● THE COLONIAL WILLIAMSBURG

interpreter

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Crime and Punishment in Colonial Virginia

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Since the dawn of recorded history, civilizations have had to contend with antisocial elements, and colonial Virginia was no exception. Once the colony was firmly established, Virginians adapted the legal precedents brought from England to meet the needs of a society emerging from a harsh frontier environment.

Over the years guests have asked numerous questions concerning crime and punishment in the colonial period. To answer them completely could easily fill several volumes. Since the dictates of time and space preclude a lengthy paper, I have listed and answered the questions most often asked by guests.

What was the General Court?

From 1662 until the end of the colonial period, the General Court served as Virginia's chief instrument of justice. It was the only tribunal that could impose the death penalty on free citizens. This meant that accused felons had to be brought to Williamsburg to stand trial. The court sat twice a year—in April and October—and had jurisdiction over civil disputes as well as criminal cases. Each session lasted twenty-four days, excluding Sundays, or until the docket was cleared. It also met in June and December, when it was called the Court of Oyer and Terminer (which means to "hear and decide"). This court heard criminal cases only.

How many members served on the General Court?

In the eighteenth century the court consisted of twelve men, the same individuals who served on the Virginia Council. Five were needed for a quorum, with the governor serving as chief justice.

What was benefit of clergy?

Benefit of clergy had its antecedents in the Middle Ages. Hugh F. Rankin, in his *Criminal Trial Proceedings in the General Court of Colonial Virginia,* states that "originally, this privilege had been based on the premise of protecting the better-educated English clergy from the vengeance of the temporal courts."

In colonial Virginia, benefit of clergy could be invoked by any convicted felon except those charged with treason, murder, rape, arson, burglary, horse stealing, or robbery. If the accused was able to read a certain passage from the Bible—usually the fifty-first Psalm—benefit of clergy could be claimed in order to escape the death penalty. After 1732 it was expanded to include women, illiterates, and slaves.

What other legal safeguards were available to the accused?

The accused, if a white or free black, was entitled to trial by jury, the right to face his accusers, the right to have witnesses to testify in his behalf, and the right of habeas corpus. This last meant that the defendant was protected from illegal imprisonment

Hang the Hair-buyer!

Henry Hamilton, the British lieutenant governor of Detroit, was called the "Hair-buyer General" in an inflammatory piece of propaganda after he had organized a number of Indian expeditions against Kentucky frontiersmen. During the American Revolution, George Rogers Clark succeeded in capturing Hamilton as part of his grand scheme to gain control of the Northwest Territory. Clark's

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and prosecution. Legal counsel was also permitted if the defendant could afford the fees. If he couldn't, he defended himself.

How were black slaves tried?

Black slaves were denied many of the safeguards that were provided for free citizens. They could be imprisoned without benefit of habeas corpus. They did not appear before the General Court but were tried by special courts of oyer and terminer in the county where the crime allegedly occurred. These courts received their commissions from the royal governor and had the authority to impose the death penalty. There were no juries, and slaves did not have the right to appeal a decision.

After 1732, if a slave was tried for a capital offense, other slaves, mulattoes, and Indians were allowed to testify or give evidence. This policy was expanded in 1748 to allow free blacks to appear in any case involving another black. Slaves were also entitled to some of the provisions of benefit of clergy, provided they were not being tried for a capital crime.

Convicted slaves could be punished by branding, whipping, or both. Condemned slaves were usually executed by hanging, but there is one known instance of a slave being burned at the stake in 1746.

What constituted a felony in colonial Virginia?

Any crime for which the penalty was the loss of life or limb was a felony. These included murder, rape, assault, horse stealing, counterfeiting, burglary, and arson. The accused could also be tried for slave stealing, inciting slaves to revolt, forging the receipts or stamps of tobacco inspectors, and a third offense of hog stealing.

What was the chief method of execution in colonial Virginia?

The supreme penalty was death by hanging. The condemned felon was taken from the public gaol, placed on a sled or cart, and taken to the gallows on Capitol Landing Road. The cart was led beneath the gallows and a noose was placed about his neck. After allowing the criminal to make his peace with God and to say his final words, a command was given; the cart lurched forward, and the condemned man stepped off into eternity.

How may condemned felons actually died on the gallows?

Owing to the loss or destruction of so many court records over the years, it is impossible to say exactly how many people were executed in Virginia during the colonial period. Fortunately, we have a complete set of *Virginia Gazettes* for 1766–1775. These show that 364 accused felons stood trial during that period, 81 of whom were condemned. Of those sentenced to die, 33 were known to have been excuted, or an average of slightly more than 3 a year.

What other punishments were imposed by the General Court?

Other forms of punishment were whipping (up to thirty-nine lashes for men and twenty-five for women) or branding, either with a hot or a cold iron—the cold iron was used almost exclusively toward the end of the colonial period. Convicted felons could also be fined and sentenced to prison terms. The most extreme form of physical mutilation I have found to date was the punishment administered to one Richard Brack in 1774 and reported in the *Virginia Gazette.* The unfortunate Brack, convicted for forgery, was sentenced to "stand in the Pillory one Hour, his right Ear to be cut off the second Tuesday in December next, and to be imprisoned one whole Year."

Were convicted felons sentenced to prison terms as they are today?

Prison sentences were imposed, but were quite rare by today's standards. Between 1766 and 1775, for example, only nine convicted felons were given prison terms, and these ranged from one month to one year.

Were women tried by the General Court?

Thirty women are known to have been tried by the General Court between 1766 and 1775.

What were some crimes for which women could be tried?

Women, like their male counterparts, could be tried for felony and, if convicted, could be sentenced to death. A number of female indentured servants were sentenced to die on the gallows for murdering infants born to them out of wedlock.

Were women actually executed?

Based on existing evidence, three women are known to have been executed between 1766 and 1775.

Were free blacks tried before the General Court?

There are two known instances of free blacks who were tried before the General

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Summary of Company of Colonial Performers Programs
Summer 1983

Mondays:
The *Morning Gun* is fired at the Magazine July 11 through August 22 at 9:00 A.M.
Fifes and Drums Parade on Duke of Gloucester Street July 4 through August 22 at NOON
Black Music Programs behind the Wythe House June 27 through August 22 at 5:00 P.M. and 5:30 P.M.
A Musical Diversion at the Capitol July 11 through August 22 at 8:00 P.M.

Tuesdays:
Military Review on Market Square at 9:00 A.M.
Eighteenth-century Dancing and Traditional Music presented by students in the Palace Gardens July 5 through August 23 from 2:00 P.M. until 4:00 P.M.
An eighteenth-century play will be presented at the Williamsburg Lodge Auditorium June 21 through August 23 at 8:30 P.M.

Wednesdays:
The *Morning Gun* is fired at the Magazine July 6 through August 24 at 9:00 A.M.
Fifes and Drums Parade on Duke of Gloucester Street July 6 through August 24 at NOON
Black Music Programs behind the Wythe House June 29 through August 24 at 5:00 P.M. and 5:30 P.M.
A Capitol Evening June 15 through August 31 at 7:30 P.M. and 8:30 P.M.

Thursdays:
Military Review on Market Square through June 30 at 5:15 P.M.
Militia Muster on Market Square July 7 through August 25 at 9:00 A.M.
Eighteenth-century Dancing and Traditional Music presented by students in the Palace Gardens July 7 through August 25 from 2:00 P.M. until 4:00 P.M.
African Traditions at 6:30 P.M.

Fridays:
Reveille beaten by the Fifes and Drums at the Magazine July 8 through August 26 at 9:00 A.M.
A Musical Diversion at the Capitol July 1 through August 26 at 8:00 P.M.

Saturdays:
The *Morning Gun* is fired at the Magazine July 9 through August 27 at 9:00 A.M.
Fifes and Drums Parade on Duke of Gloucester Street at NOON
An eighteenth-century play will be presented at the Williamsburg Lodge Auditorium at 8:30 P.M.

Special Days

May 28–30:
1983 Summit of Industrialized Nations

July 4:
The Independence Day Review at 10:00 A.M.
Tatoo and Fireworks at 8:30 P.M.

July 25:
The 207th anniversary of the first reading of the Declaration of Independence in Williamsburg is celebrated with a *Military Review* at 9:00 A.M.

Occurrences

As we all begin preparing for summer, it is important to remember how many programs and events are available for our visitors. During July and August the streets will once again come alive with music and other sounds. Be sure to seek out the actors who will portray eighteenth-century inhabitants of the town and welcome the fifers and drummers who will make their rounds to entertain our visitors waiting in lines.

The Music Teacher's Room students will perform in the Music Teacher's Room between 2:00 P.M. and 5:30 P.M. Monday through Saturday, giving an opportunity for our visitors to learn of the important role music played in the education of young people two hundred years ago. In addition, the fifers and drummers will present programs in the Magazine yard demonstrating the military arts daily, except Friday and Sunday.

The *Black Music* and *African Traditions* programs will return again this summer to help our visitors understand more fully the contributions black Americans have made to our culture. Three plays will be presented in repertoire throughout the summer: *The Sham Doctor*, *The Male Coquette*, and the ballad opera *Flora*. These and other summer programs should make for an exciting season.

The enclosed "Summary of Company of Colonial Performers Programs" will help you become familiar with the special activities that will occur regularly on different days of the week this summer. The "Visitor's Companion" will state prices if tickets are required. We hope these pieces will help you help our visitors. There are so many details for them to absorb and recall that they may need reminders of the variety of interesting and entertaining programs available while they are here.

The Exchange

Mary Wiseman describes some of the living history interpretation at Colonial Williamsburg.

To fully understand theatrical living history or character interpretation as a vital teaching tool, one should study the visitor as he encounters a personality from the past. Our visitor (that much-analyzed, surveyed, and sometimes elusive creature) is usually eager to reach back, to touch those who have gone before. Living history characters compel the visitor to suspend his disbelief and, his attention captured, to cross a bridge spanning two centuries through a door that opens on the past. This kind of "up-close" encounter with flesh-and-blood people from another time provides a remarkable connection with the past, one that leaves a lasting impression. The visitor learns that although circumstances of birth and events in history can influence attitudes and behavior, basic human needs and emotions remain the same.

Landon Carter bemoans the attitude of his son; Ann Blair wonders if she is ready to give up balls, barbecues, and her "dear variety of gentlemanly acquaintances" to manage a household as her older sister does; and William Holt, storekeeper, ponders the peer pressure of the association supported by merchants like himself. Christiana Campbell, widowed after only a few years of marriage, must bring up her daughters alone; scullery maid Jenny strives to overcome loneliness for her absent husband and survive the daily grind of endless kitchen work; and midwife Catherine Blaikley scoffs at the new ideas in medicine and worries about their somehow changing her successful vocation. These universal human concerns (often described in diaries and letters of historic personages themselves) let us see behind the tangible objects which remain to the hearts and minds of the very human beings they were.

To breathe life into these residents of eighteenth-century Williamsburg requires a team effort. Members of the research department and the Company of Colonial Performers join forces to select the characters who will best represent early Virginia society. Craftsmen, planters, slaves, career women, statesmen, housewives—all contribute immeasurably to the accurate portrayal of the microcosm of the colonial capital.

Once the characters are chosen, an intensive training program ensues and no effort is spared in making characters not only historically accurate but living, breathing personalities, each with his or her own personal history and attitudes.

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Crime, *continued*

Court. A free black named Caesar Valentine was hanged in 1759 after being convicted for an unspecified crime. In 1775 James Bailey, a free black from Norfolk County, was acquitted of housebreaking.

Were whites ever executed for murdering blacks?

In 1739 three white men from Essex County named David White, Charles Quinn, and John Cabidge were hanged for murdering two black slaves. William Pittman, a slave owner from King George County, died on the gallows in 1775 after being convicted of murdering one of his slaves while in a drunken rage.

In conclusion it can be said that colonial Virginians were determined to be governed by rule of law. Some of the court sentences may appear to be overly harsh by our standards, but this was, as Hugh F. Rankin has so aptly put it, "justice in *their* [emphasis added] time."

Hair-buyer, *continued*

prestige soared when he was able to send Hamilton in irons to the gaol at Williamsburg.

When Clark, against heavy odds of troops and distance, captured the towns of Kaskaskia and Cahokia on the Mississippi in 1778, Hamilton was compelled to move against him. He advanced to Vincennes, arriving December 17, 1778, where he was later defeated and captured after Clark's unexpected offensive, mounted under incredible difficulties and carried off with bravado. After Hamilton capitulated at Vincennes, he and a small party of his fellow officers were sent east as prisoners of war. At Chesterfield Court House they received an order signed by Thomas Jefferson that Hamilton and William La Mothe, Captain of Volunteers at Detroit, were to be "taken in irons and layed in gaol at Williamsburgh."

The denigration of Hamilton seems quite unwarranted, since the practice of employing Indian allies was apparently commonplace on both sides during the American Revolution, as it had been during the previous colonial wars. Clark himself moderated the severity of his treatment of Hamilton after hearing the testimony of one Henry the Armorer, who had been at Detroit and had witnessed Hamilton's equitable treatment of prisoners.

Hamilton's journey "by water to the Falls of the Ohio and thence by land to Williamsburgh" was prefaced by Clark's remark that "they should run the risque of their lives in passing the frontier." Even at Richmond Hamilton described "the prepossession of the people against us, and the curiosity to see how such a set of Infernals carryed themselves who had each been more bloodthirsty than Herod the Tetrarch." To his credit, he highmindedly remarked that their treatment "was very excusable considering how we had been represented, and besides that they had suffered very severely from the inroads of [our] people."

In his journal, Hamilton describes arriving at Williamsburg at sunset June 16, 1779, and waiting half an hour in front of the Palace to hear his fate. The officer in charge of Hamilton and his fellow prisoners

> Conducted us to the Common prison, distant a small mile, our attendants increasing every step. At the Jail we were received by the Jailor, a character, however beneath other peoples notice, which soon called our attention. . . .
>
> The opening and shutting doors and barriers, unbolting some cells, and giving directions in an authoritative voice perhaps were designed to appall us poor Devils, and bring us to a due sense of our situation. . . . We traversed a small court 20 feet square, walled to the heighth of 30 feet. . . .
>
> We had for our domicile a *place,* not ten feet square by actual measurement, the only light admitted was thro' the grating of the door which opend into the court above mentioned. The light and air were nearly excluded for the bars of this grating were from three to four inches thick. In one corner of this snug mansion was fixed a kind of Throne which had been of use to such miscreants as us for 60 years past . . . opposite the door and nearly adjoining the throne was a little Skuttle 5 or 6 inches wide, thro' which our Victual was thrust to us. It is not necessary to describe the furniture, as such folk as were destined to be residents here had no occasion for superfluities.

Perhaps there will be an opportunity to use this colorful account to enliven your interpretations of the Governor's Palace and the Public Gaol.

And what happened to General Hamilton? He was eventually paroled and was back in England by June 1781. He died in 1796.

—Tom Strohfeldt

Living History, *continued*

The interpreters who portray these people of the past paint the historic picture in broad strokes and vivid colors. Costume, accent, body attitude, choice of language, deportment, and manner of relating to physical surroundings and other characters all contribute to the effectiveness of the portrayal. Thus, an encounter with a living history character can be a very real opportunity for the visitor to learn the story of our past in terms of human experience.

Just as actors bring history to life on the street, in the Governor's Palace, and at the Greenhow Store, each Colonial Williamsburg interpreter makes the past come alive in a very special way. Anyone who has ever walked down Duke of Gloucester Street in colonial dress, performed an eighteenth-century craft, driven a carriage, cooked in an eighteenth-century kitchen, greeted a visitor with the proper courtesy, bargained at a colonial fair booth, taken part in a militia muster, played an instrument, or danced as the inhabitants of Williamsburg did two hundred years ago plays an important role in bringing this town vividly to life.

Tact

Before long school vacations will begin, which means that hundreds of children and parents will again descend upon us. I want to do my part to insure a pleasant visit for families, but I need

Help!

Some parents bring their children because they want to enrich their youngsters' sense of history. Others, parents and children, may see the visit as important but not particularly enlightening or pleasurable. You and I, as public contact personnel, have the capacity to contribute to the experiences of these family groups in a variety of ways. Perhaps we can even turn their indifference into interest.

First of all, one will scarcely be able to excite youngsters about any aspect of history unless one feels and shows enthusiasm. Young inquiring minds are exciting to work with and to challenge. Capture the children's interest and you've automatically engaged the parents. Have you noticed that as you ask questions of the children, many adults respond? A word of caution: don't patronize youngsters—they are quick to spot anyone who talks down to them. Your attitude toward them will help establish the pattern of their behavior.

Wherever and whenever you can involve the youngsters, you will have their attention! How about suggesting behavior expected of eighteenth-century children? Describe how they dressed, how their clothing restricted their movements, and how children generally acted. If possible, could you ask them to do something—to join you in a minuet step, or to "vote" on a proposed bill at the Capitol? If active participation is not possible, their imaginations can be evoked.

You will have abundant support this year in your interpretive efforts for family groups. Make use of special activities by recommending them to parents, by pointing out certain areas that may be of greater interest to the chilren. Help the families use brochures to their greatest advantage. Steer them toward living history experiences. Think from a child's perspective on occasion—a whole new world opens!

The King's English

Henry Hamilton used these words in his journal, which he kept from August 6, 1778 until he was imprisoned in the public gaol at Williamsburg and deprived of pen and ink.

Bateau—a light river boat.

Firkin—a small cask for liquids, fish, butter, and so forth, originally holding a quarter of a barrel.

Peltry—fur skins or pelts collectively.

Pirogue—a canoe-like vessel, with or without sails.

Portmanteau—a case or bag for carrying clothing and other necessaries when traveling.

Potations—drinks or drinking.

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