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## Entail in Two Cities: A Comparative Study of Long Term Leases in Birmingham, England and Baltimore, Maryland 1700-1900

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## ENTAIL IN TWO CITIES: A COMPARATIVE STUDY OF LONG TERM LEASES IN BIRMINGHAM, ENGLAND AND BALTIMORE, MARYLAND 1700-1900

Garrett Power

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*Urban planning is often thought of as a conscious collection of governmental choices made as to the shape and social structure of the city. Thoughtful and forward looking public policies are viewed as mapping out the future. Overlooked or understated in this estimation are the less purposeful influences on the urban morphology and city sociology. This paper examines one such influence, land tenure, by taking a comparative look at the residential development of Birmingham, England, and Baltimore, Maryland, between 1700 and 1900. Birmingham and Baltimore both housed their working class populations in densely-packed dwellings with shared party walls. And both produced and conveyed these dwellings as ninety-nine year leaseholds subject to ground rents. This paper will look at the influence of long-term leasehold tenure on the land, houses, investments and politics of Birmingham and Baltimore. We will see that the two cities share a shape distinctive to leasehold towns, and we will see that a different social attitude toward entailment in the two cities gave ninety-nine year leasehold tenure a different destiny.*

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## INTRODUCTION

Urban planning is often thought of as a conscious collection of governmental choices made as to the shape and social structure of the city. Thoughtful and forward looking public policies are viewed as mapping out the future.

Overlooked or understated in this estimation are the less purposeful influences on the urban morphology and city sociology. This paper examines one such influence, land tenure, by taking a comparative look at the residential development of Birmingham, England and Baltimore, Maryland between 1700 and 1900.

Birmingham and Baltimore are much alike. Both grew in population to one-half million inhabitants over the course of the nineteenth century. Both share a heritage of English land law. Both housed their working class populations in densely-packed dwellings with shared party walls. And both produced and conveyed these dwellings as ninety-nine year leaseholds subject to ground rents.

This paper will look at the influence of leasehold tenure on the land, houses, investments and politics of Birmingham and Baltimore. We will see that the two cities share a shape distinctive to leasehold towns, and we will see that a different social attitude toward entailment in the two cities gave ninety-nine year leasehold tenure a different destiny.

## LAND

Birmingham developed as a leasehold town in the eighteenth century. Ninety-nine year leases were employed in it and some other population centers of England (London, Liverpool and Manchester) to increase the supply of developable land (Aspinall, 1978).

The landed aristocracy held vast estates on the outskirts of these towns. However, pursuant to strict family settlements the lands passed according to the custom of primogeniture from the eldest son in one generation to the eldest son in the next. Such entailments prevented the great landlords from selling their birthright, and left them only with the income from agricultural production (Broderick, 1881: 89-128).

The stakes were high since land on the urban fringe was sometimes worth ten times as much for building as for farming. Parliament was prevailed upon to allow strictly settled lands to be leased for residential development (Chalklin, 1974: 19-23). The length of the leases ranged from fifteen to nine hundred and ninety-nine years, but eventually standardized at ninety-nine years. This duration was a compromise of sorts. Since the term reflected a liberal estimate of the useful life of an eighteenth century house, it permitted a leaseholder to sink capital into improvements and to fully enjoy the investment; assuming a 5% interest rate the leasehold would constitute 99% of the land's value (Homer, 1973: 274-279; Samuelson, 1976: 615-616). Since the improved lots reverted to the aristocratic family in every third generation, landed wealth was kept intact; assuming that the land was in proximity to a growing urban center, the reversion was likely to be worth more than straightforward economic analysis would predict.

In eighteenth century Baltimore developable land was in surfeit and pretensions to aristocracy unfashionable. Maryland had never really accepted the English laws of primogeniture; entail-



FIGURE 1. Section from Bradford's Map of Birmingham 1750. Source: C.W. Chalkin, *The provincial towns of Georgian England*.

in and around the city center. Increases in the value of land promoted "in-filling" in the gardens behind the grand houses and "polite terraces" left over from earlier decades. Most of the new dwellings were for impoverished workers and consisted of only two or three rooms (Chalklin, 1974: 107-108, 196-197).

Slum housing came in a variety of configurations designed to increase the density of habitation. Houses were "jerry-built" back-to-back, at right angle to the street. Tunnels through the terraced houses afforded access to the resulting courts (Muthesius, 1982: 107-108; Chalklin, 1974: 66-72).

The turn of the nineteenth century also witnessed an unprecedented growth in Baltimore's low income housing stock. Its masses lived very much as their Birmingham brethren did. In the low-lying districts surrounding the waterfront, houses in block rows bordered the main streets. Behind them shanties and sheds were connected by alleys and court yards. Just as in Birmingham, these warrens were the product of exigency rather than design. Profit-maximizing

ments had been legislatively abolished in 1782. Yet ninety-nine year leaseholds likewise became the customary tenure form for building lots (Mayer, 1883: 49-51).

Baltimore ground rents served another economic function. They made land more marketable by providing liberal financing terms. For example, in 1769 Ann Fell leased land to Alexander McMechen for ninety-nine years, renewable forever, at an annual rent of 10 pounds, 10 shillings. No down payment was required; the vendor had enhanced the salability of her land by lending the purchase price (*Myers v. Silljacks*, 1882: 330).

The ground rent system also served the land speculator. McMechen immediately subdivided his leasehold into three parts and assigned two lots to sublessees who agreed to pay the entire annual rent of 10 pounds, 10 shillings; he kept the third lot, exonerated from rent obligation, as his profit. In taking his profit McMechen had not been required to invest any capital.

## HOUSES

Once the land in Birmingham was freed for development, construction proceeded rapidly. During the late eighteenth century over ten thousand dwellings were erected

landlords sought to fill ever nook and cranny with living spaces for rental to the poor and casual workers (Olson, 1980: 51,117).

In both Birmingham and Baltimore the boundaries between, and rights of access to, court yard housing was uncertain. But it mattered little because the tangled labyrinth of rooms and dwelling spaces were clustered in the hands of rentiers holding on long term leaseholds. These slumlords let the space short term to tenants who paid a weekly rent; if the tenants missed a payment they were dispossessed of their worldly goods and put out on the street. Estimates suggest that a majority of the nineteenth century Birmingham population lived under these conditions while in Baltimore week-to-week tenants were in a minority (Chalklin, 1974: 157-174; Baltimore Board of Health, 1858).

A majority of Baltimore's families could afford their own homes. The city plan and the ground rent system worked together to provide cheap houses. From the Town's inception the street plan had been laid out as a rectangular grid bordered by ample lots ranging in size from one-quarter to one acre. An informal system of narrow alleys had developed straddling the back lines of the building lots and providing public access to the rear (Olson, 1980: 117-118).

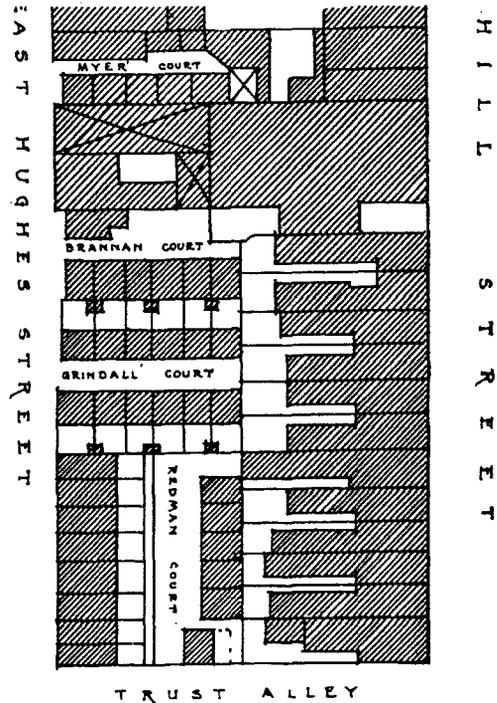


FIGURE 2. Typical arrangement of courts in a Baltimore Alley District. Source: J. Kemp, *Housing Conditions in Baltimore*.

The ground rent system proved instrumental in lining both the streets and the alleys with small dwelling houses. For example, consider the following eighteenth century scenario. In 1770 a freeholder perpetually leased a rectangular lot with twenty feet of frontage on the street for \$90 per year to the prime leaseholder who constructed a substantial row house on the front street and paid the rent. In 1775 the prime leaseholder subleased the back half of the lot to a sub-leaseholder for ninety-nine years at sub-rent of \$45 per year. The sub-leaseholder erected two, ten feet wide alley houses. The sub-leaseholder lived in one of the houses and sub-sub-leased the other to a sub-sub-leaseholder for \$25 per year for ninety-nine years.

The construction of alley houses provided a second class of houses, less expensive than those on the front streets. The reduction in size and the pay-as-you go financing associated with the ground rent system of finance made them affordable to industrious workmen. The alley supplied regular access, and since the long-term subleases were renewable forever, they were the



FIGURE 3. Baltimore row houses built about 1800. Source: R. Howland and E. Spencer, *The architecture of Baltimore*.

next best thing to a freehold. The Baltimore ground rent system proved itself compatible with the civic-republican ideal of home ownership (G. Alexander, 1991).

Meanwhile, on the outskirts of Baltimore and Birmingham, construction of substantial houses for tradesmen, artisans and manufacturers and their families was underway. Developers in both cities produced houses in block rows bordering the streets. The new houses were made of brick and with shared party walls, and each of them had a separate street level

entrance. Depending upon the affluence of the occupant, the houses ranged in width from 15 to 25 feet and in height from two to four stories.

In several respects these terraced rows were distinctive to leasehold towns. Separate street level entrances assured that each dwelling unit could be individually subleased. Tenement buildings with a single entrance for several apartment flats were rare.

Moreover, the joint venturing associated with ground rent system promoted large scale development. The long-term leases reduced the financing cost and provided an organizational form which facilitated mass production.

For example, freeholders leased blocks of land to prime contractors in return for ground rents, for no money down; the rent was sometimes held in abeyance until construction was completed. Construction proceeded a block at a time as multiple dwellings were put together. Once the dwellings were completed they were subleased. Sometimes a carpenter, joiner or other subcontracting tradesman was compensated for his labor in kind, with a sublease to one of the units. The profit of the prime contractor was the difference between ground rents owed and sub-ground rents receivable. Five, ten and sometimes twenty houses might be built in a row or crescent, many more than was customary under the freehold plan (Shivers, 1981; R. Alexander, 1975; Stewart, 1981: 26-27).

In nineteenth century Birmingham ground rents moved to the suburbs. Its business and professional leaders acquired lots on the leasehold plan in Lord Calthorpe's Edgbaston estate on the outskirts of town. There they erected substantial villas for family use (Cannadine, 1980: 85-91).

In Baltimore, on the other hand, ground rents were peculiarly associated with the industrious classes and with row houses. Perhaps because of the strength of the civic-republican ideal of

ownership Baltimore's detached suburban cottages were almost always sold in freehold (R. Alexander, 1975).

## INVESTMENTS

The biggest difference between Baltimore and Birmingham, however, was the role of ground rents in the investment market. The genius of the Baltimore ground rents was that once created they became highly negotiable. They required little active management and in the event of non-payment they were a first lien and well-secured.

Like bonds, ground rents increased in value during periods of deflation and went down in value when interest rose. But quiescent investors preferred these modest fluctuations in value to the much greater risks of panic, depression, and failure found in active trading. Indeed the investor demand for ground rents was so great that critics charged it was withdrawing "capital from manufacturing and other business enterprise" (Mayer, 1882: 130-132; Browne, 1980: 69-113).

In nineteenth century Birmingham, on the other hand, ground rents were rarely bought and sold. Most were created by the great landlords who still respected the custom of primogeniture. After "three lives", more-or-less, the improved property would revert and re-establish the family's place in the aristocracy. Retention of the reversion was part of their rear guard effort to preserve their hegemony.

Birmingham's investors looked elsewhere for investments. Many became rentiers. They assumed the responsibilities of the prime lease for a block of dwelling units which they rented short term to the masses. They filled every empty space with rooms to let. The difference between ground rents paid and weekly rents received was their profit (Chalklin, 1974: 157-174).

Conversely there was much less opportunity for Baltimore investors to become rentiers. Baltimore which claimed a 60% ownership rate (counting long term leaseholding as equivalent to ownership), had less demand for residential landlords than Birmingham (Real Estate Board of Baltimore, 1921).

## POLITICS

The political fate of leaseholds also differed. Throughout the nineteenth century in Birmingham the great landlords had been under attack by the capitalist leaders of industry. Landlordism was blamed for "rubbish and dilapidation in whole quarters" (Briggs, 1963: 227).

Notwithstanding the anti-aristocratic rhetoric, long-term leasehold tenure survived the nineteenth century. And the efforts by the captains of industry to blame leasehold tenure for all matters of squalor and poverty seem self-serving and hollow. The capitalists attacked their own landlord, Lord Calthorpe, for "taking tens of thousand a year from ground rents in Edgbaston, which have been quadrupled in a comparatively short time, not by the energy or skill or enterprise of the Calthorpe Family, but by the energy, enterprise and skill of the people of Birmingham" (Briggs, 1963: 205). In their effort to belittle Calthorpe's entitlement they conveniently forgot that the leaseholds had helped to produce and finance the houses in which they lived.

True, the aristocrats rather than the capitalists captured the appreciation in value of lands close to town, but neither class evidenced any willingness to share it with the proletariat. Leasehold tenure served as a scapegoat for the grossly disparate distribution of wealth for which the middle class elite shared responsibility with the landed aristocracy.

In Baltimore the leaseholders were more successful in their political onslaught. First they achieved legislative reassurance that they would not lose their leaseholds through oversight or inadvertence. Technical adjustments in the ground rent system provided for automatic renewal.

Next, they demanded the privilege to pay off their perpetual indebtedness. The stakes were high. During the period from 1870 to 1900 the market rate of interest on long term investment declined steadily from 6% to 3%. Leaseholders were saddled with a fixed-rate obligation in a period of declining interest (Homer, 1973: 314-316).

Although they were unable to obtain a payment privilege for pre-existing ground rents, leaseholders convinced the legislature to guarantee a right of redemption on future rents. An 1884 statute guaranteed a prepayment privilege (following a fifteen year waiting period) to the holders of all long term leases created thereafter; in 1888 the principal amount due was locked in at the "capitalization of the rent reserved at the rate of six per centum." A \$100 per year ground rent, for example, could be redeemed for \$1,667 ( $100/.06 = 1,667$ ).

By the close of the century, redeemable ground rents were no more and no less, than "a mortgage to secure a principal sum, the interest of which is placed in the form of an annual rent" (*Posner v. Bayless*, 1881).

## CONCLUSION

We have observed how ground rents shaped the two cities. In eighteenth century Birmingham ninety-nine year leases permitted the landed aristocracy to take the profit to be had from converting their manors to city lots; Baltimore's gentry used long-term leases to make their land more marketable by providing liberal financing terms.

Come the nineteenth century, the system was adapted to promote the housing industry. In both Birmingham and Baltimore slumlords rented the ground (long-term) under court yard developments; they let the dwelling spaces (short-term) to the lumpenproletariat. The difference between ground rents paid and building rents received was their profit.

In Baltimore the ground rent system proved instrumental in lining the alleys with small dwelling houses held by industrious workers on long-term subleaseholds. The reduction in size and the pay-as-you-go financing made them affordable, and since the subleases were renewable forever, they were the next best thing to fee simple ownership.

Later in the nineteenth century developers in both cities produced block rows of substantial houses for tradesmen, artisans and manufacturers. The joint venturing associated with the ground rent system promoted large scale development: the long term leases reduced the financing cost and provided an organizational form which facilitated mass production.

The terraced rows of Birmingham and Baltimore proved emblematic of leasehold towns. Separate street level entrances assured that each dwelling unit could be individually subleased. Tenement buildings with a single entrance for several apartment flats were rare.

Although the buildings of Birmingham and Baltimore were much alike, the investment markets for ground rents were much different. Birmingham ground rents were rarely bought and sold. Most were retained by their aristocratic creators. By contrast, in Baltimore ground rents were highly negotiable. In a financial world devoid of gilt-edged bonds, these passive investments were the next best thing.

Birmingham's ground rents survived the nineteenth century unscathed. The first and last use of ninety-nine year leases was to preserve the "chain of destiny" through which the aristocracy entrenched its dominant position in society. By keeping wealth intact, and by settling all of the income on the eldest male son in each generation, the family was aggrandized (Broderick, 1881: 133).

In Baltimore, on the other hand, primogeniture was a "sprig of feudalism" which had never "taken root in the new soil" (Mayer, 1883: 24). When the politically dominant debtor class found itself saddled with a perpetual debt in a time of declining interest rates, they obtained legislative relief which guaranteed all future leaseholders a prepayment privilege. Redeemable ground rents no longer provided the investors with a hedge against deflation.

#### EPILOGUE

In the two cities during the twentieth century, ninety-nine year leases had a different destiny. In Birmingham and other English leasehold towns, they flourish yet to this day. It was not until 1945 that Parliament made strictly settled land freely alienable; it was not until 1967 that Parliament provided leaseholders a guaranteed right to purchase their freehold at fair market value. (Law of Property Act, 1925; Leasehold Reform Act, 1967).

Moreover, the custom of primogeniture remains strong enough, and the price of urban property dear enough, to keep many prime leaseholds in place. For example, Gerald Grosvenor, the Duke of Westminster, remains the richest man in England. The foundation of his wealth is the ground rents he and his ancestors have received on the 300-acre Mayfair estate in London since 1677. Likewise in Birmingham, the current Lord Calthorpe continues to collect rents on his Edgbaston estate (*Sunday Times Magazine*, 1989).

Baltimore's ground rents, on the other hand, are an endangered species. Twentieth century forces push them toward extinction. Inflation has rendered the pre-1884 rents insignificant; since the leases are perpetual, the freeholders have had no opportunity to raise the rents. Right to redemption on post-1884 rents, based on a 6% capitalization, has given leaseholders an incentive to play the money market; whenever the prevailing interest rate has been less than 6%, leaseholders have availed themselves of the opportunity to pay off their ground rents for less than the capitalized amount of their indebtedness. No longer useful, with extinguishment sometimes profitable, ground rents have been dumped on the tenurial trash heap.

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Garrett Power is a Professor of Law at the University of Maryland School of Law. He is a graduate of Duke University (B.A. 1960) and Duke Law School (LL.B. 1962) and holds a graduate degree in law from the University of Illinois College of Law (LL.M. 1965). Professor Power teaches, writes and works in the fields of property law, law and economics, and planning history. He is a co-author of *Chesapeake Waters* (1984), an environmental planning history of Chesapeake Bay, and is presently working on a study of the historical development of Baltimore, Maryland. Publications resulting from this effort have appeared in *Planning Perspectives*, *The Maryland Historical Society Magazine* and the *Maryland Law Review*.