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Virginia,
American Slavery,
American Freedom

LIVING
WITH DEATH

THE most obvious difference between Virginia and England was the abundance of land and the absence of people. The native population which might have made the two countries radically different was small to begin with and became rapidly smaller under the onslaught of European diseases and weapons. Once the English pushed the remnants out of the way, they had several million acres of fertile tidewater lands available for a mere handful of settlers. The relative abundance of land and the shortage of people would shape Virginian—and American—history for centuries to come. But during the colony's first half century the shortage of people was different in kind from any experienced in Americans' later absorption of the continent. It was not just that the colony was new. It was not just a matter of time, needed to build up the stream of immigrants. It was a matter of death. The rich lands of the tidewater were empty not simply for lack of immigrants but because the men who did come to settle on them died so fast. We have seen that after 1625 the colony grew rapidly. But the growth was achieved in the face of a continuing death rate of appalling proportions.

It is well known that before 1624 Virginia was a death trap for most of those who went there. One reason why the king dissolved the Virginia Company was that it seemed to have sent so many men to their deaths without taking adequate measures to feed and shelter them. It is well known, too, that summer in Virginia was a dangerous time for new arrivals. This was "seasoning" time, and those who survived it were said to be "seasoned" and thus immune to the dangers of future summers.¹ What is not generally known is that either

¹ David Peter de Vries, in *New-York Historical Society, Collections*, 2nd ser., III (1857), 75; Neill, *Virginia Colonization*, 109.

the diseases involved in seasoning (probably typhoid fever)² or other diseases continued to kill Virginians in large numbers long after 1625. The years from 1625 to 1640, when population more than quintupled, from 1,300 to about 8,100, included the period of the Great Migration from England. During these years it is probable that immigrants to Virginia averaged at least 1,000 a year. The governor wrote in February, 1628, of 1,000 "lately received,"³ and in February, 1634, of 1,200 as "this yeares newcomers."⁴ Persons arriving "this year" were reported in July, 1634, as 1,500,⁵ in May, 1635, as 2,000,⁶ and in March, 1636, as 1,606.⁷ We have actual records for the year 1635 of 2,010 persons embarking for Virginia from London,⁸ and London was not the only port of embarkation. Perhaps these years were exceptional, but other scattered records indicate a continuing heavy exodus from England.⁹ If immigrants did average 1,000 a year during the years from 1625 to 1640, then 15,000 immigrants increased the population by a little less than 7,000. Since most immigrants came as servants and were bound for periods of four to seven years in order to repay their passage, it is unlikely that there was a heavy return migration of men ready to pay an equally heavy price to go back where they came from. No matter how one reads the figures, they show that Virginians had to cope year after year with a death rate comparable only to that of severe epidemic years in England.

There is literary evidence to support such a conclusion. Samuel Maverick, returning from Virginia to New England in August, 1636, said that 1,800 had died there the year before.¹⁰ A Dutch ship captain who called at the colony in the summer of 1636 noted that thirty-six sail of ship were there but that they had arrived before the seasoning months were over and that fifteen of the thirty-six captains had consequently died.¹¹ In 1638, the House of Burgesses

² Gordon W. Jones, "The First Epidemic in English America," *VMIIB*, LXXI (1963), 3-10.

³ C.O. 1/4, f.109.

⁴ C.O. 1/8, ff.9-10; *VMIIB*, VIII (1900-1901), 155.

⁵ Massachusetts Historical Society, *Collections*, 4th ser., IX (1871), 110.

⁶ *VMIIB*, I (1893-94), 417. ⁷ *Ibid.*, IX (1901-2), 37.

⁸ John C. Hotten, *Our Early Emigrant Ancestors: The Original Lists of Persons of Quality . . .* (New York, 1880), 35-145.

⁹ C.O. 1/10, ff.94-95, 126; P.C. 2/50, f.643; P.C. 2/51, ff.16-18; P.C. 2/52, ff.714-15; P.C. 2/53, ff.182, 187, 199.

¹⁰ John Winthrop, *The History of New England*, James Savage, ed. (Boston, 1853), I, 128.

¹¹ *New-York Historical Society, Collections*, 2nd ser., III (1857), 37, 75-77.

doubted the feasibility of the king's scheme for limiting tobacco production because of the impossibility of determining the size of such a perishing population as theirs. "In respect," they said, "of the uncertain number of people yearly cominge and the mortallity of people here farre greater some yeares then others . . . wee are not at anie tyme certain of the number of our Inhabitants."¹² At the same time the burgesses objected to a request from the king for an account of the debts owed by each planter. The information could not be had, they said, because a third of the debts outstanding in the country were contracted by persons since deceased and could be ascertained only as suits were brought by creditors.¹³ That the colony would have expired but for the annual transfusion of immigrants is suggested by the complaint of the inhabitants in 1638 that a proposed monopoly contract for the purchase of Virginia tobacco would prevent any ships from coming "excepting some few belonging to the Contractors." The result would be that "the Collonye will in short tyme melt to nothing for want of supplyes of people."¹⁴

Although Virginia was supposed to be particularly deadly for new immigrants, seasoned inhabitants too may have experienced a death rate higher than was common in England. The absence of parish registers makes it virtually impossible to obtain the birth and death dates of any substantial group of seventeenth-century Virginians after the census taken in 1624/5. But one crude index of longevity can be gleaned from the records of the Norfolk County court, which include a substantial number of depositions. At the beginning of a deposition, the witness ordinarily gave his name and age. The ages are doubtless rough, for people frequently did not know their exact age and added "or thereabouts" to the number given. The witnesses were of all social classes, including servants. Of the 207 persons who gave depositions between 1637, when the records begin, and 1664, when the number of depositions drops off, the approximate date of death for 99 shows up incidentally in the records by 1700. For these 99 persons identified (all but three of whom were male) the average age at death was 48.¹⁵

¹² C.O. 1/33, ff. 239-40; printed in *Journals of the House of Burgesses, 1619-1658/59*, 59-61. Another copy of this document is printed, wrongly assigned to the year 1658, in H. R. Mellwaine, ed., *Journals of the House of Burgesses of Virginia, 1659-60-1693* (Richmond, 1914), 53-54.

¹³ *Ibid.*

¹⁴ C.O. 1/9, f. 228.

¹⁵ The median age was between 47 and 48. The oldest was 80 and the youngest 24. The average age at which the persons made their depositions

It is difficult to measure such a figure against the life tables produced with more precise and abundant figures for England or Europe at the time, but it would seem that the life expectancy of seasoned adults in Norfolk County was somewhat lower than life expectancy in contemporary England and very much lower than in New England, where the men who settled Andover, Massachusetts, at about the same period, lived to an average 71.8 years.¹⁶ We get a

and thus came under observation was 34 and the median 33. The youngest was 20 and the oldest 60. It is doubtful that a search of the records beyond 1700 for persons who may have died after that date would be fruitful, for the names of those whose death had not been mentioned by then had long since ceased to figure in the records. The date of death has been taken as the date when the person's will was proved, or the date of the inventory of his estate, or the date when he is first referred to in the records as "deceased" (frequently one learns of a death only from the mention of someone's having married the widow). The figures thus tend to exaggerate a little the length of life. It should be noted too that longevity in Norfolk may have been lower than in other parts of Virginia. The county apparently had the reputation of being "an unhealthy place." See Francis Nicholson to Board of Trade, August 1, 1700. C.O. 5/1312, f. 1; Henry Howe, *Historical Collections of Virginia* (Charleston, S.C., 1843), 395. Kevin P. Kelly, "Economic and Social Development of Seventeenth-Century Surry County, Virginia" (unpublished doctoral dissertation, University of Washington, 1972), 224-38, attempts to construct life tables for men born in that county between 1650 and 1680, based on 63 persons.

¹⁶ On longevity in England see Peter Laslett, *The World We Have Lost* (London, 1965), 93-94; on Andover, Mass., Philip J. Greven, Jr., *Four Generations: Population, Land, and Family in Colonial Andover, Massachusetts* (Ithaca, N.Y., 1970), 26-27. A slightly different measure of longevity in Norfolk can be obtained from the county commissioners. Of the forty men who sat as commissioners between 1637 and 1660, the age at death can be ascertained for twenty-four. The average age at death was 49 and the median between 47 and 48. The oldest was 74 and the youngest 31. The average age at which they became commissioners and thus come under observation was 36 and the median between 37 and 38. The youngest was 22 when he became a commissioner and the oldest 56. The figures accord with the observation of an anonymous Virginia clergyman in 1689. Speaking of the Indians, he said, "They seldom live longer than 40 or 50 years. Neither do the English who are born in Virginia live beyond that age ordinarily" (Pargellis, "Account of the Indians in Virginia," 230). Three other studies of longevity in Virginia show somewhat different results. Wyndham B. Blanton found average longevity in Virginia, "based on a study of 205 seventeenth century families," to be 51 years and 3 months. "Epidemics, Real and Imaginary, and Other Factors Influencing Seventeenth-Century Virginia's Population," *Bulletin of the History of Medicine*, XXXI (1957), 454-62.

glimpse of what Virginians considered to be old age in the orders of the Norfolk court relieving aged persons of taxation. Bartholomew Hoskins was relieved of taxes when he was 47, because he was aged and infirm and had been in the colony since the time of Sir Thomas Dale.¹⁷ Rowland Morgan got the same privilege at 54 because he was a "poor ancient man" and Samuel Turbey at 53 because he was "ancient, poor, and decrepit."¹⁸ On the other hand, Moses Linton lived to 80 and got along without exemption until 73 as far as the records show.¹⁹

It seems likely that the colony's women and the children they bore (or at least those that survived infancy) enjoyed more favorable prospects than men. Simply by surviving infancy children were, in a sense, seasoned, and stood a better chance against the colony's endemic diseases than those entering from outside. Women had already exhibited their durability in the early days of the colony. In 1624 it was the opinion of Sir Francis Wyatt, after living several years in the country, that "the weaker sexe . . . escape better than men, either that their worke lies chiefly within doores, or because they are of a colder temper."²⁰ Wyatt may not have been a proper authority on the temper or temperature of women, but he was right about their capacity for survival. A list of the living and the dead in Virginia in February, 1624, shows that 35 out of 279 women (12.5 percent) had died in the preceding ten months, as against 294 out of 1,288 men (22.8 percent). In the following year another list shows that 14 out of 282 women died (5 percent) as against 100 out of 1,042 men (9.6 percent).²¹

at p. 461. Kelly, "Economic and Social Development of Surry County," 28-29, using genealogies of 62 families, found a mean age at death of 57.65 for men born 1620-50, 56.25 for men born 1651-80, and 61.52 for men born 1681-1710. Martin H. Quitt, "The Virginia House of Burgesses, 1660-1706: The Social, Educational, and Economic Bases of Political Power" (unpublished doctoral dissertation, Washington University, St. Louis, Mo., 1970), estimated the median age at death for 30 immigrant burgesses at 60.5 and for 74 natives at 55. But Lorena S. Walsh and Russell R. Menard, in a more widely based study of longevity in Charles County, Maryland, found life expectancy for men born in the county to be between 24.5 and 27.5 years at age 20. Immigrants, even if they survived seasoning, had an even lower life expectancy. "Death in the Chesapeake: Two Life Tables for Men in Early Colonial Maryland," *Maryland Historical Magazine*, LXIX (1974), 211-27.

¹⁷ Norfolk II, 50.

¹⁸ Norfolk IX, 274.

¹⁹ Norfolk VII, 311.

²⁰ *W'MQ*, 2nd ser., VI (1927), 117.

²¹ See Appendix, esp. note 3. The deaths in the 1625 list are incomplete. I have not counted persons whose sex is not clearly indicated by a forename.

The lists, while showing the superior resistance of women to disease, also reveal how small their total numbers were in the population. In 1625 there were 350 men for every 100 women. Subsequent immigration kept the ratio uneven. Of the 2,010 immigrants from London in 1635, less than 14 percent were women. And all the evidence indicates that during the rest of the century women continued to be a minority in Virginia (see Appendix).

We are observing, then, a society that during its first forty or fifty years grew under conditions differing dramatically from those in the world that the settlers had known before. Women, and therefore children, constituted a much smaller proportion of the population in Virginia than anywhere in Europe. Unmarried men constituted a much larger proportion. And the whole population, but especially its men, was dying off rapidly and could sustain itself and grow only by continuing heavy immigration. These unfamiliar and unwelcome circumstances, no less than the colonists' wish to create familiar institutions, dictated the shape of their developing society.

One much lamented development came in the position gained by physicians, or by persons at any rate who claimed to be able to cure disease. Sick men are not likely to be hard bargainers, and dead men cannot bargain. Virginia accordingly became a land of opportunity for doctors and quack doctors; and in the seventeenth century the ministrations of the one were not likely to be more effective than those of the other. The fees charged by people who practiced medicine were by any other standards outrageous. Men who were unable to pay sometimes bound themselves as servants for a year or more in return for a cure. But since the services performed were often unavailing, the physician or "chirurgion" commonly collected his charges from the estate of his newly deceased patient. Sums of 1,000 pounds of tobacco were not uncommon, and they went as high as 2,500.²²

The House of Burgesses noticed that the effect of these "immoderate and excessive rates" was to prevent men from summoning help for sick servants, because "it was the more gainfull and saving way to stand to the hazard of their servants then to entertain the certain charge of a physitian or chirurgion whose demands for the most parte exceed the purchase of the patient." To prevent gouging by physicians, the burgesses provided that anyone thinking a charge excessive could bring the case to court, where the commissioners would

²² Norfolk III, 136, 172, 212; IV, 162; Northampton IV, 155, 203; V, 138, 142; York II, 152.

allow what they considered reasonable.²³ But the law seems to have been ineffective. The only complaints that were successful in court were those where the patient had obtained a genuine contract in which payment was to depend on being cured.

In every county a number of physicians set up practice. In Charles City County between 1656 and 1660, when the population was probably about 2 thousand, at least nine persons are mentioned in the records as practicing medicine. In Northampton County between 1640 and 1660, at least twenty physicians or surgeons are mentioned, though no more than four or five were active at the same time. The county in 1660 probably had fewer than a thousand inhabitants. In Norfolk County between 1637 and 1660 sixteen are mentioned, for a population of around 800.²⁴ Not all those who tried to practice made a go of it; and, in view of their greater exposure to disease, the mortality among physicians may have been above average. But a few of the colony's big men began in this way: John Pott, who was governor for a time; Obedienc Robins, one of the most important men in Northampton County; and Colonel John Stringer, another Northampton commissioner, who affected the title of "philomedicus" rather than plain "chirurgion."²⁵

But the unusually large role played by physicians in the colony was the least important consequence of Virginia's continuing high death rate. More significant was the effect on the role of women. In a society where men died early, the relatively small number of women could expect to wear widow's weeds and to wear them often, though not for long. Women were too rare in Virginia to be left for long without husbands. The case of Jane Sparrow in 1660 was doubtless extreme. She was sick, and her husband called in a doctor. The cure was successful, but the husband died, leaving the doctor to collect 1,200 pounds of tobacco from his estate. The recovered wife remarried five days later.²⁶

Most Virginia women waited a couple of months; but they were, in the records at least, a singularly unlovely lot. Given their small numbers, they account for a high proportion of the cases of

²³ Hening, I, 316.

²⁴ On population estimates see Appendix. In counting "chirurgions" I have omitted persons who appear to be surgeons aboard ships lying in the Virginia rivers, except when they later became residents. But ships' surgeons did become involved in court cases ashore, and it may be that I have inadvertently included some.

²⁵ Charles City County, Orders 1658-60, in Beverly Fleet, ed., *Virginia Colonial Abstracts*, XI (Richmond, 1941), 82, 92.

slander heard by the courts, and they were also in court too often for abusing their servants. In three cases where servants died after abusive treatment, women were defendants.²⁷ In none of these cases was the woman found guilty, but one, Anne Charlton (widow of Stephen Charlton, a Northampton commissioner), was required to give bond for good behavior in the future. The commissioners had had trouble with her before, when she was the widow of Anthony West. At that time, she had gone after her overseer with a club.²⁸ Another commissioner, Henry Woodhouse, of Norfolk, had to be given protection from the unkind usage of his wife while he was sick. His fellow commissioners ordered that the neighbors should "have free libertie to resort to the house of Mr. Woodhouse to see that hee have what shalbe both sufficient and necessarie for him durance his sickness, and according to his quallitye." At the same session the court placed in the sheriff's custody for protection a maidservant of Mrs. Woodhouse who had been "Most unchristianlike used by her mistress." But the court's efforts were not enough. By the next session both Woodhouse and the maid were dead. Within the year Mrs. Woodhouse had remarried.²⁹

If an awareness of their scarcity value induced an imperiousness or even downright tyranny in Virginia's women, it also gave them greater economic advantages than they enjoyed in England. By Virginia's law, as by England's, a widow was entitled to a life interest in one-third of her husband's estate,³⁰ and in Virginia the annual usufruct of an estate was likely to amount to a larger proportion of its value than in England. Furthermore, men of property generally favored their wives with more than the law required. It was common to give specific bequests to the children and everything else to the wife,³¹ but there was great variety in wills. John Valentine gave his widow one-third of the estate as her own and the use of the rest of it while she remained a widow.³² Rowland Burnham gave his wife half the servants, half the cattle, all the furniture, but none of the

²⁷ Norfolk II, 117a, 120; III, 202; Northampton II, 22, 26; IV, 223a-227; cf. Northumberland III, 454; R. A. Brock, ed., *The Official Letters of Alexander Spotswood*, Virginia Historical Society, *Collections*, n.s., I and II (Richmond, 1882-85), II, 202-3.

²⁸ Northampton IV, 97, 223a-227.

²⁹ Norfolk III, 157a, 163a, 170a, 181, 221.

³⁰ Hening, I, 405.

³¹ This is an impression formed from reading the numerous wills recorded in the county courts. In the examples cited below, however, I have taken wills available in print.

³² *V.M.H.*, VI (1898-99), 118-20.

land.²² Abraham Peirse gave his widow one third plus one-twelfth.²³ Adam Thorowgood gave his widow a mare and a foal, one of the best cows in the pen, half a dozen goats, four sows, and part of his plantation for life, "all which I give her as a memorial of my love—not any ways intending to cut her off from a equal share in my estate with my children."²⁴

Besides getting a large share of the estate, the widow was often appointed administrator. This meant that claimants against the estate had to make their claims to her, and she, by delaying payment, might continue to enjoy the whole for some time. Captain John Sibsey left most of his land, his servants, his plate, and two-thirds of everything else to his widow, one-third to his daughter. But the daughter's husband had to sue her mother in order to get what was given her.²⁵ If a widow had a jointure (which excluded a part of the estate as belonging to her before any inventory was taken), she was in a particularly advantageous position. Whether she had a jointure or not, she was not responsible for her husband's debts beyond the value of his estate.²⁶

The wealthy widow has always had an edge on competitors in the marriage market. In Virginia the death rate produced such a rapid turnover of husbands and wives that widowhood became a principal means for the concentration of wealth. It has been suggested that the men who made their way to the top in the 1620s and 1630s in Virginia were unable to perpetuate their family lines; the famous first families of Virginia came to the colony later.²⁷ In a patrilineal sense this was the case. But while the high mortality lasted, with women apparently resisting it more successfully than men, Virginia was on the way to becoming an economic matriarchy, or rather a widowarchy. The man who needed capital could get it most easily by marrying a widow. And she was likely to get it back again, with whatever return he had added to it, when he died. The next husband would have an even larger base to build on.

We can sometimes watch the process taking place among the more successful planters, whose extensive holdings brought them frequently into the court records. One of the men, for example, who made it to the top in Virginia in the late 1620s and early 1630s was

²² *WAIQ*, 2nd ser., II (1922), 269.

²³ *VMIIB*, I (1893-94), 188.

²⁶ For examples, Norfolk III, 201; IV, 120.

²⁷ Bailyn, "Politics and Social Structure."

²⁴ *Ibid.*, II (1894-95), 416.

²⁵ Norfolk III, 122, 422, 43.

Adam Thorowgood. Though he came as a servant, he was of good family and in 1627 married Sarah Osley, daughter of a London merchant and granddaughter of a Lord Mayor. Thorowgood died in 1640 at the age of 38. Within a year Sarah married Captain John Gookin, whose father had established one of the largest particular plantations under the Virginia Company. John Gookin died in 1643 at the age of 30. Sarah stayed single for four years, playing the grande dame of Norfolk at her house on Lynnhaven Bay. In 1647 she married Francis Yeardley, aged 23, son of Sir George Yeardley, the former governor. She saw to it that most of their property would be hers and not included in the estate if he should die before her, which he did, at the age of 31. Something of her scale of living can be judged from the fact that five years after their marriage Francis traded seven head of cattle to buy jewelry for her (which did not include a diamond necklace that she had at her death).²⁸

The game, of course, could be played the other way around. If a man could stay alive long enough, he might become a repeating widower. And as might well be expected in such a perishing society, repeating widows often married repeating widowers. William Burdett, who arrived as a servant in 1615, was able to marry the widow of Roger Sanders, one of the first commissioners on the Eastern Shore. She had already been a widow at least once before she married Sanders, and evidently Burdett's pursuit of her was a matter to bet on. The Northampton court recorded a deposition "that Mr. George Scovell did laye a wager with mr. mountney £10 starling to £5 starling Calling of us tow to witness the same: That mr. william Burditt should never match in wedlocke with the widow Sanders while they lived in Virginia. Soe the sayd Scovell not Contented but would lay £40 starlinge more to £10 starlinge that the sayd mr. william Burdett should never have the widdowe Sanders." Scovell lost. Burdett got her, outlived her, and before dying at the age of forty-six, he married another widow. When Burdett died, he left 66 head of cattle, 32 goats, a parcel of hogs, 10 servants, and a stack of debts.²⁹

The man with his eye on the main chance went for the widow rather than the daughters when a wealthy Virginian died. Governor Harvey and Thomas Hill both married daughters of Abraham Peir-

²⁸ *VMIIB*, II (1894-95), 416; Norfolk III, 242, 193, 201; IV, 117; Gookin, *Daniel Gookin*, 56-57.

²⁹ Northampton I, xxxii, 10; II, 419-25.

sey, the richest man in Virginia. But Samuel Mathews, whom George Sandys had earlier identified as a man addicted to profit, got the widow (she had been the widow of Nathaniel West when Peirse married her) and with her assistance hung on to the whole estate, even though Governor Harvey in a lengthy lawsuit tried to get it away.⁴⁰

As women in Virginia generally became widows sooner or later, children generally became "orphants," as fatherless children were called in Virginia even when their mothers were still alive. And although orphans usually came off second best in contests with their mother or stepfather for an estate, Virginians were conscious of the orphans' disadvantages and took measures to protect them. In making a will, men often named a guardian other than the mother to protect the children's interests, and in addition appointed feoffees in trust to see that the guardian did his job properly. Where a child was left without either parent, the county court appointed a guardian. At the lowest rank in the social scale an orphan without either father or mother was better off than in England. Because he was a potential source of valuable labor, the community seldom had to subsidize his bringing up unless he was a mere infant. Unlike the penniless orphan in England, the parish apprentice, he could expect to be taught a trade, and frequently he received tools and clothes when he attained majority. Sometimes his guardian was required also to set aside a cow calf for him and take care of her increase until he reached majority.⁴¹

Fathers, anticipating that they would not live to see their children launched in the world, frequently deeded cattle to them at birth and appointed feoffees in trust to see that the child received the female increase when he married or came of age. The male increase was usually assigned to pay for the child's upbringing. Grandparents and godparents often made the same sort of gift. A large portion of the surviving court records consists of these deeds of gift, in which a cow is carefully identified by her appearance, earmarks, and name (Golden Locks, Gentle, Whitefoot, Nightingale, Frisky, Butter-milk). So prevalent was the practice that orphans ranked among Virginia's principal cattle owners. Parents who did not provide a "stock" for their children by deeds of gift took care of the matter

⁴⁰ *VIII*, XI (1903-4), 471, 174-82.

⁴¹ For examples, Newhampton III, 125; IV, 177; Fleet, *Virginia Colonial Abstracts*, X, 46.

in their wills. Susan English spelled out the usual arrangement with unusual explicitness: After bequeathing various cattle to her three children, she wrote:

whereas there wilbe charge in bringing upp the abovesaid Children both for diet Cloathing and schooling I desire it may be entered upon the records in the court booke that whosoever bringeth upp the children unto the age of diseresion with all things necessary and fitting shall have the male cattle for soe long tyme as the Children be with them.⁴²

The acquisition of all the male cattle produced during the orphan's minority was such a lucrative compensation for bringing him up that men on every social level competed for the privilege of guardianship. How serious a matter this could be is revealed in a contest between Governor Harvey and Ambrose Harmer over the guardianship of Benoni Buck, the idiot orphan of the Reverend Richard Buck. Harvey proposed to rotate the guardianship among members of the council in order to help support the government, but Harmer (who claimed the guardianship through his wife, the widow of one of the overseers of Buck's will) carried the case to England's Court of Wards and to the Privy Council. The Privy Council sided with Harmer, much to Harvey's chagrin.⁴³

There was so strong a temptation for guardians and stepfathers to appropriate more than the male increase or whatever was allowed in the writs and deeds of gift that the House of Burgesses in 1643 passed a law requiring a yearly accounting of all orphans' estates by their guardians. Henceforth each county court held an annual session known as an "Orphants Court," in which guardians reported the previous and present number of every orphan's cattle.⁴⁴ Even mothers who were guardians of their own children had to render accounts. Ordinarily the courts allowed no expenditure for an orphan that would diminish the cattle whose increase had been assigned for his upbringing. Mary Woodhouse Batts had to ask special permission of the court to sell two steers in order to buy clothes for her children by Henry Woodhouse. The court granted permission on the condition that the steers be replaced by two younger steers.⁴⁵

⁴² York II, 339.

⁴³ *VIII*, IX (1901-2), 178-79; XII (1904-5), 390-93.

⁴⁴ Henning, I, 260. For other legislation protecting orphans, see *ibid.*, 260-61, 269-70, 416-17, 443-44, 451. For examples of orphan's courts, see Norfolk I, 204-5, 257-58, 270-71; II, 1372-1392; York II, 180-84, 399-408.

⁴⁵ Norfolk IV, 217.

Sarah Osley Thorowgood Cookin was harder to handle. The commissioners of Norfolk County, who were obviously afraid of her, asked her politely but unsuccessfully on ten different occasions to render account of the cattle of her children by Adam Thorowgood. Finally they sent the high sheriff, Thomas Ivey, to levy a fine of 500 pounds of tobacco on her. She replied to the sheriff's hesitant communication with a letter in which she flatly refused to pay a fine or to appear at court, and hinted broadly that the court was going beyond its jurisdiction. It was unheard of, she said, that a mother should be asked to account for the property of her own children. She closed with a characteristic feminine touch: "my respects to your selfe and wyse most kindly remembred to whome I have sent a small baskett of apples per the bearer." The next sheriff, the following year, like Ivey, lacked the nerve to press the matter further. The court threatened to fine him if he did not proceed. But before anyone else dared to face up to her, Francis Yeardley married her, and upon *his* promise that *he* would render the account, the court with undisguised relief repealed its 500-pound fine.⁴⁹

But not everyone was Sarah Osley Thorowgood Cookin Yeardley. The courts frequently did curb mothers and stepfathers and guardians, even of exalted rank. Richard Vaughan, who was seoffee in trust for Stephen Charlton's stepdaughter Bridget, complained to the court, of which Charlton was a commissioner, when Charlton sold a mare and horse belonging to the girl. His fellow commissioners ordered Charlton to replace the mare and horse by a Negro man and the produce of the crops he should make annually. When Charlton died, Vaughan saw to it that Bridget's cattle and other possessions were not included in the inventory of Charlton's estate and also prevented her stepmother from making use of a mare that belonged to her.⁵⁰ When Matthew Phillips, a commissioner of the Norfolk court, got with child a maidservant who belonged to some orphans of whom he was guardian, his fellow commissioners made him pay the orphans' estate 600 pounds of tobacco for loss of the maid's time during pregnancy and lying-in.⁵¹

In making provision for children in wills, Virginians usually followed the English pasture-farming pattern of partible inheritance. Each child was likely to get something; but if one had already been given a substantial amount of property by deed of gift, his share in

⁴⁹ Norfolk II, 132, 362, 41, 48-48a, 52, 52a, 53a.

⁵⁰ Northampton IV, 218a, V, 125a, 135. ⁵¹ Norfolk I, 305.

the estate might be smaller. Thus Stephen Charlton left only small bequests to his daughter Elizabeth, but he had already deceded her 1,700 acres of land, a slave, a mare, 3 cows, 6 ewes, and several thousand pounds of tobacco.⁵² John Valentine excluded his eldest daughter Ann "in regard she hath a considerable stock already confirmed her, therefore I only give and bequeath to her at marriage one cow."⁵³ Commonly the eldest son got more than other children, especially of land, but not much more. Occasionally the youngest child got a larger share.⁵⁴ Often all shared "by the rule of proportion, that is to say, share and share alike."⁵⁵ Wills, like deeds of gift, thus contributed not simply to the accumulation of property by women but also to the dispersion of property among women and children, or widows and orphans.

If we examine the property that was being tossed about so rapidly from the dying to the living, we will discover that mobility was only one aspect of its instability. Property itself was evanescent, shifting in value, perishable. Specie was virtually nonexistent, for the export of coin from England to the colonies was forbidden, and whatever came into the colony from other sources quickly found its way out again. And land, the symbol of stable value in England, was the least valuable investment a Virginian could make during the first half of the century, unless he was remarkably farsighted and willing to wait a generation or two for the payoff. It was so abundant and so easy to acquire that the price rose very slowly. Public lands could be obtained by producing evidence of having paid for the transportation of others to the colony, at the rate of fifty acres per person or "headright"; and if a man did not need all the headrights he was entitled to, he could sell them. Such headrights were bought and sold at 40 to 50 pounds of tobacco in the 1650s.⁵⁶ To convert a headright into actual ownership of a specific tract of land, the secretary of the colony exacted a fee for making out a patent, 30 pounds of tobacco in the 1630s, increased to 50 pounds in 1643 and 80 pounds in 1658.⁵⁷ Even at the highest figure, a hundred acres

⁴⁹ Northampton V, 172, 362-372.

⁵⁰ *PAHB*, VI (1898-99), 119.

⁵¹ Northampton IV, 223.

⁵² *PAHB*, VI (1898-99), 119. This continued to be the common practice in the eighteenth century. See Robert E. and B. Katherine Brown, *Virginia, 1705-1786: Democracy or Aristocracy* (East Lansing, Mich., 1964), 81-83.

⁵³ Norfolk III, 203a; Westmoreland I, 51.

⁵⁴ Henning, I, 201, 265, 465.

of public land could be had for 160 to 180 pounds of tobacco, less than 2 pounds per acre.

Precise valuations of private land are hard to obtain, because lands were seldom appraised in the inventories of estates, and most deeds do not mention the price. Deeds which do mention the price indicate that unimproved river land could be had throughout the 1640s and 1650s for from 4 to 10 pounds of tobacco per acre. At this rate, a hundred acres was worth no more than a couple of cows, worth less than a year's wages for a servant hired by the year. Where a man's plantation was appraised in his estate, it usually accounted for only a small proportion of it. Robert Glascock, for example, left an estate in Norfolk County in 1646 worth 35,850 pounds of tobacco. The plantation and its buildings amounted to only 3,500 pounds.⁵⁵ An orphan left with nothing but land would be poor indeed, and a wise guardian would trade the land for whatever cattle it would buy, as Alexander Mountney did in 1642 with 150 acres belonging to the orphans of Edward Hill and Thomas Spilman, because vacant land "was noe wayes beneficiall to the said Orphants."⁵⁶

While unimproved land was a poor inheritance and a poor investment because its value increased so slowly, improved land was not much better, because it could decline in value. Tobacco could be grown on a piece of land for only three or four years before the crop began to diminish. The planter therefore counted on abandoning a field after that length of time. Efforts to restrict tobacco growing only hastened the process. Tobacco grown on virgin land was of better quality than that from used land, and each plant produced more.⁵⁷ Whether restricted to a certain number of pounds or to a certain number of plants, a man would go for virgin land to make the maximum profit. And as long as land remained abundant, even in the absence of restrictions, there was a temptation to keep moving in search of better crops.

Because of the abundance of low-cost land wealthy Virginians (unlike wealthy men in England) were at first relatively indifferent to the opportunities for acquiring land. Sometimes they waited years

⁵⁵ Norfolk II, 45-46.

⁵⁶ Northampton II, 213; cf. *ibid.*, 219. The value of land in Maryland at this time seems to have been about the same. See William A. Reavis, "The Maryland Gentry and Social Mobility, 1637-1676," *WPAQ*, 3rd ser., XIV (1957), 418-28, at 423n.

⁵⁷ Letter from Clayton, "Force, Tracts, III, No. 12, pp. 20-21.

before claiming the acres due them by headright for servants they had transported.⁵⁸ Often they sold their headrights rather than patent the land for themselves. When later generations of Virginians settled down, after the tide water had next to the rivers had been taken up, they felt that a tobacco plantation needed fifty acres per working hand.⁵⁹ Even though a man could care for only three or four acres at a time in tobacco, some was needed for corn and a great deal for pasture and for a long recuperative, fallow period. In the first half of the seventeenth century, however, few Virginians saw the advantage of acquiring large reserves for future use. Good land lay everywhere around them. Something of the cavalier attitude of landed men toward their holdings can be seen in Stephen Charlton's recollection in 1648 of how Francis Pott came to settle on the Eastern Shore:

Sayth that beinge att Mr. [Argill] Yardley his howse about three yeares since (or thereabouts) Capt. Francis Pott alsoe beinge then there and newly come over the Edge, with some servants (whereby to make a cropp) And beinge unprovided of a place to plant, this Deponent spooke and said hee could helpe him to ground: And Mr. Peter Walker hee said alsoe then, that hee could helpe him to grounde to plant on; but Mr. Yardley said noe William Berry his plantation laye voyde and was fenced and hee should have yt for nothings.⁶⁰

Houses, of course, increased the value of land where they were located but not usually by more than a couple of thousand pounds of tobacco. While land remained abundant, men hesitated to invest much in a house that they might one day wish to abandon. Virginia houses continued to be for the most part small and insubstantial. Even the more well-to-do planters contented themselves with a few rooms, a "quartering house" for their servants, tobacco houses for curing the crop, and perhaps a milkhouse. Though the houses were doubtless better than they had been in the 1620s, most were made of wood and were typically fifteen feet by twenty, twenty by twenty, or twenty-five by twenty. For building a house twenty feet square a carpenter charged 600 pounds of tobacco in 1655, worth

⁵⁸ See E. S. Morgan, "Headrights and Head Counts: A Review Article," *VMIH*, LXXX (1972), 361-71.

⁵⁹ Harry J. Carmon, ed., *American Handicraft* (New York, 1939), 165.

⁶⁰ Northampton III, 158a.

only a little more than a cow.⁶¹ The most valuable parts of the building were the nails and sawn boards, the doors, and the glass; and a deserted building was likely to disappear in a hurry from people scavenging these.⁶² But decay rather than pillage was the principal enemy of Virginia houses. Land and houses rapidly declined together. When Philip Chapman in his will ordered his plantation sold to buy cattle for his son John after his death, it was, he said, because the land and house alike would be worn out by the time the boy came of age.⁶³

Even tobacco, the colony's principal commodity, was highly perishable. Stored for a year or more, it was likely to rot, especially if in packing the leaves had been wet down to make them more pliable, or if improperly cured leaves had been included. In these early years Virginians had not acquired the skill in packing necessary to make tobacco keep, and so most planters were eager to get it off their hands as quickly as possible.

If the ships that carried it to market failed to arrive in sufficient numbers, the hogsheads left behind might be a total loss by the next season. Sometimes litigation would hold up shipments, with disastrous results. One Dutch merchant lost heavily when his agent collected 17,000 pounds of tobacco from Edmund Scarborough before he had conveyance ready for it. A subsequent lawsuit further delayed shipment, so that two years later in the summer of 1654 it was still packed in hogsheads in Scarborough's tobacco sheds. By that time it was so rotten that Scarborough's overseer reported he "was forced to flinge it awaye for wante of roome to cure our crops nor could bee noe longer kept by reason of the extreame stincke it yeilded in the summer tyme."⁶⁴

⁶¹ Norfolk III, 180. Another contract, in 1645, called for 240 pounds and one ewe kid (worth perhaps £3 in all) to build a house 15 by 20 feet with a "Welch chimney." Northampton II, 395. In the following year another man contracted to build a house 25 by 20 feet, the cost of the lumber not included, for five pairs of shoes and the soling of a sixth pair. Northampton III, 72. Shoes at this time cost 50 pounds of tobacco a pair. Northampton III, 242, 1512, 1712. For other building contracts see Surry I, 55, 56; Henrico I, 88; Norfolk II, 186a.

⁶² Norfolk III, 215; Henrico I, 100, 490; Northumberland III, 248.

⁶³ Northampton V, 872-88.

⁶⁴ Northampton V, 622-652. In February, 1656/7, John Jeffries, a London merchant who had been trading in tobacco for the preceding twelve years, testified before the High Court of Admiralty that planters in Virginia who had not disposed of their crop by March made it a practice

Virginia's most stable, most secure commodity was cattle. Hence the practice of deeding cattle to children. But even cattle were by no means a sure thing. Throughout the seventeenth century, Virginians were still collecting bounties on wolves (which may even have multiplied as a result of the introduction of cattle) and still sending off Indian poachers. A herd might be cut down by a bad winter or by epidemic disease, or the animals might run wild beyond recovery in the woods. You could not store up cattle and forget them, like acres of land, and expect to find them when you went looking. In demanding an annual accounting of orphans' cattle, the courts were guarding not merely against embezzlement but against the neglect that could destroy an inheritance overnight.

Servants were Virginia's most valued form of property but also the most risky. It was noted in 1648 that servants were "more advantageous . . . than any other commodities" for importation from England.⁶⁵ The initial cost for a man for four or five years was no more in tobacco than he might make in a year.⁶⁶ The risk came from the mortality to which servants were no less subject than masters. During a man's first year in the country it was considered safer not to work him in hot weather, when tobacco needed most care. The risk of losing him anyhow was so great that when the House of Burgesses passed a law against engrossing imported commodities to sell for a profit, they provided that "Nevertheless it shall be lawfull . . . for any person having bought a servant and undergone the charge and hazard of seasoning of any such servant, to make his best advantage by putting off or bartering such servant to any other inhabitant within the collony."⁶⁷ The risk was reflected in prices. A seasoned hand, even if he had only two or three years to serve, might be considered more valuable than a new hand for his full term.⁶⁸

"to send their tobacco when March is past by any shippe they can or if noe shipp bound for England bee then there to barter it away to any that will take it for the like quantitie of tobacco to bee paid the next yeare following or send the same for New England, rather than keepe it in Virginia after March is past, by reason it is a Commoditie which with the heate of the Country in Virginia will bee spoiled if it bee kept after the month of March next following after the yeare it groweth." H.C.A. 13:71 (P.R.O.).

⁶⁵ Northampton IV, 152.

⁶⁶ Assuming an output of 1,500 to 2,000 pounds. See chap. 7, note 40.

⁶⁷ Henning, I, 245.

⁶⁸ For example, a new man with four years to serve was exchanged in 1642 for a seasoned man with two years to serve. Norfolk I, 150. In 1643 a

of the market witnessing every transaction. The measure failed and was repealed,⁷⁵ but the courts themselves took on the character of an exchange. All conveyances had to be recorded there; and book debts (those recorded only in a merchant's account book) were made not actionable.⁷⁶ In order to speed collections, debtors could simply "confess judgment," that is, admit that they owed the amount demanded and have the fact recorded without going through the expense of a trial. Speed was essential because of the importance of oral testimony and the mortality of witnesses. For example, creditors who had already collected from a man sometimes tried to collect again from his heirs and often succeeded if death had also removed witnesses to the payment. The courts responded by adjusting the statute of limitations to the character of their society, ordering that no bill or bond should be good after three years from its date.⁷⁷

In requiring the speedy settlement of debts, the courts aimed primarily at preventing fraud. But they were also recognizing the importance of time in the colony's economy. Perhaps because Virginians had less time to reckon with than other people, they came to value it more highly. It was not only that a man had a short while to live. His servants, his most lucrative income-producing property, were worthless unless used before their time ran out. And he had to have them on hand when he and his crop needed them. A Virginian who made a contract to buy servants would go to court if they were not delivered on the agreed date. When John Neale promised to furnish John Harloe with a new man for four years' service but was unable to obtain one by the specified time, he had to turn over his own servant, Richard Bayley, until he could get a new one. Time was money, or at any rate it was tobacco and tobacco was money. The courts recognized the equation by making debts payable in days of work. A debt in work might even be collectible from a dead man, as when the Northampton court in 1641 ordered the estate of Daniel Cugley, deceased, to pay eight days' work to Henry King.⁷⁸

As the courts took on the function of an exchange, they acknowledged the equation of time and money in other ways too. When a man brought suit against another and failed to appear to prosecute it, he subjected the defendant to a waste of time for which

⁷⁵ Henning, I, 362, 397.

⁷⁶ *Ibid.*, 301-2, 417, 472-73, 485-86; II, 111.

⁷⁷ *Ibid.*, I, 390. The limit was later extended to five years. *Ibid.*, 483-84; II, 104-5.

⁷⁸ Northampton I, 98, 112; II, 76.

ought to pay. It accordingly became the practice in such cases to nonsuit the plaintiff and award the defendant a sum for the amount of work time lost. In an early instance the Norfolk court spelled out the reasoning: Tristram Mason, having caused Robert Taylor "to leave his affaires and to appear at this court It is therefore ordered that the said mason shall pay the said Robert Taylor for one dayes worke and his Charges for his diett the said day and likewise the charges of the suite."⁷⁹ In later instances the court specified an amount of tobacco, usually at the rate of twenty pounds a day, with ten pounds reckoned as the value of a day's work and ten pounds for diet. Witnesses subpoenaed in a suit were entitled by the same reasoning to payment for their time, and the courts ordered the losing party or the party in whose behalf they were summoned to reward them at a similar rate.

Thus Virginians built a local system of credit and exchange that recognized their peculiar conditions of life and created a kind of stability out of instability. Virginia could not quite be England. As long as the heavy mortality lasted it must be vastly different. Yet the differences were not all in England's favor. The very abundance of land and scarcity of people that made land a poor investment gave Virginia an irresistible attraction for ordinary men. Land was the anchor of every Englishman's hope for security, and English political philosophers attributed their country's freedom to the vigilance of its landowners, whose representatives in Parliament could curb the tyranny of ambitious monarchs. But in England the landowners were few, while in Virginia anyone who survived his seasoning and service could take up a plot, grow his crop, make his voice heard in voting for representatives, and perhaps even aspire to represent his neighbors in the House of Burgesses. Those who survived learned to live with the other risks, even to overcome most of them. And when mortality finally began to decline, it looked for a time as though Virginia might become the center of a New World empire where Englishmen and English liberty would thrive together.

⁷⁹ Norfolk I, 39.

The price for a servant just arriving from England with five years or more to serve ranged from 600 pounds or more in the 1630s up to 1,000 pounds or more in the 1640s and 1650s; a seasoned hand with three years or more to serve was worth from 1,500 to 2,000 pounds during the 1640s and early 1650s.⁶⁹

A servant, though seasoned and in reasonably good health, was valuable only for the work that could be extracted from him in the given time of his service. But servants unless closely supervised were no more diligent in later decades than they had been in the early days of the colony. With this fact in mind, Governor Harvey in 1639 failed to act against one Thomas Loving, who by marrying a widow had gained control of an estate entrusted to her deceased husband by a London merchant. There was no doubt that Loving was detaining the estate illegally, but the governor refrained from taking it away because there would then be no one to look after it, "the servants being thereby left without oversight by whose neglect the Estate in question might suffer much prejudice."⁷⁰ Harvey later explained the servant problem to his superiors in England: ". . . daily experience informeth how much a Virginia estate (which consisteth for [i.e., of] servants for tearme Yeares and Cattell) is wasted in the absence of a Master, through the neglect of Servants whose tyme expire with certaintye of charge to supplye them and noe advantage to the Master."⁷¹ A Virginia estate, in other words, might be here today and gone tomorrow simply from failure to make use of it.

Virginia's high rate of mortality and the fleeting value of property, whether servants, land, tobacco, or—to a lesser degree—cattle,

man with six years to serve was exchanged for a man with two years to serve plus 300 pounds of tobacco. *Ibid.*, 202. In 1655 an inventory evaluated three new men and boys for a total of 4,500, while two seasoned men for three and four years respectively totaled 4,000. Norfolk III, 19. In Northampton a 1648 inventory listed a man with two and a half years to serve at 2,000 and one with five years to serve at 1,800. Northampton III, 180a. In a York inventory in 1653 a man with three years to serve was valued at 1,000 and "a new hand" with seven and a half years to serve at 900. York I, 143.

⁶⁹ A shipload of servants in 1636 brought from 450 to 600 pounds of tobacco apiece. Martha W. Hiden, ed., "Accompts of the Tristram and Jane," *V.MHB*, LXII (1954), 424-47. The values for subsequent years are drawn mainly from inventories in Norfolk, Northampton, and York. See also chap. 15, note 4.

⁷⁰ *V.MHB*, XII (1904-5), 389.

⁷¹ *Ibid.*, 393.

precluded any secure accumulation of wealth within the colony and invited theft and embezzlement of all kinds. It was not merely a question of widows and their new husbands hanging on to estates that did not belong to them, or of men claiming, taking, and using up an estate before the true heir could show up. A clever crook could take advantage of almost any transfer of property in a community where every business transaction was a high-risk adventure delicately balanced against the perishability of both the property and the participants involved.

In spite of the handicaps thus imposed by mortality and by the evanescence of property, Virginians did manage in the decades after 1630 to bring a measure of stability to their economic transactions. In the absence of coin they made tobacco their principal medium of exchange, and because it was so perishable a medium, they often made their exchanges in advance, in promissory notes stated in pounds of tobacco "payable at the next crop." Big men, who could take the risk, became merchant planters. They bought shiploads of English goods and supplied their neighbors with clothes and tools in return for such notes. Thus Hugh Yeo, a merchant planter on the Eastern Shore, in April, 1647, supplied seventeen persons there with goods valued at a total of 9,469 pounds of tobacco payable the following October.⁷² Even fines levied as punishments by the courts were made payable at the next crop.⁷³

Although the system was simple, its operation was complicated by the death rate. A not uncommon case occurred in the Norfolk court when the clerk recorded a suit for 966 pounds of tobacco against John Laurence because he had married the widow of John Stratton who was the security for a debt due to Thomas Bridge, because Bridge had married the widow of George Bateman who had married the widow of John Holmes to whom the debt was originally owed.⁷⁴ With the parties dying off so rapidly, it was easy to lose the documents and difficult to keep track of who owed what to whom. Frequently the courts had to arbitrate disputes on the basis of oral testimony from witnesses to a transaction.

In order to lend a greater stability to the system, the House of Burgesses at one point ordered markets to be set up, with the intention of establishing what amounted to an exchange, with the clerk

⁷² Northampton III, 73-75; cf. Northampton IV, 742; V, 42.

⁷³ For example, Northampton IV, 178a. ⁷⁴ Norfolk IV, 282.