

The Capitol: A Manual of Interpretation

Department of Research
1951

Colonial Williamsburg Foundation Library Research Report Series - 204
Colonial Williamsburg Foundation Library

Williamsburg, Virginia

1990

THE CAPITOL A MANUAL OF INTERPRETATION

*Designed Principally for the Use of the Hostesses
and Escorts of Colonial Williamsburg*

FOREWORD

Colonial Williamsburg's "purpose all sublime" - unlike that of Gilbert and Sullivan's *Mikado* - is to make the interpretation fit the building. And this can be accomplished only if each hostess and escort is thoroughly familiar not only with the architecture and furnishings of each building, but also with what went on in it in colonial days.

The Capitol, unquestionably, is the most difficult of our Exhibition Buildings to interpret. It housed the legislative, the executive, and the principal judicial machinery of the colonial government, and therefore it cannot properly be understood without knowledge of how the Colony of Virginia was governed. This, unfortunately, is not covered in adequate detail in any single book, and a good deal of research is necessary to ferret out enough facts to complete the picture.

This *Manual* is merely a compilation of information drawn from many different sources - primary and secondary, printed and manuscript. Its purpose is to gather together for the convenience of ready reference as much information as possible relating to the government of colonial Virginia and more especially to what actually went on in the Capitol. It is hoped that this will facilitate the hostesses and escorts in preparing themselves - and in refreshing their memories - for the task of interpreting this important building to visitors

Arthur Pierce Middleton
Research Department
July 3, 1951

THE CAPITOL - A MANUAL OF INTERPRETATION

Table of Contents

I. THE VIRGINIA GENERAL ASSEMBLY

A. ORIGIN, 1619

B. IMPORTANCE IN AMERICAN HISTORY

C. THE ULTIMATE PREEMINENCE OF THE BURGESSES

D. A BRIEF HISTORY OF THE CAPITOL, 1699-1832

1. Removal of the Seat of Government from Jamestown,
1699

2. The Capitol, 1699-1747

3. The Burning of the Capitol, January 30, 1747

4. Rebuilding of the Capitol, 1751-53

5. The Capitol, 1753-80

6. Removal of the Seat of Government, 1779-80

B. FUNCTION OF THE COUNCIL

1. Executive
 2. Legislative
 3. Judicial
-

C. MEMBERSHIP OF THE COUNCIL

1. Appointment
 2. Qualifications
 3. Salaries
 4. Perquisites
 5. Presidents of the Council
 6. Officers of State
-
-
-
-
-
-
-
-
-
-
-

D. THE COUNCIL-AND THE REVOLUTION

1. Reaction to rebellion
 2. Percentage of loyalists
 3. What befell the Councillors, 1775-81
-

V. THE GENERAL COURTROOM

A. THE GENERAL COURT

1. Description
 2. Composition
 3. Quorum
 4. Frequency of Sessions
 5. Opening of Sessions
 6. Judges, Lawyers, and Juries
-

B. JURISDICTION OF THE GENERAL COURT

2. Court of original jurisdiction
 3. Criminal Court
 4. Appeals from, to Privy Council
-

C. OTHER COURTS THAT CONVENED HERE

1. Court of Oyer and Terminer
 2. Court of Vice-Admiralty
 3. Wythe's mock trials and assemblies
-

VI. BIBLIOGRAPHICAL ESSAY

I. THE VIRGINIA ASSEMBLY

A. THE ORIGIN OF THE VIRGINIA ASSEMBLY, 1619

Virginia began its existence without any form of self-government. At the start the colony had no legislative body and the colonists had no way of expressing their will in government, Virginia was established by a commercial company in London, which for a dozen years after the settlement of Jamestown governed Virginia by its own administrative officers acting through their executive appointees in the colony, Between 1610 and 1618 Virginia was arbitrarily ruled by what has been described as a military dictatorship, English political rights were the function of land ownership; the London Company owned all the land in Virginia, and the settlers labored merely as servants of the company.

As it eventually became clear that this kind of government discouraged prospective settlers and failed to make the colony pay, the London Company decided to change its tactics. Its new policy, adopted in 1618, involved the granting of private property in order to attract more settlers to Virginia and induce them to make it their permanent home, And as land ownership, by English law and

custom, conferred the right to representative government, the Company authorized Governor Sir George Yeardley to summon a representative assembly. This historic body - the Virginia Assembly - met for the first time in the church at Jamestown on July 30, 1619 old style (or August 9, 1619, new style) and enacted a series of laws for the colony.

In the early days, the Virginia Assembly was subject to many limitations - its acts could be vetoed by the governor and had to be ratified by the London Company - but when the first representative body in the New World came into being at Jamestown in 1619, a year before the Pilgrim Fathers landed at Plymouth, the germ of self-government was successfully transplanted from England to America.

B. ITS IMPORTANCE IN AFRICAN HISTORY

The significance of this event in American history can scarcely be exaggerated. The Spanish American colonies, which existed long before Virginia, never enjoyed representative government, and neither did the French colonies in America. In bestowing representative government in 1619, England gave America her most precious political gift - an institution that Englishmen had gradually developed over a period of centuries, and one that more than any other was to shape the political development of the British colonies in America, and, through them, ultimately of the United States.

The transfer of the representative system of government to Virginia, together with the institution of private property, just at the time when the colonists found that tobacco could be grown profitably here, provided congenial political and economic conditions that attracted Englishmen to settle in Virginia, thus saving the colony from extinction. It also made it easier for other English colonies founded after 1619 to obtain similar rights. All those who promoted colonization, whether kings, merchants, or landed proprietors, had to secure settlers for their projected colonies, and they soon found that Englishmen could not be induced to migrate in large numbers to colonies where landowning and political rights, such as they knew in England, were denied them. By leading the way in 1619 and by offering serious competition for settlers to subsequent colonies that denied them such rights, Virginia through the establishment of her assembly facilitated the spread of this priceless English heritage to all the other colonies. The institution of the Virginia Assembly in 1619, then, marked the beginning of political rights in the English Colonies, and was the forerunner of those of the United States and the British Commonwealth of Nations of later centuries.

C. THE ULTIMATE PRE-EMINENCE OF THE BURGESSES

In any discussion of the Virginia Assembly, the House of Burgesses must have a leading place. It was not the most important branch at first, but during the colonial period it steadily gained in power and prestige at the expense of the governor and council. On the eve of the Revolution it was paramount, and quite capable of seizing the reins of government when Lord Dunmore fled from Williamsburg in June, 1775. It was the elective branch, the branch closest to the widely-distributed landowning class and most intimately in touch with the needs of the people. It was through their representatives in the house that the freeholders took part in the government. It was to this house that the people sent their complaints and their petitions for redress of grievances.

For many years the governor, councillors, and burgesses all sat and voted together as one legislative house - a practice that served to overawe the burgesses and retard the development of a strong sense of their corporate existence. The great change occurred about 1680, when the Virginia Assembly permanently separated into two houses, the burgesses forming the lower, and the governor and council composing the upper house. From that time on, the rise of the House of Burgesses was gradual but steady.

The governor presided over the Council when acting in a legislative capacity until about 1725. Thereafter he ceased to do so, and its senior member, the president of the Council, replaced the governor. (The governor, however, continued to preside over the Council when it sat in executive as opposed to legislative session.)

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Note 1,- The term "burgess" is derived from the Middle English word "burgeis," and that in turn from the late Latin word "burgensis," which like its French equivalent, "bourgeois," meant a citizen of a borough or freeman of a borough - that is, an inhabitant of a borough who possessed full municipal rights. By the fifteenth century the word "burgess" was also applied to a member of the House of Commons elected to represent a borough. The same term was used for the elected representatives in the Virginia Assembly in 1619 at which time the Colony had no counties, but was divided into boroughs or towns, e.g. James City, Charles City, Elizabeth City, etc. When counties were created in Virginia, in 1634, the word "burgess" continued to be used for the elected members of the General Assembly.

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Note 2 - The expression "House of Burgesses" refers not to a room or a building, but to a body of men which formed the representative portion of the Virginia Assembly. The room in which they met in the Capitol ought therefore to be called the chamber or hall of the House of Burgesses, or the Burgesses' Room, but never the House of Burgesses.

D. A BRIEF HISTORY OF THE CAPITOL, 1699-1832

1. Removal of Seat of Government from Jamestown, 1699

The destruction of the State House at Jamestown by fire in 1698 led the Assembly to consider a more salubrious location inland,

away from possible bombardment by enemy fleets. Middle Plantation, where the College of William and Mary had been established, was finally selected. An act in 1699 directed the building of a new state house, called "the Capitoll," at Middle Plantation which was to be laid out as a city and renamed Williamsburg in honor of the reigning king, William III (1689-1702).

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Note 1 - The word "capitol" ("capitolium") in ancient days, a derivative of "caput" (head), meant a citadel on the head or top of a hill, especially the Capitol at Rome, the great national temple dedicated to Jupiter Optimus Maximus on the Saturnian or Tarpeian (after-wards called Capitoline) Hill.

Why the name "capitol" was chosen for the statehouse ordered built in 1699 at Williamsburg is not known for certain. The most plausible theory, however, is that Virginians at that date shared the erroneous idea then current in England that the Capitol of ancient Rome was the meeting place of the Senate.

Murray's *New English Dictionary* traces the use of the English word "capitol" back to 1375, when John Barbour, quite incidentally in his Scottish epic about Robert Bruce, speaks of Caesar "slayne in hys capitols," A few years later Chaucer's Monk's Tale had Caesar going to the Capitol on the fatal Ides of March.

The Roman Senate did not, of course, hold its sessions in the Capitol, but the Senators along with the generals and other magistrates, went to the Capitol on occasion for religious rites.

This confusion is believed to have been increased when a residence was built on Capitoline Hill in 1536 by Michelangelo for the Senator, an administrative official of the City of Rome, and called the "Palazzo del Senatore" (the Palace of the Senator).

Foreign visitors, apparently, mistook this to mean that the Senate formerly met there. Hence Shakespeare in his *Julius Caesar* represented the Roman Senate Chamber as being in the Capitol, and there is a similar reference in *Hamlet*.

This mistaken idea that the Capitol housed the legislature of ancient Rome probably explains why the Virginians of 1699 chose that name for the new statehouse they proposed to build in Williamsburg for their legislature.

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Note 2 - The word "capitol" ("from Capitolium"), meaning a citadel, and more particularly the Temple of Jupiter in Rome, ought not to be confused with the word "capital," from "capitalis" an adjective meaning relating to the head, main, leading, important, first-rate.

2. The Capitol, 1699-1747

The building, described in detail in the act of 1699, was actually begun in 1701 and completed in 1705. During its erection, the Assembly met in the College building. In 1704, the Assembly held its first session in the yet unfinished Capitol. The next year when it was completed, the builder's master keys were broken in the presence of the Speaker of the House of Burgesses, and Henry Cary, the master builder or "overseer" was discharged.

Probably to minimize the danger of fire, which destroyed several of its predecessors at Jamestown, the new Capitol was built without chimneys, and the use of fire, candles, and tobacco in it prohibited. In time, however, these precautions were abandoned. In 1723, two chimneys were added to the northern end of the building, the Clerk having complained that the records were "Exposed to the Damps." Candles were also ordered brought in, and in all probability smoking soon followed.

3. The Burning Of The Capitol, January 30, 1747

From some unknown cause the Capitol caught fire between 7 and 8 o'clock in the morning and was ruined. The inhabitants were able to save "all the Records deposited in the Capitol ... the Pictures of the Royal Family, and several other Things." But the building was completely gutted by fire, so that only the brick walls were left standing.

4. Rebuilding Of The Capitol, 1751-53

Governor Sir William Gooch, in an address to the House of Burgesses, immediately after the fire, urged that the "Royal Fabric" be restored to "its former Beauty and Magnificence, with the like elegant and capacious Apartments, so well adapted to all the weighty Purposes of Government." There was, however, a strong sentiment in the Assembly favoring the removal of the seat of government to a more central location and a place "commodious for Trade and Navigation." It was by a vote of 40 to 38 that "An Act for Rebuilding the Capitol, in the City of Williamsburg" was passed in 1748.

The Capitol was rebuilt (1751-53), incorporating the existing walls that survived the fire, but with a different architectural facade, The apsidal south ends of the H-shaped building were squared, and the west facade was made the main front, and adorned with a two-story portico surmounted by a pediment bearing the royal arms. In the interests of symmetry, the west door had to be moved slightly to the south.

Between the burning of the Capitol on January 30, 1747 and the completion of the rebuilding of it on November 1, 1753, the General Assembly met at the College and the General Court sat in the Williamsburg Court of Hustings chamber in the former playhouse on Palace Green. Also as a result of the fire, the Public Records office was built to house the official papers of the Colony.

5. The Capitol, 1753-1780

It was with this external appearance that the Capitol witnessed its most historic events, In 1759 George Washington took his seat as a Burgess from Frederick County and was publicly thanked by the Speaker "for his brave and steady Behaviour, from the Encroachments and Hostilities of the French and their Indians, to his Resignation, after the happy Reduction of Fort DuQuasne." On May 30, 1765, Patrick Henry introduced his fiery resolutions against the Stamp Act, and delivered his famous "Caesar-Brutus" speech in defense of them. It was also in this form that the Capitol witnessed such stirring events as the May 15, 1776 resolution calling upon the Continental Congress to declare the United Colonies free and independent, and the unanimous adoption on June 12, 1776, of George Mason's world-famous Virginia Declaration of Rights.

Ebenezer Hazard, a northern visitor to Williamsburg in 1777, described the building as it looked during the Revolution: "The Capitol is a large two Story Brick Building in the Form of an H : it is surrounded with a Brick Wall; you enter the Court Yard by an elegant Iron Gate. In the Front of the Building is a Portico & Balcony, each supported by four Pillars; above these the King's Arms (elegantly carved & gilt) were formerly placed, but upon Independence being declared they were taken down & burned."

Jefferson, in his *Notes on Virginia* (1781), described the Williamsburg Capitol as "a light and airy structure, with a portico in front of two orders, the lower of which, being Doric, is tolerably just in its proportions and ornaments, save only that the intercolonnations are too large, The upper is Ionic, much too small for that on which it is mounted, its ornaments not proper to the order, nor proportioned within themselves, It is crowned with a pediment, which is too high for its span. Yet, on the whole, it is the most pleasing piece of architecture we have ..."

6. Removal Of The Seat of Government, 1779-80

In the course of the Revolution, it became increasingly clear that Williamsburg was accessible to the attack of the enemy, who enjoyed naval supremacy throughout most of the war. The plan for moving the capital of the Commonwealth to a more central location to the westward was revived. The Assembly on June 12, 1779 passed "An Act for the Removal of the Seat of Government," and on December 24 met for its last session in the Williamsburg Capitol. The clerk was ordered to transport the books, papers, and records to Richmond — which was considered "more safe and central than any other Town situated on navigable Water," The change was made during the next five months, and the 1780 session of the Assembly took place at Richmond. On March 25, 1780, notice was published in the *Virginia Gazette* , "that the Business of Government, in the Executive Department, will cease to be transacted at Williamsburg from the 7th of April next, and will commence at Richmond on the 24th of the same Month."

7. The Subsequent History Of The Capitol, 1780-1832

After 1780 the former Capitol served variously as a meeting place of the Court of Admiralty, and the district Chancery Court; as a law school, a military hospital, and as a grammar school. In 1793 the Assembly authorized the sale of the east wing of the building to raise funds for the repair of the west wing. On April 10, 1832 the remaining portion was destroyed by fire.

II. HOUSE OF BURGESSES CHAMBER

A. COMPOSITION OF THE HOUSE OF BURGESSES

1. Representatives

Apportionment of representation

During the first half century of its existence, the representative branch of the Virginia Assembly on several occasions altered its composition. At first the boroughs or corporations (individual plantations like Flowerdieu Hundred) were represented.

17th century experiments

Two Burgesses per county 1669-1776

Then, after the creation of counties in 1634, the county became the normal geographical unit of representation, although occasional instances occur of parishes sending their own burgesses. It was many years before the number of burgesses for a county became finally fixed at two. At one time three were permitted from populous counties, two from middling ones, and one from newly-settled frontier counties. Then, for a while, each county was at liberty to choose one or two burgesses at its discretion. But in cases where only one was sent, his occasional sickness or other unavoidable absence deprived the county of its representation when important measures were voted on. Consequently, in 1669, each county per was obliged by law to send two burgesses - and that remained the rule for the rest of the colonial period.

Borough Representation

One Burgess Each: Jamestown, 1661 Williamsburg, 1722

Norfolk 1736

In addition to the counties, a few towns, in accordance with English parliamentary custom, were granted the right of sending a representative to the House of Burgesses. James City (Jamestown) received this privilege the assembly in 1661. The City of

Williamsburg received it in its royal charter of 1722. And the Borough of Norfolk obtained it in its charter, bestowed by the Assembly in 1736, Each of these towns was entitled to return one burgess, After the capital of the colony was moved to Williamsburg in 1699, Jamestown declined in population, and half a century later had only two or three families. Thus it became an early American counterpart of the "rotten boroughs" of England.

College Representation, One Burgess 1693-1776

In addition to the county and borough representatives, the House of Burgesses had one member representing the College of William and Mary. This conforms to English custom by which the Universities of Oxford and Cambridge have been entitled, until recently, to a representative in the House of Commons since the Middle Ages. It is, how-ever, the only instance of an American college being similarly privileged in a colonial assembly. The right was specifically bestowed by the royal charter creating the College in 1693.

2. Increasing Numbers Of Burgesses

Hall of the Burgesses Enlarged 1736

The first Virginia Assembly of 1619 had but twenty burgesses. But with the rapid westward expansion of the colony, particularly after Bacon's Rebellion (1676), the number of counties grew apace, and with it the number of members of the House of Burgesses. In 1705, at the time the first Capitol was completed, there were about 52 burgesses - a fact which is important, because the hall of the House of Burgesses in the first Capitol, obviously, was intended to accommodate burgesses to about that number. But by 1736, when their number had increased to 70, the hall in which they met must have been terribly overcrowded. Indeed, in that very year the House ordered the Speaker to "employ Workmen to enlarge the Chamber of the Burgesses, and to make the same more commodious, before the next Session of Assembly." This was done, but it proved to be only a temporary solution to the problem. After its restoration in 1751-53, the Capitol must have contained a much larger chamber for the burgesses, because on the eve of the Revolution their number had grown to about 130.

3. Attendance, Salaries, And Allowances of Members

A Duty Grudgingly Performed

In discussing the subject of attendance, it is well to understand, at the outset, that the seventeenth-century view of membership in the legislature differs substantially from the nineteenth-century view. Latterly it has come to be regarded as a great honor to be chosen of one's fellow citizens to represent them. But in the seventeenth century it was regarded rather as a grievous burden than an honor. Men in many cases, no doubt, accepted membership as a kind of unpleasant duty they owed to the community of which they were prominent inhabitants. But it was often done somewhat grudgingly, and their sense of duty was not so strong as to prevent their putting their private business before the affairs of the country. Hence it was necessary to enact laws designed to enforce attendance.

Fines for Absence

Fines were imposed for unauthorized absences - 20 lbs. of tobacco in 1663; 1000 lbs. in 1684; 500 in 1691, "to be deducted out of his wages by the county for which he serves." Later in 1691 it was ordered that any member who left before the end of the legislative session should lose his whole wages.

Roll-Calls

In order to check up on attendance, the House of Burgesses had a daily roll-call in the 1680+s. In 1693 it had a roll-call every Monday morning at 10:00 A.M. to make sure that members who had left Jamestown for the weekend were back in their places. In addition, unexpected roll-calls, made on the motion of any member of the House, served to expose unauthorized absentees.

Authorized Leaves

If for any reason a member desired to absent himself from the Assembly, he petitioned the House for leave and set forth his reasons. If the House was convinced that it was "some extraordinary and emergent occasion," it granted the request. Frequently the request was denied. In either case - especially in cases where it was granted - the excuses were inserted in full in the journal.

Modification in 18th century

In the course of the eighteenth century, however, as the dignity of the House of Burgesses perceptibly increased, members began to take more pride in their position and to consider it a privilege to participate in the debates, committee work, and legislation of the Assembly. Concurrently, absences became less serious, and the need for rigid enforcement of attendance declined.

Fines for absence declined in amount, and became little more than fees to be paid the messenger sent to apprehend the erring burgess. Roll-calls became less frequent, and advance notice of them was given. Moreover, the House became much more disposed to excuse absences.

This change, however, was relative, not absolute. Leave was occasionally denied, and absentee members were occasionally

brought back by force and reprimanded "for neglecting the service of the house." Severity was generally reserved for failure to be present when important measures were voted on and for which ample advance notice had been given.

French and Indian War - Leniency

Unprecedented conditions during the French and Indian War (1755-1763) resulted in even greater leniency with respect to absences of burgesses. The exigencies of providing supplies for the troops kept the Assembly in session at abnormal seasons, often conflicting with the sessions of the county courts. In consequence, many burgesses divided their time between the two. The quorum necessary for business in the House of Burgesses was, normally, about 45 percent of its total membership. In 1756 it fell to 24 percent, absence being condoned on a large scale.

Post-War Leniency

The practice of leniency during the war years continued after the return of peace in 1763. From that time until the Revolution, roll-calls were rare, members were seldom taken into custody, and excuses for absence were usually accepted without scrutiny.

Conclusion

The same development occurred during this period in the British House of Commons. Both the House of Burgesses and the House of Commons, by 1770, had come to the conclusion that attendance could not be enforced either by fines, roll-calls, or taking members into custody. Even so, the nineteenth-century idea that absence was more detrimental to the member and his constituency than to the House had not yet entirely superseded the older view.

Allowances & Salaries

1661 - 150 lbs. tobacco per day

120 lbs.

12/- 10/-

As it was considered a public duty to serve as a burgess, it was only right that all expenses connected with travel to and sojourning at the capital be paid by the public. Therefore, at first the salaries of burgesses were in the nature of expense accounts rather than rewards or remuneration for their services. But in 1661 the House of Burgesses granted each of its members a salary of 150 lbs. of tobacco per day during the session of the Assembly over and above the allowances made to them by the counties they represented for traveling expenses. In 1677 this daily salary was reduced to 120 lbs. of tobacco, and in 1723 it was made payable in current money of Virginia at the rate of ten shillings per hundred pounds of tobacco, or 12 shillings currency per day. This was later reduced to a fixed sum of 10 shillings currency per day.

This salary was paid to each burgess by the Treasurer of Virginia by order of the Governor and a certificate of the Speaker of the House.

Payment Delayed

From 1736 until the Revolution the payment of the burgesses' salaries was quite commonly postponed for periods from several months to two years. The reason for this was the "low circumstances of the treasury." There was normally an arrears in the collection of duties on liquors and slaves imported (the colony's principal source of cash revenue), and during these years Virginia was put to heavy expenditure for military purposes (King George's War 1740-48; French and Indian War 1754-63); and for rebuilding the Capitol, 1748-53. Moreover, the number of counties rapidly increased at this time, and with them, the number of burgesses, so that the public charge of the Assembly increased considerably, just as the colony faced heavy military expenditures and, as a result of wartime disruption of its trade, a decline in its revenues.

Salary of the Speaker

The Speaker of the House of Burgesses received a salary in the seventeenth century, but it was apparently fixed by each assembly. In 1656 and again in 1661 it was 6,000 lbs of tobacco. On at least one occasion, in 1695, the Speaker's salary was discontinued. But in 1702 the Burgesses voted 10,000 lbs. to the Speaker that year, (As will be seen, page 49, this was the occasion for a conflict between the Council and the House of Burgesses.) From 1699 until 1766, ^{during which} when the offices of Speaker and Treasurer were combined, the incumbent normally received 5 percent of the money he handled. After 1734 he also received £50 a year for auditing the accounts of the tobacco inspectors throughout the colony. This was such a chore that the remuneration was gradually increased until it reached the sum of £150.

After 1766, when the two offices were separated, the Speaker received an annual salary of £500 sterling, later (1769) changed to £625 current money of Virginia.

Clerk

The salary of the Clerk of the House of Burgesses was determined by the length of the session. It varied from £50 to £300, and averaged about £125 per session.

Sergeant-at-Arms

The Sergeant-At-Arms, who also served as the official messenger of the House, received a salary that varied from £20 to £80, and averaged about £30 a session.

Door-Keepers

The four door-keepers of the House of Burgesses received from £5 to £80, with an average of about £30 a session, (The doorkeeper of the Council got from £5 to £20, with an average of £10.)

Chaplain

The Chaplain of the House got from £10 to £60, with an average of about £25 a session.

Other Clerks

In addition, the clerks of the more important committees received salaries varying from £30 to £60 a session.

Public Printer

Near the end of the colonial period a public printer was regularly paid by the Assembly. Since he was appointed by the House of Burgesses he may be considered an employee of that body. His salary, on the eve of the Revolution, was £450 a year.

4. Duration And Frequency Of Assemblies

Life of an Assembly

In the early seventeenth century the life of an Assembly was confined to one session, or at least to one year. In March, 1655, however, the Assembly adjourned until March, 1656, and was then prorogued to December 1, 1656.

Biennial Act 1659

Virginia's "Long Parliament"

In 1659 an act was passed requiring the election of a new assembly every second year. This, however, was technically repealed by being omitted from the general revision of laws after the Restoration of Charles II, and Governor Sir William Berkeley, to avoid elections and escape popular interference with his policies, perpetuated one assembly for 10 or 15 years. As this abrogation of the right of frequent elections was one of the causes of Bacon's Rebellion, King Charles II subsequently confirmed the act of 1659, instructing the royal governors thereafter to call a new assembly once in two years.

Biennial Elections Normal

Although there were a few exceptions - one assembly lasting six years (1728-34) - the election of a new assembly at least as often as every two years remained the normal practice down to the Revolution.

Septennial Act 1762

When the Assembly in 1762 enacted that the maximum duration of an assembly should not exceed seven years, the action was designed to bring Virginia law into conformity with that of Great Britain, rather than to correct existing evils. In reality, no Virginia Assembly after 1676 lasted longer than seven years.

Frequency of Sessions

An assembly often held several sessions during its life. In the eighteenth century there were normally one or two sessions a year. Occasionally a year elapsed with none: of the 75 years that Williamsburg was the colonial capital of Virginia, only eleven years witnessed no sessions of the Assembly.

Intervals Between Sessions

The two longest intervals in which there were no sessions of the assembly were four years (1736-40) and three days. Based on the number of days of actual sitting, the average length tended to increase during the eighteenth century. The average for the period before 1728 was 89 days for each assembly (regardless of the number of separate sessions). Between 1728 and 1749 it was 157 days. And it rose to 176 days during the French and Indian War (1754-1763). The assembly of 1728-1734 was the longest-lived and sat for 259 days. The shortest-lived assembly to meet in Williamsburg, that of 1769, sat for nine days.

B. THE ELECTORATE AND OFFICE-HOLDERS

1. The Franchise - County, Borough, & College

A clear distinction was made between the electorate and office-holders in colonial Virginia, and more exacting qualifications set up for the latter. Here we shall confine our attention to the requirements for voting for members of the House of Burgesses.

County Electorate

1670

In the first half of the seventeenth century all freemen (that is, all men who were neither slaves, convicts, nor servants under terms of indenture) were allowed to vote for burgesses. But the large numbers of settlers from the lower classes - who had come as indentured servants, served their term of four or five years, and obtained their freedom - resulted in tumultuous elections. In 1670, therefore, the suffrage franchise following English practice was restricted to freeholders (landowners) who alone, the Assembly asserted, had "interest enough to tie them to the endeavor of the publique good."

Exclusions

1699

1723

An act in 1699 specifically excluded from the privilege of voting, all women, "infants under the age of twenty-one years," and Roman Catholics. A similar act in 1723 (probably as a result of an attempted Negro insurrection) excluded free Negroes, mulattoes, and Indians.

1736

1762

Even so the electorate was considered to include many ill qualified voters. Governor Spotswood declared that the giving of votes to everyone "tho' just out of the Condition of a Servant, and can but purchase half an acre of Land" was a serious "defect in the Constitution." And in 1736 the franchise was further restricted by the establishment of a minimum freehold. Formerly a voter merely had to be a freeholder (even if he owned but a fraction of an acre). Now he had to own at least 100 acres of undeveloped land or 25 acres with a house and plantation. By a subsequent act in 1762 this requirement was reduced to 50 acres of undeveloped land or 25 acres with a house at least 12 feet square. (For suffrage requirements of town dwellers, see page 22.)

No Residency Requirement in the Counties

A freeholder who owned the requisite number of acres did not have to be a resident of the county in which he voted. Robert Beverley, in his *History of Virginia* (London, 1722), wrote: "The freeholders are the only electors, and wherever they have a freehold ... they have a vote in the election." It was, apparently, permissible for a freeholder to vote in *each* county in which he owned land. But as he had to vote in person, there was a practical limit to the number of counties he could visit during a single election. Possibly a freeholder occasionally voted in two or three adjoining counties, particularly when the elections took place on successive days. But multiple voting was never sufficiently common to become a bone of contention between the large and small freeholders.

Inhabitants of other Colonies Allowed to Vote in Virginia

It is interesting that even freeholders who were not Virginians were entitled to vote for members of the House of Burgesses. In 1734 the Committee on Elections of the House, in deciding a disputed election, held that an in-habitant of Maryland who owned land in Virginia could vote in the election of burgesses for the county in which his land was situated.

Borough Franchise

The requirements for voting for a burgess from Jamestown, the only "rotten borough" in colonial Virginia, were the same as in the counties. But in the other two cities which had representation in the Assembly, the suffrage was more widely distributed.

Williamsburg 1722

The Royal Charter of the City of Williamsburg, granted in 1722, extended the privilege of voting for the city's burgess to the following group of inhabitants:

- (1) the mayor, recorder, alderman, and common councillors
- (2) all actual inhabitants and residents of the city who had a visible estate of t50 currency
- (3) all freeholders owning one entire lot (½ acre) of ground with a house on it
- (4) all persons who had served five years in a trade in the city and after expiration of their service were actual housekeepers and inhabitants of the city

Norfolk 1736

The charter of the Borough of Norfolk, granted by the Assembly in 1736, laid down substantially the same qualifications for voting for that borough's member of the House of Burgesses.

Jamestown, Williamsburg, and Norfolk were the only Virginia towns that enjoyed special representation in the Assembly before the Revolution.

The College Electorate

The Royal Charter of the College of William and Mary, dated 1693, authorized that institution to send one burgess to the Virginia Assembly. The charter also prescribed that he should be chosen by the President and, six Professors of the College from among their own number, or from among the Board of Visitors, or from among the citizens of the colony at large. As the President and

Professors were usually in Holy Orders and as clergymen (for reasons explained on [page 28](#).) were ineligible to sit in the House of Burgesses, their choice generally fell, not upon one of themselves, but upon some gentleman of the laity who resided in or near Williamsburg (thereby saving the College the cost of transportation and board for its burgess during the sessions of the Assembly).

It is worth noting, as a commentary on our post-revolutionary rejection of allowing universities to elect representatives that the College burgess in colonial days was invariably one of the most competent and distinguished members of the House of Burgesses. Among them were Sir John Randolph, Edward Barradall, Beverley Randolph, Peyton Randolph, George Wythe, Munn Page, John Blair, and John Randolph the "Tory."

Participation in Elections (General)

Despite the exclusion of women, minors, and Roman Catholics and the adoption of property qualifications for voting, the suffrage franchise was more widely distributed in colonial Virginia than in England or in many of the northern colonies. At least, this is true if one ignores the Negroes and Indians and considers only the white inhabitants. The presence of an abundance of cheap land in the colony made it relatively easy for Virginians who took their citizenship seriously to obtain the vote.

Participation in Elections (Local)

According to the late Dr. Lyon G. Tyler, who compiled some statistics based on voting lists in certain counties, some 8% or 9% of the white population voted for burgesses in Virginia elections of the late colonial period. If these figures are true - and if they are equally applicable to other counties - Virginia compares favorably with the New England and Middle colonies when it comes to voting for members of the colonial assembly.

The reverse was true in local elections - that is, the election of county, borough, and parish officials. Here Virginia, and the southern colonies generally, were far behind the northern colonies. The New England colonies had universal - or almost universal - manhood suffrage in their township elections, although the franchise for electing assemblymen had a substantial property qualification. But in Virginia there was virtually no *local suffrage* at all.

When a new parish was created, all the freemen assembled to elect a vestry of twelve men. But these vestrymen served for life and were, by the end of the seventeenth century, empowered to fill vacancies in their ranks. Thus, by the eighteenth century, the parish vestries of Virginia were self-perpetuating bodies in which, because of the aristocratic mould of Virginia society, membership had in practice become hereditary. The officials of the next larger governmental unit, the county, were all appointive: the sheriffs, colonels of militia, and justices of the county court held office at the pleasure of the royal governor. Not one of them was responsible to the people in the sense of depending upon them for election. And the mayor, recorder, alderman, and common councillors of the two incorporated cities, Williamsburg and Norfolk, were named in the charter and empowered to choose their successors. Thus, like the parish vestries, the municipal officials of colonial Virginia constituted a self-perpetuating, closed corporation, who did not have to be passed upon by the people in periodic elections.

In the event of corruption, dereliction of duty, or any other malfeasance on the part of vestries or municipal corporations, the people had recourse to the General Assembly which alone had power to dissolve those bodies and appoint a new election. This, however, was seldom done in the case of parish vestries, and never in the case of city officials. Hence, whereas Virginia was unusually liberal in extending the franchise for elections of burgesses, the local government of the Old Dominion was completely unrepresentative.

2. Qualifications for Office-Holding

Character & Moral Rectitude

Expulsion of Members

Perhaps the most conspicuous difference between colonial and modern legislatures, as far as qualifications for office-holding are concerned is the stress placed by the former on the character and moral rectitude of its members. The House of Burgesses, on occasion, expelled a lawfully-elected member for notoriety as a "scandalous person," for disturbing the peace, for bribery, drunkenness, adultery, fornication, and blasphemy. In 1655 the Assembly endorsed the principle that burgesses "shall be such and no other than such as are persons of knowne integrity and of good conversation." By an act of 1705 anyone convicted of treason, murder, felony, blasphemy, perjury, forgery, or any other crime normally punishable by dismemberment or death, even though pardoned, was for-ever disqualified from holding any civil, military, or ecclesiastical office in Virginia. These laws were fairly rigidly enforced - there are numerous instances of burgesses being investigated by the House for bad reputation and, if the suspicions were confirmed, expelled.

After an investigation by the Committee of Privileges and Elections, which habitually handled such matters, a member of the House of Burgesses in 1742 was expelled for stealing sheep in Maryland twenty-one years before. In cases of expulsion, the county that lost a representative was permitted to hold another election to replace him by a more acceptable burgess.

Residence Requirements

Another difference between colonial and present-day requirements in the Virginia Assembly is that the colonial burgess did not have to reside in the city or county he represented. Thus George Washington of Fairfax County was a burgess for Frederick County from

1758 to 1765, and Patrick Henry, while living in Hanover County, represented Louisa County from 1765 to 1769. In this respect Virginia colonial practice followed English precedent, where to this day a member of the House of Commons need not reside in the district he represents.

Qualifications for Burgesses

Oaths

Property

Apart from character and moral rectitude, the requirements for office-holders were the same as for voting — with this difference, that office-holders were obliged to take certain oaths affirming their loyalty to the Crown and to conform to the Church of England. In order to be eligible to be a burgess, a man had to own enough land in a county to qualify him to vote.

Exclusions from Office-Holding

Negroes, Mulattoes, Indians, Roman Catholics, Women and Children

As in the case of the suffrage franchise, certain groups and classes were totally excluded from office holding because of race, creed, and sex. Negroes (even when free), mulattoes, Indians, Roman Catholics, women and children were all debarred from office-holding. The first three groups were thought to be insufficiently attuned to western civilization, women and children were considered deficient in understanding, and "popish recusants" (as Roman Catholics were frequently called) were thought to be disaffected toward the Crown, subversive toward the Established Church, and secret sympathizers of Great Britain's arch rivals, Spain and France.

Clergymen Excluded from House of Burgesses

Similarly, but for different reasons, Anglican priests were also incapable of being members of the House of Burgesses. This was not, of course, because of any supposed defect of character, loyalty, or understanding, but simply in order to conform to English custom. As "Lords Spiritual," English bishops sat (and still sit) in the House of Lords along with secular peers, "Lords Temporal," but as the lesser clergy were represented in ecclesiastical convocations, it was thought proper to reserve membership in their secular counterpart, the House of Commons, to the laity.

Clergy on the Council

Convocations

In colonial Virginia the clergy were eligible to sit in the upper house of the legislature, the Council, if appointed by the King. In general, only the Commissary of the Bishop of London (who was commonly the President of William and Mary as well) was a Councillor. The Rev. Dr. James Blair was a councillor for many years, and served in 1740 as acting governor during the temporary absence of Governor Gooch on the military expedition against Cartagena. The rest of the Anglican clergy in Virginia had the right to sit in the ecclesiastical convocations that were convened from time to time, usually at the College in Williamsburg.

Religious Qualifications for Holding Office

It is important to note that, except for the exclusion of Roman Catholics after 1699, there were no requirements for voting. But there were stringent religious qualifications for office-holding. All persons elected to the House of Burgesses or holding any other office under the Crown in Virginia had to take the oath of allegiance to the King, reject the authority of all foreign princes and prelates over England and her colonies, deny "transubstantiation" (a doctrine of the Holy Eucharist that is peculiar to the Church of Rome, and regarded as heretical by the Church of England), and subscribe to the "Test" which, in effect, amounted to acceptance of the validity of the Anglican priesthood and sacraments.

The "Test"

To the twentieth century it seems strange that the most sacred rite of the Holy Liturgy should have been employed as a political test. But it did not appear anomalous in colonial days. In fact, it made sense for a Christian State like England or Virginia, which considered civil magistrates to be instruments of God's will on earth, to restrict political office-holding to communicants of the Established Church who, by means of the Sacrament of Holy Communion, were considered to have sure and certain access to the special channel through which God's Grace was normally bestowed on the faithful. In view of the fact that "original sin" enabled Satan to work through unregenerate men, it was considered both logical and wise to purge public life of all but orthodox Churchmen. All other men were thought to be spiritually frail, and therefore unworthy to be entrusted with the responsibility of administering the affairs of state for the good of the nation and the greater glory of God. This, at least, was the theological and doctrinal basis for the "Test."

Crown Officers Excluded from House of Burgesses

Virginia also followed English practice in excluding members from the House of Burgesses who accepted offices under the Crown by appointment of the governor. The reason for this is that it was feared that such persons might be unduly subservient to the executive. Besides, by creating enough lucrative offices, the executive might use them as bribes to keep the legislature submissive. In 1685 Robert Beverley forfeited his seat as a burgess by being chosen Clerk of the House (a post at the disposal of the governor),

Tobacco inspectors, sheriffs, customs collectors, coroners, clerks of courts, and all others holding places of profit in the government were ineligible to serve as burgesses, (This did not apply to county court justices, because they served without pay, and therefore did not hold "places of profit.")

The Treasurer an Exception

There was, however, one exception - the Treasurer of the Colony. As this official was to handle the proceeds of taxes and disburse money voted by the House of Burgesses and as he was appointed, not by the governor but by the Assembly, his duties were held to be quite consistent with those of a burgess. John Robinson was both Speaker of the House of Burgesses and Treasurer of Virginia from 1738 until 1766. His successor, Robert Carter Nicholas (who lived in the Carter-Saunders House), was Treasurer from 1766-1776, and, concurrently, burgess for James City County.

3. Character of the Men who were Burgesses

The Virginia aristocracy of colonial days was politically-minded. Every gentleman of means and education considered it his duty to serve his less fortunate fellow-countrymen by assuming political office. As a result, almost every prominent Virginian served at one time or another as vestryman of his parish, justice of his county, and, ultimately as a member of the House of Burgesses or Council. Indeed, the affinity between Virginia gentlemen and political office was so strong that a list of members of the Assembly is practically the "Who's Who" of colonial Virginia. For this reason the colonial Assembly was, much more nearly than its modern counterpart, a concentration of the wealth, brains, and social position of Virginia. This, above all else, explains why it was of greater importance in relation to its own times than the modern General Assembly.

But although in colonial Virginia, as in England, the elected members of the legislature in the eighteenth century came mostly from families of the gentry, some did not. Some were of middle class origin, men who had accumulated ample estates or had risen via the learned professions into the upper class. And in a few instances former indentured servants and other men of rude beginnings ultimately became substantial planters and obtained a seat in the House of Burgesses. When this happened in the long-settled Tidewater counties, these men usually became adjusted to their new social environment and assumed the habit and demeanor of gentlemen "to the manner born." But an increasing number of burgesses came from the newly-settled areas of the west. In consequence, there was always a sprinkling of somewhat less sophisticated burgesses from the frontier counties, whose buckskin garments and unrefined deportment contrasted sharply with the correct attire and polished manners of the Tidewater gentry.

4. Virginia and Democracy

Meaning of Democracy

There is a great deal of loose talk about "democracy" in connection with colonial Virginia. One must, however, define the term strictly before applying it, for the word now has a wider meaning than it had in the colonial period. The basic meaning of democracy - and what our colonial ancestors understood by it - is, simply, the rule of the common people (demos).

Was Virginia Democratic?

Virginia Sought Home Rule and Civil Rights not Democracy

Virginia was democratic only in the purely political sense, and then only accidentally. An abundance of cheap land made it possible for many colonists to obtain voting privileges which, by English law and custom, were based on land ownership. But no serious attempt was made deliberately to extend the suffrage franchise until well along in the nineteenth century (1830). The real objectives of Virginians of the colonial and revolutionary period were *civil rights* and *home rule*, not *democracy*. Indeed, with a few exceptions like Henry and Jefferson, the Virginia ruling class took an extremely dim view of democracy (in the sense of deliberately extending the suffrage), and had no patience at all with fantastic notions of social equality or a classless society.

The Council Rejects the Vestry Bill 1706

An interesting example of this is the reply of the Council to the House of Burgesses in 1706 in connection with the former's rejection of a bill providing for the periodic election of the vestries by the freeman of each parish. This, the Council said, would occasion "partys and Factions throughout all the parishes in the Country, and lay a foundation for renewing such broils and Factions every 6th year, when there must be new Canvassing for Elections." Moreover, as these elections were not confined to landowners, "the greater part" of the voters being "mean people, and not always the most considerate, they will be like enough to carry the Election in favour of such as themselves."

That, of course, would never do in a society that firmly believed that the burden of political administration should be entrusted only to the best people, i.e. the most educated, most refined, and most enlightened men of the colony. In that sense Virginia was aristocratic.

In addition to being aristocratic, the ruling classes of Virginia were also conservative. They believed firmly in the principle, to use the words of the Council in 1706, "that the alteration of an established Constitution where the same is not generally complained of, is dangerous and the consequences cannot be foreseen."

Another instance of the prevailing view of democracy is a letter of Governor Spotswood to the Board of trade in 1712: "The Mob of this Country having tryed their Strength in the late Election and finding themselves able to carry whom they please, have generally chosen representatives of their own Class." This, he said, was "owing to a defect in the constitution, which allows to every one, tho' just out of the Condition of a Servant, and that can but purchase half an acre of Land, an equal vote with the Man of the best Estate in the Country."

1718

In 1718 Spotswood, complaining to the Board of Trade about the poor quality of Virginia naval stores, attributed it to the dishonesty of the "meanest of the people." As these people had "great influence in the election of Burgesses," he said, "it is difficult to persuade those who receive a benefits by their votes, to pass an Act so prejudicial to their interest, as that of obliging them to a greater honesty would be..."

C. LEGISLATIVE PRACTICE

1. Parliamentary Privilege

"Parliamentary privilege" consists of rights claimed and exercised by the English - and, after 1707, by the British - Parliament, especially by the House of Commons. By extension the term is applied to similar rights of representative assemblies elsewhere.

In general it includes freedom from arrest and molestation, freedom of speech, the right to decide disputed elections, the power to discipline its own members, and the authority to punish outsiders for any insult or injury to the house or to its members.

Having been won gradually through the centuries, the privileges of parliament were looked upon by seventeenth-century Englishmen as bulwarks of their rights. It is not surprising, therefore, that the Virginia Assembly (and, indeed, the other colonial assemblies) began almost from the start to claim, and in many instances to obtain, the traditional privileges of the House of Commons.

As early as 1623 the House of Burgesses secured for its members immunity from arrest. Later (1705) this was extended to include their servants and estates as well as their persons. This immunity, however, was limited to the actual sessions of the assembly and ten days before and after. Moreover, it did not cover serious offenses like treason, felony, and breach of the peace. Its purpose was to protect the public business from interruption for trifling reasons, or by factions or vindictive persons. Thus the governor or an irate inhabitant of the colony was restrained from bringing suit against a burgess in order to prevent him from attending the assembly.

A similar privilege was immunity from compulsory service in the militia or as sheriff of a county. The former might be used by the local militia commander and appointment as sheriff by the governor as a means of eliminating burgesses who were politically at variance with themselves.

In addition, burgesses were protected by the House against slander and assaults on them or their families and servants. Such fences were considered a breach of parliamentary privilege, and the guilty persons were summoned to the bar of the House, reprimanded, sentenced, or discharged after investigation. In one instance, in 1756, the slanderer proving the truth of his charge was released, and the prosecuting assemblyman expelled and forever disqualified to be a burgess.

2. Officials

Among the officials elected by the House were:

- (1) The Speaker
- (2) Clerk of the House
- (3) Chaplain
- (4) Sergeant-at-arms
- (5) Clerks of the Standing Committees
- (6) Four doorkeepers
- (7) The Public Printer (after 1732)

Of these, the Speaker, the Clerk of the House and the Sergeant-at-Arms were chosen by the Burgesses, but actually appointment as well as their election from the Burgesses and were responsible only to the House. The Treasurer, alone of all the colonial officials, was appointed by act of the Assembly, which, of course, required the concurrence of the House, the Council, and the Governor (See [page 31](#))

Oaths

All the officials of the House (as also the Treasurer of the colony) had to take the oaths appointed by law, sub-scribe the test, and swear not to divulge private debates.

The Clerk

The Clerk of the House, being the appointee of the governor, could inform the governor of "resolves and votes" of the House, but like other officials chosen by the Burgesses, was honor bound not to divulge private debates.

The Chaplain

The Chaplain was sometimes a dignitary, e.g. Commissary Blair or Dawson, and sometimes the Rector of Bruton or a neighboring parish or a professor at the College of William and Mary, e.g. the Rev. Hugh Jones.

The Chaplain's duty was to read the Order for Morning Prayer in the Conference Room at the beginning of each day's session, The Council was invited to attend, and usually did so.

Visiting Preachers

Often a visiting clergyman who happened to be in Williamsburg while the Assembly was in session was invited to attend Divine Service - either in Bruton Church or in the Capitol - and preach a sermon before the Assembly. One of them, the Rev. Chicheley Thacker, Rector of Blisland Parish, preached so fervently in 1738 that the House of Burgesses ordered a thousand copies of the sermon printed "Divinity and Dignity of the Blessed Jesus."

Election Sermons

The practice of preaching election sermons on the opening day of a new assembly was known in the seventeenth century, but disappeared in Virginia after 1686.

Sergeant-at-Arms

The sergeant-at-arms was to the House what a bailiff is to a court of justice; he carried out the orders of the House, executed writs, made arrests, summoned witnesses and malefactors to the bar of the House, and quelled disturbances of the peace in the Capitol. Because he required a commission as a legal basis for the execution of writs and for making arrests, he was appointed by the governor, although chosen by the Burgesses.

Doorkeepers

The four doorkeepers guarded the entrances of the House of Burgesses and wore clothes and badges of office provided by the Assembly. Unfortunately, we do not know what the clothing or badges were like.

Election of Officials

Throughout most of the colonial period all these officials were elected openly. After 1766, however, they were chosen by ballot. For a description of the ballot system, see page 47, "Methods of Voting."

Salaries

The salaries of the various officials of the House have been dealt with on page 17.

3. Opening Ceremony

The ceremony of the opening of a new assembly was closely patterned after the traditional state opening of Parliament.

State Coach 1769

Lord Botetourt, when governor, added greatly to the ceremonial on these occasions by riding from the Palace to the Capitol in a handsome coach drawn by six white horses. Probably the most elegant equipage known to colonial America, this "superbly finished" coach was presented to him by William, Duke of Cumberland, uncle of George III, whose state carriage it was to have been. The Virginia arms were emblazoned on its doors in lieu of the royal arms of Great Britain.

4. Oaths of Office

Parliament in the eighteenth century was sovereign; but the Virginia Assembly still sat by permission of the king. Therefore, the House of Burgesses could not legally assemble until its members had been sworn in by the royal governor or his deputies.

Upon reaching the Capitol on the opening day of a new assembly, the burgesses assembled in the Council Chamber and took their oaths of office in the presence of the governor or one or more councillors duly commissioned by the governor for the purpose.

The oaths they were required to take were those of Allegiance and Supremacy, appointed by Act of Parliament in 1688, and required of all office-holders in Virginia from governor to doorkeeper.

Oath of Allegiance

"I, A.B., do sincerely promise and swear, That I will be faithful, and bear true Allegiance to their Majesties King William and

Queen Mary; So help me God."

Oath of Supremacy

"I, A.B., do swear That I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable Doctrine and Position, that Princes excommunicated or deprived by the Pope, or any Authority of the See of Rome, may be deposed or murdered by their Subjects, or any other whatsoever, That no foreign Prince, Person, Prelate, State or Potentate hath, or ought to have any power, Jurisdiction, Superiority, Pre-eminence or Authority, Ecclesiastical or Spiritual, within this Realm; So help me God."

Test Acts 1673

In addition, they had to qualify under the terms of the Test Act of 1673, which required holders of any office, civil or military, to receive within three months of their taking office the Sacrament of Holy Communion according to the rite of the Church of England "in some publick Church, upon some Lord's Day, commonly called Sunday, immediately after Divine Service and Sermon," and to deliver a certificate of their having done so, signed by the priest, churchwarden, and two credible witnesses.

1678 Declaration against Transubstantiation, etc.

Also, by the terms of the Test Act of 1678 they were obliged to make, sign, and audibly repeat the following declaration:

"I, A.B., do solemnly and sincerely, in the presence of God, profess, testify, and declare, That I do believe that in the Sacrament of the Lord's Supper there is not any Transubstantiation of the Elements of Bread and Wine into the Body and Blood of Christ at or after the Consecration thereof by any Person whatsoever: and that the Invocation or Adoration of the Virgin Mary, or any other Saint, and the Sacrifice of the Mass, as they are now used in the Church of Rome, are superstitious and idolatrous, And I do solemnly, in the presence of God, profess, testify, and declare, that I do make this Declaration, and every part thereof, in the plain and ordinary sense of the Words read unto me, as they are commonly understood by English Protestants, without any evasion, equivocation, or mental reservation whatsoever, and without any Dispensation already granted me for this purpose by the Pope, or any other Authority or Person whatsoever, or without any hope of any such Dispensation from any Person or Authority whatsoever, or without thinking that I am or can be acquitted before God or Man, or absolved of this Declaration, or any part thereof, although the Pope, or any other Person or Persons, or Power whatsoever, should dispense with or annul the same, or declare that it was null or void from the beginning."

An explanation of the purpose of this oath is seen in the fact that the Church of England at the Reformation retained the ancient catholic doctrine of the "real presence" of Christ in the Holy Communion, but rejected as heretical the distinctively Roman doctrine called "transubstantiation," which asserts that the bread and wine at the instant of consecration cease to be bread and wine and miraculously become the actual corporeal body and blood of Christ. Belief in Transubstantiation after 1570, therefore, served as a kind of shibboleth whereby anyone who secretly was a Roman Catholic might be forced to reveal his ecclesiastical affiliation.

Burgesses' Oath 1652-1738

In addition to the above, which were prescribed by Acts of Parliament, the Burgesses also assented to the following oath, drawn up in 1652 and authorized by the Virginia Assembly:

"You and every of you, shall swear, upon the holy evangelist, and in the sight of God, to deliver your opinions faithfully, and honestly, according to your best understanding and conscience, for the general good and prosperity of this country, and every particular member thereof, and to do your utmost endeavour to prosecute that, without mingling with it and particular interest of any person or persons whatsoever."

But in 1738 this oath was discontinued on the grounds that it arose out of the particular situation existing in 1652 and was intended to oblige burgesses to consult the general good of the colony, without regard to the particular interest of either the Cavalier or Roundhead parties.

5. Speaker's Election and the Governor's Speech

Burgesses "Attend" upon the Governor

When the burgesses were duly sworn, they returned to the chamber of the House, and awaited the summons of the governor, who, in due course, "commanded" them to attend him. When they complied, the governor ordered them to return to their chamber and elect a Speaker.

Clerk Presides

Back in their own chamber for the second time, the burgesses proceeded to elect a Speaker in this way. The Clerk of the House took the chair and presided over the election, but legislative custom permitted him to designate the member who had the floor by

gesture only: he was not allowed to speak. This followed English practice.

Speaker-Elect's Self-Abasement until 1732

Until 1734 another curious English custom was observed by the House of Burgesses. The Speaker-elect repeatedly declared his unsuitability for the office and begged the House to reconsider its decision and choose someone more fit to preside over its counsels.

House Overrides Speaker-Elect's Objections

Everyone, of course, including the Speaker-elect, understood that this was merely a gracious formality characteristic of early eighteenth-century notions of courtliness. The House, therefore, always overrode the Speaker-elect's protestations and confirmed its original choice.

Speaker-Elect Thanks the House

Thereupon the Speaker-elect formally thanked the House for its kindness and condescension and solemnly promised to execute his office faithfully.

An Example from the Journal of the House 1700

When the House chose Mr. Peter Beverley for its Speaker he was conducted to the chair by two members. Whereupon he arose and said:

"Gentlemen. Being best acquainted with my owns Infirmitys I think it not just to receive this Testimony of your Affections without letting you know That It is my Opinion there are many Worthy Members here present capable of doeing you far greater Service in your Chairs then my weak abilitys will reach. This I hope will prove a Motive to divert your Inclinations and prevaile with you to recede from your first Intentions I acknowledge it a Sufficient Honor that you have named me in this matter And because the due Performance of the work of a Speaker greatly concerns your Honor and the Interest of the Publick I pray you will be pleased to wave me and to proceed to the choice of another person more proper to Sit in your Chaire and better accomplished for the weighty work pertaining to it."

But the House "Disallowed" his excuses and reiterated its choice of Beverley. Thereupon he took the chair and said:

"Gentlemen. My' reasons not proveing prevalent to alter your Choice it behoves me not to press you farther but greatfully to accept and acknowledge your favours. I'll assure you I take them with a Resolution to study your Service and to discharge my duty with Integrity and faithfulness. As for such unwilling Slips as I may happen to make in the management thro' my owne weakness or inadvertencie I doubt not of your Goodness and Assistance to pardon and correct. It is that confidence which now Supports my Spiritts and the Experience will keep me alwaies chearfull in the greatest difficultys of this place given by your favor and held at your pleasure."

Mace Brought In

At this point in the ceremonial, the mace of the House of Burgesses was brought into the Chamber and placed under the table, for the House was not considered fully constituted until the governor gave formal approval to the Speaker's election.

Governor Ratifies the Choice of Speaker

Then, after an exchange of messages, the Burgesses went for the third time before the governor, to present their choice of Speaker. The governor, then formally ratified the House's choice, and the Speaker-elect officially became the Speaker.

Confirmation of Privileges

So soon as his election was approved the new Speaker begged the governor to confirm and continue the "ancient right; and privileges" of the House of Burgesses. These varied slightly from time to time, but after 1700 consisted principally of the three main elements of parliamentary privilege:

- (1) freedom of debate
- (2) freedom from arrest for their persons and servants, and
- (3) protection for their estates

A fourth, in use before 1705 and again after John Robinson became Speaker in 1738, was that the Speaker's mistakes might not be imputed to the House of Burgesses.

Governor's Speech

The governor graciously confirmed the privileges of the house and then proceeded to read a speech which set forth his reasons for calling the assembly and laid down the principal agenda for the public business of the session.

The burgesses then returned to their own chamber, where the mace was placed *on* the table and the Speaker read a copy of the governor's speech, so that its contents might be considered more carefully.

Congratulatory Reply

Regardless what the burgesses thought of the governor's speech and the proposals it contained for remedying existing evils in the colony, they invariably, in good eighteenth-century fashion, sent him a humble address of thanks and congratulations couched in deferential terms.

With that the traditional ceremonial of opening a new assembly was complete, and the House of Burgesses, as well as the governor and Council, proceeded with its legislative business.

6. Legislative Procedure

The modern reader cannot fail to be impressed by the time-consuming nature of the formalities observed by the Virginia Assembly in colonial days. Life in the eighteenth century was leisurely; and its slow pace was reflected in the legislative practices of the House of Burgesses. The pressure of business never became so great that the saving of time seemed important. In consequence, the procedure tended to become characterized by an elaborate ceremonial, and the rules of debate allowed almost unrestricted discussion.

As in England, the character of the members of the legislature lent a dignity to the forms of procedure, and prevented any unscrupulous use of such rules. Coming for the most part from families of the gentry, the burgesses brought into the house a sense of conduct that befitted a gentleman.

Ebenezer Hazard, visiting Williamsburg in 1777, said: "The Assembly of Virginia observes great Decorum in their Conduct and keep up the Dignity of the House."

Moreover, in nearly every important detail the historic procedure of the English House of Commons was deliberately copied by the House of Burgesses. As English procedure had evolved in opposition to royal authority, the Virginians had no need to develop anything new in their struggle with the prerogative as represented by the governor. They diverged, naturally, from English practice in the conduct of business, for they discharged a number of duties which in England were assumed by local bodies; but the means they followed to increase their dignity and power were parliamentary devices that had been thoroughly tested and tried.

7. Other Legislative Customs

- a. *Gowns* - Following English custom, the Speaker of the House wore a gown while presiding. The Clerk of the House and his assistant also wore gowns. On December 7, 1700, at the first session of the Assembly in Williamsburg (meeting in the great hall of the College) Governor Nicholson gave a gown to the Burgesses for use by the Speaker.
- b. *Mace* - The House of Burgesses, like the House of Commons, had a ceremonial mace which served as the symbol of its authority. At the same time he gave a gown for the Speaker, Governor Nicholson presented to the House "a Staff or Mace to be borne before Mr. Speaker after he is confirmed by his Excellency (as an Ensign and Token of Honor and power)." In 1722 the House purchased a new - and, possibly more elaborate - mace to replace the one Nicholson gave.
- c. *Hats* - In imitation of the practice of the House of Commons, the Burgesses from their first session in 1619 until the Revolution wore their hats while sitting in the Chamber of the House.
- d. *Method of Voting* - Voting in the House was, normally, *viva voce* those in favor of a resolution or bill saying "Aye," and those opposed "No." When the Speaker could not distinguish between the numbers of each, he called for a division of the House, those in favor going to one side of the chamber, those opposed to the other, or, in some cases, those in favor to remain in the chamber, those opposed to walk out into the lobby. In other cases - especially of important bills - a roll call was taken.

After 1766, however, the secret ballot was in use, especially for the election of officials. In that year the House "Resolved, That the said doorkeeper be chosen by way of balloting. Ordered, That members of this house do immediately prepare tickets, to be put into a glass with the name of the person to be the said doorkeeper. The glass being accordingly brought in; the clerk went with the same, on each side of the house, to receive the said tickets and the members having put in their tickets, the glass was brought up to the clerk's table," where a committee of six counted the ballots.

The balloting glass then in use was, apparently, replaced in 1768 - perhaps by a better one. On May 9, 1768 George Wythe wrote John Norton, a London merchant, and ordered "a sett of balloting glasses such as are used in the house of commons." And in a follow-up letter on August 8, 1768, Wythe referred to it as "the glasses, balls and other apparatus, such as are used by the house of commons."

In 1775, when Alexander Purdie and William Pinkney were both seeking appointment as the public printer, neither got a majority on the first ballot. Rather than go through the formality of making up new ballots, the Speaker called for a division of the House, "directing those for Purdie to be on the right side of the house, those of Pinckney on the other."

- e. *Admission of Visitors* - No provision was made for admitting visitors to the chamber of the House of Burgesses until 1766, when

a gallery was erected across the hall. Thereafter admission was confined to councillors or persons introduced by members of the House. Prior to 1766 persons interested in attending the sessions of the House had no course but to listen through the open windows or else through the door. An example of the latter is seen in Jefferson's autobiography (written in 1821) in which he said of Patrick Henry's "Caesar Brutus" speech, "When the famous resolutions of 1765, against the Stamp Act, were proposed, I was yet a student of law in Williamsburg. I attended the debate, however, *at the door of the lobby of the House of Burgesses* and heard the splendid display of Mr. Henry's talents as a popular orator."

D. CONFLICTS AND CLEAVAGE

1. Between Burgesses and Council

The relations between the Burgesses and the Council were not always smooth. In 1702, for example, the Burgesses included in the book of claims an item of 10,000 lbs. of tobacco as salary for the Speaker of the House. When the book of claims came before the Council for approval two councillors, Harrison and Carter, objected to this item on the grounds that it was too heavy a burden on the taxpayers. The Council, acting in its legislative capacity, sustained this objection. Governor Nicholson asserted that the Burgesses were the proper judges of the merits and remuneration of their own officers and urged the Council to avoid an unnecessary dispute with the House. But the Council remained adamant and resolutely refused to approve the item.

2. Between Burgesses and Governor

Although Virginia was spared the violent and prolonged conflicts between its colonial governor and assembly that mark the history of New York, Massachusetts, and New Hampshire, there were occasional instances of disagreement. This was, in large measure, because the colonial and the British concept of the nature and authority of the colonial legislatures became increasingly divergent after the "Glorious Revolution" of 1688, which permanently established the English Parliament as supreme in the government of the kingdom. The colonists considered that, as English-men, they were entitled to a voice in the making of laws and levying of taxes; and that their own legislatures were equivalent to the British Parliament, and heirs to all the rights and powers over the governor that Parliament had acquired over the king. But the British authorities held a different view. The colonial legislatures, they maintained, were by no means equal in "might, majesty, power, and dominion" to Parliament, but were subordinate bodies, rather like municipal councils in England. The colonists asserted, with a good deal of justice, that before 1689 Parliament seldom enacted legislation touching the colonies - except in matters pertaining to trade (the Navigation Acts) - and that English authority over the colonies was vested exclusively in the Crown, not in Parliament. But the British authorities countered, also with much justice, that after 1639 the power of the Crown was quite constitutionally wielded by the Ministry, which in the course of the eighteenth century One to be responsible to Parliament.

In view of this basic disagreement, it is not surprising that governor and burgesses occasionally came into conflict over matters pertaining to the extent of the constitutional authority of each.

Postal Rates 1718

An interesting precursor of the protest against taxation without representation occurred in 1718 when the Postmaster General of America endeavored to extend the postal system to Williamsburg. As the fee for carrying letters was authorized by an act of Parliament in 1711, the people of Virginia raised a "great clamour" against it on the grounds that Parliament could not "lay any tax... on them without the consent of the General Assembly."

Pistole Fee Controversy 1753

Another example of conflict was the pistole fee that Governor Dinwiddie tried to collect for land grants. Finding upon his arrival in Virginia in 1751 about one thousand patents for land already made out and awaiting the governor's authorization, Dinwiddie established a fee of one pistole (a Spanish gold piece worth about \$3.50) for signing each patent. This action was neither in violation of any existing Virginia law, nor of his instructions from the Crown. He did it solely to line his pockets, and had no idea that it would cause such a storm of protest. The Council assented to Dinwiddie's action and so did the British Board of Trade (which then had general supervision of colonial affairs). But it was extremely unpopular throughout Virginia and it was denounced by the Burgesses at their next session. On November 27, 1753, the House sent an address to the governor asking him whether the pistole fee was established by his directions and if so then by what authority. Dinwiddie replied the next day that he had given the order in accordance with the authority granted him by his instructions from the Crown and with the unanimous advice and consent of the Council. The tone of the reply seems to imply that Dinwiddie did not consider that the matter of the fee fell within the constitutional sphere of the House. The Burgesses replied to him the next day that it was their undoubted right to inquire into the grievances of the people; that "The Rights of the Subject are so secured by Law, that they cannot be deprived of the least Part of their Property, but by their own Consent: Upon this excellent Principle is our Constitution founded"; and that the pistole fee was not warranted by any known law, and therefore was an infringement of the rights of the people and "a Grievance highly to be complained of." The Burgesses went on to rehearse the history of the land grant system in Virginia, how 50 acres were given free to every settler by the Virginia Company; how this was continued by the Crown after 1624; how Governor Lord Howard of Effingham in 1685 tried to collect a fee for land patents; and how upon representation of the House of Burgesses King William III by order-in-council in 1689

discontinued the collection of fees for that purpose.

Dinwiddie countered on December 4 with the assertion that "The establishment of the Fee complained of, relates solely to the Disposal of the King's Land, and which, it is conceiv'd, may be deemed a matter of Favour from the Crown, and not a Matter relative to the Administration of Government." In other words, Dinwiddie considered it an executive, not a legislative matter and, therefore, none of the business of the House of Burgesses.

The House unanimously defended its position and declared the governor's replies to its addresses to be both "unsatisfactory and a Means to create Fears and Uneasiness in the Minds of his Majesty's faithful Subjects." The House then resolved that the fee was "illegal and arbitrary" and that it "manifestly tends to the subverting the Laws and Constitution of this Government," and voted to appeal to the King to overrule Dinwiddie. The same day the House resolved "That whoever shall hereafter pay a Pistole, as a Fee to the Governor, for the Use of the Seal to Patents for Lands, shall be deemed a Betrayer of the Rights and Privileges of the People."

In order to carry the appeal to the King, the House decided to appoint a special agent who was voted £2,500 for his services. The choice of the Burgesses for this post of envoy extraordinary fell upon the highly-esteemed attorney general of Virginia, Peyton Randolph. The next day the governor prorogued the Assembly.

The Merits of the Case

In this dispute Governor Dinwiddie was technically in the right. The unoccupied lands of the colony belonged by law to the Crown and could be administered and disposed of by the King and his appointees in Virginia without regard to the House of Burgesses. The pistols fee, therefore, was not illegal. But Dinwiddie's action in establishing it was ill-advised, and his resolution in clinging to it in the face of such opposition on the part of the people was productive of more harm than good, for it put him and the Crown whose agent he was in a tyrannical light, and served as a wedge between the prerogative of the British Crown and the "faithful Subjects" of the King in Virginia.

Dinwiddie's View, 1754

Writing of the matter in 1754, Dinwiddie summed it up in these words, "If I had known that this affair would have created so much uneasiness to me and trouble to my friends at home, I would not have taken that fee; but when it was established by the Council here, and approved by the Lords of Trade The British Board of Trade, I could not in honor to the Board submit to the unjust clamors of our House of Burgesses, who, by the opinion of Sir Dudley Rider the British attorney general, had no cognizance of it."

House of Burgesses Justified

On the other hand the fee was unusual and burdensome. And since it was generally complained of by the people and therefore was a grievance, there is no reason why the House of Burgesses could not take cognizance of it to the extent, at least, of petitioning the governor to desist, and, upon his refusal to do so, to petition the Crown.

Pistole Fee in Retrospect

The truth is that conditions were changing faster than the constitution. Virginia was becoming politically mature, and, therefore, increasingly restive under the cumbersome and seemingly arbitrary (or, at least, unrealistic) transoceanic control of internal affairs of the colony. The pistole fee contest was merely an incident in the long conflict between royal prerogative and American aspirations for home rule that eventually produced the war for independence.

The Outcome

The outcome of the pistole fee controversy is an excellent example of the genius of the British government for shrewdly evaluating all the elements involved in a particular case and clearly differentiating between principle and expediency. The King-in-Council held that Dinwiddie was right in principle, and ordered the Board of Trade to regulate such matters in the future. The Board instructed the governor of Virginia to take no fee for a patent for less than 100 acres, or for land grants to recent immigrants, or for lands granted west of the mountains. The Board also limited single land grants to a maximum of 1,000-acres and ordered that Peyton Randolph, who naturally had incurred the enmity of Governor Dinwiddie for serving as the special agent of the House, be reinstated in the office of attorney general of Virginia

As in the case of the repeal of the Stamp Act in 1766, the British Government in connection with the pistole fee in Virginia yielded in substance to the wishes of the colonists, yet at the same time maintained the principle of its rightful authority.

3. Between Tidewater and the West

The history of Virginia has always been characterized by sectionalism as a result of the varying physiographic of its land: - (1) a low coastal plain, called the Tidewater, interlaced by navigable rivers; (2) the rolling uplands above the heads of navigation of the rivers, called the Piedmont; and (3) the "Valley" of the Shenandoah and the mountains.

In the eighteenth century the economic, social, and political life of the Tidewater centered in the large plantation devoted principally to tobacco and grain, and worked by slave labor. The plantation-system also existed in the Piedmont, but the large plantation was

not dominant there before the Revolution. The Piedmont had a large number of small farms as well as some large plantations and although it was much larger than the Tidewater, the Piedmont had a much smaller slave population. The Valley, on the other hand, was, except for Lord Fairfax's princely domains, almost entirely composed of small farms held by German and Scotch-Irish immigrants that had entered Virginia by way of Pennsylvania. The inhabitants of this region were for the most part anti-aristocratic in temperament, unsympathetic with the dignified formalism and sacramental character of the established Anglican church, and conscientiously opposed to slave-holding.

The antagonism that existed between the people of the Tidewater and those of the back country rested upon deep-seated differences of economic interests, social, racial, and religious background, and political objectives. And it was reflected in the House of Burgesses, the only branch of the Virginia colonial government which included representatives of the back country.

Representation in the Virginia Assembly was geographical in character: it was based upon a representation of individual counties, not upon population. Thus the smallest counties, which were generally in the Tidewater, enjoyed equal representation in the House of Burgesses with the large western counties, although the latter in many cases had a larger white population than some of the Tidewater counties with their few whites and many slaves.

The basic conflict between the Tidewater and the west, then, was the matter of representation. The strongly entrenched Tidewater gentry kept control of the House of Burgesses out of all proportion to their numbers. And the western burgesses struggled in vain to obtain representation in the House in proportion to the number of freemen in each section.

In this sectional conflict the Piedmont burgesses were divided. Some, like Washington, as a result of their alignment with the Tidewater aristocracy, sided with them against the more democratic west. Others, like Patrick Henry and Jefferson, as a result of their political convictions espoused the cause of the West. On the other hand, a few of the Tidewater burgesses, like George Wythe and Richard Henry Lee, although social and intellectual aristocrats, were a little more liberal in politics than their neighbors, and in matters affecting relations with the British Government, often found themselves in company with the western burgesses in opposition to the conservative aristocrats of the Speaker Robinson, Edmund Pendleton, Peyton Randolph stamp.

In general the western section of Virginia struggled:

1. to obtain proportional representation based on population (exclusive of slaves)
2. to reduce slave importations by means of a heavy duty
3. to restrict - or even to disestablish - the Anglican Church
4. to obtain appropriations for the construction of roads and bridges, and for improving navigations - all of which were opposed by the Tidewater where roads had already been built, ferries were in regular operation, and the deep tidal estuaries provided adequately for navigation.

Note - The disproportion of regional representation at the time Jefferson wrote his *Notes on Virginia* (1781) may be seen in the following tables

Region	Sq. Miles	Fighting Men	Delegates	Senators
The Tidewater - between the sea and the falls of the rivers	11,265	19,012	71	12
The Piedmont - between the falls of the rivers and the Blue Ridge Mountains	18,759	18,828	46	8
The Valley- between the Blue Ridge Mountains and the Alleghenies	11,911	7,673	16	2
The Mountains - between the Alleghenies and the Ohio	70,650	4,458	16	2

III. THE COMMITTEE ROOMS

A. COMMITTEE'S AT WORK

1. Appointment of Committees

Committees were appointed by the House of Burgesses as a whole, although after 1682 the Speaker was accorded the privilege of making the first nomination. His nomination, however, was not binding upon the House but was "allowed or disallowed as the house pleases." In practice the Speaker's nominees were frequently elected - but not always. Additional nominations could be made by any burgess subject to confirmation by the House.

2. Names of Committees

English Background
Virginia Practice

Like its English counterpart (the House of Commons), the Virginia House of Burgesses early developed committees for expediting the work of legislation. But Virginia produced a variant. In England by the end of the seventeenth century, most committees, except

that for privileges and elections, were of unlimited size - any member of the House who chose could sit in them. Committees of the Commons were generally well attended, and, therefore, approximated committees of the whole. In Virginia, however, the system early reached its logical development, and the committees were restricted to limited and well-defined membership.

Standing Committees of the House of Burgesses

Prior to 1727 the House of Burgesses had three standing committees: (1) Elections and Privilege; (2) Public Claims; and (3) Propositions and Grievances. In 1727 the Committee on Courts and Justice was created; in the Committee on Trade, and in 1769 the Committee on Religion.

Membership

The chief members of the House generally sat on the Committee of Privileges and Elections and on that for Propositions and Grievances. After the middle of the eighteenth century the chairman of every committee had a seat on one or the other of these two leading committees.

As the House of Burgesses grew in numbers, the membership of the committees gradually increased.

	17th c.	1734	1736-40	1742	1762	1769
1. Elections & Privileges	5 or 6	5	15		18	22
2. Public Claims	7-9	10	20		25	30
3. Propositions & Grievances	10-12	13	24		43	47
4. Courts & Justice (1727)	--	12	19		15	29
5. Trade (1742)	--	--	--	12	19	21
6. Religion (1769)	--	--	--	--	--	45

3. Their Function

- (1) *The Committee on Elections and Privileges* inquired into the legality of the election of each burgess and handled all matters pertaining to the ancient privileges of the House. In its former capacity it judged contested elections and from time to time handed down decisions affecting the exercise and limitation of the franchise.
- (2) *The Committee of Public Claims* handled money matters. In colonial days money was seldom voted in advance (i.e. "appropriated") except for large-scale under-takings such as building the Governor's Palace, or raising troops for the French and Indian Wars. In lesser matters, the House gave orders what was to be done, and after the completion of the work, the House received petitions asking for payment. These were referred to this committee for consideration and recommendation. All the items approved of by the committee were enrolled in a book which the committee presented to the House in the closing days of the session. After discussion - and perhaps some revision of the amount - the House passed the book of claims. It then went to the Council for concurrence.
- (3) *The Committee of Propositions and Grievances* was the place where remedial legislation was initiated. At the beginning of each session petitions from the several counties for the remedy of evils by changing existing laws were referred to this committee. After weighing the complaints, this committee - if persuaded - drew up and introduced bills to the House designed to correct the evils.
- (4) *The Committee for Courts and Justice* (created in 1727) was originally designed to examine the procedure of county courts and discover reasons for delays in the administration of justice. In the course of time, however, this committee came to be a subsidiary of the overworked committee of Propositions and Grievances, To it was assigned the examination of lairs that had expired or were about to expire and required re-enactment. It also handled the vexed problem of duties on imported slaves, servants, and liquors and on exported furs and skins - all of which is a far cry from courts and justice. (No committee by this name ever existed in the British House of Commons.)
- (5) *The Committee on Trade* (created 1742) handled all matters pertaining to the trade of the colony.
- (6) *The Committee for Religion* , (created 1769) framed a bill for granting toleration, and thereafter devoted most of its time to investigating petitions and counter-petitions for the division of parishes.

Special Committees

In addition to the standing committees which handled certain types of business, special committees were created from time to time to deal with matters of a peculiar nature that fell outside the sphere of the standing committees. These fall roughly into three categories:

1. formal, customary committees for such matters as the preparation of an address in reply to the governor's speech, the proportioning of the public levy, and the examination of enrolled bills.
2. various committees to examine the allegations of petitions for private bills.
3. all others, including, for example, committees to inspect the treasurer's accounts, to examine the state of the construction work on the Capitol or the Governor's Palace, or to search for precedents in the records of the Assembly.

4. Joint Committees

In addition to the standing committees and the special committees of the House of Burgesses, there was a third category of committees. On occasion, joint committees with the council were appointed to deal with some matter of considerable importance that concerned both houses of the General Assembly.

Just such a committee in 1700 and again in 1748 performed the task of revising the laws and preparing for presentation to the House of Burgesses during the following session bills for re-enacting such laws as were still desirable.

In 1705 a joint committee of twelve burgesses and six councillors was created to investigate the causes and results of the burning of the College of William and Mary.

B. THE CONFERENCE ROOM

1. Its Evolution

As originally planned, the two buildings that comprised the Capitol were to be connected by "a cross Gallery" thirty feet long and fifteen feet wide. (Act Directing the Building the Capitoll and the City of Williamsburg, 1699). In 1701, however, before the foundation of the Capitol was laid, the Assembly passed an act "giveing further directions in building the Capitoll" which revised the original specifications so that "the cross building betwixt the two main buildings" was enlarged from fifteen to twenty-five feet in breadth.

As a result of this change the "cross Gallery" became a commodious chamber rather than merely a connecting passage. And from 1703 onwards the House of Burgesses ordered "the Conference room to be furnished with an Oval table fourteen foot long and six foot broad"; this served as a joint committee or conference room for the Council and House of Burgesses.

2. Its Use as a Chapel

It also served as a chapel for the Assembly. When the Reverend Hugh Jones M.A. was appointed chaplain in 1718 the House of Burgesses ordered him to "attend in the Conference room every morning at Eight of the Clock and read Divine Service." In 1720 he petitioned the House to purchase a surplice, Prayer Books, and kneeling hassocks "for the use of the House of Burgesses when they go to Prayer." This was finally done in 1722 when the House ordered from England a folio Holy Bible and a folio Prayer Book for the chaplain, forty octavo Prayer Books, and five dozen "Cushions of Green Cloth" for the Burgesses. In 1734 twelve additional Prayer Books were ordered for use of the Councillors.

3. Precedent for Joint Committees of Congress

The decision in 1703 to fit out a special room for joint committee meetings is interesting evidence of the extent of Virginia legislative development. Even this early it was apparent that the smooth operation of a bicameral assembly depended upon the maintenance of harmonious relations between the Council and House of Burgesses. And as a result of the experience of the Virginia Assembly in the twenty years after its division into two separate houses (e. 1630), it was realized that such relations could best be maintained by conferences between representatives of the two houses while bills were in the committee stage.

The wisdom of this decision has been justified by subsequent American legislative history. The "Conference Room" of the colonial Virginia Capitol is an early precursor of the joint committee system that occupies such an important place in legislative practice of the U.S. Congress today.

IV. THE COUNCIL CHAMBER

A. THE GOVERNOR

1. Position

At the apex of the official pyramid of Virginia was the royal governor who was chief magistrate, captain general, vice-admiral, and chief justice of the colony - the principal agent of the Crown and the chief means where - by the British government made its will effective in the Old Dominion.

His office was two-fold in character: he was both the guiding executive of a local government and the central link in the chain that bound the colony politically to the mother country. His task, therefore, was the difficult one of holding in balance the frequently dissimilar interests and needs of the two peoples.

Bearing in mind the nature of the office, the relatively small financial return, and the eighteenth-century concept of political office as a property right, the comparatively high quality of the men who served as colonial governors is remarkable.

2. Appointment

*Royal Appointment
Titular Governors*

The power of appointment of the governor of Virginia resided in the Crown from 1624 (when the Virginia Company was dissolved) until 1776 (except, of course, for the brief interlude of Cromwell's Protectorate, 1652-1660). In the eighteenth century the king frequently gave the appointment to a court favorite whom he wished to honor and reward, but who had no intention of exchanging the comfortable elegance of the royal court for duties in remote Virginia. Four such titular governors held office from 1697 until 1768. They received half the salary appropriated for the office and had no duties or authority whatsoever. They could not even appoint the lieutenant governor who was sent to Virginia to perform the actual duties of the governorship for the remaining half of the salary.

3. The Lieutenant Governor

The lieutenant governor was in all but title and remuneration the governor in chief. He was appointed by the Crown and was responsible only to the Crown.

Authority of Lieutenant Governor

In 1739 Lieutenant Governor Gooch made an appointment in Virginia without notifying the titular governor, the Earl of Albemarle. When the governor-in-chief remonstrated, Lt. Gov. Gooch replied, September 3, 1739: "I can Assure Your Lordship there is not one Instance ... of a Lt Governour being controlled by the Chief Governour in the disposal of any Office of Trust or Profit, whenever such became Vacant ... and the Reason, My Lord, is very Evident, because the Letters Patents, by which they were Constituted, devolve the whole Power of Government upon the Person who is Commander in Chief on the Place An if your Lordship will be pleased to recollect, You will find no Power given you by your Comission to Exercise any Act of Government in this Colony, during your Residence elsewhere."

*Governors: Titular and Actual
1697-1768*

Non-Resident Governors-in-Chief	Resident Lieutenant Governors
Earl of Orkney 1697-1737	Col. Francis Nicholson 1698-1705
	Col. Edward Nott 1705-1706
	Col. Alexander Spotswood 1710-1722
	Col. Hugh Drysdale 1722-1726
Earl of Albemarle 1737-1754	Col. (later Sir) William Gooch 1727-1749
Earl of Loudoun 1756-1763	Robert Dinwiddie 1751-1758
Sir Jeffrey Amherst 1763-1768	Col. Francis Fauquier 1758-1768

In 1768, however, the British Government resolved to put an end to the sine cure of the titular governorship of Virginia and to require the governor-in-chief to go to Virginia and exercise his office in person. As Sir Jeffrey Amherst was unwilling to do so, he tendered his resignation to the Crown. Thereafter, until the Revolution, the governor-in-chief of Virginia was resident in the colony and there was no lieutenant governor.

Resident Governors-in-Chief

Norborne Berkeley, Lord Botetourt,	1768-1770
John Murray, Earl of Dunmore,	1771-1775

4. Acting Governors

Presidents of the Council as Acting Governors

When a resident governor died in office, or left the colony before the arrival of his successor, the authority vested in him devolved upon the senior member of the Council who bore the title "President of the Council." Thus, for example, when Governor Gooch left the colony in 1740 to command the Virginia regiment in the expedition against Cartagena, the authority of the governorship was temporarily exercised by the Rev. Dr. James Blair, Commissary of the Bishop of London and President of the College of William and Mary, by virtue of the fact that he was the senior member of the Council.

The Presidents of the Council who served as acting governors were:

Presidents of the Council	Acting Governor	Between
Col. Edmund Jennings	1706-10	Col. Nott and Col. Spotswood

Col. Robert Carter	1726-27	Col. Drysdale and Col. Gooch
Rev. Dr. James Blair	1740-41	[In Gooch's absence]
Col. John Robinson	1749	Sir. Wm. Gooch and Robt. Dinwiddie
Col. Thomas Lee	1749-51	Sir. Wm. Gooch and Robt. Dinwiddie
Col. Lewis Burwell	1751	Sir. Wm. Gooch and Robt. Dinwiddie
Col. John Blair	1758	Dinwiddie and Fauquier
Col. John Blair	1768	Fauquier and Lord Botetourt
Col. William Nelson	1770-71	Lord Botetourt and Lord Dunmore

5. Salary

By the end of the seventeenth century the salary of the governor of Virginia had become more-or-less stabilized at £2,000 sterling a year, plus certain perquisites. This money was granted to him, not by the Virginia Assembly, but by the King, and was paid out of the proceeds of a permanent duty of two shillings sterling on each hogshead of tobacco exported from the colony. The duty, it is true, was granted by act of the Assembly in 1658, but as it had become perpetual in 1680 and as it had received the King's assent, it could not be amended or repealed by the Assembly except with the consent of the Crown.

Financial Independence of the Governor

It is significant, therefore, that in Virginia as opposed to many of the other royal and proprietary colonies the governor's salary was beyond the power of the Assembly to withhold or diminish whenever the governor's actions met with its disapproval. This gave a governor of Virginia a much freer hand in dealing with the Assembly in matters of disagreement than would otherwise have been the case. The royal governors of New York, New Jersey, Massachusetts, South Carolina, and New Hampshire had to rely for their salaries upon temporary grants from the Assembly - a dependence which placed the governor at a great disadvantage by enabling the Assembly to coerce him by withholding his salary until he assented to its proposed legislation.

Division of Salary between Governor and Lt. Governor

When there was both a titular governor in chief, living abroad, and a resident lieutenant governor in Virginia, the whole salary was paid to the resident lieutenant governor, and he, in turn, was obliged to send £1200 of it to the non-resident titular governor.

By about 1732 the total income of the governor (salary and perquisites) amounted to about £2400. The lieutenant governor, therefore, received a net of £1200 plus the Palace rent free after he had remitted £1200 to the governor-in-chief in England.

As time went on, however, the perquisites of the governor brought in more money. Lt. Gov. Gooch, therefore, paid the titular governor, Lord Orkney, £1300 a year. After Gooch's departure in 1749, Col. Thomas Lee, while serving as acting governor, offered to pay Lord Albemarle £1 a day extra as long as he could keep the post of lieutenant governor vacant. When Dinwiddie became lieutenant governor (1751), the governor-in-chief demanded that he pay £365 per annum over and above the customary 30300, on the grounds that Colonel Lee "found he could afford to pay so much." Dinwiddie, accordingly paid Lord Albemarle £1665 a year. Lt. Gov. Fauquier (1758-68) paid Sir Jeffrey Amherst £1500 a year, or, if receipts from perquisites were high, 1500 guineas (i.e. £1575). Lord Botetourt (1768-70) and Lord Dunmore (1771-75), being governors-in-chief, kept the entire proceeds of the office, which on the eve of the Revolution amounted to about £4,000 a year.

6. Perquisites

The principal perquisites of the governor were fees that had come to be established by custom rather than law. Below is a list of the fees usually allowed:

Table of Fees Allowed the Resident Governor

For affixing the seal of the colony	£ 1
For signing land patents	£ 1-1-6d.
For registry of ships 100 tons or over	£ 1-10s.
For registry of ships less than 100 tons	£ 1
For issuing "protests" *	£ 1
For an "ordinary" (i.e. restaurant) license	£ 1-15s.
For a marriage license	£1
For naturalization papers	£2-10s.

In addition, the governor was entitled by custom to receive as his perquisite the beaver skins that various Indian tribes annually rendered to the Virginia Colony as tribute in recognition of the suzerainty of the King. The tribute beaver was valued at about £50 a

year.

Another perquisite of the governor, after 1736, was the right to import Madeira wine for his own use duty free up to the amount of ten pipes *—a year.

7. Magnificence

Magnificence of Royal Governors 1769-75

After 1769 when there was no lieutenant governor, and when the governor-in-chief actually resided in Virginia, the salary and perquisites of office were no longer divided, and the resident governor enjoyed an affluence unknown by his predecessors. The last two governors, Botetourt and Dunmore, moreover, were peers - the former a baron, the latter an earl - and men of considerable estate in their own right. Botetourt with his fine clothes, courtly manners, and gilded state coach drawn by six white horses introduced a note of magnificence into life in Williamsburg that had been wanting in the British Colonies in America before his time. Lord Dunmore, though perhaps less gracious and diplomatic than Lord Botetourt, was not less stately in his public appearances, and greatly impressed the colonial Virginians by his private yacht, the *Lady Gower*, and by the splendor that characterized the formal balls at the Palace during his administration.

Romanticism and Williamsburg's "Grand Manner"

Williamsburg had come a long way from 1699 to 1775 along the road of sophistication and material well-being. The royal period of Virginia history ended, fittingly enough, in a burst of official magnificence under Botetourt and Dunmore, which loomed even larger in the memories of Virginians who survived the dreary war of independence, the postwar depression, and lived to taste the simplicity and colorlessness of the early republic officialdom. This contrast put republican simplicity in a bad light - particularly during the "romantic period" of the middle nineteenth century, and added fuel to the fire of the "cavalier myth" in the generation before the Civil War.

B. FUNCTION OF THE COUNCIL

Concentration of Powers

The Council of colonial Virginia was the embodiment of aristocracy - the principal stronghold of conservatism and vested interests - and the ne plus ultra of concentrated power. The post-revolutionary American concept of separating executive, legislative, and judicial authority is the antithesis of colonial Virginia constitutional practice. The governor was the chief executive official, the presiding officer of the upper house of the Assembly (until about 1725), and, at the same time, chief justice of the Colony's supreme General Court. The twelve Councillors, similarly, were an executive body of advisors to the governor - comparable to the President's Cabinet in our Federal system or a legislative body in that they formed the upper of the two houses of the Virginia Assembly - and were therefore comparable to our Senate - and a judicial tribunal, in that they formed the General Court of Virginia - which was comparable to our Supreme Court.

The Council - a buffer between Governor and Burgesses

Another feature of the Council was that whereas the governors were always sent over from Great Britain, the members of the Council were generally either natives of Virginia or else had lived here long enough to identify themselves with the colony and its interests. The Councillors, therefore, tended to form a kind of "country party" conservative and aristocratic perhaps, but serving as a buffer between the royal prerogative and British commercial interests, represented by the royal governor, on the one hand, and the rank and file of Virginians, represented by the House of Burgesses, on the other. The Council in its executive capacity served as a restraining influence on a royal governor who was over-zealous in carrying out to the letter his instructions from the Mother Country. The Council also defeated ill-considered attempts on the part of the Burgesses to place obstructions in the way of commerce with Great Britain or to extend the electoral franchise too far.

Continuity and Experience

In its exercise of this function, the Council had a distinct advantage over the royal governors, in that it enjoyed continuity and accumulated knowledge of the colony, its economic, social, and legal history and pattern, such as was necessarily beyond the reach of a newly-arrived governor from Great Britain. Hence, for reasons of sheer ignorance which would take many years to overcome, the governors were forced, whether they liked it or not, to rely heavily upon the advice of their Council. In its executive capacity the Council was consulted by the Governor in almost every official act.

Leonard W. Labaree in his *Conservatism in Early American History* (New York and London, 1948) shows that the "relatively few families of wealth and social distinction provided the largest part of the membership of the council, and, since their families were nearly all intermarried, the council became a body of uncles, cousins, and brothers-in-law, who, when they put up a united front, were often able to guide their relatives and supporters in the lower house, checkmate the governor at any hostile move, and run the colony generally in the interests of their own extremely privileged class."

From 1680 until the Revolution, ninety-one men were appointed to the Virginia Council. Labaree has found, however, that only fifty-

seven family names were represented. "Of these, nine names account for just short of a third of the total membership." The Page family contributed five; the Burwell, Byrd, Carter, Custis, Harrison, Lee, Ludwell, and Wormeley families, three each. Almost another third came from the next fourteen names. Two were from each of the following families: Beverley, Blair, Corbin, Dawson, Digges, Fairfax, Grymes, Lewis, Lightfoot, Nelson, Robinson, Smith, and Tayloe. "Thus, during a period equal to the time from the Mexican War to the Second World War, over 60 per cent of the places on the council were occupied by members of only twenty-three families."

"But these figures," Labaree continues, "only begin to suggest the solidarity of the council for they fail to show the extensive intermarriage within the group. That situation can well be illustrated by reference to the descendants of Lucy Higginson, a Virginia lady who lived in the middle of the seventeenth century. By two of her three husbands, Lewis Burwell and Philip Ludwell, themselves early councillors, she was the direct ancestor of seven councillors and of the wives of eight others. One sixth of all Virginia councillors after 1680 could refer to the good lady as 'Grandmother Lucy.' Many of the men in this group were related to each other twice or three times over, and most were also related to several other councillors. In fact, for any one time during this period a roster of the Virginia council shows from a third to a half of the members were closely related to one or more other councillors and more distantly connected by blood or marriage with various others."

"Family dominance continued to be a feature of the Virginia council throughout the eighteenth century... When recommending John Carter, secretary of the colony, to fill a vacancy in 1732, the governor warned the Board of Trade that they might object to this appointment since the secretary's father, 'King' Carter, was already on the council. He did not add, as he might have done, that a brother-in-law of the candidate, Mann Page, was also a councillor. The lieutenant governor did point out to the home officials, however, that the interrelation of councillors was inevitable since 'there is scarce a qualified person in the colony, unattended with some like inconvenience, for they are all incorporated either in blood or marriage.'" When the Revolution began, "ten of the twelve members of the council were related to one or more of their colleagues and all but two were sons or grandsons of former councillors."

1. Executive Function

According to P. S. Flippin (*The Royal Government in Virginia*, pp. 164-65), the Council considered with the Governor petitions of every nature, the reports of all revenue officials, the granting of land, and all matters pertaining to Indian affairs. The appointment of all public officers holding commissions from the Governor, the conduct of the Anglican clergy, controversies between the Vestries and Rectors of parishes, the expenses of the colony, were all discussed and decided by Governor and Council. Matters pertaining to intercolonial relations, and practically all official correspondence of the Governor, were laid before the Council, and he could not put into execution any article of war or declare martial law without the advice and consent of that body.

Necessity for Harmonious Relations

In consequence, the Governor was more or less obliged to work harmoniously with the Council. He strove to avoid controversy with its members, because the conduct of government was practically impossible without their full co-operation. In cases where a serious rift developed between Governor and Council, the Governor was considered an unprofitable servant of the Crown, and was recalled. Both Francis Nicholson and Alexander Spotswood were removed from office principally because of opposition of the council.

Conflicts with Governors Nicholson and Spotswood

Nicholson and Spotswood were both men of strong character and inclined to resent any opposition to their well-defined and somewhat grandiose imperialism. To the more conservative and more provincial councillors the bold actions of these governors smacked of dictatorship. Spotswood countered by charging that the councillors "enjoyed considerable authority and aimed at greater."

Harmony under Governors Drysdale and Gooch

Spotswood's charge, however, was true only when an aggressive governor like himself provoked their opposition. Under Drysdale (1722-26) and Gooch (1727-49) complete harmony reigned, and the Council made no attempts to usurp any of the functions of the governor. This harmony, however, was maintained only by allowing the Council an important share in the administration of the colony.

Gov. Fauquier and the Council

Governor Fauquier (1758-68) carried the policy of deferring to the advice of the Council to such lengths that on one occasion, in 1759, he signed a certain act of the Assembly that was contrary to his instructions and against his own judgment simply because the Council urged him to do so.

In general, it seems that whenever the Governor allowed the Council a large share in the government, harmony reigned and the colony was, constitutionally speaking quiet and peaceful.

2. Legislative Function

The General Assembly of Virginia at the beginning of the eighteenth century consisted of two parts: (1) the lower house, called the House of Burgesses; and (2) the upper house, consisting of the Governor and Council. After about 1725, however, the Governor ceased to sit with the Council when it met in legislative session, though, of course, he continued to sit with it when it met in executive session or as the General Court (in judicial session).

Analogy between Parliament and the Virginia Assembly

We do not know what brought about this change. Possibly it was a conscious attempt to bring the Virginia legislature into closer conformity with that of Great Britain where the King did not, except when officially opening Parliament, preside over the House of Lords.

British System		Virginia System
King	Executive	Governor
House of Lords	Upper House	Council (in Legislative Session)
House of Commons	Lower House	House of Burgesses

This analogy was apparent at the time. Robert Beverley in his *History and Present State of Virginia*, (London, 1705), spoke of the Council and Burgesses as forming two distinct houses, "in imitation of the two Houses of Parliament in England, the Lords and Commons." Book IV, Chap, I, p, 3.

The Council, like the House of Lords, had the power to amend or reject bills passed by the Burgesses. But it could not initiate bills. Therefore the House of Burgesses was a necessary element of the legislature and had a certain advantage over the Council, even though the latter was the upper house and enjoyed vastly more influence and prestige by virtue of its small numbers and life tenure and by virtue of the superior: wealth and position of its members.

3. Judicial Function

The members of the Council not only exercised executive and legislative functions, but also judicial ones. Together with the governor they were ex officio members of the General Court, which was in effect the supreme court of colonial Virginia, although an appeal in certain cases might be made to the Privy Council in England, The jurisdiction of the General Court is dealt with at length on page 99 *et seq* .

C. MEMBERSHIP OF THE COUNCIL

1. Appointment

Appointment and Tenure of Office

The Council consisted of twelve men of whom the Commissary of the Bishop of London was one, *ex officio* . The other eleven were nominated by the governor and appointed by the King. They held office for life.

2. Qualifications

Invariably they were chosen from amongst the wealthiest, most capable, and most influential citizens of the colony. Therefore, the Councillors generally represented the apex of the social pyramid of Virginia, and one would be justified in considering the Council the best and most exclusive "club" in colonial Virginia.

Wealth

The home authorities regularly instructed the governors not to recommend anyone for appointment to the Council who was not wealthy as well as capable. Lord Howard of Effingham (governor, 1684-88) was warned to avoid choosing "necessitous people, or people much in debt."

When Governor Gooch recommended John Blair for appointment to the Council in 1745, he felt called upon to explain to the Board of Trade in London that he had not recommended Blair in the past because "during his Uncle's the Late Commissary's life time, he was in narrow Circumstances; but as he left him, at his Death, near ten thousand Pound," John Blair was then "a proper Person to have a Seat at that Board [i.e. the Council.]"

Proximity to Williamsburg

Another factor that had a bearing upon the selection of Councillors was their principal place of residence. In its legislative capacity the Council met only when the House of Burgesses met, and therefore it mattered little where the Councillors resided. But in their judicial capacity (as justices of "the General Court and the Court of Oyer and Terminer) the Councillors met four times a year. And in their executive capacity they were obliged to meet even more frequently, often on short notice, as emergencies arose. Therefore, it was highly desirable that a large percentage of the twelve Councillors at any given time be permanently resident in Williamsburg or within fifty miles of the city. In consequence, gentlemen of rank and fortune who lived in this part of the colony had a much better

chance of obtaining the sought-after appointment to the Council than equally qualified gentlemen living a greater distance from the capital. Robert Carter of Nomini Hall, on the Northern Neck, had great difficulty in securing his appointment largely because of the distance of his principal seat from Williamsburg. But he had the support of his wife's influential relatives in Maryland and England, and ultimately got the cherished post. The work it entailed, however, ultimately led him to purchase the present Carter-Saunders House and to transfer his residence from Nomini Hall to Williamsburg. Similarly, Col. John Tayloe of Mt. Airy, Col. William Byrd III of Westover, and Philip Light-foot of Yorktown, as well as other Councillors, found it expedient to purchase or rent Williamsburg houses.

3. Salary of Councillors

By 1676 the Council as a whole received an annual sum of £350 for salaries. It was paid out of the royal revenues and therefore was not dependent upon appropriations by the Assembly.

This figure was gradually increased to £600 by 1740 and to £1200 under Dinwiddie (1751-58) and succeeding governors. This salary was divided among them in accordance with the frequency of their attendance.

When the President of the Council served as acting governor, he got half the salary and half the perquisites of the governor as well as his own salary as a Councillor.

4. Perquisites

In the seventeenth century membership in the Council was the surest and quickest means of trebling and quadrupling an ample fortune. The lucrative offices of state such as that of Auditor, Receiver General of Revenue, Escheator (i.e. receiver of lands that reverted to the Crown for non-payment of quit-rents or for other causes), Farmers of the Quitrents, Collectors of Customs, and Naval Officers (not in our modern sense, but customs officials who issued clearance papers and other necessary documents to ships trading to and from Virginia), were liberally distributed by the governor with the advice and consent of the Council to members of the Council. In addition, Crown lands were generously granted to Councillors and arrears in their payment of quit-rents winked at. Moreover, the duties of Councillors, though multifarious and time-consuming, did not interfere with their simultaneous accumulation of private wealth as planters, land-speculators, and merchants.

5. The President of the Council

The President

In its executive and judicial sessions, the governor normally presided over the Council. If, however, the governor could not be present owing to illness, or absence from the colony, the senior member of the Council acted in his stead. Similarly, in the interim between the death or departure for England of a governor and the arrival of his successor, the senior Councillor, bearing the title "President of the Council" automatically served as acting governor.

Because of the position of the President of the Council - second only to that of the governor - and because of the chance of its holder becoming for a time the acting governor, the post was held in high esteem and was much sought after by ambitious Councillors, even though it brought no extraordinary powers so long as the governor was present.

6. Officers of State (who had offices in the Capitol - mostly on the third floor)

a. The Commissary of the Bishop of London -

The highest ecclesiastical official in Virginia was known as the "Commissary" and received his appointment from the Bishop of London in whose spiritual jurisdiction lay Virginia (and all the other British colonies). Created in 1689, this office was generally held by the President of the College of William and Mary.

Virginia Commissaries of the Bishop of London

	Commissary	President of College
Rev. James Blair	1689-1743	1693-1743
Rev. William Dawson	1743-1752	1743-1752
Rev. Thomas Dawson	1752-1761	1755-1761
Rev. William Robinson	1761-1768	--
Rev. James Horrocks	1768-1771	1764-1771
Rev. John Can	1771-1776	1771-1777

Only Robinson was Commissary without being President of the College. Only the Rev. William Stith 1752-55 and the Rev. William Yates 1761-64 were Presidents of the College without being Commissaries.

The duties of the office included the general super-vision of the clergy and a seat on the Council. But as the Commissary was not a

bishop, he could do little except report to the Bishop of London and make recommendations, He did convene and preside over periodic convocations of the Virginia clergy, which generally met at the College, but he never succeeded in maintaining the right of deposing an unworthy incumbent of a parish. Writing in 1725, the Rev. Hugh Jones said that his powers were "few, limited and disputed," for he was but a "shadow of a bishop." But what he lacked in power, he made up in influence. With few exceptions the Commissaries were influential in the Colony, and Dr. Blair was undoubtedly the most powerful man in Virginia of his day, having influenced several governors and procured the recall of those whom he could not influence. Also, no Virginian could be a candidate for Holy Orders in England without the Commissary's recommendation.

b. The Secretary -

Invariably held by a Councillor, the office of Secretary was a royal appointment made on the governor's recommendation. As the seal of the colony was in his keeping, the Secretary was analogous to the Lord Chancellor in England and the Secretary of State in the Federal government. All patents and most other documents requiring the seal - such as proclamations, commissions, marriage licenses, etc. - issued from his office. He was, moreover, the custodian of the records of the colony, including lists of births and deaths, journals of the General Court and admiralty court, and lists of all tithables in each county. As land grants required the seal to make them valid, the Secretary operated the land office for the colony. Similarly, he issued naturalization papers to foreigners who had lived seven years in America and were prepared to swear allegiance to the British Crown. and subscribe to the Test, in effect denying the Romish doctrine of Transubstantiation, and he issued passes (the forerunner of our passports) to anyone who desired to leave the colony. In return for these services, the Secretary received compensation in the form of fees (established and regulated by law). These amounted to £400 or £500 a year in 1696, but rose to about £1,000 a year by 1763. He also had the power of appointing the clerk of the General Court (who was really his deputy) and the clerks of all the county courts in Virginia. Next to the governor, the Secretary exercised the greatest power of appointment in the colony.

The Secretaries of Virginia during the period that Williamsburg was capital of the Colony were:

Ralph Wormeley	1693-1701
Edmund Jenings	1702-1712
Dr. William Cocke	1712-1720
Edmund Jenings	1720-1722
John Carter	1722-1743
Thomas Nelson	1743-1776

c. The Auditor -

This office was created in 1664 by the Virginia Assembly. Its incumbent, however, received his commission from the Crown, and was considered a deputy of the Auditor-General, a London official who had financial supervision of all the colonies. The Auditor examined all the revenue accounts of the Virginia Colony, including those of the royal collectors and customs officials, the quitrents, the public claims, and fines and forfeitures. He swore to his accounts before the Governor and Council in April and October each year, and forwarded them with vouchers for each item to the Auditor-General and Treasury officials in London.

The Auditors of Virginia:

Thomas Stegg	1664-1670
Edward Digges	1670-1675
Nathaniel Bacon, Sr.	1675-1687
William Byrd I	1687-1704
Dudley Digges	1705-1710
Philip Ludwell	1711-1716
Peter Beverley	1716- ?
John Grymes	1718- ?
Nathaniel Harrison	? -1728
John Blair, Sr.	1732-1771

d. The Receiver General -

Originally the offices of Auditor and Receiver General of the Royal Revenues were held by the same person. In 1705, however, they were separated because of the growing royal revenues and the opportunities for fraud when the same person who received the money also audited the accounts. The Receiver General handled the royal quitrents, the revenue from the export duty of two shillings on each hogshead of tobacco, the one penny per pound on tobacco exported from Virginia to any other British colony, and

the port duty of 1s. 3d. per ton paid by every vessel trading to the colony, as well as all other revenues not handled by the Treasurer. The difference between the Receiver General and the Treasurer was that the former received and disbursed "royal revenues" over which the Assembly had no control; the latter received and disbursed "colonial revenues" arising from taxes, duties, and appropriations enacted by the Assembly.

The Receiver General was compensated by a percentage of the funds he handled. At first 4%, later 7%, and finally 5%. The proceeds of this office amounted to about £800 sterling a year in 1763.

Receivers General of Virginia

William Byrd II	1705-1716
James Roscow	1716-1723
John Grymes	1723-1748
Philip Grymes	1749-1754
Richard Corbin	1754-1776

e. The Attorney General -

The first Attorney General of Virginia was appointed in 1643 by the King. About 1700, however, the Attorney General was appointed and commissioned by the governor under the seal of the colony. Shortly before the Revolution the earlier method of appointment was revived. The last Attorney General of the colony, John Randolph "the Tory," was commissioned by the King. Unlike the office of Secretary, Auditor, and Receiver General, that of Attorney General was usually not held by a Councillor.

The Attorney General had to be learned in the law. He prosecuted criminals in the General Court and the courts of Oyer and terminer, and also landholders who refused to pay quitrents to the Crown. In addition, he gave legal opinion, when requested to do so by the Council, on matters requiring a knowledge of law, and explained the meaning of instructions received from the home government. He also prepared proclamations and commissions to be issued by the governor and Council. The salary attached to the office in 1680 was £40 a year out of the royal revenue plus £80 a year voted by the Assembly. It was increased several times, and amounted to £200 in 1767 (all paid out of royal revenues). After 1703, he was required to reside permanently in Williamsburg in order to be readily available for consultation by the governor and other officials of the Colony.

Attorneys General of Virginia (after 1699)

Bartholomew Fowler	1699- ?
Benjamin Harrison	?-1702
Stevens Thomson	1701,-1714
John Clayton ¹	1714-1737
Edward Barradall ²	1737-1743
William Bowden	1743-1748
Peyton Randolph ³	1748-1766
John Randolph "the Tory" ⁴	1766-1776

f. The Surveyor General -

Created in 1621, this office was attached to the College of William and Mary by its charter in 1693. Thereafter, this official received his appointment from the President and Trustees of Visitors of the College. In actual practice, however, the College generally appointed the nominee of the governor and Council, because the President of the College in his capacity of Commissary of the Bishop of London was a member of the Council, and the Trustees and Visitors of the College were frequently Councillors too.

The Surveyor General appointed and commissioned (with the assent of the governor and Council) the county surveyor for each county. In a day when the process of settlement was rapid and new lands were continuously being patented, the task of surveying was of the utmost importance. Besides, boundary disputes between landholders were much more common in a new country like Virginia than in an old, settled one like England where estates rarely changed hands and where the boundaries had been fixed "time out of mind."

The Surveyor General (as well as the Secretary of Virginia) kept a record of all land surveyed. The office paid about £50 a year to its incumbent.

The Surveyors General who held office after its attachment to the College of William and Mary in 1693 were:

Miles Cary	1692-1708
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William Buckner	1708-1716
Peter Beverley	1716-1728

Information concerning later incumbents of this office is, strangely, lacking - possibly because of the destruction of most of the College records.

D. THE COUNCIL AND THE REVOLUTION

1. Reaction to Rebellion

As the Councillors were generally the wealthiest planters of Virginia and held their office by royal appointment, they might be expected to be rather more conservative than the Burgesses and rather more attached to the status quo at the time of the Revolution.

2. Percentage of Loyalists

Taking the Councillors who held office during the administration of the last royal governor, Lord Dunmore, we find that most of them were loyalists. Three of them, however, were not: Thomas Nelson, and John Page were staunch patriots; and Robert Carter was a lukewarm one. The Corbins, Byrd, Fairfax, Wormeley, and Cam were staunch loyalists; Tayloe was a moderate one.

3. What Befell the Councillors, 1775-81

- (1) *Thomas Nelson* (1716-1782) - As President of the Council, he was a firm adherent of the colonial side in the Revolution but opposed violence and tried to protect Lord Dunmore from the people. He was nominated for governor of the Commonwealth on June 29, 1776, as a conservative candidate and received 45 votes to Patrick Henry's 60. The same year he was appointed a member of the Privy Council of the Commonwealth, but declined the office "on account of his age and infirmities" and retired to private life.
- (2) *Richard Corbin* - Being a firm loyalist, he retired from office at the outbreak of the war and lived quietly and unmolested at his home in the country.
- (3) *William Byrd III*, Being a loyalist, he retired from office in 1775 and, like Corbin, lived quietly at home until his death in 1777.
- (4) *Philip Ludwell Lee*, (1727-1775) - As he died in February, 1775, he did not live to manifest his sympathies, Judging from his character, it is supposed that he would probably have been a loyalist.
- (5) *George William Fairfax* (1724-1787) - A Councillor from 1769 to 1773, he returned to England in 1773 to manage an estate he inherited. He is known to have been ardently loyal to the Crown. Even so, he greatly admired George Washington and named him one of the executors of his will.
- (6) *Robert Carter Burwell* - A Councillor from 1764 until 1775, he died in 1777. His sentiments are unknown, but the fact that he vacated his office at the outbreak of the war suggests that he was a loyalist, On the other hand, his daughter Frances was the wife of the patriot, John Page.
- (7) *John Tayloe II* (1721-1779) - He was a Councillor from 1757 until 1775. Although a supporter of American rights and a friend of George Washington, he could not bring himself to favor a complete separation from Great Britain, He, therefore, retired to private life in 1775 and declined appointment in 1776 to the first Council of State of the new commonwealth.
- (8) *John Page* (1720-1774) - A Councillor from 1768 until his death in 1774, he died before the outbreak of hostilities, but is known to have been an active member of the patriot party.
- (9) *Ralph Wormeley III* (1744-1806) - As a Councillor (1771-1775) he steadily opposed British measures for taxing America, but nonetheless remained steadfastly loyal to the Crown. During the war he was confined to his plantation by the revolutionary government. After the war his popularity and influence revived, and he was elected a member of the convention of 1788 and later a member of the Virginia House of Delegates.
- (10) The Rev. *John Camm* (1718-1779) - He was a Councillor and the last colonial President of the College. An ardent loyalist, he refused to recognize the revolutionary state and was removed from both offices.
- (11) *Gawin Corbin, Jr.* - Appointed to the Council in 1775, he was a loyalist.
- (12) *Robert Carter of Nomini* (1728-1804) - A Councillor from 1764 to 1775, he consistently opposed separation from Great Britain until independence was declared. There-after he acceded to the decision of his fellow countrymen and cast his lot with the United Colonies. He may be described as a reluctant patriot.

V. THE GENERAL COURTROOM

A. THE GENERAL COURT

1. Description

The highest court in colonial Virginia was the General Court, which grew out of the Governor and Council acting in a judicial

capacity. Until 1684 the decisions of the county courts were appealed to the General Assembly. After that year, however, the appellate jurisdiction of the House of Burgesses ceased, and the Council extended its judicial function, eventually becoming the General Court - the only appellate court of the colony.

2. Composition

The General Court consisted of the Governor and Council.

Its members were not commissioned specifically as judges: as the result of custom,¹ their judicial function came to be regarded as a normal part of their duty. The Governor, also by custom rather than by specific commission, was *ex officio* the chief justice, although that title was not used.

3. Quorum

An act of the Assembly in 1705 provided that the court should "consist of her Majesty's governor, or commander in chief, and the council, for the time being, any five of them to be a quorum." (Hening, *Statutes* III, 288.) Hence, the governor did not have to be present.

4. Frequency of Sessions

After 1684 when the General Court acquired the features which were distinctive of it for the remainder of the colonial period, it met twice a year: April 15 and October 15, or, if these days fell on Sunday, the following day.

5. Opening of Sessions

Hening III, 290

The oath to be taken by Councillors when serving as judges of the General Court was provided by an act in 1705:

"You shall swear, that you will well and truly serve our sovereign lady the queen, and her people, in the office of a judge or justice of the general court of Virginia; and you shall not council or assent to any thing, the which might turn to the hurt or disheriting of the queen, by any way or colour; and you shall do equal law, and execution of right, to all the queen's subjects, rich and poor, without having regard to any person: You shall not take, by yourself, or by any other person: any gift or reward, of gold, silver, or any other thing (except meat and drink, and that but of small values) You shall not take any fees, or other gratuity, of any person, great or small, except such salary as shall be by law appointed: You shall not maintain, by yourself, or any other, privily or openly, any plea or quarrel hanging in any of the queen's courts: You shall not delay any person of common right for the letters of the queen, her governor of this county, or of any other person, nor for any other cause: And in case any letter come to you, contrary to the law, you shall nothing do for such letter, but you shall proceed to do the law, the said letters notwithstanding: And lastly, in all things belonging to your said office, during your continuance therein, you shall faithfully, justly, and truly, according to the best of your skill and judgement, do equal and impartial justice, without fraud. So help you God."

An act of 1684 provided that at the opening of the session, silence was to be commanded in this fashion: "lett the cryer or under sherriffe make proclamation and say 'O yes O yes O yes silence is commanded in the court while his Majesties Governor and Councill are sitting, upon paine of imprisonment.'

"After silence comanded lett the cryer make proclamation saying: 'All manner of persons that have any thing to doe at this court draw neer and give your attendance and if any one have any plaint to enter or suite to prosecute lett them come forth and they shall be heard.'

"When silence is thus comanded & proclamation upon calling the dockett the cryer shall call for the plaintiffs.

"A.B. come forth and prosecute the action against C.D. or else thou will be nonsuit.' And the plaintiffs putting in his declaration the cryer shall call for the defendant.

"C.D. come forth and save thee and thy bayles or else thou wilt forfeit thy recognizance."

6. Judges, Lawyers, and Juries

Judges

The Councillors, who served *ex officio* as judges of the General Court, were appointed by virtue of their wealth, position, and probity - and not by virtue of their legal training. In consequence, few of the judges of the General Court had been lawyers. This is, perhaps, the principal difference between it and our high courts of today. The judges relied on the counsel for the plaintiff and defend-ant to provide the court with citations of legal precedents for them to take into consideration before deciding a case. But the judges made up in intelligence what they lacked in legal training. They knew more about fundamental principles, more about human nature, and, often, more about the individual litigants and their business than they did about precedents and the technical details of the law.

Of the general character of the decisions of the General Court, composed as it was of non-lawyers, Dr. Chitwood has written:

"While the General Court doubtless tried to conform its decisions to the laws of England, yet it was impossible to fit the judicial business of the colony into exactly the same mould into which that of the mother country had been cast. A certain amount of elasticity had to be given to the laws of England before they could be adapted to the differing conditions in Virginia. Besides, a legal education was not a requisite qualification for membership in the council, and so cases must sometimes have arisen in which the judges did not know how to apply the common law."

Lawyers

Most of the lawyers who practiced before the Court in the eighteenth century were learned in the law - many had been taught at the inns of court in London. Others had studied in the office of well-trained lawyers. They were, on the whole, well versed in the common law, the principles of equity, and the rules of practice and special pleading. The arguments recorded in the Reports by Sir John Randolph and Edward Barradall of Decisions of the General Court of Virginia, 1728-1741. (published as R. T. Barton, ed., *Virginia Colonial Decisions*, 2 vols., Boston, 1909) show a degree of legal learning that would do credit to modern lawyers.

One wonders if the justices of the court, who were not learned in the law - although they were highly educated and generally well informed men - were not hard put to follow some of the elaborate arguments of Randolph and Barradall and their involved dissertations upon technical rules of pleading and evidence. Mr. Barton, who edited the *Virginia Colonial Decisions*, ventured to imagine that the justices wearied in listening to the complicated pleas as much as *he* did in reading them, and he wondered if they made any more impression on the minds of "King" Carter, Commissary Blair, or the others than if they had been addressed to them "in the language of the Mandarins."

No Jury in Appellate Civil Cases

When the General Court heard civil cases on appeal from the county courts, it did not use a jury, because the facts of the case had already been established by the county court.

Jury Optional as in Original Civil Cases

Civil cases originating in the General Court, opposed to those which were heard on appeal from the county courts, were heard without juries unless requested by either party.

Jury Required in Criminal Cases

When The General Court heard criminal cases, the defendant was entitled to the ancient right of Englishmen to trial by jury. An act in 1662 required six jurors to be summoned from the defendant's county in criminal cases, and authorized the sheriff of James City County to select six additional jurors from among qualified bystanders. An act in 1734 required that all twelve jurors in capital offenses were to be summoned from the defendant's county to attend the General Court. Jurymen so ordered to the General Court were entitled to an allowance from their county of 20 lbs. of tobacco per day during their journey to and from the capital and 50 lbs. of tobacco per day during their attendance at court.

As the number of criminal cases increased, this method of trial became "very burthensome and expensive to the public, as well as grievous to many of his majesty's good subjects, who live in remote counties." Therefore, in 1738, the Assembly provided that whenever the defendant was a convict who had been transported from Great Britain - and they formed the bulk of the offenders - he or she was to be tried by a jury chosen from the bystanders in order to avoid bringing jurors from distant counties. The theory, as enunciated in the act, was that transported convicts were "commonly servants, and little known in the neighbourhood where they live," therefore no benefit accrued to them to have a jury of the vicinage, and they "may be as fairly and impartially tried by a jury of the by-standers."

Qualifications Jurors

In colonial days juries were not composed of riff-raff, or of any free men who had nothing else to do. The jury, according to eighteenth-century thinking, played an important part in the administration of justice and therefore should be confined to men who were respectable and responsible. To that end, an act in 1699 confined the selection of jurors for the General Court to men who were freeholders worth at least £100 sterling, and jurors for county courts to men worth £50 sterling. In 1748 this was reduced to £100 currency and £50 currency, respectively.

Right to Counsel

In civil cases, both sides were permitted to retain counsel, if they chose. This was a privilege that had existed in England since the Paddle Ages. In criminal cases, however, it was a different story: the right to counsel, except in the case of treason, did not exist in English common law until the nineteenth century.

In cases involving treason, the accused received the right to a full defense in the English Treason Act of 1696 which specified that persons accused of treason were entitled "to make his or their full defense by Counsel learned in the Law, In trials of other felonies,

the accused had no right at common law to counsel in England until 1836. And as most crimes were felonies, this meant that the defendant was usually obliged to defend himself. In practice, however, the court sometimes granted permission to retain counsel, as a privilege rather than a right.

In the American colonies the courts were somewhat more liberal. William Penn's frames of government for Pennsylvania and Delaware extended the right of counsel to all accused persons. And the Virginia Assembly specifically ~enacted in 1734, "That in all trials for capital offenses, the prisoner, upon his petition to the court, shall be allowed counsel."

Thus, most of the cases before the General Court (particularly after 1734) were argued by learned counsel

B. JURISDICTION

The General Court was the highest court of colonial Virginia and took cognizance of all causes, criminal, penal, ecclesiastical, and civil - except admiralty cases for which there was a special Court of Vice-Admiralty (which met in the same courtroom at times when it was not in use by the General Court or the Court of Oyer and Terminer).

Criminal

As the criminal jurisdiction of the county courts was restricted to cases not involving life or limb (except in the case of slaves), all persons accused of the more serious crimes were tried in the General Court or the Court of Oyer and Terminer meeting in the Capitol. The county court did serve as an examining body to determine whether the evidence was sufficient to send a case to Williamsburg for trial.

Civil

In civil causes the General Court had original jurisdiction in all cases involving property worth more than £ 16 sterling. It also served as a court of appeals for cases decided in the county courts. Until 1748 there was no limit to the amount in cases appealed to it from the county courts. In that year, however, an act of the Assembly provided that its appellate jurisdiction was limited to cases involving £10 or more. The General Court was not "supreme" in civil causes: cases involving more than a certain sum of money could be appealed to the Privy Council in London. This sum, originally £100, was gradually increased to £500 sterling. Comparatively few cases were carried to the Privy Council. (Between 1680 and 1776 only 53 cases were appealed from the Virginia General Court to the Privy Council.) The reason was that very few cases - probably not one in fifty - involved sums in excess of £500. Moreover, the expense of prosecuting an appeal overseas was a serious drawback. And the delay involved was often quite lengthy. A study of some 140 cases appealed from various American colonies to London shows that although more than one third were adjudicated within a year, three required more than six years, and one took twelve years. The average length of time was nearly two years.

C. OTHER COURTS THAT CONVENE HERE

1. Court of Oyer and Terminer (after 1711)

As the population of Virginia grew, so did the number of criminal fences. And since the General Court met only twice a year (April 15 and October 15), persons charged with a crime would often be required to languish in jail for periods up to six months before being brought to trial, and this, of course, applied to those subsequently found innocent as well as to those proven guilty. In time the Court of Oyer and Terminer (so-called from the Norman French words for hear and decide) came to serve as an interim criminal court.

Oyer and Terminer courts were first authorized in 1662 by royal instructions to Gov. Sir William Berkeley for the trial of cases involving treason, piracy, and capital crimes committed by Indians. In 1692 by act of the General Assembly these courts, to be appointed by the governor as need arose, were also empowered to try slaves in the county where they committed the alleged crimes.

These courts were commissioned at first by the governor, and later (1676) by the governor and council, and met at irregular intervals - the time, place, and duration being prescribed by the terms of the commission. After 1711, however, in response to royal instructions to Gov. Spotswood, the Oyer and Terminer Court was placed on a permanent footing with regular, semiannual sessions, on the second Tuesdays in June and December, midway between the sessions of the General Court at the Capitol.

Spotswood held that he had a right to appoint anyone he chose to be a judge of this court, and secured the concurrence of the London authorities. But he encountered serious opposition from the Council which stoutly maintained that only members of the Council were eligible for such appointments. Spotswood refused to accede in principle to this view, but in practice avoided a conflict by voluntarily confining his appointments to Councillors. As his successors did the same, the judges of the Court of Oyer and Terminer were always members of the Council and, as such, also judges of the General Court. In effect, then, the Court of Oyer and Terminer was really the General Court - minus the governor - sitting as a criminal court.

After the creation of the Court of Vice-Admiralty late in the seventeenth century, pirates were tried before it rather than under commission of Oyer and Terminer. And as the Indians were pushed westward, they were seldom involved in Virginia courts.

Consequently, the Oyer and Terminer Court came, after 1692, to be devoted largely - if not exclusively - to the trial of slaves accused of criminal acts. As slaves were considered to be property and had no personal rights, they were tried "without the solemn rite of jury."

In 1738, however, the Virginia Assembly enlarged the jurisdiction of the Oyer and Terminer Court to include the trial of white convicts who had been transported hither from the jails of England to labor as indentured servants on plantations for periods of seven or fourteen years, depending upon the gravity of their offence. These transported felons were often lawless and violent, and committed many crimes after coming to this colony. When the jurisdiction of the Oyer and Terminer Court was enlarged to include these Englishmen, it was obliged to accord them the time-honored right of Englishmen to a trial by jury. Later (act of 1748) the Oyer and Terminer Court was authorized to try all persons accused of crimes.

The verdict of the Oyer and Terminer Court was final: no appeal lay to the General Court or to England. A criminal sentenced to death by this court had no recourse save to throw himself on the mercy of the governor who had - but seldom exercised - the power of pardoning criminals.

The assignment of regular terms to the Court of Oyer and Terminer in 1711 rested largely upon practical considerations. The expense of holding slaves, and later white criminals, for any appreciable length of time could be avoided by more frequent sessions of courts competent to try them. Moreover, it was in the interest of the slave owner that the accused be brought to a speedy trial and either condemned - in which case the owner was reimbursed by the government for the value of his slave - or acquitted so that he might be returned without unnecessary delay to productive labor.

2. Court of Vice-Admiralty

Admiralty Law

Cases involving ships, mariners, crimes on the high seas, piracy, and privateering were not tried by the common law courts but by special courts that applied admiralty law, rather than common law, principles.

Admiralty law had its rise in the Mediterranean maritime codes, especially that of Rhodes, and followed Roman law procedure, which did not use a jury. As England increased her seafaring activities she adopted Admiralty law and set up special courts for the purpose of applying it.

Early Virginia Admiralty Courts

As early as 1660 the Virginia Assembly enacted legislation authorizing the Governor and Council to sit as a court of admiralty when necessary. But the need for such a court seldom arose in the seventeenth century when few Virginians engaged in privateering. Besides, the colonial governors and councillors were generally unfamiliar with admiralty law and their decisions often ignored or over-ruled in English admiralty courts.

Court of Vice-Admiralty

In order to correct this chaotic situation, Parliament passed an act in 1696 authorizing the High Court of Admiralty in England to commission subsidiary or "vice admiralty courts" in the colonies, and to keep their judges informed by issuing periodic instructions to them.

These courts had a permanent staff consisting of a judge, an advocate, a register, and a marshal, but met only when called into session by the Governor to try a case that had come up. Instead of salaries, the court officials received a certain percentage of the value of the ship or goods adjudicated. For example, the judge received 5% of the value of a condemned vessel, the register 2½%, and the marshal 2½%. During the several Anglo-French wars of the eighteenth century during which Virginians increasingly participated in privateering, the officers of the Court of Vice-Admiralty found their position enormously lucrative.

3. Wythe's Mock Trials in the Second Capitol

Mock Trials

After the removal of the seat of government of the Commonwealth of Virginia to Richmond in 1780, George Wythe, then Professor of Law at the College of William and Mary, used the former Capitol for mock trials and assemblies to teach his students judicial and legislative procedure. In 1780 Jefferson wrote James Madison: "Wythe's school is numerous, they hold weekly Courts & Assemblies in the Capitol. The professors join in it, and the young men dispute with elegance, method & learning."

Mock Assemblies

Thomas Lee Shippen of Philadelphia who came to William and Mary to study under George Wythe wrote home to his father on February 5, 1784, "Last Saturday was the day of my political birth, if I may call so, the day on which I first assumed the character of a Legislator in Wythe's mock assembly: for then I delivered an oration for the first time in our grand and august Assembly." He added a remark that may explain the curious long legged chair now in the antechamber of the Council Chamber: "lately Mr. Wythe has had a lofty presidential Seat erected, which adds much to his dignity and may with great propriety be called his hobby horse,

this entre nous. This throne has a greater effect in throwing a damp upon the spirits of the speaker, than you can imagine."

It is not known for certain which room Wythe used for these exercises, but presumably he held the mock trials in the old General Courtroom and the mock Assemblies in the former hall of the House of Burgesses. The necessity for erecting a "presidential Seat" may have been the result of the removal of the Speaker's Chair to Richmond in 1780.

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Footnotes



^ *Note: A "protest" is a declaration in writing made by a notary public on behalf of the holder of a bill or note, protesting against all parties liable for any loss or damage by the non-acceptance or nonpayment of the bill. When the person on whom a bill of exchange (the colonial equivalent of a modern bank check) was drawn refused payment, the holder of the bill obtained a "protest" against the person who issued it.

^ *Note: A "pipe" was a cask equal in volume to two hogsheads or four barrels.

^ 1 Father of the natural scientist of the same name whose, great work, *Flora Virginica* , was published by Gronovius at Leyden in 1739.

^ 2 Whose elaborate tombstone may be seen in the southeast corner of Bruton Churchyard

^ 3 & 4 Whose mortal remains lie interred in the crypt of the College Chapel