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COLONIAL LEGISLATION AFFECTING

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THE

POWATAN CONFEDERATION

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The English planters who landed at Jamestown, May 24, 1607, were bound by the terms of a charter issued to their financiers, the Virginia Company, by James I. The preamble of this document stated as one of the motives for planting the colony a desire for

propagating of Christian religion to such people, as yet live in darkness, and miserable ignorance of the true knowledge and worship of God, and may in time bring the infidels and savages, living in those parts, to human civility, and to a settled and quiet government.¹

We may safely assume, however, that these first planters were more concerned with the savage nature of the natives they expected to meet than with their state of infidelity, and paid more attention to the specific instructions of the Virginia Company, to observe "all just, kind and charitable courses in dealing with the natives" in order to obtain their confidence and cooperation before "they perceive you mean to plant among them,"² than to their Christian obligation to obtain converts. Moreover, there was the excellent prior advice of Richard Hakluyt that colonists should first establish for themselves "a settled and quiet government" to assure respect for themselves and a securer basis for any attempt to reduce the natives to "human civility." Hakluyt had advised:

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1. William Waller Hening, Statutes at Large, I (Richmond 1809) 58. Spelling has been modernized throughout this paper.
 2. "Instructions by way of advice, for the intended Voyage to Virginia," reprinted in Travels and Works of Captain John Smith, edited by Edward Arber and A. G. Bradley, Edinburgh, 1910, I, XXXIII.

The means to send such as shall labor effectually in this business is by planting one or two colonies of our nation upon that firm, where they may remain in safety, and first learn the language of the people near adjoining...and by little and little acquaint themselves with their manner, and so with discretion and mildness distill into their purged minds the sweet and lively liquor of the gospel: Otherwise for preachers to run unto them rashly with out some such preparation for their safety, it were nothing else but to run to their apparent and certain destruction.³

Any doubts as to which of the conflicting ideals would prevail should be resolved by an examination of the instructions from the Virginia Company, a document which stresses reality. The colonists were warned not to trust Indian guides, never to allow them to handle their weapons, nor to allow an inferior marksman to shoot before a native, "for if they see your learners miss what they aim at, they will think the weapon not so terrible, and thereby will be bold to assault you; Above all things, do not advertize the killing of any of your men [least] they perceive that they are but common men."⁴

A week after landing at the site chosen for their colony, Captain Newport, with twenty-three companions, began to explore the upper reaches of the James River. On the third day, the explorers made contact with "Powhatan the Cheif of all the Kingdoms," who

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3. E.G.R. Taylor, Writings and Correspondence of the Two Richard Hakluyts, Hakluyt Society (London, 1935) II, 334 ff.
 4. Arber and Bradley, Travels and Works of John Smith, I, XXXVI.

"moved of his own accord a league of friendship with us."⁵ This was a deceptively auspicious beginning for Anglo-Indian relations, since Powhatan held authority over the Indians of most of Tidewater Virginia. By conquest, he had extended his control from his hereditary domains, in the immediate neighborhood of Jamestown, to include all lands north of the James River to beyond the Potomac, roughly bounded on the West by the fall line, and including some territory on the Eastern Shore.⁶ In this loose confederation he numbered some thirty subject tribes,⁷ with an estimated total population of 8,000 inhabitants, 2,400 of whom were warriors.⁸ Had this "league of friendship" been sincere on both parts, the subsequent conflicts between Indians and English might have been negligible. But at almost the very time that Powhatan and Newport were exchanging pledges of friendship, the English left at Jamestown were being ambushed by four hundred of Powhatan's subjects.⁹ The colonists then abandoned all other construction to pallisade their settlement; and their leaders, for the time, substituted for James I's idealistic principles a policy which more realistically met the problems at hand. "For many and sudden were the Assaults and Ambuscades of the Indians; and the

5. Ibid., I, XI ff.

6. William Stith, The History of the First Discovery and Settlement of Virginia (New York, 1864) 46. William Strachey, The Historie of Travaile into Virginia Britannia (London, 1849) 36.

7. Sources vary on the number of tribes in the confederation. Stith, Ibid., says thirty; so does Jefferson, Notes on Virginia, The Works of Thomas Jefferson, ed. by Paul Leicester Ford (New York, 1904) III, 496.

8. Jefferson's estimate, computed from figures given by Smith, Ibid., III, 496.

9. Arberand Bradley, Travels and Works of John Smith, I, 7.

English, by their disorderly straggling were often hurt, while they, by their nimbleness of their heels, escaped."¹⁰ In fairness, however, it should be mentioned that retaliatory measures were not as severe as those advocated by John Smith, possibly because Smith's martial proposals were impractical of operation for the small group at Jamestown.

The instructions issued by the Virginia Company to cover specific problems reiterated the caution which had previously characterized its general instructions. This realization that Christian tenets were not the sole principles by which the colonists could be guided is indicated by the orders issued to Sir Thomas Gates in 1609:

For Powhatan and his Werowances it is clear even to reason beside our experience that he loved not our neighborhood and therefore you may no way trust him.... If you make friendship with any of these nations as you must do, choose to do it with those that are farthest from you and enemies unto those among whom you dwell for you shall have least occasion to have difference with them, and by that means a surer league of amity.¹¹

Strangely, this advice, if it had been followed, would have coincided nicely with the objectives of Powhatan. He had, early, encouraged the English in their belief that the James would

10. Thomas Studley, "Proceedings of the English Colony in Virginia," reprinted in Arber and Bradley, Ibid., I, 92. Stith, History, 46, incorporates the same account verbatim, without acknowledgement.
11. Susan Myra Kingsbury, The Records of the Virginia Company of London, III (Washington, 1933) 18-19.

lead to a passage opening into the Western ocean, hoping to throw them into contact with his enemies on the upper James, and to profit from the resulting confusion.

No basis for cooperation between the two races was found until after the kidnapping of Pocahontas in 1612. The act, itself, antagonized Powhatan, rather than bringing him to terms. But John Rolfe's suit for Pocahontas appeased her father, a result which Governor Dale had foreseen when he approved the courtship.¹² In fact, intermarriage had previously been proposed by Powhatan as the only conclusive evidence that the Englishmen's protestations of friendship were sincere.¹³

Following the marriage, a peace was concluded in 1616, which "lasted uninterruptedly for quite a while and both parties adhered to the terms of it so well that our people went among them unarmed."¹⁴

Encouraged by this peace, the first serious missionary attempts were undertaken. Funds were raised in England "for the building and planting of a college for the training up of the

12. For Rolfe's letter stating his reasons for desiring to marry Pocahontas, see L. G. Tyler, Narratives of Early Virginia (New York, 1907) 239. Dale's covering letter, addressed to the Bishop of London is quoted in Meade, Old Churches, Ministers and Families of Virginia (Philadelphia, 1906) I, 78.

13. Robert Beverley, The History and Present State of Virginia (London, 1705) Book I, 38. Beverley repeated that mixed marriages had not been practiced.

14. An anonymously published "Account of Two Tragical Events" /the massacre of 1622 being one/(Leyden, 1707) reprinted in William and Mary Quarterly, first series, IX (1900) 203 ff.

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Children of those Infidels in true Religion Moral virtue and Civility and for other Godly uses."¹⁵

This uneasy surface friendship continued until the first great massacre. As late as March of 1622, "Powhatan said that he would prefer seeing the country turned upside down rather than break a single article of the treaty."¹⁶ The country was turned upside down on March 22, by the outbreak of the first general massacre. It proved the final blow to hopes for accord between the two races, and was followed by prompt and stern retaliation, which characterized Indian relations for the next fifty years.

Prior to the massacre, ordinances specifically directed toward the Indians may be termed purely defensive in nature. As an example, a proclamation of Council and General Court, dated 7 June, 1617 "against teaching Indians to shoot with guns on pain of death to learner and teacher,"¹⁷ while severe, is only logical in view of the seriousness of the situation which would result

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15. Kingsbury, Records of the Virginia Company, III, 102. See Wesley Frank Craven, "Indian Policy in Early Virginia," William and Mary Quarterly, third series, I (1944) 65 ff, for a good, brief summary of the project.
16. "Account of Two Tragical Events," Ibid., first series, IX (1900) 208. The quotation is questionable, since Powhatan died in the spring of 1618; Arber and Bradley, Travels and Works of John Smith, II, 539: "Powhatan died this last April, yet the Indians continue in peace" and "have confirmed our former league."
17. Virginia Magazine of History and Biography, XIII (1914) 395.

should Indians become familiar with firearms. That some weapons were already in their possession is revealed by the minutes of the Council for October, 1624. One witness before the Council stated that John Smith had taught some of the Indians how to shoot, and that Dale had given firearms to others. At least six guns had fallen into the hands of the Mamunkeys, but these had been subsequently recovered when the Indians sent them to Jamestown for repair.¹⁸ The records of the first assembly, June, 1619, have not been fully preserved, but it is believed that its Indian legislation was concerned only with temporary defense.¹⁹ The first assembly after the massacre inaugurated a policy of relentless warfare, which was strengthened by Council proclamations.

The first of these proclamations was issued by Francis

Wyatt:

Whereas the coming of certain Indians lately to Martins Hundred has given us cause to suspect, that their intent is only to spy and observe the weakness of our Plantations..the Governor...does charge and Command, that no person whatsoever...shall hold any conference with any Indians...without first giving notice thereof...that he see due watch and word kept, and that he suffer none to go abroad to work but with their Arms by them, and sentinels armed to give them warning, nor any to straggle for killing of Venison or other occasion...
 [for] they cannot hurt us through their strength but our own carelessness...."²⁰

18. Ibid., XX, (1921) 157 ff.

19. Hening, Statutes, I, 120.

20. William and Mary Quarterly, second series, VII (1927) 249.

Acts 23 to 32 of the Assembly of 1623 supplemented this proclamation and required that dwellings be palisaded, culminating with the provision that in July "the inhabitants of every corporation shall fall upon their adjoining savages as we did the last year."²¹ This concerted attack was launched on the 23 of July, with the object of destroying the corn crop after it was too late for a second planting; but it was abandoned when the soldiers' own food supply was exhausted.²²

Apparently, some of the settlers were dilatory in complying with the order to defend their dwellings, for on the 15 of October, 1626, by a decision of the General Court

it is ordered according to an act of a late General Assembly that all dwelling houses through the Colony be palisaded or paled about, defensible against the Indians, to be done and finished before the first day of May next²³

and a scale of fines was provided for evaders.

In August, 1628, a truce, spoken of as a "treaty" in the Council records, was negotiated, but its sole purpose was to enable the recovery of prisoners held by the Indians²⁴ and was terminated the following year:

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21. Hening, Statutes, I, 128.
 22. Council Records, abridged in Virginia Magazine of History and Biography, XIX (1920) 120.
 23. Ibid., III (1895) 364.
 24. Council Records, Ibid., XIX (1920) 123.

The treaty of peace with the Indians which has been continued since the beginning of August last /has caused the planters to grow/secure and utterly neglected either to stand upon their guard or to keep their Arms fit...and also on the other side the Indians have been extremely false and altogether neglected the conditions of the treaty...it is a safer course for the Colony in general to prevent a second massacre utterly to proclaim and maintain enmity and wars with all the Indians of these parts...²⁵

and open hostility was resumed the following spring, with the determination "that no peace be concluded with them."²⁶ In a letter to the Virginia Company, the Governor and his council declared

notwithstanding your advice to observe justice to this perfidious people we shall use all stratagems to ruin and destroy them, which will not be unjust whoever may otherwise inform you.²⁷

This seems to have been a campaign with extermination as its object. The Assembly provided for annual marches, to be undertaken in November, March, and July (to coincide with harvest, the first corn planting, and the latest date on which replanting could be made) "to do all manner of spoil and offence to the Indians that may possible be effected."²⁸ This resort to crop

25. Ibid., XXX (1931) 353 ff.

26. Hening, Statutes, I, 153.

27. Virginia Magazine of History and Biography, XV (1916) 37.

28. Hening, Statutes, I, 140.

destruction was justified on the grounds that, since the Indians could not be provoked to pitched battle, it was the only method of retaliation practical. The commanders of the several plantations were authorized to levy the necessary men, and any man injured in service was promised that he would be "maintained by the country according to his person and quality."²⁹ The Pamunkey tribe, who were popularly believed to have instigated the massacre,³⁰ were subjected to vigorous attacks. Governor Wyatt wrote to the Virginia Company that sixty Englishmen had obtained a great victory over eight hundred Pamunkeys, in the course of which they had destroyed enough corn to sustain four thousand men for a year; only the lack of sufficient powder prevented them from annihilating the tribe.³¹ The account is doubtless exaggerated, but it is descriptive of the relentless policy, which was summed up by the statement that "for the Indians, we hold them our irreconcilable enemies"³² and "no person...shall dare to speak or parly with the Indians either in the woods or in any plantation if it can possibly be avoided by any means."³³ The Indians of the Eastern Shore, however, were excepted from this last provision, with due warning that caution must be observed in communicating with them.

29. Ibid., I, 128, 164.

30. "Account of Two Tragical Events," William and Mary Quarterly, first series, IX (1900) 203 ff. The Pamunkeys had been the nucleus, and were still the strongest tribe, of the Confederacy. Maurice A. Mook, "The Aboriginal Population of Tidewater Virginia," American Anthropologist, XLVI (1944) 199.

31. Virginia Magazine of History and Biography, VI (1898) 130

32. Hening, Statutes, I, 176.

33. Ibid., I, 192.

For the first time, a clumsy method was provided for the reception of messengers from neighboring tribes. These messengers were to be escorted to the local "commanders" by the person intercepting them, under penalty of a month's service for failure to do so.

In October, 1630, a plan was announced whereby the frontier of the English settlement would be pushed still further into "the Chief residence of the Pamunkey King, the most dangerous head of the Indian Enemy."³⁴ Under this plan, grants of undesignated acreage were made to the "commanders" of the enterprise, and twenty-five acres "perpoll" to such settlers as could be persuaded to establish residence on the south side of Pamunkey River. A peace, of sorts, was concluded with the Pamunkeys and Chickahominies in October, 1632, but the Council gave the customary warning against parleying with or trusting the Indians.³⁵

Once more the punitive acts were allowed to lapse, and Indian legislation was confined to precautionary measures. The expanding Indian trade required new regulating statutes. Previous acts making the sale of weapons punishable by death were amended, and the sentence lightened to forfeiture "to public uses all the goods and chattels that [the offenders] then have to their own use, and shall also suffer imprisonment during life;"³⁶ one half

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34. Virginia Magazine of History and Biography, V, (1897) 341. This King, Opecancanough, was, in truth, the Englishmen's most formidable enemy. Head of the confederation since 1618, he was more relentless, if less clever, than Powhatan.
35. Ibid., XIII (1914) 390.
36. Hening, Statutes, I, 219.

the estate so confiscated was to go to the informer. Each subsequent Assembly repassed this act in substantially the same terms, but apparently the colonists were lax in observing it. Guns, and, more particularly, powder and shot, were reaching the Indians through the practice of employing them as hunters. The Assembly of 1642 made this practice illegal.³⁷

Trade regulations had, earlier, been designed primarily to protect the colony, lest the Indians become familiar with its weakness.³⁸ An equally important objective had been to prevent the dissipation of the small stock of goods. To that end, it had been acknowledged that "trade with the natives is to be cherished for many respects, yet it is thought fit that the necessity of our present want be first supported."³⁹ The governor was empowered to decide when conditions warranted the sale of items from the colony's stores. As early as 1627, William Claiborne and Henry Fiset had been granted commissions for trade;⁴⁰ in the same year, an attempt was made to enforce restrictions by instructing the authorities of Accomac to investigate the illegal sale of certain items reported to be in the possession of local Indians.⁴¹ In 1639,

37. Ibid., I, 255.

38. Proclamation of 10 May, 1618. Virginia Magazine of History and Biography, XV (1916) 405.

39. Hening, Statutes, I, 219.

40. Council Records, Virginia Magazine of History and Biography, XIV (1915) 263, XXIX (1930) 297.

41. Ibid., XXIX (1930) 297.

a temporary move toward free trade was made when the prohibition against barter without a commission was amended to cover only the sale of "pieces, powder and shott."⁴²

The vindictive attitude which followed the massacre of 1622, had not entirely abated, however; at least not in cases involving individual natives. In 1640, the General Court authorized the victim of a theivish Indian "to detain in his custody the next Indian who shall come to his house and confess himself acquainted with such Indian who stole the said gun, breeches, and shirt until they be brought back by the Indian that stole the same."⁴³ There was, as yet, no tendency to extend to the Indians the benefits of English common law. Nevertheless, the Assembly of 1642, in a lengthy address to the colony, designed to call attention to "the weighty consequence and benefits redounding thereto" from the work of their legislators, could with sincerity refer to "the settling of peace with friendship with the Indians by mutual capitulation and articles agreed and concluded on in writing."⁴⁴ The "capitulation" was hardly mutual, since the English had made no concessions, nor, as events proved, were the Indians sincere. But the yearly

42. Hening, Statutes, I, 227.

43. Council Records, Virginia Magazine of History and Biography, XI (1912) 282.

44. Hening, Statutes, I, 237. In 1641, a number of restrictive acts were repealed, including acts "forbiding parlying," "going abroad without arms," and requiring sentinals. Virginia Magazine of History and Biography, IX (1910) 56 ff.

destructive raids against the native villages had been abandoned, and a measure of friendship restored.

The Pamunkey tribe had been confined to that area lying between the Pamunkey and Mattaponi Rivers. In April, 1644, the tribe began a second concerted effort to drive the English out of their territory. This attempt, like the first, was led by Opechan-canough, now so feeble that he had to be carried in a litter, with his eyelids held open by his attendants. Once more, the English retaliation was severe. Punitive raids designed to break the power of the neighboring tribes were undertaken. The Assembly of 1644 provided for troop levies, every fifteen tithables to furnish, equip, and pay the wages of one soldier. The construction of blockhouses was undertaken at points selected not only for their strategic value, but also with the object of preventing "the great relief and subsistence to the savages by fishing" in their accustomed waters.⁴⁵ Again, provision was made for the wounded, but this time the expense was to be borne by "the several counties where such men reside or inhabit."⁴⁶ Instead of an admonition to observe caution, as had been issued in 1622, the county lieutenants were authorized to punish all persons who traveled abroad in numbers insufficient for defense against ambush.⁴⁷

45. Ibid., I, 237, 293-294, 315, 326-327.

46. Ibid., I, 287.

47. Ibid., I, 301.

In July, three hundred men, under William Claiborne, were levied to march against the Pamunkeys.⁴⁸ As a reward for his services, Claiborne was later given a grant of land within Pamunkey territory, presumably at the point where his expedition crossed the river.

So effective were the raids that by the spring of 1646 the Assembly announced "the almost impossibility of a further revenge upon them, they being dispersed and driven from their towns and habitations, lurking up and down the woods in small numbers."⁴⁹ Negotiations for a settlement were begun, and the sheriffs of the several counties were ordered to levy an extraordinary tax to meet unpaid claims occasioned by the war.⁵⁰

This peace, concluded in October, 1646, marks a decided shift in policy from attempts to exterminate the local tribes to the original theory of converting them to the status of subjects. Under its provisions, Necotowance, successor to Opechancanoe, acknowledged himself subject to the King of England, and, as token that his territory was held at the pleasure of the English sovereign, pledged payment of "twenty beaver skins at the going away of geese yearly."⁵¹ The Assembly promised to protect him and his successors against "any rebels or other enemies whatsoever," thus

48. Virginia Magazine of History and Biography, XXIII (1924) 231.
 49. Hening, Statutes, I, 317-319.
 50. Ibid., I, 337.
 51. Ibid., I, 323-326.

reversing the earlier policy of alliance with tribes hostile to the local Indians. Instead of continuing a menace, the Weyenokes, Nottoways, and Appomattox on the south and the Chickahominies, Pamunkeys, Rappahannocks, and Mattaponis on the west, constituted a real protection on the colony's frontiers.

Necotowance was granted all lands and hunting privileges north of the York river "without any interruption from the English;" but this apparent concession was somewhat invalidated by the provision that the lower reaches of the territory might be opened to settlement at any time after notice had been served by the Governor and his Council. Pending such settlement, it was declared a felony for any Englishman to resort to this preserve, except those "who by stress of weather are forced upon the said land." A further exception, however, gave the English what amounted to complete timber rights in the preserve, since any settler could "go over to the said north side having occasion to fall timber trees or cut sedge, so as the said persons have warrant for their so doing under the hand of the Governor."

In return for this somewhat circumscribed preserve, Necotowance ceded all claims on the territory bounded by the James and York Rivers, from the bay to the fall lines, an area from which they had, in fact, been excluded by the previous hostilities. While trespassers in the Indian preserve were to be turned over to the colony for trial, Indians found in the ceded territory could legally be shot on sight, "unless such Indian...

be sent upon a message from the said Necotowance." It was stipulated that these messengers should report to Fort Royal, on the Pamunkey River, or to Fort Henry on the Appomattox, before entering the restricted area. At these points, they would be supplied with distinctively striped matchcoats, which would serve as their badge of office and exempt them from execution on sight. Upon completion of their business, they were required to leave by the same point.⁵²

Garrisons for these forts were assured by tax exemptions and land grants to specified contractors in return for maintaining ten soldiers at each post for a period of ten years.⁵³

The treaty of 1646 having been signed and means provided for enforcing it, the previous acts "prohibiting any terms of peace" and providing for sorties to destroy corn were repealed,⁵⁴ and an official interpreter was appointed.⁵⁵

This treaty, although harsh in some of its provisions, was a big step forward in effecting amicable relations. It established a basis for adjusting disputes with the natives and remained in effect practically unmodified until the disturbances culminating in Bacon's Rebellion. Under pressure from the "clamorous

52. The points of entry and exit were doubled by the next assembly, which added Westover and Chiskiack. *Ibid.*, I, 348.

53. *Ibid.*, I, 326.

54. *Ibid.*, I, 333.

55. *Ibid.*, I, 328. This first interpreter, John Flood, was succeeded by his son, Thomas Flood in 1659. *Ibid.*, I, 521.

necessities of divers of the inhabitants occasioned and brought upon them through the mean produce of their labours upon barren and overwrought grounds," the lower reaches of the preserve were thrown open to settlement in 1648.⁵⁶ With this settlement, the clause making it a felony for an Englishment to be caught beyond the York was removed; but the law against Indian trespass remained unchanged until modified in 1655.⁵⁷ The civil war in England necessitated reenactment of the treaty and its modifications in March, 1658, substituting "Lord Protector" wherever "King's Majesty" appeared in the original. Otherwise, it was not changed.⁵⁸

It is questionable whether the treaty worked as well as it did because of the good faith of the English, or because of the exhausted condition of the Tidewater tribes. After the death of Opecancanough, who "with his squaw commanded 32 Kingdoms under him,"⁵⁹ the confederation dissolved, and no one tribe remained powerful enough to constitute a threat to the English. In October, 1648, the Governor was allowed a bodyguard of ten men to protect him from threats upon his life by Indians resorting to his office "upon pretext of public negotiations;"⁶⁰ but it is more probable that the guards were provided to protect him from the results of

56. Ibid., I, 353.

57. Ibid., I, 415.

58. Ibid., I, 453.

59. Contemporary letter signed by Thomas Martin, quoted by David I. Bushnell, Jr., Virginia - From Early Records (Lancaster, Pa. 1907) 32.

60. Hening, Statutes, I, 354.

local disaffection arising from the civil war in England. The main Indian threat was now from hostile foreign tribes which, from time to time, encroached on the local Indians. Berkeley could, with all sincerity, assure the Assembly, in 1651, that "The Indians, God be blessed, roundabout us are subdued,"⁶¹ and the Assembly began to lighten its restrictive legislation with acts designed to benefit its formerly "irreconcilable enemies."

The best feature of the treaty of 1646 was its approach to a land settlement. The preamble of the first charter suggests that the English did not intend to dispossess the Indians, but, instead, would seek to share the bounties of the new country. Such, of course, was not the case; and if any of the colonists had difficulty reconciling their instructions to "bring the infidels...to a settled and quiet government" with the practical course adopted, their difficulty could have been resolved by a sermon preached in London, 1609, by the Reverend Robert Gray.⁶² This sermon bluntly disclosed

by what right or warrant we can enter into the land of these savages, take away their rightful inheritance from them, and plant ourselves in their places.

This could be done without violating Christian tenets expressed in the charter, Gray said, since,

61. Virginia Magazine of History and Biography, I (1893) 77.
 62. Robert Gray, A Good Speed to Virginia, ed. by Wesley F. Craven (New York, 1937).

Some affirm, and it is likely to be true, that these savages have no particular property in any part or parcel of that country, but only a general residence there...for they range and wander up and down the country without any law or government...there is not meum and tuum among them; so that if the whole land should be taken from them, there is not a man that can complain of any particular wrong done unto him...all politicians do with one consent, hold and maintain, that a Christian King may lawfully make war upon barbarous and savage people.... [Here he gives Biblical citations] And therefore let every man that is or will be an adventurer in this plantation...not doubt of the lawfulness of it, but let him cheerfully and liberally put his helping hand to this business.

It was Jefferson's belief "that the lands of this country were taken from them by conquest, is not so general a truth as is supposed."⁶³ A tenuous legal claim may, in fact, have been established when Powhatan accepted a crown from Smith and Newport,⁶⁴ an act which may be interpreted as an acknowledgement of the English crown's superior title to Powhatan's land. But it is difficult to believe that the Indians could grasp the fine point involved in their surrender of sovereignty. True, there was no "meum and tuum among them," but the separate tribes of Powhatan's confederacy each held well defined Tribal Bounds which were respected by the other tribes;⁶⁵ and if, as individuals, they could not "complain

63. Jefferson, Notes on Virginia, Works, III, 496

64. Craven, "Indian Policy in Early Virginia," William and Mary Quarterly, third series, I (1944) 69.

65. Beverley, The History and Present State of Virginia, Book III, 56 ff.

of any particular wrong done," as tribal units they had been dispossessed and their conception of communal rights in the country's resources violated.⁶⁶

The 1646 treaty placed the English claims to tribal lands on a legal basis acknowledged by the Indians; but, more important in the development of an enlightened Indian policy, it recognized the natives' land rights, and promised to protect them in maintaining these rights. After 1646, although the territory assigned to the Indians was increasingly narrowed by white settlement, this was done in an orderly fashion, by purchase. In time, the Indians' rights were as zealously defended by the Assembly as were those of the settlers. In 1652, the Court of Northampton county ordered

Whereas divers Indians from the town of Canoncocke, have declaired unto us [that they] have from time to time suffered us to locate upon their land for some small satisfaction received of us for the said land, insomuch that the Indians are now straightened from their hunting, and... divers of our people have been in their

66. See James Buchanan, Sketches of the History, Manners, and Customs of the North American Indians (London, 1824) 19 ff, for an account supposedly by a Virginia Indian on his race's reaction to infringement of hunting and fishing rights by the English. Some individuals "purchased" land rights from the Indians. William Claiborne, when his possession of Kents Island was challenged in 1631, admitted he had to claim to a grant, but based his ownership on purchase, and occupation "by force and virtue thereof." William and Mary Quarterly, second series, I (1921) 79.

woods and laid out land even unto the very town of Cananocke...no man shall presume to seat upon any land on the North side of Pungotegge, unless compensation be made to the Indians.⁶⁷

In July, 1653, the Assembly declared that "the Commissioners of York are required that such persons as are seated upon the land of Pamunkey or Chickahominy Indians be removed."⁶⁸ In the same session, the commissioners of Gloucester and Lancaster counties were "strictly required forthwith to proportion the Indians inhabiting in the said counties their several tracts of land...and assign them such places and bounds to hunt in as may be convenient, both for the inhabitants and the Indians."⁶⁹ The Lancaster court seems to have been less concerned with the convenience of the Indians than with that of the inhabitants, for, to impliment the act, it ordered a force "well and sufficiently armed with a formidable gun, powder and shot, with either a sword or a pistol, and a week's provision," anticipating trouble in what appears to have been a forceable settlement in "such places and portions of land as is allowed and assigned them."⁷⁰ But, in the same year, the Lancaster

67. Virginia Magazine of History and Biography, V (1897) 35. Upon complaint from several Indians that the land was still not paid for, the Englishment concerned were individually ordered to make payment in 1653. Ibid., V (1897, 39.

68. Hening, Statutes, I, 380.

69. Ibid., I, 382. The Indians of Accomack were similarly provided with land in 1660. Ibid., II, 13.

70. Virginia Magazine of History and Biography, III (1895) 173.

court made one of the earliest recorded decisions in favor of an aggrieved native when an Indian shot, "contrary to the laws of this country and the peace established,"⁷¹ was awarded a matchcoat as damages.

Two years later, in an act termed "a part of a plan to civilize the Indians by introducing among them an idea of separate property," the Assembly promised

What lands the Indians shall be possessed of by order of this or other ensuing Assemblies, such land shall not be alienable by them the Indians to any man de futuro...therefore be it enacted, that for the future no such alienations or bargains and sales be valid without the assent of the Assembly.⁷²

The act further promised that Indian children taken into English households in order to convert them to the Christian religion would not be treated as slaves, and must be instructed in a useful trade. The County Courts were charged with enforcing this provision of the act, which approached an apprenticeship system. It was confirmed and elaborated by the passage of two supplementary acts the following year. The first forbade the transfer of such children from one master to another.⁷³ The second prohibited the purchase of Indian slaves, least it "may be of very important and dangerous consequence to the colony if not timely prevented."⁷⁴ Violations were tried before the General Court, resulting

71. Ibid., VII (1900) 173.

72. Hening, Statutes, I, 396.

73. Ibid., I, 455.

74. Ibid., I, 481.

in the release of an adult who had been sold into slavery, and offering to a boy a choice of remaining with the English or returning to his tribe. By 1670, however, Indians were permitted to sell their captives as "servants for a term of years" under an interpretation which distinguished between non-Christian servants shipped into the colony as slaves, and those who "shall come by land." The latter could be held in bondage only until thirty, or, in the case of adults, for twelve years.⁷⁵

In March, 1658, the Assembly further announced

Be it enacted by this present Grand Assembly that there be no grants of land to any Englishman whatsoever (de futuro) until the Indians be first served with the proportion of fifty acres of land for each Bowman; and the proportion for each particular town to lie together, and to be surveyed as well woodland as cleared ground, and to be laid out before patented, with liberty of all waste and unfenced land for hunting for the Indians.⁷⁶

These instructions were not satisfactorily carried out, for later in the same month the Assembly enlarged on them in the most detailed statement of Indian land policy which can be found in the Assemblies' records:

75. *Ibid.*, II, 283.

76. *Ibid.*, I, 456 ff. Craven points out that this conceded a rough equality in land rights, since fifty acres was the established headright claim of the English colonist. "Indian Policy in Early Virginia," *William and Mary Quarterly*, third series, I, 79.

Whereas many complaints have been brought to this Assembly touching wrong done to the Indians, in taking away their land and forcing them into such narrow straights and places that they cannot subsist either by planting or hunting, and for that it may be feared they may be justly driven to despair and to attempt some desperate course for themselves, which inconveniences though they have been endeavored to be remedied by former acts of assembly made to the same purpose, yet notwithstanding Many English doe still intrench upon the said Indians' land, which this Assembly conceiving to be contrary to justice, and the true intent of the English plantation in this country, whereby the Indians might be all just and fair ways be reduced to civility and the true worship of God...be it hereby ordained and enacted, that all the Indians of this Colony shall and may hold and keep those seats of land which they now have, and that no persons or persons whatsoever be suffered to intrench or plant upon such places as the said Indians claim or desire until full leave from the Governor and Council or commanders for the place....And the said commanders shall be accomptable before the Governor and Council and the Grand Assembly if any wrong or injury be done to the Indians Contrary to the intent of this act...And no Indians to sell their lands but at quarter Courts, and that those English which are lately gone to seat near the Pamunkies and the Chickahominies on the north side of Pamunky River shall be recalled....⁷⁷

77. Hening, Statutes, I, 467-468. The Mattaponi Indians, whose present reservation is situated in the area defined by the act, today claim that their reservation rights date from this document. See Frank G. Speck, Chapters on the Ethnology of the Powhatan Tribes of Virginia (New York, 1928).

This act is a clear statement of obligations on the part of colonial authority, and its sincerity is evidenced by the modification of certain features of earlier acts. The trespass law, which originally permitted any settler to shoot a trespassing Indian on sight, "the oath of the party that kills them to be evidence sufficient for proof of the said trespass" was judged to be "of too great a latitude...having a sad apprehension of the small account hath been of late made of shedding Indians' blood."⁷⁸ Henceforth, tributary Indians could be killed only for an act which would constitute a felony if committed by an Englishman, and the act must be proved by the testimony of two witnesses. In an ordinary trespass, the Indian could only be reproved; if he had done property damage, redress would be required of his chief. The agents stationed at the heads of the James and York were authorized to issue passes to Indians other than messengers, providing they were on legitimate business, such as hunting or fishing. Trade in all commodities except those legally forbidden was once more thrown open to all freedmen. This amounted to free trade, since, the same year, weapons, long the outstanding item on the list of prohibited commodities, were allowed to the Indians, because

Many quarrels have arisen between English and Indians carrying their own guns, which might,

78. Hening, Statutes, I, 416.

unless prevented, prove a disturbance of the peace now made between the two nations...it shall be lawfull for the Indians to make use of their own guns and ammunition without the let or molestation of any person or persons whatsoever within their own limits.⁷⁹

A more obvious reason for removing the restriction occurs in an act passed later in the month, allowing "everyman [to] freely trade for guns, powder and shot: it derogating nothing from our safety and adding much to our advantage."⁸⁰ Neighboring colonies, by the sale of arms, were diverting the local Indian trade. Abuses of this liberty soon led to its curtailment. The King of the Weyanokes "by disadvantageous bargains," was imprisoned for debt in 1660, but the Assembly intervened, granting him a year's respite,⁸¹ and then enacted that traders who were urging Indians to engage more goods than they were able to pay for, could not recover their losses by legal procedure.⁸² This led, in 1661, to legislation requiring a commission for trade, to prevent

The frequent intercourse of diverse ill minded, idle, and unskillful people with the Indians [which] fills the people with rumors, disturbs the peace of the country... and renders the trade...and the government far more dangerous than fruitful.⁸³

79. Ibid., I, 518.

80. Ibid., I, 525.

81. Ibid., I, 547.

82. Ibid., I, 541.

83. Hening, Statutes, II, 20.

The effective enforcement of these acts, no matter how well intentioned the Assembly may have been, was retarded by the phenomenal growth of Virginia during the middle of the seventeenth century. In 1646, when the Indians were first guaranteed their land rights, there were only ten counties in the colony. By 1662, seven additional counties had been formed.⁸⁴ The increase in population resulted in increased pressure on the Indian frontier. The Assembly sessions of 1660 and 1661 made an attempt to restrain squatters "for the preservation of the country's honor and reputation," and to extend land guarantees to tribes not already so protected.⁸⁵ It was necessary, however, to restate the whole policy in the comprehensive statute of 1662. This was necessitated by the fact that some Indians were being coerced into acknowledgement of sales that had not taken place, "corrupt interpreters often adding to this mischief by rendering them willing to surrender their own rights."⁸⁶ Under this act, those Englishmen who had settled on Indian land contrary to law should be removed and their houses burned. All Englishmen resident within three miles of an Indian village were instructed to aid the Indians "fence in a corn field

84. Morgan Poitiaux Robinson, Virginia Counties, Those Resulting from Virginia Legislation, Bulletin of the Virginia State Library (Richmond, 1916) 90 ff.

85. Hening, Statutes, II, 13, 14, 16, 20, 34, 35, 36, 39.

86. Ibid., II, 138-143.

proportionable to the number of persons the said Indian town does consist of," to protect the crops against depredation by English stock. These fences, however, had to be maintained by the natives, and if they failed to do so, "what damages soever they shall afterwards sustained shall be at the hazard and sole loss of them the said Indians."

If licensed by two justices of the peace, Indians were permitted to oyster, fish, and gather wild fruit outside the limits of their towns, provided they came unarmed and remained only so long as had been specified by the justices. If an Englishman molested them while they were protected by these licenses, "he shall suffer as if he had done the same to an Englishman, and be fined for his contempt." Trade, once more, was confined to men commissioned by the governor, and in case of dispute arising from trade, only the governor or agents appointed by him could adjust the case.

To facilitate the enforcement of the act, a commission was to determine the exact boundary of the Indian lands, and this boundary was to be examined annually to prevent the English from encroaching and to keep the Indians from settling near enough to the frontier to pilfer. In order to identify natives who violated the provisions of the act, each chief was to be furnished with a number of badges engraved with the name of his tribe. Indians within the English bounds were required to wear these badges, and their chief was held accountable for their actions. The boundary for the south side was the first established, originating on the

headwaters of Blackwater, crossing the Appomattox at Appomattox Indian Town, and reaching the James at Manakin Town.⁸⁷ Later, in order to protect

Henrico county, which as a frontier is most exposed to those dangers, the bounds already fixed on the Southside of James River [shall] be confirmed, and...the militia of that county do lay out the bounds on the Northside of the river....⁸⁸

The old law permitting Indians to be killed for trespass was revived for Henrico, "by the success whereof...it will appear whether the same course be necessary to put in practice in other places." It took the burgesses of Henrico five years to conclude that the liberty "showed several inconveniences and hazards,"⁸⁹ after which Indians were admitted provided they were in "no way entertained but by license legally obtained."

This revision of existing regulations represents a strengthening of Indian land rights, although some of their gains in personal rights were lost in the process.⁹⁰ Until the outbreak of Bacon's Rebellion, it constituted the guiding principle for Indian policy. The government continued to enforce it; as late

87. Hening, Statutes, II, 220.

88. Ibid., II, 237. As late as 1691 these bounds were still being examined. Ibid., III, 85.

89. Ibid., II, 289.

90. However, thirteen cases which were decided in favor of the Indian complaintants are recorded for the March, 1662, session of the Assembly, as contrasted to one unfavorable decision. Ibid., II, 150-156.

as 1674, when the seeds of rebellion were already sown, the Council recorded

We are informed that several Persons...have only taken Leases /to avoid the necessity of obtaining permission for purchase/ from the Pamunkey and Chickahominy Indians...it is therefore ordered that no Person do presume to take any lease for any time from any Indian whatsoever and that all such as have taken any such leases do forbear seating upon or imploying any of the said land till it shall be determined by the next Assembly what further course shall be taken.⁹¹

This same policy did not remain unchallenged by the English, however. The inhabitants of the frontier counties retained the suspicious attitude which the residents of the Jamestown area had abandoned. The Tidewater plantation system was beginning to emerge, under which "everyone endeavours to get great tracts of land, and many turn land lopers...so that too many rather than be tenants, seat upon the remote barren land, whereby contentions arise between them and the Indians...notwithstanding the governors endeavor to the contrary."⁹²

At the same time, the friendly Indians were being further constricted by inroads made by tribes which had not belonged to the old confederation, seeking relief from similar conditions in the other colonies. As early as 1654, the militia of the Northern Neck had been called out to suppress the "insolences occasioned by

91. Minutes of the Council and General Court of Virginia, edited by H. R. McIlwayne (Richmond, 1924) 370. No action by the Assembly is recorded.

92. "Virginia's Deplored Condition," Collections of the Massachusetts Historical Society, fourth series, IX, 162-176.

Maryland Indians."⁹³ In 1656, the Assembly, alarmed by a Western tribe which had settled near the falls of the James, recorded their determination that "these newcome Indians be in no sort suffered to seat themselves there...it being...within those limits which in a just war were formerly conquered by us, and by us reserved at the last conclusion of peace with the Indians."⁹⁴ Acting under the alliance formed ten years before, the friendly Indians, on this occasion, helped remove the interlopers.

The Susquehannocks of Maryland, who were retreating before the advances of the Iriquois confederation,⁹⁵ constituted a threat to Northern Virginia, where their forays were creating "plain paths...which may prove of dangerous consequence."⁹⁶ More realistically, the Susquehannocks were diverting "trade from our neighboring and tributary Indians." Protests were made to the Maryland authorities, and Marylanders, English as well as Indians, forbidden to trade with the Virginia Indians. Tributary Indians were instructed to intercept hostile Indians. On the theory that if they remained alert depredations would cease, they were held responsible for guarding the frontier. The tribe seated nearest the scene of an offense would "be declared the actors thereof and proceeded against accordingly"⁹⁷ if they failed

93. Hening, Statutes, I, 389-390.

94. Ibid., I, 402.

95. Thomas Jefferson Wertebaker, Torchbearer of the Revolution (Princeton, 1940) 74 ff.

96. Hening, Statutes, II, 153.

97. Ibid., II, 193.

to produce the Indians actually responsible.

Northern Indians, however, were given the opportunity of pledging their good will by delivering children as hostages, with the pledge that such hostages would be educated and maintained at public expense.

Meanwhile, the Tuscaroras were suspected of committing thefts on the Southern frontier. The law against entry into English territory without identifying badges was restated, with provision for punishing Englishmen who failed to enforce it.⁹⁸ The act making the Indians of the nearest tribe answerable for disturbances committed by Northern Indians was extended to include disturbances caused by any tribe. An attempt was made to encourage the colonists to carry arms, and the same of weapons to Indians was once more prohibited.⁹⁹

The colony was again on the verge of general Indian warfare, and, when it broke, it was the result of the confused situation on the Maryland border, aggravated by hasty and unauthorized action on the part of two residents of Northern Neck. Although the Powhatan tribes were almost completely broken by the war that followed, there is no evidence to connect them with its origin. In July, 1675, Major George Brent and Colonel George Mason raised

98. Ibid., II, 185.

99. Ibid., II, 215. The Assembly used the conquest of New York as the occasion. Since the Dutch source of arms was cut off, the English could prohibit the sale without loss of trade.

a party of thirty men from Stafford County to avenge the murder of an Englishman by Indians supposedly belonging to the border tribe of Doegs. Their pursuit carried them across the Maryland border, where they killed fourteen Susquehannocks, mistaking them for Doegs. The raid was ill advised in several respects. The English had no proof that the Doegs were guilty of the murder they sought to avenge, and certainly no proof that the Indians fired on were guilty. More important, they had no authority to invade a neighboring province. The fact that they accidentally revenged themselves on a tribe protected by the Maryland government brought on a series of reprisals in both Virginia and Maryland.¹⁰⁰

To meet the danger so unfortunately precipitated, the colonies of Virginia and Maryland jointly declared war on the Susquehannocks, who had, meanwhile, erected a fort on the Maryland side. Approximately a thousand men were raised from the two colonies, including friendly Indians. The fort should soon have been reduced, but for a stupid and treacherous act perpetrated by the Maryland Commander. At his invitation, the Indians sent out "5 Great men to treat of peace."¹⁰¹ After interrogating them,

100. "A True Narrative of the Rise, Progress, and Cessation of the Late Rebellion in Virginia," the report of the Commissioners appointed to investigate the Rebellion. Reprinted in Virginia Magazine of History and Biography, IV (1896) 117 ff.

101. Ibid., 119.

the officer had all five killed. This murder strengthened the determination of the besieged Indians, and they successfully defended their position for seven weeks. At length, they suddenly broke through the English lines and escaped into the forest.

At this juncture, Maryland made peace, and the full force of the Susquehannock's revenge fell on the Virginia frontier, where "the poor distressed and doubly afflicted Planters began to curse and execrate that ill managed business at the fort."¹⁰²

Crossing to the Virginia side, the Susquehannocks attacked the outlying plantations on the upper Rappahannock and Mattaponi. Within a short time, they had killed sixty persons and had terrorized the whole frontier. One parish in Rappahannock lost thirty-six persons, and, after the exodus of frightened settlers, was reduced from seventy-one plantations to eleven in less than three weeks.

Governor Berkeley, apparently believing that peace could be restored by negotiation, delayed decisive action, with unfortunate results for the local Indians. The invading Susquehannocks raided deeper into the more settled parts of the colony, taking hostages from the friendly tribes. These hostages were

102. "A Narrative of the Indian and Civil Wars in Virginia in the year 1675 and 1676," Collections of the Massachusetts Historical Society, second series, I, 27-58.

recognized by some of the planters who escaped the Indian attacks; consequently, suspicion was thrown on the entire Chickahominy and Pamunkey communities. Although the Queen of the Pamunkeys offered twelve of her warriors for service with the colonials,¹⁰³ this was not sufficient to divert the suspicion that her tribe was aiding the Susquehannocks.¹⁰⁴

In the meanwhile, the Assembly had been summoned, and it turned at once to the Indian question. Their proposals reflected Berkeley's determination to prevent a general war, which would doubtless drive the friendly tribes into the camp of the Susquehannocks. Instead, he proposed a defensive system of frontier forts. The Assembly ordered the erection of seven forts and declared war "against all such Indians who are notoriously known... to have committed the murders, rapins and depredations."¹⁰⁵ Trade restrictions, particularly the traffic in arms, were strengthened

103. T[homas] M[athey] "The Beginning, Progress, and Conclusion of Bacon's Rebellion," C.M. Andrews, Narratives of the Insurrections (New York, 1915) 15-41.

104. The inhabitants of Charles City asserted that the Susquehannocks were subjects of the Pamunkeys, who were aiding them to escape after the raids. Virginia Magazine of History and Biography, III (1895) 132. The first charge is incorrect; there is no evidence to support the second.

105. Hening, Statutes, II, 326, 336.

by restoring the death penalty for evaders. A bounty of three matchcoats was offered to any friendly Indian who brought in a prisoner alive, or one matchcoat for the head of every one killed. This bounty was ²mod~~ed~~ on one already offered, without authorization, by Colonel George Mason, one of the instigators of the war.¹⁰⁶

The construction of these forts, however, had little effect on the raids, "for the Indians quickly found out where the mouse traps were set,"¹⁰⁷ and avoided them with ease. At this juncture, news reached Henrico and Charles City Counties that hostile Indians were gathering above the falls of the James for a new assault. The terrified people began to assemble for their own protection. They lacked only a leader, and this leader they found in Nathaniel Bacon, whom they respected "not so much for what he had yet done as the cause of their affections, as for what they expected he would do to deserve their devotion."¹⁰⁸

106. This is the first time the Virginia Colony made such an offer. It was, however, renewed during the French and Indian wars. The bounty, then, was offered to both white and Indians, beginning with ten pounds in 1755, and increasing to thirty pounds in 1758. The offer was withdrawn, September, 1758, having "been found not to answer the purpose thereby intended." Friendly Indians, by then, were in little danger of being scalped for the bounty, since they were accepted for volunteer militia service, in certain capacities, on the same pay scale as whites. Hening, Statutes, VI, 550, 565; VII, 121, 165, 241.
107. Collection of the Massachusetts Historical Society, second series, I, 31.
108. Ibid., 33.

Whatever may be said for Bacon as a champion of the colonials' rights, his failure to distinguish between Virginia's tributary Indians and the hostile tribes cannot be defended. A resident of Virginia for less than two years, his judgement of all Indians seems to have been formed entirely by the hostile attitude of the frontier county of Henrico, where, only five years earlier, it had been legal to kill an Indian on sight. Bacon treated all Indians as if they deserved extermination. His first march, it is true, was directed against a band of hostile Susquehannocks who had fled to the North Carolina border. In this engagement, he was aided by a peaceful band of Occaneechees, who fed and sheltered his men and did all the actual fighting. But after the Susquehannocks had been annihilated for him, Bacon turned on his Indian allies and did not begin his return march until the Occaneechees had also been wiped out. He was well satisfied with this business believing it would result in civil war among the tribes.¹⁰⁹

Back in Jamestown, with Bacon in command of the situation, the Assembly proceeded to legislate out of existence all of the privileges extended to the Indians since 1646.¹¹⁰ A distinction was drawn between hostile and friendly Indians, but so worded that most of the neighboring tribes were classified as hostile.

109. Most of the contemporary accounts of this double victory are, perhaps, too severe on Bacon. But even the men who accompanied him disagreed on a creditable explanation of the massacre of the Occaneechees. "Virginia's Deploured Condition," Collections of Massachusetts Historical Society, fourth series, IX, 167.

110. Hening, Statutes, II, 341-352.

Indians who "already have, or hereafter shall forsake their usual and accustomed dwelling towns without license" were accounted enemies. As a natural reaction to the situation, most local tribes had already gone into hiding. The Pamunkeys, knowing they were already under popular suspicion, had withdrawn to Drogan Swamp, at the head of Piankitanck River, before the enactment of Bacon's laws. From this retreat, their queen assured the Assembly that she and her people would remain peaceful, but would not return to Pamunkey Town as long as there was danger of the inhabitants of New Kent "envying the Pamunkeys and coveting the good land on which they were seated."¹¹¹

Thus, the strongest tribe adjacent to Jamestown, which might have been of great assistance, as they had been since 1646, were technically enemies because of a natural act of self-preservation. In addition, their land preserve was subject to confiscation, since Bacon had determined to defray the expenses of the war against the Indians by the sale of Indian land.

Trade of any nature was strictly prohibited, and to ensure an effective check, all Indian commodities taken in war had to be certified as loot by an officer. All Indian goods then in the hands of the settlers had to be inventoried by a Justice of the Peace prior to the effective date of the law. But the most important item of plunder was the Indian himself, since "all

111. "Virginia's Deplored Condition," Collections of the Massachusetts Historical Society, fourth series, IX, 168.

Indians taken in war [might be] held and accounted slaves during life." This reversed the most humane protection given the Indians, a protection, moreover, which had been consistently upheld by the General Court.

Bacon marched against the Pamunkeys, although it was "well knowne to the whole country that the Queen of Pamunkey and her people had never at any time [sic] betrayed or injured the English."¹¹² Forty-five of the Indians were captured, all but five of whom Bacon sold as slaves. The commissioners appointed to investigate the rebellion after its collapse specifically condemned this treatment of "the good queen of Pamunkey, a faithful friend to, and lover of, the English and their interest, whose sufferings by the late Rebels have been very much many ways, being driven out into the wild woods and there almost famished, plundered of all she had, her people taken prisoners and sold...."¹¹³.

Following the reestablishment of order, a new treaty with the Indians was necessary. The Commissioners advised the Assembly to "...join your utmost endeavors with ours that it may be a truly good and just peace (since such a one is like onely to be most secure and lasting)...it being a base ingratitude to destroy and exterpate those amicable Indians [who] are our

112. "A True Narrative of the Rise, Progress, and Cessation of the Late Rebellion in Virginia," the report of the Commissioners appointed to investigate the Rebellion, Virginia Magazine of History and Biography, IV (1896) 177 ff.

113. Virginia Magazine of History and Biography, V (1897) 64 ff.

best guards to secure us on the frontiers,"¹¹⁴ advice echoed by Charles II's instructions to Sir William Berkeley, "you shall endeavor to make a good peace with the neighbor Indians."¹¹⁵

Accordingly, a conclave was held at Middle Plantation, May 29, 1677, for the purpose of formulating a new treaty. At this gathering, the Queen of the Pamunkeys was recognized as a superior chief, since her tribe constituted the strongest of the remaining Powhatan group.¹¹⁶ The treaty, however, was signed by all the chiefs present, rather than by the head of the Confederation, an indication that the control enjoyed by Powhatan and Opecanough had been dissipated among the scattered and weakened tribes. The Queen of the Pamunkeys was represented by her son, John West, who signed with his initials rather than with an Indian pictograph, as did the other chiefs, an indication that the Pamunkeys were beginning to adopt English customs.¹¹⁷ A letter written by Lord Culpeper, dated September 20, 1683 offers further proof; at that time, he

114. Ibid., XIV (1915) 272

115. Hening, Statutes, II, 425.

116. The full text of the treaty is reprinted in Virginia Magazine of History and Biography, XIV (1915) 289 ff. The present Pamunkey Indians, who retain a copy of this treaty, consider it the basis of their reservation rights. Speck, Chapters on the Ethnology of the Powhatan Tribes, 238.

117. This Indian was the son of the Englishman, John West, an Indian trader. "Beginning, Progress, and Conclusion of Bacon's Rebellion," Andrews, Narratives of the Insurrections, 26.

says, the King of the Pamunkeys and most of his "Chiefmen" had requested Christian baptism.¹¹⁸

This, the last important treaty with the local Indians, and the document on which subsequent legislation was based, followed the principles first established by the treaty of 1646 and elaborated by the revision of 1662. Some articles were specifically designed to right the suffering occasioned by Bacon's Rebellion. Redress was promised for violation of property rights, and future encroachment was forbidden under the provision that no Englishman could seat within three miles of an Authorized Indian town. All Indians "in amity with us" who lacked sufficient land were promised "land laid out and confirmed to them...never to be disturbed therein, or taken from them, so long as they own keep and maintain the due obedience and subjection to his Majesty." As token of this subjection, a yearly quitrent of three arrows was required from each town. An additional tax of twenty beaver skins was collected each March. This tax had first been established in 1646, but now the payment guaranteed each town protection from foreign tribes by the militia.¹¹⁹ In return, the subject tribes promised to guard the frontiers by giving warning at the approach of hostile Indians, by refusing to harbor foreign Indians, and, in the case of couriers sent by foreign tribes, to keep such

118. Virginia Magazine of History and Biography, XIV (1915) 293.

119. Beverley, The History and Present State of Virginia, Book III, 62.

foreign Indians under surveillance as long as they remained within the frontier. A bill passed the following month supplimented these provisions by reviewing the previous law making Indians of the nearest tribe answerable for disturbances, and establishing fines for unauthorized harboring of hostile Indians.¹²⁰

Enslaved Indians were freed, and, henceforth, no friendly Indian could be kept as a servant without license from the Governor; but, under such license, Indians could be indentured on the same terms as English.¹²¹ The treaty included all tribes in the colonies of Virginia and Maryland, and concluded with the promise that trade would be resumed.

The Assembly, in its October session, drew up an elaborate system to regulate the renewed trade. Under its provisions "all Indians whatsoever being in amity and friendship with us from henceforth shall have free and full liberty to come in Among us and bring in any commodities whatsoever to the several places and at the several times hereafter set down."¹²² The places and times indicated constituted a series of annual fairs, to be held at staggered intervals, for the convenience of traders, between the first of April and the tenth of November. The colony was divided into seven convenient geographical districts, each to be serviced

120. Hening, Statutes, II, 437.

121. When the Assembly revoked Bacon's laws, however, the slavery law remained on the statutes. This law, providing that Indians taken in war might be held as slaves, although open to abuse, if strictly interpreted and enforced would now apply only to foreign tribes, since the local Indians remained at peace.

Ibid., II, 404.

122. Ibid., II, 407 ff.

by a fair falling within specified dates (none of which exceeded forty days) and held at a place to be determined by the justice of the respective localities.

Accurate books were to be kept on the sales by the clerks of local courts, and trading at other times and places was forbidden to all tribes except the Wiccomicos of Northumberland and Cheescakes of Gloucester. Neither of these tribes having been provided with a fair, they were specifically exempted from trade restrictions. Before the machinery for implementing this act was completed, however, its impracticality was realized. The very elaborateness of the plan defeated its purpose, since the Indians refused to be governed by its regulations, and traders from Maryland evaded its provisions.¹²³ The act remained on the statute books, however, for three years, when the Assembly revoked all restrictions on trade.¹²⁴

As far as the local tribes were affected, this restoration of free trade was permanent with intoxicants the only restricted item. Only two major attempts were subsequently made to regulate trade, both of them directed toward Indians on or beyond the frontier. The more elaborate of these attempts was sponsored by Governor Spotswood. In 1714, construction was begun on Fort Christina, and the Assembly, on Spotswood's advice, made this

123. Beverley, History and Present State of Virginia, Book I, 86.

124. Hening, Statutes, II, 450.

fort the sole point of entry for trade with all Indians south of the James. An Indian trading company was formed, with a monopoly in return for which it garrisoned the fort for two years, and maintained a school for Indian children. For a time, the project flourished. The school, its expenses paid by Spotswood, attracted seventy children. The Saponis, a frontier tribe, were persuaded to remove to the fort as a protective force.¹²⁵ Then, in 1717, the House of Burgesses attacked the project as a private business venture, rather than a necessary frontier defense.¹²⁶ Spotswood succeeded in keeping the fort in operation a year longer, but in May, 1718 the King and Privy Council dissolved the company,¹²⁷ although it had served a useful role in regulating Western trade.

At the outbreak of the French and Indian War, to insure the friendship of the frontier tribes, a board of directors was appointed to "supply them with goods and other necessities for their support upon reasonable terms, which in this time of open war cannot be done by private adventurers...and to purchase from such Indians the skins and furs which they are now obliged to sell to the French..."¹²⁸ The venture was unsuccessful, for three years

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125. William and Mary Quarterly, first series, IX (1900) 215 ff.
 126. Virginia Magazine of History and Biography, IV (1896) 370.
 127. Virginia Historical Register, IV (1851) 15, Spotswood also faced the skepticism of the Board of Trade, which rejected his first petition for a trade company, since it would "interfere with or discourage the plantings of tobacco, which is the main thing to be pursued in the colony." Virginia Magazine of History and Biography, XXII (1923) 40.
 128. Hening, Statutes, VII, 116.

later the goods were detained at Salisbury, South Carolina, and were offered for sale to any purchaser.¹²⁹ In 1769, Virginia entered the inter-colonial system of Indian agents, and frontier trade ceased to be regulated by the Assembly.

By the turn of the eighteenth century, in fact, the local tribes were a menace only in a social sense. Interpreters, whose salaries were "very burdensome and their service of little use, seeing the tributary Indians understand and can speak the English language very well," were dismissed¹³⁰ and Indians were admitted to militia service. At first, each frontier garrison was required to maintain four natives from neighboring tribes, who were, in effect, little more than hostages for the good conduct of their tribesman. By 1691, only two were required and their function was clearly that of scouts. In addition to equipment and provender, they were placed on an annual pay allowance of eight yards of "duffits" and two Barrels of corn.¹³¹ For several years, these scouts were retained, but in the defense act of 1711 no provision was made for them.¹³² In 1723, Indians were admitted to militia service as drummers or trumpeters, or to perform "pioneering, or such other servile labor as they shall be directed to."¹³³ They served in this capacity from that date on, but, in

129. *Ibid.*, VII, 354.

130. *Ibid.*, IV, 461.

131. *Ibid.*, III, 83. A private's pay was 3,000 pounds of tobacco.

132. *Ibid.*, IV, 9.

133. *Ibid.*, IV, 119; V, 17; VI, 533; VII, 93.

emergencies they were allowed to bear arms as privates. In 1757, a special appropriation was made to pay for such service.¹³⁴

Meanwhile, legislation of a purely restrictive nature was gradually assuming the characteristics common to regulations governing an unassimilable racial minority. As early as 1691, it was considered necessary to forbid intermarriage "for prevention of that abominable mixture and spurious issue which hereafter may increase in this dominion."¹³⁵ This act was later amended, extending freedom to slaves and servants of masters cohabiting with Indians or negroes.¹³⁶ The Assembly of 1705 added a number of discriminatory acts; the most significant, if it can be taken as an indication that the practice it forbade was being followed, prohibited Indians from holding office "ecclesiastical, civil or military, or any place of public trust or power."¹³⁷ Another act prohibited negroes and Indians from giving witness.¹³⁸ In 1723, this was amended to permit testimony in cases involving members

134. Hening, Statutes, VII, 76.

135. Ibid., III, 87. Beverley, in his sympathetic, but level-headed analysis of the Indian character, repeated the passage of this act. Beverley, History and Present State of Virginia, Book I, 38.

136. Hening, Statutes, III, 450; VI, 359. The act, inevitably, failed to achieve its purpose; particularly it failed to prevent admixture of Indians and Negroes. See descriptions of runaway slaves, of mixed blood, advertised in The Virginia Gazette (Purdie & Dixon) 10 January, 1771; 5 March, 1772. More conclusive is the fact that no pure-blooded Indians survive in Virginia today.

137. Hening, Statutes, III, 251. The vote had already been denied free Indians, and this prohibition was periodically renewed, Ibid., IV, 134; VII, 519; VIII, 307.

138. Ibid., III, 298.

of their race.¹³⁹ Conditions under which such testimony was admissable varied thereafter, but it was never accepted in cases involving whites.¹⁴⁰ A third act frankly established a racial distinction in assault cases by providing that if any negro or Indian, bond or free, should "lift his or her hand, in opposition against any Christian, not being negro, mulatto, or Indian," he should "recieve on his or her back, thirty lashes, well laid on."¹⁴¹ The same session established punishments for hog stealing, ranging from thirty nine lashes for a first offense to two hours in the pillory with "both ears nailed thereto, and at the end of the said hours, have the ears cut lose from the nails."¹⁴² This punishment was not specifically designed against Indians, but they were believed to be the chief offenders, as indicated by the terms of repeated attempts to force Indians to adopt a distinctive brand to differentiate their stock from that of the English.¹⁴³

This same assembly of 1705, which was drawing racial distinctions in establishing punishments, continued to adjudicate land disputes in accordance with the liberal policies already established. The Pamunkey and Chickahominy tribes were exempted

139. Ibid., IV, 134.

140. Ibid., IV, 327, 405; V, 245, 547; VI, 104; VIII, 137.

141. Ibid., III, 459; VI, 104.

142. Ibid., III, 276.

143. Ibid., II, 317; III, 109, 278; VI, 123.

from restrictions against hunting on patented lands.¹⁴⁴ By 1705, the Indian population of Pamunkey Neck had greatly declined.¹⁴⁵ The inhabitants of New Kent and King and Queen were demanding admission to this area, located between the two counties. In May, 1688, the Governor and his Council petitioned James II for permission to raise the restrictions against white settlement, on the grounds that the Pamunkeys were so reduced that they could not adequately protect themselves from Northern tribes.¹⁴⁶ The petition was renewed in 1690, and in 1692 a "grievance proposed by several of the inhabitants of King and Queen County and praying for permission to take up lands in Pamunkey Neck" was read before the House of Burgesses, "but wanting such attestations as the law direct were rejected."¹⁴⁷ The Board of Trade, in 1700, rejected a similar petition, "relating to lands in Pamunkey Neck" with the rejoinder that the treaty of 1677 "be exactly observed...

144. Ibid., III, 260. After 1748, hunting on patented land became simple trespass for all Indians. Ibid., VI, 133.

145. Smith's estimate placed the Pamunkey tribe at three hundred members. In 1669, a census of male Indians was taken in order to set a quota of wolves to be killed by each tribe. From this census, Jefferson estimated that the tribe then numbered one hundred and fifty. Notes on Virginia, Works, III, 496. Beverley estimated their number in 1703 at one hundred and twenty five, and noted that they were decreasing. History and Present State of Virginia, Book III, 62. Around 1749, Governor Gooch numbered them at "not above 10 families," Virginia Magazine of History and Biography, III (1895) 120.

? 300 warriors
or approx 1000
soldiers.

146. Executive Journals of the Council of Colonial Virginia, editing by H.R. McIlwaine (Richmond, 1925) I, 94.

147. Journals of the House of Burgesses of Virginia, edited by H. R. McIlwaine (Richmond, 1915) 386.

no grants be made to Englishmen of any lands within the territories reserved to the Indians...a patent be granted to the Indians for the lands reserved to them...in the same manner as patents are usually granted for lands to other his Majesty's subjects."¹⁴⁸
 Nevertheless, Pamunkey Neck was opened to white settlers, and was organized as King William County in 1702.¹⁴⁹

It was necessary, therefore, for the Assembly of 1705 to reconcile this encroachment with previous legislation. They established a new Indian boundary within Pamunkey Neck, and enacted that tributary Indians should be "well secured and defended in their persons, goods, and properties..." and prohibited from conveying their lands without permission from the Assembly.¹⁵⁰

By this time, there were only three important groups of Powhatan Indians retaining a semblance of tribal government, the Pamunkeys of King William, the Nottoways of Surrey, and the Gangascoe, or Gingaskin, of Northampton.¹⁵¹ Legislation affecting these tribes after 1705 was primarily concerned with securing them in their land rights. The Pamunkeys registered complaints in 1706,

148. Virginia Magazine of History and Biography, XXII (1923) 31 ff.

149. William and Mary Quarterly, second series, XX (1940) 108.

150. Hening, Statutes, III, 464 ff.

151. Beverley, History and Present State of Virginia, Book III, 62-63. The Mattaponi and Chickahominys were, for legislative purposes, customarily grouped with the Pamunkeys. Hening, Statutes, II, 34; Virginia Magazine of History and Biography, XXXVIII (1939) 182.

and again in 1715, that English "Taking the Advantage of our Ignorance, do every year clear, build and occupy our land which is beyond this bounds, that we sold them..."¹⁵² In 1748, however, they petitioned for the right to sell a part of their land.¹⁵³ A solution was reached in 1759, when three trustees were appointed to administer their unoccupied land. These trustees had the power to rent, on twenty-one year lease, such of the Indian land as was not necessary for their personal use. Timber rights on the leased land, however, were retained by the Pamunkeys.¹⁵⁴ In 1769, several of the trustees having died, a new board was named, with full powers to adjust disputes arising from boundaries or titles.¹⁵⁵

The Nottoways successfully petitioned for the right to sell portions of their reserve in 1730 and again in 1734, giving as their reason the fact that they were reduced by "wars, sickness, and other casualties, to a small number, and among those that remain, many old and unable to labour or hunt." A special commission supervised these sales.¹⁵⁶ Ten years later, the tribe was allowed to sell an additional three hundred acres.¹⁵⁷ In 1752 and 1756, sales were again permitted, and in 1772 a permanent board of trustees, similar to that already operating for the Pamunkeys, was

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152. Calendar of Virginia State Papers and other Manuscripts, edited by W. P. Palmer (Richmond, 1875-1893) I, 105, 184.
 153. Hening, Statutes, VI, 211.
 154. Ibid., VII, 298.
 155. Ibid., VIII, 433.
 156. William and Mary Quarterly, first series, XXII (1913) 60; Hening, Statutes, IV, 459.
 157. Hening, Statutes, V, 270.

appointed for the Nottoways.¹⁵⁸ These trustees placed three thousand acres under lease.¹⁵⁹

The Pamunkey and Nottoway trustees had been appointed at the request of the tribes concerned. In 1769, after complaints that the Gingaskins were neglecting the cultivation of their reserve and allowing their aged to become a public burden, one third of their land was placed under the supervision of the vestry of Nungors Parish, the money raised to be applied to relief for sick and aged Indians.¹⁶⁰ This system was revised in 1773, and the Gingaskins, like the Pamunkeys and Nottoways, were placed under the supervision of trustees.¹⁶¹ This system of supervision by trustees was continued under the State constitution of 1776.¹⁶²

The treatment of Virginia Indians by the colonial government, while not always consistent, was, on the whole, directed by a sincere effort to be fair. The period before 1622, characterized by mutual distrust, might have seen greater advances in cooperation between the races; but the legislation enacted between the massacres is more liberal than might be expected after the disaster of March, 1622. Although the retaliation exacted after the massacres was severe, reestablishment of good relations after

158. Ibid., VIII, 588.

159. Virginia Gazette (Rind) 8 October, 1772.

160. Hening, Statutes, VIII, 414.

161. Ibid., VIII, 661.

162. Ibid., IX, 119.

bitterness subsided was rapid; the severest, and most unjust reprisals against the local Indians were the actions of a group of colonists in revolt against the authorized government. With the exception of legal expression of racial discrimination, always latent against a subject race, the record of the Assembly and General Court in protecting the Indians' personal rights against individual Englishmen is good. The development of a land policy, culminating in reservations administered by trustees, is the best evidence that Virginia's colonial authorities, while occasionally directed by less well intentioned citizens, were aware of their obligations to their subject Indians.

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