CHAPTER II

NEW LAND ACQUISITION

IN THE COLONIAL CHESAPEAKE

To develop a model of new land acquisition in the colo-nial Chesapeake, we need to examine the various theory-derived factors which might affect demand for land and to determine what data might be available to measure each factor. But before examining these "independent" variables, we first should examine the "dependent variable"--new land acquisition--in its historical context.

Land Patents and "New" Land Acquisition

How was land acquired in the colonial Chesapeake? According to the Browns, who equated economic democracy in Virginia with the availability of cheap land, the "common man" could "buy land from one of the land speculators or land jobbers who had received a large grant from the King, and of course he could buy land from others who had acquired it by whatever means. In addition, he could inherit or receive land as a gift, marry someone who owned land, or lease land for a term of years or on a life lease" (11). Or else, for the payment of certain fees (including the purchase of necessary headrights or treasury rights), he could get a

patent to land. "Men who could not pay the small amount necessary to acquire land, or preferred to buy a slave as some did, could always lease land in Virginia" (Brown 23). For the study of "new" land acquisition (land not previously owned) in the colonial Chesapeake, we are primarily interested in the colonial land patents.

Analyses of land acquisition have been relatively neglected in the colonial Chesapeake compared to the antebellum South and even to colonial New England. As Kenneth Lockridge has stated, "land and time must be the touchstones of any enquiry into the social evolution of early America: land because the economy was overwhelmingly agricultural and because land has been both the symbol and the essence of American opportunity; time because there was so much of it" (1971,468). Greven's study of Andover revolved around the interrelationships between population, land, and the family. Douglass C. North, Peter Temin, Gavin Wright, Peter Passell, and Stanley Lebergott have all added to the understanding of land acquisiton in the antebellum South. Land acquisition studies in the colonial Chesapeake have been restricted to Kulikoff's look at taxable acreage totals in the 18th century and as part of several local studies by Kevin Kelly, Carville Earle, Michael Nicholls, Ransom True, Paul Clemens, and Lorena Walsh among others.

The absence of any overall analysis of new land acquisition in the colonial Chesapeake is even more marked because excellent, fairly complete sets of land patent records exist for all of the colonies usually included as part of colonial Chesapeake studies: Virginia, Maryland, and North Carolina. For the purpose of this study, we will

focus on only one Chesapeake colony: Virginia.

All of the great Virginia historians from Bruce and Wertenbaker to Craven and Morgan have recognized the importance of the Virginia land patents, which Harrison called "Virginia's most precious surviving muniment of her past" (7). Indeed, with the destruction of many colonial and county records by the ravages of both time and war, the Virginia land patents are "the only [record] that has any claim at all to comprehensive coverage" (Craven,1971,9). The task has been made relatively easy with the publication of an excellent series of abstracts Cavaliers and Pioneers by Nell Marion Nugent, Custodian of the Virginia Land Archives from 1925 to 1958. The first volume was published in 1934 (covering Patents Book Nos. 1-5 [1623-1666]), but unfortunately her abstracts of Book Nos. 6-8 (1666-1695) were not published until 1977, followed by Book Nos. 9-14 (1695-1732) in 1979.

This greatest source of information on colonial Virginia has been severely underutilized. Major studies focusing on the land patents have been restricted to determination of the average size of land patents from 1626-1700 (Bruce 1:527-532), the social mobility of indentured servants (Wertenbaker 74-81; Voorhis 70), and the annual number of headrights as an index of immigration (Wertenbaker 35-36; Craven,1971,14-16; Morgan,1973,363-5). Most of these studies have relied heavily on random sampling because of the vast amount of information contained in the land patents. However, these attempts have barely begun to tap the wealth contained in the Virginia land patents.

In order to correct this neglect and to determine land acquisition

patterns in the colonial Chesapeake, a computer data base of the information contained in Nugent's abstracts was created covering all the patents from 1660-1706. This data base includes all names, dates, locations (county, river, creek, parish, etc.), and relationships (neighbor, previous owner, headright, etc.). A breakdown of how the land came into the ownership of the patentee (new land, lapsed land, escheated land, inherited land, land previously patented by another, patent renewal, etc.) allows more precise estimates of land acquisition.

The land patent system used throughout the colonial period was basically a continuation of the practices initiated under the Virginia Company. By the Second Charter (1609), the Company was appointed and allowed "'under their common seal [to] distribute, convey, assign...such particular portions of lands...unto such our loving subjects" (Harrison 12). Actual distribution of land began after 1616. The headright was almost exclusively the grounds on which land patents were awarded during the seventeenth century. Although there were many variations (well described by Voorhis [19-21]), the basic headright guaranteed that a grant of fifty acres be made for every person immigrating to the colony, the grant being "'made respectively to such persons and their heirs at whose charges the said persons going to inhabit in Virginia shall be transported'" (Harrison 16-17). Although in temporary confusion with the demise of the Company in 1624, land policy continued essentially unchanged under the Crown until the introduction in 1699 of the treasury right, which allowed a person to acquire a patent by payment of a fixed fee. Basically anyone could take up a patent for new land at any time as

long as there was no legal objection.

According to Beverley, a patent for new land was acquired thus:

> First, the Man proves his Rights; that is, he makes Oath in [County] Court, of the Importation of so many Persons, with a List of their Names. This List is then certified by the Clerk of that Court, to the Clerk of the Secretaries Office; who examines into the Validity of them, and files them in that Office, attesting them to be regular. When the Rights are thus certified, they are produced to the Surveyor of the County, and the Land is shewed to him; who thereupon is bound by his Oath to make the Survey, if the Land had been not Patented before....This Survey being made, a Copy thereof is carried with the Certificate of Rights to the Secretaries Office, and there (if there be no Objection) a Patent must of course be made out upon it, which is presented to the Governor and Council to pass. (277-8)

What we call today the "Virginia Land Patents" are 42 volumes (in 10 books) of "recorded copies of patents for land issued by the English crown between 1623-1706 and 1710-1774," preserved in the Virginia State Library in Richmond (Gentry 3). The original patents were hung as loose leaves on strings in the 17th century (Nugent 1:226, 394) but by 1683 the process of transcription had begun (Nugent 1:152). The essential question for the historian is what percentage of the original patents were eventually recorded in the bound patent books? Contemporary sources offer a fairly gloomy picture. The earliest evidence comes in the

October 1666 "Act for conformation of titles" passed by the Assembly. Finding "many pattents for great parcells of land, for which there appeare not any right upon record," the act traces the problem to the "defects of the clerks of those times in not makeing present entry of the rights delivered to them, and the casualty of two severall fires whereby many of those rights with other papers were destroyed" (Hening 2:245). Robert Beverley, who transcribed Patent Books 2 & 3, describes the general shambles of the Secretaries Office in the years following Bacon's Rebellion, along with the devastation of the Jamestown fire of October 1698 (102-103). Hartwell, Blair, and Chilton noted in 1697 that "there are many Patents and other Records, in that Office, in loose torn pieces, that are scarcely legible, and if some speedy Care not be taken, they will become of no Use" (49). However, most modern historians from Bruce to Wertenbaker to Craven have placed much confidence in the preservation of the original record (Bruce 1:528-9; Wertenbaker 34; Craven 12,33).

One historian who has questioned the completeness of the land patent record is Edmund Morgan. In a comparative analysis of county records with land patents (as abstracted by Nugent), he found that "most of the patents that appear in [county] deeds appear also in the patent books, but a good number do not...And even in the patent books themselves there is evidence of omissions. It was common for a man who purchased land from another man to obtain a new patent in his own name, often with additional acreage granted for persons imported. The date of the first patent and the name of the person who obtained it were recited in the second. But the original record of the first patent is often not to be

found in the patent books" (365).

Morgan's method for determining the completeness of the patent record from the patents themselves is certainly testable using the patent data base. A computer search for matched patents, by name (using a coding system to account for variant spellings described in Appendix I) and exact date, yielded an overall correlation of 48.5% for the years 1664-1706. However, a rigorous combined manual and computer search for the non-matched patents revealed a correlation of 86.2%. Sometimes the date was off by a day or a year, sometimes the name was spelled just enough different that the coding system failed to match, but the county, location, acreage were all identical. These problems are all due, no doubt, to the many times the names and dates have been transcribed from the original patent to the patent books to Nugent's abstracts. Undoubtedly, slight errors have been introduced with each transcription.

A breakdown of annual survivability correlations for the years 1660-1706 shows a wide range, indicating certain years suffered greater loss of records. In particular, the years 1660-1662 show a very high loss because very few of the original patents can be traced in this time period. For the succeeding years 1663-1666, the correlation improves each year but are still well below the average. Undoubtedly these low correlations verify the problems identified in the October 1666 "Act for conformation of titles" mentioned above. This is also confirmed by the great number of renewals of patents in the late 1660s for land originally patented during the early 1660s.

For the years 1667-1687 the record is remarkably complete with a

correlation of 94.4%. Interestingly the correlation drops for the years 1688-1706 to 70.7%, possibly indicating problems pointed out by Beverley and Hartwell, Blair, and Chilton, but it also could be random error due to the exceedingly small number of references to patents in this time period. I have no doubt the actual correlations would be much higher if I had the tools for taking into account every possible transcription error. From this analysis, I believe the patent record for the years 1664-1706 is complete enough to present no problem for the study of land acquisition patterns in late 17th century Virginia.

One inherent problem with the land patents for any study of the "colony" of Virginia are the land grants in the Northern Neck, the great peninsula between the Potomac River and Rappahannock River, whose history differed significantly from the rest of the colony. Originally granted in 1649 to "Lord Ralph Horton, Lord Henry Jermyn, Lord John Culpeper, Sir John Berkeley, Sir William Morton, Sir Dudley Wyatt, and Thomas Culpeper, Esq. by Charles, the exiled son of executed Charles I, for their support. Lord Thomas Culpeper, son of one of the original patentees, by 1681 had purchased the rights of the other patentees and become sole proprietor of the Northern Neck" (Gray ix). Actually land in the Northern Neck continued to show up in the Virginia land patents through 1679 and proprietary land grants in the Northern Neck did not start until 1690. Only the first volume (1690-1692) of the Northern Neck land grants was transcribed by Nugent; Gertrude Gray completed transcriptions of the later Northern Neck land grants. The present data base does not include data from either of these abstracts.

The basic problem is whether to include grants in the Northern Neck in a study of land acquisition in colonial Virginia. The 1660s, when the Northern Neck was part of the colonial land patent system, was a period of rapid land acquisition in the Northern Neck. Undoubtedly, land available in the Northern Neck swayed decisions to claim land in the 1660s. Similarly, the uncertainties of land title in the Northern Neck in the late 17th century undoubtedly swayed potential patentees to the south. The Northern Neck patent system for the period under study was in considerable flux; the office was closed during the years 1700-1703 (Gray 27) and probably at other times. The best alternative is to present three analyses: (1) all new land in the Virginia (Nugent) patents "as is", including patents in the Northern Neck before 1679; (2) only new land patents south of the Rappahannock River; and (3) all new land in the Virginia (Nugent) patents and Northern Neck (Nugent and Gray) patents through 1706. Northern Neck patent analysis was restricted to simply tabulating annual totals of new land patent acreage from the Nugent and Gray Northern Neck abstracts. In the regular Virginia patents, there is generally little problem identifying whether the patent is for land above or below the Rappahannock since the county is usually listed as part of the patent. However, a problem does exist for Lancaster County through 1669 and "Old" Rappahannock County through 1692 since these counties covered land on both sides of the Rappahannock. Fortunately, enough information is usually contained in the patents to identify the patent as either north or south of the Rappahannock River. Table I presents the three different patent acreage series.

Land Acquisition vs Land Speculation and Engrossment

Why did people acquire land? Although the staples and Malthusian models explain the overall growth and development of early America, individuals made decisions to acquire land. As seen by McCusker and Menard, the Malthusian and staples approaches have individual counterparts called the "subsistence model" and the "market model." The "subsistence model" claims that "farmers were not much concerned with profit, that their principal interests were subsistence and the long-term security of the farm, that they did not try to maximize production of cash crops and marketed only their surplus, that they avoided risk and were suspicious of innovations." In the "market model," "farmers were latent entrepeneurs, willing to take risks and accept innovation, who found their drive for profits frustrated by high factor prices, primitive technologies, poor transportation networks, and weak markets" (McCusker 298). These models hypothesize very different reasons for why people migrated to new lands. "In the subsistence model, 'push' factors dominated migration decisions: migrants moved away from overcrowded settlements with their poor prospects for economic independence rather than toward better market possibilities". In the market model, the 'pull' of better prospects predominated: migrants moved toward chances for commercial agriculture rather than away from depressed conditions" (304-5).

But as McCusker and Menard note, "in practice, push and pull are of

course difficult to separate--migration flows are best understood as responses to differences in anticipated income" (305). To determine "differences in anticipated income," "Malthusian" historians focus on differences in population density; "staples" historians focus on changes in the staples economy, particularly changes in staples prices.

In the final analysis, decisions to acquire new land can not be separated from decisions to migrate. Land speculators may have anticipated increased demand for land ahead of other planters, but the speculators' understanding of what created demand for land would not have been basically different from other planters. New land acquired value from individual men and women who voluntarily or involuntarily moved to the frontier to settle on the land. If men and women would not migrate then the land had no value, no matter how high tobacco prices rose. Migration and land acquisition could have been led by staples factors, Malthusian factors, or a combination of the two, but migration and land acquisition were intricately linked.

All Chesapeake historians from Bruce to Wertenbaker to the present have acknowledged widespread land speculation in the colonial era. However, most of these historians have traditionally believed that land speculation did not lead to land engrossment and did not adversely affect the growth and development of the colonial Chesapeake. Wertenbaker claims that, because "large planters found it difficult to secure adequate labor, of necessity they had to break up their estates and dispose of them to the small freeholders" (49). The Browns find that "speculators sold their land, and because men could always patent land

from the King, they had to sell at a price within the reach of the common man" (16). Clemens finds that "speculators had seldom withheld land from sale. Most acquired land in large blocks and sold it quickly; they profited not from artificially high prices but from the volume of their transactions" (75). Earle believes that "a few patrician planters may have helped raise land prices through social hoarding of land for their progeny or for social status, but in general, planters regarded land as a commodity" (209).

On the other hand, some historians have implied that the colonial land patent system was an elite land acquisition system. In Clemens's analysis, only "nonresidents--speculators, merchants, and provincial officeholders" took advantage of the patenting process (72). Morgan implies that land patents, land speculation, and land engrossment were all one in the same (1975,218-221).

Clemens and Morgan, however, ignore small resident planters who used the land patent process extensively. In my examination of the patents from 1660-1703, out of 4251 patents for new land (including patents which combined new land acquisition with other sources of land acquisition), I found a median "new" patent acreage of 300 acres and a mode of 200 acres. A breakdown of cumulative new patent acreage by the 2758 patentees (using the namecoding system described in Appendix I) shows a median of 400 acres and a mode of 200 acres. This median cumulative acreage is slightly less than the acreage identified by Kevin Kelly as the approximate "size of the average freehold in Surry during the late seventeenth century" (1979,190), indicating the average patentee was not

that much different from the average landowner.

However, large speculators did patent much of the "new" land. For the years 1660-1703, the mean "new" patent acreage was 546 acres with a standard deviation of 921 acres, indicating the presence of some very large patentees. Patents ranged from the 34 perches (approximately 2/10 acre) patented by Thomas Wells in James City on 26 October 1699 (Nugent 3:32) to the 20,000 acres patented by Phillip Ludwell, Tobias Handford and Richard Whitehead in New Kent County on 24 October 1673 (Nugent 2:130). The top 10% of the "new" patents (1100+ acres) contained 45.0% of the land patented from 1660-1703. A breakdown of cumulative acreage by patentee shows even greater disparity with a mean of 858 acres and standard deviation of 1580 acres and the top 10% of patentees (1860+ cumulative acres) patenting 50.3% of all new patent acreage. (All such estimates of cumulative acreage are undoubtedly exaggerated by combining different people with the same name, including father-and-son combinations. For example, Robert Beverley patented a maximum 18,800 "new" acres between 1660 and 1703, but this was patented by both father and son.)

The patent system also provided a means for all landowners, large and small, to reaffirm their titles. Patents for "new" land composed only 53.3% of all patents and 55.1% of patent acreage between the years 1660 and 1706. The rest of the patents are made up of patents for escheated land (6.7%), lapsed land (7.8%), dowry land (0.9%), deeded land (18.0%), patent renewal (9.0%), resurveyed land (0.6%), and inherited (or deed of gift) land (3.7%).

This analysis shows that the land patent process combined a great

number of small patentees and a small number of great patentees. However, when any one person could only tend about four acres planted in tobacco a year (Morgan 370), and with an optimum acreage per person of 50 acres, even the smallest patentees appear to be indulging in land speculation and engrossment. Without additional information, this behavior can not be classified as either "subsistence" or "market," for the additional acreage could have been held for other crops, pasturage, forest products, field rotation, speculation, children's inheritance (Easterlin 63-70), or so farm hands could be kept busy clearing and improving new land during the off-season (Lebergott 186).

Most local studies have shown that speculation in patented lands dominated the land market in every newly settled region of the Chesapeake. Once settled, land sales became the dominant means of land transfer. Kelly found that "a majority of all grants were eventually sold, either intact or in parcels, and... the average interval between their patenting and sale was brief--nine years during the 1660s and 1670s and only four years in the 1680s. This is even more true of the 54 percent that were subdivided rather than sold intact" (Kelly,1979,190). Clemens found in Talbot County that a "flurry of patenting activity soon led to extensive buying and selling of land" (72).

The Crown had a vested interest in preventing land engrossment. Engrossment would discourage immigration to the colony and encourage emigration from the colony, thus inhibiting any increase in tobacco production upon which the Crown was heavily dependent for revenues. As Hartwell, Blair, and Chilton pointed out in 1699, "in actual revenues the

establishment of one planter on every fifty acres would result in returns from tobacco duties 200 times as great as would be derived from the same area unoccupied, even if quit-rents should be fully collected" (Gray 1:400). One of the main purposes for the adoption of the headright as the basis for land acquisition was to intricately tie land to population to prevent engrossment. Other than the initial cost of land, engrossment should have been inhibited by two conditions which could lead to forfeiture of land tenure:

(a) failure to pay quit-rents of two shillings per hundred acres

(b) failure to inhabit and cultivate the land within three year ("lapsed land")

Quit-Rents and Land Speculation

The role of quit-rents in land acquisition patterns is not clear. In the most thorough survey of the quit-rent system in early America, Beverley Bond called Virginia's quit-rent system "the earliest and most successful of the quit-rent systems under the crown" (221). The rate established by the London Company of 2 shillings per 100 acres was retained through the entire colonial period. Through 1684, as Bond states, "the quit-rents were reserved in Virginia as a customary charge upon the land, but the British government paid little attention to collection, and allowed these feudal dues to come under local control" (221). After 1684, "the careful supervision of the auditor-general, William Blathwayt, assisted by the two governors, Nicholson and

Spotswood, converted a system of quit-rents that had previously been administered in an exceedingly careless fashion into an important source of revenue" (Bond 224).

Bruce believes that although there was a laxness in paying quit-rents at different times in the 17th century, "the quitrents were collected with a strictness on the whole" (560). "After the Restoration, Berkeley was instructed to 'no longer forbear,' and thereafter progress was made toward getting a majority of the landowners on the rent-roll. This fee was not a great burden on land under cultivation, for payment was made in tobacco at a rate which often cut the tax in half...but altogether the main obstacle was the indifference of the sheriffs in collecting the fee, together with the natural reluctance of the people to pay any sum however small. Occasional pressure of the governors upon the sheriffs gradually induced most plantation owners to pay at least the greater part of their dues, for the sheriff was empowered to seize goods if the quitrent was refused" (Voorhis 77).

What effect quit-rents had on land speculation and engrossment is uncertain. Apparently no land was ever seized for failure to pay quit-rents (Voorhis 77-78). Bond believes that, at least before 1684, the quit-rents had little effect on the holding of vast, undeveloped areas of land. "As there was no personal property upon these vacant lands, distraint, the usual means of forcing collections, was out of the question, and the only other possible measure, forfeiture of the land, could not be employed in face of the popular opposition it was certain to provoke" (Bond 228).

An analysis of quit-rent acreages and land patent acreage by county reveals that most patent acreage did not escape the quit-rent lists. For the period under study, annual county quit-rent totals exist for the years 1663-1665, 1688, and 1702-1704.[1] Between 1665 and 1688, the increase in quit-rent acreage equaled 63.6% of the new patent acreage. Between 1663 and 1704, the increase in quit-rent acreage equaled a full 85.9% of the new patent acreage. These percentages do not represent a one-to-one correspondence between patent and quit-rent acreage because some pre-1663 patent acreage was undoubtedly added to the quit-rent list after 1663.

In order to get a better estimate of the percentage of patent lands which were recorded on the quit-rent lists, we need an estimate of total patent acreage. Since the data base does not extend before 1660 and since many patents are missing during the years 1659-1663, this might be difficult. However, a reasonable estimate might be obtained by assuming annual new acre patents for 1659-1663 was the same as 1664 (based on analysis of missing patents in these years) and by using Craven's headright totals (15) for the years 1634-1658 to determine earlier patent acreage.

As Edmund Morgan notes, the headrights are highly correlated with new patent acreage (1973,369-370). Indeed, the annual new patent acreage to headright ratio is usually in the 45-50 range, as might be expected

[1] For the years 1663-1665: Virginia Magazine of History and Biography 3:42-47; for the year 1688: Virginia Historical Register 3:181-188; for the years 1702-1704: C.O. 5/1313, ff. 436-437; C.O. 5/1314, ff. 113-114, ff. 436-437.

with the 50 acre per headright allowance. The actual ratio is somewhat less than 50 because headrights are also required for lapsed land patents and some patents do not claim all of the 50 acres due for each headright. For the years 1660-1669 the average ratio was 47.1, but ranged from 58.1 in 1660 to 38.6 in 1668. Using this 47.1 ratio and Craven's totals for the years 1634-1658 and patent estimates for the years 1659-1662, 1663 quit-rent acreage was found to be 46.3% of total cumulative acreage from 1634-1662. Extending this technique for the patents 1663-1703, 1704 quit-rent acreage was found to be 67.3% of total cumulative acreage from 1634-1703.

There were vast differences between individual counties in the patent acreage change to rent roll acreage change comparison for the period 1663-1704. Of the counties with relatively large patent acreage, most of the counties were in the 80-90% range, but Accomack (98.2%) and Surry (96.4%) contrasted with Nansemond (59.8%). Of the counties with relatively small patent acreage, Warwick (118.4%) contrasted with York (18.1%).

Overall, it does not appear that patentees were avoiding payment of quit-rents. This analysis does reveal a strong improvement in quit-rent enforcement in the period 1688-1702 when more acres (155.0%) were added to the quit-rent lists than were actually patented, which supports the beliefs of both Bond and Bruce that the system was improving. Interestingly, the system had improved sometime before 1702, at least two years before the celebrated 1704 "full" quit-rent list.

Michael Nicholls notes that, in the Southside, some land owners may

have avoided quit-rents by holding land by survey without completing the land patent process (75). What little evidence I have uncovered tends to show this was not so for the colony as a whole. Lists of patents for lands for April 1706 and October 1706 found in Colonial Office records (C.O. 5/1315, ff. 134-136, 169-172) which lists dates of surveys indicate (out of 94 surveys) a mean gap of 11.4 months between survey and patent and a median gap of 8 months. This shorter time lag is much more in agreement with the statutory requirement that the plat be "returned to the capitol within six months of completion and a patent issued on the survey within six more months" (Nicholls 74).

Land Acquisition and Lapsed Land

Lapsed land played a significant role in early Virginia land acquisition, and became increasingly more significant with time. "The law allowed anyone to take up such land by proving to the governor and council that the claim was deserted" (Voorhis 74). For the time period 1660-1706, 619 patents (7.8% of all patents) for 421,000 acres (10.1% of all patent acreage) were for lapsed land. Comprising less than 5% of total land patents in the 1660s, patents for lapsed land rose to over 20% of total land patents in the 1690s. Between 1664 and 1706, while annual new patent acreage was decreasing at 1800 acres per year, lapsed land acreage was increasing at 200 acres per year.

This increasingly high percentage of lapsed land has been curiously ignored by historians. Historians have commented on the laxness with

which the rules of seating were enforced and the general acceptance of that laxness (Bruce 555-556). Voorhis concludes that "throughout the seventeenth century the requirement that land be occupied and cultivated was practically a dead letter. If one absolutely ignored his land and neglected to protect his title when it was brought into ques-tion, then, indeed, he ran the risk of losing his property ...Search of the patent records has failed to reveal an instance of the forfeit and regrant of land for want of culti-vation, in a case where the owner defended his rights" (74).

This laxness is confirmed by my analysis of the land patents. Large multi-tract, multi-county landowners lost relatively little of their land to lapsing, although most such great planters did lose some land due to lapsing. The average owner of lapsed land was a small landowner who had patented only one or two relatively small tracts, and who patented no other land after the date of lapsing. On the average, patentees were allowed far more than the maximum three years to "seat" their plantation and the amount of time allowed actually increased over the 17th century. By 1700, the average time between original patent date and subsequent lapsed patent date was well over fifteen years.

The increase in lapsed land claims could reflect an increase in demand for lapsed land over new land. Lapsed land was undoubtedly more economically attractive than new land because it would have the benefits of all earlier patented lands, such as closer proximity to navigable waters. The patentee of lapsed land saved on surveying fees, but was required to go through the trouble of petitioning the General Court for

the land.

However, more likely the colony-wide increase in lapsed land simply reflects the aging of the Virginia colony and the shortage of new land in the older parts of the colony. The colony-wide rise in lapsed land claims was mirrored in most counties. In each county, usually a few years after the end of a phase of rapid land acquisition, there would follow a phase of lapsed land acquisition. As Nicholls notes for the Southside (79), whether for social or economic reasons, new land was preferred over lapsed land as long as new land was available in the county. When new land was no longer available, demands for lapsed land increased.

Comparative Analysis of Land Patents and 1704 Quit-Rent List

Both Wertenbaker and Voorhis have examined the relationship of land speculation to land engrossment using the land patents and the 1704 quit-rent list. The 1704 quit-rent list includes, by county, the name of each land owner and his owned acreage in 1704.[2]

Viewing the quit-rent list, Wertenbaker was "struck by the number of little holdings, the complete absence of huge estates, the comparative

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[2] For this analysis, I relied heavily on a computer data base of the 1704 quit-rent list developed as part of the York County Project of the Department of Historical Research at the Colonial Williamsburg Foundation funded in part by National Endowment for the Humanities grant #RS-00033-80-1604. I am extremely grateful to Dr. Cary Carson and Ms. Linda Rowe for their help in obtaining access to this data base.

scarcity even of those that for a newly settled country might be termed extensive" (53). Voorhis's calculations showed "some suggestion of the subdivision of larger grants by sale of land to freed servants and others, and by allotment among the children of deceased patent holders" (70). Indeed, the quit-rent list reveals a much more egalitarian society than the patent analysis. Breaking down individual landholdings by county (combining all tracts patented by or owned by the same individual in any one county but ignoring multi-county land holdings), the mean cumulative "new" acreage patented (1660-1703) was 683 acres (std. dev. 1200 acres) while the mean 1704 rent roll acreage was 450 acres (std. dev. 782 acres). The median acreage was 344 patented acres versus 225 rent roll acres. The top 10% of patentees patented 48.2% of patented land acreage, but the top 10% of 1704 landholders only owned 44.7% of 1704 rent roll land acreage.

In a comparative analysis of individuals (using the namecoding system described in Appendix I) in both the patents and 1704 quit-rent list, as shown in Table II, only 20.7% of 1704 land owners had already patented land. Those land owners who used the patent process owned on average 350 more acres than those land owners who did not. Of those who had patented land, the mean year of first patent was 1683 and, interestingly, for the colony as a whole the average patentee on the 1704 quit-rent list had patented a mean 110 acres (median 57 acres) less than he owned in 1704.

There were wide differences between individual counties; for most counties, rent roll acreages actually exceeded patent acreages,

indicating patentees were acquiring land by means other than patenting. New Kent, Northampton, Nansemond, and Isle of Wight counties undoubtedly had considerable land specualtion. However, these calculations most likely under-estimate the difference of quit-rent acreage over patented acreage, especially due to the undercounting of quit-rent acreage (for example, in Nansemond County where undercounting was marked). The presence of several generations with the same given name (for example, the several Edmund Scarburghs on the Eastern Shore), also complicates the analysis in reflecting more family than individual landholdings and exaggerating the mean year of first patent and cumulative patented acreage.

This analysis shows that the average patentee did not speculate in land, but simply continued to accumulate lands by other means.[3] However, these averages disguise significant differences. Of the 1051 patentees who appear on the 1704 quit-rent list, 56.8% were accumulators, 38.9% speculators, and 4.3% held the same amount of land they had patented. Accumulators patented on average 441 acres (median 226 acres) but owned on average 1077 acres (median 650 acres). Speculators patented on average 1090 acres (median 600 acres) but owned on average 630 acres (median 260 acres). Those who owned the same as patented, the modal patentee, patented and owned on average 287 acres (median 200 acres). Tables III and IV show that large patentees were also large speculators

[3] This level of analysis can not determine whether the the land owned in 1704 is identical to the land previously patented. Perhaps landowners sold the land they patented and purchased the land they owned. More local work will be required to determine the prevalency of such a practice.

and large land owners were also large land accumulators; likewise small patentees tended to be accumulators and small owners tended to be speculators.[4] A large land accumulator like William Randolph and a large land speculator like Edmund Scarburgh, although demonstrating radically different land acquisition behavior, undoubtedly had much more in common

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[4] A multiple regression analysis yields the results:

$$ACREDIFF = 2164^{*} - 321^{*}ACRES - 5.2\ DATEDIFF - 94.3\ FRON + e$$
$$(11.4)\quad (9.4)\quad (1.7)\quad (0.8)$$
$$R^2 = 0.106$$

and

$$ACREDIFF = -2128^{*} + 490^{*}RRACRES - 16.6^{*}DATEDIFF - 474.9^{*}FRON + e$$
$$(9.1)\quad (13.9)\quad (5.8)\quad (4.7)$$
$$R^2 = 0.183$$

where

RRACRES = 1704 county quit-rent roll acreage
ACRES = cumulative county new patent acreage
ACREDIFF = RRACRES - ACRES
DATEDIFF = 1704 - year of first new patent
FRON = dummy variable to measure the effect of the frontier where FRON=0 for the land-locked counties of Elizabeth City, James City, Warwick, Gloucester, Middlesex, and York; for all other counties, FRON=1

* denotes statistical significance at the 5% level of significance

Note: Absolute value of t-statistics are in parentheses. For additional information on the use of statistics, refer to Appendix II.

This regression confirms the results of Tables III and IV but also indicates that rent roll acreage tends to be a much better predictor of land acquisition behavior than patent acreage. The analysis also shows that older patentees and frontier patentees are more likely to be speculators than accumulators. Inclusion of dummy variables to test the effect of regional differences other frontier effects showed no significant coefficients.

with each other than with small accumulators and speculators. But, apart from William Byrd, father and son (who both patented and owned great tracts of land in Henrico County), the stereotypical patentee as land engrosser/speculator did not exist. The patent system, although widely used for speculative purposes by large patentees, was on average a tool of neither land speculation nor land engrossment, but simply one of many means available for individual acquisition of land.

If the average patentee bought rather than sold land, then how did the other 80% of land owners come to acquire their land? Just as it is critical to note that most land owners in 1704 did not use the patent system, it is also critical to note that most previous patentees did not own land in 1704. Only 36% of the individuals who patented land between 1660 and 1703 appear on the 1704 quit-rent list. (The average patentee who did not show up on the 1704 quit-rent list had patented 655 acres compared to the 687 acres of the patentee who did show up on the list, so the two types of patentees were not that different.) Undoubtedly, most of the land patented since the days of the London Company had left the hands of the original patentee and been acquired by others through the many alternative ways of acquiring land.[5]

Did the land patent system as a whole result in engrossment of land? Many local studies have shown that a large minority (or even a slight majority) of the inhabitants of the colonial Chesapeake owned no land

[5] Some of the patentees who did not show up on the 1704 rent roll might have been non-resident land speculators. If so, then this study shows that such speculation did not lead to land engrossment and the lands were dispersed in due time.

(Nicholls 66; Walsh, 1977,399; Earle, 1975,209; Kelly,1972,125; Morgan,1975, 221-222). The picture of landlessness might actually be much bleaker. In comparing individuals named in patent headrights and land owners on the 1704 quit-rent list, Wertenbaker showed that "not more than five or six per cent of the indentured servants of [the Restoration] period succeeded in establishing themselves as planters" (97-98). In an independent analysis of the headrights and landowners (not just patentees but all indications of landholding) in the patent records, I found that 3.4% (N=10429) of the male headrights during the period 1660-1679 eventually became landowners, taking a mean 19 years to do so. For the period 1680-1699, only 0.6% (N=2934) of the headrights became land owners.[6] Why the great masses of headrights never show up in later records is not certain. Most likely many died during seasoning, emigrated, squatted on frontier land, or simply avoided county officials.

However, since land continued to be patented, bought, and sold in every county of the Virginia colony, and since there was much land left to be patented on the frontier and even in the older counties, as shown in Table V, it is difficult to prove that there was land engrossment. "New" land continued to be patented in substantial quantities in every county from the time of Bacon's rebellion in 1676 through the 1704 quit-rent list. Even if this land was considered marginal in 1676, the

[6] These patent results can only be treated as low estimates since the patent records are not the best indicators of land ownership. For these estimates, only landowners who first appeared as headrights in the patent records were considered. For most headright-landowner matches, the person actually appears as a landowner before he appears as a headright.

land was available in 1676 and it did not take long for the land to be reevaluated favorably. Although many of the percentages of modern acreage in Table III might be attributed to changes in definition of county boundaries, quit-rent abuse, or 17th century undersurveying errors (although oversurveying was probably just as much a problem), the general availability of land is confirmed by local studies. Lorena Walsh found that even with "the rise in land prices, and a concomitant increase in tenancy at the turn of the century...in 1705 only about sixty percent of the land in [Charles County] had been surveyed, much less settled" (1977,402-405).

But does the high level of landlessness indicate engrossment? The problem is how to define engrossment. If engrossment means that not everyone can own the "best" lands, to that extent there is always engrossment. If engrossment means that those who desire land can only obtain economically marginal land and are forced to migrate in order to obtain "good" lands, then land was probably engrossed in the colonial Chesapeake. If land engrossment means that landowners own more land than they or their family can possibly farm by themselves, then most landowners in the colonial Chesapeake engrossed land.

But if engrossment means that individuals who desired land were thwarted at every turn by other individuals who monopolized all of the land or means of acquiring land, then the colonial Chesapeake was definitely not a region of land engrossment. Indeed, as long as land was available on the frontier and in marginally profitable areas for a fixed small price, land prices amd rents could not become exorbitant and a

family farm was within the reach of the vast majority of white southerners. For those who could not afford the minimum capital cost of farm ownership, there was always tenancy.

And tenancy was, indeed, quite common throughout the early period of American history. Walsh believes "the explanation for a substantial rate of tenancy existing in an area where there was still land available virtually for the taking appears to lie in a complex inter-relationship between, among other things, soil quality, concentration of productive land, credit availability, and changing functions of tenancy itself" (1977,402-405). In a most thorough study of antebellum tenancy in Georgia, Bode and Ginter conclude that "tenancy makes land available, particularly to those those, such as younger sons who have not the capital to purchase" (6). Many studies of the early American North have shown that tenancy was a normal part of the "agricultural ladder" and life-cycle age stratification (Henretta 7-8). In the antebellum North, renting a farm was "an important step toward ownership" (Danhof 88). Tenancy was mostly a function of wealth; to move into land holding status required some threshold amount of capital for investment which tenants lacked (Atack 24).

Freedmen who desired land, but for whom tenancy was beyond either their mean, could simply have squatted on unclaimed land. The abundance of land and the difficulty of policing the frontier undoubtedly allowed many landless to scratch out a living through squatting. That there are few mentions of squatting in the literature of the colonial Chesapeake might indicate that land was made legally available to the landless at

terms they considered reasonable.

This is not to say that freedmen were unconstrained in their choice of tenancy, for constraints did exist. But to the degree that freedmen had a choice between land ownership, tenancy, and squatting, land was not engrossed. Each freedman simply pursued his self-interest in a social system which had never been and never would be egalitarian. Perhaps the issue of engrossment should be viewed from the perspective of the English laborer who had never owned and would never own land of his own. Although most Englishmen ideally would have preferred to own land free and clear, each freedman realistically weighed the advantages and disadvantages of leasing good land or migrating to good land versus patenting accessible poor land, including capital requirements, annual expenses, expected revenues, and risk factors.

That the freedman chose to be a tenant reflects, not engrossment, but simply the same self-interest which motivated people to emigrate to the New World and settle the frontier in the first place. "Perhaps when a poor man considered the various ways by which he might make a living in the county, survey or purchase of a marginal freehold may not have appeared to him to be the best alternative. Leasing more productive land--even though this entailed the payment of substantial rents--may have produced higher or at least equal net incomes" (Walsh,1977,414). Likewise Carr and Menard, who found evidence of heavy migration from the Chesapeake at the end of the 17th century, believe that these freedmen emigrated "less out of a sense of despair than because they thought they could do better in the more recently settled and more rapidly growing

American colonies" (1979,236237).

Although there is little evidence to show that the checks meant to prevent engrossment--quit-rents and lapsing--were effective, an analysis of these checks indicates they were at least in force during the second half of the 17th century and were much more likely to be effective than engrossment proponents would have us believe. Overall, there appears little evidence to show that potential land owners were prohibited from obtaining land, unless they were unwilling or unable to move to or patent the available land. What we might call land speculation or land engrossment, and indeed land acquisition, may be better lumped together "as a form of investment, promoted by colonial governments to provoke the opening and settlement of western lands and the concomitant economic development" (McCusker 334n). Overall we might summarize, as Lewis C. Gray did for all the southern colonies, that "the various land policies did not seriously restrict the supply of land, although in time inertia of population and the tendency toward engrossment caused the better lands in older settled districts to appear scarce" (1:403).

Timing of Land Acquisition

Clemens's study of land acquisition on Maryland's Eastern Shore has some significant and testable specifications for the timing of land acquisition in the colonial Chesapeake:

> Chesapeake settlers had three principal options when they invested in the agricultural economy: patenting land, buying land, and

> purchasing labor. Because tobacco cultivation required little land in a given year, planters benefited when they responded to higher staples prices by purchasing a servant's contract rather than more farming acreage. On the other hand, patenting land, once a person had been transported to the Chesapeake, cost little additional tobacco...People consequently patented land when tobacco prices were high and servants were being brought to the Chesapeake" (72).

Interestingly, with such timing, land acquisition might be classified as more Malthusian than staples. Whether land is being acquired by great planters in order to put additional servants on satellite plantations or by small planters who are moving to the frontier with their servants, both were acquiring land because of increased tithable population pressure on existing resources. Changes in land acqusition are only secondarily related to changes in tobacco prices. The primary cause of land acquisition is an increase in tithable population density. In this case, tithable population density is related to tobacco prices and so the staples model explains the general dynamics of land acquisition. But if tithable population density was found to vary as a function of factors independent of tobacco prices--if immigration was more a function of English wage conditions than tobacco prices or if tithable population increase was due more to natural increase of a creole labor force than immigration--then the staples model may not be as useable. Thus, for studies of land acquisition, the staples model may only be a subset of the more general Malthusian model.

However, there are problems with Clemens's timing argument. Clemens makes a claim for a capital-short society where planters could make only one decision at a time: acquire servants or acquire land. If, as Clemens states, "patenting land, once a person had been transported to the Chesapeake, cost little additional tobacco," why did the small planters who imported the servants not acquire land at the same time (72)? And why, if headrights are such a marketable commodity, is patenting land so dependent on importing servants in Clemens's analysis (Clemens 71-72)? Most Chesapeake historians, since Edmund Morgan's criticisms, have been wary to equate headrights with immigration. What Clemens finds may have been true of Maryland's Eastern Shore, but certainly his analysis of land acquisition has not been proven for the entire Chesapeake.

Nevertheless, Clemens does identify the utmost necessity of determining timing of land acquisition with respect to changes in both tobacco prices and population density if we are to properly test the two theories. Central to any such analysis, especially considering the intricate bureaucratic procedure involved in patenting land, must be an independent assessment of how long the land patent process took. What was the time lag from the start to the finish of the land patent process?

As Gavin Wright shows, the effect of changes in the price of the staple may not have an instantaneous effect on demand for land. Indeed, Wright found that "a distributed lag function, with the weights assigned to past cotton prices declining geometrically with time" gave the best results (112,116). Land acquisition may be lagged due to the time taken to make a decision to acquire new land, to the time necessary to

accumulate the required capital from the windfall of rising tobacco prices, to the physical time required to fulfill the various requirements of the patenting process. In colonial Virginia, the slowness of the colonial bureau-cracy, the inefficiency of the Secretaries' Office, the shortage of surveyors, the difficulty of travel to Jamestown or Williamsburg, all may have effectively delayed the land patent process.

The only date reported on the land patents themselves is the date that the patent was finally issued, the finish date of the land patent process. In order to determine the start date, we need to examine independent sources. Referring back to Beverley's description of the land patent process, indepen-dent dates for headright certificates and surveys, available from both county records and other colonial records, might help establish a start date.

Edmund Morgan, using the excellent index to Nugent's Cavaliers and Pioneers, analyzed the time lag between headright certificate and land patent for several counties between the years 1645-1662. "With the aid of this index it is possible to trace the names from many county certificates to the land patent in which they were used. Where a certificate contains only one name, it is usually impossible to be sure that the same name in a patent is actually the same person. But where several names are on a certificate, as was usually the case, the same combination repeated in a patent makes the identification more certain" (1973,362-363). From this analysis, Morgan identified an average "gap between date of certificate and date of patent" of 20.4 months (as I calculate) (1973,363).

A comparable study was done for the years 1663-1706 using Stratton Nottingham's abstracts of headright certificates of Accomack County. The "gap" was tallied, not by number of headrights as Morgan did, but by number of certificates in order to determine the average patent time lag. Slightly less than half (44.0%) of the Accomack headright certificates were used by the person who initially obtained them with a median time lag of 7 months and a mean time lag of 13.4 months. A quarter (24.1%) of the headright certificates were used by persons other than the person who initially obtained them with a median time lag of 9 months and mean time lag of 26.0 months. A third (31.9%) of the headright certificates could not be traced to any land patent. Almost all of the Accomack County headrights which appeared did so in Accomack or Northampton County patents, indicating very few of the certificates were sold outside of the Eastern Shore. Most of the headright certificates were recorded in the years before 1675, but the time lag showed no discernible time trend over the entire time period 1663-1706.

Another estimate of the time lag between headright certification and patent was obtained by comparing a time series of county headright certification totals for the counties of Accomack (1664-1706), Lancaster (1664-1680), Northumberland (1678-1706), and York (1664-1706) with the Virginia land patent acreage series listed in Table I. In a multiple regression analysis with various time lags, as shown in Table VI, the best estimate was obtained with a 0-1 year time lag, indicating that demand for headrights preceded the acquisition of land by at most one year. It is possible that demand for or supply of headrights lagged

behind demand for land, but this analysis would tend to support low estimates of time lag between demand for land and acquistion of land.

The analysis reported in the section on land speculation showed that the time lag between survey and patent was a mean 11.4 months and median 8 months, which tends to agree with a two year time lag for the patent process. An example is Col. Tully Robinson and Jonathan West of Accomack County who patented 500 acres on 1 May 1706 (Nugent 3:105) based on a survey by Edmund Scarburgh for Tully Robinson of 28 September 1705 (C.O. 5/1315, 136) with 10 headrights combined from certificates of Mr. John Wise [West?], Sr. of 1 February 1703/4 and Capt. Tully Robinson of 3 February 1703/4 (Nottingham 62-63), a total process of 27 months.

Morgan was more concerned to show that the date of land patent was not the date of immigration than to determine the time required to patent land. However, the regularity of the one to two year time lag between headright certificate and land patent indicates that this is a reasonable estimate of the time necessary to patent land.