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THE ADMINISTRATION OF JUSTICE IN REVOLUTIONARY VIRGINIA:

THE NORFOLK COURTS, 1770-1790

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Preface

This study grew from a conviction that one of the most important means of tracing the early history of American law is through careful and extensive research into local court records. While colonial and state legislatures enacted statutes, and while superior courts decided appeals and other important cases, it was the local courts that administered justice and handled the mass of litigation which affected the average citizen.

The Norfolk, Virginia, court records were studied because they allow a comparison to be made between the justice administered in a rural-agricultural setting and that administered in an urban-mercantile center. The Revolutionary period was chosen primarily because it supposedly ushered in a "formative era in American law." Norfolk was severely disrupted by the War for Independence. If the Revolution did have an immediate impact on legal administration, it should be clearly discernible in Norfolk.

I would like to thank Professor Daniel Flanigan for generously undertaking the direction of this study. His incisive criticisms and patient encouragement are gratefully acknowledged. Also, Professor W. W. Abbot provided the editorial skills and the insightful analysis the author often lacked. Needless to say, any errors are entirely my own responsibility.

To my wife Linda, who made the whole study possible and worthwhile, I can never adequately express my thanks.

Introduction

The American Revolution, ever since its occurrence, has been viewed by historians from many different and varying perspectives. That the Revolution had an enormous impact not only upon North America, but upon the entire world, can be little doubted. But the question of just what kind of revolution it was has excited a long and intense debate. Some have seen the Revolution as a conservative movement--an attempt to defend a familiar and endangered democratic way of life--essentially nonrevolutionary in nature. Others have considered it a socioeconomic movement, involving both an external revolution (a colonial rebellion) and an internal revolution (conflict between social classes in America).

In seeking to unearth information which might strengthen one or another of these viewpoints, historians have looked into almost every conceivable source for evidence. One area, however, in which the revolutionary generation was much involved, has been too often neglected. That is the area of local legal institutions and the law.

The impact of the Revolution upon American law in general, and upon the administration of justice in particular, especially on the local level, has barely been examined. The most obvious legal events occurring in this period--running from the adoption of reception statutes in some states after independence, to the opening phases of a movement for widespread legal reform like

that envisioned by Thomas Jefferson in Virginia as early as 1776[1] --have been recognized. But the deeper analyses necessary to discover the real state of law and of legal systems in the Revolutionary era are yet to be produced.[2]

Focusing on the local administration of justice in this neglected period is advantageous in that it allows study of the "law-in-action" and suggests difficulties presented in administering laws produced by a centralized colonial or state government of the local level. Equally important is the possibility of tracing the effects of crises upon localities as suggested by the fragments of information left in old court records, as well as isolating the problems, frustrations, successes, and general quality of life experienced by local inhabitants.[3]

The concern of this study is to analyze the <u>immediate</u> impact of the American Revolution upon the local legal system of Norfolk County, Virginia, through the use of the records of the Norfolk County Court and the Norfolk Borough Hustings Court. By analyzing the numbers and types of actions brought before the courts; by tracing the pattern of legislative action which affected the local courts in one way or another; and by investigating the personnel of the courts and the lawyers who practiced before them, some definitive statements can be made, and some possible hypotheses suggested, that will help to explain the character of justice administered in Revolutionary Virginia. In the process, the study will lead to an increased understanding of the kind of revolution America experienced in 1776.

As this study focuses on the immediate impact of the

American Revolution upon a local legal system, the "Revolution" will be treated as synonymous with the "War for Independence," and not as John Adams described it (as a "spiritual" change in the hearts and minds of the people, completed even before the war), or as Benjamin Rush saw it (as only in its initial stages in 1787).[4] Yet, these views cannot be ignored, for it is difficult to attribute any specific changes solely to the Revolutionary War itself. Daniel Smith, for instance, found that from 1780 to 1820 the interest of the upper class in local government in Albemarle County, Virginia, as well as their influence, declined, while more middle class individuals entered county government in new ways. Whether this resulted directly from the Revolution, or from more subtle changes in American society, is yet to be determined.[5] Bradley Chapin did see a direct link between law and the War for Independence, noting that the "shaping of an American treason law harmonious with republican government began with the Revolution. . . . In its origins, the law was a product of the nation, developing from the experience of the Continental Army between June 1775 and June 1776."[6]

Undoubtedly the Revolution released American legal systems from the restraints imposed by England in the eighteenth century. As Lawrence Friedman has noted, colonial law and the colonial legal structure tended to look more like that of England as the century progressed, "partly by choice, partly as a result of natural development, and partly because England was more serious about governing her children."[7] With the winning of independence, the states were free to move in any direction in restructuring

their legal systems. Still, they were caught in a dilemma. A deep and growing hostility to anything English existed in the states after the war, but there was no real, viable substitute for the common law tradition. Courts continued to use the only law with which they were familiar. English law, meanwhile, continued to filter in, in bits and pieces, especially in the nineteenth century.[8] Thus, though the possibilities for innovation, creation, and reform were available, the former colonies were slow to grasp the opportunities and reluctant to move too far from old, familiar methods and institutions.

If the American Revolution brought immediate changes to the Virginia legal system, those changes would be most readily apparent in the records of the state's local judicial bodies. In these courts the routine decisions of local government were made, essential services were provided for the community, and most importantly, the law was administered in individual cases. Sudden alterations in the manner of adjudication would come clearly into focus in these records. Complete revisals in format or procedure would be evident. Even minor, otherwise insignificant modifications could be spotted.

The following study traces Norfolk's civil and criminal litigation in an attempt to discover what changes, if any, resulted from the Revolution. A final chapter attempts to place the leadership of bench and bar in perspective, noting the influence which individuals had upon the law and its administration. Throughout, the study seeks to add to an understanding of how a legal system functions in crisis situations.

Chapter I

The Norfolk Courts

Norfolk County was in some ways an atypical Virginia county. Situated in the southern tidewater area of the colony, the county contained within its borders Norfolk Borough, the largest "city" in Virginia and the most important seaport on the Cheasapeake Bay. The area itself differed from much of the rest of Virginia, not only because it was a center of mercantile activity, but also because of its peculiar agriculture. Throughout the Revolutionary era the agricultural production of Norfolk County tended to be small. The sandy soil did not favor the cultivation of tobacco, the colony's most important staple crop. Planters instead turned to wheat and Indian corn to supplement their tobacco crops, which yielded them only a moderate income. Some farmers and plantation owners concentrated on the production of pitch and tar, the raising of stock (cows and hogs especially), and the cutting of wood to be used for housing.[1]

The unique quality of Norfolk as a Virginia county was further enhanced by the structure of its judicial system. The Borough of Norfolk, in which the county maintained a courthouse and held its monthly sessions, had a local court of its own, the hustings court, which even before the Revolution had jurisdiction in legal matters quite similar to that of the county court, and whose members were, within the town, the equivalent of justices of the peace.

Norfolk, however, tended to be representative of southern tidewater Virginia, and perhaps of other coastal mercantile areas

in Colonial America. By tracing the disruption caused in the lives of its people through the county's legal records, a better understanding may be obtained not only of the immediate impact of the Revolution on this single local area, but on other somewhat similar areas in Virginia and perhaps throughout the rebellious colonies as they became new states.[2]

The history of the courts in Norfolk County began early in the seventeenth century. The first court held in Norfolk was on May 15, 1637, in (then) Lower Norfolk County, which with Upper Norfolk County (later Nansemond) had been formed out of Elizabeth City County in 1636. At that time the county court was limited to petty cases arising from its precincts; the authority of the governor and his Council, originally the sole judicial body in the colony, had been left, for the most part, intact.[3]

The commissioners of the monthly court, later designated justices of the peace, had both civil and criminal jurisdiction in minor cases. Similarly, the early county court exercised many "extrajudicial" functions involving most of the administrative work of the locality.[4]

Through the seventeenth and eighteenth centuries, the court grew both in jurisdiction and in power. By the eve of the Revolution, the Virginia county courts in general had established themselves as essentially independent, self-perpetuating bodies, "beyond the control of the governor and of any other branch of provincial government of the Virginia counties."[5]

When Virginians thought of government, they naturally thought

of their local courts--bodies which exercised executive, judicial, even some legislative powers, in the local area--except for the few times in the year when taxes were collected or burgesses elected. The local courts were all but autonomous. They controlled the county (or borough). The significance of this power for the local inhabitants was immense. Their legal fate as debtors, their success as petitioners for new roads, their power to register deeds of bargain and sale, all rested in the hands of the local court. And for most of these local inhabitants, the decision of that court was final.[6]

The pre-Revolutionary Norfolk County Court was a collective body consisting of all the justices of the county. The justices acting individually had some minor legal jurisdiction. It was within their authority to settle suits for small debts (under 25 shillings), issue peace bonds, and order persons to appear before the county court to answer indictments and complaints. Appeals from the decisions of a single justice could be taken to the county court, but the decision of that body in such instances was final.[7]

The justices (usually eighteen in number in Norfolk County) met together monthly for one to three days as the "county court." The revision of the laws in 1748 had extended their jurisdiction to all common law actions and suits in chancery within the counties, as well as to minor criminal cases where the judgment on conviction did not require the loss of life or limb.[8] The county court also served as the local court of record, dealing with matters of probate such as the granting of certificates for

obtaining letters of administration on intestates' estates.[9]

The court also exercised various administrative duties at its monthly session, operating as the local governmental unit. As a matter of routine the justices were to cause apprentices to be bound out, issue ordinary and ferry licenses, and keep streams and rivers passable.[10] Annually the justices would meet to "lay the county levy," at which time they determined what the county owed to its officials and creditors, and how much each of the county's tithables should be responsible to pay in taxes to collect sufficient funds to offset these administrative costs.[11] Occasionally the court would handly special matters of asministration. In 1770, for instance, two justices and the county clerk were commissioned to "advertise and sell the old front prison to the highest bidder, and make their report at the next Court."[12] In 1774, members of the county court and of the borough hustings court met together to "consult on measures to stay the Progress of the small pox." They determined that a house should be built to which victims of the "Distemper" could go to be quarantined and recover, keeping the disease from spreading through the borough and the county.[13]

The justices who exercised these powers were a closely knit group. Traditionally the replacements for justices who had died or resigned were chosen from a list of candidates submitted to the governor by the county court. This made the county justices essentially a self-perpetuating group. In many cases, most of the justices, as well as being of the "better sort" both socially

and economically, were related by blood and marriage.[14]

Complaints against lay justices (justices without formal legal training) were common in colonial Virginia, as well as in most other colonies. Many complaints concerned the partiality of justices, or their very lack of legal knowledge and training.[15] It was rare indeed that a lawyer might sit on the bench, for the job was not financially attractive to a "man on the make." Most Virginia lawyers were interested in making their mark in the world and accumulating a substantial income, which was a fulltime occupation owing to the difficulty of collecting legal fees and the expense of conducting cases. Moreover, most lawyers, especially those practicing in the county courts, had other business interests (many were themselves planters), and so had little spare time to devote to the burdensome tasks of local government.

On the other hand, Virginia justices tended to be members of the local gentry, men who, at least before the Revolution, had already accumulated, or inherited, substantial incomes as well as social position. They had the time to devote to local government. Though most were not well versed in colonial law, many justices did know enough law to conduct their own affairs and thus were able to bring that knowledge and experience to court.[16] But as the eighteenth century progressed and matters of law and legal judgment grew progressively more complex, it is quite likely that the justices turned for aid to their county clerks, and listened to the arguments and comments of members of the growing legal profession who practiced before them.[17]

Appended to the county court were a number of county officers

who aided the justices in the local administration of justice. The two most important were the clerk and the sheriff. County clerks were appointed by the Secretary of the colony and were retained at his pleasure. The clerk, who often had a greater knowledge of the law than did most justices because of his intimate contact with it, was required to keep, or cause his deputy to keep, an accurate and orderly record of all court proceedings, make entrances into the will and deed books, and copy writs, summons, declarations, written pleadings, and other legal documents.[18] The sheriff carried out the executions and judgments of the court. In addition, the sheriff collected taxes, conducted Burgess elections, arrested those who broke the law, served papers issued by the court, and summoned jurors to court sessions. Though remunerative fees were established by statute for the sheriff, the duties of the office were considered so burdensome by justices (from among whom the sheriff was appointed annually on recommendation to the governor), that they often tried to avoid the obligation. To ease the burden on the sheriff, deputy sheriffs were regularly appointed to aid him.[19]

Other minor officials of the county were the coroner, commissioned by the governor to inquire into unnatural deaths and, when necessary, to act as sheriff, and the constables, chosen by the court, who were required to serve as additional assistants to the sheriff. Constables gave notice of court meeting and levies, detained and provided for runaway slaves, pursued criminals, and transported paupers from parish to parish. Occasionally they

would be required to serve papers issued by the county court.[20]

One additional legal officer operated in the Norfolk County Court, the prosecuting or deputy attorney, who provided a direct link between the local court and the central administration in Williamsburg. The prosecuting attorney was a deputy of the attorney general of the colony, performing much the same functions on the local level as the attorney general did before the General Court at the capital: that is, prosecuting offenders against the colony's laws. It is not clear, but is probable, that like the attorney general who gave advice on legal matters to the members of the General Court, the local Deputy King's Attorneys for Norfolk in the 1770's, occasionally tendered legal opinions to presiding justices in the county court.[21]

In the mid-eighteenth century, Norfolk Borough, which had originally been completely under the jurisdiction of the county court, grew important enough to have its own court established. The Norfolk Hustings Court was modeled on the London Mayor's Court which had extensive jurisdiction over common law actions, suits in chancery, and admiralty cases arising within the limits of the city. The Hustings Court was composed of eight aldermen (selected from the borough's sixteen common councillors when vacancies occurred), a "recorder" who was to be "learned in the law," and the mayor, who was elected annually by the aldermen from among their number.[22]

A close link, in terms of personnel, existed between the borough court and the county court. A comparison of the two

before 1775 indicates that of the ten members of the hustings court in these years, six were, or would be within the next few years, justices of the peace in Norfolk County. After 1782, the ties between the personnel of the two courts grew even closer, for in the 1780's, of thirteen members of the hustings court, only five were not also justices in the county. In addition, Samuel Boush III and his son John served simultaneously as clerk and deputy clerk of both the hustings court and the county court in the 1770's. These links undoubtedly helped ease jurisdictional friction which occasionally arose between the two courts, but later led to some serious disputes (especially concerning conflict of interest) which ended with the greater autonomy of the borough court in the 1780's.[23]

The Norfolk Borough Charter (1736), which incorporated Norfolk and established its hustings court, did not put that court on a completely equal footing with the county court. Individual aldermen did, however, have much the same duties and jurisdiction as did individual justices, and the court itself was to act as a court of record, hearing pleas in ejectment and trespass, writs of dower, and other personal and mixed action arising within the limits of the corporation, though not exceeding the value of £20 current money or 4000 pounds of tobacco.[24] This jurisdiction sufficed for a time, but as early as 1742, and again in 1749, the borough officials petitioned the Assembly to enlarge it. Their complaint was that people were taking suits to the county court rather than the hustings court, thereby making

adjudication difficult and unsuitable both for the county justices and for the litigants.[25] The jurisdiction of the hustings court was not enlarged, however, until 1765, when it was granted the right to hear all actions at common law arising within the borough or involving a borough resident as plaintiff or defendant, as well as equity suits, breaches of the peace, and complaints of masters, apprentices and servants.[26] The county court still controlled the trials of slaves and the examining courts for (white) accused criminals, and still acted as the sole body in the county in which deeds and wills could be recorded, probate granted, and grandjuries impaneled.

The hustings court had its own law officers. Constables were appointed by the court with powers similar to their counterparts in the county. Instead of a sheriff the borough had a "serjeant" who exercised the same basic powers as did the county sheriff, but only within the limits of the corporation.[27]

Due to the similarities between the county and borough courts, the civil procedure which obtained in both was the same. The method and procedures of trying cases before these courts had become quite technical by the mid-eighteenth century and were growing more so in the 1770's. Gradually procedure, like substantive law and like the structure of the court system, was beginning to look more like that of England.

The rules which governed procedure in the inferior courts of Norfolk in the 1770's had been laid down by statute in 1748,[28] and were not significantly changed before the Revolution. Initially a plaintiff in a common law action would file a declaration

with the county clerk to have the action entered on the docket of the court. The clerk would then issue a writ, summons, or other legal document, depending on the nature of the case, requiring the defendant in the action to attend the next court to answer the plaintiff's suit. The defendant was required to file his plea in writing. Failure to file properly provided justification for default judgment against him "for want of a plea."[29] If, on the other hand, the plaintiff failed to file a formal written declaration (something which happened rarely in Norfolk), or if he failed to prosecute his action (something which happened with increasing frequency after the war), he was to be non-suited, and his action dismissed.[30]

Once a common law action came to trial, either party, plaintiff or defendant, could request that the case be heard by a twelve-man, petit jury. Trial by jury in civil actions, already widely used in Virginia by 1642, became quite prevalent in the eighteenth century. Jurors by law had to be possessed of property of the value of £50 sterling to qualify.[31]

In certain instances, the defendant in a common law action could be taken into custody by the sheriff, and upon pleading, would be required to produce bail to obtain his release. The plaintiff also had a right, if he so desired, to move that the defendant be required to provide "special bail," in which case the person or persons coming into court to "undertake" for the defendant (called sureties) would be liable to the costs of the judgment and the prosecution against the defendant unless he met the obligations of the judgment and thereby released his bail.[32]

To recover small debts of an amount above 25 shillings but not exceeding five pounds, a plaintiff resorted to a procedure called "petition and summons." This action was judged solely by the justices, "without the solemnity of a jury." The plaintiff was to file a petition in the clerk's office expressing "whether the debt arised by judgment, obligation, or other specialty, or by account, and if by account the same shall be filed together with the petition." A copy of the petition, together with a summons to appear at the next court, would then be issued by the clerk and executed by the sheriff. The defendant was allowed to answer the petition, but if he failed to appear, the court might proceed in "a summary way" giving "judgment according as the very right of the cause and matter in law shall appear unto them, without regard to form, or want of form, in the process, petition, or course of proceeding. . . ."[33]

Individual justices and the local courts both were given the power to grant attachments against the property of a defendant when he failed to appear and plead, or when he fled or hid himself to avoid the "ordinary process of law." The "slaves, goods, and chattels" of such defendant could be taken onto custody by the sheriff or serjeant, or as much of them as would pay the amount of judgment and costs. The goods were "repleviable" by the appearance of the defendant to provide bail. If the goods were not replevied, or if the defendant failed to appear, the plaintiff might be entitled to a judgment for the full amount of his claimed debt. The attached goods were then sold by the sheriff at auction to pay the judgment and costs.[34]

Suits heard in Chancery[35] also followed guidelines set up in 1748. Initially the declaration of the "complainant" was to be filed with the court clerk, from whose office would issue a subpoena calling for the defendant to appear and answer. On the return day of the subpoena, the complainant was to file a bill, setting forth the particulars of his cause. The defendant would file an answer to the declaration at the next court after his initial appearance. If he failed to do so after two court sessions had passed, the complainant's bill was to be taken pro confesso (for the confessed, i.e., the complainant) and the judgment decreed. If the defendant did file his answer, both parties might then file a series of cross bills, replies, exceptions, and rejoinders. Finally, when the complainant believed the issue was defined clearly enough, he could motion for the court to proceed to the hearing of the suit and judgment.[36]

Suits heard in Chancery, though few in number, consummed much of the courts' time.[37] As indicated, the procedure involved in bringing equity suits before the court was often long and complicated. When the suit finally did come for its hearing (without a jury), the justices would listen to the arguments and then (at least before the war) would invaribly commission several persons to meet together to divide up the estate, personal property, lands, etc., which was being contested. The commissioners were to make a return to the next court, explaining the actions they had taken, which often consisted of dividing the contested property equally among the parties. Commissioners were employed less frequently after the war when the courts tended to make

final decisions on their own. But in the twenty years under study here, both the county court and the hustings court consistently agreed with the commissioners' actions, decreed them valid, and then commanded that the boundaries, divisions, etc., permanently fixed.

The civil actions at common law and suits heard in Chancery, appeal could be taken to the General Court, provided that the amount involved exceeded £10 current money or 200 pounds of tobacco, exclusive of costs. Any case involving the title of bounds to land, could also be appealed.[38]

Although fairly elaborate procedural rules had thus been established by Virginia law, too much emphasis may be placed on the formality of procedure. Burgesses themselves recognized the difficulties that complicated procedural rules might cause both for justices and litigants. As early as 1657 the General Assembly sought to avoid delays and complications by decreeing that judgment was to be made according to the "right of the cause and the matter in law" appearing to the judges, "without regard of any imperfections, default, or want of form in any writ, plaint, or process, or any other cause whatsoever,[39] a provision similar in wording to that which appeared several times in the 1748 revisions of the law.

The Norfolk courts, however, seemed inclined to follow rules strictly, though perhaps not always to the detriment of litigants. They seemed comfortable with familiar rules and forms. If strict procedures did not help litigants or speed the administration of justice, at least they provided a certain degree of continuity and

stability for the lay judges of the local courts. How much the justices were concerned with procedural niceties may be seen in the following case:

> Thomas Snarle against John Ivy surviving partner of William Ivy on the clerks filing away the wrong papers. The defendant by his attorney gave a wrong plea Therefore by leave of the Court and consent of the parties the same is withdrawn, and thereon the sd. defendant by his attorney pleaded he did not assume issue joined and referred.[40]

The county court was here concerned that the right plea be made in the action involved. The general issue "not guilty" would have indicated the defendant's stand, but that would not have satisfied the need for familiar formulas.

The attitude of the courts toward legal formalities was not changed much, if at all, by the Revolution. Anne Moore, for instance, executrix of her husband William's estate, had her attachment against one Billey Jordan discontinued, "it being executed by an improper officer."[41] Such incidents were rare, but pointed out that the courts did continue to favor strict adherence to formality.

Such adherence to form may well have sometimes worked in the favor of litigants, however, as appears from the following notation from the hustings court"

> John Chapman against Peter Duke, in Ejectment. On motion of the plaintiff by his attorney to read the deposition of Elizabeth Goodwin taken in his Suit, and upon solemn Argument it was the Opinion of the court that the same was not taken agreeable to notice given, and ought not to be read. And a dedimus is granted the Plaintiff to take the deposition of Bennit Kirby & the said Elizabeth Goodwin giving the defendant reasonable Notice.[42]

Since the defendant was required to have had "reasonable Notice"

before a deposition could be taken, the court's exclusionary rule" here concerning the plaintiff's evidence may be seen as a safeguard to the rights of the defendant and the better accomplishment of justice.

The Norfolk courts dealt not only with civil litigation, but also with criminal offenses which occurred within their jurisdictions. And, as in civil actions, a specified body of rules governing criminal procedure evolved in Virginia for application by her courts. In cases of misdemeanor, like breach of the peace, fornication, hog-stealing, etc., both courts could proceed against the accused in summary manner (without a jury), determine the facts, and pass judgment. In most cases the judgment ran to a fine. If the defendant could not pay the fine, or failed to do so, he could be whipped by the local sheriff. Long-term confinement was unusual. In the cases of slaves and servants, whipping at the common whipping post was the standard penalty for misdemeanor. The usual method of proceeding was to have an individual with knowledge of a crime give "information" to a local justice or alderman, upon which the accused would be summoned to court. In some instances, the grand jury of inquest, impaneled biannually in May and November might be supplied with information via the king's attorney or by members of the jury itself, and then present the accused on specified charges.[43]

When the crime involved was a felony, one which might be punished by loss of life or member, the procedure differed. The county court did not have the power to try defendants for major crimes when they were free men or women. But primarily to avoid

a backlog in the General Court, the justices were authorized to hold special courts of examination. When a single justice committed a prisoner for a crime cognizable only by the General Court, he was required to cause the sheriff to summon the other justices to meet within ten days. At that time, the prisoner and witnesses for and against him would be examined, and the court would decide whether the evidence warranted his removal to the General Court for trial, or whether he should be discharged for lack of sufficient evidence.[44]

In some cases such procedure might work a hardship on the prisoner, as he could be required to wait for as much as six months before the next General Court session. To relieve this problem somewhat, a permanent court of Oyer and Terminer (to hear and determine) was established in Williamsburg in the first quarter of the eighteenth century, composed of the members of the governor's Council, which would hold its sessions in the months of June and December between those of the General Court held in April and October. The court of Oyer and Terminer had the power to condemn criminals to death. The court usually made use of its own grandjury indictments as well as referrals from the counties, and most trials included juries selected from among the inhabitants of James City and York counties, which surrounded Williamsburg.[45]

If a felony was committed by a slave, the procedure again differed. Here the justices of the county court had authority to hold their own court of Oyer and Terminer, in which they could try the slave, without a jury, and then pronounce judgment and

execution. There was no appeal from the decision of the local tribunal, but slaves could be, and occasionally were, pardoned by the governor. There were few safeguards for the slave. In 1705, masters were allowed to appear and defend their slaves in matters of fact, while in 1748 the law provided that a divided vote of the justices would constitute an acquittal. This latter provision was revised in 1772, when the assembly provided that at least four judges had to concur in a guilty verdict.[46]

The most striking impression which emerges from the Norfolk Court records at least in terms of structure, jurisdiction, procedure, and even personnel, is of the continuity between the pre-was and postwar periods. Power did not shift hands substantially in local government, nor were the courts suddenly restructured to allow more democratic operations or the election of judges. Moreover, the procedural rules which had been followed for the thirty years or so before the war were continued in force by the passage of the state's reception statute, and were not changed significantly throughout the 1780's.

The formation of a judicial system was a pressing necessity for the leaders of the new state of Virginia once the state had declared its independence. What better plan could these leaders adopt than merely to continue the county court system with which they were so familiar? This is exactly what was done. The constitution of 1776 as well as subsequent legislation enacted by the Convention, provided for little change in the court system. Sitting justices friendly to the cause were to remain in office,

and county courts were to recommend replacements for justices who had died or resigned, and to nominate prospective justices to increase the number of magistrates available in each respective county. Likewise, the county clerks were to retain their offices and to continue to serve during good behavior, vacancies being filled by the county court itself. No immediate action whatsoever was taken to alter the structure, jurisdiction or process of the courts.[47]

The few jurisdictional changes which did occur during the Revolution were minor. The amount of a small debt cognizable by a single justice was raised slightly, for instance, but this was due to the rapid depreciation in value of Virginia's money rather than any attempt at reform. The county court was also supposed to administer the new loyalty oaths during the war, but this was an administrative rather than judicial function, and something for which the county officials were thought to be well equipped. The only major change in administration was related to the development of a new tax system for the state, a measure also resulting primarily from the economic dislocation caused by the war. New measures did affect local government, new officials were created, and older officials were forced to take on new roles.[48] But again, the effect was administrative rather than judicial, and did not really alter the local legal structure.

Not only did the basic jurisdiction, structure, and procedural basis of the courts remain fairly stable during the war, but the same personnel, to a very large degree, remained in control

of local government in Norfolk. In the hustings court, of the nine members sitting in 1774, five were still active in 1784. (Three had died, one a Loyalist). Of the five new aldermen sitting in 1784, three were from families which had provided aldermen before the war; the two others introduced new families to the borough government.[49]

In the county court, of the twenty-three justices who served for some part of 1774, only nine were still active in 1784. Thirteen others had died during the war, while only one had resigned. Only five of the thirteen new justices sitting in 1784 were members of old prominent families which had had justices among their members; two had been aldermen in the borough before the war; the rest (a little less than one third of all the justices) were new to the county government.

During the war the state government slowly undertook the task of providing a judicial system beyond the continuation of the old local courts. The impact of these measures on the local administration of justice was initially small. The first action taken was the creation of a Court of Admiralty in October 1776, which did not really touch legal matters normally cognizable before the Norfolk courts. A year later in 1777, the General Court, "a new court with an old name," was established with original jurisdiction in cases involving £10 currency or more, as well as in criminal cases where the penalty ran to death or loss of member. The General Court acted as the court of appeal from the local courts. At the same time, the Assembly sought to separate common

law and equity jurisdiction by creating a High Court of Chancery, which held both original and appellate jurisdiction. There was no appeal from this court until 1779 when the Assembly established the first court of Appeals.[50]

Once the war was over, changes began to take place directly within Norfolk's legal structure. These changes, mostly simple and pragmatic, are not necessarily attributable to the Revolution, or to some spirit of reform unleashed by the Revolutionary Movement. To some degree, the changes peculiar to Norfolk may be traced to internal disputes taking place within the county at that time.

The jurisdictional equilibrium between the county court and the hustings court of Norfolk, which had been established in the mid-eighteenth century, remained unaltered until the early 1780's. Even before the war was officially over, petitions had emanated from the borough to the General Assembly requesting that the jurisdiction of the hustings court be broadened by making it a court of record for matters of probate and allowing it power over major crimes committed within the town limits. The Assembly looked upon the request favorably, and by its actions allowed the borough to finally become independent of Norfolk County.[51]

In its October 1782 session, the General Assembly tacked on to a bill giving certain powers to the corporation of the city of Richmond an amendment which gave the Norfolk Hustings Court complete jurisdiction over criminal cases arising within the borough, "in as full and ample manner as the county courts."[52] Trial for

minor criminal offenses would continue to be handled in the hustings court, but now the aldermen could also constitute a court of examination and a court of Oyer and Terminer for the trial of major offenses. Shortly after this measure was passed, in May 1784, the hustings court was granted the right to register wills and deeds arising in the borough, and to grant probate and letters of administration in the same manner under the same restrictions as the newly formed hustings court of Petersburg.[53]

Close on the heels of these measures came another which was aimed specifically at the county courts but which seems to have had very little ultimate impact on the operations and efficiency of the Norfolk court. Justices of the peace who sat in the House of Delegates and favored the county courts, sponsored this bill[54] in an attempt to kill a more drastic measure, proposed by James Madison, which sought to take power from the county oligarchies. Madison noted later, in a letter to Jefferson, that the new bill only required the local courts "to clear the dockets quarterly. It amounts to nothing. . . ."[55]

The preface to the bill, passed in the October 1785 session of the Assembly, openly admitted that "The methods hitherto established for the administration of justice within this Commonwealth have proved ineffectual," and indicated that the volume and variety of business cognizable before the Courts required special sessions to deal with specific actions. Thus, the Assembly chose to create quarterly sessions of the county courts.[56] These courts, actually consisting of the same justices as the monthly

courts and meeting in the same places, were to convene in March, May, August, and November to deal with suits in chancery and common law cases requiring jury trials. The monthly court continued to have jurisdiction over small debt actions by petition and summons, actions in trover and conversion, actions in detinue not exceeding twenty dollars, and even proving and recording deeds and wills, and granting probate and administration. Minor criminal offenses could also still be brought before the monthly court.[57]

In actuality, the county clerk made little differentiation between sessions in the minutes, thus indicating to one historian "the manner in which the courts blended administrative orders and an assortment of other business."[58] But the process must have seemed somewhat successful, for the Assembly continued and refined the quarter sessions in 1787 when it provided that the corporation courts be specifically included in the act also. The amended act then restated the jurisdiction of the quarter sessions as covering

> the trial of all presentments and criminal prosecutions, suits at common law and in chancery, where the sum exceeds five pounds or eight hundred pounds of tobacco, depending therein.... The monthly and quarterly courts shall [also] have concurrent jurisdiction in granting and dissolving injunctions in chancery, and in entering up judgments on attachments against absconding debtors when the property attached shall not be replevied, and except such as are by law finally cognizable before a single justice of the peace, in all petitions for debt, detinue and trover, and in all matters touching the breach of the peace and good behavior. . . .[59]

The need for reform in the county and corporation court systems, to avoid delay and speed the administration of justice, was not resolved sufficiently by the acts provided by the Assembly.

The members of the Assembly felt the need for an even greater effort. After a false start in 1787, the Assembly created, in 1788, the district court system which was destined "to crowd the county court out of the picture, though the process was to take a century to complete."[60]

The new act provided that the state be divided into districts, each one of which was to have two justices serve it, convening their district court twice yearly. Norfolk County was lumped into a district with Isle of Wight, Princess Anne, Nansemond, and Southampton counties, for which the court would be held in the central location of Suffolk in Nansemond County in May and October.[61] The district court was to have jurisdiction over civil litigation involving amounts in excess of £30 and over criminal cases arising in the district involving white defendants, although the examining courts were still retained on the local level. Appeals were to be heard from the county and corporation courts in the same manner as they had been by the general court previously.[62]

Another action was taken by the Virginia Assembly before 1790 which was directed at local courts, and which had a quite tangible effect upon the relationship between the Norfolk County Court and the borough hustings court at the time. That action came in January of 1788, when the Assembly passed a measure "for regulating the rights of cities, towns, and boroughs, and the jurisdiction of corporation courts."[63]

As was mentioned earlier, the ties between the county court

and the borough court in Norfolk were, in terms of personnel, quite close before the Revolution. In the post-Revolutionary period the courts became, if anything, even more tightly bound together. As a matter of fact as late as January 1788, of the mayor and eight active aldermen of Norfolk Borough, six were also justices. From the point of view of the county court, this link was even more dramatic: it meant that occasionally when only four or five justices sat as the county court, they might be exactly the same justices who sat as the hustings court later in the month, or the group might be numerically dominated by these men.[64] A virtual monopoly of judicial power in the county was thus theoretically available to those men who served as both aldermen and justices.

The occasional monopoly of power was not the only concern, either. Verbal battles raged between the county and the borough in the 1780's over whether borough citizens could be taxed by the county, whether they could be summoned as jurors for the county court, and over the jurisdiction of each court's officers to serve legal writs and documents. Some citizens from the county disliked the location of the county courthouse as well, feeling that the court should not be held in an area over which it had no jurisdiction.[65]

Whatever the motivation, the action taken by the legislature in early 1788 resolved any problems of conflict of interest among the justices and aldermen, in theory if not in fact. The Assembly noted that it felt

> accumulating, different and distinct offices of power and authority in the same persons, has a tendency to introduce abuses, and to create an improper and dangerous influence in a few individuals, contrary to the spirit and genius of republican government, and naturally productive of oppression, and subversive of liberty . . .

Thus, it enacted that no member of a corporation court, court of hustings, or common council of any city, town, or borough of Virginia could be at the same time a justice of any county.[66]

The same act limited the jurisdiction of hustings and corporation courts, declaring that those courts

> shall have jurisdiction only in suits or controversies instituted between the respective inhabitants of such city, town, or borough, and between one or more of the inhabitants or citizens of such city, town, or borough, and any person or persons not an inhabitant or inhabitants of this commonwealth, and in either case, only when the contract hath been made, or the cause of action hath occurred within such city, town, or borough; and in all such suits and controversies, their respective jurisdiction shall not be limited to any particular sum, but shall be co-extensive with the jurisdiction of the county courts.[67]

Whatever the potential of this act, it did not solve Norfolk's problems. Some aldermen apparently did not even take note of its provisions. The county grandjury presented several justices in August 1789 for acting as county magistrates while at the same time "belonging to another jurisdiction . . ." A similar complaint was forwarded to the county's delegates in Richmond in September by the sitting justices of the county.[68]

The members of the hustings court themselves indicated that they were not at all clear on the meaning of the act. They asked the General Assembly to revise and explain the act, as a clause it contained, which they construed to mean that the hustings court

of Williamsburg and Norfolk were exempted from the act's provisions, had "occasioned some doubts to arise."[69] That petition, along with continued pressure from the county and its representatives, caused the Assembly to pass an amendment to the original act. But rather than exempting the borough court from its provisions the amended act specifically included it within the newly established restrictions.[70]

The problem of maintaining the county's courthouse within the borough of Norfolk also continued to stir passions. The same grand-jury in August 1789 presented several justices "who have been instrumental in retaining the court belonging to the county within the Borough contrary to the real interest and repeated cries and complaints of the people." The same presiding justices in September likewise forwarded this complaint to the House of Delegates.[71]

This problem was resolved quickly. In late November 1789, the General Assembly passed a bill "to remove the court of the county of Norfolk, without the Borough of Norfolk." As well as moving the court out of the borough and providing that a place for permanently holding court and erecting public buildings could only be designated by a majority of the justices of the county, the act made it unlawful for the county court to tax borough residents for any purpose, thus finally assuring the borough its independence.[72]

In viewing the structure, jurisdiction, and process followed by the local courts of justice in Norfolk County in these Revolutionary years from 1770 to 1790, a picture emerges of a

legal system much involved in the everyday life of the community in more than merely judicial affairs. This system was theoretically controlled by a central administration and was certainly affected by its measures and directives, but to a large degree it functioned freely and independently. It was hemmed in by tight procedural rules which governed its judicial activities, but also provided a familiar framework for lay judges, thus further securing them in their power. The jurisdiction of these courts stabilized gradually and was altered only slightly to produce specific results; their structure remained firm and fixed.

The Revolution, then, when it came in contact with this system, produced little appreciable change, at least in terms of jurisdiction, structure, and procedure. There was evan a fair degree of continuity through the war and beyond in the personnel sitting of these courts. The changes which came in the post-Revolutionary period were comparatively minor, except perhaps for the discernible shift in the balance of judicial power to the borough, and really seems to have affected the power and authority of the local court system very little <u>on its surface.</u>

The question of the degree to which the Revolution affected the actual administration of justice on the local level in Norfolk, however, remains. The Revolution itself, the disruption brought about by war and invasion, the chaotic economic situation following in the post-Revolutionary years--all these had an impact upon the courts and their ability to administer justice fairly, effectively, and speedily. Discovering just what this impact

was, in terms of amounts and kinds of litigation handled, numbers of criminal prosecutions, and the effectiveness of court decrees and judgments, will lead to a clearer understanding of what constituted the administration of justice of Revolutionary Norfolk.

Chapter II

Civil Litigation in Revolutionary Norfolk, 1770-1790

Both formal judicial bodies in Norfolk, the county court and the borough court, performed certain administrative, as well as judicial, duties. Indeed, the courts were of great importance in providing what might be termed "essential services" to the community: recording deeds and wills, binding out orphans at apprenticeships, licensing taverns, setting the rates at which liquor would sell, and a number of other minor, but nonetheless important, administrative tasks.

Equally important was the power of local justices sitting as the county court, and borough aldermen as the hustings court, to settle legal disputes among their fellow citizens. A majority of the time these courts spent in session was devoted to trying actions, declaring judgments and ordering their execution, granting the issuance of certain writs, ordering the payment of tobacco to witnesses, and holding special courts of examination and courts of oyer and terminer to deal with various criminal offenses committed in the area.

Around the courts grew a myriad of taverns and shops, for court days tended to be good for business, bringing in crowds from the surrounding area who came to enjoy the festive mood, listen to the oratory of local lawyers, perhaps hear a local electioneer running for a seat in the House of Burgesses, and perhaps even prosecute an action of their own. Equally important, but possible felt unconsciously, or expressed more subtly, was

the opportunity on court day to observe the attitudes, actions, and decisions of the leading men of the community, the men who sat as the county or borough court.

Whatever the motivation of those people who came to Norfolk Borough on court days, they certainly saw a fairly large number of court actions tried. Whatever the attraction of these legal proceedings for out-of-town visitors, they were actually cases of the law-in-action in Norfolk.

The courts in Norfolk may or may not have been adjudicated a proportionately large number of disputes in the Revolutionary era: there are no comparative studies available which detail the numbers and kinds of actions handled by Virginia's county courts, except in the vaguest of terms.[1] Hence, the study of the county and borough courts in Norfolk must be viewed solely in relationship to the environment of the tidewater area, influenced as it was by such occurrences as prewar and postwar depressions, British invasions, and Revolutionary activities in general.

In the years between 1770 and 1775, the Norfolk County Court heard and decided a large number of actions dealing, in one form or another, with the recovery of debt. As Table I in Appendix A indicates, several forms of action available for the litigants' use in obtaining a debt owed to him, or in recovering damages for the non-payment of debt, were utilized. The Norfolk colonists made use of both the common law action of debt and the action of <u>assumpsit,</u>[2] but seem to have preferred the latter over the former. Interestingly, the county court records show that only one action

in Covenant was brought. Apparently litigants preferred to resort to action on the case for breach of promise to recover damages for the breach of a "contract under seal."[3]

These actions in debt and case, dealing with sums in excess of £5, even when combined, were usually much fewer in number than the number of actions brought by petition and summons. As a matter of fact Table I reveals that the number of small debt actions were often double that of the total of all common law action heard yearly by the county court.

This was not the case in 1772, however, when debt action[3] and actions on the case for assumpsit and breach of promise totalled only twelve less than the number of small debt actions. The appreciable increase in these actions relating to the recovery of larger unpaid debts fits in with the general trends in the pre-Revolutionary colonial economy. The colonies suffered a financial panic and commercial slump immediately preceeding the Revolution, which "bottomed out" in 1771 and 1773.[4] The rise in actions related to debt, then, is understandable when placed in the context of the colonial economy. But curiously, these actions for debts exceeding £5 had already begun to decling in 1771, while actions by petition and summons rose markedly in the same year.

The reason for this simultaneous rise and decline in the different actions may not have been entirely related to the economy, but may have been more dependent upon the county court itself. It is possible that the county court knowingly postponed or discouraged the prosecution of small debt action in 1772 when

the worst of the recession was being felt. The rise in these actions in 1773 may be accounted for in the decline by the number of the more significant common law actions like debt and assumpsit. The court now had more time to devote to these lesser actions, as pressure from the more "important" litigants declined.

If this hypothesis is true, then the power of the justices to shape the administration of justice was certainly great. But even if it is not, the figures indicate that the court was being used by more than the large-scale merchants and planters in the area. The court was, in fact, engaged primarily, in terms of litigation, in settling the disputes of litigants seeking the recovery of small debts.

It is difficult to analyze accurately who the litigants in these various actions were, due both to the paucity of evidence concerning people and occupations in the era, and to the large number of actions adjudicated. If impressions may be trusted, it would appear that merchants and the wealthier leading citizens (often one and the same in Norfolk) tended to be plaintiffs in a large number of actions for debt recovery, both above and below £5. The poorer people, the common farmers, tended to be on the wrong side of litigation, i.e. defendants, in an overwhelming number of trials. But this is not meant to indicate that merchants never sued other merchants or larger planters, or that small farmers never came into court to make use of the actions available to them. The suggestion is merely that it appears that the upper class had greater accessibility to the legal system and was more

likely to make use of it. Moreover, mercantile agents were much more likely to need the power of the court's authority for their own business purposes.

A recent study of the Chesapeake economy in the eighteenth century indicates that it is quite likely that most of the actions involving debt which were tried in the county courts involved relatively small amounts of money. Aubrey Land has noted that probably a majority of the debtors in Virginia in the mid-eighteenth century were small planters (apparently anyone who planted was termed a "planter" at that time) who were in debt for small sums of money, often under £10. Land found that of the debts owed to merchant John Porter of Northampton County around 1740, the largest was for £20 and the smallest, sixpence. Likewise, three fourths of the people who owed money to planter-merchant Edward Dixon of Hanover County owed less than £10.[5]

The picture Land paints of Virginia creditor-debtor relations is one of degrees. Small planters, who would not maintain accounts with the great consignment houses of England, consigned their produce to petty merchants and tobacco factors based in Virginia, who in turn sold them the few commodities needed about their small farms. Credit was advanced to the small farmers, and their purchases were often paid off wholly or partially during the winter from the return brought by their crops. Extending credit became the natural way of doing business. The small farmer could buy on no other terms.[6]

Although the small planters did fit into this creditor-debtor

relationship before the war, there can be little doubt that the larger planters were the most heavily in debt. Thus historians often concentrate on these larger planters when they consider the role that private indebtedness played in the coming of the Revolution in Virginia.[7] But, as the Norfolk records demonstrate, the small farmers shared in this problem and their concerns should not be discounted in its analysis.

In comparing the actions tried by the borough court of Norfolk (the figures for which appear in Table II of Appendix A) with the actions tried in the county court, the evidence indicates that the hustings court, while trying an almost equal number of common law actions before 1774, tried far fewer actions for the recovery of small debts. In fact the number of actions of debt, assumpsit, and case for breach of promise exceeded actions by petition and summons at a rate of almost six to one in this period. The difference between the two courts is obvious. While the county court spent almost twice as much time dealing with small debt actions as with all other common law actions, the borough court devoted less than 20 percent of its time to these same small debt actions.

The transactions which took place in the borough and which produced disputes which ended on the docket of the borough court, then, were concerned with significant amounts of money or merchandise. While the transactions need not have been between borough residents, most undoubtedly were, for litigants could bring actions only when a court had jurisdiction over the case. Either

the transactions had taken place in the borough, or else they involved borough residents. The latter possibility seems more likely, for when county (as opposed to borough) residents were made defendants in actions in the hustings court, they were often identified as such, obviously to differentiate them from borough residents.[8]

Conversely, it is quite likely that creditors took their cases to the county court when debtors resided in the county, even if the transaction had taken place within the borough, which served as the local marketing place. Significantly, the number of small debt actions was larger in the county court, indicating that the small farmers of the outlying areas of the county may have been prosecuted more quickly and efficiently in the county court, while the few larger planters, and the merchants and factors may have been brought to trial in the borough court, especially since this latter group tended to live primarily in the borough itself.[9]

Evaluating the efficiency of these courts in relation to the execution of judgments awarded in debt-related actions is a difficult task. One student has suggested that the hustings courts were much more speedy and efficient in the trial of actions than were the county courts,[10] but this is difficult to confirm from the court records. The court records rarely give any indication of how quickly the necessary writs of execution were sent out, or how quickly judgments were paid or when they were paid at all. Some hints at the effectiveness of the courts may be obtained, however, from a listing of the numbers of writs issued by the

courts, as well as the number of trials of special actions designed to facilitate the execution of judgments.

Several legal instruments were used by the Norfolk courts to enforce their authority over defendants delinquent in payment of their judgments, or over defendants who failed to appear before the bench. The most frequently used by the county court was the attachment. In the five years between 1770 and 1774, the county court issued 90 attachments against debtors for a variety of reasons. Only 39 of these attachments were tried in this period, and in every instance, the defendant failed to replevy his goods, failed to show for the trial, and suffered judgment for the amount of the claimed debt to be extracted from the sale of his attached goods.

The rate of trial for attachments issued by the borough court was much higher. Of 28 attachments issued between 1770-1774, 14 were finally brought to trial. The borough court issued far fewer attachments, yet also tried fewer cases in total for debt. The fact that the borough court tried more of the attachments it issued may mean that proportionately more debtors ignored the court's decrees, or that more feared the court and failed to replevy their goods or were unable to.

At any rate, considering the large number of cases tried by both courts in this period, the attachments issued and finally tried are comparatively small in number. But there were other legal instruments to which the courts were occasionally forced to resort in an attempt to enforce their judgments. One was the

issuance and trial of writs of scire facias.[11] Another was the issuance of alias capias writs.[12] A third method was decreeing an "order" of "conditional order" against a defendant and his bail.

The court records do not indicate clearly how this latter procedure operated. In modern practice an order is a written direction of the court which is not included in the judgment. This granting of an order in colonial Virginia may have been the direction of the court to issue the first capias writ,[13] while a conditional order would indicate that the order might be rescinded if the defendant appeared voluntarily for trial, or entered recognizance to do so. The process was certainly widely used by both courts. Between 1770 and 1774, the county court issued 49 orders and 20 conditional orders, while the hustings court issued 40 and 26 respectively.

Taken cumulatively, the use of these legal instruments shows that both Norfolk courts did encounter problems in executing their judgments. The borough court had less difficulty and thus seems the more efficient, but this appearance is partially due to the fact that it tried a smaller total number of actions. And, again, considering the large number of actions tried by both courts, the number of times these legal instruments were used was neglibible.[14]

A question should be raised as the the relationship between creditors and debtors. Was there hostility between these two groups? Aubrey Land concluded that in many cases there was little ill feeling between native merchants and their small farmer clients, which he attributed to the "sense of community" which

existed between the two. He asserts that they made "common cause" together, a factor which was especially evident in political elections. The relationship also tended to be eased by the fact that many creditors hesitated to resort to litigation. Such action would indicate a loss of faith in the customer, Emory Evans asserts, and would not help the merchant's reputation. Litigation also tended to be time-consuming and expensive, especially if a creditor chose to bring a substantial number of individual actions.[15]

Both debtors and local native creditors (who tended to be in debt to British merchants themselves) looked upon the British merchants as the real troublemakers, and the hostility of both groups was directed toward these men. This gave the situation in Norfolk a peculiar twist, for there were a large number of Scottish merchants in Norfolk who dealt directly with London or Glasgow mercantile houses. These men were already disliked merely for being Scottish.[16] But being associated with British merchants caused them no little difficulty. In 1768 and 1769, several Scottish merchants joined together to have their families inoculated against smallpox. Fear that such action merely spread the disease and was really a plot by the doctors to get more business, added to the already smoldering colonial dislike of Scots, erupted into riots against the pro-inoculationists. One of their number, James Parker, a wealthy Norfolk merchant and member of the borough common council, wrote to a business associate and fellow Scot indicating that there were ulterior motives behind the riots. When rioters reached his house, Parker related, "They demanded that

I should come down, open the door, give them liqueur, and drop all law Suits I had against them; their Speaker was one Singleton a carpenter whom we had sued a year ago for Debit [sic]."[17]

Thus there was indeed hostility between at least some of the debtors and some of the creditors, though perhaps motivated by more than just the money owed by one group to the other. This helps to explain why the courts were occasionally forced to resort to a variety of legal measures in an attempt to enforce their judgments and decrees.

It would be wrong to assume that the civil litigation tried in Norfolk's courts was wholly and completely concerned with debt. It is true that in many Virginia courts in the eighteenth century 90 percent of the cases tried revolved around debt.[18] In Norfolk, this percentage always hovered between 89 and 98 percent of the total number of common law actions tried in the county court, and between 57 and 93 percent in the borough court.[19] But before the Revolution a certain number of other common law actions were always on the docket.

If debt-related actions accounted for the greater part of the actions tried in Virginia's courts, actions related to land were nearly as important. In fact, representing clients in land cases was how many lawyers made most of their money.[20] There were, however, few such cases in Norfolk. Between the two courts, only 16 actions in ejectment[21] were tried in the five years before the war, the vast majority of them being brought in the county court as would be expected (see Tables I and II, Appendix A). There

would have been little need to try the title to land in the borough court, for land in the borough was carefully parceled out lot by lot.

Actions in detinue, used for the recovery of personal property (usually slave in Norfolk) from one who acquired possessions lawfully but detained it without right, together with damages for the retention, were brought in both courts in about equal numbers, totaling 15 cases in all before the outbreak of the Revolution. There were more actions in trespass (23) and trespass, assualt, and battery (25) brought in the Norfolk courts. In these instances, also, both courts adjudicated almost equal numbers of cases.

A certain trend that parallels the noticeable trend evinced in the number of debt-related actions brought in these years emerges in Tables I and II. Apparently the crisis in the economy which caused the skyrocketing number of debt-related actions in 1772 and 1773, caused Norfolk residents to become generally more litigous. The county court, for example, recorded a discernible rise in detinue, trespass, and trespass, assault, and battery actions in these years. The same thing happened in Norfolk Borough. This says a great deal about the atmosphere in the area at that time. No doubt there was tension brought on by the economic decline. Some people resorted to violence to relieve their frustrations or damage their enemies. Their victims resorted to litigation.[22]

The county and borough court records reveal a widespread use of the twelve-man, petit jury in the pre-Revolutionary period. A

comparison of Table I with Table III (Appendix A), and Table II with Table IV (Appendix A), shows that when a dispute was fairly clear--as in debt actions, where the defendant either owed or did not owe a specific sum--resort to a jury trial occurred least frequently: in approximately 26 percent of the debt actions tried in the county court; in about 42 percent of the same actions tried in the borough court. On the other hand, when trespass on the case was used and damages were to be assessed, the jury was utilized much more regularly: in about 54 percent of the actions in case tried by the county court; in almost 59 percent of the same actions tried by the hustings court. In fact, the percentage of jury trials in such actions was steadily rising in the county from 37 percent in 1770 to a high of 83 percent in 1774, while in the borough the use of juries in the same actions increased from 23 percent in 1770 to a high of 63 percent in 1773. Likewise, litigants opted for jury trial in well over 70 percent of the other actions tried in the county, and, except for ejectment (34 percent of the total number of actions), the same was true for the hustings court.

A question must be raised as to why the use of juries was so widespread. Was the jury viewed as a refuge by defendants? Did they want to have their cases tried by a group of their peers because they might judge their cases favorably, perhaps with the intention of hindering plaintiffs in general and creditors in particular? Tables III and IV show that while this may have been the motive behind the increasing number of jury trials, jurors

rarely complied. The jurors in Norfolk were neither afraid nor unwilling to find for the plaintiffs, and they did precisely that in an overwhelming majority of the cases which they heard. As the Revolution approached there was no mass movement on the part of jurors to free defendants from their obligation, or to penalize creditors for attempting to collect debts owed to them.[23]

Civil litigation in Norfolk ebbed and flowed with the fulctuations in the colonial economy before 1774. But in that year a perceptible decline in the amount of litigation was recorded. This was only the beginning. With the coming of the Revolution, litigation ceased in the borough and all but died in the county. It is within the context of the Revolutionary crisis that the disruption of Norfolk's legal system must be viewed. Only that can help to explain the severe strains under which Norfolk's courts labored between 1774 and 1783.

In 1774 the colonies were still in the midst of a period of economic turmoil. Probably the number of actions brought for debt and breach of promise would have remained unusually high. But the Revolutionary crisis intervened. In May 1774 Governor Dunmore dissolved a threatening House of Burgesses, whose members proceeded to form the Virginia Association, with the intention of promoting non-intercourse with Britain. Local committees, whose initial function was to direct the Association on the local level, began to form in the summer of 1774. By the end of the year, thirty-three counties and three towns had committees, including Norfolk Borough.[24]

The committees at first functioned without any central direction. They "enforced the non-importation and exportation directions of the Association, mercilessly repressed anti-patriotic opinion, encouraged Revolutionary sentiment, and prepared the colony for armed resistance to England." To a considerable extent the local committees had actually become the local government by 1775. Mean-while, the local courts "put up shutters and the usual county administration was completely suspended, but justices and other local officials, under the title of committeemen, continued to exercise their powers, greatly enlarged; they assumed an inquisitorial authority over the life of the community."[25]

By mid-1775, three committees were functioning in Norfolk County. The list of members of these committees reads like a "who's who" of the Norfolk County and Borough Courts. Of the 20 members of the Norfolk County Committee, eleven were justices; of the fifteen members of the Western Branch Committee, five were justices and two were lawyers; and of the fourteen members of the Borough Committee, six were justices or aldermen, one was the deputy clerk of the county court, and three were practicing attorneys.[26]

The Courts had begun to curtail their activities as early as the spring of 1774. Charles Cullen explains that:

> Partly in reaction to a popular clamor for their closing, many county courts stopped hearing litigation as early as May 1774. Their justification for closing the courts was the expiration of the act which set the rate of fees court officials were empowered to collect.
>
> . . . When the Burgesses met in May 1774, they rejected the bill to renew the fees. The county courts, most subject to popular feeling, were not

> to have to order the collection of British debts (or domestic ones), and by the winter of 1775, all county courts had ceased to function as agencies of debt collection.[27]

The Norfolk County Court stopped hearing civil litigation at its July 1774 session. From that point on until mid-1775, the court only acknowledged and recorded wills and deeds, granted probate, assigned administrators, licensed ordinaries, and provided what might be generally termed "essential services" to the community. The county was undoubtedly in turmoil in this period, but the records give little evidence of the disruption of normal life. Only in October 1775 is there a hint of what was approaching. The Order Book records that the court

> Ordered that the sheriff summon twelve good and discreet Men to Watch the Prisoners now in his custody until the further order of this court and that they will be allowed five shillings per night at the laying of the next county Levy.[28]

In the Borough of Norfolk the Revolutionary crisis was felt even more seriously. After May 1774, when Dunmore dissolved the Burgesses, the hustings court met only twice more and handled no civil litigation. The last recorded meeting was held in February 1775, at which time the business of the court was disposed of.[29] The court did not again convene until mid-1778.

The events of late 1775 and early 1776 in the Norfolk area have often been told. Only the essentials need be repeated here. Governor Dunmore fled from Williamsburg in mid-1775, and shortly thereafter took up position in Norfolk Harbor. On November 15, 1775, he declared martial law, ordered all loyal men to join him, and proclaimed freedom to the slaves and indentured servants of rebels.

The battle at Great Bridge followed in December with the total defeat of Dunmore's forces. He retreated to his ships in the harbor and Norfolk was occupied by colonial troops. A combined British bombardment and rebel rampage on January 1, 1776, resulted in a fire which destroyed nearly two thirds of Norfolk. Neither side was strong enough to dislodge the other, and so when the American troops pulled out in February 1776 their commanders were given permission by the provincial Committee of Safety to destroy the rest of the town to "deprive Dunmore of shelter."[30]

While these events were taking place, the provincial conventions which met in 1775 and 1776 were concerning themselves among other things with the local administration of justice. In March 1775 the convention called for litigants to delay their actions and county courts to suspend all litigation except that required for tax collection and the settling of estates. The convention hoped for self-restraint on the part of all Virginians, patience on the part of creditors, and fairness on the part of debtors. They suggested that debtors pay as much as they were able and that disputes be settled by the arbitration of neighbors.[31] A little more than a year later the courts were officially reorganized by the adoption of the state constitution and the passage of supplementary enabling legislation, and were thus returned to their positions of power and dominance in the counties.

The Norfolk County Court held a session in October 1775, but did not meet again until August 1776 when it convened "at the house of Mrs. Unice Smith." The justices present took new oaths to the

state, as did the court clerk. Two lawyers were admitted to practice before the court, while five deputy sheriffs took their oaths. A lawyer was suggested to the Attorney General as "fit" to serve as deputy attorney for Norfolk. The court then adjourned.[32] The justices apparently had some doubts about the legality of their actions since the session had not been held in the official courthouse which had burned in the Norfolk fire.[33] The Assembly passed a bill in October 1776[34] authorizing the justices to erect a temporary courthouse and to hold courts anywhere in the county in the meantime, provided prior notice was given. The next court was held on December 19, 1776, at which time very little business was transacted. Something approaching regular monthly sessions began in 1777 and continued through mid-1779. From then until 1782 there is a gap, for neither a minute book nor an order book for the period is extant.

While the prime concern of the courts in the prewar years was with civil litigation, such actions were rare in the war years. The regular county court sessions were concerned almost exclusively with providing "essential services." But the court did not stop hearing civil litigation altogether. An occasional action for debt (2) and several suits in chancery (4) were decided between 1777 and 1779. But, as Table I shows, the amount of litigation heard was severely curtailed.

A comparison of the figures provided for Norfolk County with those of other areas of the state indicated the marked degree of disruption which this area experienced. In the southside, for

instance, few cases were heard in 1776 and 1777 in Amelia and Chesterfield Counties, though grandjuries continued to meet and present offenders. In 1778, the business in these courts increased markedly. The Amelia Court began to hear debt actions in May, and by June and July was progressing through the backlog of cases. The Chesterfield Court also experienced an increase in business in the summer of 1778, but a real "flood of debt cases came . . . in July 1779, and continued throughout the summer. Winter courts were very slow in both counties in 1779-1780, and in the remaining months of 1780."[35]

The Norfolk County Court had optimistically ordered in early 1778 that the "Sheriff give publick notice that at the next Court, the Court will proceed to dispatch the Docket Business, and that the Parties concerned in the suits depending in this Court do then give their attendance, and be prepared in such suits."[36] The response was dismal, however, for the next court decided only one case on attachment.[37] The area was still too disrupted for the normal administration of justice to be resumed.

Unfortunately, the records of late 1779 through 1781 have been lost, but most likely they would indicate the same general trends evident in the earlier records. The county was the scene of increasingly frequent invasions beginning in 1779, and these invasions brought in their wake increasingly serious disruption in the community. In May 1779 and again in October 1780, British forces were in the area destroying American supplies and fortifications. In December, Benedict Arnold brought a strong force to the Norfolk area and occupied Portsmouth. From there he sent out almost

continual raiding parties in every direction until his forces joined with Cornwallis in mid-1781 and moved down to Yorktown.[38]

Even before the arrival of these invading forces, civil war had broken out in Norfolk. "After the departure of Dunmore . . . enmity broke forth in a long series of murders, robberies, and burnings. Bands of ragged Tories . . . would descend upon a plantation, strip it of provisions, burn the buildings, and drive off the livestock."[39] With the coming of the British, Loyalists became even more bold. They

> began to enlist in considerable numbers, while some of the exiles came back to take possession of their confiscated estates. . . . But their confidence was sadly shaken again when the British marched out of Portsmouth. . . . Unwilling to face their outraged countrymen, they gathered up what belongings they could carry, and to the number of several hundred, followed in the wake of the troops.[40]

Although the Norfolk area was in almost perpetual turmoil, the local courts were able to meet fairly regularly. The hustings court faced greater difficulties than the county court, however, for the destruction of Norfolk meant the destruction of its jurisdiction. But the community must have begun rebuilding rather quickly. In August 1778, the borough court met to appoint a serjeant and two constables, and to grant an ordinary license to William Smith. The court met again in January 1780 when it ordered "that the Clerk give Notice that this court will proceed to Business and enter on the docket at the next Court."[41] The borough court was more successful in its optomistic prediction than the county court had been. In February and September 1780 it met monthly to discharge a considerable amount of business, although

this involved primarily dismissing and discontinuing suits. The invasion of October 1780 brought a halt to its proceedings. The court did not convene again until February 1782.

The fact that the hustings court was able to conduct business and try a few cases on a regular basis in 1780 may mean that the county court did also. Undoubtedly, however, the number of actions that might have been tried by the county justices in late 1779 and 1780 would have been minimal. The hustings court held no sessions in 1781, and it is probable that the same was true of the county court. This was the period when Virginia became the scene of the final major battle of the war at Yorktown. Most of the state's inhabitants, and certainly all of her leaders, were concentrating on defending Virginia and defeating the British. Even so, the courts could not hear civil litigation by law after May 1781 when the Assembly hastily passed an act "suspending the proceeding of certain courts in particular cases."[42] Both courts were really able to return to serious deliberations and the trial of civil suits only after Yorktown.

Civil actions in both the county and the borough increased dramatically in 1782 and 1783. Attachments multiplied substantially. Actions for small debts, which had stopped during the war, skyrocketed in number. Though the number of other actions tried remained small, it was still an impressive increase over the number tried in the war years. But the court was understandably slow to move on the backlog of cases. People were justifiably fearful that if the courts opened they would have to pay their creditors,

a threat even more potent in 1782 than in 1774, for now indebtedness had increased, while through the depreciation in value of the currency, ability to pay had decreased. The Assembly attempted to adjust the situation by providing a depreciation scale for the payment of money debts, and by postponing debt judgments until December 1, 1783.[43]

The postwar records reveal an impressive degree of continuity. There was no postwar introduction of new kinds of actions, nor was there a wholesale avoidance of older forms of action with which litigants had been familiar before the war. Actions were brought in similar proportions to those brought before the war, while those for small debts still dominated the courts' dockets.

The dramatic decline in litigation, indeed, the almost total cessation of trials of personal and mixed actions in the Norfolk courts during the war, pinpoints the most immediate and readily apparent impact of the Revolution. The numbers and kinds of astions brought in these courts after the war also provide an important indication of the difficulties of recovery, the problems of postwar booms and depressions, and the effects a newly structured superior court system had on the local administration of justice. Similarly, they tell much about the actual legal administration in the county and the internal conflicts which helped to mold the shape of postwar litigation in Norfolk.

The Norfolk area suffered greatly during the Revolution, far more than most other areas of Virginia. And while the rest of the state experienced a healthy postwar boom in 1783 and 1784, Norfolk's

economy still remained depressed. Norfolk Borough itself experienced a modest boom after its wartime destruction, with a growing volume of shipping entering and leaving the port. But Norfolk was condemned to a depressed economy, first because it was dependent upon the West Indian trade which was now largely closed to American shipping and exports, and second, due to its location as a port. While it had served the Chesapeake trade well before the war, after the Revolution Norfolk lost much of its trade to Philadelphia and Baltimore, which were more favorably located.[44] Moreover, by 1785, Norfolk petitioners were bemoaning the "evils and disadvantages" of Virginia's foreign commerce "in consequence of it being monopolized by Foreigners, particularly British merchants and Factors."[45] Indeed, by the same year, almost the entire state was suffering from a renewed depression. The bottom fell out of the tobacco market and the overextension of credit, combined with the scarcity of specie, shattered the postwar economy. It remained in a depressed state throughout the rest of the decade.[46]

Such a situation did not encourage creditors. This was especially true if they were British or Scottish merchants. These men or their agents had already begun to return to Virginia before peace was declared. Meanwhile, hostility toward repaying "foreign" debts had grown intense. Popular demand forced the Virginia Assembly to declare in law in May 1782 that no debt owed to a British merchant could be recovered in a state court. Native Virginians who had purchased debts from British merchants had to

prove such purchases had been made prior to May 1777, the date when British merchants had been ordered to leave the state. The date was later moved back even further to April 1775. Only with such proof could these Virginians collect their debts through the state's judicial system. Some returning merchants swore allegiance to the state and thus placed themselves in a position to make use of the courts. The legislature countered with a measure forbidding British merchants to enter the state and providing penalties for magistrates who administered oaths of allegiance to them.[47]

When news of the Treaty of Paris reached Virginia, there was increased support for allowing Loyalists to return, and allowing the collection of debts owed to foreign creditors. Virginia's restrictive legislation, in fact, seemed to be in direct conflict with the Treaty, thus giving such proponents considerably firm ground upon which to stand. A number of efforts were made between 1784 and 1787 to have the state remove its restrictive legislation, but all of them failed. Some minor success was achieved in 1788. But it was only with the passage of the United States Constitution and the creation of the federal judiciary that British creditors were able to have their debt actions tried in Virginia. Such litigation did not begin until the 1790's, almost twenty years after the outbreak of the Revolution.[48]

The effect of such circumstances upon the courts in Norfolk is far from clear. The numbers and kinds of actions handled between 1782 and 1790 suggest that much more than the fluctuating economy and the frustrated efforts of British creditors to recover their debts dictated the shape that civil litigation was to take.

Scanning the years from 1782 or 1790, one finds that a change had taken place between the hustings and county courts. As Charts I and II (Appendix D) indicate, the judicial balance of power had shifted to the borough court: that is, the borough court was now trying many more common law actions than the county court, while the latter retained its virtual monopoly over small debt actions. The same charts indicate that there was an appreciable drop in the number of common law actions tried in both courts between 1787 and 1790, and a very large decrease in the number of small debt actions tried in the county court after 1787.

The dockets of both of Norfolk's courts were filled with an abundance of debt-related actions, along with a dwindling number of other common law actions, in the postwar period. Again, as in the prewar years, the number of debt-related actions reached a peak early in the postwar depression. Interestingly, the highest number of cases tried in the borough court came in 1785, the year that the Assembly passed the bill forming quarterly sessions in the counties though not in the towns. Perhaps this bill aided the county court somewhat, for the number of cases it tried rose continually to 1787, the year that the bill was amended, placing the corporation courts under its provisions.

The number of common law actions decided in both courts had begun to decline in 1787. The next year the district court system was erected, though it did not become fully operational until early 1789. In that same year there was a startling drop in common law actions heard in the borough court. The number of actions

heard in the county court simply continued to decline at a steady rate. In 1790 both courts registered a slight rise in the number of cases tried.

From this data it would appear that the creation of the district court system had a much greater impact on the borough court than on the county court. Both lost cases, but how many they lost to the district court, and how much the decline was due to other factors, is not clear.

Strangely, while both courts had a fairly large caseload of debt-related actions, the number of other common law actions tried in them declined as the postwar period wore on. In the hustings court, there were quite a few actions in detinue, comparable to the prewar period, but these dropped out of sight in 1788, the year the district courts were established. Meanwhile, there were very few actions in trespass and ejectment, and none after 1786. The court did handle a significant number of "trespass assault and battery" actions throughout the period, but even these were comparatively few after 1787.

A similar development is evident in the county court. There actions in detinue and ejectment were negligible after the war, and disappeared completely after 1786.[49] A fairly large number of actions in trespass are recorded, but very few in "trespass, assault and battery." Already in the 1780's violence was on the rise in urban areas, while less noticeable in rural areas, although this may be making a bit too much of the figures given above.

The superior courts may have played a much larger role than

is readily evident from the Norfolk records. Property disputes could have been taken to the High Court of Chancery in equity suits, or to the General Court in actions of detinue or ejectment. The number of actions brought in the local courts dipped even more sharply at the time the district courts were established. This can only lead to the supposition that cases were being taken more readily to the district court than to the local court.

Another possibility, at least for those cases which might have been tried by the borough court, is that they were <u>forced</u> into the district court. The sharp drop in the number of actions brought in 1789 conincides with the passage of the amended act dealing with the jurisdiction of corporation courts.[50] This act had limited the hustings court's jurisdiction to only those actions taking place between borough residents or between a borough resident and a non-inhabitant of the state. Any other actions were presumably to be brought in the district court (such as those between a borough resident and a county resident). As the county court registered no increase in actions at this point, and in fact recorded a continuing decline, it is clear that the drop in the number heard by the borough court was due to litigants resorting to the district court, whether they wanted to or not.

Significantly, trespass actions continued to be brought in the county, "trespass, assault and battery" actions in the borough. Litigants hoped for a more favorable response from their local courts in these actions than they might get from the superior courts, since they involved damages for wrongful injury. Local

judges and juries would be more familiar with the facts in these cases, and perhaps more likely to act favorably toward the plaintiff.

An analysis of the actions in debt and case decided in the postwar years increases the complexity of the problem (see Charts III and IV, Appendix D. Trespass on the case had been the more widely used action in both courts before the war. This continued to be so in the borough court. But the county court recorded a considerable decline in the number of action on the case it tried after 1786. While debt actions leveled off after 1787, case actions declined drastically, far below their prewar levels. Two factors influenced this state of affairs. One was the fact that far more actions on the case, as well as debt actions, were brought in the hustings court. The borough court was quite probably taking suits away from the county justices. Secondly, the comparatively few actions in case tried by the county court declined even more sharply after 1787, demonstrating the influence of the district court over the local courts in Norfolk. Litigants took the more modern and sophisticated assumpsit actions to the district court, while debt actions continued to be brought on the local level.

Another way of gauging the effect of the superior court system on the local courts in Norfolk is to discover the number of appeals requested from the local courts, and the number of writs of certiorari produced to remove cases to a higher tribunal. A tabulation of these figures does not support any contention that the superior courts greatly affected Norfolk's judicial structure.

An appreciable rise in the number of appeals taken from the judgments decreed by both the hustings and the county courts took place after the war. The county court had granted appeals in 8 cases before the war, but granted 13 between 1785 and 1790; the hustings court granted 3 appeals before the war, 20 after it. In addition, the hustings court was presented 4 writs of certiorari before the Revolution, only 2 after it.[51] The ratio of appeals to common law actions brought in the postwar period illustrates how insignificant these were (one to every 40 actions brought in the county; one to every 45 actions brought in the borough).

Although comparatively few appeals were requested from Norfolk's courts, that does not mean that litigants were necessarily satisifed with the courts' decisions. The appeal process was expensive. The entire suit had to be moved to the General or District Court. New declarations had to be filed, more writs issued, and additional fees paid. A wealthy creditor might be able to afford such a process, but rarely needed to resort to it, since acquitals were rare in the local courts. A poor debtor certainly could not afford the process.

The courts did try to aid litigants by occasionally overturning jury verdicts and then granting new trials. But most often such action benefited the plaintiff rather than the defendant.[52] In addition plaintiffs had the option of bringing suit where they wished. Many apparently brought the sophisticated assumpsit actions, and perhaps detinue and ejectment, to the district court originally, rather than on appeal. Defendants were forced to plead

in whichever court handled their cases. If they did not receive fair trials, or if they disputed the judgments, the only avenue to relief, the appeal, was often closed to them. Hence, the absence of appeals says more about the difficulties defendants faced than it does about the impact of the district court on the dockets of the local Norfolk courts.

Another factor which complicates an understanding of legal administration in Norfolk after the Revolution is that of the frequency of trial for small debt actions brought by petition and summons.(see Chart II). The county court kept its virtual monopoly of small debt actions, but the hustings court tried an increasingly large number of them. The trial of these actions dropped off suddenly in 1787 after a steady five-year rise. This development is indeed baffling, for no other courts could have taken over the trial of small debt actions from the Norfolk courts. Certainly the backlog of cases had not been exhausted, nor did the small farmers and planters suddenly stop buying on credit. Nor was there a sudden increase in the number of actions dismissed or discontinued (these totals were in fact decreasing). At the same time, however, the economy was beginning an upward trend and the need to prosecute small debtors was proportionately decreased.[53]

In addition to the economic upswing, larger creditors were less in need of suing their smaller debtors. Since the British merchants were not yet able to sue for debt in Virginia's courts (and would be unable to until the 1790's), the pressure on native born or resident creditors, who were themselves in debt to the British,

may have eased. A very complicated creditor-debtor relationship existed at the time, much like that of the prewar period. It was known to be very fragile. Small debtors owed petty merchants, who in turn owed larger creditors, who in turn owed even larger creditors. As Myra Rich explains, "If nothing upset the delicately balanced system, if nobody ever wanted to collect what was owed to him, the accounts could have been kept forever with people making payments as they could. . . . But someone always wanted to have his money. . . . His demand always precipitated a chain reaction, perhaps amounting to a small panic, which sooner or later ended in a series of bankruptcies, settlements, or judgments."[54] The combination of a rising economy and lack of British suits may have led to the decreased court activity. If so, it was certainly the calm before the storm, for Virginia's courts experienced a new series of debt actions when British merchants were finally allowed to sue in the state courts.[55]

Neither of Norfolk's courts stopped hearing litigation in the postwar period. Both continued to function. But the movement of cases to the borough court from the county court, and then from both courts to the district court, must raise questions about the efficiency of both these judicial bodies. If the same standards may be applied to determine efficiency in the postwar courts as was used in the prewar courts, a surprising trend emerges. In the county court, a few less attachments were granted and only a few more tried in the five years immediately following the Revolution than in the prewar period. No significant increase in these numbers

was recorded through 1790. Likewise, far fewer writs of alias capias were issued, though a few writs of plurias capias and alias plurias capias were issued.[56] Far fewer writs of scire facias were tried, and far fewer orders against defendants issued. Only the number of conditional orders granted increased, but the court stopped granting these completely in 1785.

The borough court experienced a somewhat similar trend. In the five years following the war (1782-1786), the court issued and tried fewer attachments, the same number of writs of alias capias, and only two writs of plurias capias. The court issued no orders, but a very large number of conditional orders (139 as compared to the prewar total of 26). The rate of trying attachments went up significantly after 1786, as did the rate of trying writs of scire facias. Strangely, alias capias writs and conditional orders were not recorded after 1787, and were presumably not issued.

A comparison of the number of legal instruments used to enforce the courts' will with the number of common law actions tried reveals that the hustings court still had less occasion to resort to such methods. While the county court was forced to resort to an attachment, order, or writ of alias capias or scire facias in a ratio of one to every two actions tried, the hustings court used such methods in a ratio of only one to every four common law actions it tried.[57] The efficiency, or the authority, of both courts had obviously suffered, for such instruments were used in ratios of only one to three and one to five cases respectively in the prewar period.

The method of evaluating efficiency is useful in comparing

the county court with the borough court. It does not necessarily explain why cases were brought to the distirct court. More than efficiency and effectiveness had to be involved. Litigants were concerned about the quality of their trials as well as the effective enforcement of judgments. As the members of both courts were involved in a political struggle over the relationship of the county to the borough at the same time that the district courts were created, litigants may have felt that a better quality of justice would be available from the latter judicial body. Likewise, district courts were to be made up of judges with some degree of legal training. Attorneys may well have preferred to argue cases before them, and thus influenced their clients, where possible, to take actions to those courts originally. While a study of the Suffolk District Court records may clarify the number of cases which turned up in that court rather than in the local Norfolk courts, much more study must be done before the motivations behind this shift can be clearly defined.

One additional observation should be made concerning the post-war administration of justice in Norfolk. As was the case before the war, the use of the petit jury in trials of all major forms of action was widespread after the Revolution. And, as before the war, jury trials were much more frequent in actions on the case where damages were to as assessed, than in simple debt actions. The hustings court experienced jury trials in 90 percent of the other common law actions it tried; the county experienced only 70 percent, but this still compared favorably with the prewar percentage.[58]

Juries were not used as a refuge for defendants. The post-war period saw juries again quite willing to convict defendants, as Tables III and IV illustrate. There was no mass movement to free debtors from their obligations in either court. Nor was there any attempt to side with defendants in actions in trespass, or trespass, assault, and battery, where damages were to be assessed for wrongful injury.

The volume and variety of civil actions tried in the county and borough courts of Norfolk between 1770 and 1790 reveal much about legal administration in Revolutionary Virginia. Litigation flowed in cycles which coincided with economic crises and community disruptions. The Revolutionary War itself brought the trial of civil suits to an almost complete halt in Norfolk. Civil disorder, invasions and depradations, all made the area too unstable for any normal adjudication of disputes.

Once the war was over, Norfolk litigants resorted to their old ways. While the county and borough courts jockeyed for position in the legal and governmental structure of Norfolk, litigants chose which court best met their legal needs, which appeared to be the most efficient, and which had the jurisdiction to rule in their suits. A large number chose to resort to the borough court, which became the real judicial power in Norfolk in terms of the trial of common law actions involving substantial sums of money.

The creation of quarterly sessions may have influenced the Norfolk courts somewhat, organizing their dockets and increasing

their caseload, but in the long-run they had little effect. The district court had a much greater effect upon Norfolk's local courts. There was an immediate impact felt in the borough, and both courts undoubtedly lost cases to the district. Still, by 1790 the number of cases pending in these courts had again begun to rise.

Legislation had some effect on the courts. The economy had a greater effect--downturns pushing creditors to sue for their debts, upswings easing the pressure on debtors. The Revolution disrupted the system but itself brought no change to the kinds and proportions of actions tried, or the procedures followed. As the 1780's progressed, the system experienced minor jolts as it adjusted to changes in the economy, the legal structure of the state, and the increased awareness of litigants concerning the efficiency of local courts. There was no revolution in the Norfolk legal system. There <u>was</u> a slow but perceptible shift in the judicial balance of power. Already the movement of leadership from the county to the city, and from the local to the state government was under way. The Revolution did not cause this shift; it had begun as far back as 1736 and perhaps earlier. But the Revolution did affect Norfolk. Disruption and disorder produced the need for readjustment. Slowly and subtly, that readjustment began.

Chapter III

Criminal Justice in Norfolk, 1770-1790

While the courts in Norfolk spent most of their time trying civil actions, both also adjudicated a number of major and minor criminal prosecutions. Although the criminal jurisdiction of the county court was much wider through most of the two decades under study, both courts tried a substantial number of similar cases. The numbers and kinds of offenses tried before the local courts changed little after the Revolution, but throughout the period there seem to have been outbreaks of "misbehavior," as well as outbreaks of serious crime.

Neither of Norfolk's courts was overly harsh with the persons brought before them, except on a very few occasions during the war, or when the authority of the court had been denounced. The courts' primary concern was to keep the community quiet and to protect its citizens from abnormal behavior, as well as to create at least the appearance of a moral atmosphere.

The most frequent prosecution in the Norfolk courts was for breach of the peace. Almost without fail in a normal year, someone would be brought before each court on a warrant for breach of the peace (sometimes simply called a peace warrant), or for "being of lewd Life and Conversation, and a common Disturber of the Peace." (See Tables V and VI, Appendix B.) Usually these cases were brought individually rather than in groups--there were no prosecutions for mob violence or civil disorder. Most often the defendants were whites, but occasionally a slave

was haled into court upon whose conviction his master would be charged with posting bond to insure his future good behavior.

The courts seem to have been fairly lenient in punishing these offenders. Those convicted of misdemeanors were rarely fined, but rather were ordered to produce bond and security to insure their future good behavior. The amount of the bond and security required depended most upon the length of the defendant's probation, which each court arbitrarily set. The courts also took into account any special circumstances, among them the defendant's ability to pay. The usual amount of a recognizance was a bond of £50 and two securities of £25 each to be held for a probationary period of six months. John Godfrey, however, was given the very stiff bond of £500 and securities of £250 each on a twelve-month probation, while Samuel Gawin was required to provide only £20 bond and £10 for each security on twelve months probation, and William Murphee, a free mulatto, was to be kept in custody until he provided £5 bond and two securities at £2.10 to keep the peace for two months.[1]

During the Revolution, when community security was constantly threatened, the bond that the county court required tended to be much higher, although there are only a few cases by which to judge. In Commonwealth v. James Pinkerton, on a peace warrant, the court set bail at £1000 bond and £500 each for two securities, on twelve months probation. The same was required of Thomas Stewart, charged with disaffection in 1778. Lemuel Miller and Levi Sakes were brought into court on charges of "lewd Life and

Conversation" in the same year, and each was required to post bond and securities totaling £1200.[2]

These stiffer terms were directly related to the war and to the unsettled situation in Norfolk, rather than, say, to the depreciation in value of Virginia's money. As early as March 1782, when the Chesapeake area was still suffering from occasional flareups of fighting, in the case of Commonwealth v. Hollowall and Wainwright, on a peace warrant, bond was set at £100 and securities of only £50 each required. In the borough a year later, John Hall was convicted of being of lewd life and conversation and was required to post bond of only £10 and provide £5 securities for three months good behavior.[3]

In only one instance in either of these courts in the entire period did someone appeal the judgment passed by the magistrates. Significantly, the one instance took place in the hustings court and involved a merchant, Henry Cornick. Cornick had been charged with lewd life and conversation. Though the records do not make clear from what incident the charges stemmed, it is possible they were related to the robbery of his storehouse the night before, for which crime several blacks were tried a week later. At any rate, Cornick obviously felt himself in the right and requested an appeal to the district court, which was granted. This was the only appeal on a criminal prosecution recorded in Norfolk between 1770 and 1790.[4]

The Norfolk courts did not seem to be overly concerned about the moral quality of their community, but they did take steps to

deal with the most outrageous offenders against their society's moral code. As David Flaherty pointed out in a recent study,[5] eighteenth-century American law enforcement officials were more lenient in enforcing moral codes and less likely to associate law and morality than had been the case in the seventeenth century. By the time of the Revolution, magistrates were more concerned with what David Rothman termed the "financial costs of relief," than with the enforcement of moral codes merely for the sake of their enforcement.[6] This trend can be traced, to a certain degree, in Norfolk's legal records. The county court tried a number of persons for bastardy (usually the father rather than the mother of a child, although a few women were presented by the grandjury in 1770, each for having "a base born Child"[7]). Invariably the court judged that the father should provide an arbitrary sum for the maintenance of the child until it reached an age at which it could be bound into apprenticeship.[8] The concern of the court was to avoid, as far as possible, unnecessary costs which would eventually be placed on the community. The court did not fine these persons for their moral offenses.

Secular rulers did not abandon occasional attempts to discourage immorality altogether, however, although the kinds of offenses presented by grandjuries and tried by the local courts narrowed slightly during and after the Revolution. It is not clear how closely the charge of "lewd Life and Conversation" resembled a morals offense, and so it is difficult to attach to that any specific crusade against immorality. But there were other of-

fenses that are more clearly related to the moral code. Before the Revolution the county grandjury presented members of the community for a variety of breaches of the moral code. Joseph Butt was presented by one grandjury for being "a common swearer and not going to church." Henry Butt was delinquent in church attendance too, and Joseph Mitchell had too frequently indulged in profanity.[9] Joshua Wright was presented for "dealing with Negroes and keeping an Open House for slaves on Sabbath days," while Scarborough Tankard came to the attention of the grandjury for selling "liquor to negroes on Sundays to the great disturbance of the neighbors."[10]

The grandjury poked into many aspects of private life. Quite a number of people were presented for keeping "very disorderly houses," and not a few for keeping tippling houses. One unlucky citizen was presented for "gaming in a private home on Sunday."[11] This was after the Revolution when church and state were separated and secular authorities were supposedly less inclined to enforce morality.

Grandjuries presented both men and women for living together in adultery or fornication. Although the presentments for adultery dropped off after 1785, presentments for fornication were quite frequent. They were, in fact, nine times more frequent between 1785 and 1790 than they had been between 1770 and 1775 (see Table VII). This may bring into question two of Flaherty's assertions: first, that the secular authorities had all but "abandoned responsibility for the upholding of sexual

morals to various churches," and, second, that "fornication itself became even less subject to secular control" after the Revolution.[12] Such was not the case in Norfolk immediately following the Revolution. In fact the opposite was true. If the secularization of society, combined with popular attitudes, would indeed cause less stress to be placed on morality in the future,[13] the change had not yet became evident in Norfolk.

Grandjuries presented fairly large numbers of people for various misdemeanors between 1770 and 1790. Few of these indictments were ever brought to trial, however, owing to the unique relationship between church and state in Virginia. Before the war, offenders against society's moral code could pay their fines to the local churchwardens, while minor criminal offenders could pay their fines or enter into recognizance before a single justice of the peace. The need for these cases to be brought to trial was minimal.[14] During and after the Revolution, however, with the disestablishment of the Anglican Church and the separation of church and state, "overseers of the poor" took on the old role played by the parish vestries.[15] Apparently offenders continued to pay fines to these overseers, or to local justices, because there was no increase in the number of indictments tried in the county court.

It would be wrong to assume that the Norfolk grandjuries and magistrates were concerned solely with rounding up moral offenders and social deviants. Often their presentments convey a very serious concern for the quality of life in Norfolk County. Almost every year the grandjuries presented overseers of the

roads for not keeping the roads in proper repair, and occasionally they presented the owners of mill dams who had neglected their property and were thus endangering the community.[16] After the war the jurors added new areas to their investigations and presented an ordinary keeper for "not keeping sufficient beds," and a butcher "for selling unwholesome meats."[17]

One of the most interesting and important things which grand-jury presentments reveal is that immediately before the Revolution, and in the immediate postwar years, many people sought to avoid paying taxes. Just before the war an increasing number of people were presented for "concealing tithables," while after the war a very large number concealed, knowingly or unknowingly, at least some of their taxable property. As the war approached, it might be expected that people would attempt to avoid paying taxes, especially if they assumed some of the money might be used to enforce the king's law, or support the county government. On the other hand, people may have just taken advantage of the situation to ease their own tax burden. After the war, however, people were most assuredly seeking to avoid the burdensome load of taxes which had accumulated during the war, and which were magnified by the postwar depression and the depreciation in value of Virginia's money. That justices were included among those presented[18] indicates the magnitude of the hardship and the universality of resentment toward the state's tax structure.

The trial of minor criminal offenses not only reveals much about the attitudes of Revolutionary society toward morality, poor

relief, community security, and the general quality of life; it also provides suggestions as to how the magistrates viewed themselves. This can be seen most clearly in the number of persons cited for contempt of court. Most contempt cases involved fines for persons who had failed to appear as witnesses after they had entered recognizance to do so, or those who had failed to appear when summoned as jurors. But a few contempt rulings illustrate the courts' self-concept. When a constable was brought before the court on a complaint for neglect of duty, the court fined him the minimal sum of one shilling. But when another person was brought in for "contempt against the execution of a justice," he was fined five shillings.[19] Admittedly this is still a small fine. But consider the case of John Hannon who, "having contemned the [hustings] court's authority," was required to produce bond of £50 and two securities at £25 each for a three-month recognizance. That was the average cost of a six-month recognizance under normal circumstances.[20]

The courts' attitudes toward their authority and dignity were not changed by the Revolution. In fact they were stimulated by it. The hustings court heard the case of James O'Rourke in 1784. O'Rourke's crime is worth reviewing:

> James O'Rourke was this day brought [before] the Court by warrant under the hand of George Kelly Gent: as a person of bad fame speaking words tending to Scandalize the Commonwealth, and in Contempt of the Orders of a Magistrate advising persons to resist his Orders being carried into Execution and speaking warm and abusive Words when before him, tending to a threat of him in the Execution of his Office, and the same being proved by the oath of sundry persons. It is Ordered that

> the Searjeant [sic] take him, and keep him into Custody [sic] till he give Bond and Security . . . to keep the peace and be of good behavior for three months and pay Costs.[21]

O'Rourke was not the usual disturber of the peace. He did not get the usual recognizance of £50 bond and £25 each for securities. His bail was the astounding £1000 bond and £500 each for two securities.

A similar case in the county court illustrates the concern of the magistrates in preserving the dignity and authority of their positions in the postwar years. There Benjamin Putnum had his bail set at £1000 bond and £500 for each security to keep the peace twelve months after "grossly insulting Thomas Brown gent [a justice] in the execution of his office . . ."[22]

The cases of both O'Rourke and Putnum are indeed isolated and atypical, but they are such blatant examples of the magistrates' concern for the contempt of their authority that they must be acknowledged. Both courts were experiencing pressure at that time; both were losing cases to other courts, or realized that they might be in the future; both were experiencing the hostility of the community to overcrowded dockets, the delay of justice, and the overall inefficiency of local legal administration. Little wonder the courts reacted so strongly.

Most of the minor criminal offenses described so far concerned whites. But blacks were brought before the Norfolk courts for such offenses, too. The treatment they received at the hands of the courts was often harsh by modern standards, but often lenient for the eighteenth century.

Most of the blacks brought before the local courts were slaves, and most of the slaves were charged with hogstealing. Such an offense was only tried in the county court in these years. Before the war there were a significant number of these prosecutions; after the war they declined sharply. Most slaves brought before the court were found guilty and punished with the usual penalty of 39 lashes on their bare backs, "well laid on," the success of which punishment is questionable.[23] Only rarely was a slave acquitted of hogstealing charges, but it did happen.[24]

Occasionally slaves were brought into court for committing other misdemeanors. One slave was brought before the county court for "evil behavior." His master was ordered to give £20 bond for two months good behavior. Another slave was haled into court on a peace warrant. His master had to provide £100 bond and security for twelve months good behavior. Perhaps the most interesting case is that of Jack, brought into court for breach of the peace, whose master was ordered to provide £50 bond and security "on the condition that he send him out of the colony and pay the cost of prosecution."[25] Such indicates the attitude of the court toward trouble-making slaves: get them out of the community when possible, otherwise force the owner to have a substantial financial interest in keeping the offender in line.

Free blacks were rarely brought into Norfolk's courts, but when they were they sometimes received much worse treatment than did slaves. Slaves were kept in custody as witnesses and so were free blacks. But if a slave committed an offense like breach of

the peace, he could be bailed easily and quickly by his master. Free blacks tended to be held for long periods of time, presumably because they could not meet the required bond. The usual length of imprisonment for breach of the peace when bond was not provided ran from ten to as high as 69 days for whites. But one free black in 1775 served 94 days before being released, while another waited 183 days for his release.[26]

The trial of whites, free blacks, and slaves accused of major crimes accounted for a small part of the county court's time before the Revolution. Once the war began the trial of white accused criminals became one of the court's primary concerns. Surprisingly the number of slaves tried declined after 1775. After the war, in the borough, the number of such major criminal trials remained fairly small, although some interesting trends developed concerning the percentages of conviction and acquittal.[27]

Prewar examining courts held in Norfolk County almost wholly involved the trial of thieves and counterfeiters. Even as late as November 1775 such accusations were commonplace. But as the war progressed the emphasis of the court changed. In 1777, for instance, five of six persons examined by the county court were examined on charges of treason or "being in arms against the state." In 1778, six of eight accused criminals were examined for combinations of treason, murder, and robbery.[28]

Another wartime change can be noted in the number of persons judged sufficiently guilty to be remanded to the General Court or

Court of Oyer and Terminer in Williamsburg. Before 1775 barely 39 percent of the accused criminals were "remanded to Gaol" to await trial, while between 1777-1779 and 1782-1783 46 percent were. The justices in wartorn Norfolk County were indeed concerned about the county's internal security, and rightfully so. As early as 1775 Tory bands roamed the Norfolk and Princess Anne area. One of the most notorious and daring groups was led by Josiah Phillips. The group terrorized Norfolk and Princess Anne Counties for much of 1777 and 1778. In the latter year, Phillips was captured, tried by a civil court, and executed.[29] Undoubtedly some of those tried for treason, murder, and robbery in Norfolk's county court in 1778 were members of Phillips' band.

Partisan bands were not left leaderless after Phillips died, however, as other Tories stepped in to take his place. Law enforcement officials had their problems. The situation was so bad during the final British invasion of 1781 that Colonel Thomas Newton, Jr., county lieutenant and Norfolk justice, wrote to the governor noting that "Murder is committed and no notice taken of it. . . . A few desparate fellows go about on the sea coasts and large swamps, and do mischief in the night."[30] Even as late as August 1782 the swamps of Princess Anne still held refugees, though they now seemed more anxious to "come in under an offer of immunity" than to keep up their guerilla operations.[31]

Still, the trials in Norfolk went on. In 1782 seven men were arraigned for "High Treason" and all but one were remanded to jail to await trial in the General Court. Only in 1783 did a

decline in the number of both trials and convictions, and a change in the types of charges, take place.

A somewhat different perspective can be gained from the county oyer and terminer trial records for these same years. Just before the war reached Norfolk, a very large number of slaves were tried in the county court. But as the Revolution progressed the number of slave trials declined, although the percentage of convictions rose slightly (see Table X). A large number of slave trials came in 1778, the year Josiah Phillips was captured. Indeed, at least two of the slaves tried may have been part of the Phillips band, as he was known to have had blacks among his group. Sandy was tried on August 3, 1778, for treason, murder, and robbery. He was adjudged guilty of treason and robbery. His punishment was severe and unusual for Norfolk. The court ordered that after he was executed, the sheriff should "hang up the Body of the said Sandy . . . At some Place near that of Execution. where it shall be as conspicious [sic], and as little offensive as may [be?] and there leave it to remain."[32] Two days later another slave, Bob, was tried for treason and robbery and received the same sentence as Sandy. Bob was executed and then hung up near Sandy as a warning to all slaves who dared to commit treason against the state.[33]

Tables IX and XI reveal that in most postwar years few major crimes were tried, at least in the borough court. Likewise, in the trials that were held, convictions were rare. Between 1784 and 1787, no prisoner was ever remanded to the General

Court by the hustings court, nor was any slave convicted of a felony. In 1788, however, a sudden and dramatic change took place. From that year through 1790 slave convictions rose sharply. But even more impressive was the sharp increase in the number of accused criminals remanded to the district court.[34]

Throughout the 1780's there had been verbal attacks on both Norfolk courts, but those against the hustings court rose in tenor and volume in 1788. In that year the borough court had petitioned the Assembly to reconsider a bill making common council positions elective. The members of the court were "alarmed at this unprecedented manner of wresting from them Rights and Privileges . . ."[35] At this same time persons in the county began to pressure the Assembly to remove borough residents from the county commission of the peace and to separate the county from the borough. Thus, it is possible that the hustings court was attempting to show itself vigilant in pursuit of justice, thereby hoping for favorable action by the state's executive and legislative branches.

Although the Revolution increased the incidence of major criminal trials and examinations and brought a change in the kinds of offenses for which the accused were tried, it did not alter the manner in which these trials were conducted. While the right to counsel was supposedly guaranteed in all trials for capital offenses,[36] there is no indication that lawyers represented defendants, white or black, in any of the slave trials or criminal examinations held in Norfolk. Lawyers were inclined to avoid crim-

inal litigation, unless they were very sure that their client was innocent, or unless he was able to pay them a substantial fee. Consequently, few lawyers made themselves available to criminal defendants.[37] The whites and free blacks who were tried before the General or District Courts may have had cousel at their formal trials before those superior judicial bodies. Slaves, who were tried before local courts, went without legal counsel. The quality of justice which they received, then, for this reason alone, may be justifiably considered inferior.

The county and borough courts' order and minute books reveal that the examination of free persons and the trial of slaves accused of felony was an integral part of the administration of justice in Revolutionary Norfolk, as was the trial of minor offenses and the presentments of county grandjuries. They show a society attempting to keep order, to discourage immorality, to secure the community from danger, and to upgrade generally the quality of life. But it is in the wartime records that a special glimpse of the society is provided: a society justifiably afraid for its internal security, afraid that its salve population might take advantage of the situation and rise up in insurrection, afraid that Tory bands might overrun the county, murdering and pillaging and leaving the land as desolate as would an invading army.

Once the War for Independence was over, criminal justice in Norfolk again settled into familiar patterns, judging from the borough records. They indicate no increase in the amount of crime

experienced in the urban area after the war, and no substantial changes in the kinds of offenses for which accused were tried or examined. They do indicate, however, that even criminal justice may have been adversely affected by the political controversies which developed within Norfolk.

Chapter IV

Judicial Personnel: Justices, Aldermen, and Lawyers

No study of the administration of justice in Revolutionary Virginia would be complete were it to neglect an analysis of the men who administered the local legal system and the men who practiced law within it. Their prejudices, their social and economic standings in the community, their legal knowledge and experience, their concern for the maintenance of power--all affected the quality of justice administered in Norfolk. Such a study tells much not only about the men themselves, but about the quality of leadership at a time of crisis within the legal system.

If the Revolution brought little change in the volume and variety of actions tried and the procedures followed in Norfolk's courts, it certainly did cause some changes in the personnel who constituted these courts. By 1783, only seven justices who had been active in 1770 were still sitting on the county court, while by 1790 the number had dwindled to three. The change in personnel on the borough court was less drastic, but fewer men were involved. Still, by 1790 only three of the original aldermen sitting in 1770 were still on the bench (see Tables XIII-XVI, Appendix C). Death, resignation, or forced removal had decimated the ranks of the old county leadership and in their places came a group of young men who were anxious to exercise power in the county.

Two differences were notable among the men named to the county commission or elected as aldermen after 1775. One concerned family ties, the other social and economic status. Be-

fore the war the members of each court had been very closely tied by blood and marriage relationships. Several families had been powerful in the county from the beginning of the eighteenth century, and they continued to be so even after the Revolution was under way. The most important families in the county--Hutchings, Newton, Boush, Wilson--were allied in a very complex relationship of intermarriage. So were the Veale, Porter, Happer, and Godfrey families, the Sweeny, Tabb, and Willoughby families, and, in the borough, the Taylor, Smith, Hansford, and Pollard families, as well as the Moseley, Loyall, Calvert, and Phripp families.[1]

To a certain degree these families retained power during the Revolution, but the shortage of personnel became so serious that men with names unfamiliar in county government were allowed to enter the ranks of local leadership. Men like William Booker, Daniel Sanford, Latimore Halstead, and William King took advantage of the war to gain places on the county commission. But the old families still maintained their dominance: George Kelly married into the Veale-Porter clan which undoubtedly helped him to secure a place on the commission; two more Boushs and four Wilsons were appointed after the war; and the Veale, Happer, and Nash families were newly represented.

In the borough a similar phenomenon took place. There the earliest wartime appointments perpetuated the control of older families: Moseley, Taylor, Hansford; but elections after the war introduced newcomers, like lawyers Thomas Mathews and Richard E. Lee, and merchant Paul Proby. Thus the two courts had to ac-

custom themselves to seeing new faces on the bench, for these were the men available to do the courts' work.

A recent study has shown that the piedmont county of Albemarle in Virginia experienced a decline in the average real and personal property held by the members of its court every ten years between 1760 and 1820. Wealthy citizens took less interest in the court because of its burdensome docket, and the court itself became the target for the disfavor of county residents.[2] While the latter was certainly true in Norfolk also, the former may not have been. Initial, and by no means conclusive, data indicate that the average real property held by the members of the county court was in fact increasing after 1775. The available material suggests that while the average number of slaves held by justices dropped after 1783, the average amount of land in acres owned rose appreciably.[3] This change does not necessarily indicate increased wealth on the part of justices, but that more men who were farmers or planters, rather than merchants, were being appointed to the county court. This also meant that, in terms of personnel, ties were being broken with the borough. Newly appointed justices tended to live on their plantations outside of the borough, while older justices with mercantile connections continued to live in the town, or relocated themselves there after the war.

In the borough a different phenomenon took place. There local power fell into the hands of men, a majority of whom were large merchants who owned, rather than landed estates, lots upon

which they built their warehouses and trading facilities. These postwar aldermen were inclined to invest their profits almost exclusively in mercantile projects, and, except for George Kelly, they did not seek to establish their wealth by investing in large amounts of local acreage. Hence, even though these postwar aldermen owned fewer slaves and less land, they were at least as wealthy as their prewar predecessors.

The average land ownership of postwar justices was well above that of the average eastern landowner. Jackson Turner Main found that in the 1780's average property ownership in tidewater Virginia was 195 acres and four slaves, while many people in the lower tidewater area tended to be landless (55 percent in Princess Anne County). On the average only seven percent of the population held as much land as the average postwar justice.[4] The wealthiest men in the community were still in control of local government.

The increase in the number of planters in the county court may have added to the hostility which grew between the county and the borough in the 1780's. An agrarian-commercial split seems to have been developing. But the hostility was generated initially by local citizens who were not members of the local government, and they perpetuated it until the borough and the county were fully separated. The arenas in which this conflict was most evident were the county and borough courts.

When the borough court petitioned to have its powers broadened in 1782 and 1784, it did so for very pragmatic reasons.[5]

The court wished to provide essential services to borough residents, and it also wanted to be able to try accused criminals for offenses allegedly committed within the confines of the borough. The members did not necessarily wish to liberate the borough from the county. In fact, with so many borough residents on the county court, a case may conceivably be made that the borough leadership wished no separation at all. They wanted instead to establish firmly the dominance of the borough over the county by retaining the county court within the borough and by keeping it stocked with town residents who could influence county decision-making in favor of the borough.

The real pressure for separation came from the county. This pressure began to build because of internal problems in the county court. The increase in the number of cases after the war created an overburdened docket which the county court was slow to relieve. Soon the members recognized that suitors were taking actions to the hustings court. Their first effort to stem this tide was to order the court to sit three days, instead of the customary two, for the trial of civil litigation.[6] Shortly thereafter, the quarterly sessions courts were established. But the trend could not be stopped completely. The county court began to try an increased number of actions, but the borough court still tried a greater number. Morale on the county court dipped. Justices began to resign, claiming that personal and business affairs demanded more of their time.[7] Others retained their seats, but refused to qualify as sheriff, complaining that the cost of as-

suming the office was far too great, and the remuneration far too small, for them to be able to accept the position.[8] Meanwhile, attendance began to fall off, even at quarterly sessions.[9]

At about the same time, pressure from the county began to grow to have new men appointed to the county court, to have the borough residents on the court replaced, and to have the court removed from the town. As early as 1783 a petition had been sent to the General Assembly requesting this latter measure, but it was forcefully denounced in an opposing petition signed by six aldermen, three justices, and the borough clerk. Stating that the county had been used "for upwards of one hundred years" to having courts held in the borough, the petitioners asserted that "business has always been carried on with the utmost dispatch & to the general Satisfaction."[10] The people, however, were apparently not generally satisfied, for another petition was presented three years later, informing the Assembly that the justices who were borough residents had decided to order a courthouse and prison built in the town, "which together with the other taxes and Necessary expenses of Government, will be a distressing burthen to many of us in our present Indigent Situation; occasioned by the Scarcity of Specie, and a general Stagnation of Commerce."[11] This petition was signed by eight justices. But the idea of removing the court from the town had not yet caught on with many of the county leaders. A counter-petition, signed by ten justices and two lawyers, as well as several aldermen, represented that the original petitioners wished to remove the court

only to Portsmouth, three-quarters of a mile away, while in Norfolk "juries can at all times be had. six of the County Magistrates residing in Town. can always make a Court . . ."[12]

The frustration of county residents was intense. The acts "concerning the jurisdiction of corporation courts" had been helpful, but still borough residents on the county court influenced county decision-making. The county residents tried to stack the court by petitioning it to fill the vacancies created by recent resignations with county men. The court complied, sending a copy of the petition along with its recommendations to the governor and council.[13] The next month, these new men took their seats on the county commission.

This was not enough, however. County residents were still dissatisfied with the preponderant influence of borough residents in their affairs. In August 1789, the county grandjury made presentments of some sitting justices who had judged their own cases, belonged to another jurisdiction, refused "to put the legal and necessary questions of the administration of justice of the said court when repeatedly called for and demanded," and kept the county court in the borough. One month later, these presentments were forwarded to the county representatives in the Assembly.[14]

To cap this effort, county residents embarked on an intensive petitioning campaign. They circulated three identical petitions throughout the county, collecting a total of 546 signatures. These petitions, which apparently convinced the Assembly to remove the county court from the borough and to sever the

relations between the two, were violent denunciations of local government.

Each petition told the Assembly that the petitioners had been complaining and cataloging their grievances for the past seven years. Those grievances were occasioned by a group of men, formerly county residents, but now residing in the borough, who continued to direct the county's affairs, "contrary to the principles of honor and justice, and Good Government." The petitioners noted the inconvenience of the borough to 7/8 of the county's citizens, cut off as they were by the Chesapeake Bay, Elizabeth River, and Eastern Branch. They followed this up with a list of charges against the borough justices. The petitioners accused the justices of "withholding the legal and Necessary questions of the Court, where they did not square with the Interest of the Borough, . . . Entering of Record, the most inflamatory Protests, against the most laudable Motions, and low Subterfuge of Seceding [sic], in Order to break up the Court, when the complaints of the people [are] before Them . . ." The petitioners called on the Assembly to grant the "Complete Separation" of the <u>county from the borough,</u> the creation of two new courts out of the Portsmouth and Elizabeth River Parishes, and the annexation of Norfolk Borough to Princess Anne County.[15]

The charge that several justices influenced county decision-making in the "Interest of the Borough" testifies to the effect which individuals had on the local administration of justice. The Norfolk Borough Court was the more efficient of

Norfolk's two courts, not only because it met regularly, discharged business rapidly, and had greater authority over its litigants, but also because the borough residents who were justices deliberately sabotaged the administration of justice in the county in an effort to move the center of judicial power to the town. Such an accusation is substantiated by those same county petitions of 1789 which concluded by praying "that the inhabitants of the Borough of Norfolk, be precluded from sitting as Judges in the County Court, . . . or from interfering with or in any Manner procrastinating, the administration of Justice in the said Court . . ."[16] Thus the county residents recognized the power of individuals to influence the shape which the administration of justice took in Revolutionary Norfolk. Removal of the county court from the borough was only half the solution. A wholesale alteration in the personnel constituting the court had to be made. By the 1790's, the most important and necessary steps in that direction had been taken.

Another group which influenced the administration of justice in Norfolk's courts was the legal profession--the small number of lawyers who practiced law in Norfolk's courts. Lawyers earned powerful positions in the county both before and after the war. And though the Revolution produced an almost complete change in the personnel who practiced law, it did not destroy the profession. After the war, lawyers became, if anything, even more powerful and more necessary to the functioning of the legal system.[17]

The men who practiced law before the Norfolk courts in the early 1770's mixed experience with inexperience.[18] Six lawyers were practicing in Norfolk at the start of the decade, and all but one of them had been in the profession a number of years. James Holt had begun to practice as early as the 1750's. Walter Lyon, the deputy king's attorney, had practiced almost as long, as had William R. W. Curle. Of the training these men had little is known. None of them studied at the Inns of Court, and probably none attended a colonial college for any formal higher education. Yet, these men should not be discounted. As Stanley Katz has recently pointed out, it is easy to underestimate colonial lawyers and overvalue English legal education. American lawyers evidenced "a surprisingly familiarity with contemporary English law and a high degree of technical competence . . ."[19]

The legal profession was slow to develop in Virginia, mainly because, as in many other colonies, there was hostility toward the profession, especially among the colonial leadership, in the seventeenth century. But after the 1680's, the profession began to grow in Virginia. Hostility toward "pettifoggers" and "mercenary attorneys" remained, but colonials came to the realization that they needed the services that lawyers might provide. In order to exclude the unlearned, the House of Burgesses enacted a series of laws in the eighteenth century, culminating in 1745 in an act providing for the licensing of prospective attorneys by a board of three men "learned in the law," chosen by the governor, who would examine candidates on various points of law.[20]

The "best" lawyers in the colony gravitated toward two legal centers in the colony, the General Court and the Williamsburg Hustings Court. Only a select few of the lawyers in Virginia could practice before the General Court. Although there was no distinction between barristers and attorneys as in England, and although lawyers usually handled all aspects of their clients' cases, there was a distinction between those who practiced in the General Court and those who practiced in the inferior courts. Alan Smith found that lawyers with college educations or long years of experience dominated the practice before the General Court. Young lawyers began their practices in the inferior courts, usually hoping to graduate to the superior court in future years.[21]

Other lawyers preferred to practice in the Williamsburg Hustings Court. That court had a unique position in Virginia's legal structure. By a 1736 statute, this court's jurisdiction had been widened to allow it to try any suit involving city residents or persons having businesses in the city, whether or not the cause of action occurred within the territorial limits of the city. Thus, merchants could sue for payment of debt (the most frequent action) either in the county in which the debtor resided, or in Williamsburg.[22]

As well as attracting a certain number of court actions from the Norfolk courts, the Williamsburg Hustings Court also drew some of the better elements in the legal profession to the capitol. But the Norfolk Hustings Court was itself attractive to lawyers

who wanted to make a healthy living. As in several other colonies, the mercantile center drew lawyers, for the abundance of cases which were to be tried there promised lucrative fees. The merchants themselves wanted experienced men to practice in their area, for they had an interest in bringing the more complicated English legal system to America, because of their relationships with British merchants.[23] So, better lawyers came to Norfolk Borough, and as a result, the county court benefited, for it was included within the circuit these lawyers rode.[24]

Only six lawyers practiced regularly in Norfolk in 1770-1771. But with the commercial slump and decline in business, and the consequent rise in litigation in 1772 and 1773, the ranks of the legal profession in Norfolk swelled. By the end of 1772, four new men produced their credentials for the county and borough courts. Three of these men were new to the practice of law having just been licensed.[25] The other came to the courts in a more unusual manner. In October 1772, Thomas Claiborne produced for the county court a certificate from the King William County clerk indicating that he had practiced law there. He was given the oath of an attorney by the Norfolk County Court, and allowed to enter practice before it. He argued two cases that same day.[26]

The most well known of the lawyers who practiced in the pre-Revolutionary Norfolk courts was Thomas Burke. Later a delegate to the Continental Congress and governor of North Carolina, Burke's experience in Norfolk was typical of local lawyers. Born

in Galway, Ireland, about 1747, Burke attended a university as a young man where he studied medicine, but soon he emigrated to America. He continued to study medicine in Virginia, and set up a practice in Accomac County. He found the legal profession to be more profitable, however, so he "read the law" "for a few months" and took an examination to practice, reportedly passing "with very great applause." By his own account his practice was soon considerable. While in Norfolk he apparently practiced both medicine and law, and soon developed a profitable sideline of collecting bills for merchants. Sometime in 1772-1773, Burke emigrated to North Carolina, "following the example of a host of Virginians who saw new opportunities in a fertile, relatively unsettled country."[27]

Many lawyers acted as debt collectors for merchants; many others built up plantations as Burke did in North Carolina. But few of the lawyers left for the relatively unsettled Carolina wilderness. Several lawyers practiced in Norfolk for over 20 years. These men gradually grew powerful in Norfolk's politics and government. James Holt, for instance, married Ann O'Sheal, a widow, daughter of Samuel Boush III, who was also related to the Veale-Porter clan. He was later referred to by Goodrich Boush as "my worthy friend."[28] Such good standing with members of the county court paid off for Holt, who sat as a Burgess for the county in 1772 and 1774. The same was true for Thomas Claiborne, who married Uphan Sweeny, and thus was also allied to the Boush clan (Anne Sweeny married Arthur Boush). He was re-

warded with the post of deputy king's attorney for Norfolk on the death of Walter Lyon in 1773, less than a year after he had joined the Norfolk Bar.[29]

When the Revolution came, practically all Virginia lawyers were patriots. Most lawyers in the colonies, excluding placemen, were Whigs, and though some colonies lost their best lawyers to the Loyalist side, this was not the case in Virginia. And while men like Jefferson, Henry, and Wythe have drawn the most attention, less well-known lawyers, like those who practiced in Norfolk, played a significant revolutionary role. In fact, the lawyers from the inferior courts of Virginia, like those from Massachusetts, provided the backbone of the Revolutionary movement.[30]

In Norfolk, lawyers were at the center of the Revolutionary movement. All but one of the eight attorneys actively practicing in 1774 sat on a local county or borough committee. James Holt, in addition, represented the county in the Conventions of 1775 and 1776, while William Curle represented the borough in the 1776 Conventions. Both were appointed to the committee charged with drafting the declaration of rights and the state constitution.[31]

If the Revolutionary War disrupted Norfolk's legal system in general, it severely, though temporarily, halted the practice of law. Most of Norfolk's lawyers abandoned their practices during the war, and few returned to them afterward. Several lawyers actually moved up the political scale when the Revolution

came. James Holt was appointed to the Admiralty Court in December 1775. He relinquished that post shortly to take a seat in the newly created Virginia Senate, which he held until his death in 1779. William Curle served as Norfolk Borough representative in the House of Delegates from 1776 to 1779, when he was elected to the Court of Admiralty. William Robinson, meanwhile, served in the House for Princess Anne County from 1776 to 1779, and again in 1782. John Brickell left the county court in 1777, moved to Nansemond County, and served in the House in 1779.[32]

In Norfolk the legal profession dwindled rapidly once the Revolution began. William Robinson qualified as an attorney under the new state constitution in August 1776, and was immediately recommended for commonwealth's attorney. James Tate qualified at the same court. A year later John Brickell qualified as an attorney, but undoubtedly he had little business. Even James Holt rarely appeared in the county court to act as an attorney. The legal profession was utterly stagnant during the war because there were few cases to be tried.[33]

The profession began to revive in 1780. In that year Robinson and Thomas Mathews qualified before the hustings court, as did James Nimmo, who had been an attorney in Williamsburg before the war. By 1783, Robinson and Nimmo were arguing cases on a regular basis, as was another young attorney, Richard Evers Lee.[34]

The depleted ranks of the legal profession in Norfolk filled up rapidly after the war. As had been the case in the 1770's, the largest number came in the years of the postwar depression and rise

in civil litigation.[35] These men differed little from their pre-war predecessors. Though probably younger on the whole, and less well experienced, they were eager and talented. They had received much the same training as their predecessors--merely reading the law or serving an apprenticeship--although John Nivison did study at William and Mary where he was an original member of Phi Beta Kappa.[36]

If lawyers had been powerful and prestigious before the war, they were even more influential after it. As far as economic and social standing were concerned, they ranked as high in the socio-economic hierarchy as many justices and aldermen. Thomas Mathews, for instance, owned eleven slaves and one of the few four-wheeled carriages in Norfolk by the time he became a delegate to the lower house for Norfolk Borough in 1784. Already a member of the borough court, this immigrant from the British West Indies, prominent lawyer, and Revolutionary War general, would later serve as Speaker of the House of Delegates until his retirement in 1794. His presence on the Norfolk Bar certainly enhanced its reputation.[37]

Another example of the prominent Norfolk lawyer was Richard Evers Lee. His case is quite informative as to how powerful members of the legal profession became after the war. Lee came to power "through the ranks." He began his legal career in Norfolk in the last years of the Revolution. By 1783 he was elected to the Norfolk Common Council. One year later he was appointed deputy attorney for Norfolk Borough. Though without family connections in Norfolk, Lee was elected to the hustings court by

the aldermen in 1789. In 1790, upon the resignation of Edmund Randolph as borough recorder, Lee was recommended for the position, which he assumed shortly thereafter.[38] He transformed the office of recorder from an honorary one to an active one, sitting regularly at court sessions. His legal expertise and his mercantile connections enhanced his relations with the borough leadership. So did his financial position. Lee owned 2045 acres and two lots rated at £467, thus making him richer than most of his fellow aldermen.

The need for lawyers in post-Revolutionary society was as great as it had ever been before the war. The talent of these men was not overlooked in Norfolk. Besides the leadership of the bar like Robinson, Mathews, and Lee, other lawyers took advantage of the need for their skills, and prospered. No less than five of these post-Revolutionary lawyers served in the General Assembly, two eventually became borough recorders, and one a mayor of Norfolk. The legal profession flourished; and despite any hostility which small farmers and debtors may have felt toward them,[39] lawyers gained both influence and status in the community.

Conclusion

The Revolutionary era was one of the most important periods in American history. As the colonies threw off the restraints of colonial status and became states, they were free to pursue whatever goals they desired. But the transition from colonies into nation, while often difficult and frustrating, was rarely "revolutionary." This is most evident in Virginia, where essentially the same leadership held power before and after the Revolution, and where most of the same institutions continued to flourish after the war.

The history of the legal system in Norfolk provides a striking example of just how smooth that transition could be. The Norfolk area was the section of Virginia which suffered most from the Revolutionary War. The records of the local courts of justice in Norfolk show that the war produced enormous disruption within the community itself and the legal system in particular. The records give further evidence, however, that with the coming of peace, a legal system surprisingly intact emerged in full control of its traditional domain. Legal forms and procedures remained virtually unchanged. The basic structure and powers of the individual courts remained the same. Many pre-Revolutionary justices of the peace and aldermen continued in power, though some unfamiliar names and faces did emerge in the local government. The most significant and clearly discernible alteration came in the apparent shift in the judicial balance of power from

the county court to the hustings court, which ultimately resulted in the complete separation of the borough from Norfolk County.

Historians have traditionally viewed the Revolution in Virginia as having been fairly conservative in both its direction and its tone. Norfolk's legal history surely confirms that view. Aside from the disruption which it caused, the Revolution brought little change to the legal system. Indeed, the system was influenced far more by other factors, such as the economy, state legislation, and the political rivalries between the borough and county. Individuals perhaps played the greatest role in shaping the administration of justice. Concerned litigants, knowledgeable lawyers, dissatisfied citizens, fearful judges--all influenced the law and its administration, whether they realized it or not, and whether they wanted to or not.

The situation in Norfolk in the Revolutionary era suggests that Virginians could not and would not ignore their courts. The courts provided essential administrative services. The courts were local government. Even more important, the people in this county realized that society as they knew it, whether they liked it or not, could not function successfully without a sophisticated legal system. The system which had existed before the Revolution had its faults--quite a few of them. But the system was a familiar one, one that operated reasonably well at most times, and one that had a long and useful tradition behind it. As it turned out, that system was the only viable means by which to secure a desired end--the administration of justice in a new republic.

Notes to Introduction

1. Lawrence M. Friedman, A History of American Law (New York, 1973), 96-97; Mark DeWolfe Howe, "The Process of Outlawry in New York: A Study of the Selective Reception of English Law," in David H. Flaherty, ed., Essays in the History of Early American Law (Chapel Hill, 1969), 434-438; Charles T. Cullen, "Completing the Revisal of the Laws in Post-Revolutionary Virginia," Virginia Magazine of History and Biography, 82 (Jan. 1974), 84-99.

2. Two recent exceptions are Charles T. Cullen, "St. George Tucker and Law in Virginia, 1772-1804," (unpubl. Ph.D. diss., Univ. of Virginia, 1971), and the excellent article by William E. Nelson, "Emerging Notions of Modern Criminal Law in the Revolutionary Era: An Historical Perspective," New York University Law Review, XLVI (1967), 450-482.

3. Some important suggestions concerning the use of local court records are provided in Susie M. Ames, "Law-in-Action: The Court Records of Virginia's Eastern Shore," William and Mary Quarterly, 3rd ser., IV (April 1947), 177-191, and George Lee Haskins, "Court Records and History," ibid., V (Oct. 1948), 547-552.

4. Robert E. Brown, Middle-Class Democracy and the Revolution in Massachusetts, 1691-1780 (2nd ed.; New York, Evanston & London, 1969), 328; Gordon S. Wood, The Creation of the American Republic, 1776-1787 (2nd ed.; New York, 1972), 426.

5. Daniel B. Smith, "Changing Patterns of Local Leadership: Justices of the Peace in Albemarle County, Virginia, 1760-1820," (unpubl. master's thesis, Univ. of Virginia, 1973).

6. Bradley Chapin, "Colonial and Revolutionary Origins of the American Law of Treason," William and Mary Quarterly, 3rd ser., XVII (Jan. 1960), 8. See also Thomas R. Meehan, Courts, Cases, and Counselors in Revolutionary and Post-Revolutionary Pennsylvania," Pennsylvania Magazine of History and Biography, XCI (Jan. 1967), 3-34. Meehan found that Pennsylvanians "shed their traditional reluctance to go to court" during and after the war, and became highly litigious, especially in the west. Ibid., 21-22.

7. Friedman, American Law, 42

8. Ibid., 95, 98.

Notes to Chapter I

1. Thomas J. Wertenbaker, Norfolk, Historic Southern Port (Durham, N. C., 1931), 28-31. Other areas of Virginia experiment-

ed with wheat, corn, and other crops in an attempt to broaden the base of their economy. But even with governmental encouragement, these few small projects were doomed to failure, chiefly because the price of tobacco before the Revolution was never consistently low enough to be ruinous to the Chesapeake economy. Only in the Norfolk area, where the shift was due to natural circumstances, did large-scale production of grains take place in Virginia. See Aubrey C. Land, "Economic Behavior in a Planting Society: The Eighteenth-Century Chesapeake," Journal of Southern History, XXXIII (Nov. 1967), 471-472.

2. Cullen, "St. George Tucker," 44note, suggests that "what happened in Amelia and Chesterfield Counties [during and after the Revolution] may be taken as representative of what generally occurred [in Virginia]." Mr. Cullen, however, has chosen two adjacent counties, both lying in the Southside. Would the affairs of these counties significantly coincide with those of Norfolk, on the coast, exposed to invasion and deprivation, or with Augusta in the west, essentially a frontier area far from most of the battlefields of the war, but perhaps equally threatened by Britain's Indian allies? Undoubtedly there are some similarities among the counties of Virginia in the period, but there are not enough to yet assume that there exists a fairly accurate, much less complete, picture of justice in Revolutionary Virginia.

3. Charles B. Cross, Jr., The County Court, 1637-1904, Norfolk County, Virginia (Portsmouth, Va., 1964), 3; George Lewis Chumbley, Colonial Justice in Virginia (Richmond, 1938), 55; Oliver P. Chitwood, Justice in Colonial Virginia (reprint; New York, 1971), 74. Lower Norfolk was divided into Norfolk and Princess Anne counties by the General Assembly in 1691.

4. Chumbley, Colonial Justice, 57, 6, 55.

5. Charles S. Sydnor, Gentlemen Freeholders: Political Practices in Washington's Virginia (Chepal Hill, 1952), 82.

6. Tadahisa Kuroda, "The County Court System of Virginia from the Revolution to the Civil War" (unpubl. Ph.D. diss., Columbia Univ., 1969), 5.

7. Sydnor, Gentlemen Freeholders, 80; Chitwood, Justice in Virginia, 81-82.

8. William Waller Hening, ed., The Statutes at Large; Being a Collection of All the Laws of Virginia (1619-1792) (13 vols.; Richmond, 1809-1823), V, 491.

9. Albert Ogden Porter, County Government in Virginia. A Legislative History, 1607-1904 (New York, 1947), 51.

10. Edwin C. Surrency, "The Courts in the American Colonies," American Journal of Legal History, XI (1967), 349.

11. Norfolk County Minute Book 1773-1774 (microfilm, Virginia State Library, Richmond), 29 December, 1773. (Hereinafter cited as NCMB.)

12. Norfolk County Order Book 1768-1771 (microfilm, VSL, Richmond), 169(18 May, 1770). (Hereinafter cited as NCOB.)

13. NCMB 1774-1775, 29 March, 1774.

14. Chitwood, Justice in Virginia, 76-77, 94. See Chapter IV for the situation in Norfolk.

15. Surrency, "Courts in the Colonies," 260; Jackson Turner Main, The Social Structure of Revolutionary America (Princeton, 1965), 205-206.

16. Alan M. Smith, "Virginia Lawyers, 1680-1776: The Birth of an American Profession" (unpubl. Ph.D. diss., Johns Hopkins Univ., 1967), 8-9, 31, 13.

17. Ibid., 13, 19; Friedman, American Law, 29, 42.

18. Mrs. Philip W. (Martha Woodroof) Hiden, "Virginia County Court Records: Their Background and Scope," Virginia Magazine of History and Biography, 54 (Jan. 1946), 11; Chumbley, Colonial Justice, 61. An idea of the range of the clerk's duties can be obtained by a glance at the acts regulating his fees. See, for example, Hening, ed., Statutes, V, 331-335.

19. Chitwood, Justice in Virginia, 109-110; Surrency, "Courts in the Colonies," 375. For the duties of the sheriff and his fees, see Hening, ed., Statutes, V, 337-339. The reluctance to take on the office of sheriff increased after the Revolution. See Chapter IV.

20. Edward Ingle, Local Institutions of Virginia (Baltimore, 1885), 97; Surrency, "Courts in the Colonies," 375.

21. Chitwood, Justice in Virginia, 120-121. The General Court met twice yearly and consisted of the governor and the members of his Council.

22. Ibid., 103-104; Robert Magnum Barrow, "Williamsburg and Norfolk: Municipal Government and Justice in Colonial Virginia" (unpubl. master's thesis, College of William and Mary, 1960), 5-6.

23. Norfolk City Hustings and Corporation Court Order Book #2, 1770-1782 (microfilm, VSL, Richmond), 1-2(22 Jan., 1770), 47(19 Nov., 1770), Order Book #3, 1783-1785, 125(22 Nov., 1784), (hereinafter cited as NHOB); NCMB 1783-1785, 87(15 April, 1784); Barrow, "Williamsburg and Norfolk," 91; Cross, County Court, 67-68.

24. Norfolk Borough Charter, in Ingle, Local Institutions, 125-126.

25. Barrow, "Williamsburg and Norfolk," 63.

26. Ibid.

27. Ingle, Local Institutions, 112-113; Barrow, "Williamsburg and Norfolk," 24-25.

28. "An act for establishing county courts, and for regulating and settling the proceedings therein," Hening, ed., Statutes, V, 489-508.

29. Ibid., 497. 30. Ibid., 496.

31. Chitwood, Justice in Virginia, 86-87.

32. Hening, ed., Statutes, V, 495-496.

33. Ibid., 498-499. 34. Ibid., 492-494.

35. When the courts heard suits "in Chancery" they applied a special body of jurisprudence called "equity." Equity was essentially "justice" as ascertained by natural reason or ethical insight, but independent of the formulated body of law. "Glossary," in Flaherty, ed., Essays, 515.

36. Hening, ed., Statutes, V, 501-504.

37. These suits "in Chancery" usually concerned the division of property of persons who had died intestate, though sometimes they involved controversies which might normally be tried in ejectment or detinue, but which had certain circumstances that caused the litigants to seek a ruling in "equity" rather than by dependence upon the normal procedures and limitations of law. Invariably these suits involved specifically real and/or personal property, rather than damages or money awards as in common law actions.

38. Hening, ed., Statutes, V, 505-506.

39. Quoted in Cross, County Court, 4.

40. NCOB 1773-1775, 8(17 Dec., 1773).

41. NCMB 1783-1785, 178(16 June, 1785).

42. NHOB #2, 1770-1782, 59(25 Feb., 1771).

43. Arthur P. Scott, Criminal Law in Colonial Virginia (Chicago, 1930), 53, 71-72, 74-75, 80-81; NCOB 1768-1771, 225 (16 May, 1771).

44. Scott, Criminal Law, 59-60; George Webb, The Office and

Authority of a Justice of the Peace (Williamsburg, 1736), 109-111; Chitwood, Justice in Virginia, 96-97.

45. Chitwood, Justice in Virginia, 57-63, 66; Smith, "Virginia Lawyers," 6.

46. Scott, Criminal Law, 45-46.

47. The Virginia Constitution, 1776, in Hening, ed., Statutes, IX, 117; "An ordinance to enable the present magistrates and officers to continue the administration of justice . . . ," ibid., 126-128.

48. Porter, County Government, 152, 122-123, 110, 112, 124-125.

49. The three were Thomas Newton, Jr., Cary Hansford, and Robert Taylor. Newton and Taylor were also prewar J.P.s in Norfolk County. George Kelly, a local merchant, was also a J.P. in the county, commissioned during the war. Thomas Mathews was a lawyer practicing in the Norfolk area when he was elected an alderman.

50. Cullen, "St. George Tucker," 38-40.

51. Cross, County Court, 67-68.

52. Hening, ed., Statutes, XI, 158.

53. "An act for incorporating the town of Petersburg, and for other purposes," ibid., 386-387.

54. "An act for reforming the county courts, and for other purposes," ibid., XII, 32-36.

55. Quoted in Cullen, "St. George Tucker," 62-63.

56. Hening, ed., Statutes, XII, 32.

57. Porter, County Government, 109; Kuroda, "County Court System," 74-75.

58. Kuroda, "County Court System," 75.

59. "An act to amend an act intuled sic An act for reforming the county courts, and for other purposes," Hening, ed., Statutes, XII, 468. Charles Cullen notes that this measure was barely a reform, as it allowed the monthly courts to share much of the jurisdiction earlier confined to the quarterly sessions courts. In effect, the monthly courts were restored their pre-1785 powers. "St. George Tucker," 103-104.

60. "An act for establishing district courts, and for regulating the general court," ibid., 730-763; Porter, County Govern-

ment, 160.

61. Hening, ed., Statutes, XII, 731.

62. Ibid., 735-736, 753-754; Porter, County Government, 159-160.

63. Hening, ed., Statutes, XII, 642-643.

64. This happened four times in 1784, six times in 1785, and twice each in 1786 and 1787. At other times borough residents acted as presiding justices, thus influencing the court's decision-making. This was more frequent, occurring 22 times between 1784 and 1787.

65. Cross, County Court, 68. The problem concerning jurors was partially settled in 1790, when the assembly enacted that Norfolk Borough residents were not to serve as jurors in grandjuries impaneled for the county, and that the hustings court had authority to impanel its own grandjuries four times yearly on days coinciding with the quarterly sessions courts. Hening, ed., Statutes, XIII, 201.

66. Hening, ed., Statutes, XII, 642-643.

67. Ibid., 643.

68. NCOB 1788-1790, 96(20 Aug., 1789), 108(18 Sept., 1789).

69. Legislative Petition, Norfolk Borough, June 28, 1788.(VSL, Richmond). The clause to which the borough officials referred was somewhat ambiguous. It noted that "nothing in this act contained, shall be construed to prejudice or in any manner affect . . . the charters of the city of Williamsburg, and the Borough of Norfolk, or either of them." Hening, ed., Statutes, XII, 643. This undoubtedly referred to the right of the hustings court to select its own members, however, and was not meant to exempt it from the act's provisions. Nor could it have been related to the jurisdiction of the court, for that had already been altered, and indeed widened much beyond that granted to it by the charter, by subsequent acts of the Assembly. Thus, a limitation of the court's jurisdiction was perfectly legal and would not have altered the borough's charter.

70. "An act to amend an act for regulating the rights of cities, towns, and boroughs, and the jurisdiction of corporation courts," Hening, ed., Statutes, XII, 775-776. As early as October 1788 aldermen began to resign their county commissions. Each new Assembly act or grandjury presentment moved another aldermen to action. Of all the alderman also on the county court, only Thomas Newton, Jr., remained a justice and resigned his seat on the borough court. By March 1790 all of the six aldermen had made their decisions and taken action on them. NCOB 1788-1790,

46(17 Oct., 1788), 97(20 Aug., 1789); NHOB #5, 1788-1792, 79(19 Jan., 1789), 96(23 May, 1789), 156(22March, 1790).

71. NCOB 1788-1790, 96(20 Aug., 1789), 108(18 Sept., 1789).

72. Hening, ed., Statutes, XIII, 71-72.

Notes to Chapter II

1. See, for example, Charles Cullen's treatment of the Amelia and Chesterfield County Courts during the Revolution in "St. George Tucker," 44-45.

2. The common law action of Debt lay for the recovery of a specific sum of money, or a sum which could be readily reduced to a certainty. Assumpsit was a form of action which lay for the recovery of damages for the nonperformance of a simple contract. Henry Campbell Black, Black's Law Dictionary (4th ed.; St. Paul, 1968), 492; "Glossary," in Flaherty, ed., Essays, 514.

In eighteenth-century England, assumpsit had already grown in importance so as to cover "the old province of Debt, and a much larger province as well." F. W. Maitland, The Forms of Action at Common Law, ed. by A. H. Claytor and W. J. Whittacker (Cambridge, England, 1971), 58. From the Norfolk records it appears that assumpsit did not replace debt entirely in colonial America, although it was clearly preferred by litigants (influenced by their attorneys or the court clerks?). Hence, though the colonial legal system was indeed growing more formal and looking more and more like that of England (as in the use of prescribed forms of action), it was free to make use of innovations, to hold onto older forms, and, to a certain degree, go its own way. The forms of action were reduced to simple headings, and the "worst excesses of English law" were not fully adopted, as was noted by Friedman, American Law, 50.

3. Black's Law Dictionary, 436. The action of Covenant was apparently more formal than assumpsit, which dealt specifically with "simple contracts." Having emerged in the Middle Ages as a protection to lessees from breach of duty by their lessors, covenant developed into a form for enforcing a promise made in writing and having the promissor's seal affixed to it. Frederick G. Kempin, Jr., Historical Introduction to Anglo-American Law in a Nutshell (2nd ed.; St. Paul, 1973), 193-194. The action may have been too formal and outdated, as well as too cumbersome, for Norfolk litigants. They preferred action on the case for breach of promise, and perhaps even used assumpsit for actions which in England might have required covenant.

4. Marc Egnal and Joseph A. Ernst, "An Economic Interpretation of the American Revolution," William and Mary Quarterly, 3rd ser.,

XXIX (Jan. 1972), 14, 27-28.

5. Land, "Economic Behavior in a Planting Society," 472, 477-478.

6. Ibid., 476. See also Emory G. Evans, "Private Indebtedness and the Revolution in Virginia, 1776 to 1796," William and Mary Quarterly, 3rd ser., XXVIII (July 1971), 349-374.

7. Issac Samuel Harrell, Loyalism in Virginia: Chapters in the Economic History of the Revolution (Durham, N. C., 1926); Lawrence H. Gipson, "Virginia Planter Debts before the American Revolution," Virginia Magazine of History and Biography, 69 (July 1961), 259-277; Emory G. Evans, "Planter Indebtedness and the Coming of the Revolution in Virginia," William and Mary Quarterly, 3rd ser., XIX (Oct. 1962), 511-533; Evans, "Private Indebtedness and the Revolution," 349-374.

8. Another piece of evidence which indicates that most defendants were residents is that a large number of actions "abated" immediately after the war, the defendant in each "being no inhabitant" of the borough.

9. Perhaps too much can be made of directly attaching the small farmer in the county to the small debt action, and the merchant and large landowner to the common law actions provided for debts above £5. Indeed, merchants often made use of the small debt action by bringing several against a single defendant (perhaps a different one for each item of merchandise purchased or each debt contracted). Lawyers, likewise, sued for overdue legal fees by this action. NCOB 1768-1771, 238(22 March, 1771), 244(23 March, 1771); NHOB #2, 1770-1782, 164(25 Jan., 1773).

10. Smith, "Virginia Lawyers," 4-5.

11. A writ of scire facias was most commonly used to revive a judgment after a certain lapse of time, or change of parties, or otherwise to have execution of a judgment, in which case it was merely a continuation of the original action. Black's Law Dictionary, 1513. The county court tried 20 of these writs before 1774; the hustings court tried only seven.

12. Capias is the general name given to a group of writs which commonly require an officer to take a defendant into custody. An alias is the second issuance of a writ, when the first issuance has been ineffective. "Glossary," in Flaherty, ed., Essays, 514, 515. The county court issued 41 of these writs before 1774; the hustings court, nine.

13. Two capias writs were used most frequently in colonial Virginia. Capias ad Satisfaciendum was a writ of execution which

commanded the sheriff to take and keep the party named so that he would appear before the court on a certain day to satisfy the damages or debt and damages in a certain action. Capias ad respondendum (commonly called simply capias) required the defendant to be safely secured so that he could appear in court merely to answer the plaintiff in an action. Black's Law Dictionary, 261-262.

14. In the county court these instruments were resorted to in a ratio of one to every 2.9 common law actions tried (this excludes suits in chancery, actions of replevy bond, trover, and covenant, and motions for executions, which were generally few in number). The hustings court had a much better ratio of one to every 4.6 actions tried. If actions by petition and summons are included, the ratio climbs to one per every 7.4 actions tried in the county court, one per every 5.6 actions tried in the borough court. Unfortunately, it is not yet possible to compare these ratios with those of other Virginia courts, so the conclusion that these rates are favorable remains shaky.

15. Land, "Economic Behavior in a Planting Society," 482-483; Evans, "Planter Indebtedness," 523.

16. James Holt, a prominent Norfolk lawyer, left a sizable portion of his estate to his niece, provided she never married a Scotchman. Norfolk County Will Book 2, 1772-1788 (microfilm, VSL, Richmond), 122.

17. Quoted in William M. Dabney, "Letters from Norfolk: Scottish Merchants View the Revolutionary Crisis," in Darret B. Rutman, ed., The Old Dominion; Essays for Thomas Perkins Abernathy (Charlottesville, 1964), 114.

18. Land, "Economic Behavior in a Planting Society," 479note.

19. The percentage of debt-related actions tried in the borough court reached a high of 93 percent in 1773, but dropped in 1774 to 57 percent. It had been rising slowly but steadily since 1770, when it had been 81 percent. The percentages in the county court fluctuated from year to year: 1770, 96%; 1771, 94%; 1772, 89%; 1773, 98%; 1774, 94%. (All percentages are approximate.)

20. Smith, "Virginia Lawyers," 21-22.

21. Ejectment was a mixed common law action which lay for the recovery of the possession of land and for damages for the unlawful detention of its possession. The use of ejectment in Norfolk included all the various fictions which had grown up around the action in England. See Arthur George Sedwick and Frederick Scott Wait, "The History of the Action of Ejectment in England and the United States," in Select Essays in Anglo-American Legal History

(3 vols.; Boston, 1909), III, 611-645. The Norfolk litigants were quite imaginative. Instead of using the usual names of John Doe and Richard Roe for their ficticious lessees, they concocted "Simpleton Spendall," "Solomon Saveall," "Ferdinando Thrustout," and "Timothy Trytitle."

22. This is exactly what happened after the anti-inoculation riots in Norfolk in 1768-69. Some of that litigation was apparently still pending in 1773. Dabney, "Letters from Norfolk," 113-114; NHOB #2, 1770-1782, 178(24 March, 1773).

23. It would be very helpful to know just who these jurors were in terms of their occupations and social and economic standings in the community. Unfortunately, the great lack of evidence, and especially the lack of tax records which were not kept until the 1780's, makes this an all but impossible effort. One student has noted, however, that juries in the borough court often consisted of bystanders and spectators, and often constables and tavern keepers whose ordinaries were situated nearby the courthouse were included. Barrow, "Williamsburg and Norfolk," 72. The same is undoubtedly true for the county court, as its courthouse was also located in Norfolk Borough.

24. H. J. Eckenrode, The Revolution in Virginia (Boston & New York, 1916), 34, 41-42; Larry Bowman, "The Virginia County Committees of Safety, 1774-1776," Virginia Magazine of History and Biography, 79 (July 1971), 323.

25. Eckenrode, Revolution in Virginia, 45.

26. Charles Washington Coleman, "The County Committees of 1774-'75 in Virginia," William and Mary Quarterly, 1st ser., V (April 1897), 246.

27. Cullen, "St. George Tucker," 34-35.

28. NCOB 1773-1775, 81(19 Oct. 1775).

29. NHOB #2, 1770-1782, 224(20 Feb., 1775).

30. Eckenrode, Revolution in Virginia, 60-61, 67, 70, 83-84, 86-87.

31. Cullen, "St. George Tucker," 35-36.

32. NCOB 1776-1779, 16 August, 1776.

33. Cross, County Court, 65.

34. "An act to empower the justices of the County of Norfolk to hold Courts at such places as they shall appoint . . . ," Hening, ed., Statutes, IX, 231-233.

35. Cullen, "St. George Tucker," 44-45.

36. NCOB 1776-1779, 20 February, 1778.

37. Ibid., 19 March, 1778.

38. Rogers Dey Whichard, The History of Lower Tidewater Virginia (3 vols.; New York, 1959), I, 305.

39. Wertenbaker, Historic Southern Port, 77.

40. Ibid., 79.

41. NHOB #2, 1770-1782, 226(24 Jan., 1780).

42. Hening, ed., Statutes, X, 422. The suspension was removed in November 1781. Ibid., 455.

43. Cullen, "St. George Tucker," 49, 53. This date was later moved up to March 1, 1783.

44. Evans, Private Indebtedness and the Revolution," 361; Myra Lakoff Rich, "The Experimental Years: Virginia, 1781-1789," (unpubl. Ph.D. diss., Yale Univ., 1966), 146; W. V. Low, "Merchant and Planter Relations in Post-Revolutionary Virginia, 1783-1789," Virginia Magazine of History and Biography, 61 (July 1953), 308-309.

45. Quoted in Rich, "The Experimental Years," 239.

46. Merrill Jensen, The New Nation. A History of the United States During the Confederation, 1781-1789 (New York, 1950), 187, 192-193; Evans, "Private Indebtedness and the Revolution," 361.

47. Jensen, The New Nation, 279.

48. Ibid., 279-281; Evans, "Private Indebtedness and the Revolution," 363, 371; Harrell, Loyalism in Virginia, 162-171.

49. This factor may be partially explained in that litigants occasionally brought petitions in trover for property under £5 in value unlawfully distrained. (Trover was a newer form of action which more than covered the old domain of detinue.) Since most detinue actions dealt with slaves who were valued at much more than £5, this cannot be a complete explanation.

50. See Chapter I.

51. Both Norfolk courts apparently granted every request for appeal made to them provided the proper bond and securities were provided by the appellant. Postwar appeals by year were as fol-

lows: County Court, 1782-2, 1785-1, 1786-2, 1787-3, 1788-3, 1789-1, 1790-1; Hustings Court, 1782-1, 1784-4, 1785-4, 1786-1, 1787-4, 1788-1, 1789-4, 1790-1. The postwar writs of certiorari came in 1785 and 1786. I have found evidence of only one such writ produced in the county court in this period. It came in 1770.

52. The hustings court was much more likely to grant new trials after the Revolution than was the county court. While the aldermen granted a new trial only once in the 1770-1775 period, they granted seventeen after the war. The county court overturned no jury verdicts in the five years before the war, and only four after it.

Usually it was the plaintiff's attorney who objected to a jury verdict and convinced the court to declare a new trial. Defendants were, however, more inclined to dispute judgments after the war. Some did so by having their attorneys file motions in arrest of judgment, which would then be argued at the next court session. While between them the Norfolk courts heard only three motions in arrest of judgment before 1775, after the war the county court heard twelve and the hustings court nineteen. From the evidence I have uncovered, it appears that only two of these postwar attempts at arresting judgments were successful.

The evidence just given points out very clearly that these two courts were inclined to favor plaintiffs over defendants. This may also suggest why the number of judgments for defendants was so low. If the members of the courts had any say in the matter, they would attempt to insure the protection of property and the sanctity of account books and promissory notes.

53. This is the impression given by Forrest McDonald, E Pluribus Unum: The Formation of the American Republic, 1776-1790 (Boston, 1965), 76. He notes an upturn in the Virginia economy beginning as early as 1786-87. This would seem to fit with the total number of actions brought in the Norfolk courts, which peaked in 1785-1787. But more than this must account for the decline in small debt actions, which dropped well below their prewar levels.

54. Rich, "The Experimental Years," 83.

55. Harrell, Loyalism in Virginia, 173.

56. A plurias is the third issuance of a writ after the first two issues have proved ineffective. The court stopped issuing these various capias writs after 1786.

57. The ratio was 1/3.4 between 1782-86 in the hustings court, while in the county court the rate was 1/1.3. If small debt actions are included the ratios for the 1782-86 period rise to 1/3.9 (hustings) and 1/4.4 (county); for the entire period (1782-90) they rise to 1/5.1 (hustings) and 1/6.9 (county).

58. The percentage of jury trials in all debt actions tried in the county court between 1782 and 1790 stood at 33, while for the hustings court the percentage was 56 (up from a prewar percentage of 42). Seventy-eight percent of the actions in case where tried by jury in the county court (up from about 54 percent before the Revolution), while 74 percent were tried by jury in the hustings court (up from 59 percent).

Notes to Chapter III

1. NCOB 1773-1775, 7(16 Dec., 1773); NCOB 1771-1773, 159(18 March, 1773), 71(21 May, 1772).

2. NCOB 1776-1779, 18 June, 1778, 17 July, 1778, 20 Nov., 1778.

3. NCOB 1782-1783, 11(22 March, 1782); NHOB #3, 1782-1785, 23 (19 May, 1783). The courts were lenient with first offenders only, as the same John Hall found out two years later. Haled before the borough court again for lewd life and conversation, Hall saw the amount of his bond and securities increased tenfold to £100 and £50 each. Ibid., 137(24 Jan., 1785).

4. NHOB #5, 1788-1792, 147(23 Nov., 1789), 147-149(30 Nov., 1789).

5. David H. Flaherty, "Law and the Enforcement of Morals in Early America," Perspectives in American History, V (1971), 203-253.

6. David J. Rothman, The Discovery of the Asylum (2nd ed.; Boston & Toronto, 1971), 28.

7. NCOB 1768-1771, 166(17 May, 1770).

8. Ibid., 169-170(18 May, 1770), 183(20 July, 1770); NCOB 1773-1775, 49(20 May, 1774), 52(21 May, 1774), 67(16 Feb., 1775).

9. NCOB 1768-1771, 166(17 May, 1770); NCOB 1771-1773, 35(21 Nov., 1771).

10. NCOB 1768-1771, 255(16 May, 1771); NCOB 1771-1773, 168(20 May, 1773).

11. NCOB 1771-1773, 168(20 May, 1773); NCOB 1773-1775, 45(19 May, 1774), 73(18 May, 1775); NCOB 1786-1787, 136(15 Nov., 1787).

12. Flaherty, "Law and the Enforcement of Morals," 233, 246.

13. Nelson, "Emerging Notions of Modern Criminal Law," 455, 458.

14. Scott, Criminal Law, 75.

15. "An act for dissolving several vestries and for other purposes," Hening, ed., Statutes, IX, 525, 526; H. J. Eckenrode, Separation of Church and State in Virginia (Richmond, 1910), 115.

16. NCOB 1771-1773, 168(20 May, 1773); NCMB 1783-1785, 215(17 Nov., 1785); NCOB 1786-1787, 39-40(17 Aug., 1786).

17. NCMB 1783-1785, 92(20 May, 1784); NCOB 1788-1790, 24(21 Aug., 1788).

18. NCOB 1782-1783, 80-81(21 Nov., 1782).

19. NCOB 1768-1771, 181(19 July, 1770), 194(19 Aug., 1770).

20. NHOB #2, 1770-1782, 202(20 Sept., 1773).

21. NHOB #3, 1783-1785, 71-72(25 May, 1784).

22. NCOB 1786-1787, 36(20 July, 1786).

23. James Holt's slave Coffee was brought before the county court in 1770 for hogstealing and sentenced to 39 lashes. The same slave was back before the court three years later for the same offense. He received the same punishment. NCOB 1768-1771, 164(17 May, 1770); NCOB 1773-1775, 16(17 Feb., 1774).

24. NCOB 1771-1773, 101(19 March, 1773); NCOB 1788-1790, 2(16 Jan., 1788).

25. NCOB 1768-1771, 223(21 Dec., 1770); NCOB 1771-1773, 71(21 May, 1771), 196(20 Aug., 1773).

26. NCMB 1773-1774, 20-22(29 April, 1773); NCOB 1776-1779, 7 October, 1777.

27. Making a comparative study of criminal trials before and after the Revolution is difficult. The minute books of the county court between 1770-1772 and after 1785 are missing (although no criminal trials were recorded in 1784 and 1785). However, a qualified comparison can be made with the borough court, which received full jurisdiction over criminal offenses committed within the borough in 1784.

28. The kinds of cases tried by year break down as follows: 1773, 2 counterfeiting, 3 assault, 2 breaking and entering, robbery, 1 felony (unqualified); 1774, 1 suspicion of feloniously receiving stolen goods, 1 theft; 1775, 4 theft, 4 suspicion of felony; 1777, 1 robbery, 4 treason, 1 being in arms against the state; 1778, 1 murder, 3 high treason, murder, and robbery, 2 treason and robbery, 1 suspicion of felony; 1779, 1 suspicion of

treason, 2 treason, 6 being adherents to the King of Great Britain; 1782, 7 high treason; 1783, 1 horsestealing, 1 assault and murder, 1 mutiny.

29. Wertenbaker, Historic Southern Port, 77

30. Quoted in ibid.

31. Ibid., 77-78.

32. NCOB 1776-1779, 3 August, 1778.

33. Ibid., 5 August, 1778. The charges brought against slaves in the county oyer and terminer trials by year were as follows: 1773,.breaking and entering, robbery-5, robbery-1, felony-1; 1774, breaking and entering, robbery-2, felony-2, pickpocket-1, suspicion of felony-1; 1775, breaking and entering, robbery-3, robbery-2, suspicion of felony-5, murder-2; 1777, felony-1; 1778, breaking and entering, robbery-2, treason, murder, and robbery-2; 1779, suspicion of felony-1; 1782, robbery-1; 1783, housebreaking, robbery, hogstealing, rape-1.

34. The charges brought against accused criminals in the borough examining courts by year were as follows: 1784, robbery-1, murder-1, highway robbery-2; 1785, suspicion of being felons escaped from Richmond jail-5; 1786, shoplifting-1; 1787, pickpocket-1; 1788, breaking and entering, robbery-1; 1789, forgery-1, assault-1, breaking and entering, robbery-4; 1790, murder-1, breaking and entering, robbery-1.

The charges brought against slaves in borough courts of oyer and terminer by year were as follows: 1785, breaking and entering, robbery-4; 1788, breaking and entering, robbery-3; 1789, assault-1, breaking and entering, robbery-4; 1790, breaking and entering, robbery-1.

35. Legislative Petition, Norfolk Borough, June 28, 1788. The magistrates referred to an act of December 1787, "An act to amend the chater of the borough of Norfolk," Hening, ed., Statutes, XII, 609-610.

36. Scott, Criminal Law, 77, 79; Smith, "Virginia Lawyers," 313.

37. Smith, "Virginia Lawyers," 313-314. See also Milton M. Klein, "The Rise of the New York Bar: The Legal Career of William Livingston," in Flaherty, ed., Essays, 405.

Notes to Chapter IV

1. Interfamily relationships were derived from Barrow, "Williamsburg and Norfolk," 119-121; Robert Armistead Stewart, "The Boush Family," The Researcher, II (Jan., 1927), 118-124; Mrs. Russell S. Barrett, "Marriage Bonds of Norfolk County," William and Mary Quarterly, 2nd ser., VIII (April 1928), 99-110, (July 1928), 170-187.

2. Smith, "Changing Patterns of Local Leadership," 2, 8-9.

3. An analysis of the wealth of prewar justices is complicated by the loss of many Norfolk wills and deeds. The problem is further complicated by the vague language used in the extant wills. George Veale referred to his four plantations in Norfolk County though he gave no indication of the number of acres involved. The same holds true for James Nicholson, Arthur Boush, Henry Bressie, and several others. A search of the county's prewar deed books would be helpful, but as the economic status of the court personnel was only of secondary importance in this study, it was not undertaken. Finally, since many of the justices were merchants, their monetary assets were largely tied up in merchandise and shipping. The amounts involved, where available, were not included in the accompanying tables.

4. Jackson Turner Main, "The Distribution of Property in Post-Revolutionary Virginia," Mississippi Valley Historical Review, XLI (Sept. 1954), 254, 244note, 245note.

5. For the legislation and changes in the court structure referred to in the following section, see Chapter I.

6. NCOB 1783-1785, 194(23 July, 1785).

7. Ibid., 121(19 Aug., 1784), 131(16 Sept., 1784); NCOB 1786-1787, 75(16 Feb., 1787), 115(19 July, 1787).

8. NCOB 1788-1790, 3(20 March, 1788), 15(20 June, 1788), 49 (17 Oct., 1788), 57(22 Nov., 1788), 152(16 Aug., 1790). Robert Taylor wrote to Andrew Ronald in 1788 explaining that "in the present state of the County, the office would ruin anyone who may undertake its duties . . ." William P. Palmer, ed., Calendar of Virginia State Papers (11 vols.; Richmond, 1875-1893), IV, 416.

9. NCOB 1786-1787, 160(19 May, 1787); NCOB 1788-1790, 9(15 May, 1788), 73(21 May, 1789), 109(19 Nov., 1789), 127(18 March, 1790).

10. Legislative Petition, Norfolk County, June 17, 1783.

11. Ibid., November 2, 1786.

12. Ibid., November 2, 1786.

13. NCOB 1788-1790, 94(16 July, 1789). The petition came from the upper district of St. Brides Parish, situated in the southeastern corner of Norfolk County, far from the Norfolk-Portsmouth "metropolitan area." The complied by recommending Josiah and Robert Butt, James Grimes, James Wilson, Sr., and William Wilson, Jr., to be justices.

14. Ibid., 95-96(20 Aug., 1789), 108(18 Sept., 1789).

15. Legislative Petition, Norfolk County, October 20, 1789).

16. Ibid., emphasis added.

17. This point of view contrast with the traditional views of Roscoe Pound, Anton-Mermann Chroust, and Richard Ellis, among others. Each of these historians concluded that there was widespread hostility to the legal profession after the Revolution for a number of reasons, including the postwar depression which made debtors look for scapegoats and find them in the legal profession, the lack of proper training for large numbers of the bar, and "a strong, and at times unreasonable dislike of everything English, including the English common law," in which American lawyers were trained and experienced. See Roscoe Pound, The Formative Era of American Law (reprint; Gloucester, Mass., 1960), 6-7; Richard E. Ellis, The Jeffersonian Crisis: Courts and Politics in the Young Republic (2nd ed.; New York, 1974), 111-112; Anton-Hermann Chroust, The Rise of the Legal Profession in America (2 vols.; Norman, Okla., 1965), II, 5, 11.

The evidence from the Norfolk court records points to no widespread hostility toward the legal profession. In fact the use of lawyers increased after the war. Lawyers appeared in almost every major action before the Revolution, but in 48 percent of the cases only one party was represented. Between 1784 and 1790, that percentage dropped to 33.

18. The lawyers who practiced before the Norfolk courts in 1770-1775 were James Holt, William Roscow Wilson Curle, Walter Lyon, Thomas Burke, John Brickell, William Robinson, Andrew Ronald, William Davis, and Benjamin Crooker.

19. Stanley N. Katz, "Looking Backward: The Early History of American Law," University of Chicago Law Review, XXXIII (1966), 870-871.

20. Chitwood, Justice in Virginia, 111, 118-119.

21. Smith, "Virginia Lawyers," 301, 115.

22. Chumbley, Colonial Justice, 93-94; Robert Polk Thomson, "The Merchant in Virginia, 1700-1775" (unpubl. Ph.D. diss., Univ.

of Wisconsin, 1951), 280.

23. Klein, "Rise of the New York Bar," 393, 399; Richard B. Morris, "Legalism versus Revolutionary Doctrine in New England," in Flaherty, ed., Essays, 420.

24. Though most of the lawyers in Norfolk resided in town or in the county, several lived in other counties. Undoubtedly most rode circuit from local court to court, which included the Norfolk courts and probably those of Princess Anne, Nansemond, and Isle of Wight counties. William Curle came to Norfolk on a regular basis from Hampton in Elizabeth City County.

25. NCOB 1771-1773, 37(21 Nov., 1771), 39(22 Nov., 1771), 54 (19 March, 1772), 112(17 Sept., 1772).

26. Ibid., 126, 128(15 Oct., 1772).

27. Beth G. Crabtree, North Carolina Governors, 1585-1958 (Raleigh, 1958), 49; Elisha P. Douglass, "Thomas Burke, Disillusioned Democrat," North Carolina Historical Review, XXVI (April 1949), 151-154. For other studies of Burke see Jennings B. Saunders, "Thomas Burke in the Continental Congress," ibid., IX (Jan. 1932), 22-37, and John S. Watterson III, "The Ordeal of Thomas Burke," ibid., XLVIII (April 1971), 95-117.

28. "Holt Family," Tyler's Quarterly Historical and Geneological Magazine, VII (April 1926), 282; Norfolk County Will Book 2, 1772-1788, 176.

29. Barrow, "Williamsburg and Norfolk," 121; NCOB 1771-1773, 157(18 March, 1773).

30. John Alonzo George, "Virginia Loyalists, 1775-1783," Richmond College Historical Papers, I (June 1916), 185; Morris, "Legalism versus Revolutionary Doctrine," 418; Charles Robert McKirdy, "A Bar Divided: The Lawyers of Massachusetts and the American Revolution," American Journal of Legal History, XVI (1972), 211.

31. Coleman, "The County Committees," 103, 246, 248, 255; Lyon Gardiner Tyler, ed., Encyclopedia of Virginia Biography (5 vols.; New York, 1915), I, 259-260, II, 8. The only lawyer who did not sit on a committee was Andrew Ronald, brother of the Scottish merchant William Ronald. Although he stayed in the state throughout the war, Ronald was felt to be "exceedingly lukewarm in his loyalty to the American cause." Harrell, Loyalism in Virginia, 165note. Ronald apparently moved to Richmond sometime after 1777, where he continued to practice law. After the war, he acted with Henry Tazewell as an examiner of prospective

lawyers, practiced before the state's superior courts, and was one of the lawyers who represented British merchants in the first British debt case tried in Virginia, November 1791, in Richmond Circuit Court (Jones v. Walker). Palmer, ed., Calendar of State Papers, III, 117; Cullen, "St. George Tucker," 96-97; Harrell, Loyalism in Virginia, 163-164.

32. Earl G. Swem and John W. Williams, comps., A Register of the General Assembly of Virginia, 1776-1918, and of the Constitutional Conventions (Richmond, 1918), 3, 5, 7, 365, 423, 351.

33. NCOB 1776-1779, 16 August, 1776, 17 July, 1777, 21 August, 1778.

34. NHOB #2, 1770-1782, 227(20 March, 1780), 230(24 April, 1780).

35. In 1783, John Barret joined the Norfolk Bar; in 1784, John Nivison, William Nimmo, and Thomas Wishart were admitted to practice; in 1785, Robert Goodwin and Simon Thomas Reid produced their licenses; and in 1787, William Nivison joined the bar.

36. Lyon G. Tyler, "Original Records of the Phi Beta Kappa Society," William and Mary Quarterly, 1st ser., IV (April, 1896), 215.

37. E. Griffith Dodson, Speakers and Clerks of the Virginia House of Delegates (Richmond, 1959), 27.

38. NHOB #3, 1783-1785, 106(23 August, 1784); NHOB #5, 1788-1792, 98(25 May, 1789), 171(24 March, 1790), 178(26 April, 1790); Norfolk City: Minutes of the Common Council of the Borough of Norfolk, 1736-1798 (microfilm, VSL, Richmond), 81(15 Sept., 1783).

39. Ellis, Jeffersonian Crisis, 111-112; Main, Social Structure, 204.

Appendix A

Table I — Actions decided - Norfolk County Court, 1770-1790

	1770	1771	1772	1773	1774	1775	1776	1777	1778	1779	1780
Debt	22	31	47	25	30				2		
Case	35	36	105	71	41	3				1	
assumpsit	33	29	78	64	31	3				1	
breach of promise		2	12	6	7						
slander	1	1	4	1	1						
unidentified	1	4	7		3						
Detinue		1	3	2	1						
Ejectment	2	8	1	2							
Trespass	1	1	7	1	2						
Trespass, Assault & Battery	2	2	4	2	2				1		
Petition & Summons	147	184	150	206	84						

Appendix A

Table I (continued)

	1781	1782	1783	1784	1785	1786	1787	1788	1789	1790
Debt		16	16	17	17	37	64	61	59	57
Case		13	10	18	23	37	55	33	16	26
assumpsit				9	13	34	39	21	9	21
breach of promise				5	6	2	15	11	6	4
slander								1		
unidentified		13	10	4	4	1	1		1	1
Detinue		2				1				
Ejectment		1			1					
Trespass		1		2	4	4	1	3	1	1
Trespass, Assault & Battery						1	3			1
Petition & Summons		12	104	106	125	149	201	131	83	40

Source: Norfolk County Order Books (microfilm, Virginia State Library, Richmond) for the years 1770-1790.

Appendix A

Table II — Actions decided - Norfolk Hustings Court, 1770-1790

	1770	1771	1772	1773	1774	1775	1776	1777	1778	1779	1780
Debt	17	16	45	27	6						1
Case	66	40	98	66	11						4
assumpsit	54	30	74	56	10						4
breach of promise		2	11	4							
slander	4	3	3								
unidentified	8	5	10	6	1						
Detinue	2	1	5								
Ejectment		2			1						
Trespass	3	2	3	2	1						
Trespass, Assault & Battery	3	1	7	1	1						
Petition & Summons	20	19	22	38	2						

Appendix A

Table II (continued)

	1781	1782	1783	1784	1785	1786	1787	1788	1789	1790
Debt		3	32	39	59	51	47	57	11	34
Case		13	50	67	127	84	70	51	30	43
assumpsit		12	45	57	94	54	50	36	22	30
breach of promise						1	5	1		
slander			1							
unidentified		1	4	10	33	29	15	14	8	13
Detinue		1	4	2	1	2	1			
Ejectment				1						
Trespass		1			1					
Trespass, Assault & Battery				2	8	5		2	3	3
Petition & Summons		1	7	16	17	37	75	46	46	36

Source: Norfolk City Hustings and Corporation Court Order Books (microfilm, VSL, Richmond) for the years 1770-1790.

Appendix A

Table III Jury Trials - Norfolk County Court, 1770-1790*

Action	1770	1771	1772	1773	1774	1778	1779	1782	1783
Debt	6	6	17(1)	6	11(1)				6
Case	12(1)	15(2)	46(8)	39(9)	34(6)		1	7(2)	8
Detinue		1	3(1)	1	1			2	
Ejectment		7(3)	1	2(1)	1				
Trespass	1		7(4)	1	3(1)			1	
Trespass, Assault & Battery		1	3	2(2)	2	1			1

* Numbers in parentheses indicate verdicts in favor of the defendant.

Appendix A

Table III (continued)

Action	1784	1785	1786	1787	1788	1789	1790
Debt		8	16	25	24	27	27
Case	14(1)	20(2)	29(2)	55(7)	26(4)	13(1)	18
Detinue			1				
Ejectment							
Trespass	2	3(1)	4(3)	1	3		
Trespass, Assault & Battery			1	3			1

Source: Norfolk County Order Books for the years 1770-1790. (Only the years in which jury trials took place are included in this table).

Appendix A

Table IV — Jury Trials - Norfolk Hustings Court, 1770-1790*

Action	1770	1771	1772	1773	1774	1780	1782	1783
Debt	4	6(1)	24(3)	17	2		3	10
Case	38(7)	22(7)	60(6)	37(8)	7(1)	3	13(4)	35(7)
Detinue	1	1	5(1)					3(1)
Ejectment		1(1)						
Trespass	2(1)	2	2(2)	2(1)			1	
Trespass, Assault & Battery	3		6(2)	1	1			

* Numbers in parentheses indicate verdicts in favor of the defendant.

Appendix A

Table IV (continued)

Action	1784	1785	1786	1787	1788	1789	1790
Debt	17	34(5)	34(3)	30	26(1)	4	19(1)
Case	44(5)	105(13)	64(6)	55(2)	32(3)	26(2)	32(3)
Detinue	2(1)	1(1)	2				
Ejectment	1						
Trespass		1					
Trespass, Assault & Battery	2	7(3)	5(1)			3	3

Source: Norfolk City Hustings and Corporation Court Order Books for the years 1770-1790. (Only the years in which jury trials took place are included in this table.)

Appendix B

Table V Minor Criminal Prosecutions, Norfolk County, 1770-1790

Offense	1770	1771	1772	1773	1774	1775	1776	1777	1778	1779	1780
breach of the peace	3		3	3	1	1		2	1	1	
contempt	1	1	2	4							
hogstealing	2	4	1	3	3						
lewd life	1			2					2		
bastardy	1	3	1		3	1					
presentment	2		2	1							
complaint	1		1		1						

Appendix B

Table V (continued)

Offense	1781	1782	1783	1784	1785	1786	1787	1788	1789	1790
breach of the peace		1		4	3	6	2	2		3
contempt		1	10			1		1	16	11
hogstealing				1				2		
lewd life										1
bastardy		2	2					1		
presentment				5	4	5				
complaint		2								

Source: Norfolk County Order Books for the years 1770-1790.

Appendix B

Table VI Minor Criminal Prosecutions, Norfolk Borough, 1770-1790

Offense	1770	1771	1772	1773	1774	1775	1783	1784	1785	1786	1787	1788	1789	1790
breach of the peace	10		1	1							2	4	1	1
contempt			2	1			1	5	2		4	4	10	6
lewd life	3		1	5	1	2	1	2	1				1	2
misbehavior			2							1				
ill fame				1				1						4
complaint				1										
summons													4	6

Source: Norfolk City Hustings and Corporation Court Order Books for the years 1770-1790. (There were no misdemeanor trials in the hustings court between 1775 and 1783.)

Appendix B

Table VII Grandjury Presentments, Norfolk County, 1770-1790

Presentment	1770	1771	1772	1773	1774	1775	1782	1783	1784	1785	1786	1787	1788	1789	1790
overseers of the roads			2	5	3		1	2	2	6	5	4			3
bastardy	3	1													
tippling house	1					20					1			1	
adultery		1				3		2	3	1					
fornication						2				1	4	8	1		5
concealing tithables or taxable property	3	5		18	1	3	83	1			25	2			
retailing liquor illegally											2	2			5
disorderly house				5	5										
other	2	5	1	2			4	1	10	2	4	28	1	1	4

Source: Norfolk County Order Books for the years 1770-1790. (No grandjuries were impaneled in Norfolk between 1775 and 1782.)

Appendix B

Table VIII

Examining Courts, Norfolk County, 1772-1782

	1772	1773	1774	1775	1777	1778	1779	1782	1783
Total cases	6	8	2	8	6	8	9	7	3
remanded	3	4	0	3	4	5	0	6	0
discharged	3	4	2	5	2	3	9	1	3

Source: Norfolk County Minute Books (microfilm, VSL, Richmond) for the years 1773-1785

Table IX

Examining Courts, Norfolk Borough, 1784-1790

	1784	1785	1786	1787	1788	1789	1790
Total cases	3	5	1	1	1	6	2
remanded	0	0	0	0	1	5	2
discharged	3	5	1	1	0	1	0

Source: Norfolk City Hustings and Corporation Court Order Books for the years 1784-1790.

Appendix B

Table X

Oyer and Terminer (Slave) Trials, Norfolk County, 1772-1783

	1772	1773	1774	1775	1777	1778	1779	1782	1783
Total cases	8	7	6	12	1	4	1	1	1
convicted	4	3	3	4	0	4	1	0	1
acquitted	4	4	3	8	1	0	0	1	0
pardoned	0	1	1	1	0	0	0	0	0
benefit of clergy	2	1	1	0	0	1	1	0	1

Source: Norfolk County Minute Books for the years 1773-1783.

Table XI

Oyer and Terminier (Slave) Trials, Norfolk Borough, 1785-1790

	1785	1786	1787	1788	1789	1790
Total cases	4	0	0	3	5	1
convicted	0			3	1	0
acquitted	4			0	4	1
pardoned	0			0	0	0
benefit of clergy	0			1	1	0

Source: Norfolk City Hustings and Corporation Court Order Books for the years 1784-1790.

Appendix C

Table XII

Norfolk Justices, 1770-1775

Name	Tenure	Acres	Lots	Slaves	
George Veale	1749-76	1225[a]	5	51	riding chair
James Webb	1754-84				
William Aitchison	1759-75	275		7	riding chair
John Tatem	1759-79?				
Thomas Veale	1759-	1700[a]	14	3	
Matthew Godfrey	1759-	577		8	
Maximilian Calvert	1761-75?	[a]	7	5	
Joseph Hutchings	1761-77?	1370		20	
Cornelius Calvert	1764-88	150	1	17	
John Hutchings, Jr.	1764-86	160			
Samuel Happer	1764-83	[a]		8	
John Portlock	1764-78	460		10	
John Wilson	1767-80?	400		5	riding chair
Malachi Wilson	1767-88	2168½		41	
Thomas Newton, Jr.	1767-	[b]	1	1	riding chair
John Taylor, Jr.	1768-72	[a]		6	
David Porter	1768-82?				
Matthew Phripp	1768-80	[a]	5		riding chair
Goodrich Boush	1768-82	[a]	4	7	
Bassett Moseley	1773-82			5	riding chair
Robert Taylor	1773-89		1	6	riding chair
John Brickell	1773-78?				
Arthur Boush	1773-79	450[a]	1	3	
William Smith	1773-87	2354		44	riding chair
James Nicholson	1774-78	12[a]		4	riding chair
James Archdeacon	1775-82				
Humphrey Roberts	1775-77?	568	3		
		8969½	42	251	

Average land owned--460 acres Average number of slaves--13

[a] undisclosed amount of land described in will

[b] 4836 acres valued a £688 held jointly by Thomas Newton, Jr., George Kelly, and Patrick Wright (1788).

Sources: Norfolk County Will Book 2, 1772-1788 (microfilm, VSL, Richmond); Norfolk County Personal Property Tax Lists, 1782, 1788; Norfolk County Land Tax Lists, 1788; Norfolk Borough Personal Property Tax Lists, 1782, 1788; Norfolk Borough Land Tax Lists, 1788 (VSL, Richmond); "Land and Slave Owners, Princess Anne County, 1771, 1772, 1773, and 1774," Lower Norfolk County Virginia Antiquary, ed. by Edward W. James (5 vols.; reprint; New York, 1951), I, 4-6; "Land and Slave Owners, Princess Anne County, 1775," ibid., III, 100-101.

Appendix C

Table XIII

Norfolk Justices, 1776-1783

Name	Tenure	Acres	Lots	£ Value	Slaves	
William Booker	1777-85				2	
Charles Conner	1777-	510		371	6	
John Willoughby, Jr.	1777-	2785		2290	43	
Daniel Sanford	1778-	104		20	2	
Paul Loyall	1778-90	370	1	267	24	2 r.c.[a]
James Taylor	1778-87	310		205	18	1 r.c.
Thomas Nash, Jr.	1778-	330[b]		240	28	
Henry Bressie	1779-82				14	
Latimore Halstead	1779-84	742		272	8	
John Tabb	1779-84	300		218		
Thomas Brown	1782-		4	27	7	
John Herbert	1782-	156		94	11	
Charles Sayer Boush	1782-84	2	2	11	4	
George Kelly	1782-89	[c]	1	110	1	1 r.c.
John Portlock, Jr.	1782-		1		14	
William Wilson, Sr.	1782-	243		59	12	
William Hall	1782-	486		199	8	
Samuel Veale	1783-	572	3½	577	15	
		6910	12½	4626	217	

average number of slaves--13 average land owned--537 acres

[a] riding chair

[b] undisclosed amount of land described in will.

[c] 12,000 acres valued at £1500 held jointly by Patrick Henry, Esq., George Kelly, and Willis Wilson (1788).

Sources: see Table XII.

Appendix C

Table XIV

Norfolk Justices, 1784-1790

Name	Tenure	Acres	Lots	£ Value	Slaves	
William King	1784-		1	10	5	
Robert Boush	1785-	200	24	210	14	
William Happer	1785-	1508		460	38	
Richard Powell	1786-	200		121	3	
William Newsum	1788-		1	25	7	
Edward Archer, Jr.	1788-		1			
John Nash	1788-	429		149	4	
John Kearnes	1788-	1790	3	348	2	
George Loyall	1788-89					
Solomon Butt Talbot	1789-	1150		1121	10	
James Webb, Jr.	1789-	1028		303	17	
James Wilson, Jr.	1789-	770		189	8	
Josiah Butt	1789-	515		188	6	1 r.c.
Robert Butt	1789-	500		183	3	
James Grimes	1789-	70		35	3	
William Wilson, Jr.	1789-				15	
Willis Wilson	1789-		2	16	8	
John Cooper	1789-89	100		97	39	
John Hudson	1789-		1	20	3	
		8260	33	3475	185	

Average land owned--688 acres average number of slaves--10

Sources: see Table XII

Appendix C

Table XV

Aldermen, Norfolk Borough, 1770-1775

Name	Tenure	Acres	Lots	Slaves	
George Abyvon	1751-79?		3	19	
Archibald Campbell	1760-80	223	1	1	
Paul Loyall	1761-	370	1	24	2 riding chairs
Charles Thomas	1761-83			6	
Maximilian Calvert	1762-75		7	5	
Lewis Hansford	1762-86?				
James Taylor	1764-	310		18	1 riding chair
Cornelius Calvert	1767-	150	1	17	
William Aitchison	1768-75	275		7	1 riding chair
Thomas Newton, Jr.	1775-88		1	1	1 riding chair
		1328	14	93	

Average land owned--266 acres average number of slaves--12

Table XVI

Aldermen, Norfolk Borough, 1780-1790

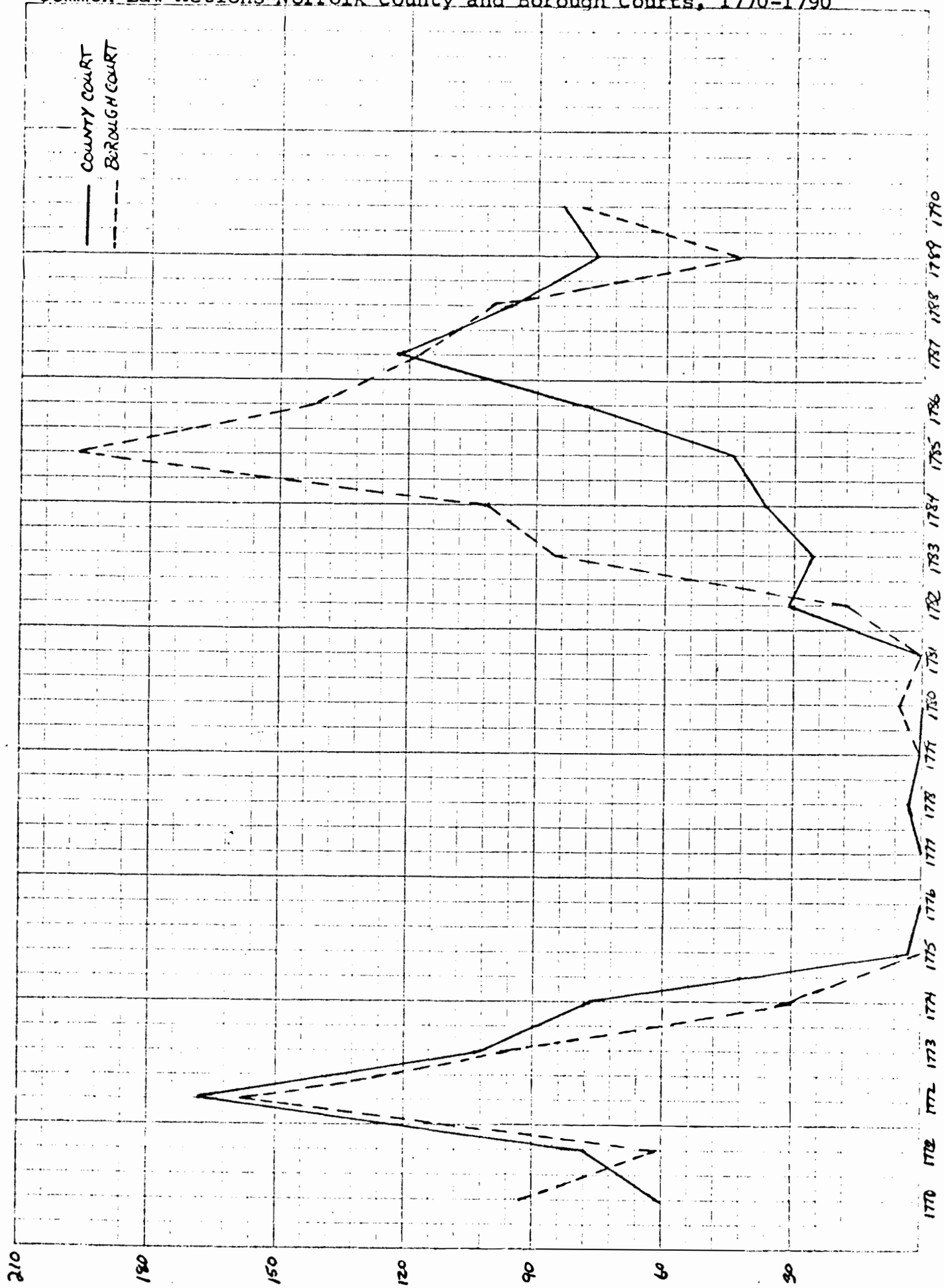
Name	Tenure	Acres	Lots	£ Value	Slaves	
Bassett Moseley	1780-82				5	1 r.c.
Robert Taylor	1780-		1	80	6	1 r.c.
Cary H. Hansford	1782-		1	20	3	
George Kelly	1782-		1	110	1	1 r.c.
Thomas Mathews	1783-87				11	1 carriage
Paul Proby	1785-		1	50	3	
Benjamin Pollard	1787-90		1	193	9	
Richard Evers Lee	1789-	2045	2	467	9	1 r.c.
Donald Campbell	1790-		1	331	9	
John Boush	1790-	200	32	197	14	1 r.c.
		2245	40	1448	70	

Average number of slaves--7

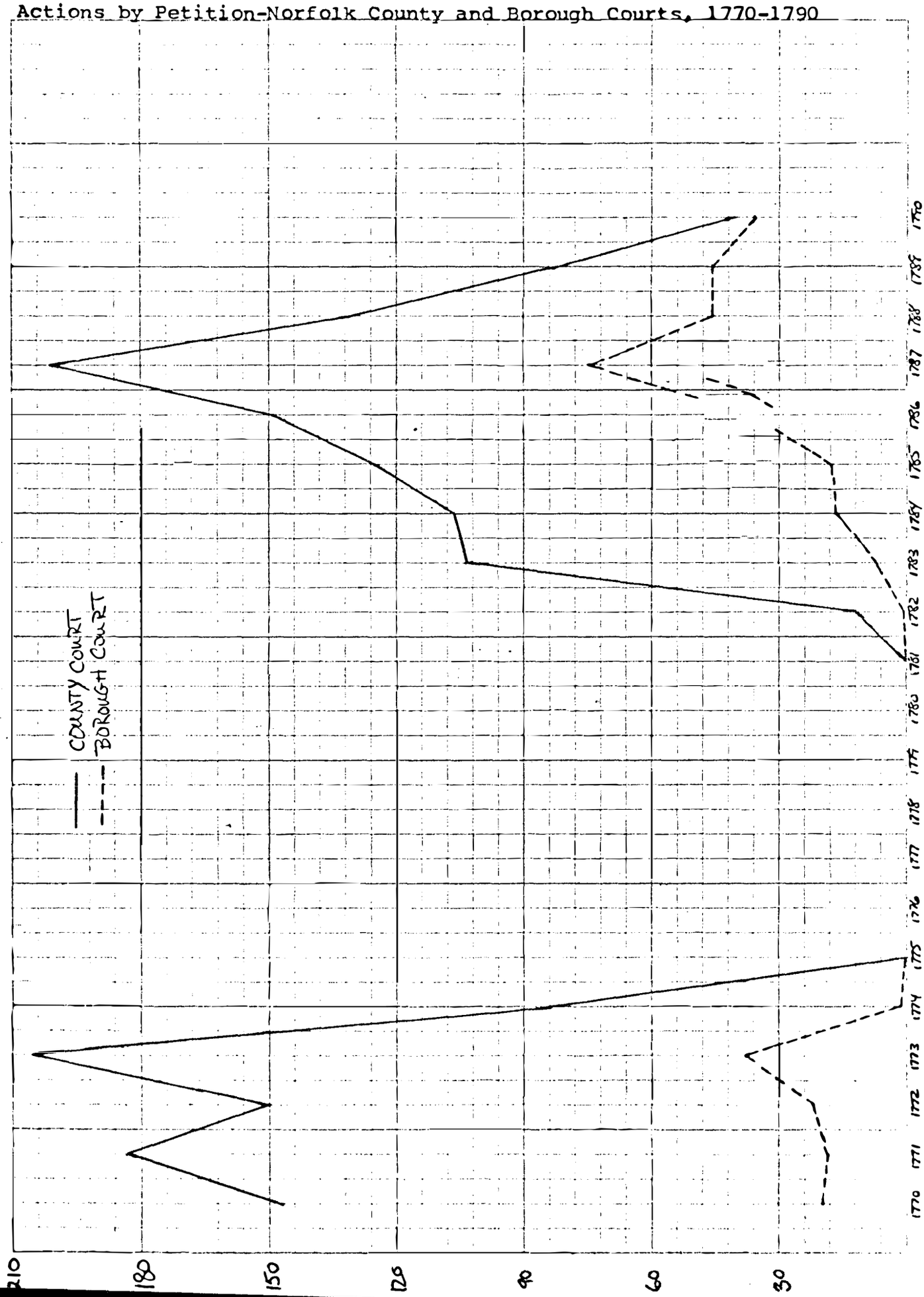
Sources: see Table XII.

Appendix D Chart I

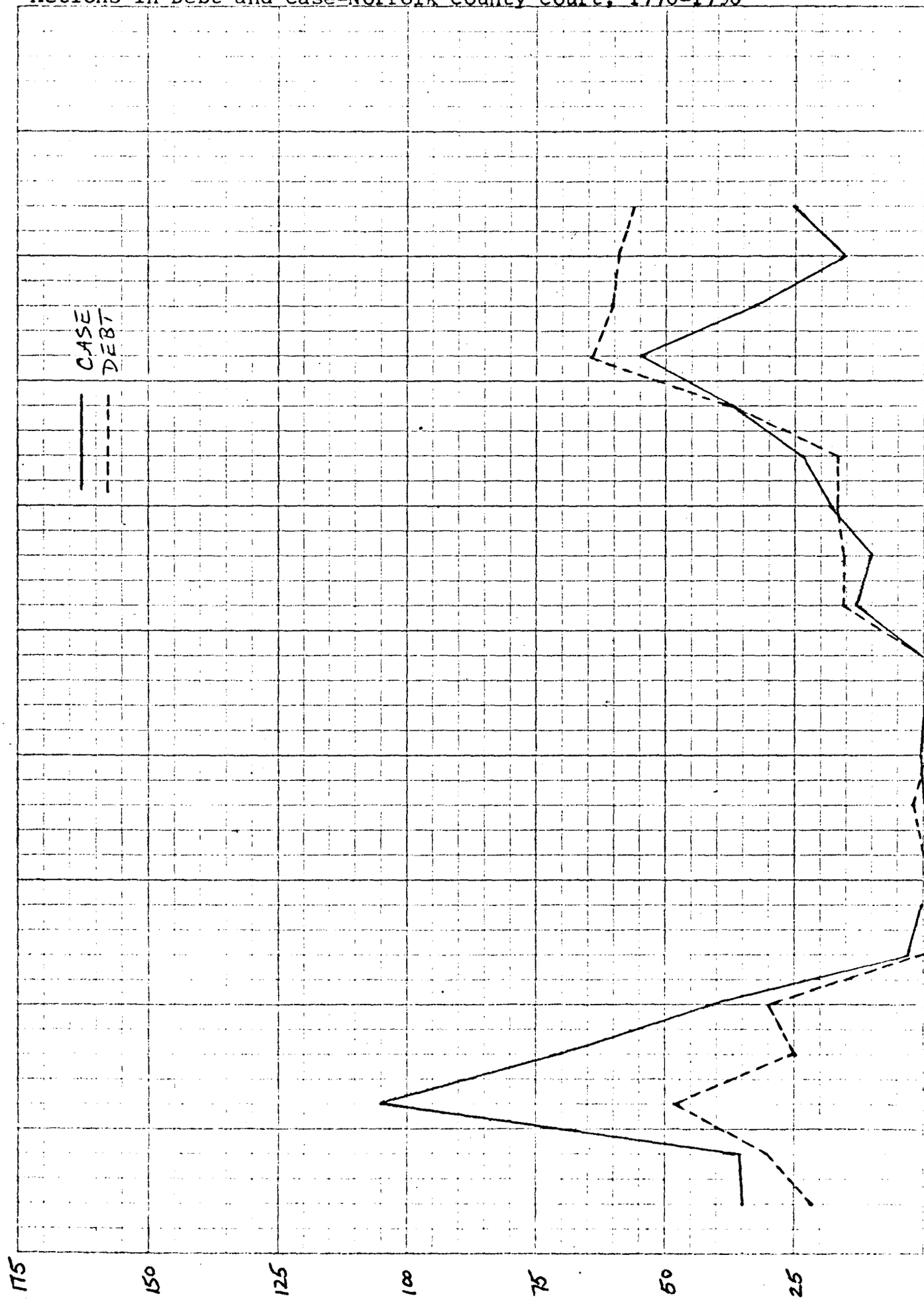
Common Law Actions-Norfolk County and Borough Courts, 1770-1790



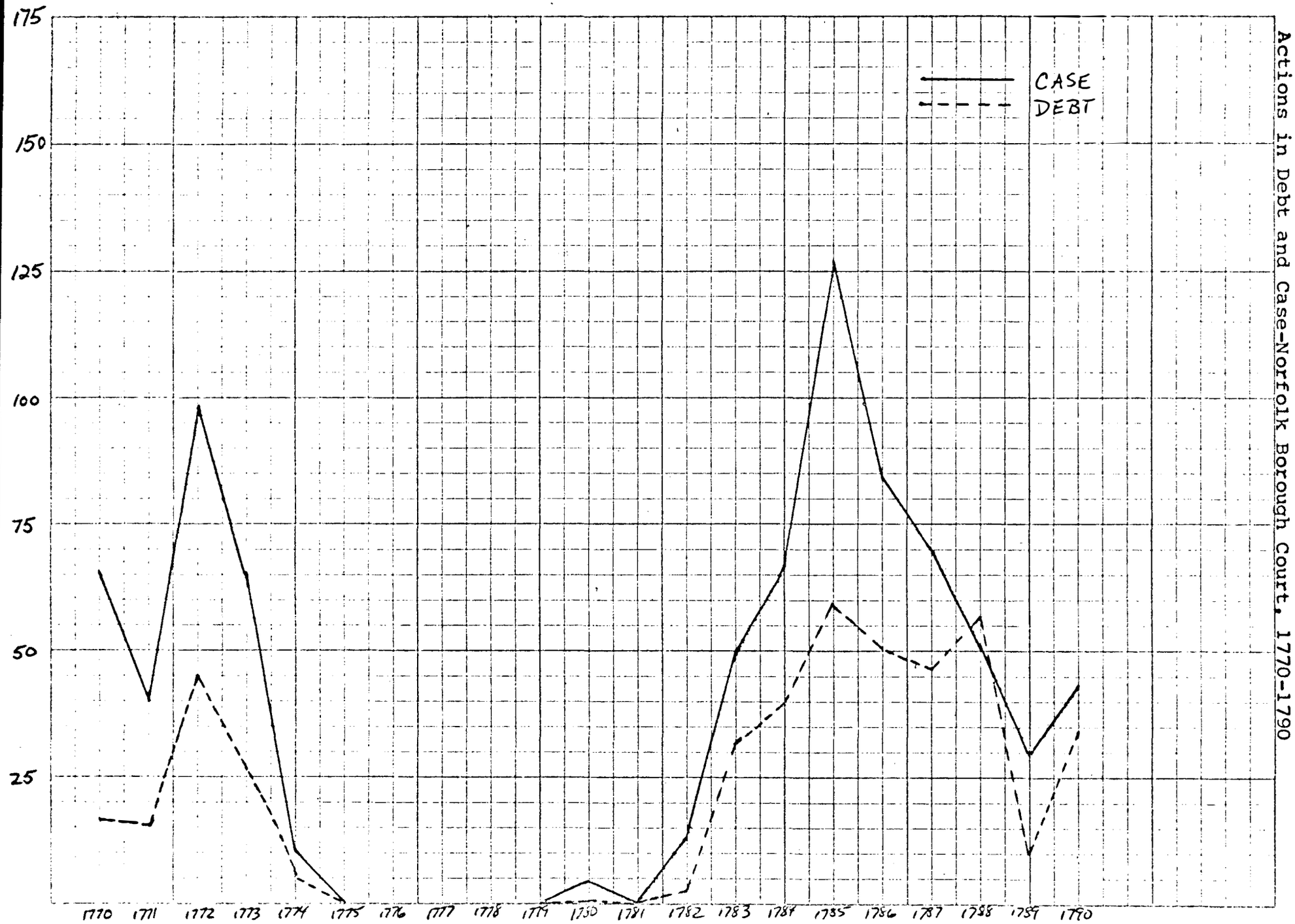
Actions by Petition-Norfolk County and Borough Courts, 1770-1790



Actions in Debt and Case-Norfolk County Court, 1770-1790



Actions in Debt and Case-Norfolk Borough Court, 1770-1790



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