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Part I—The Sequence of the Land Laws, 1788-1956

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INTRODUCTION

“Man has always held the past in high esteem; otherwise his knowledge of his environment would be limited to the experience of his own generation, and each individual would have to start anew his voyage of discovery through the complexities of nature. Nothing in this world can be known or understood intelligently without some ideas as to its origin. Even a new machine is but imperfectly explicable apart from its history. Since man is more important than the machine, more time must be devoted to the study of man than to the study of the machine, but it is essential to recognize that the present is, in its entirety, the outcome of the past, and from that recognition should come a very lively and intelligent interest in the world around us.”¹

The one continuous link which binds any one period of New South Wales history to the next has to do with the land, for until fairly recent times it was the land which was the primary source of wealth and thus the most prized and sought after of possessions.

The struggle between Governor Gipps and the squatters in the middle eighteen-forties, and a short time later, between the colonists and the Crown, frankly rested on the crucial issue of the proprietorship of the “waste lands” of the public estate—who, in fact, were to be the owners; who were to get the profits from them? In the first Parliament under self-government, John Robertson was the lands reformer, and in the first Cabinet (6th June, 1856 to 25th August, 1856), there was a “Secretary for Lands and Works”, upon whom any such reforms would officially depend. The famous Acts of 1861 portended that the lands were to be thrown open to the people, but beyond passing this legislation the Government proved ineffective and indifferent, and laissez-faire allowed the land to be “peacocked” and the “rich to grow richer still”. Again in the 1860’s, 1870’s and early 1880’s it was the revenues from the sale and rent of Crown lands which bulked so largely in the economics of the State’s finances. From then until the final acceptance of closer settlement policies in the early 1900’s, it could well have been said that “the legislature of New South Wales was wholly absorbed in the consideration of the land laws, to the exclusion of all other reforms; or (alternatively) . . . in entertaining the public with unseemly struggles for office.”² Subsequent Crown lands policies from the 1900’s to the present day are almost entirely bound up with the story of the development of a commercial agriculture in New South Wales, and with closer and soldier settlement so as to spread the ownership of land between as many as possible.

¹J. J. Auchmuty, “The Background of Australian History,” *Journ. and Proc. R.A.H.S.*, Vol. 41, Part 3 (November, 1955), p. 133.

²*Sydney Quarterly Magazine*, March, 1887, p. 43.

Life in the Colony for generations revolved around sheep and wool. It was the pastoral industry which "determined national characteristics, energised the commercial organisations, influenced the structure and composition of the political machine and the location and development of towns". Even the wealth amassed on the goldfields helped to consolidate the rule of the wool industry, whilst also laying the foundations of a modern industrialism and encouraging the growth of agriculture as a rival to wool. Australian commerce and industry were built on these twin bases of wool and gold, but have now been greatly modified and transformed, not least by the awakening of a powerful new social consciousness.

From the outset the disposal of the Crown estates involved difficult technical problems and the State has had to work out its own systems and laws. A virgin country required to be quickly and permanently developed. The problems were purely local and so they had to be met as they arose. In the complicated processes of land alienation to begin with, and then of the break-up of immense pastoral holdings into smaller properties, extending over a period of more than 150 years, a long and intricate code of legislation has been built up, with the professed aims of encouraging land development and the settlement of bona-fide farmers on the land. The minutiae of the land laws are thus overwhelmingly complicated and difficult to describe or summarise, in spite of attempts at simplification and consolidation, since almost every session of Parliament has witnessed the passage of new land laws.

It is somewhat surprising, all this being so, how relatively little has been written on this subject of lands and agricultural policies apart from S. H. Roberts' pioneer work in this field. There are miscellaneous reports, files and documents in libraries and in government departments, obscure references in Parliamentary reports and newspapers, but there has been lacking a simple connected account of the evolution of the land tenure system in New South Wales, although otherwise there are available many scattered "fragments, tags and remnants, bits and pieces" to tempt the curious.

The land tenure system is one of the fundamental links in an agricultural economy and has, universally, complex ethical, economic and national involvements. The relationship of man to the land has been variously described as "a bundle of rights," shared between the State or society, on the one hand, and owners, tenants, rentees and lessees on the other, and can never be regarded as immutable or static: changing social and economic conditions continually create fresh requirements for land tenure. A new national and social outlook reflecting a century and a half of struggle and political and economic change has set the pattern for the land tenure system as it is to-day, but this cannot be understood otherwise than by noting its gradual unfolding and accompanying historical settings. Change can never be fully understood except by noting the causes, and causes are important.

No broad picture of New South Wales agriculture can therefore afford to exclude this background—the story of the continuity of the land tenure system from the time of the first grants to the present state of the laws surrounding the distribution of property.

What has been attempted in the present sketch is to provide such a "general conspectus" or "broad canvas" of more than one hundred and fifty years of land development and to reduce a complex story to its simplicities and bare essentials. For these reasons technical details have been kept to a minimum.

In the earlier period, it is of droughts and floods, rust and rabbits, pests and diseases that most is heard. A capricious climate with its low and erratic rainfall does much to confound the orderly progress of settlement. Good seasons alternate with bad seasons, and periodically a buoyant optimism with other periods of doubt as to Australia's agricultural, pastoral and economic future. From the very beginning, the unpredictable ups and downs which characterise the market for wheat and most other forms of primary produce have profoundly affected the course of development. For a period of one hundred years or thereabouts, wheat remained a risky crop in New South Wales, while wool paid better and more reliably.

Technical insufficiencies have likewise affected land settlement and national development. Even as late as the end of World War I, post-war settlement in Australia was bedevilled by lack of knowledge of the soils and their behaviour under irrigation or cultivation, and in after years, the result of this ignorance was reaped in the salting of irrigated land and the bankruptcy of hundreds of marginal wheat farmers. From causes such as this arose the "disillusionment" of the first post-war decade, which itself merged into the Great Depression. It is not surprising, therefore, with these explanations, that "there (have been) many who (have) felt that there was but a dreary future for Australia's primary industries, faced as they were by the conjunction of inherently poor soils where rainfall was adequate, and the prospect of shrinking markets for even that volume of production which was in prospect".³

Of recent years, there has been a complete change in outlook and a dramatic "revolution" in Australian agriculture, for which "step by step, the influence of scientific research may be seen to be in large measure responsible". These also have been fundamental influences in the course of settlement.

This outline, which has been planned as a "specialised monograph", logically follows the author's previous "First Fifty Years of Agriculture in New South Wales", and will form the essential framework or skeleton upon which further studies will be prepared for publication in this *Review*, within the general title of "Closer Settlement."

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³ Sir Ian Clunies Ross, "Scientific Research and Extension and the Development of the Primary Industries" in *A Contribution to the Development of Australia's Primary Industries* (Commonwealth Bank of Australia, 1957).