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## **Loyalist or Patriot: The Precarious Position of Edmund Randolph, 1774-1786**

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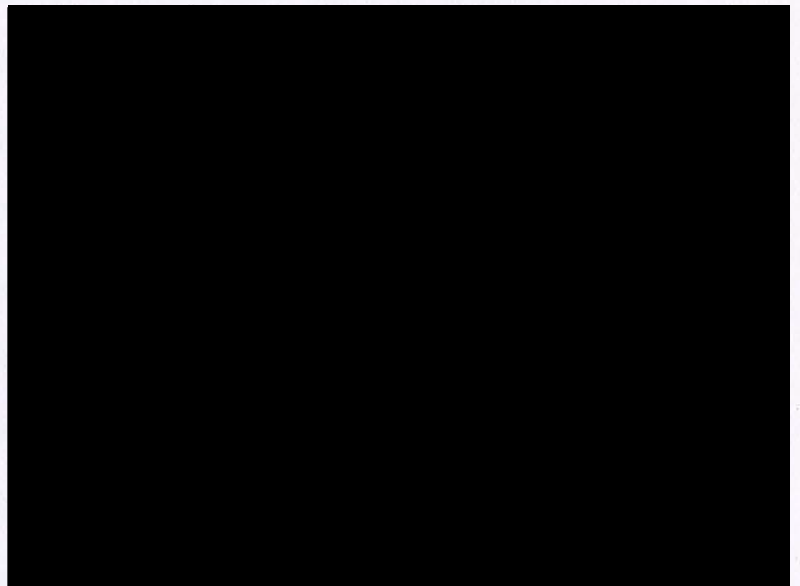
LOYALIST OR PATRIOT: THE PRECARIOUS POSITION  
OF EDMUND RANDOLPH, 1774-1786

by

Tanisha Jean Staten

A Thesis  
Submitted to the Graduate School  
of The University of Southern Mississippi  
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ABSTRACT

LOYALIST OR PATRIOT: THE PRECARIOUS POSITION  
OF EDMUND RANDOLPH, 1774-1786

by Tanisha Jean Staten

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On May 29, 1787, Governor Edmund Randolph took the floor of the Constitutional Convention in Philadelphia with a radical plan for a new federal government. Randolph was a key member of the influential Virginia delegation which paved the way for United States' Constitutionalism. An examination of his early life, legal career, and politics offers a new lens with which to view the emergence of American constitutional ideology. Building off the work of T.H. Breen, who argues that Virginia's landed gentry inhabited a distinct culture, this work illuminates the dynamics of these elites who were absolutely pivotal in shaping a new sense of "American Constitutionalism" in the early Republic. Additionally, Shelia Skemp and Willard Sterne Randall's dual biographies of Benjamin and William Franklin illustrated that biography is a fruitful research avenue for understanding not only revolutionary politics, but also the dynamic involved in revolutionary loyalism among elite families in the era. Based on a rich trove of primary sources such as government documents, personal papers, and newspapers, this modern intellectual biography of Edmund Randolph will add a crucial element to the revolutionary politics of this era. A study of the patriot and loyalist divide, through the lens of the early life and times of Edmund Randolph, allows a richer understanding of Edmund Randolph's political education and make up. Edmund Randolph's early years make it possible to see the bifurcation of the Virginia social elite,



which had important implications for the construction of a new American brand of constitutionalism.



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## CHAPTER I

## INTRODUCTION

The unincorporated town of Millwood, located in the lower Shenandoah River valley, is home to Old Chapel, one of the oldest Episcopal churches in Virginia. Not only did Lord Fairfax attend services there in the late eighteenth century, but it is also the final resting place of Colonel Nathaniel Burwell and Edmund Jennings Randolph.<sup>1</sup> At first glance, Randolph's gravesite seems rather ordinary. The grave marker simply lists his name and the dates and places of his birth (August 10, 1753, Tazewell Hall, Williamsburg, Va.) and death (September 13, 1813, Carter Hall, Millwood, Va.). A closer look reveals a faded bronze plaque with the Freemason emblem in each corner with an inscription that reads:

## EDMUND-RANDOLPH

Aide-de-camp to Washington	1775
First Attorney General of Virginia	1776
Member Continental Congress	1779
Governor of Virginia	1786
Grand Master of Masons in Virginia	1786
Member Constitutional Convention	1787
First Attorney General United States	1789
Secretary of State United States	1794. <sup>2</sup>

Further investigation shows that the memorial was dedicated in 1929 by the Freemasons Grand Lodge of Virginia. Governor Harry F. Byrd was among those in attendance at the dedication, and the Colonial Dames of America and the Daughters of the American

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<sup>1</sup> Historical Marker, Old Chapel site, Millwood, Virginia.

<sup>2</sup> Freemasons, Grand Lodge of Virginia, *Dedication and Unveiling of Memorial to Edmund Randolph by the Grand Lodge, Ancient Free and Accepted Masons of Virginia. Old Chapel, Clarke County, Virginia, September 13, 1929* (Berryville, Va., 1929), Special Collections, The Library of Virginia, Richmond, Va.



Revolution laid ceremonial wreaths.<sup>3</sup> Why one hundred sixteen years passed before someone of Edmund Randolph's stature received official recognition for his political contributions to both Virginia and the Early American Republic is a mystery. Equally perplexing is the fact that his final resting place was so far away from his family's burial vault, located under the Chapel of the Wren Building at the College of William & Mary in Williamsburg. Who was this unsung Founding Founder and why has his story been so neglected, either consciously or unconsciously, in the existing historiography? These are the main questions that drive this research.

Governor Edmund Randolph was a member of the prominent Virginia delegation to the Constitutional Convention of 1787 in Philadelphia. In fact, it was he who "opened the main business" and introduced a radical plan for a new federal government.<sup>4</sup> The Virginia Plan (also known as the Randolph Plan) led to three months of heated debates and ultimately to the creation of the Federal Government. To this day, many important facets of the plan can be found in the text of the United States Constitution.<sup>5</sup> Thus, Virginia's delegation was instrumental in helping build the foundation of American constitutionalism, which has evolved and endured for over two centuries.

The traditional historiography of the American Revolution is awash with narratives of the more famous founders of the Revolutionary generation, such as George Washington, Thomas Jefferson, John Adams, Benjamin Franklin, and James Madison. In recent years, there has been a rise of social and cultural histories of the American

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<sup>3</sup> Freemasons, *Dedication and Unveiling of Memorial to Edmund Randolph*.

<sup>4</sup> James Madison, *Notes on the Debates in the Federal Convention*, Avalon Project, Yale Law School, [http://avalon.law.yale.edu/18th\\_century/debates\\_529.asp](http://avalon.law.yale.edu/18th_century/debates_529.asp) (accessed December 17, 2012).

<sup>5</sup> National Archives, *Virginia (Randolph) Plan as Amended* (National Archives Microfilm Publication M866, 1 roll); *The Official Records of the Constitutional Convention; Records of the Continental and Confederation Congresses and the Constitutional Convention, 1774-1789*, Record Group 360; under "Our Documents," <http://www.ourdocuments.gov/doc.php?flash=true&doc=7> (accessed March 7, 2012).



Revolution and the Early Republic that have shifted away from this “great man history.” Although there is no denying the importance of the inclusion of non-elites into the historiography, the narratives of the Founding Fathers remains incomplete, as history has all but ignored many men who contributed significantly to the formation of the United States.

The truncation of these overlooked leaders has resulted in the illusion that they were nothing more than second-rate figures in comparison with the more celebrated founders. This is simply not true. These overlooked men held crucial roles in the establishment of a free and independent nation. Their ideas inspired their colleagues and the people, and they, too, helped shape a new constitutional order that became distinctly American. As such, men like Edmund Randolph, constitute forgotten founders.

Edmund Randolph does not fit the typical pattern of his fellow founders. Prior to the American Revolution, Randolph was a key member of Virginia’s landed aristocracy. His family emigrated to Virginia in the mid-seventeenth century during the English Civil War. In 1669, Edmund’s great-grandfather, William Randolph of “Turkey Island,” settled in Virginia and established what would become one of the most politically powerful families in the colony.<sup>6</sup> The Randolphs were influential in the government of colonial Virginia for over one hundred years. Edmund Randolph’s grandfather, John, the King’s attorney for the colony, was the only native-born Virginian to be knighted by the Crown.<sup>7</sup> His father, John Randolph, served as colonial Attorney General, as did his uncle Peyton,

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<sup>6</sup> H.J. Eckenrode, *The Randolphs: The Story of a Virginia Family* (Indianapolis and New York: The Bobbs-Merrill Company, 1946), 30.

<sup>7</sup> Emory G. Evans, *A “Topping People” The Rise and Decline of Virginia’s Old Political Elite, 1680-1790* (Charlottesville: University of Virginia Press, 2009), 85.



who later became President of the First and Second Continental Congresses.<sup>8</sup> Their marriages to members of other prominent families in the colony produced one of the best connected political families in America. Thomas Jefferson's mother, Jane, was a Randolph; as was Chief Justice John Marshall's mother, Mary. In 1776, Edmund Randolph continued his family's long-held tradition of public service when he became the youngest man ever elected to the House of Burgesses at the age of twenty-three.<sup>9</sup> That same year, he became the first Attorney General for the State of Virginia, a position which he held for ten years. Edmund went on to become the most accomplished member of the Randolph family, holding more (and more prominent), offices than any of his ancestors. In 1786, he was elected as the youngest Governor of Virginia and later served as the first Attorney General of the United States, before being the Secretary of State in George Washington's administration.<sup>10</sup> The Randolph family of Williamsburg embodied the social culture of the Virginia gentry who were so pivotal in shaping a new sense of "American Constitutionalism."<sup>11</sup>

Prior to the conflict with Great Britain, the Virginia gentry was, for the most part, a closely-knit brotherhood of elite landowners.<sup>12</sup> However, the outbreak of the American Revolution led to the bifurcation of this group and resulted in conflicts which pitted brother against brother, father against son, and neighbor against neighbor. In 1774,

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<sup>8</sup> Emory M. Thomas, "Edmund Randolph: His Own Man," *Virginia Cavalcade* 18, no. 4 (1969): 4.

<sup>9</sup> Thomas, "Edmund Randolph," 6.

<sup>10</sup> Thomas, "Edmund Randolph," 7-10.

<sup>11</sup> In this thesis, the "Virginia gentry" may be defined as a class of politically powerful men who "were wealthy, derived part of their income from planting, often related to the great Virginia families, were Anglicans, were of English (or at least of British origin), had attained a high educational level for the time and place, were experienced in local politics, and came from areas settled for at least a generation." Jack P. Greene, "Foundations of Political Power in the Virginia House of Burgesses, 1720-1776," in *Negotiated Authorities: Essays in Colonial Political and Constitutional History* (Charlottesville and London: University Press of Virginia, 1994), 244-245.

<sup>12</sup> Evans, *A "Topping People,"* 3.



Virginia caught the revolutionary fervor that swept across the American colonies.<sup>13</sup>

Although the majority of Virginia's political elite became Patriots, a handful remained loyal to the Crown. Some of these loyalists (or Tories, as they came to be called) were from the most influential families in colonial Virginia.

No Patriot/Tory split was more scandalous than the division of the colony's first family, the Randolphs. As Speaker Peyton Randolph presided over secret meetings of the disbanded Virginia House of Burgesses at Williamsburg's Raleigh Tavern, his younger brother, John, the King's attorney for the colony, advocated quick reconciliation with the Crown. The Randolph family was dealt a further blow when just a few weeks prior to his departure for Great Britain in late 1775, John's only son Edmund joined General George Washington's army as an aide to fight the British. As a result, Edmund was placed in the precarious position of advocating independence while his father John made the controversial and unpopular decision to remain loyal to Great Britain.

This patriot and loyalist split among elite leaders, although uncommon, was not exclusive to the Randolph family. William Franklin, the son of founder Benjamin Franklin, also remained loyal to the Crown.<sup>14</sup> George William Fairfax, a close personal friend and confidant of George Washington, was also a loyalist. This divide greatly

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<sup>13</sup> See Woody Holton, *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture at Williamsburg, Va. by the University of North Carolina Press, 1999) and John E. Selby, *The Revolution in Virginia, 1775-1783* (Williamsburg, Va.: Colonial Williamsburg Foundation; Charlottesville: Distributed by University Press of Virginia, 1988).

<sup>14</sup> See Wallace Brown, *The King's Friends: The Composition and Motives of the American Loyalist Claimants* (Providence, RI: Brown University Press, 1965); and Robert McClure Calhoun, *The Loyalists in Revolutionary America, 1760-1781* (New York: Harcourt Brace Jovanovich, Inc., 1965); Mary Beth Norton, *The British-Americans: The Loyalist Exiles in England, 1774-1789* (London: Constable and Company, Ltd., 1974); Willard Sterne Randall, *A Little Revenge: Benjamin Franklin at War With His Son* (New York: Quill/William Morrow, 1984); and Shelia L. Skemp, *Benjamin and William Franklin: Father and Son, Patriot and Loyalist* (Boston and New York: Bedford Books of St. Martin's Press, 1994).



touched the lives of the Constitution-making founders and influenced their ideas regarding republican government. Examination of the Whig/Tory split in the Randolph family allows for a richer understanding of how the Revolution affected Virginia elites who became nation-builders.<sup>15</sup>

Although he was highly respected among his contemporaries, Edmund Randolph's inclusion in the narrative of the American Founders has been overlooked. Perhaps, it is because he was controversial due to his practice of remaining neutral in the predominant ideological warfare of the Founding Fathers that resulted in Federalist and anti-Federalist factions after the 1787 Constitutional Convention. In addition, Randolph frequently changed his political positions including refusing to sign the United States Constitution, the very document he fought for so judiciously. In many respects, Edmund Randolph's early life differed from the majority of Virginia's elite. He was raised in the bustling colonial capital of Williamsburg and was exposed to the political and social culture of colonial Virginia on a daily basis. However, despite his family's domination of colonial affairs-of-state and the Virginia gentry, he realigned himself with the political elites at the beginning of the American Revolution because of his father's Tory leanings. Randolph, fearful that his patriotism would be questioned, secured recommendation letters from Thomas Jefferson, Richard Henry Lee, Patrick Henry, and Benjamin Harrison in his quest to fight for the American cause.<sup>16</sup>

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<sup>15</sup> In this thesis, the terms "Tory" and "loyalist" will be used interchangeably and may be defined as "an individual who actively or passively opposed independence from Great Britain." Bruce G. Merritt, "Loyalism and Social Conflict in Revolutionary Deerfield, Massachusetts," *The Journal of American History* 57, no. 2 (Sep., 1970): 278, note 6.

<sup>16</sup> Virginia Delegates to Congress to George Washington, Philadelphia, July 26, 1775, quoted in John P. Kraminski and Timothy D. Moore, eds., *An Assembly of Demigods: Word Portraits of the Delegates to the Constitutional Convention by Their Contemporaries* (Madison, WI: Parallel Press for The Center for the Study of the American Constitution, 2012), 190.



Edmund Randolph was an important player during this critical time in American history. He held many significant state and federal offices, yet very little historical literature has been written about him. Only two biographies exist. In 1888, a biographical sketch was published by one of his descendants, Moncure Conway.<sup>17</sup> The emergence of social and cultural history in the 1970s provided historians with new methodologies and a heightened sensitivity to primary sources, which allowed them to examine the political culture of colonial and Revolutionary Virginia. This resulted in John Reardon's historical study of Edmund Randolph in 1975.<sup>18</sup>

Reardon's work was the first comprehensive biography of Edmund Randolph's life and his unique contributions to the founding of the United States. Rich in primary source material, such as government documents and correspondence, the book portrays Randolph as a moderate politician who remained neutral despite the increasing factionalism between the Federalists and anti-Federalists. Reardon explores Edmund Randolph's political career with particular emphasis placed on his roles in the Constitutional and Virginia Ratification Conventions and his tenure as the first United States Attorney General. He concludes that Randolph's middle-of-the-road approach was both misunderstood and his contributions to American constitutional law grossly underappreciated. While this study will utilize Reardon's work, it focuses instead on Edmund Randolph's early career through his election as Governor of Virginia in 1786. It will further highlight the political culture of the influential Virginia delegation as a lens through which to view the evolution of American constitutionalism.

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<sup>17</sup> Moncure Daniel Conway, *Omitted Chapters of History Disclosed in the Life and Papers of Edmund Randolph, Governor of Virginia; First Attorney-General United States, Secretary of State* (New York: G.P. Putnam's Sons, 1889, c. 1888, Microform).

<sup>18</sup> John J. Reardon, *Edmund Randolph: A Biography* (New York: MacMillan Publishing Co., Inc., 1975).



It is necessary to look at two themes explored in this thesis to understand the study's place in the existing historiography. The first theme will examine the Randolph family's position in the influential Virginia gentry. The second focuses on the Whig/Tory split among elites in the American Revolution, particularly with regard to splits within families. This will help determine the seeds of a distinctively American constitutional ideology. The thesis will address how loyalism, republicanism, and English constitutional law influenced the Virginia aristocracy who played a crucial role in the birth of American constitutionalism. It will illuminate the Whig/loyalist split in the Randolph, Franklin, and Washington/Fairfax families and what those family issues reveal about the Founding Fathers' ideas of constitutional government. Finally, it will investigate how John Randolph's loyalism affected Edmund Randolph's early political career.

An examination of the political culture and ideology of the Virginia elites, who paved the way for American constitutionalism, will lend itself to a richer understanding of the construction of a new form of government, a federal government. Charles Sydnor's *Gentlemen Freeholders* was one of the first works to provide an intimate portrait of Virginia's political oligarchy in the late eighteenth-century.<sup>19</sup> Sydnor focuses on the Virginia House of Burgesses which he effectively proves was a training school for prominent statesmen such as Thomas Jefferson, John Randolph, Peyton Randolph, and Edmund Randolph. Rhys Isaac's rich cultural history, *The Transformation of Virginia, 1740-1790* provides a detailed analysis of the Virginia gentry's modes of dress, behavior,

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<sup>19</sup> Charles S. Sydnor, *Gentlemen Freeholders: Political Practices in Washington's Virginia* (Chapel Hill: Published for the Institute of Early American History and Culture at Williamsburg, VA, by the University of North Carolina Press, 1952).



language, professions, and politics.<sup>20</sup> He argues that the elite transformed Virginia into a political powerhouse in the last half of the eighteenth century. He investigates how the Virginia gentry's ideological notions of patriotism, loyalism, Republicanism, and slavery cemented them as an important community of future constitution-makers.

This thesis will build directly on T.H. Breen's argument in *Tobacco Culture* that Virginia's landed aristocracy inhabited a distinct social culture. Breen addresses the "tobacco mentality" of the Tidewater elite and their fervent desire to continue their domination of Virginia politics.<sup>21</sup> This study will also illuminate the dynamics of the Virginia gentry who were so influential in shaping American constitutional doctrine. Another excellent work in this regard is Woody Holton's *Forced Founders*.<sup>22</sup> Although Holton argues that the Virginia aristocracy was forced to rebel against Great Britain due to internal pressure exerted by Indians, farmers, and slaves, he provides a useful background of the political culture of Virginia's colonial elite.

Central to this thesis is how the Whig/Tory split among political elites may have affected the Founding Fathers' ideas about individual rights and representative government. The fact that Edmund Randolph was a notable patriot while his father, John, remained loyal to the Crown undoubtedly influenced his political ideology. This thesis will contrast Randolph's personal experiences with Revolutionary loyalism to George Washington's and Benjamin Franklin's experiences, as both men also had loyalists among their families or close associates. In this respect, Robert Calhoun's synthesis

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<sup>20</sup> Rhys Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill: Published for the Institute of Early American History and Culture at Williamsburg, VA, by the University of North Carolina Press, 1982).

<sup>21</sup> T.H. Breen, *Tobacco Culture: The Mentality of the Great Tidewater Planters on the Eve of Revolution* (Princeton and Oxford: Princeton University Press, 1985).

<sup>22</sup> Holton, *Forced Founders*.



*Loyalists in Revolutionary America* provides an excellent starting point.<sup>23</sup> Calhoon set the parameters for what constitutes Virginia political culture as well as defines the ideology of both patriots and loyalists in Revolutionary Virginia. In his four-volume biography of George Washington, James Thomas Flexner devotes an entire chapter to how George William Fairfax's loyalism affected his close personal friend and relative, Washington.<sup>24</sup> Finally, both Willard Sterne Randall and Shelia Skemp's dual biographies of Benjamin and William Franklin provide excellent sources of comparison regarding how this ideological divide within their own families affected Founders.<sup>25</sup> Although Franklin was not a Virginian, like Randolph and Washington, he, too, was an elite personally and politically influenced by the political split in his family.

In order to restore Edmund Randolph to his rightful place in the historiography of the American Founders, it is necessary to have a clearer picture of his family's prominence in the Virginia gentry and their influence on colonial and Revolutionary politics. Chapter II will provide a brief genealogy of the Randolph family and document their significance in colonial Virginia's politics. This chapter will also highlight how Edmund Randolph's upbringing in the colonial capital differed from other members of Virginia's landed aristocracy. It will further explore his personal and professional relationships with his father John and his uncle Peyton prior to the American Revolution. A review of the personal papers and letters of Virginians Edmund Randolph and Thomas Jefferson, the *Virginia Gazette*, and government documents reveals that the ruling elite's

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<sup>23</sup> Calhoon, *The Loyalists in Revolutionary America*.

<sup>24</sup> James Thomas Flexner, *George Washington*, 4 vols. (Boston: Little, Brown & Company, 1965-1972).

<sup>25</sup> Randall, *A Little Revenge* and Skemp, *Benjamin and William Franklin*.



personal attachment to colonial politics shaped their society, and that they created a distinct social culture.

A review of the Virginia House of Burgesses records at the Library of Virginia Archives reveals the growing antagonism between prominent members of the Virginia gentry and the emergence of conflicting ideologies between patriotism and loyalism immediately preceding the American Revolution. Chapter III will address Country ideology as well as the notions of patriotism, loyalism, Republicanism, and liberty to set the stage for the split of the Virginia elites between Court and Country. Based on original letters from the Randolph collection at the Virginia Historical Society, Revolutionary pamphlets including John Randolph's *Considerations on the Present State of Virginia*, the Deed of John and Arianna Randolph, Edmund Randolph's *History of Virginia*, and articles in the *Virginia Gazette*, Chapter III will focus on Revolutionary ideology and how it severed the ties that bound a father and his only son.

In Chapter IV, it will become evident that John Randolph's loyalty to Great Britain had a profound effect on Edmund's career during the American Revolution. This study will investigate how the Whig/Tory divide influenced other members of the nation-building elite as evidenced by the stories of the Franklin and Washington/Fairfax families. Chapter IV will also provide a richer understanding of how Edmund Randolph's thoughts regarding governance, loyalism, and patriotism influenced his position on various legislation and legal precedents in his capacity as a Burgess, Virginia's Attorney General, and a delegate to two Continental Congresses. It was during this critical period in his early career that Edmund Randolph developed his own ideas regarding constitutional jurisprudence. A review of Virginia House of Burgesses records, articles in



the *Virginia Gazette*, and the *Josiah Philips* case confirms that Edmund Randolph exhibited a great deal of compassion toward those accused of loyalism or treason. Based on this evidence, this chapter will explore whether this was due to his own experience with his father's loyalism or his idea of due process, or perhaps, both. Finally, Chapter V will briefly discuss how Edmund Randolph's experience with Revolutionary ideology influenced his later career as Governor of Virginia, United States Attorney General, Secretary of State, and lead defense counsel in the treason trial of Aaron Burr.

While the American Revolution is one of the most studied subjects in history, for a long time scholars focused predominantly on the great men of the Revolutionary era. These men took up arms in the conflict, wrote *The Declaration of Independence*, and most importantly, created a republican government which still exists today. However, the narratives of many of the men who played a crucial role in the establishment of an independent United States are often missing from the historiography of the Revolution. Virginian Edmund Jennings Randolph is among these neglected individuals.

This study of Edmund Randolph's early education and political career possibly provides a richer understanding of the emergence of a distinctly "American" constitutional ideology. Without a doubt, his intimate knowledge of the patriot/loyalist divide within the Virginia gentry as a result of his father's allegiance to the King had a profound effect on Edmund Randolph, both personally and politically. It is through his story, then, that it is possible to see the bifurcation of the entire Virginia gentry, which had important implications for the construction of a new brand of federalism. This modern intellectual biography will add a crucial element to the revolutionary politics of this era. Edmund Randolph's story offers a new lens through which to view the evolution

of American constitutionalism and allows for a more comprehensive history of America's Founding Fathers.



## CHAPTER II

## THE TIES THAT BIND

“Mr. Chairman, I am a child of the revolution” – Edmund Randolph, Virginia Convention, June 6, 1788.<sup>26</sup>

Edmund Randolph’s proclamation defined an entire generation of men, who, like himself, came of age in the most decisive period in American History. These men waged an unprecedented war of independence against the mighty British Empire and forged thirteen separate colonies into one independent nation. Edmund Randolph’s story is inextricably tied to the story of Virginia, for while he was an American Founder, he was above all else a Virginian. In 1776, Virginians paved the way for American freedom and liberty with the penning of the *Declaration of Independence*, *Virginia Declaration of Rights*, and *Virginia Constitution*. In addition, Virginians authored a substantial portion of the *United States Constitution* as well as the entire *Bill of Rights*. Thus, the story of Virginia is pivotal to the history of the American Revolution and the founding of the Early American Republic.

In 1774, Virginia, the richest and most populous British colony in North America, was on the precipice of war with the Mother Country. That spring, Parliament passed a series of bills which called for the closing of Boston harbor beginning on June 1 and other “coercive acts.”<sup>27</sup> These acts, directed at the town of Boston and the colony of Massachusetts, were doled out as punishment for the Boston Tea Party the previous winter. Nevertheless, the Virginia House of Burgesses, fearful that these acts of oppression might be expanded to the other colonies, emphatically protested on May 24.

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<sup>26</sup> Edmund Randolph, *Speech of Edmund Randolph on the Expediency of Adopting the Federal Constitution, Delivered in the Convention of Virginia, June 6, 1788*, Special Collections, Library of Virginia, Richmond, VA.

<sup>27</sup> *Virginia Gazette*, May 19, 1774.



The language contained in the resolution "Designating a Day for Fasting and Prayer" denoted a real sense of urgency and keen awareness of the looming crisis:

This House being deeply impressed with Apprehension of the great Dangers to be derived to British America . . . deem it highly necessary that the said first day of June be set apart . . . as a Day of Fasting, Humiliation, and Prayer . . . devoutly to implore the divine Interposition for averting the heavy Calamity, which threatens Destruction to our civil rights, and the Evils of Civil War, to give one Heart and Mind firmly to oppose, by all just and proper Means, every Injury to American Rights, and that the Minds of his Majesty and his Parliament may . . . remove from the loyal People of *America* all Cause of Danger from a continued Pursuit of Measures pregnant with their ruin.<sup>28</sup>

Although, another two years would pass before the colony officially joined the American Revolution, this impassioned plea proved a crucial moment for Virginia's political leadership.<sup>29</sup> On May 26, 1774, Royal Governor John Murray, Fourth Earl of Dunmore (commonly referred to as "Lord Dunmore") disbanded the General Assembly.<sup>30</sup> The next day, former Speaker of the House Peyton Randolph presided over an extralegal meeting of the body at Williamsburg's Raleigh Tavern. As a result, eighty-nine former Burgesses signed an Association and proposed a general congress of the colonies to redress "the united interests of America."<sup>31</sup> Then, on May 30, they agreed to hold a meeting to include all former Burgesses to discuss the possibility of avoiding "all commercial intercourse with Britain" unless the "intolerable" acts were repealed.<sup>32</sup> This chain of events divided the colony's political elite and forever changed history.

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<sup>28</sup> Virginia Independence Bicentennial Commission, *Revolutionary Virginia: The Road to Independence; a Documentary Record*, vol. I, ed. Robert L. Scribner (Charlottesville: Published for Virginia Independence Bicentennial Commission by University Press of Virginia, 1973-1983), 94-95.

<sup>29</sup> Holton, *Forced Founders*, 208.

<sup>30</sup> Virginia Independence, *Revolutionary Virginia*, vol. I, 94.

<sup>31</sup> Virginia Independence, "Association of Former Burgesses, with a Proposal to Hold Annual General Congress 27 May 1774," and "An Association, Signed by 89 Members of the Late House of Burgesses," in *Revolutionary Virginia*, vol. I, 96-98.

<sup>32</sup> Virginia Independence, "Memorandum," in *Revolutionary Virginia*, vol. I, 100.



The American Revolution not only determined the sovereignty of a nation, but also resulted in conflicts that tore families, friends, and communities apart across the colonies. Despite its leadership role in the political revolution that followed, Virginia was not immune. The Revolution gave rise to an ideological factionalism that rocked the foundations, albeit temporarily, of the colony's political leadership. The Randolphs of Williamsburg, one of the most politically prominent families of the generation, split into opposing camps at the outset of the American Revolution. Peyton Randolph emerged as the leader of the patriotic cause, while his brother John remained loyal to the Crown. John's son, Edmund, rebelled against his father and broke the ties that bound a father and son. Nevertheless, Edmund Randolph went on to become a notable patriot and a Founding Father.

While this study will engage certain aspects of intellectual, political, and social history, it does not seek to enter the larger historiographical debate on the causes of the American Revolution, nor does it include a discussion of the Framers' motives with respect to the United States Constitution.<sup>33</sup> Instead, it will focus on how the divide between patriots and loyalists within Virginia's powerful aristocracy, and specifically, within the Randolph family, affected these Founders and influenced their ideas regarding republican government. Therefore, an examination of the political culture of Virginia's elite during the eighteenth century is essential to better understand how, and more importantly, why, this divergence occurred among these men. Edmund Randolph's early

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<sup>33</sup> See, for example, Charles A. Beard, *An Economic Interpretation of the American Constitution* (1913); Edmund S. Morgan, *Birth of the Republic, 1763-1789* (1956); Bernard Bailyn, *Ideological Origins of the American Revolution* (1967); Gordon S. Wood, *Creation of the American Republic* (1969); Gary B. Nash, *The Urban Crucible: Social Change, Political Consciousness and the Origins of the American Revolution* (1986); Gordon S. Wood, *The Radicalism of the American Revolution* (1993); Woody Holton *Forced Founders: Indians, Debtors, Slaves and the Making of the American Revolution in Virginia* (1999); and Terry Bouton, *Taming Democracy: "The People," The Founders, and the Troubled Ending of the American Revolution* (2007).



life, legal career, and politics offers a fresh lens with which to view the dynamics of Revolutionary ideology and the role it played in the construction of an American constitutional tradition. It also allows for a richer appreciation of the distinctive social culture inhabited by the Virginians who were so instrumental in the founding of the new nation.

Virginia's landed elite largely possessed a shared set of beliefs, customs, and practices. As such, their culture had distinguishable characteristics which set them apart from other colonists.<sup>34</sup> Embedded in the cultural ethos of this community was the idea that they, as Virginians, were superior.<sup>35</sup> Historians have argued that the Revolutionary era created a new national identity of American exceptionalism.<sup>36</sup> That is, the idea that Americans "are a special people with a special destiny to lead the world toward liberty and democracy."<sup>37</sup> Therefore, it is hardly surprising that eighteenth-century Virginians exhibited extraordinary pride in their colonial heritage. Edmund Randolph's *History of Virginia* was a testament to his generation's deep affection and appreciation for their homeland and its significant history. He observed that, "the pride of Virginia had so long been a topic of discourse in the other colonies that it had almost grown into a proverb."<sup>38</sup>

The fact that Virginia was the first British settlement in North America and survived the

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<sup>34</sup> See Breen, *Tobacco Culture*. Breen argues that the planter elite of colonial Virginia had their own culture which enabled them to lead the political revolution.

<sup>35</sup> For primary sources on Virginia's superiority, see for example, Robert Beverley, *The History and Present State of Virginia* (1705); Reverend Mr. Hugh Jones, *The Present State of Virginia* (1724); and Edmund Randolph, *History of Virginia* (this manuscript was written in the early-nineteenth century, but was not published until 1970). For secondary sources, see for example, Sydnor, *Gentlemen Freeholders* (1952); Isaac, *The Transformation of Virginia* (1982); and Breen, "Tobacco Culture" (1985).

<sup>36</sup> See, for example, George Bancroft *History of the United States, From the Discovery of the American Continent* (1834-1874); Bernard Bailyn, *Ideological Origins of the American Revolution* (1967); Gordon S. Wood, *Creation of the American Republic* (1969), *The Radicalism of the American Revolution* (1992), and *The Idea of America: Reflections on the Birth of the United States* (2011).

<sup>37</sup> Gordon S. Wood, *The Idea of America: Reflections on the Birth of the United States* (New York: The Penguin Press, 2011), Kindle e-book, 2.

<sup>38</sup> Edmund Randolph, *History of Virginia*, ed. Arthur H. Shaffer (Charlottesville: Published for the Virginia Historical Society, Richmond, Va. by the University Press of Virginia, 1970), 177.



starvation time and a series of Indian wars to become its most populous and richest made her exceptional. Whenever an eighteenth-century Virginian said “my country, he meant only one thing – Virginia.”<sup>39</sup>

A review of the origins and subsequent rise of the colony’s landed aristocracy provides a more accurate portrait of this unique culture. Virginia, with her vast land and rich soil, quickly became the wealthiest American colony during the seventeenth century. This was due to the cultivation of tobacco. This crop touched every aspect of the lives of colonial Virginians and over time, it came to define this agrarian-based society.<sup>40</sup> Because tobacco “symbolized economic possibilities,” it endowed farmers with a sense of self-worth and personal autonomy.<sup>41</sup> Therefore, Virginia planters, both large and small, united in a common identity which T.H. Breen coined “tobacco mentality.”<sup>42</sup> The early eighteenth century marked the transition of the plantation economy’s labor force from indentured servants to African slaves. This move proved lucrative for the colony’s larger landowners, as well as American and British merchants.<sup>43</sup> Virginia’s transformation from a society with slaves to a slave society not only enabled large plantation owners to amass great fortunes, but also afforded them free time to participate in local politics. As yeomen farmers were not afforded such a luxury, they deferred political matters to the colony’s privileged few. What resulted was the emergence of an elite planter class.<sup>44</sup>

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<sup>39</sup> Virginia Independence, *Revolutionary Virginia*, vol. I, 135.

<sup>40</sup> Breen, *Tobacco Culture*, 21 & 41.

<sup>41</sup> Breen, *Tobacco Culture*, 58.

<sup>42</sup> Breen, *Tobacco Culture*, 22-23.

<sup>43</sup> Breen, *Tobacco Culture*, 35.

<sup>44</sup> Anthony S. Parent, *Foul Means: The Formation of a Slave Society in Virginia, 1660-1740* (Chapel Hill and London: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Va. by the University of North Carolina Press, 2003), 29-30.



Historians have sometimes referred to this group as “gentlemen freeholders,” “gentilly,” or “great planters,” however, the most commonly used term is “gentry.”<sup>45</sup> While these scholars generally agree that members of this group shared common attributes, historian Jack P. Greene provides the most comprehensive definition. He defines the Virginia gentry as a class of politically powerful white men who “were wealthy, derived part of their income from planting, were often related to the great Virginia families, were Anglicans, were of English (or at least of British) origin, had attained a high educational level for the time and place, were experienced in local politics, and came from areas settled for at least a generation.”<sup>46</sup> These men of distinction represented “the wealthiest 10 percent of free Virginians,” as they owned “one-half of Virginia’s property” as well as a significant number of slaves.<sup>47</sup> In addition to tobacco farming, a large portion of the gentry practiced law and held important political offices.

In order to gain a fuller appreciation of the Randolph family’s position in the Virginia gentry, it is important to understand how politics shaped this society’s culture. This community of gentlemen was not only bound to one another, but also held a strong attachment to the colonial government. Although somewhat comparable to a colonial caste system, the Virginia gentry was not entirely exclusive to those who possessed the pedigree of the colony’s leading families. However, kinship ties to the landed elite were necessary in order to achieve political success in the eighteenth century. The majority of gentry were either born or married into Virginia’s great families.<sup>48</sup> Intermarriage proved a

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<sup>45</sup> See Sydnor, *Gentlemen Freeholders*; Isaac, *The Transformation of Virginia*; Breen, *Tobacco Culture*; Bruce A. Ragsdale, *A Planter’s Republic: The Search for Economic Independence in Revolutionary Virginia* (Madison, WI: Madison House Publishers, 1996); Holton, *Forced Founders*; Parent, *Foul Means*; and Evans, *A “Topping People.”*

<sup>46</sup> Greene, “Foundations of Political Power,” 244-245.

<sup>47</sup> Holton, *Forced Founders*, xviii.

<sup>48</sup> Sydnor, *Gentlemen Freeholders*, 78-79.



practical way for these families to solidify their power, especially within the oldest legislative body in America: the Virginia General Assembly. One only needs to look at the membership roster of the Assembly to confirm that families such as the Byrds, Blairs, Carters, Lees, Harrisons, and Randolphs dominated politics during this era.<sup>49</sup> Hence, family connections became the hallmark of a man's position in this hierarchical society bound to governance.

Without a doubt, Virginia's General Assembly enjoyed a very high degree of autonomy. This was due to its composition. The Assembly included the crown-appointed Governor's Council (also known as "Council of State" and "Common Council") and the elected House of Burgesses. The Governor's Council, although not official until 1618, first appeared in 1607 at the Jamestown settlement when a group of men, including John Smith, was appointed to oversee the affairs of the colony on behalf of the London-based Virginia Company. The Charter of 1618 appointed a governor in Virginia and authorized him to appoint an advisory council and "convene a General Assembly to make laws."<sup>50</sup> The Council was comprised of twelve members from the colony's wealthiest families who received lifetime appointments. Its members advised the Governor in all matters related to the colony, controlled the upper house of the Assembly, and acted in a "judicial capacity" as the colony's court of appeals, known as the General Court.<sup>51</sup>

The Governor's Council possessed tremendous power within the colony. From its initial meeting in July and August 1619 until 1643, the General Assembly held

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<sup>49</sup> Virginia State Library, *The General Assembly of Virginia, July 30, 1619 – January 11, 1978: a Bicentennial Register of Members*, comp. by Cynthia Miller Leonard (Richmond: Published for the General Assembly of Virginia by the Virginia State Library, 1978), Special Collections, Library of Virginia, Richmond, VA.

<sup>50</sup> Brent Tarter, "The Governor's Council," *Encyclopedia Virginia*, Virginia Foundation for the Humanities (Jan. 19, 2012), [http://www.encyclopediavirginia.org/Governor\\_s\\_Council\\_The#start\\_entry](http://www.encyclopediavirginia.org/Governor_s_Council_The#start_entry) (accessed March 24, 2013).

<sup>51</sup> Isaac, *The Transformation of Virginia*, 134.



unicameral sessions that included the Governor, Council, and Burgesses. Therefore, it was not uncommon for Council members to also serve as Burgesses during this time. Further, in the absence of the Governor and Lieutenant Governor, the Council president served as acting governor. In fact, between 1706 and 1768, presidents of the Council “presided over the colony’s government on six separate occasions for a total of approximately ten years.”<sup>52</sup> These governors-in-fact included members of the Carter, Lee, and Blair families, who were related by marriage to the Randolphs.<sup>53</sup>

Unlike the Crown-appointed Council, the voting populace elected members to the House of Burgesses.<sup>54</sup> Originally, membership in the Burgesses was “two men out of every town, hundred, or other particular plantation.”<sup>55</sup> Membership later expanded to two men from every county. In addition, towns such as Williamsburg and Norfolk, as well as the College of William and Mary, were each assigned one representative.<sup>56</sup> In 1643, under Governor Sir William Berkeley, the Burgesses began convening as a separate body.<sup>57</sup> Similar to the Council President, the House appointed a Speaker who presided over meetings and appointed members to standing committees.<sup>58</sup> Not surprisingly, most Burgesses came from prominent families. In fact, the gentry contributed over half of the House’s leadership from the beginning of the eighteenth

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<sup>52</sup> Tarter, “The Governor’s Council.”

<sup>53</sup> Virginia. *Hening’s Statutes at Large; Being a Collection of All the Laws of Virginia from the First Session of the Legislature, in the Year 1619*, 13 vols. (Charlottesville: Published for the Jamestown Foundation of the Commonwealth of Virginia by the University Press of Virginia, 1969), see Preface to vols. IV, VI, and VII.

<sup>54</sup> The “voting populace” consisted of white, male property owners who were twenty-one or older. See Ed Crews, “Voting in Early America,” Colonial Williamsburg Foundation, <http://www.history.org/foundation/journal/spring07/elections.cfm> (accessed June 8, 2013).

<sup>55</sup> Virginia, “Ancient Charters,” in *Hening’s Statutes at Large*, vol. I, 112.

<sup>56</sup> Greene, “Foundations of Political Power,” 493-502.

<sup>57</sup> Tarter, “The Governor’s Council.”

<sup>58</sup> Greene, “Foundations of Political Power,” 486.



century through 1776.<sup>59</sup> The early-eighteenth century witnessed a growing shift in political power from Virginia's Council of State to the House of Burgesses. Beginning with Edmund's grandfather Sir John Randolph in 1734, the Speaker of the House of Burgesses became the most powerful political figure in the colony and remained so until Virginia declared statehood.<sup>60</sup>

Membership in Virginia's General Assembly benefitted these men two-fold. It enabled them to increase their wealth and advance their position within the colonial aristocracy. For example, they often exercised their influence as members of the Council and House of Burgesses to procure large land grants.<sup>61</sup> In 1745, the Council granted over 670,000 acres of western lands to companies headed by Robinsons, Beverleys, Blairs, and Randolphs.<sup>62</sup> Furthermore, members of the gentry also served as county judges, parish vestrymen, justices of the peace, tax collectors, surveyors, and sheriffs.<sup>63</sup> This group's monopoly on public offices was standard in the deferential society, where ordinary citizens "acknowledged the superior political ability of an educated and wealthy social elite."<sup>64</sup> Thus, the Virginia gentry controlled almost every aspect of this colonial society.<sup>65</sup>

Membership in the Virginia gentry was Edmund Randolph's birthright. His family's lineage can be traced back to the reign of Edward I in late thirteenth-century England, and its members included both English and Scottish noblemen.<sup>66</sup> With the onset of the English Civil War in the mid-seventeenth century, Virginia became a refuge for

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<sup>59</sup> Greene, "Foundations of Political Power," 489.

<sup>60</sup> Evans, *A "Topping People,"* 23.

<sup>61</sup> Breen, *Tobacco Culture,* 35-36.

<sup>62</sup> Evans, *A "Topping People,"* 109.

<sup>63</sup> Isaac, *Transformation of Virginia,* 133.

<sup>64</sup> Calhoun, *The Loyalists in Revolutionary America,* 107.

<sup>65</sup> Evans, *A "Topping People,"* 3.

<sup>66</sup> Eckenrode, *The Randolphs,* 17-20.



men who fought on the losing side of the monarch. Favored by the royal colonial government, these “Cavaliers,” “Royalists,” or “men of family” were able to secure extensive amounts of land to cultivate tobacco and build their fortunes.<sup>67</sup> William Randolph I, Edmund’s great-grandfather, was one such cavalier who seized the opportunity to start anew in Virginia.<sup>68</sup> It was during this time that he settled “Turkey Island” along the James River and established what would become one of the foremost politic dynasties in colonial Virginia.<sup>69</sup> Over the course of the next few decades, the Randolph family increased its powerful position among Virginia’s political elite through intermarriage with members of the Boiling, Lee, Carter, Beverley, Page, Harrison, Meriwether, Lewis, Marshall, and Jefferson families.<sup>70</sup>

The Randolph family dominated political offices in the colony for almost a century preceding the American Revolution. As shown in Table 1 below, William Randolph, his youngest son, Sir John, and his grandsons Peyton and John were all appointed as Speaker and/or Clerk of the Virginia House of Burgesses. In addition, Edmund’s grandfather, Sir John, held a seat on the prestigious Governor’s Council. As further evidenced in Table 1, the position of King’s attorney became a Randolph family legacy. For almost thirty years prior to the Revolution, the office was occupied by Edmund’s uncle and father. Further, young Edmund carried on this tradition when he became the first Attorney general for the State of Virginia in 1776, a post he stood for ten years. Considering their dedication to public service, it is hardly surprising that by 1776,

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<sup>67</sup> Eckenrode, *The Randolphs*, 28-29.

<sup>68</sup> Edmund Randolph Williams, *The Randolph Tablet and an Item for Family Records* (Richmond, Va.: Whittet & Shepperson Printers, 1950).

<sup>69</sup> Eckenrode, *The Randolphs*, 30.

<sup>70</sup> Virginia Historical Society, “The Story of Virginia: An American Experience,” <http://www.vahistorical.org/sva2003/virginians.htm> (accessed February 13, 2013).



this influential family had produced the most public servants in Virginia, including eleven members of the House of Burgesses.<sup>71</sup>

Table 1

*Political Positions Held by Edmund Randolph's Immediate Family in Colonial Virginia*

<b>Family Member</b>	<b>Positions Held</b>	<b>Dates</b>
<b>William Randolph I</b> (Great-Grandfather)	• Clerk of Henrico County	1678-1683
	• Justice of the Peace	1684-?
	• Representative, House of Burgesses	1684-1702
	• Trustee and Co-Founder, College of William and Mary	1693
	• King's Attorney	1694-1698
	• Speaker, House of Burgesses	1698
	• Clerk, House of Burgesses	1699-1702
	• Escheator General	??
	• Coroner and Sheriff	??
<b>Sir John Randolph</b> (Grandfather)	• Deputy Attorney General of Charles City, George, and Henrico Counties	1712-?
	• Clerk, House of Burgesses	1718-1734
	• Clerk, Governor's Council	1726-?
	• King's Attorney	1726-1728
	• Treasurer of Colony	1734
	• Justice of the Peace	1734
	• Speaker, House of Burgesses	1734-1736
<b>Peyton Randolph</b> (Uncle)	• King's Attorney	1748-1766
	• Representative, House of Burgesses	1748-1775
	• Vestryman, Bruton Church	1747
	• Justice of the Peace	1749-?
	• Rector, College of William and Mary	1757-1758
	• Committee of Correspondence	1759-1767
	• Speaker, House of Burgesses	1766-1775
	• Chairman, Correspondence Committee	1773-1775
	• Chairman, Virginia Convention	1774

<sup>71</sup> Greene, "Foundations of Political Power," 242.



Table 1 (continued).

<b>John Randolph</b> (Father)	• Common Council	1751-1775
	• Clerk, House of Burgesses	1752-1767
	• Mayor, Williamsburg	1755-1756; 1771-1772
	• Judge, Vice Admiralty Court	1759
	• Signer of Treasury Notes	1757-1762
	• Justice of the Peace	1767-1768, 1772
	• Member, House of Burgesses	1769; 1775-1776
• King's Attorney	1767-1775	

Note: The information contained in Table 1 was from a compilation of sources.<sup>72</sup>

As reflected in their service record, the Randolph family became the paradigm for exemplary leadership in the colony's ruling aristocracy. The ruling elites believed that the most important quality of a gentleman was honor, which consisted of "manliness, respect, valor, fame, and glory."<sup>73</sup> In addition, an honorable leader sacrificed personal advantage for public virtue. There was perhaps no better example of a virtuous and generous leader in colonial Virginia than Edmund Randolph's grandfather, Sir John. William's youngest son John received his early education from the College of William and Mary and studied law at Gray's Inn at London's Inns of Court. Upon his return to Virginia in 1718, John Randolph quickly became known as one of Virginia's finest lawyers.<sup>74</sup> In addition to the significant positions he held in the colonial government (see Table 1), he traveled to London on two separate occasions on behalf of his client, the Virginia House of

<sup>72</sup> The information contained in Table 1 was compiled from the following sources: *Virginia Gazette*, December 5, 1751, June 11, 1767, and May 5, 1774; Conway, *Omitted Chapters of History Disclosed in the Life and Papers of Edmund Randolph*, 1-14; Jonathan Daniels, *The Randolphs of Virginia* (Garden City, NY: Doubleday & Co., Inc., 1972), 13-29; Virginia State Library, *The General Assembly of Virginia*; Patricia A. Gibbs, *Character Biography of John Randolph 1727-1784* (Colonial Williamsburg Foundation, Rockefeller Library, Special Collections, Williamsburg, Va.); Carroll Johnston Ramage, *A Personal and Historical Sketch of Peyton Randolph* (Colonial Williamsburg Foundation, Rockefeller Library, Special Collections, Williamsburg, Va.); and Cathleene B. Hellier, *Sir John Randolph* (Colonial Williamsburg Foundation, Rockefeller Library, Special Collections, Williamsburg, Va.).

<sup>73</sup> William Guthrie Sayen, "George Washington's 'Unmannerly' Behavior: The Clash Between Civility and Honor," *Virginia Magazine of History and Biography* 107, no. 1, "The Private George Washington: A Bicentennial Reconsideration" (Winter, 1999), 6.

<sup>74</sup> Evans, *A "Topping People,"* 85.



Burgesses, and petitioned Parliament for the repeal of laws regarding tobacco exports and excises.<sup>75</sup> Although the circumstances surrounding his knighthood in 1732 are unclear, John Randolph returned home the following summer the only native Virginian to have been bestowed with such an honor.<sup>76</sup> Sir John was so highly esteemed that his visit to Norfolk in 1736 made headlines: “the Gentlemen of the said Town . . . showed him all imaginable respect, by displaying the Colours, and fixing the Guns of the Vessels lying there, and entertaining him at their Houses, in the most elegant manner, for several Days; amply signaling their great Respect, on this joyful occasion.”<sup>77</sup>

During this time, Sir John Randolph was “Virginia’s most notable son.”<sup>78</sup>

Undoubtedly, the Virginia gentry felt a tremendous loss when he died at the young age of forty-four in 1737. At least three different eulogies appeared in the *Virginia Gazette* between March 4 and April 8, 1737, in which he was remembered as “a Gentlemen of one of the best Families in this Country, a man of quality in an eminent Degree which Pliny mentions, and a Heav’nly Genius, Quick, Capricious, and Strong.”<sup>79</sup> Additional tributes followed, but none were more impressive than the marble tablet bearing a sixty-one line Latin inscription erected in his honor at the Randolph family vault at the Chapel of the College of William and Mary.<sup>80</sup> The best evidence that Sir John Randolph was the

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<sup>75</sup> John Randolph went to London in 1729 and 1732 as special agent for the House of Burgesses. See Colonial Williamsburg Foundation “Sir John Randolph,” <http://www.history.org/Almanack/people/bios/biorasjr.cfm> (accessed October 12, 2012) and Virginia, “An Act for Repealing the Act for the Better and More Effectual Improving the Staple of Tobacco,” 241-244; “An Act for Amending the Staple of Tobacco; and for Preventing Frauds in his Majesty’s Customs,” 247-271; and “An Act for Continuing and Further Amending an Act, intituled, An Act for Amending the Staple of Tobacco; and for Preventing Frauds in his Majesty’s Customs,” 373-393 in *Hening’s Statutes at Large*, vol. IV.

<sup>76</sup> Edmund Randolph, *History of Virginia*, 159-160.

<sup>77</sup> *Virginia Gazette*, November 26, 1736.

<sup>78</sup> Evans, “*A Topping People*,” 87.

<sup>79</sup> *Virginia Gazette*, March 4, 1737; March 11, 1737; and April 8, 1737.

<sup>80</sup> *Virginia Gazette*, April 20, 1739.



embodiment of a virtuous, kind, and selfless leader is revealed in the following portion of the inscription:

He had few equals and no superiors,  
 And all his honors, which no one better merited, were strikingly set off  
 Not only by a natural comeliness of person  
 And lordliness of manner peculiar to him,  
 But also by an inspiring appearance of intellectual power.  
 Among all his other qualities of mind and heart  
 these shown most conspicuously –  
 A sense of Equity, scorning the mere letter of the law,  
 A feeling of loyalty to his clients, which the poorest  
 could depend upon without fee or reward,  
 A love of hospitality, far removed from ostentation,  
 A devotion to truth untouched by deceit,  
 And a charitable disposition free from all manner of assumption.<sup>81</sup>

Sir John and his wife Lady Susannah (Beverley) Randolph had four children:

Beverley, Peyton, John, and Mary.<sup>82</sup> Determined that his sons Peyton and John would follow him in the practice of law, Sir John made it a provision in his Last Will and Testament.<sup>83</sup> They did as expected; both Peyton and John attended the College of William and Mary, studied law at Middle Temple in London, and became two of Williamsburg's brightest lawyers.<sup>84</sup> Peyton's gentle personality and impressive knowledge of the law made quite an impression. In 1748, at age twenty-six, he was appointed the King's attorney for the colony, a position which he held for twenty-two years. Six years later, Peyton Randolph left his private law practice and became a full-time public servant until his death in 1775.<sup>85</sup> Like his famous father before him, Peyton also represented the colony before London's Board of Trade. In 1754, he successfully

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<sup>81</sup> Williams, *The Randolph Tablet*. Williams translated the Latin inscription into English.

<sup>82</sup> Hellier, *Sir John Randolph*.

<sup>83</sup> "Copy of Will of Sir John Randolph, Dated December 23, 1735," *Virginia Magazine of History and Biography* 36, no. 4 (Oct. 1928): 378.

<sup>84</sup> Gibbs, *Character Biography of John Randolph 1727-1784* and Ramage, *A Personal and Historical Sketch of Peyton Randolph*.

<sup>85</sup> John J. Reardon, *Peyton Randolph, 1721-1775: One Who Presided* (Durham, NC: Carolina Academic Press, 1982), xi.



convinced the Privy Council to settle a dispute over the required pistole fee for land patents. Peyton Randolph returned home a hero.<sup>86</sup>

His younger brother John also made a name for himself within the colonial gentry. Admitted to the bar in 1750, John Randolph quickly established himself as a formidable attorney and as was tradition with this clan, he held many important political offices (see Table 1). John was appointed Clerk of the House of Burgesses in 1752, and he was also elected Mayor of Williamsburg on three separate occasions.<sup>87</sup> When his brother Peyton was elected Speaker of the House of Burgesses in 1766, John was the natural choice to replace him as King's attorney.<sup>88</sup> He held this position until 1775, when he fled to Great Britain with the onset of the Revolutionary War.

Little evidence survives to determine the kind of relationship Peyton and John Randolph had with their father. Nevertheless, the fact that Sir John made sufficient provisions for his sons' education and bequeathed them large estates in his Will may explain his characterization as "an excellent Father of a Family."<sup>89</sup> In addition, other than the few sources confirming their education and their father's position in the colonial government, there is no evidence that describes them as children. It may be discerned, however, that they were brought up in the customs of the gentry to be educated gentlemen and public servants.<sup>90</sup> And, as Randolphs, they most likely enjoyed all the luxuries afforded to them as sons of the colony's only knight.

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<sup>86</sup> Eckenrode, *The Randolphs*, 78-79.

<sup>87</sup> Gibbs, *Character Biography of John Randolph 1727-1784*.

<sup>88</sup> Gibbs, *Character Biography of John Randolph*.

<sup>89</sup> "Copy of Will of Sir John Randolph," 378-380 and *Virginia Gazette*, March 11, 1737.

<sup>90</sup> For practices and customs of child-rearing and education for Virginia's elite, see for example, Breen, *Tobacco Culture*; Sydnor, *Gentlemen Freeholders*; Ragsdale, *A Planter's Republic*; and Greene, "Foundations of Political Power."



Although, little historical evidence exists to indicate the relationship between these two brothers, it is reasonable to assume they were close. Although Peyton was six years older than John, they served in the Virginia House of Burgesses together for almost twenty years. The brothers lived in close proximity to one another on England and Nicholson Streets in Williamsburg. The Randolph family was also known for hosting elaborate dinners and balls together.<sup>91</sup> In all likelihood, both brothers were in attendance at these and other social functions of the family. When John Randolph left the colony in 1775, he named Peyton one of the administrators to oversee the auction of his Williamsburg property for the payment of his debts.<sup>92</sup> Although no correspondence between the two survives, Peyton must have felt a deep void at the loss of his brother John to the American Revolution.<sup>93</sup>

As was expected of the Randolph men, the two brothers married well. Peyton married Elizabeth Harrison, the daughter of Colonel Benjamin Harrison of Berkeley Plantation.<sup>94</sup> John Randolph married Ariana Jenings, the daughter of the King's attorney for Maryland, and the granddaughter of Edmund Jenings, who served on the Governor's Council of Virginia. John and Ariana Randolph had three children: Edmund, Susannah, and Ariana.<sup>95</sup> Born on August 10, 1753, in Williamsburg, Edmund was the couple's only son. By all accounts, he enjoyed a carefree childhood and grew up in a loving household. When his two sisters pestered him, he sought refuge at the home of his uncle. Peyton and Elizabeth Randolph did not have any children of their own, so in many ways, their

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<sup>91</sup> Gibbs, *Character Biography of John Randolph 1727-1784* and Reardon, *Edmund Randolph*, 6.

<sup>92</sup> John and Ariana Randolph, *Deed*, August 25, 1775, Tazewell Family, et al. Papers, 1664 (1771-1805) 1842, Special Collections, John D. Rockefeller Library, Colonial Williamsburg Foundation, Williamsburg, Va.

<sup>93</sup> Reardon, *Peyton Randolph*, 65.

<sup>94</sup> Ramage, *A Personal and Historical Sketch of Peyton Randolph*.

<sup>95</sup> Gibbs, *Character Biography of John Randolph 1727-1784*.



nephew became their surrogate son. Both his father and his uncle expected that Edmund would carry on the Randolph family legacy of public service. Therefore, particular attention was paid to his education and training. As was tradition within the ruling elite, Edmund received a classical education as a boy at William and Mary College's grammar school, where he studied Latin, philosophy, history, and literature.<sup>96</sup>

Even though Edmund Randolph's upbringing was reflective of the Virginia gentry's culture, his early life differed from many of his contemporaries. While many of his fellow founders, such as Thomas Jefferson, George Washington, and George Mason, were raised on vast plantations in the Piedmont and Northern Neck regions; Randolph grew up in Williamsburg. His childhood home, Tazewell Hall on South England Street, was just a few steps away from the heart of this bustling town.<sup>97</sup> Because it was the capital of the colony, Council members and Burgesses were required to travel from their plantations to Williamsburg when the General Assembly was in session. In addition, elite planters sent their sons to Williamsburg to be educated at the College of William and Mary and also to be properly presented into colonial high society.<sup>98</sup> Thus, Williamsburg was the epicenter of political and social activity for the colony's ruling elite.

The Virginia House of Burgesses – where both his father and uncle held significant positions – became a political training camp for young Edmund and his generation of Revolutionary leaders.<sup>99</sup> At fifteen, he witnessed firsthand the controversy over the passage of the Stamp Act in 1765. In order to offset costs for the French and Indian War, Parliament required that a stamp be affixed to all paper documents in the

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<sup>96</sup> Reardon, *Edmund Randolph*, 5-7.

<sup>97</sup> Reardon, *Edmund Randolph*, 5-6.

<sup>98</sup> Ronald L. Hatzenbuehler, "I Tremble for My Country" *Thomas Jefferson and the Virginia Gentry* (Gainesville, FL: University Press of Florida, 2006), 32.

<sup>99</sup> Sydnor, *Gentlemen Freeholders*, 107-111.



American colonies and imposed a duty thereon. The duties were nominal, but this direct tax incensed the colonists. In October, a general congress convened in New York to protest the Stamp Act.<sup>100</sup> Although Virginia did not send delegates to the Stamp Act Congress, the House of Burgesses, led by Speaker Peyton Randolph, admonished Parliament with the adoption of resolutions presented by Patrick Henry. In the Virginia Resolves, as they came to be commonly called, the House boldly stated “that the General Assembly of this Colony have the *only and sole exclusive* Right & Power to lay Taxes & Impositions upon the Inhabitants of this Colony.”<sup>101</sup> In response, the Royal Governor dissolved the body “by a simple fiat.”<sup>102</sup> Nevertheless, Virginia advanced the revolutionary idea that there could be no taxation without representation. This act of defiance made an indelible impression on young Edmund Randolph.

In addition to their political prowess, the Randolphs “became the most representative upper-class family in Virginia in the early part of the eighteenth century.”<sup>103</sup> Their beautiful Tidewater mansions were filled with the finest furniture and luxury goods imported from Great Britain.<sup>104</sup> Edmund was further exposed to the political and social culture of the gentry at the many dinners and elaborate parties hosted by his family and attended by Virginia’s finest citizens, including the Royal Governor,

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<sup>100</sup> *The Stamp Act, March 22, 1765*, Avalon Project at Yale University Law School, [http://avalon.law.yale.edu/18th\\_century/stamp\\_act\\_1765.asp](http://avalon.law.yale.edu/18th_century/stamp_act_1765.asp) (accessed March 8, 2012).

<sup>101</sup> Colonial Williamsburg Foundation, *Patrick Henry’s Resolutions*, under Principles of Freedom: The Declaration of Independence and the American Revolution, <http://research.history.org/pf/declaring/henrysResolutions.cfm> (accessed October 17, 2012).

<sup>102</sup> Edmund Randolph, *History of Virginia*, 170.

<sup>103</sup> Eckenrode, *The Randolphs*, 30.

<sup>104</sup> See Edmund Randolph, *Accounts and Inventory, Estate of Peyton Randolph, 1774-1788* (Washington, DC: Library of Congress, Photoduplication Services, 1950), Special Collections, The Library of Virginia, Richmond, Va., microform and John and Ariana Randolph, *Deed, August 25, 1775*, Tazewell Family, et al. Papers, 1664 (1771-1805) 1842, John D. Rockefeller Library, Colonial Williamsburg Foundation, Williamsburg, Va. for complete inventory of contents of homes on England Street.



members of the General Assembly, and other dignitaries.<sup>105</sup> Edmund's father John was quite the violinist and often entertained a number of the gentry, including John Blair, Governor Dunmore, and Thomas Jefferson, in his home on many occasions.<sup>106</sup> Thomas Jefferson was so impressed that in 1771, the two made an agreement that if Randolph died first, he would bequeath his violin to his cousin.<sup>107</sup> Records reflect that John Randolph sold his violin to Thomas Jefferson after his departure to England in 1775.<sup>108</sup> John Randolph was also recognized as an expert horticulturalist and received some commercial success with the publication of *A Treatise on Gardening*.<sup>109</sup>

Another factor that made Edmund's early life exceptional was that he belonged to the first generation of gentlemen who were educated solely in America. Naturally, like his grandfather, father, and uncle before him, he attended the College of William and Mary which his great-grandfather, William Randolph I, had helped to establish. Although his family could afford to spare no expense when it came to his education, Edmund was coveted one of the two first student assistantships for academic excellence at William and Mary.<sup>110</sup>

Edmund was unanimously elected by the President and Professors of the College of William and Mary to give the student speech at the anniversary of its founding in

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<sup>105</sup> Reardon, *Edmund Randolph*, 8.

<sup>106</sup> Gibbs, *Character Biography of John Randolph 1727-1784*.

<sup>107</sup> Julian P. Boyd, et al, eds., *The Papers of Thomas Jefferson*, 33 vols. (Princeton: Princeton University Press, 1950-) vol. 1, 66.

<sup>108</sup> Thomas Jefferson to John Randolph, Monticello, August 25, 1775, Avalon Project at Yale University Law School, [http://avalon.law.yale.edu/18th\\_century/let7.asp](http://avalon.law.yale.edu/18th_century/let7.asp) (accessed March 25, 2013).

<sup>109</sup> John Randolph, *A Treatise on Gardening*, ed. M.F. Warner (Richmond: Reprinted by Appeals Press, Inc. for the William Parks Club, 1924).

<sup>110</sup> *Virginia Gazette*, July 19, 1770.



August 1771.<sup>111</sup> The eloquence with which Edmund spoke was so impressive that he, like his predecessors, became known for his impeccable oration skills. While he may have felt immense pressure to live up to his family's sterling reputation, the fact that young Edmund gracefully accepted his place within the ruling elite is evidenced in his closing remarks: "Arise, renounce the Errors of your Age, and approve yourselves worthy of Royal Patronage . . . Let future Statesmen, future Lawyers, future Divines here spring up, but such Statesmen, such Lawyers, such Divines, as shall strive to do Honour to their Family, their Country, and this, their *Alma Mater*."<sup>112</sup>

In late 1771, Edmund resigned his student assistantship at William and Mary and spent the next few years studying law under the tutelage of his father John, who was the colony's attorney general at the time.<sup>113</sup> During this time, Edmund had access to what was considered one of the finest collections of law books in the colony, those originally belonging to his late grandfather. In the Codicil to his Will, Sir John left his book collection to his sons with a request that they be catalogued and preserved for future generations.<sup>114</sup> In 1774, Edmund was admitted to practice before Virginia's General Court.<sup>115</sup> That same year, he was granted membership into the exclusive Freemason organization.<sup>116</sup> It should have been a time of celebration for the Randolph family, but fate had a different plan.

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<sup>111</sup> Edmund Randolph, *An Oration, in Commemoration of the Founders of William and Mary College, Delivered on the Anniversary of its Foundation, August 15, 1771* (Williamsburg: William Rind, 1771), Special Collections, Virginia Historical Society, Richmond, Va.

<sup>112</sup> Edmund Randolph, *An Oration, in Commemoration*.

<sup>113</sup> Reardon, *Edmund Randolph*, 13-14.

<sup>114</sup> "Copy of Will of Sir John Randolph," 380. Note: An inventory of Sir John's library holdings has never been catalogued.

<sup>115</sup> Reardon, *Edmund Randolph*, 15.

<sup>116</sup> Freemasons, Williamsburg, Va., Lodge No. 6, et al. *Proceedings 1774-1779*, Special Collections, John D. Rockefeller Library, Colonial Williamsburg Foundation, Williamsburg, Va.



When the Virginia House of Burgesses initially convened in May 1774 to address the Coercive Acts, they had no idea their actions would have such a profound impact on the history of Virginia or America. After all, the colony had an extensive background of redress when they thought their rights had been violated under the English Constitution. Edmund Randolph recalled that "in former disputes, harmony had been restored without difficulty, and to states rights with force did not seem to verge in the smallest degree toward an opposition beyond that of mere words."<sup>117</sup> In fact, between the repeal of the Stamp Act in 1766 and the passage of the Boston Port Act in 1774, the Virginia House of Burgesses petitioned the King for redress of their grievances on five separate occasions. In 1769, they were dissolved and entered into a non-importation association. Despite the legislative body's reinstatement, they signed a second non-importation association the following year in protest of the tax on tea.<sup>118</sup> According to Edmund, this "intermediate" period "resembled that season between two old friends when the language begins to be embittered and the heart is gnawed, a rupture is dreaded but the cause is not forgiven."<sup>119</sup>

By 1774, "parliamentary omnipotence" had taken its toll on the colonies, and the tide turned.<sup>120</sup> Although Virginia's Association pledged loyalty to Great Britain in its opening statement, it blatantly accused the mother country of "reducing the inhabitants of British America to slavery, by subjecting them to the payment of taxes, imposed without the consent of the people, or their representatives."<sup>121</sup> It further declared that "an attack, made on one of our sister colonies, is an attack made on all British America."<sup>122</sup> Of the

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<sup>117</sup> Edmund Randolph, *History of Virginia*, 176.

<sup>118</sup> Virginia Independence, *Revolutionary Virginia*, vol. I, xi-xiii.

<sup>119</sup> Edmund Randolph, *History of Virginia*, 175.

<sup>120</sup> Edmund Randolph, *History of Virginia*, 176.

<sup>121</sup> Virginia Independence, *Revolutionary Virginia*, vol. I, 97.

<sup>122</sup> Virginia Independence, *Revolutionary Virginia*, vol. I, 97.



eighty-nine signatures affixed to the Association, there was one missing which proved to have major repercussions not only for Virginia's ruling elite, but for the Randolph family as well.<sup>123</sup>

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<sup>123</sup> Virginia Independence, *Revolutionary Virginia*, vol. I, 98.



## CHAPTER III

## A HOUSE DIVIDED

“The sternness of American virtue was exemplified in the fewness of the instances of defection among the people from the Revolution” – Edmund Randolph, *History of Virginia*.<sup>124</sup>

Edmund Randolph’s recollection of the American Revolution in Virginia was unmistakable. By 1776, the colony’s gentry overwhelmingly supported the cause for American independence and took the lead in the political revolution with the penning of the *Virginia Declaration of Rights*, *Virginia Constitution*, and United States *Declaration of Independence*. The minority that remained loyal to the Crown during this crucial era represented a mere one-half percent of the colony’s total population of approximately two-hundred, seventy-five thousand.<sup>125</sup> In Williamsburg alone, only thirty-two men were identified as loyalists.<sup>126</sup> Absent definitive statistical data, it has been estimated that loyalists represented approximately sixteen percent of the total American population in this era.<sup>127</sup> Therefore, Virginia had one of the lowest percentages of white loyalists in all of revolutionary America.<sup>128</sup> Although Virginia’s loyalists did not have the numbers to challenge the rebel majority, from 1774 until independence was declared in 1776, “their very presence complicated the delicate task of effecting a new constitutional order.”<sup>129</sup>

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<sup>124</sup> Edmund Randolph, *History of Virginia*, 243.

<sup>125</sup> Brown, *The King’s Friends*, 182.

<sup>126</sup> Kevin P. Kelly, “The White Loyalists of Williamsburg,” Colonial Williamsburg Foundation, [http://research.history.org/Historical\\_Research/Research\\_Themes/ThemeRevolution/Loyalist.cfm](http://research.history.org/Historical_Research/Research_Themes/ThemeRevolution/Loyalist.cfm) (accessed June 27, 2012).

<sup>127</sup> Paul H. Smith, “The American Loyalists: Notes on Their Organization and Numerical Strength,” *William and Mary Quarterly*, Third Series, 25, no. 2 (Apr., 1968): 269. Based on available statistical information, Smith estimates that between 1775 and 1783, there were approximately 513,000 loyalists out of a total population of 3,210,000, or 16%.

<sup>128</sup> Michael A. McDonnell and Woody Holton, “Patriot vs. Patriot: Social Conflict in Virginia and the Origins of the American Revolution,” *Journal of American Studies* 34, no. 2 (2000): 231.

<sup>129</sup> Calhoun, *The Loyalists in Revolutionary America*, 458-459.



There was perhaps no better example of this complexity in revolutionary Virginia than within the colony's ruling class.

Most of Virginia's white loyalists were members of the Anglican clergy, the Royal Council, and the Scottish merchant class, but a few were prominent members of the gentry class.<sup>130</sup> The loyalists from Virginia's leading families included Richard Corbin, Jr., the son of the colony's Receiver General and John Randolph Grymes, son of attorney Philip Grymes.<sup>131</sup> In addition to Royal Governor Dunmore, another member of the landed aristocracy who remained loyal was George William Fairfax, whose family held strong ties to the British monarchy for several generations.<sup>132</sup> However, the most significant defection was that of Edmund Randolph's father, John. John Randolph was not only the King's attorney for the colony and judge of the Vice-Admiralty Court, but he was also a member of the House of Burgesses. In fact, "of prominent men, of conspicuous office-holders, Randolph was almost alone in his attachment to the Crown."<sup>133</sup>

The controversy over Parliament's passage of the Coercive Acts in 1774 witnessed the emergence of conflicting political ideologies within Virginia's ruling gentry. Although most of this brethren became Patriots (also called "Whigs"), a few remained loyal to Great Britain.<sup>134</sup> While some of these loyalists (later called "Tories")

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<sup>130</sup> Calhoun, *The Loyalists in Revolutionary America*, 458.

<sup>131</sup> Kevin P. Kelly, "The White Loyalists of Williamsburg."

<sup>132</sup> George William Fairfax, "George William Fairfax Letters, 1779-1780," Colonial Williamsburg Foundation, Rockefeller Library, Special Collections, Williamsburg, Va., available from [http://research.history.org/JDRLibrary/Special\\_Collections/SpecialCollectionsDocs/Fairfax.cfm](http://research.history.org/JDRLibrary/Special_Collections/SpecialCollectionsDocs/Fairfax.cfm) (accessed March 26, 2013).

<sup>133</sup> John Randolph and Robert Carter Nicholas, *Considerations on the Present State of Virginia; Attributed to John Randolph, Attorney General; and Considerations on the Present State of Virginia Examined, by Robert Carter Nicholas*, ed. Earl Gregg Swem (New York: C.F. Heartman, 1919), 10.

<sup>134</sup> For the purposes of this thesis, "Patriots" may be defined as anyone who actively supported the American cause for independence during the American Revolution.



came from Virginia's finest families, the attorney general's dissension from the majority was, undoubtedly, the most scandalous in the colony. At the same time that his brother, Peyton, led the disbanded Burgesses toward political rebellion, John Randolph supported swift rapprochement with the mother country. This divide certainly had a profound effect on the impressionable young Edmund Randolph, who enjoyed close relationships with both his father and his uncle. In time, he, too, would choose a side that forever severed the bond of father and son.

Bernard Bailyn, Gordon S. Wood, Woody Holton, Mary Beth Norton, and many other historians have addressed loyalism and the ideology of the Founding Fathers during the American Revolution.<sup>135</sup> However, they have mostly overlooked the topic of loyalism within the families of Virginia's ruling elite. By examining the split of this group prior to the American Revolution, it will become evident that future leaders of the Revolutionary generation, especially Edmund Randolph, were deeply affected by the bifurcation of Virginia's political aristocracy. A study of the divide within the Randolph family provides a new lens with which to view the dynamic involved in Revolutionary loyalism among Virginia's gentry, who made significant contributions to the founding of the Early American Republic.

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<sup>135</sup> See Bernard Bailyn, *The Ideological Origins of the American Revolution*. Enlarged ed. (Cambridge: Harvard University Press, 1992); Gordon S. Wood, *The Radicalism of the American Revolution* (New York: A.A.Knopf, 1992) and *The Creation of the American Republic, 1776-1787* (Chapel Hill : Published for the Institute of Early American History and Culture at Williamsburg, Va., by the University of North Carolina Press, 1998); Woody Holton, *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia* (Chapel Hill: Published for the Institute of Early American History and Culture at Williamsburg, Va., by the University of North Carolina Press, 1999); and Mary Beth Norton, *The British-Americans: The Loyalist Exiles in England, 1774-1789* (London: Constable and Company, Ltd., 1974).



It is important to note that prior to the Revolution, Virginia was one of the most politically stable of all the American colonies.<sup>136</sup> Tobacco cultivation in this slave-based economy bound Virginians together in a common identity as independent planters.<sup>137</sup> There was little distinction between the public and private interests among most Virginians and for the most part, what benefitted one, benefitted all. Thus, yeomen farmers were content to defer colonial affairs-of-state to the wealthy and educated elite.<sup>138</sup> Mostly free from political partisanship, the ruling gentry maintained “a remarkable degree of unanimity both among themselves and with royal administrators” through their strong kinship ties to the Council and House of Burgesses.<sup>139</sup> However, in 1774, this group experienced “a social crisis which intensely aggravated the Virginians’ antagonism to the imperial system.”<sup>140</sup> This set in motion a split between Whigs and Tories in the colony’s political leadership and the Randolph family itself.

In order to better illustrate how this ideological divide came to fruition in 1774, it is necessary to reexamine the colony’s unique political culture and the ways the law shaped Virginia. It must be understood that colonial Virginia was a litigious society. From its very inception in the seventeenth century, the colony’s inhabitants fully utilized the general court system to settle disputes over land ownership, estate administration, and other civil and contractual matters. Due to the reciprocal nature of the commercial relationship between tobacco planters and merchants, the court also acted as an arbiter of

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<sup>136</sup> William H. Nelson, *The American Tory* (London: Oxford University Press, 1961), 41.

<sup>137</sup> Breen, *Tobacco Culture*, 22-23.

<sup>138</sup> Wood, *The Idea of America*, 49.

<sup>139</sup> Greene, “Society, Ideology, and Politics: An Analysis of the Political Culture of Mid-Eighteenth Century Virginia,” in *Negotiated Authorities: Essays in Colonial Political and Constitutional History* (Charlottesville and London: University Press of Virginia, 1994) 281.

<sup>140</sup> Wood, *The Idea of America*, 49.



debt.<sup>141</sup> Furthermore, most members of the gentry held important seats in the colonial government and many were formally-educated lawyers and professionals. Therefore, in eighteenth-century Virginia, “the law was the most valued branch of higher learning.”<sup>142</sup>

As such, many elites maintained impressive public and private law libraries. While the public repositories were maintained by the Council of State and the county courts, extensive private collections were held by members of the ruling gentry, including the Randolphs.<sup>143</sup> The elite ordered the most recent publications from London merchants and publishing houses, as well as from John Norton and Sons, who became one of the largest booksellers in the colony.<sup>144</sup> Some of the most popular legal volumes in eighteenth-century Virginia included Blackstone’s *Commentaries on the Laws of England*, Coke’s *Institutes of the Laws of England*, Rushworth’s *Historical Collections*, Sidney’s *Discourses Concerning Government* and Montesquieu’s *The Spirit of the Laws*.<sup>145</sup> Also popular were the philosophical works of the European Enlightenment such as Rousseau’s *On the Social Contract*, Locke’s *Two Treatises of Government*, and Voltaire’s plays.<sup>146</sup> Therefore, it is hardly surprising that Virginia’s gentry possessed an extensive knowledge of English common law and legal theories.<sup>147</sup>

Another group of English theorists widely read among the colony’s ruling elite during this period were the “country” opposition writers. They included John Milton, Viscount Bolingbroke, James Harrington, and radicals John Trenchard and Thomas

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<sup>141</sup> Breen, *Tobacco Culture*, 97.

<sup>142</sup> Isaac, *Transformation of Virginia*, 133.

<sup>143</sup> Warren M. Billings, “ ‘Send us... what other Lawe books you shall thinke fit,’ Books that Shaped the Law in Virginia, 1600-1800,” *Virginia Magazine of History and Biography* 120, no. 4 (2012): 317 and Greene, “Society, Ideology, and Politics,” 287.

<sup>144</sup> Greene, “Society, Ideology, and Politics,” 319.

<sup>145</sup> Billings, “Send us...”, 320-326.

<sup>146</sup> Bailyn, *Ideological Origins*, 27-28.

<sup>147</sup> Breen, *Tobacco Culture*, 316.



Gordon.<sup>148</sup> Collectively, these thinkers represented the “Whig canon” that arose after England’s Glorious Revolution in 1688. These writers embraced the ideals of classical republicanism found in the works of Aristotle, Cicero, Polybius, and Machiavelli.<sup>149</sup> Classical republicanism recognized that the most politically stable governments of antiquity were constitutional republics.<sup>150</sup> It was through these collections that eighteenth-century elite Virginians acquired an acute awareness of the precepts of mixed government, separation of powers, civic virtue, patriotism, natural rights, and most importantly: constitutionalism.<sup>151</sup>

The most significant contribution of these opposition writers to eighteenth-century political thought was Country ideology.<sup>152</sup> According to this theory, English society consisted of “court” and “country.”<sup>153</sup> “Court” represented the sovereign which consisted of royals, ministers, and “Parliamentary insiders.”<sup>154</sup> “Country” characterized “the independent gentlemen loyal only to the Country, one another, and themselves.”<sup>155</sup> They insisted that Britain’s ancient constitution guaranteed a balance of powers between the various branches of government.<sup>156</sup> Parliament represented the Country as a check on the Court, and hence, was the protectorate of liberty and property.<sup>157</sup> However, Parliament was susceptible to the “ministerial corruption” of the Court as evidenced by

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<sup>148</sup> Greene, “Society, Ideology, and Politics,” 288-289.

<sup>149</sup> J.G.A. Pocock, “Machiavelli, Harrington and English Political Ideologies in the Eighteenth Century,” *William and Mary Quarterly*, Third Series, 22, no. 4 (Oct., 1965): 551.

<sup>150</sup> Pocock, “Machiavelli, Harrington and English Political Ideologies,” 569.

<sup>151</sup> Bailyn, *Ideological Origins*, 326.

<sup>152</sup> Bernard Bailyn, *Pamphlets of the American Revolution 1750-1776*, vol. I (Cambridge, MA: Belknap Press of Harvard University Press, 1965), 29.

<sup>153</sup> Pocock, “Machiavelli, Harrington and English Political Ideologies,” 565.

<sup>154</sup> Calhoun, *The Loyalists in Revolutionary America*, 117.

<sup>155</sup> Pocock, “Machiavelli, Harrington and English Political Ideologies,” 565.

<sup>156</sup> J. Thomas Wren, “The Ideology of Court and Country in the Virginia Ratifying Convention of 1788,” *Virginia Magazine of History and Biography* 93, no. 4 (Oct., 1985): 392.

<sup>157</sup> Wren, “The Ideology of Court and Country,” 390.



the presence of standing armies, national debt, and high taxation.<sup>158</sup> “If Parliament should become wholly corrupt, it would be the end of independence and liberty.”<sup>159</sup> At the heart of Country ideology was the idea that the power of government was a corruptible force, and as such, posed a serious threat to individual freedom. Accordingly, the only way to safeguard liberty was to preserve the constitutional balance between “monarchy (Kings), aristocracy (Lords), and democracy (Commons).”<sup>160</sup> Therefore, “it was more important to supervise government than to support it, because the preservation of independence is the ultimate political good.”<sup>161</sup>

In this respect, Harrington’s *The Oceana* and Trenchard and Gordon’s *Cato’s Letters* became the most influential opposition writings to Virginia’s Revolutionary generation.<sup>162</sup> Harrington’s notion that land ownership gave a man his independence aptly suited Virginia’s tobacco culture. Equally important to a man’s autonomy was his right to bear arms. Harrington’s ideal republic was one in which free men possessed their own lands and weapons.<sup>163</sup> He identified two types of government: provincial and national. Provincial government was dependent on “some foreign prince or state;” whereas, national government was independent and self-contained.<sup>164</sup> Trenchard and Gordon defined liberty as a natural right of all free men that was only attainable if “government

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<sup>158</sup> Pocock, “Machiavelli, Harrington and English Political Ideologies,” 563.

<sup>159</sup> Wren, “The Ideology of Court and Country,” 392.

<sup>160</sup> Pocock, “Machiavelli, Harrington and English Political Ideologies,” 568.

<sup>161</sup> Pocock, “Machiavelli, Harrington and English Political Ideologies,” 565.

<sup>162</sup> Bailyn, *Ideological Origins*, 552.

<sup>163</sup> Pocock, “Machiavelli, Harrington and English Political Ideologies,” 553-554.

<sup>164</sup> James Harrington, “Chapter I: Of Government,” in *The Oceana and Other Works of James Harrington*, with an account of his life by John Toland (London: Becket and Cadell, 1771), <http://oll.libertyfund.org/title/916/7505/1844186> (accessed April 23, 2013).



(was) executed for the good of all, and with the consent of all.”<sup>165</sup> Anything else was “tyranny.”<sup>166</sup> Country ideology evoked the idea that under the right circumstances, the polity was capable of self-governance.<sup>167</sup>

With the passage of the Coercive Acts in 1774, Virginia’s leadership found itself challenged “by the corruption at the center of power, by the threat of tyranny, and by a constitution gone wrong.”<sup>168</sup> The amalgamation of English common law antecedents, Enlightenment theories, and Country ideology provided a political framework within which both sides could address the current crisis.<sup>169</sup> To Virginia’s ruling elite, “*constitution* was the most hallowed term in their political vocabulary, for it guaranteed their rights, liberty, and property.”<sup>170</sup> Therefore, the initial disagreement between the members of the gentry was one of a constitutional nature. Loyalists defended the old order of things and trusted that the British government would do the right thing in the colonies. Conversely, the Whigs began to exhibit a “fundamental distrust in Britain,” and insisted on constitutional reform.<sup>171</sup> Thus, the opposing ideologies of Loyalist and Whig are better understood if placed within the milieu of Court versus Country. The main point of contention within Virginia’s House of Burgesses in 1774 was not over whether action should have been taken, but rather over which course of action they should take.<sup>172</sup>

Hence, the summer of 1774 proved a critical juncture for Virginia’s landed gentry. Although, the majority of the Burgesses felt justified in their reproach to

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<sup>165</sup> John Trenchard and Thomas Gordon, *Cato’s Letters, or Essays on Liberty, Civil and Religious, and Other Important Subjects*, vol. 1, chapter 24, edited and annotated by Ronald Hamowy (Indianapolis: Liberty Fund, 1995), <http://oil.libertyfund.org/title/1237/64442/1597207> (accessed April 23, 2013).

<sup>166</sup> Trenchard and Gordon, *Cato’s Letters*.

<sup>167</sup> Bailyn, *Ideological Origins*, 201.

<sup>168</sup> Bailyn, *Pamphlets of the American Revolution*, 22.

<sup>169</sup> Bailyn, *Pamphlets of the American Revolution*, 37.

<sup>170</sup> Greene, “Society, Ideology, and Politics,” 290.

<sup>171</sup> Brown, *The King’s Friends*, 271.

<sup>172</sup> Brown, *The King’s Friends*, 298.



Parliament's passage of the Coercive Acts, that decision was not unanimous. John Randolph remained silent during the debates on May 25 and refused to sign both the Day for Fasting, Humiliation, and Prayer and subsequent Association.<sup>173</sup> It was then suggested that Lord Dunmore dissolved the General Assembly on May 26, because he had been "traitorously informed" by the attorney general.<sup>174</sup> John Randolph's loyalty to his fellow Virginians was now in severe doubt. Lines had been clearly drawn, and there was no turning back. The events that followed not only split the colony's political elite and its first family into opposing camps, but also fueled revolutionary ideas regarding republican government.

On May 30, 1774, moderator Peyton Randolph and the newly-formed Association called an emergency meeting of all former Burgesses in order to address non-importation, a possible non-exportation boycott, and the election of delegates to a general congress of the colonies. The meeting was scheduled for August 1 to allow members sufficient time to take care of personal matters and travel to Williamsburg. Moderator Peyton Randolph and Treasurer Robert Carter Nicholas sent out a circular addressed to their colleagues which stressed that "things seems to be hurrying to an alarming Crisis, and demand the speedy, united Councils of all those who have a regard for the common Cause."<sup>175</sup> The urgency of the situation prompted former Burgess Thomas Jefferson to transfer his entire

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<sup>173</sup> As discussed in Chapter I of this thesis, the disbanded House entered into two associations on May 25. One was a non-importation association. The other association proposed to send delegates to a general congress of the colonies. See Virginia Independence, *Revolutionary Virginia*, vol. I, 94-98.

<sup>174</sup> Virginia Independence, "An Association, Signed by 89 Members of the Late House of Burgesses," in *Revolutionary Virginia*, vol. I, 94.

<sup>175</sup> Virginia Independence, "Letter to Washington, May 31, 1774," in *Revolutionary Virginia*, vol. I, 101-102.



law practice to twenty-one-year old Edmund Randolph.<sup>176</sup>

On June 1, the port of Boston was closed, and a Day for Fasting, Prayer, and Humiliation was observed in Williamsburg. Citizens, clergy, and former House members joined Speaker Peyton Randolph on the steps of the courthouse and proceeded to the town church “where prayers were accordingly read, and a sermon, suitable to the occasion, was delivered by the reverend Mr. Price.”<sup>177</sup> Soon thereafter, the colony faced another crisis. Because Governor Dunmore refused to reinstate the General Assembly, certain acts expired including the “Fee Bill.” As a result, the county courts were shut down, and there was no relief for creditors, or any means for the recording of wills, deeds, or other legal documents.<sup>178</sup> In addition, Parliament suspended the provincial government and quartered troops in the town of Boston until restitution for the East India Company’s tea was made.<sup>179</sup> These actions only fueled a growing suspicion among the Whig majority of Virginia’s leadership that there was a genuine conspiracy afoot against American liberty.

In the meantime, attorney general John Randolph wrote his loyalist tract *Considerations on the Present State of Virginia*.<sup>180</sup> When this pamphlet was published in July 1774, it set off an inimical reaction that Randolph could not have imagined. What he intended as an appeal for moderation to the current crisis infuriated his fellow Burgesses and Virginians of all stripes. Although *Considerations* was published anonymously, it did

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<sup>176</sup> Edmund Randolph to James Parker, August 27, 1774, Edmund Randolph Papers, Virginia Historical Society, Richmond, Va. This letter also appears in “Edmund Randolph assumes Thomas Jefferson’s Practice,” *Virginia Magazine of History and Biography* 67 (April 1959): 170-171.

<sup>177</sup> *Virginia Gazette*, June 2, 1774.

<sup>178</sup> Virginia Independence, “Observations on Conditions and on Some Tractarians and Others in the Virginia Colonial Twilight June–August 1774: An Editorial Note,” in *Revolutionary Virginia*, vol. I, 106.

<sup>179</sup> Virginia Independence, *Revolutionary Virginia*, vol. I, 106.

<sup>180</sup> Eckenrode, *The Randolphs*, 91.



not take long for the gentry to realize the author's true identity. In a rebuttal pamphlet, *Considerations on the Present State of Virginia Examined*, the colony's treasurer Robert Carter Nicholas alluded to Randolph as the author of *Considerations*.<sup>181</sup> He identified Randolph as a member of the General Assembly who held a seat on one or more of the courts of the colony.<sup>182</sup> At that time, John Randolph was the only member of the House to hold a seat on both the General and Vice-Admiralty courts. With the publication of *Considerations*, Randolph had crossed an irrevocable line, from which there was no return. Randolph was labeled a traitor to his own countrymen. Over the course of the next year, he suffered public humiliation, social ostracization, and permanent estrangement from his only son Edmund. In the end, John Randolph was forced to abandon his home and fled to England, one of the first casualties of the Revolution.

Together, these two pamphlets marked the emergence of opposing ideologies in Virginia between Patriot ("Country") and Loyalist ("Court") that propelled the political revolution forward in the colony. They each offered disparate interpretations of American rights and the limits of Parliamentary power under the British Constitution. Both sides believed that the preservation of the constitution was wholly reliant upon the balance between its parts. However, "Country" thinkers viewed the parts as "independent" of one another; whereas, "Court" believed them to be "interdependent."<sup>183</sup> Randolph's *Considerations on the Present State of Virginia* was the embodiment of the loyalist perspective which called for moderation and unrelenting loyalty to the Crown. Conversely, Nicholas represented a "Country" mandate that vigorously challenged the

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<sup>181</sup> See John Randolph and Robert Carter Nicholas, *Considerations and Considerations Examined*. Nicholas' response was published that summer.

<sup>182</sup> Randolph and Nicholas, *Considerations and Considerations Examined*, 76.

<sup>183</sup> Wren, *The Ideology of Court and Country*, 571.



existing order. Nevertheless, both hoped for an expedient and satisfactory resolution to the impasse and expressed their desire that the relationship between the colonies and the Mother Country remain intact. The idea of an independent America had not been realized in Virginia at this juncture. What did emerge from the Randolph-Nicholas debate, however, was the commencement of ideological warfare between Court "conservatism" and Country "radicalism" within Virginia's gentry.<sup>184</sup>

In *Considerations on the Present State of Virginia*, John Randolph warned if the dispute with Great Britain escalated further that it would most likely result "in the Destruction of one, and perhaps of both the contending parties."<sup>185</sup> While he acknowledged that Great Britain was perhaps severe in its punishment of Boston, he wholeheartedly believed that reconciliation was possible if cooler heads prevailed. He recalled that although the colonies were successful in petitioning Parliament for the repeal of the Stamp Act almost a decade earlier, the duties on English tea remained in full force and effect. Randolph pointed out that even though Parliament had the exclusive right to impose such taxes, it was the free choice of the colonists whether or not to purchase this commodity. Therefore, he did not understand why there were "new disturbances from an old affront."<sup>186</sup>

Randolph further argued that had there been an actual conspiracy against American liberty by the Mother Country, the punitive acts passed against Boston would have been applied to the whole Massachusetts Bay Colony.<sup>187</sup> He suggested that the proper course of action would have been a public censure of the participants in the

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<sup>184</sup> Claude Halstead Van Tyne, *The Loyalists of the American Revolution* (New York: The MacMillan Company, 1902; facsimile reprint Bowie, MD: Heritage Books, Inc., 1989), 66.

<sup>185</sup> John Randolph, *Considerations*, 16.

<sup>186</sup> John Randolph, *Considerations*, 20-21.

<sup>187</sup> John Randolph, *Considerations*, 27.



Boston Tea Party for the illegal destruction of the East India Company's property. Then, the Virginia legislature should have reaffirmed its loyalty as British subjects and petitioned the King for redress of their grievances.<sup>188</sup> Suffice it to say, had John Randolph stopped there, perhaps, his plea for moderation would have appealed to the more conservative members of the House. However, it was what he said next that sealed his fate.

First, he accused the former Burgesses of acting impetuously on the passions of their constituents. "I have frequently heard the Term Patriotism mentioned . . . I can by no means denominate a Man a Patriot because he enjoys the Acclamations of the People."<sup>189</sup> Second, Randolph accused the former House of "mockery" in their politicization of the sacred practice of religious fasting. He pointed out that the Day of Fasting, Prayer, and Humiliation required that they only abstain from the afternoon meal. The attorney general failed to see the logic and stated "I cannot, without Flattery, applaud the wisdom of its authors."<sup>190</sup> Third, he attacked the Association's pledge to not consume the tea already in their houses, as he seriously doubted any of them could give up such a necessary habit.<sup>191</sup> Fourth, he called non-importation "vindictive" and said that it "would be giving to ourselves the very Wound which we complain of having been received by our Sister colony."<sup>192</sup> Fifth, he blasted the Association for contemplating the cessation of all exports. Finally, John Randolph emphatically denied that the duty on tea was a direct tax and stated that any opinion to the contrary was founded on nothing more than

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<sup>188</sup> John Randolph, *Considerations*, 28-29.

<sup>189</sup> John Randolph, *Considerations*, 17-18.

<sup>190</sup> John Randolph, *Considerations*, 30.

<sup>191</sup> John Randolph, *Considerations*, 31.

<sup>192</sup> John Randolph, *Considerations*, 31-32.



suspicion.<sup>193</sup> “For so long as the Parliament are able to enforce Duties so long will they lay them when they think it expedient.”<sup>194</sup>

In *Considerations on the Present State of Virginia Examined*, Robert Carter Nicholas began his response with “surely the author does not mean to insinuate that we have *wantonly* drawn any of these Misfortunes on ourselves.”<sup>195</sup> As to the proper course of action for addressing the current crisis, Nicholas pointed out that the colonies had petitioned for redress numerous times “without the desired effect.”<sup>196</sup> In fact, Parliament showed a blatant disregard for the protests against the Boston Acts when it enforced the blockade of the town’s port on June 1. Furthermore, this punishment was applied to the whole, and not the guilty few whose identities were unknown.<sup>197</sup> With respect to the former Stamp Act and the latter Tea Act, Nicholas rebutted that they were instituted for the sole purpose of collecting revenue in America, and therefore constituted direct taxes.<sup>198</sup> What made the recent crisis different is that a matter that should have been brought before the courts became something else entirely. Acting as both judge and jury, Parliament exceeded their legislative power when they initiated these punitive measures against an entire population until the East India Company recouped its loss.<sup>199</sup>

Nicholas challenged the author of *Considerations* to carefully reexamine the recent acts that had been enforced in Massachusetts, and then, deny that such should not been construed as a serious threat to American liberty. He fired back:

When my *Neighbour’s House* is on fire, it highly behooves me to look to *my own*.  
When the rest of America sees a Sister Colony grievously oppressed by the Hand

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<sup>193</sup> John Randolph, *Considerations*, 35.

<sup>194</sup> John Randolph, *Considerations*, 35-36.

<sup>195</sup> Nicholas, *Considerations Examined*, 39.

<sup>196</sup> Nicholas, *Considerations Examined*, 44 & 48.

<sup>197</sup> Nicholas, *Considerations Examined*, 43-44.

<sup>198</sup> Nicholas, *Considerations Examined*, 45.

<sup>199</sup> Nicholas, *Considerations Examined*, 50-52.



of Power, and this, for making a stand against the Infringements and Violations of American rights . . . would not all the Colonies have the greatest Reason to fear, if they continue to supine and indifferent to Proceedings against Boston that they might all, in Time, upon a refusal to submit to any Act of Parliament, however oppressive, be exposed to the same rigorous Treatment?<sup>200</sup>

The Boston Bill was not only a gross violation of the British Constitution, but it was of an “entirely *ex post facto*” nature.<sup>201</sup> All things considered, the former House of Burgesses, together with the other colonial legislatures, acted appropriately to the crisis. Nicholas concluded that if the author of *Considerations* had something worthwhile to add that was void of “contemptuous Indifference . . . or Ridicule,” that he would welcome same.<sup>202</sup>

During the months of June and July 1774, delegates were chosen from their respective counties to attend the August 1 Virginia convention.<sup>203</sup> As they gathered in the colonial capital, John Randolph’s *anonymous* essay quickly became the hot topic of conversation among the gentry. Illness prevented Thomas Jefferson from attending. Nevertheless, he drafted a set of instructions for the Virginia delegates to the general congress.<sup>204</sup> In them, Jefferson defiantly stated that, “the true ground on which we declare these acts void is, that the British parliament has no right to exercise any authority over us.”<sup>205</sup> He sent copies of this document to Peyton Randolph and Patrick Henry. Edmund Randolph recalled, “I distinctly recollect the applause bestowed on the most of them when they were read to a large company at the house of Peyton Randolph, to whom they were addressed. Of all, the approbation was not equal.”<sup>206</sup> While he does not refer to his father by name, Edmund’s statement seems to indicate that John Randolph was present at

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<sup>200</sup> Nicholas, *Considerations Examined*, 60.

<sup>201</sup> Nicholas, *Considerations Examined*, 64.

<sup>202</sup> Nicholas, *Considerations Examined*, 83.

<sup>203</sup> Ragsdale, *A Planter’s Republic*, 181.

<sup>204</sup> Thomas Jefferson, *A Summary View of the Rights of British Americans*, Avalon Project, Yale Law School, [http://avalon.law.yale.edu/18th\\_century/jeffsumm.asp](http://avalon.law.yale.edu/18th_century/jeffsumm.asp) (accessed September 13, 2012).

<sup>205</sup> Jefferson, *A Summary View*.

<sup>206</sup> Edmund Randolph, *History of Virginia*, 205.



the home of his brother on this occasion. Even though the Virginia delegation did not officially adopt Jefferson's radical resolutions, Peyton Randolph "deliberately" released them for anonymous publication in Williamsburg and Philadelphia under the title *A Summary View of the Rights of British America*.<sup>207</sup>

Shortly thereafter, John Randolph encountered additional backlash for his loyalist pamphlet. The attorney general's loyalty and character were questioned in a public and very humiliating manner, as evidenced by the following anonymous poem that appeared in the *Virginia Gazette* that summer:

To the Author of Considerations on the present State of Virginia.

REMONSTRANCE, Petition, and Address,  
All these, still in vain, have been try'd;  
Why then on the Throne should we press  
Those Claims that have oft been deny'd?

You tell us you're one of our Friends,  
And offer Advice without Fee;  
Thy Pamphlet may answer thy Ends,  
Though burnt under Liberty Tree;

But if, with a mischievous Aim,  
Our Councils hope to mislead,  
You'll find, with Confusion and Shame,  
Your Wishes will never succeed.

You ridicule Fasting and Prayer!  
Th'Effect 'tis presum'd, will be small,  
When known to be fond of good Fare,  
And not fond of Praying at all.<sup>208</sup>

John Randolph not only found himself in direct opposition to his older brother Peyton, but he also alienated himself from the rest of Virginia's ruling class. His new predicament was somewhat ironic in that he did not heed his own advice. Daniel Fisher

<sup>207</sup> Reardon, *Peyton Randolph*, 47.

<sup>208</sup> *Virginia Gazette*, July 28, 1774. Note: For the purposes of clarification in this poem from Old English the "f" has been replaced with "s" where appropriate.



recalled that in 1750:

John Randolph in speaking of the disposition of the Virginian, very freely cautioned us against disobliging or offending any person of note in the Colony . . . for says he, either by blood or marriage, we are almost all related, or so connected in our interests, that whoever . . . presumes to offend any one of us will infallibly find an enemy of the whole nor right nor wrong, do we ever forsake him, till by one means or other, his ruin is accomplished.<sup>209</sup>

Perhaps, John Randolph thought himself immune because of his family's prominent position in Virginia's gentry. Nevertheless, his ostracization from this group must have been quite embarrassing for his son Edmund, who was busy establishing his own private law practice.

On August 5, 1774, the Convention elected Peyton Randolph, Richard Henry Lee, George Washington, Patrick Henry, Richard Bland, Benjamin Harrison, and Edmund Pendleton as Virginia's delegates to the First Continental Congress.<sup>210</sup> Peyton Randolph was unanimously elected as President of the Congress held in Philadelphia during the months of September and October.<sup>211</sup> In preparation for same, the Virginia delegation adopted resolutions which would serve as the prototype for the Continental Association of October 20, 1774.<sup>212</sup> The Virginia Resolves pledged to cease imports of all goods, including tea, from Great Britain and slaves from the West Indies or Africa "after the 1<sup>st</sup> day of November next."<sup>213</sup> Further, should "the Inhabitants of the Town of Boston, or any other Sister colony . . . be compelled to pay the East India Company for destroying any tea . . . we will not import or purchase any British East India Commodity whatever."<sup>214</sup> They also stated that they would no longer do business with any trader or merchant who

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<sup>209</sup> Daniel Fisher quoted in Gibbs, *Character Biography of John Randolph, 1727-1784*.

<sup>210</sup> Virginia Independence, *Revolutionary Virginia*, vol. I, 229.

<sup>211</sup> Reardon, *Peyton Randolph*, 50.

<sup>212</sup> Holton, *Forced Founders*, 121 and Reardon, *Peyton Randolph*, 230.

<sup>213</sup> Virginia Independence, *Revolutionary Virginia*, vol. I, 232-233.

<sup>214</sup> Virginia Independence, *Revolutionary Virginia*, vol. I, 233.



refused to sign the Association. Finally, they resolved that “unless American Grievances are redressed before the 10<sup>th</sup> day of August 1775, we will not . . . export Tobacco, or any other Article whatever, to Great Britain.”<sup>215</sup> The First Continental Congress adjourned on October 26, 1774 and agreed to reconvene the following May.<sup>216</sup>

The majority of Virginia’s political elite were willing participants in the colonial resistance after the passage of the Coercive Acts; however, they “had little initial desire to be revolutionists, to want to substitute a new American sovereignty for the old sovereignty of Britain.”<sup>217</sup> The 1774 trade boycotts were intended to compel Parliament to repeal the Coercive Acts.<sup>218</sup> However, as previously discussed, Virginia’s “Country” Whigs were “ideologically opposed to Parliamentary sovereignty.”<sup>219</sup> The enforcement of these acts in Massachusetts only confirmed their fears that there was a real danger to American liberty. As such, they unwittingly planted the seeds for the political revolution that followed with the publication of Jefferson’s *Summary View* and Continental Congress’ adoption of their resolutions. Edmund Randolph remembered: “Virginia kept out of sight a truth which time never fails to bring to light, that when subjects questioned a power asserted by a mother country their measures will be elevated in their progress further than was at first expected.”<sup>220</sup> By the time the Continental Association went into effect that fall, the heated debate between the Whig and Loyalist factions in the Virginia gentry was essentially over.<sup>221</sup> Nevertheless, Virginia and the other American colonies still hoped for an amicable resolution to the crisis at hand.

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<sup>215</sup> Virginia Independence, *Revolutionary Virginia*, vol. I, 234.

<sup>216</sup> Virginia Independence, *Revolutionary Virginia*, vol. II, xxiii.

<sup>217</sup> Holton, *Forced Founders*, 136 and Nelson, *The American Tory*, 42.

<sup>218</sup> Holton, *Forced Founders*, 79.

<sup>219</sup> Holton, *Forced Founders*, 210.

<sup>220</sup> Edmund Randolph, *History of Virginia*, 206.

<sup>221</sup> Kelly, “The White Loyalists of Williamsburg.”



From March 20 through March 27, 1775, the Second Virginia Convention was held at St. John's Episcopal Church in Richmond.<sup>222</sup> They passed several resolutions, including the raising of volunteer militia companies in their respective counties in a "posture of defense."<sup>223</sup> This was agreed to after a very passionate speech was delivered at the Convention by Patrick Henry.<sup>224</sup> They also re-elected the same seven delegates of the First Continental Congress as Virginia's representatives to Second Continental Congress to be held in May.<sup>225</sup> It was during this time that the Whig majority, "increasingly began to talk in the highly charged rhetoric of the radical Country writers."<sup>226</sup> This eventually developed into Country Whig ideology which became the driving force of the intellectual and political revolution and resulted in the birth of American constitutionalism.<sup>227</sup>

From March through October 1775, the disbanded House was engaged in a series of standoffs with Royal Governor Dunmore. The day after they adjourned their extralegal meeting in Richmond, Dunmore issued a proclamation which forbade them to send delegates to a second Continental Congress, which they ignored.<sup>228</sup> Then, sometime between two and three o'clock on the morning of April 21, 1775, the Governor and a small company of British regulars removed fifteen barrels of gunpowder from the

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<sup>222</sup> Virginia Independence, *Revolutionary Virginia*, vol. II, xxiii.

<sup>223</sup> Edmund Randolph, *History of Virginia*, 209-212.

<sup>224</sup> Edmund Randolph, *History of Virginia*, 212. This is where Patrick Henry delivered his famous cry, "Give me liberty, or give me death!" See also William Wirt Henry, *Patrick Henry: Life, Correspondence, and Speeches*, vol. I (New York: 1891), 254-272.

<sup>225</sup> *Virginia Gazette*, April 1, 1775.

<sup>226</sup> Breen, *Tobacco Culture*, 196.

<sup>227</sup> For the purposes of this thesis, "Country Whig Ideology" may be defined as "the theory of the ultimate supremacy of the people . . . against tyrannical government . . . that by mid-eighteenth century had hardened into orthodoxy" and increased during the duration of the American Revolution. See Bailyn, *Ideological Origins*, 201.

<sup>228</sup> Virginia Independence, *Revolutionary Virginia*, vol. III, 3.



capital's magazine.<sup>229</sup> When the citizens found out, an angry and armed mob headed for the Governor's mansion to demand return of the powder. Peyton Randolph and Robert Carter Nicholas intervened and convinced the citizens to allow Lord Dunmore the opportunity to replace it.<sup>230</sup> The Governor refused, but promised Peyton Randolph that it could be delivered in half an hour in the event of a slave insurrection.<sup>231</sup> Around this same time, Virginia received news that gunfire had been exchanged between British troops and citizens of Concord, Massachusetts on April 19.<sup>232</sup> Despite the fact that its sister colony was now engaged in war with the mother country, throughout the summer of 1775 Virginia leaders continued to attempt to negotiate a settlement with the British government. Well aware of his loyalist sympathies and close friendship with the Governor, they appointed John Randolph as an intermediary between the body and Lord Dunmore, who, at this time, had sought refuge on the H.M.S. *Fowery* in Yorktown harbor.<sup>233</sup> After several failed attempts, the General Assembly finally surmised that reconciliation was improbable, and revolution was on the horizon. On August 23, 1775, King George declared that the American colonies were in a state of rebellion and made his formal declaration of war.<sup>234</sup> As a result, the General Assembly formed a Committee of Safety which became the *de facto* government of the colony. Then, on October 10, 1775, the colonial legislature dissolved itself.<sup>235</sup>

The year 1775 proved difficult not only for the Virginia gentry, but the Randolph

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<sup>229</sup> Virginia Independence, *Revolutionary Virginia*, vol. III, 3-4. See also Holton, *Forced Founders*, 143-144.

<sup>230</sup> Virginia Independence, *Revolutionary Virginia*, vol. III, 5. See also Edmund Randolph, *History of Virginia*, 219 and Holton, *Forced Founders*, 144.

<sup>231</sup> Virginia Independence, *Revolutionary Virginia*, vol. III, 5-6.

<sup>232</sup> Virginia Independence, *Revolutionary Virginia*, vol. III, 6-8.

<sup>233</sup> Virginia Independence, *Revolutionary Virginia*, vol. III, 21-23.

<sup>234</sup> Virginia Independence, *Revolutionary Virginia*, vol. III, xxviii.

<sup>235</sup> Virginia Independence, *Revolutionary Virginia*, vol. III, 23-24.



family as well. In such a volatile political climate, John Randolph was continually persecuted for his loyalism. In late July 1775, the *Virginia Gazette* published a lengthy letter from "A Volunteer" to John Randolph, Esquire. This letter had a disparaging and threatening tone, as evidenced by the following excerpts: "Your, very *idea*, like an unskillful actor, is enough to excite the aversion of your audience; and you will be hissed off the stage with the demerit you deserve . . . as a friend you are defective, as an enemy insignificant; pray abscond yourself, push for some remote corner of the globe."<sup>236</sup> Most likely fearing for his safety, John Randolph made the decision to move his family to England.

Already at odds with his older brother, Peyton, John Randolph experienced a further blow when his only son Edmund told his father of his plans to join the Virginia militia and support the American cause. Although little historical evidence survives, a heated conversation between John and Edmund Randolph must have taken place sometime in July 1775.<sup>237</sup> John Randolph wrote a letter to his son that was never received. Regardless, this letter not only sheds light on the close relationship between this father and son, but also reveals the heartbreak the American Revolution caused for this family:

My dear Edmund,  
 I wrote you a long letter . . . wherein I pointed out my reasons why I thought your military undertaking will not suit your situation, or be so advantageous to you as residing in Williamsburg. Your Uncle is dangerously ill at Richmond . . . You should never be out of the way when so much depends on your presence. I shall certainly go to England with my family before October. I want you very much to take my place at the Capitol . . . You have often told me that you would relinquish your legacy given by Mr. Jennings. As an equivalent I shall give you the full contents of my study . . . I have appointed yourself and uncle my trustees for

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<sup>236</sup> *Virginia Gazette*, July 27, 1775.

<sup>237</sup> Many personal paper and record collections held in Richmond were destroyed by fire in the Revolutionary and American Civil Wars.



selling my estate and shall join Mr. Blair with you. Consider what an honorable and advantageous (illegible) you will make in the law. Is not the glory of the cabinet equal to that of the field? Is not this better than broken limbs, fatigue, shattered health, and an eternal want of money? For God's sake return to your family and indeed to yourself. Abandon not your sisters, who are wretched about you. Come back and heaven will protect all your undertakings.<sup>238</sup>

The above letter reveals that John Randolph attempted to reason with his son on at least two separate occasions before his departure to England. What John did not know was the letters never reached Edmund, and therefore, he did not respond.<sup>239</sup> Sadly, John Randolph disowned his only son. This is best evidenced by the deed executed by John and Ariana Randolph on August 25, 1775 in which they appointed Peyton Randolph, John Blair, and James Cocke as Administrators over their Williamsburg property, not Edmund as was John's original intention.<sup>240</sup> Furthermore, in his correspondence with Thomas Jefferson in late 1775, John Randolph never once acknowledged or inquired about his son despite the fact that Jefferson commented on his recent visit with Edmund in Williamsburg.<sup>241</sup> The fact that there is not a single mention of John Randolph in Edmund Randolph's *History of Virginia* reveals how deeply Edmund was affected by his father's treachery.<sup>242</sup> John and Edmund Randolph never reconciled.

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<sup>238</sup> John Randolph to Edmund Randolph, August 12, 1775 quoted in Charles Frederic Hobson, "The Early Career of Edmund Randolph, 1753-1789" (PhD diss., Emory University, 1971), 40.

<sup>239</sup> It is believed that these letters were intercepted by the British. See Colonial Williamsburg Foundation, "John 'The Tory' Randolph, available from <http://www.history.org/almanack/people/bios/bioratjr.cfm?expand=y> (accessed March 24, 2013) and Hobson, "The Early Career of Edmund Randolph," 40.

<sup>240</sup> John and Ariana Randolph, *Deed*, August 25, 1775.

<sup>241</sup> Thomas Jefferson to John Randolph, August 25, 1775 and John Randolph to Thomas Jefferson, August 31, 1775, *Thomas Jefferson Papers*, Series 1: General Correspondence 1651-1827, The Library of Congress, under "American Memory," <http://memory.loc.gov/ammem/collections/jeffersonpapers/index.html> (accessed September 13, 2012).

<sup>242</sup> Edmund Randolph, *History of Virginia*.



CHAPTER IV  
BIRTH OF A PATRIOT

“My country, very early indeed, took me under her protection, at a time when I most wanted it; and by a succession of favors and honors, prevented even my most ardent wishes. I feel the highest gratitude and attachment to my country; her felicity is the most fervent prayer of my heart” – Edmund Randolph, Virginia Convention, June 6, 1788.<sup>243</sup>

Edmund Randolph’s statement reveals how he was embraced by his fellow Virginians as a child of the American Revolution. In the summer of 1775, he was placed in the precarious position of supporting American independence while his father John remained loyal to the mother country. Against his father’s wishes, this young man boldly declared his own independence and made America’s cause his own. His declaration proved costly. On the eve of Revolution, Edmund Randolph was disowned and left essentially “orphaned.”<sup>244</sup> Due to his father’s conduct, he was forced to realign himself with Virginia’s gentry class, a class which the Randolph family had politically dominated for over a century. However, the split within his immediate family did not prevent Edmund from becoming a distinguished Patriot. For Edmund Randolph was also “adopted and nurtured” by the American Revolution and its Virginia leadership.<sup>245</sup> While his father’s betrayal of his elite status and his colony almost sunk Edmund’s hopes, the words of other elites helped him. For the next twenty-one years, Edmund Randolph worked very hard to prove his loyalty to his country and America. Nevertheless, his intimate knowledge of Revolutionary loyalism had a profound effect on this young man, both personally and politically.

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<sup>243</sup> Edmund Randolph, *Speech of Edmund Randolph on the Expediency of Adopting the Federal Constitution, Delivered in the Convention of Virginia, June 6, 1788*, Special Collections, The Library of Virginia, Richmond, Va.

<sup>244</sup> Merrill D. Peterson, “Edmund Randolph and His Times,” in Clarke County Historical Association, *Its Proceedings*, vol. 21 (1979-1980), 4-5.

<sup>245</sup> Peterson, “Edmund Randolph,” 5.



The Whig/Tory split among elite leaders of the Revolutionary generation, although uncommon, was not limited to the Randolph family. Founders George Washington and Benjamin Franklin also had loyalists in their families. Washington's friend and relative by marriage, George William Fairfax, remained loyal to the Crown. Franklin's son, William, the last Royal Governor of New Jersey, was perhaps the most famous loyalist in all of Revolutionary America. Any divide within their own families during this era deeply affected the elites who became nation-builders. Each of these men had very different personal experiences with Revolutionary loyalism. Therefore, a comparison of the three is necessary in order to illuminate how Edmund Randolph's story stands out.

At the time of John Randolph's dissent from Virginia's Whig majority in 1774, twenty-one year old Edmund was just embarking on his legal career. In contrast, Benjamin Franklin and George Washington were already well-established in their careers, and both had served in many public capacities. Dr. Franklin, forty-seven years Randolph's senior, was a famous scholar, inventor, and publisher. In addition, he had served as Clerk of the Pennsylvania General Assembly and had spent many years in London as its agent.<sup>246</sup> In 1776, the Continental Congress appointed Franklin as a Commissioner to France.<sup>247</sup> By 1774, George Washington, twenty-one years older than Randolph, was a well-established surveyor and planter. He had been appointed adjutant general of the Virginia militia and won accolades through his military service in the French and Indian war.<sup>248</sup> In June 1775, Washington was unanimously appointed

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<sup>246</sup> "Benjamin Franklin, 1706-1790," University of Pennsylvania Archives, [http://www.archives.upenn.edu/people/1700s/franklin\\_ben.html](http://www.archives.upenn.edu/people/1700s/franklin_ben.html) (accessed October 30, 2012).

<sup>247</sup> "Benjamin Franklin, 1706-1790."

<sup>248</sup> Flexner, *George Washington*, vol. I, 42-45.



commander general of the Continental Army.<sup>249</sup> Washington and Franklin represented the older generation of American revolutionary leaders, and therefore, their loyalty to the American cause was never questioned.

These three men had very different backgrounds. Whereas, Randolph was a descendant of one of the most politically prominent dynasties of colonial Virginia; Washington and Franklin were born into families of modest means. Washington relied on his association with one of the colony's leading families to earn his place in the ruling aristocracy.<sup>250</sup> He was first introduced into the gentry when his brother Lawrence married the daughter of Colonel William Fairfax, Anne. Washington spent a great deal of his early years at the magnificent riverfront plantation of William. It was at Belvoir Manor that Washington became acquainted with the customs and mannerisms of this patrician class through his close friendship with Fairfax's son, George William.<sup>251</sup> The elder Fairfax secured Washington's first position as assistant to the surveyor for the town of Alexandria.<sup>252</sup> His appointment as adjutant general of the Virginia provincial forces was previously held by his brother Lawrence.<sup>253</sup> By the time of the Revolution, Washington had cemented his position within the gentry through his active military career, accumulation of land (including his inheritance of Mount Vernon), and marriage to Williamsburg's wealthiest widow, Martha Custis.

Benjamin Franklin neither possessed an impressive pedigree like Randolph, nor acquired gentry sponsorship like Washington. In 1683, his Puritan father Josiah

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<sup>249</sup> Virginia Independence, *Revolutionary Virginia*, vol. III, 286. Washington was appointed on June 15, 1775.

<sup>250</sup> Greene, "Foundations of Political Power," 243.

<sup>251</sup> Flexner, *George Washington*, vol. I, 26-29.

<sup>252</sup> Flexner, *George Washington*, vol. I, 42.

<sup>253</sup> Willard Sterne Randall, *George Washington: A Life* (New York: Henry Holt and Company, Inc., 1997), 66.



emigrated to Boston, Massachusetts from England in order to escape religious persecution from the Anglican Church prior to the Glorious Revolution.<sup>254</sup> Josiah Franklin established himself as a reputable candle maker in Boston.<sup>255</sup> He took a leading role in the Puritan Old South Church, and as such, earned the respect of Boston's elite.<sup>256</sup> Nevertheless, in a family of seventeen children, Benjamin's upbringing was humble compared to that of only-child Edmund Randolph.<sup>257</sup> Furthermore, unlike Randolph, Franklin did not have a formal education or enjoy a close relationship with his father. Young Benjamin left home at the age of ten to live with his older brother James, who gave him an apprenticeship at *The Boston Gazette*.<sup>258</sup> Seven years later, he left Boston and moved to Philadelphia.<sup>259</sup> Although Franklin struggled during his first seven years in the city, he eventually set up his own printing shop and newspaper, *The Pennsylvania Gazette*.<sup>260</sup> This, of course, led to Franklin's illustrious career as a printer. At the time of the Revolution, seventy-year-old Franklin was recognized as one of the foremost scholars and inventors in colonial America.

The ideological split in the Washington/Fairfax and Randolph families took place prior to the outbreak of the Revolutionary War, in 1773 and 1774 respectively. In colonial Virginia, the division of the Washington/Fairfaxes was not as controversial or permanent as the split between Randolphs. As the conflict between the colonies and Britain escalated, Washington's closest friend and confidant George William Fairfax left

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<sup>254</sup> Randall, *A Little Revenge*, 26-27.

<sup>255</sup> Skemp, *Benjamin and William Franklin*, vii.

<sup>256</sup> "Benjamin Franklin, 1706-1790," and Randall, *A Little Revenge*, 29-30.

<sup>257</sup> Skemp, *Benjamin and William Franklin*, 7-8.

<sup>258</sup> Randall, *A Little Revenge*, 35-36 and Skemp, *Benjamin and William Franklin*, 9.

<sup>259</sup> Skemp, *Benjamin and William Franklin*, 9.

<sup>260</sup> Skemp, *Benjamin and William Franklin*, 10-11.



Virginia and returned to England in 1773.<sup>261</sup> Notwithstanding, George Washington continued to correspond with his friend and kept him abreast of developments from the time of Fairfax's departure throughout the Revolutionary War.<sup>262</sup> Fairfax even granted Washington a power of attorney to oversee his affairs in Virginia.<sup>263</sup> Washington also enjoyed a personal friendship and remained in contact with George William's cousin, known Tory sympathizer Lord Bryan Fairfax.<sup>264</sup> Contrary to Council member George William Fairfax and Attorney general John Randolph, Lord Bryan Fairfax remained in Virginia "unmolested by the Revolution."<sup>265</sup> Unlike John Randolph, Lord Fairfax was relatively quiet when it came to his loyalist views. He also owned "nearly one-quarter of the settled area of Virginia."<sup>266</sup>

The fact that there were two conflicting political ideologies within Virginia's landed aristocracy did not dramatically alter Washington's relationship with the Fairfaxes, as it had for Edmund Randolph and his father John. Washington believed that Tories who simply opposed his political ideology were not dangerous unless they acted violently toward their former countrymen. This is best evidenced in his letter to Lord Bryan Fairfax in 1778:

The friendship I ever professed and felt for you met with no diminution from the difference in our political sentiments. I know the rectitude of my own intentions, and believing in the sentiment of yours, lamented, though I do not condemn, your renunciation of the creed I had adopted. Nor do I think any person or power ought to interfere whilst your conduct is not opposed to the general interest of the

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<sup>261</sup> *Virginia Gazette*, June 3, 1773.

<sup>262</sup> Randall, *George Washington*, 262.

<sup>263</sup> George Washington to George William Fairfax, June 10, 1774, *The Papers of George Washington: The Road to Revolution, 1765-1775*, University of Virginia, <http://gwpapers.virginia.edu/documents/revolution/letters/gfairfax1.html> (accessed October 30, 2012).

<sup>264</sup> See "George Washington to Bryan Fairfax, March 1, 1778, *George Washington Papers*, Library of Congress, under "American Memory," <http://memory.loc.gov/ammem/gwhtml/gwhome.html> (accessed October 30, 2012).

<sup>265</sup> Norton, *The British Americans*, 145.

<sup>266</sup> Norton, *The British Americans*, 145.



people, and the measures they are punishing. Our actions, depending upon ourselves, may be controlled, while the powers of thinking, originating in higher causes, cannot always be molded to our wishes.<sup>267</sup>

George Washington's personal experience with non-threatening loyalists in his own family most likely inspired his conviction that men should not be persecuted for their beliefs.

Unlike, Washington and Randolph, the division in the Franklin family occurred after the Revolutionary War was underway. Although he attempted to remain neutral during the initial conflict between the colonies and Great Britain, Governor William Franklin continued to send dispatches regarding colonial resistance to London. As a result, the rebelling majority saw him as a traitor and "spy."<sup>268</sup> Benjamin Franklin made several attempts to convince his son to join the American rebellion, all to no avail. After a very heated argument in the summer of 1775, the two parted ways and had no contact for several years.<sup>269</sup> One year later, William Franklin was removed as Governor of New Jersey under orders of the Continental Congress, and he became a prisoner-of-war until 1778.<sup>270</sup> Like George William Fairfax and John Randolph, loyalist William Franklin sought refuge and departed for Great Britain on August 13, 1782.<sup>271</sup> Although the estrangement of this father and son lasted over a decade, unlike the Randolphs, they did not sever all ties. In 1784, they exchanged conciliatory letters, and enjoyed a short visit

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<sup>267</sup> "George Washington to Bryan Fairfax, March 1, 1778."

<sup>268</sup> Randall, *A Little Revenge*, 348.

<sup>269</sup> Benjamin Franklin to Richard Bache, Passy, June 2, 1779, in *The Papers of Benjamin Franklin Digital Edition*, The American Philosophical Society and Yale University, <http://www.franklinpapers.org/franklin/framedNames.jsp/632362=029-597a.html> (accessed June 10, 2013). See also Randall, *A Little Revenge*, 361-366.

<sup>270</sup> Randall, *A Little Revenge*, 461 and Skemp, *Benjamin and William Franklin*, 143-145.

<sup>271</sup> Randall, *A Little Revenge*, 461.



before the elder Franklin's return to America in 1785.<sup>272</sup>

Having a clearer picture of these differences highlights the significance of the Revolutionary split within the Randolph family and allows Edmund Randolph's personal experience with his father's loyalism to be placed in its proper context. With the exception of Royal Governor Dunmore, Attorney General John Randolph was Virginia's highest-ranking colonial official to remain devoted to the Crown. When Edmund made the decision to join the Virginia militia in defiance of his father, John disinherited his son. Therefore, Edmund, who had enjoyed a life of privilege, had to find his own way in the world with no safety net. That this young man persevered in the face of adversity reveals his strength of character.

As John Randolph made arrangements to leave Virginia for Great Britain, Edmund began his quest to secure a position in General Washington's camp. Fearful that his loyalty to his country would be questioned as a result of his father's betrayal, Edmund solicited recommendation letters that would show his loyalty to class and course from prominent leaders of Virginia's gentry. In mid-July 1775, he traveled to Berkeley Plantation, the home of Peyton Randolph's brother-in-law Benjamin Harrison to solicit a letter. Harrison's letter to General Washington not only revealed Edmund Randolph's unusual predicament, but also provided one of the few surviving accounts of how his father's disloyalty deeply affected him:

Edmund Randolph is here, & has the greatest Desire to be with you. He is not able to Support himself, or he would not Ask this of you. You know

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<sup>272</sup> William Franklin to Benjamin Franklin, London, July 22, 1784, in *The Papers of Benjamin Franklin Digital Edition*, The American Philosophical Society and Yale University, <http://www.franklinpapers.org/franklin/framedNames.jsp/641381=042-u055.html> (accessed June 10, 2013) and Benjamin Franklin to William Franklin, Passy, August 16, 1784, in *The Papers of Benjamin Franklin Digital Edition*, The American Philosophical Society and Yale University, <http://www.franklinpapers.org/franklin/framedNames.jsp/641455=042-u129.html> (accessed June 10, 2013). See also Randall, *A Little Revenge*, 485-488.



him as well as I do. This deserving young Man was in high Repute in Virginia, & fears his Father's Conduct may lessen him in the Opinion of his Countrymen. He has taken this Method without the Advice of his Friends to Raise him into favor, as he is Determined on the thing. I could not Refuse it on this Occasion, well knowing that a most valuable young Man, & one that I love, without some Step of this sort, may from the misconduct of his Parent be lost to his Country which now stands in need of men of his Abilities.<sup>273</sup>

Harrison's endorsement of Edmund Randolph further highlights the significance of kinship ties to Virginia's leading families in this political culture.

Edmund next made his way to Philadelphia to obtain a letter from members of the Virginia delegation serving in the Second Continental Congress. Although no evidence exists to prove it, Benjamin Harrison most likely funded Edmund's trip at the request of Edmund's uncle Peyton, who, at the time, was presiding over the Congress. Richard Henry Lee, Patrick Henry, and Thomas Jefferson, all familiar with this young man's talents and character, immediately sent their collective endorsement of "our Countryman Mr. Edmund Randolph" to General Washington.<sup>274</sup>

Washington was no doubt impressed with Randolph's doggedness. He wrote to Richard Henry Lee:

the merits of this young Gentlemen, added to your recommendation & my own knowledge of his character, induced me to take him into my Family as an Aide de Camp . . . from a thorough persuasion of his Integrity-my own experience of activity-and finally because he stands unconnected with either of these Governments; or with this, or t'other man, for between you and I, there is more in

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<sup>273</sup> "Benjamin Harrison to George Washington, Philadelphia, July 23, 1775," in John P. Kaminski and Timothy D. Moore, eds., *An Assembly of Demigods: Word Portraits of the Delegates to the Constitutional Convention by Their Contemporaries* (Madison, WI: Parallel Press for The Center for the Study of the American Constitution, 2012), 190.

<sup>274</sup> "From the Virginia Delegates, Philadelphia July 26, 1775," in *The Papers of George Washington Digital Edition*, ed. Theodore J. Crackel (Charlottesville: University of Virginia Press, Rotunda, 2008), available from <http://rotunda.upress.virginia.edu/founders/GEWN-03-01-02-0109> (accessed October 30, 2012).



this than you can easily imagine.<sup>275</sup>

It is impossible to know whether the last line of his letter is a direct reference to John Randolph or Washington's own personal experience with loyalism. Nevertheless, his intimate knowledge of how the Revolution divided families and friends made him sympathetic to Edmund's plight.

At the age of twenty-one, Edmund Randolph became Deputy Muster-Master General of the Continental Army for the Southern District and one of General Washington's aides.<sup>276</sup> As an aide, Edmund's assignments included the duplication of the General's important correspondence. Within a few weeks, Washington recognized that Randolph possessed exemplary writing skills, and he was entrusted to compose original letters from the General's notes.<sup>277</sup> It was during this time that the news of John Randolph's departure reached the encampment. It may be of little coincidence that in the September 9, 1775 edition of the *Virginia Gazette* directly below the story regarding the attorney general's exodus from the colony, there appeared the announcement of Edmund Randolph's appointment as Washington's aide-de-camp.<sup>278</sup> This must have been a very disheartening way for Edmund to learn that his family had left. A little over a month later, Edmund took leave of absence because of the untimely and tragic death of his uncle Peyton.<sup>279</sup>

On October 22, 1775, Peyton Randolph suffered a stroke and died shortly after

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<sup>275</sup> "To Richard Henry Lee, Camp at Cambridge, August 29, 1775," in *The Papers of George Washington Digital Edition*, available from <http://rotunda.upress.virginia.edu/founders/GEWN-03-01-02-0270> (accessed October 30, 2012).

<sup>276</sup> *Virginia Gazette*, August 11, 1775 and Arthur S. Lefkowitz, *George Washington's Indispensable Men: The 32 Aides-de-Camp Who Helped Win American Independence*, 1<sup>st</sup> ed. (Mechanicsburg, PA: Stackpole Books, 2003), 27.

<sup>277</sup> Reardon, *Edmund Randolph*, 21.

<sup>278</sup> *Virginia Gazette*, September 9, 1775.

<sup>279</sup> Lefkowitz, *George Washington's Indispensable Men*, 27.



Sunday dinner at the home of Harry Hill in Philadelphia.<sup>280</sup> The members of Continental Congress, stunned by the news of their president's passing, made plans for a state funeral.<sup>281</sup> They escorted his body from Christ Church to the Francis family vault in Philadelphia until it could be properly transferred to Virginia and interred in his family's vault. Among those in attendance were "three battalions, artillery companies, and riflemen, members of Continental Congress, Virginia Assembly, and the Committee of Safety."<sup>282</sup> Since John Randolph had already set sail for England with Lord Dunmore, the only members of Peyton's immediate family present at his funeral were his widow Elizabeth and his nephew Edmund, who had recently arrived from Cambridge. His beloved uncle's death just a few weeks after his family's abandonment must have been devastating for the young man.

Like his father Sir John, Speaker and President Peyton Randolph was memorialized in numerous eulogies that appeared in the *Virginia Gazette* in November 1775.<sup>283</sup> He was described as "a gentlemen who possessed the virtues of humanity in an eminent degree . . . a most valuable member of society, having long filled, and with great ability and integrity discharged, the most honorable public truths . . . to this his family, his friends, and his country."<sup>284</sup> The Williamsburg Lodge of the ancient order of Freemasons ordered six weeks of mourning for their late Grand Master who they remembered as having "descended from an ancient and respectable family."<sup>285</sup> His sudden death "deprived America of a firm patriot, his country of a wise and faithful

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<sup>280</sup> "From Richard Henry Lee, Philadelphia October 23, 1775," *The Papers of George Washington Digital Edition*, available from <http://rotunda.upress.virginia.edu/founders/GEWN-03-01-02-0192> (accessed October 30, 2012).

<sup>281</sup> Reardon, *Peyton Randolph*, 68.

<sup>282</sup> *Virginia Gazette*, November 3, 1775.

<sup>283</sup> *Virginia Gazette*, November 3, November 9, November 10, and November 11, 1775.

<sup>284</sup> *Virginia Gazette*, November 9, 1775.

<sup>285</sup> *Virginia Gazette*, November 10 and November 11, 1775.



senator, his acquaintance of an invaluable friend, his family of the most affectionate husband and kindest master."<sup>286</sup> Virginia and revolutionary America had lost one of its most reverent leaders during its most crucial time.<sup>287</sup>

His uncle's death prevented Edmund from returning to Washington's headquarters. As the only remaining male family member, he escorted widow Elizabeth Randolph back to Williamsburg. In his Will, Peyton Randolph named his wife, his brother, and James Cocke executors of his estate.<sup>288</sup> He conveyed Elizabeth a life-interest in his entire estate. In the event of her death, all property, whether real or personal, was bequeathed to his brother John. Further, in the event of John's passing, the estate would go to his nephew, Edmund, as Peyton and Elizabeth had no children of their own.<sup>289</sup> John Randolph's departure to England complicated the handling of Peyton's estate under the terms of his Will. Edmund was charged with its administration.<sup>290</sup> Because Peyton had been acting as one of John's agents in America, Edmund also became responsible for the sale of property, payment of debts, and liquidation of assets belonging to his estranged father.<sup>291</sup> Since Edmund was not named a direct heir in his uncle's estate and had been disinherited by his father, he most likely lived with his aunt Elizabeth during this time.<sup>292</sup> He later wrote, "I surely do not commit an unpardonable sin in reprehending my father for not handing down a fortune to me."<sup>293</sup>

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<sup>286</sup> *Virginia Gazette*, November 10 and November 11, 1775.

<sup>287</sup> Reardon, *Peyton Randolph*, 68.

<sup>288</sup> Edmund Randolph, *Accounts and Inventory, Estate of Peyton Randolph, 1774-1788*.

<sup>289</sup> Edmund Randolph, *Accounts and Inventory, Estate of Peyton Randolph, 1774-1788*.

<sup>290</sup> Reardon, *Edmund Randolph*, 22.

<sup>291</sup> *Virginia Gazette*, January 3, 1777 and Patrick Henry, *Receipt to Edmund Randolph, February 27, 1779*, Tazewell Family, et al. Papers, 1664 (1771-1805) 1842, Special Collections, John D. Rockefeller Library, Colonial Williamsburg Foundation, Williamsburg, Va.

<sup>292</sup> Reardon, *Edmund Randolph*, 30.

<sup>293</sup> "Edmund Randolph to James Madison, 1782," quoted in Emory M. Thomas, "Edmund Randolph: His Own Man," *Virginia Cavalcade* 18, no. 4 (1969), 8.



In the meantime, George Washington missed his young and talented protégé. The General wrote of his dissatisfaction with his other aide George Baylor during Edmund's absence. "The duties of an Aid de Camp at Head Quarters cannot be properly discharged by any but Pen-Men . . . Randolph who was ready at his Pen, leaves me little room to expect him, my business in short, will not allow me to wait." Edmund's tenure as Washington's aide, although brief, "was his ticket into the American Patriot ranks."<sup>294</sup> With the death of his uncle Peyton and the flight of his father John, Edmund was the only hope that the Randolph political dynasty would endure. He did not disappoint. In 1776, he embarked on an impressive political career that lasted over two decades.

In April 1776, Continental Congress appointed Edmund as Muster Master General of the Continental forces in the South.<sup>295</sup> In a letter to the Committee of Safety, he expressed regret that he would have to decline this honor and resign his military commission, as he had been recently elected to represent Williamsburg in the upcoming Virginia convention.<sup>296</sup> At age twenty-two, Edmund Randolph was then, and continues to be, the youngest member ever elected to that legislative body. On May 15, the Virginia Convention made an audacious move that forever changed American history. They instructed the colony's representatives in Continental Congress propose a declaration that "the United Colonies are free and independent States, absolved from all allegiance to, or

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<sup>294</sup> Lefkowitz, *George Washington's Indispensable Men*, 298.

<sup>295</sup> "Edmund Randolph to Virginia Committee of Safety, Williamsburg, April 13, 1776," in M. St. Clair Clarke and Peter Force, eds., *American Archives, Fourth Series: A Documentary History of the English Colonies in North America from the King's Message to Parliament of March 7, 1774 to the Declaration of Independence of the United States*, vol. 5 (Washington, DC: Prepared and published under authority of an act of Congress, 1837-1846), 58.

<sup>296</sup> "Edmund Randolph to Virginia Committee of Safety." See also *Virginia Gazette* April 6, 1776 which announced Randolph's election.



dependence upon, the Crown or Parliament of Great Britain.”<sup>297</sup> They also resolved that a committee be appointed to prepare a constitution and bill of rights for Virginia. Members of this all-important committee included George Mason, Robert Carter Nicholas, Patrick Henry, John Mercer, Richard Henry Lee, James Madison, and Edmund Randolph.<sup>298</sup>

This Committee, which included Edmund, contributed two of the most important documents in American history, *The Virginia Declaration of Rights* and *Virginia Constitution*. The *Declaration of Rights* emphatically stated:

THAT all men by nature are equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety . . . THAT all power is vested in, and consequently derived from, the people; . . . THAT government is, or ought to be, instituted for the common benefit, protection, and security of the people . . . And that, when any government shall be found inadequate or contrary to these purposes, a majority of the community has an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it.<sup>299</sup>

This document served as the blueprint for the *Declaration of Independence* which Continental Congress adopted in July 1776. With the adoption of its constitution on June 29, Virginia was the first to dissolve its colonial government and declare statehood.<sup>300</sup>

As stated in the previous chapter, the most important precept of government to the Virginia gentry was constitutionalism. Country Whigs like Edmund Randolph believed “an unwritten constitution can, upon the appearance of a defect, be amended, without agitating the people. A written one is a standing ark, to which the first principles can be

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<sup>297</sup> “Preamble and Resolution of the Virginia Convention, May 15, 1776,” Avalon Project, Yale University Law School, [http://avalon.law.yale.edu/18th\\_century/const02.asp](http://avalon.law.yale.edu/18th_century/const02.asp) (accessed March 8, 2012).

<sup>298</sup> “Preamble and Resolution of the Virginia Convention, May 15, 1776.”

<sup>299</sup> Virginia, *Hening’s Statutes at Large*, vol. IX, 109-110.

<sup>300</sup> Virginia, *Hening’s Statutes at Large*, vol. IX, 112-119.



brought to a test."<sup>301</sup> For them, a written constitution was the ultimate guarantor of their rights as free men to liberty and property. When King and Parliament continued to usurp these rights, the Virginians abandoned the British Constitution and replaced it with their own. The first order of business under the state constitution of 1776 was to guarantee a separation of powers between the legislative, executive, and judicial branches "so that neither exercise the powers properly belonging to the other, nor shall any person exercise the powers of more than one of them at the same time."<sup>302</sup> It further called for the popular election of its representatives in the House and limited the terms of senators.<sup>303</sup> Edmund Randolph said that "from this demonstration of popular self-government . . . [Virginians] were treading upon the republic ground of Greece and Rome."<sup>304</sup>

Without a doubt, young Edmund Randolph made an indelible impression upon this delegation. For, within the first two months of his political career, he was not only granted membership on this exclusive committee, but was also elected the first Attorney General for the State of Virginia. That summer, he further solidified his position through his marriage to Treasurer Robert Carter Nicholas' daughter Elizabeth.<sup>305</sup> Edmund was described as a handsome man of "noble stature" whose very presence commanded attention. "His literary requirements were of the highest order . . . He spoke with a readiness, with a fullness of illustration, and with an elegance of manner and of expression, that excited universal admiration."<sup>306</sup> Just two years after his father's disgrace, Edmund successfully restored the Randolph family name and took his rightful place

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<sup>301</sup> Edmund Randolph, *History of Virginia*, 253.

<sup>302</sup> Virginia, *Hening's Statutes at Large*, vol. IX, 114.

<sup>303</sup> Virginia, *Hening's Statutes at Large*, vol. IX, 114.

<sup>304</sup> Edmund Randolph, *History of Virginia*, 262.

<sup>305</sup> *Virginia Gazette*, August 30, 1776.

<sup>306</sup> Hugh Grisby, "Edmund Randolph," in *The Virginia Convention of 1776* (New York: Da Capo Press, 1969; edition of book is an unabridged edition of first edition published in Richmond 1855), 76.



within Virginia's ruling elite: "he was regarded as the most promising scion of a stock which had been from time immemorial foremost in the Colony."<sup>307</sup>

Edmund proved to be worthy of such distinction. As shown in Table 2 below, Edmund would become the most accomplished member of the Randolph family – holding more, and more significant, offices than any of any ancestors.

Table 2

*Political Positions Held by Edmund Randolph in Virginia and the United States.*

<b>Position Held</b>	<b>Dates</b>
Clerk of the Committee on Courts and Justice, Virginia House of Burgesses	May 1774
Aide-de-Camp to General Washington	August-November 1775
Deputy Muster Master General Continental Army, Southern District	1775-1776
*Muster Master General Continental Army, Southern District	April 1776
Delegate, Fifth Virginia Convention	May-June 1776
Judge, Court of Admiralty	1776
Attorney General, Commonwealth of Virginia	1776-1786
Mayor of Williamsburg	1776-1777
Justice of the Peace for James City County	1777
Board of Governors and Rector, William and Mary College	1777
Clerk, Virginia House of Delegates	1778-1779
Delegate, Continental Congress	1779, 1781-1786
Governor of Virginia	1786-1788
Delegate, Annapolis Convention	1786
Delegate, Constitutional Convention	1787
Delegate, Virginia Ratification Convention	1788
United States Attorney General	1789-1794
United States Secretary of State	1794-1795

\*Randolph declined this position, because of his recent election to the Fifth Virginia Convention. See "Edmund Randolph to Virginia Committee of Safety, April 13, 1776." Note: The information contained in Table 2 was from a compilation of sources.<sup>308</sup>

<sup>307</sup> Grisby, "Edmund Randolph," 77.

<sup>308</sup> The information contained in Table 2 was compiled from the following sources: Colonial Williamsburg Foundation, "Edmund Randolph," available from <http://www.history.org/almanack/people/>



The absence of his personal papers makes it difficult to ascertain Edmund Randolph's personal thoughts on his father's loyalism. However, based on the few surviving accounts, it seems reasonable to assume that he was heartbroken over the split in his family during the Revolution as evidenced by the (previously discussed) contents of Benjamin Harrison's letter to George Washington. In addition, although there is no direct reference to John Randolph in his *History of Virginia*, Edmund identified loyalists in Virginia as "others from the patronage or personal weight of the chief executive magistrate [who] were insignificant."<sup>309</sup> Whether this was an inference to his estranged father will probably never be known. Even so, some surviving public papers, colonial records, and speeches shed light on how his experiences with Revolutionary loyalism influenced Edmund Randolph as a statesman and perhaps contributed to his ideas regarding constitutional jurisprudence.

After independence was declared, loyalists were branded traitors and enemies of America.<sup>310</sup> As a result, Virginia passed a series of laws with regard to the punishment of Tories and the confiscation of their property. While serving in the Virginia Convention of 1776, Edmund Randolph was appointed to a committee in May which amended the 1775 "Ordinance for Establishing a Mode of Punishment for the Enemies of America in this Colony."<sup>311</sup> The amended version made it illegal for any free person to "aid, abet, or assist the enemy." If convicted, the accused faced imprisonment, possible execution, and

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bios/bioraedm. cfm (accessed September 13, 2012); *Virginia Gazette*, September 9, 1775, April 6, 1776, July 5, 1776, December 5, 1776, December 6, 1776, April 4, 1777, and June 26, 1779; Virginia. General Assembly, "Resolution 1782 June 15 appointing Theodorick Bland, Joseph Jones, Arthur Lee, James Madison and Edmund Randolph delegates to the U.S. Continental Congress." Signed by Archibald Cary and Jno. [i.e. John Tyler]. Manuscripts Collection, Virginia Historical Society, Richmond, Va.; Conway *Omitted Chapters of History Disclosed in the Life and Papers of Edmund Randolph*, Daniels, *The Randolphs of Virginia* and Reardon, *Edmund Randolph*.

<sup>309</sup> Edmund Randolph, *History of Virginia*, 196.

<sup>310</sup> Van Tyne, *The Loyalists of the American Revolution*, 104.

<sup>311</sup> Virginia, *Hening's Statutes at Large*, vol. IX, 130-132 .



confiscation of their assets.<sup>312</sup> It is striking that the committee added a clause which provided, in the event of confiscation, that a portion of Tory estates would be set aside for the wives and children of the convicted.<sup>313</sup> These cases were to be heard before the Court of Admiralty. Perhaps because his father was a loyalist, Edmund was appointed as one of its judges.<sup>314</sup> Because the court records did not survive, it is impossible to determine whether he heard any of these cases or what his position may have been with regard to accused loyalists. Ironically, Edmund Randolph was also appointed to a committee tasked with preparing an inventory of Lord Dunmore's Virginia property.<sup>315</sup> In August 1776, the newly-appointed attorney general held an auction of Dunmore's personal belongings.<sup>316</sup> One year later, he advertised an auction of the former Governor's land holdings in York County.<sup>317</sup>

For the most part, Edmund's powers as attorney general were severely limited. The court system under Virginia's new state constitution took years to implement due to the Revolutionary War.<sup>318</sup> As such, he was allowed to continue his private law practice and hold other local offices, provided he handled any legal matters on behalf of the state should they arise. In May 1778, Governor Patrick Henry issued a bill of attainder for high treason against loyalist Josiah Philips and his co-conspirators. Philips and his gang were accused of plundering and murdering their way across southeast Virginia over a three-year period.<sup>319</sup> Upon thorough investigation, Attorney General Edmund Randolph refused

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<sup>312</sup> Virginia, *Hening's Statutes at Large*, vol. IX, 130.

<sup>313</sup> Virginia, *Hening's Statutes at Large*, vol. IX, 132.

<sup>314</sup> Eckenrode, *The Randolphs*, 113.

<sup>315</sup> Reardon, *Edmund Randolph*, 36.

<sup>316</sup> *Virginia Gazette*, August 15, 1776.

<sup>317</sup> *Virginia Gazette*, December 26, 1777.

<sup>318</sup> Reardon, *Edmund Randolph*, 34-35.

<sup>319</sup> W.P. Trent, "The Case of Josiah Philips," *The American Historical Review* 1, no. 3 (Apr., 1896), 444-46.



to prosecute Philips for treason under the bill and instead charged him with highway robbery.<sup>320</sup> Edmund Randolph insisted that Josiah Philips' constitutional rights as a citizen of Virginia had been grossly violated.<sup>321</sup> He recalled that Philips "was attained very speedily and precipitately, without any proof better than vague reports! Without being confronted with his accusers and witnesses; without the privilege for evidence in his behalf."<sup>322</sup> Nevertheless, Josiah Philips was convicted of robbery, and he was accordingly executed on November 28, 1778.<sup>323</sup> Randolph surmised that an attainder was "a dead attribute at best, to be deprecated as confounding, in defiance of the bill of rights, judicial with legislative authority."<sup>324</sup> According to Randolph, the legislature exceeded its authority when it proceeded in a judicial capacity and denied Philips' civil rights.

The *Philips* case became a major point of contention between Randolph and Patrick Henry in the Virginia Ratification Convention ten years later.<sup>325</sup> John Marshall recalled that Patrick Henry "was promptly asked to explain his dictatorial behavior in the case of Josiah Philips."<sup>326</sup> Marshall sided with Edmund Randolph and declared that Philips had been "by an act of Assembly, struck out of existence . . . without the benefits

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<sup>320</sup> William Wirt, *The Life of Patrick Henry*, ed. Henry Ketchum (New York: A.L. Burt Company, Publishers, 1903), 212-13, 218. Note: This is a primary source, as William Wirt was a contemporary of both Edmund Randolph and Patrick Henry. This is also one of the few surviving primary sources regarding the *Josiah Philips* case, as the Court records were destroyed by fire during the American Civil War.

<sup>321</sup> Edmund Randolph, *Speech of Edmund Randolph on the Expediency of Adopting the Federal Constitution, Delivered in the Convention of Virginia, June 6, 1788*, Special Collections, Library of Virginia, Richmond, VA.

<sup>322</sup> Edmund Randolph, *Speech of Edmund Randolph on the Expediency of Adopting the Federal Constitution, Delivered in the Convention of Virginia, June 6, 1788*, Special Collections, Library of Virginia, Richmond, VA.

<sup>323</sup> *Virginia Gazette*, December 4, 1778.

<sup>324</sup> Edmund Randolph, *History of Virginia*, 269.

<sup>325</sup> Wirt, *Life of Patrick Henry*, 257-258.

<sup>326</sup> John Marshall, *John Marshall: Major Opinions and Other Writings*, ed. with an intro. and commentary by John P. Roche (Indianapolis, IN: Bobbs-Merrill, 1967), xviii.



of the law of the land."<sup>327</sup> Thomas Jefferson, the author of the bill of attainder, sided with Henry. In a letter to Louis Girardin, Jefferson recalled that Edmund Randolph's position on the *Philips* case during Virginia's ratification debates was "the perversion of a fact."<sup>328</sup> He further commented that "whether Mr. Randolph was right, or when in debate with Mr. Henry, he represents this atrocious offender as sentenced and executed under the act of attainder."<sup>329</sup>

Another significant case that came across Randolph's desk during this time was that of fellow Patriot and signer of *The Declaration of Independence*, Carter Braxton. In 1780, Braxton had been accused of piracy. Randolph promptly dropped the charges due to a lack of sufficient evidence. In order to publicly exonerate himself, Braxton published the Attorney General's findings in the *Virginia Gazette*. In his opinion, Edmund Randolph stated that "the mere libeling might not be sufficient [evidence] for the act of plunder."<sup>330</sup> The wording of Edmund Randolph's decision is telling when one considers his personal experience with Revolutionary loyalism. As previously discussed, his father John was the subject of many false rumors and was essentially maligned in the *Virginia Gazette* for his loyalist views before he fled to England. As such, Edmund was understandably sympathetic to men who, in his opinion, were unjustly accused.

Edmund went on to serve in two Continental Congresses, the most important of which was the summer session of 1781. On July 18, he was appointed to a committee set to draft a law that established an admiralty appeals court under the recently ratified

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<sup>327</sup> Virginia. *Minutes of the Virginia Convention 1788*. Special Collections. Library of Virginia, Richmond, Va.

<sup>328</sup> "Thomas Jefferson to Louis H. Girardin, March 12, 1815," *The Papers of Thomas Jefferson: Retirement Series*, vol. VIII, ed. J. Jefferson Looney, et al. (Princeton and Oxford: Oxford University Press, 2011), 334.

<sup>329</sup> "Thomas Jefferson to Louis H. Girardin," in *The Papers of Thomas Jefferson*, vol. VIII, 335.

<sup>330</sup> *Virginia Gazette*, January 8, 1780.



Articles of Confederation.<sup>331</sup> Randolph's most important contribution was Continental Congress' adoption of an ordinance he authored with regard to "the powers delegated by the Confederation in cases of capture on water."<sup>332</sup> Thus, he had an important role in the establishment of one of the first national maritime laws. In 1782, Randolph resigned his congressional seat and returned to Virginia to rebuild his private law practice.<sup>333</sup> Edmund Randolph quickly became one of the most highly respected attorneys in Virginia. He even handled a large portion of the personal legal matters of his mentor and friend, George Washington.<sup>334</sup>

In 1783, Edmund once again lost a beloved member of his family: Elizabeth Randolph. She had become a surrogate mother to Edmund in the absence of his parents. Although he must have felt a tremendous loss, he quickly encountered legal problems due to the provisions of his late uncle's Will. Peyton's estate reverted to Edmund's father John upon Elizabeth's death. As a result, John's creditors demanded payment from the estate. Unwilling to part with his uncle's property, Edmund sold his own farm outside of Richmond to satisfy his estranged father's debts. In May 1784, Edmund learned of his father's passing on January 31 in England.<sup>335</sup> That December, John Randolph was brought home to Virginia. Per his wishes, he was interred next to his brother Peyton in the Randolph family vault at the Chapel of the College of William and Mary.<sup>336</sup> Whether Edmund was present when his father's body was laid to rest remains a mystery, but it is known that after 1775 they never spoke again. Regardless of their permanent

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<sup>331</sup> Reardon, *Edmund Randolph*, 44.

<sup>332</sup> "August 14, 1781," *Journals of Continental Congress, 1774-1789*, The Library of Congress, under American Memory, available from [http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(jc02119\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(jc02119))) (accessed September 13, 2012).

<sup>333</sup> Thomas, "Edmund Randolph: His Own Man," 8.

<sup>334</sup> Lefkowitz, *George Washington's Indispensable Men*, 296.

<sup>335</sup> Reardon, *Edmund Randolph*, 74-75.

<sup>336</sup> Gibbs, *Character Biography of John Randolph 1727-1784*.



estrangement, Edmund Randolph obviously loved his father. In 1785, Edmund's wife Elizabeth gave birth to their third child, a son named John.<sup>337</sup> Sadly, their infant son died the next spring.<sup>338</sup> Despite three years of personal tragedy and financial struggle, Edmund continued to be a faithful public servant.

In September 1786, Edmund Randolph was elected as a Virginia delegate to the Annapolis Convention. The Convention met to address problems associated with interstate commerce and concluded that the Articles of Confederation needed revision. However, only five states sent delegates.<sup>339</sup> Therefore, the committee lacked the proper quorum of nine states required under the Articles of Confederation.<sup>340</sup> They addressed a report to the other states which called for a national convention to convene the following May in Philadelphia.<sup>341</sup> This set into motion one of the most significant moments in the history of the Early American Republic –the Constitutional Convention – in which Edmund would play an important role. On November 7, 1786, now having the full confidence of his fellow countrymen, Patriot Edmund Randolph, the son of a loyalist, was elected Governor of Virginia.<sup>342</sup>

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<sup>337</sup> Reardon, *Edmund Randolph*, 75.

<sup>338</sup> Reardon, *Edmund Randolph*, 78.

<sup>339</sup> Peterson, "Edmund Randolph and His Times," 5.

<sup>340</sup> *Articles of Confederation* under "Charters of Freedom," National Archives, [http://www.archives.gov/exhibits/charters/charters\\_of\\_freedom\\_zoom\\_pages/charters\\_of\\_freedom\\_zoom\\_4.14.html](http://www.archives.gov/exhibits/charters/charters_of_freedom_zoom_pages/charters_of_freedom_zoom_4.14.html) (accessed March 7, 2012).

<sup>341</sup> "Proceedings of Commissioners to Remedy Defects of the Federal Government : 1786," Avalon Project, Yale University Law School, [http://avalon.law.yale.edu/18th\\_century/annapoli.asp](http://avalon.law.yale.edu/18th_century/annapoli.asp) (accessed June 10, 2013).

<sup>342</sup> Virginia, Governor (Randolph: 1786-1788). *Executive Papers of Edmund Randolph, 1786-1788* (bulk 1787-1788), Accession 40084, State Government Records Collection, The Library of Virginia, Richmond, Va.



## CHAPTER V

### CONCLUSION

In some ways, Edmund Randolph emerges as somewhat of a tragic figure in American colonial history. He was center-stage as an important member of the influential Virginia delegation during the founding of the Early American Republic. Yet, his story has, for the most part, been neglected in the historiography of the American Founding. Edmund was born into one of the most prominent families in colonial Virginia's ruling gentry. At the outset of the American Revolution, his family split along ideological lines. In 1774, his uncle Peyton led the colony's Whig majority into political rebellion, while his father John remained loyal to Great Britain. As the conflict between the colonies and the mother country escalated, young Edmund rebelled against his father and joined the American cause, placing him in the precarious position of advocating independence while his loyalist father fled to England. Edmund's decision proved costly, as it permanently severed the ties between John Randolph and his only son. Nevertheless, on sheer determination and his own merit, Edmund quickly rose among the ranks of Virginia's patriotic leadership and made significant contributions to the founding of a new American nation.

On May 29, 1787, Virginia Governor Edmund Randolph took the floor at the Philadelphia Convention and offered fifteen resolutions for a new plan of national government. He began "that the Articles of Confederation ought to be so corrected & enlarged as to accomplish the objects proposed by their institution; namely, common defense, security of liberty, and general welfare."<sup>343</sup> The resolutions that followed called

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<sup>343</sup> Madison, *Notes on the Debates in the Federal Convention*, Avalon Project, Yale Law School, [http://avalon.yale.edu/18th\\_century/debates\\_529.asp](http://avalon.yale.edu/18th_century/debates_529.asp) (accessed December 17, 2012).



for separate executive, legislative, and judicial branches of government. The legislative branch was to consist of two houses based on the apportionment of population in each state. The most radical component of the Virginia Plan was its proposal that "a Republican Government & the territory of each State, except in the instance of a voluntary junction of Government & territory, ought to be guaranteed by the United States to each State."<sup>344</sup> In other words, the national government was superior to the individual state governments.

The Virginia Plan (sometimes known as the Randolph Plan) was the basis for three months of extensive debates and ultimately the creation of the United States Constitution. In fact, many of the Virginia Plan's resolutions were incorporated into the text of the new Constitution. There is no question that the Virginia delegation, led by Governor Edmund Randolph, played a significant role in the establishment of a distinctively American brand of constitutionalism. On September 17, all except three of the remaining delegates to the Convention affixed their signatures to the Constitution before it went to the state assemblies for ratification. The three that refused to sign the document in its final form were George Mason, Elbridge Gerry, and Governor Edmund Randolph.<sup>345</sup>

Before the Convention adjourned, Randolph made a motion for a second convention to consider the document after it had been presented to the people. Although his motion was seconded by Benjamin Franklin, it was denied by the convention. Randolph was not opposed to a strong union, but he believed the Constitution lacked a clear definition of the specific powers of the national and state governments and a bill of

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<sup>344</sup> Madison, *Notes on the Debates in the Federal Convention*.

<sup>345</sup> Madison, *Notes on the Debates in the Federal Convention*.



rights.<sup>346</sup> In the end, Randolph refused to sign the document “because he thought the object of the Convention would be frustrated by the alternative which it presented to the people. Nine States will fail to ratify the plan and confusion must ensue . . . he could not, by pledging himself to support the plan, restrain himself from taking such steps as might appear to him most consistent with the public good.”<sup>347</sup> When the Constitution was sent to the states for ratification, two factions formed: the Federalists (pro-Constitution) and the Anti-Federalists (anti-Constitution). It is important to note that Edmund Randolph was neither. If anything, he was a middle-of-the-road conservative.

His refusal to sign the document caused controversy in his home state of Virginia. By spring 1788, eight states out of the required nine had ratified the Constitution. On June 21, New Hampshire became the ninth state.<sup>348</sup> However, if Virginia, the most populous state in America, did not approve the Constitution, it was widely felt that the union would not survive. In late 1787, Edmund Randolph published *Letter on the Federal Constitution* which outlined his reasons for his refusal to sign the document.<sup>349</sup> Then, at the Virginia Ratification Convention of 1788, Governor Randolph changed his position and encouraged Virginia’s ratification of the document. On June 6, he explained if Virginia did not adopt the Constitution “that, by a disunion, we shall throw away all those blessings we have so earnestly fought for, and that a rejection of the constitution will operate disunion.”<sup>350</sup> This sudden change of heart, of course, made him the subject of

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<sup>346</sup> Eckenrode, *The Randolphs*, 119.

<sup>347</sup> Madison, *Notes on the Debates in the Federal Convention*.

<sup>348</sup> *U.S. Constitution*, under “Charters of Freedom,” National Archives, <http://www.archives.gov/exhibits/charters/constitution.html> (accessed March 7, 2012).

<sup>349</sup> Edmund Randolph, *Letter on the Federal Constitution, October 16, 1787* (Richmond: A. Davis, 1787), microfilm.

<sup>350</sup> Edmund Randolph, *Speech of Edmund Randolph on Adopting Federal Constitution*.



harsh criticism. Cyrus Griffin called him “by nature very timid and undecided.”<sup>351</sup> Elbridge Gerry referred to him as duplicitous and versatile.<sup>352</sup> Notwithstanding, Randolph’s arguments in the state convention were successful. On June 25, 1788, the Virginia Convention ratified the United States Constitution.<sup>353</sup>

Randolph went on to serve as the first Attorney General of the United States under the Washington administration, from 1789 until 1794. Although very few cases came through the United States’ Attorney General’s office during that time, in 1791, President Washington asked Randolph to investigate the constitutionality of a proposed bill on the creation of a bank of the United States.<sup>354</sup> Randolph’s opinion provides a rare glimpse of his thoughts on constitutionalism. His opinion revealed that he held a strict interpretation of the Constitution. In his review of the Commerce Clause, Randolph determined “the phrase ‘and proper,’ if it has any meaning at all, does not enlarge the power of Congress, but rather restricts them. For no power is to be assumed under the general clause, but such as is not only necessary but proper, or perhaps expedient also.”<sup>355</sup> He concluded that if there was a “latitude of construction” it could lend itself to “an unlimited power in Congress.”<sup>356</sup> Therefore, Randolph believed that the Constitution prohibited the proposed bank bill.

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<sup>351</sup> Cyrus Griffin to James Madison, New York, April 14, 1788 in Kaminski, *An Assembly of Demigods*, 191.

<sup>352</sup> Elbridge Gerry to James Warren, Cambridge, Mass., June 28, 1788 in Kaminski, *An Assembly of Demigods*, 192.

<sup>353</sup> Virginia Convention (1788), *Ordinance of Ratification, 1788*, accession 35159d, State Government Records Collection, The Library of Virginia, Richmond, Va.

<sup>354</sup> Edmund Randolph, *Opinion of the Attorney General on the Bank Bill, February 12, 1791*, accession 23982, Personal Papers Collection, the Library of Virginia, Richmond, Va.

<sup>355</sup> Edmund Randolph, *Opinion of the Attorney General on the Bank Bill*.

<sup>356</sup> Edmund Randolph, *Opinion of the Attorney General on the Bank Bill*.



In 1793, Attorney General Edmund Randolph argued on behalf of the Plaintiff in the landmark United States Supreme Court case *Chisholm v. Georgia*.<sup>357</sup> Alexander Chisholm, as an executor, sued the State of Georgia to collect a debt owed to the estate of a South Carolina merchant. Georgia maintained that the Supreme Court had no authority over it as a sovereign state. After careful consideration, the Court disagreed and entered Judgment for the Plaintiff. The Court ruled that Article III, Section 2 of the United States Constitution provided that in “controversies between a State and citizens of another state . . . the Supreme Court shall have original jurisdiction.”<sup>358</sup> The controversial decision in the *Chisholm v. Georgia* case led to the passage of the Eleventh Amendment (commonly referred to as the states’ rights amendment) to the Constitution.

In 1794, United States Secretary of State Thomas Jefferson resigned and President Washington appointed Edmund Randolph in his stead. However, Randolph’s tenure as Secretary of State was short-lived. In 1795, the Secretary of State expressed his reservations about the President signing the controversial Jay Treaty with Great Britain.<sup>359</sup> Randolph was not only concerned about Britain’s continual seizure of American ships, but also the impact the treaty might have on the United States’ diplomatic relationship with France.<sup>360</sup> Per his advice, Washington waited to sign the treaty. During this time, the President was handed an intercepted letter of the French Minister Fauchet which incriminated Randolph in a bribery plot.<sup>361</sup> The President “confronted his old friend in the presence of his cabinet, accusing him of treason.”<sup>362</sup>

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<sup>357</sup> *Chisholm v. Georgia*, 2 U.S. 419 (1793).

<sup>358</sup> *Chisholm v. Georgia*.

<sup>359</sup> Reardon, *Edmund Randolph*, 294.

<sup>360</sup> Reardon, *Edmund Randolph*, 294-296.

<sup>361</sup> Peterson, “Edmund Randolph,” 7.

<sup>362</sup> Lefkowitz, *George Washington’s Indispensable Men*, 297.



Washington never gave the Secretary of State an opportunity to prove these allegations false. Despite the fact that Fauchet himself denied any misconduct on the part of Secretary Randolph, the President believed him guilty. Washington, the man he had served loyally for so many years, turned his back on Edmund. Randolph was convinced that he was the victim of partisan politics.<sup>363</sup> He resigned his position as United States Secretary of State and never returned to public office.<sup>364</sup>

Randolph resurfaced in 1807 at the request of his longtime colleague and friend Aaron Burr, who had been charged with high treason. Edmund served as lead defense counsel in this famous trial which ended in Burr's acquittal by Chief Justice John Marshall.<sup>365</sup> Randolph's argument allows incredible insight into his legal mind. Randolph argued that law "is a privilege given for good reasons as a check to prevent the danger of perversion to oppression; of degeneracy to tyranny."<sup>366</sup> He further stated that Burr had been charged with treason on mere speculation, as there was no concrete evidence of his guilt. He concluded that "in the conflicts of political animosity, justice is sometimes forgotten or sacrificed to mistaken zeal and prejudice. We look up to the judiciary to guard us."<sup>367</sup> Without a doubt, his intimate knowledge of Revolutionary loyalism greatly contributed to his ideas on individual rights and justices, which are the cornerstones of the American political and legal system.<sup>368</sup> His own experiences allowed him to sympathize with those who were ideologically opposed to American independence and

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<sup>363</sup> Edmund Randolph, *A Vindication of Edmund Randolph, Written by himself and published in 1795*. Special Collections, Library of Virginia, Richmond, Va.

<sup>364</sup> Reardon, *Edmund Randolph*, 313-315.

<sup>365</sup> Reardon, *Edmund Randolph*, 357.

<sup>366</sup> Edmund Randolph, *Speech of Edmund Randolph in the Trial of Aaron Burr for Treason, 1807*, Special Collections, The Library of Virginia, Richmond, Va.

<sup>367</sup> Edmund Randolph, *Speech of Edmund Randolph*.

<sup>368</sup> Randolph's views may have also been greatly influenced by the false accusations brought against him during his tenure as United States Secretary of State and George Washington's subsequent betrayal.



those accused of treason. After Burr's acquittal, Randolph returned to Richmond where he continued his private law practice and spent his last years composing his *History of Virginia* until his death on September 13, 1813.<sup>369</sup>

Although he played many significant roles during the birth of the American Republic, Edmund Randolph has been "virtually forgotten, even in Virginia."<sup>370</sup> Despite the fact that he held more, and more important, political offices than any other Randolph in history, his star was dim in comparison with the most famous leaders of Virginia's revolutionary generation. However, Edmund Randolph was not only a Virginian, but he was an American Founder as well. The story of his early life and the bifurcation of Virginia's political elite allows for a better appreciation of the complex dynamics involved in Revolutionary ideology. It also offers a fresh lens with which to view the emergence of American constitutional doctrine within Virginia's colonial gentry, a group instrumental in helping to create a new American constitutionalism. Finally, it restores Edmund Jennings Randolph, a forgotten Founder, to his rightful place within the historiography of the American Revolution and the Early American Republic.

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<sup>369</sup> Lefkowitz, *George Washington's Indispensable Men*, 297.

<sup>370</sup> Peterson, "Edmund Randolph and His Times," 4.



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