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## LOCAL GOVERNMENT LAW IN VIRGINIA, 1870-1970

*Patrick M. McSweeney\**

VIRGINIA has never faced more pressing local problems. Both the population and the economy have grown so rapidly in the last several decades that the traditional system of local government has been strained and perhaps even rendered obsolete. This system was established when Virginia was a predominantly rural and agricultural state. But after approximately three centuries without radical change, it has suddenly been threatened by urbanization. Simply put, it was not designed to operate in a predominantly urban and industrial setting and has proven unequal to the task of coping with the problems which attend urbanization.

The principal symptom of Virginia's rapid urbanization is her metropolitan problem. The traditional local units within metropolitan areas cannot provide the full range of necessary services or perform certain governmental functions adequately because of "limited jurisdiction, limited finances, and insufficient intergovernmental cooperation."<sup>1</sup> Although the fragmentation of governmental units within metropolitan areas is not as pronounced in Virginia as it is in other states,<sup>2</sup> it has nonetheless created a serious problem.<sup>3</sup> Fragmentation produces financial inequities, causes wasteful duplication of administrative functions, and makes the solution of areawide problems all the more difficult.<sup>4</sup>

All other problems of local government, however, including the political and social ones, pale in comparison with the financial problem. It is simply because this problem is compounded in metropolitan areas that the metropolitan problem is the state's most serious local

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<sup>1</sup> VA. METROPOLITAN AREAS STUDY COMM'N, REPORT 6 (1967) (also popularly known as the "Hahn Commission Report" or "Hahn Report" after the chairman, Dr. T. Marshall Hahn, Jr.) [hereinafter cited as the HAHN REPORT].

<sup>2</sup> See VA. ADVISORY LEGISLATIVE COUNCIL [hereinafter referred to as VALC], GOVERNMENTAL SUBDIVISIONS IN VIRGINIA 6 (1955); Deming, *An Approach to the Solution of Metropolitan Government Problems*, 35 VA. MUN. REV. 292, 293 (1958).

<sup>3</sup> See VALC, ANNEXATION AND CONSOLIDATION 11-12 (1964); Drinard, *The Metropolitan Problem in Virginia*, 36 VA. MUN. REV. 93, 94-5 (1959), reprinted in A. RAGAN & McC. GILLIAM, READINGS IN VIRGINIA GOVERNMENT 184 (1965) [hereinafter cited as READINGS IN VA. GOV'T].

<sup>4</sup> See Grant, *Trends in Urban Government and Administration*, 30 LAW & CONTEMP. PROB. 38, 46 (1965).

concern. The need for cooperation, the friction between local units within the metropolis, and a host of other troublesome matters are directly related to finances. Solution of the financial problem would eliminate many of Virginia's other local problems. The incidence of annexation and consolidation would almost certainly decline if the need for an increased tax base were otherwise satisfied. Friction between local units would in large measure be soothed by removing the financial irritant.

There are many causes of the financial crisis, some of which have not been isolated; but two major causes have been the reliance upon inefficient units to supply services which should be provided by larger entities<sup>5</sup> and a noncoincidence of the benefits and the costs of governmental services.<sup>6</sup> The latter is not an important factor in rural areas.<sup>7</sup> In metropolitan areas, however, these two factors merge. Actually, they are aspects of the same problem. The multiplicity of units in metropolitan areas leaves the provision of areawide services (if they are to be supplied at all) to several entities instead of one. This causes duplication of effort, unequal services in different sections of a metropolitan area, or financial inequity with the core city usually bearing a disproportionately large share of the burden.<sup>8</sup> Mobility and the very nature of some services (*i.e.*, those whose benefits are impossible to contain within the boundaries of the unit) permit residents of the metropolis to enjoy services which are supplied by a local unit other than their own.<sup>9</sup> This phenomenon has been called "spillover" and will be examined more closely later in this article. It is enough for the moment to mention that "spillover" is a chief source of irritation in Virginia's metropolitan areas, as can be seen from the recent struggle in the Richmond area over the occupation tax imposed by the city.<sup>10</sup>

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<sup>5</sup> See COMM. FOR ECONOMIC DEVELOPMENT [hereinafter referred to as CED], MODERNIZING LOCAL GOVERNMENT 11 (1966); VALC, GOVERNMENTAL SUBDIVISIONS IN VIRGINIA 9 (1955); Bane, *Local Government: The Next Half Century*, 42 U. VA. NEWS LETTER 25, 26 (1966).

<sup>6</sup> See ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS [hereinafter referred to as ACIR], PERFORMANCE OF URBAN FUNCTIONS: LOCAL AND AREAWIDE (1963); ACIR, GOVERNMENTAL STRUCTURE, ORGANIZATION AND PLANNING IN METROPOLITAN AREAS 15-16 (1961); Hirsch, *Local versus Areawide Urban Government Services*, 17 NAT'L TAX J. 331 (1964).

<sup>7</sup> Cf. VA. RURAL AFFAIRS STUDY COMM'N, REPORT 25-31 (1969).

<sup>8</sup> Grant, *supra* note 4, at 46.

<sup>9</sup> ACIR, GOVERNMENTAL STRUCTURE, ORGANIZATION AND PLANNING 15 (1961); Fitch, *Metropolitan Financial Problems*, 314 ANNALS OF CONG. 66 (1957).

<sup>10</sup> In an attempt to make non-residents who work in the city share part of the cost of city services, the city imposed a tax on all who are regularly employed there

Any thought that Virginia is witnessing the end of its rapid growth stage cannot seriously be entertained. While there were six Standard Metropolitan Statistical Areas in Virginia according to the *1967 Census of Governments*,<sup>11</sup> there will be eleven by 1980.<sup>12</sup> The projected population increase will almost certainly be confined to urban areas.<sup>13</sup> This suggests that the metropolitan problems will become even more serious and immeasurably more difficult to solve. Even now, they cannot be solved piecemeal. Yet Virginians seem unprepared for broad reform or state and regional planning.<sup>14</sup> The longer the postponement of reform, the more radical the solutions will have to be and the more bitter the political struggle to effect such solutions will be.

Unfortunately, Virginia's proud history of stable and uncomplicated local government has led to complacency. The recent, drastic measures adopted elsewhere to handle local problems have heretofore been of only academic concern to Virginians. It is true that Virginia has been remarkably flexible, imaginative, and progressive in meeting local problems in this century,<sup>15</sup> but Virginia has never before confronted the unsettling change it is now experiencing. The reforms of the first part of this century, which established Virginia as one of the most innovative of the states, were not easily accomplished. Nevertheless, they cured ills that, while serious, were not critical. The problems of the 1970's and beyond, on the other hand, threaten to paralyze Virginia's cities and counties.<sup>16</sup>

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whether resident or non-resident. The Supreme Court of Appeals upheld it, *City of Richmond v. Fary*, 210 Va. 338, 171 S.E.2d 257 (1969), but legislation enacted in the early days of the 1970 Session of the General Assembly put an end to the tax before it was ever collected by the city.

<sup>11</sup> 1 U. S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, *1967 CENSUS OF GOVERNMENTS* (1968).

<sup>12</sup> See Dixon, *Government in Virginia's Emerging Metropolitan Areas: A Profile*, 44 U. VA. NEWS LETTER 25 (1968). See also Knapp, *Population Projection to 1980 for Virginia Metropolitan Areas*, 43 U. VA. NEWS LETTER 13 (1967).

<sup>13</sup> Cf. Everett & Leach, *Urban Problems and Prospects—A Foreword*, 30 LAW & CONTEMP. PROB. 1 (1965).

<sup>14</sup> Witness the fate of the proposals made by the Commission on Constitutional Revision relating to local government at the hands of the 1969 Extra Session of the General Assembly.

<sup>15</sup> Virginia, for example, was the first state to experiment with the city manager plan, the first to adopt a county manager plan by popular vote, and a leader in city-county mergers.

<sup>16</sup> Cf. Godwin, *Virginia and Her Localities: A Necessary Partnership*, 43 U. VA. NEWS LETTER 9, 11 (1966); Temple, *The Challenge of an Urban Society: The State and Local Response*, 44 U. VA. NEWS LETTER 5 (1967).

## THE BASIC PATTERN OF LOCAL GOVERNMENT IN VIRGINIA

The pattern of local government in Virginia has one feature that distinguishes it from all other states—separation of city and county. The Commonwealth is divided into 134 geographical districts, 96 of which are counties and 38 of which are cities.<sup>17</sup> No other state with a county system has given its cities territorial exclusivity and integrity, but instead superimpose the city on the county system.<sup>18</sup> State-directed functions continue to be the responsibility of county government in those states while the city performs the purely local functions.<sup>19</sup> In Virginia, however, cities are completely independent of counties.<sup>20</sup> The Virginia city, therefore, has all the powers and responsibilities which the county normally exercises, as well as those additional powers which are conferred upon it as a municipal corporation through its charter.<sup>21</sup> Jurisdiction to tax and to perform other governmental functions within their respective territorial boundaries do not overlap.<sup>22</sup>

Since the principal role of counties is to act as the arm of the state in such areas as the administration of justice and the assessment and collection of state taxes, they are established on a rather arbitrary basis.<sup>23</sup> Cities, on the other hand, are established "by the consent of the persons composing them for the formation of their own local private advantage and convenience."<sup>24</sup> Both county and city in Virginia serve a dual role as agents of the state and as local lawmaking bodies with the power to provide, within the limits of the grant of authority from the state, for the particular needs of the individual city or county.<sup>25</sup>

<sup>17</sup> See SECRETARY OF THE COMMONWEALTH OF VA., REPORT (1968-69); Makielski, *The Special District Problem in Virginia*, 55 VA. L. REV. 1182, 1183 (1969).

<sup>18</sup> C. BAIN, "A BODY INCORPORATE"—THE EVOLUTION OF CITY-COUNTY SEPARATION IN VIRGINIA ix, 35 (1967) [hereinafter cited as A BODY INCORPORATE]; HAHN REPORT, *supra* note 1, at 15 (1967).

<sup>19</sup> See CED, MODERNIZING LOCAL GOVERNMENT 29 (1966).

<sup>20</sup> F. K. GIBSON & E. S. OVERMAN, COUNTY GOVERNMENT IN VIRGINIA 2 (1961). An exception, perhaps, is the situation in which a city of the second class shares with a neighboring county a circuit court and certain constitutional officers. VA. CODE ANN. §§ 15.1-994, 15.1-997 (1964).

<sup>21</sup> 13 M.J. *Municipalities* § 2, at 363 (1951).

<sup>22</sup> A BODY INCORPORATE, *supra* note 18, at 77-83.

<sup>23</sup> 5 M.J. *Counties* § 3, at 90 (1949).

<sup>24</sup> *Id.* at 90 n. 7; see J. DILLON, MUNICIPAL CORPORATIONS §§ 18, 25 (5th ed. 1911) [hereinafter cited as DILLON].

<sup>25</sup> See DILLON, *supra* note 24, § 31, at 58-59; G. JENNINGS, VIRGINIA'S GOVERNMENT 111 (1968); K. Millikan, *History of Articles VII and VIII*, 21 (Memorandum to Va. Comm'n on Constitutional Revision, July 12, 1968).

Neither is sovereign. Neither possesses any power not conferred upon it by the state.<sup>26</sup>

City and county are fundamentally different in theory,<sup>27</sup> but in recent years the two have become almost indistinguishable in fact, especially in metropolitan areas. Cities are public corporations called into being by their inhabitants to provide the broad range of public services associated with urban life.<sup>28</sup> Because of city-county separation in Virginia, all the functions which would otherwise have been the responsibility of county government are subsumed in the city government. Thus, in Virginia, the city can be thought of as the fusion of municipal corporation and county government. As described above, it exercises all the powers granted to counties plus those additional corporate and governmental powers conferred by its charter.

Again in theory, counties only incidentally possess corporate powers.<sup>29</sup> But as the mode of life in counties grows to resemble that found in cities, more and more of these corporate powers are vested in county government to meet the demand of county residents for services related to health, fire protection, sanitation, industrial development, and a host of other needs.<sup>30</sup>

An interesting feature, but one that is of very little practical importance, is the division of cities into those of the first class and those of the second.<sup>31</sup> The former must have a population of over 10,000; the latter in excess of 5,000.<sup>32</sup> Cities of the second class share certain constitutional officers with their surrounding counties.<sup>33</sup> In addition, they remain "within the jurisdiction of the circuit court of the county of which it was originally a part."<sup>34</sup>

Town government is the third primary unit of local government in Virginia. It is not territorially exclusive of the county in which it lies.<sup>35</sup> The county continues to exercise all of its powers within the town.

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<sup>26</sup> *Camp v. Birchett*, 143 Va. 686, 126 S.E. 665, 129 S.E. 324 (1925); see HAHN REPORT, *supra* note 1, at 6 (1967).

<sup>27</sup> 13 M.J. *Municipalities* § 2, at 363 (1951).

<sup>28</sup> *Jones v. Williamsburg*, 97 Va. 722, 34 S.E. 883 (1900).

<sup>29</sup> See DILLON, *supra* note 24, § 35, at 64.

<sup>30</sup> Cf. REPORT OF THE VA. COMM'N ON CONSTITUTIONAL REVISION 215 (1968) [hereinafter cited as CCR REPORT].

<sup>31</sup> VA. CODE ANN. § 15.1-978 to -1010 (1964).

<sup>32</sup> VA. CODE ANN. §§ 15.1-978, 15.1-1011 (1964).

<sup>33</sup> VA. CODE ANN. § 15.1-994 (1964).

<sup>34</sup> VA. CODE ANN. § 15.1-997 (1964).

<sup>35</sup> VA. METROPOLITAN AREAS STUDY COMM'N, GOVERNING THE VIRGINIA METROPOLITAN AREAS: AN ASSESSMENT 18-19 (1967).

Town incorporation is ordinarily accomplished in a judicial proceeding, but it can also occur by means of a special act of the General Assembly.<sup>36</sup> In the judicial proceeding, the court must find that the population of the area for which incorporation is sought is at least 1,000, that there is a density of 125 persons per square mile, that incorporation is in the best interest of the inhabitants, and that the services needed in this community cannot be provided by the establishment of a sanitary district or by some other arrangement with the county.<sup>37</sup>

Towns are an important factor in the Virginia scheme of local government only in a negative sense. Since they may be created with such a low population, they are far too numerous in Virginia.<sup>38</sup> These municipalities are often too small to justify separate governmental status or to provide efficiently the services demanded of them.<sup>39</sup> The town also causes a drain of revenue away from the county at large, putting even greater pressure on the county government where it can least afford it.<sup>40</sup>

#### INTERGOVERNMENTAL RELATIONS

Under our federal system, the central government theoretically exercises only those powers granted to it by the fifty sovereign states which retain all other powers not so delegated. Unless they are limited by the federal Constitution, the states possess exclusive power over persons and property within their respective jurisdictions.<sup>41</sup>

The point need not be belabored here that the trend toward centralization has given this theory of federal-state relations a hollow ring.<sup>42</sup> What is significant is that in spite of this trend, states are

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<sup>36</sup> See *A BODY INCORPORATE*, *supra* note 18, at 71.

<sup>37</sup> VA. CODE ANN. § 15.1-967 (1964).

<sup>38</sup> VALC, ANNEXATION AND CONSOLIDATION 12-13 (1964); VALC, GOVERNMENTAL SUBDIVISIONS IN VIRGINIA 12-13 (1955); CCR, REPORT 215 (1968); HAHN REPORT, *supra* note 1, at 12 (1967).

<sup>39</sup> See CCR REPORT 215.

<sup>40</sup> See VALC, GOVERNMENTAL SUBDIVISIONS IN VIRGINIA 37-38 (1955); Tucker, *County Government: A Problem in Administrative Organization*, in BUR. OF PUB. ADMIN., COUNTY GOVERNMENT IN VIRGINIA—A SYMPOSIUM 3 (1942).

<sup>41</sup> See C. ADRIAN, STATE AND LOCAL GOVERNMENTS 77 (2d ed. 1967) [hereinafter cited as ADRIAN]; CED, MODERNIZING STATE GOVERNMENT 10-11 (1967); L. GULICK, THE METROPOLITAN PROBLEM AND AMERICAN IDEAS 28 *et seq.* (1962); R. MARTIN, THE CITIES AND THE FEDERAL SYSTEM 21 *et seq.* (1965); 17 M.J. State § 2, at 199 (1951).

<sup>42</sup> See ADRIAN, *supra* note 41, at 82-86; Darden, *Random Thoughts on Government*, 20 WASH. & LEE L. REV. 207, 211 (1963); Fordham, *The States in the Federal System—*

still looked to for fundamental governmental services such as roads, education, police protection, public utilities, health services, public welfare, fire protection, and recreation.<sup>43</sup> To furnish these services, states have created a variety of local governmental units, political subdivisions and administrative agencies.<sup>44</sup> The traditional local units are the city, the county, and the town. The states may also provide services to its citizens through state-level agencies, such as the State Department of Highways and the State Police. Falling somewhere between the traditional units of local government and the state-level administrative agencies are a variety of creatures of the state: for example, public corporations, special districts, and regional authorities.

A basic familiarity with the interaction of governmental units in the United States is essential to any understanding of modern local government problems. Such interaction is both "vertical" and "horizontal."<sup>45</sup> Vertical interaction occurs (1) between localities and their respective states, (2) between localities and the federal government, and (3) between states and the federal government. In recent years it has greatly increased as local governments turn to state and federal sources for funds which they themselves cannot raise by taxation, borrowing or otherwise. There has also been a nationwide movement toward "home rule" or broader powers for local units, but the major concern of localities in their relations with state and federal governments is obviously the procurement of financial assistance.

The recent interest in federal block grants to the various states and in direct federal grants to cities has dramatized the importance of vertical interaction in the future of American local government.<sup>46</sup> No longer can localities or even states raise sufficient revenues to finance governmental operations and services without federal assistance.<sup>47</sup> Borrowing by local governments has become more and more costly, and tax revenues more difficult to find. The federal government, on the

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*Vital Role or Limbo?*, 49 VA. L. REV. 666, 667 (1963); Walker, *Myth and Reality in State Constitutional Development*, in W. BROOKE GRAVES (ed.), MAJOR PROBLEMS IN STATE CONSTITUTIONAL REVISION 3, 13 (1967).

<sup>43</sup> See CED, *supra* note 41, at 12; Fordham, *supra* note 42, at 668.

<sup>44</sup> See 1 U. S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, 1967 CENSUS OF GOVERNMENTS 13 (1968).

<sup>45</sup> See Grant, *Trends in Urban Government and Administration*, 30 LAW & CONTEMP. PROB. 38, 50 (1965). See also Fordham, *supra* note 42, at 669.

<sup>46</sup> See Cooper, *Updating Local Government in Virginia: The Postwar Period and Beyond*, 43 U. VA. NEWS LETTER 13, 15 (1966); Heller, *Should the Government Share Its Tax Take?*, SAT. REV., MAR. 22, 1969, at 26.

<sup>47</sup> See 1 ACIR, FISCAL BALANCE IN THE AMERICAN FEDERAL SYSTEM 5 (1967).

other hand, has proven to be an efficient vehicle for raising the necessary funds. The use of block grants to states with few if any strings, it is argued, would take advantage of this federal tax collection feature while avoiding the lack of flexibility and responsiveness to local needs which is so often identified with federally-administered programs.

Horizontal interaction between and among localities has been characterized by acute problems, particularly where metropolitan areas are concerned. In such areas there are usually several local units with a core city that has a rapidly deteriorating tax base and an alarming increase in the demand for services caused by a growing population of poor people and school age children, and by non-residents working in the city but residing and paying taxes in an adjoining county.<sup>48</sup>

The existence of these benefit spillovers, alluded to earlier, has created much friction. In an effort to correct the inequities and to establish a more realistic financial base for providing these services, cities have resorted to annexation and consolidation. Underlying this trend toward boundary expansion is the notion that services which benefit an entire metropolitan area should be financed by the entire metropolitan area.<sup>49</sup> Yet the financial burden on core cities could also be relieved by federal or state subsidies without the need for annexation or merger.<sup>50</sup> In this way, non-residents would pay, at least in part, for the benefits they receive, through state or federal taxation. However, if control and administration were left with the city, the residents of the adjoining units would have little or no voice in the planning and operation of the departments which provide these areawide services.<sup>51</sup> Inequities could, and probably would, result.

#### A BRIEF REVIEW OF LOCAL GOVERNMENT HISTORY BEFORE 1870

Present-day Virginia government can be traced to the military government provided by the Virginia Company of London, a joint-stock company chartered in 1606 by James I.<sup>52</sup> When members of the Com-

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<sup>48</sup> See Hirsch, *Local Versus Areawide Urban Government Services*, 17 NAT'L TAX J. 331, 334 (1964).

<sup>49</sup> Cf. ACIR, *GOVERNMENTAL STRUCTURE, ORGANIZATION AND PLANNING IN METROPOLITAN AREAS* 15 (1961); Woo Sik Kee, *City-Suburban Differentials in Local Government Fiscal Effort*, 21 NAT'L TAX J. 183 (1968). "The size of the spillover area indicates the proper unit for fiscal interrelation." Hirsch, *supra* note 48, at 336.

<sup>50</sup> See Hirsch, *supra* note 48, at 332.

<sup>51</sup> See *id.* at 333.

<sup>52</sup> See Rutman, *The Virginia Company and Its Military Regime*, THE OLD DOMINION 1 (D. Rutman ed. 1964); Tilden, *Forerunners of the Public Authority*, 7 WM. & MARY L. REV. 1, 18 (1966). See generally S. BEMISS, *THE THREE CHARTERS OF THE*

pany in 1607 established the first permanent settlement of Englishmen in the New World at Jamestown, they were operating within the framework of an entity that bore a striking resemblance to modern municipal and public corporations. It has been suggested that the "basic form of public government in America derived from a so-called commercial- or rather, proprietary-corporation: the Virginia Corporation, which was chartered in 1606."<sup>53</sup>

In bestowing all the land in Virginia to the Company, the King created a monopoly and granted powers that were limited only by a guarantee of individual liberties to the settlers.<sup>54</sup> The Company's first charter vested policymaking authority in the King's Council of Virginia, which sat in London; but the immediate control and administration of the colony was the responsibility of the President and Council in Virginia.<sup>55</sup> Under the first charter, the colony was hampered by weakness of administration and the lack of central leadership.<sup>56</sup> The charter was amended, therefore, in 1609 principally to correct these deficiencies. A Governor was sent to Virginia with greater executive authority, and the King's Council of Virginia was abolished.<sup>57</sup>

These changes, however, did not provide the answer to all of Virginia's problems. Starvation and Indian attacks, for example, con-

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VIRGINIA COMPANY OF LONDON (1957); W. CRAVEN, *THE VIRGINIA COMPANY OF LONDON* (1957); S. KINGSBURY, *RECORDS OF THE VIRGINIA COMPANY* (4 vol. 1906-33); A. WODENOTH, *A SHORT COLLECTION OF THE MOST REMARKABLE PASSAGES FROM THE ORIGIN TO THE DISSOLUTION OF THE VIRGINIA COMPANY* (1651).

Modern public, including municipal, corporations owe much to the Virginia Company. See COUNCIL OF STATE GOVERNMENTS, *PUBLIC AUTHORITIES IN THE STATES* 21 (1953); Lathan, *The Body Politic of the Corporation*, *THE CORPORATION IN MODERN SOCIETY* ch. 11 (E. Mason ed. 1960).

<sup>53</sup> Gerwig, *Public Authorities in the United States*, 26 *LAW & CONTEMP. PROB.* 591, 595 (1961).

<sup>54</sup> Provision to that effect can be found in the original charter of the Company. S. BEMISS, *THE THREE CHARTERS OF THE VIRGINIA COMPANY OF LONDON* 9 (1957).

Also wee doe, for us, our heires and successors, declare by these presentes that all and everie the parsons being our subjects which shall dwell and inhabit within everie or anie of the saide severall Colonies and plantacions and everie of their children which shall happen to be borne within the limits and precincts of the said severall Colonies and plantacions shall have and enjoy all liberties, franchises, and immunities within anie of our other dominions to all intents and purposes as if they had been abiding and borne within this our realme of Englande or anie other of our saide dominions.

See also 2 P. BRUCE, *INSTITUTIONAL HISTORY OF VIRGINIA IN THE SEVENTEENTH CENTURY* 231 (1910).

<sup>55</sup> See S. BEMISS, *supra* note 54, at 3. The original charter may also be found in 1 W. HENING, *THE STATUTES AT LARGE* 57-75 (2d ed. 1823).

<sup>56</sup> See T. WERTENBAKER, *VIRGINIA UNDER THE STUARTS* 2-4 (1914).

<sup>57</sup> 1 W. HENING, *THE STATUTES AT LARGE* 110-13 (2d ed. 1823).

tributed to a bleak picture of the colony in England, thereby discouraging new investment.<sup>58</sup> Without this lifeblood, the Company was forced to give away parcels of land in Virginia to satisfy the claims of members who had served the Company in the New World and to attract new settlers to Virginia.<sup>59</sup> This division of land marked the beginning of large plantations in Virginia, a movement which was stimulated by the arrival in Virginia of the first slaves in 1619.<sup>60</sup>

The Virginia Company was dissolved in 1624, and Virginia became a royal colony.<sup>61</sup> Five years before, however, the first measure of local self-government had been introduced to Virginia by the creation of the General Assembly with its two houses: the Council and the House of Burgesses.<sup>62</sup>

The manner in which Virginia was settled was largely responsible for the system of local government which has prevailed in the Commonwealth for over three centuries. Unlike New Englanders, who concentrated in towns, Virginians established scattered plantations that were, in the main, self-supporting.<sup>63</sup> The township system of government, still found in the New England states,<sup>64</sup> reflected the overriding interest of the settlers of that region in mutual protection and assistance.<sup>65</sup> Lacking towns and devoid of any mercantile class, Virginia was unsuited to the township arrangement.<sup>66</sup>

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<sup>58</sup> *John Smith's General History of Virginia, 4th Book*, NARRATIVES OF EARLY VIRGINIA, 1606-1625, 295 (L. Tyler ed. 1959). See also W. CRAVEN, THE DISSOLUTION OF THE VIRGINIA COMPANY: THE FAILURE OF A COLONIAL EXPERIMENT 195-220 (1932); C. HATCH, THE FIRST SEVENTEEN YEARS: VIRGINIA, 1607-1624, 28 (1957); G. WILLISTON, BEHOLD VIRGINIA: THE FIFTH CROWN 105-17 (1951).

<sup>59</sup> See 1 P. BRUCE, ECONOMIC HISTORY OF VIRGINIA IN THE SEVENTEENTH CENTURY 506, 512 (1895); C. HATCH, *supra* note 58, at 21-23.

<sup>60</sup> See W. CRAVEN, *supra* note 58, at 131; C. HATCH, *supra* note 58, at 25. Wertenbaker, however, concludes that slaves were not a significant socio-economic factor until sometime after 1680. T. WERTENBAKER, THE PLANTERS OF COLONIAL VIRGINIA 30-31 (1922).

<sup>61</sup> See 1 J. CHANDLER, THE SOUTH IN THE BUILDING OF THE NATION 22 (1909); C. HATCH, *supra* note 58, at 29. See generally E. NEILL, HISTORY OF THE VIRGINIA COMPANY OF LONDON 385-419 (1869).

<sup>62</sup> 1 W. HENING, THE STATUTES AT LARGE 110 (2d ed. 1823); see Henry, *The First Legislative Assembly in America*, 2 VA. MAG. HIST. & BIOG. 55 (1895).

<sup>63</sup> See J. GOTTMAN, VIRGINIA AT MID-CENTURY 65-67 (1955). See also 2 P. BRUCE, *supra* note 59, at 522-25; T. WERTENBAKER, *supra* note 60, at 29.

<sup>64</sup> See CED, MODERNIZING LOCAL GOVERNMENT 30 (1966).

<sup>65</sup> See E. CHANING, TOWN AND COUNTY GOVERNMENT IN THE ENGLISH COLONIES OF NORTH AMERICA 6 (1884); E. INGLE, LOCAL INSTITUTIONS OF VIRGINIA 75 (1885); H. McBAIN, GOVERNMENT AND POLITICS IN VIRGINIA 111-12 (1916).

<sup>66</sup> See E. INGLE, *supra* note 65, at 104.

With the creation in 1634 of eight "shires" in Virginia,<sup>67</sup> patterned after the old English county, a local government structure appeared that has prevailed without radical change ever since. Although Jamestown and other towns existed during the first century of the colony, they were not the predominant unit of local government in Virginia.<sup>68</sup>

Recognizing the need for diversifying Virginia's economy which had become overly-dependent upon tobacco, the General Assembly between 1655 and 1706 enacted general legislation for the establishment of towns in each county.<sup>69</sup> "All ships and vessels were required to leave their cargo at these designated places, and the planters were compelled to carry their tobacco and produce to the same place."<sup>70</sup> After fifty years of encouraging the development of towns by general legislation, the General Assembly had realized little or no success. Thus, the plan was abandoned in favor of creation of towns by special acts.<sup>71</sup>

Meanwhile the number of counties was increasing as settlers moved westward. By 1680, there were twenty counties in existence;<sup>72</sup> by 1750, there were fifty;<sup>73</sup> and in 1800, ninety-nine.<sup>74</sup> The number rose between 1800 and 1863, the year West Virginia became a separate state.<sup>75</sup> As of 1870, there were ninety-nine counties in Virginia.<sup>76</sup>

In 1780, Jefferson attempted to establish a modified form of town-

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<sup>67</sup> See A. PORTER, COUNTY GOVERNMENT IN VIRGINIA: A LEGISLATIVE HISTORY, 1607-1904, 11 (1947) [hereinafter cited as PORTER]; M. HIDEN, HOW JUSTICE GREW; VIRGINIA'S COUNTIES, AN ABSTRACT OF THEIR FORMATION 3-7 (1957); Pinchbeck, *Origins and Evolution of County Government in Virginia*, 1 U. RICH. INST. FOR BUS. & COMMUNITY DEV. NEWSLETTER 3 (1968) (originally published in 1948 by the National Association of County Officials).

<sup>68</sup> See A BODY INCORPORATE, *supra* note 18, at 4-11. See also E. INGLE, *supra* note 65, at 101-09; T. WERTENBAKER, *supra* note 60, at 29.

<sup>69</sup> 1 W. HENING, THE STATUTES AT LARGE 412-14 (2d ed. 1823); 2 W. HENING, THE STATUTES AT LARGE 471-78 (2d ed. 1823) (suspended by the King-in-Council because it was "impracticable"); 3 W. HENING, THE STATUTES AT LARGE 404-19 (2d ed. 1823); see A BODY INCORPORATE 5-7.

<sup>70</sup> A BODY INCORPORATE, *supra* note 18, at 5.

<sup>71</sup> See *id.* at 8; E. INGLE, *supra* note 65, at 76. See generally Riley, *The Town Acts of Colonial Virginia*, 16 J. SO. HIST. 306 (1950).

<sup>72</sup> See PORTER, *supra* note 67, at 12. See generally M. HIDEN, HOW JUSTICE GREW: VIRGINIA COUNTIES, AN ABSTRACT OF THEIR FORMATION (1957); J. WEEKS, DATES OF ORIGIN OF VIRGINIA COUNTIES AND MUNICIPALITIES (1967).

<sup>73</sup> See A BODY INCORPORATE, *supra* note 18, at 5.

<sup>74</sup> See Pinchbeck, *supra* note 67, at 3.

<sup>75</sup> See Robinson, *Virginia Counties: Those Resulting from Virginia Legislation*, 9 BULL. VA. STATE LIB. 5, 38 (1916). The number reached 148 before 1863.

<sup>76</sup> See *id.*

ship government.<sup>77</sup> He was strongly inclined toward this stronger, more responsive and more democratic form of local government, but Virginians were not prepared for it. In fact, when Jefferson later helped to draft the Ordinance of 1787, which provided forms of local government for Illinois and other western states, he ignored the township concept and based his plan on the Virginia county system.<sup>78</sup> It did not mark a change in his political philosophy, rather it reflected the practicalities of the situation which then existed not only in Virginia, but also in those western states.

Aside from the traditional units of local government—cities, towns and counties—Virginia had experience with other forms of local government from its earliest beginnings. The public authority and the special district may have antedated both municipalities and counties in Virginia.<sup>79</sup> Although the Virginia Company was nominally a private “corporation,” its essential characteristics made it something very close to a public corporation.<sup>80</sup> The special district, which is closely akin to and often indistinguishable from the public authority, was present in Virginia long before 1700. When the Elizabethan Poor Law became effective in 1621,<sup>81</sup> the special district appeared and was used extensively from that point forward to accomplish a variety of tasks, such as the construction and maintenance of roads, bridges, and tobacco warehouses.<sup>82</sup>

In 1784, George Washington and others organized the James River Company to construct a canal westward from Richmond so that a trade link between the eastern and western sections of the state could be established.<sup>83</sup> Although the initiative and much of the capital invested were private, the state invested public funds in the company. Some years later, other internal improvement companies were formed for

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<sup>77</sup> See E. INGLE, *supra* note 65, at 116.

<sup>78</sup> *Id.*

<sup>79</sup> Cf. Gerwig, *supra* note 53, at 595.

<sup>80</sup> The element of private gain does not in itself render the corporation “private.” Because the Virginia Company so completely ordered the lives of the settlers in the New World, it had significant governmental qualities—more, in fact, than most modern public authorities.

<sup>81</sup> See PORTER, *supra* note 67, at 39-40.

<sup>82</sup> 5 W. HENING, *THE STATUTES AT LARGE* 378 (1st ed. 1819); see S. MAKIELSKI, JR. & D. TEMPLE, *SPECIAL DISTRICT GOVERNMENT IN VIRGINIA* 10-11 (1967) [hereinafter cited as MAKIELSKI & TEMPLE].

<sup>83</sup> 11 W. HENING, *THE STATUTES AT LARGE* 450, 510, 525 (1st ed. 1823); see C. PEARSON, *THE READJUSTER MOVEMENT IN VIRGINIA* 1 (1917). See generally W. DUNAWAY, *HISTORY OF THE JAMES RIVER AND KANAWHA COMPANY* (1922).

much the same purpose.<sup>84</sup> When news of the great success of the Erie Canal spread, the states along the Atlantic seaboard took a new interest in works of internal improvement.<sup>85</sup> Many of them created state enterprises or public corporations to construct railroads and canals.<sup>86</sup> Virginia, on the other hand, turned to its private internal improvement companies, such as the James River Company (later the James River and Kanawha Company) to provide these transportation links.<sup>87</sup>

The Virginia approach has been described as a "system of mixed enterprise" because it involved heavy public investment in private corporations.<sup>88</sup> The rationale for this system is expressed in the following remark:

Experience testifies that [internal improvements] will be more economically made, and better repaired, if their management be left to the individuals who subscribe to their stock with a view to private gain, than if confided to public officers or agents.<sup>89</sup>

In 1816, all of the state's holdings in internal improvement companies were consolidated into a single Fund for Internal Improvements, which was pledged for fifty years for the sole purpose of improving transportation and communication.<sup>90</sup> The General Assembly in the same act also established the Board of Public Works to manage the fund and to oversee the operation of the internal improvement com-

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<sup>84</sup> There were the Dismal Swamp Company (1787), the Appomattox Company (1788), and the Rappahannock Company (1793).

<sup>85</sup> See C. GOODRICH, *GOVERNMENT PROMOTION OF AMERICAN CANALS AND RAILROADS, 1800-1890*, 3 *et seq.* (1960); A. HEINS, *CONSTITUTIONAL RESTRICTIONS ON STATE DEBT* 3 (1963); A. HILLHOUSE, *MUNICIPAL BONDS* 143-99 (1936).

<sup>86</sup> See H. ADAMS, *PUBLIC DEBTS* 322 (1887); C. GOODRICH, *supra* note 85, at 121; Heath, *Public Railroad Construction and the Development of Private Enterprise in the South before 1861*, 10 J. ECON. HIST. 40 (Supp. 1950).

<sup>87</sup> See C. PEARSON, *supra* note 83, at 1.

<sup>88</sup> See Goodrich, *Virginia's System of Mixed Enterprise: A Study of State Planning of Internal Improvements*, 64 *POL. SCI. Q.* 355, 357 (1949).

<sup>89</sup> *Id.* at 360.

<sup>90</sup> VA. ACTS OF ASSEMBLY 1816, at 43-57; see *A Collection of All Laws and Resolutions of the General Assembly of Virginia Relating to the Board of Public Works; Report of the Commissioners Appointed to View Certain Rivers within the Commonwealth in 1812* (Richmond 1819). On February 15, 1812, a commission was appointed to "view certain rivers in Virginia." It was led by John Marshall and examined and mapped certain areas of the James River, the New River and other waterways. In December, 1815, the Committee of Roads and Internal Navigation reported that state aid would be necessary if substantial internal improvements were to be made. It recommended that a "proper body" be established to assist the General Assembly in allocating funds and that a separate fund be established.

panies. It was recognized that state ownership of these enterprises might conceivably be necessary or advisable, but the Assembly proceeded on the assumption that such cases would be exceptional. A general plan was formulated under which three-fifths of the capital was to be raised by private subscription before public funding was allowed.<sup>91</sup>

Virginia abandoned its system of mixed enterprise after the Panic of 1837 drove private capital away from internal improvement companies.<sup>92</sup> Most of the previously private enterprises became public and, after 1838, were backed by the state's credit.<sup>93</sup> While these companies were perhaps never public authorities in the modern sense, they were similar enough to justify a claim that Virginia's experience with public authorities in this century was not entirely unprecedented.

Virginia's first Constitution in 1776 made little change in the form of county government inherited from the colonial period.<sup>94</sup> The county court was the central administrative body for the county. Legislative, administrative and judicial responsibilities were merged in that body. The system was aristocratic and self-perpetuating since the justices (or commissioners) of the county court nominated their successors, who were almost invariably approved by the Governor and his Privy Council.<sup>95</sup> The Constitution of 1830 did little to change this pattern.<sup>96</sup>

The Constitutional Convention which met in 1850 brought significant reform to county government by adopting two provisions. The first "destroyed the aristocratic character of the [county] court by making the members elective and by giving them pay . . . ." <sup>97</sup> The

<sup>91</sup> This formula reflected a philosophy that was prevalent in Virginia even until the 1830's. Consider the following remarks made at the Convention of 1829-30: "Individual enterprise was first to be called out, and then aided by the hand of government." PROCEEDINGS AND DEBATES OF THE VIRGINIA STATE CONVENTION OF 1829-1830, 143 (1830). See also Goodrich, *supra* note 88, at 362.

<sup>92</sup> The state alone assumed

the completion of certain great works of internal improvement, leaving those of minor utility and proportions to the support of the Board of Public Works and individuals of whom the Board was but a co-partner.

JOURNAL AND DOCUMENTS OF THE HOUSE OF DELEGATES, 1834-35, Doc. No. 1.

<sup>93</sup> Va. Acts of Assembly 1838, ch. 12; see JOURNAL OF THE SENATE, 1877-78, Doc. No. 24. See generally Curtis, *Debts of the States*, 58 No. AM. REV. 110 (1884); Goodrich, *The Revulsion against Internal Improvements*, 10 J. ECON. HIST. 145 (1950); Morton, *The Virginia State Debt and Internal Improvements, 1820-1838*, 25 J. POL. ECON. 339 (1917).

<sup>94</sup> R. PINCHBECK, *IMPROVED COUNTY GOVERNMENT IN VIRGINIA* 7 (1938).

<sup>95</sup> *Id.* at 7-8.

<sup>96</sup> See PORTER, *supra* note 67, at 164. See generally W. VAN SCHREEVEN, *THE CONVENTIONS AND CONSTITUTIONS OF VIRGINIA, 1776-1966* (1967).

<sup>97</sup> PORTER, *supra* note 67, at 298.

second created a new subunit of county government, the magisterial district, which exists in almost the same form today in Virginia.

### THE CONSTITUTION OF 1869

The Constitutional Convention which met in 1867 and 1868 was a curious mixture of carpetbaggers, scalawags and conservatives.<sup>98</sup> The chairman of the Convention was a federal judge from New York, John C. Underwood, whose name is often associated with the Convention and the Constitution it produced.<sup>99</sup> The Constitution of 1869 had a profound effect upon local government in Virginia for several reasons, but chiefly because it abandoned the magisterial district system created by the Constitution of 1851 in favor of a township system which was inimical to Virginia tradition.<sup>100</sup> The concept was borrowed from New York's local government system, no doubt owing to the presence of thirteen New Yorkers at the Convention.<sup>101</sup>

The Underwood Constitution was the first to provide a classification of municipalities based on population.<sup>102</sup> It raised from 5,000 to 10,000 the minimum population required before a new county could be formed.<sup>103</sup> Road and school districts were created within each county, using the township as the base for each district, but allowing further subdivision within the township.<sup>104</sup> A foundation for the first state-wide system of public, free schools was laid by a mandate to that effect in section three of article eight.<sup>105</sup> Every city was required to elect a mayor who was to be its chief executive officer.<sup>106</sup> Special legislation pertaining to the organization and government of cities was forbidden "except in cases where, in the judgment of the General Assembly, the object of such act cannot be attained by general laws."<sup>107</sup>

<sup>98</sup> See PORTER, *supra* note 67, at 243. See generally DEBATES AND PROCEEDINGS OF THE VIRGINIA CONSTITUTIONAL CONVENTION 1867-68 (1868); A. LONG, THE CONSTITUTION OF VIRGINIA (1901); A. MOGER, VIRGINIA: BOURBONISM TO BYRD, 1870-1925, at 5-8 (1968); C. PEARSON, THE READJUSTER MOVEMENT IN VIRGINIA 17-23 (1917).

<sup>99</sup> C. PEARSON, *supra* note 98, at 17.

<sup>100</sup> VA. CONST. art. VII, § 2 (1869); see H. ECKENRODE, POLITICAL HISTORY OF VIRGINIA DURING RECONSTRUCTION 102 (1904); PORTER, *supra* note 67, at 245, 248-51.

<sup>101</sup> See PORTER, *supra* note 67, at 245.

<sup>102</sup> VA. CONST. art. VI, § 14 (1869); see A BODY INCORPORATE, *supra* note 18, at 17-18.

<sup>103</sup> VA. CONST. art. V, § 19 (1869); see PORTER, *supra* note 67, at 243.

<sup>104</sup> VA. CONST. art. VII, §§ 3, 4 (1869); see MAKIELSKI & TEMPLE, *supra* note 82, at 14-19; PORTER, *supra* note 67, at 249.

<sup>105</sup> See J. BUCK, THE DEVELOPMENT OF PUBLIC SCHOOLS IN VIRGINIA, 1607-1952, at 65-69 (1952); PORTER, *supra* note 67, at 291 *et seq.*

<sup>106</sup> VA. CONST. art. V, § 19 (1869).

<sup>107</sup> VA. CONST. art. V, § 20 (1869).

One of the most significant provisions was that which created the board of supervisors for each county and established the single-judge county court, thereby divorcing judicial functions from administrative and legislative functions for the first time in Virginia county government.<sup>108</sup>

#### FROM 1870 TO 1902

The township concept, introduced by the Underwood Constitution<sup>109</sup> and put into effect at the first session of the General Assembly following the adoption of that Constitution,<sup>110</sup> had a very brief lifespan in Virginia. Immediate and widespread dissatisfaction made the plan difficult, if not impossible, to implement; thus, in 1874, an amendment eliminated the township and reestablished the magisterial district as the subunit of county government.<sup>111</sup>

The new provision allowed as many magisterial districts as were appropriate in each county, but no less than three.<sup>112</sup> They differed from townships in that the latter "were real units of government with certain independent powers, while the magisterial districts were not, and in that the [supervisor under the township form] had definite duties connected with the government of the township in addition to his powers as a member of the county board . . ." <sup>113</sup>

Abolition of the township, however, did not mean an end to some of the institutions that accompanied its creation. The county school and road districts, which were new to Virginia and which were coterminous with townships, survived the 1874 amendment.<sup>114</sup> When the state returned to county magisterial districts, passage of a general law made the county court once again responsible for road construction and maintenance.<sup>115</sup> Yet shortly thereafter, the counties of Loudoun, Fairfax and Fauquier by special acts were exempted from the general law, and were allowed to operate under a road-district system similar to that which had been in effect under the township plan.<sup>116</sup> Other

<sup>108</sup> See PORTER, *supra* note 67, at 244-45.

<sup>109</sup> VA. CONST. art. VII, § 2 (1869).

<sup>110</sup> Va. Acts of Assembly 1869-70, ch. 39; see PORTER, *supra* note 67, at 251.

<sup>111</sup> Va. Acts of Assembly 1874-75, ch. 76; see PORTER, *supra* note 67, at 271.

<sup>112</sup> VA. CONST. art. VII, § 2 (1869).

<sup>113</sup> PORTER, *supra* note 67, at 245.

<sup>114</sup> See MAKIELSKI & TEMPLE, *supra* note 82, at 13-14.

<sup>115</sup> Va. Acts of Assembly 1874-75, ch. 181.

<sup>116</sup> Va. Acts of Assembly 1874-75, ch. 87 (Loudoun); 1875-76, ch. 92 (Fauquier); 1875-76, ch. 258 (Fairfax).

special legislation spread this road district system to many of the remaining counties.<sup>117</sup>

To effectuate the broad mandate in the Constitution of 1869 that a state-wide system of public, free schools be set up, the Convention of 1867-68 created the township school-district system.<sup>118</sup> Following the demise of the township, the school-district system was incorporated, with little but geographical change, into the resurrected magisterial-district system.<sup>119</sup> The county boards were authorized to subdivide the school district into as many units "as may be deemed necessary."<sup>120</sup> Although the early period in the development of school districts was fraught with difficulties, the system greatly improved public education and, of particular importance in the context of this article, it contributed to the pattern of "strongly localized government units created to handle major public services" which provided the foundation for the emergence of special districts in the twentieth century.<sup>121</sup>

One of the most noteworthy features of the last third of the nineteenth century was the accelerated growth of towns and cities.<sup>122</sup> During the Civil War, the socio-economic fabric of Virginia was rent. The plantation economy, which had remained relatively unaltered since the seventeenth century, was undermined not only by the destruction and havoc of war, but also by the elimination of the principal factor which sustained the plantation-slavery.<sup>123</sup> Following emancipation, many Negroes joined the migration to towns and cities, causing a sharp rise in the population and number of municipalities in Virginia. This trend has continued ever since.<sup>124</sup>

In 1880, the youngest Virginia County, Dickenson, was created by an Act of the General Assembly.<sup>125</sup> It is undoubtedly the last new county that will ever be formed in Virginia, although in theory the constitutional power still remains with the General Assembly. The

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<sup>117</sup> See MAKIELSKI & TEMPLE, *supra* note 82, at 15.

<sup>118</sup> VA. CONST. art. VII, § 3 (1869); See J. BUCK, *THE DEVELOPMENT OF PUBLIC SCHOOLS IN VIRGINIA, 1607-1952*, at 65 (1952).

<sup>119</sup> See MAKIELSKI & TEMPLE, *supra* note 82, at 18.

<sup>120</sup> VA. CONST. art. VII, § 3 (1869); see PORTER, *supra* note 67, at 293.

<sup>121</sup> MAKIELSKI & TEMPLE, *supra* note 82, at 18.

<sup>122</sup> See H. MCBAIN, *supra* note 65, at 118.

<sup>123</sup> See INGLE, *supra* note 65, at 119.

<sup>124</sup> See H. MCBAIN, *supra* note 65, at 118; RURAL AFFAIRS STUDY COMM'N, REPORT 1 (1969); Gedel, *Growth of Virginia Counties, 1790-1920*, 2 U. VA. NEWS LETTER October 1, 1925, at 1.

<sup>125</sup> Va. Acts of Assembly 1879-80, ch. 140; see VALC, *GOVERNMENTAL SUBDIVISIONS IN VIRGINIA 7* (1955).

Constitution of 1869 had greatly circumscribed that power.<sup>126</sup> Due to the undesirability of local units which are too small and too poor to support minimal services, the likelihood of any new county being carved out in the Commonwealth is remote indeed since Virginia counties are already small in comparison to those in other states.<sup>127</sup>

Although the number of special acts passed by the General Assembly relating to local government is still a matter of concern, it was a particular problem during the period between 1870 and 1902.<sup>128</sup> Consider, for example, the following passage from Porter:

Another characteristic of the period is the flood of special laws relating to counties. Since the actual power given to counties was limited to routine administration and since this was carefully regulated by law, any unusual circumstance made a special grant of power necessary and the counties were continually running to the legislature for special bills of one sort or another. During the last quarter of the century there was a total of two thousand three hundred forty-six special laws passed. Well over half of this number came in the last ten years. If the special acts concerning cities and towns were added, the total would be more than doubled. Much of this, of course, resulted from the increasing tempo of American life which was putting an increasing strain on the old machinery of local administration, but much of it was due to defects in this machinery as well.<sup>129</sup>

Virginia's first modern public health system appeared in 1900 when the General Assembly created a state board of health and required that local boards be set up in every county and city.<sup>130</sup> These local boards were given "broad powers in the matter of sanitation, control of contagious diseases, and vaccination. . . ." <sup>131</sup>

Between 1870 and 1902, the chief sources of local revenue were the poll tax (maintained at a very high rate after the Civil War for political reasons), license taxes, general property taxes, and certain other miscellaneous taxes.<sup>132</sup> In 1880 counties were granted taxing power

<sup>126</sup> See PORTER, *supra* note 67, at 230.

<sup>127</sup> Virginia, with 40,815 square miles, has 96 counties. In the nation as a whole, there are 3,615,210 square miles and only 3049 counties. U. S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, COUNTY AND CITY DATA BOOK 610 (1968).

<sup>128</sup> See PORTER, *supra* note 67, at 265, 280-81, 301.

<sup>129</sup> *Id.* at 301.

<sup>130</sup> Va. Acts of Assembly 1899-1900, ch. 1146, *amended* 1901-02, ch. 317.

<sup>131</sup> See PORTER, *supra* note 67, at 291.

<sup>132</sup> See H. ECKENRODE, POLITICAL HISTORY OF VIRGINIA DURING RECONSTRUCTION 72 (1904); PORTER, *supra* note 67, at 281.

over the real estate of railroads,<sup>133</sup> and in 1882, they were allowed to tax telegraph lines.<sup>134</sup>

Local debt was not a significant factor in the last quarter of the nineteenth century.<sup>135</sup> Counties had no general power to borrow money, but special legislation provided the authority in boards of supervisors to create debt for specific purposes.<sup>136</sup> Some latitude was given counties, however, by an act passed in 1874 which permitted borrowing for the construction and repair of public buildings.<sup>137</sup>

### THE CONSTITUTION OF 1902

In theory, Virginia is still functioning under the Constitution of 1902, but the provisions pertaining to local government have been so often and so drastically amended that there is little resemblance between the present document and the document produced by the 1901-02 Constitutional Convention. Nevertheless, the amendments have been largely permissive, as have the statutes which implemented them. The voters of each county and city were permitted to decide for themselves whether they would abandon the rigid system ordained by the 1901-02 Convention. As a result, the conservative attitude of Virginia's rural populace precluded radical county government change in counties outside of the metropolitan areas; but all of the cities and some suburban counties have taken advantage of the amended provisions by abandoning the archaic system imposed by the original provisions of the 1902 Constitution in favor of governmental forms tailored to local needs.<sup>138</sup>

The 1901-02 Convention shackled cities with a "strong mayor" form of government.<sup>139</sup> Those with a population of 10,000 or more were to elect a mayor and to adopt a bicameral council plan.<sup>140</sup> The powers and duties of the mayor were set out in detail, leaving less flexibility than was desirable; moreover, the two branches of council were so large

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<sup>133</sup> Va. Acts of Assembly 1879-80, ch. 106, *amended* 1881-82, ch. 221; *see* A. MOGER, *supra* note 98, at 49.

<sup>134</sup> Va. Acts of Assembly 1882 (Ex. Sess.) § 24, ch. 119; *see* PORTER, *supra* note 67, at 281.

<sup>135</sup> PORTER, *supra* note 67, at 288.

<sup>136</sup> *Id.* at 265.

<sup>137</sup> Va. Acts of Assembly 1873-74, ch. 300.

<sup>138</sup> All of Virginia's cities have adopted the city-manager form of government. Wheeler, *Virginia and the Council-Manager Plan*, 42 U. VA. NEWS LETTER 33 (1966).

<sup>139</sup> CCR REPORT 214.

<sup>140</sup> VA. CONST. art. VIII, §§ 120, 121 (1902).

and unruly that coordinated city government was a virtual impossibility.<sup>141</sup>

Another provision relating to cities and towns prohibited special legislation in regard to their government and organization, but a grandfather clause left existing charters unaffected.<sup>142</sup> Special acts were also forbidden for the extension or contraction of corporate boundaries.<sup>143</sup>

Counties fared no better. A uniform state-wide system of government was prescribed which completely ignored the problem of accommodating the needs of individual localities.<sup>144</sup> The provisions dealing with county government, just as those relating to cities and towns, denied localities a strong, flexible form of government and made reform impossible without constitutional amendment.

#### THE CHANGING FORMS OF LOCAL GOVERNMENT, 1902-1928

The single form of government required in all cities and towns in Virginia by the Constitution of 1902 was an overly elaborate and cumbersome one. The unwieldy bicameral council arrangement was the most often criticized feature of the Virginia constitutional plan, and seemed especially unsuited for city government in the twentieth century.<sup>145</sup> The advent of the automobile and a growing concentration of people in urban areas sharply increased the number of services which cities were expected to provide.<sup>146</sup> The demand for street lights and paved streets, among other things, was not being adequately or efficiently handled by the existing governmental structure. Cities needed a more businesslike method for meeting such demands.

In 1908 the City of Staunton decided to hire a manager to provide a more efficient means of dispensing municipal services by circumventing the slow, complex and often frustrating procedure

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<sup>141</sup> See L. HODGES, REORGANIZATION OF MUNICIPAL GOVERNMENT IN VIRGINIA 2 (1915).

<sup>142</sup> VA. CONST. art. VIII, § 117 (1902).

<sup>143</sup> VA. CONST. art. VIII, § 126 (1902).

<sup>144</sup> CCR REPORT 214. For a broad discussion of the 1902 Constitution and a description of the Convention, see generally R. McDANEL, THE VIRGINIA CONSTITUTIONAL CONVENTION OF 1901-02 (1928); A. MOGER, VIRGINIA: BOURBONISM TO BYRD, 1870-1925, 198 (1968); Holt, *The Virginia Constitutional Convention of 1901-1902: A Reform Movement Which Lacked Substance*, 76 VA. MAG. HIST. & BIOG. 67 (1968). See also PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION (1906).

<sup>145</sup> See, e.g., L. HODGES, REORGANIZATION OF MUNICIPAL GOVERNMENT IN VIRGINIA 2 (1915).

<sup>146</sup> See ADRIAN, *supra* note 41, at 235.

to which it had been tied.<sup>147</sup> This concentration of responsibility and control in a single individual permitted Staunton to achieve significant results. In taking this step, Staunton became the first city in the country to adopt what was to become known as the "city-manager plan" or the "council-manager plan."<sup>148</sup> It set in motion a reform movement in municipal government that is perhaps the most significant of this century.<sup>149</sup>

Because of the requirements of the Virginia Constitution, this new Staunton plan had to be engrafted on the traditional form of municipal government. The Constitution was amended, however, in 1912 to allow cities to adopt their own form of government.<sup>150</sup> In 1914 the General Assembly enacted legislation to implement the constitutional change.<sup>151</sup> Another constitutional amendment in 1920 expressly authorized the adoption of the city-manager form by cities and towns.<sup>152</sup> Today every Virginia city and most of Virginia's towns have adopted a manager plan.<sup>153</sup>

Although real reform came more slowly to Virginia counties than to its cities, county reform in Virginia also established a pattern for the rest of the country. Prompted by a number of studies of county inefficiency in Virginia, Governor Byrd urged constitutional revision to allow counties to adopt a plan of government less cumbersome than the traditional plan under which all Virginia counties were then required to operate.<sup>154</sup>

The Constitution of 1902 had provided only one form of government for counties. Under this traditional system, both legislative and administrative functions are vested in the board of supervisors, who

<sup>147</sup> See W. GRUBERT, *THE ORIGIN OF THE CITY MANAGER PLAN IN STAUNTON, VIRGINIA* (1954).

<sup>148</sup> See Stoneham, *Fifty Years of City Manager Government In Virginia*, 34 U. VA. NEWS LETTER (April 14, 1958), reprinted in READINGS IN VA. GOV'T 171; Wheeler, *Virginia and the Council-Manager Plan*, 42 U. VA. NEWS LETTER 33 (1966).

<sup>149</sup> See ADRIAN, *supra* note 41, at 223-27. There is a suggestion, however, that the council-manager plan is losing ground to the mayor-manager plan. See Austin, *Leadership in Council-Manager Government*, 46 U. VA. NEWS LETTER 9, 12 (1969). Yet the economies derived from the use of the council-manager plan are generally recognized. See, e.g., Booms, *City Governmental Form and Public Expenditure Levels*, 19 NAT'L TAX J. 187 (1966).

<sup>150</sup> Va. Acts of Assembly 1912, ch. 28, at 52-54, amending VA. CONST. art. 8, § 117.

<sup>151</sup> Va. Acts of Assembly 1914, chs. 138, 165, at 224-25, 269-70.

<sup>152</sup> Va. Acts of Assembly 1920, ch. 350, at 520-23, amending VA. CONST. art. 8, § 117.

<sup>153</sup> See Cooper, *Updating Local Government in Virginia: The Postwar Period and Beyond*, 43 U. VA. NEWS LETTER 13, 14 (1966); Wheeler, *supra* note 148, at 33.

<sup>154</sup> See Pinchbeck, *Origins and Evolution of County Government in Virginia*, 1 U. RICH. INST. FOR BUS. & COMMUNITY DEV. NEWSLETTER 3, 5 (1968).

are representatives from (but not of) the magisterial districts of the county.<sup>155</sup> The board nominally exercises general control of the affairs of the county; it not only makes policy, but executes it as well.<sup>156</sup> Yet the latitude of the board is circumscribed by the prerogatives of a number of constitutional officers elected in each county operating under the traditional plan: treasurer, sheriff, commonwealth's attorney, clerk, and commissioner of revenue.<sup>157</sup> They are called constitutional officers because their posts cannot be abolished except by constitutional amendment.

In 1915 an independent study by LeRoy Hodges was one of the first to dramatize the deplorable condition of county government in Virginia and to suggest a reorganization to provide a more efficient and responsive government.<sup>158</sup> He found that counties operated without central leadership, and that

the Constitutional Convention of 1902 shackled the counties of Virginia with a prescribed form of government which, in the majority of them, provides a job for about one out of every ten votes and virtually places the selection of these job-holders in the hands of the job-seekers themselves. The result is that instead of an efficient, representative and responsive county government, the rural people of Virginia find themselves at the mercy of a dangerously topheavy, unrelated, non-cooperative, inefficient, unbusinesslike and, in some cases, corrupt system of local government.<sup>159</sup>

He saw that the traditional system afforded county government no central leadership, and recommended a "controlled-executive plan," the basic features of which would be simplicity, responsiveness, and direct responsibility. There was no justification, in his opinion, for the fundamental difference between city and county governmental structures. "The only real difference . . . is merely in detail and intensity of organization."<sup>160</sup>

The catalyst which led to constitutional reform, however, was the

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<sup>155</sup> See G. JENNINGS, *VIRGINIA'S GOVERNMENT* 113 (1968).

<sup>156</sup> See Long, *Virginia Counties Turn to an Executive Secretary*, 40 U. VA. NEWS LETTER 33 (1964).

<sup>157</sup> VA. CONST. art 7, § 110.

<sup>158</sup> L. HODGES, *REORGANIZATION OF COUNTY GOVERNMENT IN VIRGINIA* (1915).

<sup>159</sup> *Id.* at 1. See also CCR REPORT 214.

<sup>160</sup> L. HODGES, *supra* note 158, at 3. The Report of the Virginia Commission on Simplification and Economy of State and Local Government in 1924 repeated many of the observations of Hodges and urged reorganization of county government particularly to correct fiscal and administrative inadequacies.

study commissioned by Governor Byrd and presented to him in 1927 by the New York Bureau of Municipal Research. The following passage fairly summarizes the report's findings:

In our study of Virginia county government we were particularly impressed by the scattered, disjointed and irresponsible type of organization that exists in all the counties. . . .

The present county government . . . is without a chief administrative officer and the board of supervisors controls through appointment only a small part of the county administration . . . . The voters of the county have very little power in the determination of county policies . . . . In fact, there is nothing to commend the present form of county government in Virginia. In many of the counties it is grossly political, careless, wasteful, and thoroughly inefficient. It has been that way for many years, but still it exists and seems to flourish. Perhaps the reason for this is that the people of the State have not yet become aware of the possibility of establishing a different form of county government, which is less costly, more efficient, and better able to meet modern conditions.<sup>161</sup>

#### THE 1928 CONSTITUTIONAL REVISION AND OPTIONAL FORMS OF COUNTY GOVERNMENT

A thorough revision of the 1902 Constitution was begun in 1927 and the resulting amendments were ratified in 1928. The most notable change in regard to cities, towns, and counties was the amendment to section 110 which allowed the General Assembly to enact general laws providing for the adoption by voters in each county of forms of county organization and government different from the traditional form. To permit this, a provision was added to section 110 which removed the restrictions on the election or appointment of county officers to allow for the creation of executive positions contemplated by the new forms of government recommended in the reports discussed in the preceding section.

At its 1930 session, the General Assembly approved a law which enabled Arlington County to adopt a modified county-manager form of government.<sup>162</sup> It was the first county in the United States to do so by popular vote.<sup>163</sup> The residents of Arlington had seen the ad-

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<sup>161</sup> N. Y. BUREAU OF MUNICIPAL RESEARCH, REPORT 5-6 (1927).

<sup>162</sup> Va. Acts of Assembly 1930, ch. 167, at 450-56.

<sup>163</sup> Reid, *Arlington County Adopts the Manager Plan*, 20 NAT'L MUN. REV. 127 (1931).

vantages of the city-manager plan as a result of the 1922 campaign there for incorporation as a city.<sup>164</sup> For at least two years before the adoption of the county manager form, Arlington had been using a "directing engineer" who performed many of the administrative duties which would otherwise have been handled by the board of supervisors.<sup>165</sup>

Also at the 1930 session, the General Assembly established the Virginia Commission on County Government to draft a general law to implement the amendment to section 110.<sup>166</sup> The commission's legislative proposal was submitted to the 1932 Assembly as the Optional Forms Act.<sup>167</sup> It contained two new forms of county organization, the County Manager Form and the County Executive Form. The differences between the two are insubstantial.<sup>168</sup>

Under the County Manager Plan, administrative functions are divorced from legislative functions (insofar as that is possible) and vested in the manager.<sup>169</sup> The board of supervisors, still popularly elected, is left with legislative powers only. County activities are divided into seven departments: finance, public works, public welfare, law enforcement, education, public health, and county records, all under the supervision of the county manager to promote efficiency and economy. That County Executive Plan differs from the County Manager Plan in that "the board of supervisors upon the recommendation of the county executive appoints administrative officers and employees; while the manager, directly responsible to the board for administration, appoints administrative officers."<sup>170</sup>

Five referenda were held in the first two years after the Optional Forms Act was passed, but only Henrico and Albemarle adopted one or the other of these plans.<sup>171</sup> Within several years, two more referenda

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<sup>164</sup> *Id.* at 127-28.

<sup>165</sup> *Id.* at 129.

<sup>166</sup> Va. Acts of Assembly 1930, ch. 268, at 689-90; see Corson, *The Year 1930 in the History of Virginia Counties*, 20 NAT'L MUN. REV. 197 (1931); Spicer, *Virginia's Progress in County Government*, 28 AM. POL. SCI. REV. 1074 (1934).

<sup>167</sup> Va. Acts of Assembly 1932, ch. 368, at 727-52.

<sup>168</sup> See VA. METROPOLITAN AREAS STUDY COMM'N, GOVERNING THE VIRGINIA METROPOLITAN AREAS: AN ASSESSMENT 17 (1967).

<sup>169</sup> VA. CODE ANN. § 15.1-622 to -660 (1964); see VA. STATE CHAMBER OF COMMERCE, OPPORTUNITIES FOR ECONOMY IN COUNTY GOVERNMENT IN VIRGINIA 56 (1947). See generally G. SPICER, TEN YEARS OF COUNTY MANAGER GOVERNMENT IN VIRGINIA (1945).

<sup>170</sup> Pate, *Virginia's Experience with New Forms of County Government*, 24 NAT'L MUN. REV. 265 (1935).

<sup>171</sup> See VA. COMM'N ON COUNTY GOV'T, REPORT, 14 (1940); Spicer, *supra* note 166, at 1077.

were conducted and both failed.<sup>172</sup> In 1945, Warwick County adopted the County Manager Plan and operated under that form until it became a city.<sup>173</sup> The residents of Fairfax County approved the County Executive Plan in 1952.<sup>174</sup>

Special legislation has provided for a limited departure from the traditional form of county government without the need to adopt one of the optional forms. As early as 1928, Augusta County was allowed to create the post of clerk of the board of supervisors who was independent of the county clerk.<sup>175</sup> Other special acts permitted the counties of Chesterfield (1942),<sup>176</sup> Fairfax (1944),<sup>177</sup> and Elizabeth City (1946)<sup>178</sup> to appoint a county executive secretary without a referendum. The County Executive Secretaries Act of 1950 provided a general law similar to the special laws applicable to those three counties.<sup>179</sup> It exempts four counties (Caroline, Essex, Northumberland, and King and Queen) from its application. The fundamental problems related to the traditional form of county organization are hardly eliminated by this approach, and it is not intended to be a substitute for the optional forms.<sup>180</sup> But because it does involve a popular vote, the County Executive Secretaries Act makes possible a more efficient system for dispensing urban services in counties which are just beginning to feel urban pressures, yet are not prepared to approve radical change in their governmental structure.<sup>181</sup>

Another optional form, the County Board Form, was added in 1940.<sup>182</sup> It was originally enacted for adoption in Fairfax County, but was never approved by the voters there.<sup>183</sup> An amendment in 1950 extended its applicability to include Elizabeth City County which did

<sup>172</sup> See R. PINCHBECK, *IMPROVED COUNTY GOVERNMENT IN VIRGINIA* (1938).

<sup>173</sup> See VA. STATE CHAMBER OF COMMERCE, *supra* note 169, at 59.

<sup>174</sup> Earlier in 1945, Fairfax County had turned to an executive secretary as the result of a special act. Va. Acts of Assembly 1944, ch. 204, at 293-97.

<sup>175</sup> See VA. STATE CHAMBER OF COMMERCE, *supra* note 169, at 59.

<sup>176</sup> Va. Acts of Assembly 1942, ch. 389, at 624-25.

<sup>177</sup> Va. Acts of Assembly 1944, ch. 204, at 293-97.

<sup>178</sup> Va. Acts of Assembly 1946, ch. 373, at 653.

<sup>179</sup> Va. Acts of Assembly 1950, chs. 106, 388, at 123-27, 694-97; see Long, *Virginia Counties Turn to an Executive Secretary*, 40 U. VA. NEWS LETTER 33, 34 (1964). The executive secretary was an adjunct of the County Board Form.

<sup>180</sup> See Long, *supra* note 179, at 34.

<sup>181</sup> See VA. METROPOLITAN AREAS STUDY COMM'N, *GOVERNING VIRGINIA'S METROPOLITAN AREAS* 17 (1967).

<sup>182</sup> Va. Acts of Assembly 1940, ch. 396, at 696-706.

<sup>183</sup> The Act does not expressly mention Fairfax County.

adopt it.<sup>184</sup> A later amendment made it available to any county.<sup>185</sup> Since Elizabeth City County became a city in 1952 as a result of its merger with Warwick, only Scott County operates under this form. There is very little, however, to distinguish the County Board Form from the County Executive Secretaries Act.

A Modified Commission Plan was authorized by the General Assembly for Arlington County in 1930,<sup>186</sup> but was never adopted by that county. Under this plan, all governmental powers, whether legislative, administrative or executive, were to be vested in a board of five commissioners with certain specified functions assigned to each.

In 1960 the Urban County Form was authorized by the General Assembly and intended for adoption only in Fairfax County.<sup>187</sup> It is patterned after the County Executive and County Manager Forms, but amendments added in 1966 rearranged sanitary districts to provide for greater efficiency and better planning, with these new, larger districts serving as electoral divisions for election of supervisors. The board is granted broad power and flexibility so that it may provide urban services without undue restriction.<sup>188</sup>

#### THE EMERGENCE OF A NEW FORM OF LOCAL GOVERNMENT— THE URBAN COUNTY

One of the strongest traditions in Virginia and the one that gives city-county separation its reason for being is that "urban areas should be under urban government and rural areas under county government."<sup>189</sup> As the Hahn Commission observed, however, this concept has been undermined by the erratic growth experienced in metropolitan areas and by the grant of additional powers to counties.<sup>190</sup> Today in Virginia, many counties exercise the same powers and provide essentially the same services as do their neighboring cities.<sup>191</sup>

So complete has been the merging of city and suburban county functions that in 1950 the General Assembly enacted legislation which

<sup>184</sup> Va. Acts of Assembly 1950, ch. 106, at 123-27.

<sup>185</sup> Va. Acts of Assembly 1962, ch. 623, at 1101.

<sup>186</sup> Va. Acts of Assembly 1930, ch. 167, at 450-52, *as amended*, VA. CODE ANN. § 15.1-670 to -673 (1964).

<sup>187</sup> Va. Acts of Assembly 1960, ch. 382, at 571-92, *as amended* VA. CODE ANN. § 15.1-722 to -791 (1964).

<sup>188</sup> See G. JENNINGS, VIRGINIA'S GOVERNMENT 111 (1968).

<sup>189</sup> County of Norfolk v. City of Portsmouth, 186 Va. 1032, 1045, 45 S.E.2d 136, 142 (1947).

<sup>190</sup> HAHN REPORT, *supra* note 1, at 7.

<sup>191</sup> See A BODY INCORPORATE, *supra* note 18, at 110.

gave certain counties "the same powers and authority" as are extended to cities and towns under Virginia law.<sup>192</sup> This statute was amended in 1958 to extend its effect to other suburban counties,<sup>193</sup> and finally in 1966 to extend to all counties in Virginia.<sup>194</sup> In *Board of Supervisors v. Corbett*,<sup>195</sup> however, it was held that the powers granted to counties under this statute do not include powers exercised by cities and towns by reason of a special charter provision, but only those powers conferred upon municipalities by general law. Since cities derive most of their powers from charter provisions adopted by the electors of the city and approved by the General Assembly, the sweeping grant of section 15.1-522 is not as broad in practical effect as it may first appear. This has been corrected by resort to special legislation for counties, enacted ostensibly as "general legislation" but confined to certain counties as the need arises, usually by reference to population levels.<sup>196</sup> Although this approach runs afoul of the spirit of section 63 of the Constitution, this practice has been upheld by the Virginia Supreme Court of Appeals as a valid exercise of legislative power and as a general classification in spite of the fact that the limiting language of the statute may confine its application to a single county.<sup>197</sup>

This special legislation approach was used as early as 1918 to allow the counties surrounding cities of over 30,000 to "install and maintain suitable lights on the streets and highways in the villages and build up portions of such counties respectively. . . ." <sup>198</sup> Other special acts followed the 1918 act and further extended the powers of certain counties.<sup>199</sup>

Of perhaps only historical note is the appearance of drainage districts after a 1910 enabling act.<sup>200</sup> Counties were authorized to set up such

<sup>192</sup> Va. Acts of Assembly 1950, ch. 100, at 113-14.

<sup>193</sup> Va. Acts of Assembly 1958, ch. 190, at 251-52.

<sup>194</sup> Va. Acts of Assembly 1966, chs. 405, 495, at 592-94, 675-76 [codified at VA. CODE ANN. § 15.1-522 (1964)].

<sup>195</sup> 206 Va. 167, 142 S.E.2d 504 (1965).

<sup>196</sup> See Bohannon, *Local Bills—Some Observations*, 42 VA. L. REV. 845, 854 (1956). See also Note, *Special Legislation in Virginia*, 42 VA. L. REV. 860 (1956).

<sup>197</sup> See *Newport News v. Elizabeth City County*, 189 Va. 825, 55 S.E.2d 56 (1949); *Gandy v. Elizabeth City County*, 179 Va. 340, 19 S.E.2d 97 (1942); *Martin's Ex'rs v. Commonwealth*, 126 Va. 603, 102 S.E. 77 (1920). *But cf.* *County Bd. of Supervisors v. American Trailer Co.*, 193 Va. 72, 68 S.E.2d 115 (1951); *Quesinberry v. Hull*, 159 Va. 270, 165 S.E. 382 (1932). *Compare* *Dean v. Paolicelli*, 194 Va. 219, 72 S.E.2d 506 (1952), *with* *Joy v. Green*, 194 Va. 1003, 76 S.E.2d 178 (1953).

<sup>198</sup> Va. Acts of Assembly 1918, ch. 51, at 105.

<sup>199</sup> Va. Acts of Assembly 1930, ch. 125, at 341-42; Va. Acts of Assembly 1932, ch. 273, at 481-82.

<sup>200</sup> Va. Acts of Assembly 1910, ch. 312, at 474-85.

districts for "ditching and draining the wet, swamp and overflowed lands of the State." Although these entities resembled the sanitary districts which were to appear later, they were never an important factor because so few were created.<sup>201</sup>

In 1926 the General Assembly provided for the creation of sanitary districts within certain counties.<sup>202</sup> Four years later, a sanitary district law of general applicability was passed.<sup>203</sup> Such legislation was a significant step making it possible for counties to provide a limited number of urban services to those areas within the counties which were highly developed. Sanitary districts are authorized by state law, but come into existence only upon the petition of the requisite number of voters in the proposed district.<sup>204</sup> Bonds may be issued by these districts with the approval of the county to finance water systems, garbage collection and disposal, sewerage, street lighting and other projects.<sup>205</sup> The most important characteristic of these entities is that they constitute special taxing districts within the county for the purposes for which they are created, but remain under the control of the governing body of the county.<sup>206</sup> As a consequence, counties are able to avoid the impact of section 168 of the Constitution which requires uniformity of taxation "within the territorial limits of the authority levying the tax. . . ." Establishing sanitary districts with well-defined boundaries permits special levies upon persons within such boundaries for the additional services provided therein.

The range of permissible activities of sanitary districts has been broadened since the 1930 act to include so many additional powers that a listing of them here is impractical.<sup>207</sup> Moreover, the passage of the Public Facilities District Law in 1946 allowed certain counties to exercise powers even broader than those granted under the Sanitary District Laws.<sup>208</sup> The public facilities district is practically unlimited in what it can provide in the way of public services.

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<sup>201</sup> See MAKIELSKI & TEMPLE, *supra* note 82, at 19.

<sup>202</sup> Va. Acts of Assembly 1926, ch. 339, at 604-28; see MAKIELSKI & TEMPLE, *supra* note 82, at 24; VALC, GOVERNMENTAL SUBDIVISIONS IN VIRGINIA 15 (1955).

<sup>203</sup> Va. Acts of Assembly 1930, ch. 460, at 1001-04.

<sup>204</sup> VA. CODE ANN. § 21-113 (1960).

<sup>205</sup> VA. CODE ANN. § 21-122 (1960).

<sup>206</sup> VA. CODE ANN. § 21-119 (1960); see G. JENNINGS, VIRGINIA'S GOVERNMENT 120 (1968); MAKIELSKI & TEMPLE, *supra* note 82, at 23.

<sup>207</sup> See generally VA. CODE ANN. §§ 21-118 to -120 (1960).

<sup>208</sup> Va. Acts of Assembly 1946, ch. 93; see VALC, GOVERNMENTAL UNITS IN VIRGINIA 16 (1955). The act originally applied only to Elizabeth City County, but was amended to apply to Fairfax County. Va. Acts of Assembly 1952, ch. 363.

The General Assembly has established or has enacted enabling legislation which would permit localities to establish several different public authorities to provide specialized services. Among them are park authorities, water and sewer authorities, public recreational facilities authorities, authorities for the development of former federal areas, hospital or health commissions, housing authorities, airport authorities, parking authorities, produce market authorities, and redevelopment and urban renewal authorities.<sup>209</sup> These developments have made it possible for a vast array of urban services to be provided outside of Virginia's cities, but the price has been a hodge-podge of overlapping statutes causing confusion, administrative difficulty, and troublesome planning problems.<sup>210</sup>

One commentator in 1963 observed that special legislation and other factors have made it possible for certain highly-developed counties to acquire a closer resemblance to cities than to traditional counties.<sup>211</sup> Because these counties have been granted such a complete range of powers usually exercised by cities, he referred to them as "urban counties," and suggested that they may become a hybrid unit of local government in Virginia, distinct from both city and traditional county. In passing legislation in 1960 allowing certain counties to adopt an urban county form of government,<sup>212</sup> the General Assembly may have tacitly recognized that proposition.<sup>213</sup>

#### LOCAL TAXATION AND FINANCE

Cities and counties rely heavily on property taxes.<sup>214</sup> Real property

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<sup>209</sup> A collection of the laws relating to these Virginia public authorities, special districts, etc., may be found in McSweeney, *Limitations on the Power of the General Assembly to Incur Debt* (Memorandum to the Comm'n on Const. Revision, July 17, 1968). See also Makielski, *The Special District Problem in Virginia*, 55 VA. L. REV. 1182 (1969).

<sup>210</sup> Cf. MAKIELSKI & TEMPLE, *supra* note 82, at 116-17.

<sup>211</sup> Griffin, *Units of Local Government in Virginia*, 1962, 40 U. VA. NEWS LETTER 1, 4 (1963). See also A BODY INCORPORATE, *supra* note 18, at 110.

<sup>212</sup> Va. Acts of Assembly 1960, ch. 382.

<sup>213</sup> The General Assembly, however, would not go so far as to adopt the proposal of the Commission on Constitutional Revision that counties with a population of 25,000 or more be allowed to adopt a charter. CCR Draft, art. VII, §§ 1, 2. Such a change would have made the urban county almost indistinguishable from a municipal corporation.

<sup>214</sup> RURAL AFFAIRS STUDY COMM'N, REPORT 29 (1969); Horsley, *Developments Bearing on the Future of Taxation in Virginia*, 12TH ANN. WM. & MARY TAX CONF. PROCEEDINGS 7 (1966); Mitchell, *The Financial and Fiscal Implications of Urban Growth*, 37 VA. MUN. REV. 21 (1960). See also COMM. FOR ECONOMIC DEVELOPMENT, MODERNIZING LOCAL GOVERNMENT 8 (1966).

and tangible personal property, except the rolling stock of public service corporations, are reserved for local taxation.<sup>215</sup> Because they are made by the localities themselves (except in the case of public service corporations where assessment of property subject to local taxation is made by the State Corporation Commission), assessments vary from locality to locality.<sup>216</sup> The Constitution requires assessment at fair market value,<sup>217</sup> but most cities and counties apply their tax rates to a percentage of the full value. In Washington County in 1966, for example, assessments of real property were at 5.9%; while in the City of Richmond, they were at 86.3%.<sup>218</sup> Counties generally have used a very low percentage in order to increase the burden of local taxation borne by public service corporations whose property is assessed by the SCC at forty percent of fair market value.

The other taxes traditionally imposed by local units are not particularly significant,<sup>219</sup> but some of the recently initiated local taxes, especially the sales tax, have had a great impact. When it became obvious that a new source of revenue had to be found if essential urban needs were to be met, Virginia cities began to turn to a tax on certain sales within their corporate limits. On July 1, 1964, Norfolk became the first locality in Virginia to impose such a tax.<sup>220</sup> Within one year, all six of the cities in the Hampton Roads area had such a tax.<sup>221</sup> Cities in other parts of the state began to impose the sales tax. Several suburban counties, realizing that this tax did not drive business away from those cities which collected it, also became interested in using it, but were not permitted by law to do so under existing statutes.<sup>222</sup>

An areawide sales tax plan for Hampton Roads failed, and pressure

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<sup>215</sup> Va. Const. art. XIII, §§ 168, 171 (1902); VA. CODE ANN. § 58-9 (1969). The original § 169 of the Constitution of 1902 provided that after January 1, 1913, the General Assembly would not be prohibited from segregating classes of property for local taxation only. See generally Sager, *Property Classification for Taxation*, 43 VA. L. REV. 1325 (1957).

<sup>216</sup> See Va. Dep't of Taxation, *Real Estate Taxes in Virginia: Real Estate Assessment Ratios and Average Effective True Tax Rates in Virginia Counties and Cities—1964 and 1966* (mimeo. 3 pp., June 1, 1967).

<sup>217</sup> VA. CONST. art. XIII, § 169 (1902).

<sup>218</sup> See Va. Dep't of Taxation, *supra* note 216.

<sup>219</sup> See VA. DEP'T OF TAXATION, REPORT FOR THE FISCAL YEAR ENDING JUNE 30, 1969 (1969).

<sup>220</sup> Reed, *A City Sales Tax: Norfolk's First Year*, 42 U. VA. NEWS LETTER 9 (1965).

<sup>221</sup> *Id.*

<sup>222</sup> Board of Supervisors v. Corbett, 206 Va. 167, 142 S.E.2d 504 (1965); see Horsley, *supra* note 214, at 8.

for a state sales tax began to mount.<sup>223</sup> The Norfolk experiment threatened to spread to all of the cities of the state, leaving counties at a disadvantage. For this reason, the political opposition to the state sales tax which had thwarted such legislation for years was finally overcome in 1966,<sup>224</sup> less than two years after Norfolk began to collect its sales tax. This legislation provided for a state sales tax at 2% until January 1, 1968, when the rate was increased to 3%. Each locality is given the option to add to the sales tax another 1% which is not subject to the sales tax distribution formula, but which remains in the local unit that collects it.

More recently, cities turned to what is popularly called an "occupation tax" to raise badly needed revenues and to equalize the imbalance caused by benefit spillovers. An occupation tax is imposed upon resident and non-resident alike, and is intended to make the latter bear part of the cost of services which the cities provide to those who work therein. Richmond's occupation tax was upheld by the Supreme Court of Appeals in *City of Richmond v. Fary*.<sup>225</sup> The tax there is imposed only upon those (1) who earn \$3,100 or more, (2) who work in the city 120 days or more each year, and (3) who pay no license tax. The court distinguished the occupation tax from the "payroll tax," which is forbidden by both § 58-851.2 of the Virginia Code and § 2.02(a) of the Charter of the City of Richmond. Claimed violations of due process and equal protection were not found by the court under either the federal or Virginia Constitutions. The General Assembly during the 1970 Session, however, passed legislation making occupation taxes unlawful.<sup>226</sup>

Almost all of the major capital projects undertaken by local units are financed, not by tax dollars, but rather by bond issues. However, the power of cities, towns, and counties to incur debt is circumscribed by the Constitution of Virginia.<sup>227</sup> Under section 127, cities and towns may not issue bonds which exceed 18% of the assessed valuation of the real estate within the respective municipalities. There are certain bonds which are specifically excluded from the general restriction of

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<sup>223</sup> Horsley, *supra* note 214, at 8-9; Reed, *supra* note 220, at 9-10. See also Snively, *The Sales and Use Tax*, 32 U. VA. NEWS LETTER, No. 4 (1955), reprinted in READINGS IN VA. GOV'T 77.

<sup>224</sup> Va. Acts of Assembly 1966, ch. 151; VA. CODE ANN. § 58-441.1 *et seq.* (1969). See generally Morrisett, *Major Tax Enactments of the 1966 Virginia Assembly*, 12TH ANN. WM. & MARY TAX CONF. PROCEEDINGS 37 (1967).

<sup>225</sup> 210 Va. 338, 171 S.E.2d 257 (1969).

<sup>226</sup> H.B. 56, Va. Acts of Assembly 1970, ch. 748.

<sup>227</sup> VA. CONST. art. VII, § 115a (1902) (counties); art. VIII, § 127 (cities and towns).

this section. Debt incurred in anticipation of the collection of revenues is not added to the amount of outstanding indebtedness for the purposes of section 127. Likewise, bonds approved by referendum to finance a revenue-producing project are not governed by the 18% limit; nevertheless, such debt may later be added to the outstanding debt subject to the 18% limit if the project fails to raise sufficient revenues.

Counties may issue no bonds except to meet casual deficits, to anticipate the collection of revenues, or to redeem a previous liability unless the bond issue is approved by referendum.<sup>228</sup> There have been repeated complaints that counties are disadvantaged by this arrangement and that cities and counties should be treated alike insofar as public debt is concerned. An attempt to bring cities and counties within the same constitutional debt restrictions was made by the Virginia Commission on Constitutional Revision, but it failed to win the approval of the General Assembly in the form recommended. The 1969 Extra Session of the Assembly did provide, however, that any county may, after a successful referendum on the issue, elect to be treated as a city for the purpose of issuing bonds.

In 1958, section 115a was amended to permit counties to borrow from the Virginia Supplemental Retirement System to finance school construction.<sup>229</sup> No referendum is required in such instances.

#### PUBLIC AUTHORITIES IN VIRGINIA

In 1928 the General Assembly created the Norfolk-Portsmouth-Norfolk County Bridge Authority.<sup>230</sup> It lacked the autonomy of today's authorities because it was headed by a commission composed of the governing bodies of the three constituent units. The veto power each unit had led to inaction by the authority and to such friction among the three members that positive programs became impossible.<sup>231</sup>

The defect in the 1928 act was eliminated in the legislation establishing the Elizabeth River Tunnel Commission in 1942,<sup>232</sup> which according to one commentator was the first true public authority in Virginia.<sup>233</sup> Since that time, more than three hundred public authorities

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<sup>228</sup> VA. CONST. art. VII, § 115a (1902). See Bennett, *County Debt in Virginia*, 33 U. VA. NEWS LETTER, No. 16 (1957), reprinted in READINGS IN VA. GOV'T 89.

<sup>229</sup> Va. Acts of Assembly 1958, ch. 643, at 1087.

<sup>230</sup> Va. Acts of Assembly 1928, ch. 364.

<sup>231</sup> MAKIELSKI & TEMPLE, *supra* note 82, at 31; Makielski, *State Authorities: Virginia's Governmental Paradox*, 41 U. VA. NEWS LETTER 41 (1965).

<sup>232</sup> Va. Acts of Assembly 1942, ch. 130.

<sup>233</sup> MAKIELSKI & TEMPLE, *supra* note 82, at 33.

and special districts have appeared in the state,<sup>234</sup> presenting a problem which other states had to face long before now.<sup>235</sup> It is described by Professor Makielski:

There is the danger . . . that too many authorities too soon will present the problems of a crazy quilt of governmental units and jurisdictions, each with different goals, each charged with narrowly defined functions, and each beyond the direct control of the electorate.<sup>236</sup>

The otherwise simple plan of local government in Virginia with its noticeable lack of "layering" of jurisdiction except where town and county are concerned is complicated by the presence of such a large number of single or limited purpose authorities.<sup>237</sup> Yet the problems presented by the increase in the number of these authorities and often their very existence may not be apparent to the general public. Certainly, the nature of these hybrid governmental units is not understood by the public, which is not surprising in light of the confusion among experts as to what public authorities are.

Several writers have attempted definitions, but due to the great variety of public authorities, public corporations, commissions, boards, and special districts, it is difficult indeed to arrive at a satisfactory definition that will fit every such creature.<sup>238</sup> A few of the definitions offered principally for working purposes are:

A special unit of government performing some public service and having its own fiscal authority and separate governing body.<sup>239</sup>

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<sup>234</sup> SEC'Y OF THE COMMONWEALTH OF VA., REPORT 78-308 (1968); Makielski, *The Special District Problem in Virginia*, 55 VA. L. REV. 1182, 1183 (1969).

<sup>235</sup> See, e.g., 11 N. Y. STATE CONST. CONV. COMM., REPORTS 244 (1938); Davis, *Borrowing Machines*, 24 NAT'L MUN. REV. 328 (1935); Nehemkis, *The Public Authority: Some Legal and Practical Aspects*, 47 YALE L.J. 14 (1927); Porter, *A Plague of Special Districts*, 22 NAT'L MUN. REV. 544 (1933).

<sup>236</sup> Makielski, *State Authorities: Virginia's Governmental Paradox*, 41 U. VA. NEWS LETTER 41, 44 (1965).

<sup>237</sup> MAKIELSKI & TEMPLE, *supra* note 82, at 5.

<sup>238</sup> There is a considerable body of literature in this area. See, e.g., ACIR, *THE PROBLEM OF SPECIAL DISTRICTS IN AMERICAN GOVERNMENT* (1964); J. BOLLENS, *SPECIAL DISTRICT GOVERNMENTS IN THE UNITED STATES* (1957); COUNCIL OF STATE GOVERNMENTS, *PUBLIC AUTHORITIES IN THE STATES* (1953); W. FRIEDMAN (ed.), *THE PUBLIC CORPORATION—A COMPARATIVE SYMPOSIUM* (1954); R. SMITH, *PUBLIC AUTHORITIES, SPECIAL DISTRICTS AND LOCAL GOVERNMENT* (1964); Alderfer, *Is "Authority" Financing the Answer?*, 70 AM. CITY 115 (1955); Chatters, *Another Point of View*, 70 AM. CITY 116 (1955) (an answer to Alderfer); Davis, *Borrowing Machines*, 24 NAT'L MUN. REV. 328 (1935); Ellinwood,

<sup>239</sup> ADRIAN, *supra* note 41, at 227.

A limited legislative agency or instrumentality of corporate form intended to accomplish specific purposes involving long-range financing of certain public facilities without legally or directly impinging upon the credit of the State.<sup>240</sup>

A special public corporation whose obligations are payable solely from its revenues or property, or both, without recourse to taxes and special assessments.<sup>241</sup>

A public corporation set up outside the regular framework of federal, state or local government, and freed from the procedures and restrictions of routine government operations, in order that it may bring

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*The Use of Special Authorities to Finance School Improvements*, 25 MUN. FIN. 48 (1953); England, *Dangers of the Authority Mechanism*, 51 PUB. UTILITIES FORTNIGHTLY 729 (1953); Fed. Res. Bank of Richmond, *The Public Authority—A Growingly Popular Device*, MONTHLY REV., May 1955, at 3; Fox & Fox, *Municipal Government and Special—Purpose Authorities*, ANNALS OF CONG. 176 (1940); Fuchs, *Regional Agencies for Metropolitan Areas*, 22 WASH. U.L.Q. 74 (1936); Gerwig, *Public Authorities: Legislative Panacea?*, 5 J. PUB. L. 389 (1956); Gerwig, *Public Authorities in the United States*, 26 LAW & CONTEMP. PROB. 591 (1961); Goldberg, *The Use of the "Authority" in Public Housing*, 27 GEO. L.J. 1129 (1939); Goldstein, *The New York Port Authority*, 5 J. PUB. L. 408 (1956); Jones, *Special Districts and Authorities*, in C. WOODBURY (ed.), *THE FUTURE OF CITIES AND URBAN REDEVELOPMENT* 573-86 (1953); Kuisshan, *How Should Authorities Be Controlled?*, 5 GOVERNMENTAL RESEARCH ASS'N REP. 5 (1953); Martin, *Therefore Is the Name . . . Babel*, 40 NAT'L MUN. REV. 70 (1951); McLean, *Use and Abuse of Authorities*, 42 NAT'L MUN. REV. 438 (1953); Morris, *Evading Debt Limitations with Public Building Authorities: The Costly Subversion of State Constitutions*, 68 YALE L.J. 234 (1958); Nehemkis, *The Public Authority: Some Legal and Practical Aspects*, 47 YALE L.J. 14 (1937); Netherton, *Area-Development Authorities: A New Form of Government by Proclamation*, 8 VAND. L. REV. 678 (1955); Pope, *New Agencies in City Government*, 36 PUB. MANAGEMENT 122 (1954); Porter, *A Plague of Special Districts*, 22 NAT'L MUN. REV. 544 (1933); Robson, *The Public Corporation in Britain Today*, 63 HARV. L. REV. 1321 (1950); Savino, *The Authority Concept*, 5 GOVERNMENTAL RESEARCH ASS'N REP. 80 (1953); Shestack, *The Public Authority*, 105 U. PA. L. REV. 553 (1957); Tilden, *Problems Underlying the Control of the Public Authority/Corporation*, 1 PORTIA L.J. 85 (1966); Tilden, *Forerunners of the Public Authority*, 7 WM. & MARY L. REV. 1 (1966); Westmeyer, *Authorities: An Escape from Debt Limitation?*, 6 GOVERNMENTAL RESEARCH ASS'N REP. 48 (1954); Wood, *Special Authorities*, MUN. FIN. 162 (1953); Note, *From Private Enterprise to Public Entity: The Role of the Community Development Corporation*, 57 GEO. L.J. 956 (1969); Note, *The Applicability of Sovereign Immunity to Independent Public Authorities*, 74 HARV. L. REV. 714 (1961); Comment, *Obligations of a State-Created Authority: Do They Constitute a Debt of the State?*, 53 MICH. L. REV. 439 (1955); Alpern, *Unsnarling the Traffic Jam by the Use of Parking Authorities*, 36 VA. L. REV. 1029 (1950).

<sup>240</sup> Gerwig, *Public Authorities in the United States*, 26 LAW & CONTEMP. PROB. 591 (1961).

<sup>241</sup> Nehemkis, *supra* note 235, at 14.

the best techniques of private management to the operation of a self-supporting or revenue-producing public enterprise.<sup>242</sup>

Professor Makielski has attempted a method for identifying public authorities in Virginia. He has isolated five characteristics which readily distinguish an entity as a public authority or special district: (1) They are created by the General Assembly and are not subordinate to cities or counties. (2) They fall within the ambit of the special fund doctrine, which means that their debts in no way constitute a liability of another governmental unit and that they enjoy a considerable amount of autonomy in their operations. (3) They are a strange blend of public and private. They perform governmental functions and exercise certain governmental powers such as eminent domain, but operate in the manner of private enterprises without the usual restrictions imposed upon traditional units of government. (4) The functions of public authorities are not confined to the boundaries of a single unit of local government, but may extend into two or more jurisdictions. The territorial range of the authority tends to coincide with the reach of its services. (5) They are not governed by well-established legal rules whether of statute or of case law.<sup>243</sup>

Many advantages have been cited to justify the use of these devices, but they have generally been created out of necessity without a weighing of pros and cons.<sup>244</sup> Those states which have constitutional limitations on both state and local debt have resorted to public authorities to provide the services which were demanded of them, but which could not be financed by traditional units of government because of the constitutional debt restrictions.<sup>245</sup> Legislators were given very little choice because of the reluctance of voters to amend or eliminate the debt limitations. Special districts or public authorities supplied the answer to their dilemma.

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<sup>242</sup> Address by Austin J. Tobin, Exec. Dir., Port of N. Y. Auth. at Rutgers U., Mar. 26, 1953, quoted in Gerwig, *supra* note 239, at 594.

<sup>243</sup> Makielski, *The Special District Problem in Virginia*, 55 VA. L. REV. 1182, 1184-85 (1969).

<sup>244</sup> See Gerwig, *Public Authorities: Legislative Panacea?*, 5 J. PUB. L. 389 (1956).

<sup>245</sup> See A. HEINS, CONSTITUTIONAL RESTRICTIONS AGAINST STATE DEBT 84-86 (1963); J. MAXWELL, FINANCING STATE AND LOCAL GOVERNMENTS 199 (1965); W. MITCHELL, THE EFFECTIVENESS OF DEBT LIMITS ON STATE AND LOCAL GOVERNMENT BORROWING 47 (1967); B. RATCHFORD, AMERICAN STATE DEBTS 523 (1941); THE TAX FOUNDATION CONSTITUTIONAL DEBT CONTROL IN THE STATES 26 (1954); MORRIS, *Evading Debt Limitations with Public Building Authorities: The Costly Subversion of State Constitutions*, 68 YALE L.J. 234 (1958); Westmeyer, *Authorities: An Escape from Debt Limitation?* 6 GOVERNMENTAL RESEARCH ASS'N REP. 48 (1954); Note, *Constitutional Restrictions on the*

The judicial acceptance of the special fund doctrine made this approach possible.<sup>246</sup> This doctrine permits the Commonwealth to avoid the restrictions of sections 184, 184a, 184b, and 185; cities to avoid the restrictions of section 127; and counties to avoid the restrictions of section 115a. Basically, these constitutional provisions greatly limit the borrowing of the governmental unit involved or prohibit the lending of credit by such unit.

The special fund doctrine as applied in Virginia provides that bonds to be serviced by income from the project for which they are issued or from certain other earmarked funds do not constitute a debt of the state, the city, or the county within the meaning of these constitutional provisions.<sup>247</sup> The doctrine owes its existence to the "revenue bond," which is a public finance device that shifts the risk of default from the issuing unit to the bondholder for an added cost reflected in a higher interest rate.<sup>248</sup> The traditional general obligation bond pledges the taxing power of the state or other unit to the repayment of the debt. The nonguaranteed revenue bond, on the other hand, involves no such

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*Use of Public Authorities in the New England States*, 43 BOST. U.L. REV. 122 (1963): Comment, *Obligations of a State-Created Authority: Do They Constitute a Debt of the State?*, 53 MICH. L. REV. 439 (1955).

Of course, the cost of financing by means of the public authority device is appreciably higher than the cost of financing governmental projects with general obligation bonds. U. S. DEP'T OF HEW, HEW INDICATORS 16 (1961); A. HEINS, *supra*, at 36-81; J. MAXWELL, *supra*, at 204; W. MITCHELL, *supra*, at 28; B. RATCHFORD, *supra*, at 514; R. ROBINSON, POSTWAR MARKET FOR STATE AND LOCAL GOVERNMENT SECURITIES 210-12 (1960); Darden, *Virginia's Indirect Debt*, 39 U. VA. NEWS LETTER 21 (1963); Kurnow, *The Nonguaranteed Debt of State and Local Governments*, 15 NAT'L TAX J. 239, 243 (1962); O'Donnell, *The Tax Cost of Constitutional Debt Limitation in Indiana*, 15 NAT'L TAX J. 406 (1962); Tifer, *Revenue Bond Financing: Advantages and Disadvantages*, 32 MUN. FIN. 76 (1959).

<sup>246</sup> Chesapeake Indus. Dev. Auth. v. Suthers, 208 Va. 51, 155 S.E.2d 326 (1967) (dictum); Fairfax County Indus. Devel. Auth. v. Coyner, 207 Va. 351, 150 S.E.2d 87 (1966); Button v. Day, 205 Va. 739, 139 S.E.2d 838 (1965); Button v. Day, 204 Va. 270, 130 S.E.2d 459 (1963); Harrison v. Day, 202 Va. 967, 121 S.E.2d 615 (1961); Harrison v. Day 200 Va. 764, 107 S.E.2d 594 (1959); Farquhar v. Board of Supervisors, 196 Va. 54, 82 S.E.2d 577 (1954); Almond v. Gilmer, 188 Va. 822, 51 S.E.2d 272 (1949). *But see* Button v. Day, 208 Va. 494, 158 S.E.2d 735 (1968); Button v. Day, 205 Va. 629, 139 S.E.2d 91 (1964); Town of South Hill v. Allen, 177 Va. 154, 12 S.E.2d 770 (1941); Town of Galax v. Appalachian Elec. Power Co., 177 Va. 29, 12 S.E.2d 778 (1941).

For a discussion of the doctrine, *see* R. RATCHFORD, *supra* note 245, at 446-66, 497-523; Gerwig, *supra* note 239, at 607-08; Comment, *Obligations of a State-Created Authority: Do They Constitute a Debt of the State?* 53 MICH. L. REV. 439 (1955).

<sup>247</sup> Farquhar v. Board of Supervisors, 196 Va. 54, 61, 82 S.E.2d 577, 582 (1954); Almond v. Gilmer, 188 Va. 822, 842-44, 51 S.E.2d 272, 280-81 (1949).

<sup>248</sup> *See* W. MITCHELL, *supra* note 245, at 17 *et seq.* *See generally* L. KNAPPEN, REVENUE BONDS AND THE INVESTOR (1939).

pledge of the issuing unit's credit. Unlike the holders of general obligation or full faith and credit bonds, revenue bondholders can look only to the revenues produced by the project financed by the bond issue or to some other limited fund. Virginia has made considerable use of this type of borrowing device, *i.e.*, nonguaranteed, long-term revenue bonds issued by authorities, commissions, and special districts, to finance such projects as college dormitories and dining facilities, toll bridges and highways, and other revenue-producing facilities.<sup>249</sup>

The doctrine is justified upon the theory that revenue-generating projects are self-supporting and do not rely upon appropriations from the General Fund.<sup>250</sup> Instead the debt is retired by user charges in the form of tolls, fees, rents, or special assessments. This theory had been extended in Virginia to uphold a plan in which funds indirectly attributable to the construction of new facilities were pledged to repayment of the debt, and another plan by which the governing bodies of certain colleges were authorized to issue bonds pledging not only the revenues of the new project, but also any or all revenues of any existing facilities.<sup>251</sup> Thus, the special fund doctrine has been extended to cover bond issues involving projects which are not truly self-supporting to save them from constitutional attack.

There were and are other reasons for using public authorities. They provide a more efficient method for supplying certain services. They allow a more equitable matching of cost to benefit by means of user charges. They are able to provide areawide services without regard to political boundaries, which is particularly important when general agreement among local units for the provision of such services cannot be had. The bonds of these authorities are easier to sell than those of cities and counties. Because of their very nature and because they are superimposed on the existing local government pattern, they cause a minimum of political disruption.<sup>252</sup>

Arguments against the use of public authorities except in excep-

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<sup>249</sup> See 1 U. S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, CENSUS OF GOVERNMENTS (1968); MOODY'S INVESTORS SERVICE, INC., MUNICIPAL BONDS AND GOVERNMENT MANUAL 2758-64 (1970).

<sup>250</sup> See *Button v. Day*, 204 Va. 270, 273, 130 S.E.2d 459, 462 (1963); B. RATCHFORD, *supra* note 245, at 497 *et seq.*

<sup>251</sup> *Button v. Day*, 204 Va. 270, 130 S.E.2d 459 (1963), and *Button v. Day*, 205 Va. 739, 139 S.E.2d 838 (1965), respectively.

<sup>252</sup> See ADRIAN, *supra* note 41, at 229. See also Alderfer, *Is "Authority" Financing the Answer?*, 70 AM. CITY 115 (1955); Cottrell, *Problems of Local Governmental Reorganization*, 2 WEST POL. Q. 599 (1949); Fuchs, *Regional Agencies for Metropolitan Areas*, 22 WASH. U.L.Q. 64 (1936).

tional situations have been frequently presented,<sup>253</sup> but generally ignored. The principal argument, of course, is that they are not sufficiently accountable to the public.<sup>254</sup> The special fund doctrine requires that the state establish these entities beyond the usual controls imposed upon governmental units so that the individual authority can in no way be viewed as the alter ego of the state.<sup>255</sup> The result is that voters lack effective means to bring these authorities to account. In fact, they cease to be taxpayers and voters where authorities are concerned, and instead become "consumers."<sup>256</sup> As these authorities increase, it is all the more important to restore some measure of popular responsibility before they undermine the tradition of strong, democratic local government.

One further disadvantage of heavy reliance upon public authorities is that they are usually created on an ad hoc basis as the need presents itself. This tends to forestall needed, long-range planning on the state level.<sup>257</sup>

#### THE METROPOLITAN PROBLEM

The most acute local problems arise in metropolitan areas. Characteristic of the ills that beset such areas are an evermounting financial burden on core cities, a lack of long-range planning on an areawide basis, political friction between core city and suburban county, and a reluctance or an inability on the part of the various units to attack areawide problems such as air pollution, transportation, water supply, sewage and waste disposal, and open spaces.<sup>258</sup>

There is a traditional reliance in Virginia upon local initiative to cope with governmental problems, but local self-help is not adequate to the task of meeting metropolitan problems.<sup>259</sup> Air pollution, for example, does not respect political boundaries. Proper control of air

<sup>253</sup> See e.g., ACIR, *THE PROBLEM OF SPECIAL DISTRICTS IN AMERICAN GOVERNMENT* (1964); J. BOLLENS, *supra* note 239, at 252-56; Aronson, *The Boston Redevelopment Authority: A Quasi-Public Authority*, 43 BOSTON U.L. REV. 466, 488 (1963); Cameron, *Whose Authority?*, ATLANTIC MONTHLY, Aug. 1959, at 38, 39-40.

<sup>254</sup> See 11 N. Y. STATE CONST. CONV. COMM., REPORTS 244 (1938).

<sup>255</sup> *Chesapeake Indus. Dev. Auth. v. Suthers*, 208 Va. 51, 56, 155 S.E.2d 326, 331 (1967) (dictum).

<sup>256</sup> Netherton, *supra* note 239, at 691.

<sup>257</sup> See J. BOLLENS, *supra* note 239, at 255; Makielski, *supra* note 236, at 44.

<sup>258</sup> Cf. C. ADRIAN, *STATE AND LOCAL GOVERNMENTS* 245-46 (2d ed. 1967); Dixon, *Government in Virginia's Emerging Metropolitan Areas: A Profile*, 44 U. VA. NEWS LETTER 25, 28 (1968). See also READINGS IN VA. GOV'T 184 (1965); Shaw, *The Consequences of Urban Growth: The Fairfax County Experience*, 43 U. VA. NEWS LETTER 5 (1966).

<sup>259</sup> See HAHN REPORT, *supra* note 1, at 9.

pollution necessitates areawide enforcement. Likewise, the need for better streets and highways and for public transportation is not adequately met by leaving the solution to the individual governmental units. By their very nature, such problems are broader than any single city or county.

Virginians, unfortunately, have been slow to appreciate the problems which accompany the emergence of large metropolitan communities.<sup>260</sup> There is a tendency to think as before. As a consequence, the traditional local governmental units are left to deal with these problems. When these problems become insoluble on the local level, state assistance is reluctantly called for.<sup>261</sup> Occasionally, even federal action is requested. But local leaders are notably indifferent or hostile to the formation of a metropolitan government.<sup>262</sup>

There are undoubtedly many reasons for the lag between the reality of metropolitan life and the myth that Virginia's existing structure and traditional approach will accommodate the new problems. These problems sprang up so suddenly that Virginians were not prepared for them. For years Virginians had witnessed metropolitan growing pains in other states while they themselves were left relatively unaffected. City-county separation has contributed to a degree of autonomy and local independence perhaps not to be found in other states. Yet this same independence makes cooperation among the units within Virginia's metropolitan areas even more difficult. Local units are reluctant to surrender any prerogative or power. Appeals to this traditionally strong local spirit perpetuate resistance to change and merely postpone the inevitable confrontation with the overwhelming problems of metropolitan areas.<sup>263</sup>

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<sup>260</sup> Makielski, *Local Leadership and the Virginia Metropolitan Area*, 44 U. VA. NEWS LETTER 33 (1968).

<sup>261</sup> See ACIR, *METROPOLITAN AMERICA: CHALLENGE TO FEDERALISM* 8-9 (1966); L. GULICK, *THE METROPOLITAN PROBLEM AND AMERICAN IDEAS* 135 (1962); R. MARTIN, *THE CITIES AND THE FEDERAL SYSTEM* 162-69 (1965).

Because metropolitan areas often stretch across state lines and because states have been notoriously inept in dealing with metropolitan problems, programs have been initiated which bypass the state altogether. See *id.* at 42, 111-32. See generally R. CONNERY & R. LEACH, *THE FEDERAL GOVERNMENT AND METROPOLITAN AREAS* (1960).

<sup>262</sup> Makielski, *supra* note 260, at 36.

<sup>263</sup> Cf. HAHN REPORT, *supra* note 1, at 8-11. Makielski has surveyed local, civic and governmental leaders and found that they recognize the interdependence of local units and the need for greater state effort and intergovernmental cooperation, but maintain, nevertheless, a "firm faith in the overall adequacy of the present forms and methods of government and the tradition of strong local government in meeting major problems of governing the States." Makielski, *supra* note 260, at 36.

The racial composition of Virginia's metropolitan areas has caused predominantly white suburban counties to resist annexation, consolidation, or the creation of any areawide governmental or quasi-governmental entity with sufficient power and responsibility to deal with the larger problems. Suburbanites want no part of the unruly central city with its higher taxes, crime, and bureaucracy.<sup>264</sup> Not surprisingly, the predominantly Negro core cities are often just as reluctant to move toward areawide government for fear that their political power will be diluted.<sup>265</sup>

The Advisory Commission on Intergovernmental Relations has observed that the "metropolitan area problem is primarily a public finance problem."<sup>266</sup> But it is not the sort of financial problem that can be solved by better financial administration alone. The principal cause of the problem is the "spillover" phenomenon discussed earlier in this article.<sup>267</sup> In the modern metropolitan setting, services provided by one component local unit very often extend beyond its boundaries. This disturbs the equitable balance between the enjoyment of services and the cost of providing them. Quite clearly, the core city suffers most acutely from these "spillovers."<sup>268</sup>

There is also a great discrepancy between "core cities and their suburbs in the fiscal capacity to raise adequate revenue on one hand and the needs for public services on the other."<sup>269</sup> What to do about this problem has caused a political divergence so fundamental and so marked that progress in other areas of metropolitan affairs has often been frustrated. Race and class distinctions become central issues and charge the atmosphere with the deepest tensions.

The issue goes beyond whether suburban residents will bear a proportionate share of the cost of services which the city provides for their enjoyment. The question is whether the suburbs, which have the fiscal capacity, will subsidize services provided by the city for the poor and disadvantaged who concentrate there. These services are not restricted to public welfare, health and hospital services, which often are

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<sup>264</sup> D. LOCKARD, *THE POLITICS OF STATE AND LOCAL GOVERNMENT* 496 (2d ed. 1969).

<sup>265</sup> ADRIAN, *supra* note 41, at 256-57; L. GULICK, *supra* note 261, at 98-99.

<sup>266</sup> ACIR, *GOVERNMENTAL STRUCTURE, ORGANIZATION AND PLANNING IN METROPOLITAN AREAS* 15 (1961). See also Bane, *Local Government: The Next Half Century*, 42 U. VA. NEWS LETTER 25, 26 (1966); Berk, *The Metropolitan Financing Crisis*, 38 VA. MUN. REV. 9 (1961).

<sup>267</sup> See text p. 181, *supra*.

<sup>268</sup> See ADRIAN, *supra* note 41, at 236-38.

<sup>269</sup> Woo Sik Kee, *City-Suburban Differentials in Local Government Fiscal Effort*, 21 NAT'L TAX J. 183 (1968).

subsidized by the state and the federal government. They include other services which are not in the nature of welfare—recreational facilities, public transportation, and urban renewal.<sup>270</sup> It is difficult to “sell” projects of this kind to voters in suburban counties who, more than likely, will derive only indirect benefits, if any, from them.

At the heart of the metropolitan problem is the lack of areawide democratic machinery to deal with problems that are larger than the individual local units.<sup>271</sup> Only when the artificiality of present political boundaries is recognized will it be possible to mold a metropolitan constituency and to create the governmental devices needed to solve metropolitan problems. The metropolitan area is an organic whole and problems which are truly metropolitan in character should no longer be attacked in a piecemeal fashion by city, county or even public authority.

#### PROPOSED SOLUTIONS TO THE METROPOLITAN PROBLEM

A catalogue of alternative solutions to the metropolitan dilemma has come from many sources, including commissions especially cre-

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<sup>270</sup> See Hirsch, *Local versus Areawide Urban Government Services*, 17 NAT'L TAX J. 331, 338 (1964). Hirsch concludes that those services which have income redistribution characteristics, such as welfare, housing, education and health, should be subsidized by federal and state governments. He carefully examines the range of services generally provided on the local level and suggests which would best be provided on an areawide basis. *Id.* at 333-37.

An excellent description of the financial burden carried by core cities can be found in ADRIAN, *supra* note 41, at 237:

The core city furnishes free services to suburbanites by providing them with roads and traffic control devices during their journey to work. It usually permits suburbanites to use libraries, parks, and recreational facilities free, although quite a few suburbs restrict their own facilities to residents. The city must expand its public-health department in order to inspect the restaurants where the noontime hordes of suburbanites eat—blissfully unaware that it costs other people money to see to it that they are not poisoned. Public-welfare costs hit the core city especially hard, although the cost of unemployment is a social one logically distributable among all members of society and not among core-city residents alone.

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The large cities also pay most of the state taxes since, in spite of losses to the suburbs, they remain centers of concentration of wealth. Yet the state tends to spend most of its money in the rural and suburban areas expecting the large cities to finance most of their functions themselves. The state police, for example, will often lend assistance to the amateurish efforts of suburban policemen but seldom operate within the core city. Health, education, highway, welfare, and other state functions may be provided more generously outside the large cities than inside them. Grants-in-aid by the state usually give preference to the lesser populated local governments.

<sup>271</sup> See L. GULICK, *supra* note 261, at 123-24.

ated for that purpose, such as the Advisory Commission on Intergovernmental Relations<sup>272</sup> and the Virginia Metropolitan Areas Study Commission.<sup>273</sup> These are the major proposals suggested: (1) annexation, (2) merger or consolidation of city and suburban county, (3) public authorities to perform areawide functions, (4) integrated metropolitan government as in Toronto, (5) metropolitan federation with traditional local units retaining those functions that are not truly areawide, (6) cooperative arrangements between and among local units in the metropolitan area to deal with individual problems, (7) extra-territorial powers for cities so that they may cope with areawide problems, (8) additional powers to the county so that it might serve as the overall metropolitan unit, (9) the separation of city and county, and (10) increased state and federal involvement.<sup>274</sup>

Annexation has rather effectively permitted an accommodation of urban growth in Virginia until recent years.<sup>275</sup> Texas and Missouri are perhaps the only other states which allow annexation without a referendum in the area to be annexed.<sup>276</sup> This factor has contributed to relatively comfortable expansion of city boundaries as the need arose. Certainly the use of a judicial proceeding in annexation matters rather than reliance upon the legislative or administrative process has served to remove the issue of boundary expansion even further from politics.<sup>277</sup>

Before the automobile, FHA and VA financing, and the decentralization of industry made "urban sprawl" possible, annexation was adequate.<sup>278</sup> Now, however, the needs of outlying communities for urban services often arise long before the city is prepared or legally permitted to annex such areas. One of the key phrases in annexation law is "reasonably compact body of land."<sup>279</sup> It is not unusual, however, for suburban communities to emerge some distance from city boundaries.

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<sup>272</sup> ACIR, *ALTERNATIVE APPROACHES TO GOVERNMENTAL REORGANIZATION IN METROPOLITAN AREAS* (1962).

<sup>273</sup> HAHN REPORT, *supra* note 1, at 15-19.

<sup>274</sup> See generally ADRIAN, *supra* note 41, at 246-54; D. LOCKARD, *supra* note 264, at 487-501; Fordham, *Local Government in the Larger Scheme of Things*, 8 VAND. L. REV. 667, 672-73 (1955); Grant, *Trends in Urban Government and Administration*, 30 LAW & CONTEMP. PROB. 38, 46 (1965).

<sup>275</sup> See VALC, *ANNEXATION AND CONSOLIDATION* 11 (1964); Deming, *An Approach to the Solution of Metropolitan Government Problems*, 35 VA. MUN. REV. 292, 293 (1958); Griffin, *Units of Local Government in Virginia*, 1962, 40 U. VA. NEWS LETTER 1, 4 (1963).

<sup>276</sup> See ADRIAN, *supra* note 41, at 247.

<sup>277</sup> See generally C. BAIN, *ANNEXATION IN VIRGINIA* (1966).

<sup>278</sup> See ADRIAN, *supra* note 41, at 235-36.

<sup>279</sup> VA. CODE ANN. § 15.1-1042 (a) (1964); see C. BAIN, *supra* note 277, at 140-45.

Annexation, in such cases, is out of the question. The General Assembly, as has been seen, has granted counties additional powers to provide urban services to these areas. Thus, by the time these areas actually converge with the city, thereby making the area adjacent to the city limits sufficiently urban in character to be annexed, it is probably being supplied many urban services by some other unit, usually the county through a sanitary district.

In metropolitan areas, cities no longer grow in concentric rings. Technology has made it possible for urban services to be offered to areas well beyond the city.<sup>280</sup> This fact has forced a reconsideration of the maxim that urban populations were to be governed by cities and rural populations by counties. Annexation will continue to be relied upon, particularly by cities outside of metropolitan areas; but Virginia's larger cities must look for something in addition to or instead of annexation to provide a satisfactory solution to their current ills.<sup>281</sup> It is too slow and costly, allows for only piecemeal growth, and hampers long-range metropolitan planning.<sup>282</sup>

The threat of annexation also frustrates city-county cooperative efforts and contracts between city and county for the provision of certain municipal services to the county by the city. Suburban counties fear that such arrangements will be relied upon by the city in later annexation proceedings to show the dependency of the county upon the city.<sup>283</sup> Ironically, the threat of annexation has stimulated interest in, and in some instances actually produced, city-county consolidation.<sup>284</sup>

Most commentators consider consolidation a much more satisfactory method of solving boundary expansion problems than annexation.<sup>285</sup> In the first place, it eliminates the resentment of suburbanites which often continues to cause friction long after annexation has been accomplished. When city and county merge, they do so as equals and then only after a referendum.<sup>286</sup> Consolidation also produces a new unit that is more metropolitan in character than any product of annexation proceedings

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<sup>280</sup> See ADRIAN, *supra* note 41, at 204.

<sup>281</sup> HAHN REPORT, *supra* note 1, at 18-19.

<sup>282</sup> See VA. METROPOLITAN AREAS STUDY COMM'N, GOVERNING THE VIRGINIA METROPOLITAN AREAS: AN ASSESSMENT 29-30 (1967); DIXON, *supra* note 258, at 28; Makielski, *supra* note 260, at 35.

<sup>283</sup> HAHN REPORT, *supra* note 1, at 14.

<sup>284</sup> See Temple, *Merger in Virginia Local Government: Issues and Implications*, 40 U. VA. NEWS LETTER 5, 7 (1963).

<sup>285</sup> See, e.g., ADRIAN, *supra* note 41, at 249.

<sup>286</sup> See Temple, *supra* note 284, at 7.

could be. It is thus in a better position to dispense areawide services and to meet areawide problems.

Virginia has been a leader in consolidation of local governmental units.<sup>287</sup> The first took place in the state between the cities of Richmond and Manchester under a 1910 special act.<sup>288</sup> Since 1952, consolidations in Tidewater Virginia have made it "the scene of the most extensive local governmental reform in the nation."<sup>289</sup> Merger is currently a live topic in Richmond and Norfolk but was recently defeated in Charlottesville. A most ambitious plan is under consideration in the Norfolk area where the cities of Norfolk, Portsmouth, Chesapeake and Virginia Beach are exploring the consolidation of all four units.

Although merger avoids the piecemeal disintegration of urban counties,<sup>290</sup> it may not produce a governmental unit that truly reflects the outlines of the sociological complex that is the metropolis. In addition to this shortcoming, consolidation may fail to provide an answer because, in the words of the Hahn Commission, "the political feasibility of consolidation is generally limited."<sup>291</sup>

Another suggested approach is functional consolidation, wherein the local units involved retain their identities, but where certain functions are performed jointly.<sup>292</sup> The popular sentiment against such an approach was demonstrated by the defeat of a proposed constitutional amendment in 1960 which would have facilitated functional consolidation.<sup>293</sup>

Among the remaining alternatives, several can readily be discarded. Virginia already has city-county separation, but metropolitan woes persist. Making the county the metropolitan unit of government (a proposal which is almost the converse of city-county separation) is unsatisfactory for at least two reasons: (1) there is usually more than one county in Virginia's metropolitan areas,<sup>294</sup> and (2) the county is quite often a poor profile of the metropolitan area.<sup>295</sup> Giving cities extra-territorial powers to solve specific metropolitan problems is at best

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<sup>287</sup> See VA. METROPOLITAN AREAS STUDY COMM'N, *supra* note 282, at 31.

<sup>288</sup> Va. Acts of Assembly 1910, ch. 127, at 193-99.

<sup>289</sup> Makielski, *City-County Consolidation in the United States*, 46 U. VA. NEWS LETTER 1, 3 n.1 (Oct. 15, 1969).

<sup>290</sup> See Temple, *supra* note 284, at 9.

<sup>291</sup> HAHN REPORT, *supra* note 1, at 19.

<sup>292</sup> See Uhl, *Functional Consolidation in the Counties of Virginia*, 25 NAT'L MUN. REV. 601 (1936).

<sup>293</sup> Va. Acts of Assembly 1960, ch. 613, at 1071-74.

<sup>294</sup> HAHN REPORT, *supra* note 1, at 17.

<sup>295</sup> ADRIAN, *supra* note 41, at 252.

a temporary solution.<sup>296</sup> Cooperation among local units should be encouraged, of course, but reliance upon informal agreements and service contracts will not satisfy the compelling need to adopt long-range areawide plans, and such reliance also overlooks the desirability of establishing a responsive, democratic government for the entire metropolitan area.

Much can be said in favor of public authorities and special districts as vehicles for metropolitan problem-solving.<sup>297</sup> The scope of their activities can be limited to those functions which are areawide, leaving "local" functions to the existing governmental units. The territorial reach of the authority or district can be drawn to fit the metropolitan area without regard to existing political boundaries. There would be a minimum of political disruption since the present local structure would nominally remain intact. The weaknesses of this approach, however, are serious.<sup>298</sup> Traditionally, authorities and special districts have been used in conjunction with revenue-producing projects which are operated as businesses rather than as governmental undertakings. Because they are not directly accountable to the public, they tend to be undemocratic. Without the usual governmental characteristics and without a governing body elected directly by the voters, they are politically unsuitable for such a role.<sup>299</sup>

A metropolitan government with broad powers is simply out of the question in Virginia, at least for the present. There is a very strong political sentiment that individuals should have access to local units of government to insure grassroots control. Many Virginians apparently fear that bigger governmental units will mean less popular control, more bureaucracy and greater impersonality.

A "two-tiered" government has been proposed for metropolitan areas.<sup>300</sup> In fact, it has been used with relative success in London. Under this arrangement, all areawide functions would be the responsibility of a governmental unit with territorial jurisdiction approximating the metropolitan area. Functions which can best be handled by local units, either for reasons of economy or because of an overriding need to provide for citizen participation and control, would continue to be the

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<sup>296</sup> *Id.* at 253.

<sup>297</sup> See Netherton, *Area-Development Authorities: A New Form of Government by Proclamation*, 8 VAND. L. REV. 678 (1955).

<sup>298</sup> See *id.* at 690-92. See also ADRIAN, *supra* note 41, at 248-49; D. LOCKARD, *supra* note 274, at 489 *et seq.*

<sup>299</sup> See D. LOCKARD, *supra* note 264, at 490.

<sup>300</sup> ACIR, *supra* note 272.

responsibility of such local units. The governing body of the metropolitan unit would be popularly elected by the voters of the entire area. The recommendations of the Hahn Commission resemble this "two-tiered" alternative, but they would not entail an immediate, radical departure from the present local government system. The Hahn Commission envisaged a gradual vesting of functions in a "service district." The local units would be encouraged to do so through financial incentives. When the desirability of some sort of areawide agency becomes apparent to Virginians as a result of their experience with these service districts, the prospect of a metropolitan government will no longer arouse such strong political reaction.

#### RECENT DEVELOPMENTS

During the last several years much has occurred to affect the future of local government in Virginia. In 1967, the Metropolitan Areas Study Commission recommended a bold approach to metropolitan problem-solving.<sup>301</sup> The General Assembly at its 1968 Session adopted legislation to carry out those proposals.<sup>302</sup> At the same session a revision of the Constitution of Virginia was authorized.<sup>303</sup>

The Commission on Constitutional Revision consolidated the two articles in the 1902 Constitution which dealt with municipal governments and counties separately. This was characteristic of the general attitude of the Commission that the Constitution should treat counties and cities more alike.<sup>304</sup> The more important changes suggested by the Commission in regard to local government were: (1) allowing counties with 25,000 or more inhabitants to adopt charters; (2) allowing a measure of "home rule" to cities and charter counties including the power to amend their charters without the need for special legislation by the General Assembly; (3) an increase in the population minimum from 5,000 to 25,000 for transition from town to city; (4) provision for regional governments; and (5) the creation of a Commission on Local Government.<sup>305</sup>

The 1969 Extra Session of the General Assembly failed to adopt several of the Commission's proposals.<sup>306</sup> In particular, the legislature chose to continue and, in fact, to broaden the practice of dealing with

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<sup>301</sup> See HAHN REPORT, *supra* note 1.

<sup>302</sup> Va. Acts of Assembly 1968, ch. 224, at 322.

<sup>303</sup> Va. Acts of Assembly 1968, at 1568.

<sup>304</sup> CCR REPORT 19.

<sup>305</sup> *Id.* at 19-20, 213-53.

<sup>306</sup> Acts Ex. 1969, art. VII.

the individualized problems of localities by means of special acts. The number of inhabitants needed for transition from town to city was left at 5,000, but the General Assembly will be permitted to increase such limits by general law. The charter county provision was completely eliminated. The 1970 Session approved the package of constitutional amendments passed by the General Assembly in 1969, and these proposals will be put to the voters in the fall of 1970.<sup>307</sup>

Another study commission, the Rural Affairs Study Commission, noting that as the metropolitan areas are becoming more densely populated, the rural areas are losing population, recommended that the state attempt to reverse the trend.

The proposition that underlies this entire report is that the government of the Commonwealth of Virginia has the means for affecting the distribution of population and economic activity for the better. It can prevent excessive concentration in the metropolitan areas and increase the relative population and economic shares of the non-metropolitan areas.<sup>308</sup>

Among its specific proposals was a recommendation that Virginia abandon city-county separation,<sup>309</sup> a suggestion which the Hahn Commission had rejected. The Rural Affairs Commission, however, did strongly endorse the planning and service district programs enacted as a result of the Hahn Report.<sup>310</sup>

#### CONCLUSION

Reform of Virginia's system of local government will come. The magnitude of the problems will not permit otherwise. Former Governor Godwin remarked that Virginians can do it themselves, or it will be done for them.<sup>311</sup> The federal government has already begun to move in that direction.

As Virginia's experience with public authorities indicates, the state has been all too willing to deal with local and regional problems on an ad hoc basis. Coordinated planning has been sacrificed as a result. The problems of each metropolitan area unmistakably affect the state

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<sup>307</sup> Va. Acts of Assembly 1970, ch. 763.

<sup>308</sup> VA. RURAL AFFAIRS STUDY COMM'N, REPORT 2 (1969).

<sup>309</sup> *Id.* at 26.

<sup>310</sup> *Id.* at 30.

<sup>311</sup> Godwin, *Virginia and Her Localities: A Necessary Partnership*, 43 U. VA. NEWS LETTER 5, 8 (1966).

as a whole and must be resolved with that in mind. Nevertheless, each locality has peculiar needs that will not be met through general legislation. There appear to be only two ways to provide remedies tailored to the needs of individual localities and metropolitan areas: special legislation or some measure of home rule. Virginians may be familiar with the shortcomings of the former, but are unprepared for the latter.

The recommendations of the Virginia Metropolitan Areas Study Commission may not supply all the answers, but for Virginia's purposes no other proposal seems as sound. In fact, the principal criticism of these recommendations came not from those who proposed another approach to solve metropolitan problems, but rather from those who preferred the status quo. The traditional approach, which leaves the solution of problems to existing local units with some state financial assistance, will fail if the experience of other states is an accurate indicator. Should Virginia cling to this traditional approach and the national pattern of failure hold, metropolitan problems will be even more costly and difficult to resolve.

The enactment of legislation adopting the Hahn Commission's proposals does not mean that Virginia has already abandoned the traditional approach. Only when those statutes are put into practice will the state be committed to a new course. The "carrot and stick" approach may insure a limited degree of success for the Hahn Plan, but financial incentives alone cannot solve regional and metropolitan problems. An entirely new political climate must appear before the full force of the Hahn Plan will be felt. The Commission obviously believed that financial incentives would effect such a change, and they will help, no doubt. But the resistance of many Virginians to any areawide unit of government runs deeper than economics. Unless local leadership actively seeks to change these attitudes, it will be some time before the Hahn Plan achieves the degree of success of which it seems capable.

A cautious approach to change has been taken so far by the General Assembly; but far more has been done, perhaps, than was ever thought possible by many observers of Virginia politics. The 1968 Assembly did enact legislation to implement the Hahn Commission's recommendations and authorized Governor Godwin to appoint a commission to revise the Constitution. Although many of the major proposals of the Commission on Constitutional Revision concerning local government did not survive the 1969 Extra Session, some changes in the general direction suggested by that Commission were adopted.

One conclusion is inescapable. Changes in this century have led to

an interdependence among governmental units that cannot be ignored without serious consequences. The traditional approach to the provision of services and the solution of problems below the state level is inadequate. Some new direction will have to be taken if the people of Virginia are to have the services they demand and if the answers to the growing metropolitan problems are to be found.

But, as the Hahn Commission recognized, there will be neither an abrupt overhaul of the traditional system nor an immediate elimination of the existing local units. Political reality dictates gradual change. The functional approach recommended by the Hahn Commission contemplates an increasing delegation of areawide functions as they arise to a unit of government large enough to handle them. The traditional local units will continue to exist and to perform local functions, but their importance will ebb as each new function is added to the supra-local unit.

There is nothing final or sacrosanct about any governmental unit or system. They are means to an end. When they cease to provide the services expected of them, they must be changed. What the product of such change will be depends upon the balance Virginians strike between the need for efficiency and a desire for grassroots control.