AN ANOMALOUS AMERICAN COLONY

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ONLY occasionally referred to as "Delaware" in the middle of the eighteenth century, the Three Lower Counties on the Delaware held an unusual but undefined position among the North American colonies. Long a bone of contention between the rival claims of the Penn and Baltimore families, the "Territories," as they were frequently called in official communiqués, were assumed to be part of their patrimony by William Penn's descendants. A counterclaim dated even earlier was put forward on behalf of the descendants of Cecilius (or Cecil), Lord Baltimore.

The area that is now the state of Delaware was originally explored by the Dutch, colonized by the Swedes¹ and Finns,² conquered by the Dutch, and in turn taken over by the English. It was in 1664 that Colonel Richard Nicolls sent Sir Robert Carr to the Delaware, soon after the capture of New Amsterdam, to occupy the region in the name of the Duke of York—not by right of grant, but by right of conquest.³ After William Penn obtained

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¹For the most authoritative work on the Swedes in Delaware see Amandus Johnson, The Swedish Settlements on the Delaware (2 vols., Philadelphia, 1911).
²See E. A. Louhi, The Delaware Finns (New York, 1925).
³The Duke of York's royal patent of 1664, while it included what is now New York, a part of what is now Maine, all the lands west of the Connecticut River, and all of what is now New Jersey, together with Martha's Vineyard and Nantucket, did not extend beyond the west banks of the Delaware River. For the patent of 1664 see Documents Relative to the Colonial History of the State of New-York (ed. E. B. O'Callaghan, 15 vols., Albany, 1853-87), II, 295-298.

It will be noted that the patent issued on March 22, 1664, to the Duke of York covered those parts of the "maine Land of New England" specified therein. New England, according to the patent given to the Council for New England, dated March 13, 1620, included all lands between "the Degrees of Fourty and Fourty-eight." Although the Council for New England surrendered its patent to the King in 1635, the geographical limits of New
his patent for Pennsylvania on March 4, 1680/1, he became concerned lest the Province should be quite shut off from the Atlantic Ocean by the Baltimore family claims covering the northern boundary of Maryland (which are elaborated later in this article). He therefore besought the Duke of York to grant to him the conquered lands lying west of the Delaware River. Although the Duke himself had no royal patent to this territory at the time, he was prevailed upon to execute certain deeds of lease and release in favor of Penn. Despite the fact that the Duke later received a patent for Delaware from Charles II, which gave him a legal title to it, neither as heir apparent to the throne nor later as James II did he ever make any transfer of the territory to Penn that might validate the latter's title as its Proprietor, or even as the grantee of its lands. As a result, legally the area became a crown possession. So it remained legally until the War for American Independence.

England, from the point of view of the patent office, were still held to be between the aforesaid degrees. When Virginia became a royal colony, at the time the London Company of Virginia lost its charter in 1624, its boundaries likewise remained the same—exclusive of Maryland, which had been granted to Lord Baltimore in 1632.

There were executed on August 24, 1682, two leases and two deeds comprising all the land now a part of the state of Delaware. The originals of three of these documents are in the Delaware State Archives at Dover. In this connection see R. S. Rodney, "Early Relations of Delaware and Pennsylvania," Pennsylvania Magazine of History and Biography, LIV, 209-240. For a copy of the Duke's deed of the above date, giving to Penn all land twelve miles south of New Castle and extending to Cape Henlopen, see Register of Pennsylvania (ed. Samuel Hazard, Philadelphia, 1828), I, 429.

The royal patent for Delaware from the King to the Duke bears the date of March 22, 1683. The original also is in the Delaware Public Archives. Although this grant passed through various offices it apparently never, for reasons that are not clear, received the Great Seal. To this extent it was defective. See C. M. Andrews, The Colonial Period of American History (4 vols., New Haven, 1934-38), III, 295 n. Professor Andrews has the following to say about the two land leases that Penn received from the Duke of York: "The very fact that the duke, undoubtedly urged on by Penn himself, tried to obtain a royal confirmation seven months after the leases had been signed, shows that both Penn and the duke had doubts as to the soundness of the title." Ibid., III, 295-296. See also W. R. Shepherd, History of Proprietary Government in Pennsylvania (New York, 1896), 322, and M. P. Andrews, The Founding of Maryland (Baltimore and New York, 1933), 40-41.

It seems that one of James II's last acts, before his flight from England as a result of the so-called Glorious Revolution, was to order the draft of a grant of Kent and Sussex Counties in Delaware to Penn. While this was drawn up under date of December 10, 1688, it was never signed by the King in his haste to escape. For a copy of the draft of the grant, see the Appendix of the article by B. A. Konkle, "Delaware: A Grant yet not a Grant," Pennsylvania Magazine of History and Biography, LIV, 241-254.
Nevertheless, Penn proceeded on the assumption that his deeds and leases of 1682 were valid, and upon arriving in the new world later that year sought to unite the three Delaware counties to the three counties then forming Pennsylvania. An act of union to this effect, petitioned for by representatives of the people, was promulgated by him at Chester or Upland in Pennsylvania on December 7, 1682, "by and with the advice and consent of the deputies of the freemen of the province and counties aforesaid, in Assembly met. . . ." The same body also accepted the idealistic, rather complicated frame of government that Penn had drawn up during the spring of that year while still in England.  

Notwithstanding Penn's hopes for the permanency of the formal political union which had taken place between Pennsylvania and Delaware, his attempts to bring the peoples of the two areas to accept political fusion in practice were far from successful. In fact, sharp divergencies soon developed.

The inhabitants of the Lower Counties were in favor of defensive measures—especially in face of the dangers to them from the pirates abounding at the mouth of the Delaware in the latter part of the seventeenth century—and demanded a militia and the construction of adequate forts.  

The people of the Province would have none of these things. Most of those of the Lower Counties at the time of the Act of Union were still of Swedish, Finnish, or Dutch extraction and of either Lutheran or Calvinist religious persuasion; most of those of the Province were English or Welsh and were Quaker in religion and pacifistic in outlook. Again, at

7 For a copy of "An Act of Union for annexing and uniting of the Counties of Newcastle, James's and Whorekulls, Alias Deal, to the Province of Pennsylvania; and of Naturalization of all Foreigners, in the Province and Counties aforesaid," see Pennsylvania Archives, 8th ser., I, 328-330.

8 Ibid., I, 334-341.

9 For the extent of the threat of pirates and privateers in the Delaware Bay and River areas up to 1748, see W. M. Mervine, "Pirates and Privateers in the Delaware Bay and River," Pennsylvania Magazine of History and Biography, XXXII, 459-470, and H. C. Conrad, History of the State of Delaware (3 vols., Wilmington, 1908), I, 73-74; see also Leon de Valinger, Jr., Colonial Military Organization in Delaware, 1638-1776 (Wilmington, 1938), 27-30, 41-42. For an incident of privateers attacking New Castle in 1747 see "Minutes of the Provincial Council of Pennsylvania," Colonial Records, V, 245-284. As a result of this and other similar incidents an embargo was placed upon the Lewes pilots in effect restraining them from their livelihood. This they protested, claiming that the pilots dwelling on the New Jersey side were suffering no such limitation of their activities. See Pennsylvania Gazette, December 15, 1747, also reprinted in the Boston Evening-Post, January 18, 1748.
the time of the union, the territorial limits of the Lower Counties were highly restricted on all sides and were destined to remain so, whereas the three Pennsylvania counties of Chester, Philadelphia, and Bucks, it was plain for all to see, were destined to be supplemented from time to time, as the population expanded, by the creation of new counties out of what was still wilderness.

In addition, the rivalry between New Castle and Philadelphia as centers of commerce and as seaports was intense in 1682. The rapid rise of the City of Brotherly Love, soon overshadowing its competitor, did not fail to create hard feelings, nor were these at all assuaged when the issue arose as to the meeting place of the Assembly. The provincial representatives insisted on Philadelphia and also that all laws passed at New Castle must be reaffirmed by an Assembly meeting within the limits of Pennsylvania. The colonials of the Lower Counties, facing political and economic submergence in their relations with their more powerful neighbor, became increasingly restless under a yoke that they felt was binding them as unequals. Those of Pennsylvania became equally convinced that they could expect only obstruction in their endeavors to promote the welfare of the Province so long as representatives of the Lower Counties remained in the Assembly.  

This was the situation when Penn returned to America in 1699. The following year on October 14, in answer to the general desire for a new frame of government, he assured his petitioners that he would give them all possible assistance to that end. But during this same session, indications of the future political separation of the Lower Counties became manifest when their representatives proposed:

That the Union shall be confirmed on Condition, that at no Time hereafter the Number of Representatives of the People in Legislation in the Province, shall exceed them of the annexed Counties; but if hereafter more Counties shall be made in the Province, and thereby more Representatives be added, that then the Union shall Cease.  

10 For an extended treatment of the differences between the two areas see R. W. Johannsen, “The Conflict between the Three Lower Counties on the Delaware and the Province of Pennsylvania, 1682-1704,” Delaware History, V, 96-150; see also W. R. Shepherd, op. cit., 324-337.
11 Proceedings of the Assembly at New Castle, October 14, 1700, Pennsylvania Archives, 8th ser., I, 243.
12 Ibid., I, 258.
This attitude was most distressing to Penn. Early in the fall of 1701 in order to try to persuade both groups to bury differences in point of view, he declared to the General Assembly: "Your Union is what I desire. ... Yield in Circumstantial to preserve Essentials; and being safe in one another, you will always be so in Esteem with me." But his pleas fell on deaf ears. Thus, when the famous Charter of Liberties of that year was drawn up and approved by Penn—shortly before sailing for England in order to defend his American territorial limits against both Lord Baltimore's claims and those "Interests" seeking an Act of Parliament that would unite all the proprietary colonies to the Crown—the following statement was included in the closing proviso:

If the Representatives of the Province and Territories shall not hereafter agree to Joyn together in Legislation ... any Time within Three Years ... the Inhabitants of each County in the Territories shall have as many persons to Represent them in a distinct Assembly for ye Territories as shall be by them Requested. ...  

When the Assembly met the following year in Philadelphia the representatives of the Province showed their attitude toward a continuing union with the Lower Counties or Territories by affirming to Lieutenant Governor Hamilton that they "had long groaned under the hardship of it [the Union] and now having an opportunity ... to ease ymselves of those troubles they Judged themselves obliged to make use of it for their own Safety & Quiet." As for the representatives of the Lower Counties, they would neither take their seats in the Assembly nor recognize the binding power of the Charter of Liberties over their constituents.

13 Ibid., I, 311.
15 Ibid., II, 73. According to R. W. Johannsen (op. cit., V, 125), Deputy Governor Hamilton did his utmost to favor the reuniting of the Territories and the Province, citing among the foremost inconveniences that would result otherwise "the fact that the province would lose the rich tobacco trade which they carried on with England, since all the tobacco was grown in the lower counties." It is worth noting that the growth of excellent quality tobacco in Delaware, which seems to have had a prominent part in its agriculture in the first quarter of the eighteenth century, had diminished to such a degree by the middle of the century that Israel Acrelius, in his History of New Sweden (Philadelphia, 1874), 151, reported: "Tobacco is planted in almost every garden, but not more than for domestic use."
16 Pennsylvania Colonial Records, II, 75.
They even questioned the legality of Penn’s claim to the Three Counties, although willing to accept as their chief executive the Lieutenant Governor appointed by the Proprietor for Pennsylvania. Nevertheless, they were prevailed upon by the Lieutenant Governor in 1704 to elect members to a joint Assembly under certain specified conditions. As these conditions involved the question of representation, however, the Pennsylvania representatives refused to accept them. With a new election called for and held, the representatives of the Lower Counties gathered at New Castle in a distinct Assembly on May 22, 1704. This event marks the permanent political separation of the two areas.\textsuperscript{13}

Throughout the period from 1704 to the War for American Independence Delaware was unique among the British colonies in more ways than one. It had no official name; it was legally neither a proprietary nor a recognized royal colony; nor was it a corporate colony as were Connecticut and Rhode Island, nor even a trusteeship, in the formal sense that Georgia was during the first twenty years of its existence as a colony. While the laws of Pennsylvania had to be sent to England for approval by the Privy Council, this was never done in the case of the Lower Counties. Although the Lieutenant Governor or Deputy Governor of Pennsylvania also acted in the same capacity for the “Territories” and was nominated by the Penn family and approved by the King with important reservations, no distinct commission was ever given to him as the chief executive officer of the Lower Counties. Further, while royal instructions relating specifically to the Province were issued to him, he never received any that had special application to the Lower Counties.\textsuperscript{18}

Such was the state of uncertainty as to what kind of colony Delaware was that, in addition to questioning the legality of Penn’s claim, members of its Assembly meeting at New Castle made an effort in 1708 to secure a royal commission for a governor of their own.\textsuperscript{19} In other words the people of the Lower Counties wanted recognition as a royal colony. However, by 1717—in view of the attempt of the Earl of Sutherland two years earlier to secure a royal grant of the Lower Counties based upon a claim of £20,000

\textsuperscript{17} For this separation see R. S. Rodney, \textit{op. cit.}, LIV, 236-240.
\textsuperscript{18} See C. M. Andrews, \textit{op. cit.}, III, 324-326.
\textsuperscript{19} \textit{Pennsylvania Colonial Records}, II, 423.
due from George I for services rendered—the people of Delaware changed their attitude. Thoroughly alarmed lest their land titles might be questioned and a rapacious proprietor substituted for indulgent supervision, they became more favorably disposed toward Penn. Declaring to Lieutenant Governor Keith in 1717 that their own interests and those of the Proprietor of Pennsylvania were so interwoven that any alteration of this relationship would be disastrous to them, they even sought to be reunited to Pennsylvania in one government. But the Assembly of the Province, having once been freed of the Delaware representatives, was not at all desirous of seeking a reunion.20

One result of the Earl of Sutherland's application for a grant of Delaware had been that Crown lawyers were induced to pry deeply into Penn's rights, and the opinion of both the Attorney General and Solicitor General which ensued was adverse to the Penn family.21 While the Crown took no steps to assume direct control of the little colony, any claim to govern it by Penn was so clouded that Governor Keith took the precaution, on all Delaware documents requiring the use of a seal, to utilize one from which Penn's name was omitted,22 but which contained significantly the coat of arms of the King of Great Britain.

This was the situation of Delaware before 1750—an anomalous colony without official name or legal constitution, in the sense that other colonies had one, and without even a separate file of papers in the paper offices in London in recognition of its existence. Its people possessed no clearly defined rights beyond their inherent

20 For an abstract of the Earl of Sutherland's memorial, see Secretary Stanhope to the Board of Trade, December 29, 1715, P.R.O., C.O. 5:1265, Q. 110. See W. R. Shepherd, op. cit., 349.
22 The "Act for Establishing a Great Seal for the Government" stated that "a certain Silver-Seal, now in the Governor's Custody, with the King of Great-Britain's Arms cut upon it, and the inscription Delaware round it, shall be held and deemed to be the Great Seal of Government in these Counties and Territories" (Laws of the Government of New Castle, Kent and Sussex upon Delaware [Philadelphia, 1741], 4-5). Unfortunately, the inscription "Delaware" was spelled "Dellowarre," with the result that by an act passed in 1751 (25 Geo. II, c. 122 a.) a new seal was ordered which also displayed the arms of the King and had an inscription running round the arms which read "Counties on Delaware, 1751." The Assembly in this law provided for the validity of all laws and other acts that carried the defective seal of the colony. See Laws of the State of Delaware from 1700 . . . to 1797 (2 vols., New-Castle, 1797), I, 299-302.
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rights as subjects of the Crown of Great Britain, and the titles to their lands were not above question. When Robert Hunter Morris was appointed Deputy Governor in 1754, the royal approval of his nomination was only given after Thomas and Richard Penn, the sons of William, had signed the following characteristic declaration required of the Penn family since the year 1702:

We underwritten do by these Presents declare and promise, that the King's Royal Approbation and Allowance of Robert Hunter Morris, esquire, to be Deputy Governor of Pennsilvania and the Three Lower Counties upon Delaware River, shall not be construed in any Manner, to diminish or set aside the Right claimed by the Crown, to the said Three Lower Countys.23

The anomalous situation of Delaware before the War for American Independence may be further illustrated. When the town of New Castle was incorporated as a borough in 1724 with the power to be represented in the Assembly of the Lower Counties, its charter was issued not by the Penn family, but in the name of George I.24 Yet no other steps were taken to implement the King's authority or that of his successors over the Delaware Counties. Meanwhile the people clung to the Penn connection, their fears aroused by the renewal of the 1715 Sutherland application to receive the colony as a proprietary, and a later one by his son to this same end. Even more did they fear a strongly supported petition presented to the King in 1737 by Charles, Lord Baltimore, the Maryland Proprietor, in which he affirmed "that the Counties are admitted to have been included in the Grant of Maryland" and begged that until the matter had finally been determined "no Deputy Governor for the Three Lower Counties be appointed by commission from the Pennsylvania Proprietors, but only by the Crown."25

24 See New-Castle upon Delaware, May 28, 1724. ... Sir William Keith ... caused the King's Charter to be Publish'd for Erecting the Same into a Body Corporate and Politick ... by the name of Newcastle; ... made the following Speech to the Corporation (Philadelphia, 1724). For a copy of New Castle's charter of 1724 see R. S. Rodney, "Delaware under Govern-ern Keith, 1717-1726," Delaware History, III, 26-36.
25 Acts of the Privy Council, Col. Ser., Unbound Papers, 244. That Baltimore had the support of the Board of Trade in his position is indicated by its report that came before the Privy Council in 1735. Of the lower
To the relief of the colonists in the Lower Counties, the Privy Council took no action on the Sutherland memorials or on the Baltimore petition, while the Baltimore-Penn boundary dispute was taken to the High Court of Chancery for final adjudication, as will be stressed subsequently. It is interesting to note that in 1768, in ratifying the agreement made between the Maryland and Pennsylvania Proprietors, the Privy Council still insisted that although they did so this should not diminish "his Majesty's claim of right to the Three Lower Counties or the interests of the planters within the same."²⁶

In 1750, despite all its handicaps, Delaware had a well-rounded government. The Deputy Governor for the Lower Counties as well as for the Province of Pennsylvania, worked quite harmoniously with the House of Assembly, it would appear. The legislature—which met at New Castle during this period—was composed of eighteen members, six of them elected annually by the freemen Counties the Lords Commissioners declared: "There is no doubt . . . that the disputed lands were included in Baltimore's patent in 1632 . . . In 1633 and 1638 his right to the whole peninsula was affirmed; in 1683 and 1685 it was denied by the Privy Council. If the right is judged to remain in the Crown, the B[oard] of T[rade] recommend Lord Baltimore's pretensions on the ground of the money spent by his family in colonizing Maryland" (ibid., 236).

There seems to be little doubt that at the time the patent for Maryland was issued to Lord Baltimore it was intended—defective as knowledge was of certain geographical details—that it should extend from the south bank of the Potomac River up to the fortieth degree of north latitude, where began the possessions of the Council for New England under its grant of 1620. According to the charter, Baltimore was granted lands "in a Country hitherto uncultivated, in Parts of America, and partly occupied by Savages . . ." (see Laws of Maryland [ed. Thomas Bacon, Annapolis, 1765], for the patent in both Latin and English, following the Preface but without pagination). If the grant that it contained stopped at the thirty-ninth degree of north latitude, as later urged by Penn, it could not possibly have been interpreted so that its other territorial terms would have any meaning. By it Baltimore received all the land "which lyeth under the Fortieth Degree of North Latitude . . . where New England is terminated, . . . westward by the degree aforesaid unto the true Meridian of the Fountain of the River Pattowmack, then verging to the South unto the further Bank of said River" (ibid.). See a recent study supporting the claims of the Penn family by J. C. Hayes, "Penn vs. Lord Baltimore: A Brief for the Penns," Pennsylvania History, VIII, 278-303. For a keen analysis of the basis of the respective territorial claims of Maryland and Pennsylvania, as well as of the Lower Counties on the Delaware, see the letter of Lewis Evans to Governor Horatio Sharpe of October 20, 1753, in my Lewis Evans . . . (Philadelphia, 1939), 42-47. Evans supports strongly the validity of Lord Baltimore's claim to all the land from the south bank of the Potomac to the fortieth degree of north latitude.

²⁶Acts of the Privy Council, Col. Ser., Unbound Papers, 469 and ibid., 1766-1783, 100-108.
in each of the counties of New Castle, Kent, and Sussex. In 1741
it had ordered the printing of those laws previously passed and
approved by the Deputy Governor that it desired to preserve. They appeared in that same year under the title of Laws of the
Government of New Castle, Kent and Sussex upon Delaware.
Although only seventy-six in number, they are comprehensive in
nature and indicate that the machinery for maintaining order and
for meeting social and other problems of the age was by no means
lacking. These laws, and others passed in the eighteenth century
after the colony had separated from Pennsylvania—which were not
included in the code of 1741—were characterized by a certain
circumspection in making innovations and by their moderation,
considering the age in which they were passed. The compre-
prehensive statute passed in 1742 (15 Geo. II, c. 90. a), "An Act for
the more effectual preventing and punishing... crimes and offences
committed within this government," for example, while strength-
ening the criminal code, adhered closely—as did the criminal code
of Pennsylvania at that time—to the common, as well as statutory,
law of England. Yet the fact that no Delaware law was ever

27 Minutes of the House of Assembly of the Three Counties on Delaware
1740-1742 (first printed from the manuscript in 1929 by the Public
Archives Commission of Delaware), 29. The minutes are incomplete and
jump from October 25, 1740, to October 1741, leaving off abruptly on March
13, 1741/2.
28 For the laws of Delaware covering the eighteenth century see Laws of
the State of Delaware... 1790-1797 (ed. George Read, 2 vols., New
Castle, 1797). A broad summary of them is given by H. C. Conrad, History
of the State of Delaware, I, 83-86. Delaware had its county courts of
common pleas and criminal courts of quarter sessions. Appeals from these
courts ran to a supreme court of three judges, called justices. The justices
also had the duty of holding courts of oyer and terminer in each of the
Three Counties relating to capital felony cases. For a description of the
judicial system of Delaware in the middle of the eighteenth century see
D. F. Wolcott: "Ryves Holt, of Lewes, Delaware, 1695-1763," Delaware
History, VIII, 3-50. Holt was commissioned Chief Justice of the Lower
Counties in 1745.
29 Laws of the State of Delaware (1797), I, 235-238.
30 Under terms of the above statute it was provided, for example, that per-
sons convicted of receiving stolen goods other than slaves and livestock, were
to be whipped twenty-one lashes on the back, branded on the forehead with
the letter "R," and to make fourfold restitution; if unable to do the latter,
the person so convicted was consigned to servitude for a period of seven
years; those receiving slaves and livestock, such as horses, were to suffer the
death penalty. In 1741 Parliament had passed a statute (14 Geo. II, c. 6),
which provided that anyone who was an accessory to the stealing of sheep
was to suffer the death penalty; the following year this was extended to
cattle and horses (15 Geo. II, c. 34). In this connection it should be pointed
out that a Delaware law passed in 1719, "An Act for the advancement of
submitted to the Privy Council for approval or disapproval permitted legislation to stand that was disallowed in the case of the Pennsylvania Assembly. In 1727 a law was passed in each of the two colonies having to do with the courts of judicature, each containing a similar clause that, in the case of the Pennsylvania law, brought disallowance on the grounds that it was prejudicial to Crown revenues and would encourage illegal trade. Since the Delaware law was not submitted for review, it remained in force; in fact, when in 1760 an act was passed relating to the Supreme Court of the Lower Counties, this feature was retained.

Again, doubtless because Delaware laws were not brought to the attention of the British authorities, the Lower Counties were able to raise a barrier against the importation of people convicted of "Heinous crimes," who had been consigned by the British courts for transportation to some colony to labor there. Such a Delaware law was passed in 1749 (22 Geo. II, c. 114). It strengthened a statute of the year 1740 and required not only the payment of an import duty of £5 by a shipmaster for every such convicted person brought into the colony but also bound the shipmaster "by good security" to the sum of £50 for the good behavior during the following year of each imported convict. Further, any person living within the area governed by the Lower Counties who should purchase one of these convicts was to forfeit £10. As a result, while neighboring Maryland was flooded with transported criminals, this was not true of Delaware.

Justice and more certain administration thereof," provided that for all crimes involving treason and felony of death the common law and statutes of England should be followed. Laws of the State of Delaware (1797), I, 64-77.

For the Pennsylvania statute of 1727 see Char iter to William Penn and Laws of the Province of Pennsylvania . . . (eds. S. George, B. N. Nead, T. MacCamant, Harrisburg, 1879), 399.

For the Delaware law of 1727 relating to the judiciary see Laws of the Government of New Castle, Kent and Sussex upon Delaware (Philadelphia, 1741), 42-43.

It may be noted that in 1751, presumably influenced by the Delaware statute relating to security bonds for good behavior, the magistrates of Baltimore and Ann Arundel counties in Maryland attempted to require the posting of £50 for the good conduct of each transported convict, but they were overruled by the provincial court for exceeding their jurisdiction. See A. E. Smith, Colonists in Bondage . . . 1607-1706 (Chapel Hill, 1947),
For administrative purposes the Lower Counties were divided, not into towns or townships as was true of Pennsylvania and other colonies to the northward, or into parishes, as was the case with Maryland and colonies to the southward, but into hundreds, in line with the Anglo-Saxon subdivision of the English shires. Yet in some ways the little colony adhered to the pattern of the Pennsylvania government. The Assembly was unicameral like that of the Province. The electors of its members could qualify, as they could in Pennsylvania, either by taking the prescribed oaths or by affirmation. But here the similarity ended. In Delaware there was compulsory voting, at least after 1734, under terms of a law passed that year for regulating elections. During the administration of Lieutenant Governor Keith (1717-1726) whatever indulgence of affirmation had been permitted earlier was now denied to assemblymen, with the result that Quakers no longer sat in the Delaware legislative body. For in 1720, during the Keith regime, the Assembly passed “An Act for Regulating Elections and Ascertaining the Number of Members of Assembly” (7 Geo. II, c. 61. a.) whereby no person could act as a representative unless he were prepared to make certain “Declarations” involving a profession of loyalty to the King, of detestation of the doctrine that the Pope could free a subject of his allegiance, of rejection of the belief in transubstantiation, and finally of acknowledgment of belief in the doctrine of the Holy Trinity. Voters, officeholders, and witnesses, on the other hand, could still qualify by affirming.

The contrast between the policies of Pennsylvania and Delaware is likewise reflected in other ways. In 1740, in the midst of the war with Spain, the Assembly of the Lower Counties passed a law...
providing for the security and defence of the exposed coastal town of Lewes in face of the depredations of privateers and "pirates" in the Delaware Bay (13 Geo. II, c. 68). This law not only gave the Deputy Governor authority to keep a military watch there but also provided that all inhabitants and freemen within the limits of the town should furnish themselves with arms under penalty and that in case of an alarm, should any person refuse to attend the place of rendezvous or muster, he should forfeit £5, or, if without goods that could be levied upon, should suffer commitment in jail for a period of two months. Significantly, the act provided no exemption for those who had scruples against bearing arms.

Also in 1740 Deputy Governor George Thomas appealed to the Assembly of the Lower Counties in the name of the King to give general military support to Great Britain in the war against Spain. In response the legislature readily voted £1,000 to supply provisions and transportation for the troops that had been recruited in the Lower Counties to participate in the British campaign in the West Indies. The Quaker-dominated Assembly of Pennsylvania, in contrast, refused to place its seal of approval on even so much as defensive measures, although the Province was suffering from the depredations of the French upon its shipping and its commerce. As a result the Assembly became involved in a bitter controversy with the Deputy Governor. The following year, while Pennsylvania refused to do so, the Assembly of the Lower Counties passed a general militia law requiring under penalty all freemen between certain ages, unless exempted, to secure arms and appear at military musters. As for the Quakers

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40 Laws of the State of Delaware (1797), I. 175-179. See also footnote 9 above.
41 It seems that among the troops enlisted were a number of indentured servants. This caused dissatisfaction. Before the funds were voted the members of the Assembly were therefore assured that servants would be discharged from the service. See Minutes of the House of Assembly of the Three Counties . . . 1740-1742, 5-8.
42 For the controversy over the issue of defence see Pennsylvania Archives, 8th ser., III, 2529-2634.
43 See Minutes of the House of Assembly . . . , 1740-1742, 66 and 71. It may be pointed out that all Quakers were not opposed to defensive measures. James Logan, Secretary of Pennsylvania, and between 1731 and 1734 Chief Justice of the Supreme Court, although a member of the Society of Friends stood for defensive measures and in 1741 suggested that those of the Society who could not conscientiously vote for such measures should not seek election to the Assembly. For his statement see Pennsylvania Magazine of History and Biography, VI, 402-411. In like manner, Chief Justice Samuel
in the Three Counties, under the terms of this act they were relieved of military service, but only on payment of two shillings sixpence to the poor fund.\textsuperscript{44}

Later, in the course of the Great War for the Empire between the years 1754 and 1763, the little colony was to participate fully in military operations, with the result that it received a generous portion of the funds granted by Parliament to certain of the colonies for service during the years 1758, 1759, and 1760. These reimbursements were to help maintain the colony’s excellent financial credit.\textsuperscript{45} In this connection it may be pointed out that, as was true of the other colonies, Delaware had a London agent in the person of David Barclay, and it was he who received and transmitted these reimbursement funds.

The readiness of the government of Delaware to support the mother country in time of war brought even further rewards. When addressing its Assembly in 1740, Deputy Governor Thomas did not fail to mention that in writing to the Secretary of State for the Southern Department, the Duke of Newcastle, he had more than once represented in the most favorable way the dutiful and loyal behavior of the people of the colony and added: “I doubt not but it will be hereafter remembered to the advantage of this Government.”\textsuperscript{46} In other words, from the viewpoint of the imperial administration, Delaware—unimportant as it was in comparison to most of the North American colonies both politically and economically—was considered to be a good colony and worthy of encouragement and support. It received this support in 1750 when the claims of Lord Baltimore to it were rejected and a most favor-

Chew of Delaware, also a Quaker, in November of that same year while addressing a grand jury strongly supported the idea that man has the natural right of self defense. See \textit{The Speech of Samuel Chew, Esq. . . .} (Philadelphia, 1741).

\textsuperscript{44} L. de Valinger, Jr., \textit{Colonial Military Organization in Delaware, 1638-1776} (Wilmington, 1938), 30-37.

\textsuperscript{45} See \textit{Laws of the State of Delaware} (1797), I, 395 and 397 and \textit{Votes and Proceedings of the House of Representatives . . . at an Assembly held in New-Castle . . . 1762} (Wilmington, 1930), 7; see also R. S. Rodney, \textit{Colonial Finances in Delaware} (Wilmington, Delaware, 1928), 37-40. An unsuccessful attempt was made in the Assembly to utilize a part of the funds allotted to Delaware to reimburse those whose servants had been enlisted in the armed forces and had served during the war outside of the colony. Instead it was agreed that this sum be used to sink £7,000 of the bills of credit issued in 1759. \textit{Votes and Proceedings}, 12-13.

\textsuperscript{46} Deputy Governor Thomas to the Assembly, October 21, 1740, \textit{Minutes of the House of Assembly . . . 1740-1742}, 13.
able interpretation of the semicircular limits of New Castle County was rendered at the expense of Maryland in a decision of the High Court of Chancery by Lord Chancellor Hardwicke. The decision of this court also came closer than any previous pronouncement by an authoritative body in Great Britain to defining the relationship of the colony to the Penn family and the Crown. It took the position that the settling of the Lower Counties by William Penn was the equivalent of a valuable purchase of them, that the relation of the Duke of York to Penn was to be likened to that of a trustee for the grantee, and that when the Duke became James II this trusteeship for Penn was conferred on the Crown.

Despite this decision the Penn title to Delaware remained clouded and defective. Further, the family seems to have profited very little financially from its claim to the Lower Counties. While quit-rents were expected from the lands, there was so much uncertainty in the minds of even those landowners who were prepared to pay them—especially in view of the Baltimore family's proprietary claims to these same lands—that little if any revenue was received from this source before 1750, with the result that vast theoretical arrears in such rents accumulated. When the decision in 1750 of the High Court of Chancery seemed to have dispelled

47 For the Chancery decision of 1750 relative to the Baltimore-Penn dispute see Francis Vesey, Cases Argued and Determined in the High Court of Chancery ... from the year 1746/7 to 1755 (2 vols., 3rd edn., London, 1788), I, 452-455; for the breviate in Chancery filed by John Penn, Thomas Penn, and Richard Penn, plaintiffs, in 1735 and amended in 1736, see The Breviate of the Boundary Dispute between Pennsylvania and Maryland, Pennsylvania Archives, 2nd ser., XVI (the entire volume); see also Report on The Resurvey of the Maryland-Pennsylvania Boundary ... Authorized by the Legislature of Maryland and Pennsylvania (Harrisburg, 1909), Part III, "History of the Boundary Dispute ..." by E. B. Mathews, and Part IV, "Manuscripts and Publications Relating to the Mason Dixon Line and other Lines in Pennsylvania, Maryland and the Virginias Involving the Charter Rights of Lord Baltimore and the Penns," by E. L. Burchard, and especially 170-175.


49 See B. W. Bond, Jr., The Quit-Rent System in the American Colonies (New Haven & London, 1919), 161-173. When the Duke of York, upon receiving a grant of the Lower Counties from Charles II, confirmed the land titles of the Dutch and Swedes, a small quit-rent of a bushel of wheat for each 100 acres of land was specified, as a rule. In the early part of the eighteenth century Penn changed the payment on further grants to a penny an acre.
this uncertainty, the fact that there were these large arrearages in the quit-rents, which could only be liquidated with great difficulty and hardship, led the landowners by and large to ignore the obligation. This attitude continued until the War for American Independence settled the matter. The Reverend Israel Acrelius, who had lived for some years from 1749 onward among the Delaware people, stressed the fact that even in the late 1750's, at the time he wrote, there was such confusion over land titles that quit-rents were not paid. He stated:

... some have their deeds from the Duke of York, which are safe enough. Another party holds from Penn, another from Lord Baltimore, and some from both. Meanwhile no land-rents have been paid since the year 1715, nor have any been demanded.60

Following the example of other colonies to the northward, Delaware in 1723 began the issuing of bills of credit31 and loaned this paper money through offices set up in each of the Three Counties. Fortunately, the prudent method practiced by Pennsylvania and New Jersey was used in administering these funds. Sums up to £60 would be loaned to landowners who would give first mortgages and would agree to pay interest at five per cent. They were expected to discharge the debt by eight annual payments.52 By adhering strictly to the plan of liquidation of the loan, the money remained in good repute throughout the remainder of the colonial period, although from 1729 onward the period of final redemption of the loans was extended from eight to sixteen years. That these bills of credit stood high is indicated by the fact that in 1730 it took but £150 in these bills to pay for £100 sterling and in 1739 it took only £134.10 to secure the same amount of sterling; in 1749 it required £159 and in 1761, £172. This was small depreciation indeed when compared to the great depreciation that took place in the bills of credit of Rhode Island during the same period.53 Before 1750 some £67,000 in bills of credit had been

52 See the Pennsylvania Gazette for February 9, 1730/1.
53 The value of the Rhode Island bills of credit by 1762 had sunk to a point at which they were worth in exchange less than one thirtieth of the English equivalent in pounds and shillings.
issued, but, since much of it had been cancelled, only a portion of this total was in circulation by that year. The interest on these loans was used as the chief source of financing the government of the colony. One may therefore conclude that, as was true of Pennsylvania and New Jersey, public burdens were very light in the Lower Counties in the middle of the eighteenth century. In fact, no taxes at all seem to have been levied in the Territories at this period, even at the local level.

In summing up the picture of the Three Lower Counties on the Delaware it is clear that we are concerned with a colony largely occupied with the cultivation of land, although many of the people of Lewes, located just north of Cape Henlopen, had long earned a livelihood as expert pilots for vessels entering the Bay. The Reverend Andrew Burnaby, in referring to his trip from Newcastle to Philadelphia, declared: "The country . . . bore a different aspect from anything I had hitherto seen in America. It was much better cultivated and beautifully laid out in fields of clover, grain, and flax." In Delaware's fertile but restricted area—which did not include much of rather sterile Sussex County—large crops of cereals, fruits, and vegetables were grown and livestock flourished in the pastures. The market for these and other products was chiefly Philadelphia.

By 1754, according to Acrelius, New Castle, which had once

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[24] In 1739, according to Deputy Governor Thomas, of £35,000 issued by Delaware before that year, only £17,250 was still in circulation. See Governor Thomas to the Board of Trade, December 1739, P.R.O., C.O. 5:1269.
[26] County taxes could be levied to maintain public facilities such as the courts, jails, and workhouses and to pay bounties for the destruction of wolves, crows, and blackbirds. See "An Act for raising county-rates and levies" (16 Geo. II, c. 102, 1743), Laws of Delaware (1797), I, 257-267. But since local officials were chiefly paid by fees and since the counties derived a revenue on the loan of bills of credit allocated to each county, the need to pay taxes did not exist in 1750. See M. M. Daugherty, Early Colonial Taxation in Delaware (Wilmington, 1938), 43.
hoped to rival or even surpass Philadelphia as a trading center and had been a major port of entry for immigrants, had sunk to comparative unimportance. In 1754 the city of Philadelphia could boast at least 2,300 houses with 117 "large sailing-vessels in the harbour at the same time," whereas the town of New Castle at the same period, although still the capital of the Lower Counties, could claim but 240 houses and was the port of call for few if any large vessels. In fact, Wilmington, its neighbor, called by Burnaby "a very pretty village," located five miles to the north at the junction of Brandywine Creek with Christina River and adjacent to the Delaware River, was by 1754 somewhat larger, with 260 houses and a number of seagoing vessels of its own. It, rather than New Castle, was destined to become the active shipping center of the Lower Counties and ultimately to assume real importance in America in the field of industry. As early as 1723 an iron forge had been constructed on the so-called Welsh Tract near the Christina and in 1726 the Abbington Iron Works had been built in this same area at Iron Hill by Pennsylvania ironmasters. Although these ventures had come to an end by about 1736, the water power of the Brandywine and other tributaries of the Christina, such as Mill Creek, and the shipping facilities afforded by the Christina and the Delaware brought about the location there of sawmills as well as gristmills. Then in 1740 came the building of the first ocean-going vessel at docks on the Christina where a town had arisen which, first called Willingtown in 1731, was renamed Wilmington eight years later by the Penn family when its inhabitants were given a borough charter.

59 When Deputy Governor Gordon wrote to the Board of Trade on March 15, 1730/1, in answering its queries, he stated that the town of New Castle was the most considerable one in the Lower Counties and had 100 houses. See Shelburne Papers, 45:205-211, Clements Library.

60 Andrew Burnaby, op. cit., 43. In 1744 Dr. Alexander Hamilton found Wilmington compactly built and about the size of Annapolis. See Carl Bridenbaugh, Gentleman's Progress. The Itinerarium of Dr. Alexander Hamilton (Chapel Hill, N. C., 1948), 15.

61 Israel Ackley, op. cit., 142 and 144-145.


64 Benjamin Ferris, A History of the Original Settlements on the Delaware... (Wilmington, 1846), 192-232. For the construction of ships at Wilming—
The original founders of Delaware—the Dutch, Swedes and Finns—by 1750 were rapidly becoming assimilated into the English pattern of living. For example, the Swedish-speaking Acrelius, who came to Christina Parish in 1749 to take up the ministry in the Swedish Lutheran Church there, found it necessary to make the effort to preach in English, since so many people who came to hear him could not easily understand Swedish. In fact, these people of Dutch, Swedish, and Finnish ancestry found themselves, in the course of the eighteenth century, living in the midst of many others of divergent ancestry who had found their way to the Lower Delaware and had established homes and farms: there were English and Welsh Quakers, Ulster-Scot Presbyterians, English Anglicans and some Irish Roman Catholics, all of them speaking the English language. That in the 1720's large numbers of people from Ireland certainly landed at New Castle and Lewes, even if they did not remain within the Lower Counties, is indicated by the statement that between Christmas 1728 and Christmas 1729, there were landed in the "Newcastle Government . . . about 4500 Passengers and Servants, chiefly from Ireland." The numerical strength of each of the different national groups within the Three Counties is probably impossible to indicate with accuracy. However, according to the listing of family names for the census of 1790, sixty per cent appeared to be of English stock;
over fourteen per cent of Dutch, Swedish, or French ancestry; eight per cent of native Scottish, over six per cent of Ulster Scottish, over five per cent of native Irish, just over one per cent of German, and four and one half per cent unassignable. It seems to be clear that members of the Society of Friends—whose number had been increasing throughout the eighteenth century despite the political disabilities governing their occupation of seats in the House of Assembly—were very numerous in New Castle County by 1770 and especially in Wilmington. The Quaker Joseph Oxley, speaking of Quaker activity in this town, declared in 1770: “Attended a very large meeting. The chief part of the inhabitants of this town, which is a very improving one, are under our denomination.”

In Kent and Sussex Counties at the same period it was asserted that “more than half the people were of the Established Church of England.” In sparsely-settled Kent County in 1743 there were said to be some 1,020 men, among whom were 484 Anglicans, 397 Presbyterians, and 56 Quakers. In 1751, the Reverend Mr. Neill, the Anglican pastor at Dover, county seat of Kent County, declared in a letter to the Secretary of the Society for the Propagation of the Gospel in Foreign Parts, that in this county there were 1,320 taxpayers or families and that those who professed themselves of the Church of England were about equal in number to the “Dissenters of all sorts.”

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67 Quoted by R. M. Jones, The Quakers in the American Colonies (London, 1911), 524. In the above connection it should be pointed out that a wealthy and public-spirited Quaker, William Shipley, was chiefly responsible for the creation of the borough of Wilmington; it was he also who erected the first market building in 1736 and who took the leading role in the building of the first ocean-going vessel, The Wilmington, which sailed to Jamaica in 1741 loaded with flour, ship bread, barrel staves, barreled beef and other commodities. See Benjamin Ferris, op. cit., 210-231. Further, it was in Shipley’s house that the first Quaker meetings were held in Wilmington in 1736. See Friends in Wilmington, 1738-1958, 34, and, in the same volume, the article by Alice A. Johnson, op. cit. For Welsh Anglicans and Welsh Baptists in New Castle County see N. R. Burr, op. cit., 117-120.


69 Historical Collections Relating to the American Colonial Church (ed. W. S. Perry, 5 vols., Hartford, 1870-1878), V, 97-98.
The total population of Delaware in 1750—according to a recent study made by Dr. Stella H. Sutherland, a leading authority on population distribution during the colonial period—was 28,704 of which 1,496 were Negroes. In 1760 the total was 33,250 of which 1,733 were Negroes. In 1734 Richard Penn stated in a petition to the King in his own name and that of his brother Thomas that there were 70,000 inhabitants living within the Three Counties. Yet, when the first actual census was taken in 1790, there were only 59,096 people, including 8,887 slaves.

Among the white people of Delaware there were apparently no extremes of poverty or wealth in 1750, nor was there to be found among them the degree of intense local pride and loyalty that characterized the inhabitants of some of the other colonies by this time. With the political status of their colony still shrouded in uncertainty, the people of Delaware were able at least to feel that, whatever the future held in store for them in the way of a permanent political arrangement, as British North Americans they were embraced within the bounds of the Empire and could rely on the protection that this afforded them. Nevertheless, their geographical location on Delaware Bay, strategic as it was, left them highly vulnerable to enemy attack. This fact seems to have colored their attitude toward supporting the military activities of the mother country. By 1750 there is evidence of a growing homogeneity of thought among the diverse groups within the colony that led them to support militia acts, to maintain a sound financial system, and to unite in building a flourishing rural economy. This they achieved, despite the overshadowing of their colony by more powerful neighbors, Pennsylvania and Maryland, and the fact that their lands were for so long the object of the rival claims of the Penn and Baltimore families.

Dr. Sutherland, author of the standard work, Population Distribution in Colonial America (New York, 1936), has prepared a table, “Estimated Population, 1610 to 1780,” covering all the colonies. The figures for Delaware are included. The table will be embodied in a volume, Historical Statistics of the United States, Colonial Times to 1957, which will be issued shortly by the Bureau of the Census. This and other material was kindly placed at the writer’s disposal by Professor Lawrence A. Harper of the University of California, who has been assisting the Bureau in preparing this volume for publication.


See E. B. Greene and Virginia D. Harrington, American Population before the Census of 1790 (New York, 1932), 121.