

Chapter 4

Virginia and the Proprietary Colonies

Land Distribution in Virginia

As already has been noted, the early Virginia settlements were made under the auspices of the London Company, the twin corporation which received its charter from James I on April 10, 1606. The shareholders proceeded almost immediately to exploit their grant, and it was provided that, although all products of labor during the first seven years were to be pooled, each emigrant at the end of the seventh year was to receive a share of stock in the company and a proportionate grant of land.

Though the original motives of the promoters of the London Company were similar to those of the New England (Plymouth) Company, the economic, climatic, and geographical conditions in the area of Virginia were considerably different from those prevailing in New England, and this situation had an important bearing on the policies of land distribution and land settlement.

After severe hardships, verging on collapse, the first settlers began to spread out. They were aided in this move by the successful cultivation of tobacco, which was in great demand in Europe and, as is well known, became the staple product of the region. This development was a potent force in the distribution of the settlers on plantations rather than the congregation type of settlement that prevailed in New England. Hence large tracts were granted to individuals, not with a view to subdivision or resale, but with the object of retention and settlement.

The Virginian, in order to be a gentleman, as in England, had to be the owner of a vast estate. In this capacity he was aided not by tenants or copyholders, but by indented servants and slaves. Land, plantations, tobacco, and slaves were thus the props of the Virginia economy.

Although the Council of the Virginia Company early announced that it was its intention to "allot to every man that hath already adventured his money and person" plots of land, ". . . the holder of which may dispose of his lot, or go there to possess it, or send families to cultivate as he may do for half the clear profits," large grants to officials and individuals, particularly after the revocation of the company's charter in 1624, became the general rule. The aim to attract settlers, however, was an important factor, and land was given to individuals who were instrumental in promoting this immigration.¹

Grants of land in fee simple rather than in tenancy became the more usual practice, though the quitrent system was not entirely ignored. As in the case of the Plymouth Company, land was allotted as dividends to shareholders. Thus Berkeley's Hundred, 4,500 acres on the upper James River was granted to five prominent men in England as a first dividend on their shareholdings. "In a feudal manner the company held land for its absentee shareholders."² In order to obtain cash, the Company borrowed money by issuing "bills of adventure" of the same denomination as the shares (£12,10^s), entitling the holders to allotment of lands of 100 acres for each bill. Some holders of these bills associated together and jointly took up allotments to be held for speculation. Among the settlements resulting from this system are Smith's Hundred and Martin's Hundred.

In 1624, James I finally succeeded in annulling the charter of the London Company but did not disturb its land privileges or those who had received grants under it. For a long time after the revocation of the charter, land was still exchanged for the company's shares. Because allotments were generally made along the navigable rivers and in many

¹For a good account of the policy of land distribution in Virginia, see a pamphlet by Fairfax Harrison entitled *Virginia Land Grants*, Richmond, Old Dominion Press, 1925.

²See Chandler, *op. cit.*, p. 85.

cases comprised large tracts, the population of the colony was spread over an extended area containing but few towns or villages. This, as we may see, was in contrast to the New England system of land settlement.

The Proprietary Colonies

In addition to the incorporation of colonial companies to foster the settlement of North America, such as the incorporated companies already mentioned and others that followed later, the King of England assumed the privilege of making personal grants of American territory to individuals of his choice. These grants, in a way, differed very little from the colonial corporations, since the powers, rights, and duties of both bear a strong resemblance to each other. And the purpose of the grants in both cases was the same; namely, the enlargement and settlement of the British dominions.

But in the matter of land distribution and land tenure, there was an important difference. The grants to individuals of large areas connoted a feudalist arrangement, similar, though with important differences, to that which had prevailed until the seventeenth century in Great Britain. In other words, the grants were made under the theory that the land, in essence, still belonged to the King, who held supreme political power over it and its inhabitants and could forfeit the grant on the ground of nonuse in cases of failure to settle it. But despite its feudalistic character, the old theory of attaching the inhabitants to the soil in a condition of serfdom was almost completely absent. This was to be expected in view of the decadence of the tenure theory that had been going on in Great Britain and culminated in 1662 when Charles II signed the act releasing his noble retainers from furnishing military forces to the Crown.

Moreover, the power of the King to demand contributions in the form of taxes or tribute was expressly waived in most proprietary grants, notably those of Maryland and Pennsylvania, though in the case of Pennsylvania it was stipulated that such taxes could be levied "with the consent of the proprietary or Chief Governor and assembly, or by the Act of Parliament in England."

The Proprietary Grants in New Jersey and Pennsylvania

The land now comprising the state of New Jersey was included in the grant made by Charles II to his brother, James, the Duke of York. But James, in 1664, "for and in consideration of the sum of ten shillings," sold to John Lord Berkeley, "one of his majesties most honorable privy council," and to Sir George Carteret, also "one of his majesties most honorable privy council," this territory to be called New Cesarea or New Jersey, reserving a rental of "a peppercorn upon the feast of the Nativity of St. John the Baptist (only if the same be demanded)."

These two "gentlemen," both of unsavory reputation, thus became the absolute owners of New Jersey, later divided into East Jersey and West Jersey, and "all land titles . . . rest upon their signatures and public officials continue to perpetuate their memories by giving their names to streets and school houses."³ Because of the conflicting claims by the Dutch and other authorities arising from grants of land with undefined boundaries, a period of litigation ensued which continued down almost to the present day. In this way, land titles in New Jersey as well as in other parts of America are based on force and possession rather than on grounds of legitimate descent or transfer.

Berkeley and Carteret, the absentee landlords, proceeded at once to exploit their grants. As absolute lord proprietors, they appointed a resident governor to whom was given the power to sell and to rent the land and to levy taxes and otherwise rule over the territory. As in the case of the other colonies, to induce immigration, land was offered on the basis of "headrights"; i.e., so much acreage for each indentured servant or settler brought into the territory. The allotment of headrights, as usual, was subject to a quitrent. Lords Berkeley and Carteret, having experienced difficulties in collecting rents and facing open revolts by settlers on the land, sought to dispose of their New Jersey grant at wholesale in England. They finally divided the territory between themselves. Carteret received East Jersey, comprising approximately 3,000 square miles, and Berkeley (who had already sold much of his interest in the territory to a group of Quakers, of which William Penn was a member) consented to receive West Jersey, an area of 4,595

³*Ibid.*, p. 306.

square miles. In this way the proprietors separated into two groups, one known as the East Jersey Company, and the other the West Jersey Company. These continued to operate for many years, though they lost their governing privileges when New Jersey became a royal province in 1702. However, they still retained their title to the land and gradually disposed of most of it through dividends to shareholders. In the meantime, the disputes regarding land titles and the refusal of settlers to pay their land rents continued.

The land history of colonial Pennsylvania was more orderly and less confusing than that of New Jersey. Like the latter, part of the territory, particularly along the Delaware Bay, had already been open to settlement by the Dutch, Swedes, and others before William Penn received his grant from Charles II in 1681.

Penn, having already been concerned in land deals in New Jersey, proposed to Charles that the £16,000 of back pay due his father as admiral of the British Navy be commuted into a grant of land lying west of the Delaware River. This the King was willing to do, and in a document dated February 28/March 4, 1681, granted to Penn, his heirs and assignees, as absolute proprietor, "all that tract of land in America . . . bounded on the east by the Delaware River from 12 miles northward of New Castle unto the 43° north latitude. On the south by a circle drawn at twelve miles distance from New Castle, northward and westward unto the beginning of the 40° north, then by a straight line west to 5° in longitude from the easterly boundary." The grant had the usual proviso regarding the King's sovereignty over the territory and the payment of 20 per cent royalty on all gold and silver discovered. The territory was to be erected into a province and "seigniorie" to be called "Pennsylvania."

Penn, a pious Quaker, received in his grant the power and privileges of a feudal lord, but his interest appears to have been more in settling the country than in exercising its governmental powers. However, he and his heirs disposed of most of his grant under a quitrent system. He laid out Philadelphia, divided the place into lots, and scoured Europe and Britain for settlers under conditions very similar to those already operative in the other colonies. The Penn family continued to

hold their position as proprietors until the Revolution, but they avoided exercise of feudal powers.

The Maryland Palatinate

The grant of a territory north of the Virginia settlements to Cecil Calvert, the first Lord Baltimore, in 1633, was peculiar in several respects. It set up a system of feudal tenure such as was not provided in similar colonial grants. The charter received by Calvert not only granted ownership of all the land, minerals, rivers, and fishing privileges, but it also included the right to confer titles, incorporate cities and towns, levy import and export taxes, erect manors, and exercise other ancient feudal rights, and, in addition, the King bound himself and his successors not to levy taxes upon the people other than customs duties. Thus there was created in America a palatinate similar to that existing on the continent of Europe.

A grant of this nature, comprising feudal privileges, had an important bearing on the nature of ownership and the distribution of land in Maryland. It literally meant a hierarchy of landownership based on a system of rent payments. Thus Calvert, in his initial advertisement for settlers, stated that "every first adventurer, who shall transport five men between 15 and 50 years of age, shall receive for himself and his heirs for ever, a grant of two thousand acres of land at a yearly rent of four hundred pounds of good wheat—twenty pounds rent per hundred acres." The payment of rents in wheat was a rather common practice then existing in England.

When settlements were undertaken in Maryland, manors comprising large acreages were set up, and the system of quitrents was established, which continued in modified form in some localities, as in the case of Baltimore City, almost down to the present day. However, this attempted revival of feudal land tenure met with little success. The manors, where they actually came into existence, were broken up. In the latter part of the seventeenth century land conveyances in Maryland became relatively frequent, and such conveyances were required to be registered. In this way, most of the large original grants and the Baltimore proprietorship were broken up. As a result of the increase of

population in the colony, land values rose also. The original practice of granting land warrants under the "headright" system was abandoned in favor of outright purchase. Thus, today, the land-tenure system of Maryland does not differ essentially from that of the New England or other British Crown colonies.⁴

The Carolinas

The grant of the Carolinas to Lord Ashley Cooper, together with the then proprietors of New Jersey, John Berkeley and George Carteret, all favorites of Charles II, was very similar to that of Lord Baltimore in Maryland. Under it, they were to establish a feudal regime, based on landownership or landholding—under a system of sub-infeudation, already outlawed in England. The proprietors adopted the "Fundamental Constitutions in London in 1669"—a charter of government supposedly written by John Locke, but not in accordance with Locke's later ideas set down in his *Essay on Civil Government*. These "Fundamental Constitutions" were amended several times, and it appears that they were never applied strictly in the government of the territory.

The proprietors endeavored to sell the land in large tracts, constituting seignories and baronies, the purchaser to have feudal powers. Quitrents from tenants were required, but throughout the era of the proprietorship there is evidence that such payments were generally avoided and the proprietors had difficulty in enforcing a governmental system on the settlers or of obtaining revenues sufficient to maintain the government. The whole system finally collapsed and in September 1729, South Carolina (together with North Carolina, which was severed from it) became a royal province.

The land grants previously made were confirmed, however, and quitrents were made payable to the Crown. But large baronies ceased and royal grants of land became limited in quantity. The feudal plan of landholding in time gave way to a fee system, and both large and small holdings persisted.

⁴See V. J. Wyckoff, "The Sizes of Plantations in Seventeenth-Century Maryland," in *Maryland Historical Magazine*, Vol. XXXII, No. 4, and "Land Prices in Seventeenth-Century Maryland," in *American Economic Review*, Vol. XXVIII, March 1938, pp. 82-88.

The Georgia Colonial Land Policy

Unlike the other and earlier colonies, Georgia was not founded under a plan of land exploitation by chartered companies or feudal proprietaries. "A humanitarian motive led to the founding of the colony."⁵ General James Oglethorpe and his associates planned the colony as a haven for relief and rehabilitation of unfortunate debtors. The disposal of vacant land, or its retention for personal gain, therefore, was not a motive in the founding of the colony. Toward this end regulations were made in the original charter placing a maximum limitation upon the number of acres that could be granted to one individual. It was stipulated "that no greater quantity of lands be granted, either entirely or in parcels, to or for the use, or in trust for any one person, than five hundred acres."⁶

The trustees of the colony went even farther and ruled that, for military and economic reasons, they would not allot to a settler more than fifty acres "to prevent the accumulation of several lots into one hand lest the garrison should be lessened, and likewise to prevent a division of these lots into smaller parcels lest that which was no more than sufficient for one planter, when entire, should if divided amongst several, be too scanty for their subsistence."

To carry out this policy, land was granted "in tail male." This had the objective that it could neither be mortgaged nor sold—a provision that hampered the success of the colony. Another damper on the land allotments was restrictions against slaveholding. These restrictions, despite their high moral purposes, were not such as would invite settlers to the colony, particularly when in the neighboring territories large tracts of land could be leased on liberal terms and where Negro slaves could be used without limit.

Within five years after the founding of the colony, complaints were made by the settlers to the trustees. The outcome was a relinquishment of the entail provision in land allotments, and by 1750 "the principle of absolute ownership of land was recognized in the colony."⁷ Slavery

⁵See Enoch Marvin Banks, *The Economics of Land Tenure in Georgia*, p. 11.

⁶*Ibid.*, p. 11.

⁷*Ibid.*, p. 13.

was also permitted. All this gave an impetus to land settlement in Georgia. Between 1750 and the outbreak of the Revolution, the colony's population greatly increased. Land was plentiful and the region enjoyed a period of prosperity and expansion. However, as slaves were included along with members of a family as individuals, for whom 50 acres each were allotted, it was not long before large plantations began to grow in Georgia, as had already developed in the other southern colonies.

The Quitrent System

From the preceding pages covering landownership and distribution in the American colonies, it should be noticed that, with the exception of New England and possibly Virginia, the quitrent system of land tenure was largely in vogue. However, in practice it was a theoretical legalistic concept, since with few exceptions, notably in New York, it was not adhered to in practice, and the payment of rents was largely ignored or refused. Regarding the failure of the system, Professor Beverley Bond, Jr., author of the scholarly work, *The Quit-Rent System in the American Colonies*, writes:

As a general form of land-tenure in the American colonies the quit-rent system was not wholly successful. This failure resulted from the fundamentally different character of the quit-rent in England and America. In England it had come as a relief from onerous feudal dues. As such it was accepted without question; at first, as a welcome relief, later, as a customary charge. In America the very circumstances attending the introduction of the quit-rent were different from those in England. The lands which the colonists rescued by their own labor from the primeval wilderness had paid no previous feudal dues. The quit-rent constituted, therefore, not a welcome relief, but a tax upon the land. The colonists finally came to look upon it as an imposition upon the land for the benefit of an outside power. Their independence of spirit added fuel to the hostility. Perhaps even then the quit-rent would have been accepted, such is the power of custom, had it prevailed in all the colonies. But when the plans of the New England Council failed, and the land-tenure in all the corporate colonies became free of feudal charges, the doom of the quit-rent

system was sounded. The example of New England soon stirred up opposition in the neighboring colonies. As communication became more frequent, this influence would have made itself felt to a more marked degree in the colonies to the southward, had not the Revolution intervened.

The problems that confronted the crown and the proprietors in establishing the quit-rent system in a new country militated against its success. Separated by long distances from the home government, the colonial governors were at a great disadvantage in carrying out instructions. Their dependence upon the assemblies for measures of enforcement greatly added to their perplexities. In all the colonies, except Maryland, the history of the quit-rent was one of persistent struggles between the governor and the assembly, the former representing the crown or the proprietor, the latter the tenants. Compromises became necessary, but usually it was the overlord who surrendered a large part of his claims in order to secure even a measure of respect for his rights in the soil.⁸

The Motives and Methods of Colonial Land Distribution

The acquisition of land and the pecuniary benefits of its ownership or disposal were undoubtedly prime motives of the shareholders of the colonial trading companies and the holders of land grants in the American colonies. America, from its very beginning as a field of economic exploitation, was a speculation in land and pelts. Though many of the actual settlers emigrated to these shores to escape religious or political persecution, they were merely given the opportunity to do so because of the need for settlers on the land to make it economically valuable. It is doubtful whether any of the grantees of vast areas from the British Crown, even Calvert or Penn, had, as a prime or sole motive for their undertakings, the relief of their brethren from religious persecutions. This, in effect, was merely incidental to other and more persistent motives—the pecuniary benefits of landownership and land disposal.

⁸*The American Historical Review*, Vol. XVII (April 1912), p. 514. A more detailed discussion is contained in Professor Bond's complete volume under the same title, published by the Yale University Press, 1919.

The different methods of land disposal and land settlement in the various geographical areas of the British-American dominions were due more largely to differences in climate, soil, terrain, and the presence of unfriendly aborigines than to differences in theories of land tenure or in political and religious beliefs. That the New England colonies adopted, for the most part, a system of relatively small allotments, centered about a community, was not so much the result of a preconceived or definite plan of land settlement as a provision for better defense and for local market and exchange of products among the inhabitants. Nevertheless, the urge for association in common worship by people of strong religious beliefs, which undoubtedly has been a factor in village and town development throughout the world, was a potent force in the decisions leading to methods of land allotments.

Summary on Colonial Land Systems

From the foregoing pages it is apparent that, notwithstanding the differences in the land systems of the various colonies and the distinctions between colonial land companies and proprietary grants, the ownership and profitable disposal of land were, with a few exceptions, the prime objectives. Absentee ownership was the rule, and the spirit of "landlordism" in England and Ireland, which was then taking root, was extended to the vast unsettled areas of America. The privilege of landownership, which was offered to actual settlers, was for the purpose of improving the land and, by increasing population, to make the undisposed portions more valuable. The fact that the original owners and promoters did not, in many cases, obtain their objectives and did not realize the wealth or income expected was primarily due to the abundance of land opened for settlement and the inability to enforce the collections of payments and of rents. Revolt against restricted privileges of landownership and against the governing privileges given to owners of land, whether heads of manors or freeholders, was manifested in the colonies a century before the Revolution and continued long thereafter, particularly as "land hunger" was unabated, and land speculation became a prevalent disease among the colonists. Of this we shall speak more in the next chapter.

Philosophic Conceptions of Landed Property in the Colonial Era

Having reviewed the history of land acquisition and landownership in the colonial era, it might be well and proper at this point to refer to the philosophic and moral concepts of landed property that prevailed in the same period. It should be borne in mind that at this time the theories of "natural rights" and civic freedoms were beginning to emerge and found expressions in the works of such philosophers as Spinoza, John Locke, Judge Blackstone, Harrington, and others. The theories of Locke are particularly noteworthy in this connection, not only because of his genius and influence, but also because he is reputed to be the author of the only constitution set up as a basis for government of an American colony. Moreover, it is generally conceded by most historians that Locke's political doctrines were a powerful force in stimulating the movement which resulted in the American Revolution. But despite all this, Locke's philosophy regarding landed property appears to have been largely bypassed by the political philosophers, statesmen, and leaders of the colonial and Revolutionary eras, and certainly there is little evidence that they were eager or willing to adopt his ideas on the subject at that time.

Locke expressed his views on landed property in Chapter V, Book II, of his two *Treatises on Civil Government*, in the chapter titled "On Property." In this chapter he carefully distinguishes, as other writers have done before and after him, between the bare land as property and the fruits of labor applied to land. He held that the first is the common heritage of all men, and only the second—namely, the labor applied to the land in use—is the legitimate basis for private landownership. Thus Locke, like Henry George, distinguishes land itself as an entity distinct from the improvements made on the land. And he also counseled against concentration of landownership, stating that "as much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. . . . The measure of property Nature well set, by the extent of men's labour and the convenience of life," and he also states that as long as the land is put to use there is no injustice in its private ownership, provided "there is enough, and as good, left in common for others." Though Locke's philosophy did

not set up a demand for restraint on land concentration in the colonies, it undoubtedly had an influence on some of the fathers of the Revolution as well as on the French physiocrats and classical British economists. Both Thomas Jefferson and John Adams, as shall be shown later, were opposed to large individual landholdings. And Benjamin Franklin, though a participant in colonial land-grabbing, denied that the right to private property was absolute. But it was only after land was well settled and tended to become scarce, as a natural monopoly, that property ideas expressed by John Locke and his followers in later years took root on our continent. This development will also be discussed in a later chapter.

Summary

In summing up the role of landownership and land distribution as related to the colonial grants, it may be stated that, in origin, though the colonial charters were based largely on the concept of the trading companies then existing in Britain, they were, in essence, land-speculation ventures. This motive was stimulated by the rise of the British mercantile classes during the period and their gradual assumption of a predominant role in British politics. The absence of any elaborate details regarding land distribution in the colonial charters indicates that landownership, as a political factor, had already lost much of its effect in governmental matters, while its economic aspects, as a factor in providing for human existence and as furnishing a means of social aggrandizement, was becoming more important. The economic conditions in England at the time were such that the new "landless" classes, created by the disintegration of feudalism and the growth of the enclosure movement, led to economic misery and political discontent. The effort to establish colonies was the outcome of this situation. But land-grabbing was also an important motive. As already pointed out, the rising mercantile classes were eager to be landlords. Absentee ownership of large areas was a badge of social prestige.