

# Property Rights In Land

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Questions:

- How did the American colonists establish property rights in land to begin with?
- What did the Revolution do to existing property rights?
- How did Americans allocate property rights to land outside of the original colonies?
- What are property rights?

The first settlers at Jamestown in 1607, were an adventurous lot, motivated by hopes of finding gold and silver, a water passage to the east, and the hope of acquiring land.

Their operation was a risky one, made more risky by the continuous warfare between European powers and the hegemony of Spain, particularly the Spanish navy. The colonists wanted protection from the King, in return for which they were quite willing to offer the King a share of the profits from their venture.

The Virginia Company charter, issued in 1606 by King James, created the Virginia Company, and granted the company the right to settle land in the King's name:

“...either appertaining unto us, or which are not now actually possessed by any *Christian* Prince or People, situate, lying, and being all along the Sea Coasts, between four and thirty' degrees of *Northerly* Latitude from the Equinoctial Line, and five and forty Degrees of the same Latitude, and in the main Land between the same four and thirty and five and forty Degrees, and the Islands thereunto adjacent, or within one hundred Miles of the Coast thereof;”

The king was to provide the colonists protection, in return for which he was to receive a share of any gold or silver found by the colonists, and a share of the land sales of the colony.

Two very important parts of the charter follow. First, everyone who lived in the colony would be a subject of the English King:

Also we do, for Us, our Heirs, and Successors, DECLARE, by these Presents, that all and every the Persons being our Subjects, which shall dwell and inhabit within every or any of the said several Colonies and Plantations, and every of their children, which shall happen to be born within any of the Limits and Precincts Of the said several Colonies and Plantations, shall HAVE

and enjoy all Liberties, Franchises, and Immunities, within any of our other Dominions, to all Intents and Purposes, as if they had been abiding and born, within this our Realm of *England*, or any other of our said Dominions.

And all land sold by the Virginia Company would be held in “Free and Common Socage”:

And finally, we do for Us, our Heirs, and Successors, GRANT and agree, to and with the said Sir Thomas Gates, Sir George Somers, Richard Hackluit, Edward-Maria Wingfield and all others of the said first colony, that We, our Heirs and Successors, upon Petition in that Behalf to be made, shall, by Letters Patent under the Great Seal of England, GIVE and GRANT, unto such Persons, their Heirs and Assigns, as the Council of that Colony, or the most part of them, shall, for that Purpose, nominate and assign all the lands, Tenements, and Hereditaments, which shall be within the Precincts limited for that Colony, as is aforesaid, To BE HOLDEN Of Us, our heirs and Successors, as of our Manor at East-Greenwich, in the County of Kent, **in free and common Socage only, and not in Capite:**

It was this last provision that would be critical to the growth of the American colonies, and determine the pattern of property rights in land in the United States.

Unlike most other kinds of feudal land tenures then used in Britain, free and common socage was “alienable.”

That is, land held in free and common socage could be freely bought and sold as long as the new landholder continued to honor his obligations to the “donor” (in this case the King).

In England, from the time of William the Conqueror on, most land was held in land tenures that required a personal obligation between the lord and the tenant, e.g. the relationship between a king and his Earls and Dukes. These land tenures might be perpetual and inheritable, but they were not alienable.

Because land in Virginia could only be held in free and common socage, all the land could be bought and sold.

Interestingly, the charters for Maryland and Pennsylvania allowed for sub-infeudation, but very little land was sold in those tenures. People would rather move to Virginia.

When the United States began the Revolutionary War, there was a serious question about who should own the land, who should be the donor. The King had the legal right to collect taxes on his lands, who would that right pass to? Or would it be extinguished?

This was one source of Maryland’s reluctance to ratify the articles of confederation, it had no Western land claims, unlike Virginia, New York, and Massachusetts. A compromise was eventually reached in which the existing states agreed to give up their claims to western lands

the federal government, and a policy for establishing new states was created.

In the Northwest Ordinance of 1787, the Congress established a method for selling land to private individuals, and for creating new states.

Land was to be held in “fee simple” our version of “free and common socage.” Although the federal government owned all of the western lands, once land was sold to a private individual, the state became the “donor” of the land. As a result, the right to collect land taxes devolved onto the states after land was sold to a private individual.

Land policy in the 19<sup>th</sup> century took many twists and turns (including squatting and homesteading), but the basic way in which land would be held in America was established by the Virginia Company charter, and the Northwest Ordinance.