the number of 500 men, 200 of which had marched to murder the Lord of the Manor and level his house, unless he would sign leases for 'em agreeable to their form, as theirs were now expired and that they would neither pay Rent, taxes &c, nor suffer other Tenants. The levellers met by Mr. Walter Livingston the Son who made a sally with 40 armed men—the 200 having only sticks—obliged them to retire, not without their threatening a more respectable visit on the return of Col. Livingston of the Manor.

29th. Seventeen hundred of the Levellers with fire arms are collected at Poughkeepsie. All the jails broke open through all the countries this

¹¹ Colden Report, *supra* note 3 at 383.

¹² *Id.* at 384.

side of Albany on the East side of the River by people headed by Pendergrast. 8000 cartridges sent up to the 28th Regt. . . . 30th. The 28th regiment, now at Poughkeepsie have secured 8 of the offenders. . . .

[August] 19th. Wm. Pendergrast, who was tried at Poughkeepsie and found guilty of High Treason and received Sentence of Death, begged leave of the Court to admit him to deliver a few words viz "That if opposition to Government was deemed Rebellion, no member of that court were entitled to set upon his Tryal" which consisted of Judge Horseman O. Del-y-, Sa-t Sm-R.¹³

The achievement of independence of the United States did not destroy the existing great landed estates. The Van Rensselaers, Livingstons and others of the great landlords, who sided with the revolutionary cause, kept their holdings.¹⁴ The Constitution of 1777 expressly disclaimed any impairment of the effect of grants made before October 19, 1775.¹⁵ But to the tenantry a landlord in the State seemed little more acceptable than the same landlord in the Province. Governor Young speaks of tenant disorders in 1811 and in 1813;¹⁶ legislation of 1815 and 1816 limiting the landlords' right to distrain for rent¹⁷ suggests that the tenants had acquired effective political strength. But the manors continued as going concerns for another generation, until the rent wars of 1839 to 1845 showed that settlement day would not long be delayed.

Samuel J. Tilden writing for the Legislature in 1845 "a general view of the extent and location of the principal leasehold estates,"¹⁸ lists by name seventeen existing large tracts then under lease in the counties of Albany, Rensselaer, Columbia, Schenectady, Montgomery, Schoharie, Otsego, Herkimer, Oneida, Delaware, Greene, Ulster and Sullivan. Tilden's acreage figures total over 330,000 acres in manorial lease-holds, exclusive of Rensselaerwyck and Livingston Manor lands, whose acreage he does not state; and he refers to still others. Governor Young in his

¹³ "Journals of Capt. John Montresor," New York Historical Society, Collections 363, 375-84 (1881).

¹⁴ Among the Loyalists were some great landowners who forfeited their estates. A list of the forfeitures, with acreage, and the names of purchasers is contained in an appendix to Flick, "Loyalism in New York During the American Revolution," 14 *Studies in History, Economics and Public Law*, Columbia University Press 216 et seq. (1902). Confiscation and sale of loyalist estates weakened the feudal element in New York, as large manors were to an extent cut up and sold on easy terms. James De Lancey's estate went to about 275 different persons; 50,000 acres forfeited by Roger Morris in Putnam County were sold to nearly 250 persons. Flick, *ibid.*, at 159, 160.

¹⁵ N.Y. Const. art. XXXVI (1777). Its substance is now N.Y. Const. art. I, § 15.

¹⁶ See his Annual Message, January 4, 1848, in IV Lincoln, *Messages from the Governors* 409.

¹⁷ N.Y. Sess. Laws 1812-15, c. 227; N.Y. Sess. Laws 1816, c. 177.

¹⁸ Tilden Report, *supra* note 4 at 2 et seq.

Annual Message of 1848 spoke of eighteen hundred thousand acres in New York still held under manorial leases, on which two hundred and sixty thousand people were living.¹⁹ The Governor's figures may well be exaggerated, but clearly there were thousands of tenants holding by tenures they considered "feudal" and oppressive as late as 1845.

Ironically enough the final great rent disorders were caused, at least in part, by the leniency of a kind and enlightened landlord, "the Good Patroon." By long indulgence to tenants in arrears of rent he allowed the impression to get about that back rents would never be collected. Stephen Van Rensselaer III was born in 1764. He graduated from Harvard College in 1782, and on his majority assumed the patroonship of Rensselaerwyck. He was twice Lieutenant-Governor. He was wounded as a General of the militia in 1812 at Queenstown Heights. He founded Rensselaer Polytechnic Institute. He was active in bringing about the construction of the Erie Canal. He was Chancellor of the University of the State of New York when he died in 1839. Governor W. H. Seward, announcing his death in a special message to the legislature, referred to

The various and eminent public services of the deceased and the universal esteem which he secured by the blamelessness and benevolence of his life. . . .²⁰

The whole country was unfortunately in a state of economic collapse at the time. To the dismay of the Van Rensselaer tenants, accumulated arrears of rent amounting to nearly four hundred thousand dollars were not forgiven by Stephen's will. Instead the Good Patroon bequeathed the back-rents in trust to be collected and applied on his debts.²¹ The

¹⁹ IV Lincoln, Messages supra note 16 at 408. Tilden does not estimate the acreage under lease in Rensselaerwyck and in the Livingston Manor in 1845. His figures on leasehold acreage in seventeen other large tracts—a total of about 330,000 acres—would have a million and a half acres in Van Rensselaer and Livingston leases, if Governor Young is correct. This would be enough land for 1,000 farms averaging 150 acres each—not an impossible total. E. P. Cheyney, in *The Anti-Rent Agitation in New York* (1887), says at page 60 that in 1846 there were in Albany County alone 1,397 Van Rensselaer farms under lease, which tends to support Governor Young's figures of the year 1848. Kiliaen Van Rensselaer wrote in 1929 that in 1846 there were 1,397 Rensselaerwyck farms under lease in Albany County covering 233,900 acres; and 1,666 Rensselaerwyck farms in Rensselaer County covering 202,210 leased acres. Note 5 supra.

Accepting 1,800,000 as the total manorial acreage, and 260,000 as the population on that area, the density of farm population would be about seven acres per inhabitant on the leased estates, not an incredible figure. But as the population of the State in 1845 was 2,604,515 (State Census of 1865, Introduction, LVII), if Governor Young is correct, one in ten of the inhabitants of the State in 1845 lived on leaseholds on large estates. This figure seems large.

²⁰ III Lincoln, Messages supra note 16 at 750.

²¹ Tilden Report, supra note 4 at 9. A modern lawyer, used to the idea that a man

efforts of Stephen's sons to collect the arrears touched off the "Rent Wars," which troubled the State for years, not on the Van Rensselaer properties alone but throughout the other areas of long-term leases.

Between 1839 and 1845 anti-rent disorders, first acute in the Helderberg Hills southwest of Albany, spread along the branches of the upper Delaware, and across to the east side of the Hudson.²² A loosely organized "resistance movement" grew up. Bands of "Indians" wearing fantastic disguises of sheepskin and calico blew tin horns to warn the countryside when sheriff's officers were coming with process to serve on tenants in arrears. Sometimes the Redskins threatened and abused the officers, flourishing firearms and knives; they seem to have had a certain amount of fraternal fun in the process. Each leader had an Indian *nom de guerre*. The paramount chief was Dr. Smith Boughton of Alps, Columbia County, known as "Big Thunder." His second in command was "Little Thunder": there were all the rest of the usual names of schoolboy redskin romance. In the face of this opposition ordinary Sheriff's posses proved unable to function. "Big Thunder" with a group of his "Indians," on December 11, 1844, by threats of violence, took away from a sheriff the papers which he was trying to enforce on a Livingston tenant in Columbia County; this episode which was open rebellion against the law resulted, after two trials, in Dr. Boughton's conviction for robbery with a sentence to life imprisonment.

Militia were repeatedly called out to aid sheriffs or to protect the courts. In 1845 the alarmed legislature passed a statute²³ making it a felony to go armed in disguise, but the law was openly violated. Delaware County was the most tumultuous of all. In August, 1845, Under-Sheriff Osman Steele of Delaware with two deputies was conducting an execution sale on a farm in the town of Andes, when suddenly two hundred armed and disguised men rode up on horseback, formed a semi-

must be just before he is generous, wonders how it could have been in the Good Patroon's power, even had he so desired, to forgive his debtors and thus leave his creditors unpaid.

²² Literature on the anti-rent disorders is considerable. A recent book, written in lively style and supported by much original research is Christman, *Tin Horns and Calico* (1945). The matter is briefly treated in "Problems Relating to Bill of Rights and General Welfare," VI Reports of New York State Constitutional Convention Committee 188 (1938), and is mentioned in Casner and Leach, *Cases on Real Property* 263 (1951). Earlier accounts are Cheyney, *The Anti-Rent Agitation in the State of New York 1839-1846* (1887); Murray, "The Anti-Rent Episode in the State of New York," *Annual Report of the American Historical Society* 139-73 (1896). J. Fenimore Cooper had strong sympathies for the landlords; his trilogy of novels on the rent troubles is bitter toward the anti-renters. They are the "Littlepage Chronicles," entitled respectively "Satanstoe," "The Chain-bearers," and "The Redskins."

²³ N.Y. Sess. Laws 1845, c. 3.

circle, and when their leader commanded "Shoot the horses," fired two volleys. Two of the Sheriff's horses fell, and Deputy Steele dropped with three bullets through his body. Quite possibly no one had expected to shoot him. It was all very well to dress up as an Indian, carry a gun, blow a horn on the mountain-side, and boast about what would be done to any of the landlords' men if they tried their tricks, but murder was different. The redskins hurried away, and Steele's friends carried him into the farmhouse where he died.

Silas Wright, then Governor, immediately proclaimed Delaware County in a state of insurrection and sent three hundred militia under the command of the Adjutant-General. This time sixty men were promptly tried and convicted for various offenses connected with the disorders. Two were found guilty of murder and sentenced to hang, but the sentences were later commuted to life imprisonment. The killing of Steele had taken all the life out of the anti-rent rioters. Public opinion turned alike against "Injins" and oppressive farm leases.

Dr. Boughton and a number of the other convicted anti-renters were sent to the new Clinton Prison at Dannemora. The doctor served as prison physician despite his convict status. All the tenants who had been convicted of offenses arising out of the rent riots were pardoned by Governor John Young about the first of February, 1847. It was said that the political support given him by the Anti-Rent Party may have influenced his action; but at any rate the convictions of the Indians had served their purpose. Violent resistance of the tenants in New York had ended. On the other hand, political and legal measures remained.

III

The principal grievance of the tenantry was probably an injury of personality more than an unbearable economic burden. Thirty bushels of wheat, four fat hens, and a day's service "with carriage and horses" does not seem a high year's rent for a two hundred seventy-four acre farm.²⁴ But although the tenant's ancestor or predecessor had cleared the land, built the buildings, fenced the fields, and given the place whatever value it had above forest acreage, the farm could never be owned outright by the occupant. Contemporary accounts stress the value of the "mere idea of proprietorship."²⁵ A pamphlet published in 1846 by

²⁴ The figures are drawn from the opinion in *Van Rensselaer v. Hays*, 19 N.Y. 68 (1859). The Tilden Report, *supra* note 4, contains copies of several farm leases on the manors.

²⁵ Tilden Report, *supra* note 4 at 195.

the Anti-Rent Associations of Albany and Rensselaer²⁶ speaks of the tenants as "enslaved," as subject to "feudal servitude interminable," and "serfdom of the soil." Fenimore Cooper in his novels on the rent troubles, while poking fun at the tenants who protested at feudal tenures they had no learning to understand, nevertheless dramatizes the tenants' exasperation. A man wanted to own his land!

Their grievance at their continued status as tenants was aggravated by persistent doubt that the landlords ever had good title to the patroonships and manors. The circumstances of their origins cast some shadows on the proprietors' titles; but blocking a court challenge stood the rule that one entering as tenant was estopped to assert title adversely to his own landlord, a rule which greatly annoyed those active in the Anti-Rent movement. An indignant anti-rent lawyer, pamphleteering in 1846, wrote:

The repeal of this law is of fundamental importance to the tenants, and absolutely necessary to the maintenance of their rights and the enforcement of justice. If the tenants have been for a long series of years deceived and humbugged, defrauded and oppressed by a claim of title that was never valid in law, by what principle of justice or of equity, by what rule of ethics shall the Van Rensselaers be still allowed to take advantage of their own wrong? If the Van Rensselaers are themselves deceived in this matter, and suppose that they have title when in fact they have none, is that any reason why the truth should be longer concealed?²⁷

The Van Rensselaers utilized for most of their landholdings a device known as the "durable lease" or "base fee," ascribed by some historians to the legal talents of Alexander Hamilton.²⁸ The estate of the grantee was perpetual, with perpetual rents due to the grantor. Owners ordinarily pay real property taxes of course, and upon failure to pay the taxes the taxing government commonly takes the property away. One might suppose that dispossession by the Patroon was no worse than dispossession by the County. But taxes represented some service to the people; manorial rents none. Cumulation irked the tenant; under his durable lease he undertook to pay all taxes while the landlord paid none,

²⁶ Pepper, "Manor of Rensselaerwyck," published by the Albany and Rensselaer Anti-Rent Associations at page 32 (1846).

²⁷ *Id.* at 22, 23. Mr. Pepper, struck by an ingenious idea, trespassed on the Patroon's land in Watervliet and cut down a tree in the presence of a witness. ". . . methought I heard [he writes] the crash of patroonery, and the fall of feudalism." *Id.* at 34. Mr. Pepper then wrote to Stephen Van Rensselaer, told of the cutting, and stated that Pepper was prepared to defend a prosecution for malicious trespass by contesting the Van Rensselaer title. The Patroon inconsiderately ignored the trespass.

²⁸ See Bigelow, *Tilden's Public Writings and Speeches* 187 (1885), where the editor makes this statement, though without reference to his source.

and in addition he had to pay in perpetuity to the landlord the other tax called rent.²⁹

Another grievance was the privilege of "fines and quarter sales." One among many examples is found in a grant of land in Claverack, Columbia County, made by James Van Rensselaer to William P. Snyder in 1785 in fee subject to an annual rental in wheat. The grant, among other things, contained the following provisions:

And the said lessor, for himself, his heirs . . . doth also save and reserve the one equal fourth part of all moneys of arising or that may arise, by or from the selling . . . of the premises hereby leased, or any part or parcel thereof, by the said lessee, his heirs, his executors . . . when, and as often, and every time, the same shall be so sold, rented, set over, assigned or otherwise disposed of. . . .³⁰

Whenever the farmer found a buyer for his farm, he owed a quarter of the price to the lord of the manor. The origin of fines and quarter-sales has been explained by the originally feudal relationship of landlord and tenant. The landlord wished to exercise some control over his tenant's transferee, and the payments in question were intended to persuade the landlord to permit the new tenant of the land to take over. The amount payable was not always a quarter; it was sometimes a third and sometimes as little as a fifth of the price, but the "quarter-sale" was most usual. It was peculiarly obnoxious to a tenant who had cut off the trees, gone through the backbreaking labor of grubbing out stumps and fitting the land for cultivation, who had built a house and barns, perhaps planted orchards, and who had thus by his labor created the principal value of the lands. He or his successors in interest grew increasingly irritated at the thought of paying in perpetuity a large fraction of every sale price to a proprietor whose only connection with the premises consisted in collection of produce or money.

The drastic remedy of "distress," available to the landlord, gave the tenants another cause of complaint. Chancellor Kent, writing in 1828³¹ ascribes this extraordinary self-help in the collection of rent to

. . . the exorbitant authority and importance of the feudal aristocracy and the extreme dependence, and even vassalage of the tenants.

and comments that this

. . . summary remedy is applicable to no other contracts for the payment of money than those between the landlord and tenant.

When rent was due and unpaid, the landlord, upon demand, might im-

²⁹ Tilden Report, *supra* note 4, see accompanying document (A).

³⁰ The provisions here quoted are taken from *De Peyster v. Michael*, 6 N.Y. 441, 442 (1852).

³¹ 3 Kent, *Commentaries on American Law* 378 et seq. (1st ed. 1828).

mediately enter the demised premises in person or by agents and "distrain," or seize, any goods and chattels found there belonging to the tenant or anybody else; the right of the landlord to distrain any goods and chattels on the premises was founded on reasons of public convenience, to prevent collusion and fraud.

And this law of distress is liable to so much abuse on the part of the landlord, and tenants are so often driven to desperate expedients to elude the promptitude and rapidity of the recovery, that the law has been obliged to hold out the penalty of double damages against the one, if he distrains when no rent is due, and of treble damages against the other, if he unlawfully rescues the goods distrained.³²

The Tilden Report indicated that by 1845 distress was not much employed on the leasehold estates except on one or two tracts. Yet it was regarded as an

. . . invidious distinction in favor of a particular class of creditors . . . odious to those who are subject to it . . .³³

These, then, were the legal incidents of their tenures which caused the greatest distress to the tenantry on the large estates—the perpetual interest of the landlord, the impossibility of challenging his title, the exemption of the landlord from tax, the recurrence of "quarter-sales," and the drastic remedy of distress. Governor Seward, in his message to the legislature of 1840, wrote:

Such tenures, introduced before the Revolution are regarded as inconsistent with existing institutions, and have become odious to those who hold under them. They are unfavorable to agricultural improvement, inconsistent with the prosperity of the districts where they exist, and opposed to sound policy and the genius of our institutions. The extent of territory covered by the tenures involved in the present controversy, and the great numbers of our fellow citizens interested in the questions which have gone out of them render the subject worthy of the consideration of the legislature. While full force is allowed to the circumstance that the tenants enter voluntarily into such stipulations, the state has always recognized its obligation to promote the general welfare, and guard individuals against oppression.³⁴

Repeated sympathetic mention of the tenants' grievances in annual messages of Governors, beginning with that of William H. Seward in 1840, shows how politically and socially necessary the elimination of feudal tenures had become. Negotiated purchase of the landlord's interest by the tenant seemed one obvious step, and by 1845 in districts where both sides were reasonable this process was rapidly eliminating

³² *Id.* at 384.

³³ Tilden Report, *supra* note 4 at 14.

³⁴ III Lincoln, Messages from the Governors 776 (1840).

landlords' reversions. The Tilden Committee mentioned the Livingston Manor in Columbia County as a favorable example.³⁵ Van Rensselaer adjustments were more difficult. The Legislature in 1840³⁶ had directed the appointment of two Commissioners to use their best endeavors to effect a settlement between the landlords and tenants of Rensselaerwyck. Unfortunately, though the Commissioners arranged a conference between representatives of tenants and of Stephen Van Rensselaer IV, the landlord was not willing to accept what the tenants were able or willing to pay, and nothing came of this effort to compromise. The anti-renters turned to the legislature and the courts.

State legislation, constitutional or statutory, which might modify the rights of the landlords, was confronted by the contract clause, in Article I, Section 10 of the Federal Constitution. In 1843, as all lawyers knew, the Supreme Court of the United States had declared unconstitutional under that clause an Illinois act of 1841 restricting mortgage foreclosures.³⁷ Prospective legislation could change rights or remedies thereafter created; but to divest the landlords of their existing interests presented Federal Constitutional problems of which the lawyers of the time, including those sympathetic with the interests of the tenantry, were fully conscious. A proposal much debated was the taking of the landlord's interest by eminent domain, and its subsequent sale to the occupant of the land. Today this procedure might be considered entirely constitutional,³⁸ but in the 1840's, even those who advocated the existence of such power considered it too "doubtful and dangerous" to be exercised;³⁹ it was never attempted on the manors.

The taxing power, however, was a resource which escaped the inhibitions of the contract clause.⁴⁰ By taxing the interests of the landlords, continued ownership might be discouraged; they might be brought to sell out to the tenants more readily than in 1841.

³⁵ Tilden Report, *supra* note 4 at 2, 3.

³⁶ N.Y. Sess. Laws 1840, c. 277.

³⁷ *Bronson v. Kinzie*, 1 U.S. (How.) 311 (1843). This decision is discussed in the Tilden Report, *supra* note 4 at 19 as an obstacle to modification of the landlords' rights in New York.

³⁸ *Berman v. Parker*, 348 U.S. 26 (1954); *Puerto Rico v. Eastern Sugar Associates*, 156 F.2d 316 (1st Cir.), cert. denied, 329 U.S. 772 (1946); *Murray v. La Guardia*, 291 N.Y. 320 (1943).

³⁹ Tilden report, *supra* note 4 at 17. The Tilden Committee proposed "by the exercise of the unquestionable power of the legislature over the statutes of devises and descents," that a statute provide that wherever one of the long-term leases would have passed by devise or descent if real estate, the tenant might have the landlord's interest valued by the court of chancery, and buy it out on a five-year mortgage. The statute never was adopted.

⁴⁰ Tilden Report, *supra* note 4 at 11 et seq.

Furthermore, legislative mitigation of the drastic remedies available to the landlord might offer another aid to the tenants. By increasing the exemptions of debtors' goods, and by removing the right of distress, further pressure might be put upon the landlords to come to some reasonable settlement.

The theory that a judicial decision operates only to declare law which has existed all along would permit judicial remedies for the tenants' difficulties, even where new legislation was constitutionally impossible. The landlords' titles might be judicially invalidated with no constitutional obstacle. And even if the landlords' titles were valid in most respects, certain objectionable incidents of their ownership, notably the quarter-sales, might be declared contrary to the statute of *Quia Emptores* or to its state counterparts. The courts as well as the legislature thus offered hope to the anti-renters.

Eighteen forty-six saw three legislative gains for the tenants. Pursuant to the recommendation of Governor Silas Wright in his annual message of 1846⁴¹ the legislature required that the interest of a landlord be assessed and taxed to him as personal property.⁴² By the amendments to the state constitution in 1846 listed on the first page of this paper, future leases of agricultural lands were limited to twelve years, and fines and quarter-sales upon grants to be made in the future were forbidden.

On May 13, 1846, a statute abolished distress for rent.⁴³ This mitigation of remedies available against debtors had begun many years before, and continued until 1852. By a series of statutes in 1788, 1815, 1816, 1842, continued in effect by amendments of 1851 and 1852,⁴⁴ the legislature provided exemption from seizure by a creditor of what might be thought the reasonable household goods, tools, domestic animals, and homestead of a typical small farmer. By the iniddle of the nineteenth century, in addition to \$1,000 worth of freehold land, any householder could hold free from execution and distress ten sheep and their fleeces and the cloth manufactured therefrom, one cow, two swine and their pork, all necessary wearing apparel and bedding, necessary

⁴¹ IV Lincoln, Messages from the Governors 243.

⁴² N.Y. Sess. Laws 1846, c. 327.

⁴³ N.Y. Sess. Laws 1846, c. 274.

⁴⁴ N.Y. Sess. Laws 1788, c. XXXVI; N.Y. Sess. Laws 1815, c. 227; N.Y. Sess. Laws 1816, c. 177; N.Y. Sess. Laws 1842, c. 157; N.Y. Amended Code 1851, § 472; N.Y. Code of Procedure 1852, § 291. While not directly relevant to the tenancy problem, it is interesting to note that by Act of April 19, 1847, N.Y. Sess. Laws 1847, c. 85, a householder with a family was granted an exemption for land and buildings of the value of \$1,000. This provision has continued unchanged to the present time.

cooking utensils, one table, six chairs, six knives and forks, plates, tea-cups and saucers, spinning wheels, weaving looms or stoves kept for use in a dwelling house, and additional household furniture, working tools and a team up to the value of \$150. The same exemptions of personalty were available to a tenant who owned no land outright. Beside these things sixty days' earnings for personal services prior to execution, and a pair of andirons, a church pew, the family Bible and family books and pictures were free from seizure by the creditor. The Tilden Report of 1846 pointed out that the enlargement of the list of chattels free from seizure had already deprived the remedy of distress of any substantial utility. Abolition of distress by the act of 1846 was probably more of a sop to the farmers' feelings than a piece of practical relief.

Judicial procedure to end or limit the landlords' interests remained to be explored. In April, 1848, pursuant to a recommendation from Governor Young, the legislature requested the Attorney-General to investigate the manorial titles and to take such measures as might be necessary to test them.⁴⁵ The State Attorney-General was under no such estoppel as kept the tenants from attacking the landlords' titles, and accordingly he began two actions on behalf of the State of New York, one against William P. Van Rensselaer, asking ejectment of the defendant from land in Poetenskill, Rensselaer County;⁴⁶ the other action against George Clarke, seeking to repeal letters patent granted to the defendant's predecessors in title in 1737, covering 25,400 acres of land in Albany County, on the grounds of fraud.⁴⁷

The theory of the Attorney-General in the case against William Van Rensselaer was that patents granted by Governor Dongan in 1685 and by Lord Cornbury in 1704 to Van Rensselaer's ancestor were void because they attempted to create manorial privileges and franchises in violation of established law and custom in the colony. The Attorney-General argued that as grants by which feudal tenants subinfeudated others could not be made after *Quia Emptores Terrarum* of 18 Edward I in A.D. 1290 the creation of manors had become impossible; and as the grants of Rensselaerwyck attempted to authorize the grantees to hold a court leet and a court baron, to award fines, to have customary writs, to have waifs and estrays, deodands, and other feudal privileges—that is, to enjoy a characteristic manorial estate—this grant of privileges was beyond the powers of the grantor, and therefore the entire grant

⁴⁵ See IV Lincoln, Messages from the Governors 413.

⁴⁶ *People v. Van Rensselaer*, 9 N.Y. 291 (1853).

⁴⁷ *People v. Clarke*, 9 N.Y. 349 (1853).

failed. The Attorney-General won in the trial court; but the Court of Appeals reversed this judgment and upheld the Van Rensselaer title. The court held in the first place that assuming grants of manorial privileges were beyond the powers of Governors Dongan and Lord Cornbury, this did not prevent the passage of title to the property generally in fee to the Van Rensselaer of that day. In the second place, the Court of Appeals held that the grants of 1689 and 1704 were made by the Governors for the King of England; and regardless of the limitations on the creation of manors by lesser persons, *Quia Emptores* did not interfere with the creation of manors by the King. The Court of Appeals also pointed out that under a statute of 1801, the Good Patroon on December 26, 1806, had bought out the state's interest in the quit-rents by commuting for their value at an established rate.

The effect of the commutation of the quit-rent said the Court of Appeals

... is the same upon the rights of the parties, as if the people had made a new grant of the patent, without reservation.

The Attorney-General was equally unsuccessful in the action to set aside the Clarke patent for fraud. His complaint here recited that in August, 1737, George Clarke, ancestor of the defendant, was Lieutenant-Governor of the Province of New York, and had the power of granting lands and issuing letters-patent. Governor Clarke, the Attorney-General alleged, had made a grant of 25,400 acres to one Corry and others under a secret arrangement that Corry would immediately convey half to Clarke. The Attorney-General complained that all the grantees except Corry took in trust for Corry and the Lieutenant-Governor himself; that in December, 1737, all the other grantees turned over their interests to Corry; and that on the 18th of the following February, Corry turned over to Lieutenant-Governor Clarke half of the grant. The transaction was further fraudulent in that neither Clarke nor Corry intended in good faith to bring settlers upon the land but meant to seize the lands for themselves alone and to evade a prohibition of a grant of more than 2,000 acres of Crown lands to any one occupant or settler.

The trial judge gave judgment for the defendant on the ground that a forty-year statute of limitations had barred the action; and the Court of Appeals affirmed on the same ground. So ended the ancient controversy over the validity of at least two of the great grants, and by inference the validity of all the grants was established.

The tenants did win one notable lawsuit in 1852.⁴⁸ This was a suit

⁴⁸ *De Peyster v. Michael*, 6 N.Y. 467 (1853).

of ejectment by a landlord named De Peyster, successor to one of the Van Rensselaers, against a tenant, Anthony Michael, brought to recover possession of one hundred acres of land in Claverack, Columbia County. The original Van Rensselaer perpetual lease provided for a quarter sale; the plaintiff sought to eject the defendant on the sole ground that when the premises had previously been sold by one tenant to another, the then tenant had failed to pay the landlord a quarter of the price. The Court of Appeals, in an opinion by Chief Justice Ruggles, found the quarter-sale inconsistent with the grant of an estate in fee simple; it operated as an invalid restraint upon alienation. The quarter-sale was inconsistent with the New York "Statute of Tenures" of 1787⁴⁹ which substantially transcribed into the law of New York the statute of *Quia Emptores*.

The invalidity of the quarter-sales indicated, arguably at least, the invalidity of perpetual rents owed by a tenant in fee simple. This last great question of the law governing New York manorial estates was decided in 1859 adversely to the tenants in the two famous cases of *Van Rensselaer v. Hayes*⁵⁰ and *Van Rensselaer v. Ball*.⁵¹ Both cases concerned lands in the town of Berne, Albany County, in the west manor of Rensselaerwyck. While the nominal plaintiff in each case was Stephen Van Rensselaer, it seems quite probable that by this time he had turned over his interests to a Colonel Walter Church who had arranged to buy out Stephen Van Rensselaer's rights for \$210,000. In the *Hayes* case the plaintiff sought judgment for sixteen years arrears of rent, and in the suit against Ball, ejectment for non-payment of rent. In each instance the grantee had a fee, and the rent reserved was perpetual. The Court of Appeals granted the plaintiff judgment against the defendant Hayes for \$483.07 unpaid rent with interest, and against Peter Ball the court granted judgment of possession of the premises in favor of the plaintiff.⁵²

At the end of this period of legislation and litigation, the great landlords were still left with hundreds of thousands of acres of land in New

⁴⁹ N.Y. Sess. Laws 1787, c. XXXVI.

⁵⁰ 19 N.Y. 68 (1859).

⁵¹ 19 N.Y. 100 (1859).

⁵² The report of *Van Rensselaer v. Ball*, 19 N.Y. 100 (1859) does not give the first names of the parties. Mr. Gearon Kimball, Deputy Clerk of the Court of Appeals, courteously answering my inquiry informs me that the plaintiff was Stephen Van Rensselaer and the defendant was Peter Ball. Christman describes Peter Ball of Berne as the leader of the Helderberg farmers. Ball was dispossessed in the snow on February 17, 1860. He was returned to possession by his neighbors, but was evicted again by Colonel Walter Church and militiamen in 1865. See Christman, *Tin Horns and Calico* 294, 296, 298 (1945).

York on which dwelt a multitude of tenants.⁵³ The Court of Appeals had held the landlords' title to be valid, and the obligation of the tenants to pay rent to be perpetual. One might suppose that this investment, the return on which was payable in commodities and so proof against inflation, would have continued to be so desirable that it would have lasted until the present time, protected by the contract clause of the Federal Constitution. But the pressure of economics, a power more effective than either legislation or adjudication was working in favor of the tenants. Patroonship was already unprofitable by 1839 even without the additional legal disadvantages which attached to it in the 1840's and '50's. The Good Patroon owed almost as much when he died as the arrears in rent, approaching \$400,000, which were then owing to him.⁵⁴ Church found the pickings in the west manor so slight that he was unable to carry out his original commitment for the purchase price.⁵⁵

The Van Rensselaer heir on the east side of the Hudson made an assignment for his creditors in 1848, and Colonel Church finally agreed to buy his rights, nominally amounting to more than \$200,000, for less than fifty cents on the dollar. The next year this was scaled down to \$57,303.07. Church still found payment of the price difficult: by 1863 the East Manor claims had been divided among twenty-one different owners; they sold for five to twenty-five cents on the dollar.⁵⁶ Church continued to struggle to collect rents with diminishing success until his death in comparative financial straits in 1890. The expense of collecting small claims for rent by levy and sale must have been considerable even when it was ultimately successful. Most landlords decided to sell out. Of the 3,325 farms in Albany County shown in the census of 1880, 2,635 were then occupied and worked by their owners and only 690 were held upon lease. Stephen Van Rensselaer alone had had twice that many farms under lease in Albany County in 1846. By 1880 in Delaware County where the rent troubles of the '40's had reached their greatest intensity, there were only 688 leased farms out of a total of 5,264. The proportion of leased farms was no greater than that in any other portion of the state or in other eastern states.⁵⁷

The debates of 1938, when the protections to the tenant of 1846 were struck out of the state constitution, read rather curiously to one who has

⁵³ Governor Young's figures in his annual message of 1848—1,800,000 acres and 260,000 people—may possibly be exaggerated. See IV Lincoln, Messages 408. The possible exaggeration is discussed in note 19 *supra*.

⁵⁴ Tilden Report, *supra* note 4 at 9.

⁵⁵ Murray, note 22 *supra* at 171.

⁵⁶ *Id.* at 171, 172; Cheyney, note 22 *supra* at 50.

⁵⁷ Cheyney, *op. cit.* *supra* at 60. He draws his figures from the census of 1880.

spent some time in the atmosphere of a century before. The Chairman of the Committee on Agriculture, Jerome Barnum of Syracuse, reporting for that committee, recommended the elimination of the limitation of twelve years for agricultural leases.⁵⁸ The committee reported that the limitation of twelve years was against the interest of agriculture, restricted its development, and hindered the conservation of the land by limiting leases to a period which prevents development expenditures which would require a longer period of years to amortize. William I. Myers of The Cornell University College of Agriculture, then head of the Department of Farm Management, wrote to the Chairman of the Committee on Agriculture a letter opposing the twelve-year limit; the Chairman read this letter to the Convention. Dean Myers pointed out that in some cases a landlord might be willing and able to make needed improvements on farms but would feel it unwise to do so because he could not negotiate a long-term lease. Another letter came from the late Howard Edward Babcock, then Manager of the Grange League Federation. Mr. Babcock wrote of his observation of leaseholds in England and said that a real benefit was possible if we would take off the twelve-year provision. Young men, he said, were apt in their eagerness to become self-supporting, to put all their money into land and try to get together equipment and livestock to work the farm on a credit basis.

The result is they underequip and understock the farms they have purchased, pay high credit charges, and are terribly handicapped from the very beginning.

Provided long agricultural leases were legal, it would be much better for these young men to invest what capital they have in equipment and livestock thus keeping themselves in liquid position and to lease land over a long period so that as they build it up and equip it, they would be able to write off their improvements over a long period.

This was a long way from the anti-rent spirit of 1845.

V

For today's lawyer the story of the painful tensions in New York a century and more ago which finally resulted in the break-up of the great landed estates, is a piece of the dead past. Feudal overlords and an oppressed tenantry striving to satisfy land-hunger with small freehold plots seem unreal; the name "manor" serves only to ennoble one

⁵⁸ See Revised Record of the New York Constitutional Convention 616-36 (1938). The discussion on quarter-sales occurs on pp. 1053, 1054. The debate concerning feudal tenures occurs on pp. 1158-62.

more suburban subdivision a short walk from the station.⁵⁹ Great agricultural properties still exist in the United States and, indeed, the size of farms may be increasing. The King Ranch in Texas is probably larger than Rensselaerwyck. But the great grain farms or cattle-ranchers of the west, and the fruit farms of California are social institutions quite unlike the New York manors with their small tenant-holdings in fee or for long terms, each yielding an independently produced annual rental in commodities. Along the Hudson, as in the rest of the United States, agrarianism is history.

But in much of the world the same controversies that beset New York more than a century ago are today acute legal and social problems.⁶⁰ The Circuit Court of Appeals of the First Circuit in 1946 upheld a measure of the Puerto Rican legislature to

. . . take the necessary action to put an end to the existing corporative latifundia in this Island, block its reappearance in the future, insure to individuals the conservation of their land, assist in the creation of new land owners. . . .⁶¹

Constitutional guaranties of property, conflicting with the political urges arising out of widespread popular demand for small proprietorship of the land of great landlords, have caused notable constitutional litigation in India in the last few years.⁶² Similar litigation has recently been conducted in the Supreme Court of the Philippine Republic concerning the efforts of that nation to distribute great estates among small proprietors.⁶³ In Japan during the American occupancy a comparable movement was carried out.⁶⁴ Italy is trying to reconcile the efficiency of operation of large areas of land with the desire of small tenants to

⁵⁹ This observation I owe to Professor Julius Goebel, Jr. of the Columbia Law School. See Goebel, *Some Legal and Political Aspects of the Manors in New York* 22 (1928).

⁶⁰ See an editorial, "Men and the Land", *New York Times*, July 17, 1955, p 8E, col. 3. The history of "land reform" in Communist Russia and China has been one of continuous trouble. See Schwartz, *Chinese Communism and the Rise of Mao* (1952), *passim*.

⁶¹ *Puerto Rico v. Eastern Sugar Associates*, 156 F.2d 316 (1st Cir.), cert. denied, 329 U.S. 772 (1946). Puerto Rico is, of course, a part of the United States; and the Eastern Sugar case shows that my statement that agrarianism for us is only history, is, like most sweeping statements, subject to some small qualification.

⁶² *State of Bihar v. Kameshwar Singh*, All India Rep. [1952] Sup. Ct. 252; see also Driver, *Problems of Zamindari and Land Tenure Reconstruction in India* (Bombay, 1949).

⁶³ See Republic of the Philippines Office of Economic Coordination, *Report and Recommendations of the Advisory Committee on Large Estates Problems*, Manila, Philippines (1951). Recent litigation in the Philippines is reported in a Note, "Expropriation—Power of the Government or any of its political subdivisions to expropriate lands to be subdivided into small lots and conveyed at cost to individuals," 29 *Phil. L.J.* 832 (1954).

⁶⁴ See Ito, *New Japan*, Ch. VI "Agrarian Reform" (Tokyo, 1951).

own their plots.⁶⁵ The problem appears in South America.⁶⁶ It may be that in the New York experience of a century ago some lessons may be learned, useful in the solution of legal and constitutional problems elsewhere. There are few more striking examples of the interplay of law, practical politics, and public policy; of the fluctuation between a desire for order and the impulse to popular protest; of the origins and nature of the institution of property itself.

⁶⁵ See G. Gaetani D'Aragona, "A Critical Evaluation of Land Reform in Italy," XXX *Land Economics* 12 (Feb. 1954).

⁶⁶ Edmundo Flores, "Land Reform in Bolivia," XXX *Land Economics* 112 (May, 1954).