

TURNING THE PAGES OF FREEDOM

They were your average Prussian farming family. Mom, dad and three sons with little to show for years of hard labor—owning nothing but clothes, tools, and an old mule. Seeking freedom, Godfrey and Maria decided to emigrate. They sailed west from a European port to Baltimore or Philadelphia in the early 1720s. They made their first documented appearance in America in Maryland when they were issued a passport over the signature of Benedict Leonard Calvert, the fifteenth proprietary governor of the colony on December 26, 1727 as “free persons, and under no sort of contract to any Person.” Documented, identified by name, free at last.

The passport explains how they paid for the three week cruise--under the legal obligations of indenture. Indentured servants, better described as “voluntary slaves for a period of time”, entered into a legal agreement--usually with the ship's captain for transatlantic passage in exchange for a stated period of servitude (usually 5 to 7 years) from their arrival to the New World. On landing, the captain with indentured passengers would advertise his cargo of laborers. In some type of auction, he would sell the indentures to people who guaranteed to feed and clothe the servants for the specified indenture. The deal included the children whether they knew it or not.

After obtaining the passport, the family resettled in Maryland. Godfrey and his youngest son, Conduce, were naturalized as British citizens in Annapolis on October 26, 1743. Prerequisites included their oath of allegiance to the Crown, and certification they had received communion in the Church of England.

Godfrey and Maria might conceivably have been German Lutherans, Catholics, or even Jews before they left Europe, but they conformed to the religious establishment of their new land—they joined the local Anglican Parish. They assimilated. They worked hard, but now for themselves. On September 10, 1737, Godfrey acquired a 50 acre farm in the city of Baltimore from a merchant in consideration of the sum of 15,000 pounds of tobacco—indicating they had learned the rudiments of tobacco farming, an occupation not known in Europe. How remarkable that only 10 years after acquiring indenture freedom, he acquired real freedom. The ownership of

property guaranteed by the government. A page of freedom identifying the location and boundaries of a piece of dirt. A recorded deed.

Voluntarily in servitude to pay for their move, parents and children alike enduring hard agricultural labor, confronting a new language and customs, probably also unlettered even in their native language, Godfrey and family had become respected members of the community—your typical American family—maybe with a white picket fence?

In 1745 son Conduce married Presocia Burgin, a member of a Huguenot family which originated in Burgundy. They had eight children, four sons and four daughters. They became a really typical family –trouble with a rebellious teenage son. Why is it the middle children who test parental limits? What would you do if your son took up with a cult that held nighttime meetings in neighbor's homes with people shouting, falling down, overcome with religious fervor. Middle son, Philip, had discovered Methodism. Much more fun than the dreary Anglican liturgy. The Book of Common Prayer? Boring. He responded to the spontaneous, relevant praying. Eventually he persuaded the family to convert.

In early Methodist hierarchy, the bottom position was that of class leader who arranged the time and place of meetings and provided refreshments. Next came the exhorter, and then the local preacher. By 1773. Philip had become an exhorter, but wanted to become a preacher. Francis Asbury, the first American Methodist Bishop, an Englishman, carrying John Wesley's Methodism to America, came to Baltimore for a quarterly meeting. He read the rules for becoming a preacher drawn up at the Philadelphia conference in July 1773. He questioned the 10 candidates seeking licensing as an exhorter or preacher.

Philip came last. After he passed the preacher test, Asbury asked him if he could travel in his work. Yes. Did he have a horse? Yes. Would his parents be willing to give him up? Yes. Asbury licensed him on the spot as an itinerant preacher and advised him that his first circuit was to be in the Jerseys. He became a traveling salesman.

In 1776 he was assigned to the Brunswick circuit in Virginia where he met Elizabeth Smith, the daughter of Thomas Smith of Powhatan. They married in 1778. Philip gave up circuit riding and became a local preacher returning to the family occupation of farming, but with slaves. When they

were married, her father gave Elizabeth a number of slaves, but he never transferred title to them. Philip and Elizabeth fretted under the system, but couldn't free their slaves until 1782 when the Virginia assembly passed an act authorizing the manumission of slaves by their owners. With a written instrument signed by two witnesses and approved in County Court, slaves set free were given a copy of the instrument of emancipation attested by the clerk of the court, for which the emancipator paid five shillings. A page of freedom.

Thomas Smith, died in 1786 leaving his property equally between sons and daughters. Married women had no control over the property if their husbands were living. Thus, Elizabeth's inheritance of slaves and more land became Philip's. From itinerant preacher to well-off landowner – all from the work of the Lord. He manumitted their nine slaves by a deed recorded in Powhatan County in 1788. Philip and Elizabeth left Virginia in 1798. Their first stop was in what is now known as Newtown, where they lived in a rented home. The land did not drain well and mosquitoes were voracious. They kept moving.

Philip located and purchased property from John Nancarrow, a Revolutionary war soldier who had acquired title in lieu of wages in a grant signed by Thomas Jefferson and James Madison, a document recorded in Clermont County. Philip acquired title in 1799. 250 acres bought for \$290, with a down payment of \$230, the balance to come from crop sales. That page of freedom proved ownership of a fertile tract which now includes the town of Milford.

Philip was unable to persuade his younger brother, Nicholas, to join him. Instead, Nicholas sent his son, Lewis, born in Baltimore January 12, 1784. With the help of his uncle Philip, Lewis prospected acquired land, became a farmer and real estate developer. He and wife Maria had 11 children.

Lewis' oldest son, John, was born June 7, 1813 the same year Lewis built a stone house on the hill in Milford which stands today, just east of the water tower.

Son John married Georgianna Hutchinson of the sweet singing Hutchinson clan. John, too, prospered under the guidance of his father and Uncle Philip, now a stalwart preacher in the Milford Church, the first Methodist Church in the Northwest Territory. From Judge John Pollock, John

purchased 100 acres in 1849 along the East Fork of the Little Miami River including the stone house built in 1826, property now owned by Valley View Foundation. John was known as “Black John,” not because of a character defect, but because of a fondness for black coffee which he drank in the evening under the branches of an ancient bur oak tree in the front yard. When John died in 1891, Gov. John Pattison gave the eulogy under that tree.

John had eight children. He named second oldest child, born on July 6, 1860, Lewis, after his father. Lewis preferred books--not farming. He attended Woodward High School, traveling by rail from Terrace Park where he grew up. After graduating, he did not go to college but become a teacher at Woodward. After teaching a few years he aspired to become a lawyer.

Without a college or law degree it could be done if a man found a lawyer who would hire him as a clerk. The clerkship was called “reading law.” Lewis located with an established Cincinnati lawyer, John W. Herron. After clerking for a number of years, Mr. Herron said Lewis was ready to sit for the bar exam, which he did successfully, becoming licensed in 1890, joining Mr. Herron’s practice.

John W. Herron joined the Literary Club in 1849, its first year. An 1845 graduate of Miami University, he became President of its Board of Trustees. In 1893 he gave \$2500 with which the university built Herron gymnasium in 1897. Mr. Herron was president of the Literary Club in 1868 and again in 1899. Other than Thornton Hinkle, president in 1872 and 1873, no other member has served twice in that capacity. Mr. Herron invited Lewis to join the Literary Club which he did in 1897.

Lewis and his wife, Mary, without need for farm hands, had only two children, son Loren in 1891, and a son who Lewis named “John” after his father, born 1893. The boys did finish college, but did not complete law school. Instead they fought in WW I for which duty they were given a law degree upon return home without further studies. They passed the bar exam before going to war. They joined their father in the practice as he had joined Mr. Herron.

John had seven children. He named a son “Lewis” after his father. Lewis did finish college and law school and joined the family firm in 1961. In

1965, sponsored by Eslie Asbury, Lewis became a member of the Literary Club. The Asburys keep on helping.

Lewis had three children, the second a son he named “John” after his father. John had two children the second a son he named “Lewis” after his father.

Starting to practice in 1961, fortified with knowledge of constitutional and antitrust law, Lewis found only one such matter—a price fixing claim against a respected firm client. He took other assignments, few of which excited him. Then, the firm merged with another small firm which represented the Wyoming Savings and Loan. Hamilton County, thanks to its German immigrants, had more Bauevereins than any county in Ohio. They made it possible for people to invest at a favorable interest, and borrow to buy homes. There were no credit scores in the early 60s. But, there was a better system. All the borrower had to do was put 20% down, proving good credit. And the S&L needed assurance the seller had good title. That assurance was an opinion letter from its lawyer based on a title search. As the last hire, Lewis became the searcher and opinion writer for all of the S&L’s loans, skills for which he had no training.

Thus, during a hot humid summer in 1963, he learned all about real estate. At first he did not enjoy the assignment. Walking 11 blocks from the Union Central Building to the courthouse with a bulging briefcase was a painful 20 minutes journey. At the courthouse, not air-conditioned, except for the judges offices he discovered the deed books, the mortgage books, the plat books, the probate records, and the judgment records – all on separate floors. The books were heavy, dusty, sometimes missing, and often the documents were handwritten.

The process forced him to take a comprehensive postgraduate course in probate law; reading surveys; partnership law; creditors rights; common law marriages; adverse possession; holistic wills; making your mark; and what a notary public does. Knowledge that served him well in later years, long after he stopped writing opinion letters. He had learned title searching from generous mentors such as Stan Stanford, Francis Montel, Joe Moran, and Leo Weinberger. As he learned the obscure problems, he realized he may have left many timebombs in his opinion letters. He was quite pleased when Ohio adopted the Marketable Title Act, which probably protects him for any undetected title deficiencies that occurred more than 40 years

before a faulty opinion. It has been well more than 40 years since he wrote his last opinion.

During his labors he came to appreciate the work done by Thomas Jefferson, who thought that Americans could and should have the right to own land. Jefferson developed his thinking long before his work on the Declaration of Independence. In 1774 he published a pamphlet in which he denounced King George III's plan that American colonists on the far side of the appellations should live in a feudal arrangement with the King owning the land. Jefferson declared that a formula for inequity based on an ecclesiastical privilege that had been developed in Britain thousand years before by the Norman conquerors.

He declared that in the Northwest Territory, all men should have the right to own land as they see fit-to buy, sell or borrow against its value, and hand it down over generations. And to pay taxes on it. The land ordinance of 1785 for ascertaining the mode of disposing of lands in the Western territory was a piece of legislation that laid down the rules for how the immense tracts of new American countryside, were to be divided, described and eventually distributed. This legislation not only provided for those who wished to own land, it raised money for a new government financially exhausted by the war with Britain. Jefferson had figured out how to have people settle the Northwest Territory while funding the government with the purchase price and annual taxes.

The place where the surveys of Western America would be formally begun is on the outskirts of East Liverpool, Ohio. Jefferson's name is not on the monument, rather Tomas Hutchins, the first geographer. Some say he invented the survey system used which is a model for many of the world's great surveys.

Boundaries have had important and far-reaching implications, since biblical times. Some historians believe that once the Jews accepted the original title from God, it became the responsibility of the existing government civil divisions and individuals to redistribute that title. Governments became involved in the administration and recordkeeping aspects by necessity to preserve the continuity of records.

Jacob and his neighbor Laban are described in the Old Testament as establishing the first boundary mark, Genesis 31:45-48. It is here that the need for definite boundaries became a necessity and a law other than supernatural law. As in the mother country, the deed system was used in America. Ownership became effective on delivery of the deed to the buyer. The public recording of the deed was not necessarily required in England, but colonial legislatures dealt with higher volumes at a greater level of fraud than in England. They recognized the need for a public register of land transactions. Virginia, for example, passed statutes beginning in 1640 that required all transfer title to be recorded in order to preserve their validity. Later statutes clarified that the recording must take place in the jurisdiction where the land lay.

Why is it that capitalism works in Western countries and fails the majority of the world that is living in poverty? According to economist Hernando Desoto, the answer lies in something that he called “dead capital” assets. In his book *The Mystery of Capital*, he states that 5/6ths of the world is poor despite the fact that the people in underserved parts of the world own houses, land, crops and businesses, just as those in the Western capitalist nations do. However, their assets are not participating in the economy. Without property laws in place, people can't transfer ownership, verify owners, divide ownership in the shares by rights over property, force people to pay debts, or enter formal business.

How important is proof of ownership? Ask the citizens of Puerto Rico. Why isn't FEMA better helping the Maria hurricane victims there? The University of Puerto Rico School Law found that 50% of residents have problems with their titles or lack titles. Without titles, residents have a difficult time proving ownership of their properties. Many applicants for aid have been denied because a lack of acceptable homeownership. Most people can be owners of the property, according to Puerto Rico's law, but they do not have documentation to prove they are the owners. The held up relief is not a political failure. Puerto Rico does not have the deed system – rather the civil law system established when it was under Spanish rule. When original owners died, the children just keep living there, generation after generation. Everyone knows what family owns the land. The decendants just can't prove it by documentation, required by FEMA.

Quoting from a Wall Street Journal piece, January 26, 2018, by Ex-Senator Phil Gramm: *Economists have long failed to appreciate the relationship between private property rights and economic development. Karl Marx saw private property as the source of wealth and called for its elimination to promote equality. A century and a half later we know that a country without a formal system for registering property rights limits its own economic development. The road to economic development runs thru the County Clerk's office at the local courthouse.*

When the terrorist Shining Path leaders in Peru surrendered, their commander specifically blamed the implementation of a system to establish property rights. It was the first use of digitized record keeping, now called Block Chain. The plan was conceived and implemented by Hernando Desoto and his American supporters such as Gramm. United States has never won a war against Communism and terrorism, with so little blood and treasure as was done in Peru.

This new technology makes a global property rights registration system feasible with its record-keeping capacity, its ability to provide access to millions of users, and because it can be constantly updated as property ownership changes hands. The technology can empower public and private efforts to register property rights on a single computer platform. Gramm believes we can share the blessings of private property registration with the whole world.

But, is Block Chain compatible with Jefferson's tenet that ownership of property equals freedom when the owner pays tax to run the government? Will the Block Chain platform include a tax component?

Recently, Dick Wendel gave a comprehensive review of the health care industry in Cincinnati. He explained how five hospital conglomerates have taken over most health matters, including turning most of our doctors into W-2 employees. They don't call it "profit," but hospitals each year end up with significantly more receipts than disbursements. That led him to the conclusion that perhaps their land and improvements should not be exempt from real estate tax.

That thought stirred Lewis' interest in the theory behind charitable property tax exemptions. He learned that as in Ohio, most states' constitutions grant authority to the legislature to make specific exemptions. Ohio provides that religious, educational, hospital, library, and civic organizations are non-profit organizations, exempt from real property tax. The main reason for the exemption is the charity provides services to the public which the government would otherwise have to provide.

In Pennsylvania, charities face a tougher test. It's law is based on the principle that a taxpayer should pay no more or less than his proportionate share of the cost of government. Its Supreme Court has stated that taxes are not penalties, but are contributions which all are expected to make to fund the cost of government. Certain organizations are exempt from real estate tax upon the premise they are given a quid-pro quo for providing services which the government would otherwise have to provide. The Pennsylvania constitution has 5 requirements for exemption. An applicant charity must:

1. Advance a charitable purpose
2. Donate or render gratuitously a substantial portion of its services
3. Benefit a substantial and indefinite class of persons
4. Relieve the government of some of its burden
5. Operate entirely free from private profit motive.

Why the higher bar for exemption in that state? The legislators have stated that taxpayers unjustly pay more than their fair share of the cost of government when other property owners game the system by gaining tax exemption for activity that don't lessen the government's burden.

For cities heavily reliant on the property tax, the exemption means that homeowners and businesses must bear a greater share of the property tax. But, the exempt charities still enjoy fire protection, road maintenance, police protection, and every now then the service of a life squad.

Many cities whose economies used to be dominated by manufacturers such as slaughter houses, machine tool making, steel, the auto industry, and clothing markets, have seen mobile for-profit businesses leave town. Yet colleges, universities, and medical centers, tied to their location due to fixed capital investments, remain in place and expand—free of property tax. UC just graduated a class of almost 7,000 tuition payers. In a study from 1990

to 2010 workers employed in manufacturing fell from 16.2% to 8.9% while workers in education and health services grew from 10% to 15.1%

The ever increasing number of charitable entities seeking exemption from property tax has forced governments to get creative in finding ways to cajole or command that exempt charities return some of their tax savings. Central cities and college towns are most likely to pursue policies to offset the negative impact of the charitable property tax exemption, such as voluntary contributions and in-kind services. One voluntary plan is called a “PILOT” the acronym for - Payments In Lieu Of Taxes. An example of a plan, which could be termed voluntary, happens in Princeton Bourough, New Jersey. Princeton voluntarily pays 5% of the city budget, despite tax exemption of all its property. Princeton paid \$1,189,496 on an annual city budget of \$24,700,000 in 2017. Note that Princeton’s endowment at year end 2017 was \$24 billion. Perhaps it doesn’t need the property tax exemption to carry out its purpose?

A study of PILOTs in Boston recommended that such programs should be voluntary, and an exempt charity should provide 25% of what it would pay if its property was not exempt. Wouldn’t a PILOT for a charity that uses its tax exempt facility just 9 months of the year be appropriate?

Lewis wondered what Jefferson would say about exemptions for charities that don’t serve a public purpose. He certainly had provided a good system. Lewis then considered his own family’s system of alternating the first names of the sons since the 1770’s: Lewis, John, Lewis, John, Lewis, John, Lewis -- with the expectation that the youngest Lewis (the fourth one) will maintain the system. The writer Lewis hopes the system will Gatch on.

Lewis Gatch

The Literary Club

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