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The Carolinas

In the mid-seventeenth century, many settlers from Virginia, disgruntled by the domination of society by the planter aristocracy or by the Anglican church, moved down to the southern part of the Virginia grant, on the north of Albemarle Sound (in what is now North Carolina). The leader of the first settlement was the Presbyterian Roger Green. Many of these settlers were Quakers. At first part of Virginia, this settlement, which was also largely devoted to raising tobacco, was relatively independent. Soon, however, it was to feel the heavy hand of a feudal proprietary grant. For the large territory south of Virginia and down to the border of Spanish Florida was still up for seizure. In 1663 the newly installed Charles II granted a feudal proprietary gift of the territory between the thirty-first and thirty-sixth parallels—from what is now slightly north of the Florida-Georgia border to the northern boundary of North Carolina—to a proprietorship comprising eight of his favorite courtiers and supporters. This grant whittled away the southern portion of the Virginia grant, which had been bounded by the thirty-fourth parallel. The eight proprietors were Sir Anthony Ashley Cooper, the chancellor of the Exchequer (later first Earl of Shaftesbury); the governor of Virginia, Sir William Berkeley; his brother John Lord Berkeley, a high-ranking naval officer; the Earl of Clarendon, chief minister to the king; Gen. George Mack, the new Duke of Albemarle; Sir George Carteret; the wealthy Earl of Craven; and Sir John Colleton, a wealthy Barbadian planter and slave trader. As in the Virginia grant, the territory grandiosely extended west to the "south seas." The idea of the grant originated with those proprietors already interested in the Americas: Colleton, William Berkeley, Ashley Cooper (also a Barbadian landholder), and Clarendon, a land-

owner in Jamaica. John Berkeley acted as agent of the others to persuade the king to make the grant. The grant was known as "Carolina," after a previous land grant to the area.*

Two years later, the eight Carolina proprietors received a new charter extending their grant to 36° 30' in the north and down to 29° in the south—the latter, however, being academic, as it covered the Spanish settlements of Florida.

A party of settlers under the new grant established a settlement at Charles Town (now Charleston), at the mouth of the Ashley and Cooper rivers, in 1670. From the beginning, the proprietors had to govern two distinct and separate settlements, unruly Albemarle in the north, and Charles Town in the south, far more under its control. Moreover, the two settlements were, from the beginning, administered by different governors, though under the same proprietary. Albemarle was under the general aegis of Virginia's Governor Berkeley, one of the proprietors who appointed the governor of the district. From 1691 on, Albemarle settlement was known as North Carolina, and the Charleston area as South Carolina, separately administered though for some years under a single proprietary rule.

The proprietors were given a grant with feudal powers virtually as sweeping as the Maryland gift of privilege—a veritable palatinate. The proprietors were empowered to work their will, with the very important exception that an Assembly of the freemen of the colony, or their representatives, had to approve of the laws. Thus, as in the other colonies, the popularly elected Assembly originated less as a sovereign branch of government than as a check on the despotic rule of the executive. Even before Charleston was settled, the proprietors in 1665 drew up for the government of the chartered area, the "Concessions and Agreements," a relatively liberal document granting freedom of conscience, liberal land distribution subject to the inevitable but small quitrent, as well as an Assembly elected by the freemen of the colony. But in 1669 the proprietors, spurred by the ambitious Ashley Cooper, decided to embark on the fantastic project of fastening a feudal rule on the colony that could not be supplanted or dissolved by market processes. For not only were there to be proprietors as feudal lords, but there was to be a fully ordered feudal hierarchy of various degrees of subinfeudation. This scheme, to be imposed on the entire Carolinas, was drawn up for the supposedly "liberal" Shaftesbury by his hired theo-

*In 1629 King Charles I made his first land grant of the area between the thirty-first and thirty-sixth parallels to Sir Robert Heath, and called it New Carolina. Heath transferred his grant in 1630 to Samuel Vassal and others, but they failed to settle the virgin territory. In 1632 Heath conveyed his rights to Henry Lord Maltraven, who also failed to settle the area. The Duke of Norfolk, heir of Maltraven, Samuel Vassal, and the Cape Fear Company of London and New England merchants (who had settled on the Cape Fear River of North Carolina in 1662 but quickly abandoned the settlement) all now tried to invalidate the Carolina charter, but the Crown voided their patents in 1665. And yet, as late as 1768, the Crown granted the Coxe family of New Jersey (to whom had been transferred the Heath title in 1696) 100,000 acres of land in New York as a payment for their tenuous and dubious claim.

retician, John Locke, and promulgated as the *Fundamental Constitutions* of the Carolinas.*

The Cooper-Locke scheme envisioned a hereditary feudal nobility that was to preempt two-fifths of the land of the Carolinas, to be sold to it by the proprietary. Each of these nobles was to have his own seignory of 12,000 acres in each county; underneath the nobles were the landgraves, each of whom was to have four baronies totaling 48,000 acres; next to them, the caciques, with two baronies totaling 24,000 acres; underneath them, the lords of the manor, each with 3,000 to 12,000 acres; and finally, the freeholders, with a 500-acre minimum requirement for voting. The unfree—slaves and indentured servants—of course did not count enough to be worthy of mention in the hierarchical structure. The eight proprietors were to constitute a supreme Palatine Court, with each proprietor also operating a court of his own. The Palatine Court was to appoint the governor and exert sovereign rule over the colony. The Assembly was to be limited to the governor, the hereditary nobility, and the deputies—the last restricted to holders of 500-acre freeholds. All fishing and mineral rights were to be retained in the ownership of the proprietors.

Religious freedom was to be guaranteed—a long-standing conviction of Locke's—even for Quakers, Jews, and slaves, but the Church of England was to be established by the government, with churches to be built and the ministers paid by the state. But although Locke did not agree with the establishment of the Church of England, he was perhaps partially compensated for this disappointment by receiving the title of landgrave. It was, however, also decreed that no non-theist could hold public office or even have the protection of the law. Another libertarian provision was the guarantee of trial by jury.

Fortunately for the Carolinas, the proprietors were never able to persuade the Assembly to accept this scheme. As a consequence, the gravest threat of permanent feudalism in English America was nipped in the bud. Twenty-six landgraves and thirteen caciques were created, but they mostly expired with the original holder and did not become hereditary. Furthermore, no manor was ever created and no large seignory or barony was established.

*The contradiction has often been noted between the archfeudalism of Locke's *Fundamental Constitutions* and the individualist, laissez-faire liberalism of his *Civil Government*—a liberalism destined to have great intellectual impact on eighteenth-century America. The latter was written not much more than a decade later. This is largely true. However, we must also point out that a staunch defense of private-property rights will mean laissez-faire liberalism in a new country largely unsaddled by the yoke of feudal land tenure, while an equivalent defense in a country already hagridden by feudalism will be, at least in part, an apologia for feudal rather than justly private property and a free society. In short, the crucial issue is the justice of the private-property titles that are being defended. Glossing over this question means that the same set of principles may lead to a libertarian society in a nonfeudal America, where land titles devolved fairly rapidly upon the actual settlers, but to retention of quasi-feudalism in an England where land titles had been largely feudal. A conservative bulwark for feudalism, when transplanted, can prove to be a radically libertarian call for a free society.

We have seen that by the mid-1670s, the Southern colonies were becoming ripe for revolution: accumulated grievances in Virginia and Maryland included English restrictions on tobacco, aggravated dictatorial rule by the governor in Virginia as well as growing Indian troubles, and also attempts to impose feudalism and Protestant anti-Catholicism in Maryland. But the Carolinas, small though they yet were, did not need a lengthy incubation for serious rebellion. Indeed, with the attempt to impose an elaborate feudal structure upon the Carolinas, the new colony was ripe for rebellion almost immediately. This was particularly true of North Carolina, where an unusually independent group of small farmers exercised religious toleration, even for Quakers. Unburdened by feudal planters or a theocratic church, they were suddenly confronted with an attempt by a new English ruler to fasten upon them the very conditions for which they had left the Virginia settlement. North Carolina, which had a population of about 1,000 in 1660, grew rapidly, its free atmosphere and complete religious freedom attracting religious sects and great admixtures of ethnic groups: Germans, French, Swiss, Scots, and Moravians. By the 1670s, its population totaled about 4,000, while new South Carolina was still well under 1,000. The English navigation laws and restrictions on tobacco occasioned additional grievances among the tobacco-growing North Carolinian settlers.

The free spirit of the North Carolina settlers was further reinforced by the failure of land grants for large plantations to take root there. This was a colony of small farmers who had largely settled there to assure their independence. It had no large town or city (the largest town was Edenton) that could serve as a convenient seat for governmental rule. The earliest arrivals either settled freely on the land or purchased it from Indian chiefs. The proprietary, anxious to make money by encouraging rapid settlement, adopted the equivalent of the Virginia headright system, first granting 100 acres to each settler, plus fifty acres of land for each person the settler brought over to the colony. By the 1680s the headright was sixty acres for each settler and sixty for each servant brought over. Each servant was also to receive 100 acres of land on expiration of his term of service. This system, while subject to grave abuses through accumulation of headrights resulting in arbitrarily large land grants, at least assured a wide distribution of land in the colony. The land, from the first, was subject to restrictive conditions and charges, including a quitrent of half a penny per acre to the proprietor; but at least no initial purchase price was required to the grantee. Unfortunately, one-eleventh of each division of land was to be reserved to the proprietors.

In the early eighteenth century, the Virginia planter William Byrd was to write of the North Carolinians that they "treat [their governors] with all the excesses of freedom and familiarity. They are of the opinion that rulers would be apt to grow insolent if they grow rich, and for that reason take care to keep them poorer." Another shock to visitors was the absence of churches—apparently the North Carolinians preferred to practice their re-

ligion in private. The great English founder of the Quakers, George Fox, visiting Albemarle in 1672, discovered to his chagrin that he could find no place of worship in all the colony. And some years later William Byrd was again stunned to find that "this is the only metropolis in the Christian or Mohammedan world where there is neither church, chapel, mosque, synagogue, or any other place of public worship of any sect or religion whatsoever."