

*in 1776
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REPUBLICANISM IN VIRGINIA
AND
THE CONSTITUTION OF 1776

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Chapter I. "Snuff the Approach of Tyranny"

In 1776 Virginians resolved to secure their rights and liberties through independence and republicanism. The decision was not unanimous, nor was it clear in meaning. Political separation from monarchical Britain was obviously intended, but the changes this would entail for Virginia government and society were not easily determined. Individuals had various conceptions of what the new Commonwealth should be, but not all their dreams could be fulfilled. The Constitution of 1776 and the Declaration of Rights represented an attempt to define the meaning of the Revolution, and gave Virginians a concrete goal to strive for and to defend. Yet the Constitution fell short of the expectations of many supporters of the patriotic cause; some feared that stability and order might not be maintained under it, others were disappointed that liberal republican principles were not fully embodied in the plan. Nevertheless, the Constitution was both conservative enough and republican enough that those who found it lacking could still live under it. Ironically, Thomas Jefferson, the foremost dissenter within the Virginia system, could even find himself propelled to national leadership as the defender of the system, and Jeffersonian Republicanism and Virginia Republicanism would become synonymous in the public mind. While Jefferson and others believed that the Constitution failed to reach the highest ideals of republicanism, they imposed strict limits on their efforts to reform the system. No one protested so loudly that his personal political effectiveness would be endangered, nor so violently that the government would lose the respect of the people. The genesis of Virginia's Constitution of 1776 and its remarkable ability both to generate

and to endure dissent are the subjects which will be investigated in this essay.

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Both the success of the Constitution and the dissatisfaction which it engendered should be attributed to the quality of late eighteenth-century Virginia society. The framers intended to devise a system of government which suited the manners and morals of the people. Obviously one workable mode of government was the one which had existed during the colonial era, and many Virginians feared any tampering with that system beyond what was absolutely necessary. Virginians had believed themselves potentially free and happy under the old system, but saw themselves moved to revolution by British threats to their way of life. Therefore they approached the task of forming a new government with the attitude that the old one had been basically sound and only needed reforming, even though they had great differences of opinion about how much reforming was needed. In order to understand these differences one must first analyze Virginia society on the eve of Revolution, and apprehend how it seemed threatened, and how the threat was responded to.¹

¹Charles S. Sydnor, Gentleman Freeholders: Political Practices in Washington's Virginia (Chapel Hill, 1952), gives the best over-all picture of eighteenth-century Virginia society. Other important works that shed light on Virginia society are: Jackson Turner Main, The Social Structure of Revolutionary America (Princeton, 1965); Daniel J. Boorstin, The Americans: The Colonial Experience (New York, 1958); Thomas J. Wertenbaker, The Planters of Colonial Virginia (Princeton, 1922); J.R. Pole, Political Representation in England and the Origins of the American Republic (New York, 1966); Pole, "Representation and Authority in Virginia from the Revolution to Reform," Journal of Southern History, XXIV (1958), 28-31; Jack P. Greene, "Foundations of Political Power in the Virginia House of Burgesses," William and Mary Quarterly, 3d Ser., XVI (1959), 485-506; Greene, "Changing Interpretations of Early American Politics," in Frank Otto Gattell and Allen Weinstein, eds.,

Life in Virginia revolved around the interests of the agricultural community; men either farmed or provided services for farmers. The most prosperous farmers took the positions of leadership in their society, and educated their sons so they could serve society well. By mid-century a substantial gentry class had arisen in Virginia, possessing great economic power, a high level of education, and a highly developed sense of public responsibility. In every county, members of the gentry served on the county court and on the parish vestry. Some of the more able and prosperous gentry secured election to the House of Burgesses, and the most able and prosperous gentry of the colony achieved leading positions in the House or a seat on the Council. As a matter of course the prominent gentry of a county received the leading positions in the militia. The professional services which the community required were also provided by the gentry, law in particular often became a gentleman's principal occupation. But many planters were jacks-of-all-trades, serving sometimes as lawyers, physicians, engineers, merchants, teachers, and the like. Thus the planter gentry did not find themselves faced with any important rivals within Virginia society. The few outsiders who moved into positions of potential power, such as clergymen, merchants, or teachers, had very little influence unless they managed to be accepted by the local elite, and in that case they usually became part of the

American Themes: Essays in Historiography (New York, 1968), 26-54; Bernard Bailyn, "Politics and Social Structure in Virginia," in James Morton Smith, ed., Seventeenth Century America: Essays in Colonial History (Chapel Hill, 1959), 90-115; Dumas Malone, Jefferson the Virginian (Boston, 1948); David John Mays, Edmund Pendleton 1721-1803: A Biography (Cambridge, 1952); Robert E. and B. Katherine Brown, Virginia, 1705-1786: Democracy or Aristocracy? (East Lansing, 1964); Wilcomb E. Washburn, "Law and Authority in Colonial Virginia," in George A. Billias, ed., Law and Authority in Colonial America (Barre, Mass., 1965).

gentry class. Virginia society and its interests were therefore remarkably unified.

Another strength of the society was the opportunity it provided for social advancement. Although the county oligarchies were in a sense self-perpetuating, in practice the Virginia system tended to recognize merit and give the most able men a chance to rise. Men dissatisfied with their status in the older settled regions could often improve their situation by moving to the frontier. Extremes of wealth and poverty did exist, but they appeared to be based on differences of ability. The gentry received deference from the lower classes because they were believed to deserve it. The lower classes were relatively well off for the eighteenth century, and most Virginians were small farmers. Generally speaking, Virginia society was an orderly one, in which the lower classes could sustain themselves above subsistence levels, and could accept government by the gentry class as in the interest of the entire agricultural society.

This acceptance of gentry rule was demonstrated annually in the elections for the House of Burgesses. The freeholders of the county almost invariably selected two leading members of the gentry to be their representatives. The burgesses, together with the governor and his council formed the provincial government. Members of the council were appointed by the King and generally were of the most prominent and influential gentry families. The only outsider in the system was the governor, and he found as other outsiders did that to be effective he had to become part of the gentry society and act in its interest. With the governor's cooperation, Virginia society functioned very well.

Yet as well as the system functioned there remained a flaw: Virginia's status as a royal colony. Royal authorities believed Virginia existed to serve

the interests of the British Empire, and when local interests clashed with the greater interests then Virginia would have to give way. Virginia's Assembly on occasion enacted needed legislation only to have it disallowed by officials in London. Royal governors of Virginia who supported local interests often found themselves censored by their superiors for abandoning their responsibility to the crown. The governor was instructed to use his powers to prevent Virginia legislation in opposition to royal policies. These veto powers exercised by royal authorities in the colony and in Britain often evoked protests from Virginia, but what drove the colony to rebellion was not an attempt by Britain to block Virginia legislation, but an attempt by Britain to legislate for Virginia. If the British could impose new taxes on Virginia, then it seemed to follow that anything might be imposed and therefore Virginia society would be entirely at the mercy of British whims. Virginia feared subjection to a British tyranny.²

The disposition to "augur misgovernment at a distance and snuff the approach of tyranny in every breeze," which Edmund Burke remarked upon, was intensified by the underlying fear of the Virginia gentry that their social

²Besides works already cited, the best studies of Virginia's colonial history and the coming of the revolution are: H.J. Eckenrode, The Revolution in Virginia (Boston, 1916); Allan Nevins, The American States During and After the Revolution (New York, 1924); Jack P. Greene, The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776 (Chapel Hill, 1963); Leonard W. Labaree, Royal Government in America (New Haven, 1930); Philip A. Bruce, Institutional History of Virginia in the Seventeenth Century (New York, 1910); John R. Alden, The South in the Revolution, 1763-1789 (Baton Rouge, 1957); Bernhard Knollenberg, Origin of the American Revolution, 1759-1766 (New York, 1960); Thad W. Tate, "The Coming of the Revolution in Virginia: Britain's Challenge to Virginia's Ruling Class, 1763-1776," Wm. and Mary Qtrly., 3d Ser., XIX (1962), 323-343; Richard Lee Morton, Colonial Virginia (Chapel Hill, 1960), 2 Vols.; Percy S. Flippin, The Royal Government in Virginia, 1624-1775, (New York, 1918); C.R. Lingley, Transition in Virginia from Colony to Commonwealth (New Haven, 1910); Lucille Griffith, Virginia House of Burgesses, 1750-1774 (Northport, Ala., 1963).

and political system might be considered illegitimate by British authorities. Perhaps they even questioned its basis in their own minds, for the degree of self-government possessed in Virginia went far beyond the royal instructions which served as the legal foundation for provincial institutions. The system which had been arrived at after a century and a half of adroit political maneuvering gave to the House of Burgesses powers which theoretically still belonged to the royal governor, at least to British minds. The basic colonial defense of its system was the sanctity of custom, and if men in England could ignore custom and impose new taxes on Virginia without local consent, then the whole structure was vulnerable. During the decade leading up to the Declaration of Independence, Virginians and other Americans argued their case against British legislation in terms of custom, as well as in any other terms which might support their cause.³

Contradictory doctrines were often advocated by the colonists without sufficient analysis; but many men were driven to intensive study of colonial society, the British Constitution, and Western political theory. What began as a conservative movement on the part of Americans took on radical implications as some writers moved to a defense based on abstract rights of men. The

³Attempts to explain the intellectual origins of the revolution are found in H. Trevor Colbourn, The Lamp of Experience: Whig History and the Intellectual Origins of the American Revolution (Chapel Hill, 1965); Bernard Bailyn, The Ideological Origins of the American Revolution (Cambridge, Mass., 1967); Bailyn, "Political Experience and Enlightenment Ideas in Eighteenth Century America," American Historical Review, LXVII (1962), 339-351; Gordon S. Wood, The Creation of the American Republic, 1776-1787 (Chapel Hill, 1969); Wood, "Rhetoric and Reality in the American Revolution," Wm. and Mary Q. J., 3d Ser., XXIII (1966), 3-32; Thomas C. Barrow, "The American Revolution as a Colonial War for Independence," Wm. and Mary Q. J., 3d Ser., XXV (1968), 452-464. An understanding of the basis for upper class insecurity can be gained from Emory G. Evans, "The Rise and Decline of the Virginia Aristocracy in the Eighteenth Century: The Nelsons," in Daxrett B. Rutman, ed., The Old Dominion: Essays for Thomas Perkins Abernethy (Charlottesville, 1964).

protest movement included men of quite diverse interests and attitudes and so it was natural that they would argue their cause in different terms, but when protest proved to no avail and the colonies moved to independence these differences would take on new significance as men tried to come to some agreement on what they were fighting for. While all Virginians said their purpose was to preserve their free society, they would quickly discover that they were not all talking about the same thing.⁴

⁴An important strain in revolutionary thought is analyzed in Caroline Robbins, The Eighteenth-Century Commonwealthmen (Cambridge, Mass., 1959). But as Jack P. Greene argues, Virginia's experience did not quite fit the Commonwealthman interpretation. The importance of ideology is not so clear in Virginia. Greene, "Political Mimesis: A Consideration of the Historical and Cultural Roots of Legislative Behavior in the British Colonies in the Eighteenth Century," Amer. Hist. Rev., LXXV (1969), 337-360. "A Comment," by Bernard Bailyn, and a "Reply" by Greene follow, 361-367.

To stress the unity of Virginia society is not to deny that dissent existed. However, Virginia was a consensus society. For comments on the replacement of the conflict and consensus dichotomy in American history by a new appreciation for complexity see Richard Hofstadter, The Progressive Historians: Turner, Beard, Parrington (New York, 1968), 442.

Chapter II. "Founded on a Rock"

Virginia's final decision to declare independence and erect a government may have been hastened by its leadership's essential conservatism. Once Lord Dunmore, the royal governor, fled from the colony and declared that Virginia was in rebellion, the legal basis for government evaporated. John Page was representative of the leading patriots in his fear of Virginia's remaining too long in a state of legal anarchy. "I think our Countrymen have exhibited an uncommon Degree of Virtue," Page wrote to Thomas Jefferson on April 26, 1776, "not only in submitting to all the hard Restrictions and exposing themselves to all the Dangers which are the Consequence of the Disputes they are involved in with Great Britain, but in behaving so peaceably and honestly as they have when they were free from the Restraint of Laws. But how long this may be the case who can tell?"⁵

It was the concern of a conservative man for legitimacy, not a lack of institutions, which caused Page's letter to be written. At the time county governments were functioning under traditional leadership; annual elections had just been held for the Virginia Convention, a body almost identical to the old House of Burgesses; a Committee of Public Safety was exercising the state's executive powers; and representatives, including Jefferson, were serving in the Continental Congress. But "to prevent Disorders," Page urged that "a Constitution should be formed as nearly

⁵Jensen, Founding of a Nation, 645; The Papers of Thomas Jefferson, ed. Julian P. Boyd (Princeton, 1950-), I, 288.

resembling the old one as Circumstances, and the Merit of that Constitution will admit of." Other Americans were also anxious to establish governments, and on May 10, the Continental Congress adopted John Adams' resolution recommending that "the exercise of every kind of authority under the ... crown should be totally suppressed, and all the powers of government exerted, under the authority of the people of the colonies." Five days later the Virginia Convention adopted a resolution calling for complete independence from Great Britain, and created a committee to draft a plan of government for the new state.⁶

The phrasing of the resolution which moved Virginia towards its first written constitution was relatively conservative in tone:

Resolved unanimously, that a committee be appointed to prepare a DECLARATION OF RIGHTS, and such a plan of government as will be most likely to maintain peace and order in this colony, and secure substantial and equal liberty to the people.

Colonial spokesmen had been talking about "rights" throughout the period of protest, and even the words "equal liberty" were a part of traditional English whig rhetoric. The twenty eight men appointed to the committee to prepare the documents would not have considered themselves instructed to devise anything radically new. Two late appointments lifted the membership to thirty and provided the committee with their most effective member in George Mason, and their youngest in James Madison. The importance of Madison lies not so much in what he did at the time as in his transmission of information about

⁶Ibid., 288, 329-330; Merrill Jensen, The Articles of Confederation: An Interpretation of the Social-Constitutional History of the American Revolution, 1774-1781 (Madison, 1940), 98-99; Lingley, Transition in Virginia, 21; Pole, "Representation and Authority in Virginia," 28-31; George Brown Oliver, A Constitutional History of Virginia, 1776-1860 (unpubl. Ph.D. diss. Duke, 1959), 8-10, 14-16.

what others did. Unfortunately, few records exist of the proceedings in the Convention.⁷

We do know that the committee approached the declaration of rights and the plan of government as separate items of business, attending to the declaration first. George Mason apparently assumed the leading position in the committee and composed drafts of both a declaration and a plan of government for the rest to consider. Appointed on May 18, Mason managed to finish a draft of the declaration and guide it through the committee in time for Chairman Archibald Cary to read it before the entire convention on Monday, May 27. The Declaration of Rights provoked intense debate and was not approved until June 12, but the entire process resulted in very little deviation from the original Mason draft. The principles of the Declaration were those of a man committed to freedom defined within the tradition of English constitutionalism. Mason was a student of history and government with a wide knowledge of the world, yet his personal inclinations led him to prefer the routine of plantation life to the role of a legislator. Such inclinations were common to Virginia gentlemen, but among those of comparable ability Mason was perhaps most the localist, and most the reluctant public servant impelled by a sense of duty. By his efforts in the Revolution Mason hoped to assure a society in which he would be left alone to enjoy his personal freedom. Such a goal seemed dangerous to some men.⁸

Both democratic and conservative factions in the convention attacked Mason's Declaration of Rights for overemphasizing the freedom of the individual

⁷The Proceedings of the Convention of Delegates, Held at the Capitol, in the City of Williamsburg, in the Colony of Virginia, on Monday the 6th of May 1776 (Williamsburg, 1776), 32-33. The best accounts of the constitution-making are Julian Boyd's editorial note in Jefferson Papers, I, 329-337; Malone, Jefferson the Virginian, 235-246; and Irving Brant, James Madison, The Virginia Revolutionist (Indianapolis, 1941), 234-271.

and neglecting the security of society. The declaration "that all men are created equally free and independent, and have certain inherent natural rights, ... among which are the enjoyment of life and liberty," caused more conservative members to raise the question of the reality of such a principle in a society in which slavery existed. Robert Carter Nicholas condemned the principle as a pretext for civil convulsions. The declaration was amended to read "that all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact, deprive or divest their posterity." Slaves apparently did not qualify for rights because they had not entered into a state of society. The issue of freedom of religion proved controversial, for the Convention included men who supported the state church and legal restrictions on dissenters, while others wanted complete freedom of religion and disestablishment. The final compromise stated the right to the free exercise of religion but did not disturb the state church. The only other subject of contention of which there is record was the prohibition in the declaration of ex post facto laws and bills of attainder. Patrick Henry and his supporter, Thomas Ludwell Lee, argued against prohibiting ex post facto laws, contending that the good of society might make them necessary. Perhaps the dangers of the war in which they were then involved convinced the convention to keep the government's options open.⁹

The debates over the Declaration of Rights indicate that Virginians were aware that freedom potentially shaded into anarchy, but in the context of

⁹Proceedings of the Convention, 56-100; Kate Mason Rowland, The Life of George Mason, 1725-1792 (New York, 1892), I, 222-266; Robert A. Rutland, George Mason, Reluctant Statesman (Williamsburg, 1961), x, 49, 56-61; Charles Henry Ambler, Sectionalism in Virginia from 1776 to 1861 (Chicago, 1910), 27-28.

Virginia society freedom appeared to be a cohesive stabilizing force. The Declaration included the rights necessary to make possible free government, or in other words, republican government. Classical political theory divided governments into three basic categories--monarchy, aristocracy, and democracy--each of which was appropriate for different types of society.

Virginia society, while not possessing the qualities believed necessary for pure democracy, was believed to possess the qualities necessary for a system in which the people possessed great freedom and responsibility. The Declaration of Rights can be understood as a statement of conditions and attitudes which had to be maintained "as the basis and foundation of government" if Virginia society and government were to continue to be marked by liberty. Men had to be "equally free and independent ... with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." Men had to keep the attitude that government was "instituted for the common benefit, protection, and security of the people," and that members of the government were the people's "trustees and servants, and at all times amenable to them". The community could only grant privileges and emoluments to those who earned them by public service. The powers of government had to be divided, and officeholders changed frequently. "All men having sufficient evidence of permanent common interest with and attachment to, the community," had to be guaranteed the suffrage and not deprived of property or bound by any law to which they or their representatives had not consented. The people had to be protected from oppressive treatment by the courts, and by the military. A free press, a militia "composed of the body of the people,"

⁹Rowland, Mason, 240-250; Robert Leroy Hilldrup, The Life and Times of Edmund Pendleton, 168-169.

and the opportunity for the free exercise of religion had to be guaranteed. "Justice, moderation, temperance, frugality, and virtue" had to be firmly adhered to and often referred to.¹⁰

These conditions and attitudes necessary for free government existed to a great extent in Virginia. The passage of the Declaration of Rights seemed to indicate a commitment to enlarge the scope of freedom. The next step was to devise a plan of government which would carry the principles of republicanism into practice.

On May 18, when the committee was in the early stages of deliberation, little fear existed that "to form a plan of just and equal government" would be too difficult a task. "But to preserve it from being marred with a thousand impertinences; from being in the end a jumble of discordant, unintelligible parts," wrote Thomas Ludwell Lee, "will demand the protecting hand of a master." Lee called on his brother Richard Henry Lee to become that master. On the same day, Richard Henry Lee was also asked by George Mason to assume a leading role in devising a plan of government. Mason remarked that "the committee appointed to prepare a plan is, according to custom, overcharged with useless members ... We shall, in all probability," he warned, "have a thousand ridiculous and impracticable proposals, and of course a plan formed of heterogeneous, jarring, and unintelligible ingredients." But Lee did not return from the Congress at Philadelphia until June 23, and in the meantime Mason assumed the leading role in the committee. Mason was remarkably successful in keeping the plan free of "impertinences" in the sense

¹⁰Rowland, Mason, 240-250, 433-441. For analysis of political theory, the following are important: John R. Howe, Jr., "Republican Thought and the Political Violence of the 1790's," *American Quarterly*, XIX (1967), 147-165; Wood, *Creation of the American Republic*; Bailyn, *Ideological Origins*.

of trivial detail, but he was not entirely successful in preventing the intrusion of "heterogeneous" and "jarring" ingredients.¹¹

While the convention had agreed with relative ease on general principles contained in the Declaration of Rights, they were not quite so certain how the principles should be implemented. Colonial experience did not always coincide with modern political theory. The older conception of a constitution as the organic law of a state proved more influential in Virginia than the Enlightenment attitude that a constitution should be based on reason. Schemes of European radicals like Thomas Paine which discarded historical models were not favored in the convention. But one non-Virginian combined a forthright republicanism and a sympathy for political traditions to create a plan of government which Virginians could adopt to their own uses.¹²

John Adams, like Thomas Paine, stressed that the "only valuable part of the British constitution" was the republican part, but unlike Paine, he believed that a system of checks and balances, and a separation of powers and interests were necessary to maintain freedom. As early as November 15, 1775, Adams had sketched out his ideas in a letter to Richard Henry Lee. He elaborated upon these ideas for George Wythe in January, 1776, and at the request of Lee, Adams allowed the publication of them as Thoughts on Government. Although he believed a government founded upon the principle of virtue to be the best, Adams's pessimism about the extent of popular virtue required him to warn against placing all powers of government in a single assembly. A republic should be "an empire of laws, and not of men" and to

¹¹Rowland, Mason, 224-227, 234, 250-263; Edmund Pendleton to Jefferson, 24 May 1776, Jefferson Papers, I, 296.

¹²Thomas Paine, Common Sense, in Merrill Jensen, ed., Tracts of the American Revolution (Indianapolis, 1967), 400-446.

achieve this Adams advocated the division of the government into several branches. A representative assembly should be chosen which "should be in miniature an exact portrait of the people at large." Its members should be "the most wise and good" from among the people, but great care should be taken to insure that they represent the interests of every element of the people. A second assembly, which Adams called a council, would be chosen by the representatives and granted a negative voice in the legislature. Both houses would unite to elect a governor who would be stripped of the prerogative powers of the old royal governors but "should have a free and independent exercise of his judgment and be made also an integral part of the legislature" with a veto over all legislation. Adams stressed the need for both annual elections and rotation in office, and suggested the possibility of popular election of all major state officials. Adams thought minor officials such as "judges, justices, and all other officers, civil and military, should be nominated and appointed by the governor with the advice and consent of council," or if a more popular government was desired the legislature could choose them. He recommended that county officials other than justices be chosen by the county freeholders. In order to insure the independence of the judiciary, judges would hold office during good behavior. Command of the military would rest with the governor, and the power of pardons with the governor and council. *No note?!*

Aside from the formal governmental structure, Adams recommended three provisions which would help support a republican society. First, "a militia law requiring all men, or with very few exceptions besides cases of conscience," to be supplied and trained to defend their country, appeared "in the present circumstances of our country indispensable." Second, "laws for the liberal

education of youth, especially of the lower class of people," would be considered both wise and useful. Third, although he realized their very mention "will excite a smile," he believed the happiness of the people would be promoted by sumptuary laws. These were provisions to insure that the people possessed a measure of knowledge, dignity, and equality; for dependence, ignorance, and extremes of wealth and poverty were all dangerous to a republican society.¹³

Adams included several alternatives among his recommendations, for he realized that some of his opinions would be unacceptable in Virginia. For instance, he believed election reforms necessary, but while the country remained in turmoil he thought that it would "be safest to proceed in all established modes to which the people have been familiarized by habit." In contrast to Paine, who had emphasized continental government and limited powers for the states, Adams emphasized state governments (he still spoke of colonies) and suggested limits for continental government. His over-all approach won Adams a large measure of influence with Virginians who desired moderate popular reform of their constitution. "The sentiments are precisely the same I have long since taken up," was the response of Patrick Henry to Adams.

"A Government Scheme" published in the Virginia Gazette on May 10, 1776, followed Adams' plan quite closely, and it most likely was written by Richard Henry Lee. The only significant difference was in its making the council of state a distinct body from the upper house of the legislature, a change which

¹³John Adams to Richard Henry Lee, 15 Nov. 1775, The Works of John Adams, Charles Francis Adams, ed. (Boston, 1865), IV, 185-187; Adams, Thoughts on Government: Applicable to the Present State of the American Colonies, in Ibid., 185-200; Adams, Diary and Autobiography of John Adams, L.H. Butterfield, ed. (Cambridge, Mass., 1961), III, 330-333.

Adams approved according to Lee. Otherwise the scheme tended to follow the moderately conservative recommendations in Adams's pamphlet. Members of the upper house, the lieutenant governor, the secretary, and the commissary would serve seven-year terms while all others were to be elected annually. The governor would be part of the legislature, which implied a veto power, and with the consent of the council would appoint the justices of the peace and sheriffs. The governor with the council advising him would possess the executive powers of government, including appointment of militia officers and government of the militia.¹⁴

The Virginians who are thought to have supported the Gazette plan and the Adams plan were men who had led the movement which resulted in independence. They tended to believe in the superiority of American society to that of the Old World, and hoped that a detachment from the corruptions of Europe would allow even further progress. With Adams they shared an excitement over the prospect of three million people with the "full power and a fair opportunity to form and establish the wisest and happiest government that human wisdom can contrive." They could be optimistic because the eighteenth century had seemed to bring new advances in political science, and Virginia seemed to them to possess the necessary conditions for republican government. This view of the situation was disputed in a pamphlet which arrived in Williamsburg around May 20 and which appeared in the Virginia Gazette on June 8 and 15. Carter Braxton's Address to the Convention ... on the Subject of Government in General, and Recommending a Particular Form to Their Consideration, was representative of the thoughts of the most aristocratic and conservative men in Virginia, those who tended to be reluctant revolutionaries.¹⁵

¹⁴Adams, Works, IV, 200-202; Purdie's Virginia Gazette, 10 May 1776.

Braxton accepted the necessity "to shake off the authority of arbitrary British dictators," but he did not reject his faith in the British Constitution. In his view the constitution had been corrupted, and it was only necessary to return it "to its original state" for Virginia to flourish and be happy. He warned against the republican proposals of Adams and Paine, for he believed the mass of people lacked the virtue to sustain such systems. ✓ Popular republicanism required that men refrain from luxury and from distinguishing themselves above the masses. Sumptuary laws and equal division of property might have to be imposed. Virginia conditions were not appropriate for republicanism in Braxton's view, for not only did luxury exist but the country was too bountiful to prevent its existence. It was best that Virginians avoid the systems which "exist only in theory, and were never confirmed by the experience, even of those who recommend them." To remedy the imperfections of the old constitution, Braxton believed all that was necessary was to secure the independence of the Commons and the dignity of the Lords. "The Governour will have dignity to command respect and authority, to enable him to execute the laws, without being deterred by the fear of giving offense; and yet be amenable to the other branches of the Legislature for every violation of the rights of the people." This was to be achieved by having the governor and council elected by the lower house to serve during good behavior rather than at the King's pleasure. Basically the Braxton plan was to continue the colonial system, but control it in Virginia rather than in London.¹⁶

¹⁵Adams, Works, IV, 200; Carter Braxton, Address to the Convention, in Peter Force, ed., American Archives, 4th Ser., VI, 748-754.

¹⁶Ibid.

"I suspect his whiggism," was Patrick Henry's reaction to Braxton, and Richard Henry Lee referred to the plan as "this Contemptible little Tract." They believed "the whole performance an affront and disgrace to this country," because it reflected the aristocratic pretensions of a "little Knot or Junto" within Virginia. The most conservative members of the colonial elite had been basically satisfied with the old system and would have liked to have continued it under secure local control and with new legal sanction. But when Braxton's uncle, Landon Carter, "gave the first breath for liberty in America" in 1765 in opposition to the Stamp Act, the effects were more than anyone had bargained for. Carter had protested an external threat to his position at the apex of his society; in 1776 Braxton had to protest an internal threat to his social standing and therefore proposed a constitution which he hoped would ensure the place of an aristocracy in the state.¹⁷ TJ

Thomas Jefferson submitted a plan which, in contrast to Braxton's, would ensure a major role for the people in their government by instituting democratic reforms of Virginia society. Looking back on the Revolutionary era from the vantage point of 1816, Jefferson seemed to include himself when he said, "we had not yet penetrated to the mother principle, that 'governments are republican only in proportion as they embody the will of the people and execute it.'" At the time of the Revolution, his mind was so filled with old governmental abuses that he was far more concerned about the need for constitutional limits and separation of powers than he would later be. But even in 1776, Jefferson went beyond most of his contemporaries in his concern that Virginia's government embody the will of the people.¹⁸

¹⁷William Wirt Henry, Patrick Henry, Life, Correspondence and Speeches (New York, 1891), I, 381; Adams, Works, IV, 201-202; Richard Henry Lee, The Letters of Richard Henry Lee, James Curtis Ballagh, ed. (New York, 1911), I, 190.

Jefferson considered the institution of new governments "the whole object of the present controversy." He was extremely disturbed when he had to stay at the Congress in Philadelphia rather than participate in constitution-making at the Virginia Convention. Even though his request for recall was denied, he managed to participate from Philadelphia by sending a personal draft of a constitution to Williamsburg by George Wythe. Wythe did not arrive until June 23, and by that time the committee appointed to devise a plan of government had already submitted their proposal to the convention. Since any changes in the committee's proposal had to be made on the floor of the Convention, Jefferson's plan was at a disadvantage.¹⁹

The basic structure Jefferson proposed was identical to the one set forth in "A Government Scheme" published in the Gazette on May 10, but it was far more detailed and more republican. Jefferson had a much broader and deeper conception of what a constitution entailed than did the men in Virginia. He was even unhappy that the Convention of 1776 was drafting the plan of government. In his opinion the people should have created a special body to perform the task. The procedure of the convention was to approach the declaration of rights and the plan of government separately as regular business. Jefferson proposed a single document composed of the "fundamental laws and principles of government" which would be referred for approval to the people in their respective counties. Two thirds of the counties would be required to approve the laws initially or later amend them. Jefferson

¹⁸Thomas Jefferson to Samuel Kercheval, 12 July 1816, Free Government in the Making: Readings in American Political Thought, Alpheus Thomas Mason, ed. (New York, 1965), 393-394.

¹⁹Jefferson to Thomas Nelson, 16 May 1776, Jefferson Papers, I, 292.

believed that a constitution should be treated as fundamental law requiring the direct consent of the people for both its creation and any subsequent alteration.²⁰

Jefferson began his plan of government with a preamble listing the abuses of the King which had necessitated stripping him of his authority in Virginia and establishing a new government based upon popular authority. He tried to avoid giving too much power to any man or group of men in the proposed government by providing that legislative, executive, and judicial offices would be separate, and by enumerating powers which the various branches of government would be prohibited from exercising. The legislative branch was to be composed of a house of representatives and a house of senators, the lower house elected annually directly from the people and by the people, and the upper house chosen by the members of the lower to serve four-year terms. The only special requirement for membership in the Senate was a minimum age of 31 years. Senators would be restricted to a single term and a quarter of them would be changed annually. While the Senate would act as a conservative force in the legislature, the lower house would be a democratic and presumably progressive force because it was expected to embody the will of the people. Extension of the suffrage would help ensure this.

The proposals for reform of the suffrage were the most radical features of Jefferson's plan. Any landless person of full age would be entitled to a grant of 50 acres from the public lands, and would thereafter satisfy the qualifications for voting. Furthermore any individual who settled in Virginia

²⁰Malone, *Jefferson the Virginian*, 235-240; Merrill D. Peterson, *Thomas Jefferson and the New Nation: A Biography* (New York, 1970), 100-107.

and gave evidence of his intention to remain seven years would be granted the same rights as one native born. Virginia would approach universal manhood suffrage since all men would be given the opportunity to be independent freeholders. The number of representatives to the lower house from each county would be proportioned to the number of voters there, which was a major reform in achieving equal representation. Only the house of representatives could originate and amend money bills, but in all other matters both chambers possessed equal powers and each had to approve all laws.

Jefferson's chief executive officer was to be called the administrator rather than the governor, and would be chosen annually by the assembly. According to the plan, his powers were those "formerly held by the king" and ✓ exercised by the royal governors, but in fact most of the old prerogatives were reassigned to the legislature. Only the legislature could dissolve or prorogue itself, declare war or peace, raise or introduce armed forces, coin money, regulate weights and measures, erect public buildings, lay embargoes, and make denizens. The administrator was to be bound by acts of the legislature and to possess no negative on them; his function was still vital to the process of government, but he was not the independent and equal executive of a balanced constitution. After a single term, an administrator could not serve again for three years. A privy council "to give advice to the Administrator when called on by him," was also to be chosen annually by the house of representatives. A major innovation proposed by Jefferson was in the method of selecting other public officials. County sheriffs and coroners were to be elected annually by local freeholders, and the sheriff was restricted to a single term and could not serve again for five years. This was a major reform of the self-perpetuating colonial county governments. High

state officials would be elected by the house of representatives; all others, civil and military, would be appointed by the administrator subject to the negative of the privy council.

The judicial branch would also undergo significant reform. Three levels of courts would be established. The judges of the county courts would be appointed by the administrator subject to the negative of the privy council. They would be removable for misbehavior by the highest court. The judges at the next level, the general court and the high court of Chancery, would be selected similarly for service during good behavior. However, to be a member of these courts it would be first necessary to have practiced law in Virginia for seven years. These judges were granted membership in the senate for deliberation, but could not vote there. The court of appeals, the highest court, would be chosen by the house of representatives and members could be removed only upon an act of the legislature. Its role would be limited to hearing appealed decisions and considerations of the conduct of public officials.

In all three branches of government, Jefferson was trying to build in checks against abuses of power. In the first draft of his plan he had created a senate for life in order to guard against the democracy of the lower house, and had also been more restrictive on the administrator's term of office. He did not want to make office-holding too attractive. Jefferson believed that public virtue should be the basis of government, and he prohibited salaries for principal officials, and did not even allow expenses to senators. This reflected his attitude on the need for public service without rewards, but it also reflected his assumption that only men of considerable property would serve. In guaranteeing civil liberties he went farther than the declaration

of rights in his provision concerning religion and those concerning legal penalties. Virginians would not be required to maintain a religious institution against their wills under Jefferson's plan, and as punishments for crime, torture was to be prohibited and sentences of death were to be restricted to murderers and traitors. Each detail of Jefferson's plan was devoted to the goal of insuring a republican society, increasing freedom while lessening the danger of tyranny. Jefferson included a prohibition against the importation of slaves, not because he thought slavery morally evil but because he believed that it was harmful to a republican society. No other Virginian carried the implications of republicanism so far.²¹

The republicanism of George Mason was of a more conservative variety than Jefferson's, but it was no less consistent and no less carefully reasoned. He laid his plan of government before the committee on June 8, and it was used as the basis for the constitution which was finally approved by the entire convention. Mason followed the structural outline of the scheme published in the Gazette on May 10, but he included a few new details. In his declaration of rights he had ascribed the right of suffrage "to all men, having sufficient evidence of permanent, common interest with and attachment to the community." He made this explicit in his plan by giving the vote to all those possessing leases of land for an unexpired term of seven years, and to every "housekeeper" who had resided for a year in his county "and hath been the father of three children in this county." The voters in each county would elect two delegates to the lower house who were required to meet minimum requirements of a year's residence in the county, a

²¹Editorial note and constitutional drafts by Jefferson, Jefferson Papers, I, 329-365.

Virginia estate of one thousand pounds value, and an age of twenty-four years. The upper house was to be elected indirectly. Virginia was to be divided into twenty-four districts and the voters of each county in a district were to choose twelve sub-electors who would then cast ballots for members of the upper house. To serve in the upper house a man had to possess a Virginia estate of two thousand pounds, and be at least 28 years old. A quarter of the membership would be replaced every year and then could not serve again until after a period of four years. All acts would originate in the lower house, but, with the exception of money bills, could be amended by the upper house. Approval of both houses was required for legislation.

Mason's executive branch was to be headed by a governor elected annually by the assembly, who could serve three terms and then would be ineligible for election for the next three years. He was to be granted an "Adequate but moderate salary," and with the advice of a council of state could exercise the powers of government, including proroguing and adjourning the assembly, calling emergency sessions, and granting reprieves or pardons. The eight-man council would be initially elected by the assembly, then the members would vote to remove two of their body every three years, who would then be ineligible for the next three years. Vacancies would be filled by the assembly. Three members would constitute a quorum and the advice of the council was to be recorded. Appointment of militia officers and direction of the militia was given to the governor who was to be advised by the council. Together, they were to appoint justices of the peace. After an initial election by the assembly, the executive could replace judges and the attorney

general, subject to legislative approval. Their terms were to be during good behavior. County officials were to be nominated by the respective courts and approved by the governor and council.²²

Mason founded his plan on the concept of the balanced constitution. Each branch was to be separate and yet possess checks on the others. The suffrage was to be extended but the legal qualifications for membership in the legislature were to be raised. The committee refused to accept Mason's scheme of checks and balances, as well as many of his other proposed reforms of colonial practices. The revised plan adopted by the committee prohibited the governor from proroguing or adjourning the assembly, but extended him immunity from impeachment while in office. All projected reforms of suffrage and representation for the lower house were ignored, and colonial election practices continued. In the case of the new upper house, the committee prescribed annual elections, which reduced its difference in character from the lower house. The executive was to fill vacancies in county courts and among militia officers only from the recommendations of the county courts or double the number of replacements needed. The governor and council could replace militia officers for misbehavior or inability in office, and could fill vacancies when the militia was actually in service.²³

The changes introduced by the committee into Mason's plan of government significantly altered the balance of powers within his system. Amendments in the full convention took the constitution even further from Mason's scheme. The committee reported their plan on June 24, and George Wythe, who had just arrived from Philadelphia, showed Jefferson's proposal to the leading framers

²²Mason Draft, Ibid., 366-369.

²³The Mason Plan as Revised by the Committee, Ibid., 369-372.

of the constitution. Wythe reported to Jefferson that "two or three parts" were inserted, "but such was the impatience of sitting long enough to discuss several important points in which they differ, and so many other matters were necessarily to be dispatched before the adjournment that I was persuaded the revision of a subject the members seemed tired of would at that time have been unsuccessfully proposed." Since the committee had just eliminated the more democratic features of Mason's plan, there would have been little point in pushing a far more democratic scheme.²⁴

The convention adopted Jefferson's preamble which listed the tyrannies of George III, and a less explicit version of Jefferson's paragraph prohibiting the exercise of prerogative powers by the executive. Other amendments were in direct opposition to Jefferson's republicanism. Justices of the county courts were made eligible for the legislature, in opposition to the stated principle of separation of powers. The upper house was stripped of most of its significance by making its selection process the same as the lower house, except the senators would represent several counties and would serve a four-year term. Powers of the executive were transferred to the assembly or the county courts. The executive could only suspend militia officers rather than remove them for cause. Appointments of justices of the peace were to be made only upon recommendation by the county courts. The assembly, rather than the governor's council itself, would determine which councillors were to be removed every three years. On June 29, the amended plan was passed unanimously.²⁵

²⁴George Wythe to Jefferson, 27 July 1776, Ibid., 476-477.

²⁵The Constitution as Adopted by the Convention, Ibid., 377-386; Proceedings of the Convention, 156-167

The convention had perverted every plan before it. Jefferson had based his upon a truly representative lower house balanced by a wise and independent senate. Adams and Mason had provided for a similar legislature, but also included the third element of the balanced constitution, an independent executive to provide both efficiency and a check on the other branches. All three men had projected republican reforms of the society. Even Carter Braxton had devised a consistent scheme in his purified colonial constitution. The convention had rejected consistency in political theory for consistency in political practice. The constitution represented a conscious effort on the part of the gentry class to extend their control over Virginia society.

It was not the Commonwealth's first line leadership that brought about this constitution. The little knot of aristocrats, the prominent conservatives, and the prominent liberals preferred other plans, for they would be the governors and senators. The ordinary delegate to the convention knew that his interests lay in a strong house of delegates and an independent county court system. The majority of delegates resisted proposals either to extend popular participation in the government, or to create a powerful senate which would embody a small aristocracy. A prominent moderate, Edmund Pendleton, wanted the senate totally independent of the lower house, "and to say the truth, of the people too after election. I mean the senate holding their offices for life, unless impeached, and to have been chosen out of the people of great property to secure their attachment ... but this seemed so disagreeable to the temper of the times I never mentioned it." The only significant reform acceptable to the convention was of the executive office, because the powers of the executive would be shifted to the bastions of the middle gentry, the lower house of the assembly and the county courts. Too

strong an executive appeared to be a threat to gentry power. As Edmund Randolph later wrote, "No member but Henry, could with impunity to his popularity, have condemned, as strenuously as he did for an executive veto on the acts of the two houses of legislation."

The convention went beyond every plan in increasing the majority gentry power at the expense of the office of governor. Even Jefferson who was most concerned with creating a responsible and limited executive had proposed a governor with more appointive power and with far more individual freedom of action. Mason had his governor share more of his powers with his council, but he had far more extensive powers in the first place. Yet when the convention stripped the governor of his power they kept the provisions which required advice of council before action. Politics and expediency submerged theory on the floor of the convention. Separation of powers would not keep county justices out of the legislature. The majority of convention members did not want to give up their trips to Williamsburg.²⁶

"We build our Government slowly," Edmund Pendleton had written before the constitution was completed, "I hope it will be founded on a Rock." Neither Pendleton nor his correspondent Jefferson would be pleased with the final edifice, though partially for opposite reasons. Yet both would support the new government and take leading positions in it. The new government was founded on a rock, for at the time the gentlemen frecholders of Virginia

²⁶Edmund Randolph, "Essay on the Revolutionary History of Virginia," Virginia Magazine of History and Biography, XLIII (1935), 48; Jefferson Papers, 329-86; Edmund Pendleton to Jefferson, 10 Aug. 1776, Ibid., 489.

were able to supply a body of leaders as reliable and as talented as any in the world. In the hands of the revolutionary generation, the constitution would function well. But the failure to reform the republican basis of society would cost Virginia.²⁷

²⁷Pendleton to Jefferson, 1 June 1776, Ibid., 297; Pendleton to Jefferson, 10 Aug. 1776, Ibid., 489; Jefferson to Pendleton, 26 Aug. 1776, Ibid., 503-505.

Chapter III. "To Preserve the Commonwealth"

Virginians were generally pleased with their new republican form of government, in large measure because it was not very new. It seemed to provide stability in a period of upheaval. Patrick Henry, the first governor under the constitution, justified the convention's work in these terms in his inaugural address: "In order to preserve this commonwealth from anarchy, and its attendant ruin, and to give vigour to our councils, and effect to all our measures, government hath been necessarily assumed, and new modelled." Legitimacy had been given Virginia society, and moderates like Richard Henry Lee were pleased that a more aristocratic system had been avoided. Lee considered the constitution "very much of the democratic kind," and it was, in the sense that the democratic branch of government dominated. Men who were less concerned with order, and more concerned with the republican basis of government were less satisfied. George Wythe wrote Thomas Jefferson, "the system agreed to in my opinion requires reformation," and called on him to effect it.²⁸

If the constitution had actually been the triumph of republicanism that it has sometimes been portrayed to be, it would not have received its harshest criticism from the foremost advocates of republicanism in Virginia. Only when studied outside of its local and historical context does the constitution appear to be a product of radical ideology. Certainly even the most unlearned member of the convention had some familiarity with political theory, but the institution of a weak executive and an unchecked legislature came about despite that theory rather than because of it. Virginia's House of

Burgesses had been the dominant force in the colonial government since the 1730's, and the new constitution recognized the colonial distribution of power rather than reacted against it. By examining the career of a true reformer, Thomas Jefferson, Virginia's lack of ideological commitment to liberalism will be seen.

Before the constitution had been written, Jefferson had worried about the dedication of his countrymen to reform and had agonized over the necessity of remaining in Philadelphia rather than attending the convention. The constitution deeply disappointed him, for it perpetuated the colonial society even if it provided a new name and a new sanction for it. Independence meant more to him than a cutting of political ties. Jefferson wanted to create a more rational and a more just society, one in which the ideals of the declaration of independence would become reality. Previously he had expressed a desire to serve with Benjamin Franklin in France, but when the alluring appointment as a commissioner came late in 1776, Jefferson turned it down, for he believed "the laboring oar was really at home, where much was to be done, of the most permanent interest, in new modeling our governments."²⁹

Jefferson spent the next two and a half years as the leader of reform in the Virginia assembly. He took advantage of the optimistic spirit of the times to abolish primogeniture and entail, and to obtain revisions of the criminal laws; but these were reforms which were rather obviously in the interests of the gentry class; on controversial issues Jefferson did not fare

²⁹Peterson, Jefferson and the New Nation, 3-240; Malone, Jefferson the Virginian, 245-246.

well. His bill for religious freedom was thwarted at first, but was finally passed in a watered-down version in 1786. Other proposals concerning slavery, lands, and education were unacceptable to the legislature. What success Jefferson did have was made possible by Virginia's freedom from crisis in the early years of the war. But by the time he was elected governor on June 1, 1779, the state was undergoing economic difficulties, and soon after Virginia became a battleground. Jefferson conducted his governorship as an experiment for his conception of a republican executive, but the stress of war made the experiment a perilous one.³⁰

The Virginia governors were not limited during the revolution to their constitutional powers. Even before the convention adjourned it granted emergency powers to the executive, and afterwards the assembly not only renewed these powers, but added far more extensive ones. The assembly gave the governor and council the right to lay embargoes, to call out up to 20,000 militia, and to march the militia out of the state. The executive was granted the power to confine or remove disaffected persons, to invoke martial law against those aiding the enemy, and to institute special treason courts during an invasion. They were also authorized to use the militia to suppress mutiny or resistance to laws for recruiting of troops. After Virginia came under invasion in May 1781, the executive was empowered to impress property, to deny habeas corpus, to banish, and to institute special courts. Perhaps the only real constitutional restraint upon the effectiveness of the executive was the requirement that the governor seek the advice of the council before acting. Decision making by committee may have hampered the executive to some extent, but the crucial problem arose in securing a quorum. The personal

³⁰Ibid., Chapters XVIII-XXI.

responsibilities of many of the members kept them away from the capitol at times of emergency. The shift of the site of government from Williamsburg to Richmond, and for a time to Charlottesville and Staunton, made a quorum even more difficult to achieve. At times the governor was prevented from acting. In emergencies he was forced to act without the required advice.³¹

As governor, Jefferson was not only extremely reluctant to exceed his legal powers, he was also extremely reluctant to use his emergency powers. Because he believed that the success of republicanism depended upon the virtue of the people rather than the force of government, he attempted to give the people the opportunity to act in the public interest from their own free will rather than use his position as governor to vigorously enforce the laws. For his restraint he received criticism from those who could not understand his principles, but others such as Lafayette excused "inconveniences that are so far compensated by the numberless blessings of a popular government." Lafayette, who commanded the continental forces stationed in Virginia, did not search for scapegoats for the state's military weaknesses.³²

In June 1781, when Jefferson's second term as governor was expiring, Virginia reached its low point of the war as a British army moved virtually unopposed across the state. Richard Henry Lee was representative of many frightened and discouraged Virginians who beheld "everything in the greatest possible confusion," and turned to executive authority for salvation, advocating

³¹William Waller Hening, ed., The Statutes at Large, Being a Collection of All the Laws of Virginia, From the First Session of the Legislature in the Year 1619 (Richmond, 1821-1822), IX, 50, 120, 178, 292, 309, 530; X, 106, 309, 389, 413, 414, 415.

³²Peterson, Jefferson and the New Nation, 167-240.

the establishment of a temporary military dictatorship to provide the power necessary to unite the people and thrust out the invader. Members of the legislature who had been driven over the mountains to Staunton were thinking along similar lines. The most reliable accounts indicate that General Washington and General Greene were proposed for the position of dictator. George Nicholas, a junior member of the assembly, moved to establish "a Dictator ... in this Commonwealth who should have the power of disposing of the lives and fortunes of the citizens thereof without being subject to account." According to the fullest report, Nicholas "referred to the practice of the Romans on similar occasions. After Mr. Nicholas sat down Mr. Henry addressed the chair; he observed it was immaterial to him whether the Officer proposed was called a Dictator or a Governor with enlarged power or by any other name yet surely an officer armed with such powers was necessary to restrain the unbridled fury of a licentious enemy and concluded by seconding the motion." The assembly defeated the proposal by six votes.³³

The only exact precedent for a republic in crisis converting itself into a dictatorship was found in Roman history, and the custom of the Romans had evolved into Caesarism and the ultimate destruction of republicanism. Patrick Henry's association with the scheme awakened a fear of tyranny in Virginia's aristocrats who had long suspected Henry of demagogic ambitions. However, the scheme was more likely brought up out of desperation rather than

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Richard Henry Lee to the Virginia Delegates in Congress, 12 June 1781, Jefferson Papers, I, 90-93; Thomas Jefferson, Notes on the State of Virginia, William Paden, ed. (Chapel Hill, 1954), 126-129; Louis Hue Girardin, Burk's History of Virginia (Petersburg, Va., 1816), IV, xi-xii; Journal of the House of Delegates, 10; Henry Young to William Davies, 9 June 1781; Archibald Stuart to Thomas Jefferson, 8 Sept. 1818, Jefferson Papers, VI, 84-85.

sinister intentions. Writing soon after the crisis had passed, Jefferson branded the very thought of a dictatorship "as treason against the people; ... and treason against mankind in general; ... rivetting for ever the chains which bow down their necks, by giving to their oppressors a proof, which they would have trumpeted through the universe, of the imbecility of republican government, in times of pressing danger, to shield them from harm." Jefferson deplored the lack of faith in republicanism shown by a substantial minority of the legislature. In particular, the affair brought home to him the dangerous defects of a constitution under which the creation of a dictatorship was conceived possible.³⁴

Under the constitution, Jefferson wrote, it seemed "that there being no barrier between the legislative, executive, and judiciary department, the legislature may seize the whole; that having seized it, and possessing a right to fix their own quorum, they may reduce that quorum to one, whom they may call a chairman, speaker, dictator, or by any other name they please." Concentration of all powers in any hands was despotism to Jefferson. "It will be no alleviation that these powers will be exercised by a plurality of hands and not be a single one. 173 despots would surely be as oppressive as one." This was not a new idea for Jefferson, in his Summary View of the Rights of British America, published in 1774, he had written that "history had informed us that bodies of men as well as individuals are susceptible of the spirit of

³⁴Jefferson, Notes on Virginia, 120-129; Charles F. Mullett, "Classical Influences on the American Revolution," Classical Journal, XXXV (1939), 96-98; Robert LeRoy Hilldrup, The Virginia Convention of 1776, (unpub. Ph.D. diss., Virginia, 1935), 3, 106, 319-320; Hilldrup, Pendleton, 168-169; William Wirt, Sketches of the Life and Character of Patrick Henry (Philadelphia, 1818), 223; Girardin to Wirt, 27 Jan. 1815, Wm. and Mary Qtly., 2d. Ser., V (1925), 106.

tyranny." The principle of the need for limitations on all branches of government was well enough known that every proposed constitution for Virginia had provided for checks not only on the executive and judiciary but also on the legislature. But the members of the convention had thrown out any checks on their exercise of power, preferring to secure their own interests.³⁵

A new constitution appeared to Jefferson to be a necessity. The faults of the government seemed too severe to correct as he had tried to by serving within the system as a legislator and governor dedicated to republican principles. But the gentry class refused to risk its control over Virginia society, and although Jefferson continued to agitate for a new constitution for many years, he was never able to bring about a convention in his lifetime. After the end of the revolutionary war and the establishment of the federal constitution, Virginia's internal problems tended to seem less significant than external problems. Jefferson did not intellectually accept the Virginia constitution as the fulfillment of the promise of the revolution, but as a practical man he acquiesced to the system. While he knew the potential for tyranny existed in Virginia, he believed the threat to republicanism was more serious in other quarters. Other critics of the constitution compromised in much the same manner, resigning themselves to a much less than perfect society, but still a society with peace and order, and a substantial degree of both liberty and equality.³⁶

³⁵ Jefferson, Summary View, Jefferson Papers, I, 124; Jefferson, Notes on Virginia, 128; Randolph, "Essay," 314-315.

³⁶ Jefferson Papers, VI, 278-308; Merrill D. Peterson, ed., Democracy, Liberty, and Property: The State Constitutional Conventions of the 1820's (Indianapolis, 1966), xiii-xvii, 271-447, traces the development of opposition to the Constitution of 1776 and the failure of the reform movement in the Convention of 1829-1830.

Because the interests of the gentry resembled the interests of the rest of the society, the Constitution of 1776 provided an acceptable government for Virginia. The absence of a centrally controlled patronage system prevented the formation of artificial interest groups based on place seeking. The constitution relied upon a combination of republican virtue and aristocratic honor to keep the gentry public spirited, and a combination of traditional deference and a satisfaction with their condition to keep the lower classes in their place. Republicanism in Virginia was a mild form of oligarchic rule, kept mild by its recognition of the necessities of personal liberty and popular consent.

BIBLIOGRAPHY

- Abernethy, Thomas Perkins, Western Lands and the American Revolution. New York, 1937.
- Adams, John, The Works of John Adams. Charles F. Adams, ed., 10 v. New York, 1850-1856.
- Alden, John Richard, The South in the Revolution, 1763-1789. Baton Rouge, 1957.
- Ambler, Charles Henry, Sectionalism in Virginia from 1776 to 1861. Chicago, 1910.
- Anderson, Dice R. "Jefferson and the Virginia Constitution," American Historical Review, XXI, (1916), 750-754.
- Anderson, James LeVerne, The Governor's Councils of Colonial America, A Study of Pennsylvania and Virginia, 1660-1776. (unpubl. Ph.D. diss., Virginia, 1967.)
- Andrews, Matthew Page, Virginia: The Old Dominion. New York, 1947.
- Armstrong, W. Donovan, The Justices and the Burgesses of Fauquier County, Virginia: 1759-1776. (unpubl. M.A. thesis, Virginia, 1968.)
- Bailyn, Bernard, The Ideological Origins of the American Revolution. Cambridge, Mass., 1967.
- Bailyn, Bernard, The Origins of American Politics. New York, 1968.
- Barrow, Thomas C., "The American Revolution as a Colonial War for Independence," William and Mary Quarterly, XXV, 452-464. (1963)
- Boorstin, Daniel J., The Americans: The Colonial Experience. New York, 1948.
- Boorstin, Daniel J., The Lost World of Thomas Jefferson. Boston, 1948.
- Brant, Irving, James Madison, The Virginia Revolutionist. Indianapolis, 1941.
- Braxton, Carter, American Archieves. Peter Force, ed., 4th Ser. VI, 748-58.
- Bridenbaugh, Carl, Seat of Empire: The Political Role of Eighteenth Century Williamsburg. Williamsburg, 1950.
- Brinton, Crane, The Anatomy of Revolution. Revised and expanded edition, New York, 1965.
- Brown, Robert E. and B. Katherine, Virginia, 1705-1786: Democracy or Aristocracy. East Lansing, Michigan, 1964.

Bruce, Philip Alexander, Institutional History of Virginia in the Seventeenth Century. 2 v. New York, 1910.

Chandler, Julian A.C., The History of Suffrage in Virginia. Baltimore, 1901.

Chitwood, Oliver Perry, Richard Henry Lee: Statesman of the Revolution. Morgantown, W. Va., 1967.

Clarke, Mary P., Parliamentary Privilege in the American Colonies. New Haven, 1943.

Colbourn, H. Trevor, The Lamp of Experience: Whig History and the Intellectual Origins of the American Revolution. Chapel Hill, 1965.

Douglass, Elisha P., Rebels and Democrats: The Struggle for Equal Rights and Majority Rule During the American Revolution. Chapel Hill, 1955.

Eckenrode, H.J., The Revolution in Virginia. Boston, 1916.

Evans, Emory S., "The Rise and Decline of the Virginia Aristocracy in the Eighteenth Century: The Nelsons," in Darrett B. Rutman, ed., The Old Dominion: Essays for Thomas Perkins Abernethy. Charlottesville, 1964.

Ferguson, E. James, The Power of the Purse: A History of American Public Finance, 1776-1790. Chapel Hill, 1961.

Flippin, Percy S., The Royal Government in Virginia, 1624-1776. New York, 1918.

Freeman, Douglas S., George Washington. 6 v., New York, 1948-1954.

Gay, Peter, The Enlightenment: An Interpretation: The Rise of Modern Paganism. New York: 1966.

Girardin, Louis Hue, Burk's History of Virginia, Vol. IV, Petersburg, Virginia 1816.

Gottschalk, Louis, Lafayette and the Close of the American Revolution. Chicago, 1942.

Green, Fletcher M., Constitutional Development in the South Atlantic States, 1776-1860. Chapel Hill, 1930.

Greene, Evart B., The Provincial Governor. New York, 1898.

Greene, Jack P., "Changing Interpretations of Early American Politics," American Themes, Essays in Historiography. Frank Otto Gatell and Allen Weinstein, eds. New York, 1968, 26-54.

Greene, Jack P., "Foundations of Political Power in the Virginia House of Burgesses, 1720-1766," William and Mary Quarterly. XVI (1959), 485-506.

Greene, Jack P., The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776. Chapel Hill, 1963.

Griffith, Lucille, Virginia House of Burgesses, 1750-1774. Northport, Ala. 1963.

Grigsby, Hugh Blair, The Virginia Convention of 1776. Richmond, 1855.

Gwyn, W.B., 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, 1965.

Hartz, Louis, The Liberal Tradition in American. New York, 1955.

Henry, William Wirt, Patrick Henry, Life, Correspondence, and Speeches. 3 v. New York, 1891.

Hilldrup, Robert Leroy, The Life and Times of Edmund Pendleton. Chapel Hill, 1939.

Hilldrup, Robert Leroy, The Virginia Convention of 1776, (unpubl. Ph.D. diss, Virginia, 1935.)

Holmes, Geoffrey, British Politics in the Age of Anne. New York, 1967.

Howe, John R., Jr., "Republican Thought and the Political Violence of the 1790's." American Quarterly, XIX, (1967), 147-165.

Jefferson, Thomas, Notes on the State of Virginia. William Peden, ed. Chapel Hill, 1955.

Jefferson, Thomas, The Papers of Thomas Jefferson. Julian P. Boyd, ed. 17 v. Princeton, 1950.

Jensen, Merrill, The Founding of a Nation: A History of the American Revolution 1763-1776. New York, 1968.

Jensen, Merrill, The Articles of Confederation. Madison, 1940.

Knollenberg, Bernhard, Origin of the American Revolution, 1759-1766. New York, 1960.

Labaree, Leonard Woods, Royal Government in America: A Study of the British Colonial System Before 1783. New Haven, 1930.

Lee, Richard Henry, The Letters of Richard Henry Lee. James Curtis Ballagh, ed., 2 vols., New York, 1911.

Lingley, C.R., Transition in Virginia from Colony to Commonwealth. New Haven, 1910.

MacMillan, Margaret B., War Governors in the American Revolution. New York, 1943.

Main, Jackson Turner, The Anti-Federalists: Critics of the Constitution, 1781-1788. Chicago, 1964.

Main, Jackson Turner, The Social Structure of Revolutionary America. New York, 1965.

Malone, Dumas, Jefferson the Virginian. Boston, 1948.

Mason, Alpheus Thomas, Free Government in the Making: Readings in American Political Thought. New York, 1965.

Mays, David John, Edmund Pendleton, 1721-1803: A Biography. 2 v., Cambridge, Mass., 1952.

Meade, Robert Douthat, Patrick Henry, Practical Revolutionary. Philadelphia, 1969.

Morgan, George, The True Patrick Henry. Philadelphia and London, 1907.

Morton, Richard L., Colonial Virginia. 2 vols. Chapel Hill, 1960.

Mosse, George L., The Struggle for Sovereignty in England. East Lansing, 1950.

Mullett, Charles F., "Classical Influences on the American Revolution," Classical Journal. XXXV, (1939), 92-104.

Nelson, William H., The American Tory. Oxford, 1961.

Nevins, Allan, The American States During and After the Revolution, 1775-1789. New York, 1924.

Oliver, George Brown, A Constitutional History of Virginia, 1776-1860. (unpubl. Ph.D. diss., Duke, 1959).

Peterson, M.D., ed., Democracy, Liberty, and Property: The State Constitutional Conventions of the 1820's. Indianapolis, 1966.

Peterson, M.D., The Jefferson Image in the American Mind. New York, 1960.

Peterson, Merrill D., Thomas Jefferson and the New Nation. New York, 1970.

Plumb, J.H., The Origins of Political Stability: England 1675-1725. Boston, 1967.

Pole, J.R., Political Representation in England and the Origins of the American Republic. New York, 1966.

- Pole, J.R., "Representation and Authority in Virginia from the Revolution to Reform," Journal of Southern History, XXIV (1958), 16-50.
- Porter, Albert Ogden, County Government in Virginia: A Legislative History, 1607-1904. New York, 1947.
- Prosser, C.W. and Margaret Sharp, A Short Constitutional History of England. London, 1938.
- Pulliam, David Loyd, The Constitutional Conventions of Virginia from the Foundation of the Commonwealth to the Present Time. Richmond, 1901.
- Randolph, Edmund, "Essay on the Revolutionary History of Virginia," Virginia Magazine of History and Biography, XLIV, (1936), 312-322.
- Robbins, Caroline, The Eighteenth-Century Commonwealthman. Cambridge, Mass. 1959.
- Rodick, Burleigh Cushing, American Constitutional Custom: A Forgotten Factor in the Founding. New York, 1953.
- Rowland, Kate Mason, The Life of George Mason, 1725-1792. New York, 1892.
- Rutland, Robert A., George Mason, Reluctant Statesman. Williamsburg, 1961.
- Sieghart, Marguerite A., Government by Decree: A Comparative Study of the History of the Ordinance in English and French Law. London, 1950.
- Swem, Earl G. and John W. William, A Register of the General Assembly of Virginia, 1776-1918 and of the Constitutional Conventions. Richmond, 1918.
- Swisher, Carl Brent, American Constitutional Development. Boston, 1954.
- Sydnor, Charles S., Gentleman Freeholders: Political Practices in Washington's Virginia. Chapel Hill, 1952.
- Tanner, J.R., English Constitutional Conflicts of the Seventeenth Century, 1603-1689. Cambridge, 1928.
- Tate, Thad W., "The Coming of the Revolution in Virginia: Britain's Challenge to Virginia's Ruling Class", 3rd Ser., XIX (1962), 323-343. William and Mary Quarterly.
- Tyler, Moses Coit, Patrick Henry. Ithaca, New York. 1898-1964.
- Ver Steeg, Clarence, The Formative Years, 1607-1763. New York, 1964.
- Vile, M.J.C., Constitutionalism and the Separation of Powers. London, 1967.
- Washburn, Wilcomb E., The Governor and the Rebel: A History of Bacon's Rebellion in Virginia. Chapel Hill, 1957.

Washburn, Wilcomb E., "Law and Authority in Colonial Virginia", Law and Authority in Colonial America. George A. Billias (ed). Barre, Mass. 1965.

Wertebaker, Thomas J., The Planters of Colonial Virginia. Princeton, 1922.

Wirt, William, Sketches of the Life and Character of Patrick Henry. Philadelphia, 1818.

Wood, Gordon S., The Creation of the American Republic. Chapel Hill, 1969.

Wright, Benjamin F., Consensus and Continuity, 1776-1787. New York, 1958.