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Presentments of the Grand Jury of Northumberland County, Virginia, 1744-1770

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PRESENTMENTS OF THE GRAND JURY OF NORTHUMBERLAND COUNTY, VIRGINIA, 1744-1770

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ABSTRACT

This thesis studies the activities of the Northumberland County grand jury between 1744 and 1770 from a social, rather than legal or political, point of view.

The sphere of activity of the Northumberland grand jury was considerably more narrow than that of its counterparts in England and several other of the colonies. In other colonies, and in England, county grand juries often served as forums for the voicing of local grievances. The Northumberland County grand jury never acted in such capacity, but concentrated primarily upon the prosecution of certain offenses against the public morality.

Each of the different offenses prosecuted through grand jury action are discussed in the text. Graphs and charts are included to illustrate the numbers and relative frequencies of prosecutions for the different offenses.

The study suggests that central supervision of local affairs may have acted to narrow the sphere of county grand jury activity. It is further suggested that the prosecutions of the grand jury were important to the development of a sense of community amongst the people of the county in the absence of town life.

PRESENTMENTS OF THE GRAND JURY OF NORTHUMBERLAND COUNTY, VIRGINIA, 1744-1770

The twentieth century grand jury bears only slight resemblance to the first juries used in France. These earliest juries consisted of local men assembled and questioned by officials of the government concerning murders, robberies, or other disturbances that had taken place in their neighborhood, and of which they had first-hand knowledge. The earliest jurors were, in other words, eyewitnesses to crimes who gave their testimony to a court.[1] The Norman Conquest carried this practice to England where, as in France, the primary function of the jury was to gather information concerning local affairs, which information was presented to representatives of the governing authority who periodically rode circuit through the Shires and Hundreds. Among other things, the juries routinely reported the misdoings of local officials, persons suspected of crimes, outlaws, and so forth.[2]

Until the fourteenth century, when conditions necessitated the calling of local representatives to sit in Parliament, the jury remained a group of eyewitnesses that reported on the affairs of their locality. The more frequent calling of Parliaments undercut this information-gathering function of the jury, and two distinct bodies that had been developing within the old jury began to emerge. The two

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[1]Frederick W. Maitland and Francis C. Montague, A Sketch of English Legal History, with notes and appendices by James F. Colby (New York: The Knickerbocker Press, 1915), n. 1, pp. 53-54.

[2]Sir William Holdsworth, A History of English Law, 3rd edition in 16 volumes (Boston: Little, Brown & Co., 1923), 1:312.

were distinguished by the degree to which each judged fact or presented information. The former became the modern petit jury, and the latter, the lineal descendant of the original group of eyewitnesses, the modern grand jury.[3]

It was the practice in England for the Sheriff to summon twenty-four freeholders of the venire, or locality, of whom twenty-three would be sworn for service on the grand jury.[4] A charge, or speech, was delivered to the sworn jurors by the senior member of the court then present outlining the general responsibilities of the jury and, perhaps, touching upon the types of cases likely to be heard at that session.[5] The jury would then retire to a separate room where it would consider evidence against, but not usually for, each of the accused. If, after deliberation, a majority of the grand jury thought that there was probable cause to suspect the accused guilty of the charge, a billa vera, or true bill, was returned to the court and the defendant held for trial before a petit jury. If, on the other hand, a majority thought the evidence to be deficient, an ignoramus, or bill not true, was returned to the court, and the defendant was released.[6]

After dispatching the bills prepared for them, the grand jurors

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[3]Ibid.

[4]Since a simple majority decided the outcome in each case, an odd number of grand jurors prevented ties.

[5]John D. Cushing, "The Judiciary and Public Opinion in Revolutionary Massachusetts," in George A. Billias, ed., Selected Essays: Law and Authority in Colonial America (Barre, Massachusetts: Barre Publishers, 1965), pp. 168-182, asserts that a lecture on "moral philosophy" or some topic of timely political interest was often included in the "charge".

[6]Holdsworth, A History of English Law, 1:313.

in English counties consulted with one another concerning any of the business of their county in which individuals had an interest.[7] If the jurors had information to present, they would do so at that time; a practice that was carried across the Atlantic to the colonies and which continued through the eighteenth century.

County court records from several colonies provide examples of extra-judicial activity on the part of grand juries. Under the Fundamental Constitutions of North Carolina, a court of intermediate authority was to sit periodically in each of the counties. A grand jury, selected from the freeholders of the county was to attend that court and pass judgment on the judicial bills prepared for it. After dispatching those bills, the North Carolina county grand jury, like its English counterpart, was expected to deliver a presentment of "such grievances, exigencies, misdemeanors, or defects which they think necessary for the public good of the county."[8]

Although the Fundamental Constitutions did not survive the seventeenth century, and perhaps were never fully implemented, the practices prescribed for the grand jury did survive and were implemented at the county level during the eighteenth century. In 1740, the grand jury of New Hanover County made presentment[9] of the complaints made to them concerning the theft or loss of cattle.[10] This same grand

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[7]Holdsworth, A History of English Law, 1:323, n. 1.

[8]Paul McCain, The County Court in North Carolina Before 1750 (Durham, North Carolina: Duke University Press, 1954), pp. 37-49, especially pp. 44-46.

[9]Presentment, in an eighteenth century court, meant an accusation drawn up in such a manner that the language was much less formal than that found in an indictment. The presentment usually included the name of the accused, his place of residence, and the offense charged.

[10]Paul M. Walker, ed., New Hanover County Court Minutes, 2 volumes (Bethesda, Maryland, 1958), 1:14.

jury complained that rafts carrying goods down the river often broke up, scattering their contents along the banks where they were picked up by persons who were not the lawful owners of the goods. The jury declared that any one picking up goods be obliged to advertise the recovery publicly.[11] Some years later, a grand jury in New Hanover complained of the inconvenient location and unsanitary condition of the jail in Wilmington. In each of these cases, the county court itself attempted to redress the grievance expressed by the grand juries.[12] Through court order, local ordinances were established. Advertisements of lost goods were to be posted in public places. The sheriff ordered the surveyor to lay out five acres in Wilmington in such manner that the jail would be in its center.[13]

In Virginia, scattered remains of the records of the General Court indicate that grand juries there were similarly involved in some extra-judicial activity. In contrast to North Carolina law, Virginia law did not encourage the grand jury to present grievances, but neither

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[11]Note in particular, the grand jury's use of the imperative voice, "shall be", Ibid.

[12]Ibid., 1:25. There are may other examples of colonial grand juries making legislative proposals. For example, Mabel L. Webber, "The Presentments of the Grand Jury, March 1733/4," South Carolina Historical and Genealogical Magazine, 25(1924):193-5, or The Charles-Town Gazette (Timothy: Charleston, S.C., March 19, 1737), p. 1. Other examples may be found in the Calendar of State Papers of America and the West Indies, Colonial Series, 37 volumes (London, 1860-1916; reprint ed., Varuz: Kraus Reprints Ltd., 1964), 5:297; 30:197-8. George C. Rogers, The History of Georgetown County, South Carolina (Columbia: The University of South Carolina Press, 1970), p. 105n. See also, Thomas J. Farnham, James K. Huhta, and William S. Powell, eds., The Regulators in North Carolina: A Documentary History 1759-1776 (Raleigh: State Department of Archives and History, 1971), pp. 367-8.

[13]Walker, New Hanover County Court Minutes, 1:14, 25.

did it forbid this practice. The addresses of the grand jury at the General Court were solicited by several of Virginia's governors who hoped to use them as counterweights to the attacks of hostile members of Council which were being transmitted to the Lords of Trade.[14] As late as 1737, the grand jury at the General Court acted in a manner similar to the county grand juries of some other colonies when it urged that the governor's prohibition against exporting grain from Virginia be continued.[15]

Yet, it would appear that the presentment of grievances was not considered to be one of the duties of grand juries in the counties. Not a single example of this type of presentment can be found in the Northumberland County Court Records. Other procedures and other institutions established by Virginia law took the place of the grand jury in that regard. In each county, immediately before the opening of a new session of the Assembly, the local justices held a special court for receiving petitions from the inhabitants of the county. Once certified by the justices, these petitions were sent to the House of Burgesses where a standing committee, on Propositions and Grievances, considered their individual merit. The committee reported on each of the proposals,

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[14]At this time, grand juries of the General Court were made up of the "by-standers" present at the court. Mostly, they were members of Burgesses. Details of the struggles between Governors and Council may be found in Richard L. Morton, Colonial Virginia, 2 volumes (Chapel Hill: University of North Carolina Press, 1960), 1:342 ff.; 2:409-63, passim. The addresses themselves may be found in the Calendar of State Papers, 22:91-5; 21:591, 760.

[15]Williamsburg Virginia Gazette (Parks, October 14, 1737), p. 3, col. 1.

and the final determination was made by the whole House.[16]

The road leading to the redress of grievances in Williamsburg sometimes wound through and around a maze of red-tape that might well have been avoided had the matter been settled through the passage of a by-law in the county.[17] For example, between 1646 and 1769, a dozen laws were passed by the House at the request of some county or counties, all of which laws were aimed at the extermination of wolves. Most of these laws offered a bounty, to be paid out of the county levy, for each wolf pelt brought before a Justice of the Peace of the local court.[18] Re-enactment after re-enactment changed the amount of the bounty, allowed certain counties to offer a larger bounty than others, or added and dropped the names of counties from the list of those included in the acts. Similarly, the Assembly enacted and re-enacted laws to limit the number of dogs that might be kept at the slave quarters and laws to control the population of squirrels and crows.[19] These laws were enacted in response to the petitions of the inhabitants of several counties. Later, some counties asked to be dropped from the bills, others petitioned to be added, and as new counties were formed

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[16]A fuller description of the Committee on Propositions and Grievances appears in Robert E. and B. Katherine Brown, Virginia 1705-1786: Democracy or Aristocracy? (East Lansing: University of Michigan Press, 1964), p. 232.

[17]William Waller Hening, The Statutes at Large: Being a Collection of all the Laws of Virginia... (Richmond: Samuels Pleasants jr., Printer to the Commonwealth, 1809-1823), 2:71, 441.

[18]These dozen laws were: Hening, Statutes, 1:328, 456; 2:87, 178, 215, 396; 3:43, 282; 4:89; 6:152; 8:388.

[19]Northumberland (and Richmond) County petitioned the House for inclusion in one of these acts. H. R. McIlwaine and John Pendleton Kennedy, eds., The Journals of the House of Burgesses of Virginia, 1619-1776 (Richmond: E. Waddy & Co., 1905-1919), cite May 11, 1742, p. 13.

in the west, they often petitioned for inclusion.[20]

This tendency towards the central supervision of local affairs, while it acted to limit the roles of the county grand jury in Virginia, was itself a product of the same forces that created a grand jury that was almost uniquely Virginian. Early experience had taught that the stability and survival of the colony depended upon the maintenance of a cohesive bond between widely scattered and ever-spreading settlements. The county grand jury evolved as a most important tool for the development and maintenance of that common bond by enforcing a rigid conformity to current standards of morality.

The history of the grand jury in Virginia begins, then, in the early seventeenth century as a part of the Assembly's search for more effective means of law enforcement in the counties. The colony's population, laced heavily with single, young men, posed tremendous problems of discipline to those in authority.[21] These problems were compounded by a widely held attitude that Virginia was, first and foremost, a disagreeable place to live, made bearable by the knowledge that residency was only temporary and might enable those who persevered to buy a life of comfort upon their return to England.[22] Indentures began to expire at a time when great tracts of land in the Tidewater had been gobbled up by speculators. The white servitude once thought of as the salvation of many a beggar from a life of wandering about the English

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[20]For example, Hening, Statutes, 8:388-90; 6:296.

[21]Morton, Colonial Virginia, 1:28-31, 49, 69.

[22]Edmund S. Morgan, American Slavery American Freedom -- The Ordeal of Colonial Virginia (New York: W. W. Norton & Co., 1975), see chapter 2.

countryside or a death at Tyburn, came to be counted as something less than a blessing in Virginia. Faced with the choice of working for their former masters, settling on the dangerous frontier, or wandering, many chose to roam the Tidewater counties, homeless drifters.[23]

The Assembly began its attack on the problems of local law enforcement by creating agents and agencies to act as peace officers in each of the counties and parishes. This task was largely completed by 1661/2, at which time the churchwardens, the grand jury,[24] and the informer had been designated the principal local peace officers. From 1661/2 until 1748, the Assembly busied itself in a more careful and detailed outlining of the responsibilities of its law enforcement agents and agencies. During that same period, the laws to be enforced by the local officials underwent a parallel revision in the direction of greater detail, precision, and sophistication.

Laws which named churchwardens as their sole agents of enforcement were, for the most part, passed by the Assembly prior to 1670. The churchwardens, particularly before the formation of the counties, were convenient and available officers of the single most important unit of local government. As men of local prominence, members of the Vestry, and secular officers of the church, they represented, if they did not always embody, the conventional morality of the Anglican Church. But, most importantly, the law enforcement role of the Churchwardens in

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[23]Colonial fears concerning land-hungry freedmen are discussed in Morgan, American Slavery American Freedom, chapters 12 and 13.

[24]Churchwardens were named as peace officers as early as 1623/4 in Hening, Statutes, 1:126, while informers first appeared in 1642/3 in Hening, Statutes, 1:240. The grand jury was not created until 1645/6 in Hening, Statutes, 1:310, and did not become a permanent agency of law enforcement until 1661/2 in Hening, Statutes, 2:74.

English parishes was of longstanding, and very familiar to most Virginians. The force of tradition, alone, might have sufficed to effect its transplantation to the colony.[25]

In seventeenth century England, the office of Churchwarden was one of dignity and importance, and not terribly demanding of the office-holder. Other of the English parish offices, which the Virginia churchwardens assumed, were less desirable. Those of Surveyor of the Highways and Overseers of the Poor could involve unpleasant dealings with neighbors, as well as a considerable amount of work and responsibility. Those appointed Petty Constable invariably paid a substitute unless they were themselves so poor as to find the perquisites of the office attractive.[26]

Under provisions of Virginia's "Order for Ministers", passed by the Assembly in 1631/2, churchwardens in the colony were obliged to make a true presentment of those persons leading a prophane or ungodly life to the Commissioners of the Monthly Court.[27] Their presentments were to include common swearers, drunkards, blasphemers, sabbath-breakers, adulterers, fornicators, slanderers, and masters or mistresses who failed to cathechise dependents in their charge.[28] The presentments expected of the churchwardens under this law were virtually identical

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[25]For example, Wallace Notestein, The English People on the Eve of Colonization, the New American Nation Series, Harper Torchbooks (New York: Harper & Row, 1962), pp. 228-50.

[26]Sidney Webb and Beatrice (Potter) Webb, English Local Government from the Revolution to the Municipal Corporations Act: The Parish and the County (London: Longman's, Green & Co., 1906), p. 18.

[27]Hening, Statutes, 1:156.

[28]Ibid., see also 1:227.

to those made over one hundred years later by the grand jury in Northumberland County.

The reorganization of the laws of the colony was one goal of the Assembly of 1642/3. More precise language clarified the procedures which the churchwardens were to follow in making their presentments. The presentments were to be made in writing and were to be based on the knowledge of the churchwarden himself. The churchwardens were, in many ways, similar to the earliest jurors who were eyewitnesses to the offenses that they presented to the court.[29]

The role of the churchwardens in law enforcement was broadened when, in 1661/2, the Assembly authorized the churchwardens to summon all persons upon whose reports they might have grounded their presentments to appear at the court and give their testimony.[30] In addition to being eyewitnesses to certain offenses, the churchwardens were recognized by the Assembly as channels through which information might be filtered and channeled to the court.

The churchwardens represented the Assembly's earliest efforts to institutionalize peace officers. Using the English churchwarden as their model, the Assembly hoped to fashion an officer who would provide a degree of peace and stability in the wilderness. In 1645, the grand jury, similarly modelled after its English counterpart, was introduced in Virginia. The law creating the grand jury in Virginia was carelessly and vaguely written, perhaps simply because the institution that it

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[29]Under the "Order for Ministers" of 1631/2, oral presentments were permissible. See above, page 10. The Assembly demanded that presentments be in writing in Hening, Statutes, 1:239-40.

[30]Hening, Statutes, 2:51.

created was so familiar to most people in the colony. It required only that "a jury" be "empannelled" at the midsummer and March sessions of the local courts. It specified neither the number nor the qualifications of the persons who were to serve on the jury. Once assembled, the jury would receive presentments and informations and inquire into the breach of all criminal laws except those laws concerning felonies. The county courts, in turn, could hear and determine all these presentments, or send any case to the Governor and Council, if it saw fit.[31]

A second law concerning grand juries was passed in 1657/8, but its language can be described as even less precise than the act which it was intended to supercede. The Assembly again failed to specify both the number and qualifications of persons to serve on the grand jury, and even omitted the reference to the "midsummer" and March sessions of the county court. Shortly after the passage of this act, the Assembly repealed all of the acts concerning grand juries because the body had not proved as successful as might have been hoped. For almost four years, there were no county grand juries in Virginia.

Not until 1661/2 did the Assembly make the grand jury a permanent part of the law enforcement machinery of the colony. The Assembly thought that the county courts and their personnel had been lax in punishing persons presented by the grand jury. However, the Assembly realized that they too had to share the blame since they had failed to delegate the responsibility of enforcing the laws to one specific person or institution. Because the Assembly thought the churchwardens alone could not cope, the grand jury was revived.[32] The law of 1661/2 lacked

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[31]Hening, Statutes, 1:304.

[32]Ibid., 2:74.

detail, but nonetheless represented the best efforts of the Assembly up until that date. Each county court was ordered to call a grand jury twice yearly, in April and December, to enquire of the breach of all criminal laws and to make presentment of the offenders to the court.[33] The justices of the court could use the presentment of the grand jury itself as evidence, if it were made on the knowledge of any two members of the jury. If a presentment were made on the information of some person who was not a grand juror, the court could still use the presentment itself as evidence provided that the informer swore to his statement before any member of the court. While the act of 1661/2 left unspecified both the number of persons who were to serve on a grand jury and their qualifications, if any, the Assembly did make it clear that the grand jurors, much like the churchwardens, were to be eyewitnesses to the offenses that they presented or channels through which information could be filtered and passed on to the court.[34]

In a separate enactment later in that same 1661/2 session of the Assembly, the decision was made to set aside the first day of each subsequent session to receive the presentments of the county grand juries, to appraise the effectiveness of the institution, and to equitably distribute amongst the counties any money collected by the grand juries in fines. Clearly, the Assembly had determined that the grand jury would become a permanent part of the county judiciary in Virginia.[35]

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[33]"Call" suggests a summoning process, while the earlier "empannell" suggests that a jury might have been composed of the bystanders at the court. Ibid.

[34]Compare Hening, Statutes, 2:51-2 with 2:74.

[35]Hening, Statutes, 2:75-6.

Not until 1705 did the General Assembly further clarify the composition, function, and procedure of the county grand juries. In that year, the Assembly defined grand juries as bodies of "four and twenty" freeholders of the county which were summoned, rather than called, to appear twice annually, specifically at the May and November sessions of the courts. Again, the Assembly ordered the grand juries to enquire into the breach of all criminal laws and to present the offenders to the court. However, the Assembly added the stipulation that after presenting all such matters as came to their knowledge, the jury was to be discharged. Unlike their English counterparts, Virginia grand jurors could not consult with one another concerning the affairs of the county after they had dispatched their bills. The justices could take for evidence the presentment of the jury itself if it were made on the knowledge of any two of the jurors. If a presentment were made on the information of some person who was not a member of the grand jury, the informant's name had to be written below the presentment, in order to expedite the prosecution.[36]

In order to insure the effectiveness of this act of 1705, even in the absence of the close supervision of grand juries that had been provided in 1661/2, heavy fines for non-compliance were instituted. Freeholders summoned for jury duty who failed to appear, and by their failure made it impossible to empanel a jury, were subject to a fine of two hundred pounds of tobacco. Justices failing to order that a grand jury be empanelled were subject to a fine of four hundred pounds of tobacco each, while sheriffs who refused to return the names of those

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[36]Hening, Statutes, 3:367-9. Evidently, the court would summon the informer if such action was deemed necessary.

summoned to the court were subject to a fine of one thousand pounds of tobacco. Monies accruing from these fines were recoverable in any court of record in the colony by action of debt, bill, plaint, or information. Those who brought action to recover the fines were promised a share of the money collected.[37]

In 1727, the Assembly passed a resolution urging renewed vigor on the part of county grand juries in the prosecution of petty vice in their county. The Assembly was alarmed to hear that the juries in some counties did not consider the fines levied for most of the offenses presented large enough to warrant their action or concern. That the Assembly considered petty vice to be the province of the county grand jury became more clear in 1748.

The "Act Concerning Juries" of 1748 reiterated the Assembly's earlier plea for the more vigorous prosecution of what some considered to be petty vices. However, the act of 1748 went farther by clearly outlining the procedure county grand juries were to follow in the prosecution of petty offenses.

Under the provisions of the act of 1748, the sheriff summoned twenty-four freeholders of the county, of whom a minimum of fifteen were later sworn grand jurors. The Assembly narrowed the pool of prospective grand jurors by exempting certain professionals and county officers from jury service. Ordinary keepers, for example, would likely have done a good share of their business on court days, and, probably for this reason, were exempted. Owners or occupiers of mills, as well as Surveyors of the Highways were also exempted, most likely because

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[37]Hening, Statutes, 3:367. The minimum number of persons required to form a grand jury was here set at fifteen.

jury duty held a potential conflict of interest for each of them.[38]

The grand jury was once more charged to enquire of the breach of all penal laws and to make presentment of the offenders to the court. Evidentiary requirements were unchanged, but a time limit of twelve months between the occurrence of the offense and its presentment by the grand jury was added to the law.[39]

But, the major contribution of the act of 1748 to Virginia law was the method and form of procedure that it prescribed for grand jury prosecutions. When the fine for a given offense did not exceed five pounds current money or one thousand pounds of tobacco, the presentment read only that the same stood presented by the grand jury. Once such a presentment was made, the court summoned the accused to appear at a specified session of the court to answer the charge. At that session, the court proceeded to judgment without the formality of a petit jury, and if the accused failed to appear as summoned, could and did levy the appropriate fine.[40]

These provisions contained in the act of 1748 exemplified the efforts of the Assembly to streamline legal procedure in the colony; an effort that was evident in many other laws. As early as 1660, the Assembly had complained of "the excessive charges and great dealings

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[38]The "Act Concerning Juries" may be found in Hening, Statutes, 5:523-26, and was part of the revision of the laws undertaken by the Assembly in 1748 and more fully described by Gwenda Morgan, "The Revision of 1748," an M.A. Thesis, College of William and Mary, 1968. The potential conflict of interest for owners of mills and Surveyors of the Highways is described below.

[39]Certain laws against vices had long contained their own time limitation on prosecution. Hening, Statutes, 5:525.

[40]Ibid., 5:524. (Section II).

and hinderances of justice" arising from "small mistakes in writs and forms of pleading".[41] However, in making grand jury presentments a relatively simple and informal matter, the Assembly was attempting to do more than just streamline legal procedures; it was tailoring the procedure followed by the grand jury to the types of offenses that it was expected to present.

The grand jury in Northumberland County closely followed the procedures established in the act of 1748.[42] One or two months before the April and November sessions of the court, the sheriff was ordered to summon twenty-four freeholders of the county to form a grand jury. Most often, a full panel of twenty-four members appeared at the court. From 1744 to 1770, one hundred and seventy different men served as grand jurors for the county. This represented just under one-half of the freeholders voting in the county in the election year of 1765.[43]

Several days after being sworn, the grand jury returned to the court with a list of presentments that contained, on the average, eighteen names. The parish of residence, the offense charged, and sometimes the amount of time that had elapsed between the offense and its presentment by the grand jury appeared beside each name. The justices then ordered the sheriff to summon each of the accused to appear at the next session of the court to answer the charge, and the grand jury was dismissed.

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[41] Hening, Statutes, 1:468.

[42] See, for example, Northumberland County Order Book, May 14, 1744 (Richmond: Virginia State Library), Reel #51, fol. 20. Northumberland County was selected for this study due to the availability of full county and parish records for the period.

[43] Charles S. Sydnor, American Revolutionaries in the Making: Political Practices in Washington's Virginia (New York: The Free Press, 1965), p. 122.

At subsequent sessions of the court, the list of presentments reappeared, in whole or in part, together with the judgment of the magistrates in each case. In Northumberland County, persons presented by the grand jury rarely appeared to answer the presentment. The justices of the court, proceeding in accordance with the provisions of the act of 1748, routinely found these absentees guilty as charged. If the offense was fairly serious, as, for instance, bastardy was, the sheriff was ordered to seize the accused. Most often, the justices merely ordered that the fine be collected at the next levy.[44]

In this manner, the grand jury of Northumberland County processed well over eight hundred presentments between 1744 and 1770. Of these, seven hundred were based on the knowledge of the jurors themselves, and the remainder, on the information of persons who were not members of the grand jury. Two hundred, or almost one quarter of the presentments made by the grand jury of its own knowledge were dismissed, while the remainder resulted in convictions. The ratio of convictions to dismissals in presentments made on the information of others was about the same.

Since by law, the name of the informer had to be written below a presentment when the informer was not a member of the grand jury, it was possible to determine who the informers were in Northumberland County. Almost always, the informer was one of the churchwardens of one of the two parishes in the county, Wicomico and St. Stephen's, and the offense presented on his information was bastardy. In Northumberland, the churchwardens seem to have abdicated the broad responsibility

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[44] Northumberland County Order Book, e.g., May 13, 1751, Reel #51, fol. 160-193, passim.

granted them in the seventeenth century, taking part in the presentment of offenders only when the parish had a direct financial interest in bringing them to justice.

One other offense was presented with some regularity, and in significant numbers, on the information of persons who were not members of the grand jury. Persons who failed to report the number of persons living in their household who were tithable, or subject to taxation by the county, were usually presented on the information of a member of the Vestry, the sub-sheriff, or one of the Constables of the county. Once again, a local institution had a direct financial interest in the prosecution of offenders.

In view of the fact that informers were usually promised a portion of the fines collected in successful prosecutions, it seems surprising that no private citizen, acting as such, ever gave information to the grand jury. County and parish officers seemed similarly reluctant to give information to the court, except when the institution which they represented and for which they were responsible had a direct financial interest in the prosecution. In the absence of such a threat, citizens and officials of the county did, in fact, act as informers, but only when carrying out their sworn duty to protect the general welfare of the community as grand jurors.

The chart (1) (see appendix) illustrates the total number of presentments made by the grand jury of its own knowledge and on the information of others at each of the sessions of the court from 1744-1770. The distribution of the presentments over that period was far from even. In fact, half of all the presentments made in Northumberland were the work of fifteen grand juries that sat in the eight years between

1762 and 1770. Chart (2) (see Appendix) illustrates that, while the number of presentments for each of the different offenses was greater after the midpoint of the survey[45] than before, the major reason for the large increase in the number of presentments was a law passed in 1762, requiring the grand jury annually to inspect the lists of tithables and to present persons suspected of being concealors.[46]

As the chart (2) illustrates, the offense most often presented by the grand jury in Northumberland County was failure to attend church. Wesley Frank Craven stated that Virginia statutes, from Dale's Code on, indicated that Sabbatarianism was hardly less strong in Virginia than it was in Massachusetts.[47] Craven thought that New England town-life may have permitted more effective enforcement than was possible in the more scattered settlements of Virginia. However, since two hundred and sixty-three of the presentments of the Northumberland grand jury were for not attending church, it would seem fair to conclude that, while effective enforcement may have been rendered more difficult by the pattern of settlement, efforts at enforcement were as great or greater than in New England towns.

In fact, it would seem that in making presentment of any number of offenses against the conventional morality of the day, the members of the grand jury were spurred to greater effort by Virginia's pattern. Edmond S. Morgan commented that settlers of seventeenth century Virginia

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[45] 1757 was chosen as the midpoint since the same number of juries sat before, as after 1757.

[46] Hening, Statutes, 7:539.

[47] Wesley Frank Craven, The Southern Colonies in the Seventeenth Century 1607-1689 (Baton Rouge: Louisiana State University Press, 1949), p. 172.

were stretched out along the rivers "over areas much larger than the usual English parish." Lacking the physical closeness that would promote a sense of community, they tried to bind themselves together by imposing on each other a strict standard of behavior. Thus, without being Puritans in any theological or Ecclesiastical sense, they looked a little Puritanical in the way they dealt with offenses against conventional morality.[48] The records of the Northumberland County grand jury for a period much later than that which Morgan described reveal a similar zeal. Though the country was more thickly settled than it had been a hundred years before, it still lacked any town-life.

Early seventeenth century laws for compulsory church attendance reflected the desire of a paternalistic Assembly to expose its charges to the benefits and blessings of Sunday service. The Assembly took its responsibility quite seriously, feeling that the men in authority in the colony would "answer before God for such evils and pains wherewith Almighty God may punish his people" for not attending church.[49]

Other of the laws concerning church attendance, such as that passed in 1661, underscored the social, rather than the religious importance of church attendance, requiring that each person attend the church or chapel in their own neighborhood.[50] By the second half of the

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[48]Morgan, American Slavery American Freedom, p. 150. See also Beth-Anne Chernichowski, "Legislated Towns in Virginia, 1680-1705: Growth and Function, 1680-1780," Unpublished M.A. Thesis, College of William and Mary, 1974, p. 71. The author suggests that settlement in the county during the 18th century was sparse.

[49]Hening, Statutes, 1:154-6.

[50]Ibid., 3:170-1. Requiring people to attend their own church also cut down on the number who, once presented for not attending church, claimed that they had been to services in another parish or county.

eighteenth century, the social, political, and economic aspects of attending church on Sunday seemingly outweighed the religious.

Philip Vickers Fithian reported that there appeared to be three divisions of time spent at church on Sundays. Time before service was spent exchanging business correspondence, reading advertisements, consulting about the price of tobacco, grain, and discussing favorite horses. The actual service, in contrast, was of minor importance. Prayers were read hastily. The sermon seldom lasted more or less than twenty minutes, and always contained sound morality, or deep studied Metaphysics. Following the service, nearly an hour was spent strolling among the crowd around the church offering or receiving dinner invitations.[51]

All persons aged twenty-one years and older were required to attend church at least once in a month. Chart (3) (see Appendix) illustrates that a large number of persons in the county could not meet even this minimal requirement. The chart also shows that a large number of presentments for not attending church resulted in dismissal. The large number of dismissals was undoubtedly a result of provisions in the law which allowed a person presented for not attending church to offer a "reasonable excuse" for his absence to the justices of the court. A smaller number of the dismissals involved "Protestant Dissenters", who, due to the Act of Toleration, were not required to attend services in the Established Church.[52]

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[51] H. D. Parish, ed., The Journal and Letters of Philip Vickers Fithian 1773-1774 (Williamsburg: Colonial Williamsburg Inc., 1957), p. 167.

[52] Hening, Statutes, 3:170 contained the provisions exempting "Protestant Dissenters" from prosecution under the Act of Toleration of William and Mary (1696). See also, 3:360.

The chart (3) reveals that the pattern of presentment for failure to attend church over the twenty-six year period was highly uneven. It would appear that attitudes towards church attendance in the county alternated between great concern and relative indifference. Arthur Scott, in a brief examination of seventeenth century York County, Virginia presentments, noticed a similar pattern.[53] He attributed the fluctuations in the number of presentments made for not attending church to the force of public opinion. When attendance at church fell to disgracefully low levels, public opinion forced a greater number of presentments until the large number of presentments became, itself, an embarrassment, at which point they dropped off. Whatever the underlying causes, the cyclical nature of presentments for not attending church is unmistakable.

Some individuals were presented on more than one occasion for not attending church. In fact, some forty individuals account for almost one-half of the two hundred and sixty-seven presentments. The worst offenders were people like William Trussell, who was presented seven times, or Abijah and Joseph Biddlecome, William Gill, and Metcalf Gill who were presented six different times. Interestingly enough, the dismissal rate for the repeat offenders was almost exactly the same as that for one-time offenders.

This study of Northumberland County presentments confirms that the laws concerning church attendance were aimed at what Scott called "Lukewarm Anglicans", rather than at dissenters. Although persons accused of petty offenses by the grand jury seldom appeared to answer

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[53]Arthur P. Scott, Criminal Law in Colonial Virginia (Chicago: University of Chicago Press, 1930), pp. 250-51.

the charge when summoned, those that did appear were almost without exception Protestant Dissenters accused of not attending church. Three such dissenters, Major William Taite, James Brown, and John Wright, appeared in Northumberland County Court to declare themselves dissenters after having been presented by the grand jury. In each case, the charge was dismissed, and only Major Taite was subsequently presented for the same offense.[54]

Eleven persons were presented for the more serious offense of misbehaving in church, seven of the presentments being made in May of 1770. While the charges against the seven presented in 1770 were dismissed, the remaining four were found guilty. Those found guilty included one woman, Winifred Reason, and the dissenter, Mr. Wright. Wright was convicted of "writing and behaving himself in an unseemly and indecent posture", thus disturbing the congregation twice in Fairfield's Church.[55] For that offense, he was fined two hundred pounds of tobacco and cask.

Other offenses against the conventional morality resulted in a large number of presentments in Northumberland County. Drunkenness, swearing, adultery, and fornication were all outlined and defined in a number of separate enactments passed by the Assembly during the seventeenth century. Most of those laws were enforced by the churchwardens. By the end of the century, what had evolved from these laws was a

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[54]Ibid. Taite was presented and convicted in November of 1761. In May of 1762, he was presented again, declared himself a dissenter, and the charges were dismissed. See Northumberland County Order Book, Reel #52, fol. 474. He was again presented in May of 1763, but again the presentment was dismissed.

[55]Northumberland County Order Book, May 14, 1759, Reel #52, fol. 59.

conflicting and often contradictory hodge-podge that hindered any efforts at law enforcement.

Beginning in 1691, the Assembly determined that it was necessary to digest these laws into one statute. That one law, the Assembly hoped, diligently enforced, would suppress vice and reform the lives of the colonists. The Assembly believed that earlier laws had been ineffective because the fines appointed in them had not been large enough, and because of imperfections in the laws in not clearly outlining methods and procedures to be followed in the prosecution of offenders. However, the Assembly did not, in this or following acts, significantly alter the amounts of the fines, nor did it detail procedures to be followed in prosecuting these offenses.[56]

However short of its other goals the Assembly may have fallen, it succeeded admirably in defining the offenses that the grand jury was expected to present. Swearing was "forbidden by the word of God" and punishable by a fine of one shilling. Doing anything "whatsoever... which tends to the prophanation" of the Sabbath day was, judging by the larger fine of twenty shillings, a much more serious offense. Adultery and fornication were described as two "filthy and grievous sins and offences as well against the law of God, as the law of man." Fornication was punishable by a fine of ten pounds sterling, and adultery, twenty pounds sterling.[57]

The Assembly considered drunkenness, rightly or wrongly, to be the cause of most other lawlessness, and it was this offense that drew

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[56]Hening, Statutes, 3:72.

[57]Ibid., 3:74.

extended comment. The "sin of drunkenness" was felt to be too common in the colony and was the "root and foundation" of "other enormous sins"; bloodshed, stabbing, murder, swearing, fornication, and the like. The Assembly also blamed strong drink for sluggish economic productivity in the colony, since it led to the disabling of many workers and the subsequent impoverishment of their families.[58]

If the offender were a servant, or some other person who was unable to pay the cash fines stipulated in the act, corporal punishment could be substituted. The penalty for breaking the Sabbath, swearing, or being drunk was three hours in the stocks. Adulterers or fornicators who could not pay their fines were subject to thirty lashes on the bare back. Monies collected by the sheriff in fines were divided into three equal portions. One third was allotted to building and repairing the church or chapel of ease in the parish, a second to the maintenance of the minister, and the remainder to whomever would sue for it by bill, plaint or information in any court of record in the colony.[59]

Few substantive changes were made in the passage of a second act against vice and immorality in 1696. The amounts of the fines were expressed in terms of pounds of tobacco, as well as pounds and shillings sterling. The fine for drunkenness was thus expressed as ten shillings or one hundred pounds of tobacco.[60] A third act returned control over distribution of the fines to the Vestry, which was to distribute the money to the poor of the parish annually, on Easter Tuesday.[61]

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[58]Hening, Statutes, 3:73.

[59]Ibid., 3:74.

[60]Ibid., 3:139. The ten to one ratio seems to have been a constant. Fines in Northumberland were always collected in that ratio.

[61]Ibid., 4:358-60.

The offense mentioned in these acts most often presented by the grand jury in Northumberland County was swearing. The two hundred and thirteen presentments for swearing resulted in one hundred and ninety-seven convictions. All but four of the presentments were made by the grand jury of its own knowledge. The small number of presentments dismissed would seem to indicate that either swearing was thought a more serious offense than not attending church, but more likely, that while missing church was sometimes excusable, swearing was not.

Some people in the county habitually absented themselves from church, and others habitually swore, or at least, they were always caught at it. Richard Pope was presented seven times, John Cottrell and James Blincoe, five times each, and Henry Christopher, four times.[62]

The pattern of presentments for swearing strongly resembles the pattern of presentments for not attending church. As chart (4) (see Appendix) illustrates, a session or series of sessions at which the number of presentments was small was often followed by a series of sessions at which the number of presentments was relatively high. There seems to be no reason not to conclude that the pressures of public opinion, as exerted upon and reflected by members of the grand jury, influenced the number of presentments for this offense.

Despite the amount of attention the Assembly devoted to the offense of drunkenness, it accounted for only a small proportion of the presentments made in the county. This small number, forty-two, is perhaps explained by the subjective definition of the offense. The Northern

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[62]Pope was presented in May of 1744, 1746, 1750, 1755, 1763 and in the fall of 1753 and 1768. Blincoe was presented in the fall of 1759 and 1760 and twice in the spring of 1760. Cottrell was presented in the fall of 1761, 1763, 1768 and in the spring of 1765 and 1768.

Neck, in which Northumberland is situated, was viewed by some as an area "where drinking...is too much in fashion."[63]

The number of presentments for drunkenness increased sharply after 1757. Only seven were made before that date, while the remaining thirty-five were made between 1758 and 1770. Curiously, of the presentments made after 1757, nineteen were made in November of 1758. Most of the presentments, in fact, were made in pairs; perhaps an indication of the nature of drinking itself.

There were ten presentments for disturbing the peace; nine made on the information of the jurors themselves, and the tenth on a complaint.[64] Only one of the presentments was dismissed, and only one man, Joseph Wildey, was subsequently presented for the same offense.

Five men were presented by the grand jury in 1752 for holding "a disorderly meeting with negroes."[65] Whatever else might be said of the events that led to these presentments, it is certain that the meeting was not conspiratorial. As described in the court record, it appears that the men organized a horse race one Sunday afternoon in a deserted area of the county. Blacks must have been present, but the court did not elaborate on their role.

Like drunkenness, swearing, and not attending church, adultery and fornication were offenses against the conventional morality of colonial Virginia. However, these sexual offenses were prosecuted

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[63]Governor Gooch to the Bishop of London (July 8, 1735) in Morton, Colonial Virginia, 2:541.

[64]The complaint was against Metcalf Gill in 1747.

[65]Northumberland County Order Book, November 13, 1752, Reel #51, fol. 362-3.

primarily for reasons of finance than reasons of morality. Illegitimate children were the common result of adultery and fornication, and these children were likely to become a charge on the parish in which they were born.[66]

The task of "keeping the parish harmless", saving it the expense of raising a bastard child, was complicated almost from the beginning, by the presence of large numbers of indentures. Laws against bastardy, generally speaking, provided that freemen should be fined and forced to post security for the child's upbringing. However, servants had little or no money; certainly not enough to pay the heavy fine of fifty shillings or five hundred pounds of tobacco, much less to post the required security. Consequently, most of the laws contained provisions allowing the master or any other interested party to pay the fine and to post the security bond for a servant. In return, the servant agreed to work for the person who had paid their court costs for an additional period of time after their indenture had expired.

One of the earliest laws awarded the masters of female servants delivered of a bastard child two years of additional service in compensation for the time lost during the pregnancy and the money spent in payment of the fine. Unfortunately, Virginia's chronic labor shortage and the relatively long period of extra service awarded to the masters of pregnant servants combined to produce an intolerable situation. In 1661/2, the Assembly declared that some unscrupulous masters were fathering their servants' children in order to claim the extra period

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[66]The concept of keeping the parish "harmless", saving it the expense of rearing bastard children, was most important. It was repeated time and again in all of the laws on the subject.

of service. Unwilling, in simple fairness, to allow that practice to go unchecked, and yet unable to forego all punishment of the servant women involved, for fear that all bastards would be blamed on their masters, the Assembly found a compromise. Thereafter, if the child's reputed father were the master, the churchwardens of the parish were authorized to sell the woman into bondage for a period of two years after her indenture expired. The master, and his family, were denied any prospect of buying the woman servant at the public sale, and the proceeds went to the parish.[67]

These seventeenth century laws safeguarded the financial interests of the parish and, so far as though necessary, the interests of the child's mother. Later in the colonial period, the Assembly set stricter enforcement of the laws in existence as its goal. In 1727, the Assembly complained that many women, upon discovering that they carried a bastard child, fled the county or colony before delivery in an attempt to escape punishment. In remedy, the Assembly ordered that the birth of a bastard child be reported to the churchwardens of the parish by the person in whose home the child was born. Failure to report the birth would result in a fine of five hundred pounds of tobacco or fifty shillings; the same as that levied on the mother.[68]

In Northumberland County, eighteen persons were presented for adultery and thirteen for fornication between 1744 and 1770. All of these presentments were made by the grand jury of its own knowledge. Fifteen of the eighteen adultery presentments, and all of the fornication presentments, resulted in conviction.

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[67]Hening, Statutes, 2:167

[68]Ibid., 4:213.

The records of the county court indicate that adultery and fornication did, indeed, result in the birth of a bastard child. Mary Anne Fountain, presented for bastardy in November of 1769, was presented for adultery in May of 1770.[69] A woman named, ironically, Mary Magdelene Lewis, was presented for bastardy and for adultery with John Clarke in November of 1766.[70] Two other women, Anne Oldham and Elizabeth Ackless, were presented for bastardy at one session of the court, and for fornication at a subsequent session.[71] Other women were presented on a number of occasions for adultery, fornication, and/or bastardy. Israel Gaskins was presented once for adultery in May of 1754, but three times for bastardy; in 1749, 1752 and 1755.[72] Helen Lancaster was presented six times for adultery stemming from what must have been a notorious affair with John Edmonds. On three other occasions, the grand jury presented her for bastardy, and each time she was found guilty and fined.[73]

Many more women were presented for bastardy, but never for adultery or fornication. In all, the grand jury made one hundred and eighty presentments for bastardy. Unlike other offenses, such as not attending church or swearing, which were also presented by the grand jury in large numbers, the bastardy presentments were spread fairly evenly over the period. In addition, fully one-third of the bastardy

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[69] Northumberland County Order Book, Reel #54, fol. 312, 370.

[70] Ibid., Reel #54, fol. 95.

[71] Ibid., Reel #53, fol. 56, 401; Reel #54, fol. 312, 370.

[72] Ibid., Reel #51, fol. 494, 296, 377.

[73] She was presented in the spring of 1767, 1768, and 1770.

presentments were made by the grand jury on the information of one of the churchwardens. Finally, nearly a quarter of the presentments ended in dismissal.

The direct interest of the parish in the prosecution of bastardy accounts for the involvement of the churchwardens. As officers of the church, they were sworn to protect its interests. While they exercised their authority only minimally in the presentment of other offenses, the financial threat to the institution they represented forced them to prosecute bastardy with vigor.

A large number of the bastardy presentments were dismissed by the court. Unfortunately, the court seldom recorded its reasons for the dismissal of any charges, and bastardy was no exception. The most likely explanation for the dismissals lies in the definition of "bastard" in Virginia law. Only if a child were both conceived and born out of wedlock would it have been considered illegitimate. "Forced" marriages, it seems likely, would have legitimized the child and resulted in the dismissal of charges.[74]

Other presentments of the Northumberland County grand jury were concerned neither with morality nor with finance, but with the administrative and licensing authority of the county government. In this category fall the construction and maintenance of the roads, the licensing and regulating of ordinary keepers and millers, and the collection of taxes.

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[74]Marriage records for this period do not exist. The Register for St. Stephen's Parish records few marriages, and since it was recopied during the 19th century, is unreliable for dates of birth and death. See also, Dominik Lasok, "Virginia Bastardy Laws: A Burdensome Heritage," William and Mary Law Review, 3rd Series, 8(Winter, 1967):402-429.

Regulations concerning the sale of liquor in colonial Virginia, with which this paper is concerned, are found in the laws on inns and ordinaries. Licenses were required for these establishments, and they were obtained by petitioning the county court. The court considered the convenience of the proposed location and the ability of the petitioner to provide the houses, lodging, and other facilities that travellers and their servants might require.[75] If the petitioner satisfied the court in these respects, he would be granted the license after posting a security bond for fifty pounds current money and paying the license fee of thirty-five shillings. The license expired after one year, but was renewable upon petition.[76]

These laws were intended to regulate the sale of liquor sold "by the drink" for "on-premise" consumption. The laws did not interfere with "package" sales by merchants or storekeepers. Presumably, then, the sixteen presentments for "retailing liquor without license", made by the Northumberland grand jury, involved persons who were operating unlicensed ordinaries. Of the sixteen presentments, seven were dismissed, and nine sustained.[77]

The building, operation, and maintenance of water mills was also supervised by the county courts of Virginia. The first step in building a watermill was to petition the county court. In some

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[75]Hening, Statutes, 6:72. See also P. A. Gibbs, "Taverns in Tidewater Virginia 1700-1774," an M.A. Thesis, College of William and Mary, 1968.

[76]Hening, Statutes, 6:75. "Nothing in this act shall be construed to prohibit merchants or persons keeping store of sale of merchandise from retailing liquor, so as such liquors be not intended to be drank...where the same shall be sold."

[77]Ibid.

instances, the court granted permission to begin construction of its own discretion. However, when the construction of the mill threatened to damage adjacent property, not owned by the petitioner, or when there were other questions concerning the project, the court called a jury to assess the probable damages to the threatened property. In any case, once permission to build was granted, the construction had to begin within one year, and the mill had to be completed within three years.[78]

Once in operation, the miller was bound by law to properly grind the grain brought to his mill, for which service he was allowed to take one-eighth of the grain for his "toll". The miller was subject to suit for damages and a fine of fifteen shillings for failing to live up to the standards set by the law. If the miller were a servant or slave, he was whipped for the first two offenses, but upon a third offense, his master had to pay the fifteen shilling fine and face the prospect of lawsuits. To insure that the grain was accurately measured at the mill, every miller was required to keep "sealed measures" of several different sizes, including one to measure his toll.[79]

Other regulations dealt with specifications for the maintenance of the mill, its dams, and any public roads which might have led over the dam. When a public road led to a dam, the miller was required to keep a road twelve feet in width, over the top of his dam. The miller was also required to provide two railings, one on either side of the road. Peer-heads or flood-gates washed away in a storm or otherwise damaged had to be repaired within one month after the miller had ground

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[78]Hening, Statutes, 6:56.

[79]Ibid., 6:59. "Sealed" measures were probably those bearing the seal of the county or provincial government.

his first bushel of grain for toll.[80]

Thirty-one millers were presented by the grand jury, all of them on the knowledge of the jurors themselves. Most of the presentments resulted from improper maintenance of the peer-heads or flood-gates at the mill. Some millers were presented repeatedly for what appears to have been the same infraction. For example, David Boyd was presented initially in the fall of 1766 for not keeping the peer-heads at his dam in fit repair, was subsequently presented in the spring of 1767, and for a third and final time in 1769. Griffin Fauntleroy and Robert Sibbalds were presented on two or three occasions for what appears to have been the same offense. However, most millers presented by the grand jury in Northumberland, two-thirds of them in fact, never had to pay the fifteen shilling fine because their presentments were dismissed. The presentment of millers in the county was not punitive, but intended to serve as a warning.[81]

The county delegated its responsibility to maintain the public roads to minor officials in each precinct of the county who were known as Surveyors of the Highways. The Surveyor was authorized to call upon any of the tithables in his precinct to supply the labor necessary to repair or construct a public road. He was also responsible for the proper supervision of any work done. If the Surveyor failed in any of his responsibilities, he was subject to a fine of twenty shillings.[82]

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[80]Hening, Statutes, 6:59.

[81]The dismissal of presentments against millers is even less surprising in light of the fact that millers, or at least mill-owners, were the social equals of the Justices of the Peace. In fact, Griffin Fauntleroy sat on the Northumberland County bench.

[82]Hening, Statutes, 6:64-68.

Twenty-six of thirty-nine presentments of Surveyors of the Highways in the county were dismissed. Presentment of the Surveyors, like the presentment of millers, was intended to warn, rather than to punish, negligent officials.

The remainder of the presentments made by the grand jury in Northumberland County were for not reporting tithables. Both the parish and the county in Virginia were dependent upon a head tax. Procedures for the collection of this tax were outlined in a number of laws throughout the colonial period, but changed significantly in 1762, the year in which the grand jury began to present concealors in large numbers.

Generally speaking, during most of the colonial period, all male persons sixteen years of age or older, as well as all negro, mulatto, or Indian women of the same age were considered "tithables", or chargeable for defraying the expenses of the county and parish. Each justice of the local court was responsible for making a list of tithables in one of the county's precincts. A notice was posted on the church door each year by the tenth of June announcing when and where the justice for each particular precinct would be making his list. The master or mistress of each household had the responsibility of seeing that an accurate list of the tithables within his or her charge was delivered at the appointed time and place. If the master or mistress were ill, another person had to be appointed to deliver the list. At the August session of the court, a list from each precinct was given to the Clerk of Court, who made a copy and posted it on the door of the church for public inspection and to encourage the reporting of concealors.[83]

[83]Hening, Statutes, 4:259-60, 260. The particular law referred to here was passed in 1705.

In 1761, the procedures were changed because the Assembly suspected that frauds had been committed by the sheriffs in collecting the taxes. A justice was still required to take a list in each of the county's precincts, and the head of each household was still responsible for reporting his or her tithables to that justice. However, the copies made by the Clerk of Court were not only posted on the door of the church, but given to the grand jury for its inspection. Upon inspection of the lists, the grand jury presented those it suspected of being concealors. These presentments were handled in the same manner as all other grand jury presentments. The court summoned those presented to appear at the next session of the court to answer the charge. The county court had authority to hear and determine these cases and to impose punishment without the involvement of a petit jury.[84]

Fines for concealing tithables were extremely high, particularly in relation to the amounts of the fines for other offenses routinely levied as a result of grand jury presentment.[85] For each hundred acres of land concealed, the fine was twenty shillings. For each carriage wheel, the fine was three pounds, for each two-wheeled chaise or chair, thirty shillings, and for each tithable person concealed, five pounds paid in current money or one thousand pounds of tobacco. Informers were encouraged to come forward with their information concerning concealors of tithables by the promise of one half of the fine collected.[86]

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[84]Hening, Statutes, 7:539, 540-41. This law was an unpopular one, since the revenues it raised were for defraying the expenses of the French and Indian War. It is even questionable that the Assembly passed this law with the intention of seeing it enforced. See below.

[85]See Table (1), Appendix.

[86]Hening, Statutes, 7:539.

Theoretically, these changes made the collection of taxes in the colony. However, the choice of the grand jury as the agency to enforce the law was a poor one. Clearly, that body acted primarily as a guardian of local morality. The grand jury was hampered in any type of investigation because it lacked the authority to summon persons or documents. It seems unlikely that the grand jury would have been capable, then, of uncovering the objective evidence necessary to the successful prosecution of concealors of tithables. The protection of the financial interests of a local institution was a responsibility which the officers of those institutions, in Northumberland County, seem to have taken seriously, and was a task which they were best equipped to perform. Ultimately, of course, the officers of the county were responsible for the enforcement of this tithables law, and in spite of the best intentions of the Assembly, could not be kept honest by the grand jury. Fines were imposed by the Justices of the Peace, who served in rotation as sheriff for the county, the very officer the Assembly claimed to distrust.

In 1762, four concealors were presented by the grand jury, of its own knowledge, but three of these presentments were dismissed. In November of 1763, four more presentments were made, two by the grand jury of its own knowledge, and two on the information of Richard Hudnall, a vestryman. One of the presentments made on Hudnall's information was dismissed, and the two made by the grand jury of its own knowledge were likewise dismissed.

Not until 1765 were concealors of tithables presented in large numbers. That year, the grand jury made thirty-five presentments based on the information of four different individuals, not members of the

grand jury. These thirty-five presentments netted only nine convictions. The four informers were Thomas Hudnall, George Philips, James Champion, and William Angell. All of these men were prominent in the county, and William Angell was, at that time, serving as an Under-sheriff.

Thirty more concealors were presented during the next five years, one third on the information of persons who were not members of the grand jury. Eighteen of the presentments were dismissed and twelve resulted in convictions. However, some of those found guilty of concealing tithables had their fines remitted by the justices. By 1770, a total of ninety-five presentments had been made under the tithables law of 1761. Fifty-three of the presentments were made on the information of persons who were not members of the grand jury, and forty-six of the ninety-five ended in dismissal.[87]

Each time that a grand jury presentment was sustained by the justices of the county court, a fine was levied on the offender. Table (1) (see Appendix) presents the amount of the fine levied for each of the different offenses prosecuted in Northumberland by the grand jury. Clearly, the amount of the fine reflected the seriousness of the offense and, in some cases, was intended to make obeying the law less expensive than breaking the law.

All of the fines collected from grand jury presentments in the county were allocated to the use of the poor of the parish in which the

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[87]See Northumberland County Order Book, Reel #52, fol. 366; Reel #53, fols. 2, 247, 296, 323, 372, 430, 492-502, 538; Reel #54, fols. 133, 151, 163, 196, 323.

offender lived.[88] The smallest of the fines was five shillings or fifty pounds of tobacco, and the largest, one thousand pounds of tobacco. Most of the fines actually levied in the county ranged from five to ten shillings, or from fifty to one hundred pounds of tobacco.[89]

The amounts of the fines are more meaningful when expressed in terms of the commodities that they could have bought, rather than in terms of pounds and shillings or hundredweight of tobacco. Land in the county, albeit improved land, seems to have sold for about one pound current money per acre. A day laborer or carpenter, who earned about

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[88]The Assembly experimented with different methods of collecting and disbursing the fines. At one time, the Churchwarden of the parish was authorized to collect the fine at the parish levy, but no mention was made of any accounts that he might keep or in what ways the money might be put to use. See Hening, Statutes, 1:144; 2:48, e.g. In 1661/2 the Assembly concluded that some evil "Commonwealth's man", or else inefficient churchwardens, were preventing fines levied from being collected. They decided to maintain an accounting of the fines for themselves. See Hening, Statutes, 2:75. The different methods of distributing the money collected in fines was mentioned above, p. 26.

[89]As small as most of the fines levied appear to have been (see Table (1), Appendix), they do not represent all of the costs to an individual that might result from a grand jury presentment. Clerks of Court, Sheriffs, and other officers collected their own fees, in addition to the fines, and these were sometimes as large or larger than the fine itself.

Clerks of Court were allowed twelve hundred pounds of tobacco per year for the performance of certain "public services", such as recording the proceedings of the county grand jury. When a presentment of the grand jury was dismissed, the Clerk of Court received no fees, and the work he did was considered as part of his "public services". When a person was convicted, however, "...the Clerk shall charge him or her or them...with all fees accruing thereon." See Hening, Statutes, 5:336. Clerk's fees could be substantial. A Clerk was allowed to charge a shilling for each writ he issued, and a half-shilling for each copy of a writ. He was also allowed one and one-half shilling for each order he entered in the record.

Sheriffs were granted a similar annual stipend for "public services" rendered. Like the Clerk, he received his own fees in a grand jury presentment only if the offender were found guilty. Sheriffs were allowed three shillings for an arrest, one and one-half for an attachment, one and one-half for whipping a servant, and two shillings for whipping a freeman. See Hening, Statutes, 5:339.

five shillings a day, might never have been able to buy land, and he probably would have had difficulty paying the fine and costs of court resulting from a grand jury presentment.[90]

Sheriffs' accounts, orphans' accounts, and inventories of estates offer further insight as to the real meaning of a fine to those who paid it. In searching for a runaway servant, Robert Sibbalds was forced to hire two days labor at five shillings per day. Servants or slaves were often hired out by the administrator of an orphan's estate. The money earned by hiring out servants, which interestingly enough always balanced exactly with the expenses of keeping the orphan for a year, might be as little as three pounds or as much as five pounds and ten shillings.[91]

Among the items contained in an inventory of the estate of George Kerr, evidently a merchant or storekeeper, were two pairs of men's shoes valued at five shillings a pair; two pairs of pumps for four shillings and sixpence each. There were also two gunlocks which were valued at two shillings, sixpence, and two shillings, ninepence, respectively. Four pounds of cinnamon was valued at six shillings, onepence, and one pound of mace, at two shillings and sixpence.[92]

Livestock was another important possession for people in Northumberland County. A cow and her calf were generally valued at thirty shillings. A sow might be worth eight shillings. Sheep seem to have been the least expensive animals. They were generally valued

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[90] Northumberland County Deed Book, Microfilm (Richmond: Virginia State Library), Reel #6, passim.

[91] Ibid., fols. 851, 259, 283, e.g.

[92] Ibid., fol. 29, passim.

at six shillings a head. Horses were important to transportation, as well as to farm life, and seem to have been the most expensive of animals. Depending, perhaps on the age and condition of the animal, as well as its intended use, the value of a horse varied from as little as one and one-half pounds to as much as twelve or fifteen pounds.[93]

Table (2) (see Appendix) reports the amount of the parish levy for one parish in Northumberland County. It is evident that the fines paid upon presentment by the grand jury represented a very small portion of the money collected in the annual levy. On the average, the parish levy was some thirty-five thousand pounds of tobacco, distributed amongst one thousand tithables at thirty-five pounds of tobacco, or three and one-half shillings, per tithe. A fine of five shillings, for example, levied on a parishoner who failed to attend church, was a pittance to the church that received it, but the equivalent of almost two additional tithes to the person who paid it.

There are a number of general studies on the subject of grand juries. Holdsworth devoted several chapters in his multi-volume, A History of English Law, to this institution, and Maitland, some pages, in his A Sketch of English Legal History. More recent studies of the grand jury have been more technical in their approach, and tend to argue either that the institution is antiquated and manipulated by clever prosecutors seeking political advantage, or else that it stands as a most important bulwark between the people and "statism".[94]

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[93] Northumberland County Deed Book, fols. 41, 115, 55, 53, 161.

[94] Wayne Lyman Morse, "A Survey of the Grand Jury System," a J.D. Thesis reprinted from the Oregon Law Review 10(1932):nos. 2-3, argues the former; and Richard D. Younger, The People's Panel (Providence: American History Research Center, Brown University Press, 1963), the latter.

All of these studies view the grand jury as it functions within the legal-political system. This study has attempted to view the grand jury of one Virginia county within a social context, rather than a political-legal context.

It was possible to view the Northumberland grand jury in this light because it did not conform to patterns that general histories of grand juries, and primary source material from other colonies suggested. During the colonial period, the /behavior of/ grand juries in several colonies including Virginia might find a true bill against a suspected murder or merely make presentment of the town drunk, depending upon the jurisdiction of the court it served. In some colonies, county grand juries reported the misdoings of local secular and clerical officials to the Provincial government, or even to the Crown. Very often, county grand juries complained about what its members considered public nuisances, or made suggestions that might be incorporated into by-laws. In Northumberland, the grand jury made no complaint concerning local administration nor was its advice on by-laws for the county offered or solicited. Instead, the grand jury for the county concerned itself, almost exclusively, with the enforcement of laws against vice and immorality.

In focusing its attention on the enforcement of these laws, the grand jury followed the instructions given it by the Assembly, but also gave expression to certain community values as well. In Virginia's colonial legal order, governmental operations reflected a faith in the division of labor regarding individuals as well as institutions. When the people most qualified to perform a task were given that responsibility, the Assembly could be most certain that the responsibility

would be discharged. Thus, time and again, the Assembly gave responsibility over the enforcement of laws against vice and immorality to those best qualified for the task, the people of the community. Other bodies were better suited to deal with larger questions of colonial policy and criminal justice.

The Assembly took some pains to insure that the men called upon to act as grand jurors shared in the written and unwritten compacts that bound their community. Although not all voters were grand jurors, all grand jurors were voters. Each man had demonstrated evidence of a permanent attachment to and a common interest with his community. Each man who served as a grand juror was expected to have a respect for God, his neighbors, the family, property, and the social order. These were the values of the community that the grand juror swore to protect.

The maintenance of local order and unity was the responsibility of the grand jury. The men and women that the grand jury presented were the Black Sheep that had to be brought back to the fold of the community if its values were to survive. The fact of presentment alone brought some pressure to bear upon these individuals. Sometimes this subjection to public scrutiny sufficed and the court could forego further punishment. Such was the case in the presentment of the Reverend Smith for not reading an act entitled, "An act for the effectual suppression of vice and restraint and punishment of blasphemous, wicked, and dissolute persons." Similarly, presentments against mill-owners and surveyors of highways were usually dismissed because the focus of public attention resulted in the desired remedy making the addition of a fine superfluous.

In matters of petty immorality such as swearing, or not going to church, the harm done could not be remedied, and the sting of a fine was added to the embarrassment of the presentment. More serious offenses such as adultery, fornication, or bastardy involved a financial as well as a moral threat to the community. In such cases, the court usually required the posting of a security bond in order to keep the parish "harmless", and levied a large fine as a reminder of the importance of the family unit.

The most important party involved in grand jury presentments was neither the grand juror-freeholder nor the offender, but the community itself. The presentments of the Northumberland grand jury outlined the limits of acceptable behavior in the county. Whatever action the court might take in disposing of a presentment, the values of respect for God, neighbors, family, property, and the social order found expression and were given new life.

APPENDIX

Figure 1

Presentments of
the Grand Jury
1744-1770

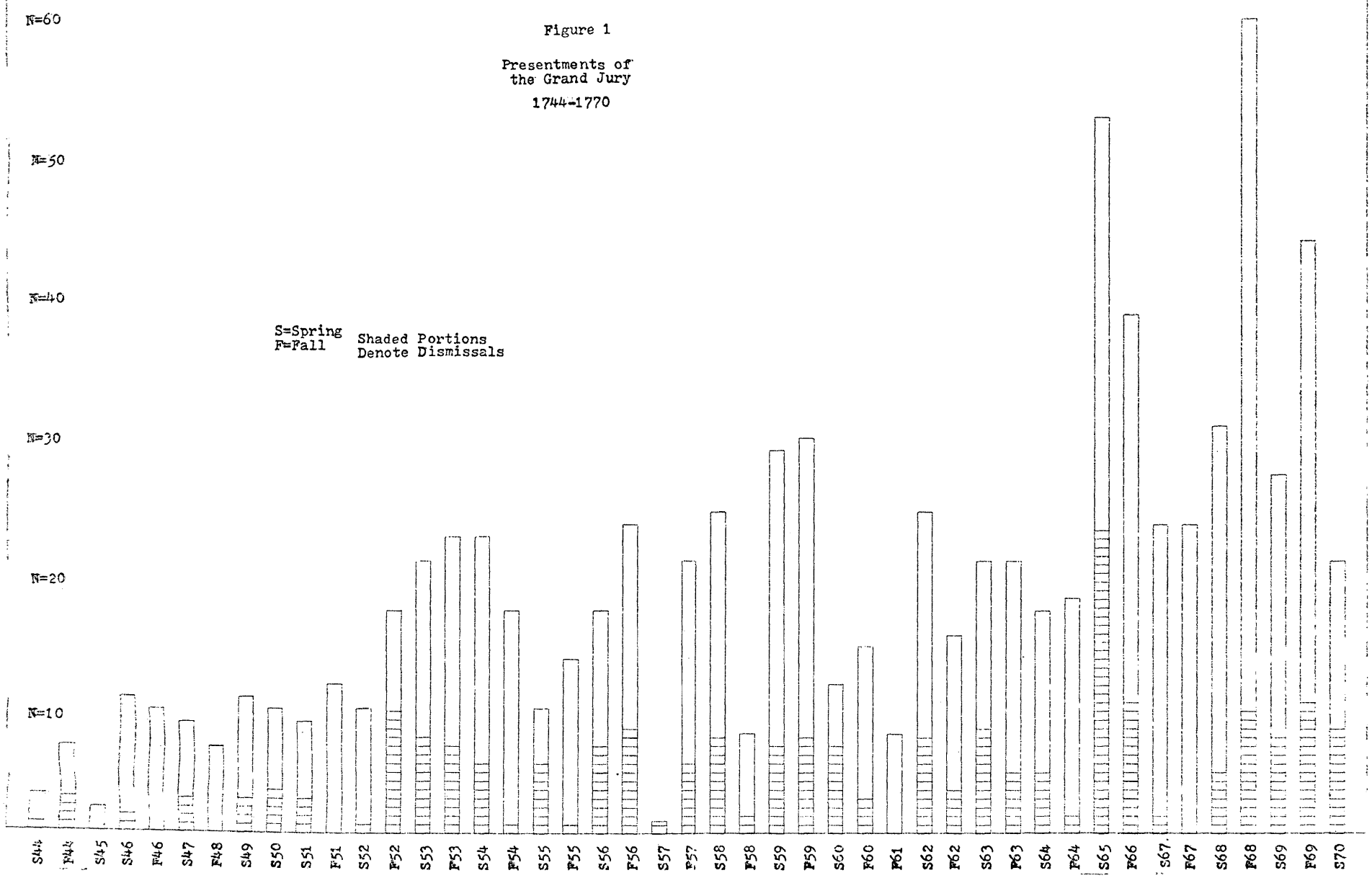
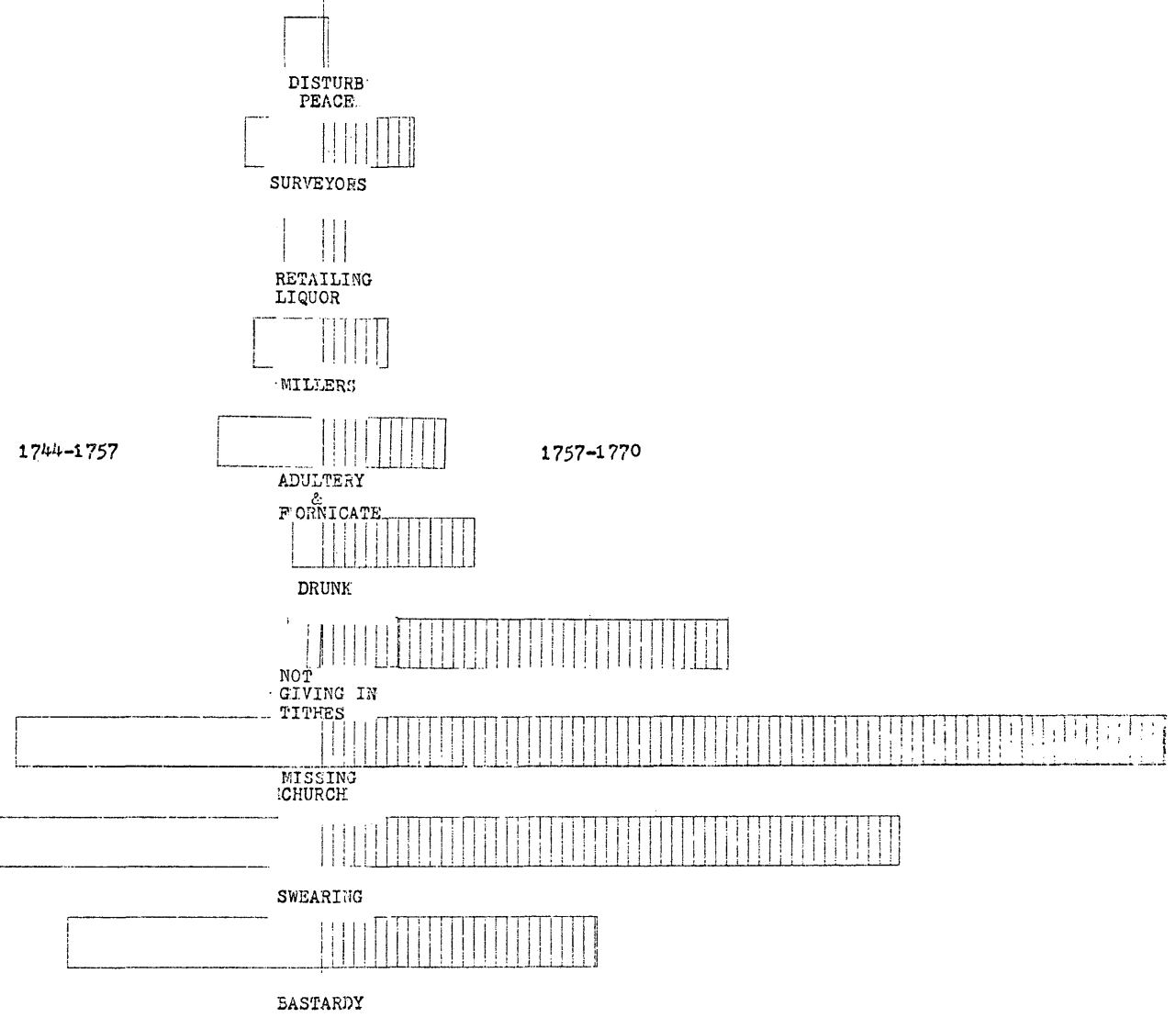


Figure 2

PRESENTMENT OF EACH OF THE OFFENCES BEFORE AND AFTER 1757

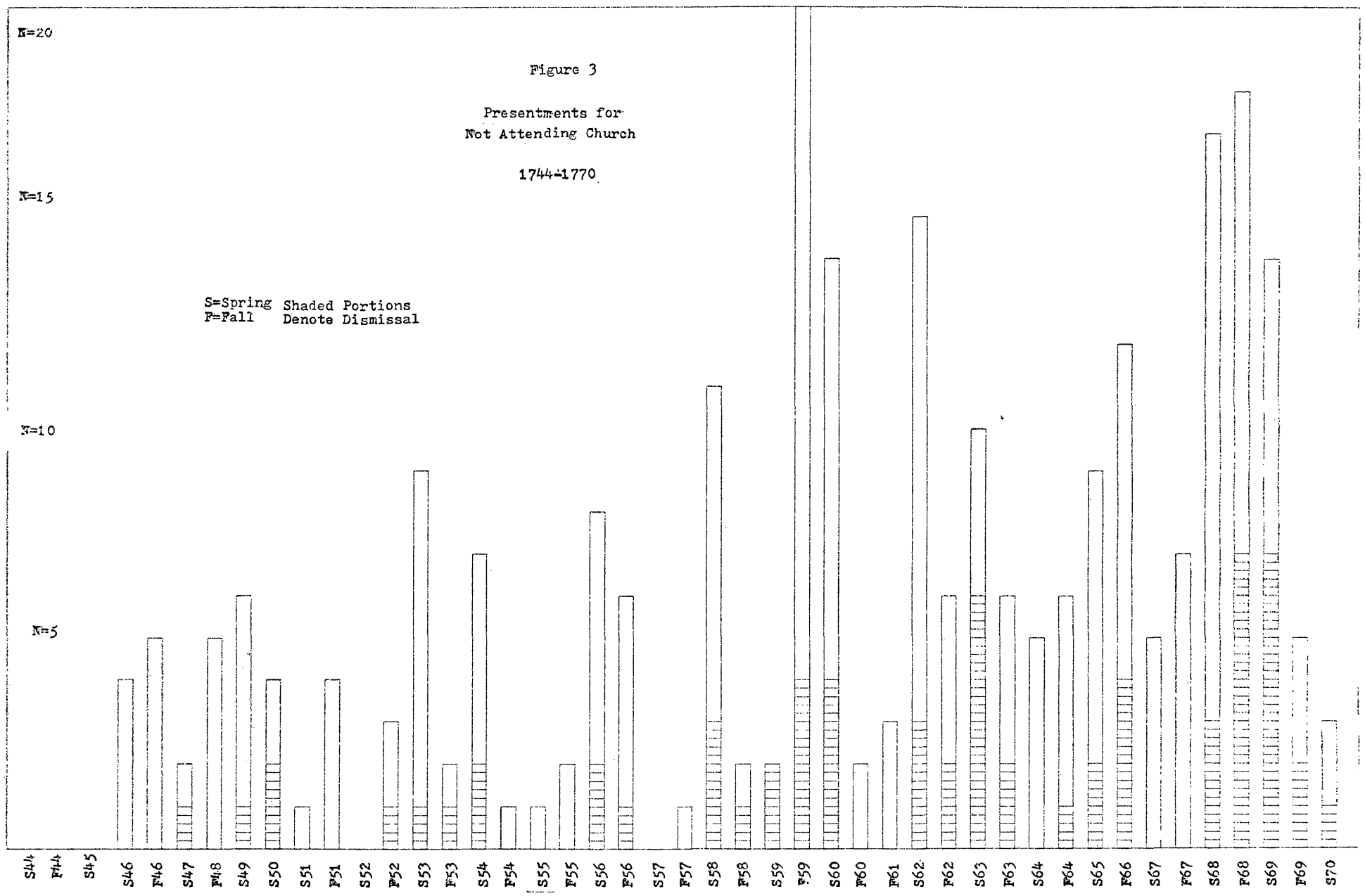


[redacted]

Figure 3

Presentments for
Not Attending Church

1744-1770



[redacted]

Figure 4

Presentments for Swearing

1744-1770

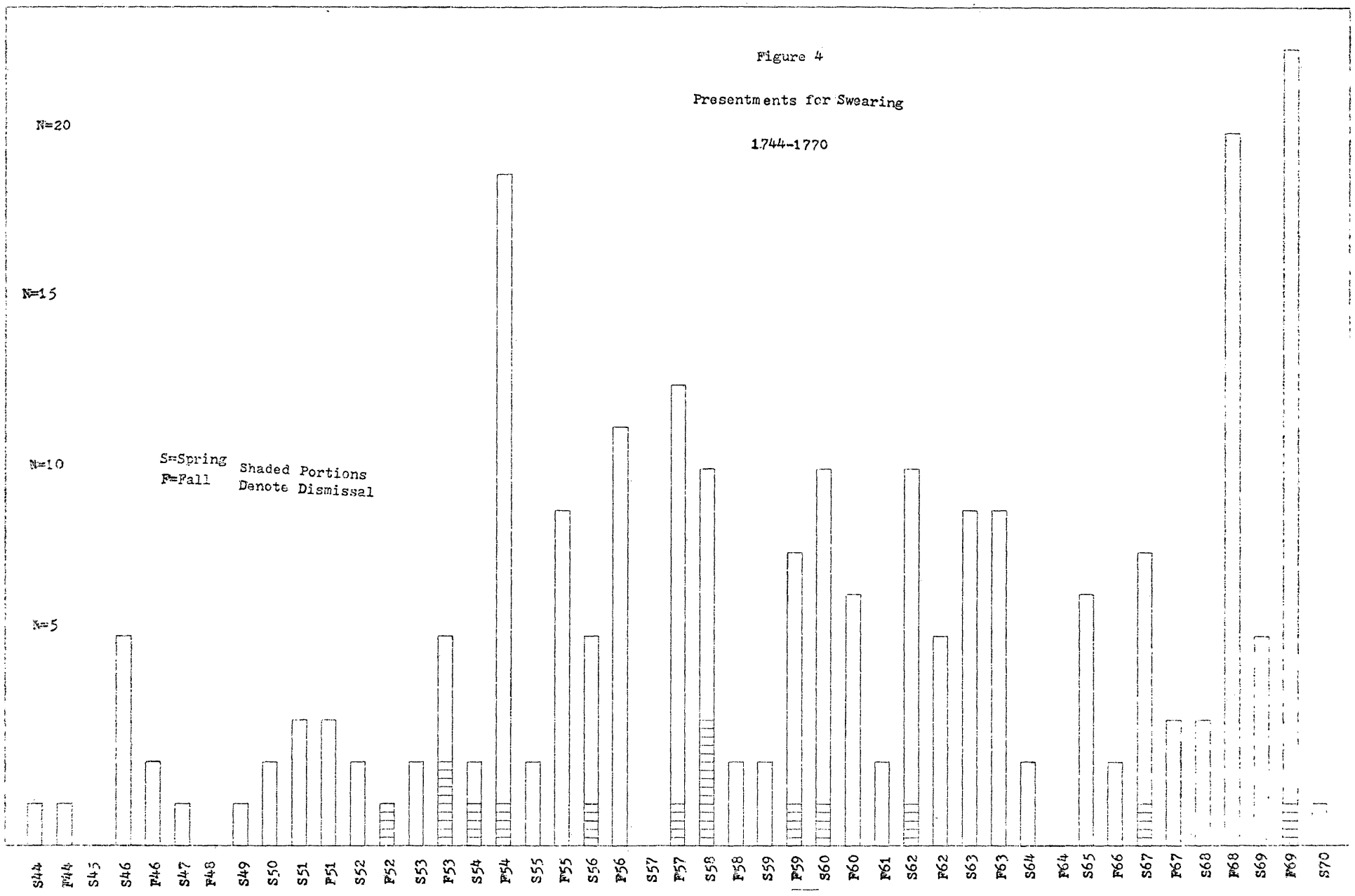


TABLE (1)

AMOUNTS OF FINES IN SHILLINGS AND POUNDS OF TOBACCO
LEVIED FOR SEVERAL OFFENSES

	Shillings	lbs. Tobacco
Not going to church	5	50
Swearing	10	100
Drunkenness	10	100
Adultery	20	200
Fornication	20	200
Bastardy	50	500
Against millers	15	150
Against surveyors of highways	15	150
Retailing liquor without license	15	150
Not giving in tithables	50 per	500 per

TABLE (2)

ANNUAL PARISH LEVY FOR WICOMICO PARISH, 1744-1770

Year	Number Tithes	Tobacco(lbs.)	Lbs./Tithe
1744	910	19,610	22
1746	937	28,818	31
1747	944	22,357	24
1748	921	29,501	32
1749	955	41,230	43
1750	979	20,966	22
1752	973	30,322	31
1753	985	78,205	79*
1756	1028	30,649	29
1757	1028	26,262	25
1758	1015	26,048	26
1759	1024	25,600	25
1760	1063	28,742	27
1761	1114	52,639	47
1762	1106	55,809	50
1763	1121	58,483	52
1764	1120	53,760	48
1765	1160	38,982	33
1766	1114	44,923	40
1767	1146	38,231	32.5
1768	1163	39,202.5	33
1769	1211	33,641	27
1770	1158	40,530	35

*For a new church building.

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