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## The Virginia Law Revision of 1748-49

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THE VIRGINIA LAW REVISION OF 1748-49.

MA

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A Thesis

Presented to

The Faculty of the Department of History  
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In Partial Fulfillment

Of the Requirements for the Degree of

Master of Arts

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By

Gwenda Morgan

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APPROVAL SHEET

This thesis is submitted in partial fulfillment  
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## ABBREVIATIONS

Acts of the Privy Council of England, Colonial Series.	A.P.C.
Journals of the Commissioners for Trade and Plantations.	B.T.J.
Public Record Office, Colonial Office.	C.O.
Journals of the House of Burgesses of Virginia, 1619 - 1776	J.H.B.
Legislative Journals of the Council of Colonial Virginia.	L.J.C.
Colonial Williamsburg Inc.	C.W.I.

## ABSTRACT

It is the intention of the thesis to treat the Virginia law revision of 1748-49 as a microcosm of Anglo-Virginian relations. It provides a unique perspective for an examination of the imperial administrative machinery in operation, the locus of power, the principles under which it was operating, and the colonial reaction at a significant point of time.

In 1748, the Board of Trade came under the ambitious Presidency of the Earl of Halifax. It took the opportunity afforded by the Virginia revision to tighten the framework of the formal political relationship between colony and mother country. Furthermore, it tried to apply its experience with Virginia elsewhere. While the recalcitrance of other colonies and the advent of war deflected its aims, the Board did not altogether retreat as its stand on the Virginia Tobacco Act of 1758 was to demonstrate.

The law revision embraced many aspects of Virginia's growth, and it formalized them at a time when the seasoned Governor Sir William Gooch was preparing to give way to a more ambitious successor. The action of the King in Council on the Revision caused the assembly to define its rights and assess its relationship with the mother country. Issues arising from the revision provided a continuous thread of debate between colony and mother country through the decade. Given the ease of relations under Gooch, the history of the law revision served as an introduction for Virginia politicians to the field of imperial relations.

THE VIRGINIA LAW REVISION of 1748-49



## INTRODUCTION

The second quarter of the eighteenth century was an era of good feeling in relations between Virginia and the mother country. Despite some early economic difficulties at the beginning of this period, this was to be the golden age of the plantation system when Lieutenant Governor William Gooch could write to the Board of Trade that the condition of affairs in the colony could be summed up in two words, "Peace and Plenty".<sup>1</sup> Relations between the governor and assembly were excellent, and Gooch came to enjoy the reputation of being the only governor against whom neither inhabitant nor merchant ever complained.<sup>2</sup>

This was the period of alleged "salutary neglect," and Gooch's contacts with the Board of Trade, the chief agency of colonial administration, were few, scarcely averaging one letter per year. But the period finds its key not merely in the well-meaning disposition of its governor and the divided attention of authorities at home, but in a combination of these factors with others: in the subsidence of the merchant lobby following the

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(1) Gooch to Board of Trade, 14 March 1734, C.O. 5/1323, f.107; William Gooch (1682-1751) was Lieutenant Governor of Virginia from 1727 to 1749. A former career soldier under the Duke of Marlborough, he was one of Virginia's most popular governors. He commanded the American Regiment against Cartagena, but declined a similar appointment in 1746 in the expedition against Canada. He was created a baronet in 1747.

(2) The Official Records of Robert Dinwiddie, 1751-1758, ed. Robert A. Brock (2 vols., Richmond, 1883-1884), I, 2.

decline of Micajah Perry, in the fact that the Commissary of the Bishop of London in Virginia, the once fiery James Blair (1655-1743) was now old and ill, in the absence of primary issues, and in the maturity of the House of Burgesses itself.<sup>3</sup>

During its last session under Governor Gooch the assembly of 1748-49 revised its laws.<sup>4</sup> Although the scope of its work was very extensive, the assembly regarded its action as routine and did not anticipate any strong reaction from the home government. The report presented by the home government to the assembly, however, proved otherwise.

Since all colonial laws had to be sent home for inspection, legislative review presented imperial authorities with the opportunity to reject and reshape colonial actions. Yet it was customary for the Board of Trade, which was primarily responsible for the review of colonial legislation, to allow the majority of colonial laws to "lie by probationary" without any action being taken on them.<sup>5</sup> The

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(3) James Blair (1655-1743) was a notable figure on the Virginia scene for over fifty years. A formidable character, he was reputed to make and unmake governors. He was instrumental in the founding of the College of William and Mary securing its charter in 1693. He was appointed Commissary of the Bishop of London in 1689 and as a member of the Virginia Council in 1694. Micajah Perry (d.1753) was the most prominent merchant of his day engaged in the Virginia trade. He acquired a great deal of influence in the disposal of public offices in Virginia which Governors Spotswood and Gooch objected to strongly. He was Lord Mayor of London 1738-1739 and a Member of Parliament 1727-1741.

(4) J.H.B., 1742-1749, Assembly of 1748-49, passim.

(5) Elmer B. Russell, The Review of American Colonial Legislation by the King in Council (New York, 1915), 54-58; Board of Trade to the Duke of Newcastle, I July 1724, cited in Leonard W. Labaree, Royal Government in America (New York, 1930) 224-225.)

Board set forth its policy, in this respect, in a letter to the Duke of Newcastle in 1724. "The fewer acts there are confirmed" it stated, "the greater will be the dependence of the colonies on the Crown." The point to be taken here was that if the home government did not act on a colonial law when it was submitted to it, it could always do so at a later date. On the other hand, the majority of colonial laws were of little interest to any but those enacting them.

A small percentage of colonial acts did catch the attention of English authorities or else interested parties in the colonies or at home and on these some formal decision would be required. If a law was considered to be objectionable by the home government, then it was usually disallowed or, on rare occasions, it might be disallowed ab initio. In the case of a simple disallowance, the colonial law ceased to be in effect from the time when its formal disallowance was proclaimed in the colony. In the case of a law which was disallowed ab initio, the law was considered never to have been in effect at all. A law might also be confirmed by the Crown but confirmation was generally used only in connection with private acts which usually related to land. Confirmation might also be used as a mark of special favor towards an individual colony or a particular interest group. Laws which might affect certain interest groups or else were of doubtful interpretation might be declared probationary. The majority of colonial acts, however, as was previously stated, had no action taken on them. They were simply allowed.<sup>6</sup>

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(6) Russell, Legislative Review, 109-202.

Nonetheless, a centralizing impulse was haphazardly at work in English colonial policy in the eighteenth century and, from time to time, additional instructions were fashioned which imposed limitations on the legislative powers of the colonial legislatures and controls on the executive.<sup>7</sup> Such instructions bore little relationship to the facts of colonial power and attempts were seldom made to implement them. In 1738 a further instruction was issued that required governors to insist on the inclusion of a clause suspending the operation of an act that altered another act formally passed in the legislature, and the operation of laws of a temporary nature.<sup>8</sup>

The treatment afforded the Virginia law revision marked a distinct departure in the policy of the Board of Trade and signalled its revival as a far more vigorous agency in colonial relations. The Board was, in fact, reversing its former approach to colonial legislation and attempting to interpose the authority of the home government far more forcefully. The Board was not entirely successful in this, but neither was it without effect. The Virginian assembly was taken unawares by the disallowance of several of its most important enactments and the confirmation of the majority. Brusquely it was reminded of its subordinate status.

The appointment in 1748 of the Earl of Halifax to the Presidency of the Board of Trade had infused new energy into this

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(7) Charles M. Andrews, The Colonial Period of American History (4 vols., New Haven, 1938) IV, 219.

(8) Royal Instructions to British Colonial Governors, 1670-1776, ed. Leonard W. Labaree (2 vols., New York, 1935), I 128.

chief agency of colonial administration.<sup>9</sup> Subject to the deliberations of this revitalized Board, the Virginia Law Revision served to bring colony and mother country into a closer relationship. The revision aroused the Board's interest in legislative control; it summoned other government agencies into action in colonial affairs and it attracted the attention of several minority interests and pressure groups, including English merchants trading with Virginia, land interests in the colony, the Anglican hierarchy, and a militant section of the Virginia clergy. Moreover, it occasioned a debate in the Virginia assembly which Herbert L. Osgood was to describe as one of the most exciting before the Revolution.<sup>10</sup>

Historians of royal government in America have dealt with the Virginia law revision briefly, while Herbert L. Osgood and Lawrence H. Gipson have treated it in some detail.<sup>11</sup> They fail, for the

(9) George Montague Dunk, Earl of Halifax (1716-1771) was President of the Board of Trade 1748-1761. Although entering the House of Lords as a follower of the Prince of Wales, he had transferred his interest to the Ministry. Though personally temperamental, Halifax was the most conscientious of Presidents to head the Board of Trade. He seldom missed a session of the Board of Trade and maintained personal control of affairs when the Board was in recess. He campaigned for the creation of a third Secretaryship based on the West Indies, but only just succeeded in obtaining Cabinet status for his office, in 1757. He took great personal interest in the settlement of Nova Scotia. In 1761 he became Lord Lieutenant of Ireland, and in 1762 First Lord of the Admiralty. He was Secretary of State in both the Bute and Grenville administrations, but remained out of office on the fall of the latter until his nephew, Lord North, came into office in 1770. He held the position of Lord Privy Seal until his death one year later.

(10) Herbert L. Osgood, The American Colonies in the Eighteenth Century (4 vols., New York, 1924-1925), IV, 106-113.

(11) Ibid.; Lawrence H. Gipson, The British Empire Before the American Revolution (13 vols., New York, 1936), II, 26-28.

most part, however, to develop its significance as a continuing factor in Anglo-Virginian relations and as an instrument of Board of Trade policy.

CHAPTER I  
THE ENACTMENT OF THE REVISION.

The second quarter of the eighteenth century was a period of rapid growth for the colony of Virginia. During the governorship of Sir William Gooch (1727-1749) the number of Virginia counties increased from thirty to forty-four.<sup>1</sup> That administration should keep pace with territorial expansion was a perennial problem for the government in Williamsburg. Concern for the quality of this administration was to be found in the press.

An edition of The Virginia Gazette for October 1745 carried as its leading article a lengthy statement lamenting the poverty of local law and the ignorance of its administrators in the colony. The laws of England, wrote "Common Sense", were Virginia's heritage, an ever-ready defense against arbitrary power.<sup>2</sup> This concern was reflected by the Virginia assembly when in its next session it passed certain expansionist and reformist measures. An act for the Establishment of the General Court extended the sessions of the court to deal with the ever-increasing volume of business.<sup>3</sup> Another regulated the practice of attorneys, requiring

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(1) Richard L. Morton, Colonial Virginia (2 vols., Chapel Hill, 1960), II, 569.

(2) The Virginia Gazette (Parks) October 10, 1745, Williamsburg, Colonial Williamsburg Inc. Photostat.

(3) William W. Hening, Statutes at Large (13 vols, Richmond and Philadelphia, 1809-1823), V, 319-320.

that students at law be examined before a duly appointed board before receiving their licence.<sup>4</sup> Third provision was made after a lapse of some forty years for a revisal of the laws.<sup>5</sup>

This was, in fact, the sixth revision of its kind; the colony had previously revised its laws in 1632, 1643, 1658, 1661, and 1705. The Board of Trade, in its first full flush of energy, had attempted to dictate to the Virginia assembly over the last of these revisals.<sup>6</sup> Governor Gooch reported to the Board of Trade on the necessity of the measure. It had been some sixteen years, he related, since the laws of the colony had been printed and distributed to the members of the assembly and the justices of the counties. Though men of probity and truth, neither burgesses nor justices were well skilled in the law. Since that time, Gooch continued, several new counties had been erected toward the western frontier and a revisal would provide for their better administration. No printed copies of the laws were available and the new counties stood in the greatest need of them. The assembly considered that a full revision was preferable to a mere reprint. Many of the late acts had been entirely or partially repealed, others had expired, and still others had been altered or amended. The task of preparing the revision was assigned to a joint committee of the House and Council that in turn would present its work to the

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(4) William W. Hening, Statutes at Large (13 vols, Richmond and Philadelphia, 1809-1823) V, 345-350

(5) Ibid., V, 321-324

(6) Ibid., I, vi; Russell, The Review of American Colonial Legislation, 93-94.



assembly for deliberations and passage into law. Gooch hoped that the Board of Trade would consider the act providing for the revision both "useful and necessary".<sup>7</sup>

Since the establishment of joint committees of the House and Council was a procedure reserved for matters of major importance, the committee of revision was accordingly drawn from among the more prominent members of the assembly, in particular from among those acquainted with legal affairs. Care was also taken that the members of the committee should be resident in the vicinity of the capital. This consideration would facilitate the work of the committee when the assembly itself was not in session, affording it ease of access to assembly records.<sup>8</sup> Six members of the House of Burgesses were appointed to the committee: William Beverley, Thomas Nelson, Richard Randolph, John Robinson, Jr., Benjamin Waller, and Beverley Whiting. These were joined by three Councillors: John Blair, William Nelson, and John Robinson, Sr.<sup>9</sup>

Only five of the committee members, however, had served in the assembly for any length of time. Four had entered in the

- (7) Gooch to Board of Trade, July 4, 1746, C.O. 5/1326, ff. 205-206; Hening, V, 321-324.
- (8) Gooch to Board of Trade, July 4, 1746, C.O. 5/1326, ff. 205-206.
- (9) Hening, V, 324. There is some discrepancy here with the entry in the Legislative Journal of the Council, which lists Thomas Dawson as the clerk of the Revisal Committee. Since, however, George Webb petitioned the House of Burgesses in 1748 for an additional allowance for performing this task, I have accepted the Committee as given in Hening.

current decade, namely, Thomas Nelson, William Nelson, Benjamin Waller, and Beverley Whiting. Yet seniority was no key to prominence in Virginia politics; family connection, wealth, and personality could elevate a newcomer to the front rank of the assembly. Between them the committee members had accumulated numerous public appointments and considerable committee service. Of the burgesses, Richard Randolph had first entered the House in 1727 and had served on the all-important committee of privileges and elections and the committee of propositions and grievances for over fifteen years. John Robinson, Jr., and William Beverley both took their seats in 1736, the former becoming Speaker and Treasurer two years later; the latter became chairman of the committee of public claims in 1740 and a negotiator of the Treaty of Lancaster in 1744. Thomas Nelson, who became a Burgess for Yorktown in 1745, was already Secretary of the colony. Benjamin Waller, elected for James City County in 1744, was Clerk of the General Court, and had served as clerk to the committees of privileges and elections and of propositions and grievances in the early forties. Beverley Whiting was Chairman of the committee of courts of justice in the current session of the assembly. Each of the three members of the Council had previously served in the House for a short period of time.

The task of revision was one of formidable dimensions, and it was not until some three years later, in October of 1748, that the committee of revisal, as it was called, was ready to present its report to the assembly. The committee seems to have divided its work into three parts, writing among this maze of laws,

it tabulated them under three headings: those that had become obsolete and were marked down for repeal; those that remained valid and were to be continued; and, thirdly, those that required alteration, amendment, or consolidation, all of which would require drafting as new bills.<sup>10</sup>

There is little information as to who did what among the committee members. Many years later Littleton Waller Tazwell claimed the major share of the honors for his grandfather, Benjamin Waller, maintaining that "the revisal of 1748 as it is called was the work of his hands almost exclusively...."<sup>11</sup> Probably the actual framing of the laws did owe more to Waller than to any other member of the committee, judging from the way in which he was consulted about the revision by the assembly in 1752.<sup>12</sup> Yet, from the remarks made by Governor Gooch in his opening address to the assembly in 1748, it would not appear that this was a solitary effort in its committee stage.<sup>13</sup> At least one other person felt himself overworked during this period. George Webb, clerk to the committee of revisal, petitioned the assembly for a further allowance, being "at a Considerable Expense in attending the said Committee at their several Meetings, and for Books, Paper, Pens and Ink ...."<sup>14</sup>

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- (10) J.M. Leake, The Virginia Committee System and the American Revolution (Baltimore, 1917), 45-46.
- (11) Littleton Waller Tazwell, A Sketch of his own Family, 1823, 101, Virginia State Library, Richmond.
- (12) The Diary of Landon Carter, ed. Jack P. Greene (2 vols., Charlottesville, 1965), I, 98.
- (13) J.H.B. 1742-1749, 257
- (14) Ibid., 1742-1749, 354

Seventy-two members took the appointed oaths when the assembly convened at the College of William and Mary on October 27, 1748, for the session that would consider the revision.<sup>15</sup> The assembly of 1748-49 was to be one of the longest in the history of the colonial legislature. It met in two sessions, from 27 October to 17 December 1748, and from 2 March to 11 May 1749. It was also Governor Gooch's final assembly. In his address to the House Gooch prepared the burgesses for a lengthy session. The committee of revisal had, he said, performed their laborious task and prepared a work for the assembly to complete. This work would take time, patience, and application.<sup>16</sup> The meeting of the assembly did prove long and costly, its members tense and irritable. While the law revision occupied much of the time, the questions of relocating the capital and of relations between the two chambers provided subordinate themes. These injected into the two sessions the tensions of competing sectional interests and conflicting claims to rights and privileges.

The report of the committee of revisal was formally presented to the House from the Council.<sup>17</sup> At the time Philip Ludwell, Chairman of the committee of propositions and grievances of the House and Peyton Randolph, Attorney General, joined the committee, replacing Richard Randolph and John Robinson, Jr. Thomas Nelson, now elevated to the Council, replaced John Robinson, Sr., and completed the committee which would see the law revision through

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(15) The capitol had been destroyed by fire the previous year.

(16) J.H.B. 1742-1749, 257

(17) Ibid., 1742-1749, 267

its various stages in the assembly.<sup>18</sup>

The first two stages were straightforward enough.<sup>19</sup> The committee of revisal had advised the repeal of some twenty-one laws that had become obsolete, useless, or otherwise provided for. The committee of courts of justice, as ordered, brought in a bill for their repeal which passed the House without even being referred to the committee of the whole house.<sup>20</sup> A further thirty-six were presented to the House as fit to remain as they were and no further action was taken on them.<sup>21</sup> The major work of the assembly lay in the third and final stage, the presentation and consideration of revised bills.

Eighty-nine bills eventually received the Governor's signature, but this number by no means represents the full measure of the assembly's activity. Several bills were defeated in the House for one reason or another, others were lost in the struggle between the House and Council, while others simply faded. Normal business was also considerable as the two previous meetings of the assembly had been short-term, single-purpose meetings. Groups of revised bills were therefore introduced into the House as convenient.<sup>22</sup> None of

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- (18) Richard Randolph and John Robinson, Sr. both died the following year and may have been dropped from the committee on account of ill-health. John Robinson, Jr., would find service on such a committee during the assembly incompatible with his office as Speaker.
- (19) Leake, Virginia Committees, 45-46.
- (20) J.H.B. 1742-1749, 277-278, 389, 396, 397, 400.
- (21) Ibid., 1742-1749, 278-279.
- (22) The Assembly of July 1746 had been summoned to bear the cost of enlisting and transporting men for the expedition to Canada; that of March, 1747, on the occasion of the burning of the capitol.

the revised bills thus far introduced had made much progress when Gooch adjourned the first session of the assembly in December of 1748. He was able, nevertheless, to give his assent to some twenty-one bills that were not the work of the Committee of Revisal.<sup>23</sup>

The bulk of the work of revision was done during the second session of the assembly between 2 March and 11 May, 1749. The assembly had been careful in its original act to circumscribe the power of the revisal committee, while at the same time affording it a unique legal status, which projected its existence beyond the normal session of the assembly. In this respect it was to serve as a model for the committee of correspondence in 1759.<sup>24</sup>

Throughout the meeting of the assembly members of the House and Council took full advantage of their powers under the original act to scrutinize and amend the bills presented to them. Well over half the revised bills were referred to the committee of the whole house for extensive discussion and amendment, and there were few bills that did not receive amendment at the hands of the House. A prominent figure in all these moves was the Chairman of the committee of the whole house, Charles Carter. Amendments were frequently handed down from the Council, some of which were accepted by the Lower House, others were rejected. Often lengthy negotiations were necessary to steer a bill successfully through the assembly.

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(23) J.H.B. 1742-1749. 328

(24) S.M. Pargellis, "The Procedure of the House of Burgesses", William and Mary Quarterly, Ser.2, VII, (1927), 146.

Finally, as the work of revision drew to a close, provision was made for the printing of the laws.<sup>25</sup> A further committee was appointed "to treat with William Parks, Printer," and to "receive his Proposals for printing a compleat Body of the Laws of this Colony, as now revised and corrected ...." The committee was responsible as well for collecting the laws and making provision for their indexing.<sup>26</sup> Parks agreed on the printing of a thousand copies by 10 June, 1751 at a cost of £1250 current money. These were to be distributed to the members of the assembly, to the clerks of both chambers, and the Secretary's Office, as well as to the clerks of the county courts and the courts of Hustings, and, as the Treasurer directed, to those justices who were not themselves members of the assembly.

On the final two days of the assembly in May 1749, Governor Gooch gave his formal consent to the laws passed by the legislature.<sup>27</sup> He was required by his instructions to forward all new laws to the Board of Trade for their perusal within three months of their enactment and to register his comments on them.<sup>28</sup> He therefore reserved his strongest comments for the attention of the government at home rather than the assembly. Regardless of these comments, however, Gooch considered the work of the 1748-49 assembly as a worthy achievement, a fitting conclusion to his long

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(25) J.H.B. 1742-1749, 386, 401.

(26) J.H.B. 1742-1749, 388, 406.

(27) J.H.B. 1742-1749, 400-405.

(28) Royal Instructions, Labaree, I, 134-135, 136-137.

tenure in office.<sup>29</sup>

Ten years later, in 1759, Thomas Sherlock, Bishop of London, was to charge that the work of the Virginia assembly in revising its laws posed a deliberate challenge to the imperial relationship. Sherlock maintained that he detected a distinct change in the character and outlook of the colony from this date. Virginia had revealed a spirit clearly hostile to the mother country, Sherlock charged, when the legislature had removed in patronage of the clergy from the king and bestowed it on the vestries in 1748. Yet Sherlock was old and ill when he made these charges and had been conditioned into believing them by the representative of the Virginia clergy in England, John Camm.<sup>30</sup>

Undoubtedly, the initiative behind the law revision lay with the assembly. There is no evidence of a directive from the home government or the Governor in official correspondence or the journals of the assembly. The motion to bring in the original revisal bill in 1746 was made from the floor of the House, and its drafting was entrusted to a committee of the House.<sup>31</sup> The two

(29) J.H.B. 1742-1749, 406.

(30) Bishop of London to Board of Trade, June 14, 1759, C.O.5/1329, ff. 131-132, Morton, Colonial Virginia, II, 794-796; Thomas Sherlock (1678-1761) had held the bishopric of Bangor, 1728-1734, and Salisbury, 1734-1748, when he was elevated to the see of London. Acutely aware of the inadequacy of episcopal supervision of the colonies, he promoted several schemes for the establishment of a colonial bishopric, but he failed to influence the Ministry of the day.

(31) J.H.B. 1742-1749, 202. The committee appointed to draft the bill consisted of William Beverley, Richard Bland, Benjamin Waller, William Waller, James Power and George Douglas, several of whom served on other committees connected with the Law Revision.



sessions of the 1748-49 assembly reflected not a deliberate challenge to the Crown, but the mature development of the legislature under Governor Gooch and the evolution of the committee system. The revisal assembly, as a whole, demonstrated the sophistication of this committee system, illustrating Jack P. Greene's notion of "institutional momentum"<sup>32</sup>

The actual contents of the law-revision suggest that it was initiated exactly as Gooch's letter to the Board of Trade had stated, by the sheer facts of physical growth and lapse of time. Of the eighty-nine acts forwarded to the Board of Trade, many fall under the headings of internal improvements, economic growth, legal and judicial matters, police power, and religious affairs.<sup>33</sup> By far the largest group concerned internal improvement and physical growth. Some provided for roads, causeways, and ferries. Four divided counties, four others established towns, and two divided parishes. A second large group was concerned with the establishment of the courts, the conduct of suits, and the defense of legal rights. A further group dealt with the laws of trespass- the perennial concern of an agricultural community. The economic well-being of Virginia was further provided for by tightening the laws for the inspection of tobacco and meat. The welfare of the church and the status of the clergy also had their place in the law revision.

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(32) Jack P. Greene, The Quest For Power (Chapel Hill, 1963), x.

(33) I am treating the total number of laws passed during this Assembly, including those passed at the adjournment in December 1748, as a single body as they were treated in this way by the home government.

Yet, what was significant about the Virginia law revision of 1748-49 was not so much what was in it, but what was done with it by the home government and the colonial reaction to the treatment that it received. The Virginia assembly in 1749 did not anticipate any strong reaction from the home government to its work of revision. As far as the assembly was concerned, a laborious but worthwhile task had been completed and submitted to the Board of Trade in a routine fashion.

## CHAPTER II

### THE RESPONSE OF THE HOME GOVERNMENT TO THE REVISION.

Colonial governors were responsible for forwarding all new laws to the Board of Trade within three months after enactment, together with their observations on them.<sup>1</sup> The Virginia law revision, like most colonial legislation, exceeded this time limit and was forwarded by Gooch's temporary successor, Thomas Lee, President of the Council.<sup>2</sup> Gooch's comments pre-dated the arrival of the laws (in London) at the Board and seem to have been delivered personally by him.<sup>3</sup>

Once the receipt of the Virginia acts had been registered at the Board of Trade, they were briefly perused by the Board along with various supplementary material, including the Journals of the Council and the House of Burgesses, Lee's letter of dispatch, Gooch's remarks on the revision, and his observations on the present

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- (1) Royal Instructions, ed. Labaree, I, 134-135, 136-137.
  - (2) Thomas Lee (1698-1750), a younger son of Richard Lee II, he consolidated his position by marrying into the wealthy Ludwell family. He was appointed to the Council in 1732 and served as acting governor 1749-1750. He was one of the leading figures behind the organization of the Ohio Company. He was also the father of several sons who made their mark during the Revolution. These included Richard Henry, Francis Lightfoot, Arthur and William.
  - (3) Endorsed "Delivered by Governor Gooch," C.O.5/1327, f.77A.

state of the colony. The revision was then forwarded, together with the late Governor's comments, to the King's Attorney, the legal counsel to the Board of Trade.<sup>4</sup>

Action on colonial legislation in England involved four steps: examination by the King's Attorney; recommendation of acceptance, confirmation or disallowance by the Board of Trade to the Committee of the Privy Council for Plantation Affairs; recommendation by that committee in turn to the Privy Council; and the issuance of the appropriate Privy Council order in the name of the King in Council. In the case of the Virginia law revision, the final two stages were purely formal as the Committee of the Privy Council accepted the report of the Board of Trade verbatim. The Board was, therefore, the final deliberating agent. The Board, however, prepared its report after considering the observations furnished by Gooch, and in consultation with the King's Attorney. When this process had been completed, the report of the King in Council on the Virginia law revision proclaimed the disallowance of ten of the revised laws ab initio and the formal confirmation of fifty-seven laws. Fifteen were assigned a probationary status and three were referred to the Lords of the Treasury for further comment.<sup>5</sup>

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(4) B.T.J., 1749-1753, 67

(5) A.P.C. IV, 131-141; B.T.J., 1749-1753, 198-202. Two of the eighty-nine acts had expired by the time the home government's opinion was known; two others were private acts which were dealt with by the Board of Trade at a later date. See Appendix III, IV, V, pps. 75-79.

Imperial review of colonial legislation exposed the slightest details of colonial action to the scrutiny of the home government, should it choose to exert itself. Since it seldom did, the reception unexpectedly afforded the Virginia revision affords a unique perspective for examining the imperial administrative machinery in action, the locus of power in it, and the principles under which it was operating. Moreover, the action of the Board of Trade on the revision marked a significant departure of policy, one which was of considerable influence on the course of Anglo-Virginian relations over the next decade.

In any view of colonial legislation the remarks furnished by the governor of the colony were an important consideration. Throughout his career in Virginia Governor Gooch had been particularly diligent in his reports on colonial legislation and his observations on the law revision suggest a serious appraisal of the assembly's work, even if his grasp and interest were not what they once had been.<sup>6</sup> Like many returning governors, Gooch was old and ill and more interested in obtaining returns for services rendered than in pressing current colonial interests.<sup>7</sup>

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(6) The Committee drafting "the Representation to the King" in 1752 had some doubts as to whether "the Governor" had adequately supported the laws. This was doing Gooch less than justice. It seems more likely that they assumed that the report on the laws had been prepared by Lee who forwarded the laws to London and whose interests and personality often ran up against the Assembly. Diary of Landon Carter of Sabine Hall ed. Greene, I, 98-99.

(7) Gooch to Thomas Gooch, Bishop of Ely, 6 Oct., 26 Nov., 1749, July 17, Aug. 7, 1750, Sept. 26, Oct. 18, 1751. Gooch Correspondence, Benacre Hall, Wrentham, Suffolk.

His opinion, however, was a major determining factor in the fate of the revision. Both the King's Attorney and the Board of Trade heeded his cautions, and nothing that he opposed gained the support of either.

Gooch can be credited with prompting the disallowance of four of the acts. On the other hand, not even his most enthusiastic support could secure the confirmation of the Act concerning the Titles and Bounds of Lands or prevent the disallowance of the Act for the Better Support of the College of William and Mary.<sup>8</sup> The Governor's observations on the Virginia laws were for the most part explanatory, demonstrating how deviations from English law were necessitated by the nature of the country's development. Such observations were, therefore, slanted in Virginia's favor.

Gooch sealed the fate of the Act declaring Slaves to be Personal Estate and of a related Act for the Distribution of Intestates' Estates. He doubted the necessity of the former law and stated that in his opinion it would have failed in a full Council.<sup>9</sup> Gooch as strongly opposed an Act for the Establishment of the General Court, preferring to retain the law it was intended to supersede.<sup>10</sup> Aiming to cut through the great mass of business that had accumulated before the General Court, the act prohibited the bringing of suits in the General Court for actions under £20 or the appeal of actions under £10. Gooch warned the Board of

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(8) Gooch to Board of Trade, no date given, but obviously 1749, C.O.5/1327, ff.71, 75.

(9) Ibid., f.72.

(10) Ibid., f.73.

the possible loss that this would entail for the English merchant creditor, while his successor, Thomas Lee, drew attention to its partiality towards rich over poor.<sup>11</sup> Gooch also dismissed an Act concerning Servants and Slaves as inferior to its predecessor.<sup>12</sup>

In the case of this last act and that of the Act declaring Slaves to be Personal Estate, Gooch proffered the opinion that the Council opposed both acts.<sup>13</sup> Admittedly, dissenters in the Council had insisted on registering their objections in the Council Journal, but they numbered only two in the first case and one in the second.<sup>14</sup> Both sessions of the Council were well attended when the acts came up for discussion: there were seven members present when the first act was discussed, and eight when the second was before the Council. The Council did not even request a single amendment to the act declaring Slaves to be Personal Estate and only a few to the Act concerning Servants and Slaves. The House agreed to one of these and the Council dropped the remainder. In short, both acts were passed with a minimum of difficulty between the two chambers and with a large majority of the Council in their favor.<sup>15</sup>

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- (11) Ibid., f.73; Lee to Board of Trade, 29 Sept. 1749, Ibid., ff. 105-112.
- (12) Gooch to Board of Trade, 1749, C.O.5/1327, f.73
- (13) Ibid., ff. 72, 73.
- (14) Thomas Lee objected to both acts; William Fairfax to the first mentioned only. Legislative Journals of the Council of Colonial Virginia, (3 vols., Richmond, 1918-1919) (ed. H.R. McIlwaine), II, 1034-1035, 1046-1047.
- (15) J.H.B., 1742-1749, 361, 371, 373, 385.

Perhaps Governor Gooch's grasp was indeed slipping or else he was not beyond distorting the facts. Either way the imperial government might justifiably and erroneously arrive at a view of the Council as a body out of sympathy with the aspirations of the Lower House.

Governor Gooch, unlike the King's Attorney, paid no heed to that clause in his instructions which required the inclusion of a suspending clause in acts that repealed, altered, or amended former laws.<sup>16</sup> Several of the revised acts were in fact suspended until June 1751, either to meet the expiration date of some of the old laws or in deference to imperial interests. It was logical to suppose that by this date any objections from the mother country would have reached Virginia. Nor did Gooch, unlike the Board of Trade, seek out specifically English interests for his protection. His endorsement of the Act for the Better Support of the Clergy and the Law concerning Executions and for the Relief of Insolvent Debtors, favored the interests of the colony and would be rued in the next decade by his successor, Governor Dinwiddie, by various pressure groups, and by government agencies. Gooch identified himself with particular interests in the colony, some altruistic as illustrated by his efforts on behalf of the College of William and Mary, others self-seeking, as in the case of his interest in the Land Law.<sup>17</sup>

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(16) Royal Instructions, ed. Labaree, I, 128-129.

(17) J.H.B., 1742-1749, 154; For Gooch's land interests, David A. Williams, "Political Alignments in Colonial Virginia, 1698-1750." Ph.D. Northwestern, 1959, 333-334.



The King's Attorney, to whom the Virginia law revision was forwarded from the Board of Trade on 10 May, 1750, was at this time Matthew Lamb, "a successful pleader at the bar".<sup>18</sup> This office of King's Attorney with special responsibility for colonial legislation had been created in 1718, following the failure of a satisfactory relationship to develop between the Board of Trade and the two principal legal officials of the government, the Attorney and Solicitor Generals.<sup>19</sup> Although his opinion might only be requested "in point of law and equity," the King's Attorney might enlarge this frame of reference almost to the point of policy making. Implementation of his recommendations, on the other hand, was dependent on an interested Board of Trade, and its recommendation in turn was dependent on the action of the Privy Council.

How did Lamb's comments correspond with the final result? Of the ten laws that were finally disallowed, Lamb had objections to only five, a partial objection to a sixth, observations to make on two, and no objections to the remaining two. Of the fifteen laws that were scheduled to "lye by probationary," Lamb had no objections to nine of these, observations to make on three, objections on two, and a partial objection to one of them. Of those that were confirmed, Lamb objected to five and made observations

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(18) Matthew Lamb (1705-1768) was King's Attorney to the Board of Trade from 1746 until his death. He was also a Member of Parliament. He was returned for Stockbridge in 1741 and for Peterborough in 1747, both in the Newcastle interest.

(19) Russell, Review of American Colonial Legislation, 69.

on twelve. To those referred to the Treasury he had no objections at all.<sup>20</sup> His opinions were of weight before the Board of Trade, but by no means conclusive.

Lamb's objections to those laws that were eventually confirmed lay in the fact that they altered former laws without the inclusion of a clause suspending their operation, thereby infringing royal instructions. His objection to the three acts that were to be declared probationary was to the provisions of the individual acts themselves, though Gooch had had no objections to any of them.<sup>21</sup> In an Act to oblige the Justices of Isle of Wight to build a Bridge at Blackwater Swamp, Lamb objected to the penalties that the law would impose on the justices, who acted without benefit to themselves. In the Act for Annexing Certain Lands to the Town of Tappahannock, he questioned whether the proprietors had given their consent to the grant, even if it was for the public good. No man's property should be annexed without his consent, he wrote, even if satisfaction was intended, unless it was for the public good. Lamb accepted "the public good" to mean roads, rivers, and bridges. His objections to the Act concerning Juries focused on the power given to the grand juries and county courts to investigate breaches of the penal law, present offenders, and hear and determine cases. In the opinion of the King's Attorney, this was too extensive a power to be vested in county

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(20) Lamb to Board of Trade, Jan. 31, 1750/51, C.O.5/1327, ff. 139-148

(21) For Gooch's opinion, C.O.5/1327, ff. 68, 70, 73; for that of Lamb, Ibid., ff. 140, 144, 147.

courts in such general terms.

Of those acts that were disallowed Lamb registered his disapproval most strongly at infringements of the King's prerogative, as in the case of the appointment of fairs by act of assembly, a power reserved to the Crown in the person of the Governor. With regard to four of the six acts to which he stated his objections, Lamb was merely reinforcing Gooch's negative. He strongly backed the governor in his disapproval of the Act declaring Slaves to be Personal Estate, but rather on the technical ground that it repealed two former laws without a suspending clause.<sup>22</sup> Both Governor and King's Attorney rejected An Act concerning the Distribution of Intestates' Estates, which was dependent on the forementioned Act, on the ground that there were good and adequate laws already in existence. Lamb expressly deferred to Gooch's opinion on An Act for the Establishment of the General Court, An Act concerning Servants and Slaves, and An Act to Prevent the Tending of Seconds.<sup>23</sup>

As legal counsel to the Board of Trade, Lamb kept within the stated limits of his authority for the most part. He pointed out departures from English law and technical weaknesses. He sought to widen that authority, however, when he registered his disapproval of the legislature's presumption in altering and repealing former

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(22) Lamb to Board of Trade, 31 Jan. 1750/51, Ibid. f. 139

(23) Ibid. ff. 139, 140, 141.

laws without the use of a suspending clause. Such an observation lay more properly within the province of the governor or the Board in general. Yet Lamb clearly recognized the utility of such a revised body of laws. Provided the infraction of instructions was recognized as such, Lamb was quite satisfied that the offending acts should be allowed to stand.<sup>24</sup>

While the Privy Council exercised the final decision in the review of colonial legislation, it acted through committee and on the recommendation of the Board of Trade, which under the Earl of Halifax, its new President, seemed prepared to exercise far more energy than previously in the conduct of its business.<sup>25</sup> The Board of Trade discussed the Virginia law revision over six days, between May 14 and 23, 1751, with little else of weight on its agenda. Three days were given over almost entirely to the consideration of the Virginia laws.<sup>26</sup> Attendance at the Board was well above average. The Earl of Halifax, President of the Board, and Francis Fane, a former King's Attorney, were present at

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(24) Ibid., ff. 147.

(25) Arthur H. Basye, The Lords Commissioners for Trade and Plantations (New Haven, 1925) Ch. 2; Oliver M. Dickerson, American Colonial Government, 1696-1765 (New York, 1962), 64-67; Lawrence H. Gipson, The British Empire Before the American Revolution, 13 vols., (New York, 1936-1961), I, ; Percy S. Flippin, Royal Government in Virginia (New York, 1919), 44; Mark A. Thomson, The Secretaries of State, 1681-1782 (Oxford, 1932), 49-53; For a more qualified view, Leonard W. Labaree, Royal Government in America (New York, 1930), 64-67.

(26) B.T.J., 1749-1753. 195-202.

each of these sessions.<sup>27</sup> Particularly significant was the regular appearance of Fane, whose record of attendance in the past had been very desultory. Fane as a former King's Attorney had himself undertaken in 1732 the examination of the laws of Connecticut, 584 in number, submitting nine reports on them over several years.<sup>28</sup> His was doubtless a major voice in the Board's debates on the Virginia revision.

The Board of Trade did not, moreover, confine itself merely to digesting the opinions of its legal counsel and the former governor, but asserted its own initiative, overriding the opinions of both Lamb and Gooch on more than one occasion. While the Board would regularly accept their negative opinions, the positive support of Governor and Attorney for measures rooted in local circumstances did not weigh very heavily with them. Innovations and alterations that touched the political, judicial, religious, and financial structure of the colony, were regarded very warily by the Board. The Board were responsible for assigning eleven of the fifteen acts to the probationary category. Seven of the eleven were concerned with just such innovations and alterations, including the question of moving the capital, the appointment of a treasurer, and the regulation of attorneys. Four others illustrated the Board's claim to be safeguarding "just Liberties and Privileges,"

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(27) See Appendix I for the attendance of members of the Board at these sessions, Francis Fane (c. 1698-1757) served as King's Attorney to the Board of Trade from 1725-1746, and as a member of the Board itself until 1756. He was a Member of Parliament successively for Taunton, Ilchester, and Lyme Regis.

(28) "Francis Fane's Report on the Laws of Connecticut", in Publications of the Acorn Club, ed. Charles M. Andrews (New Haven, 1915), 23-24.

as did the probationary status it accorded the remaining four on which both Gooch and Lamb had expressed reservations.<sup>29</sup> That the status accorded these acts was a conscious deliberate decision and not a reversion to earlier methods was evident from the Board's letter to the new Lieutenant Governor in Virginia, Robert Dinwiddie.<sup>30</sup> The Board was not simply failing to act as it had so often in the past, but it specifically declared these acts probationary.

Two acts in particular derived their veto from the hands of the Board of Trade, namely, An Act for the Better Support of the College of William and Mary, and An Act concerning the Limitation of Actions and the Avoiding of Suits.<sup>31</sup> Neither Gooch nor Lamb had registered any objections to either beyond the latter's comment that they did alter former laws without a suspending clause. This observation had had no bearing on the decision taken on other laws.<sup>32</sup> The Board's objections to the two acts did not stem from the fact that the assembly had tampered with former laws without the inclusion of a suspending clause contrary to royal instructions. Rather it was the case that the assembly had altered, amended, and repealed laws that had received the King's

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- (29) Gooch to Board of Trade, 1749, C.O.5/1327.f. 68; Lamb to Board of Trade, 31 Jan. 1750/51, Ibid. ff.139-148.
- (30) Board of Trade to Dinwiddie, 29 Nov. 1752, C.O.5/1366, ff. 264-265.
- (31) Representation of the Board of Trade to the King in Council, 6 Aug. 1751, C.O.5/1366, ff.251-252. Robert Dinwiddie (1693-1771) served as a Lieutenant Governor of Virginia 1751-1758, a period dominated by the menace of the French and one of difficult relations between executive and legislature. Dinwiddie had enjoyed a long career of service to the Crown

express confirmation without the inclusion of the requisite suspending clause. This constituted a far more serious infraction of royal instructions and an encroachment on the prerogative of the crown than that to which the King's Attorney had drawn attention.

In submitting its conclusions to the Committee of the Privy Council for Plantation Affairs, the Board of Trade noted Lamb's point relating to the general alteration of laws without the use of the suspending clause. Yet the Board conceded "the necessity and expediency of having these Laws take place as soon as possible." It did not therefore urge their repeal, "excepting only such as do repeal laws heretofore confirmed by Your Majesty or by Your Predecessors without such suspending Clause, which is a Deviation and departing from Your Majesty's Instructions which no Circumstances or Necessity can justify."<sup>33</sup> It was the assertion of this principle, requiring the use of a suspending clause in the alteration of laws which had received the King's express confirmation, that caused great consternation in Williamsburg. In the past few Virginia laws had been confirmed, but now the Board of Trade had recommended, and the King in Council endorsed, the formal confirmation of a substantial part of the Virginia Law revision.<sup>34</sup>

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as admiralty representative in Bermuda in 1721, collector of customs 1727, surveyor-general of customs for the Southern District 1738. This last gave him the right to Council membership in the colonies in the district, a right which the Virginia Council had disputed in vain.

- (32) Gooch to Board of Trade, 1749, C.O.5/1327.f. 73; Lamb to Board of Trade, Jan. 31, 1750/51, f.140.
- (33) Representation of the Board of Trade to the King in King in Council, 6, Aug. 1751; C.O.5/1366.f.241.
- (34) Ibid., 240-252; A.P.C. IV, 131-138.

Although the Board invested considerable time and energy in its considerations of the Virginia revision, it did not see fit to consult the merchant interest over the several laws that came within their purview such as those relating to debt and the conduct of trade. Nor was the Bishop of London, though an ex-officio member of the Board, informed of the one act that was of particular significance to him, namely, the Act for the Better Support of the Clergy. While the Board failed to see the interests of the merchants and the Established Church at stake in the many bills before it, the question of His Majesty's revenue was a matter of automatic consideration. Following the receipt of the Law officer's report, the Board withheld three acts for the further consideration of the Treasury: An Act for Settling the Titles and Bounds of Lands, An Act for Amending the Staple of Tobacco, and An Act for Preventing Frauds in His Majesty's Customs.<sup>35</sup> The first of these was returned by the Treasury without any comment. The Act was then sent to the Auditor General, Horatio Walpole, in April 1752, and returned by his successor in office, Robert Cholmondeley in 1758.<sup>36</sup> The second and third acts were passed on by the Treasury itself to the Commissioners of Customs, who in their turn required certain modifications.<sup>37</sup>

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- (35) B.T.J. 1749-1753, 201; Hening, V, 408-431; VI, 154-193, 94-101.
- (36) Thomas Hill to Horation Walpole 16 April 1752, C.O.5/1366 f.256; Cholmondeley to Board of Trade, n.d. but endorsed "Read 22 Feb.1758.", C.O.5/1329,f.185.
- (37) Lords of the Treasury to Board of Trade submitting Report of Customs Commissioners, 14 Nov. 1751. C.O.5/1327, ff. 201-202.



The recommendations of the Board of Trade that fifty-seven acts should be confirmed, ten disallowed, fifteen/declared probationary, and three referred to the Treasury were adopted verbatim by the committee of the Privy Council for Plantation Affairs, as was usually the case at this time. Approval by the Privy Council invariably followed the Committee recommendation.<sup>38</sup>

Thus, in the treatment of the Virginia law revision each of the appropriate agents played its allotted role, but with an almost unparalleled degree of application. Moreover, the home government was invoking instructions which it had rarely attempted to enforce and which the Virginia assembly, like other colonial legislatures, was accustomed to ignore. The attention which was now unexpectedly afforded this body of Virginia laws could not but be a matter of concern to the assembly in Williamsburg.

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(38) <sup>h</sup> Bernard Knollenberg, Origin of the American Revolution, 1759-1766 (New York, 1960), 48,300,fn.19.

### CHAPTER III

#### REACTIONS IN VIRGINIA AND THE MOTHER COUNTRY

It fell to Governor Dinwiddie during the course of his first assembly in 1752 to transmit to the Virginia legislation the report of the King in Council on the revision which came to hand during the session.<sup>1</sup> The contents of the report were unexpected on three counts. First, it was unexpected that it came at all, for three years had passed since the work of revision had been completed and the laws were now in print.<sup>2</sup> Any apprehensions that the Virginia legislators might have entertained about the home government's response had subsided. A sufficient interval had elapsed to discount the likelihood of action by the King in Council. Second, the Virginia Assembly was taken unawares by the thoroughness with which the revision had been considered. The Virginia revision had been examined in its entirety whereas it was usual for the Board of Trade to report only on a minimum of laws and without action always following from its recommendations.

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(1) J.J.H.B., 1752-1758 78; Diary of Landon Carter, ed. Greene, I, I. 94-95.

(2) Morton, Colonial Virginia, II, 603.

Third, the treatment afforded the Virginia laws reflected a major change of policy in two respects, each of which restricted the power of the assembly.

The report of the King in Council had disallowed ten acts ab initio.<sup>3</sup> In the past laws had been simply disallowed by the King in Council and had been held valid until news of their disallowance was announced in the colony. The disallowance of laws ab initio meant that such laws were held never to have been in effect at all. This type of disallowance imposed a doubly strong negative on a colonial act and opened the way for legal action in situations where the laws had already been enforced. Moreover, it was particularly disturbing that the Act for the Establishment of the General Court had been repealed in this way since it threw into question the legality of all proceedings conducted under it.

Equally unwelcome and even more serious in its implications for the assembly was the formal confirmation of fifty-seven acts of the revision by the King in Council.<sup>4</sup> Confirmation was a formula used primarily in the passage of private legislation, chiefly relating to land, and occasionally for laws considered to be of special relevance to a particular colony, minority interest group,<sup>R</sup> of the home government itself. While confirmation was not unknown in Virginia, experience of it was limited. In forwarding a printed copy of the laws to London in 1741, Geoch remarked that only two of Virginia's laws had received the King's confirmation,

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(3) See Appendix III for disallowed Acts. p.75.

(4) See Appendix IV for confirmed Acts. pps.76-78.

An Act for Settling the Titles and Bounds of Lands and An Act for the Better Securing the Titles and Lands in the Northern Neck.<sup>5</sup> Gooch's memory was partially defective on this point, for in 1736 he had announced the confirmation of the former act and also of one for the Better Support of the College. Gooch had expressly solicited this confirmation and the Assembly had warmly received it.<sup>6</sup> Nor was the House of Burgesses itself beyond countenancing the royal confirmation when such an action was to its advantage. An Act for the Relief of Certain Creditors, passed in the 1744 session of the assembly, was confirmed at the behest of John Tayloe, who had hurried to England to forestall a possible request for its disallowance from English merchant interests.<sup>7</sup> Yet, of the forty-three acts that had received the king's confirmation since the last revision at the turn of the century, only ten can be classified as public acts. These related to trade, debts, duties, land, and the College. The remaining thirty-three acts were private measures relating primarily to land and the docking of entails.<sup>8</sup>

What was involved in the confirmation of fifty-seven Virginia acts was an attempt to implement the additional instruction of 1738, which required the insertion of a clause suspending the operation of an act that altered or amended a former act of assembly until

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(5) Gooch to Board of Trade, Sept. 9, 1741, C.O.5/1325, f.54.

(6) J.H.B., 1727-1740, 243, 246.

(7) J.H.B., 1752-1758, 46.

(8) Shelburne Papers, William L. Clements Library, Ann Arbor, Michigan, Vol.49, 117-126. (C.W.E. microfilm)

the king's pleasure was known.<sup>9</sup> Yet the instruction, which imposed severe limitations on the colonial legislature since most acts would eventually involve alteration, was not pressed by the Board of Trade or the colonial executive. In 1751, however, in its report on the Virginia law revision, the Board recommended the disallowance of several Virginia acts on the grounds that they had altered, without the requisite suspending clause, former acts of the assembly which had received the king's confirmation.<sup>10</sup> If the grounds of the Board's recommendations and the widespread use of confirmation were maintained, then the suspending clause would become a pre-condition of virtually all colonial legislation.

In addition to the complexities which would arise should the home government try to maintain the regular use of the retrospective disallowance and the royal confirmation, the action of the home government had already frustrated the express object of the revision, namely, to provide a body of well-digested laws in usable form for the public officers of Virginia, especially those of the newer and more remote counties. Disallowance of ten acts resurrected in their place twenty earlier acts which William Hunter, the public printer, now undertook to publish separately.<sup>11</sup>

Virginians at large learned of the disallowance of the ten acts - acts which had been in effect for three years, by a

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(9) Royal Instructions, ed. Labaree, I, 128-129.

(10) Representation of the Board of Trade to the King in Council, 6 Aug., 1751, C.O.5/1366, ff.251-252.

(11) J.H.B., 1752-1758, 129, 138, that many Virginians never did receive a copy of the revision or the additions, see J.H.B. 1758-1761, 136, 137, 147, 153.

proclamation that the governor issued. The proclamation was read and posted at the courthouses of the various counties under the supervision of the sheriff, and also published three times in The Virginia Gazette.<sup>12</sup> While it was the intention of the proclamation to give wide publicity to the effect of the action taken by the home government, it also served to draw attention to the action itself - to the interference of the home government in the legislative process of the colony.

The Virginia assembly, conscious of the threat to its powers which was contained in the home government's action on the law revision, appointed a joint committee from the House of Burgesses and the Council to consider some appropriate response.<sup>13</sup> To six members of the revisal Committee of 1748-49 - Peyton Randolph, Benjamin Waller, Beverley Whiting, John Blair, Thomas Nelson, and William Nelson - were now added Richard Bland, Charles Carter, and Landon Carter. Yet the means of protest which the assembly had at its disposal were limited. The assembly could only call on the services of the colonial agent, on its right of petition, and on the good offices of the governor. The committee recommended that the assembly should declare the validity of the proceedings of the General Court under the disallowed act; that it should prepare an appeal to the King setting forth the reasons for the passage of those acts which had been disallowed, and that it should

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(12) Hening, V, 567-568; The Virginia Gazette, (Hunter), Williamsburg, 10, 17, 24 April, 1752.

(13) J.H.B. 1752-1758, 78-79.

solicit the support of the governor. The assembly promptly adopted the Committee's recommendations.<sup>14</sup>

The assembly's address and representation to the King, together with Landon Carter's minutes of the assembly, provide a significant insight into the Virginian view of the imperial relationship at this time. The committee appeared to have studied the provisions of the governor's commission assiduously. It closely consulted with its leading legal authority, Benjamin Waller, Clerk to the General Court, on past legislative practice. It then concluded that the assembly was free to enact any legislation that was not detrimental to the interests of the mother country or contrary to the principles of law and was directed to the public good. The committee debated the approach to be used in its appeal to the King, concluding that since the petition of the assembly would appear "to Prescribe to his Prerogative," its language should therefore be couched in the most humble terms.<sup>15</sup>

Reviewing the home government's action, one prominent burgess, Landon Carter, reacted forcefully. "An Act of Assembly is now a trifling thing," he lamented, and yet "the People ought to have the power incontrollable of Amending or repealing [their laws]... And the repealing of a Law not affecting the Mother Country but purely relating to the trade of or general or Particular good of the Country ... is to do them an injury."<sup>16</sup>

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(14) Ibid., 80; Diary of Landon Carter, ed. Greene, I, 96-97.

(15) Ibid., I, 98.

(16) Ibid., 95.

The assembly's address and representation to the King confined itself to more respectful tones, yet carried the same import. The assembly maintained that some of the disallowed acts were "of great Utility and well calculated to promote the public Peace welfare and good Government of this Colony and not repugnant to the Laws and Statutes of Great Britain." It requested that the governor be allowed to give his assent to the reenacted laws.<sup>17</sup> The representation noted that in the past, those laws that were disallowed by the Crown had been held valid in the colony until news of the decision had reached the colony. The Assembly was greatly concerned at the solemn confirmation of fifty-seven Virginia laws, and feared that it would not have full power to remedy them as exigencies required. The assembly requested a declaration from the government in England to the effect that it was not the "Royal Intention to fix those confirmed Laws so unalterably upon Us." The strict application of the principle requiring the use of the suspending clause in the alteration of laws that had received the royal confirmation would, the Burgesses argued, subject them "to great Hardships and Inconveniences." The representation was followed by a list of the disallowed acts and the reasons for their passage.<sup>18</sup> The committee, however, did concede that two of the acts disallowed - An Act concerning Servants and Slaves, and An Act concerning the

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(17) L.J.C. II, 1083.

(18) Ibid., II, 1084-1087.



Limitation of Actions and Avoiding of Suits - were ill-drawn and dropped them.<sup>19</sup>

The reasons presented in the representation were persuasive enough. Yet they did not come to terms with the King's prerogative. Nor the opposition of the governor and, by extension, the Council; nor could they successfully circumvent the issue of the suspending clause. A burgess such as Landon Carter could make a realistic assessment of the prospects of success. "It is not easy," he observed, "to imagine the King would consent to undo what they the Board of Trade and Privy Council have advized him to do or that those boards to whom this Representation and these reasons are to be referred ... would be easily persuaded to contradict their own advice!"<sup>20</sup>

Some members of the 1752 Assembly attributed their lack of success to the want of adequate representation in Whitehall. The services of the colonial agent, Peter Leheup, had been deficient in the extreme.<sup>21</sup> Leheup did not appear to present the law revision in the first place, nor was he present when it came before the Board for extensive discussion. Landon Carter urged on the House of Burgesses the adoption of an agency bill. "I put them [the House]," he remarked, "in mind of the Evils we had

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(19) Ibid., II, 1083

(20) Diary of Landon Carter, ed. Greene, I, 101.

(21) Peter Leheup was chief Treasury clerk and Comptroller of Exchange for many years until he lost both places for misconducting a lottery. He served as Virginia agent from 1727 to 1753 and also as agent for New York and Barbados. His services left much to be desired.

suffered for want of a Person to have objected to some arguments that no doubt had been used to get the repeal of the Laws we now complain of."<sup>22</sup> That the present agent had been of no use did not negate the value of his position, Carter continued, for "bad servants could not be an argument for no Servants at all [though] it might be one for a Change." Despite the fact that a small attendance in the House precluded a division on this bill, the House did vote the appointment of a special agent, James Abercromby, to present its representation to the King.<sup>23</sup>

The choice of Abercromby was ironic. In 1752, Abercromby himself submitted to the Board of Trade a lengthy memorial aimed precisely at securing the due subordination of the colonies to the mother country and the strengthening of the imperial framework.<sup>24</sup> The fact did not inhibit him from accepting the Virginia commission, nor did it probably have any bearing on the outcome.

Persuasive though the Virginia representation was, it made little impression on the Board of Trade regardless of the fact that

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(22) Diary of Landon Carter, ed. Greene, I, 104.

(23) J.H.B. 1752-1758, 96. The nomination of Abercromby to this task was suggested by Dinwiddie, the House of Burgesses having consulted him over a suitable appointee. Abercromby succeeded Leheup as the regular agent of the Colony in 1754. His advocacy of Dinwiddie's position in the case of the pistole fee controversy discredited him with the Burgesses. In 1759, the House appointed Edward Montague for their particular service, while Abercromby continued as agent for the Governor and Council. Abercromby had been Judge-Advocate to James St. Clair's American Expedition in 1746, and agent for the Royal Americans, 1758-59. From 1761 to 1768, he served as M.P. for Clackmannshire. He was one of the few colonial agents to have a personal knowledge of the Colonies, having lived in South Carolina 1734-40.

(24) "An Examination of the Acts of Parliament relating to Trade and Government of the American Colonies." May, 1752. Shelburne Papers, vol. 47.

several laws similar to those disallowed had previously passed through the hands of the Board unscathed. The most that the Board would concede was permission to reenact two of the disallowed acts, if properly drafted.<sup>25</sup> An additional instruction was issued to the governor that would allow him to give his assent to an Act for the Better Support of the College of William and Mary, if accompanied by a suspending clause, and an Act to Prevent the Building of Wooden Chimneys in Walkerton, if the clause prohibiting the raising of hogs was removed.<sup>26</sup>

Interest in the Virginia law revision, however, was not confined to the assembly and the Board of Trade. There were other reactions to it on both sides of the Atlantic, primarily in connection with individual acts.

Governor Dinwiddie assured the assembly of his full support for the appeal to the King, but his sympathy was less than wholehearted.<sup>27</sup> In his capacity as the King's servant, Dinwiddie seized on two acts which he believed detrimental to the interests of the mother country. The offending legislation, namely, an Act for the Better Support of the Clergy and an Act concerning Executions and for the Relief of Insolvent Debtors, was reported to the Board of Trade, the London merchants trading to

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(25) Board of Trade to King in Council, Feb. 14, 1753, C.O.5/1367 ff. 9-10.

(26) Ibid., ff. 14-15.

(27) J.H.B. 1752-1758, 91.

to Virginia, and the Bishop of London by Dinwiddie.<sup>28</sup> Dinwiddie considered that the former act, though raising the salary of the clergy, deprived the Crown of the crucial right of presentation and gave it to the vestry.<sup>29</sup> The latter act eased the position of the debtor, by allowing the creditor a fixed 25 per cent advance on sterling in the settlement of debts in current money, an arrangement that would be disadvantageous to the English merchant creditor.<sup>30</sup>

For one who had previously resided in Virginia, Dinwiddie demonstrated a remarkable misunderstanding of local conditions. The power of presentment had been in the hands of the vestries since 1643 at least and rarely challenged.<sup>31</sup> Moreover, William Dawson, the Commissary of the Bishop of London in Virginia, had specifically requested the Bishop to promote both the act and the revision as a whole before the Board of Trade.<sup>32</sup> The governor's position on the debtor law stood in sharp contrast to Governor Gooch's sympathetic attitude toward the problem of a single crop economy.

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(28) Dinwiddie to Board of Trade, June 5, 1752, C.O.5/1327, f.210; Dinwiddie to Bishop of London, June 5, 1752, Fulham Papers, Virginia, XIII, f.63. Lambeth Palace, London.

(29) Hening, VI, 88-90

(30) Hening, V, 526-540

(31) W.H. Seiler, "The Anglican Parish in Virginia," in Seventeenth Century America, ed. J.M. Smith, (Chapel Hill, 1959), 133.

(32) William Dawson to Bishop of London, July 15, 1751, Fulham Papers, Virginia, XIII, f.46.

The immediate impact of Dinwiddie's report, however, was negligible. The Bishop of London displayed no interest in Virginia, while the merchants concerned had already launched their protest. The Virginia assembly itself was not aware of Dinwiddie's complaints. Had it been aware of them relations between the Governor and the assembly would have soured at an earlier point than they actually did. Yet in the long run Dinwiddie equipped the Board and the Bishop for their attack on the assembly which came at the end of the decade.

British merchants trading to Virginia considered the Act concerning Executions and for the Relief of Insolvent Debtors prejudicial to their interests. They claimed that the 25 per cent advance on the settlement of sterling debts in current money fell well below the actual rate of exchange with correspondingly loss to themselves and profit to the planter.<sup>33</sup> Merchants in Bristol, Liverpool, and London petitioned the Board of Trade for the repeal of the act by the King in Council, only to find themselves the victims of the royal confirmation. The Board had not consulted the merchants in connection with the act, and their petition reached the Board barely three weeks after the act had been formally confirmed. The Board advised the withdrawal of the petition and an application to the King.<sup>34</sup> This done, nothing further was heard of the merchants' case until their

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(33) C.O.5/1328, ff. 62-64.

(34) B.T.J., 1749-1753, 230, 233.

representation was released by the Privy Council for the consideration of the Board of Trade three years later.

It is interesting to note that the merchants of Bristol and Liverpool took the initiative in drafting their complaints before those of London.<sup>35</sup> The quick response of Bristol might be explained by the fact that the clerk of the Society of Merchant Venturers of the port of Bristol was Thomas Fane, a brother of Francis Fane, the member of the Board of Trade and former King's Attorney.<sup>36</sup> If the merchant lobby had a leader, it was John Hanbury, a prominent London merchant who had presented the petitions of both Bristol and London to the Board and attended its deliberations. Hanbury was a friend of Governor Dinwiddie and as such particularly well placed to safeguard the interests of the merchants.

Despite repeated recommendations by the Board of Trade, the Virginia Assembly failed to remedy the Act concerning Executions and for the Relief of Insolvent Debtors of 1749 to the satisfaction of the merchants.<sup>37</sup> With the advent of war in 1754, the situation became more complex and more serious as the colony resorted to paper currency in increasing quantity. The British merchant, under the Act of 1749, was obliged to accept it as legal tender in

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(35) Ibid.

(36) "Francis Fane's Report on the Laws of Connecticut," ed. Andrews, 38.

(37) For a detailed history of this Act and the concessions which Virginians made including the adjustment of exchange rates in the courts which failed to satisfy the English merchants, see J.A. Ernst, "Genesis of the Currency Act of 1764," William and Mary Quarterly, Ser. 3, XXIII (1965), 33-74.

the payment of debts. The failure of Southern Colonies to oblige the home government and notably Virginia to provide for the security of British merchants trading with them carried the currency issue to Parliament.

Conversely, despite Dinwiddie's initial reaction to it, the Act for the Better Support of the Clergy had a very different history. Among the provisions of this act had been one which settled the maintenance of the clergy at 16,000 lbs. of tobacco per annum. In 1755 and 1758, years which yielded poor tobacco crops on account of drought, the Virginia assembly enacted a temporary law which enabled the inhabitants of the colony to discharge their tobacco dues in current money at the low rate of two pence per pound.<sup>38</sup> A militant section of the Virginia clergy, headed by John Camm, Professor of Divinity at the College and minister of Yorkhampton parish, campaigned vigorously against the act, which deprived the clergy of the profits of a scarcity market.<sup>39</sup> The clergy seized on the Act for the Better Support of the Clergy of 1749, which contained a fixed provision for their salary and had been confirmed by the Crown, as the main support of their appeal to the Privy Council. Knitting together the threads of several arguments, the clergy brought their case to stand on the fact that the law of 1755 and 1758 had been passed contrary to royal instructions since it altered the act of 1749 that had received

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(38) Hening, VI, 568-569; VII, 240-281.

(39) The narrative of the "Parsons' Cause" is well told in Morton, Colonial Virginia, II, 751-798.

the king's express confirmation.<sup>40</sup> The Bishop of London, in his report on the law to the Board of Trade in 1759, reinforced this line of attack. The Virginia assembly, he charged, had presumed to pass an act that had suspended the operation of a royal act, assuming a power "to bind the King's hands, to say how far his power shall go and where it shall stop . . ." Virginia had changed, he continued, from the well-regulated colony she once had been, and he pointed to that clause providing for the appointment of ministers by local vestries, included in the Act for the Better Support of the Clergy of 1749, part of the law revision, as the first manifestation of this change.<sup>41</sup> The Two Penny Acts were disallowed before this formidable assault.

The fate of one other act of the law revision was of particular interest to another significant group in Virginia, those interested in speculating in western lands. The Act for Settling the Titles and Bounds of Lands eased the conditions for taking up lands in Virginia, but it had contained a suspending clause. It was, therefore, inoperative until the king's pleasure was known. Land interests in Virginia were becoming impatient about the fate of their law as early as June 1751. Councillor John Blair received a petition from Colonel Patton, William Curry, and Colonel Joshua Fry, which solicited his good offices with the colonial agent, Leheup, to obtain the royal assent speedily.<sup>42</sup> In

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(40) The Representation of the Virginia Clergy, C.O.5/1329, ff. 119-120.

(41) Bishop of London to Board of Trade, June 14, 1759, C.O.5/1329, ff. 131-132.

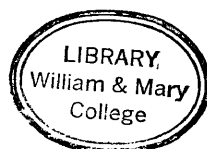
(42) Entry for June 13, 1751, John Blair, Diary, 1750-1751. Virginia Historical Society, Richmond.



August of the same year, Lewis Burwell, President of the Council and Acting Governor, tried to expedite matters with an appeal to the Board of Trade.<sup>43</sup> When the opinion of the King in Council was eventually delivered later that year, the Act for Settling the Titles and Bounds of Lands was found to have been declared probationary and reserved for the further consideration of the Treasury.<sup>44</sup> It was forwarded in 1752 to the Auditor General, Horatio Walpole, and returned from his successor, Robert Cholmondeley in 1758.<sup>45</sup> The colony was not informed of his decision, and, in 1759, the newly-appointed Committee of Correspondence, formed to direct the activities of the agent of the House of Burgesses in England directed the agent's attention to it.<sup>46</sup> In 1761 Edward Montague, the new agent, petitioned the Board successfully for the release of the act.<sup>47</sup>

- (43) Lewis Burwell to Board of Trade, Aug. 21, 1751, C.O.5/1327 f.165.
- (44) B.T.J., 1749-1753, 201.
- (45) Thomas Hill to Walpole, April 16, 1752, C.O.5/1366, f.256; Cholmondeley to Board of Trade, endorsed "Read 22 Feb. 1758," C.O.5/1329, f. 54.
- (46) Proceedings of the Virginia Committee of Correspondence, Virginia Magazine of History and Biography, X (1902-1903), 343-345.
- (47) Memorial of Edward Montague to Board of Trade, 1761, C.O. 5/1330, f. 45.

Thus, issues arising from the Virginia law revision continued to color Virginia politics and delineate some of the contours of Anglo-Virginian relations for the next decade. The assembly and the Board of Trade were debating the competency of the colonial legislature a decade before Parliament appeared on the scene, while at the same time the Anglican hierarchy and the English trader were courting colonial animosity. What should have been a brief and laudable chapter in the history of the legislature merged into the years of the pre-Revolutionary debate with the mother country.



## CHAPTER IV

### THE BOARD OF TRADE AND LEGISLATIVE REVIEW

The Virginia Law Revision afforded the Board of Trade an ideal opportunity to extend its traditional role, an opportunity which the Board under the Presidency of the Earl of Halifax did not fail to recognize. Its action on the revision sustains the hypothesis of a revitalized agency under his Presidency. No more telling contrast is possible than to compare the Board's reaction to the laws of Virginia in 1751 with its total lack of response to the reports of Francis Fane on the laws of Connecticut in the 1730's.<sup>1</sup> Connecticut was admittedly a corporate colony, and the Board's potential role would have been more difficult in any event. Even so, the Board did not display the slightest flicker of interest in Fane's exhaustive study.

In addition to the extensive time, full attendance, and degree of individual consideration, in themselves unique, that the Board of Trade afforded the Virginia laws, its treatment of the revision contained two distinctive features, as previously stated - the extensive use of confirmation with regard to fifty-seven

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(1) Francis Fane's Report on the Laws of Connecticut, ed. Andrews, 24-25. The contrast is made with Connecticut because the situation was similar and the time span the closest that this writer is aware of.

acts and the retroactive disallowance of ten. Neither confirmation nor disallowance ab initio were innovations in the field of legislative review, but their use in the past had been rare. What was novel in 1751, was not merely the scale on which they were applied, but the obvious effort by the Board to apply improved controls to colonial legislation. Previously, it had been usual to allow the majority of laws to "lye by probationary" without any official action being taken on them.<sup>2</sup> The failure of the Board to report on laws did not preclude action on them at a later date should they prove unsatisfactory. The Board itself had in the past maintained that the fewer laws that were confirmed, the greater would be the dependence of the colonies on the Crown.<sup>3</sup> Confirmation, however, had the additional advantage of requiring that any law altering a law so confirmed must have a clause suspending its operation until examined by the home government. Since most laws would require attention sooner or later this would enable the Board of Trade to inspect colonial legislation before it went into effect instead of afterwards. As for retroactive disallowance, this was a doubly strong negative that would open the way for legal action.

The Board of Trade was impressed by the Virginia law revision for its own merits, but more especially for the example it furnished for the further regulation of other colonies. In

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(2) Russell, Review of American Colonial Legislation, 54-58.

(3) Board of Trade to Duke of Newcastle, July 1, 1724, cited in Labaree, Royal Government in America, 224-225.

presenting its report to the Committee of the Privy Council for Plantation Affairs, the Board lauded the Virginian effort "as a Matter worthy of Imitation and which we could wish to see followed in all other Your Majesty's Colonys in America, since nothing can more effectually tend to promote Order and good Government, secure the Propertys and Possessions of Your Majesty's Subjects, and prevent litigious Controversys and Dispute than a Clear and well digested Body of the Laws."<sup>4</sup> The Privy Council endorsed the Board's recommendation and ordered the preparation of an additional instruction by the Board to this effect.<sup>5</sup> A circular instruction was accordingly drafted directing the governors of royal colonies to instruct their assemblies to revise their laws and frame "a complete and well-digested Body of new Laws" to be submitted to the Board. The instruction also ordered that special care be taken that these laws paid due regard to the king's instructions and included a suspending clause.<sup>6</sup> Governors of proprietary and charter colonies were directed to forward copies of their laws to London. On the same day the Board received the Order in Council enlarging its stature in colonial administration, a step that also formed a part of this fervor for re-organization.<sup>7</sup>

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(4) Representation of the Board of Trade to the King in Council, Aug. 6, 1751, C.O.5/1366, f.240.

(5) A.P.C. IV, 153.

(6) C.O./324/15, ff. 294-289

(7) B.T.J. 1749-1753, 286-289.

As President of the Board of Trade, Halifax was as ambitious as he was hardworking. Conscious of the limitations of the Board, he sought to enhance its powers and to elevate his own status.<sup>8</sup> He seldom missed a session of the Board and was responsible for many of its reports. The outcome of his protracted negotiations with the King and his ministers was the Order in Council of 11 March 1752, which provided the Board of Trade with the right to make original representations to the King, to receive original correspondence from the colonies, and to nominate colonial officials.<sup>9</sup>

The instruction directing the colonies to revise their laws, together with one arising from the Order in Council of March 11 which related to the direction of correspondence, was forwarded to colonial governors with a covering letter dated 28 April, 1752. In it the Board stated that it foresaw difficulties in executing the instruction relating to the revision of colonial laws and was therefore forwarding to the colonies, for their guidance, the Virginia Act for the Revisal of the Laws of 1746.<sup>10</sup> Governors were urged to do their utmost to secure a similar revision and to do so within the framework of the Board's instructions. The Board conceded, however, that the governors should not press for the observation of the instructions to the point where it would

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(8) Basye, The Board of Trade, 63.

(9) C.O./323/13, ff. 147-148

(10) C.O./324/15, ff. 314-317

put the question of the revision itself in jeopardy. Two months later, in June 1752, the Board took a closer look at the subject of instructions in a further letter to colonial governors which observed that instructions were too often being set aside on the slightest of pretences.<sup>11</sup> Since such instructions, the Board observed, were issued for the support of His Majesty's Prerogative and the Protection of His Subjects ..., for the establishing and preserving good Government in his Colonies ..., "their neglect was a matter of the highest concern. The governors were enjoined to adhere strictly to their instructions. Yet the Board also conceded that some instructions might have become obsolete and that governors might, therefore, consider and revise their instructions without delay and submit to the Board those instructions they believed to be "useless, improper or liable to Objection."<sup>12</sup>

That the Board of Trade was consciously and deliberately striking a new note in its vigorous treatment of the Virginia law revision is clear enough. In 1753, when it received the representation of the Virginia Assembly protesting against the action taken on its laws was referred to it, the Board confirmed its past position and amplified this position.<sup>13</sup> The Board

(11) Ibid., ff. 318-321

(12) Ibid., f.321; One student of royal government in America has pointed to 1752 and the projected revision of instructions as the last date at which some realistic adjustment between Great Britain and her American colonies was possible. Labaree, Royal Government in America, 67.

(13) Board of Trade to Committee of the Privy Council for Plantation Affairs, Feb.14, 1753, C.O.5/1367.ff. 7-10.

sharply dismissed the assembly's request for leave to reenact eight of the disallowed acts and for power to enact alterations, amendments, and repeals without the required suspending clause. To agree, the Board stated, "would be to take away, or at least to render useless and ineffectual that Power which the Crown has so wisely and properly reserved to itself, of rejecting such Laws pass'd in the Colonies as shall upon due Consideration be thought improper or liable to Objection, and would destroy that Check which was established, not only to preserve the Just and proper Influence and Authority, which the Crown ought to have in the Direction and Government of its Colonies in America, but also to secure to its Subjects their just Liberties and Privileges ..."<sup>14</sup>

A list of Virginia acts among Board of Trade material in the Shelburne Papers was obviously drawn up for the use of the Board at this time.<sup>15</sup> Someone in the service of the Board had obviously been required to cull through the volumes of Virginia legislation in the hands of the Board and to list those acts which had in the past come before the Board for extended consideration. Dated 1753, it listed those acts which were confirmed, repealed, disallowed, or declared probationary. It comprised, in effect, two separate lists, for those acts dealt with in the 1748-49 revision formed a distinctly separate section tacked purposefully to the end. The first section, dating approximately from the

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((14) Ibid., f.8

(15) Shelburne Papers, Vol. 49, 117-135. Headed "Virginia, 1753: List of Acts passed in the Colony of Virginia as have been reported on by the Board of Trade between the years 1703 and the present time."<sup>11</sup>



last revisal of the laws (1703) to the present one, may well have been a copy of a previous list drafted for the use of the Board on its first consideration of the Virginia laws in 1751. Whether used in 1751 and 1753, or only in 1753, it bears out the fact of a reappraisal by the Board of Trade of its role in the review of colonial legislation.

There had been a decided touch of experimentation in the Board's actions on the Virginia Law Revision in 1751 and the Board was undoubtedly ready to review the effectiveness of its measures. The Virginians themselves reacted stubbornly, and the outbreak of hostilities with the French in 1754 in the Virginia backcountry required the Board to adopt a more conciliatory tone.<sup>16</sup> A broad, indiscriminate use of confirmation was not maintained.<sup>17</sup> Nor was the disallowance of acts ab initio. Possibly the expression had been used in the first place only to give added emphasis to the Board's disapproval of the Virginia acts in question. Moreover, an opinion delivered in 1753 by the Solicitor and Attorney Generals, Dudley Ryder and William Murray, had rejected the concept of a retroactive disallowance.<sup>18</sup> With time, the Board's outlook became more sophisticated and matured into an emphasis on royal instructions and in particular on the use of the suspending clause.

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(16) Greene, The Quest for Power, 18.

(17) Knollenberg, Origin of the American Revolution, 51.

(18) Chalmers, Opinions of Eminent Lawyers, 292.

The circular instruction directing governors to secure a revision of their laws for submission to the Board had itself met with an unfavorable response from colonial assemblies, who showed a marked disinclination to oblige the Board.<sup>19</sup> Massachusetts pointedly refused to co-operate. Lieutenant Governor Phips reported to the Board that the Massachusetts assembly had declared its satisfaction for its present laws and opposed any alterations.<sup>20</sup> The Board was not disposed to give up without an effort! the governor of Massachusetts, William Shirley, then in London, was summoned before the Board and directed "to induce the Assembly to obey his Majesty's orders and stress the utility of a revisal."<sup>21</sup>

Interest in colonial affairs, however, was to swing of necessity from controls to cooperation with the onset of war.<sup>22</sup> The principal Departments of State resumed their preeminence over the Board of Trade whose authority was correspondingly diminished. Concessions were made to the colonies because of the necessity for colonial support and harmony between colony and mother country. The Board countenanced the tenure of the offices of Speaker and Treasurer by one man, John Robinson; the supervision of military expenditure by committees of the Virginia assembly; and the issue of large quantities of paper money.<sup>23</sup> The principle relating to

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(19) Russell, Review of American Colonial Legislation, 95-96.

(20) B.T.J. 1749-1753, 410.

(21) Ibid., 417, 418-419.

(22) Greene, The Quest For Power, 18.

(23) Jack P. Greene, "The Attempts to Separate the Offices of Speaker and Treasurer in Virginia, 1758-1766." Virginia Magazine of History and Biography, LXXI (1963), 11-18; Greene, The Quest for Power, 63-64.

the suspending clause, upheld in the Board's report on the Virginia appeal of 1753, was not regularly maintained.<sup>24</sup> The prevailing mood of the Board of Trade in 1754 was signified by its recommendation that Peyton Randolph be reappointed to the position of Attorney General which he had forfeited on leaving Virginia the previous year. "We recommend it," the Board wrote to Dinwiddie, "as it appears to Us to be at this time particularly necessary for His Majesty's Service, that Harmony and Mutual Confidence should be established between the Governors and the People in all His Majesty's colonies, but especially in that of Virginia, on the Frontiers of which the French are carrying on such unjustifiable Encroachments."<sup>25</sup>

Even so, the Board of Trade continued to make inroads on the Virginia constitution during the French and Indian War. It did not altogether restrain its hand until the cessation of hostilities, which Green<sup>e</sup> would maintain it did.<sup>26</sup> In 1759 the Board revived the issue of royal instructions and legislative controls when it recommended the disallowance of four important Virginia acts directed towards alleviating the colony's economic plight by allowing Virginians to discharge their tobacco dues in current money. The Board invoked the same principle that it had in 1751 and 1753 when dealing with Virginia legislation, namely, that in altering laws, especially those confirmed by the Crown, use

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(24) Knollenberg, Origin of the American Revolution, 51.

(25) Board of Trade to Dinwiddie, 3 July, 1754, C.O.5/1367,f.51.

(26) Greene, The Quost For Power, 18.

should be made of a suspending clause. The laws in question were contrary to the governor's instructions since they infringed the Act for the Better Support of the Clergy of 1749, without the inclusion of this clause and, also, because they were enacted for a period of less than two years.<sup>27</sup> Both these omissions were violations of the circular instruction of 1738.<sup>28</sup> The Virginia governor, in this case, Francis Fauquier, was required to adhere strictly to his instructions relating to the passage of laws on pain of His Majesty's highest displeasure and threat of recall.<sup>29</sup>

These strictures did, in fact, coincide with the success of British arms in North America in 1759, but they also represented a success for the persistent lobby of the Virginia clergy, headed by John Camm and supported by the Archbishop of Canterbury and the Bishop of London.<sup>30</sup> The pattern of their success was similar to that of the powerful merchant lobby which had secured an additional

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(27) Representation of the Board of Trade to the King in Council, C.O.5/1367, ff.186-190.

(28) Royal Instructions, ed. Labaree, I, 128; Francis Fauquier (1703-1768) served as Lieutenant Governor of Virginia from 1758 until his death. He was a man of many interests who appealed to Virginians as "the complete gentleman". He rode the Stamp Act crisis without jeopardizing his position at home or in Virginia.

(29) C.O.5/1367, ff.192-194.

(30) The Archbishop secured the presentation of the memorial of the Virginia clergy to the King, William Robinson to Bishop of London, 17 Aug. 1764, Fulham Papers, Virginia, XIV, f.28. The Bishop of London supplied a vigorous denunciation of the offending acts, 14 June, 1759, Bishop of London to Board of Trade, C.O.5/1367, ff. 131-132.

instruction directing the amendment of two Virginia acts in their favor a year earlier.<sup>31</sup>

Once again, the home government was seriously impairing the legislative freedom of the Virginia assembly. The assembly responded, as it had in 1752, with an eloquent appeal to the King. Its address presented a rigorous defense of the disallowed acts. It strongly denied that it was ever the assembly's intention to infringe the prerogative of the Crown or lessen its influence. Nonetheless the assembly sought the virtual abrogation of the circular instruction of 1738 by urging that the governor might be allowed to give his assent to acts of less than two years' duration when necessary for the relief of the people and that acts might be altered and repealed without the use of a suspending clause where the prerogative of the King and the trade of the mother country were not affected.<sup>32</sup> Colony and mother country were, in fact, adopting positions similar to those of a decade before. Their relationship had pursued a circular course. In approach and terminology, the assembly's protest was very similar to that of 1752. Yet the terms of the exchange demonstrated a certain hardening in the attitude of the Board. The assembly conceded the propriety of the suspending clause but claimed that it had been the regular practice of the assembly to repeal, alter, or amend laws which were found burdensome and inconvenient. To

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((31) C.O.5/1367, ff.178-180.

(32) Representation of the Council and House of Burgesses of Virginia to the King in Council, 20 Oct., 1760, C.O.5/1330, ff.51-53.

limit the legislative power in such cases would involve the colony in insuperable difficulties. Unforeseen circumstances might arise, the assembly claimed, which would require immediate action. In such cases, the use of a suspending clause would negate the legislature's ability to deal with the situation.

The Board, for its part, was willing to permit the passage of an act similar to those disallowed for those counties which produced little tobacco and where the clergy were willing to accept current money. The Board did concede that emergencies might occur, especially in wartime, when immediate action would be required. In such circumstances, the Board stated, the governor might use his discretion. Yet, refusing to enlarge its ideas, the Board insisted on seeing the Tobacco acts merely in terms of an assault on the royal prerogative, as acts that contravened a law which had received the King's confirmation. "Every Act so pass'd" the Board asserted, "is such a violation of the just & Lawfull Authority of the Crown, and so dangrous a Deviation from the true Principles of the Constitution that it is of the highest importance, that a Practice so subversive of both, should be constantly check'd in every instance."<sup>33</sup> The Board maintained not only its insistence on the use of the suspending clause in the alteration of laws confirmed by the Crown, but it sought to apply it to the alteration of any laws regardless of confirmation by the Crown. This was in accordance with the full requirements of the additional instruction of 1738, the sixteenth article of the

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(33) Board of Trade to Committee of the Council, 20 May, 1761, C.O.5/1368, ff.89-92.

governor's instructions. While the Board's report on the Virginia address of 1760 contained an element of flexibility in conceding the governor some discretion, its treatment of the Virginia Tobacco acts demonstrated its inability to allow him to exercise it in an obvious situation.

The impact of the Board's decision should not be underestimated. It was not a new statement of policy with which the members of the assembly were totally unacquainted, but rather an extension of policy. At least half the members appointed to draft the address to the King in 1760 on the subject of the late disallowance had been caught up in the Board's earlier treatment of the law revision of 1748-49 and the ensuing exchanges.<sup>34</sup> The committee appointed from the House included Richard Bland, Archibald Cary, Charles Carter, Richard Henry Lee, Robert Carter Nicholas, Peyton Randolph, Edmund Pendleton, and Benjamin Waller.<sup>35</sup> The committee appointed from the Council was headed by Thomas Nelson, who had been engaged in the various stages of the Revision from the very beginning.<sup>36</sup> Just how seriously the disallowances were viewed in the Virginia assembly can be seen from the reactions of Charles Carter, the chairman of the committee of the whole house and one of the leading figures in the assembly. In a letter to the Premium Society of London, Carter wrote how "by a late revival of an old Instruction we cannot alter or amend any Law before Application is made to his Majesty, which has taken away our constitution, and unless Mr.

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(34) See Appendix II. p. 74.

(35) J.H.B. 1758-1761- 188.

(36) L.J.C.. III, 1241

Montague can get an alteration we in all Probability may be ruined, as no Body of Men is infallible, and all Laws are found by Experience deficient."<sup>37</sup> Another leading member of the assembly, Richard Bland, attacked the chief support of the home government's case, the royal instruction, in his Letter to the Clergy of Virginia, published in 1760.<sup>38</sup> Bland rejected the all-pervasiveness of the royal prerogative. While of great weight in a subordinate government, he wrote, it must at all times be exerted only for the good of the people. If the exigencies of the subordinate state required it, the strict letter of an instruction, a fixed rule of the constitution, indeed every consideration, must give way to the good of the people. To Bland this was so fundamental to the English constitution it scarcely required restatement.<sup>39</sup>

The Board of Trade had adopted a more conciliatory tone during the course of the French and Indian War, although more so during the early part of the conflict than in the final successful years. Nevertheless the Board continued to exert increasing influence on Virginia legislation. It was during these years Halifax fashioned the suspending clause as a lever of control, and imposed it on the Virginia constitution. By an analysis of the laws contained in Hening's Statutes one student of royal government

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(37) Charles Carter to Peter Wyche, c. 1761, Royal Society of Arts, London, Guard Book VI, no. 48.

(38) Richard Bland, A Letter to the Clergy of Virginia, Williamsburg, 1760.

(39) Ibid., 18.



traced the development of its use in Virginia.<sup>40</sup> He found no instance of the use of the suspending clause before 1711, 21 cases between 1711 and 1748, 45 between 1748 and 1763, and 77 between 1763 and 1773. By this date, mother country and colony had changed the rules of the game. While these figures are not in themselves startling, they represent the increasing encroachment of the mother country on the legislative freedom of the colony in the years before the Revolution. When Virginia came to catalogue her greivances against the mother country, such interference received a prominent place.<sup>41</sup>

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(40) Percy S. Flippen, Royal Government in Virginia, 199-201

(41) T.W. Tate, "The Coming of the Revolution in Virginia"  
William and Mary Quarterly, Ser.3, XIX (1962), 323-324.

## CONCLUSION

In its treatment of the Virginia law revision the Board of Trade had attempted to regularize its review of colonial legislation in keeping with royal instructions. In 1759, with the issuance of an additional instruction to Governor Fauquier, it sought to tighten this framework still further. Its assault prompted the Virginia assembly to define its right and assess its relationship with the mother country. The revision served to reactivate and broaden this relationship, which had been static for a period of almost twenty years.

The threat presented to Virginia by an aggressive Board of Trade, however, was as much potential as real. Even an energized administrative machine could maintain only a partial grasp of colonial affairs. Its performance was slow, limited, indecisive. Too many agents were involved in the production of a single decision, and the field was too broad for the agents. While the experience of the law revision schooled the English merchants and the Bishop of London in the best approach to the Crown, even they, armed with warnings of infringements of the royal prerogative, had to press their cause to maintain its momentum and achieve results.

In this situation the role of governor became increasingly more difficult. The Board failed to appreciate the delicacy of the governor's position, placed as he was between the interests of the colony and those of the mother country. His efforts to implement the Board's instructions would put him at variance with the colonial legislature; his failure to do so, at variance with the Board. Fauquier, who had achieved a harmonious relationship with the Virginia assembly at a difficult time without neglecting his role as an imperial servant, was to fall under the strictest censure of the Board for merely doing as his predecessor had done in the passage of legislation.

In the numerous exchanges between the colony and mother country dating from the law revision, leading burgesses became acutely aware of the inadequacy of their representation before the home government. They hesitated to accept their <sup>that the Board could reject</sup> "true statement of the case," preferring to believe that their agent had been negligent or inadequately briefed, or that the arts of the English merchant and the Bishop of London were more subtle than their own. Their concern expressed itself in several attempts to promote a revised agency bill following the action of the King in Council on the law revision.<sup>1</sup> In each case, the bill was promoted by the same small group of men, all of whom had been active in the law revision - Charles Carter, Landon Carter, Richard Bland, and Peyton Randolph.<sup>2</sup> After 1755, as a measure of their growing

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(1) J.H.B. 1752-1758, 96, 250-251, 269, 307, 308, 311, 313, 501, 502, 504, 505.

(2) Ibid. 307, 308, 501.

significance, such bills were referred to the committee of the whole house as opposed to the select committees of earlier years.

In February 1759, such a bill successfully passed the assembly.<sup>3</sup> A special committee of correspondence was assigned the task of briefing the agent. The committee, like that of 1746, was given a legal existence beyond the session of the assembly. In composition and character it reflected this earlier Virginia experience. Ten of the twelve members of the committee had been engaged in various stages of the law revision and protracted negotiations with the mother country. The committee included Councillors William and Thomas Nelson, who had drafted the assembly's representation to the King in 1752. John Robinson, Peyton Randolph, Charles Carter, Landon Carter, Richard Bland, Benjamin Waller, George Wythe, and Robert Carter Nicholas were the members appointed from the House, and most of them had also served on the 1752 committee. These members of the assembly had come into politics towards the end of the era of good feeling under Gooch. Whether they were on the periphery or already at the center of political power, the Virginia law revision had served as their apprenticeship in the field of imperial relations.

In its first letter to its new appointee, the committee of correspondence outlined the agent's priorities:

That you will take Care allways to be ready to prevent the Repeal of Laws passed by the Legislature, the Reasons for which, will be from time to time transmitted to you by us; to support any Representations which it may be necessary to make and for that Purpose will not fail to

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(3) Hening, VII, 276-277, 375-377, 646-647.

attend them thro' the several Boards to which they may be referred; to give early intelligence of anything that may be moved in Parliament, or the Department of American Affairs to this Committee; And in all things relative to this Colony to use your best endeavours according to your discretion, to protect her Rights and secure her Interests.

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Apart from a short directive to the agent that he join in any solicitation for a grant to reimburse the colonies for their expenditure in the war, the letter addressed itself at length to three themes arising from or reverting to the 1748-49 revision. First, the agent's attention was directed to An Act for Settling the Titles and Bounds of Lands. This had been the focus of considerable attention as early as 1751.<sup>5</sup> The letter spelled out the details of the act, its modifications and amendments, and ascribed its failure "to the want of proper application."<sup>6</sup> Second, it turned to a recent instruction delivered to Governor Fauquier on the question of paper currency, and the sterling settlement of debts. The committee believed that the Act concerning Executions and for the Relief of Insolvent Debtors of 1749 and its amendments provided adequately for the security of English merchants. It pointed out that one of the main reasons for such issues was that the armies to the northward had drawn the available gold and silver out of the colony.<sup>7</sup> Third, the letter

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- (4) Proceedings of the Virginia Committee of Correspondence, Virginia Magazine of History and Biography, X, (1902-1903), 343.
- (5) See pp. 49-50.
- (6) "Proceedings of the Virginia Committee of Correspondence," 343-345.
- (7) Ibid., 345-347.

dealt with the question of the memorial of the clergy against the act allowing the payment of tobacco dues in current money. The committee stated that they <sup>were</sup> unacquainted with the contents of the actual memorial. Nevertheless, they felt that a statement of the circumstances of the act would equip the agent to refuse the charges of arbitrary action and disloyalty which the memorial was rumored to contain.<sup>8</sup> It was to the resultant instruction to Governor Fauquier that the committee addressed itself in its next letter. Should this additional instruction be enforced, "the Privilege of making Laws, which all his Majesty's Colonies have & ought to enjoy will be abridged, & in a great Measure abolish'd."<sup>9</sup>

The correspondence between the committee and agent provided a channel through which the assembly could try to avert the type of misrepresentation of which it had been a victim in the past.<sup>10</sup> The work of the committee and the agent, however, did not produce any appreciable improvement, and post-war imperial policy forced the traditional relationship into new channels.<sup>11</sup> The committee of correspondence faltered, to be revived as a major agency in the service of the Revolution.<sup>12</sup> At least half the members of

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(8) Ibid., 347-353.

(9) Ibid. XI, 1903-1904, 15.

(10) Ibid. X, 1902-1903, 343.

(11) Michael G. Kammen, "The Colonial Agent, English Politics, and the American Revolution", William and Mary Quarterly, Ser. 3, XXIII, Sept. 3, 250-252, 257-258.

(12) J.H.B. 1773- 1776.

the committee of 1773 had been members of the former committee of correspondence, and several of these had been engaged in the exchange over the law revision in the early 1750's.<sup>13</sup> The failure of the home government to appreciate colonial needs was finally recognized for the refusal that it was.

Few of the members of the original committees of the law revision lived on into the new Republic. Benjamin Waller was one; George Wythe (a clerk in the 1748-49 assembly) was another. Several others lived on into the Revolution itself, Thomas Nelson until 1782, Landon Carter to 1779. Richard Bland and Peyton Randolph lived into the first years of the Revolution, while Charles Carter and John Robinson saw Virginia in the 1760's place her weight firmly behind opposition to the Crown. Perhaps the futility of exchanges with the mother country, such as those over the Virginia law revision of 1748-49, bore its fruit in conservative support for the Revolution in Virginia.

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(13) See Appendix II. p. 74.

APPENDIX I

Record of Attendance of Members of the Board of Trade at Sessions relating to the Virginia Law Revision

	Halifax	Pitt	Grenville	Dupplin	Fane	Towshend	Stone	Oswald
10 May 1750. Receipt of revision registered at Board.			X	X		X		
14 May 1751. Laws under review.	X		X	X	X			
* 15 May 1751. Laws under review.	X	X	X	X	X			
* 16 May 1751. Laws under review.	X		X	X	X	X		
21 May 1751. Laws under review.	X	X	X	X	X			
* 22 May 1751. Laws under review.	X		X		X	X		
23 May 1751. Laws under review.	X	X	X		X	X		
2 August 1751. Report ordered to be transcribed.	X	X	X			X		
5 August 1751. Report signed.	X	X	X			X		
+ 11 March 1752. Draft of additional instruction considered and ordered transcribed.	X	X	X	X	X	X	X	X
+ 12 March 1752. Draft signed.	X	X	X	X	X	X	X	X
+ 13 March 1752. Draft of covering letter to governors transcribed and signed.	X	X	X	X	X	X	X	X

\* Sessions devoted almost entirely to consideration of the revision.

+ Sessions which also considered the order in council reconstituting the Board's position in colonial administration



## APPENDIX II

## List of Committee Members

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	Revisal 1746	Revisal 1748	Appeal 1752	Appeal 1759	Corres- pondence 1759	Corres- pondence 1773
William Beverley	x	x				
John Blair	x	x			x *	
Richard Bland			x	x	x	x
Lewis Burwell					x *	
Danby Carr						x
Charles Carter			x	x	x	
London Carter			x		x	
Robert Carter					x *	
Archibald Cary				x		x
Dudley Digges					x *	x
Philip Grymes				x	x	
Benjamin Harrison						x
Patrick Henry						x
Thomas Jefferson						x
Richard Henry Lee				x		x
Philip Ludwell		x				
Thomas Nelson	x	x	x	x	x	
William Nelson	x	x	x			
Robert Carter Nicholas				x	x	x
Edmund Pendleton				x		x
Peter Randolph				x	x	
Peyton Randolph		x	x	x	x	x
Richard Randolph	x					
John Robinson, Jr.	x				x	
John Robinson, Sr.	x					
Benjamin Waller	x	x	x	x	x	
Beverley Whiting	x	x	x			
George Wythe						x

\* Members added to the Committee of Correspondence in 1763

APPENDIX III

LIST OF ACTS DISALLOWED

Resolved, that the following laws being liable to many objections are proper to be laid before his Majesty for his disapprobation.

An Act declaring slaves to be personal estate, and for other purposes therein mentioned.

An Act for the distribution of intestates' estates.

An Act for establishing the general court, and for regulating and settling the proceedings therein.

An Act for the limitation of actions and avoiding of suits.

An Act concerning servants and slaves.

An Act to prevent the tending of seconds.

An Act for allowing fairs to be kept in the town of Suffolk, and preventing hogs and goats going at large therein, and for altering the times of holding fairs in the town of Newcastle.

An Act for the better support of the College of William and Mary.

An Act for establishing a town in Augusta County, and allowing fairs to be kept therein.

An Act to prevent the building of wooden chimneys in the town of Walkerton, and also to prevent the inhabitants thereof from raising and keeping hogs.

( B.T.J., 1749-1753, pps.198-199)

## APPENDIX IV

### LIST OF ACTS CONFIRMED

Resolved that the following laws relative to the particular circumstances and government of this colony, and no ways derogatory of his Majesty's authority and instructions, or contrary to the laws of this kingdom, are proper to be laid before his Majesty for his royal approbation.

An Act for the better management and security of orphans and their estates.

An Act directing the manner of granting probates of wills and administration of intestates' estates.

An Act for establishing county courts and for regulating and settling the proceedings therein.

An Act to prevent frivolous and vexatious suits.

An Act for prescribing the method of appointing sheriffs, and for limiting the time of their continuance in office, and directing their duty therein.

An Act declaring the laws concerning executions and for the relief of insolvent debtors.

An Act directing the method of trial of criminals for capital offences, and for other purposes therein mentioned.

An Act for better securing the payment of rents, and preventing the fraudulent practices of tenants.

An Act for the settlement and regulation of ferries, and for the dispatch of public expresses.

An Act concerning seamen.

An Act for the better securing the payment of levies and restraint of vagrants, and for making provision for the poor.

An Act directing the duty of surveyors of land.

An Act for preventing trespasses by unruly horses, cattle, hogs, sheep or goats, and by taking away boats or other vessels.

An Act concerning tithables.

An Act to prevent the clandestine transportation or carrying of persons in debt, servants or slaves out of this colony.

- An Act for prevention of abuses in tobacco shipped on freight.
- An Act prescribing the method for proving book debts.
- An Act concerning water mills.
- An Act for appointing public storehouses and ascertaining the prices of storage.
- An Act concerning highways, mills, dams and bridges.
- An Act for clearing rivers and creeks.
- An Act for regulating ordinaries and restraint of tipling houses.
- An act for preventing excessive and deceitful gaming.
- An Act concerning marriages.
- An Act ascertaining the damage upon protested bills of exchange, and for the better recovery of debts due on promissory notes, and for the assignment of bonds, obligations and notes.
- An Act for dividing the County of Orange.
- An Act for dividing the County of Gooch Land.
- An Act for continuing the Act intituled, An Act for reducing the laws made for laying a duty upon liquors into one Act of Assembly.
- An Act for enabling the justices of Prince William to levy tobacco on the inhabitants of the said county, to defray the charge of clearing the road therein from the Pignut to the Blue Ridge.
- An Act for destroying crows and squirrels.
- An Act for establishing a town on the land of Richard Littlepage, gentleman, in the county of New Kent.
- An Act to empower the vestry of the parish of St. Martin's Brandon in the county of Prince George, to sell the glebe land in the said parish, and to purchase a more convenient glebe in lieu thereof.
- An Act for dividing the parish of Raleigh in the county of Amelia, and erecting the same into four distinct parishes.
- An Act for establishing the towns of Petersburg and Blandford in the county of Prince George, and for preventing the building of wooden chimneys in the said towns.
- An Act for giving a certain sum of money to trustees for the clearing roads over the Great Mountains.
- An Act to empower Thomas Dansie to make a causeway through the marsh opposite to his wharf.
- An Act for the better support of the clergy, and for the regular collecting and paying the parish levies.
- An Act to restrain the taking of excessive usury.
- An Act concerning the publick prisons, and directing the method of appointing the keepers thereof.

An Act for encouraging adventurers in iron works.

An Act for encouraging the making tar and hemp

An Act for making provision against invasion and insurrections.

An Act to empower the trustees of Leeds Town to make a causeway through the marsh opposite thereto, and for appointing a public ferry.

An Act for dividing the county of Isle of Wight into two distinct counties, and for other purposes therein mentioned.

An Act for obliging the county of Gooch Lane and parishes of St. James Northam and Southam to repay the county of Albemarle and parish of St. Anne's a sum of money and tobacco therein mentioned.

An Act for erecting a town in the county of Prince William.

An Act for giving a reward for killing wolves.

An Act against stealing hogs.

An Act for preventing losses from drivers passing with horses and cattle through this colony, and for laying a duty on horses imported, and the more effectual preventing horse stealing.

An Act for inspecting pork, beef, flour, tar pitch and turpentine.

An Act for establishing a town near Warwick in the county of Henrico.

An Act for erecting a town at Hunting Creek Warehouse in the county of Fairfax.

An Act for dividing the county of Henrico into two distinct counties.

An Act to empower the vestry of the parish of Newport in the county of Isle of Wight to sell the glebe lands in the said parish, and to purchase a more convenient glebe in lieu thereof.

An Act for dividing the parish of Truro, and dissolving the vestry of the parish of Suffolk, and other purposes therein mentioned.

An Act for repealing several Acts of Assembly therein mentioned.

An Act concerning strays.

(B.T.J., 1749-1753, pps.199-201)

APPENDIX V

LIST OF ACTS DECLARED PROBATIONARY

Resolved, that the following laws do lye by probationary:

- An Act concerning juries.
- An Act for rebuilding the capitol in the city of Williamsburg.
- An Act for confirming the grants made by his Majesty within the bounds of the Northern Neck as they are now established.
- An Act for continuing an Act, intituled, An Act for the better regulating and collecting certain officers' fees, and for other purposes therein mentioned.
- An Act for obliging the justices of the Isle of Wight to build a bridge near Blackwater Swamp.
- An Act for appointing a treasurer and other purposes therein mentioned.
- An Act for reviving the Act to impower the justices of Elizabeth City County to erect pounds, and for other purposes therein mentioned.
- An Act to enable the Pamunkey Town Indians to sell a certain tract of land, and for other purposes therein mentioned.
- An Act to enable the Nottoway Indians to sell certain lands, and for other purposes therein mentioned.
- An Act directing the trial of slaves committing capital crimes, and for the more effectual punishing conspiracies and insurrections of them, and for the better government of negroes, mulattoes and Indians, bond or free.
- An Act for regulating the practice of attorneys.
- An Act for annexing certain lands to the town of Tappanhanoch, and vesting the same in the feoffees of the said town, and for other purposes therein mentioned.
- An Act to restrain the keeping too great a number of horses and mares, and for amending the breed.
- An Act for altering the method of holding courts in the counties of Brunswick, Fairfax, Lunenburg, Frederick, Albemarle and Augusta.
- An Act for dissolving the vestry of the parish of Cumberland in the county of Lunenburg and electing a new vestry in the said parish.

(B.T.J., 1749-1753, p. 201) 1

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