

The Beginnings of Representation in America:
The Relationship between Representatives and Constituents in the Colonial Era

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Most studies of representation start with the existence of representative assemblies as a given. In this paper I start at the beginning with the rise of such bodies in colonial America. I examine how expectations about representation evolved and show that colonial lawmakers struggled with concerns about the Burkean dilemma. Over time, it appears that they moved away from an emphasis on pursuing the common good in favor of promoting their constituents' expressed preferences. I investigate some possible explanations for this change, focusing in particular on a substantial increase in direct demands from the voters. This history is useful because it probes the initial context from which our current understanding of representation developed.

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The Relationship between Representatives and Constituents in the Colonial Era

Representation is an elemental concept in the study of legislatures. In almost every examination of it, however, scholars take the existence of representative institutions as a given. Little attention has been given to how representative assemblies developed and what that process might tell us about the relationship between the representative and the represented. Miller and Stokes (1963, 45), for example, ground their celebrated study of constituency influence in Congress in the expectations expressed by the founders during the writing the U.S. Constitution. But this approach misses not only a decade of experience with the Congress under the Articles of Confederation and the original 13 state legislatures, but also the 157-year history of representational activities in the colonial assemblies, all of which had to have informed the founders' thoughts.¹

This paper is an effort to correct that omission. In it I trace the rise of representative assemblies in colonial America and assess the early expectations for representation.² I then document how those expectations evolved. One finding is that colonial lawmakers wrestled with concerns about the Burkean dilemma well before Burke articulated the problem. Over time, it appears that elected assembly members moved away from an emphasis on pursuing the common good as they discerned it, in favor of promoting their constituents' expressed preferences. Electoral changes do not seem to have driven this change; rather it appears to have emerged as a response to a decided increase in direct demands from the voters. In any event, many of the qualms expressed today about our representational system existed during the colonial era and have yet to be resolved.

The Emergence of Representative Assemblies

The first assembly in the Americas was established in Virginia in 1619. Unlike the assemblies that would be created in other colonies over the following few decades, it was clearly intended to be a representative body: "And that they might have a hande in the governing of themselves, it was granted that a general assemblie should be helde yearly once, wherat were to be present the Gov^r and Counsell with two Burgesses from each Plantation freely to be elected by the inhabitants thereof . . ." (McIlwaine 1915, 36).³ It would be a mistake, however, to assume that the Virginia assembly was modeled to be a representative body of the same sort as Parliament.⁴ The failing colony's commercial directors hoped a representative body would help foster much needed economic vitality, consequently they molded it to fit their corporate needs (Billings 2004, 5-7; Kammen 1969, 13-15; Kukla 1985, 284). In their minds the representatives were there to act on behalf of their fellow stakeholders. The assembly's charge makes this clear: "this

assembly to have power to make and ordaine whatsoever laws and orders should by them be thought good and proffittable for our subsistence” (McIlwaine 1915, 36). The corporate focus did not begin to disappear until after the Virginia Company was dissolved and the colony fell under royal control in 1624.

In contrast with Virginia, the other early colonial assemblies did not start as representative bodies. In these places the governmental structure initially put in place consisted of a governor, a council, and an assembly comprised of all the colony’s freemen (Morey 1893-1894, 204).⁵ Each of these governing units—the governor, the councilors, and the assembly—was a distinct entity. But they made most decisions jointly in what was often referred to as the General Court. Essentially, early colonial government was a form of direct democracy.

The assemblies of freemen, however, rapidly turned into representative bodies. The first Massachusetts general court met in 1630, and was attended “not by a representative, but by every one, that was free of the corporation, in person” (Hutchinson 1765, 25; Shurtleff 1853a, 79-80). For the next few years a Court of Assistants, a body composed of councilors authorized by the freemen, made all laws in consultation with the governor. But as the result of a controversy about the apportionment of taxes among the various towns in the colony it was decided to have each community appoint two representatives to discuss the matter with the assistants (Hosmer 1908, 74-75; Shurtleff 1853a, 93). In turn, that led to a decision in 1634 to have a General Court meet four times a year and “that it shalbe lawfull for the ffreemen of [every] planta[tion] to chuse two or three of each towne before every Gen[er]all Court . . . & that such p[er]sons as shalbe here-after soe deputed by the ffreemen of [the] se[ver]all planta[tions], to deale in their behalf, in y^e publike affayres of the Co[mm]onwealth . . .” (Shurtleff 1853a, 118).

There were several reasons behind the move away from the use of mass meetings. According to one historical account, “The freemen so increased, that is was impracticable to debate and determine matters in a body, it was besides unsafe, on account of the Indians, and prejudicial to their private affairs, to be so long absent from their families and business, so that this representative body was a thing of necessity” (Hutchinson 1765, 36).⁶ The annual elections Court, however, still required that “e[ver]y freeman is to gyve his owne voyce” (Shurtleff 1853a, 118-19). That requirement was loosened in 1635/1636—the year depends on the calendar used—when it was ordered that “the townes of Ipsw^{ch}, Neweberry, Salem, Saugus, Waymothe, & Hingham shall have libertie to stay soe many of their ffreemen att home, for the safty of their towne . . .” Those who remained home were entitled to “send their voices by p[ro]xy” (Shurtleff 1953a, 166). Mandatory attendance was removed altogether in 1638, when the “Courte, takeing into serious consideration the greate danger & damage that may accrue to the state by all the freemens leaveing their plantations to come to the place of elections” determined that they could vote by proxy through their deputies (Shurtleff 1853a 188). But a few years later the use of proxies was found to be “subiect to many miscarriages, & losse of oportunityes for advice in the choyse” so that it was decided “for ev^y ten freemen to choose one, to be sent to the Court wth power to make election for all the rest” (Shurtleff 1853a, 333-34). Clearly, figuring out the

mechanics of representation was challenging and it took some time to work out the kinks. But a representative assembly eventually emerged, if only for practical rather than for philosophical reasons.

A similar sequence of events unfolded in Plymouth's general court, a body which also met several times a year. In 1638, it was decided that,

Wheras Complaint hath bine made that the ffreemen were put to many Inconveniencies and great expences by their Continewall attendances att the Courts It is therefore enacted by the Court and the Authoritie thereof for the ease of the seuerall townes of this Gou^rment; that euery towne shall make Choise of two of their freemen and the towne of Plymouth of foure to bee Comittes or Deputies to joyne with the bench to enact and make all such laws and ordinances as shalbee Judged to bee good and wholsome (Pulsifer 1861, 91).⁷

The freemen were still expected to attend the annual General Court session devoted to elections. In 1649, the General Court eased this requirement for one community on the colony's periphery: "It is enacted that the towne of Rehoboth shall haue liberty yearely to make choice of 2 freemen of their inhabitants to be assistant[s]." The privilege was extended to all Plymouth towns in 1652 (Pulsifer 1861, 55, 59). Developments along much the same lines unfolded in Connecticut (Trumbull 1850, 22-24), New Haven (Hoadly 1857, 113-14), and Rhode Island (Bartlett 1856, 147, 149).

In some of the mid-Atlantic colonies there were slightly different variations on this pattern. The charge for Maryland's first official assembly in 1637/1638 made representation optional: "and to give free power & liberty to . . . the said freemen either to be p[rese]nt at the said assembly if they so please; or otherwise to elect and nominate such and so many persons as they or the maior part of them so assembled shall agree vpon to be the deputies or burgesses for the said freemen . . ." Over 20 deputies appeared for the initial meeting of the first assembly. But they were later joined by other freemen who for one reason or another desired to participate. Thus, for example, "Came John Langford of the [Island] of Kent, gent, highe Constable of the said Iland, who had given a voice in the choice of Robert Philpott gent to be one of the Burgesses for the freemen of that Iland; and desired to revoke his voice and to be personally p[rese]nt in the Assembly; and was admitted." The next assembly in 1638/1639 avoided any chaos induced by allowing an ever changing roster of members by issuing a request that each community "chuse from amongst themselves two or more discreet honest men to be their deputies or Burgesses . . ." (Browne 1883, 1, 6, 27-28). In Pennsylvania, the initial 1682 frame of government held that "the General Assembly shall or may for the first year consist of all the freemen of and in the said province, and ever after it shall be yearly chosen . . . which number of two hundred shall be enlarged as the country shall increase in people . . ." Such optimism evaporated quickly; a revised frame issued the following year stated that the "Assembly shall consist of thirty six persons, being six out of

each county . . .” (*Minutes of the Provincial Council of Pennsylvania, from the Organization to the Termination of the Proprietary Government* 1838, xxvii, xxxv).

In most of the later colonies representative assemblies were established from the start. The 1663 charge in North Carolina called for “deputies or assembly-men, to be by them chosen out of themselves, viz.: two out of every tribe, division, or parish . . . to make their own laws” (Sanders 1886, 45). In 1668, New Jersey Governor Carteret issued a proclamation for the first meeting of an assembly, requiring the freeholders in each town “To make Choice and appoint Two able men that are freeholders and dwellers Wthin the said Limits to be your Burgesses and Representatives for you” (Whitehead 1880, 57). A decade and a half later, instructions given to the New York governor authorized the calling of a general assembly, “of all the Freeholders, by the p^rsons who they shall choose to rep^rsent y^m” (O’Callaghan 1853, 331).

With the emergence of representative assemblies came one small question and two more pressing ones that had to be answered. The small matter was what to call those elected to serve in the assemblies. Over time the elected members of the assemblies took many names. In Virginia they were almost always called burgesses because they were elected from boroughs. Maryland employed several titles. For instance, a journal entry in 1674-1675, stated, “It is this day ordered by the Bu[r]gesses], Dep^{ty}s or Delegates of this Province . . .” (Browne 1884, 441). Similarly, documents from the first New Jersey Assembly reveal the use of two names for its members, referring to them as burgesses and deputies (Leaming and Spicer 1758, 77, 90). By 1703, they were called representatives (*Journal and Votes of the House of Representatives of the Province of Nova Cesarea* 1872). Representative was actually a less commonly used title, across the assemblies deputy was the term typically used.

More important were two other questions. First, what qualifications would be imposed for holding office? In a few colonies ideal qualifications for assembly membership were propounded. In Pennsylvania, the frame of government admonished the freemen to select “men of most note for their virtue, wisdom, and ability,” a standard that was obviously unenforceable (*Minutes of the Provincial Council of Pennsylvania, from the Organization to the Termination of the Proprietary Government* 1838, xxxv). The more general rule across the colonies was that anyone who was entitled to vote for representatives was certified to serve as an assembly member. Thus in New Hampshire, qualified voters were “Freeholders of the value of income of Forty Shillings Per Annum or upwards in Land, or worth Fifty Pounds Sterling at the least in personal Estate.” Meeting that standard meant a freeholder was “capable of being Elected to Serve in the General Assembly” (Batchellor 1904, 658-59). In New York the standard was “Land or Tenem^{ts} Improved to ye vallue of fforty pounds in free hold free from all Incumbrances . . .” (*The Colonial Laws of New York from the Year 1664 to the Revolution* 1894, 405). Qualifications in Delaware were slightly more detailed. Members had to be “natural-born subjects of *Great Britain*” or have been naturalized in England, Delaware or Pennsylvania. They also had to “be of the Age of Twenty-One Years or upwards, and be a Freeholder . . . and have Fifty Acres of Land or more well settled, and twelve Acres thereof cleared and improved, or be

otherwise worth *Forty Pounds* lawful Money of this Government clear Estate” (*Laws of the Government of New-Castle, Kent, and Sussex, Upon Delaware* 1763, 119). In some cases hopes were tied to concrete qualifications. Burgesses in Virginia were required to be “persons of knowne integrity and of good conversation and of the age of one & twenty yeares.” Prohibited from “bearing any publique office” were persons convicted of the “odious sinnes of drunkenesse, blasphemous swearing and curseing, scandalous liveing in adultery and ffornication” (Hening 1809, 412, 433).

While property and wealth qualifications were roughly consistent across the colonial assemblies, an important difference among them emerged on the matter of residency (Phillips 1921). At the time the early colonial assemblies were established it was thought that a residential requirement encouraged parochialism and probably impeded gathering the best talent available for legislative service (Kammen 1969, 8-9). A prerequisite that an assembly member reside in the place from which he had been elected was found throughout the colonial era in Delaware, Maryland, New Hampshire, New Haven, Pennsylvania and Plymouth. Residency was not required in Connecticut, Georgia, and South Carolina and in those places constituents might be represented by someone who owned land in the area but did not live among them. In South Carolina, for example, an assembly visitor observed, “a great majority of the house are dwellers in Charlestown, where the body of planters reside during the sickly months” (Quincy 1915-1916, 454).

The situation in the other colonies either changed at some point or was murky. Assembly members in North Carolina were required to live in the places they represented until 1743 at which time non-residency was allowed. New Jersey permitted non-residency representation briefly between 1702 and 1710. Virginia formally required residency except for the years from 1676-1692. But the rule was not always enforced, most notably in the 1765 election of Patrick Henry from Louisa County where he did not live (Miller 1907, 51). A similar situation obtained in New York. Ostensibly, the colony required residency, but an Assembly investigation in 1769 found that over the years there had been at least 21 instances of members who had been elected from counties where they “did not actually reside within the same” (*Journal of the Votes and Proceedings of the General Assembly of the Colony of New-York* 1769, 64). Massachusetts enacted a residency requirement in 1693 at the behest of the governor, who, according to a contemporary observer, found that most of his “opposers were gentlemen, principally of Boston, who were too near Sir William to think well of him, but served in the house for several towns and villages, at some distance.” The governor managed to get the assembly to agree that “no man whatsoever should serve in the house of commons for any town, unless where he did at that time live and dwell . . .” (Hutchinson 1765, 79-80). Thus an important link between representatives and the represented varied both over time and across the colonies.

But even more important than the formal qualifications was an informal restriction that was routinely imposed. This was the colonial norm of deference, a sentiment among the masses that officeholding was best left to a disinterested economic elite (Kirby 1970; Tully 1977). As one

historian has observed about colonial elections “It seems not to have been so much a question of *what* as *who*” (Griffith 1970, 2). Deference meant that although the right to vote was widely enjoyed by white adult males—current estimates are that up to 80 percent held the franchise (Zagarri 2000, 665)—relatively few of them were deemed appropriate to hold office. Thus, as a letter writer advised his fellow voters in New Jersey, “Chuse not Men whose Abilities, Probity and Fortune, are not well known to you; for when you have chosen them, it will be too late to know them” (*New York Gazette Revived in the Weekly Post-Boy* 1751). There were some, however, who still found the informal standards in place too loose. In Virginia, Lt. Governor Alexander Spotswood, a well-born Englishman, complained in a letter to his superior in London, “I must always have to do w’th ye Representatives of ye Vulgar People . . . for so long as half an Acre of Land, (which is of small value in this Country,) qualifys a man to be an Elector, the meaner sort of People will ever carry ye Elections . . .” (*The Official Letters of Alexander Spotswood, Lieutenant-Governor of the Colony of Virginia, 1710-1722* 1885, 124).

But in a number of colonies there were concerns that there might be too few members of the elite willing to serve. Consequently, there were efforts to expand the pool of potential candidates by providing compensation for service. In 1645, the Massachusetts General Court argued explicitly that financial incentives were required to get people to serve. The Court noted that it was “sensible” of the many demands made on lawmakers “w^{ch} daily increaseth, & w^{ch} necessarily occasioneth much expence of their time, to y^e [pre]judice of [their] families & estates . . .” Therefore legislators needed to be compensated so “none be unequally burthened, or discouraged fro^m doing s^tvice to y^e country . . .” (Shurtleff 1853b, 101). Initially, Rhode Island’s lawmakers received no compensation, but attendance proved to be a problem, consequently, pay was introduced “ffor the encouragement and ingadging of the . . . Deputies to attend the Generall Assemblies” (Bartlett 1857, 433-35). But, although most colonies came to pay their lawmakers there were differences among them on this issue: assembly members in Georgia and South Carolina worked without any remuneration, with those in the latter institution actively distainig the notion (Smith 1903, 115).

The second critical question was how assembly seats would be apportioned across a colony. Representation in the colonies was uniformly based on geographic units, whether towns, counties or parishes. The election of two representatives from each electoral unit was common, but the numbers could vary. In Connecticut, for example, in 1638 the three largest towns were granted four deputies while the number for the other communities was to be determined by the General Court taking into account “a resonable proportion to the nūber of Freemen that are in the said Townes.” By 1661 the Court reconsidered the issue, holding that because of the “great cost and burthen y^t lies vpon this Collony by the great number of Deputies that attend y^e Gen^{ll} Courts; . . . it is desired y^t y^e number may be lessend one halfe in each Towne . . .” (Trumbull 1850, 24, 372).

Costs also came to play a role in apportioning representatives in Massachusetts. Like its neighbor to the south, the colony had altered its representational scheme relatively quickly, within a few years moving away from two deputies from each town to a proportional system:

“no towne that hath not 10 freemen resident in it shall send any deputy to the Gen[er]all Courts; those that have above 10, & vnder 20, not above one; betwixt 20 & 40, not above two; & those that have above 40, three . . . (Shurtleff 1953a 178). In 1645 it was decided, “that each towne shall beare y^e charges of y^r owne deputies at y^e Gen^rall Co^t . . .” (Shurtleff 1853b, 140).

Because this imposed a financial burden on the smallest communities, nine years later the General Court determined, “that such townes as haue not more then thirty ffreemen shall henceforth be at li[ber]tie for sending, or not sending, deputyes to the Gen^l Court . . .” (Shurtleff 1854, 320). Thus, for the smallest Massachusetts communities, representation became optional. More generally across colonies the numbers allocated to electoral units could change from time to time and it was common for larger cities to be given additional seats (e.g. Greene 1963, 172-85).

Overall, colonial lawmakers generally represented fewer constituents than did their counterparts in Parliament: assemblies in New Hampshire, New Jersey, New York, North Carolina, Rhode Island, and South Carolina, for example, are estimated to have had approximately one member for every 1,187 constituents while the House of Commons at the time had one member for every 14,362 constituents (Clarke 1943, 268; Pole 1962, 638). By the mid-eighteenth century, however, the number of constituents per assembly member was rising in a number of the colonies, most notably in Maryland, New Jersey, New York, and Pennsylvania where populations were increasing rapidly. As a result the growth in assembly membership sizes failed to keep up (Greene 1981, 461). This lag was caused in large part by the British government which prohibited a number of colonial legislatures from creating new constituencies in an effort to try and gain greater control over the institutions (Greene 1963, 381-87). One consequence of this problem was that newly developed areas on a colony’s peripheries were often afforded little or no representation in the assemblies (e.g. Lincoln 1899). These “backwoodsmen” would have to wait for the creation of the provincial congresses during the interregnum between the colonial governments and their successor state governments to fully correct their omission (Squire 2012, 76-78).

Expectations for Representation

Elected assembly members were clearly intended to act as representatives on behalf of a colony’s freemen. But, exactly what that meant was never spelled out. In Massachusetts, it was said that assembly members “shall have the full power & voyces of all the said ffreemen, derived to them for the makeing & establishing of lawes . . . (Shurtleff 1853a, 118). But the larger expectations established for the members of the assemblies strike us today as woefully naïve. Lawmakers were universally directed to perform their duties with the sole goal of advancing the collective good, broadly construed. When the Massachusetts General Court moved to become bicameral in 1644, the language used allowed for “the deputies in like mann^r siting a[part] by themselues, & consulting about such orders & lawes as they in their discretion & exp[er]iencie shall find meete

for co[mm]on good.” When given proposals from the Council, the deputies were to determine “how good & wholesome such orders are for the country” (Shurtleff 1853b, 58). In New Jersey, Governor Carteret’s charge to the members of his assembly was “to advise in the Management of the affaires that are needful and Necessary for the Orderly & Well Gouverning of the said Prouince hereof you may not faile as You and Every of You Will answere your Contempt to the Contrary” (Whitehead 1880, 57). Along similar lines, New York’s assembly was to pass “what laws are fit and necessary to be made and established for the good weale and governem^t of the said Colony and its Dependencies, and all of the inhabitants thereof . . . (O’Callaghan 1853, 331). Clearly lawmakers were not thought to be acting on behalf of their constituents in competition with their colleagues’ constituents but rather in the interest of all.

This notion surfaced in other areas. Most colonial lawmakers had to take oaths of office. The oath sworn in Virginia appears in the legislative journals and provides some insight into the beliefs about the responsibilities of the elected representatives. The oath administered in 1652 stated:

You and every of you shall swear vpon the holy Evangelist, and in the sight of God to deliver your opinions faithfully and honestly, according to your best vnderstanding and conscience, for the generall good and prosperitie of this country and every perticular member thereof, and to do your vtmost endeavor to prosecute that without mingling with it any perticular interest of any person or persons whatsoever (McIlwaine 1915, 82).

The following year the oath was greatly condensed and an intriguing change was made to the opening: “You shall swear to act as a Burgess for the place you serve for in this Assembly, with the best of your judgment and advice, for the generall good . . .” (McIlwaine 1915, 86). But every subsequent time the oath appears over the next century it follows the 1652 model (McIlwaine 1910, 382; 1914, 25, 120; 1915, 86, 115). Thus, Virginia burgesses were sworn to use their own best judgment to pursue policies for the general good and forbidden to consider the financial or other implications of those policies for themselves or their associates.⁸ The idea that their constituents might have distinct preferences which they were to promote was recognized only in the divergent 1653 oath.

At the same time that colonial lawmakers were being urged to pursue the greater good they were also deeply concerned with what their constituents thought about proposed legislation. Perhaps the most extreme case was the initial design of the legislative process in Rhode Island that created what we would characterize today as a “bottom up” system. All legislative proposals were to originate at the local level, accordingly “The Towne where it is propounded shall agitate and fully discuss the matter in their Towne Meeting and conclude by Vote.” Any measure that passed would then be distributed to the other towns for their consideration. Legislation that passed in all of the towns would go into effect “till the next General Assembly . . . and there to be considered, whether any longer to stand yea or no” (Bartlett 1856, 148-49). The Plymouth

General Court had a “top down” process, but it also took consultation seriously. The procedures they put in place ‘prouided that the lawes they doe enact shalbee propounded one Court to bee considered of till the next and then to bee confirmed if they shalbee approued of except the case require p^rsent confeirmation” (Pulsifer 1861, 91). Thus under most circumstances assembly members had to bring bills they were considering back to their constituents for their contemplation before they could be passed into law.

Although less regimented than in Plymouth, most assemblies took unscheduled breaks explicitly intended to allow them to confer with the voters about important legislation. In Massachusetts, for example, on an “Excise Bill which relates to the private Consumption of Wines and Spirits distill’d,” it was stated that “it is the Desire of this House, that they call their several Towns together, that this House may know the Minds of their Constituents with Regard to said Bill” (*Boston Evening Post* 1754). The controversial measure generated a number of pamphlets in support and opposition and they all encouraged people to take advantage of the chance to convey their opinions on it to lawmakers.

- “As the Honourable House of Representatives has published parts of the Excise Bill, on Purpose that the Minds of the Inhabitants of the Province concerning it may be known; it is supposed that they expect and desire such Persons as do not like the Bill, to let them know their Thoughts about it with freedom” (*A PLEA for the Poor and Distressed, Against the BILL for granting an Excise Upon Wines and Spirits distilled, sold by Retail, or consumed within this Province, &c.* 1754, 14).
- “This Bill is therefore now expressly submitted to publick Examination, and every Member of the Community . . . has a Right to deliver his Sentiments upon it without Doors, with the same Freedom, as the Members of the General Court may make use of within Doors (*Some Observations on the Bill, intituled, “An Act for granting to His Majesty an Excise upon Wines, and Spirits distilled, sold by Retail or consumed within this Province, and upon Limes, Lemons, and Oranges”* 1754, 2).
- “I take it the Design of the General Assembly in committing this Bill to public Examination, was, that they might have the Satisfaction of knowing the Minds of their Constituents, and of hearing what Gentlemen had to say, for, or against it (*The Good of the Community impartially considered, in a Letter to a Merchant in Boston; in Answer to one received respecting the Excise-Bill* 1754, 31).

The approach used in Massachusetts was not unusual. During a debate over a tobacco bill in the Virginia House of Burgesses, the measure “was ordered to be printed for the Perusal and Consideration of the Inhabitants’ (Greene 1965, 117). Similarly, the New Jersey Assembly asked of the governor on an important issue, “What further remains to be considered . . . we hope your Excellency will permit us to consult our Constituents upon.” But in this instance it must be pointed out that the lawmakers went on to confess that they also desired to adjourn because “It is now Harvest Time and many of the Members being from Home is very Disadvantageous” (*Votes*

and Proceedings of the General Assembly of the Province of New-Jersey, Held at Burlington on Friday the Twenty-Second of June 1744 1744, 10). Governors could play this game as well. When New York's governor prorogued his assembly in 1749, he scolded them "I therefore think that I cannot, at this Time, more effectually show the Concern I have for the People of this Province, than by giving you Time, coolly to consult with your Constituents, on the Consequences your Proceedings may have (*Journal of the Votes and Proceedings of the General Assembly of the Colony of New-York* 1766, 258).

But even where special provisions to enhance representativeness were not instituted, assembly members professed great concern about the views of their constituents. Occasionally this surfaced in the in the context of specific issues. In a row with voters over legislative pay, the House of Burgesses prefaced a controversial bill with a statement noting, "WHEREAS, the excessive expenses of the Burgesses causing diverse misunderstandings between them and the people" (Hening 1823, 23). This was followed the next year by a legislative *mea culpa*, "WHEREAS the immoderate expences of the burgesses causing diverse heart burnings between them and the people . . ." (Hening 1823, 106). When the public uproar failed to subside the members voted to cut their pay because it was "complained of as greivous and burthensome to the people" (Hening 1823, 398-99). More common, however, were broad statements of harmony. In responding to the governor's address, the North Carolina Assembly claimed, "Permit us, Sir, to say, that we shall always look upon the Interest of our Constituents as our most indispensable Duty . . ." (*Journal of the House of Assembly* 1755, 7). Members of the Delaware House declared that they were "zealous for the Happiness of our Constituents" (*Votes and Proceedings of the House of Representatives of the Government of the Counties of New-Castle, Kent, and Suffolk, upon Delaware* 1765, 29). And there is a strong sense that assembly members knew that such sentiments might be needed to pander to their voters back home. A long-time member of the Virginia House of Burgesses wrote in a letter to his brother just prior to an election—a missive we can assume was meant to be widely shared—that "I shall always act to the utmost of my capacity, for the good of my electors, whose interests and my own, in great measure, are inseparable" (Campbell 1840, 4). Thus colonial legislators were asked to work for the common good while at the same time being sensitive to their constituents' preferences.

Burkean before Burke

Well before Burke articulated the difference between delegates and trustees colonial lawmakers struggled with the philosophical question of what the role of an elected representative should be. Initially, it appears that there was a desire to favor the lawmaker's preferences over those of his constituents. In his 1736 speech accepting the speakership of the House of Burgesses, John Randolph advised his colleagues that, "We must consider ourselves chosen by all the People; sent hither to represent them . . ." But he then went on to caution,

And surely, a Desire of pleasing some, and the Fear of offending others; Views to little Advantages and Interests; adhering too fondly to ill-grounded Conceits; the Prejudices of Opinions too hastily taken up; and Affectation to Popularity; Private Animosities or Personal Resentments; which have often too much to do in Popular Assemblies, and sometimes put a Bias upon Mens Judgments, can upon no Occasion, turn us aside in the Prosecution of this important Duty, from what shall appear to be the true Interest of the People; Tho' it may be often impossible to conform to their Sentiments, since, when we come to consider and compare them, we shall find them so various and irreconcilable (McIlwaine 1910, 240).

Perhaps the most thoughtful examination of the Burkean dilemma was captured by Colonel Landon Carter, also a member of the Virginia House of Burgesses. Writing in his diary in 1754, Carter noted that he and his colleagues explicitly confronted this problem during a debate on a measure to regulate the growing of tobacco (“the Bill for a Stint Law”).⁹ As he framed the exchange, “the question was Whether a Representative was obliged to follow the directions of his Constituents against his own Reason and Conscience or to be Governed by his Conscience.”

In Carter’s view, on one side were “the favourers of Popularity,” who held that “The Arguments for implicit obedience were that the first institution of a Representative was for the avoiding the Confusion of a Multitude in assembly. He, therefore, was to Collect the sentiments of his Constituents and whatever that Majority willed ought to be the rule of his Vote.” On the other side—where Carter placed himself—were “The Admirers of Reason and Liberty of Conscience,” who asserted “where the matter related particularly to the interest of the Constituents alone, there implicit obedience ought to Govern, but, where it was to affect the whole Community, Reason and Good Conscience should direct.” He argued that this was necessary, “for it must be absurd to Suppose one part of the Community could be apprized of the good of the whole without Consulting the whole. For that Part, therefore, to order an implicit vote must be absurd and the Representative acting accordingly could only augment the Absurdity because he must suppose his people so perverse as not to be moved by Reasons ever so good that might be advanced by other parts of the Community” (Greene 1965, 116-17).

There were voters who agreed with Carter’s position. One wrote in a public letter that he took “it for granted that those Gentlemen who are impower’d to consult and act for the Good of their Country, and do, or ought to make it their principal, if not only Busineis, are more capable of judging what Steps are proper to attain that End, than such as from a Design of making themselves popular” (*A Letter from a Gentleman to his Friend, Upon the Excise-Bill now under Consideration* 1754, 1). So he was not alone in his beliefs.

Over time, it seems apparent that colonial lawmakers were becoming more likely to take into account the wishes of their constituents and to defer to them. The evidence on this point, however, is necessarily anecdotal. Most voting in the assemblies was conducted by using some form of tellers. Recorded votes are very rare and journals reveal much about procedures but

little about debates. Thus, we have to rely on incidents recorded in journals such as the one kept by William Williams, a member of the Connecticut House. According to his account, in 1757 the nomination of a justice of the peace and quorum in New Haven was initially blocked because some members complained about the candidate “having been very frequently Drunk . . .” But the nomination was confirmed when other “Members were examined resp[ec]t. sd. Rept. & declared it to be Common in N[ew] H[aven] & ye Neighboring Towns” (Turner 1975, 25). Here it seems clear that deference was given to the standards of the community and the preferences of the voters over the judgment of the representatives.

Concerns that colonial lawmakers were coming to put the voters interest ahead of the larger good surfaced by the early part of the eighteenth century. As lieutenant governor of Virginia, Alexander Spotswood blistered the burgesses on this score in a message to them:

[T]he Giddy Resolves of the illiterate Vulgar in the Drunken Conventions you hold for the most Sacred Dictates to your proceedings. . . . [A]ll your proceedings have been calculated to Answer the Notions of the ignorant Populace; And if you can Excuse your Selves to them, you matter not how you Stand before God, your Prince, and all Judicious men, or before any others to whom you think, you owe not your Elections (McIlwaine 1912, 167, 170).

He was just as scathing on this score in his private correspondence, denigrating burgesses “who, for fear of not being chosen again, dare in Assembly do nothing that may be disrelished out of the House by ye Com[m]on People” (*The Official Letters of Alexander Spotswood, Lieutenant-Governor of the Colony of Virginia, 1710-1722* 1885, 124).

During his time as a lawmaker Landon Carter similarly, but perhaps more judiciously, lamented that popularity appeared to be carrying the day on most votes. Writing about a bill he opposed to provide government support for “killing Crows and Squirrels” he noted of his colleagues that “some voted to Please their Constituents and others, particularly the Townsmen of Northfolk, voted for it by a Perswasion that grain would grow cheaper by it” (Greene 1965, 74). Perhaps even more troubling for Carter was the reaction to the stint law when it was later brought up for a vote: “the Worthy Members for it so bent upon pleasing their Constituents that is was remarkable to hear them without doors exclaiming against yet plum for it on every motion within” (Greene 1965, 119). Lawmakers in other assemblies also tussled with the conflict between their personal preferences and a desire to keep their “popularity.” A member of the South Carolina Commons House reported about a controversial measure in 1764, that one of his colleagues, “countenanced it with his voice at the Second reading, but as if his conscience & his Interest were at variance he would vote on neither side at the third, but retired when the question was going to be put” (Rogers 1974, 382).

It also appears that the voters came to expect that lawmakers would follow the district’s preferences. This notion was most explicitly manifested in instructions, specific directions given

by voters to their legislators. Instructions were deeply rooted in the traditions of New England town meetings, with evidence of communities voting to bind their deputies to certain positions as far back as 1640 (Colegrove 1920, 414). There are instances where expectations of lawmaker obedience were publicly expressed. In a pamphlet published just before assembly elections in Boston in 1751, the writer asked his fellow voters, “how can they be truly represented by one, who acts contrary to the Mind and Instructions of his Constituents?” (*An Address to the Freeholders and Inhabitants of the Province of Massachusetts-Bay, in New England 1751*, 4). Along the same lines a broadside proclaimed, “but at the same Time it is most certainly the Duty of those who are appointed by the Body of People to act for them and plead their Cause, to adhere closely to the Interest of their Constituents . . .” (*To The Printer 1739*). In some cases the rationale behind instructions was made explicit as in this report issued to local lawmakers following a public meeting in, again, Boston:

Your being chosen by the Freeholders and Inhabitants of the Town of *Boston*, to represent them in the General Assembly the ensuing year, affords you the strongest testimony of that confidence which they place in your integrity and capacity. By this choice they have delegated to you the power of acting in their public concerns in general, as your own prudence shall direct you; always reserving to themselves the constitutional right of expressing their mind, and giving you such instructions upon particular matters, as they at any time shall judge proper (*Boston Evening Post 1764*).

The idea was that assembly members were to exercise their independent judgment, except on those issues that really mattered to their constituents. Perhaps the strongest statement on this point came from the Maryland Assembly, which in 1762 asserted, “It is a Maxim in Politics, almost universally adopted, that the Representative is justified by the Instructions of his Constituent, in acting even against his own Judgment . . .” (*Votes and Proceedings of the Lower House of Assembly of the Province of Maryland 1762*, 118).

Plausible Explanations for the Increase in Constituent Influence

There are several plausible explanations that can be advanced for the apparent increase in colonial lawmakers’ concerns for their constituents’ preferences. Most obviously, one might look to changes in the electoral context in which they served. Assembly elections were held annually in Delaware, Massachusetts and Pennsylvania and semi-annually in Connecticut and Rhode Island. In the other colonies they were called irregularly by the governor, although with never more than with a seven-year gap. The potential linkage with representation might be that more competitive elections prompted increased attention to constituent preferences. Such a hypothesis would, however, have to be premised on evidence that incumbents sought reelection. Thus the notion would be that members of colonial assemblies increasingly wanted to get

reelected, and in order to do so, they had to pay greater attention to what their potential voters wanted in the way of public policy or risk defeat.

The first premise is actually met. Over time, the colonial assemblies enjoyed increasingly stable memberships. From 1696 to 1775, turnover dropped in every assembly save New Jersey and the decline was usually impressive. In the most extreme case, turnover in Pennsylvania dropped to a mean of 18 percent in the decade from 1766 to 1775 from a mean of 62 percent in the decade from 1696 to 1705 (Greene 1981). And well over half of the “new” members in later decades were actually former lawmakers returning to the institution (Tully 1977, 181-82). Thus many incumbents did come to seek reelection.

It is with the assumption of greater electoral competition that problems arise. Electoral competition for colonial assemblies started at low levels and appears to have increased only episodically in most places (Dinkin 1989, 2). A systematic analysis of elections for the Virginia House of Burgesses between 1728 and 1775, for example, reveals that roughly two-thirds of all contests were either minimally competitive or noncompetitive based on the level of challenge to an incumbent (Kolp 1992). The same appears to have been true in Pennsylvania (Leonard 1954). Indeed, broadly contested assembly elections were sufficiently unusual that they have merited academic attention, as with the heated match largely fought between two dominant families in New York in 1769 (Leder 1963). Only in Rhode Island did anything like the modern American party system exist. In the other colonies parties were not present to recruit candidates and generate competition by offering alternative policy platforms (Greene 1979, 40; Main 1973, 5, 11).

Although assembly elections were not always competitive, there is evidence that incumbents grew aware that voters expected them to hew to their preferences. There was, for example, the case of Morris Morris, a member of the Pennsylvania Assembly who failed to get reelected in 1727. Following his defeat, Morris issued a pamphlet defending his actions in the legislature:

But I must say in the first Place, that altho’ it has been expected by some in *Philadelphia*, that have been very Active of late in Elections, that those they voted for, should take their Instructions from them, how to act in the Assembly: Yet . . . I never came under such Agreement with them, but thought that when I was chosen, I was at Liberty to follow the Dictates of my own Conscience and Understanding . . . (*Morris Morris’ Reasons for His Conduct, in the Present Assembly, in the Year 1728*, 1).

The voters’ decision indicated he was wrong.

The lesson was learned on the larger scale. Assemblies came to explain their decisions by pointing to the voters’ preference. Responding to a demand made by their governor, assembly members in Massachusetts asked “Whether your Excellency can reasonably expect that the house of representatives should be active in bringing a grievous burthen

upon their constituents? Such a conduct in us would be to oppose the sentiments of the people whom we represent, and the declared instruction of most of them” (*Journal of the Honourable House of Representatives, of His Majesty’s Province of the Massachusetts-Bay, in New England 1765/1766*, 135). Similarly, Maryland assembly members rejected a tax increase request from their governor, saying their opposition should be “ascribed to the real Motive of our Conduct, a prudent Care of, and Regard to, the Interests of our Constituents” (*Votes and Proceedings of the Lower House of Assembly of the Province of Maryland 1753/1754*, 73). Finally, defending opposition to their governor, Pennsylvania assembly members noted, “If our Constituents disapprove our Conduct, a few Days will give them an Opportunity of changing us by a new Election” (*Votes and Proceedings of the House of Representatives of the Province of Pennsylvania 1754*, 176).¹⁰

Thus, the responsiveness theme gained considerable electoral currency. In one campaign letter, a Bostonian argued against an incumbent “who lately refused to follow the Instructions of his Constituents” in favor of a colleague “who honestly endeavoured to answer the Intentions of their Constituents” (*To the Freeholders of the Town of Boston. To Morrow is the Day Appointed for the Choice of our Representatives 1760*, 1). The notion even made it into popular culture. In *The Candidates*, a 1770 play written by Robert Munford—at the time a sitting member of the Virginia House of Burgesses—Mr. Wou’dbe, an incumbent seeking reelection, complains, “Must I again be subject to the humours of a fickle croud? Must I again resign my reason, and be nought but what each voter pleases?” (Munford 1798).¹¹

It may, of course, be that assembly elections were uncompetitive because reelection seeking incumbents became so adept at their representational activities that the voters saw no need to seek alternatives. And there is informed speculation that constituent satisfaction with the performance of colonial government increased over the decades, lessening electoral pressures (Greene 1981, 456). There were, however, other better documented developments that may have combined to contribute to the apparent increase in lawmaker attention to constituent preferences.

More direct demands came to be made of assembly members. Over time the colonial assemblies experienced a dramatic swelling of their legislative agendas. Problems such as defense, Indian relations, and transportation that had been resolved at the local government level in the early years required colony wide solutions in later years (Olson 1992, 552, 562-63). It was also the case that the assemblies governed increasingly complex polities. Population growth in some of the colonies was explosive. Between 1700 and 1760, the population of Pennsylvania increased to 183,703 from 17,950, South Carolina to 94,074 from 5,704, and Virginia to 339,726 from 58,560.¹² At the same time colonial economies grew and diversified. Agriculture was always the dominant sector, but industries arose that manufactured a range of products traded worldwide (McAllister 1989, 247). Ships built in New England came to constitute about a third of the British fleet (Main and Main 1999, 121), and by time of the revolution the colonies accounted for 14 percent of the world’s pig iron production (McAllister 1989, 248). Thus as time passed there

were more people and more interests, which combined to generate more demands on the assemblies.

Many of these demands were made explicit. Much of the assemblies' time was consumed with dealing with propositions, which were requests for legislation from local governmental entities, and petitions, which were the most common vehicle for individuals or groups to call for legislative action on problems of interest (Olson 1992). Lawmakers often responded to these concerns by introducing legislation focused on local issues (Bailey 1979, 59-60; Haight 1984). Take, for instance, two measures pursued by the Virginia House of Burgesses in regards to the town of Port Royal in the 1740s. Port Royal was incorporated in Caroline County in 1744 (Hening 1819 287-92; McIlwaine 1909, 106, 108, 114, 116, 119). The following year the county submitted a proposition to the House making two requests: to establish a free ferry to connect Port Royal with Colonel Thomas Turner' property, and a measure to outlaw the building of wooden chimneys in the new community. The House quickly rejected the requested ferry, but found the idea that wooden chimneys should be prohibited "reasonable." This latter decision came as little surprise because communities in the colony often requested such legislation to reduce fire hazards. Accordingly, the House ordered one of the two burgesses representing Caroline County to "prepare and bring in a Bill, pursuant to the Resolution for preventing Wooden Chimnies in the Town of *Port-Royal*." Shortly thereafter, the House instructed that the measure should also incorporate "a Clause or Clauses, to prevent Hogs and Sheep from running at large in *New-Town*, in the *County of Princess-Anne*." Again, communities and petitioners had regularly requested laws to contain livestock. Following proper parliamentary procedures, the bill was formally read a first time and later a second time. Following the second reading it was referred to the chamber's standing Committee on Propositions and Grievances. The House directed the committee to further amend the measure to also prohibit the building of wooden chimneys in the towns of Newcastle and Suffolk and to allow all three of the communities mentioned to tear down existing wooden chimneys. It also requested that the committee incorporate language permitting Newcastle to host two fairs each year. After some maneuvering the House passed the now omnibus measure following its third reading (Hening 1819, 387-89; McIlwaine 1909, 171-72, 175, 181, 183, 185, 190, 192).

A few years later in 1748 a "Petition of the Inhabitants of *Port-Royal*" was entered in opposition to a "Proposition from the County of *Essex*, for Erecting a Public Warehouse for the Inspection of Tobacco . . ." Port Royal residents argued that the proposed warehouse would both be inconvenient for them to use and a financial threat to the warehouse in their own community, which they claimed was "sufficient to contain all the Tobacco inspected there." The petition was referred to the Committee on Propositions and Grievances, on which one of the Caroline County burgesses sat. After reviewing the petition, the committee found it "reasonable," thereby ending the potential threat of another warehouse being approved (McIlwaine 1909, 280, 307). In a clash of local interests, Port Royal's residents were able to win, likely because of the efforts of a well placed representative.

Data collected on petitions show that their use climbed significantly over the course of the 1700s (Bailey 1979, 62; Batinski 1987, 7; Harlow 1917, 19; Leonard 1948, 376-80; Longmore 1995, 428; Olson 1992, 556-58; Purvis 1986, 179). Between the second and sixth decades of the eighteenth century, the number of petitions grew in seven of the nine assemblies for which data have been collected. Over the following decade the numbers continued to increase in six of them. Moreover, the impact of petitions on the legislative process increased as well. Approximately half of all laws passed by the assemblies during the eighteenth century originated as petitions (Bailey 1979, 64; Olson 1992, 556; Purvis 1986, 178; Tully 1977, 99).

Another important development is also likely to have contributed to the rise in representative attention to constituent demands. Over time, more information about legislative activities became available to constituents. Assemblies started publishing their journals—New York was the first in 1695 (*Journal of the House of Representatives for his Majestie's Province of New-York in America* [1695] 1903)—as well as listings of the laws they passed (Hasse 1903; Olson 1992, 562-64; Surrency 1965). It was also the case that newspapers became ubiquitous, providing voters more insights into the actions of their elected representatives (Leder 1966; Merritt 1963). Given high literacy rates (Grubb 1990), assembly members had to be acutely aware that their legislative actions would become public. Thus more demands were made on the legislature and lawmakers knew that the public would be informed about their responses to those demands. That combined with lawmakers who wanted to seek reelection is a recipe for increased policy representation.

Conclusions

Representative institutions did not arrive in America prepackaged, with clear expectations for the roles of either the representative or the represented. Instead, it took a relatively brief period for representative assemblies to develop, and a much longer time for expectations about representational roles to evolve. What emerges in terms of what came to be expected of representation is actually a bit of a muddle. Eulau and Karps (1977), for example, breakdown representation into four different components of responsiveness: policy, service, allocation, and symbolic. Arguably, each component can be found in the activities of colonial lawmakers. Whatever did develop emerged from the interaction between the changing interests of those elected to office and the changing interests of those electing them. Over time, it appears that lawmakers came to want to stay in office and because of that they became more attuned to the concerns of their voters. It also appears that constituents came to make more demands of their local representatives. From a Burkean perspective, where colonial representatives initially were directed to give greater concern to the larger public good, they were later given incentives to direct greater attention to their constituents' issue preference. But the tension between the idea of working for the greater good and the rewards for seeking localized benefits was never

resolved. Indeed, it continues to haunt the relationship between the lawmakers and constituents to the present.

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¹ Of the 39 founders who signed the U.S. Constitution, 18 had served in colonial assemblies and 32 had served in state legislatures (Squire and Hamm 2005, 19).

² The focus of this paper is on the experience of the 15 colonial assemblies that were later transformed into the original 13 state legislatures. (Connecticut absorbed New Haven in 1664 while Massachusetts annexed Plymouth following the formers' final meeting of its General Court in 1692. During the latter part of the seventeenth century New Jersey was separated in to East Jersey and West Jersey, each with its own assembly. They were reunited in 1702.) It should always be kept in mind that there were assemblies in other British colonies in North America. The influence of the assemblies in colonies that were not incorporated into the United States on those that were should not be minimized.

³ This statement is taken from "A Briefe Declaration of the Plantation of Virginia duringe the first Twelve Yeares, when Sir Thomas Smith was Governor of the Companie, & downe to the present tyme. By the Ancient Planter nowe remaining alive in Virginia." Here and elsewhere I use language as given in the original source, with a few exceptions. I replaced the long s with an s and shorthand symbols that are not easily reproduced with the letters they represent. Italicized words are in the originals.

⁴ A more involved argument that the colonial assemblies and Parliament evolved differently is offered in Squire (2012), where, in addition to the obvious point that the assemblies did not follow Parliament in developing a parliamentary system, it is shown that rules, standing committee systems, and member compensation evolved very differently in colonial America.

⁵ Both the governor and council were elected in Connecticut, New Haven, Plymouth, and Rhode Island. In Massachusetts, both offices were initially elected. Later, the governor came to be a royal appointee and the council to be elected by the lower house. Councilors were elected in Pennsylvania until the colony changed to a unicameral assembly.

⁶ John Winthrop made similar observations in his journal. Among them, he noted "the number of freemen was supposed to be (as in like corporations) so few, as they might well join in making laws; but now they were grown to so great a body, as it was not possible for them to make or execute laws, but they must choose others for that purpose" (Hosmer 1908, 122).

⁷ The use of the word "Comittes" here means individuals to whom certain responsibilities were committed, not an organized body as in current usage (Kukla 1989, 56).

⁸ Formal rules regarding corruption would later be adopted in the House of Burgesses. One of the rules compiled in 1769 involved voting on matters in which the member had a financial interest: "*Ordered*, That no Member shall vote on any Question, in the Event of which he is immediatly interested." The other involved illegal campaign practices: "*Resolved*, That if any Person hath procured himself to be elected or returned as a Member of the House, or endeavored so to be, by Bribery, or other corrupt Practices, this House will proceed with the utmost Severity against such Person" (Kennedy 1906, 323-25).

⁹ Although not specified by Carter in his diary, the measure in question appears to be “A Petition of sundry Inhabitants of the County of *Westmoreland*, praying that the Number of Tobacco Plants may be reduced, and that this House will ascertain how many Plants every Person employed in making Tobacco may be allowed to tend . . .” (McIwaine 1909, 214).

¹⁰ Assembly members then immediately took a swipe at the executive, saying “and could the Governor be as soon and as easily changed, *Pennsylvania* would, we would apprehend, deserve much less the Character he gives it, of *an unfortunate Country*.”

¹¹ The play is thought to be America’s first satirical comedy (Hubbell and Adair 1948). In it Wou’dbe fears he will lose to the other active candidates: Sir John Toddy, the local lush, Mr. Strutabout, a conceited member of the gentry, and Mr. Smallhopes, a gentleman more interested in equestrian matters than human issues. The prospect that any of the other candidates might win leads the county’s other incumbent and most distinguished personage, Mr. Worthy, to agree to seek reelection with Wou’dbe, and the two of them are swept back into office.

¹² These data are taken from the *Historical Abstract of the United States, Colonial Times to 1970*, Part 2, Table Z 1-19.