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Revolutionary Governorship: The Evolution of  
Executive Power in Virginia, 1758-1781

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**Signed:**

## Abstract

The nature of governorship just before, during, and just after the American Revolution is a subject that has been noticeably neglected in the historiography of the Revolution. While biographies of individual governors have been written, there remains a need for a clear ideological and constitutional debate about the actual executive functions, the nature of the appointment system in place, and the constitutional role of governors across the colonial and state periods.

This dissertation examines the evolution of governorship in Virginia from 1758 to 1781. It attempts to identify, define and compare two different systems of governorship in Virginia. It examines the nature of executive authority and constitutional role of the different governors in this period. It seeks, first, to identify and define a gubernatorial system in colonial Virginia. By analysing a governor's methods of appointment, the governor's constitutional status, his relationship with the legislature and the people at large, this dissertation will identify a 'British' system of governorship. Second, the dissertation will attempt to identify a separate republican system of governorship in Virginia that was established in 1776. It will analyse the Virginia Constitution and explain the gubernatorial position in this political framework. It will also examine the first five years of Virginia's independence from Britain and focus on the nature of gubernatorial authority in practice. By identifying two distinct models of governorship, this dissertation will be able to compare them in order to ascertain to what extent Virginians relied upon or abandoned British constitutional thinking and practice.

The dissertation maintains that Virginians relied heavily upon British constitutional thinking when establishing their system of governorship in 1776. While Virginians rejected wholeheartedly a system based on monarchical influence and patronage, they were inspired by radical Country Whig thinkers who had dictated that an uncontrolled executive branch posed the greatest threat to the political system. Virginians in 1776 established a system of governorship that was inherently weak and that was controlled and dominated by the legislative branch. This dissertation, however, maintains that the system of state governorship established by the Virginian Convention in 1776 was not wholly dissimilar to the practical powers and influence at the disposal of royal governors. Both systems were inherently weak: the royal and state governors could not exert any meaningful control over the legislative branch, were not able to exert much influence over the people at large and were not granted many significant practical powers. This dissertation will also demonstrate that executive power, and the

perceptions of the dangers that executive power posed, had developed markedly from 1776 to 1781. Not only will it prove that Thomas Jefferson and Patrick Henry enjoyed more powers than was prescribed to the governorship in 1776, but it will also show that, by 1781, a strong executive branch was required to save the state of Virginia from potential collapse.

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## *List of Abbreviations*

- JHB* Kennedy, John Pendleton, and McIlwaine, H.R., eds. *Journals of the House of Burgesses*, 13 vols., Richmond, VA., 1905-15.
- OFLG* McIlwaine, H.R., ed. *Official Letters of the Governors of the State of Virginia*. 3 vols., Richmond: Published by the Virginia State Library, 1926.
- PTJ* Boyd, Julian P., ed. *The Papers of Thomas Jefferson*. 35 vols. Princeton: Princeton University Press, 1950-
- TNA* The National Archives, Kew
- WMQ* *The William and Mary Quarterly*

## Introduction

Early histories of the American Revolution habitually demonised royal governors and their apparently corrupt system of government; while at the same time, they lauded the achievements of the Founding Fathers and the creation of republican government. Royal governors such as Thomas Hutchinson, Francis Bernard, and Lord Dunmore were all painted with the same tyrannical brushstrokes: their egregious actions and policies during the period of revolutionary crisis were highlighted as one of the main reasons that provoked the colonists into fighting for liberty and eventual independence. Individual governors were depicted as instruments of British corruption: one early nationalist historian described a notorious royal governor as ‘dark, intriguing, insinuating, haughty and ambitious, while the extreme of avarice marked each feature of his character’.<sup>1</sup> This interpretation was juxtaposed with one that deified the Founding Fathers who, of course, included the first governors of the various newly-independent states. This eulogy-denigration dichotomy was an essential part of the cultural identity for the newly independent Americans and was a staple item in the nationalist histories spawned thereafter.<sup>2</sup> Contained within these interpretations is an implied suggestion that there was a separate ‘old’ British form of governorship as opposed to a new ‘American’ form of governorship.<sup>3</sup> The ‘old’ British model produced corruption, greed and tyranny. In stark contrast, the ‘new’ American model typified the republican virtues which helped create the American Revolution.

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<sup>1</sup> Mercy Otis Warren, *History of the Rise, Progress and Termination of the American Revolution, Interspersed with Biographical, Political and Moral Observations*, 3 vols. (Boston, 1805), I, 79.

<sup>2</sup> See Arthur H. Shaffer, *The Politics of History: Writing the History of the American Revolution, 1783-1815* (Chicago: Precedent Publishing, 1975), 13; Joseph J. Ellis, *Founding Brothers: The Revolutionary Generation*, 2<sup>nd</sup> edn. (New York: Vintage Books, 2002), 13-14.

<sup>3</sup> For example, see Guy Carleton Lee, *The History of North America*, ed. C.W. Verditz and B.B James, 6 vols. (Philadelphia: George Barrie & Sons, 1904), IV: 120-121, George Bancroft, *History of the United States of America from the Discovery of the Continent*, 6 vols. (London: Macmillan, 1876).

These early histories pose a significant question: did the Revolution signify a continuation or a change in American political ideology and practice before and after the revolution? Mercy Otis Warren's *History of the Rise, Progress, and Termination of the American Revolution* maintained a Jeffersonian interpretation of the Revolution, which stipulated that the Revolution was a radical secession not just from British domination, but from its corrupting system of monarchy and aristocracy. The natural assumption of the Revolution was that it represented a complete watershed from British political thought and practice. The Americans achieved radical change in their constitutions by promoting individual liberty. Revolution, therefore, represented a transformation of the political and social order according to this school of thought.<sup>4</sup> J. Franklin Jameson's *The American Revolution Considered as a Social Movement* (1950) claimed that the revolution was a transformative process whereby all aspects of American life were significantly altered:

The stream of revolution, once started, could not be confined within narrow banks, but spread abroad upon the land. Many economic desires, many social aspirations were set free by the political struggle, many aspects of colonial society profoundly altered by the forces thus let loose. The relations of social classes to each other, the institutions of slavery, the system of land-holding, the course of business, the forms and spirit of the intellectual and religious life, all felt the transforming hand of revolution, all emerged from under it in shapes advanced many degrees nearer to those we know.<sup>5</sup>

The American Revolution, therefore, transformed American society and its economy as well as its political structure. Gordon Wood has maintained that the American Revolution 'was as radical and social as any revolution in history' because 'in destroying monarchy and establishing republics they were changing their society as well as their governments, and they

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<sup>4</sup> Mercy Otis Warren, *Rise, Progress and Termination of the American Revolution*, Vol. 2. Alternative interpretations were articulated in the early national period. Certain historians maintained that the Revolution was a deeply nationalist movement that had its origins in the colonial era. Americans belonged to a collective movement striving for independence together. John Marshall's *The Life of George Washington* maintained that the Revolution was a national movement with its origins in the colonial era. See John Marshall, *The Life of George Washington*, 5 vols. (Philadelphia, 1804-7).

<sup>5</sup> J. Franklin Jameson, *The American Revolution Considered as a Social Movement* (Boston: Houghton Mifflin, 1926), 26.

knew it'.<sup>6</sup> The American Revolution was, according to this school of thought, a deeply radical and transformational revolution.

Alternative, more conservative, interpretations of the American Revolution have downplayed the claim that the revolution marked a sudden transformation into a republican society. Jack P. Greene has claimed that 'so intent have some scholars been upon assimilating the American Revolution to the great European revolutions that followed it, upon emphasizing its revolutionary character and radical discontinuity with the American past' that they have neglected 'to explore the bearing of earlier American political and social experience on the events and developments of the American Revolution'.<sup>7</sup> Greene suggests that the Revolution was simply a result of what was already apparent in colonial society. During the period of salutary neglect, the colonial assemblies had grown in prominence and had largely become independent of executive control. They had accrued important powers of appointment and controlled the public purse of the colonies. Greene suggests that historians have been too preoccupied with analysing the radical nature of the Revolution, that they have overlooked the fact that the Americans of the time created a 'profoundly conservative revolution'.<sup>8</sup> In other words, the American Revolution was not a radical transformation, but was a continuation of what was already apparent before the revolution. Thus the question is: was the revolution part of an evolutionary process through which Americans, becoming increasingly independent, gradually achieved their political independence in 1776? Or did the American Revolution resemble a juncture whereby the Americans ended an 'old', tyrannical, and dysfunctional system of royal authority and created a 'new', republican and radical system of government. It

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<sup>6</sup> Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Vintage Books, 1993), 5.

<sup>7</sup> Jack P. Greene, *Creating the British Atlantic: Essays on Transplantation, Adaptation, and Continuity* (Charlottesville: University of Virginia Press, 2013), 57.

<sup>8</sup> *Ibid.*

is exactly this question of whether the American Revolution was a ‘revolutionary’ transformation or the result of a gradual evolution that this dissertation seeks to investigate.

It seeks to do so by focusing on the evolution of governorship in Virginia from 1758 to 1781. It attempts to identify, define and compare the system of governorship in Virginia before and after the Revolution to see whether there was a revolutionary or evolutionary change in this important institution. It examines the nature of executive authority and the constitutional role of the successive governors of Virginia before and after 1776. While considerable attention will be given to the lives and actions of individual governors, the focus of this dissertation is primarily on the system of governorship in Virginia. It is an analysis of systems rather than of individuals; it is not a biographical study. Rather than focusing on individual governors and how they coped, struggled or even flourished during their time as governor, this dissertation will strive to define a system of governorship by analysing the powers and role of these individual governors. The dissertation is a comparative study in the sense that it identifies and compares two different systems of governorship in Virginia. It seeks, first, to identify and define a system of royal governorship in colonial Virginia. By analysing the methods of appointment, the constitutional status, the relationship with the legislature and the people at large, this dissertation will first identify a ‘British’ system of governorship. The analysis of royal governorship focuses on the relationship between governors and the British system of imperial administration and colonial political institutions, such as the colonial assembly. This network of interconnected political bodies was fundamental to the running of the British Atlantic world. This dissertation will reassess how these political bodies interacted and how effective governors were in this tripartite system of colonial administration. This dissertation will then examine the republican system of governorship in Virginia that was established in 1776 in order to identify what had or had not changed as the result of independence. It will analyse the Virginia Constitution and explain the governorship position in this political

framework. It will also examine the first five years of Virginia's independence from Britain and focus on the nature of gubernatorial authority in practice. By examining two models of governorship pre and post-1776, this dissertation will compare them in order to ascertain to what extent Virginians after 1776 relied upon or abandoned British constitutional thinking and practice.

Virginia's importance to the development of colonial America and the establishment of an independent confederation of states cannot be overestimated. Jamestown was the first English colony on the mainland of North America and Virginia was the first royal colony to be established. It was the first colony to have a representative assembly and the first colony to establish slavery. Virginia was the largest and most populous of the thirteen mainland British colonies by the time of the American Revolution. By 1758, it had become one of the most politically important colonies and certainly one of the most influential. It was controlled by a local planter elite who had dominated the legislative assembly for a number of decades. Some of the most important actors on the Revolution were Virginian: including Patrick Henry, Thomas Jefferson, George Washington and James Madison. Virginians were instrumental in helping devise the Federal Constitution and, in terms of executive power, four of the first five presidents were born and raised in Virginia. The revolutionary experience and character of Virginia, therefore, make it a natural choice for an in-depth study of how executive power changed over the revolutionary period.

This dissertation seeks to understand the ideological debate over executive power that took place in the American colonies and, subsequently, in the American states. Trans-Atlantic History is based on the concept of shared experiences and ideas that are not restricted by national boundaries.<sup>9</sup> Crucial to this analysis of the evolution of governorship is the notion that

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<sup>9</sup> David Armitage, 'Three Concepts of Atlantic History', in *The British Atlantic World, 1500-1800*, ed. David Armitage and Michael J. Braddick (New York: Palgrave Macmillan, 2002), 18-22.

Americans were heavily reliant upon British constitutional thinking concerning executive power. Americans did not have any personal experience writing constitutions and, thus, had to rely on their reading of historical precedent and theoretical texts. This dissertation argues that Virginian understanding of the dangers of executive power was preconditioned by radical Country Whig thinking that dictated that a powerful executive branch posed the greatest danger to the political stability and the liberty of the individual. It will maintain that it is impossible to understand the Virginian constitution of 1776 without giving prior consideration to the ideological principles that motivated these colonists.

The nature of executive power in America just before, during, and just after the American Revolution is a subject that is more often ignored than examined by historians. There is a glaring gap in the already crowded historiography of the Revolution in terms of the continuity/change in the governor structures in the colonies/states. Not only have the individual governors in the various colonies/states received minimal attention, but scholarship on the theoretical and practical constitutional questions concerning the changes in executive authority during this period are almost non-existent.

While there has not been a study of executive power in America that has straddled the Revolutionary and Independence periods, there have been several constitutional studies that have taken into account the nature of executive power either in the colonial or in the state eras. For example, several scholars have attempted to explain why the various states uniformly weakened the executive branch in their respective first constitutions. Pennsylvania essentially abolished the governorship in the new political system established in 1776, by creating an executive committee of 12 members with a rotational presidency. Virginia, in 1776, deprived the governor of all of the prerogatives and patronage he had enjoyed in the colonial era. Several analyses of the first state constitutions have discussed the reasons for the various states decisions to weaken the governor's position in their respective constitutions, in varying

degrees, in order to make the executive power in the political system but a shadow of what it had been in the colonial era. Historians have uniformly placed the reason for the deliberate weakening of the executive authority in the first state constitutions on the colonial experience of royal governors. They have argued that Americans acted from a widespread fear that an executive similar to that of the royal model would corrupt the newly created republics. The experiences of the colonial era, when the Americans believed that they had to endure overbearing royal governors possessing considerable prerogative powers, ensured that the newly created state constitutions would make the executive little more than a prestigious ceremonial office.<sup>10</sup>

Most historians of the first state constitutions have argued that the constitutions which were devised by the various states during the period from 1776 up to the adoption of the Federal constitution in 1789 can be divided into two ‘waves’. The first wave, including Pennsylvania and Virginia in 1776, devised constitutions which completely stripped the executive of all the prerogatives and influence theoretically enjoyed by their royal predecessors. The second wave, including New York’s 1777 constitution and Massachusetts’s 1780 constitution, restored the position of the executive to some degree of influence and power within the framework of government.<sup>11</sup> The states in the first-wave largely retained much of their colonial charters with the exception of changes made to the executive branch. Their constitutions were drafted and ratified by a provincial congress, not by the people. In the second stage, however, the

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<sup>10</sup> See, for example, Marc W. Kruman, *Between Authority and Liberty: State Constitution Making in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1997), 36; Gordon Wood, *The Creation of the American Republic 1776-1787* (Chapel Hill: University of North Carolina Press, 1969), 136; Lee Ward, *The Politics of Liberty in England and Revolutionary America* (Cambridge: Cambridge University Press, 2004); Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985), 242-7; Donald Lutz, *Popular Consent and Popular Control: Whig Political Theory in the Early State Constitutions* (Baton Rouge: Louisiana State University Press, 1980), 44-45; Willi Paul Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era*, trans. Rita and Robert Kimber (Chapel Hill: University of North Carolina Press, 1980).

<sup>11</sup> See Donald Lutz, *Popular Consent and Popular Control*, 44-45; Willi Paul Adams, *The First American Constitutions*, 64-65.



constitution-making bodies were distinct from the legislatures, with Massachusetts being the prime example, and the ‘constituent power’ was placed in the hands of special conventions which drafted the constitutions which then had to be ratified by the people.

For the executive branch within these constitutions, the two-wave interpretation is an insufficient description of the way the theory and practice of executive power developed within the different states. In the first place, the chronology does not make sense: Massachusetts devised a constitution (which was rejected by the people) in 1778 that mirrored the weak executives in the constitutions of the 1776 ‘first wave’, but this constitution came after the 1777 New York Constitution, with its strengthening of the executive power, which purportedly signals the start of the second ‘wave’. Moreover, the ‘two-wave’ interpretation places too much emphasis on the content of the constitutions themselves and ignores the practical increase in power that various governors enjoyed in certain states over this period. Instead, this dissertation maintains that the varying degrees of power granted to the executive branch in the first state constitutions must be seen as being the result of an evolutionary process and not as the result of two distinct waves.

The fate of the royal governors in the historiography of the American revolutionary crisis is indicative of their position in the colonies during this period. In view of the fact that the royal governors were the king’s representatives in the colonies, and they held the critical political posts as mediators between British colonial policy and the colonial assemblies, one would have expected the royal governors to be elevated to what, in theory, should have been a prominent place within the narrative of the political origins of the American Revolution. Such prominence has never been accorded to the royal governors by historians seeking to explain the American Revolution. Apart from Leonard Woods Labaree’s seminal *Royal Government in America*, published as far back as 1930, which provides a thorough survey of the nature of executive power in the royal colonies including its executive functions, its relationship with

legislative assemblies and its constitutional role, there has not been a similar, exhaustive examination of the royal governors in more recent historiography. The interpretations, put forward by such institutional historians as Labaree, Evert Boutell Greene and Louise Dunbar, have never been seriously questioned. Undoubtedly, historians have considerably downplayed the importance and relevance of the royal governors prior to the outbreak of the American Revolution. Historians have distinguished between the theoretical powers which the royal governors appeared to enjoy and the practical powers which they actually possessed. These historians have argued that, although all governors were furnished with an apparently impressive array of powers, their research has suggested that such powers proved to be hollow and inconsequential. Their ability to wield the royal prerogative, to control the colonial legislature and judiciary, and to distribute patronage was restricted by an over-restrictive home government and by increasingly powerful colonial legislatures.<sup>12</sup>

The role of royal governors has never been subjected to modern revision of the kind that other colonial institutions, such as the colonial assemblies, have received. Instead, they have played only supporting roles in the great historiographical dramas that have been played out over the last fifty years. For example, Jack P. Greene's work on the rising influence and burgeoning powers of the colonial assemblies in the decades before the American Revolution has ensured that royal governors are often interpreted as unfortunate bystanders in the revolutionary crisis. It is within this context that the royal governors have received the most

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<sup>12</sup> See Bernard Bailyn, *The Origins of American Politics* (New York: Alfred A. Knopf, 1968), 71. Labaree has insisted that 'the duties of the governor were extensive and his powers almost dangerously great', Leonard Woods Labaree, *Royal Government in America: A Study of the British Colonial System Before 1783* (New Haven: Yale University Press, 1930), 123. This excellent study has been the definitive study of royal government in America. The scope of Labaree's research focuses equally on colonies in the Caribbean and Canada however. Leonard Woods Labaree, ed., *Royal Instructions to British Colonial Governors, 1670-1776*, 2 vols (New York: D. Appleton-Century Company Inc., 1935). Evert Boutell Greene, *The Provincial Governor in the English Colonies of North America* (New York: Longmans, 1898). For other important discussions of royal governors see John W. Raimo, *Biographical Directory of American Colonial and Revolutionary Governors, 1607-1789* (West Port: Mekler Books, 1980); and Louise Dunbar, 'The Royal Governors in the Middle and Southern Colonies on the Eve of the American Revolution', in *The Era of the American Revolution: Studies to Everts Boutell Greene*, ed. Richard B. Morris (New York: Columbia University Press, 1939). 214-268.

recent attention from historians. This framework, however, lessens the importance of royal governors to the extent that they are used as a body to be compared with the legislatures and not assessed and analysed in their own right.<sup>13</sup>

A few historians have explored the disparate nature of executive authority in the American colonies. Bernard Bailyn has analysed the constitution of colonial America and compared it to the constitution of Stuart England. Within this analysis, Bailyn makes several important points about the nature of executive authority in the colonies. First, he explores the fact that although all royal governors were invested with legal powers which exceeded those possessed by the monarch at home, they had far less influence than leading politicians in Britain. Bailyn maintains that even though governors had the power to have an absolute veto on legislation, to prorogue or dissolve colonial legislatures and to dismiss judges (which were powers no longer exercised by the monarch at home), governors lacked the powers of patronage to exercise effective influence, lacked a ruling class to assist them in their duties, and lacked autonomy as they were hindered by strict instructions from Britain.<sup>14</sup> Second, Bailyn maintains that in the absence of real power being exercised by the royal governors, factions thrived and colonial politics became more dynamic than the politics in Britain. Within this factionalism, the opposition ideology within Britain, the radical country Whig ideology, became dominant in the colonies.<sup>15</sup> In other words, because governors had very little *real* power within the colonial system, opposition politics was allowed to spread and eventually dictate colonial policy. The governors' lack of authority allowed colonists to challenge Britain's authority to impose taxation within the colonies.

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<sup>13</sup> Jack P Greene, *The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1176* (Chapel Hill: The University of North Carolina Press, 1983). See also Jack P Greene, *Negotiated Authorities: Essays in Colonial Political and Constitutional History* (Charlottesville: The University of Virginia Press, 1994), and John F. Burns, *Controversies Between Royal Governors and Their Assemblies in the North American Colonies*, 2<sup>nd</sup> edn. (New York: Russell & Russell, 1969).

<sup>14</sup> Bernard Bailyn, *The Origin of Politics*, 67-74.

<sup>15</sup> *Ibid.*, 41-58.

While historians have demonstrated that nearly all royal governors lacked genuine authority in the colonies, some historians have shown that colonists did respect the authority of the monarch who headed the executive branch in Britain. Brendan McConville, in his study of the evolution of royalist culture within colonial America, has maintained that, in the eighteenth century, colonists had a resurgent reverence for monarchy. He provides extensive evidence, from the printed word to popular iconography, to suggest that the vast majority of colonists showed growing enthusiasm for the institution of monarchy and for what it represented. In this regard, McConville echoes interpretations, put forward by Gordon Wood and Richard Bushman before him, that monarchy was central to the eighteenth-century American character.<sup>16</sup> One of ‘the King’s Three Faces’ that McConville depicts is a face that represented an ‘extralegal, extrainstitutional monarch at one with his meanest subjects’. In other words, the king, not parliament, was the crucial tie between mother country and colony. The monarchy represented a form of benevolent kingship whereby the king ‘alone bound the empire together and acted as an imperial arbitrator’ between competing legislative bodies in the imperial conflict.<sup>17</sup> For the colonists, therefore, the imperial executive was the one imperial institution that was above partisanship and above contested authority. It was only in 1774 and 1775, when it became evident that the monarch did not heed the repeated colonial requests for assistance, that the monarch became embroiled in the fraught ideological warfare that was being waged throughout the colonies.

This is an interpretation easily identifiable in Rhys Isaac’s analysis of the famous Virginian planter and diarist, Landon Carter, in his monograph, *Landon Carter’s Uneasy Kingdom*. Isaac reveals that Carter’s greatest anguish in 1775 was ‘the cruel and unnatural

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<sup>16</sup> Brendan McConville, *The King’s Three Faces: The Rise and Fall of Royal America, 1688-1776* (Chapel Hill: University of North Carolina Press, 2006), 203-219; Richard L. Bushman, *King and People in Provincial Massachusetts* (Chapel Hill: University of North Carolina Press, 1985), 135-169; and Gordon Wood, *The Radicalism of the American Revolution*, 16-19.

<sup>17</sup> McConville, *The King’s Three Faces*, 143, 204.

fatherhood of the king'.<sup>18</sup> Isaac maintains that Carter believed that 'this king would prohibit these loving American "children" from approaching him with petitions' and thus destroy the relationship of child and parent forever.<sup>19</sup> Isaac more broadly explores the challenge to political authority in his cultural history of the religious and political transformation of Virginia between 1740 and 1790. By using an ethnographic approach, Isaac maps out the inherent hierarchical nature of Virginian society prior to the American Revolution. He reveals that various colonial institutions, such as the Church, the General Court and the militia, were all built around reminders of social class and accepted authority. He maintains, however, that many Virginians began to challenge the traditional authority of the Established Church as early as the 1740s and this allowed them to accept the revolutionary doctrine that stipulated that separation between mother country and state was necessary in the 1770s.<sup>20</sup> Michael McDonnell, moreover, in his monograph, *The Politics of War*, builds upon Isaac's analysis. He maintains that, by the eve of the Revolution, Virginia was a divided society between the planter elite and the colony's lower classes. He suggests that Dunmore's actions, in confiscating the gunpowder stocks and issuing the proclamation to emancipate slaves, served to radicalise the disparate 'lower sort' – slaves, middle-class whites and poor whites – who not only challenged the British government, but also the authority of the leadership in Virginia.<sup>21</sup> In other words, both McDonnell's and McConville's interpretations infer that executive authority was crucial to the form that the revolution took in Virginia.

Royal governors in Massachusetts have understandably received far more attention from historians than in any other colony. Both Francis Bernard and Thomas Hutchinson were

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<sup>18</sup> Rhys Isaac, *Landon Carter's Uneasy Kingdom: Revolution and Rebellion on a Virginia Plantation* (Oxford: University of Oxford Press, 2004), 291.

<sup>19</sup> *Ibid.*, 292.

<sup>20</sup> Rhys Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill: University of North Carolina Press, 1982), 131-133, 144-157, 194-198.

<sup>21</sup> Michael A. McDonnell, *The Politics of War: Race, Class and Conflict in Revolutionary Virginia* (Chapel Hill: University of North Carolina Press, 2007), 7-15.

excoriated by the Massachusetts' colonial assembly and colonists alike for their apparent attempts to subvert the rights and liberties of the colonists. Colin Nicolson, in his study of Francis Bernard's governorship of Massachusetts, persuasively maintains that the actions and reports of Bernard directly informed both the British government's policies of the time and the colonists' response to these measures, which often had disastrous consequences. He deftly shows how Bernard's actions alienated a body of potential loyalist support – the 'friends of government' – because of Bernard's stubborn insistence on the colonists' theoretical subordination to parliament. Nicolson also demonstrates that Bernard's exaggerated reports of the lack of support for government measures and the decline of law and order in Massachusetts shaped British colonial policy in Massachusetts. Far from being a bystander between competing legislatures, Nicolson proves that Francis Bernard played a key role in provoking the colonists towards revolution.<sup>22</sup> Bernard Bailyn's *The Ordeal of Thomas Hutchinson* analyses the fate of a conservative and a loyalist in an age of apparent liberty and revolution. In this way, Bailyn's work is not a study of a governor grappling to control his colony, but is an account of a Burkean conservative, who accepted wholeheartedly the indivisibility of the sovereignty of king in Parliament, while struggling to understand the increasingly country Whig aspirations of his fellow colonists.<sup>23</sup> William Pencak, in a similar vein, examines Thomas Hutchinson's ideological motivations through an analysis of his political and historical writings. In naming Hutchinson, as 'America's Burke', Pencak maintains that Hutchinson was a major exponent of American conservatism. By drawing out a coherent conservative philosophy from his writings, Pencak claims that Hutchinson wanted Americans to accept an imperfect liberty and happiness. Although the careers of a few royal governors, such as Thomas Hutchinson and Francis Bernard, have been extensively researched, other royal governors have

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<sup>22</sup> Colin Nicolson, *The 'Infamous Governor': Francis Bernard and the Origins of the American Revolution* (Boston: Northeastern University Press, 2001), 10-13, 124-32.

<sup>23</sup> Bernard Bailyn, *The Ordeal of Thomas Hutchinson* (Cambridge, Mass., Belknap Press, 1974), 196-273.

remained surprisingly understudied.<sup>24</sup> Historians have been very concerned with the breakdown of the imperial-colonial relationship, and have ignored examples of where the relationship seems to have worked harmoniously.<sup>25</sup>

The insufficient historiographical treatment of royal governors is perfectly exemplified in the historical treatment of Virginian royal governors. Between 1758 and 1776, three men acted as governors of Virginia successively: Francis Fauquier, Lord Botetourt and Lord Dunmore. Of these three governors, only Lord Dunmore has received substantial scholarly attention. This scholarship, however, has largely concentrated on Dunmore's Proclamation of 7 November 1775. Understandably a royal governor, calling for a slave insurrection against their rebellious slave masters and offering manumission in return, has been of great interest for historians of slavery before the American Revolution and to British colonial policy towards slavery.<sup>26</sup> The stress on Dunmore's proclamation, however, has ensured that his wider role as

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<sup>24</sup> William Pencak, *America's Burke: The Mind of Thomas Hutchinson* (London: University Press of America, 1982), 210-227. See also Andrew Walmsley, *Thomas Hutchinson and the Origins of the American Revolution* (New York: New York University Press, 1999). For other major biographies of leading royal governors, see John Richard Alden, *Robert Dinwiddie: Servant of the Crown* (Charlottesville: University of Virginia Press, 1973), Michael C. Batinski, *Jonathan Belcher: Colonial Governor* (Lexington: University of Kentucky Press, 1996), Alfred R. Hoermann, *Cadwallader Colden: A figure in the American Enlightenment* (West Port, Greenwood Press, 2002), Paul D. Nelson, *William Tryon and the Course of Empire: A Life in Imperial Service* (Chapel Hill: University of North Carolina Press, 1990), Charles A.W. Pownall, *Thomas Pownall, M.P., F.R.S.: Governor of Massachusetts Bay, Author of the Letters of Junius. With a Supplement comparing the colonies of King George III and Edward VII, 1722-1805* (London: H. Steven, Sons & Stiles, 1908). For a brief biography of every serving royal governor in the colonies, see John W. Raimo, *Biographical Directory of American Colonial and Revolutionary Governors, 1607-1789* (West Port: Mekler Books, 1980).

<sup>25</sup> The insufficient nature of the scholarship is not caused by a lack of available source material. There is a considerable imbalance between the relatively insubstantial scholarly attention given to governors in the American colonies and the vast collection of source material available both in printed and manuscript form. There is indeed a plethora of source material that is available to the historian for this research topic: ranging from correspondences and speeches by individual governors to pamphlets from prominent members of colonial and state society who discussed the nature of executive authority and leadership. There is a considerable number of 'official' sources, which reveal the theoretical powers of both royal and state governors: royal instructions written from the Board of Trade and Plantations in London to each royal governor dictating colonial policy and directing governors' actions; colonial charters which set up the colonies' political frameworks; and the first state constitutions. All royal governors were compelled to report back regularly to the Board of Trade and Plantations in London on events in the colonies and any difficulties that they had in carrying out British colonial policy. This voluminous correspondence provides historians with extensive knowledge of the multiple problems experienced by all royal governors, and it reveals the complicated nature of the relationship between governors and prominent members of colonial society and with the political institutions in the colonies.

<sup>26</sup> See Mark Lawrence McPhail, 'Dunmore's Proclamation (November 7 1775)', in *The American Revolution, 1775-1783: An Encyclopaedia*, ed. Richard L. Bianco, 2 vols. (New York: Garland Reference library of the humanities, 1993), I: 490; Benjamin Quarles, 'Lord Dunmore as Liberator', *The William and Mary Quarterly*, 3<sup>rd</sup> Series, 15 (1958), 494-507; Philip D. Morgan and Andrew Jackson O'Shaughnessy, 'Arming Slaves in the

governor has not received sufficient attention. Early historical works were influenced by the American ‘demonisation’ of him after the revolution. Percy Burdelle Caley’s lengthy PhD dissertation in 1939 was the first attempt to provide a balanced assessment of Dunmore, but it has never been published.<sup>27</sup> James Corbett David’s recent biography, however, has made an excellent attempt at re-assessing Dunmore’s governorship in Virginia. He neatly captures Dunmore’s strong personality and his thirst for land. He also manages to explain the motivations behind Dunmore’s ‘tyrannical’ actions.<sup>28</sup>

The scholarship on Fauquier and Botetourt is relatively thin in comparison, which is surprising. Both governors appeared to have excellent relations with the House of Burgesses, the Virginian assembly, and the people. Undoubtedly the lack of primary sources has been a contributing factor to the lack of detailed scholarship on Fauquier. We know very little about his private life in Virginia, his early career and the exact nature of his appointment to the position of lieutenant-governor in the first place. George Reese’s outstanding research, however, in his three volume publication of Francis Fauquier’s ‘Official Papers’ in 1980 has proved an invaluable resource for understanding Fauquier’s governorship and the thinking which influenced many of his actions. Thus, although we can only speculate about Fauquier’s private life and early career, Reese’s work has given us evidence for a re-examination of Fauquier’s tenure as governor. Indeed, it seems strange that, since Reese’s work, there has been

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American Revolution’, in *Arming Slaves from Classical Times to the Modern Age*, ed. Christopher Leslie and Philip D. Morgan (New Haven: Yale University Press, 2006); Woody Holton, *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia* (Chapel Hill: University of North Carolina Press, 1999), 156-16; Michael A. McDonnell, *The Politics of War*, 139-44.

<sup>27</sup> See Caley, ‘Dunmore: Colonial Governor of New York and Virginia, 1770-1782’ (Unpublished PhD Dissertation: University of Pittsburgh, 1939). John Selby wrote a short bicentennial pamphlet on Dunmore in Virginia, which essentially recaps Caley’s dissertation, see John Selby, *Dunmore* (Williamsburg, VA.: Virginia Independence Bicentennial Commission, 1977).

<sup>28</sup> James Corbett David, *Dunmore’s New World: the extraordinary life of a royal Governor in Revolutionary America with Jacobites, Counterfeiters, land schemes, shipwrecks, scalping, Indian politics, runaway slaves, and two illegal royal weddings* (Charlottesville: University of Virginia Press, 2013). His biography was built upon his PhD dissertation, David, ‘Dunmore’s New World: Political Culture in the British Empire, 1745-1796’ (Unpublished PhD Dissertation, The College of William and Mary, 2004). See also Glenn F. Williams’s popular history, *Dunmore’s War: The Last Conflict of America’s Colonia Era* (Yardley, PA: Westholme Publishing, 2013).



little attempt to re-evaluate the significance of Fauquier's term as governor, especially in the context of royal authority in the royal colonies.<sup>29</sup>

Because of the poor state of scholarship on Fauquier, Nellie Norkus's thesis remains the most substantial contribution to Fauquier historiography. Norkus's unpublished 1954 PhD dissertation on Fauquier provides us with an exhaustive, and in painstaking detail, an almost day-to-day account of Fauquier's governorship. While Norkus deserves much credit for the amount of research that went into her study, her analysis of Fauquier's governorship is completely submerged by her detailed narrative of events. There is no attempt to place Fauquier's governorship in context or to discuss the significance of Fauquier's apparently successful governorship.<sup>30</sup> There have been other attempts to revisit Fauquier, but there remains a gap in the historiography of Virginia and of governors in general which needs to be filled.<sup>31</sup> Since Percy Scott Flippin's analysis of *Royal Government in Virginia*, in 1919, there has been little constructive analysis of Botetourt's governorship. Indeed, Lord Botetourt appears to be a forgotten governor in this period. Only Graham Hood's excellent reconstruction of the Governor's Palace in Williamsburg has demonstrated Botetourt's undoubted cultural importance to colonial Virginia on the eve of the American Revolution. Using inventories of Botetourt's belongings drawn up after his death, Hood has shown how the governor symbolised the cultural connection between the old world and the new.<sup>32</sup>

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<sup>29</sup> See *The Official Papers of Francis Fauquier: Lieutenant-Governor of Virginia, 1758-1768*, ed. George Reese, 3 vols. (Charlottesville: University Press of Virginia, 1980).

<sup>30</sup> See Nellie Norkus, 'Francis Fauquier, lieutenant-governor of Virginia, 1758-1768: A study in Colonial Problems', Unpublished PhD Dissertation, University of Pittsburgh, 1954.

<sup>31</sup> See George H. Reese, 'Portraits of Governor Francis Fauquier', *The Virginia Magazine of History and Biography*, 76 (1968), 3-13; Robert Douthat Meade, 'Gov. Fauquier --- Friend of Jefferson: His Influence on Sage of Monticello Said to Have Moulded Latter's Religious Views, Created Desire for Travel and Broadened Outlook on Nationalistic Philosophy', *Richmond Times-Despatch*, 7 July 1935; Charles R. Hildeburn, 'Notes on the Stamp Act in New York and Virginia', *The Pennsylvania Magazine of History and Biography*, 2 (1876), 296-302.

<sup>32</sup> See Percy S. Flippin, *Royal Government in Virginia, 1624-1775* (New York: Columbia University Press, 1918); Graham Hood, *The Governor's Palace in Williamsburg: A Cultural Study* (Williamsburg, Va.: Colonial Williamsburg Foundation, 1992), Charles Washington Coleman, 'Norborne, Baron de Botetourt, Governor-

The first Virginian state governors have fared little better than their royal predecessors in terms of the attention which they have received by historians. They have tended to ignore the position of the governor in the initial years of the State in favour of an analysis of the revision of laws undertaken by Thomas Jefferson among others.<sup>33</sup> The best way to exemplify the dearth of scholarship is to point to the fact that Emory G. Evans's chapter on the first three governors of Virginia – Patrick Henry, Thomas Jefferson and Thomas Nelson – still remains the most systematic analysis of governorship in this period to date.<sup>34</sup> Individual biographers of Patrick Henry and Thomas Jefferson understandably have also focused on their terms of office as governor. Excellent biographies of Patrick Henry are particularly rare: older works lack objectivity and more modern biographies tend to offer somewhat superficial analyses.<sup>35</sup> Patrick Henry's exploits pre-1776 dwarf his post-1776 career in the majority of these biographies. In addition, Henry's opposition to the Federal Constitution in the late 1780s receives more attention than his difficult first stint as governor.<sup>36</sup> In the voluminous literature on Jefferson and his 'excellent' career, surprisingly little has been written on his ill-fated tenure as governor of the colony. Jefferson, for posterity, blamed his perceived failure as governor on the status

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General of Virginia, 1768-1770', *WMQ*, 1<sup>st</sup> Series, 5 (1897), 165-171, and Bryan Little, 'Norbonne Berkeley: Gloucestershire Magnate', *The Virginia Magazine of History and Biography*, 63 (1955), 379-409.

<sup>33</sup> See, for example, John E. Selby, *The Revolution in Virginia, 1775-1783* (Charlottesville: University of Virginia Press, 1988).

<sup>34</sup> This is clear in Evans's defence of Thomas Jefferson's governorship: 'Jefferson, despite a gloomy prospect, seems to have entered office confidently, and, other estimates to the contrary, he proved to be an extremely good governor. Any careful study of his two years in office will reveal him to have been informed, practical, hardworking, tough, decisive, and infinitely patient. He was the master of detail but at the same time saw the state's and the country's problems in broad perspective'. Evans, in his assessment of Jefferson, even mounts a defence of Jefferson's last five months in office and his 'flight from Monticello', Evans Emory G. 'Executive Leadership in Virginia, 1776-1781: Henry, Jefferson and Nelson', in *Sovereign States in an Age of Uncertainty*, ed. Ronald Hoffman and Peter J. Albert (Charlottesville: University Press of Virginia, 1981), 202, 216-7.

<sup>35</sup> The most detailed biography of Patrick Henry is by William Wirt Henry. While it lacks objectivity, it contains many extremely useful sources, see William Wirt Henry, *Patrick Henry: Life, Correspondence and Speeches*. For other biographers who discuss Patrick Henry's time as governor between 1776 and 1779, see Richard R. Beeman, *Patrick Henry: A Biography* (New York: McGraw-Hill, 1974); Henry Mayer, *A Son of Thunder: Patrick Henry and the American Republic* (New York: F. Watts, 1986); Robert D. Meade, *Patrick Henry*, 2 vols. (Philadelphia: Lippincott, 1957-1969); Moses C. Tyler, *Patrick Henry*, 2<sup>nd</sup> edn. (New York: AMS Press, 1972); David J. Vaughn, *Give Me Liberty: The Uncompromising Statesmanship of Patrick Henry* (Nashville: Cumberland House, 1997).

<sup>36</sup> For example, Richard Beeman's biography only contains two pages on Henry's 1776-1779 governorship in a biography of 192 pages. Richard Beeman, *Patrick Henry*, 111-2.

and provisions of his office rather than on his own actions.<sup>37</sup> This is a theme which the most fervent Jefferson apologists have latched onto: Jefferson's failings as a governor has more to do with the system rather than the man, with the system of government in place rather than with the governor himself.<sup>38</sup> Other biographers have been less forgiving: they have argued that Jefferson was a poor administrator and an ineffective executive.<sup>39</sup> Most historians who have analysed Jefferson's presidency usually preface their analysis with a consideration of Jefferson's first experience as the head of an executive.<sup>40</sup> Although this strategy is understandable, it does tend to relegate the importance of Jefferson's governorship: in other words, Jefferson's gubernatorial career is regarded as a prelude, not a story in itself.<sup>41</sup> The only logical explanation for the change in the constitutional status of the governor in Jefferson's

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<sup>37</sup> 'For this portion therefore of my own life, I refer altogether to [Louis H. Girardin's] history. From a belief that under the pressure of the invasion under which we were then laboring the public would have more confidence in a Military chief, and that the Military commander, being invested with the Civil power also, both might be wielded with more energy promptitude and effect for deference of the state, I resigned the administration at the end of the 2d. year, and General Nelson was appointed to succeed'. 'The Autobiography of Thomas Jefferson', in *The Life and Selected Writings of Thomas Jefferson*, ed. Adrienne Koch and William Peden (New York: Random House, Inc., 2004), 50-51.

<sup>38</sup> Dumas Malone has argued that 'At the conclusion of the account of this highly controversial period, however, it may be said without much doubt that the most conspicuous failure was that of the government rather than the Governor. The agencies which had been created in 1776 were ill-suited to the conduct of war, or to the meeting of serious crises of any sort'. See Malone, *Jefferson and his Time: Volume 1 – Jefferson the Virginian* (London: Eyre and Spottiswoode, 1948), 368. Marie Kimball is in no doubt that it was events that caused the difficult nature of his governorship, see Marie Kimball, *Thomas Jefferson: War and Peace, 1776 to 1784* (New York: Coward-McCann, 1947). See also Nathan Schachner, *Thomas Jefferson: A Biography* (New York: Thomas Yosseloff, 1951); Merrill D. Peterson, *Thomas Jefferson and the New Nation: A Biography* (New York: Oxford University Press, 1970); and R.B. Bernstein, *Thomas Jefferson* (New York: Oxford University Press, 2003).

<sup>39</sup> Fawn Brodie: 'It was the great misfortune of his life that Jefferson was elected as governor of Virginia in June 1779', Brodie, *Thomas Jefferson: An Intimate History* (New York: W.W. Norton & Co., 1974), 136.

<sup>40</sup> Jeremy Bailey's analysis of Jefferson and executive power, for example, foreshadows Jefferson's presidency with a discussion of Jefferson's governorship, see Jeremy D. Bailey, *Jefferson and Executive Power* (Cambridge: Cambridge University Press, 2007), 28-64.

<sup>41</sup> Clearly the most significant recent monograph on Jefferson's governorship is Michael Kranish's excellent analysis of Jefferson's 'Flight from Monticello'. While Kranish does analyse Jefferson's governorship in its entirety, he focuses more on the last six months of Jefferson's governorship. See Michael A. Kranish, *Flight from Monticello: Thomas Jefferson at War* (Oxford: Oxford University Press, 2010). Francis D. Cogliano has provided us with an excellent analysis of Jefferson's governorship in the first chapter of his recent monograph. However, this acts as a foundation for his analysis of Jefferson's foreign policy as President. See Francis D. Cogliano, *Emperor of Liberty: Thomas Jefferson's Foreign Policy* (New Haven: Yale University Press, 2014), ch.1. The lack of proper focus on Jefferson's governorship is probably best exemplified by the fact that the two most recently published companions to Thomas Jefferson do not have a separate chapter on Jefferson's governorship. Clearly in the historiography of Thomas Jefferson, his governorship does not figure as large as his other positions or exploits. See *The Cambridge Companion to Thomas Jefferson*, ed. Frank Shuffelton (Cambridge: Cambridge University Press, 2009) and *A Companion to Thomas Jefferson*, ed. Francis D. Cogliano (Malden, MA: Blackwell Publishing Ltd., 2012).

draft of a revised constitution of Virginia in 1782 as opposed to his ‘administrator’ in his 1776 draft, must rest on his experiences as governor of Virginia. Jefferson’s attitude to executive power changed when he had to endure being a weak executive himself during two terms as governor.

The historiography on Virginian governors is clearly lacking the depth of analysis that the subject deserves and dated historical interpretations are in need of revision in the light of modern scholarship. A clear ideological and constitutional debate about the actual executive functions, the nature of the appointment system in place, and the constitutional role which both the royal and state governors were granted and which were actually put into practice is clearly needed. This dissertation will provide an analysis of the Virginian governorship within a chronological framework: examining, in turn, the system of governorship just before, during and just after the American Revolution. In so doing, it will be divided into six chapters.

Chapter One will reassess the nature of royal government in the colonies. It will provide a succinct overview of the powers granted to the royal governor, the powers that they actually had at their disposal, their relationship with the British imperial government, and their relationship with the colonial assemblies. It will also provide a summary of the franchise in Virginia. In so doing, it will seek to challenge the widely accepted view, which has been maintained by the institutional school and has been widely accepted by later historians, that royal governors were, in theory, kings in America, but in practice could never exercise their kingly powers. Instead, this chapter will argue that royal governors could never be mistaken for being kings, even in theory, in terms of the powers which they had at their disposal and their relationship with the colonists. Royal governors were not kings, but administrators who acted as a conduit between an over-zealous British government and potent colonial assemblies.

From this foundation, Chapter Two will analyse how Virginian governors functioned in an age of difficult imperial politics. It will focus on three governors in particular: Francis

Fauquier, Lord Botetourt and Lord Dunmore. Through an analysis of these three governors' actions, their relations with the British government, the colonial council, the legislative assembly and the Virginian people, this chapter will seek to examine the distinctive Virginian model of royal governorship. The system of royal governorship in Virginia, from outward appearances at least, was by far the most successful example of British administration in the colonies. Francis Fauquier and Lord Botetourt were widely admired by the colonial gentry during their respective terms and their deaths were mourned in Virginia. Even Lord Dunmore had a far more successful governorship, up to 1775, than some of his less unfortunate colleagues. This chapter will demonstrate that this widespread respect and affection for the governorship in Virginia was not based on the powers possessed by these governors: the Virginian governorship was in fact a very weak office. The apparent good relations between royal governor and people, moreover, masked a conditional system of deference whereby the royal governor would gain respect of the colonists only so long as he complied with their wishes and served their interests.

Creating a 'perfect' system of governorship in a new republican political system was an extremely difficult task. Traditionally historians have maintained that the vast majority of the first state constitutions created a weakened gubernatorial position because of their shared experiences of the apparent 'tyranny' perpetrated by royal governors. This dissertation will maintain that newly independent Americans were not influenced solely by their perception of previous royal governors, but were heavily guided by their reading of classical and republican texts on executive power. Chapter Three will explore the way in which Virginians put their ideological beliefs into practice in their Constitution of 1776. This chapter will explore the events that surrounded the writing of the Constitution of 1776 and, in particular, it will investigate the executive provisions in the political framework which was created. This chapter will seek to prove that Virginians established an executive within the political system which

was inspired by the Country Whig theories on executive power. It will demonstrate, however, that Virginians modified the English Country Whig model in order to suit their own distinctly Virginian (and republican) needs. They massaged the separation of powers theory in order to create legislative supremacy and to emasculate the governorship.

Chapter Four will investigate how well Virginia's first Constitution worked in practice during the difficult and tortuous years of war. In particular, it will focus attention on the fate of its first two governors, Patrick Henry and Thomas Jefferson. It will examine the difficulties experienced by both governors as they attempted to navigate the ship of state through war and economic crises while possessing a relatively ineffective political remit. It will demonstrate that the powers of the governor, as devised by the Constitutional Convention in 1776, were woefully inadequate to manage the Virginian war effort, but it will also show that the governor's position evolved to some extent over this period. It will maintain that the governorship was a far more fluid system than has been previously claimed: both Thomas Jefferson and Patrick Henry accrued more powers in order to pursue the war effort than has often been realised. The system of governorship evolved in this period and the perception of the dangers of executive power also changed.

Chapter Five will examine one particular instance which exemplifies this change of perception: the often overlooked debate over whether Virginia should install a dictator as head of state in 1781. It will question whether this debate meant that Virginians had abandoned their Country Whig ideology and whether they meant to install an absolute despot instead of a weak plural governor as the term 'dictator' connotes. It will show that some Virginians did not regard dictatorship as a direct contradiction to Country Whiggism and that they believed that they were following Roman republican precedents. More important, it will also maintain that Virginians began to realise that a strong executive branch was required in order to save the state from ruin.

Chapter Six will describe the constitutional development of executive authority in the American states up to the ratification of the Federal Constitution in 1787-88. It will analyse the creation of the Federal Executive branch and will discuss the Virginian reaction to the proposed Presidential system. It will also provide a conclusion concerning the Virginian development of executive power. This dissertation will reach three main conclusions. First, the system of governorship that was established in 1776 was very similar to the system of royal governorship in terms of the practical authority which governors had at their disposal. While royal governors were appointed by the king, granted kingly prerogatives, and involved in all aspects of colonial government, they were not as powerful as they appeared. Because of the nature of their appointment, the fact that they acted under instruction and that colonial assemblies had become increasingly powerful, the authority of royal governors was, in reality, very weak. When Virginians established an ineffective governorship in their new constitution in 1776, they were only instituting what had become obvious in reality. Second, Virginians relied heavily upon British thinking when they established their republican governorship in 1776. While the perceived tyranny of royal governors, such as Lord Dunmore, helped shape American fear of a strong executive power, they were also influenced by a radical Country Whig ideology which dictated that a powerful executive posed the greatest threat to the political stability and personal liberty. Third, in the years following 1776, the system of governorship in Virginia evolved in its perceived importance and the powers it actually had at its disposal. Governors changed from being the greatest threat to being the only saviour of the republican political system.

## Chapter One

### ‘Kings in America’: The System of Royal Government in America.

During the several readings of the Massachusetts Government bill in the Houses of Parliament in the spring of 1774, MPs and Lords debated the nature and effectiveness of royal authority within the American colonies. After the egregious destruction of tea and the public repudiation of parliamentary supremacy in Boston in December 1773, Parliament questioned the extent to which royal governors in their current form had the required powers and authority to implement imperial policy and had the ability to clamp down on the revolutionary upheaval which was causing so much difficulty for the mother country. It was the first time in Parliament that MPs had properly considered the functionality and suitability of gubernatorial power in the colonies. Lord North, the Prime Minister, believed that in the colony of Massachusetts, ‘an executive power was wanting’.<sup>1</sup> He argued that ‘something is radically wrong in their [Massachusetts] constitution. The Governor in the last riot issued a proclamation without the advice of his council. It was treated with contempt’. In a typically Court Whig attitude, he declared, erroneously, that the fault lay in the hands of the democratic nature of the election of the Council which worked to undermine the governor’s orders. North proposed to ‘take the executive power out of the democratical part of the constitution and put into the hands of the civill [*sic*] Governor appointed by the Crown’.<sup>2</sup> The implicit contention in North’s argument is that the royal governor still had an important and essential role to play in imperial government. The realisation that the powers of the royal governor were not as effective as first supposed caused considerable debate among MPs as new proposals to strengthen the Massachusetts governor were being discussed. During these debates, MPs disagreed over the exact nature of

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<sup>1</sup> Lord North, ‘First reading of the Massachusetts Government Bill’, 28 March 1774, in *Proceedings and Debates of the British Parliaments Respecting North America, 1754-1783*, ed. R.C. Simmons and P.D.G Thomas, 8 vols (New York: Kraus International Publications, 1985), IV: 149.

<sup>2</sup> *Ibid.*, IV: 148.



royal governorship in the colonies: what did royal governorship represent and what should be the role of royal governors in the colonies? William Dowsdell, an MP who vehemently opposed strengthening the powers of a governor, asked ‘what is a governor? The king’s servant, I do not like that Power. I do not consider that Governor otherwise than as a creature of the Crown put in a powerful office from which he may be removed’.<sup>3</sup> The royal governor, therefore, was merely a creature of the crown, whose power, though strong, was purely transitory. Thomas Pownall, a former governor of the Massachusetts colony, however, in a vehement defence of the specifics and provisions of royal government in the American colonies defined the royal governor’s position in far more laudable terms: ‘Governors are kings in America’.<sup>4</sup> Pownall was one of the most knowledgeable authorities on American affairs in Britain at the time because he had the experience of being a royal governor.

The historiography of royal governors in the American colonies has largely portrayed royal governors, in their theoretical form, in the terms that Pownall used. These ‘institutional’ historians have defined the theoretical model of royal governorship that existed in the colonies as an executive in the mould of a Stuart king in the seventeenth century.<sup>5</sup> They have insisted

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<sup>3</sup> William Dowsdell, ‘Massachusetts Government Bill: First Reading, 15 April 1774’, in *Proceedings and Debates*, ed. Simmons and Thomas, IV: 168-9.

<sup>4</sup> Thomas Pownall, ‘Motion for Leave for Massachusetts Bill’, 28 March 1774, in *Proceedings and Debates*, ed. Simmons and Thomas, IV: 149.

<sup>5</sup> Bernard Bailyn, in his chapter on the ‘The Structure of Colonial Politics’, provides a meticulous account of the different theoretical powers enjoyed by their governors and the similarity between them and their Stuart predecessors. His major consideration, however, is the differences and similarities between the political system in the colonies and the political system in Britain See Bernard Bailyn, *The Origins of American Politics: The Charles K. Colver Lectures, Brown University, 1965* (New York: Alfred A. Knopf, 1968). Labaree has insisted that ‘the duties of the governor were extensive and his powers almost dangerously great’, Leonard Woods Labaree, *Royal Government in America*, 123. This excellent study is the definitive study of royal government in America. The scope of Labaree’s research focuses equally on colonies in the Caribbean and Canada however. Evart Boutell Greene’s monograph is also a useful study but does tend to generalise too much. See Greene, *The Provincial Governor in the English Colonies of North America* (New York: Longmans, 1898). Ian Steele has claimed that ‘the governors represented a monarchical power that was supposedly stronger in the colonies than in England’, but were denied these in practice. See Steele, ‘The Anointed, the Appointed, and the Elected: Governance of the British Empire, 1689-1784’, in *Oxford History of the British Empire*, ed. Wm. Roger Louis, et al., 5 vols. (Oxford: Oxford University Press, 1998), II: 110-11. For other important discussions of royal governors, see John W. Raimo, *Biographical Directory of American Colonial and Revolutionary Governors, 1607-1789* (West Port: Mekler Books, 1980); and Louise Dunbar, ‘The Royal Governors in the Middle and Southern Colonies on the Eve of the American Revolution’, in *The Era of the American Revolution: Studies to Evarts Boutell Greene*, ed. Richard B. Morris (New York: Columbia University Press, 1939). 214-268.

that royal governors were granted immense theoretical powers, were the bearer of the royal prerogative, albeit by proxy, had extensive patronage powers and had substantial theoretical control over the political system in the colonies. These historians have shown, moreover, that this theoretical royal gubernatorial system was never realised because, in practice, royal governors were deprived of any substantial powers with which to influence or control colonial governments. They have furnished a picture that suggests, in reality, royal governors suffered in their position because their powers, responsibilities and patronage were parcelled out between a controlling home government and an increasingly potent colonial legislative system.<sup>6</sup> Colin Nicolson, in a recent published work on royal governorship, has adopted a similar position when he maintains that ‘royal governors in theory had considerable powers, but in practice they were counterbalanced or outweighed by the General Court’.<sup>7</sup>

The purpose of this chapter is, in part, to revise this ‘institutional’ interpretation. It will seek to prove that using a theory versus practice paradigm does not fully explain the system of royal governorship that existed in the American colonies. It will maintain that there can be no doubt that all royal governors theoretically enjoyed some of the same powers and privileges which were at the bestowal of a Stuart monarch, but it will also stress that it is entirely misleading to maintain that royal governors theoretically had an awesome armoury of powers, that they resembled Stuart kings in every colony and were able to control every aspect of the political system in the colonies. Undoubtedly all royal governors enjoyed a broad portfolio of

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<sup>6</sup> Bernard Bailyn has argued that ‘a paradox lay at the heart of provincial politics in eighteenth-century America: on the one hand an enlargement, beyond what was commonly thought incompatible with liberty, of the legal authority possessed by the first branch of government, the executive; and on the other hand, a radical reduction of the actual power in politics exercised by the executive, a reduction accounted for by the weakness of the so-called “influence” by which the crown and its ministers in England actually managed politics in that country’. Bernard Bailyn, *The Origins of American Politics*, 106.

<sup>7</sup> Colin Nicolson, *The ‘Infamous Governer’: Francis Bernard and the Origins of the American Revolution* (Boston: Northeastern University Press, 2001), 11. Nicolson has also provided the most succinct description of royal governors’ powers to date: ‘A royal governor was the king’s representative, his captain general and vice admiral, and exercised by proxy the king’s prerogatives in colonial government and imperial administration. With respect, the royal governor was the colony’s chief executive, in which capacity he issued warrants, addressed the House, presided over the Governor’s Council, and administered the provincial executive.’ In *ibid.*, 10.

powers which was denied their royal master in London, but it is certainly not true to maintain that, even theoretically, royal governors were all-powerful executives. Indeed, within this theoretical system of governorship, which devolved certain provisions and powers to all royal governors, there were certain restraints placed upon the royal governors that ensured that they could never be 'kings in America' as has been supposed. It is not possible to describe the governors' powers in a theoretical-practical dichotomy, but it is possible to show what the system of royal government was in reality.

This chapter will set out the system of royal government in the American colonies prior to the American Revolution. It will seek to define the specific powers of the royal governor, his authority within a royal colony and the exact nature of his power in theory and in practice. It will compare the powers, constitutional status and political role of a royal governor to the powers, constitutional status and the political role of George III during his early years as king in the 1760s and 1770s. It will focus its attention on the system of governorship in Virginia and compare this system to other systems of governorship in the colonies. In so doing, it will first attempt to prove that royal governors, even in their theoretical manifestation, were inherently weak executives and could never resemble George III in their colonies. This will be achieved through an analysis of the prescribed powers at the disposal of the royal governor. Second, this chapter explores the nature of the royal governor's practical relationship with the home government and the nature of his position within the colonial political framework.

### *The Appointment System for Royal Governors*

By 1763, there were thirteen British colonies on the North American mainland which were destined to become the first thirteen states of the United States of America. Of these thirteen, eight were royal colonies, three were proprietary colonies and two were charter colonies. While a proprietary colony was ruled by proprietors or owners in the king's stead, a royal colony was ruled by the king. The eight royal colonies in this era were Georgia, Massachusetts-Bay, New Hampshire, New Jersey, New York, North Carolina, South Carolina and Virginia. Delaware, Maryland, and Pennsylvania were proprietary colonies and Connecticut and Rhode Island were charter colonies. Of the thirteen colonies, only New Hampshire started off as a royal colony. Virginia was a charter colony until 1624, when James I revoked its charter and the colony was thereafter to be controlled by the king through his appointed representative, the governor.<sup>8</sup> In the eight royal colonies, therefore, the governor was the king's representative in the colony. The system of appointing a royal governor, however, meant that he could not govern like a king.

Essentially, the appointment system for royal governors weakened their ability to govern their colony. The connections and networks which allowed many governors to secure this office made their position as governor unstable and impermanent because the connections that helped them to be promoted to this office lacked permanence and, because of the uncertain nature of their tenure of office, any change in personnel in the British machinery of government made many governors nervous. The mode of appointing governors varied in the different types of colonies, but their appointments always depended upon the British government. The appointment of a royal governor involved a complex series of solicitations, network-building

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<sup>8</sup> Charter colonies were given charters from the king, which acted as their constitutions. While they acknowledged the king's ultimate sovereignty over the colony, they were essentially self-governing polities. The Virginia Company was created by James I in 1606.

and familial connections. The power of appointment always rested with the king who had the final say over any of the appointments. The crown would consider recommendations from various secretaries of state and the more secure their position, the more chance their suggestions would be accepted. Recommendations would largely come from the Secretary of State for the South, the President of the Board of Trade and eventually the Secretary of State for the Colonies, a new post created in 1768. This power of patronage largely remained the same even if the hands that held it changed. In order to be appointed, a prospective governor had to lobby the respective minister, usually through an important patron. For example, Francis Bernard owed his appointment to the New Jersey governorship in 1758 and his successful transfer to the more lucrative Massachusetts governorship in 1760 to the patronage of Lord Barrington, who was the Secretary at War at the time and also his wife's cousin. Lord Barrington was a prominent member of the Pitt-Newcastle government and Newcastle's patronage appointments were usually rubber-stamped by the Board of Trade which was under the presidency of the Earl of Halifax.<sup>9</sup> Sources of patronage of this kind are seldom permanent, however. When Bernard's situation in Boston deteriorated rapidly after the Stamp Act crisis, he called upon the patronage of his friend and relative to remove him to a better and more peaceable colony. When Francis Fauquier died in 1768 in Virginia, Bernard pleaded with his patron that he should be given this more agreeable position, but he was unsuccessful and the position was given to Lord Botetourt.<sup>10</sup> By 1768, however, the Duke of Newcastle was no longer in government and the

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<sup>9</sup> Colin Nicolson, *The "Infamous Governor"*, 41. For a fuller discussion of the patronage at the disposal of the Duke of Newcastle when he was First Lord of the Treasury, see Richard Middleton, 'The Duke of Newcastle and the Conduct of Patronage during the Seven Years' War, 1757-1762', *British Journal for Eighteenth-Century Studies*, 12 (1989), 175-86.

<sup>10</sup> Bernard quickly realised that the Virginian governorship could be his escape from his difficult predicament in Massachusetts. While he had reservations at first concerning the nature of the position, once he was assured of its benefits, he became hopeful of moving south to this 'safe' colony. Bernard's original reservation was about the Virginia position being of the rank of Lieutenant Governor which he saw as 'no advancement' for him. His patron, Lord Barrington, however, assured him that Virginia 'in ease and comfort it is infinitely preferable'. See Bernard to Lord Barrington, 7 February 1768, and Lord Barrington to Francis Bernard, 9 May 1768, *The Barrington-Bernard Correspondence and Illustrative Matter, 1760-1770*, ed. Edward Channing and Archibald Cary Coolidge (Cambridge, Mass.: Harvard University Press, 1912), 142, 154. Bernard's patron, Lord Barrington, however, had to send him the disappointing news that Lord Botetourt was chosen to be governor of Virginia. Lord Barrington to Francis Bernard, 8 November 1768, *ibid.*, 175. Lord Hillsborough, the new American Secretary at the time,

path by which Bernard gained his position in the first place had closed. Barrington could no longer help his friend in the same manner as before. This highlights the inherent weakness of a royal governor's position in the colonies: because he owed his appointment to a complex system of patronage, he was in continuous danger of losing that appointment and not being able to gain a new one because of the very same system. As he was at least 3000 miles away from the decision-makers, he was obviously unable to advance his interests in person. It is ironic that as soon as a royal governor sailed to his colony, he was reducing his ability to retain his position. In addition, the governors were not appointed for a fixed term, but were appointed as governors during the king's pleasure. This was particularly important in the 1760s when there were many short-lived and unstable ministries, all of which had difficult relations with the king or with the House of Commons or with opinion 'out of doors'. Not only was the patronage through which governors secured their gubernatorial position impermanent, but their very tenure of it was uncertain as well.

In Virginia, moreover, in what was a peculiar custom in a royal colony, ever since the Earl of Orkney's governorship which began in 1714 until the death of Francis Fauquier in 1768, the governor of the colony never resided in the colony itself since the position was purely a sinecure. He did, however, receive half the salary of the governorship with the other half going to his deputy, the lieutenant-governor. Although Fauquier served the colony merely as its lieutenant-governor, which in other colonies was a position of very little power, he was in effect, the *de facto* governor as the 'official' governors of the colony during this period, Lord Loudoun and Sir Jeffrey Amherst, never visited Virginia. Thus, Fauquier fulfilled all the duties of governor, but had to share the salary with the official governor.

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was more circumspect in his response to Bernard, intimating that it was simply a matter of expediency that denied Bernard the position in Virginia. Lord Hillsborough to Francis Bernard, 19 November 1768, TNA, CO 5/757.

Who were those men who were promoted by this system of appointment? Labaree has maintained that the governors, who were appointed, were generally similar to ‘typical British officials neither better nor worse than those who were carrying on the administration in England’.<sup>11</sup> This interpretation is disputable: while the Westminster Parliament could never claim to be a meritocracy, MPs and peers were able to ascend the political ladder based partly on their merits as able administrators, gifted speakers and skilled parliamentarians, and their ability to build a network of relationships within a system that was heavily reliant upon patronage. Although it is an appealing image to suggest that there was a similarity between the officials appointed as governors and the ministers making imperial policy, it is a flawed interpretation. The Westminster Parliament was hardly the stagnant pool of talent that some American historians have implied. Many ministers in Britain were men of very considerable ability. This could not be said of most colonial governors. The governors appointed in this period to the royal colonies rarely had a track record of significant achievements before they were appointed governors. Lord Dunmore, for example, was an unremarkable Member of Parliament and Lord Botetourt was almost forced to take the governorship of Virginia because he had multiple financial troubles as a result of an unsuccessful business venture.<sup>12</sup> It is highly unlikely that if any of these men had been successful in his career in Britain that he would have even ended up being a colonial governor at all. In other words, able men with the prospect of

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<sup>11</sup> Leonard Woods Labaree, ‘The Early Careers of the Royal Governors’ in *Essays in Colonial History Presented to Charles McLean Andrews by His Students*, ed. Leonard Woods Labaree (New Haven: Yale University Press, 1931), 168.

<sup>12</sup> William C. Lowe has provided us with an excellent overview of Dunmore’s early parliamentary career and his financial troubles and predicament prior to his appointment to the position in New York, see Lowe, ‘The Parliamentary Career of Lord Dunmore, 1761-1774’, *The Virginia Magazine of History and Biography*, 96 (1988), 3-30. Botetourt, who became an MP for Gloucestershire in 1741, was a colonel of the North Gloucestershire militia, and in 1762 he became the Lord Lieutenant of Gloucestershire. In 1760 he became one of the lords of the king’s bedchamber and this suggests he was one of the ‘king’s friends’. Important for his future governorship, he successfully petitioned for a peerage and sat in the House of Lords as Baron de Botetourt. His move to Virginia, however, largely originated with the financial troubles that he encountered with his investment into the Warmley Copper Works. Botetourt’s difficulties with the Warmley Company are detailed in the Badminton Muniments, Warmley, Gloucestershire Archives, Gloucester, D2700 QP 13/2-3. For Botetourt’s early life, see Bryan Little, ‘Norbonne Berkeley: Gloucestershire Magnate’, *The Virginia Magazine of History and Biography*, 63 (1955), 379-409. For source material on Botetourt’s elevation to the peerage, see ‘The Case of Norbonne Berkeley, Esq, In relation to The Barony of Botetourt. [written by C.Yorke]’, Gloucestershire Archives, Gloucester, D421 Z7.

a successful political or administrative career in Britain would not use their patronage connections in order to seek a colonial governorship.

Colonial patronage appointments were typically not based on an individual's talent or ability as a politician or as an administrator, but were based on the influence they could curry with men in the highest echelons of government. While it has been argued that the Duke of Newcastle's appointments in Britain and in the colonies in the 1750s and the early 1760s were often made as a result of his desire to see the talented rise to the upper echelons of government, this was not entirely true of the general system of appointment to official positions in the colonies.<sup>13</sup> There can be no doubt that there were men who were appointed as colonial governor who had considerable ability and merited the appointment: governors such as William Shirley, Alexander Spotswood and Francis Fauquier all had precocious skill in people-management and were highly esteemed in the colony themselves.<sup>14</sup> In the same vein, however, it is indisputable that there were other governors appointed about the same time who lacked the administrative abilities and diplomatic skill required of effective royal governors.<sup>15</sup> Because of the non-

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<sup>13</sup> Richard Middleton has maintained that the Duke of Newcastle did believe that, contrary to the traditional interpretation, merit was an important factor in making appointments. See Middleton 'The Duke of Newcastle and the Conduct of Patronage', 179. Of course, Middleton's argument makes sense, but it is certainly more accurate in terms of patronage in government departments within Britain. For Newcastle, gaining supporters within parliament and government departments was foremost in his consideration. See Richard Middleton, *The Bells of Victory: The Pitt-Newcastle Ministry and the Conduct of the Seven Years' War, 1757-1762* (Cambridge: Cambridge University Press, 1985), 213; and Reed Browning, *The Duke of Newcastle* (New Haven: Yale University Press, 1975), 263-4.

<sup>14</sup> For William Shirley, see John A. Schutz, *William Shirley: King's Governor of Massachusetts* (Williamsburg, Va.: University of North Carolina Press, 1961); and *Correspondence of William Shirley: Governor of Massachusetts and Military Commander in America, 1731-1760*, ed. Charles Henry Lincoln (London: Macmillan, 1912). For Francis Fauquier, see Nellie Norkus, 'Francis Fauquier, lieutenant-governor of Virginia, 1758-1768: A study in Colonial Problems', unpublished PhD Diss, University of Pittsburgh, 1954; Robert Douthat Meade, 'Gov. Fauquier --- Friend of Jefferson: His Influence on Sage of Monticello Said to Have Molded Latter's Religious Views, Created Desire for Travel and Broadened Outlook on Nationalistic Philosophy', *Richmond Times-Despatch*, 7 July 1935; and Charles R. Hildeburn, 'Notes on the Stamp Act in New York and Virginia', *The Pennsylvania Magazine of History and Biography*, 2 (1876), 296-302.

<sup>15</sup> Benjamin Franklin insisted that that the governors were 'sometimes men of vicious characters and broken fortunes, sent by a minister to get them out of the way', see Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA.: The Belknap Press of Harvard University, 1967), 102.



meritocratic nature of the appointment system, therefore, it was, in effect, a lottery whether capable candidates were chosen.

From the Earl of Halifax to Lord Dartmouth (from 1748 to 1775) the reasons adopted for making certain appointments varied from expediency at home to attempts at pacifying troubling situations in certain colonies. There were many types of appointment made to the office of governor.<sup>16</sup> Indeed, the variation in the men appointed to a governorship in itself reflects the haphazard and disorderly way that the system of appointment worked. Most of the governors appointed to the royal colonies were neither American born nor had ever previously set foot in the colony before becoming governor. When they arrived in the colony, therefore, there was much pomp and ceremony to accompany their arrival, which, without doubt, added prestige to their appearance and future governance. It was easier to govern as the substitute for the king, when a governor appeared to be actually coming directly from the monarch in Britain. A British-born governor had the added advantage of being an ‘unknown’ quantity to the colonists, with little baggage to weigh down his administrations.

In the light of this gubernatorial appointment system, the claim that a governor was a king in America is deeply flawed and quite untenable. In the eighteenth century, a king owes his position to hereditary right, which is a claim that some held to be divinely ordained and all believed it was a revolutionary act to challenge. In contrast, a governor owed his position to patronage – he was appointed *by* the monarch and could be dismissed by him. In other words, while a king owed his position to divine providence, a governor was appointed on the personal whim of the king or because of the influence on the king of powerful backers of that person. He could be easily removed for the same reasons. No governor was chosen solely because of

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<sup>16</sup> Leonard Woods Labaree has argued that those who were appointed to royal governorships can be neatly divided into three groups of appointments: ‘provincials’, ‘military or naval officers’, and, lastly, ‘by far the largest group of governors was composed of Englishmen who owed their appointments to political connections at home’, Leonard Woods Labaree, *Royal Government in America*, 37-41.

his own influence or personal merits. All governors were no more than second-rank political figures within the British political world, who owed their position to the superior influence of their patrons within the British political system. They were ‘clients’ of superior patrons, such as the monarch or powerful politicians, and were appointed and removed as such patrons saw fit. This profoundly affected the prestige which they possessed with the colonists. A king was revered in Britain because he could expect the loyalty of almost all men and he possessed an aura of majesty. One young American noted in 1774: ‘There is something that Strikes an awe when you enter the Royal presence’.<sup>17</sup> A governor could not possibly resemble a king because he was lacked such an aura and had not inherited the right to govern; he could never command the same aura that the king possessed as of right. In the same way, he could never exercise the powers exercised by a king.

## II

### *The Royal Governor as ‘King’: The Powers devolved to the Royal Governor*

The prevailing historiography has maintained that, in theory, royal governors were endowed with substantial and wide-ranging powers which should have enabled them to exercise tight control over the political system in the colonies and to retain the right to be the ultimate authority in all legislative, judicial and executive matters. The system of royal government in the American colonies was theoretically one in which all authority and power was devolved upon the head of the executive in each colony: the royal governor. Unlike the first state constitutions, this system of government was not designed or created upon a specific ideological foundation, but evolved over time with one overriding aim: the maintenance of the royal prerogative in the colony. This system of royal government in the American royal

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<sup>17</sup> Margaret Hutchinson to Elizabeth Hutchinson, 19 October 1774, cited in Jerrilyn Greene Marston, *King and Congress: The Transfer of Political Legitimacy* (Princeton: Princeton University Press, 1987), 15.

colonies can be understood through the analysis of the documents which were devised by the Board of Trade and Plantations in London and accompanied every newly appointed royal governor when he travelled to his colony. All royal governors, soon after they were appointed to the governorship were supplied with a series of documents that set out the exact nature and format of royal government in the colony in which they were going to govern. The governors' commissions, which bestowed on them all powers necessary for establishing and maintaining royal government, were issued in the form of letters patent under the Great Seal: 'with these instructions you will receive our commission under our great seal of Great Britain constituting you our Captain General and Governor in Chief'.<sup>18</sup> This commission, because it was issued under the 'great seal', gave the governors the solemn duty of maintaining the royal prerogative in the royal province. Together with the commission, the royal governor was issued with a set of instructions that set out how he should execute the powers granted to him in the royal commission. While the terms of his commission were read aloud in the colony once the governor had arrived, the gubernatorial instructions were almost always kept private because they were written only for the governor's consumption.<sup>19</sup> The commission and set of instructions established the highest legal authority in the royal colonies.<sup>20</sup> Historians, while

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<sup>18</sup> The full Massachusetts commission read: 'With these our instructions you will receive our commission under our great seal of Great Britain constituting you our Captain General and Governor in Chief of our Province of the Massachusetts Bay, AND our Lieutenant and Commander in Chief of the militia within our dominions and Territory of New England in America'. 'Governor's Commission and Title: Massachusetts, 1702-1771', in *Royal Instructions to British Colonial Governors*, 2 vols (New York: D. Appleton-Century Company Inc., 1935), I: 8. The Virginian governor's Commission from 1683 to 1768 read 'with these instructions you will receive our commission under our great seal of Great Britain constituting you our lieutenant and Governor General of our colony and Dominion of Virginia in America'. From 1768, the commission inserted 'lieutenant and governor general of our said colony'. See *ibid.*, I: 13, 31.

<sup>19</sup> The governor's commission was given a public reading at the governor's inauguration, but the instructions did not get a public airing: 'And forthwith to cause our said commission under our great seal of Great Britain constituting you our lieutenant and governor general of our said colony and dominion to be published in the usual manner and with all due and usual solemnity', *ibid.*, I: 31. The instructions were written only for the governor's private use, but some sections were read to the executive council, see *ibid.*, I:45-6.

<sup>20</sup> Thomas Pownall boldly claimed that the commission 'is hardly a commission during pleasure, to the person therein named as governor, yet it provides for a succession without vacancy, or interregnum, and it is not revoked but by a like commission, with like powers: It became the known, established constitution of that province which hath been established on it, and these laws, courts, and whole frame of legislature and judicature, are founded on it: It is the charter of that province: It is the indefeasible and unalterable right of those people ... and therefore not to be altered; but by such means as any reform or new establishment may take place in Great Britain: It cannot, in its essential parts, be altered or destroyed by any royal instructions or proclamation; or by letters from secretaries

analysing these commissions and instructions, have tended to depict governors as examples of an executive in the mould of a Stuart king. A close examination of this system, however, demonstrates that the authority and power of royal governors should not be compared to those of kings. The system of royal governorship set up a weak executive who can only be regarded as a symbolic representative of a king rather than one who could exercise his royal master's full powers in his stead.

From the outset, royal governorship was an inherently weak position because it was governance by instruction. The instructions which bestowed an array of powers on all royal governors were, ironically, one of the main reasons why royal governors could not function as their powers dictated. Constrained by precise and standardised instructions which had to be rigidly maintained,<sup>21</sup> the governor was unable to respond to a crisis with any degree of flexibility. When placed in a difficult situation, the governor lacked the autonomy required to respond as he best saw fit. The instructions were not general guides as to how a governor should act, but were specific orders that *had* to be obeyed. Because of the standardised nature of these instructions, the Board of Trade ignored the inherent differences between the royal colonies on the American mainland. The most remarkable aspect of royal government in the American colonies is the unchanging nature of the gubernatorial commissions and instructions: for over a century, the commissions which were sent to every royal governor across all royal colonies were surprisingly similar. For example, the commission sent to Alexander Spotswood, lieutenant-governor of Virginia from 1710 until 1722, was almost identical to the commission sent to Francis Fauquier almost fifty years later.<sup>22</sup> While the situation in the colonies, in terms

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of state: It cannot be superceded, or in part annulled, by the issuing out of any other commissions not known to this constitution.' Thomas Pownall, *The Administration of the Colonies*, 2<sup>nd</sup> edn. (London, 1765), 54.

<sup>21</sup> See Leonard Woods Labaree, ed., *Royal Instructions to British Colonial Governors, 1670-1776*, 2 vols (New York: D. Appleton-Century Company Inc., 1935).

<sup>22</sup> *Ibid.*, I: 11. A further example of the standardisation of commissions can be seen in the collection of commissions for the Massachusetts Bay colony: *Massachusetts Royal Commissions, 1681-1774*, 2 vols. (Boston: Colonial Society of Massachusetts, 1913). 8.

of the powers of the assemblies and attitudes towards imperial control of the colonies, had evolved significantly over these decades, gubernatorial powers had not evolved in a comparable manner. Whenever a governor attempted to ignore his instructions for expedient reasons in times of crisis, the Board of Trade vehemently censured him and normally vetoed any laws agreed to by him. The very fact that royal governors were bound by instructions, which had to be strictly followed, demonstrates that royal governors had no real sovereign authority to act as they saw fit. Bernard Bailyn has claimed that, even with this system of governorship by instructions, royal governors had the ability to be powerful executives ‘if they had had the equipment that they needed’.<sup>23</sup> Of course, governing by instruction does not necessarily mean that royal governors were always in a weak position because, if they actually had full use of the powers that were theoretically devolved upon them, they should have been able to maintain power and influence despite the apparent inflexibility of their instructions.

A closer inspection of the governor’s powers, however, which have led so many historians to depict governors as possessing kingly authority, proves that governors could never be powerful executives in the colonies. As the governors’ commissions make clear, the ultimate responsibility of the royal governor was to maintain the royal prerogative. They were the bearers and maintainers of the royal prerogative in the colonies. Prerogative power is an abstract concept and this makes it difficult to define. Institutional historians, such as Leonard Woods Labaree, Ewart Boutell Greene and Percy Scott Flippin, have often defined the royal governors’ role in the colonies as the maintenance of the royal prerogative, but they have not suggested the larger significance of this devolved task.<sup>24</sup> What is the ‘royal prerogative’ and

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<sup>23</sup> Bernard Bailyn, *The Origins of American Politics*, 72.

<sup>24</sup> Leonard Woods Labaree, *Royal Government in America*, 5; Ewart Boutell Greene, *The Provincial Governor in the English Colonies of North America*, 92-93; and Percy Scott Flippin, *The Royal Government in Virginia, 1624-1775*, 101. Most recently, in a forum report published in *The William and Mary Quarterly*, several historians have debated the role of the concept of prerogative power in the ideological controversy waged in the colonies during the revolutionary period. The forum is centred on an essay by Eric Nelson and three responses by Gordon Wood, Daniel Hulsebosch, and Pauline Maier. See Eric Nelson, ‘Patriot Royalism: The Stuart Monarchy in American Political Thought, 1769–75’, *The William and Mary Quarterly*, 3rd Series, 68 (2011), 533-572; Daniel J.

what does it mean when the royal governors exercised and upheld such a prerogative in the colonies? The royal prerogative is the rights and powers at the disposal of a monarch which are inherent in his authority to rule. The royal prerogative, as fully exercised by a king, is clearly illustrated in the examples of the Stuart dynasty in seventeenth-century Britain. By the middle of the eighteenth century, however, the powers of the royal prerogative were becoming increasingly subsumed with the portfolio of powers at the disposal of the king's ministers. George III, for example, increasingly exercised his prerogative powers through the advice and consent of his ministers who were appointed by the king but were also directly accountable to Parliament. The sovereignty of king-in-parliament, which increasingly developed following the settlement of the Glorious Revolution in 1688-89, was widely accepted in order to curtail and limit the powers of the crown.<sup>25</sup> Historians have argued that royal governors did not have the same restrictions on their right to exercise and maintain the royal prerogative in their theoretical manifestation. Indeed, it has been argued that royal governors were, in theory, relics of a system of kingly power that had existed in Britain prior to the Glorious Revolution. While the royal prerogative was gradually diminished in Britain in the decades after 1688-89, the prerogative powers of the governors arguably remained undiminished in the royal colonies. It is clear, however, that royal governors were never able to wield their prerogative powers autonomously, but were, in fact, only custodians of this prerogative power so long as the monarch and his ministers allowed them to exercise it. A closer inspection of the nature and execution of these theoretical powers demonstrate that royal governors were simply pawns in the imperial machinery of colonial government rather than kings of their respective colonies.

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Hulsebosch, 'The Plural Prerogative', *ibid.*, 583. Eric Nelson, 'Taking Them Seriously: Patriots, Prerogative, and the English Seventeenth Century', *ibid.*, 558.

<sup>25</sup> John Phillip Reid, *Constitutional History of the American Revolution: The Authority of Law* (Madison: University of Wisconsin Press, 1993), 151.

Historians have highlighted some of the powers apparently granted to the governor and have claimed that this made the governor appear as powerful as a king. In terms of military and maritime affairs, a royal governor could exercise vice-regal powers: the commission named him captain general, vice-admiral and commander-in-chief of his colony, making him second only to the overall commander-in-chief of His Majesty's forces in the colonies, and the instructions given to him devolved all the requisite powers due to his rank, and these, in theory, were extensive. He was able to impose martial law in an emergency, had control over all provincial forces in his colony, all officers in the colony were under his authority and he was able to direct any forces under his command to any part of the colonies if need be.<sup>26</sup> These powers have led Labaree to argue that a royal governor's control over purely local and provincial military organisation was, in theory, practically absolute.<sup>27</sup>

Royal governors also appeared to have substantial powers over the judiciary in the colonies. In 1701, the judiciary in England had been protected from monarchical intrusion by the Act of Settlement. In England, judges were appointed by the crown, but could be removed for bad behaviour only at the request of both houses of Parliament. This made them independent of the crown after their appointment, but did not separate the judiciary from the legislature. The judicial system was very different in the colonies. Indeed, such was gubernatorial interference within the judicial branch in the colonies that the judiciary was almost an extension of the executive branch of government. Before 1700, all the commissions for the governors in the royal colonies, except Massachusetts, stipulated that they had the power to appoint all judges and other judicial officers on their own authority.<sup>28</sup> From 1752, however, the Board of Trade prohibited all royal governors from appointing judges on their own initiative and required them

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<sup>26</sup> Labaree. ed., *Royal Instructions*, I: 395, 397,

<sup>27</sup> Labaree, *Royal Government in America*, 108.

<sup>28</sup> The Massachusetts Charter of 1691 created an exception because it authorised the governor to appoint judges, but only with the advice and consent of the council, *ibid.*, 381

to seek the approval of at least three members of their council.<sup>29</sup> Colonial judges lacked security of tenure and could be removed at will by a royal governor. Because of the perceived amateur status of judges in the colonies, the imperial government denied them the same rights and privileges bestowed on their English counterparts.<sup>30</sup> Governors were also given the right, through the advice and consent of the council, to erect courts of justice, but only on the authority of an 'especial order' from the Board of Trade.<sup>31</sup> The governor also had other judicial functions to perform: he heard appeals in civil cases, had the probate of wills and the issue of marriage licenses.

Apart from the military and the judiciary, however, governors did not have the required powers needed to control other parts of the political system. Historians have pointed to the apparently immense patronage powers at the disposal of royal governors, which allowed them to fill most colonial offices in their colonies. The governor's powers of appointment were essential to his ability to maintain his influence and uphold the royal prerogative in the colonies: by placing key personnel in official positions in his colony he should have been able to curry favour with important sections of colonial society and ensure that he could garner support for his measures when he pleased. All royal governors had certain powers of appointment and it was not purely restricted to the judiciary: in military affairs, they had the right to name all their subordinate officers; in civil affairs, the commission empowered them to appoint justices of the peace, sheriffs, customs officials 'and other necessary Officers and Ministers ... for the better Administration of Justice and putting the Laws in Execution'.<sup>32</sup> Governors, could not remove these officials 'without good and sufficient cause to be signified' to the metropolitan authorities and were instructed to report all names of those officers that were appointed.<sup>33</sup>

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<sup>29</sup> Labaree, ed., *Royal Instructions*, I: 367.

<sup>30</sup> Labaree, *Royal Government in America*, 382.

<sup>31</sup> Labaree, ed., *Royal Instructions*, I: 295

<sup>32</sup> *Ibid.*, I: 307.

<sup>33</sup> Labaree, ed., *Royal Instructions*, I: 369, 387-8.



Patronage in colonial America should not solely be understood as the ability to appoint to offices because a large amount of the patronage at the disposal of a royal governor involved the ability to approve all land grants in their colony. Because the governor was the custodian of the ‘great seal’, and because of the fact that in all royal colonies, any unclaimed land was deemed to belong to the king, the commission gave him the power, with the consent of the council, to grant lands.<sup>34</sup> This was a privileged power which greatly benefited all governors, both in terms of personal monetary gain and the prestige and influence it gave their office.

It is misleading to maintain that royal governors enjoyed *substantial* and *influential* powers of patronage, however. While the royal governors undoubtedly enjoyed some patronage powers, it is essential to focus on what positions they were entitled to fill. Often these were low-level positions that did not significantly enhance the governor’s position in the colonies. The most important patronage power denied the royal governor, however, was the ability to influence the colonial assembly by means of having ‘friends’ within the assembly. Even in times of apparent absolute rule in England in the sixteenth and seventeenth centuries, the king had to rely on peers and MPs within Parliament who would uphold and support the king’s interests. In the eighteenth century, the king always exercised patronage powers over the composition and actions of Parliament. He would create and promote peers and bishops in the House of Lords. George III was able to count on a reliable Court party in the House of Lords because a majority of the king’s ministers sat in the upper house.<sup>35</sup> This was not available to any governor. The system of influence in a parliamentary system that enabled the king and his ministers to influence a majority in the House of Lords and a significant majority in the House of Commons, was entirely lacking in the colonies. There were no peers or bishops in the council in the colonies and the electoral system in the colonies was very different from that of Britain

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<sup>34</sup> Ibid., II: 527.

<sup>35</sup> H.T. Dickinson, ‘George III and Parliament’, *Parliamentary History*, 30 (2011), 403.

because there were no rotten boroughs.<sup>36</sup> The king's patronage over the Commons did not depend on his direct influence over rotten boroughs, but over his ability to influence the many peers who did control so many small boroughs. The king in Britain could himself influence some rotten boroughs and was able to offer a range of honours and sinecures that were conferred on MPs. Although he was never able to control the House of Commons, George III was still able to exert substantial influence over the lower house.<sup>37</sup> The governor could not control the colonial assembly in the same manner. The system of governorship in place required an extensive web of electoral corruption to ensure that the governor had effective control of the colonial assembly and this was not possessed by any royal governor. There were no officials appointed by the governor sitting in the colonial assemblies. He had no influence at all over the members of the colonial assembly or on their behaviour. Rather than having the patronage powers to control the colonial assembly, royal governors had to use their personality to court the friendship of important members in the assembly in order to influence and maintain control of the colony's legislature. The personality and management skills of a governor, therefore, were more important than the patronage at his disposal if he was to maintain effective control within his colony.<sup>38</sup>

Although royal governors apparently possessed certain powers, their position within the framework of government in the colony was, in reality, inherently weak. The position of the royal governor within the colonial political framework might appear to be the same as the head of the executive in Britain in the eighteenth century. The governor's relationship with the colonial council and colonial assembly also resembled the position of the king in relation to the House of Lords and House of Commons. But no governor could exercise as much patronage

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<sup>36</sup> Bernard Bailyn, *Origins of American Politics*, 82.

<sup>37</sup> H.T. Dickinson, 'George III and Parliament', 405-6.

<sup>38</sup> This is not entirely different to the situation in Britain, however. Patronage was effective over the House of Lords but could never secure an absolute majority in the House of Commons. The king had to appoint ministers with considerable abilities to manage the House of Commons.

in order to influence the composition and behaviour of his local assembly as the king could exercise over the British Parliament. Although the royal governor was a representative of a constitutional monarch, it has been suggested that his powers and responsibilities in his colony were more substantial than those of constitutional monarch in Britain. While the royal governor worked within a comparable system of limited government in the colonies to the monarch in Britain, it has been suggested that he possessed certain powers that ensured his powers within this structure were not so limited as those of his royal master in Britain. In other words, it has been suggested that the instructions appeared to grant the governor a stronger powerbase than the king in London. This was not the case.

The royal governor of a colony did not govern alone: he was assisted by a council and a lieutenant-governor acting as the governor's advisory board. The colonial council helped the governor perform his executive duties. In Britain, the monarch was assisted by the privy council, but it only met at the king's discretion and could only offer advice. Increasingly it was replaced as an effective body by a cabinet of ministers, but this was not as active as the governor's council. The governor's council was involved in every decision that the governor had to make and the governor was not able to perform his duties without the consent and advice of his council. The colonial council was very influential in all three branches of the colonial political system: it was the highest court of appeal in the colony, served as the upper House of the legislature, and was involved, with the governor, in all the decision-making of the executive branch.

The council in Virginia was composed of between ten and twelve councillors at any one time and they enjoyed an equal voice in all colonial legislation and served as the highest court in the colony. Because of their important duties, the selection of the council's members was fundamentally vital to the governor's effectiveness. This important patronage right, which would have allowed a governor to build up a support base, was often denied the royal governor

in Virginia. In a letter to the Board of Trade in 1762, for example, Fauquier protested against the appointment of Robert Burwell to the Virginia council. Although Fauquier's instructions directed him to recommend appropriate men to be appointed to the council, often these recommendations were ignored in Britain and instead the Board of Trade appointed men who had not been nominated by the governor.<sup>39</sup> Fauquier's exasperated language in his complaint to the Board on this occasion contains a logical and powerful argument. While he did not deny that Burwell was a 'gentleman of very fair character, of a very good family, and of a convenient situation', he believed that Burwell lacked the appropriate 'mental Qualifications' and had 'an unwarrantable Impetuosity of Temper'.<sup>40</sup> Fauquier maintained that he was not waging a personal vendetta by insisting on his recommendations, but was concerned about his position and authority within the colony:

For the sake of his Majesty's Government here, much more than for my own, I cannot help observing to your Lordships (and irksome it is to me to do it, as it personally [*sic*] concerns me) that if a Governors Recommendation is totally [*sic*] disregarded, He will very soon become of little Weight, and have very small Influence in the Colony over which He is appointed to preside, by which his Majesty's Service may occasionally suffer .... Such and such only can be answerable to your majesty, if they should recommend improper Persons. They are in his Majesty's Power; but if a private Man can obtain his Wishes to serve his Friend, will he not afterwards laugh in his Sleeve and despise Consequences?<sup>41</sup>

Fauquier's logic is compelling: he was new to the colony and his influence would diminish considerably if the colonists became aware that his recommendations for important appointments were being ignored by the Board. The Board denied that, in proposing Burwell's appointment, it was doing anything to weaken the governor's effectiveness: 'in general, great respect is due and indeed paid to the recommendations of His Majesty's Governors, but it would be carrying that respect too far, if the recommendations were construed to preclude a

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<sup>39</sup> 'You are FROM time to time, when any vacancies shall happen in our SAID COUNCIL, FORTHWITH to transmit unto our Commissioners for Trade and Plantations in order to be laid before us, the names AND characters of THREE persons INHABITANTS of OUR said PROVINCE, whom you shall esteem the best qualified for that trust', in Leonard Woods Labaree ed., *Royal Instructions to British Colonial Governors*, 1:51. See Leonard Woods Labaree's excellent discussion of how the Board of Trade often undermined the powers of the royal governors with their interference with council appointments in Labaree, *Royal Government in America*, 134-171.

<sup>40</sup> Francis Fauquier to the Board of Trade, 31 July 1762, *Fauquier Papers*, II: 782.

<sup>41</sup> *Ibid.*, II: 782-3.

Nomination to His Majesty of any other person even in preference to the Governor's recommendation'.<sup>42</sup>

Unlike the governor's councils in other colonies, the council in Virginia proved to be a disappointing and generally ineffectual body within the Virginian political system. Whereas the royal governor was invariably British, the colonial council consisted solely of native-born colonists. This fact caused significant logistical problems because of the topography and sheer size of colonial Virginia. All three governors of Virginia constantly had problems putting a quorum together because the members of the council were scattered across the colony. Councillors were often men of influence and ability, but they also normally possessed rich plantations which were spread out across the colony and travelling conditions in Virginia in this period were notoriously difficult. It would often take a matter of weeks from a governor announcing a meeting of council to the meeting actually taking place, even if the business was urgent. In 1767, Francis Fauquier reported that five out of the eleven councillors resided in the Northern Neck region of the colony, which was 145 miles away from Williamsburg.<sup>43</sup> The dispersed nature of colonial Virginia's population ensured that the council was often dysfunctional and unmanageable in this period, which severely hampered the governor's ability to govern effectively.

The importance of the council within the political system had in fact steadily declined during the eighteenth century. In the commissions of the Virginian royal governors in the first half of the seventeenth century, the royal governor was nothing more than the first among the councillors.<sup>44</sup> By the middle of the eighteenth century, the importance and role of the governor far outweighed the functions of the council in the political system. While the council certainly

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<sup>42</sup> The Board of Trade to Francis Fauquier, 11 March 1763, *Fauquier Papers*, II: 929.

<sup>43</sup> Francis Fauquier to Lord Shelburne, 30 July 1767, TNA, CO 5/1345; Labaree, *Royal Government in America*, 141.

<sup>44</sup> Labaree, *Royal Government in America*, 170.

advised all the royal governors in this period on various matters including the enforcement of royal policy or the approval or rejection of colonial legislation, the final decision always rested with the governor. Proof of the ineffective nature of the Virginian council can be shown by examining Francis Fauquier's work with the council. In 1759, the House of Burgesses passed a bill which laid a duty on slaves imported for the personal use of the importer from Maryland, the Carolinas and the West Indies. Fauquier was well aware that his instructions from Britain had strictly forbidden him to assent to any such bill, but he also knew that the bill was very popular in the colony. He sought the advice of his council and requested its members to give him their opinion in writing on whether he should approve the bill in spite of his instructions from Britain. Seven out of the eight councillors who attended the meeting approved of the bill and Fauquier, therefore, signed it and forwarded this piece of legislation and the councillors' opinions of it to the Board of Trade.<sup>45</sup> The Board of Trade, however, sought in no uncertain terms to correct Fauquier's understanding of the functions of the council in no uncertain terms.<sup>46</sup> The council was simply an advisory body and the home government explicitly refused to allow the council to develop into a responsible body which could have a significant influence on imperial policy.

By the time Fauquier was appointed to the lieutenant-governorship of Virginia in 1758, the governorship was actually not the most important branch of government in the political system within Virginia. The Virginia House of Burgesses, which was the first established representative assembly in the English colonies in North America, became the preeminent

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<sup>45</sup> *Ibid.*, 169.

<sup>46</sup> 'The cases in which the advice and consent of the council are required in any acts of government are precisely marked out in the instructions; in all other cases of duties enjoined by these instructions the governor alone is accountable for his own conduct; and if it should ever be admitted that the advice and opinion of the council can dissolve the governor from the obligation he is under of obeying these instructions by which the negative voice in the passing of laws is limited and restrained, the interest of the crown and the mother country must depend solely for security upon the uncertain wills, interests, and inclinations of the members of the council, and what the consequences of such a system would be are too obvious to mention'. The Board of Trade to Francis Fauquier, 13 June 1760, *Fauquier Papers*, I: 225.

political institution in the colony by the middle of the eighteenth century. This House was dominated by wealthy landowners, who were often members of or closely related to the great Virginian families. Its members were well educated, Anglican, and very experienced in local politics.<sup>47</sup> The apparent and actual relations between royal governor and colonial assembly have been misinterpreted in much of the existing historiography. The existence and authority of the colonial assemblies in each colony were supposedly dependent on the royal prerogative at the disposal of the royal governor. While it was a matter of contention in the colonies prior to the American Revolution, the system in place in the royal framework of government in the colony, in British-eyes, meant that the assemblies were constitutionally subservient to the governor.<sup>48</sup> They met at the whim of the royal governor who could convene, prorogue or dissolve the assembly whenever he pleased. This prerogative power had not been exercised to this extent in Britain since the Glorious Revolution.

While the colonial assemblies were apparently dependent even for their existence on the prerogative at the disposal of the royal governor, the royal governor's actual authority over the assemblies was not strong. During the period of 'salutary neglect' in the first fifty years of the eighteenth century, when metropolitan control of the colonies was less intrusive and more relaxed than during the subsequent twenty-five years, the House of Burgesses took advantage of this situation and accrued more powers and responsibilities until in effect they dominated colonial government. Although the assembly would meet only in either the spring or autumn

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<sup>47</sup> Jack P. Greene, 'Foundations of Political Power in the Virginia House of Burgesses, 1720-1776', *The William and Mary Quarterly*, 3<sup>rd</sup> Series, 16 (1959), 485-506.

<sup>48</sup> The right of the assembly to meet was dependent on the royal prerogative and, as such, the colonial assemblies theoretically did not even have an existence without the approval of the governor. The colonial assemblies were only summoned when the executive decided to do so, just as parliaments had once been summoned only at the discretion of the Tudor or Stuart monarchs in the sixteenth and seventeenth centuries. In Britain, the Septennial Act of 1716 had decreed that no Parliament could last longer than seven years without there being a general election, but the king had great powers to decide when an election could be called before the seven year term had ended, and George III exercised this prerogative quite frequently. He could start and end any session of Parliament whenever he chose, although he usually did so when his ministers advised him to act in this way. In practice, of course, the king did need to summon annual sessions of Parliament in order to secure taxes each year. The general assemblies in the colonies, however, did not have anything comparable to the seven year limitation.

every year for around four to six weeks and its membership was composed mainly of part-time politicians, the House assumed control of some of the most important functions of the colonial political system.

The House of Burgesses had control of the colony's public finances, which ensured that all governors were dependent on their assemblies to implement royal policy. The assembly's control over finance was the most important weapon that it had in order to restrict, neutralise or combat the powers of the executive in the colony. In the first place, its control over finance meant that it had the sole right to initiate taxes in order to raise the revenue required by the executive. Francis Fauquier, Lord Botetourt and Lord Dunmore could not fully exercise their prerogative rights over the House if the assembly controlled the means of raising revenue and the amount to be raised in the colony. Not only was the House in control of raising revenue, but it also assumed increasing control over how this revenue was to be spent. All three governors during this period in Virginia had to rely on the House of Burgesses for the money needed to raise troops and to provide for the colony's defence. In other words, all three governors were accountable to the House of Burgesses for all expenditures out of the funds collected by the assembly. This reliance upon the legislative assembly to provide military support caused considerable difficulties between governors and legislature in this period.

The superiority of the House of Burgesses as a political branch in the Virginian political system became apparent in the 1750s. Richard Dinwiddie, Francis Fauquier's predecessor as governor, failed to prevent the House of Burgesses from challenging British parliamentary authority, and his ability to implement imperial legislation, in the colony. In 1752, Dinwiddie successfully sought the permission from the Board of Trade to impose a Pistole fee for attaching the royal seal on all land patents.<sup>49</sup> In all other American royal colonies in the 1750s,

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<sup>49</sup> A pistole was a Spanish coin that was worth around 16s 10d according to the Lords of the Treasury in 1741. See Jack P. Greene 'The Case of the Pistole Fee: The Report on the Pistole Fee Dispute Before the Privy



except Virginia, the governor was allowed to impose a fee for sealing land patents. In Virginia, however, the House of Burgesses had regulated all fees from land grants since the 1680s. The members of the House of Burgesses vehemently protested the implementation of the fee and claimed that no fee was legal without the prior consent of the colonial legislative assembly. It declared that the ‘demand of a pistole ... being not warranted by any known or established law, is ... an infringement of the rights of the people’.<sup>50</sup> The House sent Peyton Randolph to the Privy Council in London in order to protest the pistole fee and the Council heard arguments from Dinwiddie by letter and from Randolph in person. The Privy Council decided on a compromise: Dinwiddie was allowed to levy the pistole fee but not for lands of less than one hundred acres, for lands east of the Allegheny mountains, or for lands where applications for patents had been initiated before April 1752, when the fee was proposed. It was a partial victory for the governor, but, more important, it demonstrated that the House of Burgesses could stand up to the royal representative and assert its rights. Although the Privy Council confirmed the governor’s right to levy the fee, it placed certain restrictions in order to conciliate the legislative assembly. By agreeing to listen to the protests of the House of Burgesses and by agreeing a compromise, as a result, the Privy Council essentially acknowledged the political strength of the House and legitimised the House acting outwith the governor’s authority and control.

There was one possible source of friction between governor and legislative assembly that did not exist in the colony. Unlike other colonies, the House of Burgesses had no control over the governor’s salary. Every governor in Virginia, from 1683 until 1775, was instructed to take a salary of £2000 a year from the local revenue of two shillings per hogshead.<sup>51</sup> The

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Council, June 18, 1774’, *The Virginia Magazine of History and Biography*, 66 (1958), 399–422; Glenn Curtis, Smith ‘The Affair of the Pistole Fee, Virginia, 1752–55’, *The Virginia Magazine of History and Biography*, 48 (1940), 209–221; and John Richard Alden, *Richard Dinwiddie: Servant of the Crown* (Charlottesville: University of Virginia Press, 1973), 26–32.

<sup>50</sup> *JHB*, 1752–1755, 143.

<sup>51</sup> A hogshead was a large wooden barrel that was used to transport and store around 900 to 1000 pounds of tobacco in colonial America. See Alvin Rabushka, *Taxation in Colonial America* (Princeton: Princeton University Press, 2010), 245–6.

governor's salary in Virginia was the largest of all the salaries paid to governors in the eight royal colonies. Because this salary was not controlled by the House of Burgesses, this legislative assembly could not use its control this issue as a potential bargaining tool in its relations with the governor.

The royal governor's role in the entire legislative process was minimal. In the first place, the governor's instructions and commission did not allow him to initiate legislation or propose policies to be enacted. The most important fact about the nature of gubernatorial power in the royal colonies is that the governor, as the head of the executive, did not introduce measures in the colonial assemblies, but simply reviewed legislation proposed by the colonial legislature.<sup>52</sup> Rather than enjoying the full prerogative powers of a king, a royal governor was merely an administrator who acted as a conduit between the colonial assembly and the Board of Trade. He was instructed: 'You are to transmit authentic Copies of all Laws Statutes and Ordinances which at any time hereafter shall be made or enacted within our said province, each of them separately under the public Seal, unto our first commissioners for Trade and Plantations within three Months or by the first Opportunity after their being enacted'.<sup>53</sup> Royal governors were not the initiators of legislation, but were simply the conduit by which colonial legislation proposed and passed by the colonial assemblies was transmitted to the Board of Trade and Plantations. This is very different from Britain where the most important legislation and taxes were initiated by the executive through the king's ministers. A great deal of legislative action in the Westminster Parliament was in the form of private or local legislation brought in by ordinary backbench MPs, but the most important legislative acts (especially about taxes and

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<sup>52</sup> Labaree, *Royal Government in America*, 219.

<sup>53</sup> The instruction goes on to warn the governor of the consequences of not transmitting all laws: 'upon pain of our highest displeasure and of the forfeiture of that year's salary wherein you shall at any time or upon any pretense [*sic*] whatsoever omit to send over the said laws, statutes, and ordinances as aforesaid within the time above limited, as also of such other penalty as we shall please to inflict'. Labaree, ed., *Royal Instructions to British Colonial Governors*, I: 134-5.

law and order) were initiated by the king's ministers. The king's ministers at Westminster were far more active in national policy making than were the colonial governors.<sup>54</sup>

The governors' role in the legislative process has been exaggerated primarily because they had the ability to veto legislation. While it may seem the case that royal governors had an absolute authority over all legislation that passed in the colonial assemblies because they had the ability to veto all laws passed in the colonies, the royal governors never enjoyed such an absolute negative on colonial legislation. His veto was simply a negative by instruction: the governor reviewed all legislation passed by the assembly in strict accordance with his instructions. In these instructions, the governor was ordered to veto all legislation that contravened his instructions, endangered the prerogatives of the crown, or affected the policies set out by the imperial government. The types of laws that were absolutely prohibited were meticulously spelled out in the governor's instructions.<sup>55</sup> The power of veto over most colonial legislation at the disposal of a royal governor was typically a 'suspending' veto. The most important legislation passed by the colonial assembly had a suspension clause inserted so that it could not be executed until it had received the royal consent by an order in council usually on the advice of the Board of Trade and Plantations. Suspending clauses were required for all legislation that affected the royal prerogative, colonial trade and colonial currency.<sup>56</sup> While the governor could indicate his personal approval of a certain piece of colonial legislation in practice, the law could not be executed until the imperial administration had approved of it. This is markedly different from the situation in Britain. While the Board of Trade and Plantations could veto legislation passed in the colonies, no veto was ever applied to legislation passed by the Westminster Parliament after 1708. George III never vetoed any legislation passed by the British Parliament (though he very occasionally contemplated doing so). Most

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<sup>54</sup> H.T. Dickinson, 'George III and Parliament', 408-11.

<sup>55</sup> Labaree. *Royal Instructions to British Colonial Governors*, I: 128-130, 141-145.

<sup>56</sup> *Ibid.*, I: 130-131, 141, 145. See also Labaree, *Royal Government in America*, 226-229.

of the time, his ministers were strong enough to defeat legislation they or the king disliked.<sup>57</sup> From the passage of a bill in the colonial assembly to the approval of the home government was a time-consuming exercise and the royal governor merely acted as a conduit in this example of metropolitan authority.

With the ability to wield the royal prerogative, summon, dissolve or prorogue the lower houses of the colonial assemblies, the ability to veto colonial legislation, create courts, and appoint at all levels of colonial government and the judiciary, historians have maintained that royal governors were not merely ‘kings in America’ as Thomas Pownall stipulated, but theoretically Stuart kings with all the prerogative powers at their disposal. As we have seen, this interpretation is misleading and unhelpful. Royal governors were never the theoretical all-powerful executives that the prevailing historiography has portrayed, but were essentially administrators acting for and under the authority of the imperial government. Without doubt, all royal governors were granted some powers that gave them the appearance of being strong executives, in the military and judiciary spheres for example, but, crucially, the most important powers that the governors required in order to be dominant executives were weakened, became conditional and were even non-existent in practice. Royal governors were no more than agents or servants of powerful patrons, instructed how to act and liable to have any decision of theirs vetoed or overturned back in Britain. The commission to all royal governors, which contained bold titles to executive power, could never be fully realised and this was compounded by the system of imperial administration which weakened the governor’s authority even further. What is obvious, however, is that the system of governorship in the royal colonies as perceived from Britain was diametrically opposed to this political system based on a more participative political culture. Royal governors needed to be operating in the system which existed in eighteenth-century Britain rather than the one with which they had to contend in the colonies,

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<sup>57</sup> H. T. Dickinson, ‘George III and Parliament’, 402-3.

if they were to be as effective an executive authority as the king and his ministers were in Britain. The rise of the colonial assemblies gathered momentum in the first half of the eighteenth century and, with their control of the public finance in the royal colonies, the royal governors' authority and effectiveness were seriously weakened.

### III

#### *The Royal Governor as 'Pawn': Metropolitan control of the Colonies*

While this chapter has thus far maintained that royal governors always struggled to be powerful executives, this section focuses on the exact nature of imperial administration over the political system within the colonies prior to the American Revolution. The system of imperial administration that existed in the colonies and in Britain, before the American Revolution, made it extremely difficult for the governors to govern effectively. While the prescribed powers devolved on the royal governor ensured that the governor could be little more than the chief administrator of a royal colony, his limited powers in practice were further restricted by the system of imperial government that existed up to the revolutionary crisis that engulfed the colonies in the mid-1770s.

The system of imperial administration for the American colonies within Britain was one which repeatedly malfunctioned because the system of communication between colony and mother country constantly struggled under a heavy bureaucratic burden and frequently suffered because there were too many decision-makers for efficient and effective imperial control. Until the creation of the American Colonial Office in 1768, the maintenance of colonial affairs was devolved upon several different departments. While the system of governance in the colonies appears to have been extremely centralised, in that it was governance by instruction and all legislation passed in the colonies was reviewed by the home government, in fact the imperial administration within Britain was largely de-centralised. This system was not

streamlined, efficient or co-ordinated. It was heavily bureaucratic and lacked the devolved system of decision-making that is considered essential by any successful modern government department. Policymaking in London involved many individuals and straddled many departments, including the Board of Trade and Plantations, the Privy Council, the Secretary of State for the South, the Admiralty, the Bishop of London, and the Treasury.<sup>58</sup>

The most important office was that of the Lords Commissioners for Trade and Plantations, more widely known as the Board of Trade, which oversaw the bulk of colonial affairs. The Board frequently wrote to the various royal governors, requesting further clarification of their actions, rebuking them for ignoring their instructions, or sending new instructions when and if the situation demanded it. While the Board was the centre of all information regarding the colonies, it lacked the autonomy to initiate policies in the colonies and act upon information received from the colonies because it was largely an advisory body and was subordinate to more important ministers and departments of state. It could not take the initiative by making changes to the government's imperial policy or suggest a new course of action directly to the governor. Instead, it had to take the ponderous path of making recommendations to the king and, if the king acting through the Privy Council agreed to such requests, an order-in-council would be sent to the governor directly, or the Secretary of the State for the South would be advised to send a letter to the governor. Only in a minority of cases was the Board of Trade given the task of writing the recommendation itself. Because even then it acted at the request of the Privy Council, and hence these instructions were often written in a guarded and vague manner. The circuitous and bureaucratic nature of the

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<sup>58</sup> For a discussion of the bureaucratic nature of the central administration in London, see Oliver Morton Dickerson, *American Colonial Government, 1696-1765: A Study of the British Board of Trade in its relation to the American Colonies, Political, Industrial, Administrative*, 3rd edition (New York: Russell & Russell, Inc., 1962), 20.

administrative system of royal governance over the colonies therefore ensured that the governor was handicapped from the outset.

One of the main functions of a royal governor was to send detailed reports back to the Board of Trade and to the Secretary of State for the Southern Department (and the later to the Secretary of State for the American Department) in order to keep the imperial authorities up-to-date with all business in the colony, including any issues concerning trade, recent legislation and general colonial affairs. This system of correspondence, however, had an unintended consequence: because of the great distance between any colony and Britain and the slow means of communication, the governor's reports were sometimes given greater significance than they deserved or their reports were accepted at face-value when the situation might have changed in the meantime. The British government lacked accurate, up-to-date and current coverage of events in the colonies and, hence, the royal governors' reports were often accepted as important and reliable accounts of events. The reports sent, for example, by Francis Bernard to the Board of Trade during the Stamp Crisis were undoubtedly exaggerated and exposed his inability to comprehend the true nature of the hostilities against imperial policy and his position. These reports, however, were presented to the House of Commons and played a considerable role in informing and influencing government opinion and consequently had an impact on the government's role in formulating new policy.<sup>59</sup> Of course, the weight given to Bernard's reports during the Stamp Act Crisis was not a frequent occurrence, but the episode does demonstrate the importance given to governors' reports by the British government.

The patronage originally under the control of the governor was gradually absorbed by the home government and by the colonial legislatures during the eighteenth century. In 1752, the Earl of Halifax, President of the Board of Trade, brought all colonial appointments under

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<sup>59</sup> See Colin Nicolson, *The 'Infamous Governor'*, 140.

the Board's jurisdiction. Although this simplified the administrative burdens for the Board, it reduced the powers of the governor and his effectiveness.<sup>60</sup> Moreover, this control of appointments was not just restricted to the appointments of councillors. The most important facet of the nature of gubernatorial authority within the royal colonies was the fact that they essentially lost their powers to appoint officials at a local level. Again, this was not restricted to political offices: the royal governors' ability to grant lands in their colonies was also affected. The Privy Council between 1764 and 1777 approved grants of land that incredibly totalled over five million acres.<sup>61</sup> The egregious intrusion by the imperial centre into powers that had previously been at the disposal of all royal governors weakened the gubernatorial position to such an extent that any hopes the governors might have had of maintaining some control of their colony were much reduced.

The nature of the appointment system, the disorganised situation in the metropolitan administration and the removal of some of the patronage previously at the disposal of the governors, ensured that all royal governors struggled to exercise power effectively. They could not function as the present king's vice regent let alone act like a previous Stuart monarch.

#### IV

##### *Conclusion*

Lord Dunmore bemoaned his ineffective political authority in 1774. He was certain that 'if it had been thought fit to vest all power of this nature which this government affords in the hands of the governor, I should have had the means of keeping down the attempts of party and faction which have put the public affairs of this colony in the alarming situation in which they actually stand'.<sup>62</sup> The governor believed that he had substantial powers in theory which were denied to

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<sup>60</sup> See Bernard Bailyn, *The Origins of American Politics*, 74.

<sup>61</sup> Labaree, *Royal Government in America*, 106, 114-23.

<sup>62</sup> Lord Dunmore to the Earl of Dartmouth, 24 December 1774, TNA, CO 5/ 1353.



him in practice. This was not the case. While he did have certain powers, such as control over the military and judiciary, the most important powers and privileges, which would have enabled him to control his colony more effectively, were in practice denied to all royal governors. He did not have full veto powers, he could not control appointments to his council and he did not have a controlling influence within the legislative assembly. His supposed or desired powers were in practice parcelled out to the metropolitan government and to an increasingly potent legislative system. Royal governors were weak executives in relation to both the Westminster government and the colonial legislative assemblies.

Royal governors were never ‘Kings in America’ as has often been claimed. The king in Britain not only had substantial powers over the political system, but he also had the *appearance* of power. Because he had a natural and undisputed right to be head of a powerful executive, his authority was seen as almost divinely ordained, he enjoyed enormous personal prestige and the aura of majesty, and, hence, he was elevated above any politician of his day. Governors could not remotely expect to possess the same prestige or power. The popular British belief, that royal governors should be kings in the colonies, is an important one which led British politicians to perceive wrongly what governors could achieve in the colonies. They believed that, as representatives of the king, all governors could expect to enjoy the respect and deference of the colonists. Thomas Pownall, who was a governor himself, maintained that governors were ‘kings’ and should act as such in the colonies. This fundamentally misleading picture of eighteenth-century colonial governorship was widely accepted in Britain and this showed how ignorant the British Parliament was of the actual political situation in the colonies.

## Chapter Two

### Virginian Governors and Imperial Politics, 1758-1776

John Murray, Lord Dunmore, was relatively content with his appointment as royal governor of New York in 1770. After spending ten years in the House of Lords, during which time he experienced multiple financial troubles, Dunmore secured this profitable appointment through the help of his patrons, the Bedford connection.<sup>1</sup> The New York governorship was certainly a lucrative appointment in the British Empire, especially for a peer who did not have the financial resources to support his elevated status. The governor was granted an annual salary of £2000, which was guaranteed out of the revenue collected by the Tea duty which was retained in 1770, and was provided with a profitable system of fees which was collected by the governor in return for granting land patents. This revenue was particularly welcome to a governor such as Dunmore who was unabashedly determined to make his fortune while he lived in New York. He certainly benefited from his governance of the northern colony: within nine months, he had acquired fifty thousand acres in the colony and obtained substantial sums from granting land patents to prospectors. Such was Dunmore's greed for funds that he became entangled in a bitter dispute with the long-serving, and long-suffering, lieutenant-governor of the colony, Cadwallader Colden. The lieutenant-governor refused to give up half of the proceeds that belonged to the office of the governor during the period of the governor's absence from Dunmore's appointment to when he finally took up his office.<sup>2</sup> Dunmore was in New York for

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<sup>1</sup> William C. Lowe has provided us with an excellent overview of Dunmore's early parliamentary career and his financial troubles and predicament prior to his appointment to the position in New York, see Lowe, 'The Parliamentary Career of Lord Dunmore, 1761-1774', *The Virginia Magazine of History and Biography*, 96 (1988), 3-30. The Bedfords were a crucial segment of the Grafton Ministry in 1769. Although, as William C. Lowe makes clear, there is little concrete evidence to tie Dunmore to the Bedford group, there is much circumstantial material.

<sup>2</sup> Mary Lou Lustig, *Privilege and Prerogative: New York's Provincial Elite, 1710-1776* (London: Associated University Presses, 1995), 162-3; and James Corbett David, *Dunmore's New World*, 32-36. For Cadwallader Colden's lieutenant-governorship of New York, see Seymour I. Schwartz, *Cadwallader Colden: A Biography* (New York: Humanity Books, 2013); Alice Mapelsden Key, *Cadwallader Colden: A Representative Eighteenth Century Official* (New York: 1906); and Alfred R. Hoermann, *Cadwallader Colden: A Figure of the American Enlightenment* (Westport, CT.: Greenwood Press, 2002).

his own self-aggrandisement and he was certainly not prepared to be charitable. The New York governorship was the ideal place for a Scottish peer who was seeking colonial riches.

After a brief and relatively agreeable nine months in New York, however, Dunmore was appointed to the governorship of Virginia in 1771. After the death of the popular Norbonne Berkeley, Lord Botetourt, in Virginia, the British government moved Dunmore there. He was replaced in New York by the governor of North Carolina, Sir William Tryon. The British authorities were unquestionably impressed by Tryon's ability to put down the Regulator Movement in North Carolina's backcountry.<sup>3</sup> Dunmore was surprised and bitter about his removal from New York, but he was utterly powerless to prevent it without ending up with no official appointment. The patronage of the Bedfords could not help him: a new ministry was now in place and Dunmore could not rely on the necessary political connections to keep him in his profitable position in New York. He beseeched Lord Hillsborough, the American Secretary of State, that he should be allowed to remain as governor of New York. He claimed that if he were able to stay in what he described as the colony which would 'most powerfully influence the political conduct of the whole continent',<sup>4</sup> he would be the right person in the right place at a critical time in the colonies. When that tactic did not work, he hoped to gain Lord Hillsborough's sympathy by adopting a different argument:

I grant the advantages in point of emolument but the climate is such that it will oblige me to live without my family, which will make my residence in that country where there is little or no society so tiresome that I cannot be certain I should not be able to stay there any time, and therefore it might be more advantageous for me as well as my family that I should remain in a place where there is a harmony between me and the people, and at the same time suits so with my disposition that I cannot forsee anything which may interrupt the design I had in coming to this country at first, but may continue here as long as His Majesty shall judge proper.<sup>5</sup>

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<sup>3</sup> The Earl of Rochford, writing on behalf of Lord Hillsborough, had informed Tryon that his actions against a 'body of lawless Insurgents stiling [*sic*] themselves Regulators' had received 'the King's entire Approbation'. Paul David Nelson, *William Tryon and the Course of Empire: A Life in British Imperial Service* (Chapel Hill: University of North Carolina Press, 1990), 87.

<sup>4</sup> Lord Dunmore to Lord Hillsborough, 9 March 1771, Dunmore Papers, National Archives of Scotland, RH 4/195/3.

<sup>5</sup> Lord Dunmore to Lord Hillsborough, 2 July 1771, TNA, CO 5/154.

While, on the surface, Dunmore's concerns about his political influence and his family's health seem somewhat desperate, they were certainly not unfounded. After all, the last two governors who had taken residence in Virginia, Francis Fauquier and Lord Botetourt, had both died during their respective terms as governor. Dunmore surely would have been aware that the appointment to Virginia might certainly be regarded as a 'death trap'. Dunmore, feeling helpless, used his charms on his appointed successor in an attempt to persuade him to go to Virginia in his place, but Governor Tryon was not prepared to give up on his advantageous promotion. When Tryon arrived unexpectedly in New York, Dunmore was not even there to greet him: instead, he was in New Jersey scouting for land. On the night that Tryon took the oath of office, Dunmore threw a party for the newly appointed governor. After drinking excessively, Dunmore, according to first-hand accounts, vented his frustration at his failure to remain as governor of New York. He called Tryon a coward, hit out at the councillors and then ran into the streets bewailing his fate: 'Damn Virginia, did I ever seek it? Why is it forced upon me? I asked for New York, New York I took and they have robbed me of it without my consent'.<sup>6</sup> In all probability, this account has been embellished, but there are numerous other reports which substantiate Dunmore's propensity for heavy drinking and it is certainly evident, from letters sent to Lord Hillsborough, that Dunmore was distraught at his lack of connections at home.<sup>7</sup> Dunmore's drunken rant contains an important and often overlooked significance: royal governors were powerless to prevent themselves from being appointed to any of the eight royal colonies, especially if they had lost patronage at home. A royal governor, without the necessary support base at home, was little more than a political pawn ready to be moved on the colonial chessboard wherever the British chess master desired.

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<sup>6</sup> 'Entry for 9 July 1771', *Historical Memoirs from 16 March 1763 to 9 July 1776 of William Smith*, ed. William H.W. Sabine (New York: Colburn & Tegg, 1956), 106-7.

<sup>7</sup> See James Corbett David, *Dunmore's New World*, 41.

Despite the lucrative earnings available in New York and despite the gloomy prospect of his health deteriorating in Virginia, Dunmore's cantankerous display after Tryon's inauguration appears particularly odd. Virginia was by far the most prestigious colony to govern and the salary was higher than that in New York. Indeed, the widespread eulogising after the premature deaths of Fauquier and Botetourt, in 1768 and 1770 respectively, suggest that there was a marked respect for royal authority in Virginia. When Fauquier died in the Governor's Palace in Williamsburg, on 3 March 1768, after repeated bouts of illness, most probably from testicular cancer,<sup>8</sup> there was much public mourning within the colony for the loss of a seemingly 'successful' governor. Newspapers of the day captured the general sense of approbation for a governor who judiciously and in an even-handed manner enforced royal policies, but still governed 'much to his own honour, and the ease and satisfaction of the inhabitants'.<sup>9</sup> Contemporaries were quick to record their recognition of Fauquier's abilities and their praise for his administration.<sup>10</sup> Fauquier's popularity was immortalised in the famous words of his 'protégé', Thomas Jefferson, who described him in his autobiography as the

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<sup>8</sup> In a letter to Benjamin Tasker on 30 May 1767, Robert Carter, a prominent Virginian planter and member of the Council, described Fauquier's illness that had debilitated the lieutenant-governor: 'Governor Fauquier hath schirrus Testicles. This Disorder is o'ft mortal. He forgoes the use of spirits, fermented Liquours, and animal food (except small soop [*sic*]).' In Susan Eley Briggs, 'Robert Carter letterbook, 1764-1768' (Unpublished MA thesis, College of William and Mary, 1962), 60.

<sup>9</sup> Rind's *Virginia Gazette*, 3 March 1768, published an obituary that was effusive in its praise of the character and conduct of the deceased governor: 'As a faithful Representative of his Sovereign; he was vigilant in Government, moderate in Power, exemplary in Religion, and merciful where the rigour of Justice could by any means be dispensed with. In the exercise of less public virtues; he was warm in his Attachments, punctual in his Engagements, munificent to Indigence, and in his domestick [*sic*] Connexions truly paternal.'

<sup>10</sup> Robert Carter described Fauquier's administration in glowing terms: 'During his Administration every royal order, which his Sovereign caused to be transmitted here was spirituously and diligently enforced, he was vigilant in government, moderate in power and merciful where the rigours of justice could be dispensed with' Robert Carter to Thomas Bladen, 9 March 1768, 'The Robert Carter Letter Book', 100. Carter wrote an identical appraisal of Fauquier's governorship to the Virginian Governor, Sir Jeffrey Amherst on 9 March 1768, see 'The Robert Carter Letter Book', 106-107. John Blair, who became acting governor of Virginia after Fauquier died, described him 'as a most punctuously diligent man'. Cited in *The Official Paper of Francis Fauquier*, I: 8. James Horrocks, rector of Bruton Parish and president of the College of William and Mary, similarly composed a memorable eulogy that was often quoted in the press of the day: 'On the 3th. Inst. We reciev'd no small Misfortune in the Death of our late Governor, not only a sensible Loss to his particular Friends, amongst whom I had the honor to be numbered, but in my humble Opinion to this Country in general. According to my Judgement, his Administration was conducted with so fair & even a hand between the Prerogative & Authority of our Mother Country, & the Rights and Priveleges [*sic*] of America, that I think he highly merited the Esteem & Affection of the People here, tho' they seemed unwilling to allow them in those Times of Difficulty & Confusion occasion'd by the Stamp Act and Repeal of it'. Cited in *The Official Papers of Francis Fauquier*, I: 8.

‘ablest man who ever filled that office’.<sup>11</sup> Fauquier’s successor, Lord Botetourt, received even more praise for his seemingly benevolent and wise administration when he died after just two years in office in 1770. In his diary, Langdon Carter bemoaned Botetourt’s death as a loss to the colony that was ‘so great to be expressed’.<sup>12</sup> Virginians believed Botetourt was meant to be the gubernatorial saviour of Virginia, who would save the colonists from ministerial tyranny, but his death opened the way for a new tyranny to raise its ugly head. Thomas Jefferson maintained that ‘Lord Bottetourt’s great respectability, his character for integrity, and his general popularity, would have enabled him to embarrass the measures of the patriots exceedingly. His death was, therefore, a fortunate event for the cause of the Revolution’.<sup>13</sup> Botetourt was not just the Virginian saviour, he was also its friend. The statue of Botetourt which was put up in the centre of Williamsburg three years after his death proclaimed him America’s ‘Friend’.<sup>14</sup> His public funeral was not just a celebration of Botetourt’s administration, but was also a celebration of the royal bonds which tied the colony to the mother country.<sup>15</sup> Instead of presiding over a colony that was creating significant strife for the crown’s representative and a colonial political structure which detested the idea and practice of royal governorship, the only major problem facing Dunmore when he entered Williamsburg appears to have been whether he could match the success of his illustrious and beloved predecessors.

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<sup>11</sup> Thomas Jefferson to L.H. Girardin, 15 January 1815, in *The Writings of Thomas Jefferson*, ed. Alfred A. Lipscomb and Albert Ellery Bergh, 19 vols. (Washington D.C.: Issued under the auspices of the Thomas Jefferson memorial association of the United States, 1903-04), XIV: 231-2.

<sup>12</sup> ‘A fine gentleman is dead and truly Noble in his Public character. He, as anecdote says, was picht [*sic*] upon to be the Agent of a dirty tyrannic Ministry; but his virtues resisted such an employment and he became the instrument of a dawning happiness; and had he lived we should have been so: for through his active and exemplary virtue, order everywhere revived out of that confusion that our own dissipative indolence had thrown us into’. *The Diary of Colonel Landon Carter of Sabine Hall, 1752-1778*, ed. Jack P. Greene, 2 vols. (Charlottesville: University of Virginia Press, 1965), 1: 512.

<sup>13</sup> *The Writings of Thomas Jefferson*, X: 330, cited in Louise Dunbar, ‘The Royal Governors in the Middle and Southern Colonies on the Eve of the Revolution’, 238.

<sup>14</sup> The inscription on the statue to the left read: ‘America, behold your Friend! who, leaving his native country, declined those additional honours which were there in store for him, that he might heal your wounds, and restore tranquillity and happiness to this extensive continent. With what zeal and anxiety he pursued these glorious objects, Virginia thus bears her grateful testimony’. Rind’s *Virginia Gazette*, 13 May 1773.

<sup>15</sup> Graham Hood’s depiction of Botetourt’s funeral is particularly striking. See Hood, *The Governor’s Palace in Williamsburg: A Cultural Study* (Williamsburg, VA: Colonial Williamsburg Foundation, 1992), 12-20.

Virginia in 1771 appeared to be a distinctly easier colony to govern than the more unsettled situation in New York. Unfortunately for Lord Dunmore, he fairly soon became one of the most hated figures during the American Revolution. According to Richard Henry Lee, if the British government ‘had searched through the world for a person best to ruin their cause, and procure a union and success for these colonies[,] they could not have found a more complete agent than Lord Dunmore’.<sup>16</sup>

This chapter seeks to explain the gubernatorial system in Virginia and demonstrate how various governors operated within that system during the imperial crisis. In doing so, this chapter will, first, investigate Francis Fauquier’s early governorship from 1758 to 1764 when he faced numerous challenges from the legislative assembly. Second, this chapter will focus on the reaction in Virginia to the Stamp Act in 1765 and 1766 and will examine how well Fauquier coped during this crisis. Third, this chapter will explore Lord Botetourt’s brief spell as governor of Virginia and examine his relationship with the legislature and the colonial elite. Fourth, it will examine Lord Dunmore’s disastrous spell as governor.

## I

### *Francis Fauquier and the Problems of Governance, 1758-1764*

Francis Fauquier’s governorship was continuously beset with difficulties from within the colony and from outside. His governorship was a constant struggle: he faced insurmountable problems trying to supply Virginian men and money to fight the Seven Years’ War and he worked hard, with little success, to defend the frontier effectively from constant Native American raids. He created uproar among the Virginian clergy by approving the Two Penny Act and he made an enemy out of British merchants and faced the wrath of the Board of Trade

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<sup>16</sup> Richard Henry Lee to Catherine McCauley, 29 November 1775, *Letters of Richard Henry Lee*, ed. James Curtis Ballagh, 2 vols. (New York: 1911-1914), I: 221.

by permitting the issuance of the paper money to alleviate economic suffering in the colony in 1764. Fauquier also laboured to keep control of the colony during the Stamp Act crisis. All royal governors, especially those who were not native-born colonists, entered a society which was both unfamiliar and foreign. When Francis Fauquier arrived in Virginia in 1758, after a lengthy voyage from England, he frankly commented that he felt that he was ‘an utter stranger to the whole colony’.<sup>17</sup> The royal governor in Virginia was entering a society and a political framework that neither had the necessary support base for him to function properly nor did he possess the means by which he could build up that support base once he had arrived.

Between 1758 and 1766, Fauquier was out of favour with the Board of Trade because he was unable to comply with the home government’s direction to him to separate the important offices of Treasurer of the colony and Speaker of the House of Burgesses.<sup>18</sup> From 1738, until his death in 1766, John Robinson had filled the twin posts of Treasurer and Speaker, a custom that had begun in 1723 in Virginia. By occupying these two posts for so long and because of his personal popularity, Robinson was one of the most powerful political figures in the colony. Throughout Dinwiddie’s tenure as governor, he was at odds with the House of Burgesses over a number of issues ranging from the pistole fee to the issue of supplies during the Seven Years’ War, and Dinwiddie realised that he could not perform effectively with Robinson as Speaker-Treasurer. When Dinwiddie returned to London in 1758, he laid the whole blame for his unsuccessful governorship on Robinson and the power he had accrued because of the nature of his dual appointment. The Board of Trade set out to change this procedure and instructed Fauquier to separate the two positions, thus ending Robinson’s dominance. It was an attempt by the Board to reassert royal authority within the colony. Repeatedly over this eight year

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<sup>17</sup> Francis Fauquier to the Board of Trade, 31 July 1781, *Fauquier Papers*, II: 782.

<sup>18</sup> The controversial episode perfectly symbolises the difficult predicament in which a royal governor was placed in while he governed a royal colony. For a fuller examination of this episode, see Jack P. Greene, ‘The Attempt to Separate the Offices of Speaker and Treasurer in Virginia, 1758-66: An Incident in Imperial Conflict’, *Virginia Magazine of History and Biography*, 71 (1963): 11-18.



period, however, Fauquier refused to enforce the Board of Trade's directive to separate these two posts. The Board often reprimanded Fauquier for his failure to enforce its instruction.<sup>19</sup>

From the outset, Fauquier clearly believed he had some room for manoeuvre when he was meant to be enforcing this instruction. Indeed, Fauquier argued this very point in a reply to a chastising letter he received from the Board of Trade, when he made it clear that 'it was not made an Instruction, because if it had it could not be departed from; and I understood I had a Latitude given to me to do as well as I could in this delicate affair'. Fauquier's belief that he could exercise some flexibility with regard to this instruction must have risen from when he attended the Board of Trade in London on 9 March before he sailed for Virginia. Two days before Dinwiddie had appeared before the Board and had laid the entire blame for his governorship on Robinson and his excessively powerful position. Dinwiddie 'stated to their Lordships the improper practice, which the House of Burgesses, there has of little years fallen into, by nominating their Speaker to be treasurer of the country duties and revenue, and the inconvenience resulting from such practice, and proposed that some directions should be given to the Lieutenant Governor now going out'.<sup>20</sup> Surely it does not take much to infer that Fauquier was aware that Dinwiddie was the author of this instruction. When Fauquier attended the Board of Trade 'his lordships having acquainted him with the late lieutenant Governor of the impropriety of the officers of the speaker of the House of Burgesses and Treasurer being united in the same person, it was recommended to him to use the endeavours, and to take all such measures, as he should judge consistent with the good of his Majesty's service to put a stop to

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<sup>19</sup> 'We are concerned to find that you are of opinion that the practice of appointing the Speaker of the House of Burgesses to be Treasurer of the Revenues cannot be set aside without prejudice to his Majesty's Service and obstruction of your government, we are still of opinion, that this practice, however warranted [*sic*] by long usage or the acquiescence of the Crown in the Acts which have been pass'd since 1738, for uniting those Offices, is both irregular and unconstitutional, and that a governor ought not to give his assent to any such Acts for the future, if it can be refused without manifest prejudice to his Majesty's service.' Board of Trade to Francis Fauquier, 18 Jun 1759, *Fauquier Papers* 1: 155.

<sup>20</sup> *Journals of the Commissioners for Trade and Plantations, 1704-1782*, 14 vols. (London: HMSO, 1920-1938), XI: 356.

a practice, which appeared to them highly improper, liable to great inconveniences and prejudicial to his Majesty's service'.<sup>21</sup> The language recorded here is particularly noteworthy: the Board did not make the separation an 'official' instruction, but 'recommended' to the governor that he separates the positions by using 'endeavours' and 'all such measures'. Fauquier knew he had some breathing space when he arrived in the colony to implement this suggestion. Exploring Fauquier's reasons for his actions provides an important insight into the system of governorship in Virginia and this incident also helps to illuminate the tactics to which royal governors often had to resort in order to perform their duties as required by the home authorities because of the power of the colonial legislative assemblies.

Fauquier refused to comply with the Board's directive because he feared that it would precipitate a crisis which would endanger harmonious relations between Britain and Virginia. Fauquier was well aware that 'this delicate' affair, if badly managed, could affect his entire administration. Context is vital in understanding Fauquier's actions: 'the Eyes of the Country were upon me on my first Arrival here: all anxious for the fate of their Treasurer'.<sup>22</sup> Knowing that many of the colonial elite were anxiously waiting for what he would do with John Robinson, Fauquier shrewdly 'sounded many of the principal People of this Country' to ascertain what the best course of action should be. Rather than blindly enforcing his authority, Fauquier, in what became common during his entire governorship, consulted the Council and other prominent Virginians, in order to reach a conclusion which had much support in the colony. This consensual style of governance enabled Fauquier to discover that Robinson was 'the most popular Man in the Country: beloved by the Gentleman, and the Idol of the people'; he was quite simply 'the Darling of the Country'.<sup>23</sup> John Robinson was undoubtedly the most

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<sup>21</sup> Ibid., XI: 367.

<sup>22</sup> Francis Fauquier to the Board of Trade, *Fauquier Papers*, II: 782.

<sup>23</sup> Francis Fauquier to the Board of Trade, 28 June 1758, *ibid.*, I: 43; Francis Fauquier to the Board of Trade, 12 May 1761, *ibid.*, II: 525. See 'The Correspondence of William Byrd III' in *The Correspondence of The Three William Byrds of Westover, Virginia, 1684-1776*, ed. Marion Tinling, 2 vols. (Charlottesville: The University of Virginia Press, 1977), II: 611.

powerful native-born Virginian in the colony during this period and, it can be argued, he was even more powerful than the lieutenant-governor in some respects. His responsibilities as treasurer included receiving all revenues collected under provincial laws and distributing the money when ordered to by the House or the lieutenant-governor. He received a commission of 5 per cent on all revenues collected which gave him considerable wealth. While Robinson held a powerful position in itself, the very nature of his long tenure of the position together with his popularity allowed him to build a substantial support base and to foster a network of friends that made him a very powerful figure. Indeed, it has been shown that when John Robinson died, many of the most prominent men in Virginia owed him money up to a total of £130,000. Thus, many of the most important Virginians were indebted to Robinson, which he surely used to his advantage.

Clearly, Fauquier was impressed by Robinson and knew that he could work with him. Repeatedly, he described Robinson in glowing terms to the Board: Robinson 'is a Man of Worth, Probity and Honor', and his popularity 'he well deserves ... for his Great Integrity, assiduity, and ability in Business'.<sup>24</sup> While Fauquier's sentiments could be interpreted simply as a way of convincing the Board that Robinson merited the position, which was surely half the reason, it does seem that Robinson and Fauquier actually gelled as a partnership. This was a result of the personable nature of Fauquier's leadership style. Fauquier 'went directly to himself (as your Lordships may remember you gave me leave so to do) and in the frankest Manner talk'd to him of it'. While Robinson explained that it was a result of 'an Old Grudge' of Dinwiddie's, he 'was highly pleased with the open Manner in which I dealt with Him. And I am told by those who know his Character that I have attach'd him to me in the strongest Manner, by the Openness of my Behaviour.'<sup>25</sup> Fauquier's bold and candid meeting showed

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<sup>24</sup> *Fauquier Papers*, I: 205.

<sup>25</sup> Francis Fauquier to the Board of Trade, 28 June 1758, *ibid.*, I: 44.

Fauquier ingratiating himself with Robinson, and thus highlights the weakness of his position if he felt compelled to curry favour with a prominent colonist. It surely must also be concluded that Fauquier foresaw the great benefits for his governorship if he were to befriend and support Robinson, rather than making an enemy of him and provoking endless difficulties. He knew, as he relayed back to the Board, that if he were to separate the two offices, he ‘apprehend[ed] bad consequences which as a Man of Integrity charged with the Care of his Majesties Affairs I think it incumbent on me to represent your honourable Board’.<sup>26</sup> By using the political conditions of his day to his benefit, and demonstrating that he was prepared to face the wrath of the Board of Trade, in order to preserve royal government and allow him to fulfil his larger priorities rather than settling an old grudge for his predecessor, Fauquier exhibited an ability to make things work which was rare in other royal governors. With the help of Robinson, Fauquier was able to secure supplies for the war. He tried to vindicate his decision to the Board of Trade by insisting that if he had not retained Robinson in his place, he would not have been able to promote British imperial interests.<sup>27</sup>

Despite this effective use of political skills, however, this episode demonstrates that Fauquier was essentially a weak executive, in that he failed to implement a directive from Britain, appeared to run scared of confronting a major figure in the colony, and complied too easily with the wishes of the council and other advisers. Greene used this ‘incident in imperial conflict’ to demonstrate the ‘enormous power’ of the Virginia House of Burgesses. While Greene did pay tribute to Fauquier’s political ability, he maintained that the incident proved that it was impossible to govern Virginia without the active cooperation of the Burgesses.<sup>28</sup>

The incident proves that the House of Burgesses was powerful and it was impossible to govern

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<sup>26</sup> Francis Fauquier to the Board of Trade, 10 April 1759, *ibid.*, I: 204.

<sup>27</sup> ‘Let me add my lords that I believe I owe the Supply I have obtained this Year of Men and Money to the strong Support of himself and his Friends. for [*sic*] I am afraid the Disposition of the House in general was against increasing the Debt of the Colony’. *Ibid.*, I: 205.

<sup>28</sup> Jack P. Greene, ‘The Attempt to Separate the Offices of Speaker and Treasurer in Virginia, 1758-66: An Incident in Imperial Conflict’, 11-18.

without its agreement. It also revealed the inherent weakness of Fauquier's position. While this episode does undoubtedly show that the royal governor's position was inherently weak, compared to the burgeoning powers of the House of Burgesses, as Greene has maintained, Fauquier's political deftness and man-management skills did enable him to transform a potentially explosive situation into one that benefited royal government and his own position as governor. As a result of Fauquier's actions and his friendship with Robinson, he could, in the main, establish cordial relations with the House of Burgesses; a position he welcomed eagerly, even if it came at the cost of strained relations with the Board of Trade. Because of Fauquier's handling of this initial crisis, it meant that, compared to other governors, he had a far smoother journey as governor thereafter, in terms of the relations he had with the local legislature. Indeed, when Robinson died in 1766, Fauquier did not hide the fact that he had lost not just a personal friend, but someone with whom he could work harmoniously in managing the colony.<sup>29</sup>

Fauquier's actions encapsulate the fundamental problem facing every royal governor in Virginia. Governing a colony without any institutionalised support base, or having the means to build up a party of supporters, a royal governor had to improvise if he was to be effective in his position. While Fauquier undoubtedly benefited from this relationship with the House of Burgesses, it often came at the cost of tense relations with the British government and other royal institutions. Fauquier's entire philosophy of maintaining a successful governorship seems to have been based on the premise that he needed to keep the metropolitan officials at arms-length in order to have a generally agreeable tenure as governor and maintain the small amount of authority that still resided with the royal governor in Virginia. Although it would be going

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<sup>29</sup> 'This event would have been a sensible Loss at any time but more particularly so now, as I had promised myself great Assistance from him in the next Session of Assembly to quiet the Minds of the People and bring him to a just and proper Sense of their Duty. He was a man of Integrity and Ability and one for whom I had long entertain'd a great Esteem'. Francis Fauquier to the Board of Trade, 11 May 1766, *ibid.*, III: 1359.

too far to claim that in order to be effective in his position, a royal governor ought to side with the Virginians in every crisis in the colony, it does appear, in Fauquier's case, that he had a deep attachment to the concerns and problems facing Virginians and that he had a genuine desire to resolve the disputes fairly, even if it that meant he faced the wrath of his metropolitan masters. Without the required patronage at their disposal, royal governors had to work within the local political conditions they faced in order to implement royal policy effectively. Thus, the system of governorship was inherently weak in Virginia, but if a governor was able to improvise and compromise, then it was possible to work effectively within this weak system.

Fauquier signed the Two Penny Acts into law in 1758, an act passed to provide temporary relief to Virginians who had suffered a poor tobacco crop that year. The poor yield from the harvest meant that Virginians would be hard pressed to pay taxes at the expected rate (including those to Church of England clergy). His concession enabled the colonists to pay their taxes at a reasonable market rate. Fauquier did not add a suspending clause to the bill because he believed that would have been counterproductive and would have made the Act null and void. He justified his actions to the Board by stressing that the bill was a 'temporary law' to ease the burden on the colonists and by pointing out that there was a precedent in since Lieutenant-Governor Dinwiddie had signed a similar law in 1755. Fauquier, moreover, made it plain that he was in no position to stop the bill: 'the Council and the House of Burgesses were almost unanimous in their passing it; And I conceived it would be a very wrong Step for me to take who was an entire Stranger to the Distresses of the Country, to set my Face against the whole Colony in refusing a Bill which I had a precedent for Passing'.<sup>30</sup> Although he had to deal with a revolt by the Anglican clergy, who protested at the reductions to their income and who believed that the very issue of church establishment was at stake, Fauquier was well aware that

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<sup>30</sup> Francis Fauquier to the Board of Trade, 5 January 1759, *Fauquier Papers*, I: 144. See Richard Morton, *Colonial Virginia*, II: 751-800, for the best discussion of the Two Penny Acts' controversy.

if he had refused to sign the bill he would despair ‘of ever gaining any Influence either in the Council or House of Burgesses’.<sup>31</sup> After the Virginian clergy remonstrated to the Board of Trade in 1759 and used Fauquier’s disregard for the sixteenth article of his Instructions to support their complaint,<sup>32</sup> Fauquier received a rebuke from the Board of Trade for not adding a suspending clause.<sup>33</sup> The veto of the bill by the Board, however, had no effect as it arrived too late to affect the 1758 collection of taxes. Fauquier was undoubtedly prepared to face the wrath of the metropolitan authorities if it meant that he could alleviate the economic distress and improve social stability in the colony, and could establish better relations with the House of Burgesses.

This does not mean, however, that Fauquier was able to solve every crisis by ignoring the instructions sent to him from Britain and by responding to pressure from the House of Burgesses. Indeed, from the ecclesiastical protests in 1758-9 to the passing of the Currency Act in 1764, Fauquier had to grapple unsolicited with the crisis over the increased use of paper money that was more symptomatic of the inherent problems of colonial government.<sup>34</sup> Because of the depressed tobacco markets, from the mid-1750s, the cost of war, and the unscrupulous behaviour of the treasurer, John Robinson,<sup>35</sup> there was a lack of coinage within the colony. British merchants demanded that, with the increased circulation of paper money in the colony, these treasury notes should not be made legal tender in payment of debts to them. Because of

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<sup>31</sup> Francis Fauquier to the Board of Trade, 5 January 1759, *Fauquier Papers*, I: 144-5. The so called ‘Parsons’ Cause’ affected Fauquier quite deeply. He advised the Board of Trade that his position in the colony would have been advantageous if it were not for the continuous opposition of the clergy.

<sup>32</sup> ‘The Humble Representation of the Clergy of the Church of England in His Majesty’s Colony and Dominion of Virginia’, TNA, CO 5/1329.

<sup>33</sup> ‘We do therefore strictly command and require you for the future, upon pain of Our highest Displeasure and of being recall’d from the government of Our said Colony’, punctually to observe and obey the several Directions contained in the 16<sup>th</sup> Article of Our said Instructions’, Additional Instruction to Francis Fauquier, 21 September 1759, *Fauquier Papers*, II: 249.

<sup>34</sup> For the best discussion of the paper currency issue and the reason for the Currency Act in 1764, see Joseph Albert Ernst, ‘Genesis of the Currency Act of 1764: Virginia Paper Money and the Protection of British Investments’, *WMQ*, 3<sup>rd</sup> Series, 22 (1965), 33-74.

<sup>35</sup> John Robinson had mishandled public funds by giving out loans totalling £100,000 from the treasury to his friends.

the general insolvency in the colony, the circulation of paper money had increased and so did the rate of exchange with the British pound. In 1749, the House of Burgesses had passed an Act fixing the rate of exchange for all sterling debts. The merchants, however, were worried that the prevalence of paper money in the colony and the consequent variable rates of exchange would mean there would be little security for the repayment of the debts owed to them. After they had expressed their concerns to the Board of Trade, Fauquier was sent additional instructions in 1759 to address the situation ‘most urgently’. Fauquier, always aware of the delicate position in the colony, simply absolved himself from any responsibility and diplomatically forwarded these instructions to the House.<sup>36</sup>

Fauquier was not a supporter of paper currency, but he was aware that there was no alternative. He tried to reason with the Board of Trade that ‘I do not approve [of paper money] ... and yet I do not see how it was to be avoided, as the Country is obliged to be at this Expence [*sic*]’ because the colony is ‘drain’d at present by money to be sent to New York’.<sup>37</sup> While he did not believe in the use of paper money in principle, Fauquier argued that expediency dictated that paper money was the only option for the colonists and he maintained that the merchants’ fears were ‘groundless’. Indeed, Fauquier accused the Board of double standards.<sup>38</sup> He even disputed, a couple of years later, that the rise in the exchange rates was purely down to the increased usage of paper money. He maintained that ‘I am entirely of Opinion there is a much more fundamental cause for this Rise, to wit, the Increase of the Imports’.<sup>39</sup> Despite his ‘given’ reasons, there can be no doubt that Fauquier was anxious that this controversy should not

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<sup>36</sup> The Instructions asked the House to provide ‘for the security of the merchants of Great Britain, in the recovery of sterling debts due to them from this Colony from any loss they may sustain from our unavoidable emissions of paper money’. *Journals of the House of Burgesses, 1758-1761*, 134.

<sup>37</sup> Francis Fauquier to the Board of Trade, 5 January 1759, *Fauquier Papers*, II: 145.

<sup>38</sup> ‘If great Britain is obliged to borrow Money on Loans for the current Service, and either can not, or it is not thought expedient, She should raise the Money within the Year, how can it be expected from the Colony, And the Emissions of paper is a Means of borrowing Money without Int[erest] and a Tax is always laid up by ways of sinking Fund for the Redemption of every Emission’. In *ibid.*, I: 145.

<sup>39</sup> Francis Fauquier to the Board of Trade, 3 November 1762, *Fauquier Papers*, II: 818.



impede the promised Supply Bill that was about to be passed by the House in 1759, which would provide valuable resources for the prosecution of the war. The House rejected the Board's instructions in 1759 and what follows was a four year stand-off between the Board, which attempted to protect the Glasgow merchants' interests, and the House of Burgesses, which refused to comply with the Board's wishes.

Fauquier was caught in between these two competing interests and struggled to maintain his position with any success. He became embroiled in a debate with local merchants and councillors who were anxious to protect their own mercantile interests and he was severely rebuked by the Board of Trade for not enforcing his instructions straightaway without consulting the House of Burgesses.<sup>40</sup> His correspondence suggests he believed there was a conspiracy against him among some members of the council.<sup>41</sup> Indeed, Fauquier was engaged in a very public debate with Richard Corbin, a Council member and a close ally of the merchants, that was published in the *Virginia Gazette*, but has not survived. It appears they argued over the reason why the exchange rates fluctuated so much: Fauquier cited the volume of imports coming into the colony and Corbin blamed the increased use of paper money.<sup>42</sup> Until parliament intervened and passed the Currency Act in 1764, Fauquier struggled to control a volatile situation. Although he expressed privately that the House would accept the Board's instructions, he was well aware that he needed the House's support in order to finance a

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<sup>40</sup> 'This appears to us to have been the Obvious tendency of your Conduct, upon this Occasion, and what has happen'd since confirms us in that Opinion, for tho' several Acts, for creating paper Bills, of Credit have been passed, it does not appear, that you have in any one instance used your Endeavours to carry those Orders into Execution, or have insisted upon the Amendment, which the Instruction Recommends, tho' it was evident that, that every Subsequent Measure of this Kind, must in it's consequences aggravate the injury which the Merchants complained of .... In this view of your Conduct, it is Our indispensable Duty to pass this Censure upon it, hoping that you will thereby be brought to a Sense of the Duty you owe to His Majesty, and Obedience due to His Commands, and that you will leave no means untried to procure for the Merchants that relief and Satisfaction, which their Case appears to require, and which has been so properly recommended by His late Majesty.' Board of Trade to Francis Fauquier, 7 February 1763, *Fauquier Papers*, II: 909-910.

<sup>41</sup> Fauquier, in a letter to the Governor of Virginia, Sir Jeffrey Amherst, makes mention, rather cryptically, of 'Intrigues in relation to the Emission of more paper money'. See Fauquier to Jeffrey Amherst, 25 September 1762, *Fauquier Papers*, II: 803.

<sup>42</sup> See Joseph Albert Ernst, 'Genesis of the Currency Act of 1764', 59.

regiment for the ongoing war, and so he was not prepared to counter the House's wishes. In walking this tightrope, Fauquier faced the wrath of the Board of Trade and lost friends in the council.

Throughout Fauquier's administration, he was repeatedly censured and rebuked by the Board of Trade for not enforcing the government's colonial policy or for undertaking actions that did not have the pre-approval of the imperial government. Indeed, a brief survey of Fauquier's actions during the decade he was in charge suggests that, as a royal governor, he was essentially a failure. He was an inadequate, weak and ineffective governor who was unable to enforce colonial policy, who complied too easily to the demands of the powerful House of Burgesses and who lacked the willpower to make important decisions. Indeed, Fauquier's entire political philosophy of successful governorship seems to have been based on the premise that he needed to keep the metropolitan officials at arms-length in order to have a generally agreeable tenure as governor and maintain the small amount of authority that still resided with the royal government in the royal colony. Although it would be going too far to claim that Fauquier sided with the Virginians in every crisis in the colony, it does appear that Fauquier had a deep attachment to the concerns and problems facing Virginians and that he had a genuine desire to resolve the situations fairly, even if it meant he faced the wrath of the metropolitan centre.

## II

*Francis Fauquier and the Stamp Act Crisis in Virginia, 1765-1766*

Francis Fauquier, as other royal governors did in other colonies, suffered under the enforcement of the Stamp Act in 1765-66. Just as Governor Francis Bernard in Massachusetts and Lieutenant-Governor Cadwallader Colden in New York experienced immense difficulties in trying to calm the colonial uproar and professed outrage at British imperial policy, so did Francis Fauquier despair of his ability to control a virtually uncontrollable situation. While Colden and Bernard became enmeshed in the symbolism of colonial tyranny during this period, and they were certainly not exempt from personal attack, Francis Fauquier seems never to have been included in the rhetoric of the pamphlets or speeches of the day, or personally attacked or to have become involved in the revolutionary rhetoric.<sup>43</sup> On the one hand, of course, this could simply be explained by the fact that such was the perception of Fauquier's weak and ineffective position that Virginians did not feel the need to attack the governor. On the other hand, however, it does seem strange that in the other most important royal colonies, governors were condemned simply because they represented royal authority. Indeed, in the standard histories of the Stamp Act, Fauquier does not get much attention, other than in a few references about

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<sup>43</sup> For example, an anonymous letter to the acting governor of New York, Cadwallader Colden, on 1 November 1765, is generally representative of the public perception of him during the Stamp Act: 'The People of this City and Province of New York, have been inform'd that you bound yourself under an Oath to be the Chief Murderer of their Rights and Privileges, by acting as an Enemy to your King and Country to Liberty and Mankind in the Inforcement of the Stamp-Act which we are unanimously determined shall never take Place among us, so long as a Man has Life to defend his injured Country. . . We can with certainty assure you of your Fate if you do not this Night Solemnly make Oath before a Magistrate, and publish to The People, that you never will, directly nor indirectly, by any Act of yours or any Person under your Influence, endeavour to introduce or execute the Stamp-Act, or any Part of it, that you will to the utmost of your Power prevent its taking Effect here, and endeavour to obtain a Repeal of it in England. So help you God. We have heard of your Design or Menace to fire upon the Town, in Case of Disturbance, but assure yourself, that, if you dare to Perpetrate any Such murderous Act, you'll bring your grey Hairs with Sorrow to the Grave. You'll die a martir [sic] to your own villainy, and be hanged, like Porteis upon a Sign Post, as a memento to all wicked Governors.' Cited in F.L. Engleman, 'Cadwallader Colden and the New York Stamp Act Riots', *The William and Mary Quarterly*, 10 (1953), 561. The letter was representative of the continuous intimidation and general violence committed by extra-legislative groups in New York against Colden during his several tenures as governor: he was burned in effigy several times, his house was ransacked and his coach was attacked; Colden was a figure of near universal hatred in the colony. See Alice M. Keys, *Cadwallader Colden: A Representative Eighteenth Century Official* (New York: Columbia University Press, 1906); Alfred R. Hoermann, *Cadwallader Colden: A Figure in the American Enlightenment* (West Port, Greenwood Press, 2002); and Joseph S. Tiedemann, *Reluctant Revolutionaries: New York City and the Road to Independence, 1763-1776* (London: Cornell University Press, 1997). In Massachusetts, the lieutenant-governor, Thomas Hutchinson's house was ransacked and his property was destroyed. He largely bore the personal resentment for the Stamp Act. See, Edmund S. Morgan, 'Thomas Hutchinson and the Stamp Act', *New England Quarterly*, 21 (1948), 459-492.

him being the most important source for Patrick Henry's Stamp Act Resolutions.<sup>44</sup> Some historians have even argued that Fauquier was more concerned with frontier activities rather than the Stamp Act because his correspondence includes more letters concerning confrontations between Virginians and Native Americans than reports about the Stamp Act and the unrest in Virginia.<sup>45</sup>

The Stamp Act, which was passed by the Westminster Parliament on 22 March 1765, was an internal duty on almost every piece of printed paper that Americans used, including legal documents, licenses and newspapers. The British government hoped that the money raised by the tax would be used to pay for the British defence of the American colonies near the Appalachian Mountains.<sup>46</sup> Although the actual cost of the duty was relatively small in comparison with other duties of the day, a considerable number of Americans protested the principle that they should pay taxes that had the direct purpose of raising money and not to regulate commerce. They also protested the fact that the Westminster Parliament imposed a tax on the American colonies without prior consultation with the colonial legislatures and the fact that Americans had to accept a tax from a legislative body in which they were not represented.

Virginians began to protest against the Stamp Act as soon as rumours circulated of George Grenville's proposals in 1764. A letter from London was published in the *Virginia Gazette* which stated that 'You will soon have a parcel of Myrmedonian ravens, who will feed upon and rip open your very vitals, such as Officers of Stamp Duties .... The Ministry are determined to make you pay for the Peace which you like so well'.<sup>47</sup> When the legislature's

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<sup>44</sup> See Edmund S. and Helen M. Morgan, *The Stamp Act Crisis: Prologue to Revolution* (Chapel Hill: University of North Carolina, 1953), 92-123.. For Patrick Henry's resolutions, see letter to Board of Trade, 5 June 1765, *Fauquier Papers*, III: 1252-3.

<sup>45</sup> For examples of letters concerning frontier activities, see Francis Fauquier to Board of Trade, 14 June 1765; Fauquier to the Earl of Halifax, 14 June 1765; Fauquier to Board of Trade, 1 August 1765; in *Papers*, III:1257, 1258, 1265-6. Fauquier was trying to avert a war between the Overhill Cherokees and the settlers of the Blue Ridge Mountains.

<sup>46</sup> Edmund S. and Helen M. Morgan, *The Stamp Act Crisis*, 54-72.

<sup>47</sup> *Virginia Gazette*, 27 April 1764.

standing Committee of Correspondence met on 15 June 1764, with members from both the Council and the House of Burgesses present, they wrote a letter to their London agent, Edward Montague, stating that ‘the colony is much alarmed at the Attempt in Parliament to lay a Duty’. They instructed Montague to ‘oppose this with all his Influence, & as far as he may venture insist on the Injustice of laying any Duties on us & particularly taxing the internal Trade of the Colony without their Consent’.<sup>48</sup> Virginians acknowledged the right of the Westminster Parliament to make laws concerning trade and set external custom duties, but they protested that ‘no Subjects of the King of great Britain can be justly made subservient to Laws without either their personal Consent, or their Consent by their representatives’.<sup>49</sup>

Whereas in 1764 Virginians protested against the imposition of an internal tax, by 1765, their hostility to it had hardened. Edmund Pendleton wrote to James Madison on 17 April 1765 that ‘the House of Commons have resolved and ordered in a bill to establish a stamp duty, by which every kind of business transacted on paper is taxed, supposed to amount to £50,000 sterling a year on this colony. Poor America!’<sup>50</sup> In other words, Virginians disliked the duty, but had not yet decided to oppose it. By May 1765, however, the Burgesses were ready to defy Parliament. On 29 May, George Johnstone, a representative from Fairfax County, moved that the House should ‘consider the steps necessary to be taken in consequence’ of the Stamp Act. After seconding the motion, and the House agreeing approving of it, Patrick Henry moved his Virginia Resolves. There is an historical debate as to how many resolutions were in Henry’s original motion.<sup>51</sup> There are four Resolves in the journal of the House, but Francis Fauquier informed the Board of Trade that Henry had proposed 5 resolutions, but only four passed the

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<sup>48</sup> William G. Stanard, ed., ‘Proceedings of the Virginia Committee of Correspondence, 1759- 67’, *The Virginia Magazine of History and Biography*, 12 (1904-5), 5-7.

<sup>49</sup> J.A. Leo Lamay, ‘John Mercer and the Stamp Act in Virginia, 1764-1765’, *The Virginia Magazine of History and Biography*, 91 (1983), 5.

<sup>50</sup> Edmund Pendleton to James Madison, 17 April 1765, *Papers of Edmund Pendleton, 1734-1803*, ed. David John Mays, 2 vols. (Charlottesville, Va.: The Virginia Historical Society, 1967), I: 20.

<sup>51</sup> Edmund S. and Helen M. Morgan, *The Stamp Act Crisis*, 94-98.

House. The Resolutions that did pass the House on 30 May 1765 placed the House on a collision course with Westminster:

*Resolved*, that the first adventurers and settlers of His Majesty's colony and dominion of Virginia brought with them and transmitted to their posterity, and all other His Majesty's subjects since inhabiting in this His Majesty's said colony, all the liberties, privileges, franchises, and immunities that have at any time been held, enjoyed, and possessed by the people of Great Britain.

*Resolved*, that by two royal charters, granted by King James I, the colonists aforesaid are declared entitled to all liberties, privileges, and immunities of denizens and natural subjects to all intents and purposes as if they had been abiding and born within the Realm of England.

*Resolved*, that the taxation of the people by themselves, or by persons chosen by themselves to represent them, who can only know what taxes the people are able to bear, or the easiest method of raising them, and must themselves be affected by every tax laid on the people, is the only security against a burdensome taxation, and the distinguishing characteristic of British freedom, without which the ancient constitution cannot exist.

*Resolved*, that His Majesty's liege people of this his most ancient and loyal colony have without interruption enjoyed the inestimable right of being governed by such laws, respecting their internal policy and taxation, as are derived from their own consent, with the approbation of their sovereign, or his substitute; and that the same has never been forfeited or yielded up, but has been constantly recognized by the kings and people of Great Britain.<sup>52</sup>

These Resolves are centred on the argument that the Westminster government do not have the right to impose an internal tax on the colony without the colonists' consent. The 'distinguishing characteristic of British freedom' was the fact that the people's own representatives in their legislative assemblies were best placed to tax the people in order to prevent them being subject to unjust and 'burdensome taxation'. Although the House repealed the Fifth Resolution, which stated that the 'General Assembly of this Colony have the *only and exclusive* Right and Power to lay Taxes and Impositions upon the inhabitants of this Colony', the same argument is implicit in the remaining four Resolves. Francis Fauquier was placed in a difficult predicament.

Fauquier attempted to defuse this potentially volatile situation. He advised the Board of Trade that the opposition to the Stamp Act was simply 'rash heat', that the 'Speaker, the King's Attorney and Mr Wythe' were 'overpowered by the Young, hot and Giddy members', led by a Mr Henry a young Lawyer' who used 'very Indecent language'.<sup>53</sup> Despite the fact that

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<sup>52</sup> *JHB, 1761-1765.*

<sup>53</sup> Francis Fauquier to the Board of Trade, 5 June 1765, *Fauquier Papers*, III: 1250.

he included Henry's resolutions, which claimed the exclusive right of raising internal taxes on Virginians, Fauquier did not believe that it was a cause for serious alarm, for he wrote in the same letter: 'so that I hope I am authorised in saying, there is cause at least to doubt, whether this would have been the Sense of the Colony, if more of their Representatives had done their Duty by attending to the end of the Session'.<sup>54</sup> While it is possible, as certain historians have done, to excuse Fauquier's interpretation by claiming that Fauquier did not want to alarm the Board of Trade, it does seem Fauquier was a little too trusting of the innate loyalties of Virginians to the British crown.<sup>55</sup> Fauquier was definitely more prudent than Francis Bernard, however, who sent disquieting reports of colonial unrest which had a considerable impact on the government's reaction and the decision to support eventual repeal.<sup>56</sup> Indeed, Bernard actually claimed on 15 August 1765 that 'two or three months ago I thought that this people would submit to the Stamp Act without actual opposition .... But the publishing of the Virginia Resolves proved an alarm bell to the disaffected'.<sup>57</sup> In later months, Fauquier began to realise that his reading of the opposition to the Stamp Act was a misjudgement. After numerous protests in the colony and an attack on the Stamp Distributor, Mercer, he came to realise that the protests did not originate simply because a minority of representatives had taken advantage of a poorly attended House of Burgesses.<sup>58</sup>

Fauquier publicly stepped in to prevent widespread disorder in the colony. He was optimistic that 'we shall weather the Storm which seems ready to burst over the northern colonies'. The Stamp Act was the main topic of conversation in the colony and once it became known that Colonel George Mercer accepted the position as stamp distributor, resentment

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<sup>54</sup> Ibid.

<sup>55</sup> Nellie Norkus, 'Francis Fauquier, lieutenant-governor of Virginia, 1758-1768', 428.

<sup>56</sup> See Colin Nicholson, *Infamous Governor*, 139-140.

<sup>57</sup> Francis Bernard to the Earl of Halifax, 15 August 1765, TNA, CO5/891/270-274.

<sup>58</sup> 'At the time the Resolutions were passed in a very thin House, I hoped a fuller house would have quashed them ... I fear I was mistaken in that point'. Francis Fauquier to Henry Seymour Conway, 11 December 1765, *Fauquier Papers*, III: 1317.

stirred in the backcountry where effigies of Mercer were made and defaced. In October 1765, Fauquier waited nervously for Mercer's impending arrival and he hoped that 'the Winds would detain him till the Tryals [*sic*] were over, and the Town [Williamsburg] rid of that Class of People who attend on that Occasion'.<sup>59</sup> Unfortunately for Fauquier, Mercer arrived in Williamsburg as expected on 30 October, two days before the Stamp Act was meant to be put into effect. When a mob assembled to meet Mercer arriving in the colony, and was purportedly ready 'to destroy all Stamp'd papers' (as Fauquier relayed back to the Board of Trade), Fauquier had to intervene to prevent any harm coming to Mercer. Fauquier made an appearance at a coffee house in an area of Williamsburg called the Exchange, 'where all money business is transacted'. He wrote to the Board of Trade that 'My particular Reason for going then was, that I might be an Eye witness of what did really [*sic*] pass'.<sup>60</sup> Fauquier later informed the Board that 'a Mob' which was 'chiefly if not altogether composed of Gentlemen of Property in the Colony' and 'Merchants of the Country, whether English[,] Scotch, or Virginians', congregated outside Mercer's residence. At the agreed signal of 'One and all' being shouted, this mob sought out Colonel Mercer and 'demanded of him an Answer whether he would resign or act in his Office as Distributor of the Stamps'.<sup>61</sup> Mercer replied that he would give an answer at 10 o'clock on Friday morning, but this did not satisfy the waiting horde of people and they followed him to the coffee house, where Fauquier was observing the spectacle. He informed the Board that the mob 'followed [Mercer] to the coffee house, in the porch of which I had seated my self with many of the Council and the Speaker who had posted himself between the Crowd and my self'.<sup>62</sup> Fauquier's description perfectly encapsulates imperial politics in Virginia: on the one side, Fauquier and the Council are shielding the imperial tax distributor and on the other side, a crowd hoping to prevent Mercer from distributing stamps. In between

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<sup>59</sup> *Ibid.*, III: 1285

<sup>60</sup> *Ibid.*, III: 1292.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*



the competing sides was John Robinson, the Speaker, who had spent years building up his influence and respect in the colony.

When the mob was about to ‘rush in’ on Mercer, Fauquier entered the fray: ‘I immediately heard a Cry see the Governor take care of him, those who were before pushing up the Steps immediately fell back and left a small Space between me and them’. Fauquier believed that it was ‘owing to the Respect they bore to my Character, and partly to the Love they bore to my person’ that the crowd ceased their immediate onslaught, though there are no sources to corroborate his conviction. It could be easily interpreted as a vain attempt by Fauquier to prove to his superiors that he was held in high esteem by the colonists. Fauquier urged Mercer to accompany him to the Governor’s mansion and they ‘accordingly walked side by side through the thickest of the people who did not molest us; tho’ there was some little murmurs’.<sup>63</sup> Fauquier had banked on the general goodwill he had built up over the last seven years and he was utterly convinced that the propertied elite still respected authority. By his actions, Fauquier believed that he ‘saved [Mercer] from being insulted at least’.<sup>64</sup>

Fauquier consistently bemoaned the ineffective nature of royal government in Virginia during his entire tenure as governor. He quickly realised after arriving in the colony that he could not govern without the active support of the House of Burgesses and learned, through harsh experience, that he lacked the patronage needed to be an effective governor. During the Stamp Act crisis, Fauquier perfectly conveyed the inherent weakness of his position and of royal authority in general within the colony to his benefactor the Earl of Halifax. In a letter dated 14 June 1765, he informed Halifax of ‘the melancholy Situation of Affairs in this Colony’, where the ‘Government is set at open Defiance, not having Strength in her hands to enforce Obedience to the Laws of the Community’ which ‘renders them uneasy, peevish, and

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<sup>63</sup> Ibid., III: 1292-3.

<sup>64</sup> Ibid., III: 1293.

ready to murmur at every Occurrence'.<sup>65</sup> The inability of the royal governor to enforce government policies led to a vicious cycle in which the colonists became emboldened to 'encrease the general Dissatisfaction' against all royal policies.<sup>66</sup>

Although Fauquier's depiction and analysis of the reaction to the Stamp Act in Virginia was inaccurate, he was able to keep control of the members of the House of Burgesses throughout the Stamp Act crisis, which directly affected Virginian involvement in the Stamp Act Congress of 1765. Historians have credited Fauquier with acting with considerable political skill to clamp down on any Virginian involvement within the Stamp Act crisis on the national stage, though the available source material does not wholly substantiate this.<sup>67</sup> The major criticism that can be levelled against Fauquier during his tenure as governor is that he was too amenable to Virginian demands and was not more forthright in his implementation of imperial policy. Such a claim cannot be made with regard to the Stamp Act however. After Patrick Henry's 'revolutionary' resolves in the House of Burgesses, Fauquier dissolved the assembly on the 31 May 1765 and did not convene it again for seventeen months. Whether Fauquier deliberately prorogued the Assembly in order to stop it electing delegates to the Stamp Act Congress to be held in New York is purely speculative as there is no evidence to substantiate such a conclusion. It is possible, however, to infer that Fauquier did not want to give the House any latitude to cause more trouble. This is made clear in a letter to the Secretary of State for the Southern Department, Henry Seymour Conway, in which Fauquier articulated his reasons for not calling for a new session of the House. He revealed that he had consulted with the Council and the 'unanimous' decision was that it would not be prudent to convene the Assembly:

Indeed Sir no Good was to be expected from calling men together to consider coolly [*sic*] of the Circumstances of the Times when they are so heated as to shut up all Avenues to Reason, but on

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<sup>65</sup> Francis Fauquier to the Earl of Halifax, 14 June 1765 in *ibid.*, III: 1259.

<sup>66</sup> *Ibid.*, III:1260.

<sup>67</sup> John Selby, *The Revolution in Virginia*, 8.

the occasion it was probable more violent measures would have been proposed ... At present the minds of the Colonies reciprocally inflame each other and where the Fury will stop I know not. At some Times I think the Present Confusion and Distress of people by having no Courts open to which they can apply for a Redress of Wrongs, will open their Eyes and Bring them to another Way of thinking: at other Times I see so much heat, Violence, and Resolution that I dread the Consequences. In short I can by no means see my Way thro' this gloomy prospect.<sup>68</sup>

Fauquier deliberately refused to convene the Assembly in order to avert future trouble and he hoped that by preventing the law courts opening, the colonists would come to their senses and stop this 'fury'. While Fauquier was indeed gloomy about the prospects of colonial government being restored to its normal functions, he did resolve 'that the best thing I can now do for His Majestys Service is to be patient and cool, and take no Step which would be likely to irritate the Minds of the people, waiting for some favourable Events which I may turn to some Advantage by the meeting of the Assembly'.<sup>69</sup> Whether Fauquier prevented the Assembly convening so that it could not elect delegates to the Stamp Act Congress is very much open to conjecture. When the letter from the New York assembly was sent to John Robinson, Speaker of the House of Burgesses, it seems likely that Robinson informed Fauquier of the purposes of the proposed Congress. Whether this influenced Fauquier's actions, it is uncertain, but when Fauquier wrote that the 'Colonies reciprocally inflame each other and where the Fury will stop I know not', it seems reasonable to assume that Fauquier was referring to the inter-colonial assembly that had met the previous month. Fauquier's general popularity is also borne out when he reconvened the House of Burgesses after a seventeen month interval. The House's address was effusive, if a little affected, in its praise of Fauquier's conduct during the entire crisis.<sup>70</sup>

### III

#### *Lord Botetourt and the Re-establishment of the Virginian Governor*

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<sup>68</sup> Francis Fauquier to Henry Seymour Conway, 11 December 1765, *Papers*, III: 1317.

<sup>69</sup> *Ibid.*, III: 1317-8.

<sup>70</sup> See *JHB*, 1763-1766.

According to the *Virginia Gazette* of 6 October 1768, ‘Yesterday Lord Botetourt kissed his Majesty’s hand at St. James’s on being appointed Governour of Virginia’.<sup>71</sup> For the past fifty-four years, the governor of Virginia had never taken up residence in Virginia, leaving lieutenant-governors to fulfil their duties. The appointment of Botetourt was made not simply to assist a peer out of his financial difficulties, but was because of far more pressing political concerns. When Fauquier died on 3 March 1768, John Blair, the president of the council, assumed the powers of the lieutenant-governorship on a temporary basis. Lord Hillsborough wrote to Blair and asked him to ‘not omit any opportunity of acquainting me, in the fullest & most circumstantial Manner, of every incident that has occurred, or may be expected to happen, relative to the state of the Colony, & the Administration of its Government’.<sup>72</sup> Hillsborough duly received disturbing resolutions from Blair that were originally sent from the speaker of the House in Massachusetts. These resolutions contained a an address to the king, a memorial to the House of Lords, and a remonstrance to the House of Commons. The Massachusetts’ legislature protested against the recently passed Mutiny Act and the Townshend Duties. The Virginian Council had agreed to comply with the wishes contained in the Massachusetts’ documents and duly ordered its agent in London to submit them to the appropriate bodies.<sup>73</sup> It was decided in London that soldiers and armed ships were to be sent to Massachusetts in order to pacify the colony during its perceived disobedience and, at the same time, it was decided that a governor, and not a lieutenant-governor, should be sent to Virginia in order to maintain control of Britain’s largest and most prosperous North American colony. When Sir Jeffrey Amherst was informed that the Board of Trade was going to discontinue the practice of sending a lieutenant-governor to Virginia, he immediately resigned his commission as governor

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<sup>71</sup> The *Virginia Gazette* (Purdie and Dixon), 6 October 1768.

<sup>72</sup> Lord Hillsborough to James Blair, 11 June 1768, TNA CO 5/1375.

<sup>73</sup> *JHB, 1766-1769*, 173.

because he was unwilling to go to Virginia. It was hoped that this token of royal favour would restore a modicum of the crown's authority in the colony.

When Lord Botetourt arrived in the colony, in 1768, he immediately sought to impose royal authority. He was instructed to issue writs for a new assembly to convene at a time which Botetourt thought best. Botetourt wrote to Hillsborough on 24 November 1768 that he had issued a proclamation which had ordered the new assembly to convene on 8 May 1769 as he believed that 'it will be the fittest for promoting those measures to which by His Majesty's instructions my attention is particularly instructed'.<sup>74</sup> While Botetourt may have privately had high hopes for his first session on 17 May, he was 'with great astonishment' to find the House of Burgesses in open defiance of parliamentary sovereignty.<sup>75</sup> He was forced to dissolve the Assembly because of its resolves against recent parliamentary taxation without its consent and other perceived injustices. Botetourt was instructed that if the House of Burgesses should by any votes, resolutions, or addresses to the governor persist in its open denial of parliamentary supremacy, he was to dissolve it immediately and suspend any council members who may have concurred in such actions. Botetourt did not hesitate to comply with the Board of Trade's directive. He informed the Assembly that 'I have heard of your Resolves, and augur ill of their Effect: You have made it my duty to dissolve you; and you are dissolved accordingly'.<sup>76</sup> He assured Lord Hillsborough that 'no one of His Majesty's Council has had any [of] the smallest share in any part of this abominable measure'.<sup>77</sup> Botetourt was utterly powerless, however, to prevent a majority of the Burgesses thwarting the exercise of his prerogative by meeting extra-legally in the house of Anthony Hay in Williamsburg. Because they judged 'it necessary that some Measures should be taken in their distressed Situation, for preserving the true and

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<sup>74</sup> Lord Botetourt to Lord Hillsborough, 24 November 1768, TNA CO 5/1347/21-2.

<sup>75</sup> Lord Botetourt to Lord Hillsborough, 19 May 1769, TNA, CO 5/1347/74-5.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

essential Interests of the Colony’, they appointed a committee to prepare resolves and, the following day, they signed an agreement banning the importation of goods that were taxed by the Townshend Duties.<sup>78</sup>

Although it appeared that Lord Botetourt and the House of Burgesses were heading for a collision, Botetourt was relieved to receive letters from Lord Hillsborough on 13 May and 17 July 1769, in which Hillsborough informed the governor that the British government was preparing to repeal the Townshend duties. Hillsborough gave Botetourt permission ‘to declare these principles in the fullest manner’.<sup>79</sup> Botetourt duly convened the House of Burgesses on 7 November and related the news to its members: ‘His Majesty’s present Administration have at no time entertained a design to propose a Parliament to lay any further Taxes upon America for the purpose of raising Revenue’.<sup>80</sup> The Burgesses wrote a reverential address to Botetourt: ‘Your Lordship’s great Regard and Attention to the Welfare and true Interest of this Colony had before endeared you to us all; but your generous and noble Declarations, upon this Occasion, demand our warmest and most grateful Acknowledgements’.<sup>81</sup>

Botetourt sought to quash rumours circulating in Williamsburg, that the Westminster Parliament would reverse its recent repeal of the Townshend Duties, by putting his own reputation at stake:

It is my firm Opinion that the Plan I have stated to you will certainly take place and that it will never be departed from, and so determin’d am I for ever to abide by it that I will be content to be declared Infamous. If I do not to the last hour of my life, at all times, in all places, and upon all occasions, exert every power with which I either am or ever shall be legally invested, in order to obtain and maintain for the Continent of America that satisfaction, which I have been authorized to promise this day, by the Confidential Servants of our Gracious Sovereign, who by certain knowledge rates his honour so high, that he would rather part with his crown, than preserve it by deceit.<sup>82</sup>

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<sup>78</sup> *JHB, 1766-1769*, xxxix-xl.

<sup>79</sup> Lord Hillsborough to Lord Botetourt, 17 July 1769, TNA CO 5/1347/116-118.

<sup>80</sup> *JHB, 1766-1769*, 227

<sup>81</sup> *Ibid.*, 234.

<sup>82</sup> *Ibid.*, 227.

He wanted to assure the Virginians that he was certain that British ministers would not reintroduce the kind of policies that had produced so much consternation in the colony. It is clear that Botetourt, in a similar fashion to Fauquier, tried to calm fears in the colony by stressing that his personal honour and that of George III were at stake. Botetourt, however, was severely reprimanded by Lord Hillsborough for appearing to commit the king to a future course of action.<sup>83</sup>

According to Robert Beverley, a notable Virginian loyalist, Botetourt's governorship served as a happy interlude in a period of political disagreement between the colony and the imperial centre. He cited two pieces of evidence for this claim: the House of Burgesses' address to Botetourt after the partial repeal of the Townshend Duties and the statue erected in memory of Botetourt after his death.<sup>84</sup> Beverley, however, misunderstood personal goodwill for Botetourt and dutiful loyalty to George III in person as evidence of Virginian loyalty to the British government and parliament. A closer inspection of the Burgesses' address reveals evidence of an implied warning: 'We will not suffer our present Hopes, arising from the pleasing Prospect your Lordship hath so kindly . . . displayed to us, to be dashed by the bitter Reflection that any future Administration will entertain a wish to depart from that Plan'.<sup>85</sup> While the members of the Virginian legislature had great respect for Botetourt, as is demonstrated by the statue which they erected in his honour, they never believed that Botetourt personally supported recent British imperial policies. Botetourt's statue represented the veneration Virginians had for Botetourt himself as a person, but it did not represent Virginian acceptance of the sovereign authority of the Westminster Parliament.

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<sup>83</sup> Lord Hillsborough to Lord Botetourt, 18 January 1770, TNA, CO 5/1348.

<sup>84</sup> Robert M. Calhoun, "A Sorrowful Spectator of These Tumultuous Times": Robert Beverley Describes the Coming of the Revolution', *The Virginia Magazine of History and Biography*, 73 (1965), 49.

<sup>85</sup> *JHB, 1766-1769*, 233.

The colonial elite did not allow Botetourt to forget their concern about the Westminster Parliament's sincerity. When, in December 1769, the Burgesses gave a party in the capitol in honour of Botetourt, nearly one hundred of the ladies present wore dresses that were made in the colony, whereas it was usually common to wear the latest fashion from London.<sup>86</sup> These concerns about the survival of the Townshend Duties hardened when it became known that the Westminster Parliament had retained the duty on Tea. Once more, the Burgesses formed an association, on 22 June 1770, and signed an agreement against importing all British manufactures, tea and slaves until the tea duty was repealed.<sup>87</sup> Botetourt did not see the result of this imperial disagreement because he died on 15 October 1770, after suffering with a fever for three weeks.

The crucial question to be addressed when explaining the system of governorship in Virginia was how such royal governors as Fauquier and Botetourt were apparently so well received, when Dunmore became the epitome of tyranny to most Virginians? The answer is not as simple as one might expect. Undoubtedly, Fauquier possessed considerable ability in terms of managing various difficult problems and was always able to acquit himself in a professional manner. He was often able to avoid bitter confrontations and, at the same time, to pursue British imperial interests with great energy. While Fauquier's political abilities cannot be denied, the general popularity of his governorship surely cannot be explained simply by acknowledging his political dexterity. What were the reasons behind Fauquier's and Botetourt's unqualified popularity within the colony, and Dunmore's gradual demonisation?

Graham Hood, in his material culture study of the Governor's Palace at Williamsburg, maintains that 'to the colonists, Governors Fauquier and Botetourt personified the best elements of the English gentry tradition and culture'. In other words, Fauquier's and

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<sup>86</sup> *Virginia Gazette* (Purdie and Dixon), 14 December 1769.

<sup>87</sup> *JHB*, 1770-72, xxvii-xxx.



Botetourt's interaction with the people must be seen through the medium of the anglo-centrism which was so ingrained in the Virginian gentry's psyche. Hood highlights the comments of various correspondents at the time in order to substantiate his claim, including those of Edmund Randolph, who disclosed that Virginia had an 'idolatrous deference to the Mother Country' and stated that 'every political sentiment, every fashion in Virginia appeared to be imperfect unless it bore a resemblance to some precedent in England'.<sup>88</sup> The latest London magazines, newspapers and pamphlets were regularly sent by British merchants to their Virginian business partners and such fashionable literature was widely circulated among the colonial gentry.<sup>89</sup> Thus, according to Hood, Fauquier and Botetourt were essentially cultural icons: they represented the cultural transference of cultures, practices and thinking from the Mother Country to the new world.

Hood's argument is entirely credible. It was widely publicised in Virginian elite society that Botetourt was a prominent figure in Court politics in London and his noble heritage was also well known.<sup>90</sup> It was no coincidence that this heritage was printed in Rind's *Virginia Gazette* on 6 October 1768.<sup>91</sup> This was a man from the British nobility coming to a society that

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<sup>88</sup> Hood does a remarkable job in reconstructing what the Palace would have been like during the time of the governorships of Fauquier and Botetourt and he also discusses its role in Colonial Williamsburg. His main source for his analysis is the inventory of Lord Botetourt which was compiled in meticulous detail after Botetourt's death. Hood supplements this with other primary source material such as various correspondence and diaries of the time that reconstruct the culture, conditions and fashions of Williamsburg society. Hood, *The Governor's Palace*, 285, 34. For Lord Botetourt's inventory, see the Botetourt Papers, Library of Virginia, Richmond.

<sup>89</sup> Albert H. Tillson, Jr, *Accommodating Revolutions: Virginia's Northern Neck in an Era of Transformations, 1760-1810* (Williamsburg, Va.: University of Virginia Press, 2010), 18.

<sup>90</sup> See, for example, George Mercer in London writing to his brother James in Virginia about Botetourt's qualifications for the governorship: 'He [Botetourt] never was married, has been ever recommended for his hospitality and affability ... I believe a very independent fortune, and I know one of the prettiest Seats in England, as I have often visited it with great pleasure – You'll find his Lordships Title a very old one, though he was long kept out of it. He is one of the Lords of the King's Bedchamber, and has always sat in the Claim, since his Title was acknowledged, when the Lords have been in a Committee – upon my honour I think from his general character, and the small acquaintance I have the honour of with him, no one is more likely to succeed to make the People of Virginia happy .... I do most sincerely rejoice at his appointment'. George Mercer to James Mercer, 16 August 1768, George Mercer Letters, 1768-1771, Library of Virginia, Richmond.

<sup>91</sup> 'From KIMBER'S Peerage. NORBORNE NORBORNE BERKELEY, Lord Botetourt, Lord Lieutenant and Custos Rotulorum of the county of Gloucester, Lord Lieutenant of the cities of Bristol and Gloucester, Constable of St. Briavel's castle, Colonel of the South battalion of the Gloucestershire militia, L.L.D. was the son of John Berkeley, of Stoke Gifford, in Gloucestershire, Esq; (who represented that county in several Parliaments) by his wife Anne, daughter of Leicester, 6th Viscount Hereford, and sister of Leicester and Edward, the 7th and 8th

yearned to have its own nobility recognised as being on a level with that of Britain. Both Fauquier and Botetourt wore the latest fashions from London; Fauquier was extremely well read and conversant with the latest thinking in all matters political, religious and philosophical. Both Fauquier and Botetourt's manners were particularly English and the annual celebration of the King's birthday at the Governor's palace was the highlight of the cultural calendar in Williamsburg. Virginians paid great deference to Fauquier and Botetourt: there is one report, used by Hood, of the Virginian gentry doffing their hats to Fauquier when they met him in the street.<sup>92</sup> The great landowners of Virginia, when they visited the governors' palace, would have doubtless appreciated Fauquier's and Botetourt's social virtues: their manners, their classical and scientific learning, and their love of music. Fauquier displayed a fashionable understanding of major enlightenment thinking and unquestionably made a point of using it in conversation. Fauquier's and Botetourt's old world sensibilities found new meaning and gained respect in the New World.

Botetourt's and Fauquier's position in Virginia can, however, also be seen in a different way. It was not so much that Fauquier and Botetourt were glamorous icons to be copied, as that they were well integrated into Virginian society. Fauquier's intellectual pursuits, his love of science, music and the arts, his stress on the importance of education and his appreciation of the enlightenment, unquestionably meant that he was well suited to be governor of colonial Virginia. Before Fauquier arrived in Virginia, his cultural interests and his published works suggested that he would have much in common with a typical Virginian gentleman. Not only was he a notable philanthropist in London, but his election as a Fellow of the Royal Society of

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Viscounts; which John Berkeley, Esq; deceased December 11th, 1736. His Lordship claiming the barony of Botetourt from the Lord Botetourt, High Admiral of England, and constable of Stable of St. Briaye's castle, in the time of Edward I, and III. after a solemn hearing of his claim in the House of Peers, had the title adjudged and confirmed to him in 1764, and accordingly took his seat in the House, next to Lord Dacre, bring the 5th Baron of England. His Lordship's sister is Elizabeth, Dutchess Dowager of Beaufort, mother of the present Duke. His Lordship represented the county of Gloucester in the 9th, 10th, 11th, and present Parliament of Great Britain, until he became a Peer.' Rind's *The Virginian Gazette*, 6 October 1768.

<sup>92</sup> Hood, *Governor's Palace*, 154.

London and his membership of the Society for the Encouragement of Arts, Manufactures, and Commerce, indicate that he would have fitted well into Virginian life and especially with the intellectual elite of Virginian society. He developed a keen interest in economic and financial affairs and his published essay on an alternative way to fund the Seven Years' War reveals that he was a thoughtful and logical thinker. In this pamphlet, Fauquier maintained that the best way to raise money for the war was to have a graduated income tax on estates and consumption rather than taxes on manufacturers or the working poor.<sup>93</sup> While his policies were never adopted, he did cause considerable public debate and his pamphlet was printed in three editions. At the beginning of his governorship, moreover, he sent to the Royal Society in London an account of a hail storm which occurred in the colony. He also regularly recorded the weather which he kept in a diary which was later published by an English clergyman, Andrew Burnaby.<sup>94</sup> His interests in natural phenomenon, science and education marked him out to be a perfect fit for Virginian society. Even his will, moreover, suggests that Fauquier was a man of science and of benevolence: he wanted an autopsy on his body so that he could 'become more useful to my fellow creatures in death than I have been in life'.<sup>95</sup> Fauquier transformed the governor's palace at Williamsburg into a hub of intellectual activity with a close circle of friends including George Wythe, William Small and the young Thomas Jefferson, who were all in frequent attendance. Fauquier was an enlightened governor for what was fast becoming an enlightened colonial gentry. Indeed, if one goes back to Jefferson's description of Fauquier 'as the most able man to have ever filled that office', it does not necessarily mean that Fauquier

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<sup>93</sup> See Francis Fauquier, *An Essay on Ways and Means for Raising Money for the Support of the Present War, without Increasing the Public Debts* (London, 1756).

<sup>94</sup> See Andrew Burnaby, *Travels through North America*. The best account of the Virginian elite is Emory G. Evans, *A "Topping" People: The Rise and Decline of Virginia's Old Provincial Elite, 1680-1790* (Charlottesville: University of Virginia Press, 2009). For a description of the Northern Neck gentry in this period, see Albert H. Tilson, *Accommodating Revolutions*, 15-53.

<sup>95</sup> 'The Will of Francis Fauquier', Papers of Francis Fauquier, Library of Congress, Manuscript Division.

was a successful governor in his official role, but he was undoubtedly a most gifted governor as an individual.<sup>96</sup>

There are other reasons why Botetourt and Fauquier were well respected by the Virginian gentry. In both Botetourt and Fauquier's inventories, there are several names, which are the most interesting aspect of these inventories: they are the names of their slaves.<sup>97</sup> Both Botetourt and Fauquier had a number of slaves (Fauquier in his inventory had seventeen, which was a substantial number in view of the fact that the Governor's Palace did not have any land). They were like educated and propertied Virginian gentlemen: owners of slaves, conversant with matters of politics and culture, lovers of science, music and the arts. Fauquier was also a compulsive gambler. This last point has been exaggerated by historians, but it does seem that Fauquier did enjoy gambling and helped make gambling acceptable in society.<sup>98</sup> Fauquier even admitted to Richard Bland that 'I acknowledge to you freely that I have become so much a Virginian'.<sup>99</sup> In certain respects, therefore, it would be difficult to distinguish Fauquier and Botetourt from the Virginian gentry over whom they governed. Undoubtedly, their adoption of London fashions, their cultural interests and understanding and their archetypal English manners appealed to the Virginian gentry, and hence it was these traits which helped these two governors to fit into Virginian society. As Lord Botetourt remarked to Lord Hillsborough on arriving in Williamsburg, 'I like their stile [*sic*] very much'.<sup>100</sup>

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<sup>96</sup> Indeed, it can be speculated, as Daniel Dean Roland has done, to wonder how much influence Fauquier had over Jefferson. See Daniel Dean Roland, 'The Influence of Francis Fauquier, William Small, and George Wythe on Thomas Jefferson', *The Southern Historian*, 8 (1987), 5-13.

<sup>97</sup> For Botetourt's inventory, see 'The Inventory of Lord Botetourt', Botetourt Papers, Library of Virginia, Richmond. Graham Hood has overlooked this aspect.

<sup>98</sup> Burk has claimed that Fauquier won his lieutenant-governorship by a lucky hand in cards. See Burk, *History of Virginia*, II: 335. See also Dumas Malone, *Jefferson the Virginian* (London: Eyre and Spottiswoode, 1948), 78.

<sup>99</sup> This was in reference to Fauquier waiting for news from the Board of Trade about his decision not to veto the Two Penny Acts. Fauquier to Richard Bland, 28 July 1760, *Fauquier Papers*, I: 393.

<sup>100</sup> Lord Botetourt to Lord Hillsborough, 28 October 1768, TNA, CO 5/758.

While it is certainly correct to maintain that Virginians lauded Botetourt and Fauquier for their British culture and manners and it cannot be denied that they both fitted well into Virginian society, there was a larger symbolism at play here which is extremely important in understanding how governors and governed interacted. Brendan McConville, in his recent study of the fate of monarchy in colonial America, has claimed that the colonists viewed the monarch within a ‘benevolent royalism’ paradigm.<sup>101</sup> In other words, up to 1774, Americans largely revered monarchy and were not shy of participating in royal iconography. George III was the symbolic link between mother country and colony and the colonists celebrated him as such. This paradigm can easily be seen in the governorship of Fauquier and of Botetourt in terms of their ceremonial functions. Lord Botetourt, dressed in an expensive costume which was red with gold trim, would travel to the House of Burgesses on his remarkable gold state coach, which the Duke of Cumberland, uncle of George III, had presented to him and which bore the Virginian crest and was drawn by six white horses. He looked the part of a substitute king. There are reports that suggest even his slow speech was reminiscent of the way George III himself spoke.<sup>102</sup> Both Fauquier and Boteourt were heavily involved in local patronage: Fauquier commenced plans to open up a hospital (which opened after his death) for those that suffered with mental health issues; and Botetourt was a patron of the College of William and Mary, even bestowing medals for academic excellence in natural philosophy, mathematics and classical learning.<sup>103</sup> Anne Blair recalled an episode when Botetourt visited her family when it was singing and he

Stopped to listen to our enchanting Notes ... The Invader ... call'd out in a most rapturous Voice,  
Charming! Charming! Proceed for God sake, or I go Home directly – no sooner were these words  
utter'd, than all as with one consent sprung from their seats, and the Air echo'd with ‘pray, Walk in  
my Lord’; No – indeed, he would not, he would set on the step’s too; so after a few ha, ha’s, and

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<sup>101</sup> Brendan McConville, *The King’s Three Faces*, 255.

<sup>102</sup> See Dunbar, ‘The Royal Governors’, 239.

<sup>103</sup> See ‘His excellency’, William & Mary College, 20 March 1770, Broadside, Virginia Historical Society, Richmond, Broadside.

being told what we all knew – that it was a delightful Evening, at his desire we strew'd the way over Flowers etc, etc, till a full half hour we elaps'd, when all retired to their respective homes.<sup>104</sup>

The deference and respect are unmistakeable: Virginians regarded Fauquier and Botetourt not only as representatives of the king, but also appreciated the fact that they acted in a royal manner.

This interpretation can be taken even further. In McConville's monograph, he has unearthed evidence to suggest that colonists in America, up to around 1774, perceived George III as detached from the ministerial policies which were causing such disturbance in the colonies. George III was 'the king above dispute, king as father, king as honest broker'.<sup>105</sup> If we look at the rhetoric in Virginia during the 1760s, we can see the same dynamic at play: Virginians viewed Fauquier and Boteourt as being detached from those ministerial policies which were creating serious resentment in the colonies. Fauquier was not blamed for the introduction and enforcement of the Stamp Act,<sup>106</sup> while, after Botetourt dissolved the Assembly in 1768, Robert Fairfax wrote that the Assembly 'suppose[d] he was obliged to do so; he is universally esteemed here for his great assiduity in his office, condescension, good nature and true politeness'.<sup>107</sup> Whereas Francis Bernard and Thomas Hutchinson in Massachusetts were inextricably entangled in the colonial propaganda war against British policies, Fauquier and Botetourt in Virginia were not regarded as being part of this ministerial 'tyranny' and not viewed as accomplices of the specific British policies which were alienating

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<sup>104</sup> Cited in Dunbar, 'Royal Governors', 239.

<sup>105</sup> Samuel Sherwood preached in Connecticut in 1774 'we have no controversy with the king; nor in the least, dispute his authority over us', cited in McConville, *King's Three Faces*, 255.

<sup>106</sup> Fauquier was never publicly criticised or denounced during the 'fury' over the Stamp Act in Virginia. When a mob assembled to meet Colonel George Mercer, the Stamp distributor, arriving in the colony, and was purportedly ready 'to destroy all Stamp'd papers', as Fauquier relayed back to the Board of Trade, Fauquier had to intervene to prevent any harm coming to Mercer. When the mob were about to 'rush in' on Mercer, Fauquier entered the fray: 'I immediately heard a Cry see the Governor take care of him, those who were before pushing up the Steps immediately fell back and left a small Space between me and them'. Fauquier believed that it was 'owing to the Respect they bore to my Character, and partly to the Love they bore to my person' that the crowd ceased their onslaught, though there are no sources to corroborate his claim. Fauquier's general popularity can also be seen when he reconvened the House of Burgesses after a seventeen month interval, because the House's address to him was effusive, if a little affected, in its praise of Fauquier's conduct during the entire crisis. See *JHB, 1763-1766*. Francis Bernard to the Board of Trade, *Fauquier Papers*, III: 136.

<sup>107</sup> Robert Fairfax to Anon., 20 May 1769, Robert Fairfax Letters, 1768-1769, Library of Virginia, Richmond.

the colonists. They were regarded as the embodiment of the royal ties connecting colony to Mother Country and were treated as such.

Understanding the Virginian mode of deference to authority is crucial in this respect. Historians have long debated the significance and meaning of the role of deference in colonial American society.<sup>108</sup> It is misleading to assume that because there was an appearance of deference to royal symbols in colonial Virginia, this represented unconditional obedience to royal authority. These forms of celebration were not unconditional, but were contingent on a mutual understanding and respect between governor and people. By deferring to the gubernatorial symbols of authority and professing their allegiance to the king and governor, the Virginian people were also promoting their own interests. Relations between governor and people were conditional: as long as the governor helped them to further their own ends, the governor could expect their allegiance. Neglect of the interests of the elite in particular bode very ill for the governor, however. In other words, the relationship between governor and people was a marriage of convenience and there were always grounds for divorce if the governor proved hostile to the colonists' interests. This conditional relationship is easily identifiable in the example of Dunmore's governorship.

## V

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<sup>108</sup> Some historians have argued that colonial America was intrinsically deferential. See J.G.A. Pocock, 'The Classical Theory of Deference', *American Historical Review*, 81 (1976), 516-23; Charles Sydnor, *Gentlemen Freeholders: Political Practice in Washington's Virginia* (Chapel Hill: University of North Carolina Press, 1952); and Jack P. Greene, 'Virtus et Libertas': Political Culture, Social Change, and the Origins of the American Revolution in Virginia, 1763-1766', in *The Southern Experience in the American Revolution*, ed. Jeffrey J. Crow and Larry E. Tise (Chapel Hill: University of North Carolina Press, 1978). Other historians have questioned the spontaneity of deference in colonial America and have argued that it was contingent on a beneficial relationship between leader and people. See Joy and Robert Gilsdorf, 'Elites and Electorates: Some Plain Truths for Historians of Colonial America', in *Saints and Revolutionaries: Essays on Early American History*, ed. David D. Hall *et al.* (New York: W.W. Norton and Co., 1984); and Richard D. Beeman, 'Deference, Republicanism, and the Emergence of Popular Politics in Eighteenth-Century America', *WMQ*, Third Series, 49 (1992), 401-430.

## *Lord Dunmore and the Loss of the colony of Virginia*

John Murray, Lord Dunmore, was never really accepted in the higher echelons of Williamsburg Society. Dunmore was certainly not as popular among the Virginian elite as his esteemed predecessors. He was plagued by the fact that every action he took was often compared to those of his illustrious predecessors and he was often found wanting in the eyes of many Virginians.<sup>109</sup> For most Virginians, Dunmore was a poor substitute for the revered Botetourt. Reports of his drunken behaviour, his reluctance to come to Virginia and his avaricious appetite for land did not sit well with the Virginian elite. Rumours circulated in the inner circles of Virginia about his repeated philandering, ‘ignoble’ links with Jacobitism, and lack of social graces.<sup>110</sup> His Scottish heritage and his links with Scottish Jacobitism ensured that many Virginian gentry were quietly suspicious of him. It was widely reported that his father had supported Bonnie Prince Charlie, the Jacobite Pretender, in 1745 and Dunmore could never escape his family’s past history. Because Jacobites contested the settlement achieved in the years after 1689 and joined in major uprisings in 1715 and 1745 for the ‘tyrannical’ Stuarts, eighteenth-century Virginians, who were mostly of English origin, had natural misgivings about the political loyalty and reliability of Scots with such tendencies. Tensions simmered between the Glaswegian tobacco merchants in the northern neck and the Virginian gentry in

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<sup>109</sup> For example, the Virginian House of Burgesses contrasted Dunmore’s recent behaviour with that of his predecessor: ‘We will presume to carry your attention no further back than to the administration of a Governor immediately preceding your Lordship. Previous to his coming over to Virginia, there has arisen some unhappy disputes between Great Britain and the colonies. His Majesty was graciously pleased to send over to us, from his immediate presence, the truly noble Lord BOTETOURT, who told us, that he had received it in command from his Majesty to do justice, and maintain the rights of all his subjects. He cheerfully entered upon the duties of his exalted station, in which he acted as a true representative of his royal master, at once supporting the dignity of his crown, dispensing the utmost justice, and diffusing benevolence throughout the country. By his exemplary conduct, in all respects, he accomplished what he deemed a glorious work; He gave us tranquillity, and happiness. Indeed he was often heard to declare, that the business of a *Governor* of Virginia was much easier than he could have conceived, as he found that the government almost executed itself. Matters were not yet that time carried on, and precipitated, with so high an hand, on the other side of the water, as at present. This probably was owing to his minutely examining every subject to the bottom himself, taking nothing upon trust; to his discountenancing tale-bearers, and malicious informers; and, at last, making a faithful representation of things, as he found them. In a short, too short a time, for the happiness of Virginia, it pleased God to remove him from us’. In *JHB, 1770-72*, 189.

<sup>110</sup> Frank L. Dewey, ‘Thomas Jefferson and a Williamsburg Scandal: The Case of Blair v. Blair’, *Virginia Magazine of History and Biography*, 89 (1981), 44-63; James Corbett David, *Dunmore’s New World*, 51-2.



this period.<sup>111</sup> Scottish merchants were fast becoming the most successful tobacco merchants in the colony and, by the 1770s, the main Glasgow merchants controlled around half of the tobacco market in Virginia. Virginian settlers were jealous of the increasingly vibrant Glasgow trade and depicted Scottish people as greedy, untrustworthy and dishonest.<sup>112</sup> These misgivings ensured that Virginians would never entirely trust as their governor a Scottish peer, who was suspected of having ties to the Stuart family.

Despite Dunmore's failure to gain acceptance within the Virginian elite, he was not immediately castigated or demonised as the perpetrator of British tyranny. Indeed, prior to 1774, he was generally well received in the press of the day. The respect and general reverence for British aristocracy exhibited by Virginians are evident in their rapturous reception of Lady Dunmore and her children, when jubilant crowds greeted their arrival in February 1774. Effusive and poetic tributes filled the pages of the Virginian press, which gave the impression that Virginians had tremendous respect for Dunmore and his family.<sup>113</sup> In December 1774, Lady Dunmore gave birth to a daughter whom the parents called Virginia, clearly as a sign of affection for the colony. As one Virginian merchant remarked, Dunmore 'is as popular as a Scotsman can be amongst prejudiced people'.<sup>114</sup> In just over a year, however, the same newspapers were filled with diatribes against Dunmore.<sup>115</sup>

Dunmore managed to placate the colonists when he acceded to their demands. On key issues, he aligned himself with the most influential Virginians in order to curry favour with the provincial elites. For example, in March 1772, the House of Burgesses passed a law that raised

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<sup>111</sup> For a detailed discussion, see Albert Tillson's chapter on Scottish tobacco merchants in the Northern Neck region, in *Accommodating Revolutions*, ch. 4.

<sup>112</sup> *Ibid.*, 169-70. Jacob M. Price, 'The Rise of Glasgow in the Chesapeake Tobacco Trade, 1707-1775', *WMQ*, 3<sup>rd</sup> Series, 9 (1954), 179-199.

<sup>113</sup> 'On the Arrival of Lady DUNMORE', *The Virginia Gazette* (Purdie and Dixon), 3 March 1774; 'By a LADY', *Rind's Virginia Gazette*, 3 March 1774.

<sup>114</sup> James Parker to Charles Steuart, 27 Jan 1775, Charles Steuart Papers, National Library of Scotland, MS 5029. Charles Steuart was the illegitimate son of the Jacobite Pretender.

<sup>115</sup> For example, see 'Mr Purdie', *The Virginia Gazette*, 24 November 1775.

the tariff on imported slaves from neighbouring colonies, including the colonies in the Caribbean, as well as from the Atlantic Slave Trade. The Burgesses firmly believed that they needed to protect the existing slave population in the colony from an influx of slaves from the Atlantic Slave Trade, which would ultimately dilute the value of their existing holdings. In direct contravention of his instructions, Dunmore assented to the bill. While there is scope to question his motives,<sup>116</sup> there can be little doubt that Dunmore was primarily seeking to ingratiate himself with the most influential men in the colony.<sup>117</sup> He enjoyed some temporary popularity after ‘Dunmore’s War’. His successful expedition against a coalition of Shawnee and Mingoe warriors in the Ohio River Valley proved a triumph for Dunmore’s public relations with the colonists. The press of the day was filled with congratulatory messages praising not only Dunmore’s subjugation of the Native Americans, but also his own exemplary conduct and resilience.<sup>118</sup> There was even a parade in the streets of Williamsburg when Dunmore returned to a hero’s welcome.<sup>119</sup> Dunmore was treated as a brave conqueror because he had complied with Virginian demands to provide security for them in western lands.<sup>120</sup> While clearly motivated by his own interest in western lands, Dunmore was also aware that his actions would be effective propaganda for royal interests.<sup>121</sup>

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<sup>116</sup> James Corbett David has persuasively argued that Dunmore had an ulterior motive when he agreed to sign this legislation. He argues that Dunmore sided with the provincial elites because the Scottish Lord wanted to establish a permanent seat for his family in the colonies, which meant that he would own a substantial number of slaves. See David, *Dunmore’s New World*, 44.

<sup>117</sup> Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism* (Chapel Hill: University of North Carolina Press, 2006), 139. Lord Hillsborough left little room for doubt when he informed Lord Dunmore that the law would not get the agreement from the Privy Council. See Lord Hillsborough to Lord Dunmore, 1 July 1772, TNA, CO 5/1350.

<sup>118</sup> The *Virginia Gazette* (Purdie and Dixon), 8 December 1774.

<sup>119</sup> James Corbett David, *Dunmore’s New World*, 89.

<sup>120</sup> *Documentary History of Dunmore’s War* (Madison: University of Wisconsin Press, 1905), 9-19.

<sup>121</sup> Patrick Griffin has argued that Dunmore manufactured the war with the Shawnees in order to enrich land speculators. See Patrick Griffin, *American Leviathan: Empire, Nation and Revolutionary Frontier* (New York: Hill & Wang, 2007), 97-123. James Corbett David has disagreed with this analysis and has argued that it would be nigh impossible for Dunmore to orchestrate the series of events that led directly to the war. See David, *Dunmore’s New World*, 91-2.

Although Lord Dunmore was grateful for the positive support his actions received, he was also aware that the governor of Virginia was inherently ineffective in controlling events in the borderlands of the colony. He frequently lamented his inability to control those Virginians seeking to move west. He frankly acknowledged that ‘The established Authority of any Government in America, and the Policy of Government at home, are both insufficient to restrain the Americans’.<sup>122</sup> Because royal governors in Virginia did not have a broad patronage system at their disposal capable of winning loyal support throughout the whole colony, they had to depend upon their personal abilities and status to encourage loyalty within some parts of Virginian society. While royal governors did not have sufficient patronage in some areas, they did have the ability to bestow land grants to Virginians, which was an important means of building a support base. Land was an important commodity in colonial Virginia: without land, a Virginian man could not vote nor hold political office, and the size of a man’s holding determined how far he could rise up the political ladder.<sup>123</sup> Granting legal titles to land, however, could create unforeseen problems for royal authority in the colony. The promise of land grants in order to gain support could in fact cause problems for the governor. The granting of lands encouraged Virginians to move west and consequently to move to areas not under the control of the governor whose power was largely based in and around Williamsburg. While a governor could secure a Virginian’s favour by granting him land, he was at the same losing his ability to control him after his movement west.

The hero quickly became a villain in the eyes of many Virginians. Dunmore was powerless to placate an exasperated House of Burgesses when its members reacted angrily against the coercive measures undertaken by the British government against Boston after the Boston Tea Party. In May 1774, when Dunmore dissolved the assembly for declaring a day of

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<sup>122</sup> Lord Dunmore to Lord Hillsborough, 24 December 1774, TNA, CO 5/1353.

<sup>123</sup> L. Scott Philyaw, *Virginia’s Western Visions: Political and Cultural Expansion on an Early American Frontier* (Knoxville, TN: The University of Tennessee, 2004), 29.

fast and prayer in support of Boston, the House of Burgesses foiled the governor's attempt to reassert imperial authority by adjourning to the Raleigh Tavern. In this session, the members called for an annual meeting of colonial delegates in a 'general congress ... to deliberate on those general measures which the united interests of America may from time to time require'.<sup>124</sup> In other words, the Burgesses called for a Continental Congress. It was one thing to appease the Virginian legislature by complying with their demands in direct defiance of the British government's instructions, but quite another to prevent the Virginian legislature acting independently of royal authority. A few days after their extra-legal meeting in the Raleigh Tavern, a circular letter arrived from Boston, which called for a cessation of colonial trade with Britain. A convention was summoned to meet in Williamsburg on 1 August 1774 in order to consider Boston's request. Two-thirds of county meetings and all the towns in Virginia recommended supporting Boston's course of action. Since the Council had already persuaded Dunmore to convene a new assembly in August, elections were held in the same meetings as the ones that debated Boston's call to restrict trade. Inevitably, the representatives for the Convention were generally the same as the ones elected to the new session of the House. In other words, Dunmore had legitimised the convention. After receiving Dunmore's report of this incident, which was written in December 1774, Lord Dartmouth appears to have been genuinely astonished that Virginians had sided with their colonial cousin in Massachusetts: 'The steps which have been pursued in the different Counties of Virginia to carry into execution the Resolutions of the General Congress are of so extraordinary a Nature, that I am at a loss for words to express the criminality of them, and my Surprise, that, the people should be so infatuated, as tamely to submit the Acts of such Tyranny and Oppression'.<sup>125</sup>

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<sup>124</sup> John Selby, *The Revolution in Virginia*, 8.

<sup>125</sup> Lord Dartmouth to Lord Dunmore, 3 March 1775, TNA, CO 5/1353/85

From thenceforth, Lord Dunmore and the Virginian patriots were on a dividing path that only widened in the coming months which increased the suspicion and paranoia between the royal governor and the colonists. The Virginian Convention in March 1775 resolved to arm the militia, a decision taken after Patrick Henry's 'Give me liberty, or give me death' speech. In the middle of the night of 20 April, Dunmore, fearing an armed uprising, secretly ordered the removal of gunpowder from the public magazine in Williamsburg. Lieutenant Henry Collins led a small group of marines and removed fifteen half-barrels of gunpowder. Dunmore gave instructions for the gunpowder to be stored on board HMS *Fowley*, docked at Yorktown. For Dunmore, this was a precautionary measure, but it was quickly regarded by Virginians as a provocative move. Dunmore was unaware of the events in Lexington and Concord, Massachusetts that had occurred a day earlier, where Americans had essentially sparked the American War of Independence into life. McDonnell has insisted that Dunmore's seizure of gunpowder 'precipitated a calamitous chain of events that led to armed conflict – and to Virginians' declaring their independence from Britain'.<sup>126</sup> In Williamsburg, an armed crowd gathered outside the Governor's palace and demanded that Dunmore return the powder and issued threats that they would kill the governor and anybody who helped him.<sup>127</sup> The crowd feared that there could be a slave uprising and white Virginians did not possess the ammunition to put it down. Patriot leaders, including Peyton Randolph, the Speaker of the House of Burgesses, managed to defuse the crowd's anger by preparing a remonstrance that was going to be presented to Dunmore 'in a decent and respectful manner'. The address asked Dunmore to explain his actions. Dunmore, perhaps not realising the colonial elite's attempt at restraining the mob from committing violence, berated the crowd's 'treasonable' actions and accused them of 'one of the highest insults, that could be offered to the authority of his majt'ys [*sic*]

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<sup>126</sup> Michael McDonnell, *Politics of War*, 50.

<sup>127</sup> *Ibid.*, 52.

Govern[men]t'.<sup>128</sup> Dunmore believed that rather than trying to rein in the mob, the colonial elite had used the presence of the crowd to intimidate him. He later informed General Gage that the leaders presented their address 'under the muskets of their independent company which they only left only at a little distance from my house'.<sup>129</sup> Dunmore insisted that the gunpowder was 'too much exposed there to the attempts of the people' and could be a means to begin an insurrection.<sup>130</sup>

Continued rumours and intrigue flourished in the colony which not only undermined royal government in Virginia, but also undermined the Patriot leaders' attempts to control the 'lower sort' in the colony. While many Virginians began to suspect that Dunmore was ready to fortify the palace and even arm his slaves, Dunmore claimed that parties of armed 'men were continually coming into town from adjacent Counties'. Dunmore was irritated at his lack of control over the movement of Virginians, while Virginians began to believe the rumours circulating around the colony about Dunmore's evil purpose. He attempted to act decisively to reinstate royal authority by ordering the arrest of two of the leaders of the local militia in Williamsburg, George Nicholas and William Finnie. Dunmore fuelled further paranoia when, as reported in a first-hand account by a doctor in Williamsburg, Dr. William Pasteur, 'his Lordship then proceeded to make use of several rash expressions & said that tho' he did not think himself in danger, yet he understood some injury or insult was intended to be offered to [the marines] ... & then swore by the living God, & many such like expressions that if a grain of powder was burnt ... or that if any injury or insult was offer'd himself ... he would declare freedom to the slaves & reduce the City of Wmsburg to ashes'.<sup>131</sup> Dunmore would 'have a Majority of white People and all the Slaves on the side of the Government' and he 'declared

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<sup>128</sup> Lord Dunmore to General Gage, 1 May 1775, CO 5/92.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

<sup>131</sup> 'The Desposition of Dr. William Pasteur in regard to the removal of powder from the public magazine', *The Virginia Magazine of History & Biography*, 13 (1905), 49.

that in a short time he could depopulate the whole country'.<sup>132</sup> Clearly there was a breakdown in communication between Dunmore and the colonists. Dunmore had made an egregious misjudgement when he threatened to liberate the slaves because he precipitated a torrent of abuse against him. According to Edmund Randolph, in his *History of Virginia*, 'it was believed at the time, and more strongly suspected from what happened afterwards that [Dunmore] designed, by disarming the people, to weaken the means of opposing an insurrection of the slaves ... for a protection against whom in part the magazine was first built'.<sup>133</sup>

By May, Dunmore himself followed the kegs of gunpowder and took refuge on board HMS *Fowley*. He believed that around two thousand Virginian volunteers were ready to descend on the capital.<sup>134</sup> He informed Gage that 'there is scarce a County of the whole Colony wherein part of the people have not taken up arms and declared their intention of forcing me to make restitution of the powder'.<sup>135</sup> He also sent his wife and children back to Great Britain on board the *Magdalen*. Although the naval command disagreed with this move and did not authorise it, Dunmore maintained that the government at home must be informed of his position as soon as possible. The members of the House of Burgesses begrudged Dunmore's implication that his wife and children 'were in danger amongst a people by whom they were universally esteemed and respected'.<sup>136</sup> Dunmore further declared that he would not accept any business emanating from the House unless it was presented to him in person on board the ship. The members of the House themselves declared that Dunmore had abandoned his executive position and so they established a committee of safety to be the new executive authority in the state. To all extents and purposes, royal government had collapsed in Virginia. Dunmore

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<sup>132</sup> Ibid.

<sup>133</sup> 'Edmund Randolph's Essay on the Revolutionary History of Virginia 1774-1782', *The Virginia Magazine of History and Biography*, 44 (1936), 219.

<sup>134</sup> 'The inhabitants of most of the counties of this colony are in commotion and a body of two thousand men are now actually preparing to the assault of my house', defended only by myself and the persons belonging to my family'. Lord Dunmore to General Gage, 1 May 1775, CO 5/92.

<sup>135</sup> Ibid.

<sup>136</sup> *JHB*, 1773-76.

insisted to General Gage that he was powerless in his position as royal governor without a military force to support him: ‘Their conduct has already afforded sufficient evidence of a rebellious spirit with which they are possessed, and therefore if His Maje’s thinks it necessary to maintain appearance of authority in this Colony during the unhappy struggle between America and Great Brittain [*sic*], it cannot be affected without a force to support it’.<sup>137</sup> In other words, Dunmore was articulating the inherent problem of royal government in Virginia: royal authority in the colony was essentially vacuous without at least the appearance of military strength.

Dunmore was increasingly vilified by Virginians and his demonic status for many white Virginians was confirmed when he issued his infamous ‘Dunmore Proclamation’. Perceiving a rising tide against British interests in the colony and realising that his small army had become alarmingly outnumbered, Dunmore issued a proclamation intended to bolster the British army and to disrupt Virginians in their preparation of defences. On 7 November 1775, Dunmore issued the following proclamation:

I do require every Person capable of bearing Arms to resort to His Majesty’s STANDARD or be looked upon as Traitors to his Majesty’s Crown and Government and therefore be liable to the Penalty the Law inflicts upon such offences, such as forfeiture of life, confiscation of land &c. & c. And I do hereby further declare all indentured Servants, Negroes or others (appertaining to Rebels) free that are able and willing to bear Arms, they joining His Majesty’s Troops as soon as may be, for the more speedily reducing this colony to a proper sense of their Duty to His Majesty’s Crown and Dignity.<sup>138</sup>

This offer was a conditional freedom to black slaves and indentured whites: join the British effort in suppressing the revolutionary movement and you will be ‘free’. Dunmore had finally carried out his threat. Dunmore was not a fervent abolitionist, however.<sup>139</sup> His actions were a

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<sup>137</sup> Lord Dunmore to General Gage, 1 May 1775, TNA, CO 5/92.

<sup>138</sup> ‘Proclamation by Lord Dunmore, 7 November 1775’, TNA, CO 5/1353.

<sup>139</sup> While governor, Dunmore owned slaves. In April 1775, a group of black slaves came to Dunmore, after the gunpowder seizure, and asked for arms to fight for the British Crown in return for their freedom. Dunmore was incredulous and ordered the slaves ‘to go about their business’ and warned them of the ‘severest resentment should they resume their application’. Sylvia R. Frey, *Water from the Rock: Black Resistance in a Revolutionary Age* (Princeton, NJ: University of Princeton Press, 1991), 55. See also Simon Schama, *Rough Crossings: Britain, the Slaves and the American Revolution*, 2<sup>nd</sup> edn. (London: BBC Books, 2006), 85-109.



strategic calculation intended to disrupt the Virginian war effort. He knew that the colonial elite was worried about the potential of a slave uprising in its- midst and Dunmore hoped to benefit from this fear. Within two weeks of the proclamation, Dunmore gleefully reported that two to three hundred slaves had fled their masters and joined him on his ships.<sup>140</sup> He set about forming an ‘Ethopian Regiment’, which quickly numbered 800 men.

It was only after such actions, however, that the deep-seated feelings about Dunmore’s Jacobite family heritage surfaced in the newspapers in Virginia. Dunmore was ‘the tyrannical, cruel, and destructive executioner of ministerial vengeance’ and together with ‘his banditti of blacks, and Scotch Tories and Jacobites’, he was attempting to disrupt and destroy the Virginian way of life. To Virginians, it made sense that someone who had previously been in league with Jacobites would mastermind such a ‘cruel proclamation’.<sup>141</sup> Dunmore’s actions were ‘treason against the State, for which such men as Lord *Dunmore*, and even Kings, have lost their heads’.<sup>142</sup> Earlier governors in Virginia had never been embroiled in the kind of propaganda war which was now being waged in the colonies. It was only when Dunmore sought to destroy the very fabric of Virginian society that he became the epitome of tyranny. The call to arms which was printed in the *Virginia Gazette* made reference to Dunmore’s heritage:

The *present ministry* and *rebels* and *traitors* to their *prince*; they are endeavouring to make him forfeit his crown. The earl of Dunmore, *late* governour, may be called a *genuine rebel*. His father was in *two rebellions*, strictly and properly so called; and he is now himself engaged in one of a more artful and dangerous nature, and he has the effrontery to shift the *odious charge* on us. If there are loyal subjects in the world, they are in America; they are in Virginia. But enough of this. Independent of these arguments, my countrymen, we may urge, that we have a right to take up arms in self-defence, since we have been threatened with an *invasion* of *savages*, and an *insurrection* of *slaves*, and have had our *negroes* and *stocks* piratically taken from us. The *laws* of *God* and *nature*, and the *principles* of the *constitution*, justify it; and, at present, all the feelings of humanity, every suggestion of policy, and the cries of our insulted and imprisoned countrymen, loudly call you TO ARM.<sup>143</sup>

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<sup>140</sup> Maya Jasanoff, *Liberty’s Exiles: American Loyalists in the Revolutionary World* (New York: Alfred A. Knopf, 2011), 48.

<sup>141</sup> *Virginia Gazette*, 10 February 1776; *ibid.*, 25 November 1775.

<sup>142</sup> Anon., *Virginia Gazette*, 24 November 1775.

<sup>143</sup> *Ibid.*, 8 December 1775.

Dunmore's actions ensured that Virginians became 'forced founders'. The sight of runaway slaves joining the British ranks shaped Virginian planters' convictions that revolution was necessary in order to establish their own system of government and also to quell this slave rebellion within their society.<sup>144</sup> Dunmore's own Council denounced the Proclamation publicly, including Robert Carter Nicholas who wrote that Dunmore's Proclamation was proof that the royal governor was the 'executioner' of the 'system of tyranny adopted by the Ministry and Parliament of Great Britain'.<sup>145</sup> Dunmore had called for a slave rebellion and, as a result, he was forever to be remembered as the perpetrator of tyranny. Royal government ended in Virginia when the royal governor attempted to destabilise one of the colony's fundamental institutions.

#### IV

##### *Conclusion*

The contrasting fortunes of Lord Dunmore, Francis Fauquier and Lord Botetourt as royal governors expose an important problem at the heart of this study of gubernatorial power. Fauquier and Botetourt were well-respected and revered governors in Williamsburg at a time when most other royal governors in the colonies were becoming embroiled in the propaganda war involving revolutionary rhetoric and initiating popular protests. This demonstrates that royal governors were not always ineffective executives and were not always castigated as puppets carrying out the policies of ministerial tyrants. Nevertheless, while this chapter has shown that Fauquier and Botetourt were certainly skilled politicians and were undoubtedly more capable than Lord Dunmore, their power and authority in the colony was not as substantial or as strong as an effective executive required. Rather, their careers as governor

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<sup>144</sup> Woody Holton, *Forced Founders*, 162-4.

<sup>145</sup> McDonnell, *The Politics of War*, 137.

illustrate what limited achievements an able man could accomplish under such a weak system of executive authority.

The system of royal governorship in Virginia could, in some ways, give the illusion of effectiveness and acceptance, but seen in a broad context, governors could exert very little control in some counties of the colony. The Virginian system of governorship was not just a weak system in the exertion of political power at the centre, its influence with the wider and dispersed population at large was virtually non-existent. While Fauquier, Botetourt and (to a lesser extent) Dunmore managed to build successful relations with the Virginian elite particularly in the central areas of the colony, they failed to achieve unqualified allegiance throughout all ranks in the colonies. Thus, although the propertied elite mourned the passing of Fauquier and Botetourt, their platitudes disguised a deep-seated distrust and widespread suspicion of gubernatorial authority that was unmasked during the unfortunate governorship of Lord Dunmore.

The system of government in Virginia required a consensual style of governance in which the governor had to prove flexible, sometimes had to ignore his instructions from Britain, had to respect Virginian interests and respond to local demands, and use all his personal skills in order to placate an increasingly troublesome colony. Royal governors in this period were never strong and effective executives, but they could be effective managers of the propertied elite. The actions of Dunmore from 1775 onwards, however, were those of a man who lacked the abilities shown by Fauquier and Botetourt and who ensured that the royal governorship in Virginia would always be remembered as a tyrannical and arbitrary office. Indeed, when Americans began to devise their own constitutions for their respective states in 1776, the actions of royal governors such as Dunmore ensured that gubernatorial authority in the new republican order would inevitably be weak and severely restricted.

## Chapter Three

### The Virginia Constitution of 1776 and the Creation of a Republican Governor

The position of the executive within a republican framework of government was an immediate and significant problem faced by Virginia as soon as independence was declared in 1776. For many Americans seeking independence, giving one person any substantial power in the political system was the greatest threat to their newly acquired liberty. Although the examples of the Roman Republic and the contemporary Dutch Republic furnished useful historical precedents on which to base their new constitutional systems, the respective constitutions in the American states, as some historians have shown, were in effect laboratories in which they tested political principles and theories garnered from their experiences and various political documents of the colonial era, and their interpretations of major British Whig theorists of the late seventeenth and early eighteenth centuries.<sup>1</sup> It is essential to consider both the ideological and practical origins of gubernatorial power in the first state constitutions because it is important to understand the extent to which American Patriots relied upon or abandoned British constitutional thinking.

Historians have placed the reason for the deliberate weakening of the executive authority in the first wave of state constitutions on the colonial experience of royal governors. They have maintained that American Patriots acted from a widespread fear that an executive similar to that on the royal model would corrupt the newly created republics. The experiences of the pre-revolutionary decade or so, when the American Patriots believed that they had to endure overbearing royal governors with considerable prerogative powers, ensured that the

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<sup>1</sup> See Lee Ward, *The Politics of Liberty*, 18; Gordon Wood, *The Creation of the American Republic*, 3-45; and Donald Lutz, *The Origins of American Constitutionalism* (Baton Rouge: Louisiana State University Press, 1988), 49-50.

new constitutions would make the executive little more than a prestigious ceremonial office.<sup>2</sup> In other words, it was a natural reaction for these Americans, who most actively opposed British policies, to strip the executive of any meaningful powers and to give those powers to the legislative branch of government. There is little doubt that the perceived tyranny of royal governors in the run up to independence had a direct bearing on the adoption of weak executives in the first state constitutions. Indeed, at the same time as the Virginian Convention was debating the various provisions of the proposed new Constitution, including the executive branch, Lord Dunmore, the beleaguered royal governor of Virginia, was taking refuge in Gwyn's Island and was still intent on leading an armed force against the rebellious Virginians. The pages of the newspapers in Virginia were littered with abuse against Dunmore and his followers, after his slavery proclamation and his seizure of the stocks of gunpowder.<sup>3</sup>

The revisionist school of the 1960s and 1970s overhauled how historians interpreted and understood the motivations and ideological origins of the American Revolution. They completely refuted the liberal consensus of the first-half of the twentieth century that argued that John Locke was the greatest influence on the American colonists during the revolutionary upheaval. Through the seminal monographs produced by such historians as Caroline Robbins, Bernard Bailyn and J.G.A Pocock, American Revolutionary political thought was decisively defined as a non-Lockean tradition. These scholars contended that the ideological tradition that inspired the American colonists originated instead with such writings as James Harrington and other 'commonwealthmen' during the turbulent Civil War and interregnum years. These writings were developed and adapted through such later Country Whig political thinkers as

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<sup>2</sup> See, for example, Marc Kruman, *Authority and Liberty: State Constitution Making in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1997), 36; Gordon Wood, *The Creation of the American Republic*, 136; Lee Ward, *The Politics of Liberty*, 412; Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985), 242-7.

<sup>3</sup> In Purdie's *The Virginian Gazette*, 24 November 1775: 'HERE you have a proclamation that will at once show the *baseness* of lord *Dunmore's* heart, his *malice* and *treachery* against the people who were *once* under his government, and his *officious* violation of all law, justice, and humanity; not to mention his *arrogating* to himself a power which neither he can assume, nor any power upon earth invest him with'.

Algernon Sidney, John Trenchard and Thomas Gordon, and Viscount Bolingbroke in the late seventeenth and early eighteenth centuries.<sup>4</sup> Although this ‘oppositional’ thought was consistently rejected by Court Whig politicians in Britain, it was, according to Bernard Bailyn, ‘devoured’ by the colonists.<sup>5</sup> While the Country Whig tradition can be perceived as a fringe, fragmented and inconsequential political force in Britain, the revisionist school has argued that this tradition, transplanted into the colonies three thousand miles away, was well received, was largely incorporated into revolutionary writings, and proved a determining factor in the outcome of the American Revolution.

American Patriots and critics of Britain’s imperial policies from the 1760s regarded themselves as ‘Whigs’ and accused British ministers, their supporters in Britain and loyalists in the colonies of being ‘Tories’.<sup>6</sup> What did American Patriots mean when they classified themselves as ‘Whigs’? In Britain, Whigs accepted the rule of law, accepted a number of civil

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<sup>4</sup> See Clinton Rossiter, *Seedtime of the Republic*; Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass.: Belknap Press of Harvard University, 1977); Caroline Robbins, *The Eighteenth-Century Commonwealthman: Studies in the Transmission, Development and Circumstance of English Liberal Thought from the Restoration of Charles II until the War with the Thirteen Colonies* (Cambridge, Mass.: Harvard University Press, 1959); J.G.A Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975); J.G.A Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (Cambridge: Cambridge University Press, 1957); J.G.A Pocock, ‘Machiavelli, Harrington and English Political Ideologies in the Eighteenth Century’ in *The William and Mary Quarterly*, 3<sup>rd</sup> series, 22 (1965), 549-583; Isaac Kramnick, ‘Republican Revisionism Revisited’, *The American Historical Review*, 87 (1982), 629-664; John Dunn, ‘The Politics of Locke in England and America in the Eighteenth Century’, in *John Locke: Problems and Perspectives*, ed. John W. Yolton (Cambridge: Cambridge University Press, 1969); and Robert E. Shalhope, ‘Toward a Republican Synthesis: The Emergence of an Understanding in American Historiography’, *The William and Mary Quarterly*, 3<sup>rd</sup> Series, 29 (1972), 49-80. Elsewhere Bernard Bailyn divulged his reasoning for his interpretations of the ideological origins of the American Revolution: ‘I knew the leaders of the Revolution were not, as some then said, engrossed in the writings of Locke or acting out his and similar ideas’, in Bailyn, *American Constitutionalism: Atlantic Dimensions, the Inaugural Caroline Robbins Lecture, 2001* (London: The Institute of United States Studies, 2002), 1-2. For an example of the Lockean consensus, see John C. Miller, *Origins of the American Revolution* (2<sup>nd</sup> edn., Stanford: Stanford University Press, 1966).

<sup>5</sup> Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass.: Belknap Press of Harvard University, 1977), 43.

<sup>6</sup> In his autobiography, Thomas Jefferson recalled the principles that motivated Americans in the drafting of their first state constitutions: ‘Before the Revolution, we were all good English Whigs, cordial in their free principles, and in their jealousy of the executive Magistrate. These jealousies are very apparent in all our state constitutions’, ‘The Autobiography of Thomas Jefferson’, 6 January 1821, in *The Life and Selected Writings of Thomas Jefferson*, ed. Adrienne Koch and William Peden (New York: Random House, 2004), 77. In a similar fashion, George Mason, the principal author of the Virginia Constitution, noted in 1781 that ‘I live in a part of the Country remarkable for it’s [*sic*] Whigism [*sic*], and Attachment to the Cause of Liberty’, George Mason to the Virginia Delegates in Congress, 3 April 1781, *The Papers of George Mason, 1725-1792*, ed. Robert A. Rutland, 3 vols. (Chapel Hill: The University of North Carolina Press), II: 682.

liberties (including trial by jury and due legal process), advocated representative government imposing financial restraints on the crown's income and initiating statute laws, and rejected divine right, absolute monarchy and a Catholic ruler.<sup>7</sup> American Patriots were mainly Country Whigs in that they were increasingly critical of the actions, policies and powers of those servants of the king (and his court) in both Britain and the colonies. They were often, therefore, greatly influenced by the Court-Country Whig division seen in *practical* politics in both Britain and the colonies between those anxious for office at the political centre and those critical of the centre as corrupt and faction ridden and who wished to have limited government at the centre and power mainly at the hands of local men who exercised great influence in their local areas. The colonists saw ministers in Britain calling themselves Whigs, but perceived them to be very anxious to accept crown patronage for themselves, use crown and their own patronage to win majority support in both houses of parliament, and raise taxes and loans to create a powerful state apparatus. These British politicians were seen as Court Whigs and most colonists distinguished themselves from such men by stressing that they were Country Whigs anxious to defend the interests of the localities (that is, of the colonial periphery of the British empire).<sup>8</sup>

The Country Whigs were the opposition to the Court Whigs in Britain in the early eighteenth century. They disagreed with their Court opponents over many issues, not least the constitutional balance attempted in the Glorious Revolution settlement of 1688-89. The Country Whigs feared that the Revolution had not gone far enough as the constitutional settlement left too much power in the hands of the monarch and the aristocratic elite. They feared the impossibility of achieving a balanced constitution if the executive was able to exert considerable influence over the legislature, especially the House of Commons. The Country Whigs launched a movement to impose limits on the executive and its corrupting influence on

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<sup>7</sup> H.T. Dickinson, 'Whiggism in the eighteenth century' in *The Whig Ascendancy: Colloquies on Hanoverian England*, ed. John Cannon (London: Edward Arnold, 1981), 42-3.

<sup>8</sup> *Ibid.*, 34-38, 41-43.

the British political scene. Country Whig ideology, however, served as a blueprint to be improved upon and the newly independent Americans radicalised, adapted, and modified these ideological lessons into a workable and sustainable constitutional attitude which had a profound effect on their views of executive authority. A host of historians have shown how the theories postulated by radical Country thinkers had a wide readership in the colonies, and have shown that these theoretical standpoints greatly motivated and spurred the colonists during the revolutionary era.<sup>9</sup> Because the American Revolution was a rejection of British power, which they saw as too much based on a Court Whig or even Tory ideology, and because American Patriots were fearful of the survival of their new-found republic and mindful of historical precedents in history, historians have maintained that Americans wholeheartedly embraced the radical Country Whig theories concerning executive power in 1776. Country Whigs in the colonies, therefore, believed that the British government and parliament were abusing their powers and the trust bestowed on them and believed that the colonists had the right to resist this abuse of power. Country Whigs in the colonies maintained that the greatest threat to the colonies was from an over mighty, tyrannical and corrupt executive. Because of this, they stipulated that a stable government could only be achieved if there was a representative legislature accountable to the electorate. They advocated that most power in a functioning system should be located in the legislature.

Country Whigs, however, were not all united in ideological terms. They disagreed over what was the best form of government to adopt and which form of government was most legitimate and justified. Historians have shown that there were essentially two different strands of radical Country Whigs. There were those (stressed by historians such as Caroline Robbins, John Pocock and Bernard Bailyn) defined as being neo-Harringtons, Commonwealthmen or

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<sup>9</sup> Bailyn, *The Ideological Origins of the American Revolution*, 34-54; Bailyn, *Origin of American Politics*, 136-149; Gordon Wood, *Creation of the American Republic*, 30-36; and J.G.A Pocock, *The Machiavellian Movement*, 519-26.



Classical Republicans. Radical Whigs of this kind wished effective political power to be in the hands of public spirited, independent, propertied men (especially landowners) who had sufficient virtue to defend their rights by bearing arms and showing a readiness to form a citizen militia. They wanted a limited, propertied franchise because they were fearful of the propertyless as a potential many-headed hydra who wanted to take property and power from this natural elite and who would be easily corrupted by crown patronage or manipulated by popular demagogues.<sup>10</sup>

Historians have disagreed with Pocock and Bailyn when they have maintained that American colonists were mainly Classical Republicans. Historians, such as Thomas Pangle, Joyce Appleby and Stephen Dworetz, have tried to reassess Locke's influence on American republicanism as manifested during the American Revolution. They have identified a second strand of radical Whiggism, which was greatly influenced by the natural rights ideology of John Locke in particular. This ideology was, at least potentially, far more democratic because it stressed that God had created all men equal and all men possessed the right to life, liberty and property. These rights were universal and inalienable. The only legitimate form of government was created by an original contract involving all men. The civil government so created (both executive and legislature) could be resisted by force if it seriously abused the trust and the powers bestowed on it. This was feared by other radical Country Whigs as potentially leading to the rule of the poor and political instability. Natural rights arguments can be detected in much of the political discourse of the American Revolution, including Thomas Paine's *Common Sense* and the Declaration of Independence. According to Stephen Dworetz, 'the Lockean-liberal spirit played a very important role in the formation of the American myth and, ideologically, in the making of the American Revolution'.<sup>11</sup> Clearly historians should not

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<sup>10</sup> See Bernard Bailyn, *The Ideological Origins of the American Revolution*; Caroline Robbins, *The Eighteenth-Century Commonwealthman*; and J.G.A Pocock, *The Machiavellian Moment*.

<sup>11</sup> Dworetz, *The Unvarnished Doctrine*, 186.

discard the importance of Lockean thought on the period just after Independence: such principles as the consent of the governed, religious toleration and limited government were all employed by Americans and were undoubtedly inspired by Locke.<sup>12</sup> Joyce Appleby, in particular, has criticised the Classical Republican interpretation. She maintains that Americans were ‘Liberal Republicans’ during and just after the American Revolution. She has claimed that leading American Patriots, such as Thomas Jefferson, were inspired by Lockean Liberalism rather than Classical Republicanism. ‘Deliverance from the strictures of classical republicanism came from the ideology of liberalism,’ asserts Appleby, ‘from a belief in a natural harmony of benignly striving individuals saved from chaos by the stability worked into nature's own design.’<sup>13</sup> According to Appleby, Americans were motivated by egalitarian individualism rather than the civic virtue advocated by Classical Republicanism.

This historiographical disagreement is perfectly understandable when one takes into consideration the fact that most American Patriots were not philosophers, seeking logical, intellectual coherence. Rather, they were like lawyers (many were indeed lawyers) who used any argument to win their case. Although J.G.A Pocock is certainly correct to claim that Country Whig ideology ‘ran riot in America’ during the American Revolution,<sup>14</sup> it is important to emphasise the point that within Country Whiggism there were two different strands – Classical Republicanism and Lockean Liberalism – and American Patriots made use of both strands. The differences between the two strands within Country Whiggism were over who the legislature should represent and how extensive the franchise should be. As a slave owning colony, Virginia could never be quite as Lockean as Massachusetts with its much wider distribution of property and wealth. Thomas Jefferson used Lockean terminology in the

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<sup>12</sup> Ibid.

<sup>13</sup> Joyce Appleby, *Liberalism and Republicanism in the Historical Imagination* (Cambridge, Mass.: Harvard University Press, 1992). 185.

<sup>14</sup> J. G.A Pocock, ‘Virtue and Commerce in the Eighteenth Century’, *Journal of Interdisciplinary History*, 3 (1972), 123.

opening of the Declaration of Independence, but his ownership of slaves shows he was never a complete adherent of Lockean principles.<sup>15</sup> Indeed, historians are in agreement that one of the most important texts that inspired American Patriots was Trenchard and Gordon's *Cato's Letters*. J.G.A Pocock classifies this text as fundamentally classical republican, but Richard Hamowy has emphasised the Lockean nature of *Cato's Letters*, in that Trenchard and Gordon perceived the role of government as a product of a contract 'designed to enforce men's natural rights'.<sup>16</sup> It is possible to identify both strands of Country Whig thought in the language and constitutional documents of the American Revolution.

It is impossible to understand fully the practical and political behaviour of the various state governors of Virginia without giving due consideration to the different provisions for executive power outlined in this state constitution. In doing so, this chapter will, first, outline the process by which Virginians wrote the state's constitution. Second, it will examine Virginia's Declaration of Rights and the use of popular sovereignty in the Constitution. Third, this chapter will analyse Virginia's application of the separation of powers principle and, most important, it will examine the governor's position within the political framework. This chapter will maintain that Virginia established a system of government which was modelled on English Country Whig ideology. In particular, it will contend that the powers granted to the governor demonstrate that they had created in their new constitution their own distinct model of executive power based on Country Whig principles and attitudes.

## I

### *The Making of the Virginia Constitution, 1776*

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<sup>15</sup> David N. Mayer, *The Constitutional Thought of Thomas Jefferson* (Charlottesville: University Press of Virginia, 1994), 21.

<sup>16</sup> Pocock, 'Virtue and Commerce', 127; Ronald Hamowy, 'Cato's Letters, John Locke and the Republican Paradigm', *History of Political Thought*, 11 (1990), 293.

After nine days of arduous debating in the Capitol in Williamsburg, 112 delegates passed three resolutions without opposition: the first declared an end to royal government in Virginia; the second declared that Virginia should establish a Declaration of Rights and a written constitution; and the third called for Congress to declare its independence, to form a ‘confederation and perpetual union’ among the thirteen colonies and to make alliances with foreign powers. Excited crowds had gathered outside the Capitol building and, before any vote had even been taken or announced, they hauled down the British Union flag on top of the building and replaced it with the Grand Union Flag of Washington’s army. There were ‘other demonstrations of joy’: troops paraded, cannons were fired and there were illuminations in the evening.<sup>17</sup> Thomas Nelson rode directly to Congress to present this Virginia Resolution. On 7 June 1776, inspired by Virginia’s resolution, Richard Henry Lee, one of Virginia’s delegates to Congress, proposed a motion, ‘That these United Colonies are, and of right ought to be, free and independent States, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved’.<sup>18</sup>

The Virginian Convention decided not to wait for Congress to declare its independence from Britain, but immediately set about filling the void that the absence of royal government had created. Rather than elect a body for the sole purpose of adopting a constitution, however, the delegates to the Convention took it upon themselves to act as if they represented the popular will of the Commonwealth. The Convention appointed a constitutional committee under the chairmanship of Archibald Cary. It assigned over one-quarter of the delegates in the Convention to the committee; among them were George Mason, James Madison and Patrick

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<sup>17</sup> John E. Selby, *The Revolution in Virginia*, 97.

<sup>18</sup> *The Journals of the Continental Congress*, ed. Worthington C. Ford *et al.*, 34 vols. (Washington, D.C.: Library of Congress, 1904-37), V: 424.

Henry.<sup>19</sup> Mason believed that the committee was too large and complained that it was ‘overcharged with useless members’, who were clearly intent on devising a plan of government ‘form’d of heterogeneous, jarring, and unintelligible Ingredients’.<sup>20</sup>

There was one notable absentee from this Constitutional Committee, however. Thomas Jefferson was not present during the Convention’s discussions over a new constitution. He attended Congress from May until September 1776 and, thus, was unable to influence the constitution as strongly as he had hoped. This did not deter Jefferson, however, from trying to shape his state’s future political framework. Virginia was close to his heart and he wanted to share the responsibility of influencing the Commonwealth’s future political direction. He wrote to Thomas Nelson, ‘It is a work of the most interesting nature and such as every individual would wish to have his voice in’. For Jefferson, declaring independence was not enough to achieve real independence from Britain. Americans had to establish a workable and long-lasting political structure in their individual states in order to ‘gain’ independence: ‘In truth it is the whole object of the present controversy; for should a bad government be instituted for us, in future it had been as well to have accepted at first the bad one offered us from beyond the water without risk and expense of contest’.<sup>21</sup> Jefferson believed that the first constitutions of the newly independent states were particularly important to the survival of America as a republic. If the states could not establish permanent, functioning and viable constitutions, the contest with Britain would ultimately prove to be futile. He stressed that Americans ought to establish constitutions which were radically different from the ‘bad one offered us beyond the water’. Independence, therefore, would be achieved by the success of the new constitutions which were being devised.

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<sup>19</sup> John E. Selby, *The Revolution in Virginia*, 100-1

<sup>20</sup> George Mason to R.H. Lee, 18 May 1776, *Papers of George Mason*, I: 271.

<sup>21</sup> ‘Thomas Jefferson to Thomas Nelson, 16 May 1776, *PTJ*, I: 292.

Although Jefferson was absent from the Constitutional Convention, Virginians did have help from other notable American political theorists. The actual author of the Virginian Constitution of 1776 is debatable. While George Mason wrote the main draft for the constitutional committee, there were many contributions made by others to that document. Edmund Randolph, who was a member of the Convention, recollected: ‘A very large committee was nominated to prepare the proper instruments, and many projects of a bill of rights and constitution discovered the ardour for political notice, rather than a ripeness in political wisdom. That proposed by George Mason swallowed all the rest, by fixing the grounds and plan, which after great discussion and correction, were finally ratified’.<sup>22</sup> By 1776, four different draft constitutions had been offered to the Convention for consideration.

As early as November 1775, when Americans began to contemplate creating a possible republican government, a prominent Virginian, George Wythe, had approached John Adams and asked him to explain in writing how he would establish a workable constitution. Adams’s letters were eventually published in the spring of 1776, by Richard Henry Lee, under the title, *Thoughts on Government: Applicable to the Present State of the American Colonies*. This ten-page pamphlet was well-received in the colonies, particularly in Virginia. Adams wanted this pamphlet published in order to counteract Thomas Paine’s general views on government, which included a single legislative assembly, that had been suggested in *Common Sense*.<sup>23</sup> Adams believed that ‘a single assembly is liable to all the vices, follies and frailties of an individual’ and strongly urged all states to establish an upper house in order to curtail the possibility of establishing a collective despotism. Although Virginians ignored Adams’s promotion of a strict separation between executive and legislative branches, they accepted wholeheartedly his

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<sup>22</sup> ‘Edmund Randolph’s Essay on the Revolutionary History of Virginia’, cited in *PTJ*, 1: 333.

<sup>23</sup> Adams published his *Thoughts on Government* in 1776, a pamphlet supporting bicameralism, in part to ‘counteract the Effect’ that ‘so popular a pamphlet might have among the people’. Adams detested Paine’s plan to have a single legislative assembly and maintained that ‘I think a people cannot be long free, nor ever happy, whose government is in one assembly’. ‘Thoughts on Government’, *Papers of John Adams*, IV: 88.

proposal for a bicameral legislative branch. George Mason's draft constitution bore a remarkable resemblance to the tone and form of Adams's pamphlet.<sup>24</sup>

While Adams's plan was wholeheartedly welcomed, there were others who were determined to retain the British form of government. Carter Braxton wrote a pamphlet in direct response to Adams's plan, which was entitled, *Address to the Convention of the Colony and Ancient Dominion of Virginia, on the Subject of Government in General, and Recommending a Particular Form to Their Consideration, By a Native of the Colony*. Braxton maintained that Virginia should reject Adams's republican constitution and instead restore the British constitution to its original state, which would herald 'more happiness than any other'.<sup>25</sup> Virginians rejected this appeal to establish a British form of government in Virginia, and Richard Henry Lee described Braxton's plan as 'this Contemptible little Tract, [which] betrays the little Knot or Junto from whence it proceeded'.<sup>26</sup> Virginians rejected the British system of government and were determined to establish their own uniquely republican system.

Jefferson himself sent a draft constitution to the Convention, which was delivered by George Wythe, in mid-June, but the Convention decided not to treat it as a feasible draft proposal because it had arrived too late. George Mason had already prepared a draft constitution and the delegates were keen to debate a constitution which had been drawn up by their own constitutional committee. They allowed Jefferson's draft to be considered for the purpose of amending Mason's constitution and they adopted Jefferson's preamble, which

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<sup>24</sup> For a discussion of the various drafts written by George Mason and Thomas Jefferson, and the process through which the Constitution of 1776 and Virginia's Declaration of Rights were created, see *PTJ*, I: 329-386, and *The Papers of George Mason*, I:276-291, 295-310. For the text of the Virginian Constitution, see 'Final Draft of the Virginia Constitution of 1776' in *ibid.*, I: 304-310. See also Donald Lutz, *Popular Consent and Popular Control: Whig Political Theory in the Early State Constitutions* (Baton Rouge: Louisiana State University Press, 1980), 44-45; Willi Paul Adams, *The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era* (Chapel Hill: University of North Carolina Press, 1980); Marc W. Kruman, *Between Authority and Liberty: State Constitution Making in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1997).

<sup>25</sup> Cited in *PTJ*, I: 335.

<sup>26</sup> R.H. Lee, *Letters*, cited in *ibid.*

contained charges against King George III.<sup>27</sup> Jefferson, subsequently, sent two further drafts to the Convention; clearly he was anxious to influence this ‘momentous occasion’. Few of Jefferson’s proposals were adopted in the final text, however; apart from clauses concerning the court system and the disputed territories in the west.<sup>28</sup> By 29 June, after weeks of deliberation and debate, the Virginia Constitution was ready for adoption. Thus, three days before the Continental Congress was scheduled to vote on Jefferson’s Declaration of Independence, the Commonwealth of Virginia had established a republican system of government.

## II

### *The Declaration of Rights: The Application of Popular Sovereignty*

The Constitution of Virginia in 1776 did not just outline the powers belonging to the several branches of government, but contained two important lists. The first list was a Declaration of Rights, which established the theoretical and contractual basis from which Virginians were able to construct their framework of government. The second was a list of charges against the British king, which was written by Thomas Jefferson (and later included, in a slightly altered form, in the Declaration of Independence). Both lists provide revealing insights into the reasons why the executive branch was transformed in Virginia’s new political system.

The Declaration of Rights was originally drafted by George Mason and it was the first document deliberated upon by the constitutional committee, even before it considered a draft constitution. In his first draft, Mason put forward ten points which he believed were ‘the Foundation and Basis of Government’.<sup>29</sup> The Committee added eight new points to Mason’s

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<sup>27</sup> For example, the Convention named the upper house of the legislature the Senate in accordance with Jefferson’s draft.

<sup>28</sup> *PTJ*, I: 333.

<sup>29</sup> George Mason to R.H. Lee, 18 May 1776, *Papers of George Mason*, I: 271.



draft and placed it before the Convention for debate. Among these 18 ‘rights’ were the right to trial by jury, the right to freedom of the press, and the right to create a state militia. After weeks of discussion, when there was heated debate among the delegates, especially on points concerning freedom of religion and the thorny issue of slavery, the Convention finally adopted its first Declaration of Rights on 12 June 1776, with a reduced number of sixteen articles.

Of the sixteen articles adopted, the Convention made an explicit acceptance of popular sovereignty in the second article: ‘All power is vested in, and consequently derived from, the people; the magistrates are their trustees and servants, and at all times amenable to them’.<sup>30</sup> This declaration clearly reflected what had been propagated in the writings in this period within the newly independent states.<sup>31</sup> Willi Paul Adams has clearly shown that, while several constitutions affirmed the principle of popular sovereignty, none spelled out exactly the ramifications and practical consequences of this for the state governments, leaving instead for the full implications to be worked out through future political action.<sup>32</sup> Historians, who have discussed the concept of popular sovereignty in the first American constitutions, have generally concentrated on the question of the division of sovereign power between the state governments and the Articles of Confederation.<sup>33</sup>

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<sup>30</sup> ‘Final Draft of the Virginia Declaration of Rights’, *Papers of George Mason*, I: 287.

<sup>31</sup> The Massachusetts General Court proclaimed: ‘As the happiness of the people [alone] is the sole End of Government, so the consent of the People is the only Foundation of it . . . and therefore every Act of Government, every exercise of sovereignty, against, or without, the Consent of the People, is Injustice, Usurpation, and Tyranny’. See ‘The Proclamation of the General Court of the colony of Massachusetts-Bay, 23 January 1776’, in *Popular Sources of Political Tradition*, 65. See also the statement from the town meeting of Stoughton, 2 October 1776: ‘Resolved that as the end of Government is the happiness of the people So the sole power and right of forming and Establishing as plan thereof is essentially in the people’, in *ibid.*, 106. A typical statement of belief in popular sovereignty, can be found in *An English Patriot’s Creed*: ‘I believe all political power to be derived originally from, and invested in the people; which, I believe, they may dispose of, for their own use, in what hands, and under what conditions they please’. See Anon., ‘An English Patriot’s Creed, Anno Domini, 1775’, in *American Political Writing*, 1: 318.

<sup>32</sup> Willi Paul Adams, *The First American Constitutions*, 137.

<sup>33</sup> Willi Paul Adams, *The First American Constitutions*, 142; and Gordon Wood, *The Creation of the American Republic*, 354-363.

The conception and application of popular sovereignty within the framework of government devised by Virginia created substantial problems for the location and nature of executive power in the state. By acknowledging the sovereignty to the people, Virginians raised an important, though awkward, issue which was the relationship between the sovereign people and their elected rulers. The nature of representative government, where the popular will was embodied in the elected representatives in the legislative assembly, created a gap, or even a division, between the people and their representatives.<sup>34</sup> This transferral of sovereignty could create fear among the electors that their representatives might set their own agenda and pursue their own interests. This suspicion partly stemmed from a reading of *Cato's Letters*, written by John Trenchard and Thomas Gordon, which stressed that 'Whatever is good for the people is bad for the governors; and what is good for the governors is pernicious to the people'.<sup>35</sup> In terms of executive power, there remained the issue of what was the proper relationship between the governor and the people: whether there was a direct relationship through popular election, or whether this relationship should be indirect through a third party, namely the legislature. In essence, therefore, the constitution of Virginia had to decide whether the governor was appointed and accountable to the people or to the legislature. For executive power, the clear issue was from whom did the governor derive his power and influence: the people or their elected representatives?

The issue of sovereignty had saturated the polemical disputations between Britain and the colonies that eventually led to revolution. Governor Thomas Pownall perfectly described the ubiquitous prevalence of the subject: 'we have neither knowledge, nor system nor principle, we have but one word ... sovereignty – and it is like some word to a mad-man which, whenever

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<sup>34</sup> The major works on representation within this period are J.R Pole, *Political Representation in England and the Origins of the American Republic* (London: Macmillan 1966); and John Phillip Reid, *The Concept of Representation in the Age of the American Revolution* (Chicago: University of Chicago Press, 1989).

<sup>35</sup> Cited in Gordon Wood, *The Creation of the American Republic*, 18.

mentioned, throws him into his ravings'.<sup>36</sup> The doctrine of sovereignty pervaded the literature of the transatlantic debate as writers grappled with abstractions in order to contest the feasibility of the British taxation policy on the colonies and, ultimately, the right of Britain to impose any tax or legislation at all upon the colonies.<sup>37</sup> From the 1760s to 1787, from the early constitutional dispute with Britain to the contested Federal Constitution, the issue of sovereignty was the most divisive subject in the heated political atmosphere of America. Sovereignty was the conviction that there had to be in every state a supreme power which had the right to exercise ultimate (and incontestable) authority, and all other powers in the state had to be subordinate to this authority. Alexander Hamilton provides a good example of the commonly held belief in 1775: 'In every civil society, there must be a supreme power, to which all the members of that society are subject; for, otherwise, there could be no supremacy, or subordination, that is no government at all'.<sup>38</sup>

From the outset, however, Virginians did not fully comply with their dogmatic affirmation of popular sovereignty because their constitution lacked popular consultation or ratification. Hence, they were not pure Lockean Whigs. Although Virginians used the name 'Convention', it does not mean that this body of delegates was specially convened for the sole purpose of devising a constitution or that the constitution was subsequently ratified by the people.<sup>39</sup> The constitution, therefore, emanated and derived its authority from a legislative body. Thomas Jefferson, in his *Notes on the State of Virginia*, maintained that, while the constitution was formed when 'we were new and unexperienced in the science of government', it contained 'very capital defects in it'. Among these defects, according to Jefferson, was the

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<sup>36</sup> Cited in John A. Schutz, *Thomas Pownall: British Defender of American Liberty. A Study of Anglo-American Relations in the Eighteenth Century* (Glendale: The Arthur W. Clark Company, 1951), 220.

<sup>37</sup> See Bernard Bailyn, *The Ideological Origins of the American Revolution*, 198-229.

<sup>38</sup> Alexander Hamilton, 'Farmer Refuted', cited in Willi Paul Adams, *First American Constitutions*, 133.

<sup>39</sup> Jeremy D. Bailey, *Thomas Jefferson and Executive Power* (Cambridge: Cambridge University Press, 2007), 29n.

ability of the ‘ordinary legislature’ to alter the constitution itself.<sup>40</sup> In other words, the Virginia Constitution of 1776 proclaimed its belief in popular sovereignty, but, in practice, adhered to the more traditional belief in legislative sovereignty. In this way, they followed the example of major Country Whig thinkers.

Legislative sovereignty reigned supreme in the writings of major Whig theorists of the late seventeenth and eighteenth centuries in Britain. John Locke in his *Second Treatise of Government* clearly stated that ‘the legislative is not only the supreme power of the commonwealth, but sacred and unalterable in the hands where the community have once placed it’.<sup>41</sup> Although Locke did not explicitly mention England, it is apparent that he regarded the sovereign legislature in his work to the combined institutions of king, lords and commons.<sup>42</sup> Locke’s doctrine concerning legislative sovereignty quickly became common currency, even among Court Whigs, in eighteenth-century British politics to the extent that it was perceived to be incontestable. The introduction of William Blackstone’s commentaries into the colonies by the 1770s reaffirmed the need for ‘a supreme, irresistible, absolute, uncontrolled authority, in which the *jura summi imperii*, or the rights of sovereignty, reside’. Blackstone was in no doubt that this ‘sovereignty of the British constitution’ resided in the king-in-parliament.<sup>43</sup> While colonists likewise argued in support of legislative, that is colonial legislative, sovereignty, the belief in popular sovereignty became more widespread than in Britain after independence.<sup>44</sup>

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<sup>40</sup> Thomas Jefferson, ‘Notes on the State of Virginia’, in *Life and Writings of Thomas Jefferson*, 220-1, 223.

<sup>41</sup> John Locke, ‘Second Treatise of Government’ ch.11, para. 134, in *Two Treatises of Government*, ed. Mark Goldie (London: J.M Dent, 1993), 182.

<sup>42</sup> In normal circumstances, Locke did place sovereign authority in the legislature. Locke did, however, accept that a legislature which clearly abused the trust placed in it could be resisted by force. The resisters could make an appeal to heaven and could trust that God would favour a just rebellion and punish an unjust rebellion. H.T. Dickinson, ‘The Eighteenth-Century Debate on the Sovereignty of Parliament’ *Transactions of the Royal Historical Society*, 5<sup>th</sup> Series, 26 (1976), 192-3.

<sup>43</sup> Cited in Bernard Bailyn, *The Ideological Origins of the American Revolution*, 201-2.

<sup>44</sup> Horst Dippel, ‘The Changing Idea of Popular Sovereignty in Early American Constitutionalism: Breaking Away from European Patterns’, *Journal of the Early Republic*, 16 (1996), 21-45.

Although some fringe elements of Country Whig thought fully advocated popular sovereignty in Britain, the great majority of Whig theorists, most especially those who enjoyed an extensive readership in America, never openly supported the idea. Instead, there was a tacit role for the people in relation to legislative authority in their works, which contain the embryonic roots of the concept of popular sovereignty. There has been a tendency among historians to overemphasise the role Whig theorists envisaged for the people at large. Lee Ward, for example, has claimed that Algernon Sidney held popular sovereignty to be the logical and moral implication of natural liberty and equality, and that he had a populist conception of the proper form of government.<sup>45</sup> Locke's legislative sovereignty was premised on the consent of the people, because government originated in a social contract, and thus made the people, by implication, superior to the legislature. Indeed, if the contract was broken, by a tyrannous regime, then Locke argued that the people had a right to resist such an unlawful government. This right of resistance had a substantial bearing in the colonies.<sup>46</sup> It is tenuous to argue from this basis, however, that all or even most Country Whigs advocated popular sovereignty. Whig theorists had no desire to see manifested what was latent in their concept of government by consent. Locke was not prepared to grant the people a continuously active role in government: once the original contract was in effect, the legislature was supreme. Sovereignty only reverted to the people when government was dissolved and the social contract broken. Indeed, Dickinson has shown that the 'people' referred to in such Whig writings as Locke, Sidney, and Tyrrell must be interpreted in a relatively narrow sense: it was a 'limited definition' closely resembling the electorate already in place.<sup>47</sup> Popular sovereignty was simply alien to most of

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<sup>45</sup> Lee Ward, *The Politics of Liberty*, 14; Edmund Morgan has similarly argued that Locke and Sidney wrote 'sweeping defenses' of popular sovereignty, in Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: W.W. Norton & Co., 1988), 104-5.

<sup>46</sup> See Jonathan Mayhew, 'A Discourse Concerning Unlimited Submission and Non-Resistance to the Higher Powers', 60-151.

<sup>47</sup> H.T. Dickinson, 'The Eighteenth-Century Debate on the Sovereignty of Parliament', 199-203. While David Hume dissented from the prevalent interpretation of the original contract and instead argued that it originated 'either on usurpation or conquest', once established over a number of years, he argued, that they had the

the major Whig thinkers in this period. It was in America where popular participation in politics had already become more apparent, and where the king's influence, including his representatives, had diminished considerably, that a far more acceptable and welcoming laboratory for popular sovereignty was created.

Fear of the power of the chief magistrate clouded Virginia's application of the doctrine of popular sovereignty within its constitution. Virginia did not cater for a popularly elected governor; instead, it dictated that 'a Governour, or chief magistrate, shall be chosen annually, by joint ballot of both Houses, to be taken in each House respectively'.<sup>48</sup> Rather than entrusting the people with the choice of their magistrate, gubernatorial elections were kept within the bounds of legislative prerogative. Thus, the governor was not the servant or representative of the people, but the choice of the legislature. Denying a popularly elected executive, moreover, was rooted in the Classical Republican strand of the Country Whig tradition. The executive authority in Harrington's *Commonwealth of Oceana*, for example, was exercised by the magistrates and various councils, which were chosen by the Senate from among its own members.<sup>49</sup> By making the governor a legislative appointment, Virginians made sure that a popular champion could not usurp the political system in place. Clearly, by denying the people a say in the election of their governor, the constitutional committee were tacitly admitting that they did not trust the electorate to make the right choice. As Thomas Jefferson himself made clear to Edmund Pendleton, a popularly elected governor would be a hindrance: 'I have ever observed that a choice by the People themselves is not generally distinguished for it's [*sic*] wisdom. This first secretion from them is usually crude and heterogeneous. But give to those

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prescriptive right to be sovereign. See David Hume, 'Of the original contract', in *David Hume: Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994), 189.

<sup>48</sup> 'The Virginian Constitution', 306.

<sup>49</sup> James Harrington, *The Commonwealth of Oceana* (London, 1656), 111-113. See also, Charles Blitzer, *An Immortal Commonwealth: The Political Thought of James Harrington* (New Haven: Yale University Press, 1960), 248.

chosen by the people a second choice themselves, and they will generally chuse wise men'.<sup>50</sup> In other words, for Jefferson, the choice of governor should be made by the members of the legislature because they would exercise greater wisdom and discretion than the people at large in choosing the best person to execute the laws that the legislators passed.<sup>51</sup> Thus, the Virginian governor could never be a popular champion, but would always be a creature of the legislature.

Not only was the governor elected by the legislative branch, but he could also be dismissed by the legislators as well. A clause in the Constitution of Virginia stipulated that the governor was always subject to the will of the legislative branch. If the governor proved to 'offend the state', by means of 'maladministration, corruption or by other means', which endangers the State, he 'shall be impeachable by the House of Delegates'.<sup>52</sup> In other words, the executive was wholly accountable to and removable by the legislative branch and not the people.

Because the radical Country Whigs believed that the corrupting influence of the court was so dangerous, they often advocated the annual rotation of offices so that no official or representative would hold power for more than a year. Virginia instituted the rotation of office principle and practice within its framework of government. The governor could serve three successive one-year terms, but could not run for the governorship again for another four years. This prevented a governor from accruing a substantial powerbase from which he could exert greater control which might eventually corrupt the government.<sup>53</sup> John Adams, in his pamphlet, *Thoughts on Government*, advocated a rotation of offices because he believed that long tenure led to corruption and made an office appear hereditary.<sup>54</sup> The Virginian Constitution placed all elective power within the legislature as representatives of the people, and made the governor

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<sup>50</sup> Thomas Jefferson to Edmund Pendleton, 20 August 1776, in *PTJ*, I: 504.

<sup>51</sup> Jeremy D. Bailey, *Thomas Jefferson and Executive Power*, 33.

<sup>52</sup> 'The Final Draft of the Virginia Constitution, 1776', in *Papers of George Mason*, 1: 308

<sup>53</sup> *Ibid*, I: 306.

<sup>54</sup> *Papers of John Adams*, IV: 63-90.

subordinate to it. Thomas Jefferson later described the powers enjoyed by the legislature in his *Notes on the State of Virginia* as an ‘elective despotism’.<sup>55</sup> Virginia, displaying a radical Country Whig fear of executive power, situated the majority of powers and supremacy within the legislature. The governor, therefore, had no direct relationship with the people.

## II

### *The Denigration of Executive Power: The Charges against George III*

While the application of popular sovereignty was modified in respect to the governorship, the second list which prefaced the Constitution explicitly formed the platform from which Virginia’s weak governor position was created. Thomas Jefferson judged that it was necessary to validate Virginia’s actions and to explain and justify it to the American people and the world. He provided twenty charges against George III, which, Jefferson believed, proved that Virginians had a right to dissolve this tyrannical government and create a new one. According to the Virginian Constitution, George III by his actions had acted against the best interests of the people: ‘Whereas George the Third, King of Great Britain and Ireland, and Elector of Hanover, heretofore intrusted with the exercise of the Kingly office in this Government, hath endeavoured to prevent, the same into a detestable and insupportable tyranny, by putting his negative on laws the most wholesome and necessary for the publick good’.<sup>56</sup> What follows is a list of charges against George III which was designed to portray the king as an architect of tyranny.

Fear of executive power is the prevailing tone of Jefferson’s list of charges. From the outset, he suggested that George III abused his position of authority and trust by exercising his prerogative powers against the ‘publick good’. Jefferson depicted George III as an arbitrary

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<sup>55</sup> Thomas Jefferson, ‘Notes on the State of Virginia’, in *Life and Writings of Thomas Jefferson*, 222.

<sup>56</sup> ‘The Constitution as Adopted by the Convention’, 29 June 1776, *PTJ*: I: 377.



executive who deliberately used his power in order to disrupt and destroy American colonial liberty. He ‘prevented necessary colonial legislation from being passed’ and acted ‘arbitrarily’ by ‘dissolving legislative assemblies’ without cause and ‘taking military control over the colonies’.<sup>57</sup> By dissolving the assemblies of the people and failing to recall them for long periods, his actions represented nothing less than repeated ‘invasions of the rights of the people’. According to Jefferson’s charge sheet, George III had approved legislation which was passed by the Westminster Parliament, but which was very harmful to the interests and wishes of the colonists. The king revealed his ‘tyrannical’ self when he agreed to having ‘large bodies of troops quartered’ among Americans, ‘for cutting off’ American trade to all other parts of the world, for imposing taxes without colonial consent and for depriving Americans of the benefits of trial by jury.<sup>58</sup> In other words, according to Jefferson, George III had deliberately attempted to subvert and undermine the natural rights belonging to Americans.

Most of the charges which Jefferson levelled at the king were in actual fact initiated by ministers, passed by Parliament and implemented by royal governors. It was the governors who had dissolved the legislative assemblies, attached suspending vetos onto colonial legislation, and refused to call legislative assemblies into session. In particular, it was Lord Dunmore who had prompted ‘our negroes to rise in arms against us, those very negroes whom, by an inhuman use of his negative, he hath refused us permission to exclude by law’.<sup>59</sup> While royal governors may have committed these abuses, the king refused to overturn these decisions; in other words, he had failed to protect his people against abuses which threatened their liberty. Jefferson concluded his list of accusations by maintaining that because of these ‘several acts of misrule,

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<sup>57</sup> *Ibid.*, I: 377-8.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*,: 378.

the government of this country, as formerly exercised under the crown of Great Britain, is TOTALLY DISSOLVED'.<sup>60</sup>

Undoubtedly, the list of charges against George III was included in the Constitution by the Convention because it gave political justification for and legitimacy to the document. In true Lockean fashion, by delineating all the apparent abuses perpetrated by the Crown, Virginians were able to justify their establishment of a new government. George III's tyranny gave the Americans a right to resist, to break the existing link with Britain and to establish a new form of government. It also served a secondary function, however. By prefacing their republican form of government with their perception of monarchical government and its apparent abuses, they were able to draw a sharp distinction between the 'old' system of government and the 'new' system which they had just devised. In other words, they juxtaposed the British system of government, which committed numerous injustices against the Americans, to their Virginian system of government, which they believed would herald a new era of freedom.

Jefferson's list, however, exposed an important problem facing the Virginia Convention in 1776. The king was removed from the political framework, but the question remained about what should happen in this republican framework to the kingly prerogatives, exercised previously by the royal governor on his behalf. Jefferson believed that the constitution had to tackle the problem of replacing the 'kingly office'. In his draft constitution, he ensured that the governor would inherit the kingly office, but would be denied all the powers previously pertaining to that position.<sup>61</sup> In other words, Jefferson's 'administrator' would resemble the

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<sup>60</sup> Jefferson continued: 'We therefore, the delegates and representatives of the good people of Virginia, having maturely considered the premises, and viewing with great concern the deplorable conditions to which this once happy country must be reduced, unless some regular, adequate mode of civil polity is speedily adopted, and in compliance with a recommendation of the general Congress, do ordain and declare the future form of government of Virginia to be as followeth'. *Ibid.*, I: 379.

<sup>61</sup> In his third draft, Jefferson wrote that George III 'hereby is deposed from the kingly office with this government and absolutely divested of all its rights, powers and prerogatives'. In other words, the kingly office remains but

king in terms of ceremonial significance, but would be denied the exercise of any kingly prerogatives. His ‘Administrator shall possess the powers formerly held by the king: save only that, he shall be bound by acts of legislature tho’ not expressly named’.<sup>62</sup> Jefferson was concerned to ensure that the governor was simply an executive official with limited powers. As he wrote to Edmund Pendleton:

should we not have in contemplation and prepare for an event (however deprecated) which may happen in the possibility of things; I mean a re-acknowledgement [*sic*] of the British tyrant as our king, and previously strip him of every prejudicial possession? Remember how universally the people run into the idea of recalling Charles the 2d. after living many years under a republican government.<sup>63</sup>

In other words, Jefferson was concerned in case Virginia re-established monarchical government should its republican government prove unsuccessful. Jefferson evidently remembered the Virginian gentry’s deep admiration for Fauquier and Botetourt when Virginia was a royal colony, and republican government seemed a fragile entity in the face of the fickleness inherent in the people at large. Jefferson maintained that Virginia should install a governor who would be an officer in the form of a king, but would lack the king’s powers and prerogatives, so that absolute or arbitrary monarchy could not rear its ugly head again.<sup>64</sup> The Virginia Constitution had a significant problem to overcome: which institution would wield the prerogative, which body was to be the law-making authority, and where did power lie in the constitution?

### III

#### *The Framework of Government: The Implementation of the Separation of Powers*

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George III has been deprived of it and of all its privileges by the Virginian people. ‘Third Draft by Jefferson, before 13 June 1776, *PTJ*, I: 357.

<sup>62</sup> *Ibid.*, I: 360.

<sup>63</sup> Thomas Jefferson to Edmund Pendleton, 13 August 1776, *PTJ*, 1: 492.

<sup>64</sup> Jeremy D. Bailey has claimed that Jefferson’s faith in democracy ‘carried with it some suspicion that the people desired monarchy’. Bailey, *Jefferson and Executive Power*, 32-33.

The Virginia constitution boldly declared that it had instituted the doctrine of the separation of powers into its governmental framework: ‘The legislative, executive, and judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the other; nor shall any person exercise the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them at the same time’.<sup>65</sup>

The Convention maintained that this tripartite system of government would be kept separate and no one could exercise the powers of more than one branch at the same time. It established a legislative General Assembly, consisting of a House of Delegates and a Senate, an executive, consisting of a governor and Privy Council, and a separate justice system. What was implied when Virginia affirmed its belief in the doctrine of the separation of powers? How independent would each branch be, and would equal power be parcelled out to each branch of government? Virginia adapted the accepted practice of the separation of powers by following a radical Country Whig version of the doctrine.

No other constitutional concept has defined the particular aspects of the American system of government over the centuries than the concept of the separation of powers.<sup>66</sup> No other constitutional concept, however, during the era of the first state constitution making, has suffered from such conflicting and ambiguous definitions. Indeed, next to the institution of popular sovereignty, no other constitutional concept has become more relevant to the study of the evolution of gubernatorial power in Virginia, than the practical application of the separation of powers in its constitution. Historians have failed to agree about the significance, etymology and implications for the explicit acceptance and application of the separation of powers doctrine within the constitution of Virginia. Gordon Wood has argued that, in the first wave of

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<sup>65</sup> ‘Final Draft of the Virginia Constitution of 1776’, in *Papers of George Mason*, 1: 304.

<sup>66</sup> See M.J.C Vile, *Constitutionalism and the Separation of Powers* (Oxford: Oxford University Press, 1967), 119-176; W.B. Gwyn, *The Meaning of the Separation of Powers: An Analysis of the Doctrine from its Origin to the Adoption of the United States Constitution* (New Orleans: Tulane Studies in Political Science, 1965); and Gerhard Casper, *Separating Power: Essays on the Founding Period* (Cambridge, Mass.: Harvard University Press, 1997), 1-22.

constitutions, particularly in Virginia, the separation of powers meant little more than ‘insulating the judiciary and particularly the legislature from executive manipulation’.<sup>67</sup> Another interpretation, however, has claimed that the acceptance of this doctrine within the constitutions was not purely because it protected the legislature from executive corruption, but also because it reduced the American fears of governmental power in general, either in one man or in a body of men.<sup>68</sup> Indeed, there has been a tendency among some historians to interpret the use of the separation of powers doctrine as a prelude to the Federal Constitution’s institution of this constitutional principle. They have interpreted the first state constitutions as a part of an evolutionary process that produced the eventual manifestation of the separation of powers which appeared in 1787 and which was engineered by James Madison.<sup>69</sup>

This dispute among historians is due, in part, to the fact that by the middle of the eighteenth century, there was not a single definition of the concept of the separation of powers that had achieved widespread acceptance. Americans still thought of their own colonies/states as a microcosm of the balanced constitution present in Britain. Indeed, such was the general ambiguity of the notion of the separation of powers within the colonies, that historians have contested who bore responsibility for having the greatest influence on them for developing the doctrine. Montesquieu has generally been considered the most obvious influence as he was the first directly to define the separation of powers concept, when analysing the ‘Constitution of England’ in his *The Spirit of Laws*.<sup>70</sup> Montesquieu positioned the separation of powers as an

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<sup>67</sup> Gordon Wood, *The Creation of the American Republic*, 157. Wood’s interpretation has become the accepted one among most historians of the period. See, Donald Lutz, *Popular Consent and Popular Control*, 96-77; Willi Paul Adams, *The First American Constitutions*, 271-5; and Ellen E. Brennen, *Plural Office-Holding in Massachusetts, 1760-1780* (Chapel Hill: University of North Carolina Press, 1945), 136-178.

<sup>68</sup> Marc Kruman, *Between Authority and Liberty*, 111.

<sup>69</sup> W.J.C Vile, *Constitutionalism and The Separation of Powers*, 119-175.

<sup>70</sup> ‘When legislative power is united with executive power in a single person or in a single body of the magistracy, there is no liberty, because one can fear that the same monarch or senate that makes tyrannical laws will execute them tyrannically. Nor is there liberty if the power of judging is not separate from legislative power and from executive power. If it were joined to legislative power, the power over the life and liberty of the citizens would be arbitrary, for the judge would be the legislator. If it were joined to executive power, the judge could have the force of an oppressor’. Montesquieu, *The Spirit of the Laws*, trans. and ed. by Anne Cohler *et al.* (Cambridge: Cambridge University Press, 13<sup>th</sup> edn., 2008), 157.

essential prerequisite in any framework of government if ‘liberty’ was to be maintained. In other words, for Montesquieu, the lack of a separate and distinct tripartite system of government would endanger liberty because governmental power would become absolute and arbitrary. Montesquieu’s political ideology did have a sympathetic readership in the colonies.<sup>71</sup>

It has been argued, however, that the notion of the separation of powers did not originate with Montesquieu, but was implicit within several works of Whig political thinkers in Britain that preceded the publication of Montesquieu’s work in 1748 and had a direct bearing on the prevalence of the notion in the colonies before independence.<sup>72</sup> Indeed, Vile has shown that the doctrine of the separation of powers was ‘born’ and developed in the particular circumstances of the English Civil War and the Interregnum.<sup>73</sup> In this period, the separation of powers was advocated as a means of safeguarding the legislature from executive encroachment. John Locke was really the first major writer to employ the doctrine in his *Second Treatise of Government*, but he still failed to demarcate clearly the various separate functions of the legislature, the executive and the judiciary. He argued that ‘well-framed governments’ are those that have ‘the legislative and executive power’ in ‘distinct hands’.<sup>74</sup> Similarly, other major thinkers, such as Bolingbroke and Trenchard and Gordon, have been credited with promoting a doctrine of the separation of powers in their political writings, although this remains a matter of debate.<sup>75</sup> There was little coherent theoretical development of the principle of the separation of powers in this era and, where it was discussed, it was often closely entwined with the theory of mixed government.

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<sup>71</sup> See M.J.C. Vile, *Constitutionalism and the Separation of Powers*, 121-2, 129-131. For an example of the influence of Montesquieu on the writings of colonists, see ‘Letter by T.Q. in the *Boston Gazette and Country Journal* for April 18, 1763’ in *American Political Writing*, 1: 20.

<sup>72</sup> See W.B. Gwyn, *The Meaning of the Separation of Powers*, 67-99.

<sup>73</sup> M.J.C. Vile, *Constitutionalism and the Separation of Powers*, 53.

<sup>74</sup> John Locke, ‘The Second Treatise of government’, Ch. 14. Para 159, in *Two Treatises of Government*, 197.

<sup>75</sup> See W.B. Gwyn, *The Meaning of the Separation of Powers*, 85-99; and H.T. Dickinson, *Bolingbroke*, 202-3.

The prevalence and general acceptance of the theory of the separation of powers in the colonies was primarily based on the desire to neutralise the power of the executive. It is in this way that it had an unmistakeable radical Country Whig tone in the literature published in the colonies by 1776. Most Americans subscribed to Montesquieu's interpretation that the establishment of the separation of powers within the structure of government was necessary to protect civil liberty: 'It is essential to liberty that the legislature, judicial and executive Powers of Government be, as nearly as Possible, independent of and separate from each other; for where they are united in the same persons, there will be wanting that natural check, which is the principal security against the enacting of arbitrary Laws, and a wanton Exercise of Power in the Execution of them'.<sup>76</sup> Indeed, Daniel Shute's rationale for the separation of powers seems to reinforce the view that Montesquieu's writings greatly influenced the colonists:

It is necessary that each should keep the line of his own particular department; every excentric [*sic*] motion will introduce disorder and be productive of mischief: But each keeping a steady and regular course in his own sphere, will dispense a benign influence upon the community and harmoniously conspire to promote the general good: As in the solar system, every planet revolving in its own orbit round the sun produces that order and harmony which secures the conservation of the whole.<sup>77</sup>

The separation of powers, where each arm of government keeps to its own sphere, was essential for the 'order and harmony' of good government and the security of the people's liberty.

If one looks past the superficial acceptance of the doctrine of the separation of powers proposed by the major pamphleteers, however, and attempts to pinpoint the exact reasoning behind their acceptance of it, there appears a widespread fear of executive manipulation and corruption of government. Crucial to this is the experiences of plural office holding under royal government in the colonies. John Adams in his *Novangulus* essays of 1775 severely criticised royal government in Massachusetts and was particularly vehement in his condemnation of the

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<sup>76</sup> 'Boston's Instructions to its Representatives, 30 May 1776' in *The Popular Sources of Political Authority*, 95.

<sup>77</sup> Daniel Shute, 'An Election Sermon, Boston, 1768' in *American Political Writing*, 1: 121

concentration of legislative, executive, and judicial power in the persons of Francis Bernard, Thomas Hutchinson and Andrew Oliver.<sup>78</sup> The colonists' desire for a separation of powers was also clearly heightened by the fact that their own royal governors possessed patronage powers. While this patronage was not as vast in practical terms as it may have seemed, governors could confer some well-paid and influential appointments which could give rise to charges of corruption.<sup>79</sup> This fear of executive manipulation of the legislature was not solely produced from the use of patronage by the royal governors, but also arose because of the colonial practice of combining legislative and executive powers in the same hands. A Virginian contended that 'it is a solecism in politicks to invest the different powers of legislation and the execution of the laws in the same hands'. According to a letter written in the *Boston Evening Post* in 1763, 'there can be no liberty where he who exerciseth the executive power, has any share in the legislature'.<sup>80</sup> The experiences of royal government in Virginia under the detested Lord Dunmore inevitably conditioned how the practice of the separation of powers was later applied in Virginia. Clearly, by 1776, in the tumultuous political environment of Virginia, the separation of powers had come to be understood as a preventive measure: a way of ensuring that the executive was not too potent and effective arm of government.

The logical reason for implementing the separation of powers principle was to prevent one branch of government encroaching on another, increasing its own powers at the expense of the other, and thereby upsetting the balance of the institutions of government. James Madison, a Virginian, claimed in *The Federalist*:

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<sup>78</sup> *Papers of John Adams*, II: 238. See also C. Thomas Bradley, *John Adams and the Spirit of Liberty* (Lawrence: University Press of Kansas, 1998), 212-216; and Richard Alan Ryerson, 'John Adams, Republican Monarchist: An Inquiry into the Origins of His Constitutional Thought' in *Empire and Nation: The American Revolution in the Atlantic World*, ed. Eliga Gould and Peter S. Onuf (Baltimore: Johns Hopkins University Press, 2005), 72-92.

<sup>79</sup> Bernard Bailyn, *Origins of American Politics*, 72-80.

<sup>80</sup> Anon, 'Loose Thoughts on Government', cited in Wood, *The Creation of the American Republic*, 153; and 'Letter by J' in *The Boston Evening Post*, 23 May 1776. O.P.Q. argued in *The Massachusetts Spy* in 1776 that 'the placing the legislative and executive powers in the same hands, is unconstitutional, impolitic, oppressive and absurd'. See O.P.Q., *The Massachusetts Spy*, 18 May 1776, in *Popular Sources of Political Authority*, 82-83.



But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others. The provision for defence must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man, must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government.<sup>81</sup>

This is the classic defence of mixed government and a balanced constitution. In theory, according to Madison, a separation of powers between the three branches of government involves granting enough powers to each branch in order to ensure that one branch does not overpower either or both of the other two branches. The executive branch, therefore, should be granted enough powers in order for it to remain independent of the legislative and judicial branches. This was not the case with the Virginian constitution. Although many Virginian Whigs favoured a separation of powers, they did not desire an equality of powers. They may have signalled their intention of separating the three powers, but they did not have any intention of keeping them wholly independent of each other. Indeed, it can be argued that Virginia paid only lip-service to the concept of the separation of powers.

The Virginian Convention ensured that the legislative branch would be the superior branch in the government and the executive would be relatively powerless in comparison. The constitutional committee had rejected Jefferson's belief in preserving the form of the 'kingly office'. Instead, they favoured Mason's proposal that the governor and council would 'exercise the executive powers of government'. In other words, it denied the governor any law-making authority, but specified that the executive branch would simply execute the laws passed by the legislative branch. The constitution was unambiguous in its intention that the governor should

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<sup>81</sup> James Madison, 'Number 51', *The Federalist*, 261. John Adams had stipulated in an 'Essay on Man's Lust for Power' as early as 1763 that 'No simple form of Government can possibly secure Men against the Violences of Power. Simple Monarchy will soon mould itself into Despotism, Aristocracy will soon commence on Oligarchy, and Democracy will soon degenerate into Anarchy, such an Anarchy that every Man will do what is right in his own Eyes, and no Man's Life or Property or Reputation or Liberty will be safe'. John Adams, 'An Essay on Man's Lust for Power', 29 August 1763, *The Papers of John Adams*, I: 83.

not have any of the prerogatives or extent of patronage that his royal predecessors had enjoyed: '[the governor] shall not, under any pretence, exercise any power or prerogative by virtue of any law, statute, or custom, of *England*'.<sup>82</sup> Even though it was elected by the legislature, Virginians still regarded the executive as the greatest danger to the Commonwealth's political framework. The constitution stripped the governor of all of the prerogatives he possessed when Virginia was a royal colony.

The Virginian constitution, therefore, insisted that there should be an executive branch in the government framework, but it ensured that this branch would have very little real power. The most important point about the governorship in the Virginia Constitution was that it did not exercise the powers of the executive alone. Instead, the governor was only head of the executive branch and was assisted by an eight-man Council of State, or Privy Council. This council was to be elected by a joint vote of the legislature and its members were selected from existing delegates or senators, or 'from the people at large'.<sup>83</sup> Of course, the royal governor in Virginia had been assisted by a council in order to perform his duties. The new Virginian Constitution, however, ensured that the governor was no longer simply assisted by the council, but now could act only *with* the consent of the council. While the Constitution specified that the governor would function with the 'advice of the council', it did not mean that the council was purely an advisory body. The constitution decreed that 'four members shall be sufficient to act [as a quorum], and their advice and proceedings shall be entered on record, and signed by the members present, (to any part whereof, any member may enter his dissent) to be laid before the General Assembly, when called for by them'.<sup>84</sup> The General Assembly wanted a record of the discussions of the council, in order presumably to determine the constitutionality of a governor's actions and to use this as a basis to re-elect or impeach a governor. The governor

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<sup>82</sup> 'Final Draft of the Virginian Constitution of 1776', in *Papers of George Mason*, I: 306.

<sup>83</sup> *Ibid.*, I: 306.

<sup>84</sup> *Ibid.*

had to execute the laws passed by the legislature with the assistance of the council. In other words, the constitution established a plural governorship: because the governor could not exercise his powers without the consent of the council, the office of governorship consisted of the governor and his council. Not only did the legislative branch elect the governor, but it also elected his council. The executive branch, therefore, was not separate from the legislative branch; in effect, it was the creature of the legislature.

The legislative branch was the focal point of all law making activity and it had taken over all the prerogatives and patronage typically at the disposal of royal governors before 1776. The legislative branch was to be formed of two distinct houses: the House of Delegates, acting as the lower house, and the Senate, acting as upper house. Together they were to be called the ‘General Assembly of Virginia’. The House of Delegates was elected in the same manner as the members of the House of Burgesses had been when Virginia had been a royal colony. Two representatives were elected from every county and a representative for the ‘city of Williamsburgh, and one for the borough of Norfolk, and a Representative for each of such other cities and boroughs, as may hereafter be allowed particular representation by the legislature’.<sup>85</sup> Each delegate was elected for a one-year term. The electors had to be ‘free’, white males over the age of twenty-one who had owned one hundred acres of unimproved land or twenty-five acres on which there was a house or plantation, for at least one year in the county in which they voted.

The members of the Senate were elected in a different way from the delegates in the lower house. The composition and accountability of the upper house proved to be a substantial problem for the Virginia Convention. Because it was the upper house, the Senate had to have a different constituency from the lower house, but it still had to be accountable to the electorate.

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<sup>85</sup> Ibid., I: 305.

George Mason devised a plan which divided the state into twenty-four districts, in which voters were able to pick 'sub-electors' who would, in turn, select their senator. In this electoral college, senators would have a different constituency to the lower house, but still remain answerable to the people. While the Convention accepted Mason's basic premise, it altered his plan so that the people in each district would elect senators directly. Each senator served four years, but not all were to be elected at the same time. Only one-quarter of its membership stood for election each year.<sup>86</sup>

The Convention ensured that the House of Delegates would be substantially superior to the Senate. The constitution dictated that 'All laws shall originate in the House of Delegates'. The Senate was not permitted to initiate legislation, but it could reject or approve any legislation passed by the lower house. The senate could also suggest amendments to the legislation passed by the lower house, so long as the House of Delegates accepted the changes, but it could not amend any money-bills. Just as the House of Burgesses previously had exercised tight control of the public finances of the colony, so the Convention ensured that the lower house would continue with this privilege in the Commonwealth era.<sup>87</sup> The Senate was designed to be 'an aristocracy of talent', which could moderate the delegates' actions.<sup>88</sup>

The House of Delegates assumed all the important patronage which was nominally at the disposal of the royal governor. It appointed the treasurer, all important judicial officers and also elected the governor and the Council of State. One of the few remaining powers at the disposal of previous royal governors, which they exercised regularly, was their ability to prorogue, adjourn or dissolve the legislative assembly. This was a power which was explicitly denied the governor: 'Either House of the General Assembly may adjourn themselves

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<sup>86</sup> Ibid.

<sup>87</sup> Ibid., I: 306.

<sup>88</sup> Selby, *The Revolution in Virginia*, 118.

respectively. The Governor shall not prorogue or adjourn the Assembly, during their sitting, nor dissolve them at any time'.<sup>89</sup> He was able to call the General Assembly into session 'if necessary' before they were scheduled to sit, but only on the advice of the Council of State or by an 'application of a majority of the House of Delegates'.<sup>90</sup> The governor also did not have a veto on legislation passed by the legislative branch. The royal governor had previously possessed a 'suspending' veto on all legislation passed by the House of Burgesses. The new republican governor had no influence or control over the legislature and was excluded completely from sharing in any law-making activity. The governor, therefore, was completely stripped of all influence in terms of passing legislation. The governorship in the new constitution, therefore, was mostly form with little substance. The governor was more a creature of the legislature than an independent branch of the government and more of an 'administrator' of government policies decided by others rather than one who could dictate or initiate policy.<sup>91</sup>

While the constitution stripped the governor of all of its prerogative powers, it also acted to strip away some of his powers of appointment. In order for a governor to exercise influence over the legislature and the people at large in the eighteenth century, he required the ability to offer positions of status, value or influence in order to gain the occupants' loyalty and support. The legislature in the new constitution took away the governor's powers to appoint to

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<sup>89</sup> Final Draft of the Virginian Constitution of 1776', in *Papers of George Mason*, I: 306.

<sup>90</sup> Ibid.

<sup>91</sup> Virginia's constitution entirely followed in the spirit of Jefferson's own draft: '[the Administrator] shall have no negative on the bills of the Legislature; he shall be liable to action, tho' not to personal restraint for private duties or wrongs; he shall not possess the prerogatives of dissolving, proroguing or adjourning either house of Assembly; of declaring war or concluding peace; of issuing letters of marque or reprisal; of raising or introducing armed forces, building armed vessels, forts or strong holds; of coining monies or regulating their value; of regulating weights and measures; of erecting courts, offices boroughs, corporations, fairs, markets, ports, beacons, lighthouses, seamarks; of laying embargoes, or prohibiting the exportation of any commodity for a longer space than [40] days; of retaining or recalling a member of the state but by legal process pro delicto vel contractu. of making denizens; of pardoning crimes, or remitting fines or punishments. But these powers shall be exercised by the legislature alone'. 'Jefferson's Third Draft', *PTJ*, I: 360. Whereas the final draft of the constitution did not specify all the powers that the governor was prevented from exercising as Jefferson's did, it was clear that the constitution writers acted to neutralise the executive and protect the legislature and judiciary from any corrupting influence by the governor. See Gordon Wood, *The Creation of the American Republic*, 137.

the judiciary, the treasury and the legislative assembly. The constitution did allow the governor to make some appointments: 'the governor, with the advice of the Privy Council shall appoint Justices of the Peace for the counties'. The Sheriffs and Coroners were nominated by the various county courts, but had to be approved by the governor. He was granted the powers of pardon or reprieve in the state except 'where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct: in which cases, no reprieve or pardon shall be granted, but by resolve of the House of Delegates'.<sup>92</sup> These powers, however, did not furnish the governor with much influence or power within the state.

The military was the only area in which the constitution equipped the governor with meaningful powers. The only remnant of the royal gubernatorial authority in this new republican form of government was the executive's powers over the military: 'The Governour may embody the militia, with the advice of the Privy Council, and, when embodied, shall alone have the direction of the militia under the laws of the country'.<sup>93</sup> Even in this provision, however, there was a radical Country Whig tone to it: by placing a civilian at the head of the military, there was less chance of a military coup taking place. Clearly, with a conflict ongoing with the British, an effective military was extremely important to the Virginia Convention. Apart from a powerful executive, the Convention was also afraid that a powerful military leader could overrun the state and destroy the Commonwealth. They allowed the governor to have full military powers because they believed that keeping the military under civil control ensured the Commonwealth's safety. The governor could not create a military dictatorship because he was kept on a very short leash by the legislative branch.

During the period of royal government in Virginia, all governors had apparent control over the third branch of government, the judiciary. As with nearly every prerogative and power

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<sup>92</sup> Final Draft of the Virginian Constitution of 1776', in *Papers of George Mason*, 1: 307-8.

<sup>93</sup> *Ibid.*, I: 307.

previously enjoyed by the governor in colonial Virginia, the Constitution stripped away all gubernatorial influence over the legal system. Influenced greatly by Jefferson's third draft, the Convention created a 'Supreme Court of Appeals', a 'General Court, and separate courts of admiralty and chancery. The Convention rejected Jefferson's proposal that the governor should appoint all judges. Instead, they decided to keep this prerogative within the legislative branch. All judges were to be appointed by a joint vote of the General Assembly.<sup>94</sup> The Attorney-General was also appointed by the legislature and all judges were impeachable by the House of Delegates. The governor could not exercise any influence over the judicial system in the new Commonwealth's constitution.

Thus, the separation of powers that was devised by Virginia was strongly influenced by a radical Country Whig belief which dictated that the executive and its potential influence over the other branches of government was the single greatest danger to the constitution. Independent Virginians ensured that the legislature assumed all the prerogatives and patronage typically at the disposal of a royal governor. This did not produce a strict separation of powers, but a fundamental radical Country Whig-inspired insulation of the constitution from any possible corrupting influence at the disposal of the executive. In *The Federalist*, James Madison encapsulated the problem with Virginia's application of the 'separation of powers' principle: 'Yet we find not only this express exception, with respect to the members of the inferior courts; but that the chief magistrate, with his executive council, are appointable by the legislature ... that all the principal officers, both executive and judiciary, are filled by the same department.'<sup>95</sup>

#### IV

#### *Conclusion*

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<sup>94</sup> 'Jefferson's Third Draft', *PTJ*, I: 361.

<sup>95</sup> James Madison, 'Number 47', in *The Federalist*, 251.

The creation of a republican governor was obviously a difficult and problematic process in the first state constitution-making era of the early Republic. There was no definitive philosophical guide or historical precedent available on which to create a successful republican framework of government that could be guaranteed to be long lasting and effective. Virginians when they were reconstructing the gubernatorial office turned to and modified their shared Country Whig heritage. They proclaimed their belief in popular sovereignty, but denied the people a choice over who should become their governor. Although they maintained that they had adopted the ‘separation of powers’ principle in their constitution, they ensured that the governor would be controlled by the legislative branch of government. In other words, the Virginians had modified their radical country Whig beliefs and created a gubernatorial model which they believed would lack the powers of patronage to endanger their newly established constitution. While they rejected the British constitution with its elements of monarchy, aristocracy and democracy, they did rely on a British constitutional ideology, particularly a Country Whig ideology, which advised that the legislature should be the superior branch of government and that the executive should be considerably weakened.

The problem with adopting a new constitution based on such principles was that Virginia’s political system was about to come under enormous strain as the British invaded the state and threatened the collapse of republican government. In other words, it can be argued that the Virginia Convention was considerably short-sighted. Instead of contemplating what would ensure the defeat of the British and the safety of their state, it created a constitution which was dominated by a desire to reduce the influence which the executive could exert over the rest of the political system. In the next five years, Patrick Henry and Thomas Jefferson, as governors, struggled manfully to manage a state facing major crises when hampered by inadequate powers. Fortunately, while the Constitution of 1776 established a weak executive



branch, thanks to the efforts of Henry and Jefferson the power and influence of the governorship in Virginia would evolve into something rather stronger.

## Chapter Four

‘The Grave of all Useful Talents’<sup>1</sup>: *Virginian Governorship and the Revolutionary War*

When Patrick Henry, the widely-popular orator and former colonel of the Virginian militia, was elected by the Virginian Convention as the first governor of the commonwealth of Virginia on 1 July 1776, there were certain factors which remained unchanged from the colonial period for the head of the executive branch. The Virginia Convention of 1776 granted the governor the same salary which his royal predecessors had received and he was also provided with an extra one thousand pounds to refurbish the old royal governor’s palace, which became the residence for the new state governor. Patrick Henry was to be addressed as ‘His Excellency’ and, it has been reported by one of his biographers, that the new governor took the unusual step of seldom appearing ‘on the streets of Williamsburg, and never without a scarlet cloak, black clothes and a dressed wig’.<sup>2</sup> In outward appearances, at least, there was some continuity in the office of governorship from the royal colonial days in Virginia, this did not extend very far. When Patrick Henry eventually took up residence in the old royal governor’s palace in Williamsburg in the autumn of 1776, after a period of prolonged illness, he could be forgiven for wishing that he could have taken over more than the royal governor’s dwelling, title and salary. Patrick Henry was perfectly aware of the ineffectual nature of the position before he became governor (he described it as ‘a mere phantom’ during the constitution debates), and he may have hoped during his three difficult years as governor of Virginia that he would gain

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<sup>1</sup> James Madison described the executive branch in Virginia, in which he was to serve in the Council from January 1778 to December 1779, as the ‘grave of all useful talents’. See Jeff Broadwater, *James Madison: A Son of Virginia & A Founder of the Nation* (Chapel Hill: University of Virginia Press, 2012), 9.

<sup>2</sup> William Wirt Henry, *Patrick Henry: Life, Correspondence and Speeches*, 3 vols. (New York, Charles Scribner’s Sons, 1891), I: 457-8.

possession of some of the powers which his royal predecessors had enjoyed.<sup>3</sup> In his first address, Patrick Henry expressed his gratitude to the Convention for electing him, but he lamented his ‘want of talents’ and claimed that he was ‘unequal to the duties of that important office’.<sup>4</sup> In the coming months, he would come to lament the weakness of the office which he now occupied.

Henry was not the only governor of Virginia in 1776: Lord Dunmore, the royally appointed governor, was still proving to be a menace on Gwyn's island.<sup>5</sup> Both of these governors, however, did not govern as they were appointed. Dunmore still had his commission empowering him with apparent kingly powers, but had already fled from Williamsburg. Patrick Henry was too 'ill' to perform his duties and he spent the summer recuperating and his duties fell on the lieutenant-governor, John Page. In effect, during the summer of 1776, these two governors of Virginia did not govern at all because they could not perform their appointed duties. Henry's faltering first few months as governor was an inauspicious start to Virginia's experiment with plural governorship and, through the successive administrations of Patrick Henry and Thomas Jefferson, Virginia's executive branch proved to be inadequate as it was soon apparent that a strong executive was required in a time of war and uncertainty.

In his chapter on the first three governors of Virginia – Patrick Henry, Thomas Jefferson and Thomas Nelson – Emory G. Evans has maintained that the first three governors, despite having limited prescribed powers and despite the fact that they governed during an uncertain

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<sup>3</sup> Emory G. Evans, ‘Executive Leadership in Virginia, 1776-1781: Henry, Jefferson and Nelson’, in *Sovereign States in an Age of Uncertainty*, ed. Robert Hoffman and Peter J. Albert (Charlottesville: University Press of Virginia, 1981), 188.

<sup>4</sup> ‘Message of Patrick Henry Accepting His Election as Governor of Virginia July, 1776’, in *OFLG*, I: 4.

<sup>5</sup> *The Virginia Gazette*, 2 August 1776 perfectly juxtaposed both governors in their respective condition and the popular attitudes to both men: ‘We have the pleasure to inform the publick, that our worthy GOVERNOUR, who is now at his seat in Hanover, is so much recovered from this late severe indisposition that he walks out daily, and it is hoped will soon be able to return to the seat of government to attend the duties of his high and important office. Since our last, we have certain advice that lord Dunmore, with his motley band of pirates and renegades, have burnt the elegant brick house of William Brent, esq.’.

and difficult period of war, were effective holders of the executive powers of the state. He provides four key reasons for his claim: temporary and expedient extensions of their authority during wartime; their ability to maintain influence in order to keep the government functioning; their comprehension of the war in a broad perspective; and their own innate abilities and national experience. Indeed, Evans makes the bold claim that any assessment of the first three governors ‘must conclude that they did a remarkable job’ and that any historian who emphasises the weakness of the executive in Virginia during this period ‘misperceive[s] the situation in the context of the time’.<sup>6</sup> Evans, however, seems to elevate the position of governor to a loftier position in the framework of government than was actually achieved and he makes an unwarrantable attempt at defending all three governors even when the evidence clearly points to another conclusion.<sup>7</sup>

This chapter does not seek to assess whether Patrick Henry or Thomas Jefferson were capable chief executives, nor does it attempt to exonerate their actions as governor or assess which governor achieved the better results, but it does seek to *explain* the system of governorship with which they had to contend. Rather than delving into minute detail over the actions of Henry and Jefferson while they were governor, it will provide examples from their respective administrations in order to explain and analyse the system of governorship in Virginia in this period. It also does not seek to provide an in-depth account of Virginian politics and society for the first five years of the war; rather it attempts to contextualise the actions of

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<sup>6</sup> Emory G. Evans, ‘Executive Leadership in Virginia, 1776-1781: Henry, Jefferson and Nelson’, in *Sovereign States in an Age of Uncertainty*, ed. Robert Hoffman and Peter J. Albert, 187, 225. Another worthwhile contribution to the scholarship on governorship is Margaret Burnham Macmillan, *The War Governors in the American Revolution* (New York: Columbia University Press, 1943). Although it is not Virginia-specific, it does contain important passages about the governorships of Henry and Jefferson.

<sup>7</sup> This is clear in Evans’s defence of Thomas Jefferson’s governorship: ‘Jefferson, despite a gloomy prospect, seems to have entered office confidently, and, other estimates to the contrary, he proved to be an extremely good governor. Any careful study of his two years in office will reveal him to have been informed, practical, hardworking, tough, decisive, and infinitely patient. He was the master of detail but at the same time saw the state’s and the country’s problems in broad perspective’. Evans, in his assessment of Jefferson, even mounts a defence of Jefferson’s last five months in office and his ‘flight from Monticello’, *ibid.*, 202, 216-7.

Henry and Jefferson where it is appropriate to do so and to utilise the sources available to construct an accurate analysis of the system of governorship in this period.<sup>8</sup> In doing so, this chapter will explore, first, the governors' legislative election and the consequences this had on the system of governorship in this period. Second, it will assess the system of governorship in Virginia through an analysis of Patrick Henry's governorship. Third, it will analyse Thomas Jefferson's governorship during a period of crisis and invasion. This will include Jefferson's 'flight' from Monticello and the last days of his governorship and an assessment whether this event is indicative of the weak gubernatorial position in Virginia in this period. This chapter will seek to demonstrate that the system of governorship in Virginia, that was devised by the Virginia Convention in 1776, was inherently weak and woefully inadequate to confront an enemy which eventually invaded the state. It will also demonstrate, however, that the system of governorship did evolve over the period from 1776 to 1781 when it had to adapt to the changing and alarming circumstances which Virginia found itself combatting. While it does not intend to justify or vindicate the actions of Henry or Jefferson, it will demonstrate that, because of the nature of their appointment to the governorship and their natural ability to work within a difficult situation, the governorship in Virginia was able to evolve over this period. In

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<sup>8</sup> For an in-depth discussion of the political system in Virginia during this period, see Michael A. McDonnell, *The Politics of War: Race, Class and Conflict* and John A. Selby, *The Revolution in Virginia*. A note must be made about the sources available. The executive letter-books of Patrick Henry while he was governor were reportedly captured during Benedict Arnold's raid after his capture of Richmond in 1781 and have subsequently been lost. H. R. McIlwaine's excellent research, however, has uncovered many letters in disparate repositories for his edited volume of Patrick Henry's papers as governor. Indeed, McIlwaine's three volumes of the *OFLG of the State of Virginia* is an invaluable resource because he has combined the executive letterbooks of the various governors from Patrick Henry to Benjamin Harrison with extracts from *the Journals of the House of Delegates* and the *Councils of State*. There is a plethora of other useful sources: the extant executive letterbooks are housed in the Library of Virginia, and the Journals of the Council, House of Delegates and the Senate have all been published. See *OFLG of the State of Virginia*, ed. H. R. McIlwaine, 3 vols. (Richmond: Davis Bottom, Superintendent of Public Printing, 1926). A calendar of the manuscript collection of letters and other documents received in the Governor's Office of Virginia for the first six governors is available through the Library of Virginia's catalogue and is searchable. This is available at <[http://va1.hosted.exlibrisgroup.com/F/?func=file&file\\_name=find-b-clas07&local\\_base=CLAS07](http://va1.hosted.exlibrisgroup.com/F/?func=file&file_name=find-b-clas07&local_base=CLAS07)>. Other useful resources for Patrick Henry and Thomas Jefferson are William Wirt Henry, *Patrick Henry: Life, Correspondence and Speeches*, 3 vols. (New York: Charles Scribner's Sons, 1891); and *Calendar of Virginia State Papers and other Manuscripts, 1652-1781*, ed. Wm. P. Palmer (New York: Kealis Reprint Corporation, 1968). Thomas Jefferson's edited correspondence is an outstanding resource for his governorship. See *PTJ*, volumes 2, 3, 4 and 5.

order for the governors to navigate the ship of state safely through the troubled waters in which it constantly found itself, they were able to accrue more temporary powers which helped them to act more decisively in their executive position.

## I

### *Legislatively Elected: The State Governor as a Creature of the Legislature*

The Virginian Constitution of 1776 sought to ensure that the governor would be completely under the direct authority of the legislative branch of government. In the words of the Constitution itself, the governor ‘was to exercise the Executive powers of government according to the laws of this Commonwealth’.<sup>9</sup> In other words, the head of the executive was essentially an administrator: implementing legislation passed by the legislative branch, and thus, carrying out the legislative branch’s bidding. Central to this legislative control over the governorship was the legislature’s election of the governor. The framework of government, devised in radical Country Whig terms, made the executive completely subordinate to the legislature because it rejected the notion that the chief magistrate should be popularly elected, but provided instead for a governor who would be elected for one-year terms by a joint vote of the two houses of the legislature. This form of election ensured that the governor could not build up a popular support base which might have made the governor more powerful than was originally intended.

Between 1776 and 1781, Patrick Henry and Thomas Jefferson were elected consecutively to the governorship. On 29 June 1776, after the Virginian Convention adopted the Constitution, its members elected Patrick Henry as governor by sixty votes to forty-five for Thomas Nelson, and a single vote for John Page. Henry did not put himself forward for office and did not canvass support for himself, as was the custom of the day. In 1777 and 1778, he

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<sup>9</sup> ‘Final Draft of the Virginian Constitution of 1776’, in *The Papers of George Mason*, I: 306.

was re-elected unopposed by a joint vote of the two houses of the legislature. After Henry had completed his maximum allowed three consecutive annual terms as governor in 1779, Thomas Jefferson achieved a much narrower electoral victory over his friends, Thomas Nelson and John Page. In a joint vote by the House of Delegates and the Senate, Jefferson was elected governor on 1 June 1779, eventually defeating John Page by 64 votes to 61 in the second ballot. It was taken to a second ballot, because none of the three candidates was able to win an overall majority in the first vote.

The executive role performed by the governor was completely new territory for both men: neither had any executive experience, nor had they much military experience. Henry had been a colonel of a regiment of the Virginian militia, but had been overall commander for only six months, while, in 1770, Thomas Jefferson had been appointed lieutenant, with the rank of colonel, of the Albemarle County Militia, but this position mostly involved administrative and logistical tasks and he never served in the field. While Jefferson and Henry had no experience of performing the tasks required of the governor under the new constitution, they did not enter the governor's palace as political novices. Although the nature of the gubernatorial election process meant that the man elected by the legislative branch almost inevitably came from the legislature with minimal executive, administrative or military experience, it does not necessarily follow that the man elected did not deserve the office. Indeed, one of the major contrasts with the nature of the appointment of their royal predecessors was that the election by the legislative branch ensured that the man chosen for the governorship would be selected more on merit rather than as a result of patronage. Both Patrick Henry and Thomas Jefferson had extremely impressive résumés prior to their first election as governor in 1776 and 1779 respectively. Patrick Henry had served as a member of the House of Burgesses from 1765 to 1774, was an early critic of British authority as is evident in his Stamp Act Resolves in 1765, was one of the six Virginian delegates to the First Continental Congress in Philadelphia in 1774

and, in 1775, the Virginia Convention had appointed him colonel of the 1<sup>st</sup> Virginia Regiment and overall commander of the Virginia militia. By 1776, Patrick Henry had helped write Virginia's new constitution, its Declaration of Rights and a resolution to Congress proposing independence. Thus, Henry had been very active in the forefront of Virginia's rebellion against Britain and he was a natural choice as first governor of the Commonwealth of Virginia.

While the election of Henry was a decision taken by the Virginian Convention, the members in the Convention undoubtedly elected him on the basis of his overwhelming popularity with the people. Patrick Henry, as is clear from the press of the day, was an overwhelmingly popular choice as governor.<sup>10</sup> While there was considerable opposition to the election of Henry as governor within the legislature, especially given his often fiery temperament, which made some moderates in the assembly uncomfortable, his election must be seen as a way of validating the new constitution.<sup>11</sup> Among the people, Henry had long been considered as one of the popular voices of rebellion in Virginia, from his Stamp Act Resolves to his denunciation in the Proclamation issued by Lord Dunmore.<sup>12</sup> His resignation as overall commander of the Virginia militia in December 1775, in a fit of pique, sparked vociferous

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<sup>10</sup> For example a letter written by 'An Honest Farmer' lavished praise on Patrick Henry: 'Virginia may truly boast, that in him she finds the able statesman, the soldier's father, the best of citizens, and liberty's dear friend. Clad with innocence, as in a coat of mail, he is proof against every *serpentine* [*sic*] *whisper*. The officers and soldiers, who know him, are riveted to his bosom: when he speaks, all is silence; when he orders, they cheerfully obey; and in the field under so sensible, so prudent an officer, though hosts oppose them, with shouts they meet their armed foe, the sure presages of victory and success. Let us, my fellow countrymen, with grateful hearts, remember that he carried off the standard of liberty, and defeated Grenville in his favourite Stamp Act.' The *Virginia Gazette* (Purdue), 15 March 1776.

<sup>11</sup> Henry's election to the governorship made some prominent Virginians uneasy. Francis Eppes wrote to his brother-in-law, Thomas Jefferson, and revealed his deep-seated animosity towards Henry: 'You have heard no doubt before this that Patrick Henry is our Governour. What strange infatuation attends our Convention. At a time when men of known integrity and sound understanding are most necessary they are rejected and men of shallow understanding fill the most important posts in our country. What but inevitable ruin can be the consequence of this?' Eppes to Jefferson, 3 July 1776, *PTJ*, I: 576. Thomas Jefferson, himself, was unimpressed by Henry's legislative record. Writing in 1812, Jefferson remembered that 'in ordinary business he was a very inefficient member. he could not draw a bill on the most simple subject which would bear legal criticism, or even the ordinary criticism which looks to correctness of stile & idea: for indeed there was no accuracy of idea in his head'. 'Thomas Jefferson's Notes on Patrick Henry [before 12 April 1812], *The Papers of Thomas Jefferson, Retirement Series*, ed. J. Jefferson Looney, 11 vols. (Princeton: Princeton University Press, 2007), IV: 601.

<sup>12</sup> Lord Dunmore castigated 'a certain Patrick Henry ... and a number of deluded followers, [who] have taken up arms ... and put themselves in a posture of war .... All persons, upon their allegiance, not to aid, abet, or give countenance to the Said Patrick Henry'. 'Proclamation', The *Virginia Gazette*, 6 May 1775.



protests among his soldiers who threatened to resign. Patrick Henry resigned because the Virginian Convention failed to nominate him for the position of overall commander of the Virginian forces, giving the position instead to William Woodford. Henry gave back his commission and 'retired'. His resignation provoked a massive protest among soldiers and citizenry alike. It was reported that his regiment went 'into deep mourning' and some feared mutiny was possible.<sup>13</sup> It was only after Henry persuaded them to put country before personal loyalty that they agreed to continue to serve.

Henry was venerated in Virginia and the legislature could not simply ignore his reputation. By electing a popular hero to be chief magistrate, moreover, very few Virginians could complain about the adopted constitution if that was an important result of its processes. There was very much a sense that the Virginian elite could not ignore the will of the people with regard to the constitution *and* in the choice of the chief magistrate. By electing a popular hero as governor, it increased support for the new form of government. Indeed, Michael McDonnell has claimed that the election of Henry was a way not only of validating the new constitution, but was also a way of removing Patrick Henry from of the House of Delegates and putting him in a position where he could not interfere with its legislative actions. The House of Delegates was well aware of the powerless and symbolic nature of the gubernatorial position, and by sidelining the 'firebrand' Henry, the House rendered him incapable of achieving very much. The Convention, moreover, elected known conservatives to the Council, which was an attempt to neutralise Henry even further. Since Henry had to execute his duties with the consent of the council, he would be outnumbered. Although McDonnell does not present any evidence to support this claim, it does seem plausible. The governorship, therefore, was regarded as a

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<sup>13</sup> See 'An Address to Patrick Henry by the officers of the First, Second, Third, Fourth, and Fifth Regiments and of the Minute Service', Patrick Henry Papers, Virginia Historical Society; William Wirt Henry, *Life, Speeches and Correspondence of Patrick Henry*, I: 348-357; Richard Henry Lee to John Page, 19 March 1776, *Letters of Delegates to Congress, 1774-1789*, ed. Paul H. Smith, 25 vols. (Washington D.C.: Library of Congress, 1976-2000), III: 408; and Michael A. McDonnell, *The Politics of War*, 181-183.

position of symbolic and ceremonial significance, but it was also a position of political insignificance.<sup>14</sup> The election of Henry, therefore, is indicative of the legislature's perception of that office: inherently weak, but ceremonially useful.

Thomas Jefferson's substantial contribution to the American Revolution and his efforts to revise Virginia's legal code post-1776 clearly marked him out to be the most obvious successor to Patrick Henry once the latter's third and final term had ended. Thomas Jefferson, by 1779, had a substantial record of public service: a member of the House of Burgesses from 1769, Jefferson wrote a set of resolutions for Virginia's delegates to the First Continental Congress in 1774.<sup>15</sup> He was elected as a delegate to the Second Continental Congress in 1775 and was the principal author of the Declaration of Independence which was adopted by Congress on 4 July 1776. While he was clearly regarded as a prominent and skilled Patriot, his work in the Committee of Revisors during Patrick Henry's three years as governor, moreover, essentially made him the principal legislator in the House of Delegates. Why elect such a prominent figure to the governorship when Henry had been elected in order to sideline him? The answer lies in the fact that the perception of the importance of the governorship to the political system had changed by 1779. Only a month before Jefferson's election, Virginia was subjected to a British raid on the Virginian coast. The state was in danger and thus needed an able man even as its ceremonial head. The close electoral contest may also suggest that some delegates were unsure of Jefferson's administrative and military experience. What is obvious about the choice of Patrick Henry and Thomas Jefferson was that they were better qualified in terms of political experience and abilities than the royal governors who had preceded them. They had an established reputation *within* Virginia before their appointment that no royal governor ever possessed.

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<sup>14</sup> Michael A. McDonnell, *The Politics of War*, 243-4.

<sup>15</sup> This was later published as the *The Summary View of the Rights of British America* (1774).

The most ironical aspect of Henry's and Jefferson's relationship with the legislature is the fact that they achieved far more legislatively when they were not the head of state in Virginia. During Patrick Henry's three years as governor, Thomas Jefferson led a Committee of Revisors charged with redrafting Virginia's legal code. Jefferson drafted over a hundred bills with the clear intention of reforming the state's constitution and legal system. He worked tirelessly at drafting legislation, including the abolition of primogeniture and entail, the revising of the penal code and proposals for a system of education. While he was not always successful with these legislative bills, his work in this Committee is indicative of Jefferson's skill as a legislator. In other words, Jefferson in these three years acted almost as a modern parliamentary executive. In the same way, after Patrick Henry left the governorship, he was re-elected to the House of Delegates where he busied himself in debating new currency initiatives and the House appointed him chairman of the Committee of Propositions and Grievances and of the Courts of Justice. Both Jefferson and Henry, therefore, had successful legislative careers when not governors during the early years of the Commonwealth. As governors, they did not come close to achieving what they, as legislators, accomplished in the House of Delegates.

The governor of Virginia between 1776 and 1781 had a frustrating relationship with the legislative branch of government. Both Henry and Jefferson were not shy of venting their frustration at the general powerlessness of their position and the perceived ineptitude of the House of Delegates. Clearly, one of the consequences of the gubernatorial election by the legislature was the fact that the governor would always be inferior in status and power to the legislature, but this legislative election also had some unforeseen consequences. Although the gubernatorial position was in itself a weak position, the nature of the legislative election of the governor and, most especially, the choice of men with extensive legislative experience for the governorship position, had a significant impact on the power that the governor enjoyed and on the nature of the relationship between the head of the executive and the legislative branches.

While it is obvious that the executive was innately weak because of the way the governor was controlled by the legislative branch, their legislative experience and their existing relationship with the legislators meant that both Henry and Jefferson could exert a modicum of influence over the actions of the House of Delegates.

While it was not in their constitutional remit to interfere with legislative activity in the House in any way, both Patrick Henry and Thomas Jefferson felt compelled to do so. At the beginning of each legislative session, Patrick Henry wrote a letter to the House, stating ‘several matters for the consideration of the General Assembly’, which were dutifully considered by the delegates.<sup>16</sup> Because of his close personal relationship with those in the House, Henry was able to exert some influence within it. On 13 May 1778, Henry, with the advice of the Council, sent eighteen points of discussion concerning the state of existing legislation, including Henry’s tentative suggestions where and how the House could improve the situation in Virginia.<sup>17</sup> Because of Henry’s experience in the legislature prior to the new constitution and because of the fact that the composition of the House of Delegates was essentially the same as the colonial House of Burgesses, Henry was able to use his personal contacts with key legislators to make his life as governor more tolerable. Plainly all his suggestions were not heeded, but he did make useful contributions to the discussions in the House, which resulted in certain changes. For example, in a letter to the House of Burgesses in 1778, Henry inquired whether the Assembly should create a Board of Trade to alleviate some of the difficulties the governor and council had to endure.<sup>18</sup> This provision was included in Jefferson’s reorganisation of the state administration in the spring of 1779. By this time, because the volume of military and trade affairs had grown too burdensome for the governor and council, as Patrick Henry himself made clear, a Board of Trade and a Board of War were established. While it is debatable whether the

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<sup>16</sup> See, for example, ‘From the Journal of the House of Delegates’, 12 May 1777, *OFLG*, I: 148,

<sup>17</sup> Patrick Henry to the Speaker of the House of Delegates, Benjamin Harrison, 13 May 1778, *ibid.*, I: 270-3.

<sup>18</sup> ‘Fragment of a Communication from Patrick Henry to the General Assembly, 14 October 1778, *ibid.*, I: 314.

increase in bureaucracy changed a great deal for the executive branch, there can be little doubt that Henry's fingerprints can be found on the legislation which created these administrative bodies.

In a similar manner, Thomas Jefferson made repeated suggestions to the House of Delegates during his two years as governor. While Jefferson was usually careful that the 'Executive ... do[es] not intermeddle' in the 'determination of the Legislature', he was not above offering solutions to numerous problems while he was governor.<sup>19</sup> In May 1781, he wrote to the Speaker of the House of Delegates to report not only on the military situation, but also tacitly offered advice on how to improve the state's defences. He had become entangled in a disagreement with General Greene over the impressment of horses and over the apparent abuses committed by officers executing the impress. Greene, frustrated with the exercise of civil control over the state's militia, stressed that 'civil polity must accommodate itself to the emergencies [*sic*] of the war, or the people submit to the power of the enemy'. If the legislature was to accede to Jefferson's suggestions, it would imply, according to Greene, that the government believed that 'Horses are dearer to the Inhabitants than the lives of Subjects or the Liberties of the People'.<sup>20</sup> Jefferson passed on his own and Greene's letters on the subject to the legislature and deferentially advocated continuing with the impressment, but specified that the legislature should make some sort of compensation to the people affected by the impressment.<sup>21</sup> The House amended its practices as Jefferson had hoped and stipulated that the impressment should continue, but the government should pay for the horses not yet returned to their masters. Jefferson, rather than remaining an essentially weak executive, manipulated his position as a skilled legislator in order to turn his essentially weak executive position into one

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<sup>19</sup> See, for example, Thomas Jefferson to Benjamin Harrison, 2 October 1779, *ibid.*, II: 47; Thomas Jefferson to Benjamin Harrison, 30 October 1779, *ibid.*, II: 51; Thomas Jefferson to Richard Claiborne, 17 February 1781, *ibid.*, II: 354; Thomas Jefferson to Richard Henry Lee, 3 March 1781, *ibid.*, II: 384; and Thomas Jefferson to the Speaker of the House of Delegates, 9 March 1781, *ibid.*, II: 395.

<sup>20</sup> Nathanael Greene to Thomas Jefferson, 28 April 1781, *PTJ*, 5: 568.

<sup>21</sup> Thomas Jefferson to the Speaker of the House of Delegates, 10 May 1781, *OFLG*, II: 512.

of greater strength. This does not mean he was necessarily a dominant or strong executive, but it is indicative of what a governor could do given his close personal ties to certain members in the legislative branch. It cannot be denied that both Henry and Jefferson were able to use their political skills and their close relations with key legislators in order to have some input into the legislative activity of the House of Delegates. This was as a direct result of the nature of the legislative election of the governors. While they contributed to the discussion of future legislation, there can be no doubt that, in their duties, both governors had to struggle manfully to exert any control over the legislature during what became a deteriorating and pressured situation.

## II

### *Governor Henry and the prosecution of the War 1776-1779: The problem with plural governorship in wartime conditions*

The Virginian Constitution of 1776 ensured legislative supremacy and the emasculation of the governorship. It was a political framework which may have seemed workable in theory, but the practical weaknesses within this framework were exacerbated during a time of conflict, invasion and political upheaval. John Page, the lieutenant-governor in 1776, who performed all executive duties during Henry's illness, encapsulated the problem facing the newly-appointed state governor:

From the dispersed situation of our troops, the number of navigable rivers, exposing our country to the ravages of the enemy's fleet, the great demand of men and arms on our frontiers, on account of the Indian war, and from the present state of General Clinton's army near Charlestown, which we conceive might be employed to a greater advantage here, we have reason to apprehend an invasion, and have therefore ordered a number of minute-men and militia into duty, to supply the want of our two regiments ordered to the Jerseys.<sup>22</sup>

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<sup>22</sup> John Page to John Hancock, President of Congress, 3 August 1776, *OFLG*, I: 24.

Henry was facing threats from Native Americans on the western frontier, the internal threat of a slave rebellion, and Dunmore's menacing forces on the eastern coastline, and there was a constant fear that the British could overrun the state. Because of this difficult situation, this section will focus purely on the actions of Henry and how well he coped with the pressures of organising the war effort against the British.

The main responsibilities of the governorship in this period were inextricably linked with the direction of the military in Virginia. In reality, this was the only realm of responsibility in which the Constitution furnished the governor with any meaningful powers: 'The Governour may embody the militia, with the advice of the Privy Council; and, when embodied, shall alone have the direction of the militia under the laws of the country'.<sup>23</sup> How did Henry, with his Council of eight men, embody the militia? Essentially his responsibilities involved recruiting sufficient troops for the state militia and for the Continental army, ensuring that all these troops were adequately supplied with equipment and provisions, and readying both land and naval forces for the defence of the state. It needs to be emphasised that where the constitution states that the governor and his council were in sole charge of the militia, it precisely meant that they 'alone' were in charge. They were responsible for managing the entire Virginian war effort and for the supply of troops, provisions and equipment to the Continental army. Jefferson's description of the governor as an 'administrator' in his draft of the Virginian Constitution took on a new meaning in practice. The governor and council, with the help of a handful of clerks, shouldered a significant administrative burden for they had to deal with all the paperwork in order to manage Virginia's war effort. Patrick Henry complained that 'As usual I am in a great hurry ... I am really so harassed by the great load of Continental business thrown on me lately,

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<sup>23</sup> 'Final Draft of the Virginia Constitution of 1776', in *Papers of George Mason*, I: 307. In Jefferson's proposed draft of the Constitution, he granted the governor appointing powers in the military, but did not grant the governor the power of command, see 'Jefferson's drafts of the Virginian Constitution', in *PTJ*, I: 329-386, and Jeremy D. Bailey, *Jefferson and Executive Power*, 45.

that I am ready to sink under my burden, & have thoughts of taking that rest that will I doubt soon become necessary. For my strength will not suffice'.<sup>24</sup> Although the legislature attempted to alleviate the pressures on the governor and council in this period by creating new administrative bodies, such as the Board of War and the Board of Trade in 1779, historians have generally agreed that they only created more trouble for the state governor. While both bodies were established to coordinate all day-to-day trade and military activities, tasks which were supposed to lighten the load for the executive branch, they had to clear all actions with the executive making them less effective and saddling the executive branch with more bureaucratic tasks.<sup>25</sup> Unlike previous royal governors, the new state governor could not delegate his responsibilities. The Virginian state governor at times appeared nothing more than a glorified clerk because his day-to-day activities were consumed with routine administrative duties. On any given day, Henry had to review invoices for expenditures made by a number of officers requiring equipment, review pay for soldiers, provide written authorisation for delivering supplies to trading partners, attend council meetings, draft letters, proclamations and orders which were issued from the council, and receive visitors with complaints or requests. These tedious tasks involved a substantial amount of paperwork and consumed energy and time. Henry was soon to lament, 'From morning till night I have not a minute from business, I wish it may all [be] do[ne], for there are a thousand things to mend, to begin'.<sup>26</sup>

In much the same way as royal governors had struggled with prescriptive royal instructions, newly-elected state governors found it difficult to work under similar prescribed constitutional restraints. Facing a situation which required not only more emergency powers, but greater flexibility, Patrick Henry struggled to exercise much authority. Virtually all government action depended upon prior legislative approval, and Henry walked a metaphorical

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<sup>24</sup> Patrick Henry to Richard Henry Lee, 7 April 1778, *OFLG*, I: 260-1.

<sup>25</sup> Emory G. Evans, 'Executive Leadership in Virginia', 203.

<sup>26</sup> Patrick Henry Lee, 9 January 1777, *OFLG*, I: 90.



tightrope during his three consecutive terms as governor. Unlike the majority of royal governors, however, Henry was not prepared simply to ignore his constitutional constraints to make his life as governor easier. Instead, he endeavoured to be a strict constructionist, respectful of legislative supremacy where possible and sensible of the limits of his authority as an executive. Henry was well aware of the constitutional constraints on his authority and the widespread apprehension about the dangers of a powerful executive.<sup>27</sup> By the same token, however, he was equally protective of the few prerogative powers which he did have at his disposal. For example, in July 1777, Henry denounced the actions made by Brigadier General Edward Hand, who informed Henry that he was going to call up the western militia. Henry, clearly frustrated by this usurpation of his constitutional powers, described this action as ‘officious intermeddling’ and reminded Hand that the militia were under the ‘sole Direction of the Governour’.<sup>28</sup>

Between 1776 and 1779, Henry and his Council were tasked with the recruitment of troops both for the Virginian militia and the Continental Army. In the autumn of 1776, Congress requested Virginia to provide fifteen of the eighty-eight battalions of the Continental Army; there were already nine Virginian battalions in service. In December 1776, Henry was empowered ‘to carry into execution such requisitions as may be made for this Commonwealth by the American Congress for the purpose of encountering or repelling the enemy’. The governor and council could replace officers who were unsuccessful in enlisting recruits, and offer bounties in money and land as incentives for enlisting.<sup>29</sup> Henry quickly discovered that

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<sup>27</sup> This was the same for Thomas Jefferson. He had to remind General Nathanael Greene that ‘tedious as is the operation of reasoning with every individual on whom we are obliged to exercise disagreeable powers, yet free people think they have a right to explanation of circumstances which give rise to the necessity under which they suffer’. Thomas Jefferson to Nathanael Greene, 5 April 1781, *ibid.*, II: 456.

<sup>28</sup> Henry to Edward Hand, 3 July 1777, *ibid.*, I: 167-8; Henry to Edward Hand, 7 July 1777, *ibid.*, I: 170-1.

<sup>29</sup> ‘From Journal of the House of Delegates’, 21 December 1776, *OFLG*, I: 82-3; and *The Statutes at Large; Being a Collection of all the Laws of Virginia, From the First Session of the Legislature, in the Year 1619*, ed. William Waller Hening, 13 vols. (New York, Philadelphia, and Richmond, Va.: Published For the Editor, by George Cochran, 1819-1823), IX: 178, 179-84, 192-198.

this was a near impossible and thankless task. According to the records of the Continental Army, Virginian enlistment in the Continental forces was fell far short of what was required: between 1776 and 1780, the Virginian First Regiment shrank from 590 men to a pitiful 195. Virginia did not come close to the stipulated quotas expected of it since the state only raised between 40 to 45 per cent of its allotment.<sup>30</sup> Henry was increasingly exasperated by the lack of support shown by the majority of Virginians when it came to enlisting in the army. Henry, reflecting on his own troubles with troop enlistment, wrote to his successor: ‘Tell me do you remember any Instance, where Tyranny was destroyed and Freedom established on its Ruin among a people possessing so small a Share of the Virtue and public Spirit? I recollect none; and this more than the British Arms, makes me fearfull of our final Success’.<sup>31</sup>

On the one hand, state governors during the war lacked the requisite powers and authority to raise the required number of troops necessary for the defence of Virginia and for the needs of the Continental Army. Patrick Henry complained that his executive powers were ‘too much cramped’, and lamented his lack of influence with the local militia officers in the state.<sup>32</sup> The governor in Virginia in this period did not possess much influence at the local level. Local militia officials possessed a great deal of autonomy and control over the administration of state laws. If they did not want to enforce conscription or punish misbehaving militiamen, which repeatedly happened, they could simply resign their commissions or refuse to prosecute as ordered. As McDonnell has shown, court-martialling these officers was pointless because local courts were usually comprised of neighbours or colleagues.<sup>33</sup> Gubernatorial influence to enforce legislation was practically non-existent at the county level. Henry’s irritation about his lack of influence is obvious: ‘I am sorry to observe a remissness among the officers, over whom

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<sup>30</sup> *The Sinews of Independence: Monthly Strength Reports of the Continental Army*, ed. Charles H. Lessler (Chicago: University of Chicago Press, 1975), 33; and John Selby, *The Revolution in Virginia*, 131.

<sup>31</sup> Patrick Henry to Thomas Jefferson, 15 February 1780, *Papers of Jefferson*, III: 293-4.

<sup>32</sup> Patrick Henry to Richard Henry Lee, 7 April 1778, *ibid.*, I: 160-1.

<sup>33</sup> Michael McDonnell, *Politics of War*, 300.

the executive of this country can exercise no command in the opinion of most people. Indeed they have a general want of necessarys [*sic*] to struggle with. But they do not in general exert themselves as they ought'.<sup>34</sup> The executive had to rely on citizens to 'become a militia of freemen' and had to rely on the compliance of local officials, which was never going to be easy.

The ability of the governor in this period to maintain an effective military response and to increase the number of troops enlisting was not helped by a legislative branch which was infrequently in session and, when it was, it passed laws which were generally ineffective. All legislation passed by the House of Delegates did not produce the desired results and they failed to produce a workable strategy in order to increase enlistment. The House's original plan was to offer bounties in the hope that this would encourage Virginians to volunteer. By June 1777, this strategy had clearly failed, and the House legislated for a partial draft to fill six battalions. This system of enlistment, which required each county militia to put forward one man to a separate division, fell short of expectations. A second scheme was attempted, which dictated that officers and justices of the peace themselves were to pick the required men to be drafted. By the autumn of that same year, because this partial draft strategy failed, the House of Delegates passed a law to draft 2000 men using a quota system. This law was to prove immensely unpopular and did not produce the desired results. The legislature then resorted to offering extortionate bounties which placed a heavy tax burden on the state. Legislators were generally unwilling to take the necessary steps to bolster troop enlistment and were particularly afraid of instituting a state-wide draft policy. The legislative branch was evidently apprehensive about upsetting its constituents and, according to Edmund Pendleton, 'Drafting in any Shape is so unpopular a measure, that our Assembly have laid it aside'.<sup>35</sup>

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<sup>34</sup> Patrick Henry to Richard Henry Lee, 20 March 1777, *OFLG*, I: 126.

<sup>35</sup> Edmund Pendleton to George Washington, 22 December 1778, *Papers of Pendleton*, I: 276-77.

The major problem with depending upon the legislative assembly to produce adequate legislation for the effective prosecution of the war was that legislators were often divided over the right strategy to achieve the required results. For example, in November 1777, there was little agreement in the chamber on how to raise more troops. Some delegates favoured another draft, others, mindful of the previous uproar, suggested that they should target ‘vagabonds’ as potential recruits. A ‘middle way’ was agreed upon whereby a draft would be instituted through a fair lottery of ‘single men’. The legislature’s inconsistent strategy was fundamentally flawed: those Virginians that were expected by the government to serve in the militia were either subsistence farmers or labourers and they found it impossible to leave their homes, families and places of work. Moreover, the wealthier Virginians who owned property or paid taxes on more than three slaves were exempt from serving in the militia. Thus, the Virginians who were expected to serve were unable to comply and those who probably could have served were not called upon to do so.<sup>36</sup> While Washington, Congress and other Continental leaders wanted soldiers for the long term, the House of Delegates diluted its draft legislation by making a draftee’s term of service last for only one year. Governor Henry was hampered by ineffectual, compromised and inefficient legislation passed by a body which was often divided within itself. One contemporary agreed that the General Assembly ‘go very slowly, and entangle themselves at every step’.<sup>37</sup> Any suggestions, moreover, made by George Washington to Henry to increase troop numbers were simply forwarded to the House for consideration.<sup>38</sup> The governor lacked the autonomy and authority to act on these policy suggestions himself. Henry found it particularly frustrating that the decision making of the House of Delegates was so ineffective.

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<sup>36</sup> Michael A. McDonnell, ‘Fit for Common Service: Class, Race and Recruitment in Revolutionary Virginia’, in *War and Society in the American Revolution: Mobilisation and Home Fronts*, ed. John Resch and Walter Sargent (DeKalb, IL: Northern Illinois University Press, 2007), 102-131.

<sup>37</sup> ‘Entry for 1 June 1779’, Robert Honyman Diary, 1776-1782, #8417, University of Virginia Library, Charlottesville.

<sup>38</sup> For example, George Washington wrote to Patrick Henry on 17 May 1777 suggesting that Virginia impose a draft or allow people to purchase replacements in the draft, which Henry cordially forwarded to the House. Washington to Henry, 17 May 1777, *Patrick Henry: Life, Correspondence and Speeches*, III: 71.

It has to be recognised, however, that even if the general assembly had passed the requisite laws, we cannot presume that more troops would have been recruited. Support for the war effort in Virginia seemed particularly unenthusiastic in the early years of the conflict, and the number of enlisted men increased in 1780 and 1781 only because Virginia was actually invaded. The 1777 draft law, which one contemporary described as ‘generally execrated’, caused much disaffection, bordering on ‘insurrection’.<sup>39</sup> The longer the war lasted, the more unpopular it became: the burden of the war effort, in terms of taxes, inflation, and food and manpower shortages, caused considerable consternation among ordinary Virginians.<sup>40</sup> With so many white Virginians reluctant to serve, the Virginian elite even turned to the lowest classes in the state, even enslaved men, to serve in the army.<sup>41</sup> Despite offering attractive and sizeable bounties, there was a general reluctance in Virginia to volunteer. Richard Henry Lee believed that instituting a draft was the only solution to make ‘our lazy, worthless young men’ come forward and serve their country.<sup>42</sup> The mobilisation of troops in a republic was therefore a considerable challenge for a governor with few meaningful powers.

Henry found it challenging to balance the competing military demands from the Continental Congress and from his own state legislature. The governor of Virginia was caught in a conflict of interest between meeting the needs of the defence of his home state and complying with the wider demands of the nation.<sup>43</sup> The system of governorship in Virginia meant that the executive had to contend not only with legislative supremacy, but also with issues to do with state and national sovereignty. There was a problematic dynamic between governor and legislative body in this period: when the governor tried to exert his authority over

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<sup>39</sup> Edmund Pendleton to William Woodford, 31 January 1778, *The Letters and Papers of Edmund Pendleton, 1734-1803*, ed. David John Mays, 2 vols. (Charlottesville, Va.: The Virginia Historical Society, 1967), I: 246-7.

<sup>40</sup> Albert H. Tilson, Jr., *Gentry and Common Folk: Political Culture on a Virginia Frontier, 1740-1789* (Lexington KY: Kentucky University Press, 1991), 88.

<sup>41</sup> Michael A. McDonnell, ‘Fit for Common Service’, 108.

<sup>42</sup> Richard Henry Lee to Thomas Jefferson, *PTJ*, II: 14.

<sup>43</sup> Michael A. McDonnell, *Politics of Race*, 248.

the militia, he often challenged the supremacy of the legislature. Because of the demands made on the executive in this period, whether it was directing the militia or supplying the Continental Army, the governor often had to contend with an intransigent legislature. Although the governor was apparently 'in sole charge' of the militia, it was never that simple. Patrick Henry often had his executive decisions questioned by the elected representatives and some of his orders were even overturned.

In 1776, Henry's ability to defend the state was hampered by direct interference from the House of Delegates. The main theatre of war was located in the northern states between 1776 and 1778. In the summer of 1776, General William Howe's British army of 32,000 men arrived on Staten Island, New York, and it was assisted by a naval force numbering seventy-three ships under the command of Admiral Richard Howe, William's older brother. In order to counter the British campaign in the North, the Continental Congress pressed the various state governments to assist the cause by sending men and munitions. They requested two of the recently created Continental regiments in Virginia to be sent to join the main army. John Page (who was acting governor at the time) and the Council reluctantly agreed. Virginians were particularly worried that Virginia was still under threat from Dunmore's forces and concerned about ongoing attacks from Native Americans on the western frontier. Their fears were exacerbated when General Howe's forces moved to attack New York in September. Congress, desperately seeking to halt the British advance, ordered the remaining three Continental regiments from Virginia to be sent north. Henry and the Council reluctantly agreed to this demand, but they believed that the absence of the Continental troops meant that Virginia and, in particular, the capital, Williamsburg, was vulnerable to attack. In order to increase their defence forces, Henry and the Council called up 1300 local militiamen to bolster the defences of the 'present naked and defenceless situation of this Country [Virginia]'. While contemporaries questioned Henry's alarmist response, especially when the British army was

based in the north, the governor's measure was a sensible one. There were rumours that Dunmore was preparing to attack Virginia again and the executive branch was starved of reliable intelligence concerning the whereabouts of all of the British forces. Henry and the Council acted within their constitutional authority, but the House of Delegates, once it reconvened on 7 October, censured the governor for wasting unnecessary resources, and rescinded Henry's order. Although in hindsight, Henry was wrong to believe that Virginia was vulnerable to a British invasion at this time, he did not have the benefit of hindsight.

In the invasion scare of 1777, the Delegates repeatedly questioned the governor's judgments. By August 1777, General Howe, after he had failed to reach Philadelphia by marching through New Jersey, moved his forces by sea up the Chesapeake Bay. Word spread to Williamsburg that the British fleet had been spotted off the Virginian coast on 14 August, which understandably spread panic. Patrick Henry, who had been convalescing in Hanover County that week, speedily returned to Williamsburg and ordered Thomas Nelson, a Brigadier General, to mobilise troops and prepare the state's defences. When Howe reached Maryland, it became evident to Henry and the government that Howe's plan was to attack Philadelphia, not Virginia. Henry and the Council sent a third of the Northern Neck militia to Maryland to assist Washington. The records of the *Journal of the House of Delegates* make it clear that delegates questioned the propriety of the governor's decision to send the militia out of the state in order to aid Washington, the Council's order to remove all suspicious persons from coastal areas and even whether Henry had acted constitutionally in taking decisions without legislative consent.<sup>44</sup> Unfortunately, the actual debates were not recorded and all that is left to us are the questions debated and the decisions made. Eventually, a committee of the House resolved that the governor and council 'acted according to the laws of this Commonwealth'.<sup>45</sup> Such was the

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<sup>44</sup> *Journal of the House of Delegates* (Williamsburg, Va., 1777), 16 Dec 1777.

<sup>45</sup> *Ibid.*

heated nature of this controversy, however, that the Delegates believed it necessary to publish their decision in the *Virginia Gazette*.<sup>46</sup> Henry was clearly irritated that his decisions, which were made in a pressurised situation, were being scrutinised retrospectively and he vented his fury to his friend, Richard Henry Lee: ‘Time will not permit the discussion of many matters that wait, & have long waited for a decision. Can you think it? Not one law of importance is passed.’<sup>47</sup> Henry evidently had no real confidence in the legislature and in his fellow public servants. He even confessed to Washington that in Virginia, ‘most people seem at a loss to fix on the most effectual means of prosecuting the war vigorously’.<sup>48</sup>

At the same time, dealing with the central authority, the Continental Congress, was also troublesome for the state governor. In the first place, Henry was little more than an intermediary between Congress and the legislative assembly. In this period, Congress sent a substantial amount of correspondence on financial and other administrative matters to the governor. While these missives were sent to the governor, they were actually intended for the legislative assembly. Letters concerning taxes, loans and army numbers were passed on to the general assembly by the governor. Although the governor was nominally the head of state, he did not have any control over the financial policy of the state and he had no influence or authority over the treasurer. The office of governor represented nothing more than a ‘pipe of communication to the sentiments of others’.<sup>49</sup> Congress also periodically sent resolutions to the governor, asking what the state had done ‘in consequence of their recommendations’.

In the winter of 1777-8, when Washington was camped at Valley Forge, Patrick Henry became exasperated at the poor administrative efforts of Congress to supply the Continental forces. He was inundated with letters from George Washington who, on one occasion, notified

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<sup>46</sup> The *Virginia Gazette*, 19 December 1777.

<sup>47</sup> Patrick Henry to Richard Henry Lee, 18 December 1777, *OFLG*, I: 219.

<sup>48</sup> Patrick Henry to George Washington, 30 October 1777, *ibid.*, I: 199.

<sup>49</sup> Thomas Jefferson to Nathanael Greene, 1 April 1781, *PTJ*, V: 313.



Henry that ‘for several days past we have experienced little less than a famine in camp, and have had much cause to dread a general mutiny and dispersion’.<sup>50</sup> Henry believed that it would be ‘unworthy [of] the character of a Zealous American to entrench himself within the strict line of Official duty, and there quietly behold the starving and dispersion of the American Army’. He begged the Virginian delegates to Congress to make Congress aware of the ‘Sentiments of the Executive Body of this State’. For Henry, ‘It is with the deepest Concern that the Business of Supplying Provisions for the grand army, is seen to fall into a State of uncertainty & Confusion’. He earnestly pointed out that ‘the Executive power here has nothing to do with the Commissary’s business’ and ‘that it holds itself guiltless of all the mischiefs which in future may arise from the Delinquency in that office’. Henry exonerated the efforts made by himself and his Council to supply the Continental Army and blamed the poor management of Congress.<sup>51</sup> The problem with the system of governorship in this period was dependence: the governor was forced to depend on the assembly for effective legislation and it was, in turn, forced to depend on Congress and the Continental Army. Conversely, Congress and Washington depended upon a state governor who was effectively powerless to assist in their endeavours and the general assembly depended upon a weak state governor to prosecute the war effort in Virginia. This system of dependence augured ill in a time of war and confusion.

The above has shown that Patrick Henry struggled to increase troop numbers, laboured to meet the competing demands made by the Continental Congress and legislative assembly, and suffered under an immense administrative burden. Henry’s governorship did evolve over this period, however. Because of the perceived ineffectiveness of the gubernatorial position in the political framework, the legislature felt compelled to increase the powers of the executive from time to time. In 1777, when the Virginian government received news from the north that

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<sup>50</sup> George Washington to Patrick Henry, 19 February 1778, in *Patrick Henry*, 558.

<sup>51</sup> Patrick Henry to the Virginia Delegates in Congress, 20 January 1778, *OFLG*, I: 251-2.

the military front had collapsed and that Congress had fled from Philadelphia to Baltimore, it believed that its own state was in danger of being invaded. It therefore temporarily increased the powers that Patrick Henry enjoyed in order to repel any future enemy advance. The Virginian Senate agreed to proposals drawn up by George Mason that ‘additional powers be given to the Governour and Council’ in order to ‘carry into Execution Such Requisitions as may be made to this Common-Wealth by the American Congress, for the purpose of encountering or repelling the Enemie [*sic*]’.<sup>52</sup> Mason believed that, because of ‘the present imminent Danger’, ‘the usual forms of Government shou’d be suspended, during a limited time’ so that the State could be preserved. He also added that ‘this Departure from the Constitution of Government, being in this Instance founded only on the most evident & urgent Necessity ought not hereafter to be drawn into Precedent’.<sup>53</sup> Patrick Henry, with the advice and consent of the Council, was given free rein to exercise broad powers for a limited time. They were authorised to raise whatever number of troops was required and were allowed to send them wherever the governor wished during the legislative recess from December 1776 to May 1777.<sup>54</sup> These new powers were not meant to be permanent, but some of the provisions were extended in each new session of the assembly.<sup>55</sup>

Although Henry gained some extra powers during his three terms as governor, he was still powerless to prevent a British expedition raiding the Virginia coast in early May 1779. A British force consisting of 28 ships under the command of Commodore Sir George Collier and 1800 soldiers, commanded by Major General Edward Matthew, caused substantial damage to Virginian coastal towns. This small expedition was designed to distract the Americans in the

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<sup>52</sup> ‘Resolutions Urging Recruitment and Conferring Emergency Powers on the Governor and Council’, in *The Papers of George Mason*, I: 326.

<sup>53</sup> *Ibid.*

<sup>54</sup> John Selby argues that ‘the powers Mason conferred upon the executive did make Henry a “Dictator”.’ Selby, *The Revolution in Virginia*, 129-30. The ‘dictatorial’ nature of these powers will be discussed in the next chapter.

<sup>55</sup> *The Statutes at Large; Being a Collection of all the Laws of Virginia, From the First Session of the Legislature, in the Year 1619*, ed. William Waller Hening, 13 vols. (New York, Philadelphia, and Richmond, Va.: Published For the Editor, by George Cochran, 1819-1823), X:

south in order that the main British army, commanded by Sir Henry Clinton, could surprise Washington, who was camped near New York. In the space of two weeks, the occupying force plundered plantations, destroyed thousands of barrels of tobacco, burned supply stores and occupied numerous ports and even the coastal towns of Portsmouth and Norfolk. This was accomplished with the loss of only two men. Collier believed that the expedition was remarkably successful and he hoped that the British would set up a permanent base on the Virginian coast.<sup>56</sup> He was, however, recalled after two weeks to join up with Clinton's army in New York and the British expedition ended up being nothing more than a raid.

This raid, however, sent ripples of fear throughout Virginia and many Virginians assumed it was only a matter of time before the British advanced on Williamsburg and Yorktown. When news arrived of the invasion, the House of Delegates, believing that 'there is reason to apprehend an invasion from the enemy on this Commonwealth', instructed Henry to mobilise a force to defend Virginia.<sup>57</sup> At first, Henry could not ascertain the real intentions of the enemy and only issued a limited call-up of local militia on 8 May as soon as news reached him of the British invasion. In his letter to Governor Johnson of Maryland on 12 May 1779, Henry revealed his lack of accurate intelligence: 'The number of Men landed by the Enemy on this occasion cannot be ascertained. The reports say from 1300 to 1600 ... It still remains uncertain whether they mean [to] take any permanent footing in this State'.<sup>58</sup> On 14 May, Henry finally ordered a full mobilisation of the Virginia militia. Henry's lethargic response to the invasion resulted in severe reproaches from his contemporaries. In a veiled rebuke of Henry's governorship, the House of Delegates summoned Theodrick Bland's non-Virginian Continental dragoons to assist in defending the state. Clearly, Henry misread the extent of the

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<sup>56</sup> Collier reported that 'the fort was raz'd, the season'd timber for ship building burnt, the buildings and storehouses of the finest yard on this continent underwent the same fate; the sufferings of individuals I endeavoured to prevent all in my power and in general happily succeeded, and by it I hope have procured many friends to the royal cause'.

<sup>57</sup> *OFLG*, I: 366.

<sup>58</sup> *Ibid.*, I: 368.

danger posed by the British, but even if he had ordered a full mobilisation of troops immediately, it would have made little difference. Most of Virginia's soldiers were serving in the Continental Army in the Carolinas and it is doubtful whether the remaining troops could have thwarted the British advance. In the last months of Henry's governorship, Virginia's vulnerability was clear to see. The state could not prevent a small British expedition from wreaking havoc in Virginia and in the years to come they could not prevent a stronger force laying waste to the capital and forcing the Virginian government to flee.

### III

#### *The British Invasion: Thomas Jefferson and the governorship during a crisis*

Patrick Henry faced many difficulties during his three successive annual terms as governor and he struggled to manage the affairs of the state. In truth, the situation with which Henry had to contend was not as bleak as the one facing Thomas Jefferson when he ascended to the executive chair in 1779. Virginia had already been invaded in that year, inflation was rampant, the taxation system was creaking under the strain, and British forces had embarked on a southern strategy which imperilled the future of Virginia. Jefferson has faced considerable personal criticism from his contemporaries and from later historians for his apparent 'failure' as governor. Jefferson blamed his difficulties on the few powers he had at his disposal rather than on his personal abilities as an executive. This section focuses on how effective governorship in Virginia was when it faced an enemy invasion.

The American victory at Saratoga in 1777 and the subsequent alliance with France, ensured that the British had to change their strategy. Facing a global conflict with France, the British decided to concentrate their efforts on recruiting loyalists to build support in America. The British believed most loyalists resided in the southern part of America, and they still assumed that they could enlist slaves into their army. The southern strategy was predicted by

George Washington and he was well aware of the inherent military weakness of the southern states. Writing to Gouverneur Morris, on 8 May 1779, Washington maintained that it would be pointless to wage more battles in the north: ‘The relief of the S[outhern] S[tates] appears to me an object of the greatest magnitude and what may lead to still more important advantages. I feel infinite anxiety on their account; their internal weakness, disaffection, the want of energy, the general languor that has seized the people at large makes me apprehend the most serious consequences; it would seem too, as if the enemy meant to transfer the principal weight of the war that way’.<sup>59</sup> Washington was right to feel anxious about the state of preparedness of the southern defences.<sup>60</sup> The British won some important military victories in the south: they occupied Savannah, Georgia, in 1778 and Charleston, South Carolina, in May 1779. Apart from a two-week British expedition in May 1779, Virginia had so far been largely spared British attacks during the war. This was not to continue. Virginia endured two invasions, in 1780 and 1781, respectively which severely tested the Virginian governor’s capabilities.

A year after Collier had urged Clinton to establish a permanent base on the Virginian coast, Clinton finally agreed that a permanent British presence in Virginia would be advantageous to the British. By occupying Norfolk or Portsmouth, the British would be in a position to disrupt the American supply route from the north to the Continental Army in the Carolinas. On 21 October 1780, six British ships carrying 2200 men landed at Portsmouth. They were commanded by General Alexander Leslie who was ordered to establish and fortify

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<sup>59</sup> George Washington to Gouverneur Morris, 8 May 1779, George Washington Papers, Library of Congress.

<sup>60</sup> Washington was not only worried about southern defences, but was also concerned about the powers at the disposal of Congress. He makes this clear in a letter to his friend, William Fitzhugh ‘I as little scruple to add that, unless the powers of Congress are made competent to all the purposes of War we are doing no more than wasting our time, and spending our treasure to very little purpose for it is impossible to apply the strength and resources of this Country while one State complies with, another rejects, and the majority of them changes or mutilates the requisitions of that Body. Hence the willing States are capitally injured if not ruined. Hence proceed distrust, jealousy, and dissatisfaction; and the impossibility of either projecting or executing (with certainty) any plan whatsoever. Hence proceed all those delays, which to people at a distance, and unacquainted with circumstances, are altogether unaccountable. And hence it is we incur useless expence, because we do not bring our force, and means, into operation at the same time, some being exhausted, before others are obtained.’ George Washington to William Fitzhugh, George Washington Papers, Library of Congress.

a permanent British base on the Virginian coast. The British troops successively captured Norfolk and Portsmouth and thus ensured that the supply route from the North to the Continental Army in the south was cut.

The Virginian response was utterly inadequate, however. Jefferson did not have access to reliable intelligence about British motives or the size of the enemy's forces. Reports circulated that the British had invaded with fifty-four ships and Jefferson himself believed that the British force numbered sixty ships.<sup>61</sup> Jefferson did not hesitate to mobilise the local militia, but they lacked the proper supplies to be an effective force against the marauding British troops. They lacked ammunition for their firearms and there were even reports that soldiers had to share muskets.<sup>62</sup> Jefferson urged Congress to send a 'great supply of arms' and he asked Washington whether Richard Henry Lee's cavalry regiment would be able to come to Virginia's aid as it would 'be of infinite service to us'.<sup>63</sup> After Leslie's forces committed 'horrid depredations' at Hampton on the Virginia coast, they 'retired to their ships', which were docked at the mouth of the James River. Jefferson urged Horatio Gates, the commander of the Continental Army's southern forces to instruct their French allies that 'his enemies are in a net if he has leisure to close the mouth of it?'<sup>64</sup> Clearly, Jefferson's governorship did not lack effort, but all his requests for action went unanswered. Unexpectedly, Leslie was ordered to join Cornwallis's struggling army in the south and on the 15 November, Leslie left Virginia. Virginians were greatly relieved, but this relief was short lived as the British invaded for the third time a couple of months later.

Benedict Arnold's forces arrived in the Chesapeake Bay on 2 January 1781 and subsequently wreaked havoc in the state. Within a month, the British forces had plundered

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<sup>61</sup> Kranish, *Flight From Monticello*, 135.

<sup>62</sup> *Ibid.*, 135; Selby, *The Revolution in Virginia*, 225.

<sup>63</sup> Thomas Jefferson to Samuel Huntington, 25 October 1780, *PTJ*, IV: 68; and Thomas Jefferson to George Washington, 25 October 1780, *ibid.*, IV: 69.

<sup>64</sup> Thomas Jefferson to Horatio Gates, 28 October 1780, *PTJ*, IV: 78.

Richmond, Virginia's new seat of government, ensured that the entire Virginian government was put to flight, destroyed much needed supplies, and cut off the supply line between the Continental Congress and the Continental Army in the South. Numerous attempts to mobilise a sufficient and organised militia to repel the British advance failed in the ensuing months and, by May 1781, the situation seemed utterly hopeless for the Virginians.

When the British invaded in the early months of 1781, the Virginian militia numbers were insufficient to defend the state. Not only were the militia men dispersed across the state, but they lacked the supplies needed to repel the enemy invasion. Jefferson judged that there was no lack of 'inclination either in Legislature or Executive', but admitted that 'we find it very difficult to procure men'.<sup>65</sup> He had repeatedly requested arms from Congress to help them defend the state, but to no avail.<sup>66</sup> Jefferson's irritation with the inability of Congress to acquiesce with his requests is palpable: 'I have been knocking at the door of Congress for aids of all kinds, but especially of arms ever since the middle of summer. The Speaker [Benjamin] Harrison is gone to be heard on that subject. [J]ustice indeed requires that we should be aided powerfully. [Y]et if they would repay us the arms we have lent them we should give the enemy trouble tho' abandoned to ourselves'.<sup>67</sup> Jefferson believed that 'justice' demanded that Congress assist with Virginia's defences. Baron von Steuben, who had been sent south to Virginia to mobilise men in the defence of Virginia in 1780, became increasingly exasperated at the ineffectiveness of the state's executive. He complained to Washington that, when he asked Jefferson for reinforcements to help with the fortifications being built on the Hoods on the James River, 'the Executive Power is so confined that the Governor had it not in his power to procure me 40 negroes to work at Hoods'.<sup>68</sup> Weak executive power in a republican

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<sup>65</sup> Thomas Jefferson to George Washington, 28 November 1779, *OFLG*, II: 70-1.

<sup>66</sup> See the letter written from Thomas Jefferson to George Washington, 11 June 1780, *ibid.*, II: 127.

<sup>67</sup> Thomas Jefferson to General Gates, 17 February 1781, *ibid.*, II: 354.

<sup>68</sup> Baron von Steuben to George Washington, 15 February 1781, cited in Selby, *The Revolution in Virginia*, 267.

government would always create problems militarily. Governors could not function extra-legally by impressing reluctant Virginians to work. As Thomas Jefferson made clear, ‘The executive have not by the laws of this State any power to call a freeman to labour even for the Public without his consent, nor a slave without that of his Master’.<sup>69</sup> Jefferson wrote to Lafayette to explain the executive’s inability to exert much control over this unsatisfactory situation: ‘I shall candidly acknowledge that it is not in my power to do any Thing more than to represent to the House of Delegates that unless they can provide more effectually for the Execution of the laws it will be in vain to call on Militia’.<sup>70</sup>

The lack of assistance from Congress was reciprocated by Virginia at times in this period, however. When Washington requested more troops be sent from Virginia to the Continental army, Thomas Jefferson admitted to him that ‘I have, with great pain perceived your situation; and the more so as being situated between two fires, a division of sentiment has arisen both in Congress and here, as to which the resources of this Country should be sent’.<sup>71</sup> For Jefferson, choosing between the demands of the Union or the needs of his home state was a frustrating and troubling decision. His ‘two fires’ metaphor is exactly the same one that was used by Francis Bernard, the Massachusetts royal governor, when he described his difficulties in appeasing his colony and imposing royal colonial policy.<sup>72</sup> Much in the same way as royal governors were helplessly caught between enforcing the requirements of the imperial authority and complying with the wishes of the colonial assemblies, so Patrick Henry and Thomas Jefferson laboured between meeting the demands of George Washington and Continental Congress on the one hand and dealing with the intransigence of the legislative assembly and

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<sup>69</sup> Thomas Jefferson to von Steuben, 12 February 1781, *OFLG*, II:

<sup>70</sup> Thomas Jefferson to General Lafayette, 14 May 1781, *ibid.*, II: 515.

<sup>71</sup> Thomas Jefferson to General Washington, 2 July 1780, *ibid.*, II: 136.

<sup>72</sup> ‘I alone am to be made answerable to the Fury of the People for introducing Troops here illegally & unconstitutionally; for so they will call the requiring them without the Advice of Council. Otherwise I am to be made answerable to the king for all the ill consequences which shall follow the Troops here. I must say that this bringing me between two Fires is very hard; and I would add very cruel.’ <sup>72</sup> Francis Bernard to Lord Barrington, 20 July 1768, in *The Barrington-Bernard Correspondence and Illustrative Matter*, 168.



reluctant patriots on the other. The Virginian state governor had to contend with a central authority – Congress – and a local authority – the legislature – which is a similar dynamic to the one that royal governors had to endure. Whereas royal governors obviously were in constant conflict with both bodies, Jefferson, because of his weak authority, struggled to meet the demands of Washington and Congress while trying to work with an over-powerful, but ineffective legislative branch and a reluctant people. Of course, the nature of the conflict was very different, but there are comparable dynamics at work. Royal governors failed to govern effectively because they struggled under a tripartite system with competing interests and state governors seem to have fallen into a similar troubling paradigm. ‘Congress having afterwards directed that they [the militia] should not be removed [from Virginia] and our Assembly that they should’, Jefferson explained to Benjamin Harrison put himself in a disconcerting predicament because ‘the Executive are placed in a very disagreeable Situation’.<sup>73</sup>

While Jefferson sought to work with his constitutional constraints, on some occasions it proved practically impossible to do so. Thomas Jefferson was always particularly careful to present himself as a member of the executive branch rather than as someone who *was* the executive branch. He was careful in all his correspondence to use the plural when describing the executive and was not afraid to remind correspondents that the executive also included the Council.<sup>74</sup> When there was doubt about the constitutionality of an action, he sought the advice of the House of Delegates for clarification.<sup>75</sup> The problem with this system of government,

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<sup>73</sup> Thomas Jefferson to Benjamin Harrison, 29 January 1781, *OFLG*, II: 304.

<sup>74</sup> For example, in his letter to William Phillips, Jefferson wrote: ‘I shall with great cheerfulness explain, to you, the Reasons on which the advice of Council was founded, since, after the satisfaction of doing what is right, the greatest is that of having what we approved by those whose opinions deserve esteem’. Jefferson to Phillips, 22 July 1779, *OFLG*, II: 29-30.

<sup>75</sup> ‘As the act of Government it is directed that the Governor with the advice of the privy Council shall exercise the executive Powers of Government, a Doubt arises whether the Governor alone may issue a warrant upon the Treasury for the Payment of any money on accounts certified by Commissioners. From experience it is found impracticable to attend to any matters of consequence to the safety of the State, if the Council are, not only to advise the issuing of Warrants upon such Certificates, but also to keep Records of the same. We think it proper to acquaint the General Assembly with these our Sentiments; and we beg leave earnestly to recommend it to their consideration, whether it would not be to the advantage of the State if the Commissioners were empowered finally

however, was that the Council could not always be formed into a quorum in order to help the governor make decisions. It is obvious from Jefferson's correspondence that, when he was without council, he was relatively inactive. On one occasion, he even advised Colonel William Davies that he was unable to comply with his request for a supply of clothing because the Council had adjourned for the day and he did not have the power to issue clothing without its approval.<sup>76</sup> Jefferson quickly realised, however, that, despite his best efforts, an executive was compelled to act extra-constitutionally in certain instances. He did govern without the 'advice and consent' of the Council several times during his governorship. When, in April 1780, the Virginian government moved, for security reasons, from Williamsburg to Richmond, for example, Jefferson had three weeks in which to perform 'such business as may be done by him, without the concurrence of the publick boards'.<sup>77</sup> In this time, Jefferson executed several military actions including ordering militia lieutenants to 'carry an expedition into the Indian country'.<sup>78</sup> Necessity forced the Virginia state governor on certain occasions to govern alone and beyond the formal parameters set down by the Constitution. In the first six months of 1781, moreover, Jefferson found himself continually governing without a Council because the disruptions caused by repeated British invasions meant that a quorum could not always be formed. Because of the critical situation imperilling the future of the Commonwealth, Jefferson had to make crucial military decisions even without the consent of the Council: issuing orders, raising troops, and publishing proclamations. Governorship in this period, therefore, had to adapt itself to the desperate circumstances in which it found itself. For Jefferson, the prevention

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to transact this Business, or some other regular mode adopted or the future settling & passing the accounts against this State'. Patrick Henry to Edmund Pendleton, 6 December 1776, *ibid.*, I: 72-3.

<sup>76</sup> 'I am sorry it is not in my power to order a particular issue of cloathing [*sic*] to you as requested. The council have fixed by their rules the manner of issuing, and determined that it should be general, that all may far alike', Thomas Jefferson to Col. Davies, 3 September 1780, *OFLG*, II: 187. Jeremy Bailey, moreover, has clearly shown that when the Council was in attendance, Jefferson's correspondence consists of far more 'in-letters' than 'out-letters', Bailey, *Jefferson and Executive Power*, 38.

<sup>77</sup> 'Notice of Removal of Executive Office from Williamsburg to Richmond', *The Virginia Gazette*, 25 March 1780.

<sup>78</sup> Bailey, *Jefferson and Executive Power*, 57.

of the collapse of the Commonwealth was more important than operating within strict constitutional limits. He did not, however, wantonly abandon his usually strict constructionist beliefs: he made sure that he kept a record of his actions, so that the Council could retrospectively approve of them. Virginia's system of governorship, therefore, sometimes required the governor to work outside the law in order to preserve Virginia's republic of laws.<sup>79</sup>

The Virginian governor's resort to expedient action was not solely confined to his relationship with the Council, however. Jefferson discovered that he could not wait for the legislative assembly to act, but when necessity required him to act unilaterally, Jefferson often found it necessary to work without the explicit permission of the Assembly. In January 1781, Benedict Arnold's forces had destroyed several of the state's printing presses during their incursion into Richmond. Because several laws passed by the House of Delegates for procuring men and supplies to defend the state were due to expire, even before they could be printed (by the very printing presses which Arnold had destroyed) and circulated to county magistrates for enforcement, Jefferson decided to instruct the magistrates to enforce this legislation which they had not themselves seen or approved. Rather than taking the time-consuming path of waiting for new legislation to be passed, which would have to be printed and circulated, he took the decision to ignore the constitutional requirement by continuing to use existing legislation as justification for his orders. He advised the magistrates that the House would subsequently endorse his actions.<sup>80</sup> Jefferson reasoned that 'saving his country' justified his actions.<sup>81</sup>

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<sup>79</sup> The best discussions of Jefferson's involvement with the council are Jeremy D. Bailey, *Jefferson and Executive Power*, 35-41 and Francis D. Cogliano, *Emperor of Liberty: Thomas Jefferson's Foreign Policy* (New Haven: Yale University Press, 2014), ch.1.

<sup>80</sup> 'Could any legal scruples arise as to this, there would be no doubt that the ensuing Assembly influenced by the necessity which induced them to pass the act, would give their sanction to its execution, though as a later date than is prescribed'. Thomas Jefferson to the County Magistrates, 20 January 1781, *OFLG*, II: 296.

<sup>81</sup> 'However the substance of the act is to procure supplies of beef, clothing and wagons. The time of doing this is a circumstance only; and the principle is sound both in law and policy, that substance not circumstance is to be regarded. While we have so many foes in our bowels and environing us on every side, he is but a bad citizen who can entertain a doubt whether the law will justify him in saving his country, or who will scruple to risk himself in support of the spirit of a law where unavoidable accidents have prevented a liberal compliance with it'. *Ibid*.

While the constitution of 1776 deprived the executive of any meaningful powers, Jefferson's expedient actions suggest that he was able to wield a form of Lockean 'executive prerogative'. Locke maintained in his *Second Treatise of Government*, that the executive sometimes required temporary emergency powers. He defined executive prerogative as 'this power to act according to discretion, for the public good, without the prescription of the law, and sometimes even against it'. Locke maintained that because the legislative branch cannot always be in session 'and is usually too numerous, and so too slow, for the dispatch requisite to execution' and because the legislature cannot possibly foresee, and consequently provide laws for, all emergency situations, 'therefore there is a latitude left to the executive power, to do many things of choice which the laws do not prescribe'.<sup>82</sup> Locke advocated granting the executive some latitude in order to cope with unforeseen situations and urgent emergencies.<sup>83</sup> Jefferson faced several emergency situations and he could not rely on the legislative branch passing the required laws in order to protect the state. The Virginian Constitution obviously did not prescribe this prerogative power to the governor, but, such was the situation in the state, that Jefferson deemed it necessary to exercise his authority without recourse to the legislative branch. Virginia faced the prospect of being overrun by the British and Jefferson acted extra-constitutionally in order to protect the constitution and the political system in Virginia.

Just as Patrick Henry had been granted some increase in powers during his time as governor, Jefferson benefited from the same 'temporary' powers. Thus, governorship evolved gradually over the course of this period. It would be a mistake, however, to maintain that, because the assembly increased the powers of the governor, the executive was given free rein to control the military. Throughout the increase of power that the governor secured, there was

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<sup>82</sup> John Locke, 'Second Treatise on Government', in *The works of John Locke Esq; in three volumes*, 2<sup>nd</sup> edn. (London : printed for A. Churchill, and A. Manship, and sold by W. Taylor in Pater-noster-Row, 1722), II: 204.

<sup>83</sup> Lee Ward, 'Locke on Executive Power and Liberal Constitutionalism', *Canadian Journal of Political Science*, 38 (2005), 719-744; Clement Fatovic, 'Constitutionalism and Contingency: Locke's Theory of Prerogative', *History of Political Thought*, 25 (2004), 276-297; and Fatovic 'Constitutionalism and Presidential Prerogative: Jeffersonian and Hamiltonian Perspectives', *American Journal of Political Science*, 48 (2004): 429-444.

still an underlying legislative check upon the powers at the disposal of the executive branch. In May 1778, the governor could send the militia out of Virginia, but *only* in case of the actual invasion of a neighbouring state. In May 1780, the assembly declared that because ‘in this time of publick danger ... a powerful and vindictive enemy ... making rapid progress toward our own borders ... [it was] highly expedient to vest the Executive with extraordinary powers for a limited time’. Jefferson and his council were authorised to mobilise up to twenty thousand militia, to appoint new officers, and to march them anywhere they were needed.<sup>84</sup> In terms of dealing with loyalists, the governor in this period was granted some additional judicial powers. By 1781, the governor was empowered to apprehend and confine all persons ‘suspected of disaffection’, and these loyalists were given no rights to bail and habeas corpus was surprisingly suspended. The legislative assembly also provided the executive branch with certain powers of appointment: Jefferson could appoint new justices of the peace in any county where any officials had died, moved away or refused to act. For short periods, Jefferson was given power to remove any justices against whom misconduct was proven, to change the time and place of court sessions, and to be in command of the public jail.<sup>85</sup>

While undoubtedly the governor was a different creature in 1781 from the one prescribed by the terms of the constitution of 1776, he was still largely subject to the legislature. Although the governor did enjoy more extraordinary powers, he was given limited scope to exercise them and he was still dependent on the Assembly to continue them in every legislative session. Thomas Jefferson, at the height of his difficulties as governor in 1781, summarised his position to Baron von Steuben: ‘The Executive .... Sensible that a necessary Work is not be abandoned because their means are not so energetic as they could wish them and on the contrary that it is their duty to take those means as they find them and to make the most of them for the

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<sup>84</sup> *The Statutes at Large*, IX: 375, 428, 462, 477; X: 309, 413.

<sup>85</sup> *Statutes at Large*, IX: 373-4, X: 309-10, 413-6. Margaret Burnham Macmillan, *The War Governors*, 82-3.

public good ... propose to pursue this work, and if they cannot accomplish it in a shorter, they will in a longer time'.<sup>86</sup> Jefferson, in this period, did not lack ambition or will, but he did lack the means to accomplish all that he wished to achieve.

The most written about episode in this period is Jefferson's 'Flight from Monticello' during his final days as the governorship. Jefferson has faced considerable personal criticism from contemporaries and from later historians for his apparent abandonment of his governorship in the face of a hostile enemy running rampant throughout the state. By then, the government had removed to Charlottesville and learning of this intelligence, Lord Cornwallis deployed a force under the command of Lieutenant Colonel Banastre Tarleton to capture the governor and members of the Virginian government. On 4 June, when Jefferson was residing at Monticello, Tarleton sent a detachment of dragoons to capture him, but the governor was alerted to the danger and subsequently fled Monticello.<sup>87</sup> Unbeknown to Tarleton, Jefferson was not in actual fact the governor of Virginia at this time. He had not sought re-election for a third term and his official term had ended on 2 June. Unfortunately for the government of Virginia there was no successor in place: the lieutenant-governor, Dudley Digges, had resigned earlier in the year when the government moved to Charlottesville and a replacement had not been elected. A plan was in place to elect a replacement for Jefferson on the 4 June. None the less, in outward appearances at least, Jefferson was not just fleeing Monticello, but abandoning the governorship itself and this has been the event most remembered about Jefferson's time as governor of Virginia.

While it is certainly plausible to argue that Jefferson reacted too slowly to the reports that a British fleet had appeared in Chesapeake Bay on 2 January 1781, his actions over the next six months were not lacking effort, especially given his lack of authority in the state.

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<sup>86</sup> Thomas Jefferson to Baron von Steuben, 12 February 1781, *PTJ*, IV: 593-594.

<sup>87</sup> See Kranish, *Flight from Monticello*, 265-75.

Facing an enemy which was rampaging through the state, Jefferson was left with a militia which was in a crisis of its own making. Militia officers were resigning their commission at an alarming rate because they were caught in a serious predicament between enforcing unpopular state laws and facing a recalcitrant people refusing to enlist. The draft was proving an unpopular and ill-fated measure, and desertions were rife. Jefferson was forced to call the assembly for an emergency legislative session and he informed the delegates by a circular letter that the government was in urgent need of ‘men and money’.<sup>88</sup> Jefferson, perhaps aware of the usual intransigence of the legislature, warned the Delegates that a major reform of the militia laws was required and he asserted that ‘the crisis at which these instances of disobedience to the laws have appeared, may bring on peculiar ill consequences’.<sup>89</sup> Jefferson was fighting a losing battle, however. The delegates debated the issue for three weeks and then decided that it would be necessary to obtain a full report on the militia in order to consider what changes were necessary. In other words, the assembly preferred to deliberate at length rather than reach a quick decision on any of the changes which Jefferson requested.<sup>90</sup> Jefferson’s correspondence for the next two months contains desperate pleas for help to Congress and the Virginia legislature. He pleaded with the assembly in May to give the executive greater power to enforce government policy, but to no avail.<sup>91</sup> Jefferson was clear that there was a general ‘Want of Authority’ in the executive to defend the state. Undoubtedly his apparent resignation can be regarded as unfortunate and even improper, but Jefferson’s record as governor in his last six months suffered not as a result of his personal flaws as an executive, but because of the inefficient system of government within which he had to work.

#### IV

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<sup>88</sup> ‘Circular Letter to members of the Assembly’, 23 January 1781, *The PTJ*, IV: 433.

<sup>89</sup> Thomas Jefferson to the Speaker of the House of Delegates, 9 March 1781, *OFLG*, II: 395.

<sup>90</sup> *Statutes at Large*, X: 391-3.

<sup>91</sup> Jefferson to Benjamin Harrison, 28 May 1781, *OFLG*, II: 523-4.

## *Conclusion*

Faced with external threats and internal problems, the situation in Virginia demanded a vigorous and autonomous governor who could take decisive action. Unfortunately for Patrick Henry and Thomas Jefferson, the flawed constitution of 1776 had established a governorship which had to rely on the consent of the Council which was not always quorate, act at the behest of a legislative body which was infrequently in session and whose members were often at odds with each other, and was denied real powers of patronage to influence the situation at either local or state level.

As this chapter has shown, however, the governorship did evolve during this period. While Patrick Henry often struggled to exercise any effective authority to manage the war effort, Thomas Jefferson often found himself governing outwith the consent of the council and even outwith the laws of the State. Although it is obvious that both governors were denied adequate permanent emergency powers, both governors were at times granted powers that ensured that the executive became a stronger branch in the constitution. Indeed, Jefferson's 'extra-legal' method of governing suggests that he was utilising powers of prerogative which John Locke had believed were necessary for a functioning political system. The widespread perception that the executive was the greatest danger to liberties of the people was challenged when an enemy invaded the Commonwealth and threatened to destroy the entire political system.

While Jefferson and Henry, in this gubernatorial system, could not exercise any effective authority or save the state from invasion, Virginians came to realise that the dire situation in 1781 required a stronger executive. Virginia's experiment with plural governorship had clearly failed during this period, and some delegates in the House, including Patrick Henry,



wondered whether the time was right for a new and stronger executive to be created. For some Virginians, the survival of the Commonwealth demanded that they should establish a 'dictator'.

## Chapter Five

### In Search of Cincinnatus: The Virginian 'Project for a Dictator' in 1781

When a British force under the command of Lieutenant-Colonel Banastre Tarleton almost captured members of the Virginian legislature during its successful raid on Charlottesville in 1781, there was a deep sense of crisis in the fledgling independent state of Virginia. Thomas Jefferson had appeared to resign his governorship before completing his full term and without waiting for a successor to be installed.<sup>1</sup> With the British invasion apparently endangering the state's government and the state's figurehead 'abandoning' his post, there was undoubtedly an awareness that the Commonwealth of Virginia was in a perilous situation. Richard Henry Lee exemplified this gloomy mentality when he wrote: 'this government is, in the moment of its greatest danger without government, abandoned to the Arts and the Arms of the Enemy, both of which are push'd with the greatest zeal & clearly see that in this State of things that wanting a rudder in the Storm, the good ship must inevitably be cast away'.<sup>2</sup> In Lee's eyes, Virginia needed a rudder, a captain and a saviour who would be able to navigate the ship of state safely through these perilous waters. Such was the widespread perception among Virginians that plural governorship had essentially failed over the past five years and such were the apparent dangers to the future of the Commonwealth of Virginia, that certain members of the House of Delegates proposed that a dictator be appointed to save Virginia from complete collapse.

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<sup>1</sup> *Journal of the House of Delegates of the Commonwealth of Virginia, 1776-1790*, 4 vols. (Richmond: 1828), II: 15. Jefferson had resigned on 2 June 1781, which technically was the end of his term, but the House had delayed any new elections until two days later. The lieutenant-governor, Dudley Digges, had resigned earlier in the year when the government moved to Charlottesville and a replacement had not been elected. What Virginia faced, therefore, from Jefferson's 'early' resignation was a crisis of authority. See John E. Selby, *The Revolution in Virginia*, 281-282.

<sup>2</sup> Richard Henry Lee to Richard Lovell, 12 June 1781, *Letters of Richard Henry Lee*, ed. James Curtis Ballagh, 2 vols. (New York: 1911-1914), II: 237.

Unfortunately, the source material required for a full appreciation of this ‘dictatorial’ debate is deficient.<sup>3</sup> We know from a letter written by Henry Young to William Davies that a delegate in the legislature, George Nicholas, announced to the House of Delegates on 7 June 1781 that he ‘gave notice that he shou’d this day move to have a Dictator appointed’, and that George Washington was the favoured candidate, closely followed by Nathaniel Greene. Washington was urged to relinquish his post as Commander of the Continental Army in order to save his home state from apparent ruin. There is no evidence in the House’s Journal for the year of such a motion being made, but in the opinion of one historian, legislators deliberately concealed the topic of this debate because they feared the consequences if it were made public.<sup>4</sup> While first-hand sources are particularly scarce, there are second-hand accounts available to help substantiate what appears in Young’s correspondence.<sup>5</sup> The fullest account was written, albeit much later, by Archibald Stuart who was an observer in the House of Delegates that day. He wrote to Thomas Jefferson in 1818 to dispel a myth, recently advocated by William Wirt, that Patrick Henry did not favour ‘the Project of Establishing a Dictator during the revolutionary War’. He recalled that Nicholas, invoking the ‘practices of the Romans on similar occasions’, proposed that

A Dictator be established in this Commonwealth who should have the power of disposing of the lives and fortunes of the citizens thereof without being subject to account. – In support of this resolution he observed that the Country was overrun by the Enemy and the Operation of the Govt was nearly suspended: - That although the powers proposed to be conferred were very great the character he proposed to fill the office would remove all apprehensions arising from the abuse of them – That he was our fellow citizen, that we had a right to command his services and that he had no doubt but that on such Occasion he would obey the call of his country.

Stuart also emphasised the fact that Patrick Henry did indeed second the motion and recalled that the former governor asserted that ‘whether the Officer proposed was called a Dictator or a

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<sup>3</sup> Julian P. Boyd, the editor of the *PTJ*, has provided the most succinct account of the evidence available for the Virginian flirtation with the idea of instituting a dictator. See *Papers of Thomas Jefferson*, ed. Julian P. Boyd, 39 vols. (Princeton: University of Princeton Press, 1950-), VI: 85n.

<sup>4</sup> Michael A. McDonnell, *The Politics of War: Race, Class and Conflict in Revolutionary Virginia* (Chapel Hill: University of North Carolina Press, 2007), 464

<sup>5</sup> See *PTJ*, VI: 84, 85n; and *Journal of the House of Delegates, 1781-1786*, 15.

Governor with enlarged powers or by any other name yet surely an Officer armed with such powers was necessary to restrain the unbridled fury of a licentious enemy'.<sup>6</sup>

Virginia had flirted with the idea of establishing a dictator before. In late 1776, some Virginians, including Richard Henry Lee, believed that establishing a dictator could save Virginia if the state was invaded. The House of Delegates, therefore, granted Henry some temporary powers. Although Patrick Henry, with the advice and consent of the Council, was given free rein to exercise broad powers for a limited time, these powers can hardly be described as 'dictatorial'.<sup>7</sup> Henry's increased powers were specifically confined to the military arena in that he was able to raise and deploy troops as he saw fit, but it did not give him increased control over the political system. It enhanced his powers as commander-in-chief of the Virginia militia, but did not make him the state's dictator.

Five years later, however, the motion for a dictator seemed to imply that there would be a broad increase of prerogative powers granted to the head of the executive branch and these powers would not be confined solely to military matters. Away from the legislature at Staunton, Richard Henry Lee, in the Tidewater region, pressed upon Congress the suggestion of bringing Washington down in order to take over Virginia as a dictator at this time.<sup>8</sup> He wrote that because 'the time is short, the danger presses, and commensurate remedies are indispensable',

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<sup>6</sup> Archibald Stuart to Thomas Jefferson, 8 September 1818, Jared Sparks Collection of American Manuscripts, 1582-1843, Houghton Library, Harvard University, MS Sparks 22, MSS. Hist. Vol. 8, 245-6. See also William Wirt, *Sketches of the Life and Character of Patrick Henry* (Philadelphia: Published by James Webster, 1817), 320.

<sup>7</sup> John Selby argues that 'the powers Mason conferred upon the executive did make Henry a "Dictator".' Selby, *The Revolution in Virginia*, 129-30.

<sup>8</sup> 'In the popularity, the judgement, and the experience of Gen. Washington was alone can find remedy. Let Congress send him immediately to Virginia, and as the head of the Federal Union let them possess the General with Dictatorial power until the general Assembly can be convened, and have determined upon his powers, and let it be recommended to the Assembly when met to continue this power for 6, 8, or 10 months as the case may require'. Richard Henry Lee to the Virginia Delegates in Congress, 12 June 1781, in *PTJ*, VI: 90. In a letter sent to James Lovell on the same day, Lee reiterated his urgency: 'The temper of the people here, and a thousand other considerations point to this remedy – Let Gen. Washington be immediately sent to Virginia, with 2 or 3,000 good Troops – Let Congress as the head of the Federal union, in this crisis, direct that until the legislature can convene and a Governor be appointed, the General be possessed of Dictatorial powers, and it be strongly recommended to the Assembly when conven'd to continue those powers for 6, 8 or 10 months as the case may be'. Richard Henry Lee to James Lovell, *Letters of Richard Henry Lee*, II: 237.

Washington should come down to Virginia to save the State from destruction. Lee wrote directly to the General: 'It would be a thing for angels to weep over, if the goodly fabric of human freedom which you have so well labored to rear, should in one unlucky moment be levelled with the dust'.<sup>9</sup> For Lee, 'both antient and modern times furnish precedents to justify this procedure, but if they did not, the present necessity not only justifies but absolutely demands the measure'.<sup>10</sup>

Five days after the motion to establish a dictatorship was moved in the House, Thomas Jefferson's governorship over the past year was under scrutiny. George Nicolas, the same delegate who had put forward the dictatorship motion, moved 'that at the next session of Assembly an inquiry be made into the conduct of the Executive of this State for the last twelve months'.<sup>11</sup> Jefferson was clearly hurt by the implied criticism and wrote to Nicolas to request that the twenty-seven year old Virginian 'specify to me the unfortunate passages in my conduct which you mean to adduce against me'. Nicolas blandly insisted that 'as a freeman and the representative of free Men I considered it as both my right and duty' to bring the executive to account for the losses that Virginia has suffered over the past year.<sup>12</sup> Eventually, once the war was over, the delegates did investigate Jefferson's governorship, but found no evidence of wrongdoing and offered a vote of thanks for his service.<sup>13</sup> The mood had shifted considerably when the war had been won and the state was no longer imperilled. The timing of these two

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<sup>9</sup> Ibid., II: 238, Richard Henry Lee to George Washington, 12 June 1781, *ibid.*, II: 234.

<sup>10</sup> Richard Henry Lee to the Virginian Delegates in Congress, *PTJ*, VI: 91. George Washington responded to Lee and thought that Lee's plan was 'a greater proof of your unbounded confidence in me than it is that the means proposed would be found adequate to the end in view were it practicable to make the experiment'. Cited in Oliver Perry Chitwood, *Richard Henry Lee: Statesman of the Revolution* (Morgantown, West Va.: West Virginia University Library, 1967), 153.

<sup>11</sup> *Journal of the House of Delegates, May 1781*, 15.

<sup>12</sup> Thomas Jefferson to George Nicholas, 28 July 1781, *PTJ*, VI: 104-5; George Nicolas Nicholas to Thomas Jefferson, 31 July 1781, *ibid.*, VI: 105-6.

<sup>13</sup> 'Resolved, That the sincere thanks of the General Assembly be given to our former Governor, Thomas Jefferson, Esq. for his impartial, upright and attentive administration whilst in office. The Assembly wish in the strongest manner, to declare the high opinion which they entertain of Mr. Jefferson's ability, rectitude and integrity, as Chief Magistrate of the Commonwealth; and mean by thus publicly avowing their opinion, to obviate and remove all unmerited censure'. *Journal of the House of Delegates*, 30 November, 1781

motions was not a coincidence: the debate over establishing a dictator was closely connected to the investigation into Jefferson's apparent failings as a governor.<sup>14</sup> While George Washington was the stated choice by the supporters of the motion to become dictator, Jefferson and his opponents believed that it was their intention to instate Patrick Henry. Even Patrick Henry's earliest biographer admits that it was 'highly probable, that Mr. Henry was the character in view for that office [Dictator]'.<sup>15</sup> In order for Henry to be installed as dictator, however, it was necessary to discredit not only Jefferson's governorship, but the weak system of executive power that had been established by the Constitution. This would expose the inability of Virginia to combat an enemy force successively and, thus, prove the necessity of establishing a dictator. As Cogliano has shown, the discrediting of Jefferson would ensure that his supporters would find it difficult to vote against the dictatorship motion.<sup>16</sup> Although the motives behind the proponents for establishing a dictator were dubious, it does not disguise the fact that there was a realistic chance that a dictator might have been installed in Virginia in 1781.

Nicholas's motion was defeated in the House of Delegates, but there are conflicting reports on how close the legislature came to establishing such a dictatorship. Archibald Stuart, in his account of the debate suggested that the proposal 'was not relished by the people' whose 'feelings were of a different character' and insisted that 'had the enemy advanced they would have risen in mass to repel them'.<sup>17</sup> The belief that there was significant opposition to the motion has been corroborated in other accounts. Louis Girardin, in his *History of Virginia* published in 1804, claimed that 'the pulse of the Assembly was incidentally felt in debates on the state of the Commonwealth, and, out of doors, by personal conversations. Out of these a

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<sup>14</sup> Francis D. Cogliano, *Emperor of Liberty*, 29.

<sup>15</sup> William Wirt Henry, *Sketches of the Life of and Character of Patrick Henry*, 231.

<sup>16</sup> Cogliano, *Emperor of Liberty*, 32.

<sup>17</sup> Archibald Stuart to Thomas Jefferson 8 September 1818, MS Sparks 22, Hist. Vol. 8, 246.

ferment gradually arose, which foretold a violent opposition to any species of Dictatorship, and, as in a previous instance of a similar attempt, the apprehension of personal danger produced a relinquishment of the scheme'.<sup>18</sup> Thomas Jefferson, however, in his *Notes on the State of Virginia*, recalled that the dictatorship proposal 'wanted a few votes only of being passed'.<sup>19</sup>

What importance should we ascribe to this event? Are we in danger of exaggerating the importance of the fact that some Virginians considered establishing a dictator to safeguard their state when the motion itself was not even passed by the House of Delegates and Washington did not heed Richard Henry Lee's personal request?<sup>20</sup> The historiography of Virginia during the War for Independence has afforded little significance to the 'dictatorial' debates in 1776 and 1781. Undoubtedly the lack of substantial source material has contributed to the dearth in scholarship: the major monographs about Virginia during the War of Independence have tended simply to *tell* the story of the circumstances surrounding the debates, but have failed to delve deeper in order to unearth its larger significance.<sup>21</sup> John Selby has blandly insisted that

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<sup>18</sup> Louis Girardin *et al.*, *The history of Virginia: from its first settlement to the present day* (Petersburg, Va.: Printed for the author by Dickson & Pescud, 1804), appendix, 12.

<sup>19</sup> *PTJ*, VI: 85-6n; 'Edmund Randolph's Essay on the Revolutionary History of Virginia 1774-1782', *The Virginia Magazine of History and Biography*, 44 (1936), 314-15.

<sup>20</sup> George Washington responded to Richard Henry Lee to make him aware that it was impracticable for him to return to Virginia at that time and he argued that 'I am fully perswaded [*sic*] however (and upon good Military principles) that the measures I have adopted will give more effectual and speedier relief to the State of Virginia than if I was to March thither with dictatorial power at the head of every Man I could draw from hence without leaving the important posts on the North river quite defenceless, and these States open to devastation and ravage', George Washington to Richard Henry Lee, 15 July 1781, *The Writings of Washington from the Original Manuscript Sources, 1745-1799*, ed. John C. Fitzpatrick, 39 vols. (Washington, D.C.: Government Printing Office, 1937), XXII: 383.

<sup>21</sup> John Selby in his monograph about the Revolution in Virginia only spends a paragraph discussing the call for a dictator without suggesting the larger significance of the debate, see John E. Selby, *The Revolution in Virginia*, 283. Similarly, Michael A. McDonnell reiterates the source material available and provides a succinct account of the nature of the debate without focusing on the larger significance in his recent monograph, *The Politics of War: Race, Class and Conflict in Revolutionary Virginia* (Chapel Hill: University of North Carolina Press, 2007), 464-466. J. Kent McGaughy, in his recent biography, only briefly mentions that Richard Henry Lee wanted to give Washington dictatorial powers, see McGaughy, *Richard Henry Lee of Virginia: A portrait of an American Revolutionary* (Lanham, MD.: Rowman & Littlefield Publishers, Inc., 2004), 160. Oliver Perry Chitwood's more dated biography gives more space to Lee's belief that Washington should become a dictator, but does not elaborate on the effect this would have had: Chitwood, *Richard Henry Lee: Statesman of the Revolution* (Morgantown, West Va.: West Virginia University Library, 1967), 153.

‘like many words in the eighteenth-century republican’s lexicon, the term [dictator] had a meaning different from what it bears today’.<sup>22</sup> Indeed, most historians either use the debate as an example of the particular mentality of Virginians during the war or as a preface to an analysis of Thomas Nelson’s governorship.<sup>23</sup>

The conflicting reports over the closeness of the vote do not matter as much as the debate itself. The motion to establish a dictator to save the Commonwealth is crucial to our understanding of the evolution of thought concerning executive power in this period. Although a dictator was never created, there was a general recognition that a plural executive with minimal powers and one which was dependent on a legislative body that was not in constant attendance was too weak to deal with the enormity of present circumstances. In the space of five years, Virginia’s opinion of the proper exercise of executive power had evolved dramatically from a position of advocating a weak governorship with negligible powers to instituting a temporary dictatorship with a substantial and wide-ranging remit. The language and tone of the debate also suggests a widespread panic and pessimism over Virginia’s future.

On 12 June 1781, moreover, the legislature eventually elected General Thomas Nelson to succeed Jefferson as governor. Not only did they elect a military person, in itself a sign of how they perceived the role of the executive in these dark days, but the legislature furnished him with considerably stronger powers than those his two predecessors as governor had enjoyed. In a flurry of activity over five days, the House of Delegates passed legislation because ‘in this time of publick danger, it is necessary to invest the executive with the most ample

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<sup>22</sup> John Selby, *The Revolution in Virginia*, 130.

<sup>23</sup> *Ibid.*, 283. Emory G. Evans in his study of the first three governors of the period has one line on the dictatorial debate: ‘There had been talk of appointing a dictator but wiser heads prevailed and instead they resorted to what Jefferson was later to refer to approvingly as a “union of the civil and military powers”,’ in ‘Executive Leadership in Virginia, 1776-1781: Henry, Jefferson, and Nelson’, in *Sovereign States in an Age of Uncertainty*, ed. Ronald Hoffman and Peter J. Albert, 218. Indeed, in his biography of Thomas Nelson, Evans only mentions the dictatorial debate briefly, see Emory G. Evans, *Thomas Nelson of Yorktown: Revolutionary Virginian* (Charlottesville: The University Press of Virginia, 1975), 102.



powers, both for the purpose of strenuous opposition to the enemy, and also to provide for the punctual execution of laws, on which the safety and welfare of the commonwealth depends'. Nelson, with the consent of the council, was empowered by various statutes, with complete control over the state militia and the right to impress food and supplies, to seize loyalists and banish them without jury trial, and to constitute courts with the same powers as the General Court of the state.<sup>24</sup> These 'extraordinary' powers gave the governor, in the words of Emory Evans, 'almost dictatorial powers'.<sup>25</sup> There can be no doubt that in Virginia there was a widespread belief that an executive based on radical country Whig principles was not practical in time of war.

This chapter seeks to answer several questions. How did Virginia understand dictatorship and why did some Virginians regard it as a viable alternative to governorship? Were the motions for a dictator a fundamental departure from the radical Country Whig ideology which had influenced Virginians in 1776? And would the creation of a dictatorship mean that Virginians had embraced an ideology which favoured a stronger executive in their framework of government? In addressing these questions, this chapter will first explore how Americans understood the term dictator in this period and what significance that interpretation has on our understanding of this episode. Second, it will analyse how some Classical Republican theorists accepted the fact that dictatorship was a necessary and appropriate office in time of crisis.

## I

### *The Idea of a Dictator: Saviour or Tyrant?*

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<sup>24</sup> *The Statutes at Large*, X: 413-421, 423, 437.

<sup>25</sup> Emory G, Evans, 'Executive Leadership', 219.

The essential problem is with nomenclature: how did Americans in this period understand the term ‘dictatorship’? The term ‘dictator’ in modern parlance connotes malevolent tyranny and excessive oppression and is suggestive of an absolute despot. Dictatorship in the twenty-first century, therefore, is antithetical to the desired attributes of an executive in a constitutional system.<sup>26</sup> The majority of historians, however, have maintained that that the office of dictator in the eighteenth century had not acquired this ‘evil modern resonance’.<sup>27</sup> Indeed, Clinton Rossiter has used the term ‘constitutional dictatorship’ in order to draw a distinction between crisis governments with substantially increased powers and illegitimate dictatorial polities.<sup>28</sup> In Samuel Johnson’s *A Dictionary of the English Language*, the word ‘dictator’ has three definitions: ‘1. A Magistrate of Rome made in terms of exigence [*sic*], and invested with absolute authority. 2. One invested with absolute authority. 3. One whose credit or authority enables him to direct the conduct or opinion of others.’<sup>29</sup> Although these definitions do not suggest that a dictatorship was a benign office because they indicate that the dictator is invested with absolute authority, they do not have the same malevolent associations which the concept has in a modern context. The most important facet, therefore, of this analysis over the Virginian flirtation with dictatorship is how Americans understood the term itself. Did the ‘call’ for a dictator represent a marked break with the weak governorship which they earlier instituted and were they considering an absolutist executive power in the mould of an Hobbesian ‘Sovereign [*sic*] Power’; hence abandoning their earlier ideological beliefs in a time of crisis? In semiotic

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<sup>26</sup> Peter Baehr and Melvin Richter, eds., *Dictatorship in History and Theory: Bonapartism, Caesarism, and Totalitarianism* (Cambridge: Cambridge University Press, 2004).

<sup>27</sup> Garry Wills, *Cincinnatus: George Washington and the Enlightenment* (London: Robert Hale Ltd., 1984), 20.

<sup>28</sup> Clinton L. Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (Princeton: Princeton University Press, 1948).

<sup>29</sup> Indeed, his definition of ‘dictatorial’ follows the same pattern: ‘Authoritative; confident; dogmatical’, Samuel Johnson, *A dictionary of the English language: in which the words are deduced from their originals, explained in their different meanings, and Authorized by the Names of the Writers in whose Works they are found*, 2 vols., 5<sup>th</sup> edn. (London, 1773), I. There are no page numbers in Johnson’s work. Compare this definition to the definition in Edward Phillip’s *A New World of Words*: ‘(among the old Romans) a Sovereign [*sic*] Commander; who had absolute Authority for the time being, both in War and Peace, with Power of Life and Death: The Magistrates were never chosen, but upon some great Occasion, and his Command was to last but half a year; although the senate might continue it’. Edward Phillips, *The new world of words: or, universal English dictionary*, 6<sup>th</sup> edn. (London: printed for J. Phillips, 1706).

terms, what was the signification between the signifier (dictator) and the signified (its conceptual use) for Virginians?<sup>30</sup>

An insight into how Virginians understood the concept of dictatorship is the way some of them interpreted this episode in later years. Thomas Jefferson, in his *Notes on the State of Virginia*, made an acerbic attack on those who proposed establishing a dictatorship. He maintained that the dictator would be a ‘despotic one’ and that the office of dictator would be ‘invested with every power legislative, executive and judiciary, civil and military, of life and of death, over our persons and over our properties’. He disagreed with the view that dictatorship was permissible in times of crisis in a republican form of government. Indeed, Jefferson argued that the example of Rome proved that a dictatorship was antithetical to the principles of republicanism: ‘their constitution allowed a temporary tyrant to be erected, under the name of a Dictator; and that temporary tyrant, after a few examples, became perpetual’.<sup>31</sup> He maintained that no ‘necessities’ could justify the institution of a dictatorship, but that in times of crisis, government should devolve back ‘into the hands of the people, the powers they had delegated, and leave them as individuals to shift for themselves’. Rather than implementing extraordinary measures, Jefferson believed that the best remedy for the ‘perilous situation’ in which Virginia found itself would be a ‘convention to fix the constitution’.<sup>32</sup> Undoubtedly, Jefferson was convinced that there was an insufficiently strong connection between the government and the people in Virginia because the constitution of 1776 lacked popular approval. The Virginian Constitution of 1776 devised an imperfect framework of government because, without popular ratification, the Virginian legislature could meddle with the constitution as they pleased.<sup>33</sup> In

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<sup>30</sup> Ferdinand de Saussure, *A Course in General Linguistics*, trans. Wade Baskin (London: Fontana/Collins, 1916), 114-15.

<sup>31</sup> Thomas Jefferson, ‘Notes on the State of Virginia’ in *The Life and Selected Writings of Thomas Jefferson*, ed. Adrienne Koch and William Peden (New York: Random House, Inc.), 227-8, 230.

<sup>32</sup> *Ibid.*, 228-9. Michael Zuckert has used this extract to argue that Jefferson was rejecting the classical in the classical republican ideology, see Michael P. Zuckert, *The Natural Rights Republic: Studies in the Foundation of the American Political Tradition* (Notre Dame: University of Notre Dame Press, 1996), 212-214.

<sup>33</sup> Selby, *The Revolution in Virginia*, 130.

his *Essay on the Revolutionary History of Virginia*, Edmund Randolph expressed agreement with Jefferson's hostility to the introduction of a dictator by labelling any proposed dictatorship as an 'unfettered monster'.<sup>34</sup>

For Jefferson and Randolph, dictatorship was synonymous with tyranny. Andreas Kalyvas has used Jefferson's statements in the *Notes* to reinforce his argument that the concept of dictatorship was fused with the concept of tyranny much earlier than has been previously supposed. For Kalyvas, Jefferson was not merely attacking dictatorship, but tyranny as well.<sup>35</sup> Dictatorship, therefore, resembled an egregious betrayal of the republican principles at the centre of the Virginian constitution. Kalyvas's article, however, does not take into consideration external factors which doubtless preconditioned Jefferson's denunciation of the dictatorship debates. On 28 May 1781, Governor Jefferson himself wrote to Washington and suggested, in a guarded fashion, that the general should save Virginia from complete ruin.<sup>36</sup> While Jefferson did not propose that Washington should become a dictator, he was clearly in accord with the 'dictatorial' proponents in the House when he wished Washington to act as the 'saviour' of the Commonwealth. Jefferson's criticism of those who proposed the dictatorship

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<sup>34</sup> 'Let the error be traced to the panic, which the novelty of positive war in 1776 produced, and in the year 1781 to the false application of ancient history to a case, wholly unlike. Let it be understood, that the power, which may have saved Rome, would have made Virginia revolt'. 'Edmund Randolph's Essay on the Revolutionary History of Virginia', 315.

<sup>35</sup> Andreas Kalyvas, 'The Tyranny of Dictatorship: When the Greek Tyrant Met the Roman Dictator', *Political Theory*, 35 (2007): 429-30. Kalyvas's main argument is that the two classical historians Dionysius of Halicarnassus and Appian of Alexandria fused the concepts of dictatorship and tyranny together in their histories and this is proven by Jefferson's use of the term in the eighteenth century.

<sup>36</sup> 'Were it possible for the Circumstance to justify in Your Excellency a determination to lend us Your personal aid, it is evident from the universal voice that the presence of their beloved Countryman, whose talents have been so long successfully employed in establishing the freedom of kindred States, to whose person they have still flattered themselves they retained some right, and have ever looked up as their dernier resort in distress, that your appearance among them I say would restore full confidence of salvation, and would render them equal to whatever is not impossible .... Should the danger of this State and its consequence to the Union be such as to render it best for the whole that you should repair to it's assistance, the difficulty would then be how to keep men out of the field. I have undertaken to hint this matter to your Excellency not only on my sense of its importance to us, but at the solicitations of many members of weight in our legislature which is not yet assembled to speak to their own desires. A few days will bring to me that period of relief which the Constitution has prepared for those oppressed with the labours of my office, and a long declared resolution of relinquishing ot to abler hands has prepared my way for retirement to a private station: still however as an individual citizen I should feel the comfortable effects of your presence'. Thomas Jefferson to George Washington, 28 May 1781, *PTJ*, VI: 33.

motion must also be put into context: George Nicolas was also the leading legislator who had led the investigation into Jefferson's governorship. While it is certainly an exaggeration to suggest that Jefferson's denunciation of the dictatorship debate was primarily motivated by a personal vendetta, it is not difficult to imagine that Jefferson wrote these passages under the influence of personal feelings. Unquestionably Jefferson's tirade against dictatorship should be understood in context, but there is little doubt that Jefferson regarded dictatorship as a dangerous entity because of its potential for absolutism. There are other examples of the use of the term 'dictator' in the literature of this period that seem to reinforce not only Jefferson's use of the term, but also Kalyvas's argument about it. The Virginian, Carter Braxton, in 1776, had implied that the British Constitution was being 'abused' by 'arbitrary British dictators', Zabdiel Adams in a sermon had argued that dictator was 'a title similar to that of absolute monarch' and, in 1775, a writer in Purdie's *Virginia Gazette* used the term dictator in a way that implies it was synonymous with tyranny.<sup>37</sup> Clearly, for some Americans, 'dictatorship' was an ominous example of monocracy and 'Life, Liberty, Blood and Treasure would lay blended in a general undistinguished Ruin' if it were introduced in Virginia.<sup>38</sup>

For most Americans, however, the term dictator only made sense in a Roman context. Patrick Henry, in the Virginian debates on the Federal Constitution in 1788, maintained that Thomas Nelson's 'dictatorship' in 1781 followed Roman precedent:

This government is so new, it wants a name. I wish its other novelties were as harmless as this. He [Governor Edmund Randolph] told us we had an American dictator in the year 1781. We never had an American President. In making a dictator, we followed the example of the most glorious,

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<sup>37</sup> 'However necessary it may be to shake off the authority of arbitrary British dictators, we ought nevertheless, to adopt and perfect that system, which England has suffered to be grossly abused, and the experience of ages has taught us to venerate', A native of this colony, 'An Address to the Convention of the Colony and Ancient Dominion of Virginia on the Subject of Government in General, and Recommending a Particular Form in Their Attention, Virginia, 1776', in *American Political Writing during the Founding Era, 1760-1805*, ed. Charles S. Hyneman and Donald S. Lutz, 2 vols. (Indianapolis: Liberty Fund, Inc., 1983), I: 333. Zabdiel Adams, *A Sermon preached before his Excellency John Hancock, Esq.; governour* (Boston: Printed by T. & j. Fleet and J. Gill, 1782), 11. 'For if such notions become fashionable amongst the military, our laws are but a parapet of paper, which the sword is ready to cut through on the first hint from a dictator', 'To Mr. Purdie', *The Virginia Gazette*, 24 February 1775.

<sup>38</sup> Impavidus, 'No Headline', *The Boston Evening-Post*, 20 May 1771.

magnanimous, and skilful nations. In great dangers, this power has been given. Rome had furnished us with an illustrious example. America found a person for that trust: she looked to Virginia for him. We gave a dictatorial power to hands that used it gloriously; and which were rendered more glorious by surrendering it up. Where is there a breed of such dictators? Shall we find a set of American Presidents of such a breed? Will the American President come and lay prostrate at the feet of Congress his laurels? I fear there are few men who can be trusted on that head.<sup>39</sup>

Henry clearly believed that an executive under the dictatorship system was markedly different from the strong executive represented in the presidential system in the Federal Constitution. For Henry, evidence of this can be found in the Roman Republic. Historians have extensively documented the various ways in which Americans were inspired by the Roman example of republican government and how the examples passed down from ancient history informed their respective republican forms of government.<sup>40</sup> The Classics were a mainstay in the education system in colonial America and all founding fathers were steeped in the histories, poetry and practices of the ancient Greeks and Romans.<sup>41</sup> Authors such as Cicero, Sallust, Livy, Tacitus and Plutarch portrayed the collapse of the Roman Republic and, thus, provided Americans with the examples of the pitfalls of republican government: corruption, greed, luxury and disorder were understood to be the contributing factors in the demise of the Roman Republic. These

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<sup>39</sup> Patrick Henry, 6 June 1788, in *The debates in the several state conventions on the adoption of the federal Constitution, as recommended by the general convention at Philadelphia, in 1787. Together with the Journal of the federal convention, Luther Martin's letter, Yates's minutes, Congressional opinions, Virginia and Kentucky resolutions of '98-'99, and other illustrations of the Constitution*, ed. Jonathan Elliot, 5 vols., 2<sup>nd</sup> edn. (Philadelphia: J.B. Lippincott & Co., 1861), III: 160. Henry was refuting a claim made by Governor Randolph that the establishment of a Virginia dictator in 1781 was a sign that the Union needed a strong executive system: 'I will close this catalogue of the evils of the dissolution of the Union by recalling to your mind what passed in the year 1781. Such was the situation of our affairs then, that the power of dictator was given to the commander-in-chief, to save us from destruction. This shows the situation of the country to have been such as to make it ready to embrace an actual dictator.' Ibid., III: 79.

<sup>40</sup> See Richard M. Gummere, *The American Colonial Mind and the Classical Tradition: Essays in Comparative Culture* (Cambridge, MA.: Harvard University Press, 1963); Eran Shalev, *Rome Reborn on Western Shores: Historical Imagination and the Creation of the American Republic* (Charlottesville: University of Virginia Press, 2009); Carl J. Richard, *The Founders and the Classics: Greece, Rome and the American Enlightenment* (Cambridge, MA: Harvard university Press, 1994); Peter S. Onuf and Nicolas P. Cole, eds., *Thomas Jefferson, the Classical World, and Early America* (Charlottesville: University of Virginia Press, 2011); Charles F. Mullet, 'Classical Influences on the American Revolution', *The Classical Journal*, 35 (1939): 92-104, Carl J. Richard, *Greeks & Romans Bearing Gifts: How the Ancients Inspired the Founding Fathers* (Lanham, MD.: Rowman & Littlefield Publishers, Inc., 2008); Paul A. Rahe, *Republics Ancient and Modern, Vol. 3: Inventions of Prudence: constituting the American Regime* (Chapel Hill: University of North Carolina Press, 1994); and Meyer Reinhold, *Classica Americana: The Greek and Roman Heritage in the United States* (Detroit: Wayne State University Press, 1984).

<sup>41</sup> For the prevalence of classical learning in colonial America, see Carl Richard's chapter, 'The Classical Conditioning of the Founders', in *The Founders and the Classics*, 12-38.

attributes were all dangerous and inimical to republicanism, which ought to be based on virtue and simplicity.<sup>42</sup> It was inevitable that such a saturation in the Classics had a significant and long-lasting impact on the leading Patriots and on the subsequent introduction of republican forms of government. Gordon Wood contends that ‘such Classicism was not only a scholarly ornament of educated Americans, it helped to shape their values and their ideals of behavior’.<sup>43</sup> While Jefferson was undoubtedly exaggerating when he remarked that, ‘American farmers are the only farmers that can read Homer’, it does seem clear that the knowledge and understanding of Roman history were particularly pervasive in America.<sup>44</sup> The pamphlets, diaries, correspondence and newspapers in Revolutionary America are peppered with classical allusions, ideas, and examples that helped build an ideological campaign against Britain.

The example of the Roman Republic in its rise and fall was not only the most obvious precedent for Americans to build upon when they devised their republican forms of government; it was also a model to replicate. It was not just the ideas espoused by classical authors that inspired Americans during this period, but their practices. History had a teleological purpose for the eighteenth-century American: the study of history was not about accuracy or discovering the truth, but served to provide justifications and practical applications for solving the problems of the present. They manipulated or ‘managed’ historical evidence to suit the particular arguments contained in their pamphlets. It is important to emphasise the fact that they were not trying to convince historians of the modern era, but an eighteenth-century readership that was receptive and open to manipulated historical evidence. History, therefore, for the eighteenth-century American Whig was not about the past, but the present. Examples from Roman history served a political function: instances where ‘virtuous’ farmer-politicians

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<sup>42</sup> Gordon Wood, ‘Prologue: The Legacy of Rome in the American Revolution’, in *Thomas Jefferson, the Classical World and the American Revolution*, 13.

<sup>43</sup> Gordon Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: University of North Carolina Press, 1969), 49.

<sup>44</sup> Thomas Jefferson to J. Hector St. John De Crevecoeur, 15 January 1787, cited in Richard M. Gummere, *The American Colonial Mind and the Classical Tradition*, 9.

saved Rome from tyrannical men helped illuminate and justify the colonists' struggle against Britain. It goes further than this, however. Rome did not just furnish ideas and practices which influenced Americans in this period: it was regarded as the model through which Americans compared themselves to Britain. The Americans, both in the colonial and in post-Independence periods, laboured to identify binary structures with Rome to explain their conflict with Britain and their early struggles to maintain a republic. Because natural law dictated that human nature remains constant, the examples provided by Roman history were readily seen as applicable to the situation in the colonies.<sup>45</sup> Thus, the struggles in the later Roman Republic were being replayed in the American colonies in the later eighteenth century. Examples pervade colonial literature of tyrannical and corrupt Romans vying for power against the virtuous leaders resisting this oppression. For Americans, the latter were Romans such as Cicero or Cato who had resisted the tyrannical and corrupt designs of the Caesars and they needed such men in their own age to resist a British Nero.<sup>46</sup> Thus, the actions and values of certain 'honest' and 'virtuous' Romans acted as exemplars for Americans who believed that they were involved in a similar ideological and political battle with Britain. This typological exercise, which pervaded the literature of the period, is the context in which the debates concerning dictatorship should be understood.

Through reading Livy, Cicero and Polybius, in particular, Americans in this period knew that temporary dictatorships were an integral part of the constitutional system of the Roman Republic. Because the executive arm in the Republic, which was represented by two consuls who often restricted each other's power, was often ineffective in times of crisis, there was often a need for a system which allowed for decisive action. The two consuls would

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<sup>45</sup> Andrew Lossky, 'Introduction: Gibbon and the Enlightenment', in *The Transformation of the Roman World: Gibbon's Problem after Two Centuries*, ed. Lynn White Jr. (Berkeley and Los Angeles: University of California Press, 1966), 4.

<sup>46</sup> The most persuasive argument in favour of the use of classical typology is Eran Shalev, *Rome Reborn on Western Shores*, 127-43.



normally appoint a dictator at these times, with the approval of the senate, and bestow upon the dictator absolute powers for a temporary period in order to save the constitutional order. The powers, or *imperium*, at the disposal of the dictator were immense: while the dictator was primarily a military appointment, his powers extended to every level of civil society. There were important restraints on the dictator however. He was dependent on the Senate with regard to financial matters and required its approval for all money drawn from the treasury, but there was no interference in how he dispensed these funds. A dictator could not rule for more than six months and there could not be more than one dictator in one year. This was a condition which was rigidly enforced and was never contravened in the Republic. The dictator could not alter the nature of the Constitution and under a dictatorship the Senate, the consuls and the tribunes still functioned as before. Despite these constraints, however, the dictator was a temporary tyrant governing absolutely.<sup>47</sup> Thus, the very existence of the Republic was dependent on absolute power being exercised temporarily only during an alarming crisis.

Americans were widely conversant with the examples of numerous dictators, but the most widely discussed example of a Roman dictator in America in this period was Julius Caesar. He was depicted as the antichrist of the Roman republic in the literature of the American Revolution.<sup>48</sup> Caesar was denigrated in 1764 by James Otis as the ‘destroyer of Roman glory and grandeur’, John Dickinson blamed Caesar for ruining ‘Roman liberty, under the titles of tribunicial and dictatorial authorities’ and John Adams, in 1771, compared Caesar to the ‘corrupt’ and ‘tyrannical’ royal governor, Thomas Hutchinson.<sup>49</sup> While there was

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<sup>47</sup> For a description of the various powers at the disposal of a Roman dictator, see Rossiter, *Constitutional Dictatorship*, 23-26; Clifton Walker Keyes, ‘The Constitutional Position of the Roman Dictatorship’, *Studies in Philology*, 14 (1917), 298-305; D. Cohen, ‘The Origin of Roman Dictatorship’, *Mnemosyne*, 4 (1957), 300-318.

<sup>48</sup> For studies on Julius Caesar and his reception in America, see Margaret Malamud, ‘Manifest Destiny and the Eclipse of Julius Caesar’, in *Julius Caesar in Western Culture*, ed. Maria Wyke (Malden, MA.: Blackwell Publishing Ltd., 2006), 148-169; and Maria Wyke, *Caesar in the USA* (Berkeley: University of California Press, 2012). The latter focuses on Caesar’s reception in twentieth-century America, but Wyke does focus closely on the American Founding in her introduction.

<sup>49</sup> James Otis, *The Rights of the British Colonies Asserted and Proved* (Boston, 1764), 15; and John Dickinson, *Letters from a farmer in Pennsylvania to the inhabitants of the British Colonies* (Boston: Printed by Mein and

grudging acknowledgement of his military and tactical prowess, he was more often than not characterised as the ‘enemy of human kind’.<sup>50</sup> Caesar was, therefore, the personification of tyranny. By contrast, the opponents of Caesar were venerated in America. Cato, Cassius and Brutus were all glorified and were often invoked as examples or models of Virtue fighting against the corrupt Caesar in these American oppositional writings waging ideological war against the corrupt British Parliament. Marcus Porcius Cato the Younger, who opposed Julius Caesar, was the most celebrated Roman hero in the American colonies.<sup>51</sup> *Cato* by Joseph Addison was by far the most popular play in the Atlantic colonies and John Trenchard’s and Thomas Gordon’s *Cato’s Letters* were widely disseminated and read in the colonies.<sup>52</sup> The Seal of the Commonwealth of Virginia, moreover, forever captured Caesar as the personification of tyranny: it portrays ‘Virtue’ (representing the Commonwealth) triumphantly standing over the figure of ‘tyranny’, bearing a striking resemblance to Julius Caesar, and proclaims ‘sic semper tyrannis’ (thus always to tyrants) on the bottom of the seal.<sup>53</sup> Thus, the dictator, Julius Caesar, was a tyrant who was the scourge of the Roman Republic and the cause of its demise. Were Americans disparaging Julius Caesar himself or Caesar as dictator?

Americans did not universally loath Julius Caesar because he was a dictator *per se*, but they did interpret Caesar’s rise to power through his exploitation of the dictatorship system. In other words, Americans were not criticising the office of dictatorship when they were

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Fleming, 1768), 62. John Adams argued: ‘Caesar, by destroying the Roman Republic, made himself a perpetual Dictator; Hutchinson, by countenancing and supporting a System of Corruption and Tyranny, has made himself Governor – and the mad Idolatry of the People, always the surest Instruments of their own servitude, laid prostrate at the Feet of both’. John Adams, Diary, 13 June 1771, in *The Diary and Autobiography of John Adams*, ed. L.H. Butterfield (Cambridge, MA.: Harvard University Press, 1961), II: 35.

<sup>50</sup> ‘From Gordon’s Discourse upon Caesar the Dictator’, *The Boston Gazette, and the Country Journal*. 14 February 1785.

<sup>51</sup> Shalev, *Rome Reborn in Western Shores*, 219. See Anon., ‘A new Epilogue to Cato’, *The Continental Journal, And Weekly Advertiser*, 30 April 1778.

<sup>52</sup> Julie Ellison, *Cato’s Tears and the Making of Anglo-American Emotion* (Chicago: University of Chicago Press, 1999), 68; Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Harvard University Press, 1976), 35-7.

<sup>53</sup> Richard R. Beeman, *The Varieties of Political Experience in Eighteenth-Century America* (Philadelphia: University of Pennsylvania Press, 2006), 31-32.

condemning Caesar, but they were mindful that Caesar exploited the dictatorship system for his own malevolent ends. An article written in the *Massachusetts Spy* in 1771 perfectly captures this logic:

This power *might* have originally been intended for wise purposes, but we see what *is* the consequence. The office of dictator in Rome, though a great stretch of power, was intended by that honest people to be a means of safety for their country. This when in the hands of Camilius, and men of integrity, often proved so. But it was dangerous, and Rome found it so to her cost. It was this engine that overthrew the liberties of the nation, and under the name of dictator Caesar triumphed over the liberties of his country.<sup>54</sup>

Just as they condemned Cromwell for destroying the English Commonwealth, so Americans castigated Caesar for destroying the Roman Republican tradition, which included the practice of temporary dictatorship. Indeed, there are many examples in which Cromwell and Caesar were portrayed in a similar light.<sup>55</sup> Caesar utilised the dictatorship for his own tyrannical ends: he ‘covered his ambitious designs with the semblance of popular virtues’ and ‘laid waste that flourishing empire in blood, and introduced a monarchical government, more arbitrary, tyrannical and cruel than the first’.<sup>56</sup> It was the ‘engine’ through which he overthrew the ‘liberties’ of Rome: ‘as perpetual dictator, Caesar was perpetual tyrant’.<sup>57</sup> Americans interpreted Caesar’s usurpation of the dictatorship system as the fundamental cause for the

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<sup>54</sup> A Centinel, ‘For the Massachusetts Spy’, *The Massachusetts Spy*, 2 May 1771.

<sup>55</sup> An oration by William Tudor in 1779 portrayed Cromwell and Caesar as tyrants: ‘Cromwell ... became sole tyrant of three kingdoms – Tyrant – for of what consequence is it by what style or under what modification despotism operates to the public misery – Dictator, King, Protector, - it is not the appellation we reprobate, though even that we should guard against – but the thing. Who but must own that Cromwell under the name of Protector, was as absolute a despot as he could have been with any other title? The first CAESAR affords us another instance among the thousands which history holds up to our view, to teach us what bold and principled spirits have effected by the aid of the armies .... He ... led his veteran legions, “*nothing loth*,” against his country; passed the rubicon; fought his way to Rome; plunged a dagger in her vitals; impiously trampled on her dearest rights; and seized on empire crimsoned, execrable patricide! Crimsoned with the richest blood of Rome’s best citizens! ...Learn Hence, my countrymen, that a state may sink so low in slavery that even itself cannot retrieve her’. William Tudor, *An Oration delivered March 5<sup>th</sup>, 1779 at the request of the town of Boston: to commemorate the tragedy of the fifth of March, 1770* (Boston: Printed by Edes Gill, 1779), 9-11.

<sup>56</sup> Anon., ‘For The Massachusetts Spy’, 25 April 1771, Anon., ‘On the Five per Cent duty’, *The Freeman’s Journal*, 6 November 1782.

<sup>57</sup> C.X., ‘Hume’s Essays’, *Dunlap’s Maryland Gazette*, 26 March 1776.

demise of the Republic and the real reason for the rise of the despotic Roman emperors. Americans abhorred Caesar because his actions gave birth to Caesarism.<sup>58</sup>

In contrast to the vilification of Julius Caesar, there was admiration for other Roman dictators. There can be little room for doubt that for an American eighteenth-century readership there were proven examples where the system of dictatorship actually worked and, for most Americans, it seemed much more preferable to the rule of the first Roman kings: ‘The dictatorial power was afterwards given occasionally, and found of great use; but still it was limited to so many months; and there are instances where even the dictator could not do what he pleased, but was overruled by the people’.<sup>59</sup> Alexander Hamilton, in his defence of strong executive powers in *The Federalist* No. 80, utilised the example of dictators in Rome to support his advocacy of a strong presidential system:

Every man the least conversant in Roman story, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of Dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome.<sup>60</sup>

Dictatorship, therefore, was a necessary ‘evil’ in order to continue the functioning existence of a republic. Rather than being a tyrannical office in itself, it often served as a buffer against those who ‘aspired to tyranny’.

In praising certain Roman dictators, such as Fabius, Camillus and Cincinnatus, Americans in this period demonstrated that they also appreciated the importance of the dictatorship system in maintaining the Roman Republic. They were to ‘admire, in Camillus,

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<sup>58</sup> Although the word ‘Caesarism’ was not in common use until the middle of the nineteenth century, it was obvious that Americans in this period understood the concept even though they did not use the word. See Zwi Yavetz, ‘Caesar, Caesarism, and the historians’, *Journal of Contemporary History*, 6 (1971), 189 and Nicolas Cole, ‘Republicanism, Caesarism and Political Change’, in *A Companion to Julius Caesar*, ed. Miriam Griffin (Malden, MA: Blackwell Publishing Ltd., 2009), 419.

<sup>59</sup> Anon, ‘The Remainder of the piece begun in our last’, *The Massachusetts Spy*, 6 February 1772.

<sup>60</sup> Alexander Hamilton, *The Federalist: a collection of essays, written in favour of the new Constitution, as agreed upon by the Federal Constitution, September 17, 1787*, 2 vols. (New York, 1788), II: 240.

this fine example, this greatness of soul, he, who, having been unjustly banished, forgetful of the wrongs he had received, and actuated by the love of his country, more than the desire of revenge, comes to save those who had sought his ruin'.<sup>61</sup> The system of dictatorship, therefore, required a virtuous man to undertake ominous responsibilities: 'The great dictator *Fabius* saved, and even restored, the Roman state, by a prudent forbearance, when the more sanguine measures of a general, actuated by an immoderate love of glory, might have ruined the republic'.<sup>62</sup> The Roman dictator Quintus Cincinnatus was a revered figure in Revolutionary America. The use of the name 'Cincinnatus' as a pseudonym was prevalent in newspapers and pamphlets in this period.<sup>63</sup> For most Americans, Cincinnatus was the ideal historical figure: 'Cincinnatus was taken from the plough to save and defend the Roman State; an office which he executed honestly and successfully, without the grimace and gains of a Statesman .... As he came into it with universal consent, he resigned it with universal applause'.<sup>64</sup> The farmer-dictator exhibited outstanding attributes such as 'magnanimity of mind, disinterested conduct, and refined patriotism' that 'dazzled' many Americans.<sup>65</sup> It was not just the fact that he did not take advantage of his office or the fact that he had many admirable qualities, but it was also the fact that 'Honest *Cincinnatus* was but a Farmer: And Happy had it been for the *Romans*, if, when they were enslaved, they could have taken the Administration out of the Hands of the Emperors, and their refined Politicians, and committed it to such Farmers'.<sup>66</sup>

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<sup>61</sup> *The Virginia Gazette*, 9 March 1776.

<sup>62</sup> Anon., 'From the American Magazine', *The New-York Gazette*, 16 January 1758.

<sup>63</sup> Examples in newspapers include Cincinnatus, 'Friday; Committee; Correspondence; Memorial; Honorable; House; Representatives', *Boston Evening-Post*, 1 March 1773; Cincinnatus, 'For the Massachusetts Spy', *Massachusetts Spy*, 16 June 1774; 'For the Pennsylvania Packet', *Pennsylvania Packet*, 22 October 1776; and 'From the Freedman's Journal', *Thomas's The Massachusetts Spy*, 29 August 1782. For the use of classical pseudonyms in American pamphlets and newspapers and their political functions, see Eran Shalev, 'Ancient Masks, American Fathers: Classical Pseudonyms during the American Revolution and Early Republic', *Journal of the Early Republic*, 23 (2003), 151-172 and Eran Shalev, *Rome Reborn on Western Shores*, 151-187.

<sup>64</sup> Anon., 'What is Government But a Trust Committed by all, or the Most to One or a Few Who are to Attend', *The Pennsylvania Evening Post*, 28 March 1775

<sup>65</sup> Anon., 'For the Massachusetts Spy, the Centinel, No. XXXV', *The Massachusetts Spy*, 20 February 1772.

<sup>66</sup> Anon., 'Messieurs Printers', *The Boston Gazette, or Country Journal*, 12 May 1755.

The classical typology to which many Americans subscribed prior to 1776 continued during the war. This is evident in the way George Washington was habitually depicted as the American Cincinnatus. When Washington resigned his commission as Commander-in-Chief of the Continental Army in 1783, the similarity between him and Cincinnatus was not lost on the American public: the plethora of platitudes to Washington in addresses, paintings and statues were all fashioned in the image of Cincinnatus.<sup>67</sup> Although this Cincinnati iconography largely took place after 1783, there are examples during the war which show that many Americans quickly installed Washington as the mythical protector of the new republic. Poems, songs and addresses published during the War suggest that many Americans identified the same attributes in Washington that most Romans detected in their esteemed dictators. In an address in the *Virginia Gazette* in 1777, Washington was almost deified: ‘Great in the cabinet as in war, he shines with unrivalled splendour in every department of life; and, whilst his abilities as a Statesman and a General excite our wonder, his disinterested patriotism and domestic virtues command universal veneration’. Washington’s admirable qualities were placed on a pedestal for all Virginians to venerate:

Such, my Countrymen, is the General who directs the military operation of America; such the glorious leader of her armies; such the HERO whose bright example should fire every generous heart to enlist in the service of his country. Let it not be said you are callous to the impressions of such noble considerations, but, by following his glorious example, shew yourselves worthy of possessing that inestimable jewel LIBERTY, and reflect that you have nothing to dread whilst you are engaged in so glorious a cause, and blessed with a WASHINGTON for a leader<sup>68</sup>

Washington had all the traits of an American Cincinnatus and he was clearly exhorted to ‘Be Th[e] great guardian of thy country’s cause’.<sup>69</sup> Although the symbolism which portrayed

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<sup>67</sup> According to Garry Wills, Washington deliberately modelled his leadership style on such classical heroes as Cincinnatus in the years following the War. See Garry Wills, *Cincinnatus*, passim. See also Maurie D. Mcinnis, ‘George Washington: Cincinnatus or Marcus Aurelius?’ in *Thomas Jefferson, The Classical World, and Early America*, 128-170, and Ron Chernow, *Washington: A life* (New York: The Penguin Press, 2010), 448-458.

<sup>68</sup> H.G.R., ‘Honour, I obey Obey Thee!’, *Virginia Gazette*, 24 January 1777.

<sup>69</sup> Charles Henry Wharton, *A poetical epistle to His Excellency George Washington, Esq. Commander in chief of the armies of the United States of America, from an inhabitant of the State of Maryland. To which is annexed, a short sketch of General Washington’s life and character* (London, 1780), 7.

Washington as the American Cincinnatus was not fully crystallised until 1783, there were attempts earlier to draw comparisons between the two military leaders:

Such, to name no more, was the Character of a Cincinnatus in ancient Times; rising “awful from the plough” to *save his country*; and, his *Country saved*, returning to the Plough again, with increased Dignity and Lustre. Such too, if we divine aright, will future Ages pronounce to have been the character of a\*\*\*\*\*; but you all anticipate me in a Name, which delicacy forbids me, on this occasion to mention. Honoured with his Presence as a Brother, you will seek to derive Virtue from his Example; and never let it be said, that any principles you profess, can render you Deaf to the calls of your Country; but, on the contrary, have animated you with intrepidity in the Hour of Danger, and Humanity in the moments of triumph.<sup>70</sup>

Undoubtedly this veneration was partly a result of the exemplary leadership qualities of Washington, but it also stemmed from a widespread belief that Americans needed a hero to fill the role of 'saviour' of the fledging republic. In other words, Washington was deliberately cast in the mould of Cincinnatus so that Americans could have their archetypal 'hero' of the republic.

In the same way as Washington was expected to fulfil the role of the Republican Protector, so there was an expectation in certain circles that a dictator would be established to protect the republic. Proof of this can be found in the false rumours circulating in 1777 in the newspapers that George Washington was made a dictator by Congress, which John Adams reported as a 'Collection of Lyes [*sic*]'.<sup>71</sup> In 1776, there was a plea to the Assembly of

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<sup>70</sup> William Smith, *A Sermon preached in Christ-Church, Philadelphia (for the benefit of the poor)* (Philadelphia: Printed by John Dunlap, 1779), 22. Compare Wharton's *poetical epistle*:

'Thus, when of old, from his paternal farm  
Rome bad her rigid Cincinnatus arm,  
Th' illustrious peasant rushes to the field;  
Soon are the haughty Volfii taught to yield:  
His country sav'd, the solemn triumph o'er,  
He tills his native acres as before.'

Wharton, *A poetical Epistle to his Excellency George Washington*, 7.

<sup>71</sup> An example of this spurious reporting that John Adams condemned is: 'It is confidently reported, that the Congress have devolved all their Power upon Mr. *Washington*, and appointed him DICTATOR, in example of the Romans. The Reason, if the Fact be true, is very apparent: They find themselves in a slippery Situation, and are glad to throw their Burthen upon the first Simpleton of Consequence that would take it. *Washington* has now no mean Character to support: He must be the *first* or *last* of Men, who would accept Power upon such terms. But as the Congress are desperate, as is this Gentleman, as the first Instance of this Protectorship, he has ordered all Persons to take an active Part in *his* Concerns, and for the Support of *his* Authority, upon Pain of Confiscation of all their Properties.' 'New York, February 3', *The New-York Gazette; and The Weekly Mercury*, 3 February 1777. John Adams wrote to his wife Abigail that 'Another report, which has been industriously circulated is, that the General has been made by Congress, Dictator. But this as false as the other Stories. Congress it is true, upon

Pennsylvania for a dictator to be installed.<sup>72</sup> The desire for a dictator to be established during the war is a clear example of the extent to which some Americans believed that they were not just following Roman examples, but fulfilling their destiny as latter-day American Romans. There was an expectation that their ‘virtuous’ leader would make sure that their Republic was safe. Virginia was in danger and thus needed a Cincinnatus to protect her from ruin.

## II

### *The Dictator in the Whig tradition*

The question remains, however, whether the attempt to install a dictator in Virginia, and the increased military powers that Henry and Nelson enjoyed on a temporary basis, represented an abandonment of the radical Country Whig ideology which had inspired their 1776 constitution. This constitution was designed upon the premise that an independent and strong executive was a potential threat to the political system and, in particular, harmful to the future of the Commonwealth in general. A dictatorship which devolved a substantial array of powers upon a single man seems, on the surface, to be diametrically opposed to this ideological principle. Indeed, a dictator appears to be more in the style of a ‘Sovereign [sic] Power’ which Thomas Hobbes described in his *Leviathan*.<sup>73</sup>

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removing to Baltimore, gave the General Power, to raise fifteen Battallions [sic], in Addition to those which were ordered to be raised before, and to appoint the Officers, and also to raise three thousand Horse, and to appoint their Officers, and also to take Necessities for his Army, at an appraised Value. But no more. Congress never thought of making him Dictator, or giving him a Sovereignty.’ John Adams to Abigail Adams, 6 April 1777, Adams Family Papers, Massachusetts Historical Society.

<sup>72</sup> ‘Would it not conduce to the immediate safety of the state of Pennsylvania if a Dictator were appointed for three or six months, with full powers to exert the strength of the state in any way he should think proper against our enemies? Has not the want of a suitable person, entrusted with such powers in time of war, ended in the ruin of several of the most flourishing republics of antiquity? Are no the present ravages of the enemy in the states of New-York and New-Jersey owing to the want of suitable persons entrusted with absolute power to compel every individual of those states to concur in repelling the common enemy? Does not the languor with which all the new legislatures in America move, in the present alarming exigency of our affairs, fully demonstrate that placing so little in the hands of the executive branch of government is a most *essential* and *fundamental* fault in all our new constitutions?’ A Citizen, ‘To the Assembly of the of Pennsylvania’, *The Pennsylvania Evening Post*, 7 December 1776.

<sup>73</sup> Thomas Hobbes, *Leviathan, or, The matter, form, and power of a common-wealth ecclesiastical and civil* by Thomas Hobbes (London, 1651), 175-186.



Certain theorists, who were either antecedents or prophets of the Country Whig tradition themselves, acknowledged that the practice of dictatorship was not necessarily contrary to the principles later adopted in American republicanism. Just as Americans in the Revolutionary era looked upon the golden age of the Roman Republic as a source of inspiration and guidance, so did early Country Whig thinkers utilise examples from the Roman Republic in order to substantiate their theoretical political systems. Niccolo Machiavelli, the ideological forbearer of Classical Republicanism, argued vehemently that ‘the dictatorial authority did good, and not harm, to the Roman Republic’. For Machiavelli, because ‘no dictator did anything but good to the republic’, dictatorship contributed to the ‘greatness of so great an empire’.<sup>74</sup> James Harrington, a disciple of Machiavellian thought, included a provision for a dictatorship in his constitution for *The Commonwealth of Oceana* if an emergency arose: ‘And the whole administration of the commonwealth for the term of the said three months shall be in the Dictator, provided that the Dictator shall have no power to do anything that tends not to his proper end and institution, but all to the preservation of the commonwealth as it is established, and for the sudden restitution of the same to the natural channel and common course of government’.<sup>75</sup> Algernon Sidney, while not permitting dictatorship in his ideal political system, begrudgingly accepted in his *Discourses on Government* that dictatorship might be necessary in certain circumstances. Even Jean-Jacques Rousseau in 1762 argued that

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<sup>74</sup> Niccolo Machiavelli, *Discourses on Livy*, trans. Harvey C. Mansfield and Nathan Tarcov (Chicago: The University of Chicago Press, 1996), 73, 74, 75. See Patrick J. Coby, *Machiavelli's Romans: Liberty and Greatness in the Discourses on Livy* (Oxford: Lexington Books, 1999), 5-59, 114. For Machiavelli's influence on the Country Whig tradition, see J.G.A Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975); Neal Wood, ‘The Value of Asocial Sociability: Contributions of Machiavelli, Sidney and Montesquieu’, in *Machiavelli and the Nature of Political Thought*, ed. Martin Fleisher (London: Croom Helm Ltd., 1973), 282-307; and Felix Raab, *The English Face of Machiavelli: A Changing Interpretation, 1500-1700* (London: Routledge & Kegan Paul, 1964), 185-217.

<sup>75</sup> James Harrington, *The Commonwealth of Oceana* (London, 1656), 132. Harrington also stipulated that the dictator of Oceana had a term of three months, and had ‘power to levy men and money, to make war and peace, as also to enact laws which shall be good for the space of one year’, in *ibid*. See also Charles Blitzer, *An Immortal Commonwealth: The Political Thought of James Harrington* (New Haven: Yale University Press, 1960); J.G.A Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century*, 2<sup>nd</sup> edn. (Cambridge: Cambridge University Press, 1987), 124-147; and C.B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Oxford University Press, 1962), 160-193.

most dictators were effective in their duties in the Roman Republic before the dictatorships of Sulla and Julius Caesar.<sup>76</sup>

The appreciation of the importance of dictatorship for these theorists was conditional upon certain significant factors however. In the first place, dictatorship in the Roman Republic was not thrust upon the constitutional system, but emanated from it; it involved powers that were freely granted, not seized by force or corruption. Machiavelli's approval of the dictatorship system in Rome was predicated upon the fundamental fact that all dictators were essentially *legal*: 'One sees that while the dictator was appointed to public orders, and not by his own authority, he always did good to the city. For magistrates that are made and authorities that are given through extraordinary ways, not those that come through ordinary ways, hurt republics'.<sup>77</sup> This system of dictatorship, therefore, never contravened the legal processes that were in place; dictators were exercising kingly prerogatives within the confines of the law. Harrington justified the existence of a Dictator in Oceana on the same grounds as Machiavelli: dictatorship was part of the constitution of the Commonwealth of Oceana. Both theorists recognised the fact that temporary, prescribed emergency powers were sometimes essential for the preservation of the constitutional order, but both also emphasised that dictatorship should be provided for by the constitution.<sup>78</sup> Because a constitution could not possibly foresee every eventuality, it was essential that it prescribed a system whereby temporary emergency powers could be invoked to alleviate a critical situation.<sup>79</sup>

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<sup>76</sup> Algernon Sidney, *Discourses Concerning Government* (London, 1698), 119; Jean-Jacques Rousseau, *A Treatise on the social compact; or the Principles of politic law* (London, 1764), 220. See also Peter Richards, *Algernon Sidney (1623-1683): A Martyr to Liberty* (London: Libertarian Heritage No. 29, 2012); Alan Craig Houston, *Algernon Sidney and the Republican Heritage in England and America* (Princeton: Princeton University Press, 1991), 223-267; Jonathan Scott, *Algernon Sidney and the English Republic, 1623-1677* (Cambridge: Cambridge University Press, 1988), 13-42; Jonathan Scott, *Algernon Sidney and the Restoration Crisis, 1677-1683* (Cambridge: Cambridge University Press, 1991), 201-228; and Caroline Robbins, 'Algernon Sidney's Discourses Concerning Government: Textbook of Revolution', *William and Mary Quarterly*, 3<sup>rd</sup> series, 4 (1947), 267-96.

<sup>77</sup> Machiavelli, *Discourses on Livy*, 74.

<sup>78</sup> Charles Blitzer, *An Immortal Commonwealth*, 256.

<sup>79</sup> Indeed, Harrington argued 'But whereas it is incident unto Common-Wealths upon Emergencies requiring extraordinary speed, or secrecie [*sic*], either through their natural delays [*sic*], or unnatural haste to incur equal

Because Harrington made sure dictatorship was integrated into the constitutional fabric of a state, ultimate sovereignty in the Commonwealth still resided with the legislature.<sup>80</sup> Algernon Sidney also argued that dictatorial power must always be kept subordinate to the supremacy of the people: ‘I do therefore grant, that a power like to the dictatorian, limited in time, circumscribed by law, and kept perpetually under the supreme authority of the people, may, by virtuous and well disciplined nations, upon some occasions, be prudently granted to a virtuous man’.<sup>81</sup> For Sidney, dictatorship was only permissible if popular sovereignty remained intact. Dictatorship for these theorists, therefore, did not represent a Hobbesian ‘Sovereign [*sic*] Power’ because it lacked ultimate sovereignty. Sidney highlights the fact that because sovereignty resides in the people, dictators could do very little harm: ‘Cincinnatus, Camillus, Paprius, Mamercus, Fabius Maximus, were not made dictators, that they might learn the duties of the office; but because they were judged to be of such wisdom, valour, integrity and experience, that they might be safely trusted with the highest powers; and whilst the law reigned, not one was advanced to that honour, who did not fully answer what was expected from him’.<sup>82</sup> For Sidney, these examples of successful dictators proved ‘that the government was ever the same remaining in the people, who without prejudice might give the administration to one or more men as best pleased themselves, and the success shews that they did prudently’.<sup>83</sup>

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danger, while holding unto the slow pace of their Orders, they come not in time to defend themselves from sudain [*sic*] blow; or breaking them for the greater speed, they but haste unto their own Destruction’.. Harrington, *The Common-wealth of Oceana*, 131-2. Compare this with Machiavelli’s explanation for the necessity of having a dictatorship: ‘So a republic will never be perfect unless it has provided for everything with its laws and has established a remedy for every accident and given the mode to cover it. So, concluding, I say that those republics that in urgent dangers do not take refuge either in the dictator or in similar authorities will always come to ruin in grave accidents’, Machiavelli, *Discourses on Livy*, 75.

<sup>80</sup> Harrington, *The Common-wealth of Oceana*, 132.

<sup>81</sup> Algernon Sidney, *Discourses Concerning Government*, 119.

<sup>82</sup> *Ibid.*, 217.

<sup>83</sup> *Ibid.*, 119.

Dictatorship was not an ‘unfettered monster’ which was uncontrollable, but, because it was prescribed in the constitution, it was bound by certain restrictions that hindered its ability to become tyrannical. Not only was the tenure of dictators restricted to a specified term of office, but their jurisdiction was also limited to resolving the problem at hand. While they enjoyed a broad array of powers to deal with the crisis, they could not alter the constitutional order when they were in office. For Machiavelli, this was crucial: ‘So, when the brief time of his dictatorship, the limited authorities he had, and the noncorrupt Roman people are added up, it was impossible for him to escape his limits and hurt the city; and one sees by experience that he always helped’. A constitutional dictatorship was permitted in time of war or rebellion and its only purpose was to preserve the independence of the state.<sup>84</sup> Dictatorship, therefore, for these theorists, was not a dangerous office in itself because it was a temporary office, which was established by the constitution and which lacked ultimate sovereignty, and its holder could not overstep his stated powers.

It is clear, therefore, that dictatorship was not as contrary to Country Whig ideology as one might first suppose. When a minority of Virginians sought to establish a dictatorship, they did so not only because they believed that they needed to replicate the example of the Roman Republic, but also because they were following the theories propagated by certain major theorists of Classical Republicanism. There can be no doubt that if the Virginian government did establish a *de facto* dictator, they were not establishing a permanent tyrant. For George Nicolas, Patrick Henry and Richard Henry Lee among others, dictatorship did not represent an acceptance of excessive executive power, but was a necessary emergency provision which could prevent the downfall of the entire Commonwealth. As long as dictators were restricted in their tenure and jurisdiction and as long as they did not enjoy ultimate sovereignty, these

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<sup>84</sup> Clinton Rossiter, *Constitutional Dictatorship*, 6. See also, Peter Baehr and Melvin Richter, eds., *Dictatorship in History and Theory: Bonapartism, Caesarism, and Totalitarianism* (Cambridge: Cambridge University Press, 2004).

Virginians believed that they would not pose a serious risk to the Commonwealth. It was a position adopted in an emergency that was intended to save and not destroy the Commonwealth.

### III

#### *Conclusion: The Adaptation of the Roman republican model*

Thomas Nelson was governor of Virginia for only five months (he resigned because of ill health) and in that time he did not hesitate to make use of the increased powers at his disposal. He was facing an enemy on his doorstep, governing a state with very little revenue and one which was suffering spiralling inflation, and he had to operate with a state militia which was haemorrhaging men at an alarming rate. He took vigorous action by impressing all goods and equipment, personally leading the state militia to maintain control, and ordering loyalists to be arrested. Nelson's ability to keep the Virginian militia supplied undoubtedly contributed to the eventual defeat of the British at Yorktown. With his hands-on approach to governorship, Nelson often acted unconstitutionally because he governed without the consent of the council. In the months after his governorship had ended, he was severely rebuked in the press and by leading Virginians for governing 'arbitrarily' and without 'limitation', while 'sapping the Foundations of the Commonwealth, and the Rights and Libertys [*sic*] of the People'.<sup>85</sup> He defended his actions by arguing that 'the critical situation of the army and the peculiar circumstances of the country, made vigorous exertions necessary; and I must acknowledge that I feel the truest satisfaction when I reflect that those exertions were crowned with success'.<sup>86</sup> The House of Delegates on 27 December 1781 retrospectively legalised all Governor Nelson's

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<sup>85</sup> 'A Petition and Remonstrance from the Freeholders of Prince William County', 10 December 1781, in *Papers of George Mason*, II: 703-711; and Emory G. Evans, *Thomas Nelson of Yorktown*, 102-123.

<sup>86</sup> *Journal of the House of Delegates, 1781-85*, 62-63.

actions.<sup>87</sup> While it would be an exaggeration to suggest that Nelson's strengthened governorship saved Virginia from ruin, there can be little doubt that Nelson's 'dictatorial' behaviour partly contributed to the defeat of the British.

While the proponents of the dictatorial debate did not manage to create the dictatorship which they wanted, they probably felt somewhat vindicated by the success of the actions taken by Governor Nelson. They realised that in order to maintain effective control of the state, decisive executive action was required. Indeed, one could possibly argue that Thomas Nelson's governorship was a Classical Republican dictator in another guise: rather than establishing a dictator from outside the prescribed constitution, the governor was given extraordinary powers within the constitution in order to save Virginia from its worst imaginable fate.

The crucial component of this discussion is the fact that Virginia essentially rejected the Roman form of dictatorship. In the same way as they adapted the Country Whig ideology concerning executive power in their constitution, so they adapted the implementation of the dictator. The refusal to follow Roman precedent and Jefferson's repudiation of the dictatorship system both mark an interesting evolution of thought for Virginians. They looked upon the Roman example and realised that, without the occasional resort to dictatorship, the Roman republic could not have survived. The very existence of republicanism in Rome required the existence of temporary absolutism. For Jefferson, this demonstrated that the Roman Republic was fundamentally flawed: a republic in any age should not always have recourse to the abilities of one man in order to resolve a critical situation, especially when that man might end up being a Julius Caesar or Oliver Cromwell. When Thomas Jefferson wrote those paragraphs in his *Notes on the State of Virginia*, he would have been reminded of the passage in *The*

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<sup>87</sup> *Statutes at Large*, X: 478.

*Republic* by Plato when Socrates warned against installing a popular champion to rule over the people:

The people have always some champion whom they set over them and nurse into greatness ... This and no other is the root from which a tyrant springs; when he first appears above ground he is a protector .... How then does a protector begin to change into a tyrant? .... Must he not either perish at the hands of his enemies, or from being a man become a wolf – that is, a tyrant?<sup>88</sup>

The debate over establishing a dictatorship is crucial to our understanding of the evolving opinion that Virginians had of the executive branch in this period. In 1776, the executive branch had been undoubtedly the one institution in the political system that was most feared. A strong executive branch endangered the constitution as it had the greatest propensity for absolutism and corruption. In other words, the executive branch was perceived as the greatest danger to the political system. By 1781, the executive was now perceived, by some, as the only saviour of the political system. The changing perceptions ensured that executive power had evolved significantly in this period.

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<sup>88</sup> 'Plato, *The Republic*, Book VIII, trans., Benjamin Jowett', The Internet Classics Archive, accessed 11 March 2013. <http://classics.mit.edu/Plato/republic.9.vi/ii.html>

## Chapter Six

### Virginia and the Development of the Executive Branch, 1781-1788

This chapter focuses on the development of executive authority in the United States up to 1788 when the Federal Constitution was finally ratified. It will provide a succinct overview of the nature and development of the position and authority of the executive branch in Virginia, in the other states and on the national level. It will focus its attention on the Constitutional Convention of 1787 and explain why it created a much stronger executive branch than had previously been devised. It will analyse Virginian reaction to this presidential system and assess the extent to which Virginians were hostile to the new federal executive branch. In the second half of this chapter, and building upon the previous discussion, this dissertation will conclude by comparing the system of royal governorship to the system of state governorship in Virginia.

#### I

##### *The Executive Branch in the American States up to 1787*

Thomas Nelson's five-month term as governor of Virginia is very significant for this study of the evolution of gubernatorial power. In 1776, the Virginia Convention established an executive branch which was completely stripped of any meaningful powers and, at the same time, it devised a strong legislative branch that had full possession of the kind of prerogatives, which had been granted to royal governors before the Revolution. By 1781, when the exigencies of war were ravaging the state, some members of the legislative branch recognised the importance of having a stronger executive branch with access to some temporary emergency powers. Some Virginians were pessimistic about the future of the Commonwealth and they even considered installing a dictator to 'save' it. Instead, they elected Thomas Nelson



to become governor. He was vested with some extraordinary powers to drive the British out of Virginia and also to help achieve ultimate victory over the enemy.

The perceived importance of executive power to the political framework had evolved fundamentally in the space of five years. Without the necessary prerogatives to manage a crisis, the state governor, as devised in the Virginian Constitution, was nothing more than an administrator who was beholden to the legislative branch. The situation in 1781 required a governor that was able not only to respond to an emergency situation appropriately, but an executive who did not have to wait for the approval of an intransigent or divided legislative branch. In other words, by 1781, Virginians began to realise that the executive branch required a form of prerogative power. More important, the perception of governorship had changed: in 1776, a strong executive branch was regarded as the greatest threat to the political system, but, by 1781, a strong executive was required in order to save the same political system. These changing perceptions of the dangers posed by executive power, which had significantly altered in these short, but tumultuous five years, ensured that executive authority in Virginia had evolved.

Virginia was not the only state in America to modify the powers at the disposal of its executive branch during the War for Independence. Politicians in other states quickly realised that the dangers posed by dominant executives within their republican political systems were outweighed by a situation that appeared to spell the end of republican government itself. New York and Massachusetts had devised constitutions, in 1777 and 1780 respectively, that restored a degree of authority to the executive branch. Both states provided for the popular election of governors and then granted those elected a limited veto power. Although the popular election of the governor signalled the people's check on the legislative branch, the veto was not absolute

and could be overturned by a two-thirds majority in the legislature.<sup>1</sup> Both constitutions signalled an evolution in public attitudes towards executive power, however. It was believed that the burden and demands of a protracted war could only be alleviated by a decisive and administratively capable governor.

Similar attitudes motivated other states to modify their executive branches in order to prosecute the war more efficiently. Just as the Virginia legislature devolved certain special powers to Thomas Nelson in 1781, so did the South Carolinian legislature increase the powers at the disposal of its executive branch when the British forces appeared to be invading Charleston in 1780. The legislature granted its governor, John Rutledge, the ‘power to do everything necessary for the public good except the taking away the life of a citizen without legal trial’.<sup>2</sup> Changes to executive powers were not solely restricted to state constitutions, however. The pressures placed on the ‘national’ government in Philadelphia during the war led some in the capital to propose that Congress should appoint executive officers to manage the war effort more robustly.<sup>3</sup> In 1780, Alexander Hamilton complained that ‘Congress is properly a deliberative corps and it forgets itself when it attempts to play the executive’. He suggested that the newly-formed Confederation should have distinct executive departments with

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<sup>1</sup> For the Massachusetts’ Constitution of 1780, see *The Popular Sources of Political Authority: Documents on the Massachusetts Constitution of 1780*, ed. Oscar and Mary Handlin (Cambridge, Mass.: Belknap Press of the Harvard University Press, 1966), 25-26; *Massachusetts, Colony to Commonwealth: Documents on the Formation of its Constitution, 1775-1780*, ed. Robert J. Taylor (Chapel Hill: University of North Carolina Press, 1961), 51-58. For the New York Constitution of 1777, see Daniel J. Hulsebosch, *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664-1830* (Chapel Hill: University of North Carolina Press, 2005), 145-202.

<sup>2</sup> In fact, South Carolina’s provisional constitution, which was drafted before independence, granted its governor an absolute veto power, but eliminated this veto power in an amended constitution after independence was declared in 1776. Ray Raphael, *Mr. President: How and Why the Founders Created a Chief Executive* (New York: Alfred A. Knopf, 2012), 41.

<sup>3</sup> In December 1776, after Congress fled to Baltimore because of fear of attack from British forces, Robert Morris proposed that Congress ‘pay good executive men to do their business as it ought to be & not lavish missions away by their own mismanagement. I say mismanagement because no men living can attend the daily deliberations of Congress & to do executive part of business at the same time’. Robert Morris to the Committee of Secret Correspondence, 16 December 1776, in *Letters of Members of the Continental Congress*, ed. Edmund C. Burnett, 8 vols. (Washington D.C.: The Carnegie Institution of Washington, 1921-1936), II: 178. Robert Morris would later serve as the Superintendent of Finance of the United States from 1781 to 1784.

individuals in charge of each agency.<sup>4</sup> Hamilton did not suggest, however, that Congress should create a chief executive to oversee these different executive agencies. By 1781, Congress was lacking money and credit, and representatives decided to create three ‘civil executive offices’: a Financier, a Secretary of War and a Secretary of Marine. Congress realised that it required competent executive officers in order to prosecute the war effort more effectively.

When the fighting on the American mainland in 1781 stopped, and with it the disappearance of an immediate military threat, opponents of strong executive branches were once again in ascendancy in the state legislatures. In 1781, Virginia’s governor, Thomas Nelson, relinquished the governorship in the face of substantial acrimony from Delegates who protested the constitutionality of some of his actions while he was governor.<sup>5</sup> His successor, Benjamin Harrison, served as governor from 1781 to 1784, but he did not receive the same extraordinary powers that had been granted to Nelson. The Delegates in the legislature, believing that the end of the war meant that the security of the state had been achieved, began to erode the executive branch of any meaningful purpose and authority in Virginia. The Delegates transferred naval affairs to a three-man agency that was directly controlled by the House. The legislature dismantled most of the bureaucracy that was set up to assist Henry, Jefferson and Nelson during the war. The House discontinued the commercial agent, the commissary of military stores and the post of war commissioner. The executive branch by 1783 consisted of a governor, his council and three clerks. It was restored to the 1776 vision of an executive: an administrator who assisted the legislature. Benjamin Harrison, believing that he was ‘the most impotent executive in the world’, complained about the heavy burden of his daily

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<sup>4</sup> Alexander Hamilton to James Duane, 3 September 1780, in *The Papers of Alexander Hamilton*, ed. Harold C. Syrett, ed., 27 vols. (New York: Columbia University Press, 1961-87), II: 400-418. In the same vein, Thomas Jefferson maintained that ‘nothing is so embarrassing nor so mischievous in a great assembly as the details of execution’, *PTJ*, XI: 679.

<sup>5</sup> Delegates in the Virginian legislature accused Nelson of acting unconstitutionally because he had authorised impressments without obtaining the prior consent of the council. See John E. Selby, *The Revolution in Virginia*, 315-17.

chores as governor: ‘The eternal interruptions I meet with by being under the necessity of hearing every Man that has Business ... with me ... are such as often to take up Time for several Hours in the Day’.<sup>6</sup>

On the national level, under the Articles of Confederation, which took effect in 1781, the Confederation had neither an executive nor a judicial branch. There was no administrative head of government, except the president of the Congress who was chosen annually. Fear of a British-style centralised government dominated political discourse and state legislatures were not prepared to stomach strong central government. While Congress had the *de jure* authority over coinage, the postal service and Native American affairs, it required the consent of at least nine states to implement policy. It had no power to levy taxes or effectively regulate interstate commerce. Congress depended on the approval of state legislatures to achieve anything meaningful. With such a decentralised system of government, the Confederation experienced multiple problems: disagreements over paper money and protectionism for American goods ranked high among them.<sup>7</sup> Because of the nature of the inconsistency in policies adopted between the individual states, the Confederation was undermined by financial turbulence. This instability appeared to threaten the future of the Confederation when, in 1787, Captain Daniel Shays advanced an ‘army’ of 1200 hard-pressed farmers upon the federal arsenal at Springfield, Massachusetts. Shays’s Rebellion convinced many political leaders that the nation required a stronger union and a stronger national government in order to survive.<sup>8</sup> A Convention was called in 1787 in order to revise the Articles of Confederation and, consequently, strengthen

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<sup>6</sup> Benjamin Harrison to John Tyler, 1 July 1782, *OFLG*, III: 409, and Benjamin Harrison to Nathanael Greene, 21 January 1781, *ibid.*, III: 132.

<sup>7</sup> See Merrill Jensen, *The New Nation: A History of the United States During the Confederation, 1781-1789* (New York: Alfred A. Knopf, 1967), 282-301, 313-326.

<sup>8</sup> For a discussion of the impact of Shays’s Rebellion on the Massachusetts’ and American political scene, see Richard D. Brown, ‘Shays’s Rebellion and the Ratification of the Federal Constitution in Massachusetts’, in *Beyond Confederation: Origins of the Constitution and American National Identity*, ed. Richard Beeman *et al.* (Chapel Hill: University of North Carolina Press, 1987), 113-127; and David P. Szatmary, *Shays’ Rebellion: The Making of the Agrarian Insurrection* (Amherst: University of Massachusetts Press, 1980), 120-134.

the national constitution. Many Americans were determined that the country should be a closely-knit union of states rather than a loosely-bound confederation of states.

## II

### *The Federal Convention and the Creation of the Presidential Office*

On 25 May 1787, 29 delegates began work in Philadelphia to change the system of national government in the United States of America.<sup>9</sup> Their discussions and proposals marked an important milestone in the development of American constitutionalism. As Pauline Maier's *From Resistance to Revolution* demonstrates, in 1768, no American in the colonies was prepared for independence and most Americans had a deep affection for Britain. Not even the Stamp Act and the Townshend duties could shake colonial trust in the king and parliament.<sup>10</sup> Elsewhere, Maier contends that prominent revolutionaries, such as Sam Adams and Richard Henry Lee, in the 1760s, shared a commitment to traditional notions of republicanism. Indeed, she classifies them as *Old Revolutionaries* in order to draw a distinction between the men she portrays and the more familiar 'Founding Fathers' who were responsible for the great constitutional achievement in 1787, the Federal Constitution.<sup>11</sup> By 1776, however, Americans were committing metaphorical regicide and establishing republican government. Indeed, Maier's *American Scripture* demonstrates that the Declaration of Independence was not simply a work of a single author, Thomas Jefferson, but was part of a process, whereby the 'other

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<sup>9</sup> For a discussion of the debates in the Convention, see Richard Beeman, *Plain Honest Men: The Making of the American Constitution* (New York: Random House, 2009); Lance Banning, *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* (Ithaca, NY: 1995); Forrest McDonald, *We the People: The Economic Origins of the Constitution* (Chicago: Chicago University Press, 1958); Jack Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Alfred A. Knopf, 1996); and Jackson Turner Main, *The Antifederalists: Critics of the Constitution, 1781-1788* (Chapel Hill: University of North Carolina Press, 1961). For a discussion of the creation of the executive branch in the Convention, see Ray Raphael, *Mr. President: How and Why the Founders Created a Chief Executive* (New York: Alfred A. Knopf, 2012); Donald L. Robinson, 'Gouverneur Morris and the Design of the American Presidency', *Presidential Studies Quarterly*, 17 (1987), 319-28; and William H. Riker, 'The Heresthetics of Constitution Making: The Presidency in 1787, with Comments on Determinism and Rational Choice', *American Political Science Review*, 78 (1984), 1-16.

<sup>10</sup> Pauline Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776* (New York: Alfred A. Knopf, 1972), xii.

<sup>11</sup> Pauline Maier, *The Old Revolutionaries: Political Lives in the Age of Samuel Adams* (New York: Alfred A. Knopf, 1980), xvii.

declarations’ of the first half of the eighteenth century shaped American republican thought.<sup>12</sup> From the introduction of republican government, through the creation of state constitutions and the eventual failure of the Articles of Confederation, Americans had tested different forms of government. In this Federal Convention, delegates from all the states would debate different plans of government, drawing from their own experiences, failures and successes. The main debate they faced was whether to reform moderately the existing Confederation or drastically devise a new form of national government. In terms of the national executive branch, the question was whether the delegates would establish a plural executive branch that proved to be woefully inadequate during the war or would they prefer an executive branch that had a degree of authority and some meaningful powers in the constitutional system?

Although 55 delegates from all the states attended in total, several states took precedence. James Madison, a delegate from Virginia, drafted proposals that became known as the Virginia Plan and, Virginia’s governor, Edmund Randolph, presented these fifteen resolutions on 29 May 1787. The Virginia plan called for separate legislative, executive and judicial branches and a national government whose laws would be binding upon individual citizens as well as states. The legislative branch would be divided into two branches: a lower house to be chosen by popular vote and an upper house of senators elected by the state legislators. Madison’s seventh resolution described the proposed national executive branch:

Resd. that a National Executive be instituted; to be chosen by the National Legislature for the term of \_ years, to receive punctually at stated times, a fixed compensation for the services rendered, in which no increase or diminution shall be made so as to affect the Magistracy, existing at the time of increase or diminution, and to be ineligible a second time; and that besides a general authority to execute the National laws, it ought to enjoy the Executive rights vested in Congress by the Confederation.<sup>13</sup>

James Wilson, a delegate from Pennsylvania, moved immediately ‘that the ‘Executive consist of a single person’, but the Convention could not agree on this point. Even Edmund Randolph,

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<sup>12</sup> Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York: Alfred A. Knopf, 1997).

<sup>13</sup> ‘The Virginia Plan, 1787’, in *The America Republic: Primary Sources*, ed. Bruce Frohnen (Indianapolis: Liberty Fund, Inc., 2002), 231-2.

according to James Madison's notes of the debate, 'strenuously opposed a unity in the Executive magistracy' because 'he regarded it as the fetus of monarchy'. Randolph 'could not see why the great requisites for the Executive department, vigor, dispatch & responsibility could not be found in three men, as well as in one man'. The fear of monarchical power still loomed large in the delegates' discussions. Madison concluded his notes on the debate by stating, 'Mr. Wilson's motion for a single magistrate was postponed by common consent'.<sup>14</sup> After three days of debate, the delegates had sketched out the outlines of a new executive branch: a single executive, appointed by Congress, which would serve a single seven-year term, have the authority to veto a congressional bill, but this could be overturned by a two-thirds majority in both Houses of the legislature. Delegates were still to spell out exactly the powers which this 'chief magistrate' would be granted.<sup>15</sup>

On 15 June, after weeks of debate on the Virginia Plan, delegates critical of it submitted an alternative vision, which became known as the New Jersey Plan. New Jersey's William Paterson announced to the Convention that he and his colleagues – the majority of delegates from New Jersey, Delaware, Connecticut and New York – wanted to start over. These delegates proposed reforming the existing Articles of Confederation by keeping the existing representation of the states in a unicameral congress, but endowing the Congress with power to levy taxes and regulate commerce. The United States was to remain a confederation and no state would cede all authority to a supreme national government. The plan also proposed a plural executive, consisting of an unspecified number of people who would be elected by a congress.<sup>16</sup> It was clear that the choice facing the delegates was the very same choice during the era of the first state constitutions: a single, strong and independent executive or a plural executive branch that was subservient to the legislative branch.

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<sup>14</sup> 'Madison's Notes on the Federal Convention of 1787, Friday June 1<sup>st</sup> 1787', in *The Records of the Federal Convention of 1787*, ed. Max Farrand, 4 vols. (New Haven: Yale University Press, 3<sup>rd</sup> edn., 1966), I:64-66.

<sup>15</sup> Ray Raphael, *Mr. President*, 64.

<sup>16</sup> 'New Jersey Plan' in *The America Republic: Primary Sources*, 232-3.

The New Jersey Plan provoked Alexander Hamilton into defending not only centralised authority, but also monarchical government. In a speech delivered to delegates on 18 June, Hamilton claimed that the British constitution was the ‘best form’ of government. He called for a strong executive: ‘the monarch must have proportional strength. He ought to be hereditary ... [and] he must always intend ... the true interest and glory of the people’.<sup>17</sup> While the vast majority of the delegates shied away from the idea of establishing a hereditary monarchy, there was a majority in the convention that was convinced that an independent executive branch with substantial powers was the best form. Pennsylvania’s Gouverneur Morris encapsulated the logic for a strong, independent executive branch: ‘Our Country is an extensive one. We must either then renounce the blessings of the Union, or provide an Executive with sufficient vigor to pervade every part of it’.<sup>18</sup> He continued that the executive branch must be ‘the guardian of the people, even of the lower classes, against legislative tyranny’. In other words, the American President must have substantial power to limit the potential for oligarchy.

Delegates argued at length over the course of several months as to what was the most effective executive branch for the country. They argued over the election of the executive: would it be by popular vote or by legislative vote? It was finally agreed that the President would be chosen by ‘electors’ in each state equal to the number of senators and representatives in Congress. Delegates debated whether the President should have an absolute negative on all congressional bills or whether the legislature could override the Presidential veto. It was finally decided that the President could have a veto on legislation, but it was also decided that Congress could overturn this veto if it had a two-thirds majority in the House in which the legislation originated.<sup>19</sup>

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<sup>17</sup> *The Records of the Federal Convention of 1787*, I: 310.

<sup>18</sup> Ray Raphael, *Mr. President*, 78.

<sup>19</sup> *Ibid.*, 78-111.



By 17 September 1787, Congress had finally agreed upon its constitution. Government was to be divided into three branches – the executive, the judicial and the legislative. The legislative branch would be comprised of an upper house, the Senate, and a lower House, the House of Representatives. The former would consist of two senators from each state and the latter was to consist of members in proportion to the population sizes of the states. The executive branch shall be ‘vested in a President of the United States of America’, holding office for a four year term, and to be elected by the Electoral College. The President ‘shall be Commander in Chief of the Army and Navy and have power to grant pardons, to make Treaties, and to appoint Ambassadors, ‘Judges of the supreme Court’, and ‘all other Officers of the United States’, with the approval of the Senate. The President also had the power to veto all congressional laws, but his veto could be overturned by a two-thirds majority in the legislative chamber in which the bills originated.<sup>20</sup> It was a major achievement to reach a compromise over the executive branch, especially after such conflicting views were aired during the convention. While it was one thing to work out a constitution that delegates could agree upon, it was quite another to ensure that this Federal Constitution would be ratified by at least nine of the 13 states. The ratification process would put to the test the opening paragraph of the constitution: ‘We the people’.

### III

#### *‘The Genius of the People’: Ratification in Virginia*

When the Virginian Convention began to debate the Federal Constitution on 2 June 1788, a full nine months after the Federal Convention submitted its plan for public ratification, eight states had already ratified the Constitution. Several of the smaller states, apparently satisfied by the provisions for equality of representation in the senate and thus content that their rights were safeguarded, quickly ratified the constitution by the end of 1787. If the Virginia

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<sup>20</sup> ‘The Constitution of the United States of America, 1787’, in *The America Republic: Primary Sources*, 237-8.

Convention decided to approve the Federal Convention's proposals, Virginia might prove to be the decisive vote which would ratify the constitution. This was not to prove to be the case, however. New Hampshire was the ninth state to ratify the Constitution on 21 June 1788, which meant that the Constitution had been effectively ratified by the American people. It was clear, however, that this new Constitution would not succeed without the approval of the most populous state, Virginia.

Pauline Maier's seminal monograph, *Ratification*, has reframed the debate over the ratification of the proposed federal constitution in 1787-1788. Rather than analysing the ratification process in the American states as a narrow federalist versus antifederalist debate, Maier has shown that 'critics of the constitution' ranged far and wide in the American states. Because virtually all Americans recognised imperfections in the proposed constitution, Maier has shown that the debate over the constitution cannot be neatly categorised into for and against camps. Instead, there was a spectrum of opinion in the American states. Relying heavily on the *Documentary History of the Ratification of the Constitution*, Maier contends that, without the determined opposition of the constitution's critics, the first ten amendments to the constitution would not have been included. She maintains that 'We the People' of 1787 and 1788 'inaugurated a dialogue between power and liberty that has continued, reminding us regularly of the principles of 1776 upon which the United States was founded and that have given us direction and national identity'.<sup>21</sup>

Despite the fact that it was Virginian delegates who proposed the more centralised plan of government to the Convention, the Virginian legislature was particularly divided over the new national constitution. This was not a simple 'for' and 'against' division, however. James Madison identified 'three parties in Virginia' that would contest the proposed constitution: the first, a party led by Washington that favoured 'adopting the constitution without attempting

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<sup>21</sup> Pauline Maier, *Ratification: The People Debate the Constitution* (New York: Simon & Schuster, 2010), 468.

amendments’; the second, a party that ‘urged amendments’ which included George Mason; and the third, a party that wanted not to ratify the constitution at all. Leading the charge for the last group was Patrick Henry.

On 5 June, Henry denounced the proposed executive branch, declaring that the Constitution ‘has an awful squinting’ towards ‘monarchy. And does not this raise indignation in the breast of every true American?’ He reasoned that ‘Your president may easily become a King’ and ‘if we make a King, he may prescribe the rules by which he shall rule his people, and interpose such checks as shall prevent him from infringing them’.<sup>22</sup> The presidential pardon also came under attack because many Antifederalists maintained that the power was unchecked. George Mason reasoned that the President should be denied this right to pardon because ‘he may frequently pardon crimes which were advised by himself’. In Mason’s dark vision of the future presidency, the power to pardon led to monarchical government and the end of republicanism: ‘It may happen at some future day, that he will establish a monarchy, and destroy the republic’.

The powers at the disposal of the President and Senate were challenged simultaneously in the debates. Critics of the constitution maintained that the Senate would work with the President in order to bypass the people’s representatives in the House. Mason explained this Anti-Federalist thinking:

The Constitution has married the President and the Senate – has made them man and wife. I believe the consequence that generally results from marriage, will happen here. They will be continually supporting and aiding each other. They will always consider their interests as united. We know the advantage the few have over the many. They can with facility act in concert and on an uniform system. They may join scheme and plot against the people without any chance of detection. The Senate and the President will form a combination that cannot be prevented by the Representatives. The Executive and the legislative powers thus connected, will destroy all balance.<sup>23</sup>

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<sup>22</sup> Henry continued in his speech: ‘Can he not at the head of this army beat down every opposition? Away with your President, we shall have a King. The army will salute him Monarch; your militia will leave you and assist in making him King, and fight against you. And what have you to oppose this force? What will then become of you and your rights? Will not absolute despotism ensue?’ *Documentary History of the Ratification of the Constitution*, ed. Merrill Jensen *et al.*, 17 vols. (Madison: University of Wisconsin Press, 1976-), IX: 963-4.

<sup>23</sup> *Ibid.*, X: 1376.

Mason believed that such was the concentrated power that was devolved to the Senate and the executive branch, that people would become bystanders in the great political play on the national stage. Anti-Federalists were clearly worried that the executive branch could interfere with the legislative branch in the constitution and, therefore, undermine the separation of powers. Mason continued: ‘The dangerous power and structure of the government ... would end either in monarchy, or a tyrannical aristocracy’.<sup>24</sup>

How threatening was the proposed executive branch to the constitution’s critics in Virginia? Was the proposed Presidential system really regarded as repugnant by a large group of Virginians? Ray Raphael has insisted that those who ‘decided against the Constitution tried to defeat it by using any and all arguments they could muster, so they naturally raised alarms about the powers of the presidency’.<sup>25</sup> Complaining about the powers and prestige of a new political office was an easy target for Virginians who were mainly preoccupied by the issue of state’s rights. In a similar fashion, Pauline Maier downplays Virginian concerns over the presidential system. Two chapters of her monograph analyses, in minute detail, Virginian complaints about the proposed constitution, but Maier devotes only two paragraphs to a discussion of Virginian fears over the proposed presidential system. For Maier, Virginians were far more concerned about the issues of representation, states’ rights, Congress’s military powers and taxation.<sup>26</sup>

Evidence of the federal constitution’s critics’ lack of genuine conviction over the proposed presidential system is revealed in the Convention’s proposed amendments to the Constitution.<sup>27</sup> The Virginia Convention formally ratified the Constitution on 25 June and, two days later, it recommended a list of amendments to the first Federal Congress for consideration. The Convention recommended a bill of rights, which was a revised version of the 1776 Virginia

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<sup>24</sup> Ray Raphael, *Mr President*, 142.

<sup>25</sup> *Ibid.*, 139.

<sup>26</sup> Pauline Maier, *Ratification*, 260, 265-6, 286, 289-291.

<sup>27</sup> This is an argument put forward by Ray Raphael, *Mr. President*, 143-44.

declaration of rights. This is a crucial amendment and it was James Madison of Virginia, despite being a Federalist, who played a major role in getting the Bill of Rights (the Ten Amendments) accepted by Congress. As Gordon Wood has shown, it was Madison's personal conviction and political skill which engineered the passage of the Bill of Rights through a Federalist-dominated (and largely ambivalent) Congress and, thus, assuaging the doubts of those antifederalists in Virginia.<sup>28</sup> Patrick Henry demanded an additional twenty amendments to the constitution: they included amendments addressing ambiguities in the text of the Constitution; annual publication of reports on public finance changes to taxation policy, and state approval of commercial treaties. The amendments did tackle some powers of the president. In particular, the Convention wanted to limit federal control over state militias – fearing abuse of military power – and to change the president's terms of office – no person could be president for more than eight years in sixteen. Clearly, these two amendments indicate that delegates in the Convention were more worried about a president being able to abuse his authority while in office than the specific powers and prestige granted to the office. Pauline Maier may well be correct in her assertion that critics of the constitution 'had pulled back on' structural changes to the executive branch because 'understanding perhaps that the time had passed for so substantial a revision of the Constitution's institutional design'. It cannot be denied, however, that, for Virginians, their concerns did not merit amendments to the constitution. Their discussions of the perceived excessiveness of the proposed presidential powers could easily have been a front to destabilise the apparent erosion of states' rights.<sup>29</sup> The Federal Constitution had been ratified by all thirteen American states and became the law of the land on 4 March 1789. It was a phenomenal achievement for a nation that was particularly divided over the proposed system of government. George Washington was the first person to

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<sup>28</sup> Gordon S. Wood, 'The Origin of the Bill of Rights', *Proceedings of the American Antiquarian Society*, 101 (1991), 270-1.

<sup>29</sup> Pauline Maier, *Ratification*, 317.

be sworn in as head of the new federal executive branch on 30 April 1789. The American Republic had evolved from a collection of states without any real executive authority to a union of states with a federal executive branch.

#### IV

##### *Conclusion: The Evolution of Executive Authority in Virginia*

In 1776, the Virginian constitutional drafting committee was apprehensive about the potential of an unlimited executive branch. Not only did its members believe that they had endured oppressive legislation implemented by royal governors, but they concluded that the root cause of this tyrannical legislation was over-mighty monarchical government. Inspired by Country Whig theories in Britain, Virginians claimed that corruption had undermined the whole political system and Parliament's oppressive legislation had originated in its executive abuses. Inspired by radical Country Whig thinkers in Britain, Virginians maintained that all individuals had to aspire to public virtue. They believed that a system of government must protect people's happiness and they were certain that a strong executive branch was inimical to such a goal. They warned that a republican system of government must never be corrupted in the same fashion as the 'old' monarchical government. Hence, they devised a constitution which placed almost all power in the legislative branch and, by the same token, they neutralised the threat posed by the executive branch by stripping away all of the prerogatives and powers that it had formerly possessed under royal government. It was widely feared that a powerful executive branch able to wield prerogatives, enforce unpopular legislation and influence the people's representatives, would undermine and ultimately destroy the Commonwealth. They ensured that they would have an executive branch which was elected by the legislature, accountable to the legislature and managed by the legislature. Although Virginians rejected the form and substance of royal government, they relied heavily upon British constitutional thinking when they created the gubernatorial position in the Virginia Constitution. They adapted Country

Whig fears concerning executive power in order to neutralise the effect a strong executive branch could pose in the constitution. The question remains: how different was the 'old' government system that had evolved over a period of 150 years to the one created in 1776? To what extent does the 1776 system of governorship represent a radical change from its royal predecessor?

In the first place, the symbolical significance of both systems of governorship was manifestly different. Although the Virginia Convention retained the name 'governor' in the political system, they did not retain the same kind of office. The royal governor was the king's representative, who could exercise various kingly prerogatives and was involved in all the judicial, legislative and military affairs of the colony. The royal governor acted as if he were head of state and he represented the link between mother country and colony. Ceremonially, Botetourt and Fauquier were revered in the colony and were fondly remembered after they had died. In stark contrast, the new governor of the Commonwealth was an administrator who acted at the head of an executive council. He lacked any actual powers of appointment and any real powers over the legislative and judicial branches. In terms of what the governor represented, both systems appear diametrically opposed.

In terms of the method of appointment to the governorship, the two systems had contrasting methods. A royal governor was appointed, whereas the state governor was elected. A royal governor secured his position because of the influence of powerful patrons with the king. He served at the king's pleasure and could often be transferred to another colony or removed altogether on the personal whim of the king or according to the changing power struggle back at Westminster. A royal governor's appointment lacked security and permanence which severely hampered his ability to govern. A state governor, on the other hand, was elected by the General Assembly, which meant he was effectively controlled by the legislative branch. While a royal governor's appointment guaranteed that he could never be the all-powerful

executive which some contemporaries perceived him to be, or accused him of being, the state governor's election meant that he could wield only a modicum of influence over the state legislature. Because the General Assembly elected the governor, it meant that the governor inevitably came from the legislative branch with extensive legislative experience. In other words, the governor had personal contact with delegates in the House and Henry and Jefferson would often use this existing relationship in order to make policy suggestions to the House. Thus, whereas the appointed royal governor lost his ability to govern because of the nature of his appointment, the elected state governor derived some influence with the legislature because of the fact that the General Assembly appointed him.

Although they may appear diametrically opposed, the two systems of governorship were actually quite similar in certain respects. Whereas most historians have maintained that all royal governors had substantial powers, this is not entirely accurate. While royal governors in Virginia did have a degree of control over the Virginian militia and the judiciary, they had very little real authority over the House of Burgesses and had little or no means of influencing the general public. In the same manner, the state governor had no influence over the legislative branch and had very few patronage powers which would allow him to create a support base. The system of state governorship had to contend with the same difficulties and problems that undermined and exposed the weak system of royal governorship in Virginia.

Both systems ensured that the governor did not govern alone. The royal governor was assisted by an executive council consisting of between ten and twelve members. While the royal governor did not control who was appointed to the council, he did make recommendations to the Board of Trade which usually agreed with the governor's nomination. The council in colonial Virginia had become a dysfunctional political body, however. All three governors of Virginia constantly had problems putting a quorum together because the members of the council were scattered across the colony. Indeed, Virginian royal governors were often



informed by the Board of Trade to ignore the advice given by the Council if it contradicted imperial policy. The state governor was not permitted to ignore his Council of State. The Virginia Convention ensured that the Council would no longer be regarded as simply an advisory body. Instead, they stipulated that the governor could execute the laws of the state only with the consent of the council. In other words, the Virginia Convention ensured that the governor was little more than the head of a plural executive. While the governor could not govern without the advice of the Council, both Henry and Jefferson often had to act unilaterally because the Council were not present to assist him. Therefore, both royal and state governors frequently functioned without the advice and support of their Council.

Both systems of governorship had to contend with a tripartite system of administration. Royal governors worked within a system of imperial administration which proved untenable for most governors. They were instructed how to act and liable to have any decision of theirs vetoed or overturned back in Britain. These imperial bodies were haphazardly organised, heavily bureaucratic and lacked a centralised decision-making process which, if in place, would have greatly benefited the governor's ability to execute his office in the colony. The Board of Trade and Plantations often assumed some of the powers of patronage that were nominally at the disposal of the royal governors and the Privy Council appropriated land granting powers, which impaired any royal governor's ability to manage the legislative assembly. At the same time, the remaining powers of royal governors were parcelled out to an increasingly powerful House of Burgesses. This legislative body had control of the colony's public finances and was often able to use its command of the revenues raised in the colony in order to negate the governor's ability to wield his prerogative. The governor in Virginia was also unable to influence the composition of the legislative branch as the House of Burgesses was elected by a large majority of the people living in Virginia and he lacked the patronage to influence large numbers of voters or many members of the assembly.

In a similar fashion, Patrick Henry and Thomas Jefferson had to contend with two political institutions which severely hampered their ability to govern effectively. In the first place, they had to work with a legislative branch which had been granted all the prerogatives and patronage that were possessed by the executive branch before the Revolution. They were directly elected by the General Assembly of Virginia and had to act at the behest of this body, which could not always be consulted because it was infrequently in session. Second, both governors had to contend with the Continental Congress which exerted great pressure on the executive branch in the state by its frequent and unrelenting requests for both men and supplies. Both state governors frequently sought the help of the Continental Congress in order to defend Virginia, but with little success. Thus, the governor was dependent on the legislative branch for his election and the means to carry out his governorship.

In other words, both systems of governorship were severely hampered because they had to contend with an internal institution and an external administration. The Virginian royal governor was unable to exert much influence or authority in the colony because an internal institution, the House of Burgesses, controlled not only the means and amount by which revenue was to be raised in his colony, but it also assumed control over how this revenue was to be spent. The Virginian royal governor was unable to exert much authority or influence in the colony because an external administration, the Board of Trade, had assumed most of his patronage powers, had the power to remove him from office whenever it wanted, and had ensured that the governor must follow its instructions. The Virginian State governor could not exert much authority or influence in the state because an internal institution, the General Assembly, directly elected him, possessed all the prerogatives, which were formerly devolved to the royal governor, and assumed control of the most important powers of patronage. The Virginian state governor could not exert much influence in the state because an external body, the Continental Congress, placed considerable demands on the governor for men and supplies.

Both systems of governorship, therefore, struggled to work with their local legislative assembly and struggled to appease the demands placed on them by an 'external' administration.

For a royal governor to become a truly dominant executive, he would have had to be able to control the House of Burgesses. Of course, Fauquier, Botetourt and Dunmore frequently prorogued and dissolved the House in order to reassert imperial control over the Virginian legislature. This, however, did not prevent the House of Burgesses from meeting elsewhere and its members eventually acted independently of the governor's prerogative. Because they could not control the House of Burgesses, all three governors resorted to utilising a consensual style of governance. They would often accede to the legislation passed by the House in order to ingratiate themselves with the colonial elite who essentially controlled the colony. The state governor had even fewer means of controlling the General Assembly of republican Virginia. Instead, he was himself largely controlled by the legislative branch. Patrick Henry and Thomas Jefferson, however, had to rely on their personal contacts within the House of Delegates in order to achieve anything meaningful. Thus, both systems of governorship were largely powerless with regard to the powerful legislative branch.

Both systems of governorship struggled to impose their influence over the people at large. All three royal governors did not have the required patronage at their disposal which would allow them to build up large bodies of support in the colonies. They had to rely on their personality and appearance in order to cultivate loyalty among Virginians. While this worked to an extent in the capital, Williamsburg, all three governors failed to control the colonists' march westward and their incursions into Native American land. All royal governors tried to gain loyalty from Virginians by granting land patents, which were essentially another form of patronage for the governor. The problem was that by granting land patents for areas in the borderland region, the governor was essentially losing his ability to control these colonists. Both republican governors failed to exert any influence over the people because the Virginia

Convention expressly denied them any effective powers of patronage. Both Jefferson and Henry failed to wield influence on the local level and troop enlistment to the Virginia militia suffered as a direct result. Both systems of governorship lacked the patronage required and the powers needed to exert much influence over the legislative branch and over Virginians in general.

The system of governorship, that was devised by the Virginia Convention, therefore, essentially established in law what had already become apparent in practice. Royal governorship was a very weak governing system: governors lost their ability to influence the legislative branch, struggled to control Virginians in their march westward, and had to contend with a system of imperial administration that was highly diversified and bureaucratically inefficient. All royal governors lacked security in their tenure, were forced to govern by instruction and were denied the important patronage rights which would ensure they could govern effectively. Although the Virginia Convention firmly believed that royal governors, such as Dunmore, had wielded too much influence over the political system, they were mistaken. When they devised their own version of the gubernatorial office, they were actually outlining what royal governors had actually become in the colony. Without the ability to gain public loyalty, dependent on the whim of the king or their superior patrons, royal governors could exert very little influence over the colony. State governors, in the same manner, lacked the powers and prestige to influence the people at large or to control the General Assembly. The new state governorship, therefore, was a system which strongly resembled the practical nature of royal governorship. There was not a marked transformation in the system of governorship during the revolution; instead, both systems were ineffective and suffered as a consequence. The American Revolution did not radically transform the gubernatorial position, but only enshrined in law what had become obvious in reality.

While royal governors steadily lost their prerogative powers over the course of the colonial era, state governors steadily increased theirs in the space of five years. As has been shown in Chapter Four, both Patrick Henry and Thomas Jefferson were not only granted some temporary emergency powers, but were often forced to act beyond their constitutional constraints. While the House of Delegates restored the executive branch to its 1776 creation, there can be little doubt that the war, when the governorship in Virginia had evolved a little, is emblematic of the wider evolution of gubernatorial and executive power that was occurring in other American states. The Pennsylvania Constitution of 1790 had evolved from its 1776 framework: the latter constitution had got rid of the governorship, but the 1790 framework restored the governor to the position of the head of the executive branch. The Federal Constitution of 1787 devised an executive that was closely modelled upon the executive branch that was contained in the Massachusetts' constitution. The American perception and application of the powers at the disposal of the executive branch was clearly changing.

From the time when Francis Fauquier arrived in the colony in 1758 to Thomas Nelson's resignation in 1781, the perceived importance of a governor to the political system had evolved considerably. Fauquier appeared to possess kingly powers, but in reality was only an administrator of government who lacked the authority and practical influence to govern as the king's representative. In 1776, Virginians perceived the executive branch as the most dangerous threat to the future of the Virginian constitution. The constitutional committee ensured that the governor was denied all means of influence and power. Thomas Nelson inherited an office that was supposed to be ineffective and weak, but he exercised some considerable powers in order to protect Virginia and assisted in the final defeat of the British. Although Virginia restored the weak governorship system once Harrison was elected, the experience during the war ensured that most Americans believed that a weak executive branch was inadequate in time of crisis. Thus, from the weak executive branches created in the 1776

constitutions to the stronger executive branch devised by the Federal Convention in 1787, the nature of executive power in America had developed markedly.

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