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THE COUNCIL OF COLONIAL VIRGINIA:
1700-1750

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1660 is the date conveniently accepted as marking the turn of Virginia society away from its early democratic character. After that date, colonial society became clearly stratified, and by the turn of the century had received its set firmly in the mold of aristocracy. The institution in which all the elements of aristocracy concentrated was the Governor's Council, which exhibited social, political, and economic power centered in the hands of a ruling few. The period from 1700 to 1750 is the high tide of councillor power. In the years before 1700, the steady rise of its power was interrupted by the events of Bacon's Rebellion and its popular influence which was slow in dying down. After 1750, it was doomed by the rising of the democratic and nationalistic spirit forecast by 1676 and accelerated by the influence of the great religious awakening of the seventeen-forties.

The Council as an institution was as old as the colony itself. By the charter of 1606, the government of the colony was vested in a council, and, though it gave way in 1609 to a governor as the head of the government, the council was retained in an advisory capacity to the governor. In this situation, it continued to function, on through the change from company rule to crown rule, until 1776. In 1619 it took its place as a part of the legislative assembly, and at some time during the seventeenth century it assumed the functions of the highest court in the colony. By the end of the century, its form, its precedents, its methods of procedure, its
general character—all had been set, and the stamp was aristocratic.

The members were appointed in England upon the nomination and recommendation of the royal governor. Naturally, he would seek to give support to his master's authority by selecting the ablest men; but his own power and influence were not to be neglected. By nominating such as were rich, politically influential, and of wide and powerful connections, he could not only gain their favor and voice, but add to their importance as well. The position of councillor served as well to conciliate an enemy as to strengthen a friend, and it was not infrequently used as a bribe, and frequently as a favor.¹ This reasoning in the early years gave the governors subservient councils, but the passage of years resulted in the building up of a Council, which, despite the formula of nomination by governor and approval by the king, was practically self-perpetuating, for the governor, in making nominations, was forced invariably to accept suggestions from the Council. The result was a body which was virtually the master of the government and which was dealt with circumspectly by wise governors.

By the beginning of the eighteenth century, the body of twelve men, all great planters, was definitely in control of the political power in Virginia, and "seats around the green baize table in Williamsburg capitol were virtually hereditary in 'baronial families.'"²


No outsiders, no new rich, could gain admittance except by approval of those already entrenched in power. As a Byrd, a Nelson, a Page, a Lee, passed on to his fathers, the name of another member of the dominant group as "one of the Principal men of the colony" was automatically submitted to the king and as automatically received the royal approval. A few large wealthy families formed a small self-interested group, in control of the colony and jealous of its power. In the first quarter of the century, the most powerful family was that of the Burwells. Governor Alexander Spotswood objected to the appointment of Edmund Berkeley to the Council in 1714 on the ground of there being so many of one family, namely, the Burwells and their connections, in that body already. In 1717, in the dispute between Governor Spotswood, and William Byrd II and Philip Ludwell II over the latter's removal from the auditorship, the Governor charged that a majority of the Council were related to them. Byrd II replied by giving a list of the Council, showing how each was related to the two: four were related by blood or marriage to Ludwell II and two of these four to Byrd II. These four, with Byrd and Ludwell, who were related by marriage, made six or one-half of the Council—which supported Spotswood's contention nicely. Around the turn of the quarter mark of the century, the Carters, the Harrisons, the Randolphs, the Pages, and the Lees came to be the ruling families.

Control and influence in the Council were thus a family matter. It was a closed body, membership in which was determined by family connections, and in which every one was related by blood or marriage.

4 Bassett, John, The Writings of Wm. Byrd, p.LXV.
An examination of the Council membership in 1716, as a sample year, shows that two members had sons-in-law on the Council—Robert Porteus was the son-in-law of Edmund Jenings, the President of the Council, and Mann Page was the son-in-law of Robert (King) Carter; that three had brothers-in-law on the body—both Philip Ludwell II and Dr. James Blair married sisters of Nathaniel Harrison, another member; that several had children married to the sons and daughters of other members—the daughters of William Byrd II married the sons of Mann Page and Robert Carter; other members were more distantly connected, but they were connected.  

These interlocking relationships served the Council in presenting a united front and made it all the more determined to keep the body closed to all who were not of the select family groups. An interesting fact to note is the frequency with which son followed father to the Council. In 1723, Governor Hugh Drysdale recommended John Carter to fill a post in the Council. In his letter he pointed out that his father, Robert (King) Carter, was already a councillor and said that if the affinity of father and son was too close to be followed, he then recommended John Grymes, but his own inclinations were toward Carter; and on January 23, 1724, the King appointed the latter to the Council. This was an unusual occurrence—for father and son to be on the Council at the same time—and it was the only instance of the kind throughout this period. But it was almost customary for a son to take his father's place on the Council, upon the latter's death. This was especially true of the four or five


6Encyclopedia of Virginia Biography, I, 153.
most influential families—the Carters, the Byrds, the Harrisons, the Pages, and the Custises. Both of the William Byrds served. Benjamin Harrison was followed by two of his sons, Nathaniel and Henry. Cole Digges followed his father, Dudley Digges; Mann Page followed Matthew Page. John Custis III succeeded his father, John Custis II, who in turn had succeeded his father, the first John Custis. Philip Ludwell II's father had been the most powerful councillor of the preceding century. John Lewis II followed his father to the Council. Often a nephew was helped to the Council by his uncle's name. Philip Lightfoot followed his uncle, as did John Blair, who was heir to his uncle, the famous Dr. James Blair. Clearly, family connection by blood or marriage was the prime requisite for membership in this oligarchical body.

As a whole, these men were native—born Virginians. The parents of most of the members in the early part of the century had been the first of the family in the colony, but these men—and most certainly those later in the century—were purely Virginian in breeding. So turned in upon herself had Virginia become by this time, that it was very hard for an outsider to break into the charmed inner circle. There were some few in the Council, as Robert Quarry, George Phenny, and Robert Dinwiddie, later governor, who held membership by virtue of some higher position which they filled, such as that of Surveyor-General of the Customs for the Southern District of America, carrying its jurisdiction over several colonies and membership in the councils of each of them. But so jealously did the Virginia Council guard its membership that it fought the seating of all three of these men.7

They knew that these men had interests larger than those in Virginia and would not be interested in furthering the advantages of the small group in control. They had, also, to take into consideration the fact that the number of the Council was limited to twelve, and the membership of any of these outsiders cut down the number which they could control. Dr. James Blair, the Commissary, would hardly be a fair example of an immigrant who ranked high in the group for he came to Virginia in 1685, before this tendency became fixed, though his career covered nearly this whole period, his death not occurring until 1743.\footnote{Va. Hist'l. Mag., Vol. 31, 84-7.} Also much of his influence came from his position of commissary, which carried with it membership on the Council.\footnote{The only two members of the Council whose membership was automatic were the commissary and the surveyor-general of the Southern District. The first were always active, but the latter never attended. Quarry was present at two meetings; Dinwiddie and Phenny at none.}

William Cocke, a native of Suffolk, England, was appointed on the recommendation of Governor Spotswood.\footnote{Encyclopedia of Va. Biog. I, 150.} In the quarrel in 1718 between Spotswood and the Council over the appointment of Courts of Oyer and Termer, he alone of all the Council supported the governor and was pronounced by William Byrd II "a devoted creature to the lieutenant-governor."\footnote{Bassett, op. cit., p. LXIX.} His subsequent standing with the members was low, for Council "solidarity" or at least council "loyalty", as against royal prerogative, was an implied principle. Dr. William Dawson, who came to the colony in 1729 and succeeded Dr. Blair as president...
of William and Mary College in 1743, seems to have gotten along quite well with councillors, though he never exercised the power held by his more energetic predecessor. William Dandridge, the uncle of Mrs. Martha Washington, who came to Virginia a few years before 1717, was appointed to the Council in 1727 and served until 1743, when he died, but he was not of the inner group and his interests seem to have centered mostly in England, where he saw brilliant service in the British navy.

The jealousy with which membership was guarded and even the closeness with which the Council enforced the mere formality of nomination are exhibited in the incident recorded at the time of the appointment of John Lewis I, who was called by Governor Nicholson to fill the seat left vacant by the death of William Byrd I in 1704. Colonel John Lightfoot said that he thought that Governor Nicholson, in appointing him, should have consulted the Council, as did Sir Edmund Andros in appointing Colonel Digges. After examining the records for that day, Nicholson asked for opinions on Mr. Lewis. The Council agreed on him and he was seated, but only after the Council passed on him. In 1710 when Spotswood read his instructions in the executive Council, it was observed that William Byrd II had been omitted—by error of the copying clerk, agreed the Council, and expressed the opinion that he should be sworn in and continued in office until her Majesty's further pleasure be known. And called


in he was and took oath,\textsuperscript{15} for he was dominant even in the dominant group.

It might be interesting to digress here briefly and see what were the types of men who controlled the Council and the colony. A study brings to light the interesting fact that the councillors as a whole conformed to a type developed by, and characteristic of, the Virginia system. There are only a few, out of the fifty-two men who in the span of fifty years herein considered sat at the councillor table, who stand out as individuals. Three of these have a small national reputation; two others enjoy a small local fame only.

The first of this latter group is Robert Carter. He more than any other single man represents the character fundamental to all of the Virginia planter type. No colonial figure more magisterially portrays the legendary Virginia aristocrat, and certainly none was so powerful, imperious, and ferociously energetic. Personally, he shared the trait of eccentricity possessed by his family.\textsuperscript{16} He was a man of cultivated tastes and education, having received his education in England, and his library at Nomini Hall contained a thousand or more volumes of a wide variety, in addition to which he had about four hundred and fifty at Williamsburg. He was also a musician, an accomplishment of which he was very proud.\textsuperscript{17}

He was not one of those who assumed the lead in the offensive on every and sundry occasions against the royal governors. His

\textsuperscript{15}\textit{Ibid}, III, 247 (June 25, 1710).


\textsuperscript{17}Gewehr, Wesley, \textit{The Great Awakening}, pp. 20-21.
influence as the head of one of the greatest families in Virginia was powerful, and he always supported the Council in its fights on royal prerogative; but his main interest seems to have been the economic aggrandizement of his family. It was by virtue of the vastness of his holdings in land and slaves and the size of the estates he was able to leave each of his numerous progeny, that he received the title of "King" Carter. It is this phase of his career that presents him to later Virginia as the personification of what the Virginia planters as a group were like. From the fact that such a title was bestowed on him, the idea has become prevalent that he was not only of princely possessions, owning about sixty thousand acres scattered in different counties\textsuperscript{18} and having numerous tenants and servants, and a splendid mansion for his residence, but that, as a consequence, he was authoritative, lordly, and arbitrary, in his bearing and conduct, moving as a king in the colony. Certainly the records of Christ Church, Lancaster County, show that on the vestry lists the name of "King" Carter always preceded that of the minister, an inversion of the usual order; and tradition has it that the congregation never entered the church until the arrival of his coach, when all followed him and his family in.\textsuperscript{19} Whether this tradition is fact or not, it must rest on enough of the truth to make it an indication of the character and position of "King" Carter.

\textsuperscript{18} Gewehr, op. cit, p. 20.
\textsuperscript{19} Meade, op. cit, II, 116.
governors. His father had been one of the strongest supporters of Governor Berkeley during Bacon's Rebellion, but after that struggle, in resentment of what he felt was unfair treatment of him, he became the leader of the councillor group which was ever ready to lead the Burgesses against any attempted usurpation of Colonial rights, not because they were in sympathy with the people, but because they stood for Virginia rights as against royal prerogative. Philip Ludwell II was helped by his father's influence and large estate to a place in public life at an early age. Upon his father's death, he assumed his role of opposition. There was no member of the Council who was as consistent and as aggressive in opposing extension of the power of the royal governor as this man. In 1704 he was the leader of the small particular group in the Council who made formal protest against Governor Francis Nicholson—a protest which resulted in the latter's recall the next year. When Alexander Spotswood clashed, early in his administration, with the Burgesses, Ludwell sided with them. Later the two came into conflict over Ludwell's refusal to submit his auditor's books to the Governor, with the result that Spotswood suspended him from office. In 1718 Spotswood, in retaliation for Ludwell's determined opposition in the quarrel over the courts of oyer and terminer, recommended that Ludwell be removed from the Council, a recommendation which the Board of Trade did not accept. That opposition to royal authority in support of councillor prestige was the keynote of his career is indicated by the fact that, after Spotswood's

\[20\text{Bassett, op. cit, p. LXII}\

\[21\text{Bassett, op. cit, p.p. LXXIV-LXXV.}\]
recall in 1722 and his succession by wiser and less aggressive governors, we find scarcely any record of Ludwell's public life save for constant attendance at the Council meetings until his death in January, 1727.

The career of Dr. James Blair coincides to a great extent in this period with that of Philip Ludwell II, the two being always closely associated in the struggles between governors and Council. Dr. Blair was the first commissary of Virginia, a man of courage, broad vision and sincerity, who worked for over a half century for the religious, educational, and political welfare of the colony. Commissary for fifty-four years, a member of the Council for fifty years, founder of William and Mary College and its first president for over a half century, his was a rare life of service to the colony. Blair was zealous in his efforts to reform the church establishment in Virginia, especially in his first years as commissary. In his preaching, he did not soften his words to make those in authority comfortable. His congregations were often composed of the authority and intelligence, fashion and wealth of the colony, and he spared no one. The governors and the great planters frequently complained of his being personal. His want of conciliatory manners and tact in the management of men gained for him many enemies.22

Throughout almost his entire career, Blair was engaged in quarrels with the royal governors. For the first few years after his appointment as commissary, Blair had the support of the governors in his work of reform—especially that of Governor Francis Nicholson in his first period in Virginia.25 But his aggressive assertion of his powers

23 Ibid, p. 186.
as commissary soon led to conflict, for the church power in the colony was divided between the Governor and the commissary. His first controversy was with Governor Edmund Andros. In the hearing in London, Blair completely defeated the defense of Andros presented by William Byrd II and Benjamin Harrison. In these early years, the commissary opposed vigorously the great power built up by the Council, and he had many enemies in that body. But in the quarrel he had with Andros's successor, Nicholson, he had the support of the Council, and subsequently he became a firm defender of its power.\(^{24}\) Blair joined battle with Spotswood over the matter of induction and emerged the victor,\(^{25}\) with the support of the Council, though the Governor was supported by the majority of the clergy. The clergy seemed to be antagonized by Blair's aggressive reform efforts and to see better hopes for themselves in the support of the governor. This antagonism, coupled with his lack of final authority in Church affairs, caused Blair's reform program for the church to fail. But his efforts for the Church, his success in founding the college at Williamsburg, and his leading role in political affairs as a member of the Council make him loom a little larger than most of his contemporaries.

William Byrd II stands out as the example of the highest type of Virginia planter. He epitomizes all the qualities fundamental to that type. He was a great believer in the prestige of the family and the close relation of the few families to the control of public affairs. At the same time, there was in his make-up a certain


element of the frontier democracy. He had all the planter's greed for land, and his ambition gained for him lands beyond our modern comprehension. And inevitably he stood for firm establishment of the Council as the controlling institution in colonial government.

But the second William Byrd was not a colonial; he was a cosmopolitan, a man of the world. And it is here that he differs so from his father. The first Byrd was essentially a pioneer, a man on the make. His interests were centered in building up a fortune for his family. His son, however, had broader interests. He was a man of education, of cultivated tastes, as witness his great library and luxurious home (as compared with contemporary standards), of keen mind (as witness his diaries and letters). He too built up an even greater fortune, he took an even greater part in councillor affairs than his father had done; but I have no doubt that he felt more at home in the polished circles of London than he did in the provincial circles of Williamsburg. Certainly he let slip no opportunity to go to England.26

Dr. James Blair reminds you very much of the great ecclesiastical figures prominent in the history of the England of that time, and William Byrd II is a fair representative of the cultured English lord. Neither represents a pure Virginia type. On the other hand, this last figure whom I am going to consider is, in my opinion, the first prominent Virginian to represent the pure Virginia and pure American type. This is Thomas Lee, "President" Lee as he was called, who sat on the Council from 1733 to 1750, and who from 1748 to 1750 was acting governor of Virginia. Family tradition even has it that the King sent him...
a commission as royal governor—a commission which arrived after his death. 27 Burton Hendrick in his book, *The Lees of Virginia*, says of him that he is a forgotten American statesman.

He came of the famous Lee family—a family whose name dots the annals of Virginia from the very beginning. But Thomas Lee was born and passed his boyhood under the stigma of a younger son. His education was neglected and the only crumbs that fell to him from the paternal estates were one hundred and fifty acres in Northumberland County and a thousand acres in Maryland. 28 But this put him on his mettle, and thrown upon his resources, he proceeded in manhood to overcome these two deficiencies—lack of fortune and deficiency in education. Pride, ambition, aggressiveness, determination—these were the qualities that made Thomas Lee the foremost Virginian of his day. In his spirit of acquisition, of restlessness, of increasing family prestige, of engrossing political power and serving the state, he was one with the planters of the dominant group. 29 But his imagination turned him toward the west, and in his feeling for the west and his realization of its potentialities, he is dominantly pure American. It was his appointment as resident agent of the Fairfax proprietary that gave him his opportunity to study and know western lands. 30 Through his position he was enabled later to take

27 *Va. Hist'l. Mag.* Vol. 34, p. 98
30 He succeeded "King" Carter—a fact which started a feud between the two which lasted until Carter's death in 1832.
up extensive lands in the Potomac valley, for he foresaw it to be the future highway to the West.

He saw the vast possibilities that lay in the West and desired to make it definitely Virginia's and incidentally English. In his first report in 1748 as acting governor, he is "a political philosopher of authentic Anglo-Saxon breed;" 31 "The French are intruders into this America," he wrote, blandly ignoring facts. He determined to base English claims on agreements with the Indians. In 1744 he headed a commission to treat with the Six Nations at Lancaster, Pennsylvania. In the treaty which he "negotiated," the Indians transferred to Virginia all their ancestral territories in the country west of the Great Mountains, and it was on this scrap of paper that England's claim to the northwest was based. In 1748 was organized the first Ohio Company with Lee as president and its other members either in his immediate family or closely allied in interest. Thus the stockholders were "part and parcel of the oligarchy of landholders who then ruled the colony." That Lee and his associates hoped to make money out of these vast western lands is true; but he also had public motives. "He was a man of historic imagination--a Virginian Cecil Rhodes." 32 The west was to be a home for English-speaking peoples, not French.

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In studying the zeal and jealousy with which the Council built up its power as an oligarchical group, exercising it with increasing

31 Hendrick, op. cit, p. 63.
32 Hendrick, op. cit, pp.66-7.
resistance against royal efforts to suppress it, one must always bear in mind the fact that the twelve councillors were royal officials, and not representatives of the people of Virginia. They were appointed by the Crown upon the recommendation of the Board of Trade, who in turn received recommendations from the royal governor. The latter was empowered in his commission to appoint members to the Council, whenever the number of councillors residing in the colony was below nine, but the appointment had always to be affirmed by the Crown.\[33\] It is true that the governor's appointment was invariably ratified. But the commission from the Crown was always there as a symbol of royal authority, making the members of the Council representatives of the Crown, not indirectly through the governor, but directly from the throne itself. The three-fold function of the Council was an expression of the royal authority. Its members were the governor's advisers in executive matters, serving him as a royal council of state. They constituted the General Court and sat as a royal court of justice. They likewise had legislative functions as the upper house of the General Assembly. The theory was that since they held office under royal commission, they would be more responsible to royal will and more careful of the royal prerogative than the lower house, which was representative of the people. If the theory did not work out so well in actual practice, it was always to be brought forward to support the authority of the Council in its personal interests. There was one further power which this body enjoyed that gave it a weight and an authority above that of all other officials—save the governor—in the colony. By virtue of the fact that,

\[33\] Exec. Journ. II, 420 (Feb. 8, 1705).
whenever the royal governor died or was absent from the colony, the Council became the governing body with its president as titular head, it stood next in authority to the governor. In September, 1700, and again in April, 1704, William Byrd I acted as governor during Nicholson’s absence in the North. Upon the death of Governor Edward Nott in 1706, the Council took over the reins of government and Edmund Jenings became governor, a position he filled until 1710. In July, 1746, Sir William Gooch commissioned the President of the Council to take over, during his illness, the management of the General Assembly.

The position of acting governor always devolved upon the member who by length of term of service was senior in the Council. Members were listed in records and in the minutes of meetings in the order of their appointment, and influence within the body was very often in direct proportion to the number of years served, though such was not always the case, naturally. Since much depended on this rank within the Council, it was naturally guarded very jealously. For example, on October 15, 1702, the governor laid before the Council three appointments from the Queen, all dated May 21, 1702: one for Philip Ludwell II, one for William Bassett, and one for Henry Duke. The accompanying instructions did not say in what order they should be ranked and the governor did not know how to proceed. It was decided that for the time being, until instructions from England arrived,

36 Legislative Journals of the Council, II, 989.
they should take place in the above order, and this was the order later authorized. 38

In April, 1708, after six years in the Council, William Bassett was granted permission to retire due to ill-health. But in 1711, he was returned by royal commission to the Council, but not to his former position, and on this ground he declined to accept. On March 11, 1715, he was again included in the Commission, this time in his old rank, and he took his seat, attending regularly until his death in 1723. 39

Rank in the Council was not, then, a matter of small importance.

The status of royal authority thus gave to the Council the basis upon which it built the power to control affairs and oppose royal restraint. Instead, however, of building up a group of office holders devoted only to the throne, as would seem a logical development, it led to the evolution of an aristocratic body ruling Virginia with a Virginia point of view. The fact that at any time the administration of the colony might fall upon the Council gave it an enormous prestige. To be a member of the Council gave a Virginian the relative rank and standing of a noble lord in England, and the great families strove, intrigued, and bribed to secure the coveted position. It was the greatest honor open to them. "Esquire," permitted only to councillors, was worn as proudly by them as the lord in England wore his title. 40

Looking back from the stand of 1936 when the doctrine of the


separation of powers—partial, if not complete—has become one of the basic tenets of our democratic political philosophy, it is difficult for us to comprehend the three-fold function of the colonial Council in the political set-up of Virginia. As I have already said, this was an expression of its basic royal character. And in the exercise of these duties, it was not infrequent for the Council to be sitting in all three capacities at the same time—as was the case during the session of 1706.

In the first place, the Council exercised executive powers. There were two aspects of this division of its powers. It was, first of all, an advisory body to the King's governor. In this capacity, it advised the governor on the necessity of calling an assembly and on the date for a prorogation. It also exercised, with the governor, a supervisory power over the offices of the auditor, the receiver, and the secretary of the colony. The selling of the quit-rent tobacco to the highest bidder was done under the direction of the council in conjunction with the Auditor.\textsuperscript{41} It, also, alone could order payments out of the royal revenue, for salaries, "public service," etc. Since all land belonged to the King, the Council as royal officials, together with the governor, had the granting of it in patents. On the other hand, the Council partook of the nature of an executive committee which held over between sessions of the legislature. To it were left many powers of discretion, between sessions, in carrying out the colonial laws. It was, above all, the agency for carrying out the law.

In the second place, the Council was the Upper House of the

\textsuperscript{41}Flippen, Percy S., \textit{The Financial Administration of Virginia}, p. 40.
Assembly, taking its share in legislation. But in the assembly it occupied a slightly special role. All royal communications came to the Assembly through the Council, and the Governor always approached the Burgesses, on official matters, through the Council. Also, all officers appointed by the Burgesses were approved by the Council and by it given the oath.42

In theory, bills, except those in reference to money matters, could originate in either house, but in practice, the great majority of bills actually originated in the House of Burgesses.43 Indeed from 1700 to 1721 only three bills were initiated in the Council.44 The Council came, therefore, to be looked upon as a body for the consideration of bills and not one for their origination. Hence in connection with the passage of laws, its work was much less onerous than that of the lower House.

Much work was done, as today, by joint committees of the two Houses, appointed specially for certain bills. On these committees, the ratio was always 2 to 1, there being always two Burgesses to every Councillor.

As to the House of Commons, so also to the House of Burgesses belonged the power to raise public levies and appropriate the revenue. The Council always supported the Burgesses in their resistance to gubernatorial efforts to get special levies. For example, in March, 1703, the Governor asked the Council to approve an appropriation of 900 pounds for the aid of New York, stating that he felt that their

42 Leg. Journ. I, 311 (Sept. 19, 1701)
approval would be a means to induce the Burgesses to compliance. The Council made this reply: "We humbly conceive that in all grants of money for the Council to declare their opinion before the House of Burgesses is contrary to the practice and proceeding of the Assembly and we are doubtful might beget a Misunderstanding in the said house, being tender of their privileges." But the Council passed upon the Book of Claims, which was the budget and appropriation statement of the Burgesses, and frequently disapproved certain items.

In all other matters of legislation, the Council and Burgesses exercised equal power. Of the many matters it considered, I here list a few: the laying off of counties and parishes and the settlement of their grievances; questions of runaway slaves and allowances for executed negroes; the disposition of individual hostile Indians; the organization of the militia; the defense of the colony, fortifications, etc.; certain matters of judicial procedure, especially as regarded sheriffs and attorneys; matters of shipping, as places of landing, fees, embargoes, etc.; regulation of trade, as the size of tobacco hogsheads, the method of packing exported tobacco, the questions of bonds, bills, of exchange, foreign coins, etc., used in trade; ferries, roads, and express messengers. Above all, it made certain provisions for the carrying out of administration.

In the third place, the Council sat as judges of the General Court, the highest court in the colony. According to historian Robert Beverley, "the General Court is a court held by the governor and Council, or any five of them, who by law are the judges of it, and take cognizance of all causes, criminal, penal, ecclesiastical, 45 Leg. Journ. I, 371."
and civil. From this court there is no appeal, except the thing in demand exceed the value of 800 pounds sterling, in which appeal is allowed to the king and Council in England." (The expense of such an appeal was naturally prohibitive). "In criminal cases the Governor may pardon, except in cases of treason and will ful murder. In these he may reprieve."46 In reprieving and pardoning, the Governor took the advice of his executive council. Thus those same ones who passed judgment on the criminal advised on reprieve and pardon.

In the struggle which arose between Spotswood and the Council over the courts of oyer and terminer, the worthy governor expressed himself thus to his superiors: "I cannot give up my judgment withal upon this last point (the appointment of judges) unless I find your Lordships concur with these gentlemen in their sentiments, which are that since the General Court has hitherto been the only state Court of Judicature in this colony, which hath had cognizance of life and Member, the Council, who are constituted the Judges thereof, look upon that same jurisdiction to be confined to them, and cannot submit to share it with other persons; that some Governors might make a very dangerous use of this precedent and bring thereby men's Lives and liberties under less security than their Estates."47

This is a rather fair statement of the ideas of the Council as regarded their judicial powers. This dispute over the courts of oyer and terminer was an interesting one, and in it the Council as a whole was arraigned against the governor. In 1705, the General Assembly

46Beverley, Rob't.: The History of Virginia, p.206.

passed a law, setting forth the structure and function of the General Court. In 1710, Spotswood got a law passed specifying that the former law should not abridge the king's prerogative to erect special courts of oyer and terminer. His intention was to decrease the power of the Council. "The weakness of his position," says Bassett, "was that if there was good reason that the advisory part of the executive power should not engross the judicial function, there was even better reason that the presiding part should not do so." The governor would associate substantial men outside the Council with the Council members to hold these courts. In December, 1712, a case arose for a court of this type. The Governor joined three leading Burgesses with the Council to hold the court. The Council objected most vigorously and the matter dropped.

But Spotswood was not satisfied, and wrote to the Board of Trade asking for its advice. It wrote back that his claim was right, but that it would be impolitic to push it. In July, 1716, a case presented itself, which Spotswood determined to use as a test case. He appointed a court of oyer and terminer, consisting of five of the Council and four others. The Council as a body, save for William Cocke, refused to serve. The question once opened, Spotswood urged improper motives on the Council, and explained their attitude by their desire to share in the public revenue. They were formerly willing to sit with common justices of the peace and never raised a doubt on the legality. But when a salary of 100 pounds was attached to each court, they claimed the sole power of judicature. The simplest solution,

48 Bassett, op. cit., p. LXVIII

said the governor, would be to repeal the grant.  

The governor's success in removing Philip Ludwell II from his office as auditor made the Council pause. On the other hand, Spotswood began to see that victory might be Pyrrhic. The result was a compromise. Spotswood promised to appoint only Councillors to the courts of oyer and terminer; the Council had to acknowledge that its members held the office on such courts by the governor's appointment and not by inherent right.

Was not the Council an extremely centralized power? As legislators, they framed and passed laws; as judges they interpreted them; and as councillors they assisted in their execution. Their social position gave them a great influence and their official standing magnified it. Was it strange that governors came to have a wholesome fear of it?

One of the important factors in the power of the ruling group which sat on the Council was the established church. The Anglican church, as is the usual case with state churches, was one of the main supports of their oligarchical power. The union of church and state put the church under a political control, and that control took its character from existing political conditions. Vestrymen were politicians and always of the upper controlling group, with the result that the church was thoroughly subordinated to, and in sympathy with, the group in control.

The church in the early years of the colony assumed a democratic form. The vestries were in full control of the Church. The duties of Ford, op. cit., p. 15


these bodies were defined in an Act of the Assembly in 1662 as the making and proportioning of levies for building and maintaining churches and chapels, providing for the poor, maintaining the ministers, and, in general, managing parochial affairs. They also were to present ministers for induction. Vacancies in the vestries were to be filled originally by election; subsequent vacancies were to be filled by the vestries themselves. Thus they became self-perpetuating oligarchies and were irresponsible. The group who controlled the government also controlled the vestries. Vestrymen were generally members of the Council, of the County Courts, or the House of Burgesses. When County Courts were not held by Council members, they were filled with their friends, as was the latter also the case in the Burgesses. Thus the vestries and the political offices were held by the same group.

As I have said, the vestries had the power of presenting ministers to the governor for induction. Once inducted a minister remained for life, unless he were removed by the Assembly or suspended by the Council. Ministers who had a secure living, independent of the vestries, would have been a source of opposition to the control by the upper group and a means of popular articulation. Thus vestries adopted the method of failing to present ministers and of hiring them by the year, thus keeping them dependent on the vestries and the group which controlled the colony.

54 Gewehr, op. cit., p.31; Meade, op. cit., I, 150-1.
55 Eckenrode, op. cit., p.10; Gewehr, op. cit., p.30.
An effort of the Burgesses in 1706 to make vestries elective every six years was vetoed by the Council, who realized that its passage would decrease their control of the church and of popular opinion.\textsuperscript{56} The people, though they naturally chafed against this domination of the vestries by the planter group, preferred it to an increase in the commissary’s powers, for Virginians as a group feared the establishment of anything that resembled a prelatical tyranny.\textsuperscript{57}

Both Nicholson and Spotswood made efforts to enforce the governor’s powers of induction. In 1703, Nicholson attempted to present ministers to the parishes when the vestries failed to make presentation within six months after a vacancy occurred. He was upheld in his right by Sir Edward Northey, the attorney-general of England. This opinion was opposed alike by the Council and by colonial sentiment. Nicholson won over eleven of the ministers in the convocation he summoned, but Blair supported by six of the clergy and by the Council, with whom the Governor was already unpopular, won out and Nicholson was recalled in 1705.\textsuperscript{58}

In 1719, just after the settlement of the dispute over courts of oyer and terminer, Spotswood attempted to carry out Nicholson’s plan. The dispute came to a head over the refusal of the vestry of St. Anne’s Parish, Essex County, to accept the governor’s nominee. Blair urged the vestry to resist. Again the Council and popular sympathy opposed the governor, and he gave up the effort. It was largely the antagonism of the Council over this affair that resulted

\textsuperscript{56}Leg. Journ. I, 467-69.

\textsuperscript{57}Gewehr, op. cit., p.30.

in Spotswood's recall in 1722.\textsuperscript{59}

It is generally admitted that the failure of the Virginia Establishment as a spiritual force in the eighteenth century was due to its content in serving only one social group. The Church was closely and admittedly allied with the aristocratic group. Through the vestries the Council controlled the Church, and the rise of Baptist and Presbyterian Churches in the 1740's accounts in a measure for the decline in Councillor power after the mid-century.

The most striking phase of the preceding century, as regards extreme changes in attitude, had been the arrival of the cavaliers. They had intermarried with the Virginians and had had an influence on Virginia life out of all proportion to their numbers. They gave to public life something more than it had had before of the English notion that offices should be held for the benefit of the gentry.\textsuperscript{60} From that time colonial society was fixed. By the time the century was well turned, the chief public offices were all filled by members or representatives of the landed aristocracy which controlled the Council. It was a rare thing to find a councillor who did not hold at least one other job, and the usual rule was two others or more.

There were in the colonial set-up three other offices which were filled by royal appointment. The most important of these was that of Secretary of State, a position which conferred much power and influence on the occupant. He had the right to appoint all county clerks, and as these were men of weight in their respective

\textsuperscript{59}Eckenrode, \textit{op. cit.}, p.18-19.

\textsuperscript{60}Basset, \textit{op. cit.}, "Introduction."
communities and were, as a rule, almost to a man in the House of
Burgesses, it was charged that through them the Secretary exercised
too much influence on that body. In the period from 1700 to 1750,
the four men who occupied this office were all members of the Council:
Edmund Jenings (1702–1712 and 1720–1722), William Cocke (1712–1720),
John Carter (1722–1743) and Thomas Nelson (1743–1776). For the
four years from 1706 to 1710, Edmund Jenings held enough important
offices to have functioned alone as the government: he was a councillor,
he was Secretary of State, and he was acting governor. John Carter is
said to have paid fifteen hundred guineas in hard cash for this office.
It was during his incumbancy that the great power attaching to the
office came under discussion, Governor Drysdale laying before the
Lords of Trade the fact that, by virtue of his appointment of county
clerks and their membership in the Burgesses, he had the virtual ap-
pointment of one-half that body which would be thus largely devoted
to his interests.

The position of auditor-general was another which was eagerly
sought. In the period we have under discussion, seven men filled it
and every one was a councillor: William Byrd I (1687–1704); Dudley
Digges (1705–1710); Philip Ludwell II (1710–1716); Peter Beverley
1716– ); John Grymes (1718– ); Nathaniel Harrison (1724–1728);
and John Blair (1732–1771).

61 Stanard's Colonial Virginia Register.
62 Dodd, W. E., Statesmen of the Old South, p.7.
64 Stanard, op. cit.
The third office was that of Receiver-General, a position which offered great economic opportunities. William Byrd I, who held it from 1687 to 1704, was succeeded by his son William Byrd II, who gave it up in order to be able to fight Spotswood more freely. His successors, in order, were James Roscow (1716-23) and John Grymes (1723-1749). James Roscow alone was not on the Council, but was closely connected with it.

Since the Council managed to monopolize even the offices filled by appointees in England, it was natural that those offices of which they had the filling would be held by them or their representatives. The colonial militia under the lieutenant-governor as commander-in-chief was based on county divisions. The member of the Council in the county was chief of the militia with the title of lieutenant. If there was no member of the Council resident in the county, a prominent person was named, with the title of major. The executive control of each county was vested in a panel of justices, a commission of peace, which was named by the Council in executive session with the governor. The councillors were always first on the commission in their respective counties, and the other members were inevitably men who would serve their interests. There was, curiously enough, one position which a councillor could not hold. It was that of a naval officer of a district. This had been taken from them for alleged connivance with the pirates. In 1706 Governor Nott, at

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65 Soon after his death, the offices of receiver and auditor, which had up to then been vested in one man, were separated.

66 Campbell, Chas, *History of Virginia*, p.353.

67 Flippin, *op. cit.*
the Council's request, "represented to the Lords Commissioners the hardships of the Councillors being excluded from being naval officers." The Lord Commissioners asked Nott to explain the circumstances, and he requested Edmund Jenings, Dudley Digges, Robert Carter, and Philip Ludwell II to prepare a suitable representation of the matter, which they did. It is an interesting document and among other things it says: "it seems a farther hardship that the Council who are presumed to consist of men of good reputations, and as plentifull fortunes as any in the country and are under the greatest trusts in the Government should be the only unfitt men in the Government to be intrusted with a small place of profitt.--------The business of the Council, General Court, and Assembly is of late years so much increased that the Council have been kept from their homes three or four months in a year to their great Damage in their private affairs, and the whole Sallary is but 350 pounds to be divided into 12 parts, and they are not so much as allowed to have the hopes of a place of profite excepting the Secretaries, Auditors, Receiver Generals which her Majestie is pleased to bestow at her pleasure without regard to the Seniority or longstanding in the Council and the naval officers when they were in the Council still left the major part untaken care for." Could there be a plainer statement of the determination of the Council to monopolize all offices for their own interests?

The men who controlled this system were men of wealth and their opportunities to increase what they already had were great. Indeed wealth seemed to be one of the requirements for membership.

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In 1693 Edward Porteus, the father of Robert Porteus the councillor, was recommended by the governor as "one of the gentlemen of estate and standing suitable for appointment to the Council."\textsuperscript{69} In the \textit{Gentlemen's Magazine} for November, 1732, there appears in the death notices this entry: "Robert Carter, Esq., in Virginia. He was president of the Council and left among his children above 300,000 acres of land, about 1,000 negroes, and 10,000 pounds in money."\textsuperscript{70} Many of the councillors had made great fortunes as traders and merchants. William Byrd I had found the Indian trade very lucrative. William Dandridge was a merchant at Hampton, and "President" William Nelson in the early part of his life built up one of the greatest mercantile houses in the colonies.\textsuperscript{71}

Membership on the Council gave to these men already wealthy the opportunity to increase greatly their economic standing. The pay of three hundred and fifty pounds per annum, which they received as a whole, was but the smallest part of the profit they took each year out of their offices. The offices of secretary, auditor, and receiver offered great opportunities for personal enrichment and were eagerly sought. The secretary received about 70,000 pounds of tobacco a year from fees and about 40,000 pounds as acknowledgments from the county clerks.\textsuperscript{72} The auditor who audited the books kept of the royal revenues—quitrents, etc.—received 6\% of all this public

\textsuperscript{69} Quoted in \textit{Encyclopedia of Va. Biog.} I, 151.
\textsuperscript{70} \textit{Va. Hist'l. Mag.} Vol. 32, p.81.
\textsuperscript{72} \textit{Beverley's Hist. of Va.}, p.197.
money. The receiver took in and cared for all the money paid in for quitrents and the duty of two shillings a hogshead of tobacco. His salary was likewise 6%. The great profit in this office came from the sale of the tobacco which was received in payment of quitrents. At the end of the year, the receiver sold these large amounts to the best advantage of the revenues supposedly, by order of the Council privately. The tobacco was bought up at low rates and sold at the higher market price. This same principle, of price was the inducement to buyers in the farming of the quitrents, which were frequently bought by the council members. Is it any wonder that John Carter paid fifteen hundred guineas for the secretaryship, that William Byrd I authorized his friends in England to pay 300 pounds for the auditorship, and that James Roscow paid William Byrd II 500 pounds for the receivership?

The aristocracy which controlled Virginia was a landed one—land was the basis of the power of the Council. But the frequent struggles between the landed and the royal governors must have left with the colonial Virginians the insecurity of their possessions since they never held land in fee but always as renters, in the strict sense of the law.

As in any new unsettled country, the only opportunity which the colony offered for expansion of capital lay in land speculation

73 Bevley, op. cit., p.196.
74 Ibid., p.196.
75 Bassett, op. cit., pp.XXVI-XXVII.
76 Ibid., p.XVII.
77 Ibid, p.LXIII.
and land patenting. In the middle of the century, companies as the Ohio Company, were formed to speculate in western lands. But in the first half of the century, the land deals took the form of large patents for sections scattered throughout the colony, though mainly on the frontier, in the upland regions. There was one important reason why land was patented in such large sections. Negro slavery had made land even more profitable, and by this time, the economic set-up had become fixed in the vicious cycle of tobacco, slaves, land. Tobacco was an exhausting crop; little was known of fertilizers and land was plentiful. Consequently, as one stretch of land was worn out, the planter moved on to another one, and large blocks were patented to care for this. All patents were signed by the Governor in executive Council, and the councillors were able to take up huge blocks of land.

Up to 1699, land had been granted on the basis of fifty acres for each person imported. But in 1699, the Council threw aside the old custom, and ordered that anyone who paid five shillings sterling should have the right to take up fifty acres, in lieu of an importation right. The effect of this was to free much land. In 1706, the Lord Commissioners tried to restore the old importation clause to no avail. In 1709, the Council protested against the condition that, within three years of the grant, three acres part of every fifty had to be under cultivation, or the grant lapsed. In 1710, through Spotswood's efforts, a new law was passed providing that

79 *Exec. Journ.* III, 107 (June 20, 1706).
80 *Ibid* III, 221 (Sept. 12, 1709).
failure to pay quitrents for three years should cause the grant to lapse.\textsuperscript{81} Throughout the protests of the Council against restricted land-patenting, the argument was advanced that so much of the land was worn out.\textsuperscript{82}

Enormous were the amounts of land patented by the members of the Council and their families. In 1703, Nicholson wrote the Lords of Trade that the Harrison family had endeavored to engross the major part of the land on the south side of Blackwater Swamp.\textsuperscript{83} William Churchill owned two estates in Middlesex County, entirely across which they stretched.\textsuperscript{84} William Byrd I left his son 26,231 acres.\textsuperscript{85} William II increased his father's holdings to 179,440 acres before his death in 1744. Nathaniel Harrison in three years took up 27,200 acres.\textsuperscript{86}

Such was the Council. Its composition and functions were sufficient to invite the opposition of Governor and even of people, for they were somewhat anomalous. Some of the members of the Governor's Council drew very refined distinctions in defense of their apparent inconsistencies, holding that they might as councillors reject or deem unfit a measure which in the capacity of legislator they might support. In the Council they were bound by oath to assist

\textsuperscript{81} Bassett, \textit{op. cit.}, p.LV.
\textsuperscript{84} Ibid. p.150.
\textsuperscript{85} Bassett, \textit{op. cit.}, pp.XXIII-XXXVI.
the Governor and to defend all jurisdictions and authorities appertaining to his Majesty; in the Assembly they would naturally be on the side of the people, and regard only what was for the good of the colony. 87

Up to and during the rebellion under Bacon the Council had given great support to the governors. But after that the tendency was toward the aggregation of power against the governor in the hands of the Council. Culpeper and Effingham were bent on personal economic aggrandizement and Andros was not of a temperament to combat successfully the power of the Council, nor was his successor, Nicholson. Spotswood was more fitted to deal with them, but he too was unsuccessful. Each of these three, in succession, as a result of the antagonism of the Council, over disputes arising out of attacks on councillor rights in judicial and religious control, were recalled. After Spotswood, the governors seem to have learned from their predecessor's experiences and did little to combat its power. The decline in its power came as a result of other factors.

At the same time, that the Council was bolstering its power against royal control, it was trying to build up its power against the people. In the first part of the century, it was largely successful and the House of Burgesses was subservient to it and impervious to popular control. But in the period from 1735 to 1740 there comes a transition. The great religious awakening in the 1740's stirred the people to a new consciousness of their powers and gave them experience in action and better and more popular leadership. The result is a House of Burgesses that assumes an ever

87Ford, op. cit., pp.24-6.
increasing aggressiveness against the Council. In 1749, the Burgesses brought into court William Parks, the printer of the *Virginia Gazette*, for printing at the orders of the Council a strong statement of that body against the aggressive action of the Burgesses in demanding the right to search the Council's journals. In 1730, they would not have dared. Another indication of the rising power of the Burgesses is the increasing frequency of their refusals to accept councillor amendments to their bills. The Council's action in the Dinwiddie controversy, in supporting the governor, shows a resentful attitude toward "the growing republicanism and pretense of power on the part of the Burgesses. By the middle of the century the Council saw a threatening danger in the people and a haven of refuge for the large landholders in the royal prerogative." By the time of the Revolution it is definitely in support of the Crown. Another fact indicative of the change is that the men of the families who used to intrigue to get into the Council are transferring their sphere of action to the Burgesses.

The Council did make a big contribution, however, to Virginia. It developed for Virginia a colonial sense of nationalism and more concretely the basis of power for opposition to the mother country. But it did not, or would not, see the trend toward popular control, and tried to set itself against it.

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