Chapter 17

Landownership and Land Disposal in Local Politics

While the Congress was engaged in passing legislation for the disposal of the public domain, there was taking place in the old as well as the new states a series of political reactions regarding not only the question of the means and methods of disposal but also the basic principles underlying landownership and land tenure inherited from the colonial period and handed down by subsequent legislation in the different states.

We have already stated in the previous chapter that there were two schools of political thought regarding national land policy. One, the liberal school, composed of pioneer farmers, large and small spokesmen for the laboring classes of eastern urban communities, and protagonists of the theory that actual ownership of land by the masses promotes true democracy, insisted that the public domain should be disposed of quickly and on easy terms. Opposed to this liberal school were the conservatives, who maintained that the public land should be a great national resource from which the government should derive funds to be spent for the well-being, happiness, and education of all the people. To this school also belonged owners of land in the eastern states, who feared the competition of the cheaper and more fertile lands of the West, as well as eastern manufacturers, who professed to see in these lands a magnet that drew away their labor supply.[1]

Thus one party regarded the disposal of the public domain as a means

[1]See Helene Sara Zahler, *Eastern Workingmen and National Land Policy, 1829–1862*, pp. vii–viii.

of preserving a "safety valve" against political and economic discontent, and the other regarded it as a means of preserving a national resource and a means of promoting economic welfare.

John Adams, along with Thomas Jefferson, was an adherent of rapid and widespread disposal of public land to the masses. In one of his philosophical writings he stated:

> Property in the soil is the natural foundation of power and authority. Three cases of soil ownership are supposable. First, if the prince own the land he will be absolute. All who cultivate the soil, holding at his pleasure, must be subject to his will. Second, where the landed property is held by a few men the real power of the government will be in the hands of an aristocracy or nobility, whatever they are named. Third, if the lands are held and owned by the people, and prevented from drifting into one or a few hands, the true power will rest with the people, and that government will, essentially, be a Democracy, whatever it may be called. Under such a constitution the people will constitute the State.[2]

Adams complained at one time that "an attempt was made to introduce the feudal system and the canon law into America." He published a letter from the French economist and statesman, Turgot, to Richard Price, dated Paris, March 22, 1778, in which Turgot said that in America due attention had not been paid to the great distinction, and the only one founded in nature, of the two classes of men—those who were landlords and those who were not. Thus the American method of treating the land question did not escape the observation of reflective minds in Europe. In the same letter, evidently in reference to the idea of territorial possessions by the colonists as discussed in the Continental Congress, Turgot said, "The pretended interest of possessing more or less territory vanishes also when the territory is justly considered as not belonging to nations but to the individual proprietors of the soil."[3]

The political repercussions of opposing views on the land question can be noted not only in the numerous debates in Congress but in the legislation of the states and the political agitation of land reformers of

[2] *Works,* Vol. III, p. 466.
[3] *Ibid.,* p. 281.

the period. It has already been noted that during or soon after the Revolution most of the states took legislative action to abolish primogeniture and entail as features of landownership. The new states followed along the same lines. During the period from the adoption of the Constitution to the enactment of the Homestead Law in 1862, there were not only constant agitations for "free land" and "squatter sovereignty" but also local and state movements for reform of land laws.

The debates in Congress that led to the enactment of the Pre-emption and the Homestead Acts give evidence both of national and local radical movements of the time that there was opposition to the tendency toward land monopolization, which, it was claimed, was forcing "the youth and vigor of the country to a state of dependency upon the manufacturing aristocracy." On the other hand, there was opposition in the East to a "giveaway" policy of the public land on any drastic revisions of land tenure. Thus in 1840 the New York legislature protested against the sale of lands "at a price below the present minimum as a virtual violation of the trust and pledge under which they were received, as wasting the common fund, and by inducing exhausting emigration from, as well as diminishing the value of land, in the older states."[4]

And so the controversy raged—a matter of profound national and local concern, almost equal to that of the slavery question.

Land Reforms in the East

New York State

While Congress was wrangling over the public domain, several individual states were concerned with their own land problems. Some of these problems were inherited from the colonial era. Others came about through economic and political developments, which called for land reform.

New York State was one of the important sections of the nation which became involved in a serious controversy relating to landownership. It has already been shown that the land system, inaugurated by the Dutch and fostered and extended by the English, was based to a

[4]See *New York Assembly Document, 1840,* Vol. VI, No. 234, p. 20.

considerable extent on land tenancy. The grants to "patroons" under manorial rights did not cover a large part of the state's area, but in time, when the number of settlers increased and land rents were raised, the system became obnoxious. Even in colonial times, an inequitable distribution of landed proprietorship retarded the growth and economic progress of the region. There were in this period a number of agrarian conflicts, some involving the patroonships and their masters.[5] As settlements along the Hudson and the Mohawk rivers increased, and land, because of engrossments by manorial lords, got scarcer and more valuable, discontent arose among the rural population, chiefly among those who were land tenants. They suffered disadvantages compared with the settlers on the lands farther to the west, who had obtained large areas from the wholesale disposal of the state's unoccupied lands following the Revolution.

However, these tenants had one economic advantage. This was the ease with which a farmer could transport his produce to market. But this advantage was largely offset by the increased value of the rented land and the consequent demand of landlords for higher rents. Moreover, many farm tenants in New York State came from New England and, on general principles, they were opposed to rents.

The patroonships and manors created grounds for dissatisfaction. The landlords of these large areas were fast becoming an aristocratic class, having its basis in landownership. Like the feudal lords of Europe, they were, through intermarriage, extending individual holdings. Whenever they were afforded the opportunity, they raised the rents of their tenants and otherwise made it more difficult for them to gain a decent livelihood. In addition to the patroonships, other large landowners were following a policy of leasing their lands. This policy was extended to the areas of new lands opened up in the western portion of the state.[6] As late as 1848, when many landlords had already abandoned the lease

[5]For an account of these conflicts, see Irving Mark, *Agrarian Conflicts in Colonial New York, 1711–1775.*

[6]David M. Ellis, *Landlords and Farmers in the Hudson-Mohawk Region, 1790–1850,* p. 54.

system, Governor John Young estimated that 1,800,000 acres in New York State were under lease.[7]

After rumbling complaints extending over several decades, the dissatisfaction broke out in what historians call "the Anti-Rent Movement in New York." It flared up in 1839 and reached its peak in the middle 1840s, though it continued intermittently until well after the Civil War. As stated by David Maldwin Ellis: "It became the channel whereby reformers of many stripes attempted to bring about constitutional changes within the state and land reforms within the nation."[8]

The uprising took the form of a strike against rent payments. The landlords experienced serious difficulties in trying to collect their rents and were frequently met with violence. The rent strikers took the name of "barnburners." They resisted landlords, sheriffs, and the militia. They became a powerful political factor, causing the state legislature to take notice and seek to appease them by enacting relief measures.

In 1840, Governor William Seward, in his message to the state legislature, urged passage of laws which would "assimilate the tenures in question to those which experience has proved to be more accordant with the principles of republican government and more conducive to the general property and the peace and harmony of society." He followed these remarks with a special message proposing remedial legislation. As a result of his appeals and in response to the flood of petitions from disgruntled tenants, the New York legislature, on May 13, 1840, set up a commission to investigate the problem.[9] This related particularly to the dispute between the powerful Rensselaer landlord and his tenants.

In the meantime, disturbances between landlord and tenants continued. Violence was of frequent occurrence. The "Anti-Renters" became a political organization. Finally, the New York Assembly appointed a committee, of which Samuel J. Tilden was chairman, to make recommendations to settle the problem. Tilden's keen legal mind dis-

[7] *Ibid.*, p. 227.
[8] *Ibid.*, p. 226.
[9] *Ibid.*, p. 240.

covered a way out. He pointed to legal phraseology in conveyances to tenants that made them "freeholds" and not "leases." He also recommended a change in the laws regulating devises and descents, which would enable a tenant to convert an annual rent into a principal sum.[10]

Tilden's recommendations, among which were the abolition of distress, taxation of ground rents, and, as mentioned, the right of the tenant to buy out the landlord's interest, were, of course, strongly opposed by the landlords. However, the recommendations were, after a time, adopted in so far as the constitutional prohibition of invalidating a contract permitted.

A New York State constitutional convention held in 1846 was called specifically to enact land reforms. Horace Greeley, though not a delegate to the convention, urged it, in addition to other reforms, to provide against anyone acquiring more than 320 acres of land after July 4, 1847. He was against land engrossment both in the state and in the public domain. The convention, in addition to forbidding future lease of agricultural land which contained a reservation of rent or service for a longer period than twelve years, reasserted the law of 1787 abolishing feudal tenures, except rents and services lawfully created and reserved. But it did not disturb the existing legal pattern of landownership or place any restriction on land engrossment.

After several decades of rioting, legal wrangling, and political and legislative action, the old form of the leasehold system in New York State was thus finally abolished, and the long fight of the Anti-Renters and the "Barnburners" ended in success. In reality, the movement was more than a local affair. "By dramatizing the evils of land monopoly and by identifying their cause with the demand for more democracy, the antirenters helped to arouse the nation to the importance of land reform. Within less than twenty years Congress was to enact the famous Homestead Act which, despite its many faults, was an important milestone in furthering Jefferson's dream of a nation of small independent farmers."[11]

[10]*Ibid.*, p. 274.

[11]Ellis, *op. cit.*, p. 312. See also E. P. Cheyney, *Anti-Rent Agitation in the State of New York, 1839–1846,* University of Pennsylvania Publications, No. 2.

New England Land Problems

At the time of the Revolution, most of the arable land in the settled portions of New England had come under private proprietorship. The pressure of population on the arable area had at this time already begun. Land values rose, and, as already noted, New England pioneers sought relief in westward migration.

There were, however, outlying sections within New England which were still largely vacant and the settlement and ownership of which gave rise to conflict. These sections now comprise Vermont and Maine. The territory of Vermont was known in pre-Revolutionary days as the "New Hampshire Grants." We have already seen that the territory was claimed by both New Hampshire and New York. In order to forestall New York's claim and jurisdiction, Governor Benning Wentworth of New Hampshire, acting on the principle that possession was nine points of the law, hastily and recklessly made free grants in the region to both New Hampshire and Massachusetts citizens. It is estimated that, between 1749 and 1764, 131 townships were granted to more than six thousand persons. Whole "towns," comprising 23,000 acres, more or less, were granted to selected groups of individuals who had no intention of ever settling on the lands. Samuel Adams, the patriot, was among the grantees. He was known as a speculator in both New Hampshire and Maine lands in this period. Governor Benning Wentworth granted himself about 65,000 acres and is reported to have accumulated considerable wealth from heavy fees exacted for grants.[12]

Despite the Wentworth grants to prominent New England individuals, the territory of Vermont was soon overrun by squatters who refused to be ousted. Among the prominent leaders of the squatters was Ethan Allen, the hero of Ticonderoga. While New York and New Hampshire were waging a legal battle over the Green Mountain area, he was organizing opposition to both. His bold move to protect his "squatter followers" led to the creation of the State of Vermont.[13]

[12]See *Publications of the Colonial Society of Massachusetts,* Vol. XXV, pp. 33–38. Also *Publications of the New York Historical Society,* "The New Hampshire Grants."

[13]When Governor Wentworth in 1749 began to make his bountiful New Hampshire grants to land-hungry New Englanders, the New York authorities

But the greatest conflicts with squatters in New England occurred in Maine. This vast northern New England region had been originally granted to Sir Ferdinando Gorges in 1639, who associated with himself in the deal John Mason, a London merchant. These two adventurers, however, never actually took possession, and their claims were strongly contested by the Massachusetts authorities. Finally, Massachusetts obtained title by a quitclaim purchase from the heirs of Gorges. Although as early as 1661 the colony of Massachusetts sold to a few individuals a large tract along the Kennebec River known as the Kennebec Purchase, and another to the Pejepscut Company, the bulk of territory remained unsettled and was largely in a wild condition. About a quarter century before the Revolution, however, settlers began to seep into the region and squatted on the land. This gave rise to political difficulties, disturbances, and violence comparable to that which was experienced in New York State during the tenant uprising. Unlike the southern colonies, New England did not favor squatters and regarded them as illegal possessors. Accordingly, after the Revolution, Massachusetts enacted measures and took steps to oust them in Maine. Moreover, after the Revolution, the Massachusetts state treasury was in a bankrupt condition, its circulating currency depreciated; and, like New York, it was desirous of obtaining revenue from the sale of its unoccupied domain.

Following a rapid increase in squatter settlement in Maine, the Massachusetts authorities became alarmed, since it interfered with the

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brought protests against this high-handed business to the British Crown. A commission was appointed to settle the dispute. This commission decided in favor of New York and allotted to the future Empire State all territory west of the Connecticut River. The attorney for New York in the case was James Duane, destined to become the first mayor of New York City. He became the owner, through his father, of 6,000 acres of land lying west of Albany, which now comprises the town of Duanesburg, and in addition acquired large tracts in the Mohawk Valley, where he was active in attracting German settlers from Pennsylvania. He also bought heavily of Vermont "grants" after 1764, when the region was allotted to New York. His land speculations here, however, were not successful. When Vermont was granted its "independence" following the Revolution, Duane's title to lands therein was not upheld. All that his heirs received was the sum of $2,621 from the total amount of $30,000 which the Vermonters paid to New York for a quitclaim to all rights of the latter's citizens in the Green Mountain State.

sale of land in large blocks. Accordingly, in 1786 the governor was ordered to issue a proclamation prohibiting squatting on Maine lands and warning squatters they would be dealt with "according to law." This did not have the desired effect, so in 1788 another compromise was provided, whereby on payment of five Spanish dollars the squatter would be deeded 100 acres, to be laid out in the standard manner so as to include his improvements. This leniency, however, did not accomplish its object, and the strife with the squatters continued.

The Massachusetts state authorities incorporated Maine into a "district" and proceeded to make surveys of the territory and to advertise "the townships" for sale on a wholesale basis. In order to further these sales, the state appointed a committee to investigate "trespassers," as squatters were designated, and to demand payment from those who were in "illegal possession." But there was little success in this move. The squatters insisted on holding their lands and refused payment therefor. A compromise of the situation was then sought in the enactment of a statute whereby purchasers of "townships" on which there were settlers prior to January 30, 1785, were to allow each such settler 50 acres, so laid out as best to include his improvements, and to give the privilege of buying, in addition, 50 acres of unallotted land at not more than three shillings an acre.[14] The squatters were thus allowed settlement and pre-emption rights.

As the Maine lands were sold by Massachusetts at wholesale—i.e., in township units—the treatment of squatters became a problem for the private proprietors to settle. The state usually provided that each proprietor should allow a settler 100 acres, but left the proprietors and the settlers to come to terms between themselves. This was a source of conflict. The lack of uniformity in the treatment of squatters by the state and by the private proprietors caused the less favored to complain. The proprietors, being absentee landlords, employed agents to deal with the squatters, and these felt impelled to drive hard bargains in order to retain their positions. All this led to political disturbances and, at times,

[14]See Amelia Clewley Ford, *Colonial Precedents of Our National Land System, as It Existed in 1800,* bulletin of the University of Wisconsin, No. 352, p. 135.

to something like open warfare. Juries refused to convict for the killing of a sheriff who was enforcing an ouster order against a settler. Partly as a means out of the political difficulty, Massachusetts in 1820 consented to the creation of Maine into a separate state but received the right to one half of the proceeds from the sale of the public lands.

General Henry Knox of Revolutionary fame, who, in partnership with William Duer, became for a short time a large proprietor of Maine lands, counted over 500 squatters on his estate, which now comprises the present counties of Waldo and Knox in Maine. Knox fixed a price for land held by the squatters, but many resisted paying the charge, which was set at $2.50 per acre. Before a complete settlement of the dispute with the squatters was accomplished, however, Knox disposed of the bulk of his Maine lands to William Bingham of Philadelphia.

Knox and William Duer's vast Maine holdings were locally named "Bingham's Million Acres." It was in fact about two million acres. The Bingham heirs, absentee owners, desired cash rather than wild land burdened with annual tax assessments. They appointed agents, chief among whom was General Harrison Grey Otis, to dispose of the acreage, but these agents, after spending the heirs' money in building roads and other improvements, one after another, gave up their jobs.[15] Under the provisions of acquisition from Massachusetts, the lands were to be sold to actual settlers before patents could be granted. The Bingham heirs employed political influence to get the period of settlement extended from time to time, and by using methods bordering on bribery they finally obtained a patent from Massachusetts. They then proceeded to offer the land and the timber on the land for sale. In September 1828, whole "townships" were offered at auction, at a minimum price of seventy-five cents per acre. This brought about wild land speculation. Some "townships" were bought at the minimum price one day and resold at a 25-per-cent advance the next. Purchasers flocked from Boston and elsewhere to bid for "townships." There was fear of a shortage of timber at the time, and as Maine woodlands had a dense timber growth, they would thus become extremely valuable.[16]

[15]See *Maine Historical Society Collections*, Vol. VIII, p. 359.

[16]For an account of the Maine timber-land speculation, see Hugh McCulloch, *Men and Measures of a Half Century*, pp. 214–16.

Fraud and corruption accompanied the sale of these timber lands. Tracts were sold that did not exist. In the interest of large holders, maps were prepared on which lands were represented as lying upon watercourses which were scores of miles away from them. Notes were given for land and endorsed without the expectation of making payment. In one of the many lawsuits arising out of the speculation, the defendants denied the validity of the debt on the ground that "eastern land speculations . . . in general were so tainted with fraud, deception, cheating, lying, and swindling, that the very term had become proverbial for those vices." And on this ground the jury failed to return a verdict.[17] As Hugh McCulloch, Lincoln's Secretary of the Treasury, a native son of Maine, stated: "It happened strangely enough that the largest losers in this land speculation were prudent men, who kept aloof from it until it had reached the highest point, and the tide was ready to turn."

Land Politics in the Former Proprietary States

Pennsylvania and, to a considerable extent, the other states to the south that were formerly proprietary colonies escaped the political disturbances and dissatisfaction arising out of land tenure. The quitrents were only partially paid and in many cases were so insignificant as to become harmless and easily avoided. Yet, in spite of all this, quitrents were unpopular. They were, in a way, a substitute for taxes, and attempts were made with considerable success to tax the quitrents in the hands of the landlords. This was done in Pennsylvania and Maryland.[18]

The outbreak of the Revolutionary War practically put an end to the quitrent system in the colonies, but it persisted in certain areas. With the overthrow of British rule in Pennsylvania, Chief Justice McKean, in an opinion given to the General Assembly, declared that quitrents "would be utterly subservient of the rights, safety and happiness of the good people of this State, and dangerous to civil liberty in general, as evidently tending to revive and confirm an unwarrantable aristocratical power and influence . . . inconsistent with its true intent and therefore

[17]See *Hunts Merchants Magazine,* Vol. II, pp. 497–98.

[18]See Beverley W. Bond, Jr., *The Quit-Rent System in the American Colonies,* Chap. XV.

not to be admitted in a government founded upon equal liberty and authority of the people."[19]

In implementing this decision, Pennsylvania abolished the quitrents claimed by the proprietors and assumed ownership of all their unallotted lands but confirmed their reserved manors and the manorial rents as private property of the proprietors. With a sense of justice that was unique at this time, the Pennsylvania legislature voted to compensate the Penn family for loss of their quitrent rights by a payment of £130,000 "in remembrance of the enterprising spirit of the founder, and the expectations and dependence of his successor." This, as Professor Beverley Bond points out, was a good bargain for the proprietors, "for the actual returns from their quit-rents were unsatisfactory."[20]

Maryland followed much the same action as Pennsylvania in relieving the inhabitants of quitrents. By a legislative act of 1780, quitrents were abolished as incompatible with the sovereignty of an independent state. The payments of quitrents in Maryland had been a continual source of discontent, not so much because of the amount of the payments, which were unscrupulously enforced, but because it was regarded as tribute to an absentee landlord—who did nothing to aid the actual owners of the land. "No power on earth," declared the Maryland State Senate in 1783, "can place the free people of Maryland in the disregarded position of tenants to a superior lord, a foreigner or a British subject."[21]

Despite its obnoxious political aspects, the quitrent system in both Maryland and Pennsylvania had one beneficial result as regards land distribution. As stated by Bond:

[19]R. M. Cadwalader, *A Practical Treatise on the Law of Ground Rents in Pennsylvania,* pp. 46–47.

[20]The abolition of quitrents in Pennsylvania did not mean the end of a ground-rent system. This system persisted over a number of years. See Cadwalader, *op. cit.*

[21]The survival of ground rents in Baltimore—which persisted for several centuries and which only in the last few years is being discontinued—as in Pennsylvania, is not a survival of the quitrent system. The ground rent is merely an ordinary rent that is limited in time, though by a renewal clause it could become perpetual, like a feudal charge. See Lewis Mayer, *Ground Rents in Maryland,* p. 48.

> The enforcement of quit-rents rendered unprofitable the holding for an indefinite period large unsettled tracts as were taken up in New York, and thus promoted the division of the land into small holdings. Hence, in pre-Revolutionary times there were no private holdings of large tracts in Pennsylvania or Maryland. Accordingly, there was no serious problem of squatter sovereignty or agrarian unrest, or tenant revolts such as occurred in New York State and in Maine.[22]

As noted previously, in no section of the American colonies was the quitrent system of land tenure more inefficient and ineffective than in the Carolinas. Though the "Fundamental Constitutions" of John Locke were designed to set up a feudal regime, of which his patron, the Earl of Shaftesbury, was to be the overlord, and high quitrents were demanded of the settlers, the inefficiency of administration, combined with the refusal or avoidance by tenants to pay the rents demanded of them, made the whole system much of a farce. The large arrears of the tenants and the general dissatisfaction with the feudal regime, therefore, constituted an incentive to overthrow the proprietary government. The proprietors' lands in 1728, at their own request, were taken over by the British authorities by purchase, and up to the time of the Revolution the governments of the "Crown Colonies of the Carolinas" were struggling with the mess of collecting arrears of quitrents and settling the land problems, which induced constant political dissatisfaction among the inhabitants. It is not surprising, therefore, that the Carolinas early joined in the revolt against the Crown and abolished the quitrent system. The same may be said of Georgia, where even the British Government, assuming the rights of the proprietaries, was unable to make the quitrent system work and where it was ignored to such an extent that the early constitutions of the state did not formally mention it.

Summary

It will be seen from this brief account of the repercussions of the colonial land systems that landownership and its distribution had in-

[22]For an account of the workings of the quitrent system in Maryland, see C. P. Gould, *The Land System in Maryland.*

fluenced local political sentiment in the various states following the Revolution. It was only natural that in the early days of land settlement on this continent the land-hungry immigrants sought and prized landownership. Their desires were largely the result of "landlessness" in the European nations in which they had their roots. They knew what landlessness meant; they knew the exactions of landlords, whose monopoly they could not tolerate or endure. They knew in a way the nature of the unearned increment they desired to acquire, and, above all, they knew that land was the best guarantee against starvation and poverty. Thus the vast availability of land in America was a "safety valve" against political unrest. Except in a few areas, such as noted above, there was a general indifference on the part of the public for almost a century after the Revolutionary War to matters pertaining to land tenure and land control. But when ownership of land became restricted or set at a high price, the public gave vent to political and agrarian unrest. In later times this was demonstrated in such radicalisms and reforms as the populist movement, the Granger movement, the single-tax movement, and other land-reform agitation.