

New Jersey: The Unique Proprietary

NEW JERSEY, IT HAS BEEN SUGGESTED, has received little attention from historians because it was an "average" colony lacking in "distinctive characteristics."¹ Pausing only long enough to classify New Jersey as a "middle colony," many historians have then gone on to study its more interesting neighbors. But New Jersey has had an unusual and important political and legal history. In the colonial period it underwent a metamorphosis from a feudal institution to a corporation, a transformation unique in North America and one which prefigured modern business structures. Further distinctions also differentiate New Jersey from the other proprietary colonies it superficially resembled and show that it began and evolved in unique ways.²

The original English grant for the colony in 1663 came from the Duke of York, not the King. The question of whether the Duke had the same power to confer political control as he had to convey a land title to the early proprietors marked politics in New Jersey from its inception. The ultimate resolution of the question split control of the land from title to the government. Before the resolution, the difficulties the proprietors encountered in exercising governmental authority in the period to 1702 were compounded by a series of splits among the proprietors themselves. Although New Jersey was one of several multiple proprietorships, shares in it were fractionalized to an

An earlier version of this paper was presented before the Seminar for New Jersey Historians sponsored by the New Jersey Historical Commission and the Department of History, Princeton University. I would like to thank the New Jersey Historical Commission for a research grant, Rutgers University Libraries for research leave, Richard P. McCormick and John Murrin for pointing out things I had not considered, and Jonathan Lurie for reading drafts.

¹ Richard P. McCormick, *New Jersey from Colony to State* (Newark, 1981), x. In contrast, John Pomfret (*Colonial New Jersey: A History* [New York, 1973], xvi) pointed to New Jersey as "unique," citing as justification its divided proprietorship, the proprietors' ownership of the soil only, and the complex land system.

² For a comparative discussion of the proprietary colonies, see Maxine Neustadt Lurie, "Proprietary Purposes in the Anglo-American Colonies: Problems in the Transplantation of English Patterns of Social Organization," Ph.D. dissertation, University of Wisconsin, 1968.

extraordinary degree, a fragmentation exacerbated by the way land was granted as dividends to these fractional holders. In addition, New Jersey was the only proprietary colony broken into two—East and West Jersey—with ownership of each half vested in different groups. The boards of proprietors created in the seventeenth century have survived to the present, but they changed from groups of feudal lords to the precursors of modern corporate boards.

New Jersey was initially part of the grant given to James, Duke of York, by his brother Charles II on March 12, 1664.³ Later that year, the Duke conveyed part of his territory to Sir George Carteret and Lord John Berkeley, two friends and supporters from the interregnum. Berkeley sold his half in 1674 to John Fenwick and George Byllynge, two Quakers whose involved affairs and subsequent disagreements complicated the colony's early history.⁴ In 1676, Byllynge, the Quaker trustees handling the dispute between Fenwick and Byllynge, and Carteret signed a Quintpartite Agreement dividing the colony into East and West Jersey. George Carteret died in 1680; two years later, his widow sold what had by then become East Jersey to a consortium of twelve members, a group which soon doubled its membership. The twenty-four East Jersey proprietors were predominantly Quaker, and approximately half were Scots. In 1687 Byllynge's heirs sold his West Jersey shares to Dr. Daniel Coxe, an avid English speculator, and in 1691 Coxe sold most of his shares to the West Jersey Society, an investment company.

All of New Jersey's proprietors—from Berkeley and Carteret to the West Jersey Society—assumed that they had purchased the right to the government as well as the land of their colony.⁵ But the original

³ This grant included territory that sprawled from Maine to New Jersey and incorporated Long Island, Martha's Vineyard, and Nantucket Island.

⁴ Byllynge was in bankruptcy and later claimed Fenwick's involvement was as a trustee to protect Byllynge, the real owner. William Penn arbitrated the dispute, and Quaker trustees were appointed to handle Byllynge's affairs. They divided the proprietorship into one hundred shares, awarding ninety to Byllynge and ten to Fenwick.

⁵ The Quakers said they had been "induced" to buy Berkeley's half by the "powers of government" included in the conveyance "because to all prudent men the government of any place is more inviting than the soil for what is good land without good laws." They

grant, a re-conveyance from the Duke of York, did not specifically mention powers of government. The proprietors' assumptions about their right to rule were early challenged by jealous colonial officials in New York. The Province of New York had lost some of its best lands and customs revenues to the newly established Jersey colony; New York officials worked aggressively in an attempt to squash an independent government in New Jersey.⁶ The power issue was not completely resolved until the Jersey proprietors surrendered their charter on April 15, 1702.

Further confusing matters was the Dutch re-capture of New York and New Jersey, lasting from July 1673 until November 1674. When the Treaty of Westminster returned the land to Charles II, the King issued a confirmatory grant to the Duke. The Duke, in turn, issued to Carteret for East Jersey a brief release, which only mentioned the right to the soil, but no release for West Jersey was issued to Byllynge and Fenwick. It was not until 1680 that the Duke confirmed the sale of West Jersey to the Quakers.⁷ The Dutch reconquest and subsequent English regrants served to confuse further the situation because, once again, the new documents did not spell out the proprietors' rights in governing Jersey.

Still other problems emerged. Clashes between New York and New Jersey authorities, along with pressure on the Duke of York by his friend William Penn, led the Duke in 1680 to submit the legal questions around the Jersey colony to Sir William Jones, an eminent English lawyer, for his opinion. Jones found that New York officials did not have the authority to collect customs duties in New Jersey, inferring from this that New Jersey proprietors had the right to govern their colony. The Jones Decision clarified, for the moment at least,

wanted the government to "assure people of an easy and free and safe government" without which settlers would not come "for it would be madness to leave a free and good and improved country, to plant in a wilderness." Letter from the West Jersey Trustees to the Duke of York's Commissioners, 1680, quoted in John Clement, "William Penn and his Interest in West New Jersey," *Pennsylvania Magazine of History and Biography* 5 (1881), 324; Samuel Smith, *History of New Jersey* (Burlington, NJ, 1765), 117-18.

⁶ See the discussion of the problems of John Fenwick and Peter Carteret which follows.

⁷ In 1683 he confirmed the sale from Carteret to the twenty-four proprietors.

New Jersey's right to an independent government, but it did not resolve who could exercise this right in West Jersey.⁸

Acting upon the Jones Decision, the Duke—perhaps inadvertently—identified only Edward Byllynge by name in confirming the political rights of the West Jersey proprietors. Byllynge asserted sole right to the government. Resident proprietors disputed this claim but lost the argument before Quaker arbitrators in England in 1684. In 1687 Byllynge's heirs sold the right to the government to Dr. Daniel Cox, who later sold it to the West Jersey Society. Thus, in West Jersey title to the land and title to the government were clearly separated. This did nothing to clarify political relationships among colonists, New York officials, or the English government. The disagreements and frequent transfers of political rights in West Jersey did not help the proprietors of either section who were trying to validate their claims to the government of the Jerseys in the 1690s.

Confusion expanded when the proprietors of both East and West Jersey agreed, under pressure, to surrender their governments to James II so that the province could be included in the Dominion of New England. With the Glorious Revolution, proprietary government returned to both East and West Jersey in 1692, but the political dissension remained.

After 1696 English officials deliberately contributed to a confused state of affairs by forcing the proprietors to surrender their governments to the Crown. They did this by refusing to grant approbation to proprietor-selected Governors (Jeremiah Basse, then Andrew Hamilton), approbation required under the Navigation Act of 1696. This led the colonists to challenge the legitimacy of those governors, a challenge that undermined the proprietors' authority and contributed to disorder and confusion in both Jerseys from 1698 to 1702. The Board of Trade evidently believed that approving the governors would recognize the proprietors' right to govern. This action was part of a campaign against all proprietary colonies in a concerted effort to tighten control over the empire as a whole. New Jersey, as the weakest colony, gave way first. Although some of the same questions were raised about Penn's right to govern Delaware (as part of Pennsyl-

⁸ This was not a definitive resolution of the question, because English officials later maintained that the Duke could not convey his political rights to another party.

vania), he and his heirs ultimately withstood the challenges. In the end, the significant distinction is not that New Jersey relinquished power that Pennsylvania did not, but that threats to the New Jersey proprietors' right to govern surfaced first, lasted longest, and were most profound.

Much of the political disorder and confusion characterizing New Jersey under the proprietors was a direct consequence of the proprietors' questionable right to govern. Other proprietary colonies also experienced frequent political disputes and disorder. In spite of New Jersey's label as the "rebellious" colony,⁹ several of the proprietary colonies were in constant uproar. Maryland was in almost perpetual turmoil during the seventeenth century. In 1681 Lord Culpeper, Governor of Virginia, wrote that his neighboring colony was "in torment" and "in very great danger of falling to pieces."¹⁰ Writing about Virginia, Edmund Morgan referred to "lazy Englishmen."¹¹ They might also have been characterized as unruly and difficult to govern. There were rebellions in both North and South Carolina. New Yorkers refused to pay taxes and duties in the 1680s unless they had an assembly, while Penn's settlers gave him many difficult times. William Penn thought his settlers quarrelsome, wicked, "disingenuous," and "unsatiable."¹² These general complaints about the "nature" of English colonists were most pronounced in the proprietary colonies.¹³

⁹ John Pomfret, *The Province of East New Jersey, 1609-1702: The Rebellious Proprietary* (Princeton, 1962).

¹⁰ Quoted in Michael G. Hall et al, *The Glorious Revolution in America: Documents on the Colonial Crisis of 1689* (Chapel Hill, 1964), 143.

¹¹ Edmund Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York, 1975); chapter 3.

¹² Penn to James Harrison, November 20, 1686, Papers of David Lloyd and others Relating to Pennsylvania (materials from the Pennsylvania Historical Society microfilmed and presented to the Wisconsin Historical Society by Roy Lokken); Penn to [?], April 8, 1704, *ibid.*; Penn to Logan, May 18, 1708, *Penn Logan Correspondence, Memoirs of the Historical Society of Pennsylvania*, (Philadelphia, 1872), 10, 271. (Hereafter cited as *Penn-Logan Correspondence*.)

¹³ Richard Dunn makes this clear by illustrating the difficult time both proprietary and royal governors experienced in the West Indies colonies. *Sugar and Slaves: The Rise of the Planter Class in the English West Indies, 1624-1713* (New York, 1972). Even within England it was difficult for authorities to exercise their power in certain rural areas. See Robert W. Malcolmson, " 'A set of ungovernable people': the Kingswood colliers in the eighteenth

In New Jersey, conflicts erupted in the 1670s over quitrents, and in the 1690s, in both East and West Jersey, over quitrents and the qualifications and approvals for the office of governor. Disputes over rents and land titles along the borders with New York (as well as between the two sections of New Jersey itself) punctuated the 1740s and 1750s. Aggravating the disagreements among proprietors and settlers were questions as to who really held the right to govern and boundary disputes which jeopardized land titles.

Other colonies witnessed political battles, unrest, and rebellions, but only New Jersey had two of its colonial governors literally dragged from their beds and carted off to prison in another colony (New York) for having had the audacity to govern. Imprisonment was the fate of both Philip Carteret of East Jersey in 1675 and John Fenwick of West Jersey in 1677 and 1678. Carteret indignantly wrote that Sir Edmund Andros of New York had

sent a Party of Soldiers

to fetch me away Dead or alive, so that in the Dead Time of Night broke open my Doors and most barbarously and inhumanly and violently halled me out of my Bed, that I have not Words enough sufficiently to express the Cruelty of it; and Indeed I am so disabled by the Bruises and Hurts I then received, that I fear I shall hardly be a perfect Man again.¹⁴

century," in John Brewer and John Styles, eds., *An Ungovernable People, The English and Their Law in the Seventeenth and Eighteenth Centuries* (New Brunswick, NJ, 1980), 85-86. This may indicate that disorder and rebelliousness were endemic to the peripheral areas of the state and empire. That it was more characteristic in the proprietary colonies is shown by the fact that of eighteen "rebellions" in America between 1645 and 1760, thirteen occurred in the proprietaries, five in royal colonies, and none in the charter colonies. (For a list of the eighteen, see Richard M. Brown, "Violence and the American Revolution," in Stephen G. Kurtz and James H. Hutson, *Essays on the American Revolution* (New York, 1973), 85-86; the calculations are mine.) An 1701 pamphlet noted that "in some of the Proprieties, the Hands of the Government are so feeble, that they can not protect themselves against the Insolencies of the Common People, which makes them very subject to Anarchy and Confusion." Louis B. Wright, ed., *An Essay Upon the Government of the English Plantations on the Continent of America* (repr., San Marino, CA, 1945), 37.

¹⁴ In William A. Whitehead, ed., *Documents Relative to the Colonial History of the State of New Jersey*, 1 (Newark, 1880), 316. (Hereafter cited as Whitehead, *Documents Relative to New Jersey*.) See also Edwin Hatfield, *History of Elizabeth, New Jersey* (New York, 1868), 189-95. Andros acted to prevent establishment of New Jersey's right to an independent government. He demanded that Carteret cease operating a separate government, and then he had Carteret tried in New York for resisting this order. The jury verdict found Carteret not guilty, but the court ordered him to desist anyway.

John Fenwick founded the town of Salem and asserted his right, as a West Jersey proprietor, to govern the new settlement. As a result, he complained,

my house was beset, my door broken down, and my person seized on in the night time by armed men sent to execute a paper ordered from the Governor of New York, to whom I was sent prisoner in the depth of winter by sea—his order being to bring me in dead or alive—where he tried me, himself being judge, keeping me imprisoned for the space of two years and about three months.¹⁵

Only in New Jersey, too, can one find the governor of one colony seizing a ship, half of which was owned by the governor of another colony. Thus, Lord Richard Bellomont of New York seized the *Hester*, half of which Jeremiah Basse of East Jersey owned, in a dispute over the collection of customs duties. The dispute ultimately involved the question of the right to New Jersey's governments. It ended with the surrender when the proprietors agreed to give up their "pretended" rights to govern.¹⁶

New Jersey's cloudy political situation claimed another casualty. The Jersey proprietors—like those in Maryland, New York, Pennsylvania, and Carolina—planned that much of their population would

¹⁵ In Pomfret, *Province of West Jersey*, 84. Fenwick was tried in New York in 1677 but because his deeds to West Jersey were held in England by John Eldridge and Edmund Warner (to whom he had mortgaged his property), he could offer no proof of his position. He was fined by the court and required to give security for good behavior. He was arrested again in 1678 and held in New York. In 1683 William Penn bought out Fenwick's interests and claims; shortly afterwards New Jersey political rights were recognized as inhering in Edward Byllynge.

¹⁶ The dispute started in 1693 over the right of the New Jersey proprietors to create ports free from New York jurisdiction and customs collections. After 1696 East and West Jersey proprietors petitioned the Board of Trade to recognize New Jersey's rights to free ports. In 1697 the Board agreed there were no regulations against New Jersey ports. But later the same year Attorney General Sir Thomas Trevor and Solicitor General Sir John Hawles ruled that because the power to designate ports was not given to the Duke of York, he could not have transferred this power to the New Jersey proprietors. The proprietors proposed a test case; the Board of Trade then moved to tie the right to ports to the right to the government. The proprietors feared they might lose such a test, refused the arrangement, and turned to devising an acceptable surrender agreement. In a final ironic development, the *Hester Case*, which served as the test the proprietors had decided to avoid, ended in Basse's favor. The Chief Justice stated he was not convinced New York had jurisdiction over New Jersey. But it was too late; the proprietors had already conceded.

be concentrated in cities, designating some of them centers for government and trade. The West Jersey proprietors hoped to make Burlington such a "chief city"; the East Jersey proprietors in 1682 declared their intention to build a "principal town" at Perth Amboy "which by reason of situation must in all probability be the most considerable for merchandise, trade and fishing, in those parts."¹⁷ With the exception of Philadelphia, these planned, proprietary "cities" remained little more than villages throughout the colonial period.

This was especially the case in New Jersey, where even in 1797 there was "no town of very considerable trade, size, or importance."¹⁸ Officials of the colony of New York—who sought to prevent the development of ports in neighboring New Jersey before 1700—were partially responsible for this state of affairs; so too was the tendency of the more fully developed cities of New York and Philadelphia to drain trade and commerce from the colony. But other reasons, unique to New Jersey, led to the failure of urban development. Colonial cities were ports, centers designated to receive imports and collect customs; New Jersey's ports fell victim to the proprietors' questionable rights to govern and to collect customs. By the time New Jersey became a royal province her cities could not compete successfully with firmly established ports to the north and south.

New Jersey proprietors were not unique in wanting to profit from their lands. But their extraordinarily long land tenure was unusual, and it had far reaching consequences for the colony and state. The Jersey proprietors obtained their grants or purchased their shares because they expected profit from land sales or rentals, from produce or rent from proprietary farms, and, on occasion, from trading or

¹⁷ *Brief account of the province of East-Jersey, in America, published by the present proprietors, for the information of all such persons who are or may be inclined to settle themselves, families and servants in that country* (Edinburgh, 1682), in Smith, *History of New Jersey*, 542.

¹⁸ Robert Proud, *History of Pennsylvania* (Philadelphia, 1797), 1, 166. In 1740, Lewis Morris wrote to the Duke of Newcastle that Perth Amboy and Burlington "are both Inconsiderable places and like to remain so, neither of them fit for the seat of government, nor so convenient situated for that purpose as some others." William A. Whitehead, ed., *The Papers of Lewis Morris, Governor of the Province of New Jersey, from 1738 to 1746* (New York, 1852), 121.

manufacturing enterprises. Although specific figures are relatively scarce, it seems clear that in New Jersey as elsewhere colonization proved to be an expensive outlay offering few immediate returns. Only shares kept until the second or third generation realized significant returns. As in Maryland and Pennsylvania, these long-range profits generally derived from increased land values as the colony grew and matured.

Early land sales and rentals did not produce much money for a number of reasons. "Sales" prices and rents were difficult to collect; proprietary agents often kept inaccurate records; and money itself was scarce.¹⁹ In addition, the legal mechanisms for enforcing land contracts were inadequate. In some cases, the assemblies declined to create such procedures; in others, local juries refused to issue judgments. Zealous proprietors—like those in East Jersey—faced a hostile populace whose animosity increased with rent collection efforts. William Penn in 1707 advised James Logan, his agent, to "cherish or threaten tenants as they give occasion for either," but neither cherishing nor threatening availed much in Pennsylvania, New Jersey, or other proprietary colonies.²⁰

Settlers also avoided land payments by squatting or by deliberately neglecting to take out proprietary titles and pay rents. In East Jersey towns, some settlers claimed that titles from Indians (Newark) or titles obtained prior to the arrival of proprietary agents (Elizabeth-town) were sufficient and that, under these titles, payments to the proprietors were not required. Boundary disputes served as another excuse for nonpayment; residents argued that these disputes "rendered them unsafe in paying their Quit rents."²¹ New Jersey was not alone in these difficulties. Townspeople on Long Island insisted that Indian titles pre-dating the Duke of York's patent exempted them from his rents, while settlers in Pennsylvania and Maryland used boundary disputes to justify withholding payments.²²

¹⁹ In the early years, proprietors often "sold" land and reserved a quitrent; in this case, the annual rents were lower than those on land which was simply rented.

²⁰ Penn to Logan, 1707, *Penn-Logan Correspondence*, 10, 229.

²¹ Remonstrance of Assembly to Governor Gookin, May 7, 1709, *Minutes of the Provincial Council of Pennsylvania*, *Colonial Records of Pennsylvania* 2 (Philadelphia, 1852), 455.

²² J.R. Brodhead, *History of the State of New York 1609-1691* (New York, 1871), 2, 71,

Nor was the problem of trying to obtain returns from land sales and rents restricted to the early years of settlement. Controversy over rents contributed to disorder in New Jersey in the 1740s and 1750s. Continued difficulties in collecting rents led the East Jersey proprietors to liquidate their holdings after the American Revolution.²³ James Parker, the most active member of the East Jersey Board of Proprietors in this period, complained that constant vigilance was necessary to obtain returns.²⁴ Again the New Jersey experience was not unusual; at the time of the Revolution arrears in Pennsylvania were enormous.²⁵

In fact in East Jersey and elsewhere the proprietors' right to any rents was questioned. Thus Lewis Morris argued at one point that the proprietors' "quit rents are an unjust tax upon us and our heirs forever," while Maryland Protestants at the time of the Davyes-Pate uprising in 1676 maintained that they had transported themselves "into this Country, purchased the land from the Indians with loss of Estate and many hundred mens lives (yea thousands)," and had defended themselves, "whereby our land and possessions are become our Owne."²⁶

109; Alexander Flick, *History of the State of New York* (New York, 1933), 2, 85-86; J.M. Neil, "Long Island, 1640-1691: The Defeat of Town Autonomy," M.A. thesis, University of Wisconsin, 1963, 62-64, 70, 86; Jerome Reich, *Leisler's Rebellion: A Study of Democracy in New York 1664-1720* (Chicago, 1953), 13-14, 23.

For problems with rents in Pennsylvania and Maryland, see *Penn Logan Correspondence*, 9, 102, 262, 365-66; 10, 25, 50, 123, 303; *Papers Relating to the Provincial Affairs of Pennsylvania, Pennsylvania Archives* s.2 v.7 (1878), 65; Beverley W. Bond, *The Quit-rent System in the American Colonies* (New Haven, 1919), 161-62.

²³ Gary Horowitz, "New Jersey Land Riots 1745-1755," Ph.D. dissertation, Ohio State University, 1966; Thomas L. Purvis, "Origins and Patterns of Agrarian Unrest in New Jersey, 1735 to 1754," *William and Mary Quarterly* 39 (1982): 600-27; Introduction in Maxine N. Lurie and Joanne R. Walroth, eds., *The Minutes of the Board of Proprietors of the Eastern Division of New Jersey from 1764-1794*, v.4 (Newark, 1985), xxi-xlii.

²⁴ Parker wrote "Where ever I turn my Eyes as a Landlord or as a Proprietor of Lands in Common or unlocated the greatest Destruction presents itself and such a licentious Behaviour in the people in general that Really people who have not their Interests immediately under their Eyes have only but a very gloomy prospect." Letter to John Stevens, January 11, 1786, Stevens Family Papers, New Jersey Historical Society, MG 409, #272.

²⁵ In 1779 this was estimated at £118,569 4s. 6½d.; Bond, *Quitrent*, 161n.

²⁶ "Letter of Lewis Morris to the people of Elizabethtown, July 13, 1698," *New Jersey Historical Commission Proceedings* 14 (1877), 185; "Huy and Cry," (1676) in *Proceedings of the Council of Maryland* 5 (1887), 140. See also: *New York Post Boy*, June 9, 1746, Letter

The proprietors tried to increase their profits by other means. In Maryland, Carolina, Pennsylvania, and New Jersey they established farms and manors, to be run by themselves or their agents. Thus, six Scottish proprietors of East Jersey took joint title to some of their dividend lands, pooled resources, sent tenants to the colony, and waited for returns. But returns never materialized.²⁷ At other times proprietors sought profits by establishing trading posts to supply settlers with necessities. Maryland, Carolina, and Pennsylvania proprietors, as well as the Scottish proprietors of East Jersey, Dr. Daniel Coxe, and the West Jersey Society also, unsuccessfully, tried to profit from fishing, fur trading, and manufacturing.

In the early years expenses clearly outran returns. Expenses included fees for charters, land purchases from the Indians, and the transportation of settlers and supplies. Thus, George Carteret spent money to send approximately thirty colonists with Philip Carteret, the first governor; members of the West Jersey Society transported three men and a "few" families; some of the Scottish proprietors in East Jersey pooled their money to send ships and about 250 settlers to the colony.²⁸ They were evidently not reimbursed for their efforts, and they lost money. Much the same situation occurred in Pennsylvania, Maryland, and Carolina. This is why proprietors preferred that settlers come at their own expense whenever possible, and why they used headrights to entice them. They also tried to have large investors bring settlers with them at no cost to the proprietor. For example,

to Mr. Parker; the author attacked the proprietors' right to land, on the grounds that "No Man is naturally intitled to a greater Proportion of the Earth, than another," and stated that he who took vacant land and "bestowed his Labour on it" should have "the Fruits of his Industry." In William Nelson, ed., *Newspaper Extracts 1740-1750*, v.2, *New Jersey Archives* 12 (Paterson, NJ, 1895), 308-9.

²⁷ Ned Landsman, "The Scottish Proprietors and the Planning of East New Jersey," in Michael Zuckerman, ed., *Friends and Neighbors: Group Life in America's First Plural Society* (Philadelphia, 1982); Ned Landsman, *Scotland and Its First American Colony, 1683-1765* (Princeton, 1985), part II.

²⁸ Wesley Frank Craven, *New Jersey and the English Colonization of North America* (Princeton, 1964), 48; Frederick Black, "The Last Lords Proprietors of West Jersey: The West Jersey Society, 1692-1702," Ph.D. dissertation, Rutgers University, 1964, 262-65; "Account of Shipment to East Jersey in August, 1683, by Some of the Proprietors," Whitehead, *Documents Relative to New Jersey* 1, 464-69; John Pomfret, "The Proprietors of the Province of East New Jersey, 1682-1702," *Pennsylvania Magazine of History and Biography* 77 (1953), 261; John Pomfret, *The Province of East Jersey*, 197-98.

in New Jersey Berkeley and Carteret granted to Major Nathaniel Kingsland and Captain William Sandford a tract of 15,300 acres in 1671, on condition they settle ten families "besides their own" within seven years.²⁹

There were also expenditures for the costs of government and for defense. The proprietors tried to get the colonists to pay for these items, but with varying success. Even when the proprietors succeeded, it usually took them many years and a struggle with the colonial legislatures before the colonists accepted responsibility for these expenses. New Jersey, just prior to the division, and West Jersey, in 1693, passed taxes to meet some government expenses. But when they surrendered the province to the king in 1702, the East Jersey proprietors maintained that they had always underwritten the government. This is confirmed by the earlier statement by the assembly that "the planters and Inhabitants of this Province have been at Equal Charges with the proprietors in England, in that they have made all Highways, bridges, Landings and prisons, etc.," and would pay nothing more because "they were not willing to maintain a government against themselves."³⁰

Yet an additional financial burden diminished the return on funds invested in New Jersey. Fractionalized ownership led to regular trading in proprietary shares; each transfer of title required that previous proprietors be bought out, leading to additional expenses and a drain on profits. Though difficult to document, these expenses must be taken into account before the profits of an individual proprietor can be calculated. Of the other proprietaries, only in Carolina did such transfers occur; but nowhere did the transfers happen with the frequency and cost of New Jersey. Berkeley sold West Jersey to Fenwick and Byllynge for £1,000. Byllynge then sold ninety shares at £350 each. The widow of George Carteret sold East Jersey for £3,400. And the West Jersey Society bought 20 shares of West Jersey, two shares of East Jersey, and other New Jersey property from Dr. Daniel

²⁹ "Some Early New Jersey Patentees paying Quitrents," *New Jersey Historical Society Proceedings* 48 (1930), 233.

³⁰ October 29, 1686, *Journal of the Governor and Council of East Jersey* 13:169.

Coxe for £4,800.³¹ The Society sold 1,600 shares of stock at a par value of £10 each. This process continued into the eighteenth century.

It should not come as a surprise that the Jersey proprietors profitted little, if at all, in the early years of their grants. The only returns to Berkeley and Carteret were the sales prices they received when they sold their respective halves. Subsequent proprietors of both East and West Jersey did not make money before 1702. The East Jersey proprietors had expected that they would realize over £500 sterling annually from rents alone. In 1696, however, total income from rents was nearer £200, enough to cover the governor's salary, but leaving nothing for the proprietors.³² The West Jersey Society generally sold rather than rented land. By 1702, the Society had disposed of £6,000 worth of land, but the money (if any was indeed collected) was never returned to investors in England. Nor were there many remittances after 1702. Lewis Morris, who long served as agent for the Society, was dismissed in the 1730s for having failed to send funds to the proprietors.³³

Over the long term, the Jersey proprietaries became profitable investments. Individual proprietors who held on into the eighteenth century, and even those who invested then, profitted from the sale of proprietary shares, from the sale of lands obtained as dividends, and perhaps even from rents. The same held true for the last proprietors of Maryland and Pennsylvania, who realized revenues from rents and land sales up to the Revolution and received some compensation for losses afterwards. Some in East Jersey thought the

³¹ John Pomfret, *The New Jersey Proprietors and Their Lands* (Princeton, 1964), 25-26, 36-39, 73-74; Anthony Q. Keasbey, "Purchase of East New Jersey," *New Jersey Historical Society Proceedings* 17 (1882), 24; William T. McClure, "The West Jersey Society, 1692-1736," *New Jersey Historical Society Proceedings*, 74 (1956), 3-4.

³² Pomfret, *The Province of East Jersey*, 298-99; Pomfret, *The New Jersey Proprietors and Their Lands*, 51, 55-56. Andrew Hamilton wrote William Dockwra in 1688 about £950 raised by a group of East Jersey proprietors for investment in the colony. Hamilton observed that the money was "sunk and gone"; a note appended to the letter about twenty years later added that there was "nothing left for so much money but the bare land." Whitehead, *Documents Relative to New Jersey* (Newark, 1881), 2, 27-34.

³³ Black, "Last Lords Proprietors," 56, 269; McClure, "The West Jersey Society, 1692-1736," 8; John Strassburger, " 'Our Unhappy Purchase': The West Jersey Society, Lewis Morris and Jersey Lands, 1703-36," *New Jersey History*, 98 (1980), 97-115.

Revolution a close call and feared the same fate as Baltimore and the Penns.³⁴ But the New Jersey proprietors survived even the Revolution. Land dividends continued to be granted, both in East and West Jersey, into the nineteenth century. In addition, after 1800 the East Jersey Board declared the first cash dividend for proprietors and distributed money derived from the sale of United States government securities. In some ways, then, New Jersey had the most successful proprietors of all. Their very perseverance brought them into the era of the early American corporation.

The fragmentation of ownership in East and West Jersey—a pattern which did not appear elsewhere—also moved the proprietary toward a corporate form. Although multiple ownership was in some ways a consequence of the long continuation of the proprietorship, it was a process that began early and from the outset had the momentum for continued fractionalization.

Carolina was another multiple proprietorship, but one in which the number of shares never increased. In fact, the *Fundamental Constitutions* of Carolina was based on the fact that shares were not divisible; the frame of government assumed that there would always be eight “lords,” with each responsible for a distinct area of government. Over the sixty-six years of the proprietorship, only forty individuals served in those roles; even though at the time of the surrender of the charter in 1729 only two of the original families remained.³⁵ At times some

³⁴ Memo on Reasons why Books should be Returned, n.d., William Alexander Papers, NYHS, Box 43. At this point the proprietors feared the New Jersey legislature “in their present levelling mood [would] follow the example of Pennsylvania in taking possession of the whole.” It is difficult to document the profits precisely, but occasional figures are suggestive. James Alexander, prominent East Jersey proprietor in the first half of the eighteenth century, died in 1756. His papers contain several lists of property obviously enumerated to facilitate division among his heirs. One group of lands, the Sussex lands, appears on a list showing that portion on which mortgages were held, as well as what was left to be sold. The whole is valued at £5439.9.5 proclamation money or £5892.15.2 New York money. “An Account of What Remains Due of the Sussex Lands for Rights Sold,” n.d., Alexander Papers, NYHS, Box 1a.

³⁵ Willaim S. Powell, *The Proprietors of Carolina* (Raleigh, NC, 1963), 10; Kemp P. Battle, “The Lords Proprietors of Carolina,” *North Carolina Booklet* 4 (1904): 5-37; Herbert R. Paschal, “Proprietary North Carolina: A Study in Colonial Government,” Ph.D. dissertation, University of North Carolina, 1964, 98-114.

of the Carolina titles were in the hands of minors. Two shares were involved in litigation. The surrender itself took ten years, because ownership of one quarter of the province was unclear. But there always were eight shares.³⁶

The East Jersey's *Fundamental Constitutions* was based, by contrast, on the expectation of increased fractionalization of holdings. The constitution provided for limits on the impact that this pattern of ownership would have on the government of the colony. To keep one proprietor from dominating the others, the constitution prohibited anyone from holding more than a one twenty-fourth interest. Likewise, to prevent proprietors from "squandering" their interest in the government, holders of less than a one ninety-sixth interest lost their political role.³⁷ These provisions controlling access to government recognized that an unlimited number of individuals could own shares in the land. As that possibility approached realization in the eighteenth century, the East Jersey proprietors restricted membership on its Board of Directors to those owning at least a quarter share ($\frac{1}{4}$ th) in the proprietary. But there were no limits on how often a share could be subdivided; holders of even the smallest fraction were still entitled to land dividends. The same fractionalization of proprietary shares occurred in West Jersey, though title—first under Edward Byllynge, then under Dr. Daniel Coxe and the West Jersey Society—to the government there was kept intact. West Jersey differed, then, from East Jersey in denying fractional holders a say in government matters. But both East and West Jersey granted land dividends to holders of even the smallest fraction of a proprietary share.

The number of shareholders in East and West Jersey increased rapidly. East Jersey went from twelve to twenty-four to eighty-five shareholders in the 1680s alone, and the size of individual holdings dropped quickly to a twenty-fourth and then a forty-eighth share. By

³⁶ The two original families that remained were Colleton and Carteret, and Carteret kept his portion of the lands. Also the two shares which were disputed were claimed or held for more than one individual, but they were not divided the way New Jersey shares were.

³⁷ This rule was violated by Arendt Sonmans who held more than one full share. The quotation is from *A Brief Account of the Province of East New Jersey in America: Published by the Scots Proprietors Having Interest there* (Edinburgh, 1683), 13; see also "Fundamental Constitutions of East Jersey," in Julian Boyd, ed., *Fundamental Laws and Constitutions of New Jersey* (Princeton, 1964).

the eighteenth century, even a ten-thousandth share was recorded.³⁸ West Jersey went from two shareholders in 1674 to one hundred twenty by 1683, and from one hundred full shares to holdings of one sixty-fourth of one of those shares.³⁹ Splitting holdings further was the West Jersey Society, created in 1691. This holding company owned two shares of East Jersey, twenty shares of West Jersey, and parcels of land in New Jersey and Pennsylvania; speculators traded in the shares of the society.⁴⁰

The fractionalization that contributed to the evolution of the New Jersey proprietorship had other consequences as well. Almost all of the original proprietors in each colony were economically or politically prominent and influential men. Many were involved in one way or another in more than one colonial enterprise. But as time passed and proprietary titles devolved upon others, the status of the proprietors as a group declined and with it their ability to protect their colonies. This pattern of development was true everywhere, but it was exacerbated in New Jersey.

Berkeley and Carteret, the original proprietors of New Jersey, were royalist supporters of the Crown during the exile years of the Civil War period, and they held significant government posts in the Restoration government.⁴¹ Their Jersey holdings later went to men who

³⁸ Pomfret, *The Province of East Jersey*, appendix: "Transfers and Fractioning 1683-1702," 397-99. Many references to fractional holders appear in the four volumes of the *Minutes of the Board of Proprietors of the Eastern Division of New Jersey*, George Miller ed., vols. 1-3; Lurie and Walroth, eds., vol. 4.

³⁹ Pomfret, *The Province of West Jersey*, 124, 285-89, gives one example of a conveyance that read " $\frac{1}{32}$ of $\frac{3}{90}$ of $\frac{90}{100}$."

⁴⁰ The West Jersey Society remained in existence in England until 1923. McCormick, *From Colony to State*, 48.

⁴¹ John Berkeley had served during the Civil War in the Royal Army and then as secretary, treasurer, and financial manager for the Duke of York. He was rewarded for his services in 1658 by being made Baron Berkeley of Stratton on Cornwall. After the Restoration he served as a member of the Privy Council and as a commissioner of the Admiralty. In 1670 he was appointed a Lord Lieutenant of Ireland, and from 1675 to his death in 1678 he served as ambassador extraordinary to France.

As early as 1626 George Carteret had been appointed Governor of the Isle of Jersey and in 1640 treasurer of the Navy. During the Civil Wars he provided shelter in his province for Edward Hyde, Lord Clarendon, a favorite of Charles II, and also for the Duke of York. There is some evidence that in 1650 Charles tried to recompense him with the grant of an island near Virginia. After 1660, he served as a member of the Privy Council, Vice Cham-

lacked equivalent status and influence. Neither John Fenwick nor Edward Byllynge in West Jersey were politically prominent and influential, while the men who purchased the one hundred shares from them in later years were even less "weighty." In East Jersey the twelve proprietors included several Scottish lords (who later took the wrong side in the Glorious Revolution), but the group was mainly comprised of Quaker polemicists, tailors, and merchants. With the exception of William Penn, these men lacked influence at court. As the twelve proprietors became twenty-four, and then more, their individual status and influence further declined. At the time of the charter's surrender, only Penn stood out as significant.⁴² This problem of diminished standing persisted into the eighteenth century, diluting the power and influence of the Jersey proprietors.

After 1674, New Jersey—begun as one colony—was in fact two, divided into an east and west, with each section owned by different proprietors. Carolina had been split north and south, because distance between the two early centers of settlement made one government impracticable. But both Carolinas belonged to a single group of proprietors. Similarly, Delaware and Pennsylvania were administered separately for political and religious reasons, although both were the property of the Penns. In New Jersey, the impact of this unusual division was felt long after the surrender of the charter reunited the two halves into a single royal colony. In fact, the political and economic consequences continued into and beyond the eighteenth century. As a result of the separation of New Jersey into eastern and western divisions there were two capitals, two treasurers, a sectionally

berlain of the Household, Treasurer of the Navy, and Lord of the Admiralty.

Berkeley and Carteret were distinguished by the services they had rendered the Duke of York and the King, as well as by the fact that they both served with James in the Navy. These associations help explain their roles in the proprietorship of Carolina as well as that of New Jersey.

⁴² There is a list of proprietors, their holdings, and their occupations in Pomfret, *The Province of West Jersey*, Appendix: "The Proprietors of the One Hundred Shares of West New Jersey," 285-89; Pomfret, *The Province of East Jersey*, Appendix: "Transfers and Fractioning 1683-1702," 397-99; John Pomfret, "The Proprietors of the Province of West New Jersey, 1674-1702," *Pennsylvania Magazine of History and Biography* 75 (1951): 117-46; Pomfret, "The Proprietors of the Province of East New Jersey," 251-93.

balanced council, and an extraordinary political factionalization of the colony.

The West Jersey proprietors appointed Burlington as their capital; East Jersey proprietors selected Perth Amboy. The surrender agreement alternated governmental meetings between the two towns. From 1702 to 1776, alternate meeting places was customary practice, set aside only when royal governors argued that ill health or the press of business required the legislature to meet elsewhere.⁴³ When William Franklin, the last royal governor of New Jersey, pushed for the building of a formal governor's house, his request mentioned the need for two such residences.⁴⁴

The situation changed with the Revolution. Both governor William Livingston and the legislature were forced to move about the state in an effort to avoid capture by the British. The government continued to wander after the war. Meeting thirty-five times in the period from 1776 to 1791, the legislature sat in Burlington, Perth Amboy, Princeton, and Trenton. The state considered each when attempting to locate a single, permanent capital.⁴⁵ In 1790 Tench Coxe wrote William Paterson that New Jersey should "soon . . . fix [its] Government in one place" in order to promote manufacturing and stability. Coxe argued for a site accessible to ocean-going ships, suggesting "Brunswick & its Vicinity" as the most suitable.⁴⁶ His selection was ignored; the next year the legislature choose Trenton, and for the first time since the 1670s New Jersey had one capital.

Even after reunification, the historic division of the colony multiplied the number of factions in New Jersey. In the period from

⁴³ The legislature met in Trenton in 1745 at the request of Governor Lewis Morris who noted that he had been ill and "reduced almost to a Skeleton." In 1752 Governor Belcher called the legislature to Elizabethtown as an "Extraordinary Necessity" because his physicians advised against a longer "Journey at this time of the year." Whitehead, *Documents Relative to New Jersey* (Newark, 1882), 6, 257; Frederick W. Ricord, ed., *Documents Relative to New Jersey, Journal of the Governor and Council* (Trenton, 1891), 4, 393, 398.

⁴⁴ Correspondence between Franklin and the Lords of Trade, in Frederick W. Ricord and William Nelson, eds., *Documents Relative to New Jersey* (Newark, 1885), 9, 385-86, 396, 404.

⁴⁵ Mary Alice Quigley and David E. Collier, *A Capitol Place: The Story of Trenton* (Woodland Hills, CA, 1984), 35. Twenty-two of the thirty-five times the legislature met in Trenton.

⁴⁶ Tench Coxe to William Paterson, January 11, 1790, William Paterson Papers, Rutgers University Libraries, oversized. I thank Kenneth Bowling for pointing out this letter.

1703 to 1729, Governors Cornbury, Hunter, and Burnet contended with competing East Jersey factions led by Scottish proprietors, English proprietors, and Nicolls patentees as well as such West Jersey factions as the West Jersey Society, Quakers (who were often also resident West Jersey proprietors), and Anglicans (including the West Jersey proprietor Colonel Daniel Coxe). The political divisions continued into the 1780s and constituted the fundamental cleavage of the Confederation period. The Revolutionary War had heightened sectional antagonisms. East Jersey was more frequently affected by fighting, and West Jersey Quakers refused to help militarily or economically. Disagreements over the use of paper currency after 1783 also followed sectional lines. But the bitter fight between East and West Jersey proprietors over the boundary line between their sections—an issue kept constantly before the legislature from 1782 to 1786—most clearly continued and aggravated “the traditional internal split within the state.”⁴⁷ The political impact continued into the next century, long surviving the formal division into East and West Jersey which lasted only from 1674 to 1702.

Perhaps the most enduring legacy of the proprietary period were the boards of proprietors established to handle business in both East and West Jersey. These associations have survived to the present. Both have evolved into modern corporations. In the process, the New Jersey proprietorship transformed itself from a feudal lordship to a capitalist company.

Of the five grants, proprietary in origin, for mainland colonies, two—Carolina and New Jersey—were “multiple” proprietorships. That is, the original grants for these colonies went to more than one individual. These multiple proprietorships exhibited some similarities. Proprietors in both colonies contributed money to the ventures and became, in effect, shareholders. Those who did not contribute monetarily were later held ineligible for returns. The Carolina proprietors agreed in 1663 to require periodic contributions of £25 each. At the

⁴⁷ Richard P. McCormick, *Experiment in Independence: New Jersey in the Critical Period 1781-1789* (New Brunswick, 1950), 100, 135-57. McCormick quotes Noah Webster that “the jealousies between East and West Jersey . . . [are] almost as great as between the northern and southern states” on the seat of government and any other matter.

end of three years, six of them had laid out £100 each; two never met their obligations.⁴⁸ Each proprietor in East Jersey was asked to put £300 into a common fund to meet the purchase price and initial expenses. Other assessments followed. And the 1725 agreement which reorganized the East Jersey Board of Proprietors required contributions towards common expenses. The West Jersey Society expected shareholders to pay up to £10 per share for expenses; in the first twenty-seven months assessments totaled £5 5s per share. Over the years, the Society collected £8,108 of the £9,200 to which it was entitled.⁴⁹

The proprietors of East Jersey created a board to manage their affairs in 1685; West Jersey created a council to do the same in 1688. Both entities were formed in the colony; the entities themselves remained in America. In this regard, both differed from the board of directors for Carolina—and, for that matter, the West Jersey Society—which were located in England. The Jersey proprietors also differed from their Carolina counterparts in that they did not give up their lands with the surrender of their charters. The Jersey proprietaries persevered, surviving even the American Revolution.⁵⁰ As a result, the proprietors of New Jersey went from being feudal lords

⁴⁸ First meeting of the Proprietors, May 25, 1663, in Langdon Cheves, ed., *The Shaftesbury Papers and other Records Relating to Carolina*, Collections of the South Carolina Historical Society, v.5 (Charleston, SC, 1897), 5; Account 1663, CO5/286 Carolina Entry Book, May 1663–October 1697, 221ff (LC microfilm ACLS British MSS Project PRO Reel #1); *Carolina Lords Proprietors' Account of Disbursements and Receipts, 1663–1666, listing Fees in Passing ye Charter and Duplicate of Carolina* (Charleston, SC, 1963). Neither Sir William Berkeley nor Clarendon ever paid in any money.

⁴⁹ *A Brief Account of the Province of East New Jersey in America*, (1683), 12; Instructions to Governor Laurie, July 20, 1683, Aaron Leaming and Jacob Spicer, eds., *The Grants, Concessions and Original Constitutions of the Province of New Jersey* (Philadelphia, 1881), 171–73; Agreement of the Proprietors about the land, 1684, *Ibid.*, 186–87; Instructions to the Governor and Commission Land, July 3, 1685, *Ibid.*, 211; Account of the Several Rates or Assessments laid upon the Proprietors of East Jersey, September 23, 1690, *Documents Relative to New Jersey* 2: 37–40; Agreement of the Members of the West Jersey Society for the managing and improving of their lands, March 4, 1692, *Ibid.*, 73–80; Accounts of the Disbursements by the Proprietors of East Jersey upon the Publick Affairs of the Province, *Ibid.*, 202–5; George Miller, ed., *The Minutes of the Board of Proprietors of the Eastern Division of New Jersey* v.1 (Perth Amboy, 1949), 49–50; Black, “Last Lords Proprietors,” 1–2, 75–82, 102–11, 182.

⁵⁰ Memo on Reasons why Books should be Returned, n.d., Willaim Alexander Papers, NYHS, Box 43.

to being corporate stockholders, a status recognized in the late nineteenth century when the East Jersey Board of Proprietors convinced a state legislative committee that the Board was a corporation, even though it lacked a formal corporate charter. The Board argued successfully that the organization and operation of the Board predated the state.⁵¹

The survival of the New Jersey proprietors as a modern corporation is especially noteworthy because the beginnings of this transformation can be seen as early as the 1670s and 1680s. A similar process started in Carolina, but there the proprietorship did not survive to make the final transformation. According to John Pomfret, the "Carolina proprietorship, the prototype of New Jersey's, was . . . a feudal fief rather than a trading company, and it embodied the ideas of a landed nobleman rather than those of a London merchant."⁵² Multiple proprietorships in their actual operations early on combined feudal fief and company. As feudal arrangements broke down, the New Jersey proprietorship ultimately became simply a company.

There is a connection between the nature of the New Jersey proprietorship and the political problems experienced by her proprietors. New Jersey started out with two feudal lords who sold their proprietorships to groups rather than individuals. These groups were not "lords" in the traditional sense of the term; nor were they partners nor, at least originally, corporations. A lord could have political power, but it was not as clear that a quasi-corporation (not yet a recognizable corporate body) could possess such authority. Thus the changing nature of the New Jersey proprietorship complicated the question of political control which was confused from the outset by the Duke of York's grant to Berkeley and Carteret. In this sense the dispute over political control in New Jersey is really symptomatic of a more fundamental change which was nothing less than the transformation from a feudalistic entity to a modern one.

Rutgers University

MAXINE N. LURIE

⁵¹ *Report of the Joint Committee to Investigate the Acts and Proceedings of the Board of Proprietors of East Jersey, Touching the Rights and Interests of the State, And of the Citizens Thereof* (Trenton, 1882), 39-40.

⁵² Pomfret, *Colonial New Jersey*, 22.

